

Assisted Living Resident Agreements - Part One: The Financial Provisions (AKA If It Isn't Spelled Out, You Cannot Collect It.)

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Although most assisted living facilities are aware that they are required to have written resident agreements, many assisted living owners and administrators fail to appreciate the significance of having an updated resident agreement that accurately represents your business interests. It is this author's humble opinion that this is the single most important document in the long-term care industry. Frequently, clients approach me after a problem has arisen; however, it is always recommended that clients consult me as early as possible to avoid issues regarding interpretation. Keep in mind, any benefit of the doubt will favor the resident.

Although assisted living facilities are heavily regulated, the resident agreement still sets forth the basic financial obligations and understanding of the parties and acts as the guidebook for the expectations of the parties. This post is not intended to be a comprehensive analysis of what needs to be included in every resident agreement and is the first in a series of posts regarding resident agreements. This post is limited to the basics surrounding the financial provisions of the agreement. Future posts will address issues including assessment of and limiting liability, collection from residents and Medicaid.

There are several significant financial provisions that should be included in every resident agreement. The following is a non-exhaustive list of financial provisions that I recommend be in every resident agreement:

- Room rate:** It is essential that the room rate is clearly set forth, along with the terms for increases in the room rate and that residents be notified of any changes, in writing, well in advance of the increase.

•**Services:** The services that are included in that rate should be clearly identified in the resident agreement. If your facility has varying levels of care as is often the case, the qualifications, services and costs for each level should be identified. Not only is it important to identify included services, it is equally important to identify the services that are excluded.

•**Miscellaneous Fees:** All other fees, including new resident fees (move-in fees), security deposits, and optional services should be identified to the extent possible. If you want to assess any fee, make sure you first reference the fee in your agreement.

•**Security Deposits:** Many of the questions I get from clients or claims I handle deal with the handling of security deposits. I always remind client that with respect to security deposits, it remains the property of the resident and shall be deposited in an interest bearing account separate from the operating accounts of the facility, unless the facility complies with additional requirements which permit it to comingle. The deposit and earned interest is refundable to the resident or designated person when the resident moves out as long as the resident provides the facility with 30 days notice. The facility is allowed to deduct no more than one-percent (1%) per year for the costs associated with the servicing of the account.

•**Billing Procedures:** Without this provision, you have no revenue. Just as important as the financial obligations is the billing procedures, which shall be clearly identified. The date that payment is due, late fees, interest and rate changes should be included in the resident agreement. It is recommended that monthly billing statements be sent and payment be received prior to or at the beginning of the month for which services are billed. In addition, if you intend to charge residents for periods of absence, the resident agreement should include appropriate language. This often comes into play when residents are temporarily transferred to skilled nursing facilities or the hospital.

•**Personal Needs:** Often, facilities will have personal needs accounts for residents, and these accounts are required for public assistance funds. The administrator must keep a ledger with detailed records of deposits and withdrawals.

•**Non-payment and Termination:** In the event of non-payment, the facility is required to send the resident a 30 day involuntary discharge notice. The language set forth in the involuntary discharge regulation, along with the resident's right to appeal the basis for the discharge should be identified to avoid any future dispute over termination of the agreement and discharge. Specific terms for termination of the agreement by both the resident and facility shall be identified and adhered to. Often, a mutual 30 day notice of termination is advisable.

•**Medicaid and Spend down:** Specific policies regarding Medicaid and participation in Medicaid Waiver shall be established. Spend down provisions shall be clear. If your facility does not plan to open any more beds than it is required or has chosen (if greater than required) to provide and one is not available when a resident becomes eligible for Medicaid Waiver, the resident agreement should clearly state that the facility is not required to open a Medicaid slot. This will avoid confusion as the resident's assets are spent down.

•**Guaranty:** Many assisted living facilities request or even require that a guarantor or responsible person guaranty payment of the living expenses of the resident. Although this is specifically prohibited under New Jersey and Federal law for skilled nursing facilities, it is permitted for assisted living facilities. However, the guarantee must be fair and reasonable. If it is overreaching or unclear, it may be unenforceable.

These provisions set forth the basic framework for the financial obligations section for a resident agreement. I recommend that these provisions should be included in all resident agreements for assisted living facilities. The resident agreement should be reviewed frequently to ensure that it complies with all New Jersey and Federal regulations. Identifying the financial obligations at the beginning of the relationship often avoids issues with respect to non-payment and disputes during or after the relationship has ended. Now is the time to review your resident agreement to make sure it is updated, compliant and comprehensive.