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The Johns Hopkins Bloomberg School of Public Health
“Managing Long-Term Care Services for Aging Populations”

The Policy Environment



The Regulatory Environment, Present and Future
Preempting the Regulatory Specter
Substituting the Customer for Government
The Manager As Policy Activist

1

This module presents the major national policy issues that affect long-term health care as it is today and will operate in the future.

Regulation will be an ongoing factor, implementing such decisions as the level and quality of health care we want and how much we're willing to pay for it. Further, can regulation shift from its current orientation—identifying unsatisfactory facilities or programs by imposing its own product preferences—to one that requires accountability while

encouraging innovation? Can the regulatory environment keep up with and support new approaches to long-term care by focusing on outcomes, not on process? (Kane, et al.)

As we have discussed, since the mid-60s the government (as payer and regulator) has often been seen as the “customer” for skilled nursing facilities. The result was a product that met government, not necessarily resident or family specifications.

Assisted living focused more on the “true” customers and attempted to meet (if not, in fact, exceed) their expectations. It is critical that the entire seniors housing and care industry emulate that philosophy if it is to avoid and/or recover from the nursing home experience.

In so doing, the industry and its practitioners must be actively involved in the policy process. It is inevitable that regulators will regulate. *How* they regulate will be a policy issue.

Who better to determine the outcomes stemming from the policy process than those who offer the service? Failure to involve ourselves might lead to results we would prefer not to experience.

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*Starting With
The Big Picture*



- By 2030 Baby Boomers All 85+
- 70 Million Elderly
- 20% of the Population
- With Highest Growth Among “Oldest Old”
- Putting Incredible Burden on Support Systems
- Because the Elderly Live Longer, but Live Sicker

2

Several factors suggest that seniors’ health care is going to be a major issue in the coming decades:

- While baby boomers will reach the traditional “senior age” of 65 early in this century, the real crunch will be around 2030, as they reach the age of 85—when the need for health care increases dramatically.
- The U.S. will be home to an unprecedented number of seniors—20% of the population. And the “old old” (those over 85) will quadruple in number.

- In spite of the public and private funds being spent for seniors’ health care, we still are not meeting their needs. What will we do when so many more of them—us—will need health care?
- Medical advances may increase our longevity, but experience suggests that we won’t get any healthier. We therefore will spend a greater portion of our lives with chronic illnesses that require ongoing care.

NOTES:

*Is Demography
“Apocalyptic?”*



- Or “the social construction of catastrophe by suggesting that an increasing aging population will place unbearable demands on the health care system.”

--Robertson

- AKA “Voodoo Demographics”

-- Schulz

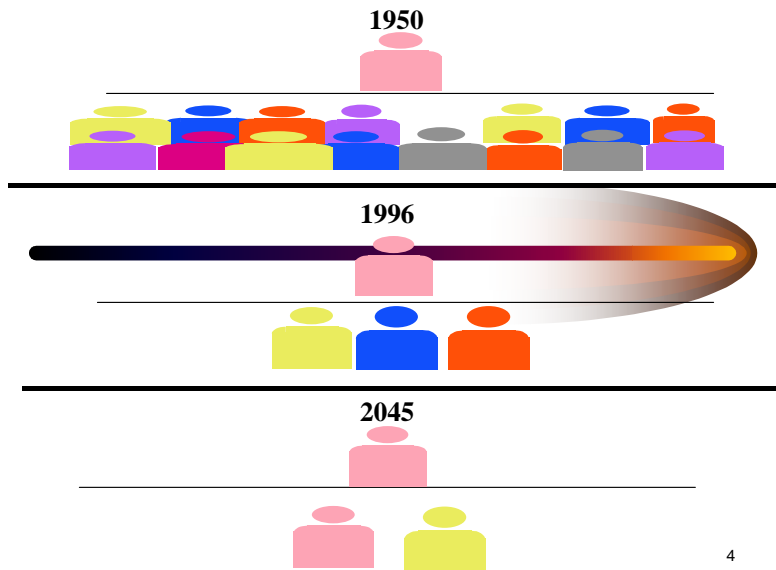
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It is easy to point to the increase in seniors’ population as leading to a future crisis in seniors’ health care (as we did on the previous page). Is the problem really that serious? Are we definitely heading towards a catastrophe or are there other factors that suggest the future may not be so calamitous, after all?

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Ratio of Retirees to Workers

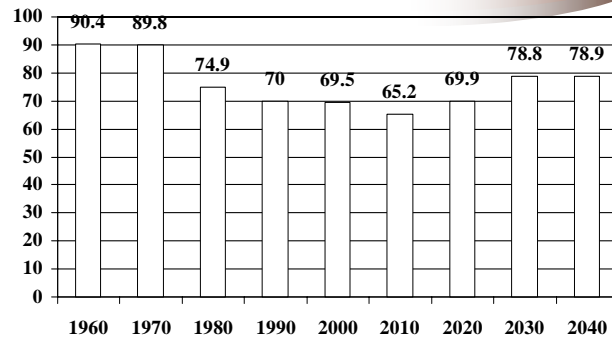


NOTES:

We have all heard how the number of workers per retiree is decreasing. The implication is that there will be fewer people “supporting” seniors, which will mean either a major increase in taxes (particularly if a higher percentage of seniors continues to vote in comparison to other age groups) or a reduction in benefits. Neither prospect is comfortable. But are those the only options?

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*Were We To Look At All
Dependents Per 100 Workers*



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“Dependents” in this context means individuals whom families support, whether seniors, adults, or children. While it is true that the number of workers per senior is declining, this trend is offset somewhat by the fact that the same workers have *fewer* children to support. The result is an increased ability for them to contribute to their parents’ housing or services (directly or through increased taxes).

So, the “big picture may not be all that apocalyptic after all. The need for senior services (particularly health care and retirement support) will admittedly be considerable. But the

issues of society’s ability to absorb the cost might well be more a question of political will than economic capacity.

NOTES:

*But We Do Need
Systemic Reform*



- Inequitable Distribution of Services
- Fragmented/Uncoordinated/Multiple Entry
- User Unfriendly
- Inadequate Support For Informal Care
- Excessive Deference to Acute Care System
- Reimbursement-Driven

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Inequitable distribution of services: What you get more often than not is a function of where you live and how much money you have, not your condition.

Fragmented/Uncoordinated/Multiple Entry: Long-term care is a maze. Few know how to get through it.

User-unfriendly: The system can difficult to negotiate. Seniors (particularly those without family members or others to help them with paperwork and other requirements) may give up and not obtain services.

Inadequate support for informal care: Most care is family-provided. Few resources are available to help them provide it.

Deference to acute care system: The systems we have in place to care for 85-year-old women are a result of decisions made thirty-five years ago by fifty-five year old men.

Reimbursement-driven: Care is often based on what is reimbursed, not what is needed. For example: Medicaid doesn't cover assessment, which is the prerequisite for quality long-term care. Further, Medicaid is oriented mostly toward institutionally based long-term care, not at all in accord with seniors' wishes.

NOTES:

*Both For
Skilled Care*



- Excessive Dependence on Public Funds
- Increasing Loss of Market Share
- Inadequate (Non-Existent?) Public Support

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In the past, seniors’ housing (read: nursing facilities) has relied largely on government funding, even with its limitations and sometimes short-sighted policies (such as an emphasis on acute rather than chronic conditions—under Medicare—and an excessive reliance on facility-based rather than community-based services—under Medicaid).

It is unlikely that seniors’ housing can continue to rely on government funding as it has in the past.

As alternatives become available to seniors, nursing facilities are losing their monopoly on seniors’ care. These facilities must either accept a smaller portion of the market share, serving a specific niche, or expand services to attract a larger percentage of seniors.


Finally, how do you market a facility that potential customers see as the place where people go to die? And how, given that public perception, do you stimulate an increase in public funds so that at least the Medicaid population can be served adequately?

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As Well

As AL

- 
- Supply and Affordability
 - Increasing Private and Public Scrutiny
 - Financing and Regulation

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Assisted living, perhaps the “coming thing” in seniors’ housing, is not a sure bet. As competition increases, the certainty of profitability and viability decreases. To attract enough residents to achieve required occupancy, the facility may need to charge rates that put it at greater risk. How much can and will seniors pay? How do you keep that competitive edge over nursing facilities? And how does the facility deal with the reality that, as residents age, their requirements (and your expenses) increase?

Assisted living can no longer rely on the popular public perception it’s enjoyed in the past. Read “Consumer Reports.” Marketers can no longer sell assisted living facilities on the basis that they are not nursing homes.

Where will the financing come from? Government funding to date has been minimal. Perhaps funding will increase, but only with the regulations attached to it. Let’s be careful what we wish for.

While demographics and other factors suggest a positive future for assisted living, the successful developer will look beyond the numbers and address these and related issues.

NOTES:

Lessons For Skilled Care



- Privatize Financing
- Up the Continuum
- The Quality Imperative
- Diversification/Campus

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AHCA’s Facts and Trends confirms that nursing facilities, as they always have, rely on public financing: only about 25% of the residents pay for care out of private resources; 64% are covered by Medicaid. These percentages have been stable over the past five years, although the number covered by Medicare has increased from 5.6% to 9.3%. (In assisted living, 95% of the residents are private-pay.) Nursing facilities must continue to push for a broader participation by the private market, including long-term care insurance.

Nursing facilities must also recognize the futility of competing with assisted living for the less-frail resident. They must focus on a different niche, including such services as highly skilled and sub-acute care.

Quality of care becomes increasingly important as seniors have more choices regarding their long-term care. The emphasis on quality may be expanding from its past focus—ensuring that the facility meets government regulations—to recognizing that quality care attracts new residents and maintains the current population.

And finally, nursing facilities, while not attractive to the residents of assisted living, might take a lesson from them by adding assisted living on their campuses or as separate units in their communities.

NOTES:

Lessons for Assisted Living



- Keep the Customer Between You and the Government
- Maintain Concept of Choice At All Costs
- Preempt the Regulatory Boogeyman
- Beware the Purveyors of “Half Full”
- Don’t Homogenize the Customer (Know Your Market)

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Customer: The provider must figure out what will improve customer satisfaction and do it and, in so doing, make the customer part of the political process. Only by continuing the emphasis on resident-centered care and recognizing the customer as the preeminent focus of our efforts can we avoid excessive government regulation by enlisting the customer as ally rather than adversary.

Choice: Just as seniors now have the choice of which type of facility to enter, they can choose *which* facility. Increasing

options can result in a greater, more satisfied population. That, also, can help preempt the regulatory boogeyman.

Regulations: Rather than making changes or establishing procedures in response to regulations, the facility can protect its own interests by enhancing quality and accountability *before* they are required by the government. Since some form of regulation is inevitable, government can work with the industry to develop a system that works.

Purveyors of half-full: Don’t accept that nursing facility-type regulations are acceptable just because they are not yet as onerous. That was the mistake made by nursing facilities in the 1970s and early 1980s.

Knowing your market: Just as nursing facilities shouldn’t try to be assisted living, assisted living shouldn’t try to be nursing facilities. Don’t admit residents that belong in skilled nursing.

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*The Quality
Conundrum*



- The Skilled Nursing Lesson
 - System Hasn’t Measured Quality
 - It Has Changed the Environment
 - And the Environment Impedes Quality

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What have we learned from decades of experience with skilled nursing facilities?

Nursing facilities’ emphasis has been to meet government regulations. The government has fallen short, confusing process with actual quality. The facilities have fallen short, too, by assuming that as long as they adhered to regulations, they were meeting an acceptable standard of care. The result: true quality has received little attention from regulators or opera-

tors, and the resident has often received inadequate care as a result.

Long before the term “defensive medicine” became part of our vocabularies, nursing facilities often performed “defensive senior housing.” As they established policies and procedures designed to satisfy regulations, they emphasized avoiding regulatory problems, not enhancing the quality of care. Once again, the resident was the one affected.

Government also looked to the facility unable to meet its procedural standards as “criminal” and began to mete out appropriate “punishment.” This process created environments that were incapable of retaining quality staff (on which quality care depends.)

The result: In spite of regulators’ and operators’ best intentions, they collaborated in creating an environment in which quality was actually diminished.

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Results

- A System That Limits Innovation
- A System That Wastes Resources
- A System That Impedes TQM/CQI
- A System That Shatters Morale (Punitive)

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With facility staff worried more about the annual government survey than residents, they give little—if any—thought to improved approaches to patient care. Staff resources end up being survey-oriented, rather than resident-oriented.

This orientation violates the basic principles of total quality management: to experiment with *alternative* approaches to improving customer satisfaction. The current system rewards

only those who conform to currently accepted approaches to “quality,” those required by the “system.” Further, the current

system severely punishes those who stray from the processes it articulates.

Worst of all, a system described as analogous to “policing” will drive out the most competent practitioners of long-term health care and leave in their wake only those comfortable with the “checklist” approach to quality care.

NOTES:

Assisted Living and the Quality Imperative



- Again, Read Your Santayana
- Don't Short-Term Maximize
- Accept the Costs of Avoidance
- Build on Favorable Public Esteem
- But Offer a Solution
- Or Accept the Consequences

13

Santayana: Once again...

Those who cannot remember the past are doomed to repeat it.

The successful assisted living developer will learn from the experiences of nursing facilities.

Short-term: The developer whose sole focus is adhering to a “little regulation” now will not be around later.

Costs of avoidance: In addition to Santayana, remember your Fram air filter ads: “Pay me now or pay me later.”

Public esteem: Make the most of it while you still can; look at what happened to nursing facilities. Assisted living still has the opportunity to work *with* consumer advocates.

Solution: But, since some form of regulation is inevitable, have an alternative available...

Consequences: ...Or else.

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*ICF With A
Chandelier?*



- Residents Are the Same (ICF)
 - Age
 - ADL Dependency
 - Cognitive Impairment
- Environment Differs (Chandelier)
 - Competitive Marketplace
 - Non-Institutional Atmosphere
 - Customer Focus

14

Assisted living shares many characteristics with the nursing homes of the 1980s, particularly in terms of resident characteristics. The difference has been the successful focus on residents’ quality of life:

“The satisfaction with the quality of life in the assisted living community...is high for the residents of those communities. This suggests that the industry is doing a good overall job of satisfying residents.

“Overall, 49.6 percent of the residents were very satisfied and 39.4 percent were satisfied. Only 2.3 percent of the

residents expressed dissatisfaction.” (NIC, National Survey of Assisted Living Residents.)

We can focus on environmental factors that attract residents. Politicians, however, will continue to focus on the same issues that have concerned them with ICFs: alleged problems with quality of care.

NOTES:

*Increasing
Public Scrutiny*



“Many problems seemed serious enough to warrant concern:”

- Inadequate or Insufficient Care
- Inadequate Medical Attention
- Insufficient and Unqualified Staff
- Inappropriate Medications
- Improper Admission and Discharge

General Accounting Office (April, 1999)

15

A good example of the increasing political attention paid to quality of care in assisted living is a 1999 report by the General Accounting Office. Those who review it are struck by the similarities to documents written about nursing facilities in the 1970s and 1980s.

Again, the parallels to the nursing home industry are increasingly frequent and disturbing. It behooves assisting living operators to pay attention to this growing concern and to make it a part of their focus, both with respect to their individual facilities as well as the industry as a whole.

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*And Not Just
Government*



- “At a significant number of ALFs, it seems, there are two sets of rules--one to lure residents in, the other to kick them out.”
- “So why does the false promise of “aging in place” persist in the minds of those shopping for long-term care? Because that promise keeps getting made.”

Smart Money (November, 1999)

Like government regulation, public scrutiny has its benefits. An educated consumer is attracted to facilities that provide quality care and reasonable policies regarding admission and discharge, level of medical care, and other factors that affect seniors’ well being.

Unfortunately, the public is starting to get another view of assisted living. Consumer Reports, a highly regarded, widely read publication, just published an article on assisted living that might presage a shift in public perception. Some of the allegations (such as questionable discharge policies) are

undoubtedly true of some facilities. But the reader is likely to finish the article with a negative perception of the entire industry.

Assisted living developers can no longer assume that prospects will continue to have generally positive impressions of such facilities.

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Options

- Deny (Can't Happen to Us, We're Different)
- Hope (Maybe It Won't Be All That Bad)
- Confront (Fix Bayonets, Into the Trenches)
- Forestall (Just Don't Let Them Age in Place)
- Delegate (Dispute the Health Care Analogy)
- Preempt (Accept and Shape the Inevitable)

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All but the last of these options will likely prove futile. Assisted living deals with a frail and needy population. An inevitable sentiment on the part of the public (family, outside observers, politicians) is to protect the elderly, especially when the industry caring for them is largely profit-oriented.

The issue, therefore, is not whether there will be regulations. That is and will continue to be the case. The only issue is what the regulatory system will look like. Will it be shaped by the industry, which theoretically is in the best position to do it right? Or will it follow what regulators are most comfortable


with—the regulatory system imposed on nursing homes.

(This should be a “no-brainer.”)

For better AND for worse, regulations are part of the bargain, as is the possible decline in public perceptions. The successful facility will accept and work with these factors.... As will the industry that represents it.

NOTES:

How to Keep the Chandelier in the ICF



- Accept Reality of Health Care Environment
- Accept Fact That Regulators Regulate
- Promote Accreditation (Deemed Status)
- Demand/Develop Outcome Standards
- Collect Data Showing Performance
- Install Quality Management Systems

18

A major selling point of assisted living continues to be the quality of the environment. On the continuum from pure housing to intensive health care, however, assisted living is somewhere in the middle. An assisted living facility *is* a health care facility, one that organizes and delivers a broad range of health, social, and environmental services and assistance—all focused on enhancing the patient’s well-being.

Assisted living residents experience diminished physical and/or mental functions and cannot totally care for themselves. This ongoing condition is likely to worsen.

All this speaks to the reality of our being “ICFs.”

Regulators and the public, therefore, will continue to scrutinize assisted living. Combining the sometimes-conflicting requirements of quality health care and a pleasant living environment—that will be the challenge

Unlike nursing home operators of the past, assisted living operators can take a proactive approach: demonstrating quality (and a more acceptable method for measuring it) *before* being forced to respond to regulations or attacks.

NOTES:

The Financing Imperative



- Demand (Demographics) Outstripping Supply (Financing)
- Political Pressures for More Government Involvement
- Fiscal Pressures for Less Government Involvement
- What To Do?

19

In the past, the public has been more concerned with other health care issues than with long-term care:

- A sense that chronic care can be delayed, but acute care must be provided immediately
- Wariness of long-term care financing when it might expand to additional financing for welfare, housing, transportation, and other systems
- Concern about probable major cost increases, even if limited to long-term care

However, several initiatives could shift the balance of government vs. private funding and suggest promising alternatives:

- Increasing growth of managed care
- Promising public/private partnership innovations (e.g., reverse equity mortgages, viatical settlements, etc.)
- Increasing use of long-term care insurance.

NOTES:

State Efforts at Reform



- System Reform
- Outside Resources
- Reductions

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System Reform: Throughout health care we’re inundated with attempts at system reforms (although some would argue whether they’re truly “reforms”). Thus far and for the foreseeable future, managed care has received most state attention, but other approaches are also being tried (including the attempted integration of Medicare and Medicaid funding and an increased emphasis on home and community-based alternatives).


Outside Resources: Non-government resources, such as long-term care insurance, have attracted attention in many states. States have also worked at using Medicare as a payer of first resort and forestalling asset divestiture by the elderly seeking to make themselves eligible for Medicaid (“artificial impoverishment”).

Reductions: Probably the most common (and highly political) approaches are reductions in the numbers of eligible beneficiaries, available services, and payments to providers.

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Research Tells Us:



- 86% of Americans Support a LTC Reform Policy That Encourages People to Buy LTC Insurance.
- But Government Must Provide for the “Genuinely Destitute.”

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A majority of Americans will back such a public-private-sector program. Research shows that Americans support the concept that those who have the ability to pay for all or part of their long-term care should accept the responsibility to do so. However, those who need help should receive help. The ability to pay will depend largely on how many individuals obtain long-term care insurance.

A Health Insurance Association of America (HIAA) study drew these conclusions about long-term care insurance:

- Although LTC insurance is becoming more common, continued growth is more likely to be through employers’ group policies than individual policies.
- Insurance policies are very flexible, offering policyholders a wide range of options.
- Federal and state incentives (particularly tax deductions) are essential to continued private sector funding of LTC. A possibility is allowing the tax-free use of IRA and 401(k) funds to purchase insurance.
- Current regulatory efforts could increase LTC insurance costs, preventing much of the population from obtaining insurance.
- Additional public education is needed to emphasize what LTC insurance is and its potential benefits.

The analysis concluded,

“The flexibility and versatility that private long-term care insurance can offer baby boomers and their families make it a sensible approach to paying for the catastrophic long-term care costs for many Americans. Given this market’s potential, it would be a mistake to minimize the role of private insurance in designing national policy for financing long-term care.”

Need Answers



- How Do We Save Medicaid and Not Imperil Other Social Programs?
- How Do We Make Private Long Term Care Insurance Affordable and Widely Purchased?
- How Do We Convince People That a New System Is Going to Be Better?

Saving Medicaid: Is this a “zero-sum” equation, or might it be that other effective programs (preventive and managed care, for example) might further reduce Medicaid costs? And do continued reductions in welfare caseloads suggest commensurate reductions in Medicaid payments?

Long-term-care insurance: As noted, the most likely way to increase the number of LTC policies is providing it as an employer benefit. How do we encourage this? Further, how do we educate potential policyholders about the difference between price and value?

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Advantages of a new system: Many people rely on entitlement programs (or expect to when they become seniors) and have a distrust of insurers. How do we counter this perception?

The Millbank Memorial Fund draws the following conclusions regarding the future of long-term care:

1. Continued combination of public and private funding
2. Medicaid continuing to be the main source of public funding
3. Minimal impact of LTC insurance
4. Increasing reliance on the tax code as a reform mechanism
5. State-level expansion of consumer choices
6. Government exploration of ways to finance affordable housing for modest- as well as low-income seniors with disabilities

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*Be a Part of
the Process*



- Join Associations
- Get To Know Your Legislators
- Reach Out to Your Community
- Bring Your Community In
- Contribute to the Political Process
- Be Proud and Show It

23

The seniors aren't going to come to you. Neither will traditional marketing techniques by themselves guarantee interest in and acceptance of your facility—particularly as increased scrutiny creates possible public skepticism about long-term care.

The successful seniors' housing manager must take two types of actions:

- Reach out to the community
- Become a proactive part of the political process

Seniors' housing is a necessary and valuable part of the community, providing an essential service. Emphasizing and demonstrating the importance and meaning of that service will be a valuable step towards satisfying at least two important constituents:

1. The seniors who require the housing
2. Government bodies responsible for ensuring a basic level of care.

But doing so requires more than acquiescence in the political process. It requires active involvement, both through your associations as well as individually. Your community is a valuable political resource. Use it.

NOTES: