

Countryside Christian Community

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Arthur Coccodrilli, Chairman
Independent Regulatory Review Commission
333 Market St. 14th Floor
Harrisburg, PA 17101

Sept. 8, 2008

Dear Mr. Coccodrilli:

The following comments are provided to you in response to the proposed assisted living regulations published in the PA Bulletin on August 8, 2008. Please note that Countryside Christian Community, now in our 49th year, has a respected local reputation for the provision of services to older adults in a continuum setting as a CCRC and has provided assisted living services to older adults, well before the creation of personal care regulations in the 1980's. In a day of increasing cost pressures, declining funding and the resulting decline in the affordability of long term care, it is greatly disappointing to see Pennsylvania create a new and redundant set of regulations that establish the high end of services desired rather than defining a minimum level of service. Historically, long term care providers have offered enhanced services beyond minimum requirements as the market will bear and as consumers request, while providing a minimum level of quality service (defined by regulation) for those unable to cover the full cost of more advanced services and accommodations. This approach has worked well and has fostered a wide variety of choices for consumers, some of which are more affordable options than these proposed regulations would allow.

The proposed assisted living regulations instead, define a high end package of services and physical plant requirements that would preclude our ability to consider assisted living licensure. This is due to the configuration of our existing facility that makes it *physically impossible* to renovate our building to suit the new requirements. Ironically, the DPW has not even considered the cost of physical plant improvements in their cost analysis, which is one of the major oversights of these proposed new regulations.

For Countryside, the effect of these regulations includes the reality that:

1. Based on an operating cost of \$96.43/day in 2007, our operating loss per resident day for personal care (assisted living) in 2007 was over \$65/day for those served under SSI. Our operating costs are actually lower than most since we have no long-term debt built into our capital costs (our facility is nearly 50 years old). These operating losses have been a pattern for the past seven years despite continuing increases in our private pay rates (some years reaching 10% to 13% annually) because no material increases in funding for SSI residents have been forthcoming, forcing private pay rates higher and higher.

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2. Given recent increases in food, energy and related expenses, we expect our losses for 2008 and 2009 to worsen materially placing the continuation of our existing personal care facility in serious jeopardy, not to mention the added costs related to licensure compliance as assisted living.
3. Our existing facility does not include sufficient space to allow the possibility of renovations that would comply with the proposed assisted living physical plant requirements for existing facilities. Our current units do not have full baths, kitchenettes and large enough rooms to comply with the 175 sq. ft. requirement nor do we have sufficient common space to meet those new requirements.
4. We had plans in place to build an appealing and suitable replacement facility at a cost of \$300,000 per bed/unit (including site infrastructure, design, engineering, furnishings/equipment, financing and capitalized interest costs). These plans, at 330 sq. ft. for each total unit (including the square footage of a full handicapped bath and kitchenette), would still not meet the proposed requirements for new assisted living facilities as written! Given the cost of the new facility as planned, no meaningful funding program in place and the expected higher sq. ft. requirements than we planned, it would suggest we no longer consider building new assisted living.

Nevertheless, to assist the Office of Long Term Living and the IRRC in the review of these proposed regulations, we submit the following summary of specific concerns we hold over the proposed regulations:

1. **Licensure Fees:** The proposed licensure fee structure is well beyond what typically is consistent for other long term care facilities such as nursing homes. Given the lesser acuity level for services in assisted living and the accordingly smaller revenue base, the fees should be proportionately less than nursing homes. These higher fees alone would add \$.50/day to the resident's cost of care.
2. **Core Services:** Further explanation of these sections must be forthcoming and should include flexibility, for the provider and resident alike, to bundle or unbundle charges for core services. We strongly urge that the regulations require a minimal package of core services (those that no resident would likely be able to provide for themselves), with the option of adding additional services as needed (example: personal laundry, medication assistance, etc.) as long as the pricing structure is clear to consumers. This gives the consumer the right to make their own choices and remain as independent as desired while not being forced to pay for services they will not need.

The requirement to have personal laundry returned within 24 hours is unreasonable. How many average Americans function today with a 24 hour return time on our own laundry? This would require laundry staff 24/7, which would be cost prohibitive and impractical. This requirement is ridiculous and should be eliminated.

3. **Administrator Requirements:** This provision is not clear and may imply that an individual, who possesses the qualifications of an administrator, be present on the property at all times, 24 hours per day and 7 days per week. This would require Countryside, with 20 units within a CCRC setting to maintain a separate, second Administrator for adequate and reliable coverage at a cost of an additional \$10/day per resident. This is far beyond the administrator coverage requirements for nursing homes, which serve a more dependent population and higher acuity level. It is reasonable to expect a facility to have a temporary qualified administrator serve in lieu of the permanent administrator during extended leave or planned vacation. Otherwise, if an administrator is on the premises to fulfill the weekly hourly requirement, that should suffice; no additional administrator is required.

Consideration should also be given to CCRC's and small facilities like Countryside that already have disproportionate administrative staff coverage compared with much larger facilities. Requiring that an administrator be present at least 40 hours per week is doubling the current mandate of 20 hours currently in the personal care home regulations. An increase of this magnitude seems excessive and burdensome, especially in light of the number of continuing education credits an administrator is being asked to accumulate throughout the year. It also ensures that an individual cannot serve as an administrator at both a Personal Care Home and an Assisted Living Facility. Given that the two care settings are permitted to be under the same roof, and one building is permitted to be licensed as both, and given that the regulations so closely mirror each other, it would seem that the same individual could serve as administrator for both.

4. **Physical Plant Requirements:** The proposed minimum square footage requirement of 175 sq. ft. per living unit for existing facilities and 250 sq. ft. per living unit for newly constructed facilities are well beyond reason and would increase operating and debt service costs far beyond necessity. They also give no option to residents with limited financial resources to choose a more affordable option in living accommodations. Having a large amount of square footage does not enhance the level of care or intrinsically heighten the dignity of the resident occupying the room. It does ensure however, that lower income individuals will not be able to buy their way into an assisted living facility. A square footage requirement of 100 sq. ft. for existing facilities and 150 sq. ft. for newly constructed facilities would allow Countryside the opportunity to consider licensure for assisted living of our existing facility or construction of our planned new facility.

In addition to the square footage requirement, the necessity for all newly constructed facilities to equip living units with a kitchenette may not be suitable or cost effective for dementia-specific units. They should not have to bear this extra cost. The provision of a congregate kitchen area will adequately meet the needs of residents. Countryside currently does not have full baths or kitchenettes in our facility. We acknowledge these features are desirable for many residents

and we would include them in any new construction however, it is physically impossible for the existing facility to be altered to accommodate them regardless of cost due to our building's configuration. We suggest such circumstances be grandfathered in as assisted living until improvements or replacement facilities can be accomplished.

If Countryside were to proceed with assisted living licensure, we would need to build a new facility, which is projected to cost over \$300,000/unit, increasing our cost per resident day by \$95/day. This clearly would exclude many middle income residents from consideration of our services, already priced at \$104/day. We currently receive approximately \$31/day for SSI residents in personal care. *The extent and depth of the proposed assisted living regulations should be proportionate to the funding provided for the required services and accommodations. This has never been the case for personal care services and again, will not be comparable for assisted living as proposed.*

5. **Supervision by RN in Assessment and Support Plan Development:** This mandate increases the cost of care and is unnecessary given the acuity level of assisted living residents. The provision that mandates an RN review assessments and support plans is equally unreasonable for the same reason and both will add \$12/per resident per day to our costs to fully comply with this requirement.
6. **Discharge of Residents:** The facility must maintain control over the transfer and discharge of its residents, this is a non-negotiable matter. The draft regulatory package curtails that power, and inserts the Long-Term Care Ombudsman as an active participant. It is inappropriate for the Ombudsman to take an active role in negotiations or in the disposition of informed consent agreements or in discharge proceedings. The Ombudsman should provide a counseling role for the resident if needed/requested, not act as a legal advisor. The state should also not force additional liability and potentially cause greater harm to residents by requiring providers to allow residents to remain in their communities after a professional determination is made that the care requirements exceed their ability. Section **2800.228(b)(2):** should be removed.
7. **Pharmacy and Prescription Drug Accountability:** Given the facility's responsibility in medication administration, the facility must be permitted to dictate the manner in which prescription drugs are delivered and packaged by a pharmacy; also a non-negotiable matter. The facility must be able to ensure the integrity of its medication administration regimen, and to deviate from that system is to pave the way for medication administration errors. Accordingly, if a pharmacy refuses to package prescription drugs in a manner consistent with the facility's operation, the facility should not be forced to accept drugs from that source.
8. **Continuing Operation as Personal Care:** Given Countryside's inability to license as assisted living due to our existing physical plant constraints, we need

the assurance that future funding and regulatory changes will not be put in place that would jeopardize our continuation as a personal care home, whether we choose to build a new facility or not. No facility can incur a major capital investment of millions of dollars without the assurance that a reliable funding mechanism is in place for the length of term the debt service would require (typically 20 to 30 years). Pennsylvania's history in funding older adult services has not supported the confidence of providers nor investors that is necessary to warrant investing in our long term care infrastructure. Without a reliable and material change in third party funding based on *actual costs* and *regulatory requirements*, our long term living "system" will literally crumble from the failure to renovate and replace aging physical plants. Many providers like Countryside question our ability to continue providing personal care services well into the future and this reality directly impacts both our financial ability and investor willingness to improve such facilities for future seniors or to consider endeavors such as licensed assisted living.

9. **Reportable Illness:** The provision adds the requirement that illnesses requiring treatment at a hospital or medical facility also be reportable. This should not be necessary. Residents will be old, frail individuals who will be susceptible to illness, often receiving care intermittently in other levels of living. Mandating a report for each time a resident changes level of care for what will commonly be routine illness, is not necessary.
10. **Waiver Requirements:** If a waiver application demonstrates compliance with clearly stated guidelines, the DPW should be obligated to issue a waiver to the facility, rather than being able to exercise its discretion. The DPW should be required to provide notice to a facility applying for a waiver under this subsection within 30 days of receipt of application. Having an unspecified timeframe for response places the provider in an unnecessarily precarious situation. The Assisted Living Residence should also be provided with grounds to appeal denials of applications consistent with the appeal guidelines provided for in this regulatory framework. Should the DPW revoke a standing waiver, a provider should be granted the ability to appeal such a revocation in accordance with the appeals procedures outlined in this regulatory framework.
11. **Residency Contract:** There is no basis for allowing the resident to terminate the contract with 14 days notice to the provider, while binding the provider to 30 days notice of termination to the resident. The administrative responsibilities placed upon the facility in order to discharge a resident, whether at the provider's request or the resident, demands a 30 day timeframe. Moreover, the general principle in contract law is to provide both parties 30 days notice to terminate a month-to-month contract. It seems reasonable to uphold that principle. Both parties should be held to the same notification requirements, and the appropriate period is 30 days.

12. **Administrator Qualifications:** The DPW should not preclude individuals who have served the long term care field for years, and in some cases decades. A grandfather provision for sections 53 and 54 should be included that exempts individuals currently serving as Personal Care Home Administrators and Nursing Home Administrators considering the duties and obligations of these roles are nearly identical to those proposed for Assisted Living Administrators. This same consideration should be applied to their continuing educational requirements.
13. **Mattress Requirements:** Many elderly applicants wish to move their own personal mattress to the residence, as they have slept on the same mattress for a number of years. These mattresses often would not be compliant with this section as proposed. Resident choice should allow for this exception to mattresses. Furthermore, most facilities have or are changing to a no smoking policy through their facility/campus, which greatly reduces the threat of fire involving a mattress. An exception to the fire retardant mattress and other personal furnishings requirement should be allowed for individuals who wish to provide their own.
14. **Fire Department Notification:** This essentially mandates that first responders must learn of each significant change in a resident's health condition. This is going beyond what is necessary since (1) it is obvious that resident conditions are frequently changing in such facilities, (2) the fire dept. is insufficiently staffed to take any meaningful action as a result of this frequently changing information and (3) this would present an undo burden upon fire departments and volunteers. An annual update to the local fire department of the evacuation needs will suffice.
15. **Fire Extinguishers:** The placement of a fire extinguisher in every living unit is beyond reason and practicality and would unnecessarily increase operating costs and resident fees. Residents are not typically considered capable of using them and they can present harm when misused or are within access of individuals who may have the onset of dementia. Additionally, even if the residents are aware of how to use a fire extinguisher, placing a fire extinguisher in the room may embolden some residents to engage in heroic acts should an emergency arise. This could lead to tragic consequences. This is especially true given that fire extinguishers have ratings noting specific purposes. An extinguisher that is rated 2-A is for ordinary solid combustibles that give off ash when burning. Any attempt to use this extinguisher on a fire of a different source, such as a grease fire, would serve only to spread the flame and exacerbate the danger. Firefighters and trained staff should be the only individuals attempting to extinguish a fire; that is not a role residents should attempt to undertake. Having at least one fire extinguisher with a minimum 2-A rating in public walkways every 3,000 square feet should be sufficient. This is consistent with National Fire Protection Act specifications.
16. **Medical Evaluations:** It is not always feasible and practicable, for instance during an emergency placement, for the facility to have an evaluation performed prior to the resident's admission to the residence. In a CCRC, this can occur

frequently and one advantage of a CCRC is responsiveness to the resident's changing needs. The 2600 Personal Care Home regulations currently allow for a medical evaluation for up to 30 days after admission, this provision has worked well and should continue.

17. **Transportation:** As written, the language suggests the residence is responsible for providing escort services to and from every medical appointment that the residence coordinates. As the aging population remains more active and the decrease in the average age of the population living in congregant living continues to lower, many residents would like to exercise their right to medical privacy and attend medical appoints unaccompanied. The regulation should be amended to take into account resident rights in this instance.

Handicapped vehicles are also required for all facility vehicles. This is unwarranted since many residents do not need to use such vehicles and prefer to travel by normal vehicles because they are more conducive to non-handicapped use. This requirement would add \$40,000 to Countryside's cost of compliance.

18. **Admission Denial:** In consideration of Federal statutes such as; Fair Housing (**Sec. 804.c [42 U.S.C. 3604]**) and the Americans with Disabilities Act, the language, as written, presents potential liability and gives rise to federal code violation(s) for providers. Requiring a written basis of denial is in direct conflict with the stated statues, does not meet the standards for permissible discrimination and therefore cannot be required. The requirement to provide a basis for denial should be removed.

19. **Handbook Changes:** The requirement to have resident handbook revisions pre-approved is impractical and wasteful of resources. Frequent changes to such materials are common and often involve matters of minor or no concern to the DPW. Review of such materials during annual inspections should be sufficient.

If you have questions concerning these comments, please contact me at 717-867-4636. I look forward to your thoughtful and practical analysis of these proposed regulations and your reply to these concerns.

Sincerely,



Daniel N. Snyder
Director of Planning & Development

Copy to:
Senator Michael Folmer
Honorable Rose Marie Swanger
Gail Weidman, Office of Long Term Living
Nick Luciano, PANPHA