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BY THE NATIONAL ELDER LAW FOUNDATION

September 5, 2008

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

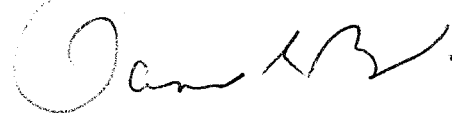
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2008 SEP -9 AM 9:28  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**Re: Comments re: Regulation No. 14-514  
Proposed Assisted Living Residences**

Dear Sir/Madam:

Enclosed please find a copy of my comments regarding Regulation No. 14-515 Proposed Assisted Living Residences, the original of which has been mailed to the Office of Long-Term Care Living.

Sincerely,



Dana M. Breslin

DMB:ao  
Enclosure

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September 4, 2008

Gail Weidman  
Office of Long-Term Care Living  
Bureau of Policy and Strategic Planning  
P.O. Box 2675  
Harrisburg, PA 17105

**COMMENTS RE: REGULATION NO. 14-514  
PROPOSED ASSISTED LIVING RESIDENCES**

Dear Ms. Weidman:

Following are my comments regarding the proposed regulations for Assisted Living Residences:

Pennsylvania's decision to finally recognize and license assisted living residences reflected by Act 56 of 2007 is vital to the continuum of care for our older and/or disabled residents. The Department of Public Welfare was given an extremely arduous task to write the regulations in a relatively short period of time. The balancing of the needs of the provider industry with the needs of consumer required the "wisdom of Solomon".

Since assisted living residences in Pennsylvania are intended to be a place where people can come, make it their home and "age in place", then the regulations must require greater staffing, training of staff, services and physical layout than what is required for a personal care home. By their very nature, assisted living residences will have people with greater and more complex medical and physical needs. Therefore, the Department of Public Welfare's proposed regulations providing the standards for training, education, staffing of employees as well as services to be provided in assisted living residences, must be retained. Some of these necessary proposed regulations which are greater than the personal care regulations are as follows:

1. Licensure fees; §2800.11
2. Fire safety approval to be renewed every 3 years; §2800.14

3. Limit the number of regulatory provisions that a facility could seek to have waived; §2800.19
4. Pre-admission disclosures; §2800.22(b)
5. Standardized resident-residence contracts so they all run month to month with 14 day advance notice by the resident required for termination; §2800.25(b)
6. Add a requirement that the person who manages and controls the operations of the facility have prior experience in the health or human services field; §2800.53
7. Require the facility to – at all times – be under the supervision of a person who is trained in how to operate and manage the facility; §2800.56
8. Require a nurse to be on call 24 hours a day and a dietician to be involved in meal planning for residents' whose support plans call for special diets; §2800.60
9. Call for air conditioning for the entire facility; §2800.83
10. Require all stairs and steps to have strips to help ensure evacuation for those with vision impairments; §2800.94
11. Require facilities to have 250 square feet of living space for existing facilities; §2800.101
12. Require living units to have kitchenettes with counter space, cabinet, microwave, fridge, and access to a sink; §2800.101
13. Require facilities to disclose their policies about pets; §2800.109
14. Require smoke detectors in each living unit; §2800.129
15. Require access to all exits required to be marked with readily visible signs; §2800.133
16. Prohibit unreasonable withholding of approval of providers of residents choice if resident has insurance;
17. Require assistance with meals and cueing for meals; §2800.162
18. Require vehicles for transportation to be accessible to residents with wheelchairs and other devices; §1800.171
19. Require facilities to obtain medications prescribed for resident and to maintain an adequate amount of the residents' medications on site;
20. Require all residences to provide cognitive support services; §2800.119
21. Require a written decision if residency is denied with an explanation of why; §2800.224
22. Requires a nurse to review and approve the support plan; §2800.227
23. Mandate that a facility must ensure that residents that are discharged have a safe and orderly discharge and that the resident's medication, durable medical equipment, and personal belongings go with the resident;
24. Improve upon the termination notice that consumers must receive, providing them more information on why they are being discharged and what limited steps they may take about the discharge; §2800.228
25. Require tracking of admissions and discharges and transfers by the facility; §2800.228 and 2800.229

26. Adopted a good standard for when an exception to the excludable conditions prohibitions would/should be granted; §2800.229

**Current personal care providers who do not meet these new standards will not have to close. There is no change recommended in the personal care regulations and these providers will continue as personal care homes.** Only those providers who wish to operate as assisted living residences will need to meet the assisted living regulations. For the first time ever in Pennsylvania, the term "Assisted Living Residence" will have true meaning.

The proposed regulations, however, fall short in protecting consumers in the following areas:

1. There is inadequate protection against an unsafe or improper discharge. But for the requirement that the provider give thirty (30) days notice prior to discharge and the discharge should be safe and proper, the regulations are silent on what the resident may do in the event of an improper discharge. The regulations must provide for due process with respect to an involuntary discharge and provide that any discharge be safe and orderly with ramifications on the provider for failing to do so.

2. There is no requirement for a thorough assessment of needs prior to the resident being admitted. The proposed regulations provide for cursory questionnaire to be given which the administrator of the facility reviews. By not fully assessing the needs of a resident before admission, then after admission, changes to the contract or leaving the facility become the only solution for the resident. Unlike nursing homes where the entrance is frequently upon discharge from the hospital, residents going into assisted living are generally coming from the community. Therefore, there is time to do proper assessment. The consumer should know before they enter whether the provider can meet their needs and what the actual costs will be.

3. Informed consent (negotiated risk) will only work when both sides, i.e., the provider and the consumer are on equal footing. The proposed regulations do not insure the consumer, especially the frail consumer, will have adequate protections. The proposed regulations place the duty to protect the consumer on the office of the long-term care ombudsman who serve only those age 60 and over. There is no assistance for those between the ages of 18 and 59. Furthermore, the long-term care ombudsman program is a federally funded program whose purpose does not encompass negotiating contracts nor staff and volunteers trained to do so. The ombudsman program functions with very limited staff and a large core of dedicated volunteers. Placing the burden of negotiated risk resolution primarily on dedicated volunteers is not acceptable.

4. The proposed regulations do not give the consumer a choice for medical providers in particular doctor and pharmacy. This runs afoul of the Medicare and Medicaid regulations and other freedom of choice rules. Even in the personal care regulations, there is the freedom to choose physicians and pharmacies. Residents of assisted living residences should have the same freedom.

5. The regulations should articulate a core package of services or benefits to be provided in an assisted living facility. By having such a core package, consumers would be better able to compare one facility against another and what the actual costs would be. As written, a consumer would not know whether the per diem cost of one facility was the same set of benefits against the per diem cost of another facility.

For these reasons, I ask that the ALR regulations be revised to include these consumer protections, but keep the safeguards which the proposed regulations provide.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dana M. Breslin". The signature is fluid and cursive, with a large initial "D" and "B".

Dana M. Breslin, Esquire  
Certified Elder Law Attorney by  
National Elder Law Foundation