

#2712

Gail Weidman  
Comments on Regulation ID #14-514 (#2712)  
September 12, 2008

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

Re: Comments on Regulation ID #14-514 (#2712)  
Proposed Assisting Living Licensure Regulations

Dear Ms. Weidman,

The County Commissioners Association of Pennsylvania (CCAP) and the Pennsylvania Association of County Affiliated Homes (PACAH) appreciate the opportunity to comment on the Department of Public Welfare's (Department) Proposed Assisting Living Licensure Regulations required under Act 2007-56 ("Act 56"), published in the *Pennsylvania Bulletin* on August 9, 2008.

CCAP is a statewide, nonprofit, bipartisan association representing the commissioners, chief clerks, and solicitors of Pennsylvania's sixty-seven (67) counties. The Association serves to strengthen Pennsylvania counties' ability to govern their own affairs and improve the well-being and quality of life of their constituents. The Association strives to educate and inform the public, administrative, legislative and regulatory bodies, decision makers, and the media about county government. CCAP also has contractual agreements with a number of independent associations and organizations having ties to county government. PACAH is an affiliate of CCAP and represents the interests of county and county-affiliated nursing homes as well as private nursing homes in Pennsylvania. The overall intent of this affiliation process is to have mechanisms whereby these groups and CCAP can arrive at common policy positions.

CCAP and PACAH support the Department's efforts to establish a new category of Assisted Living facilities, and indeed we were part of the preliminary work group in which issues concerning the proposed regulations were discussed. We understand that the driving impetus behind Act 56 was to create a licensure classification for facilities that would allow economically-challenged frail, elderly, and disabled citizens to live in non-nursing home settings and receive Medicaid-covered services. We do not, however, believe that the proposed regulations will accomplish that laudable goal.

We note as well that the proposed regulations raise many areas of significant concern for both providers and consumers. We do not believe that the Department can complete its review of comments and publish final regulations by October 20th as the Department has proposed in its briefing to legislative staff. We are especially concerned that there are only 4 days between the time that the IRRC will submit its comments and the Department plans to issue its final regulations. Given the importance of the issues at stake, and the

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need for the Department to have sufficient time to complete a meaningful review of stakeholder comments, we urge the Department to delay the issuance of the final regulations. Although we have a number of reservations about the proposed regulations, we are in this letter only addressing those that are of most concern to our constituents.

- The regulations exceed the scope of Act 56 and will have a negative impact on accessibility. The physical plant/space/staffing/licensing fee mandates in the proposed regulations will severely limit the number of providers willing or able to establish Assisted Living facilities. The excessive costs associated with complying with the proposed regulations will far exceed any possible Medicaid reimbursement that either the Commonwealth will pay, or the federal government will approve.
- If there are not a sufficient number of providers willing to obtain licensure as Assisted Living facilities, many nursing home eligible individuals on Medicaid currently living in personal care homes will be required to shift to nursing homes when they need certain healthcare services which personal care homes will be unable to provide. Not only will this pervert the legislative purpose of Act 56, it will also impose significant and otherwise avoidable costs upon the Department's budget. Thus, Assisted Living, if it exists at all, will become a private pay phenomenon.
- The square footage requirements are excessive and bear no rational relationship to the provision of quality care. We respectfully suggest that requirements of 175 sq. feet for each living unit currently constructed be revised to 125 sq. feet, which is in line with most other states. This revision will encourage, rather than discourage, existing personal care homes to seek Assisted Living licenses. Likewise, we also respectfully suggest that requirement of 250 sq. feet for each living unit newly constructed be changed to a minimum requirement of 150 sq. feet, which is in line with most other states. We note that no other state has a minimum 250 sq. feet requirement. The costs associated with constructing such units would be prohibitive, resulting, as stated before, in access issues due to the few number of organizations that will seek to provide Assisted Living.
- The proposed licensing fees are excessive. The proposed fee structure would make Pennsylvania among the highest in the country and far in excess of surrounding states. The proposed licensure fee structure is a severe change in policy from the system that has been used by personal care homes and nursing homes, and would cause significant burden on the provider. A \$500.00 licensure fee, with a \$105.00 assessment per bed would result in a 100 bed facility paying an annual licensure fee of \$11,000.00. Such a large fee is prohibitively expensive for most facilities. We respectfully request that the assessment per bed be reduced to \$10.00 per day.
- The staffing and training mandates are excessive. We are concerned especially about the following which we believe to be onerous, restrictive and not reasonably related

to improved quality of care. These requirements will add unnecessary cost with no benefit to the quality of the residents' care and life:

- Requirements to have an administrator on-site 40 hours per week is double the requirement for personal care home administrators. This requirement will cause facilities to hire two licensed administrators due to the reality of an administrator having to leave the premises during the work day to attend to business related activities. Additionally, this requirement will prevent an administrator from working in a co-located personal care home. We respectfully request that Assisted Living administrators be required to be on-site 20 hours per week, as are personal care home administrators. We are also concerned about the requirement for an administrator to have an associate's degree or 60 credit hours from an accredited college or university. This requirement does not recognize those individuals currently licensed and serving in personal care homes who do not meet this qualification. We respectfully request that currently licensed personal care home administrators be grandfathered and exempted from the education requirements
- The dementia-specific training requirements are excessive. We respectfully request that the requirement be changed to at least one 1 hour of dementia-specific training within 30 days of hire and at least one (1) hour of dementia-specific training annually thereafter. In addition, we also request that those individuals who are currently providing services to residents with dementia be exempted from the initial training requirement. We note that the role and responsibility of the administrator of a personal care home is almost identical to what will be the role of an administrator of an Assisted Living residence. This is also the case with the direct care staff. It is only reasonable to take account of the experience and expertise of the direct care staff for personal care homes in establishing what is appropriate and acceptable for Assisted Living residences.
- We would also request that the Department accept course credits from conferences and symposia sponsored by the National Association of Boards of Examiners of Long Term Care Administrators (NAB) and the National Continuing Education Review Services (NCERS) as well as classes that are sanctioned by the Bureau of Professional and Occupational Affairs and Department of State.
- The requirements for informed consent agreements, transfer and discharge exceed the statutory requirements of Act 56. We believe that providers must have the flexibility to provide clinical services based on their best professional judgment. While we support consumer/resident choice and endorse the concept that their input is necessary and appropriate, final clinical judgment ultimately must be in the hands of healthcare professionals. We believe that licensed providers must retain final control over the services that are provided within their facilities. While consumer/resident choice and input are essential to the provision of care, providers cannot and should not be told or compelled to provide services beyond what they desire to do or believe

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that they can do safely. We remind the Department that providers are ultimately responsible and potentially liable for actions occurring in the facility. The regulations should not hinder or restrict a provider's ability to exercise operational flexibility to address problems.

- In a similar vein, while we agree that residents should be allowed to rescind contracts for up to 72 hours after signing, we believe facilities should have the same right. We are concerned about allowing residents the right to rescind within 72 hours after their initial support plan is completed, however, since the initial support plan is not required to be completed for up to 30 days post-admission. This far exceeds what is fair to the facility.
- Restriction of who can complete initial assessments or support plans is unreasonable and burdensome. The proposed regulations would require that an RN supervise an LPN if the LPN completes the assessment or support plan. There is no requirement in the regulations, nor should there be, that a residence have an RN on-duty. We respectfully request that the regulation be revised to give the administrator of the facility the flexibility to choose a designee to complete the initial assessment. We note as well that an LPN has the requisite knowledge and expertise to review and approve a support plan without the need for supervision by an RN and the regulations should be revised accordingly to reflect this fact.

We appreciate this opportunity to submit comments on these proposed regulations and thank you for your consideration.

Sincerely,

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Brinda Penyak  
Deputy Director,  
County Commissioners Association  
of Pennsylvania

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Michael J. Wilt  
Executive Director,  
Pennsylvania Association of  
County-Affiliated Homes

Cc: IRRC