



Ten Most Important Aspects in Admission Contract of Senior-Care Facility

Written by Michael Qu

With increasing supply in the Chinese marketplace of senior care facilities, expertise in the operating management is highly urged. The admission contract is one of the essential parts of this management. Having seen poorly designed formats from some small-sized domestic facilities and the most complicated one that copies from western-style facility, I have to admit well designed admission contract is rarely found in practice—some have too many clauses in favor of the operator and lack of humanization and some miss critical elements which may lead to potential disputes in the future. To share some of the study on how to draft an admission contract that caters to the Chinese regulatory environment, I outline the 10 most essential aspects to be aware of as follows.

1. A pre-admission procedure be in place

Prior to entry and admission contract being reached, perspective resident should have visited the facility and consulted with the staffs to have an acknowledgement of the facility and its requirement for moving into. So when he or she comes again for residency, a complete procedure is essential, not just for the facility to be more ceremonial and credible, but rather to mitigate potential risks in the first place. Usually there are health examination from both physical and mental side, additional screening and photo for record preservation, an assessment of financial capability of the elderly's family and maybe a further requested guaranty or consent, a personalized package offer in some cases tailored for special clients, etc. More important is these collected information and assessment are just first steps in the

dynamic cycle of residency of elderly, a routine procedure for updating these information should also be in place. There are forms and documents practiced in US for decades, whether these can be referred to, Chinese elements shall be considered.

2. Wisely design your fee model to cater to elderly's needs

Usually there are entry fee plus monthly service charge model, membership model, lease model with selected care service and, of course, sales model that mostly welcomed by Chinese people. It absolutely needs effort to study the viability and legality of each model. That being said, the most essential part of a facility is related to care service, whether it's 24-hour nursing, skilled care, rehabilitative care, or social and dietary service. In the contract, what services are included in regular charge and where extra fees are charged should be clearly specified. The price, level of service, the availability to choose or swift among different services, and the adjustment mechanism of the price, among others, are recommended to be included as well. Another thing to remember is never over promise what you can provide and serve. As there are still no unified or accredited standards to refer to, service-oriented operators have to find a convincing way to educate customers what they can expected to have in the facility.

3. Operational liability is always a big risk

We've discussed in another article on how to manage operating risk, which is absolutely hard to find a workable way for every facility. The nature of care service determines operators burden more liabilities than they wish to. Like an insurance policy, it is useful for an admission contract to contain specific provisions limiting the liability of the facility owner and operator for accidents and damages that may result from activities that are not due to the fault of the operators. To avoid negligence accusation, it is also advisable to obtain a durable power of attorney that permits the attorney in fact to make financial decisions or medical treatment after the resident has become incompetent under an emergency circumstance. Another instrument—insurance—is despicable for both operator and residents. Insurance companies have started to provide insurance products on operational liability and security of resident's health and accident, but embrace very little enthusiasm. Biggest barrier exists in finding a balance between the premium and the amount of damage claimed.

4. Resident rights are not only reflected in the contract

In China, some seniors have feeling of staying in prison as they are restrained with freedom, freedom of choices, moving or even privacy. The purpose of these restraints is understandably to protect senior's health and safety and manage operation risks as well. But are these must DOES and has the resident agreed on? On a case-by-case basis, resident right must be communicated to the resident orally and then been set forth in the admission contract, but never think this is all for residents. A humanitarian service from caregivers showing respect and love is essential in daily life. It is also

important to set out a feedback and appeal approach to find misconduct of caregivers and make good of their mistakes. To ensure a well-being retirement life is what seniors want, so it is time for operators to change the mindset.

5. Build up a viable communication tunnel with residents' family

Unlike some western countries, Chinese seniors look high on family bonding. Living in senior care facility, sometimes, is to lessen the burden of children, rather than an individual free-will choice. As Such, care service could be more about psychologically care of the family members. Communication therefore is a must have mechanism to be included in the admission agreement. How frequently and through what method the facility staffs is to contact with senior's relatives? Under what circumstance operator can conduct necessary action without prior consent from relatives? Is there a committee of family members in place as most kindergartens do? And so on. The mechanism can be creative and humanitarian, and in return I believe your facility will be more welcomed.

6. Emergency and temporary treatment for health or safety reason

As there is still no regulation or industrial guidance or protocol to follow in the event of emergency or change of circumstance, but most of the legal disputes are raising from this area, the operators must define their right to transfer (usually to hospitals), discharge (usually constitute a threat to others), take precaution efforts or take temporary treatment under specific circumstance. It might be arguable whether these measures are in the nature to protect the residents' benefit or only for the operator's sake. Some operators might wish to illustrate more circumstances in the contract in order to entitled themselves with more discretion. However, if these clauses are deemed as unfair or unreasonable in terms of protection of resident's interests, it is likely they are invalid. As long as no advised format contract in this kind is produced either by authority or industrial association, it is up to the operators to find a workable way to mitigate management risks.

7. Set up clauses for contract termination, assignment and refund

Sometimes, residents will pay all or most of the fees in advance, whether in terms of entry fee, membership benefit or purchase of property right or lease right. Notwithstanding the legality of these fee model is different from city to city, most seniors will request to refund in whole or in portion, or to assign or resale their benefits in case they leave the facility or decease earlier than expected. In an early termination case, a resident may be permitted to terminate the agreement at any time without cause, but shall be imposed with some form of penalty, such as the withholding of an extra percentage of the entrance fee; and in the latter case of early death, the way to deal with the refund—also seems to be the senior's heritage - is recommended to be set forth in admission contract beforehand.

8. Tackle with the resident's financial difficulty

Again unlike western countries, fund resource for most Chinese citizens to afford senior care facility is still unknown. As some predicted, many seniors will be supported by the children, and others are self-insured with their own deposit or real property. But the fact is many operators are worrying that seniors may fall into money scarcity in their residency while no social welfare can be resorted to, and the operators are unable to just force them out onto the street. There is a phenomenon operators ask residents to provide some kind of guarantee or collateral to prove the financial sustainability, but that will inevitably keep many perspectives out of the door. It will be helpful if the facility itself has a financial assistance mechanism, and if not, is the facility entitled to access the senior's financial resource, i.e. social welfare, government subsidy, personal estate, etc.? A pre-agreed approach in these cases is helpful, and if the senior's assets are from the first day handled by a trustee, I think will be more flexible and practicable in tackling with the foregoing difficulty.

9. Is resident's association and internal rule necessary?

Although it is not compulsory, senior community does need a Residents' Association ideally participated by every resident to discuss and make suggestions regarding any program at retirement facility. Residents' Association can enhance the quality of the facility in the marketplace, and play an important rule in daily management for operators, such as to justify alteration of some service fee. An internal rule is also recommended to be put in place that every resident is bound by these rules and regulations, usually contained in Resident Handbook, which may and only be amended from time to time via a specified procedure participated along with Residents' Association.

10. Choose the right language

Last but not the least important aspect is to use plain language in drafting your contract. Imagining who are the readers of the contract and where they may mostly be concerned of, you are easy to understand the necessity of minimizing the use of legalese and formalistic writing style. That being said, we still advice you have legal counsel helping you with this, and, not to be neglected, having your marketing team involved in—they can be constructive in producing a readable and featured admission contract.

Obviously, the abovementioned points are just to raise awareness for operators, and detailed phrases in the contract still require support from legal counsel. Keep in mind admission contract links direct to your daily operation, you'd better always keep it updated and suitable to your business. ■

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