

# LONG TERM CARE COMMUNITY COALITION

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*Advancing Quality, Dignity & Justice*

## **KEEPING THE PROMISE TO AMERICAN SENIORS & FAMILIES**

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ASSISTED LIVING FACILITIES:

UNDERSTANDING LONG-TERM CARE OPTIONS FOR OLDER ADULTS

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## I. Introduction

Good morning, Chairman Casey, Ranking Member Braun, and Members of the Committee. Thank you for inviting me to testify today on this important issue.

My name is Richard Mollot. I am the executive director of the Long Term Care Community Coalition (LTCCC). LTCCC is a national non-profit, non-partisan organization dedicated to improving care and quality of life for residents in nursing homes and assisted living. We conduct substantive research on long-term care policies and the extent to which essential standards of care are realized in the lives of residents, who are typically elderly and frail. In addition to conducting systemic analysis and advocacy, we educate and engage residents, families, and those who work with them, so that they are aware of their rights and are equipped to overcome the challenges that so many of our seniors face when they need residential care.

While timelines vary, essentially, assisted living emerged in the 1980s as an alternate to nursing homes for seniors who want or need to live in a congregate setting where they can get help with tasks like housekeeping, meal preparation, and access to activities and transportation.<sup>1</sup> Over the last 40 years, three developments have drastically changed the nature and character of the assisted living sector, with both positive and negative implications. They are:

1. The needs and frailty of assisted living residents have dramatically increased;
2. Assisted living operators have adopted increasingly sophisticated and large-scale corporate models, including ownership by Real Estate Investment Trusts, Private Equity, and other sophisticated private investment structures;<sup>2</sup> and
3. Public payment and support for assisted living services has increased dramatically.

The subsequent discussion delves into some of the ramifications of these trends, followed by recommendations aimed at fostering a sustainable business model for assisted living that effectively meets the evolving needs of our expanding senior population.

## II. The Growing Needs and Expectations of Our Expanding Senior Population to Live Safety and with Dignity

Assisted living facilities (ALFs) are increasingly viewed by seniors and their families as a desirable option for residential care, particularly for those who wish to avoid the institutional environment that typically defines life in a nursing home. In fact, assisted living is the fastest growing form of senior housing in the United States.<sup>3</sup> While too often overlooked by policymakers and oversight agencies, assisted living facilities house a comparable number of individuals to nursing homes in the United States.

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<sup>1</sup>Wilson, K.B., "Historical Evolution of Assisted Living in the United States, 1979 to the Present," *The Gerontologist*, Volume 47, Issue suppl\_1, Pages 8–22 (December 2007). [https://doi.org/10.1093/geront/47.Supplement\\_1.8](https://doi.org/10.1093/geront/47.Supplement_1.8).

<sup>2</sup> See, for example, Fenne, M., "Private equity's growing presence in senior living," The Private Equity Stakeholder Project (blog post). (December 2023). <https://pestakeholder.org/news/private-equitys-growing-presence-in-senior-living/>.

<sup>3</sup> Castillo, L., "Assisted Living Industry Statistics," GITNEX Marketdata Report 2024 (December 2023).

<https://gitnux.org/assisted-living-industry-statistics/#:~:text=Assisted%20care%20experienced%20the%20highest%20growth%20in%20terms,fastest%20growing%20segment%20of%20the%20senior%20housing%20market.>

Importantly, ALFs do much more than just providing accommodations and assistance with housekeeping and prepared meals, as they largely did in the past. They now provide a range of health and support services to residents with increasing needs (and vulnerabilities):

1. Approximately 40 – 70% of assisted living residents have Alzheimer’s Disease or some other cognitive impairment.<sup>4</sup>
2. More than half of ALF residents are 85 or older (compared to 42% in nursing homes).<sup>5</sup>
3. Over 50% have hypertension.<sup>6</sup>
4. One-third or more have heart disease or depression.<sup>7</sup>
5. About half need help with dressing and/or walking and 64% need help with bathing.<sup>8</sup>
6. Over 10% of ALF residents with dementia are administered antipsychotic drugs, which carry a FDA “black box” warning against use on elderly people, due to significant risks of heart attack, stroke, Parkinsonism, falls, and death.<sup>9</sup>

In summary, the evolving care requirements of assisted living residents have grown increasingly intricate over the years. As seniors experience longer lifespans with chronic conditions, notably dementia, the susceptibility of this demographic has heightened. Despite the escalating needs and vulnerabilities, the federal government has consistently adopted a "hands-off" stance, and state regulations are generally characterized by weakness and lax enforcement. Consequently, the assisted living sector operates under a *caveat emptor* – let the buyer beware – principle.

We can and must do better for American seniors and their families.

### III. The Imperative to Improve Transparency About Quality and Safety

While the notion of "buyer beware" is already disconcerting for seniors and their families, the situation is exacerbated by the pervasive lack of transparency that extends to virtually every facet of assisted living. In any typical consumer scenario, one would rightfully anticipate clear information about the services to be provided, costs, quality, and safety. However, in the realm of assisted living, obtaining crucial indicators is challenging, if not impossible. Who’s providing care? How much will living and services cost? What happens when/if I need more care and services? What happens if I run out of money? What is the quality record of this facility? If a facility has had issues, how do I find out what they were and, most importantly, what was done to address them?

In the world of assisted living, the answers to these vital questions are not only hard to find, they are often purposefully obfuscated by both operators and the state agencies that are supposed to be protecting residents. Unlike nursing homes, for which vigorous, professional assessments are

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<sup>4</sup> Estimates vary, and the lack of firm data on this important point is a result of the lack of transparency in the assisted living industry (including the needs of those they serve and the capacity of those providing care and services).

<sup>5</sup> Zimmerman S, Sloane PD, Wretman CJ, *et al.*, “Recommendations for Medical and Mental Health Care in Assisted Living Based on an Expert Delphi Consensus Panel: A Consensus Statement,” *JAMA Network Open* (2022). <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2796840>.

<sup>6</sup> Zimmerman, S., Wenhan, G., *et al.*, “Health Care Needs in Assisted Living: Survey Data May Underestimate Chronic Conditions,” *Journal of the American Medical Directors Association*, Volume 22, Issue 2, 471 - 473 (December 2020). [https://www.jamda.com/article/S1525-8610\(20\)31022-7/fulltext](https://www.jamda.com/article/S1525-8610(20)31022-7/fulltext).

<sup>7</sup> *Id.*

<sup>8</sup> National Center for Assisted Living, Assisted Living Facts & Figures. <https://www.ahcancal.org/Assisted-Living/Facts-and-Figures/Pages/default.aspx>.

<sup>9</sup> Zhang, T., Thomas, K., *et al.*, “State Variation in Antipsychotic Use Among Assisted Living Residents With Dementia,” *JAMDA*, Volume 24, Issue 4 (February 2023). [https://www.jamda.com/article/S1525-8610\(23\)00088-9/fulltext](https://www.jamda.com/article/S1525-8610(23)00088-9/fulltext).

required upon entrance and periodically, to a large extent ALFs are free to accept – and retain – whomever they want. Licensed nurses may or may not be on hand to supervise care for residents with higher needs, respond to a fall, or ensure that medications are given correctly. Care, monitoring, and dignity for individuals with dementia may be wonderful or slipshod, depending on the facility or, even, the operator’s profit goals for the quarter. While approximately 75% of ALFs claim to have a "memory care unit,"<sup>10</sup> this term is often more a marketing strategy than an accurate representation of specialized care. Seniors and their families may lean on this term when placing an individual with dementia, despite potentially disastrous disparities in actual care quality.

#### **IV. The Case for Federal Interest and Engagement in Safeguarding Quality and Integrity in the Assisted Living Industry**

Although assisted living is commonly seen as a private enterprise functioning with a non-governmental payment model, it is essential to recognize the growing importance of public funding and the escalating demand for federal involvement. The government's interests have expanded over the years, emphasizing the need to ensure robust consumer protections and foster a healthy assisted living industry.

1. Close to 20% of assisted living residents currently rely on Medicaid to pay for services.<sup>11</sup>
2. Forty-seven states plus the District of Columbia provide access to Medicaid assisted living.
3. The U.S. Supreme Court’s landmark 1999 *Olmstead* decision established that the unjustified institutional isolation of people with disabilities is a form of discrimination under the Americans with Disabilities Act (ADA). The court declared that states are required to make reasonable modifications to publicly funded programs to accommodate qualified individuals who desire to live in the most integrated setting.<sup>12</sup> To meet this requirement, states have been “rebalancing” access to publicly-funded long-term care services over the last 25 years, favoring home and community-based services, which can encompass assisted living, over nursing home placement.
4. The U.S. Department of Housing and Urban Development (HUD) provides advantageous loans to finance the purchase, refinance, new construction, or substantial rehabilitation of assisted living.
5. The Government Accountability Office (GAO) has focused on the need to improve safety and accountability in assisted living numerous times over the last 25 plus years. Unfortunately, the persistent failure to take substantive action to implement most of the GAO’s recommendations over the years has resulted in untold numbers of residents suffering harm, including financial exploitation, sexual assault, and even death, due to substandard care and lack of promised supervision.

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<sup>10</sup> Bretschneider, A., “Understanding the Cost of Memory Care” (December 2023). <https://www.seniorly.com/resource-center/senior-living-guides/how-much-does-memory-care-cost#>.

<sup>11</sup> National Center for Assisted Living, *Assisted Living: A Growing Aspect of Long Term Care*. [https://www.ahcancal.org/Advocacy/IssueBriefs/NCAL\\_Factsheet\\_2023.pdf](https://www.ahcancal.org/Advocacy/IssueBriefs/NCAL_Factsheet_2023.pdf).

<sup>12</sup> Long Term Care Community Coalition, *Single Point of Entry for Long Term Care and Olmstead: An Introduction and National Perspective for Policy Makers, Consumers and Advocacy Organizations* (2005). <https://nursinghome411.org/single-point-of-entry-for-long-term-care-and-olmstead-an-introduction-and-national-perspective-for-policy-makers-consumers-and-advocacy-organizations/>.

6. The LTC Ombudsman Program, which monitors care and helps residents resolve complaints under the authority of the Older Americans Act, has been authorized to monitor assisted living and provide services to residents since 1981.
7. Numerous news reports, in both local and national media, have uncovered the painful and heart-breaking problems that can occur as a result of the lack of federal standards and weak state oversight. A recent report from *The Atlanta Journal-Constitution* is emblematic:

“During a routine room check, an 88-year-old resident told workers that hours earlier she had been sexually assaulted by another resident.” Three weeks later, an investigation by the Georgia Department of Community Health found that Savannah Court of Lake Oconee “failed to provide supervision consistent with the residents’ needs.”

“While the incident would be distressing on its own, its timing adds a layer of alarm. The assault took place two months after the state sent Savannah Court of Lake Oconee a notice that it planned to revoke its license. And while such an action should imply serious safety concerns, the department’s efforts to move the process along and ensure residents are free from harm have lacked urgency. ...Court documents and inspection reports reviewed by The Atlanta-Journal Constitution show that, since 2021, Savannah Court of Lake Oconee has accrued over 70 state violations, including two incidents where residents died.”<sup>13</sup>

A senior or their family would have trouble finding out this history. Savannah Court’s website provides no inkling about any of these problems (no matter what steps, if any, were taken to address them). It paints an entirely rosy picture of “an ideal place for your loved ones to age in place while also providing you with the peace of mind that comes with knowing they are well cared for.”<sup>14</sup> The state’s “Find a Facility” page only provides a single row of information with the facility’s address, phone number, bed capacity, and administrator.<sup>15</sup> One has to do a separate search in a separate database of inspection reports to find any record of what has transpired in the facility.

Beyond highlighting the imperative for substantive measures to enhance safety and quality, the substantial variances among assisted living facilities, encompassing staffing levels, services provided, and costs, underscore the need for decisive action to improve both quality assurance and transparency.

## VI. Recommendations

1. **Establish and Implement National Standards to Promote Quality, Safety, and Integrity in Assisted Living:**
  - For years, the states have functioned as an incubator for developing assisted living policies. While this has not resulted in a high-quality system, there are many lessons that

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<sup>13</sup> Gross, A., “Possible closure of Georgia senior home reveals flaws in state oversight,” *The Atlanta Journal-Constitution* (January 2024). <https://www.ajc.com/news/possible-closure-of-georgia-senior-home-reveals-flaws-in-state-oversight/RWJRB3GBABFUPJ7RFFBANW7FMI/#>

<sup>14</sup> <https://www.savannahcourtlakeoconee.com/>. Accessed January 22, 2024.

<sup>15</sup> <https://forms.dch.georgia.gov/HFRD/GaMap2Care.html>.

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can be learned, and existing state requirements provide a logical basis for promulgating federal rules.<sup>16</sup>

- A system of regular inspections and oversight at the facility and corporate levels should be developed to ensure compliance with these standards.

**2. Establish a National Assisted Living Database:**

- Create a centralized and standardized database that includes key metrics on assisted living facilities' performance, include: staffing (levels and competencies), ownership, charges for residential and care services, and citation history (including how those citations were corrected and any penalties that were imposed).
- This database should be easily accessible to the public, empowering families with the information needed to make informed decisions.

**3. Promote Resident and Family Engagement:**

- Develop rules for the rights of resident and family councils in assisted living.
- Strengthen the involvement of residents and their families in the internal policies and operation of their assisted living facility (such as by strengthening requirements under the Home and Community-Based Settings regulations promulgated in 2014).

## VII. Conclusion

Improving transparency, quality, and accountability in assisted living is not only a matter of public interest but a moral imperative. Now more than ever, federal action is needed to ensure that older Americans receive the care and support they deserve while fostering a system that promotes transparency and accountability within the industry.

I appreciate the Committee's commitment to addressing these critical issues, and I am available to provide any additional information or answer questions that may arise during or after the hearing.

Thank you for your consideration of my testimony and the issues raised herein.

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<sup>16</sup> See, LTCCC, *Assisted Living: Promising Policies and Practices* (2018). <https://nursinghome411.org/ltccc-report-assisted-living-promising-policies-and-practices/>.