

Housing Issues for the Elderly and Nursing Home Regulation in the US

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US-Japan Population Statistics

- No. of 65 plus in US; 1900, 3 million; 1980, 25 million; 1990, 31 million; 2000, 34 million; 2010, 40 million; 2020, 55 million; 2030, 72 million; 2040, 81 million.
- No. of 65 plus in Japan; 1950, 5 million; 1980, 9 million; 1990, 12 million; 2000, 17 million; 2010, 23 million; 28 million in 2020; and 30 million in 2030.

Cultural Differences

- Hong Kong has 1/10 as many court-appointed guardians as New South Wales but with the same population numbers.
- In which country do more children care for their parents-Hong Kong or Australia?
- Although precise data is not available, there are many more guardians appointed for elderly in US than in Japan.
- Understanding such cultural differences is essential to understanding housing choices of elderly in US (and many other issues) versus choices made in Japan.
- Many more elderly in US must either live alone or find alternative housing accommodations.

Housing Issues Overview

- There are numerous issues an elderly person may encounter:
 - Desire to move upon retirement
 - Need for smaller space, one floor or adapted housing
 - Age restricted housing
 - Shared housing
 - Reverse equity mortgages
 - Housing with long-term care options (Continuing Care Retirement Communities (CCRCs) and assisted living)
 - Nursing homes.

Housing Levels

- We begin with the traditional single-family home or apartment.
- But many elderly, particularly those with significant wealth, move to retirement communities where they rent an apartment with extra services. This is known as “independent living.”
- The next higher level is “assisted living.” This might be provided in separate facility or as extra service in retirement community.
- Highest level is nursing home, either intermediate care or skilled care.
- Medicare pays for some skilled care. Medicaid pays for both skilled and intermediate care but only if patient is very poor.

Key Housing Issues for Elderly

- Are reverse equity mortgages beneficial for keeping elderly in their own homes?
- The inconsistent regulation of assisted living facilities.
- Is the CCRC a realistic housing model?
- The Nursing Home Reform Act went into effect some 25 years ago. Has it achieved its purposes?

Basic Mortgage Law

- When purchasing home, individual or couple usually obtain at least 80% mortgage, meaning that purchaser puts 20% down and bank pays the balance.
- Terms of mortgage usually 15-30 years with level monthly payments. During early years, payments mostly interest. Big principal payments occur toward end.
- Many fees are incurred when obtaining mortgage.

Reverse Mortgage

- Opposite of regular mortgage. Borrower receives monthly payments from lender. Interest accrues on debt but is not required to be paid immediately. Debt and interest repaid when home sold, usually following borrower's death.
- To qualify for reverse mortgage, homeowner must be 62 or older. There are no income limits.

Problems With Reverse Mortgage

- They are complex and expensive.
- Many consumers don't really understand the product.
- The many fees are often higher than consumer anticipates.
- While not always inappropriate, other options should be considered such as moving to a smaller house or apartment.

Assisted Living

- Unlike “nursing homes,” there is no accepted definition of “assisted living.”
- Medicaid does not pay for assisted living unless state has obtained a Medicaid waiver, and even then reimbursement will be limited. Assisted living is therefore not always a good option for lower income elderly.
- Questions to ask:
 - What services are available?
 - What if patient’s condition worsens?
 - How are fees assessed, one fee or ala carte?
 - Do some unannounced inspections and ask same questions as when choosing a nursing home.

Continuing Care Retirement Communities (CCRCs) [1]

- Provides A to Z housing arrangements from individual apartments to nursing homes.
- Can move from one type of housing to another as needs change.
- Other names are life-care facilities and life-care communities.
- Entrance fees sometimes can be several hundred thousand dollars, often paid with the proceeds of home sales.
- Usually not available to lower income elderly because of entrance fee hurdle and/or monthly charges.

CCRCs [2]

- Counseling issues include:
 - Terms of contract
 - Is facility accredited by the Commission on the Accreditation of Rehabilitation Facilities (CARF)?
 - How are fees structured?
 - Any refund if resident dies after short stay?
 - Does facility meet resident's needs?

Nursing Home Patient Rights

- Nearly all nursing home are certified to receive Medicare/Medicaid benefits, which triggers federal regulation.
- State law usually copies federal law, applying same rules to homes that accept only private pay patients.

Nursing Home Reform Act

- Enacted in 1987 and became effective in 1990. Act is still in effect largely unchanged.
- Purposes of Act:
 - Every nursing home patient should receive care from an adequate and professionally trained staff
 - Every nursing home patient should receive care appropriate to own needs
 - Nursing homes should be evaluated based on quality of care provided
 - Tough but realistic penalties should be provided for noncompliance
 - Patient's rights should be specified in detail.

Nursing Home Patient Rights

- Under federal law, patient has the following rights:
 - Free choice of treatment
 - Freedom from restraints
 - Privacy
 - Confidentiality
 - Accommodation in preferences
 - Grievances
 - Activities
 - Transfer and discharge
 - Access and visitation
 - Nondiscrimination
 - Protection of funds.

State Regulation

- Most state regulation is derivative of federal law but some state nursing home statutes provide for private rights of action which may lead to:
 - Actual and/or punitive damages
 - Penalties
 - Attorneys fees.

Other Legal Theories for Imposing Liability

- Tort actions, including negligence, intentional torts, false imprisonment, and failure to obtain informed consent. Failure to meet federal and/or state standards may be evidence of negligence.
- Contractual actions, based on failure to meet one of more of the following theories:
 - Responsibility party guarantees
 - Duration of stay clauses
 - Solicitation
 - Differential charges
 - Inadequate notice of discharge
 - Violation of promises in residents handbook
 - Overbroad waiver of liability.

Newer Issues Concerning Liability

- More recent issues include:
 - Enforceability of mandatory arbitration provisions
 - Impact of state statutes limiting tort damages generally.
 - Creation of complex business organizations making it difficult to impose liability
 - Failure of states to impose more than token fines.

Government Accountability Office Studies

- GAO is federal agency that studies effectiveness of federal programs.
- While care has improved, in major 2010 report GAO indicated that it still has following concerns:
 - Poor care continues to be provided to a small but unacceptable percentage of the resident population
 - In the required surveys of nursing homes made by state government employees, problems were understated
 - Sanctions at noncompliant homes rarely went into effect
 - Oversight by CMS (Center for Medicare and Medicaid Services), the main federal regulatory agency charged with regulating nursing homes, was inconsistent and limited in effectiveness.