

**On June 29, 2010, Governor Chris Christie signed P.L. 2010, Chapter 34, which officially abolished the Department of the Public Advocate and transferred certain functions, powers and duties to other state Departments.**

**Formerly part of the Department of the Public Advocate, the Office of the Ombudsman for the Institutionalized Elderly is now in, but independent of, the Department of the Treasury.**

## **Public Advocate: National assisted living company “broke its trust” with elderly residents, 4/16/09**

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**[Media coverage: \*NPR – Assisted Living Firm Rejects Medicaid, Evicts Elderly\*](#)**

### **Public Advocate: National assisted living company “broke its trust” with elderly residents**

#### *Involuntarily discharged residents after draining their life savings*

TRENTON -- A national assisted living company that operates eight facilities in southern New Jersey broke its promises to elderly residents by allowing them to believe they could convert to Medicaid when their life savings were depleted, Public Advocate Ronald K. Chen announced today.

Instead, the company, Wisconsin-based Assisted Living Concepts, instituted a policy of involuntarily discharging elderly residents once they had spent-down all of their life savings, leaving them essentially destitute, said Chen.

“Our investigation clearly demonstrates that Assisted Living Concepts broke its trust with dozens of elderly residents who believed they would be permitted to age in place once their private funds were exhausted,” said Chen. “In reality, from mid-2006 on, the company began to execute a business plan that attempted to ruthlessly remove anyone once they reached the point where they could no longer pay with private funds and needed to rely on Medicaid. This is a clear violation of their state license.”

“I want to thank the Public Advocate's Office for its thorough investigation and for advocating on behalf of the state's seniors,” said Department of Health and Senior Services Commissioner Heather Howard. “DHSS will closely review their recommendations and looks forward to working with the Public Advocate to make sure our assisted living system works well for consumers and their families.”

The New Jersey Department of the Public Advocate, Division of Elder Advocacy began investigating Assisted Living Concepts, Inc. more than a year ago after receiving allegations that the company was unlawfully involuntarily discharging elderly residents who had exhausted all of their life savings and need to rely on Medicaid to pay their monthly fees.

As part of this investigation, the Department recently interviewed 111 current and former residents of ALC facilities or their family members to determine the scope of the involuntary discharge problem and to make recommendations for changes in state policy that would better protect residents of assisted living facilities in New Jersey.

The investigation revealed that:

- ALC's policy of discharging Medicaid-eligible residents forced dozens of senior citizens to leave their homes and suffer physical and psychological harm;
- Seniors who were too healthy or had too much monthly income to EVER qualify for Medicaid were led to believe that they would be allowed to convert to Medicaid. However, ALC administrators should have known that some of these individuals would not qualify for Medicaid. Instead, these seniors depleted their life savings and were forced to leave assisted living altogether.
- Family members were told to sign "guarantor" agreements that would make them financially liable for the cost of care of their loved one;
- State laws do not adequately protect the rights of people living in assisted living;
- The impact of the worsening economy and troubled financial markets on retirement savings may push more middle class senior citizens into Medicaid eligibility; and
- ALC went from being perhaps the most progressive assisted living company in the country – with a business model that welcomed low- and moderate-income people – to instituting a ruthless corporate policy that sought to drive out longtime residents because they had exhausted their savings and needed to convert to Medicaid, much to the dismay of the company's founder, who sold it several years ago.

The Wisconsin-based company operates eight facilities in southern New Jersey, and over 200 facilities in 20 states. The facilities in New Jersey include: Baker House in Vineland, Goldfinch House in Bridgeton and Maurice House in Millville, all in Cumberland County; Lindsay House in Pennsville, Salem County; Mey House in Egg Harbor Township, Atlantic County; Chapin House in Rio Grande, Cape May County; Granville House in Burlington, Burlington County; and Post House in Glassboro, Gloucester County.

Out of 111 participants surveyed, fifty-three (53) reported that the facility administrator promised that the resident would be able to convert Medicaid upon spend-down, without condition. Participants report that administrators repeatedly promised conversion and told them to notify the facility when they have only six months of private pay resources left.

"Because of a change in corporate philosophy, ALC broke its promise to some elderly residents who believed they would be able to go on Medicaid and stay in their assisted living facility once they spent all of their private money," said Chen. "In some cases, ALC led residents to believe they would be able to convert to Medicaid and failed to inform those residents that they might never be eligible for Medicaid because their monthly income was too high or they are deemed too healthy and active to qualify for a nursing facility level of care."

"The bottom line is that ALC pursued a policy of keeping elderly residents until they drained their life savings – and they did it as part of a corporate strategy designed to extract the company from doing business with Medicaid and to drive out low- and moderate-income residents," said Chen.

The report issued today calls for several changes in state oversight of the assisted living industry.

Recommendations include:

- Requiring all assisted living facilities in NJ to set aside 10 percent of their beds for resident relying on Medicaid and prohibiting discharges based solely on Medicaid eligibility.
- Creating a uniform disclosure form that seniors and their families can consult when shopping for an assisted living facility. This disclosure form should explicitly state the facility's Medicaid policy.
- Convening a high-level workgroup to strengthen legal protections for people living in assisted living facing involuntary discharge.
- Outlawing the use of guarantor agreements by assisted living facilities.
- Modifying the Medicaid reimbursement formula, which currently provides for a room and board monthly rate paid by the resident and a Medicaid services daily rate paid by Medicaid (minus

the resident cost share), to take into consideration resident acuity, or the level of a resident's needs.

- Linking facilities with federal assistance programs, and offering tax incentives to facilities with a high Medicaid census.
- Continuing to implement a one-door entry system for assisted living which will simplify the process for seniors and their families.
- Enacting reforms to the Consumer Fraud Act to better protect seniors living in assisted living.

Throughout the investigation, the Public Advocate and DHSS worked in a coordinated fashion to ensure that residents who were Medicaid eligible and who wanted to remain could convert to Medicaid. On November 10, 2008, ALC announced that it would no longer voluntarily participate in the Medicaid program. After this announcement, ALC sought to discharge a resident who was Medicaid eligible, and DHSS imposed a \$66,000 fine on the facility. ALC then agreed to accept her Medicaid payments.

ALC is currently in litigation with the state. From October of 2007 to roughly July of 2008, ALC was engaged in discussions with the Department of Health and Senior Services (DHSS) regarding an enforceable agreement that ALC had made as a pre-requisite to licensure that "residents will not be asked to move from the residence because of spend-down situations." If binding, that provision would prevent ALC from engaging in the currently disputed discharge practices.

ALC believes that the agreement is not binding, while DHSS believes that it is. ALC has appealed DHSS' determination to the Appellate Division of Superior Court. ALC and the Department of Health and Senior Services will be before the Appellate Division next month and the Public Advocate has entered this appeal *amicus curiae*, or "friend of the court," to support the position taken by DHSS.

People with questions or concerns about Assisted Living should call the Public Advocate: Office of Citizen Relations at 609-826-5070.

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