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#2712

September 8, 2008

The Honorable John C. Bear
1555 Highlands Drive Suite 110
Lititz, PA 17543

The Honorable Gordon Denlinger
607 East Main Street
Ephrata, PA 17522

Senator Michael Brubaker
301 East Main Street
Lititz, PA 17543

Re: Proposed Assisted Living Regulations - IRRC 14-514

Dear Sirs:

I serve as the Vice President of Operations in a Continuing Care Retirement Community in Lititz, Lancaster County. The CCRC is known for its high standards of quality. The Facility has 124 licensed Personal Care beds as part of its services and has marketed this as assisted living for its many years of existence.

As I read the introduction to the proposed Assisted Living regulations, I am thrilled to see the emphasis on Aging in Place and Aging with Choice that is discussed. However, when reading the proposed regulations, I am stunned by the proposal that clearly places limits on that very concept in many of the proposed regulations and will inevitably significantly increase the cost of providing such a service if some of the others are enacted.

The average of age of the resident served in our personal care is 84 years old. Most are female, and many are single or widowed. Most have some family. The residence is staffed with nurse aides and at least two licensed nurses round the clock. There is a registered nurse 40 hours per week in addition to the Personal Care administrator. Staffing daily exceeds the minimum staffing as required by the 2600 personal care regulations.

Overall, the proposed regulation as they are written have the impact of cost increase to the provider and therefore ultimately to the consumer of these services. These costs may, in fact, limit the benefit intended by the regulations as the cost will serve as a deterrent to those who most need the assisted living level of care. I have attempted to quantify some

of these costs and impact where that is known. The additional costs to be able to seek assisted living licensure approach $110,000. This is without any construction modifications that would be required. Based on the lack of funding for assisted living, it is highly unlikely that our facility would seek licensure as assisted living. The increased cost would also be passed on to the potential resident, and therefore make assisted living cost prohibitive for the very person it is intended to serve. Comments offered are as follows:

Section 2800.11 c

Licensure fees to be proposed in this section represent an extraordinary increase over the current fees and are out of synchrony with licensure fees nation wide. Our current relicensure fee is less that $200 annually. With the proposed increase in annual fees for relicensure this would increase to $13,520 annually. As proposed, we would pay the $500 flat fee for over 100 beds plus an additional assessment of $105 per bed. This will be passed on to the resident as an increase in costs. It will result in undue hardship for a facility.

Section 2800.15 b. c. d

The definition of "immediately" should be clarified. Is this to mean immediately following the event or with "immediate" to be understood as within 24 hours of occurrence?

2800.16.3

The proposed regulation states that an injury, illness or trauma requiring treatment to a hospital or medical facility is a reportable event. I suggest the reporting of an illness resulting in hospitalization as reportable event as illness in the elderly population with multiple co-morbidities is a natural occurrence and therefore should not necessitate reporting to the Department. Often the reason for admission to a Personal Care or to Assisted Living is because of co-morbidities. Frequently when a resident has change in condition as a result of that co morbidity, the physician will request an evaluation at the hospital. This should not be a mandated reportable event to the department and will of necessity result in increased administrative time.

2800.30.b.

This proposed regulation states that for cognitively-impaired residents the ombudsman shall be automatically notified by the licensee and that notification should be documented in the resident's file by the licensee. Section 2800.30.a.2 states that a cognitively-impaired resident shall be eligible for an informed consent agreement only if the resident's legal representative is included in the negotiation of the informed consent agreement and executes the agreement. Given the fact that the cognitively-impaired resident has their legal representative included in the discussion for an informed consent agreement, it seems unreasonable to automatically be mandated by the regulation to contact the ombudsman. This proposed regulation has the effect of increased administrative cost in addition to negating the significance of the legal representative.

2800.56.b
This section states that the designee for the administrator shall have the same training required as that of an administrator. Section 2800.57A states that the designee shall be present in the residence at all times when there are one or more residents present in the residence. If this is to mean the designee on each shift every day to be equally trained as the administrator the cost will be close to an additional cost to the facility of $10000, as each 100 hour course is averaged at $2000. The additional 24 hours required each year to maintain that will be an additional cost of $3000. Administrators are currently in short supply, and educating additional staff as administrators is neither feasible nor practicable. This would be costly for a facility and that cost will inevitably be passed on to the consumer resident.

2800.60.d
This regulation states that in addition to the staffing requirements the residents shall have a nurse on call at all times. This requires clarification as to whether that nurse is a Licensed Practical Nurse or Licensed Registered Nurse. It also requires clarification as to whether this is over and above the routine staffing when there may be a nurse in the residence at that time. Requirement for an additional nurse on call will be burdensome and costly to a facility that is already meeting staffing requirements as defined by the regulations.

2800.61
This states that when regularly-scheduled direct care staff are absent, the administrator may arrange for coverage by substitute personnel who meet the direct care staff qualifications and training as specified in 2800.54 and 2800.65. This may be very difficult and costly to maintain when regularly-scheduled are absent due to unforeseen circumstances and substitute personnel are required to meet the needs of residents for a particular shift or time frame. I would suggest there be a time where a substitute staff person could be utilized in unforeseen circumstances to meet the direct care needs for a particular resident body and that only regularly-scheduled substitute personnel meet the intent of the training regulations as specified in 2800.54 and 2800.65. This would permit emergency staffing to meet the requirements needed to provide services for residents for a given short period of time.

2800.64
This proposed regulation does not provide an exception for a nursing home administrator with a valid license from substituting credits to keep their nursing home administrator license current. I recommend that a paragraph be added to allow such an exception that permits a licensed nursing home administrator (NHA) employed as an administrator of an assisted living residence to be exempt from training and educational requirements of this chapter if the administrator continues to meet the requirements of the Department of the State for an active nursing home administrator license, since the nursing home administrator is overseeing a higher level of care than assisted living. If the Administrator is not able to use those credits required to maintain the NHA license, there would be additional expense of $3000.

2800.96.a
The requirement that every first-aid kit include an AED is costly and unnecessary. The average cost of an external defibrillator is $2,600 and this would be cost prohibitive to have more than one first-aid kit with an AED in each facility. Our facility has 4 staff support bases, each with a first aid kit. This requirement will result in an additional $10400.

2800.98.a. & b.
This states that the residence shall have at least two in-door common rooms for all residents. Section b states that the combined living room or lounge shall accommodate all residents at any one time and that there must be a total of 750 square feet if there are more than 50 living units. The availability of two rooms would be cost prohibitive and limited by the current construction in our facility. This regulation as proposed may serve as the limiting factor for current facilities to seek licensure as assisted living. The dining room could be use to meet this intent if permitted in the proposed regulation.

2800.101. b.2
This section proposes that each new living unit must have at least 250 square feet measured wall to wall excluding bathrooms and closet space, and that existing living unity have 175 sq. feet. I would suggest that square footage is not the determination of appropriate care, but rather that meeting the regulations regarding quality management, appropriate reporting and appropriate staffing suffice to meet the intent of providing an acceptable assisted living residence. The higher the square footage, the higher the cost to the provider, and that cost will be passed on to the consumer making assisted living a very expensive alternative for senior living. Several of our rooms are only 164 sq. feet It is not the size of the room that determines whether or not a program provides a quality residence for an individual, but rather the quality of the program itself.

2800.101. j.1
The regulation states that a bed must be provided with a flame-retardant mattress. It makes no exception for a resident who would choose to have their own particular private mattress rather than one supplied by the facility that is fire retardant. Yet the preamble, in the general provisions under 2800.1.b states that "assisted living residences are a significant long-term care alternative to allow individuals to age in place and that this is provided to develop and maintain maximum independence, self determination, and personal choice." I would argue that the prescriptive regulations under this section 2800.101 do not provide flexibility and resident choice. If our facility were to replace all the mattresses, the cost would be in the range of $24800.

2800.131.o
The proposed regulation states that there shall be at least one operable fire extinguisher for each floor and living unit. There is strong concern expressed that a fire extinguisher placed in every living unit is an extraordinary measure. In fact, fire extinguishers, when

used improperly, can place the resident at risk of harm. This would also invite residents who may not be familiar with the use of the fire extinguisher to use that fire extinguisher should an incident occur. The type of fire extinguisher is also a concern in that if used improperly, can actually spread a flame and increase the significant potential of danger. I would suggest that fire extinguishers placed within a certain square footage in common areas, public areas, and in every kitchen minus the actual resident room, would be an acceptable alternative. I would also suggest that to encourage a resident who has limited knowledge and experience to use a fire extinguisher has the potential to limit a timely and safe resident evacuation in the event of a fire. This new regulation would bear of cost of $12,000

2800.161.d
This proposed regulation states that a resident's special dietary needs as prescribed, etc. shall be met. I would suggest that this statement is limiting and that it requires that the residence supply special diets but takes away the resident's choice as to whether or not they prefer to follow dietary prescriptions and restrictions. It is also an antithesis to the entire culture change initiative that encourages resident choice and flexibility in the least restrictive and less institutionalized setting.

2800.162.a
This proposed regulation states that there may not be more than 15 hours between the evening meal and the first meal of the next day, and no more than 6 hours between breakfast and lunch, and between lunch and supper. I would suggest that this clause be re-stated to state that 15 hours between the evening meal and the first meal of day and no more than 6 hours between breakfast and lunch, and lunch and supper be the offered times. However, residents may choose to eat at times other than this, and this should be a clause that allows the resident this leeway. This restriction should be placed upon the facility to supply meals within that time increment, but it should not limit the resident to those hours if they choose otherwise.

2800.162.g
This suggests that all appropriate cueing shall be used to encourage and remind residents. I would encourage a clause to this proposed regulation that would state that cueing would be encouraged based upon the resident's support plan where cueing would be an advantage for that resident. To continually remind residents of meal times would seem infantile for those who are quite able to remember to dine at the meal times.

2800.171.d
This states that if the residence supplies its vehicle for transportation of residents it shall be accessible to resident wheelchair users and any other assisted device. Our facility currently has at least 2 vehicles that are handicapped accessible and two that are not. I suggest that at least one vehicle be handicapped accessible rather that mandate that all be handicapped accessible. If we were to equip the other two vehicles with wheel chair lifts, the cost would be another $32000.

2800.188.b
This suggests that a medication error shall be immediately reported to the resident, the resident's designated person, and the prescriber. I would suggest that the notification to the resident's designated person be made at the request or with the consent of the resident rather than be automatic reporting. To mandate otherwise is to remove the choice of the resident who wishes to maintain privacy of any event or who would personally wish to communicate that information them selves.

2800.202.4
This proposed regulation states that a chemical restraint for the specific and exclusive purpose of controlling acute or episodic aggressive behavior is prohibited. I would suggest that there are frequently drugs ordered for the sole purpose of alleviating acute anxiety on an as needed basis. I would suggest that clarification is required in order that these as needed anti-anxiety medications could be administered as ordered and not be considered a violation of the proposed regulation.

2800.220.c.7
This proposed regulation states that escort service to and from medical appointments is transportation provided by or coordinated by the residence. Many residents do not prefer a staff accompaniment to or from medical appointments but rather choose to attend those appointments individually and privately. This proposed regulation again limits the resident choice and places the residence in the position of nurturing and caring for an individual who may wish to remain independent.

2800.224.a. This proposed regulation as written poses potential liability as a violation to both the Fair Housing Act and the American with Disabilities Act. A written basis of denial is in direct conflict with these acts and discriminates against individuals.

2800.225.a
This states that a resident shall have a written initial assessment as completed by either the administrator or designee or a Licensed Practical Nurse under the supervision of a Registered Nurse. This initial assessment is an observation one for the purpose of creating a support plan rather than a care plan, and since it does not result in a diagnosis, it would be quite acceptable that a Licensed Practical Nurse be qualified to complete the initial assessment without the supervision of a Registered Nurse. The addition of a Registered Nurse to oversee a Licensed Practical Nurse limits the Practical Nurse's scope of practice and is also an undue cost and burden to many assisted living residences. In fact, the Licensed Practical Nurse without the supervision of a Registered Nurse may be more qualified to complete the initial assessment than an administrator who may not have clinical or medical background. This entire section requires reconsideration and clarification.

2800.227.b
The requirement of a Registered Nurse to oversee the development of a support plan that would be developed by a Licensed Practical Nurse is costly and not necessary. A

Licensed Practical Nurse is qualified with appropriate training to develop a support plan for any resident in an assisted living facility.

2800.227.c
This proposed regulation states that the support plan shall be reviewed annually upon changes in the resident's needs and quarterly. I would suggest that quarterly is unnecessary since annual review and with any change suffices to meet the intent of providing quality care to any resident. The requirement of quarterly updates is excessive, time consuming, redundant and increases cost, which will be passed on to the resident. This will increase administrative time and therefore costs.

Thank you for the opportunity to have offered comment on these proposed regulations. Any support you can provide to clarify, revise or limit this legislation will be appreciated. It would be my desire that the Office of Long-Term Living and the Independent Regulatory Review Commission consider these comments knowing that we are all partnering together to provide excellent care to those residents requiring assisted living services.

Sincerely,

Eva Bering

Eva J. Bering
Vice-President of Operations

CC: Ms. Gail Weidman, Office of Long Term Living
Ms. Kim Kaufmann, Independent Regulatory Review Commission.
PANPHA
Chuck Maines, Landis Homes
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