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**MIKE FOLMER**  
STATE SENATOR



**Senate of Pennsylvania**  
48TH SENATORIAL DISTRICT

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#2712

September 12, 2008

RECEIVED  
2008 SEP 12 AM 11:28  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

RE: IRRC Regulation #2712

Dear Mr. Kaufman:

I have a number of concerns with the Department of Welfare's proposed regulations for Assisted Living Residences (IRRC #2712):

- Anticipated costs;
- Consistency with the law, and;
- Access to care.

I am concerned with the cost impacts of these proposed regulations and how the compliance costs for these regulations will be covered. The Department estimates that the costs to be incurred by the regulated community beginning in FY 2009 – 2010 will range from \$8,000 to \$365,000 per assisted living residence (based on a 75-bed assisted living residence). I believe that these estimated costs are low.

The proposed regulations call for a \$500 license application or renewal fee. They also call for a \$105 per bed fee, which is significantly higher than existing fees. I would like to know how these fees were determined, the costs that they will cover, and some justification indicating that they are not excessive.

A goal of Act 56 is to encourage people to "age in place" by creating an assisted living licensure process and by defining assisted living residences and the services that may be offered. However, there are a number of areas where the proposed regulations' requirements appear to go beyond the intent of the law. For example:

- Informed consent: allowing residents to rescind contracts for up to 72 hours after signing is consistent with the principle of informed consent. However, the regulations do not establish similar protections for facilities (i.e., those people who they are unable to serve).

Additionally, since a resident's initial support plan is not required to be completed for up to 30 days post-admission, allowing a resident to rescind after 72 hours could be burdensome to the facility.

- The requirements for both new construction and for existing living spaces are ambitious, potentially costly, and could keep a number of existing facilities from complying;
- The requirement that every facility-owned vehicle be handicapped accessible could also be costly and burdensome and could have an unintended consequence of facilities deciding to not provide transportation to their residents;
- The requirement that an Assisted Living administrator be present 40 hours per week is double the requirement for Personal Care Homes. This could preclude administrators from serving in both a Personal Care Home and an Assisted Living facility.

Since the regulations so closely mirror each other, and the proposals allow for a facility to be licensed as both, why not make the hours per week requirement the same (i.e., 20 hours)?

- The requirement to have a Registered Nurse complete assessments and support plans could also increase costs.

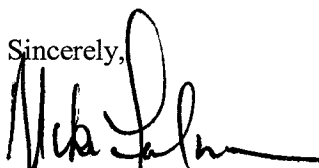
Additionally, how does this requirement relate to Pennsylvania's nurse practice law?

If the costs and/or compliance with the regulations create a disincentive to establish, expand, and/or otherwise provide assisted living services, I fear that some of those who need such services – especially low-income people – may be denied access to care due to a lack of funding. Those who are able to pay privately will be served while those who cannot pay privately may be left out.

As the June 2008 Legislative Budget and Finance Committee report, "State Efforts to Fund Assisted Living Services", notes: "Assisted living provider participation in public funding models is not assured with the introduction of public funding. Such participation is in part fostered through development of reasonable rates related to the costs and resource use." This same report also states: "Ease of administration is another way in which provider participation can be fostered."

This is why I believe that the Department's proposed Assisted Living regulations need to be carefully reviewed to ensure that they do not create unnecessary and/or unreasonable costs, that they are consistent with the law, and that they do not restrict access to care due to unanticipated costs and/or regulatory burdens.

Thank you again for your consideration of my concerns.

Sincerely,  
  
MIKE FOLMER

cc: Estelle Richman, Secretary, Pennsylvania Department of Public Welfare  
Senator Pat Vance, Chair, Senate Aging & Youth Committee