



Justice Department Upholds Rights of Seniors with Disabilities

It was in 2011 that individuals living at Harbor's Edge, a continuing care retirement community (CCRC) in Norfolk, asked a Special Needs Alliance member attorney to file a discrimination suit on their behalf. The facility was in violation of the Americans with Disabilities Act and Fair Housing Act, having barred residents of its assisted living and nursing wings from an upscale dining room in the independent living section. In addition, those using motorized wheelchairs were assessed a fee and required to purchase liability insurance.

This past spring, after years of petitioning, legal action, and media coverage, a settlement with the U.S. Department of Justice will have implications for the entire CCRC industry. Senior communities cannot segregate individuals with disabilities based on their need for special assistance, but must make reasonable accommodations to enable them to benefit from the same services available to others. Harbor's Edge must now revise its policies and appoint a Fair Housing Act compliance officer, in addition to paying \$350,000 to affected residents and family members and a \$40,000 civil penalty.

Shifting demographics illustrate the importance of this settlement. Longer life spans mean that senior communities are seeing more individuals with disabilities. CCRCs charge a fee to those moving into their independent-living areas-where they care for themselves-and guarantee them care, as needed, in their assisted living or nursing facilities. Independent living facilities are largely unregulated, while assisted living comes under state jurisdiction and nursing care is monitored by the federal government.

Harbor's Edge policies meant that, in some cases, spouses or good friends living in different parts of the facility couldn't eat meals or attend events together. Management argued that it was being safety conscious, but the Justice Department's complaint claimed otherwise: "Harbor's Edge adopted these policies because it wanted to market its facility as a place for 'young seniors' who wanted an active lifestyle."

Refusing to Give Up

Initially, a small group of residents and family members protested to the Harbor's Edge board. After being rebuffed, they began circulating petitions, only to be met with threats of eviction and legal action, so they responded with a suit of their own.

Meanwhile, attorneys representing a CCRC trade group were called in, obviously recognizing the broader implications of the case. They were firm in their position that the

Federal Housing Act did not apply, claiming that Harbor's Edge was following state regulations. They said that the facility's policies were instituted because it didn't have enough trained staff to monitor those who might have choking problems, restricted diets or other health issues. This proved to be inaccurate, with Virginia confirming that the rules governing assisted living did not apply to the independent living wing. After all, the same individuals who were being excluded from the dining room would have been served by any public restaurant in Norfolk.

It was only after the press began covering the story-including a highly sympathetic account in The New York Times-that Harbor's Edge began to make changes. Individuals who wished to eat in the dining room or attend special events were screened for cognitive, behavioral and dietary issues. They needed a signed doctor's statement that they required no assistance with eating and had to waive all liability. For some, this meant weekly evaluations.

Although these draconian measures further incensed some residents, given the cost of continued legal activity, they decided to accept the new rules. But by then, the federal government was paying attention. The Justice Department agreed with me that compliance with the Fair Housing Act was at issue, and initiated an investigation. They threatened their own suit and the facility agreed to negotiate.

While the health screenings and doctors' permission slips have been dispensed with, no wrongdoing has been admitted. Harbor's Edge claims that it simply made a business decision not to pay the costs of protracted litigation. Still, the message will ripple through the industry. As the numbers of older individuals with disabilities swell, they must have reasonable access to the same services available to others.

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