



CALCRA News

California
Continuing Care
Residents Association

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FROM THE PRESIDENT

It has been an eventful three months since the last newsletter, particularly with our efforts to develop improved relationships with Aging Services while working on our legislative agenda for this year.

As an article on page 3 indicates, Joanne Handy, the new president and CEO of Aging Services, gave a fine presentation at the annual meeting of the CALCRA

chapter at University Retirement Community at Davis. She appears to understand the issues and to have the leadership capability needed for the position.

We have been working with Aging Services on a bill, AB 1433, covering resident rights in temporary relocations caused by renovations. Both parties agreed to keep the bill as simple as possible and deal with the details in a memorandum of understanding (MOU). Unfortunately, as you will see in the article on page two, we were unable to reach an agreement on the MOU because of an unexplained objection to one sentence by Front Porch, Aging Services' largest CCRC member. This apparently was intended to torpedo the entire effort and has been a most unfortunate set back in our effort to work more effectively with Aging Services.

We also had intended this year to introduce legislation concerning governance - the responsibilities of CCRC boards of directors. This would have started with parallels to the Sarbanes-



Walter P. Rozett

Oxley Bill at the Federal level that attempts to resolve deficiencies revealed several years ago in the functioning of the boards of Enron and other publicly owned companies.

A relevant current lawsuit challenges a provider's use of resident funding at a non-profit CCRC for any purpose except to benefit residents.

Central to this issue is the IRS Ruling that establishes the tax exemption of non profit CCRCs by requiring them to operate at the lowest feasible cost. Because of this clear-cut requirement it is difficult to understand how resident funds can be used legally for any purpose other than to benefit those who supplied the money. We have concluded that the governance effort should be delayed until after this suit is settled.

The other legislation of concern is AB 1044, by Assemblyman Dave Jones of Sacramento, which would transfer the financial oversight of CCRCs from the Department of Social Services to the Department of Insurance would be most welcome. The bill, however, has many needless complications and does not deal effectively with the matter of how the two departments would work together in the licensing, operational and financial oversight of the communities. We have been unable to stimulate the needed changes and agree with Aging Services that the bill should not be passed in its present form.

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AN INVITATION TO OUR APRIL BOARD MEETING

All members are cordially invited to attend CALCRA's board meeting on Thursday, April 15, 2010 at The Covington, 3 Pursuit Road, Aliso Viejo, CA 92656.



TEMPORARY CLOSURES

Ever since we became aware of the extraordinary difficulties experienced by residents when their San Jose CCRC was closed permanently in 2006, CALCRA has been dedicated to promoting legislation that would assure conditions for appropriate care of resident transfers with any future closures, either permanent or temporary. As previous newsletters have reported, the mutual concerns of residents and providers led to last year's groundbreaking collaboration of CALCRA and Aging Services in developing successful legislation that now governs resident relocations when a CCRC closes permanently. That relationship also included agreement between the parties to mutually develop legislation in the current session that would govern temporary transfers.

This latter effort has been more complex than last year's because of the timing variables of renovation projects. To avoid unduly complex legislation it was agreed that many of the conditions of a temporary transfers would be set forth in a Memorandum of Understanding (MOU) that would be a useful guideline for providers. To keep drafting of the MOU on track, CALCRA acceded to the providers' position that it would apply only to relocations lasting nine to eighteen months. Although it was our position that shorter time periods should also be included we believed it was important to show our willingness to work with Aging Services for the common good the two parties were seeking. It was also our view that once these principles are established most providers would agree to apply them also for shorter relocations.

As negotiations proceeded toward acceptable conclusions it appeared this framework of simplified legislation and a letter of understanding would be workable to both meet resident objectives and to not cause undue complications and expense to

providers. Unfortunately that amicable relationship and the agreed upon approach are now threatened by a perplexing last minute objection from one of Aging Service's members to a single sentence in the MOU's final draft. That sentence states "The method of handling the transfer shall give serious consideration to each affected resident's condition." The language is critical since it relates directly to the misfortune that occurred in 2006 when three residents died within a month of their relocation, leading to a \$20,000 fine of the provider, demonstrating tragically that transfer trauma is real and has the potential of serious harmful impact.

That language was unacceptable to Front Porch, the largest provider of CCRCs in California and a member of Aging Services. No reason has been given for the objection nor has any substitute language been offered. This negative posture is puzzling since the lobbyist for Front Porch had participated in the negotiations from their outset, and, most particularly, because the Health and Safety Code already provides in Section 1569.682 that providers must prepare for each resident a relocation evaluation of the needs of that resident. In that light it is beyond comprehension how a provider could object to language in an MOU that is consistent with what has already been written into law. Nevertheless, the prominence of Front Porch in Aging Services makes it certain its objections will have the effect of vetoing all of the good works that otherwise had brought negotiators to a point of agreement.

CALCRA wishes to avoid any action that can unduly inconvenience or be costly to Aging Services and Front Porch, but unless a mutually acceptable agreement can be reached on handling temporary transfers of residents, it will proceed unilaterally to preserve all features of the MOU

in legislation. Because so much is at stake in this for all CCRC residents we appeal to those in Front Porch communities to write to their management directly or through the resident council asking for an explanation of this objection. Perhaps by this means we may find answers to salvage the productive efforts that preceded this surprising opposition. Please forward whatever responses you obtain to Walt Rozett by e-mail or to the address on page 1 of this newsletter.

Here is the final draft of the MOU:

Temporary Resident Relocation Due to Renovation in California Continuing Care Retirement Communities (DRAFT)

M E M O R A N D U M O F UNDERSTANDING

This Memorandum of Understanding (MOU) has been executed by Aging Services of California and California Continuing Care Residents Association, Inc. (CALCRA). This MOU is intended to serve as a set of industry guidelines for providers and residents facing temporary relocations due to renovations or major repairs.

1. The intention of this memorandum is to cover all involuntary temporary resident relocations except: a) those caused by natural disaster or other act of God, b) emergency situations out of the provider's control and c) transfers to higher levels of care.

2. An objective of this memorandum is to stimulate all providers to include in resident contracts the procedures to be followed to ensure that temporary relocations provide comparable levels of care, services and living accommodations as described in the resident's contract.

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TEMPORARY CLOSURES *continued from the previous page*

3. The provider shall notify the resident of the impending relocation at least 60 days in advance of the relocation.

4. The provider shall meet with the resident and, at the resident's request, family members or other individuals at least 30 days in advance of the transfer to discuss all aspects of the transfer. Notice of this meeting will be provided in writing and at least 7 days in advance of the meeting and include the following information: a) the date of the transfer, b) the available replacement unit(s) and monthly fees, c) the time when the resident will be able to inspect the replacement unit(s), d) the estimated date when the resident will be able to return to his/her unit or a substitute permanent unit.

5. The provider will absorb all moving costs to and from the temporary accommodations as well as any storage costs.

6. The resident shall only be required to pay the provider a monthly fee as set forth in the contract. The provider shall be required to make payment to the facility at which the resident is relocated.

7. The provider shall set forth specific procedures for the resident to follow regarding the selection of a new unit, relocation to the unit, and any timeframes for making choices. Procedures for returning the relocated residents when residential units will be ready for occupancy include: at least 60 days notice of the return to his/her unit or a substitute permanent unit, and subsequent notices 30 days and 7 days prior to the return date.

8. The provider shall identify and make known to the resident and the resident's representative an individual to assist if questions regarding the temporary relocation arise.

9. The method of handling the transfer shall give serious consideration to each affected resident's condition. Upon request by the resident or the resident's representative, the provider shall make available the services of a licensed medical or geriatric professional to advise the resident, the resident's representative, and the provider regarding the relocation of the resident. The provider may place a reasonable limit on the cost of the services of the medical or geriatric professional.

10. If the relocation of a resident of a continuing care retirement community will exceed 18 months, the resident will have all options allowed by Section 1793.82 of the Health & Safety Code, unless there is a written agreement between the affected resident and the provider to the contrary.

UNIVERSITY RETIREMENT COMMUNITY CHAPTER

by Bill Allewelt

Four years ago CALCRA members at the University Community at Davis (URC) formed a chapter to facilitate two-way communications with the statewide organization and with other chapters. Over time, the Chapter's steering committee has been encouraged by members to develop information on local issues that might warrant attention by the CALCRA board either to help resolve or to promote governing legislation. It is a very active chapter with annual CALCRA membership running close to half of all independent living residents.

As with most other CCRCs, residents at URC have been greatly concerned in recent months with how the economic meltdown has impacted residents personally and the financial viability of their community. Especially disconcerting have been commentaries in the Wall

Street Journal and the Washington Post that have reported on the financial distress with articles on CCRC bankruptcies occurring nationwide.

Against that background the Chapter's steering committee invited Aging Service's recently installed president and CEO, Joanne Handy, to address its Annual Meeting on the general subject of current challenges to CCRCs and their future prospects. Ms. Handy accepted graciously and keynoted the meeting on January 26, after she and colleague Jack Christy lunched informally with steering committee members.

Ms. Handy, who is extensively experienced with organizations that serve the elderly, and a current board member of AARP, frankly acknowledged the financial

difficulties many CCRCs are experiencing, but reassured that even where bankruptcies have occurred none has experienced serious disruptions of resident services. She also noted that from a national perspective California's industry appears the least susceptible for such difficulties because its financial and operational standards are higher than elsewhere, although even here some are seriously challenged to overcome eroded finances and declining occupancy.

In all, she expressed confidence for our industry's future because of its generally well managed operations. In that context she noted CALCRA's prominent role in encouraging universally high standards for the care of CCRC residents.

ARE YOU READY TO PAY A QUALITY ASSURANCE FEE?

by Margaret Griffin

Quality Assurance sounds like something everyone should be for— like the proverbial Mom and apple pie. After all, who wouldn't like to be assured of quality? In this case, the term is rather loosely applied to what is in practice a tax on beds in skilled nursing facilities. **CCRC's have been exempt from paying this "bed tax."** However we all know of the financial problems and budget difficulties facing our state. This dire economic situation could have a direct impact on you.

The Quality Assurance Fee was implemented in 2005 as an element of a provider tax. It involves a rather convoluted mechanism whereby the nursing facility pays a fee, and then gets it back in an enhanced Medi-Cal claims rate. Currently, CCRCs and multi-level retirement communities are exempt from this fee. A primary reason for the exemption

was that most CCRCs don't serve many Medi-Cal patients – certainly not in a number sufficient to recoup the fee – and paying a tax from which you derive no benefit was not justifiable. It has also been suggested that because residents will be the ones to ultimately foot the bill for the "bed tax," this amounts to a tax on retirement savings, again with no benefit received by those paying the tax.

Attempt to eliminate exemption failed, but could be revived at last minute. But times have changed. In its desperate quest for revenue to plug gaping fiscal deficits, our state government may decide to do away with this exemption. And as we all know, this increased cost of doing business for our skilled nursing facilities will be passed on in the form of higher resident fees.

An earlier bill that would have eliminated the "bed tax" exemption

did not make it out of committee in the legislature. While that is good news, the drama is not yet over. There is a very real possibility that this concept will be resurrected and gain new life as an element in a trailer bill during the final hours of negotiations on this year's state budget. This scenario is particularly problematic for anyone wanting to weigh in with an opposing opinion because there is not time to give budget trailer bills the same review a normal bill receives before a legislative committee, and no hearings are held on a trailer bill's merits.

You can be sure that CALCRA will continue to monitor the situation closely as the budget process grinds to its conclusion. ***If you receive a last minute urgent request to write to the Governor on this issue, we hope you will respond.***

WWW.CALCRA.ORG
We're on the Web!!!

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