



More than one million residents consider one of the estimated 20,000 assisted living residences (ALRs) their home. The number of ALR residents is anticipated to grow exponentially as the aging population grows and considers these types of facilities as viable living options within their communities.

Historically, ALRs were developed to provide services under a social framework. As they became more prevalent, however, state regulators, insurance carriers and accreditation organizations scrutinized the business patterns and trends among ALRs. As a result, risk exposures were identified and have subsequently emerged in this growing industry.

This article will highlight the risk issues that are most common within the ALR setting. Risk management methods will be offered to help your organization proactively identify and reduce those risks and their attendant liabilities.

*Staffing.* Inadequate staffing is often associated with a myriad of risk management issues. With respect to an ALR setting, low staff ratios may lead to a lack of supervision and

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predispose frail residents to a variety of injuries. According to a recent national study by the U.S. Department of Health and Human Services, which surveyed assisted living facilities for the frail elderly (April 26, 1999. <http://aspe.hhs.gov/daltcp/reports/facreses.htm>), residents of ALRs cited staff turnover and an insufficient number of staff as their primary concerns for personal safety.

Staff shortages can be traced to the difficulty in recruiting and hiring qualified job applicants. Offering qualified applicants inadequate wages and benefits exacerbate the situation. Given the obstacles to staff retention, and the associated low ratios of staff to residents, organizations must provide internal education programs, and ongoing training and supervision to curtail and eliminate the following risks:

- Preventable falls
- Unnecessary restraint use
- Wandering and elopement

*Falls.* Given the ambulatory nature of residents in assisted living facilities, attention to possible housing and environmental hazards is necessary in order to reduce the risk of falls and subsequent injury. If your organization offers specialized dementia care, there is a heightened responsibility to monitor and prevent falls.



Be alert to medication side effects, physical changes and slowing reflexes as a few factors contributing to the increased number of falls among the elderly. An important factor in reducing the risk of falls is ongoing assessment of the changing health condition of residents. As health and physical abilities may change frequently and quickly, staff must regularly assess each resident's health condition as part of a fall prevention program.

**Medication Errors.** Medication administration and its associated errors are on the rise in assisted living settings. According to a recent study, Medication Usage Patterns in Assisted Living Facilities, conducted by the American Society of Consultant Pharmacists, residents in ALRs are receiving almost as many medications on average as are skilled nursing facility (SNF) residents. About 25 percent of assisted living residents received nine or more medications, whereas 27 percent of SNF residents received the same number of drugs.<sup>1</sup>

In addition, a 1999 GAO report found that medication errors were among the most common quality problems in ALRs.<sup>2</sup> Medication administration should be monitored as a part of on-going risk management efforts. The occurrence rate for medication errors is further intensified by staff members who are not knowledgeable in the potential side effects of antipsychotic medications. Annual staff education and proficiency testing on medication administration are two interventions that can help to reduce errors and liability exposure.

**Ongoing Assessments.** Assisted living residents require more assistance over time. Liability risks are compounded when residents remain in an ALR that cannot provide the appropriate care needed. Data from a survey of assisted living providers in 44 states indicate that on admission to an ALR, the average resident requires help with 2.3 activities of daily living (ADL). After two years, help is needed with 3.5 ADL. This requirement closely approaches those of the average nursing home resident at 3.8 ADL.<sup>3</sup>

Organizations must develop thorough admission criteria to avoid the need for involuntary transfer post-admission. Such criteria should be consistently applied, with resident needs reassessed regularly and documented prominently in resident records. Involuntary transfer of a resident to a skilled nursing facility may otherwise result in unnecessary operational, legal and risk management problems.

**Inconsistent Regulations.** State regulation of ALRs exists in more than half of the states, but such regulations lack uniformity throughout the jurisdictions where promulgated and represent a patchwork of legal and regulatory requirements. Because of the variation in state assisted living guidelines, it is difficult to determine the standard of care that may be applied should litigation arise.

Many state licensure laws recognize ALRs as distinct entities. However, some states may license these facilities under other categories, such as residential care facilities, personal care homes or homes for the aged. Two voluntary accreditation organizations, JCAHO (Joint Commission on Accreditation of Healthcare Organizations) and CARF (Commission on Accreditation of Rehabilitative Facilities) have developed assisted living standards for accreditation. In order to minimize risk exposures in ALRs, the standards of these national organizations should be understood.

*"the assisted living industry must collaborate with legislative bodies, industry organizations, and the insurance community to work toward mutual risk management goals and expectations. A proactive risk management program can help a facility improve quality of care, business and clinical operations, as well as its insurance desirability"*

**Negligent Care.** Typically, residents of an ALR function at a higher capacity than most residents of skilled nursing facilities. Despite the relatively higher degree of independence with activities of daily living, an ALR will not be insulated from a negligent care claim. Pharmacy services and medication dispensing are among the common causes for negligent claims in an ALR setting.

Failure to provide special care provisions to residents with special needs — or a lack of well-defined protocols for the provision of that care — also may contribute to allegations of negligence. ALRs can focus on the following services to avoid complications stemming from substandard care:

- Ostomy care
- Injections
- Mechanically altered diets
- Rehabilitative services
- IV therapy

**Elopement.** When a cognitively impaired resident develops a wandering tendency and elopes, the facility faces the possibility of a negligence claim. Lawsuits of this nature frequently allege a failure to hire sufficient staff and/or to properly supervise residents. A comprehensive assessment of physical, emotional and psychological factors that may predispose the resident to this behavior will provide a valuable resource in the defense of an elopement claim. Documenting the initial assessment of the resident on presentation to the facility will ensure that the initial findings are incorporated in future activity planning. Ongoing assessment of mental capacity and modification of the resident's environment through security and monitoring systems represent two other important risk interventions.

**Resident Rights Violations.** Liability can also arise through a violation of resident rights, as articulated in state resident rights statutes. Rights are also created by the U.S. Department of Health and Human Services through regulations that may or may not regulate a facility. Ongoing assessment of a facility's compliance with residents' rights should be an integral part of the risk management program. Records that document the monitoring and evaluation of a resident rights compliance program are essential to mounting a strong defense. For example, violations related to protection of resident funds and financial matters, receipt of mail, security of personal property, and abusive staff behavior may be subject to heightened scrutiny.

### **Risk Reduction Strategies**

Historically, ALRs have not been required to implement formal risk management programs to address potential exposures. However, the current liability environment has accelerated the need for such programs.. The 2002 CNA HealthPro Long Term Care Claims Study <sup>4</sup> underscored the evolving liability associated with assisted living settings. Although the total

number of open and closed claims for ALRs was significantly less than that of Skilled Nursing Facilities (see Table I), ALRs headed the list of all long term care settings for the average total paid indemnity and expenses on closed claims. An average of \$60,333 was paid for ALRs versus \$45,230 on behalf of skilled nursing facilities (see TABLE II).

**TABLE I — Number of Claims by Industry Segment (closed and open)**

<b>Business Segment</b>	<b>Total Claims (Open and Closed)</b>	<b>% of Total Claims</b>
Assisted Living Residence	273	11%
CCRC	205	8%
Independent Living	48	2%
Skilled Nursing	1,877	78%
Other	11	1%
<b>Total</b>	<b>2,414</b>	<b>100%</b>

**TABLE II — Severity of Claims by Industry Segment**

<b>Business Segment</b>	<b>Number of Closed Claims</b>	<b>Average Total Paid Indemnity &amp; Expenses</b>
Assisted Living Residence	155	\$60,333
Other	7	\$58,111
Skilled Nursing	929	\$45,230
Independent Living	30	\$35,564
CCRC	136	\$23,767
<b>Total</b>	<b>1,257</b>	<b>\$44,611</b>

Negligent care, elopement and resident rights violations are primary causes of loss in the assisted living segment. ALRs must adopt strategies that minimize potential losses. Creating a meaningful risk management plan and appointing a senior leader chiefly responsible for the risk management function will alleviate some of the most prevalent factors in liability exposure.

In designing a program, remember that risk management entails the making and implementation of decisions that will assist in the prevention of adverse consequences and minimize the negative effects of accidental losses. A simple four-step model can assist an organization in managing risk exposures.

Risk identification is the step by which an ALR becomes aware of problems or potential problems that may result in loss. Prompt identification is the cornerstone of a successful risk management program. Educate staff both during orientation and on an annual basis regarding all processes used to identify potential risks and the necessary documentation

requirements. Consider employing the following methods to better identify risk in a systematic, multidisciplinary manner.

- Employee incident reporting. All staff should understand the importance of prompt incident reporting. Accidents and occurrences not consistent with the routine care of a particular resident or described operation of the facility require reporting. Failure to report or delayed reporting impedes full investigation and can compromise the facility's bottom line.
- Resident complaints. Provide in writing to the resident/family the procedure by which residents can document their complaints. Ensure compliance with state laws and regulations granting resident rights. During admission, set realistic expectations for the resident and family for both the services available and the safety measures in place. Emphasize the level of oversight provided to individuals in the assisted living setting, as opposed to a skilled nursing setting.
- Standardized questionnaires. Develop a resident/family satisfaction tool to monitor concerns and/or overall satisfaction with the facility and staff. Require residents to complete the tool on a regular basis. Keep the questions brief and consider changing the question format upon subsequent surveys.
- Committee minutes. Prepare formal minutes of all committee meetings and include an action plan for identified trends. Appropriately label the minutes as confidential and in furtherance of the risk management and quality assurance processes.
- Expert surveys. Consider accreditation by a nationally recognized accreditation organization. The process can provide an organization with valuable insight to risk and liability exposures both within and outside the assisted living setting.
- Informal discussions. Promote ongoing communication and involvement with the resident and resident's family by promoting social events designed to better acquaint staff with residents.

Risk analysis is the process of determining the likely significance and severity of possible losses. This important step allows a facility to measure the seriousness of a risk and guide the facility's selection of an appropriate risk treatment strategy. Analysis of risk can occur in a variety of ways, including some of the following methods:

- Monitor the adequacy of staffing ratios based on residents' needs.
- Review the findings of ongoing resident assessments to ascertain that the resident still meets the admission criteria. Clinical, environmental, social and other needs of each resident should be reassessed and documented according to an established interval of time.
- Analyze marketing materials to determine if they are consistent with the level of services provided, and be sure to have the governing board approve their circulation. A legal review should be completed on all marketing tools as well.
- Review resident contracts for consistency of terms. Focus on areas such as discharge and retention policies. During pre-planning with residents and their families, clarify that the facility will not allow a resident to remain in the facility if staff observes that the resident is no longer safe or appropriate for the setting.

- Appoint an individual responsible for the review of and reporting on all transfers to acute care within 24 hours of the transfer.
- Study the action plans of committees convened to monitor residents for quality of care and potential liability exposures.
- Trend findings of incident reports, resident complaints and satisfaction survey results.
- Monitor quality improvement and risk management indicators in order to identify and correct risk exposures.

Risk treatment is the third step in the risk management process. While organizations work to stop losses from occurring (through risk control), they must be prepared to pay for any losses that do occur. Payment of losses can be achieved through risk financing and the retention of funds within or outside of the organization. As a facility addresses risk control, it should include those techniques designed to minimize frequency or severity of losses. The following interventions are helpful methods to control risk:

- Draft policies and procedures that address operational, business and clinical issues to promote consistency in actual practices by the staff. Monitor the staff for compliance of established policies and include outcomes in annual competency and performance evaluations.
- Establish resident admission and discharge criteria. Establish “red flag” findings that require follow-up in a designated timeframe. Consistently apply the criteria to all admissions and document findings on resident records.
- Develop procedures for the timely transfer of residents to acute care facilities when the need arises.
- Create a falls prevention protocol that includes participation by staff, residents and family members. Include the potential risk of falls in an ongoing environment of care program.
- Implement a medication administration program that meets state and federal licensure requirements.
- Prepare a policy statement addressing the risk of wandering and elopement. Include an overview of resident assessment parameters, environmental modifications, alarm and locking systems, frequency of elopement drills, and staff preparedness.

Risk evaluation, the final step, involves assessing the effectiveness of the techniques employed to identify, analyze and treat risks. Risk evaluation should be a multidisciplinary and continuous activity involving both formal and informal methods.

### **Ensuring patient safety in the future**

The aging of the baby-boomer population will have a dramatic impact on assisted living for the foreseeable future. Because demands on the system will be at unprecedented levels, it is imperative that the industry collaborates with legislative bodies, industry organizations, and the insurance community to work toward mutual goals and expectations.

Of specific importance is a facility's ability to adopt and implement procedures that identify when an assisted living setting can no longer provide an appropriate and safe level of care. A proactive risk management program, if implemented and followed, can help a facility improve quality of care, business and clinical operations, as well as its insurance desirability.

1. Armstrong E., Rhoads M., Meiling F., "Medication usage patterns in assisted living facilities." *The Consulting Pharmacist* 2001 January 16, 2001, pp. 65-69. 2. U.S. General Accounting Office. *Assisted living: quality-of-care and consumer protection issues in four states*. GAO/HEHS-99-27. 1999. 3. National Center for Assisted Living. *Facts and trends: the assisted living sourcebook*, 2001. 4. CNA HealthPro Long Term Care Claims Study, 2002



**RESOURCES FOR THE  
ASSISTED LIVING INDUSTRY**

<http://www.alfa.org>

Assisted Living Federation of America

<http://www.aahsa.org>

American Association of Homes and Services for the Aging

<http://www.ncal.org>

The National Center for Assisted Living

<http://www.aoa.dhhs.gov/>

Administration on Aging, Department of Health and Human Services

<http://www.hud.gov/>

US Department of Housing & Urban Development

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