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Case Study

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Coordinating and Leveraging Long-Term Supports with Licensed Affordable Assisted Living: Arkansas Case Study

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Arkansas Case Study

Case Studies Prepared as a Result of the CMS State Leadership Symposium
Coordinating and Leveraging Long Term Supports with Affordable and Accessible Housing

The Gardens at Osage Terrace – Arkansas Model for Affordable Assisted Living

I. History and Background

This case study describes how a private sector entity, NCB Development Corporation, helped to coordinate and galvanize the existing efforts of essential partners to develop, plan, and finance a new assisted living facility, and coordinate appropriate funding sources for operational and client service expenditures. The Gardens at Osage Terrace was developed under the Coming Home Program, an affordable assisted living demonstration program of NCB Development Corporation (NCBDC) and the Robert Wood Johnson Foundation. The Gardens was developed by the Community Development Corporation of Bentonville/Bella Vista, Inc. (CDC), with technical assistance from NCBDC, and is owned by Osage Terrace II Limited Partnership, LLC, an affiliate of the CDC. Personal and health-care services for the residents are provided through a partnership with Mercy Health Systems of Northwest Arkansas, Inc. (Mercy Health Systems). The CDC, as owner, developed and is responsible for maintaining the building, including licensing, leasing, and rent collections. Mercy Health Systems is responsible for providing all services and daily oversight of the residents. The Arkansas Department of Human Services, especially the Division of Aging and Adult Services (DAAS), played a vital role in developing new programs, rules and regulations that enabled the development and operation of an affordable assisted living residence. The Arkansas Development Finance Authority (ADFA) provided tax credits and HOME funding for the projected and worked closely with DAAS to coordinate affordable housing programs with state service initiatives.

Several public agencies collaborated in order to establish policies that supported the development of affordable assisted living. Arkansas Governor Mike Huckabee and Herb Sanderson, Director of the Division of Aging and Adult Services (DAAS), shared a commitment to meeting the needs of their aging low-income citizens. Before receiving the Coming Home Program award, they began to assemble the financial resources and to legislate the regulatory environment that fosters affordable assisted living. The Department of Human Services worked with the Arkansas Legislature to enact regulations governing the assisted living industry, and then translated the legislation into regulation. They applied to the Centers for Medicare and Medicaid Services (CMS) for a Medicaid home and community-based waiver 1915(c) in order to fund services for low-income populations who required nursing facility-level care. When CMS granted the waiver, the state began the program with 200 “slots” available to qualifying individuals.

The Division of Medical Services’ Office of Long Term Care (OLTC) also participated in drafting the regulations and was designated as the agency responsible for licensure, monitoring, and surveying assisted living. This office helped to develop the resident assessment process and the associated reimbursement rates.

On the housing side, the Arkansas Development Finance Authority (ADFA) agreed to set aside Low Income Housing Tax Credits and HOME funds to support the

development of assisted living projects. ADFA Housing Division served as the DHS's primary partner in the Coming Home Program. ADFA publicized the availability of predevelopment funds and state and federal tax credits available to developers, and they partnered with DAAS to provide an assisted living development conference for nonprofit and for-profit developers.

While the CDC recognized the need for assisted living in the Bentonville community, they lacked experience in providing direct care services and did they want to become a service provider. To address service provision, the CDC sought out potential service partners, choosing Mercy Heath Systems of Northwest Arkansas, a non-profit Catholic organization with 13 medical clinics and St. Mary's Hospital, a 165-bed general acute care facility due to their strong reputation, experience, and mission match. Mercy Health provides all personal and health care services for residents of The Gardens and has substantial experience with delivering health care and personal care services under Medicaid programs.

Although Mercy Health is under contract with the CDC, their sole source of payment derives from either direct resident payments or from Medicaid on behalf of residents qualifying for that program. The CDC retains responsibility for facility licensure, and therefore is the Medicaid provider under the assisted living waiver, as well as the assisted living license holder.

NCB Development Corporation made a pre-development line of credit of $100,000 available to the Gardens. This loan, forgivable under certain circumstances, provided working capital to explore development and funding strategies. The CDC assembled their development team early. The CDC included a contractor on this team, preferring to select the contractor in the predevelopment stage in order to have the contractor available to work with the architect on issues regarding local materials, building practices, and to provide ongoing cost estimates to guide design development and cost containment.

Despite interest in providing services to The Gardens, Mercy Health Systems was initially reluctant to make a firm commitment to the project while the state regulations were still under development. The CDC decided to push forward with development even though they did not have a firm agreement with a service provider or a clear indication of how the state regulatory process would end. They moved forward to meet the schedule of the Low-income Housing Tax Credits (LIHTC) they received and mitigated the regulatory and service provider risks in three ways. First, the CDC actively participated in the committee to develop new assisted living regulation, insuring both strong input and first-hand knowledge of the direction of the regulations. Second, they designed the facility to comply with anticipated regulations; only slight modifications were required after the designs were complete. Finally, and most critically, the CDC established a viable alternative, or "Plan B" to operate The Gardens as an independent living residence with in-home care if assisted living were not possible.

Site selection was easy for The Gardens. In the late 1990s the CDC had assembled a 10-acre site with the goal of creating an affordable senior living campus, and one parcel remained. The first set of projects constructed on this site included the 40-unit Osage Terrace independent senior housing, a 20-unit HUD 202 senior development,

and a Senior Center. The parcel was zoned for multi-family, but required a use appeal because in Bentonville, assisted living residences fall within the nursing home use category rather than the standard residential category.

Assisted living residences may require a more complex market analysis than typically required to measure demand for independent affordable housing. The Gardens' market study was completed by Jean Moreau & Associates of Columbia, Maryland, an independent third-party company with experience in evaluating senior housing, including assisted living and local regulations. The market study for The Gardens verified the demand anticipated by the CDC, specifically, that the market could support 87-130 units. It described the existing senior housing in the county, including expansions or conversions planned by those facilities. In addition, it included information about planned development based on information available at the local and county planning offices. The study also included the fees and occupancy rates of existing senior housing by category of licensure.

For the purposes of this case study, assisted living is defined as the housing with services category offering private apartments and high levels of service, including 24-hour awake staffing. The services offered at The Gardens are designed to support residents who qualify for nursing home services under the state Medicaid program but desire and are appropriate for a more residential alternative. The Gardens is not able to serve residents who require continual skilled nursing oversight.

Project licensure category	Assisted Living II
Number of licensed units	45 apartments
Number and percentage of assisted living units designated as private occupancy (except by the residents choice – e.g., a couple, sisters who want to share an apartment)	45 (100%)
Number of units designated for people who qualify for Medicaid or other service subsidy	45 (100%): All 45 units are available to persons who qualify for the state's Medicaid Home & Community Based Services waiver
Number of actual Medicaid (or other specified subsidy) clients or units	31: At the time the case study information was collected, there were 31 Medicaid clients, with several others likely to qualify due to "spend down" of assets within 24 months. The project is designed to be able to provide 100% of its units to Medicaid eligible residents.
Number of units with affordable rents regulated by funding or financing agreements	45 (100%): All 45 units have rent limits: 40 under LIHTC requirements and 5 under HOME
Number of units/residents using Housing Choice Vouchers (HCV)	None
Number of residents receiving rent subsidies but paying privately for services	14
Unit characteristics	• Apartment-style • Kitchenette (including stove, microwave)

	• Private bathroom • 34 Studios (380 square feet average) • 11 One-bedroom (450 square feet average) • Single occupancy except by choice • Telephone jack • 100% handicap accessible • Call Buttons and Pendants
Number of floors in the building	One
Types of social spaces	Library/game room; fireplace in lobby; café; interior courtyard; beauty/barber shop
Resident laundry facilities	Yes
Project type	Campus-style property that includes independent living apartments and a senior center
Site zoning	The site is zoned as multi-family, and because local zoning regulations define assisted living under nursing facility guidelines as a health care facility, a "use on appeal" was required to obtain permission to use the site for assisted living. This involved an application ($50) and a planning commission hearing.
Neighborhood amenities	Doctor's offices, hospital, shopping center

Regarding zoning, CDC staff knew, based on past development projects, that potential neighborhood resistance to proposed development could best be addressed by informing the local community about the plans in advance of any planning commission hearing. Specifically, they sent letters to local neighbors that described the process. In the case of The Gardens, there was little to no neighborhood opposition.

II. Role of Medicaid Program and Other Agencies that Provide Long Term Supports

To become certified as a Medicaid provider, the organization must apply to DAAS and DMS. Once the organization has been approved, it receives Medicaid payments on behalf of individual residents who qualify for Medicaid under the DHS criteria. Individuals must apply to their local DHS county office.

Arkansas Medicaid rules for assisted living define 4 service tiers (or levels). A registered nurse from the OLTC completes an assessment for medical eligibility on all applicants for the HCBS waiver. Additional health or social service personnel may also take part in an assessment as needed. The nurse assesses whether or not the individual requires assistance with activities of daily living (ADL) and taking medications, as well as the client's medical diagnosis and psychosocial/cognitive status. The assessment results in a score that is associated with one of the 4 tiers. The state Medicaid agency makes payments directly to the provider on behalf of each Medicaid client. The daily reimbursement rate per resident as of 2004 was:

- Tier 1: $39.51 ($1185/month)
- Tier 2: $42.83 ($1285/month)
- Tier 3: $47.47 ($1424/month)
- Tier 4: $49.97 ($1499/month)

The Medicaid program has an automatic cost of living adjustment built into the program. The state has assumed a rate increase of 3.0% for fiscal year 2005. The OLTC determines each Medicaid client's Tier (or level of care) based on an assessment of each applicant, as described below.

Older persons must apply to the county DHS office to apply for the Medicaid waiver. This application, which must be reviewed by DAAS, includes two parts: financial eligibility and medical eligibility. The state requires that the applicant meet at least one of three medical criteria as determined by a licensed medical professional:

1. The individual is unable to perform either of the following:
   - At least one of three specific activities of daily living: transferring/locomotion, eating, or toileting, without extensive assistance from or total dependence upon another person; or
   - At least two of three specific activities of daily living: transferring/locomotion, eating, or toileting, without limited assistance from another person; or,
2. The individual has a primary or secondary diagnosis of Alzheimer's disease or related dementia and is cognitively impaired so as to require substantial supervision from another individual because he/she engages in inappropriate behaviors which pose serious health or safety hazards to him/herself or others; or,
3. The individual has a diagnosed medical condition which requires monitoring or assistance at least once a day by a licensed medical professional and the condition, if left untreated, would be life threatening.

The Arkansas Medicaid program for assisted living requires participating providers (as a condition of participation) to limit their total rent and meal charges to residents enrolled in the Medicaid program to 90% of the Federal SSI payment. The 2004 SSI payment is $564/month and 90% of SSI is $513/month. While the Medicaid program does not pay for or subsidize rent or meal costs, it limits what provider may charge a resident if they receive Medicaid payments for services delivered to that resident. Also, while Medicaid will not pay for the "meal" costs, by which we mean the raw food costs, Medicaid will pay for the staff time involved in preparing the meals.

The maximum combined rent and meal amount a provider may charge a resident enrolled in Medicaid in Arkansas is $513/month. In 2004, the food costs for The Gardens was $152/month per resident. If the meal cost is deducted from the $513 maximum, the effective rent charge is $361/month. All units utilized LIHTC equity or HOME funding. All residents must meet the income guidelines established by those programs.

III. What Was the Role of Housing Organizations/Agencies?

All 45 units are rent-subsidized, with 40 designated for LIHTC and 5 for HOME. The specific allocations are:

13 LIHTC studios targeted to 50% area median income
22 LIHTC studios targeted to 60% area median income
5 LIHTC 1-bedrooms targeted to 60% area median income
5 HOME –bedrooms targeted to 50% area median income

However, the actual rental rates that The Gardens charges are less than the total that could be charged under LIHTC and HOME guidelines. For example, the highest rent that could be charged for a 1-bedroom unit under LIHTC rules is $585 (2004), but the amount actually charged is $361 ($513 rent and meals less $152 food costs). This is due to an Arkansas Medicaid rule that sets a cap on the amount of room and board that can be charged for a Medicaid client in assisted living. Specifically, Arkansas des not permit facilities to charge more than the federal SSI rate ($564/month in 2004) minus the resident's personal needs allowance ($51/month in 2004). Thus, the maximum room and board fee in 2004 was $513. Older persons must apply for the waiver through the county DHS office.
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The list of regulating agencies includes:

1. Department of Human Services: The following two divisions jointly administer the assisted living program:
    - Division of Aging and Adult Services (DAAS): This agency co-administers the HCBS waiver, referred to in Arkansas as the "Living Choices Assisted Living Program".
    - Division of Medical Services, Office of Long-Term Care (OLTC): This is the state Medicaid agency and they co-administer the state's HCBS waiver. This agency sets reimbursement rates, license and monitor AL, and assess clients to verify that they are eligible under the HCBS waiver.
2. Arkansas Development Finance Agency: This agency coordinated a LIHTC set-aside for affordable assisted living and HOME funds
3. Arkansas Health Services Permit Commission: Reviews and grants the Permit of Approval for all health facilities, including assisted living.

The following chart demonstrates the impact on four hypothetical cases, all categorized as Tier 2 for services:

Applicants	Mary	Fred	Betty	Ruth
Income	$10,000	$15,000 ($1,250/mo)	$20,600	$21,000
Assets	$500	$3,000	$2,000	$1,000
Tests				
LIHTC Tax Credits (at 60% AMI, or $20,640 annual income)	Qualifies	Qualifies	Qualifies	Does not qualify; not eligible for The Gardens.
Medicaid (at 300% SSI, or $20,160 annual income)	Qualifies	Qualifies	Does not qualify; unless income decreases will always be "private pay" for services; however, her income of $1717/month does not cover the $2083 in rent and services.	Does Not Qualify
Medicaid Asset Limit = $2,000	Qualifies	Must spend-down $1,000 before qualifies for Medicaid payment	Qualifies	Qualifies

IV. Resources to Develop and Implement the Model

The Gardens was financed with a complex blend of debt, equity investments, and grants, both public and private. As part of Arkansas's participation in the Coming Home Program, the Arkansas Development Finance Agency committed a set-aside of LIHTC for an assisted living project ($300,000/yr). The CDC applied for the LIHTC set aside and received the full award, selling the credits to investors for $2,270,761. The CDC also applied for and received $300,000 in HOME funds and $450,000 in Federal Home Loan Bank (FHLB) Affordable Housing Program (AHP). The LIHTC, HOME, and AHP program are each highly competitive. The CDC's success in obtaining the funds and on their first application is a significant accomplishment. The Community Care Foundation provided a grant of $187,000 to The Gardens. Finally, Arvest Bank of Bentonville, who had financed most of the CDC's prior development work, provided a mortgage loan of $750,447. Arvest, as a Federal Home Loan Bank member, provided access to lower-rate Community Investment Program construction and permanent mortgage money, and served as sponsor for the

FHLB's Affordable Housing Program grants. Both loans and grants were important in covering the development costs of The Gardens.

In prior residential developments, the CDC sold its tax credit investments to the Enterprise Social Investment Corporation (ESIC). However, ESIC was not buying assisted living credits at the time The Gardens was being syndicated. In researching other investors, the CDC identified First Star Corporation, purchased by US Bank Corporation, who purchased the LIHTC as a direct placement. US Bank Corporation had experience with assisted living residences, but ended up valuing The Gardens on the basis of the strong independent senior market demand – the CDC's fall back "Plan B" should assisted living fail – rather than as assisted living. The separation of the real estate and services made this option feasible.

The HOME and LIHTC programs have significant regulatory impacts. Both establish maximum rents, based on the size of the apartments. The LIHTC program requires that any charges for services that are *mandatory as a condition of occupancy* (such as housekeeping, medication administration, or transportation) must be included in the maximum rent. Another option is to define services as voluntary and provided separate from housing. Because it is cost-prohibitive to provide services and housing for the maximum rent allowable under the tax credit program, the services at The Garden are voluntary. Under federal civil rights law, an owner cannot discriminate based on a diagnosis or disability, but can give preference to people who *need* personal care services. It is possible for an individual who does not need assisted living services to qualify for The Gardens, although it would be unusual for someone to choose to live in such a setting if they did not require personal care services. Any person applying to the Gardens with a service need would move ahead of an independent applicant.

Development of The Gardens took three years, including all planning, permitting, funding, construction, and licensing. The following is an abbreviated schedule:

10/99	Designated an NCBDC Coming Home demonstration and applied for a pre-development loan from NCBDC
7/00	Received HOME funding award
3/01	Received LIHTC award
5/01	Received FHLB award
7/01	Received foundation funding
9/01	Construction Start
10/02	Certificate of Occupancy
10/02	Medicaid Waiver Approved
11/02	Grand opening

Three factors made assembling this financing easier: state funding priorities for affordable assisted living; community support for The Gardens, which translated into a generous grant from a local foundation; and the CDC's strong relationship with a local lender. Operational economies have been achieved using Mercy Health Systems bulk purchasing agreements to buy food and supplies.

The following is a table of the residents that had moved in 6 months after opening, as of May 2003:

Total number of residents	45
Percent of residents from Benton county	91% (41)
Percent of residents who moved from • A private home in the community (alone / with spouse) • A private home in the community (with family) • A nursing facility • Hospital • Residential care facility	 • 56% (25) • 24% (11) • 5% (2) • 0 • 15% (7)
Average age of residents	82 years
Percent of total residents who are female	85%
Percent of residents who receive Medicaid	73% (33)
Percent of residents who receive other subsidies	0
Percent of private pay residents	27% (some will "spend down" to Medicaid level within 28 months)
Number of residents in each level of care category	Level 1 31% (14) Level 2 40% (18) Level 3 18% (8) Level 4 11(5)
Percent of residents who have a diagnosis of mild cognitive impairment or dementia	49% (22)
Percent of residents who would have gone to a nursing home if affordable assisted living was not available (estimate)	67% (30)
Percent of residents capable of self-administering medications	7% (3)

The administrator expressed surprise at the level of impairment among the assisted living residents. Although she knew that these residents would be more impaired than residential care residents (an existing licensure category that does not permit nursing services), she did not expect that the residents would compare to nursing home residents. For example, she explained that at least half of the residents have dementia, only three of 41 residents can manage their own medications, and that a majority of residents require assistance with using the toilet or incontinence products. She said that it "would have been tougher" if they had not been permitted to use universal workers. As it is, "everyone pitches in" to get the work done, whether that means doing laundry, redirecting residents, helping with social activities, or serving meals.

Where Resident Would Have Lived if not for The Gardens
(Based on staff report for 27 residents)

Location	*Number*	*Percent*
Nursing Home	19	70%
With Family	5	19%
Home w/Home Health	2	7%
Another Assisted Living	1	3%

Importance of Place and Services to Resident
(*Total of 30 residents surveyed*)

Category	**Very important**	**Somewhat important**	**Not important**
Having my own room/apt	28 (88%)	--	--
Having staff to help you	25 (78%)	1 (3%)	1 (3%)
Having other residents around as friends	13 (41%)	13 (41%)	2 (7%)
Having activities available	18 (56%)	6 (21%)	4 (13%)

There is significant opportunity for the other states to replicate the Arkansas Affordable Assisted Living Case Study. Other states can make the case for replication based on avoidance of more restrictive skilled nursing options for residents, and a commitment to increasing the living standards for the aging, low-income communities in their state.

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