

This document is a comment on the preliminary DRAFT final regulation. On June 24, 2009, the Department of Public Welfare provided a DRAFT final regulation for public review and comment. The DRAFT final can be found at : <http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2712/AGENCY/Document-12700.pdf>.

This is an informal process. The Department will consider these comments in preparation of a formal final regulation to be submitted at a later date.

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CHAIRMAN,  
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CHILDREN AND YOUTH  
DEMOCRATIC POLICY  
RULES

House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

August 25, 2009

The Honorable John Michael Hall  
Secretary  
PA Department of Aging  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1919

Dear Secretary Hall:

I am writing in regards to the final-draft assisted living regulations. Specifically, I would like to reiterate my support for adding an appendix section that references all of the consumer rights contained in the regulations.

I believe consolidating this information will provide assisted living residents, prospective residents, and family members, etc. a clearer understanding of their rights. Therefore, I respectfully request your consideration of the attached draft appendix that was forwarded to me by Alissa Halperin, Senior Attorney and Deputy Director of Policy Advocacy for the Pennsylvania Health Law Project.

Please do not hesitate to contact me if you have any questions or wish to discuss this matter further.

Sincerely,

A handwritten signature in cursive script that reads 'Phyllis Mundy'.

Phyllis Mundy  
Chairman  
House Aging and Older Adult Services Committee

Cc: The Honorable Estelle Richman  
Ms. Ruth O'Brien  
Ms. Jennifer DeBell  
Ms. Lisa Meade  
Ms. Alissa Halperin

Enclosure

RECEIVED  
2009 SEP -3 AM 9:19  
INDEPENDENT REGULATORY  
COMMISSION

**Assisted Living Residence Applicant and Resident Rights (During Residency and During Discharge or Termination or Residency)**

*The following are your Assisted Living Rights rights and the rights of a designated person authorized to act on your behalf.*

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**Notification of rights, complaint procedures, and rights, generally.**

**Notice of Applicant Rights** - Upon application for admission, you and, if applicable, your designated person, shall be informed of and provided this written statement of all applicant rights – including the right to lodge complaints about quality of care or violations of applicant rights without intimidation, retaliation, or threats of retaliation of the residence or its staff persons against the reporter. Retaliation includes denial of admission to the residence. (from 2800.41 – with the Applicant, resident, and discharge rights laid out separately)

**Notice of Resident Rights** - Upon admission, you and, if applicable, your designated person, shall be informed of and provided this written statement of all resident rights all resident rights and the right to lodge complaints - including the right to lodge complaints about quality of care or violations of resident rights - without intimidation, retaliation, or threats of retaliation of the residence or its staff persons against the reporter. Retaliation includes transfer or discharge from the residence. . (from 2800.41 – with the Applicant, resident, and discharge rights laid out separately)

**Notice of Discharge Rights** - Upon notice of discharge or transfer, you and, if applicable, your designated person, shall be informed of and provided this written statement of all discharge rights and the right to lodge complaints - including the right to lodge complaints about violations of discharge rights - without intimidation, retaliation, or threats of retaliation of the residence or its staff persons against the reporter. . (from 2800.41 – with the Applicant, resident, and discharge rights laid out separately)

**Notice – Generally – (from 2800.41)**

- 1) Notification of all rights and complaint procedures shall be communicated in an easily understood manner and in a language understood by or mode of communication used by you and, if applicable, your designated person.
- 2) The state requires and the facility must post the state's poster of the list of all applicant's, resident's, and discharge rights in a conspicuous and public place in the residence.

**Complaint Procedures – Generally – (from 2800.41)**

- 3) The facility shall follow standardized complaint procedures developed by the Department, including procedures for how the facilities complete an investigation of complaints filed by residents.

**Complaint procedures – Specifically (from 2800.44)**

- 1) Prior to admission, the residence shall inform you and your designated person of the right to file and the procedure for filing a complaint with the Department's assisted living residence office, local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc. or law enforcement agency.
- 2) The residence shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter. The residence shall receive and respond to such complaints without retaliation or the threat of retaliation.
- 3) You have the right to indicate that you wish to make a written complaint, but need assistance in reducing the complaint to writing, in which case the residence shall assist you in writing the complaint.
- 4) The residence shall ensure investigation and resolution of complaints. The residence shall designate the staff person responsible for receiving complaints and determining the outcome of the complaint.
- 5) Within 2 business days after the submission of a written complaint, a status report shall be provided by the residence to you, the complainant. If you are not the complainant, you and your designated person shall receive the status report unless contraindicated by the support plan. The status report must indicate the steps that the residence is taking to investigate and address the complaint.
- 6) Within 7 days after the submission of a written complaint, the residence shall give you, the complainant, and, if applicable, your designated person, a written decision explaining the residence's investigation findings and the action the residence plans to take to resolve the complaint. If you are not the complainant, you, as the affected resident, shall receive a copy of the decision unless contraindicated by your support plan. If the residence's investigation validates the complaint allegations, you, as a resident who could potentially be harmed or your designated person shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan.
- 7) The telephone number of the Department's assisted living residence office, the local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc., the local law enforcement agency, the Commonwealth Information Center and the assisted living residence complaint hotline shall be posted in large print in a conspicuous and public place in the residence.

**Rights – Generally – (from 2800.43)**

- (a) You may not be deprived of your rights.
- (b) Your rights may not be used as a reward or sanction.
- (c) Waiver of any right shall be void.

**Specific Rights:**

**THESE ARE YOUR RIGHTS AS AN APPLICANT FOR RESIDENCY IN AN ASSISTED LIVING RESIDENCE:**

- (a) You have the right to have view the facility and ask questions prior to admission.
- (b) You have the right to have an initial screening upon deciding to apply for admission.  
(2800.22(1))
- (c) You have the right to a written decision regarding acceptance into ALR including the reason for denial of admission. (2800.224 (1B))
- (d) You have the right to appeal (or seek exception) to the Department if admission denied because of an excludable condition. (2800.229(7C))
- (e) You have the right to have a medical evaluation from a provider of the resident's choice prior to admission. (2800.22(2))
- (f) You have the right to have a comprehensive needs assessment, to participate (along with others invited by the resident) in the assessment process prior to admission or within 15 days of admission, in the case of an urgent or emergent admission due to hospital discharge, an abusive situation, or no alternative living arrangement, and to receive a copy of your current assessment upon completion, without charge. (2800.224)
- (g) You have the right to participate (along with others invited by the resident) in the process of developing a comprehensive support plan prior to admission or within 30 days of admission following an urgent or emergent admission due to hospital discharge that accommodates one's needs and preferences and that facilitates independence, and to receive a copy of your current support plan upon completion, without charge. (2800.227)
- (h) You have the right to receive at the time of application written information including:
  - a. The range and pricing of each of the services provided at the residence, including services provided directly and services provided through identified third-party providers. (2800.22)
  - b. The amount of rent for the resident's living unit, including any packaged services such as housekeeping, laundry and basic meals. (2800.22)
  - c. The rules, policies and procedures expected to be adhered to by all residents. (2800.22)
  - d. The current needs of the prospective resident, including any need for physician services and whether the licensee expects to be able to accommodate the current needs of the prospective resident including any physician services needs.
  - e. The types of daily program activities and socialization opportunities offered through the assisted living residence. (2800.25)
  - f. The availability of health care and social services not provided at the assisted living residence but which are available in the community, such as hospice care, home health care, transportation and similar services to support (2800.202 and .142)
  - g. Information about the right to age in place. (2800.1)
  - h. Any additional information required by the department.
- (i) You have the right to receive at or before the application certain "mandatory disclosures" of important information, including:

- a. Contact information for:
  - i. The department, for the purpose of obtaining information on the licensing requirements and licensing status of assisted living residences. (2800.22)
  - ii. The long-term care ombudsman, with information on the ombudsman's role and availability. (2800.44)
  - iii. The department's 24-hour hotline for making complaints, along with information on how you can make a complaint and the department's investigation process.
- b. A delineation of resident rights. (2800.22)
- c. The following additional information:
  - i. A copy of the assisted living residence's policies and procedures affecting residents. (2800.22)
  - ii. Information regarding the assisted living residence's quality improvement program. (2800.26)
  - iii. Details about any internal dispute resolution process used by the licensee.
  - iv. Information on transfer and discharge policies. (2800.228)
  - v. Copies of all charge schedules and rates, including those separate charges for each of the following: utilities, telephone, cable television, internet access, garage fees, maintenance or management services, minimum or extended meal plans, bed and linen fees, if any, and any additional services related to occupancy of the resident's unit; and assisted living services and cognitive support services. (2800.25)
  - vi. A copy of the standardized form residency/services agreements that the resident will be asked to sign. (2800.22)
  - vii. Written information regarding the "informed consent" process and protections. (2800.30)
- (j) You have the right to a standardized written admission/residency agreement in plain English that references the support plan that is completed and signed prior to or, in the event of an emergency admission, within 24 hours after admission. (2800.22)
- (k) You have the right to question and consult an attorney or other independent entity for guidance on an "informed consent" agreement, what it means, how it works, what to consider, and whether it is fair and appropriate.
- (l) You have the right to not be forced to contract for services that you does not want.
- (m) You have the right to rescind the residency agreement for up to 72 hours after the initial dated signature of the contract and pay only for the services received. Rescission of the contract must be in writing addressed to the home. (2800.25)
- (n) You have the right to share a room with a spouse or significant other. (2800.101)

**THESE ARE YOUR RIGHTS AS A RESIDENT DURING YOUR RESIDENCY IN AN ASSISTED LIVING RESIDENCE:**

- (a) You have the right to not be discriminated against because of race, color, religious creed, disability, ancestry, sexual orientation, national origin, age or sex. (2800.42)

(b) You have the right to not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way. You have the right to be free from mental, physical, and sexual abuse and exploitation, neglect, financial exploitation and involuntary seclusion. (2800.42)

(c) You have the right to be cared for and treated with dignity, respect, courtesy and fairness. (2800.42)

(d) You have the right to be informed of the rules of the residence and given 30 days written notice prior to the effective date of a new residence rule. (2800.42)

(e) You have the right to have access to a telephone in the residence to make calls in privacy. Nontoll calls shall be without charge to you. (2800.42)

(f) You have the right to receive and send mail. (2800.42)

(1) Outgoing mail may not be opened or read by staff persons unless you request. (2800.42)

(2) Incoming mail may not be opened or read by staff persons unless upon the request of you or your designated person. (2800.42)

(g) You have the right to communicate privately with and access the local ombudsman. (2800.42)

(h) You have the right to practice the religion or faith of your choice, or not to practice any religion or faith. (2800.42)

(i) You have the right to shall receive assistance in accessing health care services and securing transportation to these services. (2800.42)

(j) You have the right to shall receive assistance in obtaining and keeping clean, seasonal clothing. Your clothing may not be shared with other residents. (2800.42)

(k) You and your designated person, and other individuals upon your written approval, have the right to access, review and request corrections to the resident's record. Access to records shall be provided immediately. You and your designated person, and other individuals upon the resident's written approval, have the right to purchase, at a cost not to exceed the community standard, photocopies of the resident's records or any portions of them within 24 hours of a request, excluding weekend days. (2800.42)

(l) You have the right to furnish your living unit and purchase, receive, use and retain personal clothing and possessions. (2800.42)

(m) You have the right to leave and return to the residence as you choose. (2800.42)

(n) You have the right to lock the door to your living unit and not be subjected to unannounced entries into your living unit. (2800.101)

(o) You have the right to terminate your residency at any time, with 14 days advance notice.

(o) You have the right to freely associate, organize and communicate privately with your friends, family, physician, attorney and any other person. (2800.42)

(p) You have the right to be free from any and all restraints, including chemical and physical restraints. (2800.42)

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(q) You have the right to be compensated in accordance with State and Federal labor laws for labor performed on behalf of the residence. Residents may voluntarily and without coercion perform tasks related directly to the resident's personal space or common areas of the residence. (2800.42)

(r) You have the right to receive visitors at any time provided that such visits do not adversely affect other residents. A residence may adopt reasonable policies and procedures related to visits and access. If the residence adopts such policies and procedures they shall be binding on the residence. (2800.42)

(s) You have the right to privacy of self and possessions. Privacy shall be provided to you during bathing, dressing, changing and medical procedures. (2800.42)

(t) You have the right to file complaints on behalf of yourself and others with any individual or agency and recommend changes in policies, residence rules and services of the residence without intimidation, retaliation or threat of discharge. (2800.42)

(u) You have the right to remain in the residence, as long as it is operating with a license, except as specified in § 2800.228 (relating to transfer and discharge). (2800.42)

(v) You have the right to reside in the residence and receive services as reflected in the comprehensive assessment and support plan and as reflected in the residency and services agreement 365 days a year. (2800.42)

(w) You have the right to use both the residence's procedures and external procedures to appeal involuntary discharge. (2800.42)

(x) You have the right to a system to safeguard your money and property. (2800.42)

(y) The resident has the right to choose all healthcare providers, including physicians and pharmacies. To the extent prominently displayed in the written resident-residence contract, a residence may require residents to use providers of supplemental health care services as provided in § 2800.142(a) (relating to assistance with health care and supplemental health care services). When the residence does not designate, the resident may choose the supplemental health care service provider. (2800.42)



- (z) A resident has the right to freely contract for services from providers of resident's choosing at one's own expense, as long as caregiver complies with the residence's reasonable policies and procedures. (2800.142)
- (aa) You have the right to reasonable accommodations of resident needs and preferences.
- (bb) You have the right to refuse treatments or services prescribed or recommended (2800.30(a))
- (cc) You have the right to self administer medications. (2800.181)
- (dd) You have the right to file complaints, grievances, or appeals with any individual or agency and recommend changes in policy, home rules, and services without retaliation, intimidation or threat of discharge. (2800.42 (t))
- (ee) You have the right to not have the ALR or any ALR employee assume power of attorney (2800.20) or guardianship. The ALR or any ALR employee may serve as representative payee for social security purposes however, you are urged to first understand what the "representative payee" is supposed to do, that other agencies may be available to provide representative payee service for little or no fee (i.e., mental health associations, associations of retarded citizens (arc), etc.), that representative payee is voluntary, that you can terminate the representative payee relationship at any time, and how to terminate the relationship. The administrator becoming the resident's representative payee cannot be a condition for admission.
- (ff) You have the right to receive all written and oral communications in a format that is accessible to persons with cognitive and sensory disabilities. (2800.41)
- (gg) You have the right to receive all written and oral communications in a language that is understood by the resident with limited English proficiency. (2800.41, 2800.252)
- (hh) You have the right to choose and involve a personal advocate. (2800.224)
- (ii) You have the right to notice to resident or designated person of a report of suspected abuse or neglect involving you. (2800.15)
- (jj) You have the right to age in place, including the right to receive hospice care where prescribed. (2800.321)
- (kk) You have the right to have records kept confidentially. (2800.254)
- (ll) You have the right to notice of and to challenge waivers of regulations that are requested by an ALR and to challenge such a request. In addition, residents should be given written notice of any waivers that are, granted or that are being need to be rescinded. (2800.19)
- (mm) You have the right to view inspection reports, incident reports, fire safety approvals, violation reports, and other licensure and enforcement documents on file at the facility. (2800.22)
- (nn) You have the right to receive notice of violations and change in licensure status from the facility. (2800.268)
- (oo) You have the right to consult an attorney or independent entity for guidance about an informed consent agreement the facility wants you to sign.
- (pp) You have the right to not be forced to share a room. (2800.101)
- (qq) You have the right to accessible design to maximize independence. (2800.1, 2800.232)
- (rr) You have the right to have and use assistive technology and to take it with you upon discharge or transfer.
- (ss) You have the right to have transportation provided or arranged to medical appointments or community and social activities of the resident's choosing. (2800.171)
- (tt) You have the right to conduct one's own ADLs or IADLs if you so desire. (2800.225)

- (uu) You have the right to manage your own financial affairs. The facility may not require you to deposit personal funds with the facility. (2800.22)
- (vv) You have the right to form or participate in a resident council.
- (ww) The right to terminate an informed consent agreement immediately without advance written notice. (2800.25)

**THESE ARE YOUR RIGHTS UPON DISCHARGE OR TRANSFER FROM THE FACILITY:**

- (a) You have the right to relocate and to request and receive assistance, from the home, in relocating to another facility. The assistance shall include helping you get information about living arrangements, making telephone calls and transferring records. (2800.42(n))
- (b) You have the right to decide the location to which you will be discharged or relocated.
- (c) You have the right to Age in Place. (2800.231, 2800.228)
- (d) You have the right to terminate your residency or service agreement with 14 days advance written notice. (2800.25)
- (e) You have the right to a refund of your pre-paid rent within 30 days of discharge in the event of an urgent or emergent transfer or discharge where less than 30 days notice is provided. (2800.28)
- (f) You have the right to a refund of the resident's pre-paid rent on the day of discharge in the case where 30 day notice has been provided. (2800.28)
- (g) You have the right to a full accounting and to return of monies held by the facility (under financial management agreement with the resident) within 30 days of discharge. (2800.28)
- (h) You have the right to safe and orderly transfer and discharge consistent with 2800.228.
- (i) You have the right to remain in the facility, to age in place, and to not be involuntarily discharged unless the facility has documented that: (2800.228)
  - a. you present an imminent physical threat or danger to self or others which cannot be managed by interventions or service planning;
  - b. you have failed to pay after reasonable efforts by the facility to obtain payment and you are not eligible for publicly funded programs that can provide payment;
  - c. you have medical needs which cannot be met in an assisted living facility, even with all reasonable assistance from third-party providers Or
  - d. The facility closes;
- (j) You shall have the right to choose among the available alternatives after an opportunity to visit the alternative facilities. These procedures shall apply even if you are placed in a temporary living situation.
- (k) You have the right to appeal the discharge decision through the DPW administrative hearing process and to remain in the facility pending a decision in the appeal. (2800.228)
- (l) You have the right to participate in decision around transfer to secured dementia unit. (2800.32)
- (m) You have the right to a 30 day room-hold while hospitalized or longer if continue to pay residency agreement/rental amounts owed.
- (n) You have the right to refuse a room transfer. (2800.42)