

TIM HENNESSEY, MEMBER



COMMITTEES

AGING AND OLDER ADULT SERVICES
Republican Chairman

CONSUMER AFFAIRS
POLICY

☐ 209 RYAN OFFICE BUILDING
PO BOX 202026
HARRISBURG, PA 17120-2026
PHONE: (717) 787-3431
FAX: (717) 705-1849

☐ DISTRICT OFFICES:
1038 EAST LINCOLN HIGHWAY
COATESVILLE, PA 19320
PHONE: (610) 380-8600
FAX: (610) 380-1777

☐ OLD ELVERSON TRAIN STATION
P.O. BOX 255
ELVERSON, PA 19520
PHONE: (610) 286-9194
FAX: (610) 286-1922

(610) 326-2626 POTTSTOWN

thenness@pahousegop.com

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

#2712

October 9, 2008

*The Honorable Estelle B. Richman, Secretary
Pennsylvania Department of Public Welfare
333 Health & Welfare Building
Post Office Box 2675
Harrisburg, PA 17110-2675*

*The Honorable Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
Fourteenth Floor - Harristown 2
333 Market Street
Harrisburg, PA 17101*

Dear Secretary Richman & Mr. Coccodrilli:

The House Republican Caucus has led the legislative assisted living licensing effort for nearly 10 years. As the Republican Members of the Aging and Older Adult Services Committee, as such, we continue to strive to ensure that assisted living residences in the Commonwealth are designed to "allow people to age in place, maintain their independence and exercise decision-making and personal choice." Act 56 of 2007 clearly states that "it is in the best interests of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need the care".

With this basic premise in mind, we submit the following comments regarding the proposed regulation #14-514 and respectfully request consideration for inclusion in the final-form proposal.

1) NEED TO DRAW A CLEAR DISTINCTION BETWEEN PERSONAL CARE AND ASSISTED LIVING

In order to ensure that consumers have a clear understanding of the differences between personal care homes and assisted living residences and the services that they provide, we recommend that the following definition of "Assisted living services" be added under section 2800.4. We note that the Public Welfare Code,

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Act 21 of 1967, does not define "personal care services," however, the term is defined in the Pennsylvania Code, Title 55, Chapter 2600, Section 2600.4.

2600.4--

Assisted living services. Cognitive support services, personal care services, supplemental health care services, personalized assistance services, assistive technology and health-related services, or a combination of such services, designed to respond to the individual's needs.

2) NEED TO RE-EVALUATE THE LICENSURE/BED FEE INCREASES

The current proposed increase in license fee to \$500 annually, combined with the proposed \$105/bed fee, is exorbitant. If the intent of the fee increase is to ensure sufficient resources for enforcement, we believe the department should more appropriately factor that need into their annual appropriation request to the General Assembly. As such, we propose maintaining the \$500 license fee, however, lowering the "bed tax" from \$105 to \$10/bed. We recommend that the following change be made to Section 2800.11, as follows:

2800.11--

(2) A \$10 per bed fee that may be adjusted by the Department annually at a rate not to exceed the Consumer Price Index. The Department will publish a notice in the Pennsylvania Bulletin when the per bed fee is increased.

3) NEED TO SHORTEN THE TIMEFRAMES FOR COMPLETION OF THE ASSESSMENT, MEDICAL EVALUATION AND SUPPORT PLAN

The current proposed timeframes for completion of the assessment, medical evaluation and support plan put residents in the position of potentially having to move into a residence without knowing for certain if it can meet their needs or if they will be able to remain there. It is essential, therefore, that the timeframes be shortened and, when possible, that the standard be established to complete them prior to the resident receiving care and services. We recommend that the following change be made to Section 2800.22 (a), as follows:

2800.22 (a)

(a) The following admission documents shall be completed for each resident:

(1) Preadmission screening completed prior to admission on a form specified by the Department.

(2) Medical evaluation completed prior to or within 7 days after admission on a form specified by the Department.

(3) Assisted living resident assessment completed within 3 days of admission on a form specified by the Department.

(4) Support plan developed and implemented within 7 days after admission.

(5) Resident-residence contract completed prior to admission or within 24 hours after admission.

4) *NEED TO WORK WITH THE PA BAR ASSOCIATION AND THE PA ASSOCIATION FOR JUSTICE TO RE-VISIT THE INFORMED CONSENT PROVISIONS*

The current proposed Section 2800.30 raises some very serious questions regarding not only the need for an informed consent process but the practical applicability of such a process for both providers and residents of assisted living residences in the Commonwealth. We believe that the proposed regulations for informed consent would not only make it difficult for an assisted living residence administrator to effectively manage their facility, we are concerned that the proposed regulations go way beyond the clear statutory intent of the legislation as it relates to releasing residences from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement (ACT 56 of 2007, Section 1021 (a)(2)(vii).)

We recommend that the Department work in cooperation with the PA Bar Association and the PA Association for Justice to re-visit Section 2800.30. and address the issues and concerns that have been expressed by both of those entities in their comments submitted to IRRRC, DPW and the committee.

5) *NEED TO INCLUDE SPECIFIC LANGUAGE IN THE REGULATIONS TO ADDRESS DUAL LICENSURE (PERSONAL CARE HOME/ASSISTED LIVING RESIDENCE) SITUATIONS*

Act 56 of 2007 clearly and definitively addressed the issue of dual licensure in Section 1021 (c) of the statute. The regulation, however, provides no guidance as to how a residence is to pursue a dual license. Deputy Secretary Mike Hall acknowledged the issue in recent testimony to the committee. We recommend adding the following language to Section 2800.11 in order to clearly address the issue of dual licensure in the assisted living licensure regulations:

2800.11 (e)--

11(e) The Department shall approve a facility to be dually licensed as both an Assisted Living Residence and a Personal Care Home provided that the facility meet the criteria listed in 55 Pa. Code 2800.11 (relating to licensure as an Assisted Living Residence) and the criteria listed in 55 Pa. Code 2600.11 (relating to licensure as a Personal Care Home). Upon submitting an application for dual licensure, the facility shall indicate which living units are designated as Personal Care Units, and which living units are designated as Assisted Living Units.

6) *NEED TO ENSURE THE RESIDENTS' ABILITY TO CHOOSE THEIR OWN HEALTH CARE PROVIDERS*

Act 56 of 2007 clearly states that the General Assembly finds that assisted living residences "are widely accepted by the general public because they allow people to age in place, maintain their independence and exercise decision making and personal choice." Accordingly, we recommend that the following change be made to Section 2800.142 (a), as follows:

2800.142 (a).—

(a) The residence shall assist the resident to secure medical care and supplemental health care services. The resident shall have the right to choose a supplemental health care service provider. Such provider shall be licensed, registered, certified or otherwise approved by the Commonwealth to provide such services. The residence shall document the resident's need for the medical care, including updating the resident's assessment and support plan.

7) NEED TO INFORM RESIDENTS OF THE DISCHARGE AND TRANSFER POLICIES OF THE RESIDENCE AND THEIR RIGHT TO APPEAL

The current proposed regulation provides for discharge and transfer of residents in certain situations, however, there is no guidance for residents to appeal questionable discharges or transfers. We recommend that the following language be added to Section 2800.22 (b) to ensure that residents are informed of appeal rights in such circumstances.

Section 2800.22 (b)–

(b) 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:

- (1) A list of the nonwaivable resident rights.**
- (2) A copy of the agreement 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.**
- (4) Specific information about:**
 - (i) What services are offered by the residence.**
 - (ii) The cost of those services to the potential resident.**
 - (iii) The contact information for the Department.**
 - (iv) 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.**
 - (v) Disclosure of any waivers that have been approved for the residence and are still in effect.**
 - (vi) Information regarding the discharge and transfer policies of the residence, including the resident's right to appeal a decision, as well as information on the appeal procedure and the reason for the discharge or transfer.**

8) NEED TO CAREFULLY REVIEW THE RESPONSIBILITIES IMPOSED ON THE OMBUDSMEN TO ENSURE NO CONFLICT WITH THE FEDERAL OLDER

AMERICANS ACT AND TO ENSURE THAT THEY ARE NOT STRETCHED TOO THIN IN LIGHT OF INSUFFICIENT FUNDING

The current proposed regulations expand the scope of the Ombudsman Program beyond what the Federal requirements allow. Specifically, references are made in the proposal to expanding their role beyond being resident-centered to also becoming a mediator in certain situations. We recommend that the Department work with the Department of Aging and the Area Agency on Aging Directors' Association to review the proposed regulations as they pertain to the Ombudsman Program and address areas where potential conflicts and inconsistencies occur with their mandate under the Older Americans Act and their current roles and responsibilities within the 52 local area agencies on aging statewide.

9) **NEED TO ADDRESS THE CLEAR DIFFERENCE OF PERSPECTIVE ON ROOM SIZES BETWEEN THE PROVIDER COMMUNITY AND THE DISABILITY COMMUNITY**

There has been an alarming number of criticisms of the minimum size requirements of 250 square feet and 175 square feet (primarily the 175 square feet for renovation of existing rooms). The chorus of opposition, strong and steadfast as it has been, should signal that a rethinking of these size requirements is needed.

The requirement should be rewritten to state that while the average room size must meet the standard, that 20% of the rooms on that floor could be 15% smaller than the stated requirement. That flexibility would allow for some of our existing personal care homes, which otherwise would defer, to become assisted living residences.

The averaging/concept has been used with great success in zoning ordinances, providing the flexibility sometimes required to accommodate existing circumstances and physical plant limitations.

Very truly,


Tim Hennessey, Republican Chairman
Aging and Older Adult Services Committee

TH/cat

cc: Phyllis Mundy, Majority Chairman, Aging and Older Adult Services
Republican Members, Aging and Older Adult Services Committee