

802.2(d)

Verne, B. Michael

From: [REDACTED]
Sent: Thursday, September 02, 2004 4:40 PM
To: Verne, B. Michael
Subject: RE: Assisted Living Properties with Alzheimer's Services/16 C.F.R. § 802.2(d)

Michael,

I am advised that there is one rate for residents in the regular assisted living units and a higher rate for residents in the Alzheimer's units. However, it is not precisely accurate to refer to the rates as all-inclusive. In addition to those rates, all residents are assessed as to their need for extra assistance with activities of daily living. Those assessments go into a tiered pricing system. I am advised that the average additional assessments for regular and for Alzheimer's residents are not very different.

[REDACTED]

[REDACTED]

-----Original Message-----

From: Verne, B. Michael [mailto:MVERNE@ftc.gov]
Sent: Thursday, September 02, 2004 8:28 AM
To: [REDACTED]
Subject: RE: Assisted Living Properties with Alzheimer's Services/16 C.F.R. § 802.2(d)

It would be helpful to us to know how the extra services in the Alzheimer's unit are accounted for / billed. Are those residents charged separately (above and beyond the charge for living facilities) for the special services provided? Or is there one all-inclusive rate for the regular living facilities and a higher all-inclusive rate for the Alzheimer's living facilities? Thanks

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, September 01, 2004 3:22 PM
To: Verne, B. Michael
Subject: Assisted Living Properties with Alzheimer's Services/16 C.F.R. § 802.2(d)

Dear Michael,

This is to follow up on our conversation a few days ago. I had asked about the application of the exemption for residential property under 16 C.F.R. § 802.2(d) to an acquisition of assisted living facilities which also contain units to provide enhanced services to residents suffering from Alzheimer's or other forms of memory loss. You had indicated that the applicability of the exemption depended on the nature of the enhanced services. Set forth below is a bit more information about the properties and the questions on which I would like your guidance.

Properties:

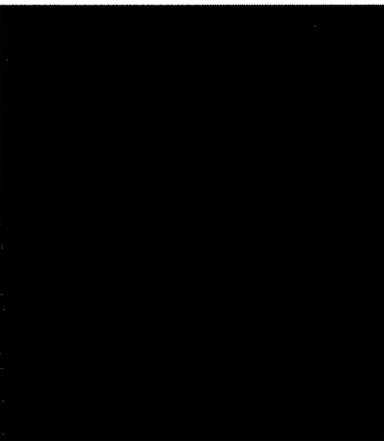
The properties to be acquired are substantially private pay assisted living facilities, some of which contain dedicated units licensed to provide Alzheimer's and other memory loss services to residents. The Alzheimer's units are located within the same buildings as other assisted living units. However, they are located only on designated corridors behind secure code locked doors, to protect against residents wandering from the building.

In addition to the services provided to other assisted living residents, the Alzheimer's unit residents are provided with additional services, principally in the areas of behavior support, communications and control of wandering. The Alzheimer's units are licensed to provide assistance with activities of daily living, such as meals, bathing, grooming, toileting/incontinence, and medication assistance in the nature of reminders and administration. They are not licensed to provide medical services which would be reimbursed either by health insurance, Medicare, or Medicaid. Essentially, the services provided on the assisted living side of the facilities are the same as on the Alzheimer's side, except for the secure nature of the unit and the focus on behavioral support, communication, and wandering control. To the extent residents need medical services, those are provided by third party service providers (typically home health, therapy, and rehab providers) unrelated to the facilities.

Questions:

1. Prior informal interpretations from the Premerger Office have indicated that assisted living facilities are considered to be exempt as residential property under 16 C.F.R. § 802.2(d). Do the Alzheimer's units, as described here, also qualify as exempt residential property under 16 C.F.R. § 802.2(d)?
2. If the Alzheimer's units are not exempt under 16 C.F.R. § 802.2(d), may they be treated under 16 C.F.R. § 802.2(d)(3) as a separate acquisition for an allocable portion of the overall purchase price?

Please get back to me on these questions at your convenience.



ADVISED THAT THIS TRANSACTION
QUALIFIED FOR THE RESIDENTIAL
REAL PROPERTY EXEMPTION.
N. OVUKA CONCURS.

B. Mellor

9/7/04