

Summer 2015

LeadingAge California
engageTM

Beyond The Schoolyard:
Bullying Among Seniors **10**

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inspire...serve...advocate

Founded in 1961, LeadingAge California is the state's leading advocate for quality, not-for-profit senior living and care. The association's advocacy, educational programs and public relations help its members best serve the needs of more than 100,000 of the state's older adults. LeadingAge California represents more than 600 nonprofit providers of senior living and care – including affordable housing, continuing care retirement communities, assisted living, skilled-nursing, and home and community- based care.

Mission

It is the mission of LeadingAge California to advance housing and services for older adults and to support and inspire its members through advocacy, education, research and services enabling them to meet changing needs of their clients and communities.

Vision

LeadingAge California is a catalyst for members to advocate, enrich and advance aging services.

Shared Values

The values shared by LeadingAge California members include:

- Long term commitment to the security of older adults
- Mission driven
- Mutual support and assistance among members
- Respect of all peoples
- Commitment to socioeconomic and multicultural diversity
- Advocate for not-for-profit status
- Consumer focused
- Dignity and quality of life for older adults
- Community-based



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A Note From The Editor

Pursuing Inclusivity and Diversity in Senior Living

In this issue of *Engage Magazine*, we take on the phenomenon of senior bullying. While the benefits of congregate living to seniors largely outweigh the risk of potential isolation that may occur if living alone, dealing with community dynamics can sometimes be difficult. We spoke with a lead researcher on this topic to understand how to better identify bullying as well as how to deal with it to promote an open and accepting community. Dr. Robin Bonifas with the University of Arizona provides intervention strategies that members can use to ensure they promote inclusion. Our second expert, Ruben Rivera-Jackman with King County Housing Authority, trains organizations on senior bullying and offers his insight into the motivation of bullying in the senior population.

Seth Kilbourn and Michelle Alcedo with Openhouse talk to us in the People in Focus feature about the progress being made on 55 Laguna, an affordable housing community designed for the needs of LGBT seniors. In our Resources section, we provide online resources for learning about LGBT aging, and cultural and linguistic competence.

Our compliance expert, Brenda Klütz, responds to a reader in this issue's "Dear Brenda" column about ensuring compliance with state and national requirements regarding language differences. Paul Gordon of Hanson Bridgett, LLP rounds out this issue's

Legal Corner with a discussion of the U.S. Department of Justice's decision on the Fair Housing Act and the separation of residents by levels of care. Providers that offer multiple levels of care (MLRCs, CCRCs, etc.) will want to take note of their dining room and activity scheduling practices as a result of the "Harbor's Edge" Consent Order.

As always, we welcome your feedback and story ideas. Our next issue (Fall 2015) will focus on issues surrounding human capital and accessing the talent we need for tomorrow's new leaders and front line staff. Contact me below to share your thoughts or suggestions.

Eric Dowdy

Editor-in-Chief

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Feature



Beyond the Schoolyard: Bullying Among Seniors

Bullying affects people of all ages – in fact, it is a common problem between older adults in congregate living settings. Learn about the various types of bullying behavior, potential causes, and why many incidents go unreported. Experts in senior bullying prevention also weigh in on how to create a safe, welcoming environment respectful of all cultures and backgrounds for both residents and staff



From the CEO Quarterly topic from Joanne Handy: Being Strategic in a Time of Change



Have you Heard? Members in their Community; Members in the News; Anniversaries & Milestones



Dear Brenda Advice column with questions on compliance or care issues from the expert

Sections



People in Focus
Michelle Alcedo & Seth Kilbourn: Video interview discussing programs, services, and future plans for reaching out to LGBT seniors across the Bay Area



Resources
A list of online resources for information on promoting cultural competency and raising awareness on issues and challenges specific to LGBT older adults



Legal Corner with Hanson Bridgett, LLP: U.S. Department of Justice: Separation of Residents by Levels of Care Can Violate the Fair Housing Act



2015 Senior Housing Conference

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October 13-14, 2015

Half Moon Bay Village

Senior Complex

Half Moon Bay, California



ICD-10 Essentials for Long-term Care

Dates and Locations

September 29-30, 2015

Hillcrest

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LaVerne, CA 91750

October 6-7, 2015

Eskaton Village Carmichael

3939 Walnut Avenue
Carmichael, CA 95608

CEUs: 11 NHAP/P • 11 BRN

From The CEO

Being Strategic in a Time of Change

The LeadingAge California Board of Directors recently embarked on its regular governance exercise of plotting the association's strategic direction for the next three years. However, this year was a bit different. As we moved through

our discussion, I was struck by the incredible change the field is currently undergoing and the opportunities that will likely present themselves in the future. With the recent merger announcement of ABHOW and be.group and the affiliation of NCPHS and Episcopal Senior

Communities, there is a lot

going on in the nonprofit senior living field in the state. With so much in flux, it was somewhat of a challenge to shift our view to what is beyond the horizon.

Yet, our Board is full of forward-thinking leaders who spend a great deal of time attempting to answer that question; what are the needs of tomorrow's older adults? And the overall question of "what if?" What if non-profit providers begin to move in earnest into the home and community-based arena? What if non-profits provided care and housing networks across the state? What if we adopt the latest app-based service delivery approaches like Uber and Honor?

As our members work to answer these questions, the association stands ready to help

"As our members work to answer these questions, the association stands ready to help pave the way."

pave the way. We are continuing our advocacy work that affects your day-to-day operations as well as looking out to the future to break down barriers standing in the way of new ideas and innovation. Our work on developing the next Long-Term Services and Supports Financing system is just one example of LeadingAge California working to make a better future its members and California's older adults.

I hope you will continue to lend your time and talent to this endeavor.

Joanne Handy
President & CEO





Have you Heard?

Episcopal Senior Communities was ranked #8 by San Francisco Business Times on their “[Best Places to Work](#)” list in April.

The Meadows of Napa Valley announced plans for a [\\$67 million expansion](#) of its continuing care retirement community in May.

ACC Senior Services’ CEO Donna Yee was featured on a KVIE program called “[Boomers in Aging](#)” along with Pam Miller, executive director of the Area 4 Agency on Aging. The program aired in May in conjunction with Asian Pacific Islander Heritage Month.

The Samarkand of Santa Barbara appointed Jessica Briceño as their new [dining services director](#).

Retirement Housing Foundation (RHF) [broke ground](#) on Sonata at Riverpark in Oxnard on May 14, RHF’s 67th community in California. Construction is expected to be completed in Summer of 2016.

Pilgrim Place was featured in a [June 8 article](#) in California Health Report titled “Patient Advocates: Divine Guidance.”

PEP Housing’s Executive Director Mary Stompe discussed the [Grady Ranch project](#) with NPR’s Marketplace in June. The project was also featured in an article in the French newspaper [Le Monde](#) in August.

RHF’s Mayflower Gardens [celebrated](#) their 50th anniversary and RHF’s 55th anniversary in June.

Los Gatos Meadows was featured in a June article in the [San Jose Mercury News](#) titled, “Los Gatos: The Meadows celebrates senior service.”

The Terraces at San Joaquin Gardens resident volunteers were [highlighted in the news](#) for their almost 30 years’ of work at the Fresno Chaffee Zoo.

Covenant Village Care Center, the skilled nursing center at Covenant Village of Turlock, received five stars, the [highest possible overall rating](#), in *U.S. News & World Report’s* seventh annual “Best Nursing Homes” ratings.

ABHOW and be.group [announced a merger](#) between the two organizations on July 7, forming the largest nonprofit senior living provider in California.

Christian Church Homes (CCH) is holding their [Annual Fundraising Celebration](#) on September 10. Oakland Mayor Libby Schaaf is the keynote speaker.

SCENE

1

Robert Tucker, opening keynote speaker at this year's Annual Conference. President and founder of The Innovation Resource, Tucker has been a consultant and keynote speaker for 25 years.

2

The 2015-16 EMERGE Class poses for a group shot at the May 4-6 Annual Conference in Monterey.

3

Eskaton's Care Centers participated in National Nursing Home Week May 11-15 with planned activities each day. From Disney theme to sports and super heroes, everyone enjoyed the costumes and games.

4

Membership Manager Maricel Lumaquin (L) attended a celebration for Asian Pacific Islander Heritage Month at California State University, Sacramento, API community leaders including Donna Yee, CEO of ACC Senior Services (R) were honored.

5

On May 12 Christian Church Homes (CCH) celebrated the grand re-opening of Westlake Christian Terrace East, a recently renovated 200-unit affordable senior housing complex in Oakland.

6

Participants at the 5th Annual Senior Housing Resident Advocacy Day on June 10. Over 140 affordable senior housing residents, administrators and service coordinators participated this year, making it the most highly attended [Resident Advocacy Day](#) to date.

7

On July 9, LeadingAge California hosted its third and final Community Conversation on Long-Term Services and Supports Financing.

8

The Fourth of July celebration at the Terraces at San Joaquin Gardens included a performance by the [Senior Dog Squad](#), a group of residents who cheer for the Fresno State Bulldogs alongside the school's own cheer squad.

9

On July 7, American Baptist Homes of the West (ABHOW) and be.group announced they will merge to form the state's largest not-for-profit provider. LeadingAge California's President and CEO, Joanne Handy, moderated the press conference. Visit abhow.com/onemission to learn more.

10

Residents of the Jewish Home of San Francisco were visited by members of the United Synagogue Youth on Wheels program in July during their cross-continent tour. The teens visited their creative arts center and enjoyed a tour of the campus.





Beyond The Schoolyard: Bullying Among Seniors

By Robin Douglas

Bullying among children and teens is a hot topic these days. As society has become more sensitive to this issue, schools have put policies and procedures in place to help protect those being victimized. Yet these behaviors can also carry over into adulthood – from out of the playground and into the dining halls and activity centers of senior living communities, many older adults are being bullied by their aging cohorts.

Bullying is defined by the American Psychological Association as “a form of aggressive behavior in which someone intentionally and repeatedly causes another person injury or discomfort.” While there is still little research available on the subject, a study by Arizona State University gerontology expert Dr. Robin Bonifas estimates that between 10 and 20 percent of residents have experienced at least one episode of bullying.

Ruben Rivera-Jackman, senior resident services manager at King County Housing Authority, is also a speaker and certified trainer with the National Resource Center on LGBT Aging. He provides training on cultural competency, LGBT issues, intergenerational communication and elder bullying for senior living providers. Through a combination of interactive sessions and more traditional presentation methods, Rivera-Jackman discusses the facts and myths around elder bullying and takes participants through self-reflection exercises to help them explore their own feelings on the topic. “I start off by asking how many people have experienced bullying,” he says. Hands immediately start to go up around the room.

What Constitutes Bullying Behavior?

“Somehow it got out that I’m a lesbian...now, suddenly, there are no seats at the table when I come downstairs to eat. They’ve shut me out.”

Bullying behavior among older adults is similar to what you might find in any middle school or high school setting where a social hierarchy exists. Perceived differences – cultural customs, socioeconomic background, disabilities, sexual identity or even being a certain age – may cause some residents to become a “target.” Rivera-Jackman shares the stories, for example, of a transgender resident whose neighbor began posting biblical verses on her door, and a younger resident harassing an older resident, intentionally bumping into her then blaming her for the incident.

In her presentation, “Recognizing and Curtailing Senior Bullying Among Older Adults,” Bonifas outlines three general types of bullying behavior: verbal intimidation, including name calling, insults, or gossiping; physical intimidation like pushing or hitting, and “relationship-centered” bullying – this can include ostracizing certain individuals during meal times and activities, or social cliques taking over certain tables in common areas for their own

group.

Usually associated with childhood and adolescence, cliques are just as prevalent in senior communities as they are in any other congregate setting. A [2014 study](#) by the American Sociological Association explains that cliques are spurred by “the desires for familiarity and certainty, for control and dominance, and for security and support.” Some older adults may be drawn to the social safety net offered by cliques as they search to redefine themselves during this new phase in life.

Bullying occurrences don’t always have to be face-to-face encounters. The rise in social networking among seniors also means “cyberbullying” – posting derogatory messages on someone’s Facebook page or other social media outlet – can have the same devastating effects on an older adult’s reputation and well-being that it would on a younger person.

Causes of Bullying Behavior

“I try not to make eye contact with him when we pass each other in the hall. Last time he threatened to hit me if I looked at him again.”

Some adults may have a difficult time transitioning into a senior living community. Fearing a loss of independence and sense of identity may cause some to react with antagonistic behavior and target residents they see as “weaker.” Those who were bullied as children can also switch roles to become the bully in their adult lives, and this behavior continues into their later years during a time when they are feeling especially vulnerable and need to regain some sense of control.

It is also important to note that some bullying behaviors may be indicative of other emotional or physical conditions. Dementia, for example, might cause people to react more aggressively to certain situations. A recent Cornell University study by gerontology professor Karl Pillemer, found that nearly one in five nursing home residents were involved in “at least one negative and aggressive encounter with one or more fellow residents” over a four-week period. These included acts of verbal or physical abuse, inappropriate sexual behavior, and invasion of privacy. “Often,

their underlying dementia or mood disorder can manifest as verbally or physically aggressive behavior,” said Pillemer. Depression, anxiety, and other behavioral disorders can also play a role.

Misperceptions about an individual can also cause unnecessary discord. A resident who is used to being in charge of others may try to organize activities in a way that comes off as pushy and domineering to their peers. If the conflict isn’t physical, Rivera-Jackman recommends trying to communicate directly with the person exhibiting the behavior. They may be unaware that anyone actually perceives them as a bully.

Suffering in Silence: Reasons for Not Reporting

“It’s not just me; she’s like this with everyone. I’ve thought about telling someone, but what if she tries to get back at me?”

Incidents of bullying among seniors can go unreported for a variety of reasons. An older

adult who finds themselves being targeted by other residents may feel surprised and embarrassed, so they may try to ignore the behavior rather than go through the reporting process and deal with possible retaliation. New residents may not want to “make a fuss” while they are still trying to get settled in a new environment.

It’s also possible that certain behaviors aren’t recognized as “bullying” in the traditional sense. Staff may be unsure of the correct protocol or would prefer to let the situation resolve itself on its own. Bullying prevention trainer Dorothy Devlin began developing a module on senior bullying after witnessing behavior at her mother’s assisted living community. “I became acutely aware of bullying behaviors going on around her – in the common room, in the dining room, hallways and laundry rooms. I started talking to residents about this and also doing some research on my own.” Following her presentation at the LeadingAge Pennsylvania Annual Conference in 2013, she realized “so many

participants had witnessed bullying in their facilities but had no idea how to handle the problem," she said.

While it may seem easier to tune it out and avoid the situation, dealing with negative behavior from other residents can have a tremendous impact on an individual's emotional and physical health – it can lead to depression, loss of self-esteem, self-isolation, or even suicide, so reaching out for help is crucial. Bullying behavior can also escalate, so whether you're a victim or a bystander, it's important to speak out. Rivera-Jackman has a catch phrase – "If you see it, say it."

How to Intervene and Promote a Culture of Respect

Taking a proactive approach to preventing senior bullying and promoting a culture of respect is essential to creating a safe, welcoming environment for residents and staff alike.

"I find that most of the facilities contact me when they are experiencing problems," says Devlin. "I often hear 'that doesn't happen here' or 'we just don't have the means to pay for this type of training.' In reality, we know that bullying occurs everywhere."

Having a firm grasp on the culture of a community is a good place to start. Administering anonymous resident questionnaires, as Devlin suggests, can help

gauge the social climate and determine whether there are any problems to be addressed. Devlin also stresses the importance of creating a system for reporting incidents and a method for responding to reports from residents, bystanders and staff.

In a blog series on senior bullying written with Marsha Frankel, LICSW for [My Better Nursing Home](#), Bonifas recommends a "three-tiered intervention" that includes strategies at the organizational, bully and victim level. "The answer is to strive to develop a culture of zero tolerance towards bullying," she says. Adopting a "code of conduct" that holds staff and residents accountable for their behavior, holding regular staff trainings on cultural competency and the warning signs of bullying can help generate discussions about bullying, its causes and its consequences.

Older adults who bully may need help dealing with feelings of depression, anger, and other issues to get to the root of their behavior. Strengthening communication skills and learning techniques for developing empathy can also help them understand how their behavior affects those around them. For example, Rivera-Jackman asks participants in his trainings to talk about a time they felt different and how it made them feel. This way they can reflect on how easy it is to make assumptions about others based on stereotypes

and superficial ideas. "When you open the conversation up to personal experience, so much changes," says Devlin. Working through self-esteem issues, focusing on assertiveness training and anger management may give victims the tools to feel more empowered.

Creating a mentoring program or "peer leadership group" within the community that allows established residents to help newcomers transition into their new homes is one strategy to help promote inclusion, says Devlin. Programs and activities that offer opportunities for residents to meet new people can help break down social boundaries as well.

While it might not eradicate these issues completely, educating residents and staff on diversity issues and promoting respect for all cultures and backgrounds is the first step to creating caring, inclusive communities for those who live and work in them. Just as the conversation has changed about youth bullying in recent years, we need to do the same for senior bullying.

Additional Information

AARP Bulletin: [Older Adults Can Be Bullies, Too](#)

NBC News: [Mean old girls: Seniors who bully](#)

SeniorHomes.com: [Coping with Older Adult Bullying in Senior Living Communities](#)

AGING^{2.0}

AGETECH EXPO – CHARTING THE COURSE: INNOVATIONS IN AGING

[Registration is now open](#) for Aging2.0's AgeTech Expo to be held November 19-20, 2015 at the Hyatt Regency San Francisco. The Expo brings together providers of senior care and housing across the continuum from CCRCs to home care, technology startups and established companies, consultants and experts for sector-leading education and networking.

The 2-day conference and technology exposition features innovation tours and workshops, inspiring keynotes, practical education panels, technology exhibits and

the live "Pitch-for-Pilots (P4P)" session. Its extensive educational content and partnership opportunities appeal to senior care executive leadership and staff across several disciplines including DONs, care managers and coordinators, activity/wellness directors, IT staff and others.

Whatever stage of technology exploration and adoption your organization is at, the Aging2.0 AgeTech Expo is your best opportunity to connect with peers, experts and partners to navigate the next wave of innovation in aging. You can find more information about the expo [here](#).

Member SPOTLIGHT

St. Paul's Senior Homes and Services: Intergenerational Day Care Program

The St. Paul's Intergenerational Program began in 1997. The idea of connecting different generations has been around awhile, but not quite like the way St. Paul's CEO, Cheryl Wilson envisioned. The program gives the older adults a sense of purpose and direction. They feel fulfilled in their role as a mentor and companion to the children, and their interaction teaches the children respect and comfort around seniors in our society. The programming focuses on sharing, life skills such as cooking, recreation, exercise and music. The older adults also offer a diverse culture and ethnic understanding. And for some whose grandparents or grandchildren live far away, it provides that love and connection they otherwise are missing out on. Organizations interested in replicating this program should do research and site visits of other organizations to see what works and does not. There are different rules and regulations to serve children and seniors. Talk with the Department of Social Services about an idea before moving forward.

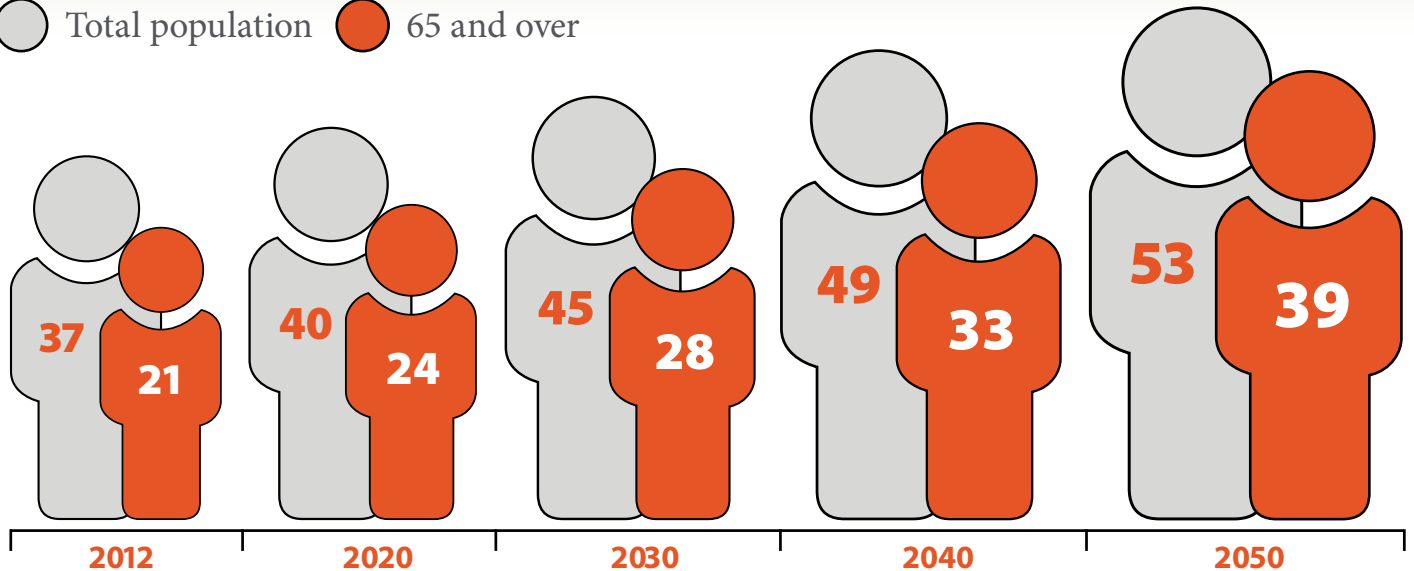
By Melissa Stinson, senior day program supervisor for St. Paul's Senior Homes and Services. [Learn more about St. Paul's.](#)



Percent Minority: 2012 to 2050

Minority refers to everyone other than the non-Hispanic White alone population

○ Total population ● 65 and over



As the overall minority population in the United States continues to grow and life expectancy increases, the over 65 population continues to reflect that diversity. Projections from the U.S. Census Bureau show the expected growth of a more ethnically and racially diverse population over the next 35 years.

Data provided by the United State Census Bureau, U.S. Department of Commerce



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Dear BRENDA

Dear Brenda: *We have language-diverse resident and staff populations in our skilled nursing community. How can we help make sure we are in compliance with state and federal requirements related to language differences?*

Answer: *California does, indeed, have a wonderfully diverse population. Skilled nursing communities must be able to embrace and accommodate that diversity when residents' and staff's primary languages don't "match."*

There are several federal and state requirements that recognize and require written and oral communications with residents in a language that the resident understands. Examples include: obtaining informed consent; informing a resident of their medical condition; right to refuse medical treatment/advanced directives; transfer and discharge notices; and activities that reflect residents' cultural/language preferences.

Facilities have been cited for failure to ensure compliance with resident rights requirements because of complaints related to situations where staffs are speaking a language that a resident could not understand.

Federal requirements require facilities to promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality. Communicating with residents in a language or method which they do not understand without an interpreter, would not be promoting care in accordance with federal regulations.

Communities should also be aware of potential issues related to the language spoken by staff in the presence of residents. The California Department of Public Health Licensing and Certification Program issued two letters to administrators (in 1994 and 1999), as well as issued guidance to district office staff when encountering complaints or situations related to staff speaking a language that resident(s) do not understand.

The department advises facility staff to not engage in conversation (regardless of the language) of a social nature that does not relate to the care of the resident, while providing care to the resident. Staffs should not "talk over" a resident when providing care. The letter acknowledges that staffs have an absolute right to communicate in their primary language when not engaged in direct communications or providing care to residents.

The department provides several examples of language-related communications that should, or should not result in a deficiency issued to the facility. A copy of these two letters and the related district office memo can be [found here](#).

A portrait of Brenda Klütz, a woman with short, wavy white hair, wearing a purple top and a patterned scarf. She is smiling slightly and looking towards the camera.

If you have any questions about this, or any other regulatory issue, please contact Brenda Klütz at: bklutz@aging.org or (916) 469-3377.

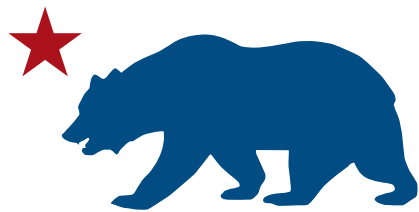
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Contact Darren Lindsey at 916-469-3369 or dlindsey@aging.org



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Justin Weber, St. Paul's Senior Services
Jay Zimmer, The Reutlinger Community
for Jewish Living

*Organization names shown for
identification purposes only.

People In Focus



**Michelle Alcedo &
Seth Kilbourn**

We sat down with Michelle Alcedo, director of programs and Seth Kilbourn, executive director of Openhouse in San Francisco, to learn about their programs, services, and future plans for reaching out to LGBT seniors across the Bay Area. [Watch the full video interview.](#)

Tell us about Openhouse.

Seth: Openhouse exists to support LGBT seniors who face unique challenges as they age. We support them through housing, services, and through community building.

Describe some of the trainings you offer.

Michelle: We train senior service providers on how to create inclusive, safe and welcoming programs and services for LGBT older adults. This involves looking at the barriers to accessing services, history, statistics and data about LGBT aging and health disparities related to sexual orientation and gender identity.

Tell us about the 55 Laguna project.

Seth: The 55 Laguna development will include 119 units of primarily one bedroom apartments that will be affordable to seniors and welcoming to the LGBT community. It's the achievement of the original Openhouse vision in many ways – to create senior housing that would be inclusive of our community and provide the programs, resources and support that the residents, and the vast majority of LGBT seniors who would not live in the housing, would need. We have combined the housing aspect with a community aspect, and I think our unique model will be a new way of looking at how to support an entire community while adding to the affordable housing stock.

How can a senior apply to live at 55 Laguna?

Seth: They will have to go through an application process, which is part of the city's affordable senior housing program. The housing crisis in San Francisco has reached enormous proportions and the impact it's having on the demographics of the city is dramatic. It's time to look at the affordable housing lottery in San Francisco, and in the meantime it's our job to do some good old-fashioned community organizing.

Michelle: We also offer housing workshops once a week, where folks can get together and learn about the housing landscape in the city. We try to educate folks about the system, to demystify the jargon and language that can be confusing.

What are you most excited about as Openhouse moves into the future?

Seth: I am most excited to see the development at 55 Laguna completed, because it will include critical affordable housing for people who need it. I'm also very proud that we've done these housing workshops, and that we've expanded our services and created new education and community programs. All those things combined are how LGBT seniors are going to live independently and with dignity in the community that they built – and they deserve that.

RESOURCES



1A



1B



1C



1D



2A



2B



2C

LGBT

[1A – AARP Pride](#)

Readers can find resources, news, and other topics of interest related to older lesbian, gay, bisexual and transgender people, their family and friends. Explore issues related to LGBT history and community, work and financial concerns, home and family.

[1B – National Gay and Lesbian Task Force](#)

As the country's oldest national LGBTQ advocacy group, the mission of the National LGBTQ Task Force is to advance full freedom, justice and equality for LGBTQ people.

[1C – Building Respect for LGBT Older Adults](#)

This free online learning tool, developed by the Administration for Community Living and Administration on Aging, is intended to introduce long-term care and other aging services providers to LGBT aging issues. It consists of six training modules with video testimonials, quizzes and information on how to make long-term care more inclusive for LGBT older adults.

[1D – SAGE – Services for Gay, Lesbian, Bisexual and Transgender Elders](#)

Founded in 1978, Services & Advocacy for GLBT Elders (SAGE) is a national organization that offers supportive services and consumer resources for LGBT older adults and their caregivers, advocates for public policy changes

that address the needs of LGBT older adults, and provides training for aging services providers and LGBT organizations.

Multicultural

[2A – A Toolkit for Serving Diverse Communities U.S. Administration on Aging](#)

This toolkit provides aging services providers with a starting point for conversations regarding how to better serve diverse populations of older adults. The goal is to provide a replicable and easy-to-use method for providing respectful, inclusive, and sensitive services for any diverse community.

[2B – Cultural Competence Resources for Health Care Providers](#)

Resource page for health care providers provided by the Health Resources and Services Administration.

[2C – U.S. Department of Health and Human Services – Office of Minority Health: Cultural & Linguistic Competency](#)

Organization dedicated to improving the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities.

Resources Credit: Administration on Aging

Legal Corner *with*



HansonBridgett

U.S. Department of Justice: Separation of Residents by Levels of Care Can Violate the Fair Housing Act

By Paul Gordon, Hanson Bridgett, LLP

The U.S. Department of Justice, under authority of the Fair Housing Act, has never delved more deeply into micro-managing the operations of multi-level care facilities than in 2015.

After threatening litigation regarding a Virginia CCRC's dining policies, it has announced a Consent Order prohibiting the exclusion of health center residents from activities conducted on the independent living premises. Another Consent Order is expected to be announced soon regarding a CCRC policy that restricted independent living residents from obtaining feeding assistance in the independent living dining room. Finally, the Department of Justice is investigating an incident where a health center resident seeking to play bingo with independent living residents reportedly was denied access to the event.

Consent Orders are not decisions made by courts on the merits of the facts and law – rather they are settlement agreements. However, they typically become the “law of the land” insofar as they reflect the policies of the Department of Justice, which has the power to prosecute what it sees as violations of the Fair Housing Act.

The actions discussed below involve CCRCs but they apply in principle to any senior living property that has multiple levels of care, whether or not a continuing care agreement exists.

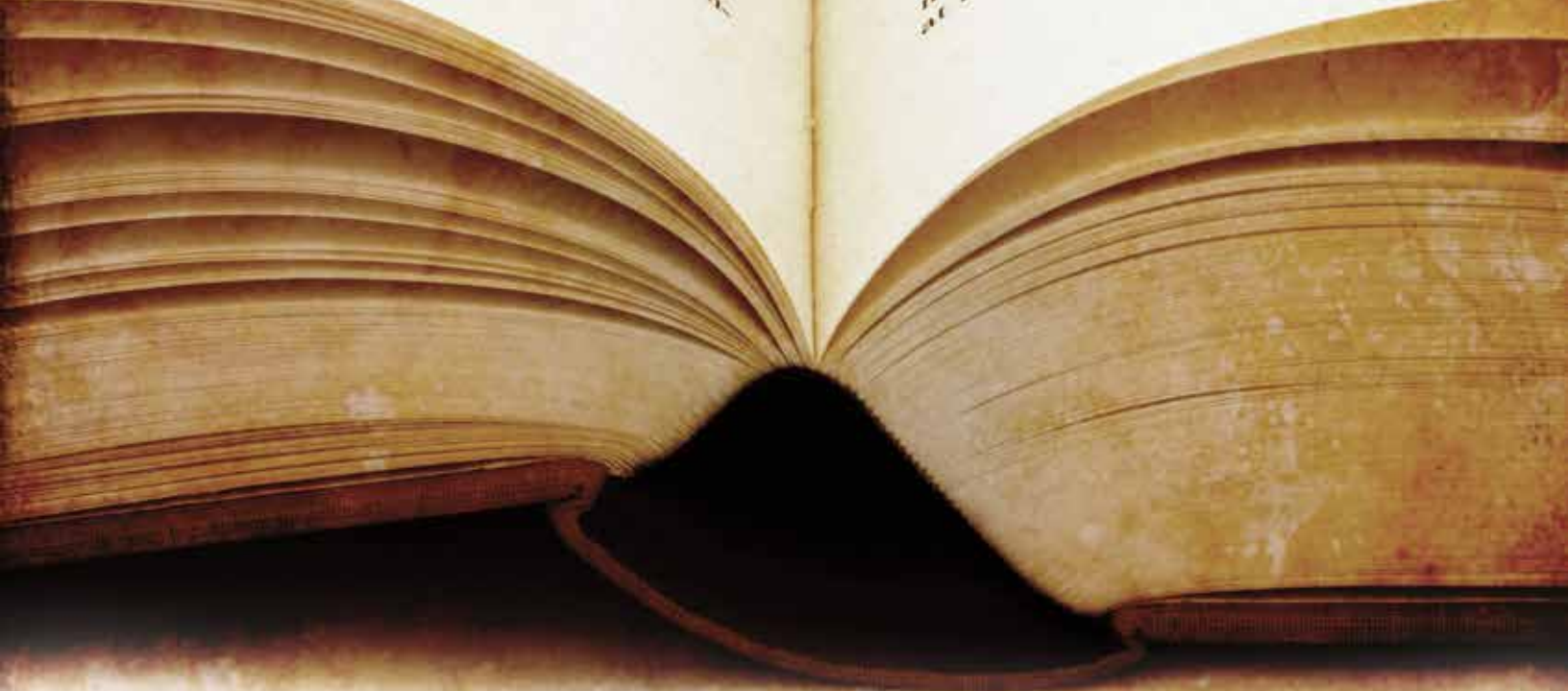
Harbor's Edge

In May 2015, the U.S. Department of Justice filed a fair housing Complaint and Consent Order in the case of *United States v. Fort Norfolk Retirement Community d.b.a. Harbor's Edge*. Interest in the Harbor's Edge dining policy emerged in early 2012 when the *New York Times* ran an article about restrictions on the ability of health center (assisted living, memory care or skilled nursing) residents to dine with their spouses in independent living. Initially, Harbor's Edge placed no restrictions on health center resident access to the independent living dining room. However, after medical incidents in the unregulated independent living dining room raised serious liability concerns, Harbor's Edge adopted a policy prohibiting health center residents from eating in the residential dining room and attending certain events outside of the health center.

The Department of Justice contended that the policy unlawfully discriminated against health center residents in violation of the Fair Housing Act, and the Consent Order requires Harbor's Edge to create a claimant's fund of \$350,000 and pay a \$40,000 fine. In addition, Harbor's Edge must adopt a new dining room and events policy, appoint a Fair Housing Compliance Officer, and report on dining room and event participation issues for a period of three years.

The dining room and events policy requires that continuing care residents who have moved to the health center be permitted to eat in the residential dining room unless they have a medical condition that may limit their ability to do so safely or in a non-disruptive manner. A decision to refuse access





to the residential dining room may be made by the nurse, physician or level of care committee, which will then refer the matter to the Fair Housing Compliance Officer who will help determine whether a reasonable accommodation may be made to allow access. Health center residents may be asked to execute a Release of Responsibility for Leave Of Absence from the health center and, in some circumstances, an Against Medical Advice Form and Liability Release.

One concern was that “direct admit” health center residents, who had never signed a continuing care contract or paid the applicable fees for independent living residence, would now be given privileges to eat in the residential dining area. The Consent Order treats all health center residents who have resided at Harbor’s Edge for more than 100 consecutive days as of May 11, 2015 as having the same dining privileges as independent living residents who paid an entrance fee and entered into a continuing care contract. The Order does not require that future health center residents have such privileges. However, a direct admit health care resident may dine in the independent living dining room as a guest of an independent living resident.

Eating Assistance

Another Consent Order is expected entered in the coming weeks, requiring the owners and managers

of an Illinois CCRC to permit residential living residents to receive assistance with eating, or to be fed, by a private attendant or family member, to permit residents of the assisted living or skilled nursing wings of the CCRC to eat in the residential living dining room, and to allow personal caregivers to live with residents in their residential living units on a full-time basis.

The owner and manager is expected to be required to create a substantial settlement fund and pay a civil penalty.

The Order permits the CCRC to make a determination, on a case-by-case basis, that a resident being fed in the main dining room, away from the supervision of the CCRC’s care staff, creates a health and safety risk, or that his or her behavior is so disruptive as to interfere with other diners’ peaceful enjoyment of their dining experience.

Access to Bingo

Recently, the *New York Times* reported on an incident in a CCRC where a resident who had moved from independent living to the health center due to increased care needs sought to return to the independent living premises to play bingo with the group she had previously socialized with when a resident in independent living. The group of residents reportedly shunned the health center resident and told her she should not

participate in independent living activities. The CCRC reportedly required that she be invited by a resident to be eligible to participate.

The Department of Justice is also investigating this incident to determine if there has been a fair housing violation. Whether the CCRC management condoned or enforced exclusionary rules about mixing of residents from different levels of care, or whether this is merely an exercise by residents of their prerogative to socialize with whomever they want, remains to be seen. It also raises a question about whether health center residents have rights to use independent living facilities even if they are not invited guests of an independent living resident.

Conclusion

Policies regarding access of assisted living, memory care and nursing residents to independent living dining and events, onsite and offsite, should be reviewed and amended as necessary, to conform to Department of Justice policy. Fortunately, there is room for creating exceptions where there are legitimate concerns for safety or disruption. Careful consideration should be given to preparation of documentation describing exceptions, waivers and accommodation policies as needed to balance rights of access with liability and regulatory compliance concerns.



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