The National Long-Term Care Ombudsman Resource Center

Dialogue Between Ombudsmen and the Federal Trade Commission
February 9, 2011
1:00 ET- 2:15 ET

Becky Kurtz, Director, Office of Long-Term Care Ombudsman Programs
David Spiegel, Federal Trade Commission
Michelle Chua, Federal Trade Commission

PURPOSE:
To start a conversation regarding potential issues in long-term care that may be under the jurisdiction of the Federal Trade Commission (FTC), to discuss the scope of the Federal Trade Act and give Ombudsmen an opportunity to share concerns from their states. The FTC has jurisdiction of service practices, pricing and potentially resident discharges that under the Federal Trade Act are deemed "unfair practices." The FTC is specifically interested in issues involving private pay residents residing in facilities other than nursing homes that do not receive Medicare and Medicaid funding.

STATES/ASSOCIATIONS/ORGANIZATIONS REPRESENTED:
AL, AZ, CA, CT, DC, DE, FL, GA, IL, IN, MI, MO, NC, NE, NV, NY, OH, PA, RI, TX, VA, WY, NALLTCO, Consumer Voice, and NASUAD

FTC (David): The FTC investigates "unfair and deceptive practices."
For example:

- An assisted living facility (ALF) places an advertisement or has a promotional pitch to consumers in which a specific representation made states their cost is $2200 a month, but when the consumer arrives at the facility there are additional costs that were not disclosed in the advertisement.

- An ALF advertises that they care for residents with dementia, but the resident arrives and the facility doesn't provide any specialized dementia care

- The FTC is primarily concerned with private pay, board and care facilities and ALFs

- After reviewing the NORS codes he's identified some complaint codes the FTC is interested in: C19 (discharges), E36 (billing), and E37 (personal finance)

The call was opened to receive concerns from the other participants:

NY (Mark Miller): In the past two years, New York has seen a significant increase in discharge issues in Adult Care Facilities (including B&C and ALFs). In general, he feels the discharges often involve individuals with mental health (MH) needs that were told by the facility that their needs would be met, but then that ends up not being the case and they discharge them. In New York, if you have 25% or more residents with MH needs the facility has to have a contract with MH services (but the regulations do not require a specific amount of time for services).

FTC (David): Asked for the identity of the facilities in order to follow-up on this issue.

GA: We have unlicensed facilities taking advantage of individuals with MH needs and elders. They can operate without a license with one resident, but homes near MH hospitals are picking up residents from shelters and becoming representative payees for the resident and moving the residents from home to home and often across state lines to FL.. This is Social Security payee fraud and Social Security Administration (SSA) is working with the Ombudsman program on this issue and assisting by blocking those individuals from becoming the representative payee. This is a serious issue of residents with MH needs not receiving the services they are promised and it is becoming even more serious with the closure of MH hospitals.

Becky: ALFs in Georgia can be licensed with 2 or more individuals (“can be licensed” vs. “has to be licensed” is a separate discussion).

CA (Joe): Some facilities are marketing themselves to hospitals and referral agencies and claiming they offer a higher level of care than is required (i.e. physical therapy in ALFs), but the residents aren’t receiving that service.

CA doesn’t have controls regarding rental increases and only requires a 60-day notice to resident.

Also, residents in ALFs have experienced ALFs refusing to issue a refund if a resident is transferred to the hospital or dies (as the facility claims they didn’t receive 30-day notice in order to issue a refund).

CA ALFs have low staffing levels, for example, a 99-bed facility will only have 2 staff members on the night shift.

CA uses a point system to assess fees and it seems to be arbitrary as well as fee increases when they determine a resident needs more care (no uniform procedure).

FTC (David): A lot of these price issues may be addressed in the contract, what was the resident told? The FTC would evaluate the contract and approach it that way.

CA (Joe): There are local Ombudsmen that can provide specific examples to discuss further.

Also, CA is concerned with a lack of oversight of medication administration (no requirement for medication aides, LVNs, etc.) and residents are supposed to be able to administer their meds, but residents in facilities providing dementia care need assistance and the staff don't have a lot of training.

GA (Judy): One facility (part of a large chain) has a vague admission agreement and requires residents to sign it upon admission. The facility does not allow a grace period so the resident can review and once it is signed the resident is in-debt to the facility. One resident signed it on the first day, but was never admitted and was still charged $4,000. Also, they will claim a base-rate, but then up-charge once they enter the facility.

DC (Lynn): Facilities have not been ordering medications for residents with mental health needs in a timely way and are running out. As a result, residents are exhibiting behaviors related to their disease are being discharged by the facilities due to behavioral problems, despite the fact that they are not receiving the appropriate medications on schedule.

FTC (David): The FTC domain is limited to the misrepresentation of prices or services, not care issues.

MI (Tony Wilson): MI has a chain of facilities with several residents stating they were charged more than they were told they would be charged. In one case the POA had the proof of the initial contract and felt the facility was not providing the care they said they were providing and charging him.

FTC (David): That may be something worth discussing, but the FTC needs a pattern of this type of up charging.

MI (Tony Wilson): I've had other complaints, but the complainants don't have the documentation.

TX (Patty): A large ALF chain (with facilities in several states) previously had Medicaid beds in their facilities and relinquished their contracts and discharged Medicaid-eligible residents.

FTC (David): More of a Medicaid-waiver issue, it needs to be more of an issue with private pay residents with a contract.

TX (Patty): Issues with referral agenices, such as A Place for Mom, as individuals are referred to an ALF and pays a referral fee to the company, but they are not refunded if the placement doesn't meet their needs (despite the contract stating a refund would be paid).

FTC: Yes, that is something we would want to pursue.

TX (Patty): Referred David to Louise Ryan (WA) as she has a lot of experience with this issue.

TX (Patty): Are you interested in facilities marketing themselves as "Memory Care Facilities" in order to avoid Alzheimer licensing requirements. Also, recommended looking at New Lifestyles for examples of advertising.

FTC: We are interested in this issue and have seen this lot in the Mid-Atlantic States

TX (Patty): Issue with motorized powerchairs and facilities are charging a large-fee as a deposit for potential damage to facility for using the chair, but it acts as a barrier for someone to use the chair they need and they may require Individual Liability Insurance (possible ADA issue). Sometimes the facilities disclose the policies upon admission, but sometimes they change the policy once the resident is there.

PA (Bob): If we come across unethical or illegal charges and see a pattern, do we report this to the FTC as a regulatory agency?

FTC (David): There are also other agencies involved but we would like to be one of them.

FTC (David): CCRCs with financial disclosure issues could potentially be an issue since they are so high and the facilities may hold back refunds, fees, etc.

Consumer Voice (Janet Wells): A resident in a WA ALF fell from her bed and the ALF told the family to purchase a bed rail and the resident asphyxiated on the bed-rail. If a bed-rail is advertised as a preventing falls and to be used for safety, would that be in the FTC jurisdiction.

FTC (David): Probably not in the jurisdiction of the FTC.

Becky: We've had some really good examples and we appreciate everyone's participation, this is the very beginning of our discussion and we will give you contact information if you think of additional information/examples. Don't be discouraged if an example you gave is not a good fit as we are in the initial stages of brainstorming.

FTC (Michelle): This is just a beginning of a conversation. David has a lot more in-depth knowledge in this area, but I do have a stronger interest in advertising issues and you can forward those examples to me.

Becky: Are you talking about prices/services that are misrepresented?

FTC (Michelle): Yes, it is all of those things combined, any feature for any product or service.

FTC (David): I've taken a look at the source books for the Mid-Atlantic States and the ads tend to be soft, but we could investigate ads that specifically list a price or use a euphemism for Alzheimer's care, such as, "Memory Care."

I definitely want more information regarding referrals/placement agencies (A Place for Mom uses Referral Counselors).

CA (Joe): Question from Susan in MO, Bristol Manor has a $75 admission fee, a non-refundable transfer fee without 30-day notice (even if the resident dies), and residents have to purchase their own toilet paper if use allotted amount for the month, etc.

FTC (David): If they were told up front, it is not something the FTC could address.

Thank you for your participation. Notes from the call will be distributed.

Contact Information:

Michelle Chua
Senior Attorney
Division of Marketing Practices
Federal Trade Commission
202-326-3248
mchua@ftc.gov

David Spiegel
Bureau of Consumer Protection
Division of Enforcement
Federal Trade Commission
202-326-3281
DSPIEGEL@ftc.gov

Becky A. Kurtz
Director, Office of Long-Term Care Ombudsman Programs
U.S. Department of Health and Human Services
Administration on Aging
Becky.Kurtz@aoa.hhs.gov

202-357-3586 (phone)
202-357-3549 (FAX)