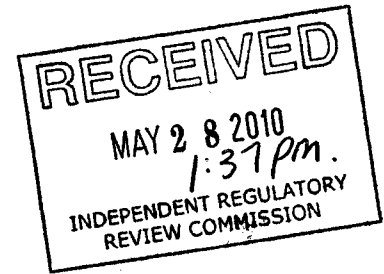


2712
May 28, 2010

Deputy Secretary Jennifer Burnett
Pennsylvania Department of Aging
Office of Long-Term Living
555 Walnut Street
Harrisburg, Pennsylvania 17105-2675



RE: Proposed Assisted Living Residence Regulatory Package

Dear Deputy Secretary Burnett:

On behalf of Senior Care, Inc., enclosed please find the company's comments regarding the proposed final form Assisted Living Regulations as provided on May 3, 2010 for additional consideration during the review process that is to be conducted by The Independent Regulatory Review Commission (IRRC).

Senior Care, through the operation of 15 personal care homes, provides residential care services to nearly 850 seniors across the Commonwealth. Senior Care also proudly employs roughly 300 of Pennsylvania's citizens as administrators, nurses, housekeepers, dietary and maintenance staff and direct care staff.

Senior Care's mission is to enrich the lives of the individuals who live and work in the company's communities by responding to their unique needs and universal desire for dignity and respect. The company's communities, like those residences envisioned in the final form Assisted Living Regulations, are presently designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice.

Senior Care has direct ties to the Assisted Living Residence Regulation Work Group that was comprised of industry stake-holders and other interested parties born from the passage of Act 56. The company truly embraces the Department's belief that it is time for Pennsylvania to enter into the world of Assisted Living licensure and enact regulations that enable the creation of an industry predicated on promoting resident independence, preserving dignity, privacy and choice and one that is based on a true resident-centered philosophy.

Senior Care commends your office for making numerous positive changes to the first draft of the 2800 regulations. Notwithstanding the foregoing, the company still has fairly significant concerns regarding certain regulations, including but not limited to dual licensure, staff qualifications and training, physical plant requirements and core services. If these regulations are enacted "as is", they could potentially jeopardize the ability of Senior Care and other quality personal care home providers to participate in Pennsylvania's "Assisted Living" industry.

Senior Care has a final note regarding the issue of grandfathering administrator and staff qualifications and training. During the Assisted Living Residence Work Group meetings, detractors argued grandfathering should not be permitted under Chapter 2800 because

grandfathering was already extended to the provider community with the inception of the 2600 regulations. This position is inane. Grandfathering under Chapter 2600 allowed personal care homes to make a seamless transition in late 2005 and 2006 as the Department began inspections under the 2600 regulations. As a result, resident health and safety was never in jeopardy. The Department, in its IRRC response, indicated it believes under the 2800 regulations assisted living will serve a higher acuity resident than personal care homes. While the law and regulations ostensibly permit this through the use of an exception/waiver or certification process, by and large, this will not be the case. Personal care home providers have been serving higher acuity residents in a safe and effective manner, and allowing them to age in place for decades. Secretary Hall has also indicated in numerous public forums he does not envision a change in the residents that are currently being served in personal care homes and essentially does not see an interruption of this vitally important industry. Given personal care homes' demonstrated ability to meet the needs of residents (including higher acuity residents), administrator and staff qualifications and training should be grandfathered.

Again, Senior Care appreciates the opportunity to provide its comments on the proposed final form Assisted Living Regulations. If you have any questions or need any additional information regarding the enclosure, please do not hesitate to contact me.

Sincerely,

Edward J Corbeil
Regional Director of Operations
Senior Care, Inc.

Enclosure

ASSISTED LIVING						
Category	Personal Care Home (PCH) Regulations		Assisted Living (AL) Regulations		Comment/Concern	Recommendation
Licensing Fees	2600.11(c)	<p>License application or renewal fee based on the number of beds in the home, as follows:</p> <p>(1) 0-20 beds—\$15.</p> <p>(2) 21-50 beds—\$20.</p> <p>(3) 51-100 beds—\$30.</p> <p>(4) 101 beds and over—\$50.</p>	2800.11(c)	<p>(1) \$300 license application or renewal fee; plus</p> <p>(2) \$75 per bed fee that may be adjusted annually at a rate not to exceed the CPI; plus</p> <p>(3) \$150 application fee for special care designation on license.</p>	<p>Even though the Department reduced the license application or renewal fee in Section 2800.11(c) from \$500 to \$300, and the per bed fee from \$105 to \$75, the Department added a \$150 fee to obtain a special care license designation. The fees are still excessive, and do not appear to be reasonably related to the cost of regulating the AL residence setting.</p> <p>By way of example, today it costs Senior Care \$450 to license 15 personal care homes with an aggregate of 1,146 beds (including three special care units). Under the AL regulations, it would cost Senior Care \$90,075 to license the same facilities, resulting in an annual increase of \$89,625.</p>	<p>For fiscal years 2010 – 2011 and 2011 – 2012, a \$10 per bed fee that may be adjusted annually by the Department after 2012 at a rate not to exceed the CPI; provided, however, in no event shall the fee (including special care designation) exceed \$1,000.</p>
Use of Term “Assisted Living” in Name or Written Materials	N/A	The PCH regulations do not contain an applicable provision.	2800.11(d)	A person, organization or program may not use the term “assisted living” in any name or written material, except as a licensee in accordance with chapter 2800.	The prohibition in Section 2800.11(d) is unduly burdensome and cost prohibitive to personal care home providers. In addition, it is unclear whether a dually licensed personal care home and	The prohibition in Section 2800.11(d) should be deleted.

					assisted living residence could use the name and/or marketing and other written materials if the term “assisted living” is used therein.	
Dual Licensure	N/A	The PCH regulations do not contain an applicable provision.	2800.11(g)(1)	<p>A licensed personal care home may submit an application requesting dual licensure if the personal care home and the assisted living residence are collocated in the same building and are each located in a distinct part of the building.</p> <p>A facility that is dually licensed shall not segregate residents or transfer residents from one licensed facility to another based on payment source.</p>	<p>The mandate for distinct parts under Section 2800.11(g)(1) is unduly burdensome, restricts a resident’s freedom of choice and ability to age in place, and limits an operator’s ability to take advantage of dual licensure. A resident who qualifies for assisted living services may not desire or even be able to utilize the additional space and amenities called for under the AL regulations; however, said resident would nevertheless be required to live in a “living unit” in order to access such care. Dual licensure should be determined based on a facility’s ability to meet the needs of the resident rather than on the facility’s physical plant/layout/amenities.</p> <p>If a dually licensed personal care/assisted living residence qualifies for Medicaid in the future, Section 2800.11(g)(1)</p>	Eliminate the requirement for distinct parts under Section 2800.11(g)(1). In the alternative, allow the resident to “opt out” of the “living unit” requirements under the AL regulations.

					implies a resident in a personal care unit who experiences a change of condition, requires assisted living services and qualifies for Medicaid assistance, could not transfer into an assisted living unit.	
Fire Safety Approval	2600.14	<p>(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. § § 7210.101—7210.1103) is required.</p> <p>(b) If the fire safety approval is withdrawn or restricted, the home shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.</p> <p>(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the home shall submit the new</p>	2800.14	<p>(a) Prior to issuance of a license under chapter 2800, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. § § 7210.101—7210.1103) is required.</p> <p>(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.</p> <p>(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required,</p>	Section 2800.14(e) was added to the AL regulations even though the Department retained requirements similar to Sections 2600.14(a) - (d) of the PCH regulations. Section 2800.14(e) is duplicative, overly burdensome and arbitrary in light of the requirements in Sections 2800.14(a) – (d), which are already designed to ensure ongoing fire safety.	Retain Sections 2800.14(a) – (d) and delete Section 2800.14(e). In the alternative, Section 2800.14(e) should be revised to require fire safety approval renewal no more frequently than every 5 years.

		<p>fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.</p> <p>(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.</p>		<p>from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.</p> <p>(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.</p> <p>(e) Fire safety approval must be renewed at least every 3 years, or more frequently, if requested by the Department.</p>		
Reportable Incidents and Conditions	2600.16(a)(1) – (19)	The PCH regulations do not contain an applicable provision.	2800.16(a)(20)	A reportable incident or condition includes an absence of staff such that residents receive inadequate care as defined by the respective resident’s support plan.	The Department revised Section 2800.16(a)(20) by adding “such that residents receive inadequate care as defined by the respective resident’s support plan.” The use of “absence of staff” and “inadequate care” (even though tied to a resident’s support plan) is ambiguous.	Section 2800.16(a)(20) should be deleted. In the alternative, the reporting requirement should be triggered if the absence of staff resulted in the facility’s failure to substantially comply with the resident’s support plan, and such failure was the

					In addition, Section 2800.16(a)(20) is arguably contained within Sections 2800.16(a)(1) – (19); therefore, the new section does not exceed the requirements under the existing regulation.	direct and proximate cause of any of the matters identified in Sections 2800.16(a)(1) – (19).
Application and Admission	2600.22	The PCH regulations require a preadmission screening completed prior to admission on a form specified by the Department.	2800.22(b.1) and (b.2)	<p>A certification shall be made, prior to admission, that the needs of the potential resident can be met by the services provided by the residence.</p> <p>The certification shall be may be [sic] made by one of the following persons:</p> <ol style="list-style-type: none"> (1) The administrator acting in consultation with the supplemental health care providers. (2) The individual’s physician or certified nurse practitioner. (3) The medical director of the residence. 	Section 2800.22 does not specify whether the certification must be made in writing and, if so, whether the Department will mandate a form.	Please specify whether the certification under Section 2800.22 must be made in writing and whether the Department will mandate a form.
Application and Admission (cont’d)	2600.22	The PCH regulations do not contain an applicable provision.	2800.22(b.3)	A potential resident whose needs cannot be met by the residence shall be provided with a written decision denying his admission and provide a basis for the denial.	Section 2800.22(b.3) is unduly burdensome and, notwithstanding the confidentiality and consent requirements, the potential risks	Section 2800.22(b.3) should be deleted.

				<p>The decision shall be confidential and may only be released with the consent of the potential resident or his designated person. The potential resident shall then be referred to a local appropriate assessment agency.</p>	<p>attendant to compiling this information (e.g., discrimination, profiling, and misuse of PHI) outweigh any potential benefits to residents.</p> <p>Even though assisted living residences will be governed by the same regulations, a resident assessment/basis for denial is still subjective, and each facility should make an independent determination.</p>	
Application and Admission (cont'd)	2600.22	The PCH regulations do not require the extensive disclosures to a potential resident upon application as contemplated under the AL regulations.	2800.22(e)	<p>Upon application for residency and prior to admission to the residence, the licensee shall provide each potential resident or potential resident's designated person with written disclosures that include:</p> <ol style="list-style-type: none"> (1) A list of the nonwaivable resident rights. (2) A copy of the contract the resident will be asked to sign. (3) A copy of residence rules and resident handbook. The resident handbook shall be approved by the Department. 	<p>Section 2800.22(e) is unduly burdensome, cost prohibitive, detrimental to the environment, and not reasonably likely to foster informed choice by the resident or consumer protection.</p> <p>The resident contract, handbook, services package, and other information contemplated under Section 2800.22(e) consist of hundreds of pages. This method of disclosure is inefficient and it is unrealistic to expect a potential resident or his designated person to independently review such materials. In order for a potential resident or his</p>	<p>Section 2800.22(e) should be deleted. In the alternative, the disclosures required under Section 2800.22(e) should be permitted to be provided in summary format and/or marketing materials in the provider's discretion, and should only have to be provided to a resident who has been certified in accordance with Sections 2800.22(b.1 and b.2).</p>

				<p>(4) Specific information about the following:</p> <ul style="list-style-type: none"> (i) The services and the core package that are offered by the residence. (ii) The cost of those services and of the core packages to the potential resident. (iii) When a potential resident may require the services offered in a different core package. (iv) The contract information for the Department. (v) The licensing status of the most recent inspection reports and instructions for access to the Department's public website for information on the residence's most recent inspection reports. (vi) The number of living units in the residence that comply with the Americans with Disabilities Act. 	<p>designee to make an informed choice, materials must be easy to read and understand.</p> <p>The Department states in its responses it does not wish to dictate marketing content or practices to assisted living residences; however, this is the effect of Section 2800.22(e).</p> <p>This method of disclosure also opens the door for unscrupulous individuals and competitors to obtain a legitimate operator's documentation and information for ulterior motives, which increases the risk for fraud and deceptive practices and claims for unfair business practices.</p>	
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				(vii) Disclosure of any waivers that have been approved for the residence and are still in effect.		
Resident-Residence Contract	2600.25(b)	The PCH regulations do not contain a similar provision giving the resident the right to provide a 14-day termination notice.	2800.25(b)	The contract must run month-to-month with automatic renewal unless terminated by the resident with 14 days' notice or by the residence with 30 days' notice in accordance with Section 2800.228.	Section 2800.25(b) is not equitable. The provider and the resident should have equal contract termination rights (i.e., 30 days) absent the exigent circumstances contemplated under Section 2800.228. The 14-day termination notice requirement is voluntary (absent exigent circumstances) and there is no compelling reason for a resident to have a shorter notification period. The 14-day termination notice is inconsistent with the well established principle of a month-to-month tenancy, which requires a 30-day termination notice. The 14-day termination notice may not give the provider sufficient time to comply with its obligations under Section 2800.228 to ensure a safe and orderly transfer or discharge of the departing resident.	Section 2800.25(b) should be revised to replace the 14-day termination notice with a 30-day termination notice except as otherwise permitted under Section 2800.228. In the alternative, the Department should identify a specific set of circumstances (based on hardship or another compelling reason not already covered by Section 2800.228) under which a resident is permitted to provide a 14-day termination notice.

Resident-Residence Contract (cont'd)	2600.25(c)(2)	A fee schedule that lists the actual amount of allowable resident charges for each of the home's available services.	2800.25(c)(2)(i)	A fee schedule that lists the actual amount of charges for each of the assisted living services that are included in the resident's core service package including assistance with unscheduled ADL's and supplemental health care services.	<p>It is unreasonable and impractical for a provider to include the actual amount of charges for unscheduled ADL's and supplemental health care services in its fee schedule as required under Section 2800.25(c)(2)(i).</p> <p>Under the AL regulations, the Department mandates that each resident be assessed on an individual, ongoing basis. A provider cannot anticipate every unscheduled ADL and supplemental health care service every resident will need, the scope and duration of such services, or the associated cost of such services (in particular, when third party providers are involved).</p>	Section 2800.25(c)(2)(i) should be deleted. In the alternative, a provider should only be required to provide a reasonable, good faith estimate of the costs for the most frequently requested unscheduled ADL's and supplemental health care services.
Informed Consent Process – Liability	N/A	N/A	2800.30(i)	Execution of an informed consent agreement does not constitute a waiver of liability beyond the scope of the agreement or with respect to acts of negligence, tort, products defect, breach of fiduciary duty, contract violation, or any other claim or cause of action. An informed consent agreement does not relieve a	The Department acknowledges in its comments that Act 56, in 62 P.S. Section 1021(a)(2)(vii), makes clear that an informed consent agreement releases the facility from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement. However, Section	Section 2800.30(i) needs to unequivocally state that an informed consent agreement entered into between a facility and a resident in compliance with the AL regulations releases the facility from liability and any enforcement actions for adverse

				licensee of liability for violation of statutory or regulatory requirements promulgated under chapter 2800 nor does it affect the enforceability of regulatory provisions including those provisions governing admission or discharge of the permissible level of care in an assisted living residence.	2800.30(i) does not comport with the foregoing. More specifically, the release of liability is negated by the exceptions for (i) acts of negligence, tort, products defect, breach of fiduciary duty, contract violation, or any other claim or cause of action, (ii) liability for violation of statutory or regulatory requirements promulgated under chapter 2800, and (iii) the enforceability of regulatory provisions including those provisions governing admission or discharge or the permissible level of care in an assisted living residence.	outcomes resulting from any and all actions consistent with the terms of the informed consent agreement, including actions which, <i>but for the existence of the informed consent agreement</i> , could otherwise constitute (i) acts of negligence, tort, products defect, breach of fiduciary duty, or contract violation, or (ii) a violation of statutory or regulatory requirements promulgated under chapter 2800, including those provisions governing admission or discharge or the permissible level of care in an assisted living residence.
Qualifications and Responsibilities of Administrators	2600.53(a)	The administrator shall have one of the following qualifications: (1) A license as a registered nurse from the Department of State. (2) An associate's degree or 60 credit hours from an accredited college or	2800.53(a)	The administrator shall have one of the following qualifications: (1) A license as a registered nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.	The failure to include a grandfathering provision in Section 2800.53 is inconsistent with, and a barrier to, the anticipated conversion of personal care homes to assisted living residences and the dual licensing permitted in Section 2800.11(g). Grandfathering was permitted	All personal care home administrators qualified under the PCH regulations (other than under Section 2600.53(a)(5)) on the effective date of the AL regulations should be grandfathered under the AL regulations. In addition, the requirement for direct care or administrative

		<p>university.</p> <p>(3) A license as a licensed practical nurse from the Department of State and 1 year of work experience in a related field.</p> <p>(4) A license as a nursing home administrator from the Department of State.</p> <p>(5) For a home serving 8 or fewer residents, a general education development diploma or high school diploma and 2 years direct care or administrative experience in the human services field.</p>		<p>(2) An associate's degree or 60 credit hours from an accredited college or university in a human services field and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.</p> <p>(3) An associate's degree or 60 credit hours from an accredited college or university in a field that is not related to human services and 2 years, in the prior 10 years, of direct care or administrative experience in a health care or human services field.</p> <p>(4) A license as a licensed practical nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.</p> <p>(5) A license as a nursing home administrator from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services</p>	<p>under the Chapter 2600 regulations with great success.</p> <p>Personal care home administrators are credentialed, qualified and have received significant training on substantially similar functions and responsibilities. Imposing additional qualifications is unduly burdensome and cost prohibitive.</p> <p>If assisted living administrators are required to have direct care or administrative experience in a health care or human services field, many otherwise qualified individuals will be ineligible, such as individuals in the hotel management, hospitality, and exercise/fitness industries.</p>	<p>experience in a health care or human services field should be deleted or, in the alternative, an individual should be able to substitute alternative education, experience, and credentials that are determined to be equivalent in the reasonable discretion of the facility.</p>
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				<p>field.</p> <p>(6) With the exception of administrators qualified under Section 2600.53(a)(5), experience as a personal care home administrator, if the following requirements are met:</p> <p>(i) Employed as a personal care home administrator for 2 years prior to the effective date of the AL regulations.</p> <p>(ii) Completed the administrator training requirements and pass the Department-approved competency-based training test at Section 2800.64 within 1 year of the effective date of the AL regulations.</p>		
Portability of Staff Training	2600.55	<p>(a) The staff qualification requirements for administrator and direct care staff persons do not apply to individuals hired or promoted to the specified positions prior to December 1, 2004.</p> <p>(b) A staff person who transfers to another licensed</p>	2800.55	<p>A staff person who transfers to another licensed residence, or from a licensed personal care home shall be given credit for any completed hours of training that are required on an annual basis, provided however, that the staff person shall complete any additional training required by these regulations for assisted living residence direct care staff.</p>	<p>Additional training should not be duplicative of training previously completed by a staff person because it is unduly burdensome and cost prohibitive.</p>	<p>All staff training should be portable and should count towards satisfaction of the requirements under the AL regulations if the training materials are substantially similar in scope.</p>

		home, with no more than a 1 year break in service, may continue to work in the same capacity as long as the staff person meets the conditions specified in subsection (a).				
Administrator Staffing	2600.56	The administrator shall be present in the home an average of 20 hours or more per week, in each calendar month.	2800.56(b)(1)	An administrator designee shall meet the following requirements, in addition to subsections (2) and (3): (1) Have 3,000 hours of direct operational responsibility for a senior housing facility, health care facility, residential care facility, adult daily living facility or other group home licensed or approved by the Commonwealth.	Section 2800.56(b)(1) does not specify how the 3,000 hours of direct operational responsibility shall be documented.	Please specify how the 3,000 hours of direct operational responsibility shall be documented under Section 2800.56(b)(1).
Staff Orientation and Direct Care Staff Person Training and Orientation	2600.65	See Regulations	2800.65	See Regulations	See comments to Section 2800.53(a) and Section 2800.55.	See comments to Section 2800.53(a) and Section 2800.55.
Training Institution	2600.67(b)	An institution and the course of study offered by	2800.67(b)	An institution and the course of study offered by an educational	Given the vast number of courses, as well as educational	Section 2800.67(b) should be revised to require the

Registration		<p>an educational institution, association, professional society or organization for the purpose of educating and qualifying applicants for certification as personal care home administrators shall be registered and approved by the Department prior to offering the course of study.</p> <p>See Sections 2600.67(b)(1) – (7) for registration application requirements.</p>		<p>institution, association, professional society or organization for the purpose of educating and qualifying applicants for certification as assisted living residence administrators shall be registered and approved by the Department prior to offering the course of study.</p> <p>See Sections 2800.67(b)(1) – (7) for registration application requirements.</p>	<p>institutions, associations, professional societies, and organizations, the registration process for educating and qualifying applicants for certification as assisted living residence administrators is unduly burdensome and complicated.</p>	<p>Department to accept official transcripts from accredited institutions, associations, professional societies, and organizations for purposes of certification.</p>
Handrails and Railings	2600.93(a)	<p>Each ramp, interior stairway and outside steps must have a well-secured handrail.</p>	2800.93(a)	<p>Each ramp, interior stairway, hallway and outside steps must have a well-secured handrail.</p>	<p>The mandate for handrails in interior hallways under Section 2800.93(a) is not consistent with the Department’s description of a “living unit”, which is designed to allow for the individual to experience a more home-like setting. Handrails in hallways institutionalizes a residential setting.</p>	<p>The mandate for handrails in interior hallways under Section 2800.93(a) should be deleted.</p>
Landings and Stairs	2600.94	<p>(a) Interior and exterior doors that open directly into a stairway and are used for exit doors, resident areas and fire exits must have a landing, which is a</p>	2800.94(c)	<p>Stairs must have strips for those with vision impairments.</p>	<p>The mandate for stair strips for those with vision impairments under Section 2800.94(c) is not consistent with the Department’s description of “living unit”, which is designed</p>	<p>The mandate for stair strips for those with vision impairments under Section 2800.94(c) should be deleted.</p>

		<p>minimum of 3 feet by 3 feet.</p> <p>(b) Interior stairs, exterior steps and ramps must have nonskid surfaces.</p>			<p>to allow for the individual to experience a more home-like setting. Stair strips for those with vision impairments institutionalize a residential setting, and they are also trip hazards.</p>	
Indoor Activity Space	2600.98(a) and (b)	<p>(a) The home shall have indoor activity space for activities such as reading, recreation and group activities.</p> <p>(b) The home shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors.</p>	2800.98(a) and (b)	<p>(a) The residence shall have at least two indoor wheelchair accessible common rooms for all residents for activities such as reading, recreation and group activities. One of the common rooms shall be available for resident use at any time, provided the use does not affect or disturb others.</p> <p>(b) The residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas must accommodate all residents at one time. There must be at least 15 square feet per living unit for up to 50 living units. There must be a total of 750 square feet if there are more than 50 living units. These rooms or areas must contain tables, chairs and lighting to accommodate the</p>	<p>The common room and square footage requirements under Sections 2800.98(a) and (b) are inconsistent with, and a barrier to, the anticipated conversion of personal care homes to assisted living residences and the dual licensure permitted under Section 2800.11(g). In addition, the requirements are cost prohibitive and an inefficient use of space. The foregoing will deter development of assisted living facilities and deny individuals access to a necessary residential living alternative.</p>	<p>The common room and square footage requirements under Sections 2800.98(a) and (b) should be deleted.</p>

				residents, their families and visitors.		
Resident Living Units	2600.101	See Regulations.	2800.101	See Regulations.	<p>The provisions of Section 2800.101 dealing with square footage are cost prohibitive and unduly burdensome. They are also a barrier to entry into the assisted living sector and negate consumer choice.</p> <p>Doubling the room size requirement for existing stock is not necessary and does not provide what residents of assisted living residences truly seek. According to the 2009 Annual Report on Licensed Personal Care Homes issued by the Department on February 10, 2010, residents over the age of 60 account for 85% of the occupancy in all personal care homes whereas younger populations with physical disabilities account for just 9% of personal care home occupancy. Essentially, seniors have long said and subsequently opted to take advantage of the current room size selections</p>	<p>For new construction, each living unit for a single resident must have at least 150 square feet of floor space measured wall to wall, excluding bathrooms and closet space. An additional 60 square feet shall be necessary when two residents share a room.</p> <p>The Department should also permit 125 square feet of living space with an additional 60 square feet for residences in existence prior to the effective date of the AL regulations.</p>

					<p>available in the market place and have instead chosen to concentrate on living their lives outside of their living units engaged in activities and taking advantage of the social opportunities offered in living their lives in a more public setting. Larger living unit size has long been sought by advocates of resident populations outside of the majority of those that will comprise assisted living residence occupancy [i.e. seniors]. However, seniors have proven that larger living units do not equate to a higher quality of life, and the current stock of living units available does not serve as an impediment to mobility needs.</p>	
Kitchen Capacity Requirements	N/A	N/A	2800.101(d)	See Regulations.	<p>Section 2800.101(d) is cost prohibitive and unduly burdensome. It is also a barrier to entry into the assisted living sector and negates consumer choice.</p> <p>Requiring AL residences to offer and possibly supply a</p>	Section 2800.101(d) should be deleted.

					<p>cooking appliance and a small refrigerator far exceeds the legal requirement prescribed by Act 56.</p> <p>Personal care homes desiring to convert to an assisted living residence will be hard pressed to provide a stove top for hot food preparation accessible to all residents, especially if the stove top cannot be the one used in a residence's main kitchen [which is not feasible or advisable]. Section 2800.101(d) promotes an unsafe environment for AL residents. The average age of an AL resident is 84 years old. In most cases, cooking is no longer a viable option for nearly all residents served currently across Pennsylvania. In many instances, the inability to cook and prepare one's own meals is what leads a resident to enter an AL residence.</p>	
Emergency Notification System	N/A	N/A	2800.101(r)	Each living unit must be equipped with an emergency notification system to notify staff in the event of an emergency.	Section 2800.101(r) does not specify the requirements for the emergency notification system. Therefore, it is not possible to	Please provide the requirements for the emergency notification system contemplated under

					determine the feasibility or impact of this provision.	Section 2800.101(r).
Bathrooms	2600.102(c)	There shall be at least one bathtub or shower for every ten or fewer users, including residents, staff persons and household members.	2800.102(c)	There shall be at least one bathtub or shower in the bathroom of the living unit.	<p>Section 2800.102(c) is cost prohibitive and unduly burdensome. It is also a barrier to entry into the assisted living sector and negates consumer choice.</p> <p>In reviewing bathroom capacity of current stock, Senior Care has approximately 160 resident living units without a bathtub or shower. The estimated cost of adding a bathroom to each living unit (including labor and materials) is approximately \$5,000 for each unit. In order for Senior Care to convert its personal care homes to assisted living residences, it would need to make an aggregate investment of \$800,000 for bathrooms alone. Assuming Senior Care and other prospective assisted living residences can meet all requirements pertaining to service, a regulation dealing strictly with “bricks and mortar” should be eased to allow greater access into an assisted living</p>	The Department should use an “exceptions” approach for the bathroom requirement similar to the Department’s approach for handling living unit size.

					residence.	
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Regarding the provisions of Section 2800.220, Section 2800.224 and Section 229, Senior Care wanted to take this opportunity to provide the following detailed comments.

Section 2800.220 Service Provision

Senior Care is concerned the core services described in the regulation are poorly defined and still appear to exceed the Department’s legal requirements under Act 56. The bundling of services could again require residents to pay for services they neither need nor want. Senior Care understands the Department’s intent to provide consumers with choice when exploring assisted living options. However, the regulations appear to limit an AL residence’s ability to charge separately for higher levels of acuity and medication administration. As an example, “basic cognitive support services” are listed under the “independent core package”. This is problematic because these services are considered to require assistance with activities of daily living (ADLs). Yet, the independent core package states this package is for residents who do not require assistance with ADLs.

The issue of a core services package was contested throughout the Assisted Living Residence Work Group meetings by provider associations that advocated for a more personal, resident-centered, ala-cart approach to services tailored to meet individual resident needs. Detractors of this approach favored core service packages, which limited personal choice and resident centeredness, and focused on stock-piling services in core packages. This would limit an AL residence’s ability to personalize care and services, as well as its ability to receive adequate remuneration for individual services rendered.

Senior Care ultimately requests the Department to either completely restructure Section 2800.220 to define a more clear set of services under each provision or to permit AL residence’s to define their own service packages based on free market enterprise and viability. The Department could review and approve, in the exercise of its reasonable discretion, each AL residence’s package to ensure it is within the spirit and intent of Act 56.

Senior Care also urges the Department to revisit the opt-out provision, which allows residents to opt-out of meal, laundry and/or housekeeping services. Permitting a resident to opt-out of services that provide nutrition, proper hygiene and environmental cleanliness is problematic if a satisfactory alternative is not secured. In many cases, a resident’s designated person[s] may elect to provide or perform these services. However, as an experienced provider of personal care and assisted living services, Senior Care knows even well-intentioned resident family members or other designated persons often do not follow through on such commitments or fail to execute the same properly. Additionally, implementing this opt-out clause in both a resident contract and billing system represents a significant undertaking for an AL residence. Senior Care respectfully requests the Department to reconsider this provision and delete it from the regulations.

2800.224 Initial Assessment and Preliminary Support Plan

Senior Care would like a better understanding of the term “under the supervision of a registered nurse” in connection with the completion of the initial assessment and support plan. Is the Department mandating the hiring or contracting of an RN to oversee this process? As previously stated, Senior Care is home to roughly 850 residents across the State. This regulation would require the hiring of multiple RN’s to comply with oversight and approval of the assessment and support plans. Non-clinical personnel, when properly trained, are more than capable of performing functional assessments for residents. This is demonstrated daily by non-clinical caseworkers who conduct functional assessments across the Area Agency on Aging network.

2800.229 Excludable conditions

Senior Care recognizes Act 56 permits an AL residence to serve residents with various conditions upon a written request for exception. However, Senior Care urges the Department to either terminate this restriction or create an immediate exception process for the following conditions:

- Sliding scale insulin
- Oxygen
- Inhalation therapy

These conditions are commonplace and are routinely handled without incident in both personal care homes and an individual’s home. An exception process for these manageable conditions could unduly delay the move-in process for prospective AL residents.

SPECIAL CARE UNITS						
Category	Personal Care Home (PCH) Regulations		Assisted Living (AL) Regulations		Comment/Concern	Recommendation
Admission	2600.231(a)	A similar provision does not exist under the PCH regulations.	2800.231(a)(1)(ii)	Prior to admission other service options that may be available to a resident shall be considered.	This provision is unduly burdensome in that it places an obligation on the provider to ensure a potential resident has considered other service options. This provision is also inappropriate for a potential resident being transferred from another facility directly to a special care unit.	Section 2800(a)(1)(ii) should be deleted.
Preadmission Screening	2600.231(c)	A similar provision does not exist under the PCH regulations.	2800.231(c)(1)(i)	A written cognitive preadmission screening completed in collaboration with a physician or a geriatric assessment team and documented on the Department's cognitive preadmission screening form shall be completed for each resident within 72 hours prior to admission to a special care unit.	This provision is unrealistic and unnecessary. This language suggests providers would unnecessarily or impulsively place a resident in a secure unit.	A written cognitive preadmission screening completed in collaboration with a physician or geriatric assessment team and documented on the Department's cognitive preadmission screening form shall be completed for each resident within 60 days prior to admission to a special care unit.
Additional Assessments	2600.231(f)	A similar provision does not exist under the PCH regulations.	2800.231(f)(1)	In addition to the requirements in Section 2800.225, residents of a special care unit for Alzheimer's disease or dementia shall also be assessed quarterly for the	This provision is unduly burdensome and excessive.	Residents of a special care unit for Alzheimer's disease or dementia shall also be assessed semi-annually to determine the

				continuing need for the special care unit for Alzheimer's disease or dementia.		continuing need for placement in the special care unit.
Resident Care			2800.234(d)(1)	The support plan for a resident of a special care unit for residents with Alzheimer's disease or dementia shall be reviewed, and if necessary, revised at least quarterly and as the resident's condition changes.	This provision is unduly burdensome and excessive.	Residents of a special care unit for Alzheimer's disease or dementia shall also be assessed semi-annually to determine the continuing need for placement in the special care unit.

Jewett, John H.

From: Ed Corbeil [ecorbeil@seniorcare-corp.com]
Sent: Friday, May 28, 2010 12:58 PM
To: IRRC
Cc: Jewett, John H.; Smith, James M.; jenburnett@state.pa.us; elasmith@state.pa.us
Subject: Proposed Assisted Living Residence Regulatory Package
Attachments: Senior Care Cover Letter 5 28 10.pdf; Senior Care AL Final form Draft Chart.docx

Members of the Independent Regulatory Review Commission:

On behalf of Senior Care Corporation, a personal care home provider serving seniors across the Commonwealth, please accept our attached comments, concerns and observations regarding the Proposed Assisted Living Residence Final Form Draft Regulations.

Please do not hesitate to contact me in this regard. All relevant contact information is below.

Regards,

Ed Corbeil

Ed Corbeil
Senior Care Corp.
Regional Director of Operations
PA Division
Cell: 610-585-9899
Home Office: 610-222-4295
Efax: 484-971-5111
ecorbeil@seniorcare-corp.com

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