



Passavant Retirement
Community

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INDEPENDENT REGULATORY
REVIEW COMMISSION

September 11, 2008

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Office of Long-term Care Living
Bureau of Policy and Strategic Planning
P.O. Box 2675
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Ms. Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street 14th Floor
Harrisburg, PA 17101

Hon. Jane Clare Orie
9400 McKnight Road
LaCasa Blanca Building, Suite 105
Pittsburgh, PA 15237

Hon. Richard R. Stevenson
1771 North Main Street Ext.
Butler, PA 16001

Dear Madams and Sir:

On behalf of current and future residents of Passavant Retirement Community and elders in Assisted Living Residences throughout the Commonwealth, this letter is our response to the proposed 2800 regulations for Assisted Living Residences in Pennsylvania. In addition to our response below, we are also entirely in agreement with PANPHA'S response to the proposed regulations. Our mission at Passavant Retirement Community is to provide elders with the opportunity to experience Abundant Life™ and as such, we looked forward to regulations that would not only enable elders to age in place and "be home" in their apartments but also continue to experience an Abundant Life.

You need to know that we are extremely disappointed with the proposed regulations. Rather than promote resident independence and the right to age in place, they stifle providers with actions and requirements far removed from resident-centered service and as a result move toward a more institutional and medical setting versus a true home and social setting. Furthermore, these proposed regulations do not address the severe insufficiency of the public payment source for low-income Pennsylvanians who need the care provided by an Assisted Living Residence.

Specifically we have comments about the following regulations:

2800.11 Licensure Fees.

At Passavant we have two (2) residences licensed under Chapter 2600 (personal care) regulations. Though licensed for occupancy of 97 in 74 apartments, the personal care home in the Main building on our campus holds an average census of 72 residents. We recently increased our capacity by 20 to provide opportunity for couples to live together without compromising regulatory capacity requirements. Likewise, the other assisted living residence on the Passavant campus, Newhaven Court, with licensed capacity of 164 in 94 apartments, has an average census of 97.

Though these high occupancy numbers have never been met, the per bed licensing fees proposed in the 2800 regulations would increase fees from a tiered annual \$80 fee for both residences to \$28,405 annually for Passavant Retirement Community as illustrated below:

\$500 renewal fee/2 licensed residences	\$ 1,000
\$105/261 bed capacity	\$27,405

This proposed licensing fee would eliminate the opportunity for .7 FTE direct care worker!

2800.16 Reportable Incidents.

Fifty-six (56) reportable incidents were submitted to the Department of Public Welfare for the 2007-08 licensure year by Passavant Retirement Community. In addition, Passavant Retirement Community is fortunate to have 10 physicians who rent office space in our Clinic and provide service to all residents on campus. The clinic, a “medical facility,” is heavily utilized by our residents. Passavant also provides transportation for residents who choose medical providers off campus. During 2007 and 2008, 138 trips to medical facilities were provided to residents to off-campus sites by our transportation department. Trips are supported by the local ambulance company for emergent and non-emergent services. **Requiring that a reportable incident form be completed for each of those trips, plus the hundreds of office visits at the on-site clinic for an “ILLNESS... requiring treatment at a hospital or medical facility” would be an undue burden on both the facility and licensing office and serves no useful purpose. We request that “ILLNESS” be deleted from the regulatory language.**

2800.22b Approval of Resident Rules and Handbook.

The handbooks provided by Passavant Retirement Community for both assisted living residences on campus are updated at least annually to incorporate changes within the community. In addition, a 30-day notice to residents of any changes is already a requirement according to the 2600 regulations. **Departmental approval for changes in home rules and the resident handbook for every assisted living residence in the Commonwealth would cause an undue burden on the both the residence and licensing office and serves no useful purpose. Please remove this proposed regulation.**

2800.56 Administrator requirements.

The requirements of the administrator in the proposed regulations cause us a number of concerns that will result in a financial burden to current and future residents. The proposed regulation, as written, requires a qualified administrator be present in the residence 24/7. This translates into 4.2 FTE administrators on the payroll per each facility (24hrs/day x 365/yr=8760hrs/2080). With a very conservative salary expectation of \$60,000 plus benefits, the costs for the additional 4 FTE administrators and training would add \$604,800 as indicated below:

$$\begin{aligned} & \$60,000 \text{ wages} \times 25\% \text{ benefits} + \$600 \text{ training costs} = \$75,600/\text{admin} = \\ & \$302,400 \times 2 \text{ facilities} = \$604,800. \end{aligned}$$

As the Executive Director and Associate Director of this campus we share on-call responsibilities 24/7. In addition, we have managers on duty each weekend. Our current system serves our campus of 600+ residents well. It is efficient and cost-effective for our residents. **To cover the conservative salary estimate due to the proposed regulation, \$3579 would have to be added to the charges for each of the average 169 residents served annually. This additional pass-through to our residents would further compromise our residents' financial ability to live at Passavant Retirement Community. Our residents cannot afford this additional financial burden!**

2800.96 Automatic defibrillators in first aide kits.

Between each of the assisted living residences on the Passavant campus we have six (6) first aide kits covering 6 floors in 2 licensed buildings. Additionally, we have four (4) handicap-accessible vans that require first aide kits as per regulation 2600.96 and 2600.71. Passavant currently has 2 Automatic external defibrillators (AED) on campus. They have been used two (2) times in the last 3 years for 600+ residents. These regulations would require an additional 8 AEDs. The additional costs are below:

8 AED's @ \$2500each = \$20,000 that could be used for additional residents services. This is an undue, unnecessary requirement for our campus without which the safety of our residents would not be compromised.

2800.83 Temperature.

Passavant Retirement Community has enjoyed serving elders as a social service ministry of the Evangelical Lutheran Church in America for over 100 years. All common areas are air conditioned and resident apartments are afforded window air conditioning units, although most residents choose turn them off. **It is unreasonable to have a regulation that requires existing facilities to "submit justification to the Department for the use of window air conditioners."** **This regulation serves no useful purpose and should be deleted from the regulatory language.**

2800.101 (2) Resident Living Units: square footage.

All apartments in both assisted living residences on the Passavant Campus are private apartments with private bathrooms. Twenty-three apartments do not meet the square footage requirements of 175 sq. ft. (old construction). All noted apartments are currently rented and Passavant continues to have a healthy waiting list for these apartments. Losing the ability to rent these

apartments under the proposed assisted living regulations would compromise the lives of elders in need of services. Elders whose financial situations are compromised, welcome these apartments for their cozy, private atmosphere where the elder maintains privacy yet has the opportunity to receive services and maintain independence. The proposed regulations would limit our ability to service elders requiring needed services. Passavant's smallest apartment, at 132 sq. ft., continues to remain occupied. Our residents do not spend most of their day in their rooms as they are involved in a variety of community activities throughout the residence.

Frankly, the loss of revenue, \$677, 390, for these 23 apartments in the Main Building, cannot be absorbed by Passavant. The remaining residents would have to absorb the loss that would increase monthly fees by the residents in 53 remaining apartments by \$1065/mo. Our residents cannot absorb this additional financial burden! This regulation is grossly unfair to them. We request that the regulation would be changed to exempt existing construction from this requirement.

2800.101 (3) Resident Living units: individually controlled thermostats

Due to the age of the building, nineteen (19) apartments do not have individual controlled thermostats. Heat flow can be maintained via a damper system that residents can control.

We request that you change the regulation to allow old construction to remain exempt from this requirement.

2800.101 (j) (1) Fire retardant mattresses.

Most residents prefer to sleep in their own bed, don't you? Our residents have traditionally brought their own mattresses, foundations and bedding with them to their apartment. **We request that a fire retardant mattress cover be permitted for those residents whose personal bed and foundation can be used in the assisted living apartment.**

2800.102 One bathtub or shower per living unit.

The "spa" experience for elders living in the assisted living residence in the Main building is something the elders look forward to. Twelve (12) spa appointments happen everyday, 7 days a week, in two spa sites in the Assisted Living Residence. Although 73 of the 76 apartments have individual walk-in showers with grab bars and assistive seating, residents prefer the "spa experience." Currently three (3) private living units do not have bath/shower units in their private bathroom due to the age/construction of the building. The three private apartments without a shower, though sometimes hard to sell, are occupied. The elders occupying these units, like their peers whose apartments have private showers, enjoy their "spa experience."

We request a change in this regulation to allow old construction to remain exempt from this requirement. Loosing these three (3) apartments, due to this regulation, would result in a loss of revenue of \$104,775 annually resulting in an additional \$1435 annual increase to residents in the remaining apartments. Our residents cannot afford this additional financial burden!

2800.131 Fire extinguishers

Fire extinguishers are prevalent through all common buildings on campus. All common areas and resident apartments are fully sprinklered in both assisted living residences on campus. Each apartment has a refrigerator and microwave. No apartment has a workable stove, due to risk of fire. Staff is trained in fire procedures. **Our residents should not attempt to fight fire**

themselves. In addition we believe that it is a safety issue to have fire extinguishers in apartments of residents who might be confused. Please reconsider the requirement for a fire extinguisher in each living unit.

2800.102 (n) Bathrooms: Emergency notification system.

All assisted living residents on campus are provided Lifeline™ pendants. Residents are encouraged to wear their Lifeline™ pendant at all times on campus. Wherever they are on campus, help is available in an emergency. Passavant has a coordinated system of notification and emergency response. If the resident is walking with a Lifeline™ pendant around his/her neck, an emergency notification system will not be in the bathroom unless the resident is present. **We request that you modify the regulation to allow other emergency systems to suffice so that additional notification systems in the bathroom need not be purchased and installed.**

2800.105(f) Laundry: 24 hour turnaround

If laundry continues to be considered a CORE service in the proposed regulations, assisted living residences, like the nursing center on our campus, may need to consider outsourcing laundry services. Turnaround time for the current outsourced personal laundry service is 3 days, triple the time limitation set in the proposed regulation. **Please consider removing the 24 hour time limitation for the return of clean resident clothing in this regulation.**

2800.171 Transportation

Passavant Retirement Community is located in the town of Zelienople, Pa. We afford residents free hourly transportation 5days/week from 9:15 AM-4:15PM. in one of our handicap-accessible 14-passenger vehicles. Residents in our assisted living residences go to the bus depot to ride to town (as indicated in their support plan). Drivers are CPR certified and personally assist resident to and from the vehicles. "Assistance when necessary," as proposed in the regulation, is subject to interpretation. Adding FTE's to assist the bus driver "when necessary" for "town runs" enjoyed by residents, prohibits our ability to provide this everyday service. Resident use of seatbelts is mandatory. Drivers are in continual communication with the transportation department. **Our residents cannot afford the additional financial cost associated with the addition of at least 4FTE's to support driver assistance for the hundreds of trips provided our residents for "town runs," pleasure trips and the opportunity to remain independent. Please consider removing the requirement for an "assistant to the driver when necessary" in the proposed regulations. Resident assistance should be addressed in the individual support plan.**

2800.220(b) (2) Assisted Living Residence Services: Core Service -laundry

Please consider laundry service a SUPPLEMENTAL service, rather than a CORE service in the proposed assisted living regulations. Currently residents are afforded the opportunity to launder their own clothing as indicated on their support plan; for residents incapable of laundering their clothing, staff support is available at an additional charge. Currently 87 of 94 residents in Newhaven Court, an assisted living residence on campus, prefer to launder their own clothing or family launders their clothing. Seven (7) residents require the supplemental laundry service provided by staff. Ample laundry areas are available for resident use. **Including laundry as a core service would add 3 additional FTE's to fulfill the laundry function for 94**

residents. All residents would absorb the increased cost of added FTE's. The laundry charge should be absorbed by those residents who need the supplemental service.

2800.220(b) (7) Assisted Living Residence Services: Core Service -transportation
Please consider transportation service as a SUPPLEMENTAL service, rather than a CORE service in the proposed assisted living regulations. Though Passavant Retirement Community absorbs the cost of hourly 'town run' bus service on campus, we cannot afford to offset the additional trips to medical facilities, shopping trips and other destinations requested and paid by our residents. Transportation, as a CORE service, would include ambulance trips and limit transportation opportunities due to the costs associated with gasoline, vehicle repair, and driver/proposed "driver assistant" wages and benefits. **We cannot afford to absorb the cost of ambulance trips! Our residents cannot afford the additional financial cost associated with the addition of transportation as a CORE service for the hundreds of trips provided our residents for "town runs," pleasure trips, medical trips and the opportunity to remain independent.**

2800.220(c) Assisted Living Residence Services: Supplemental Services

The proposed regulations read "the residence shall provide or arrange for the provision of supplemental services." Payment, by the residence, for these supplemental services, is implied. Currently, dependent on resident need, as indicted in the support plan, residents may require an escort to and from medical appointments using Passavant's transportation service. The residents have the option of family support as escort or they may contract with local outside agencies (i.e. HomeInstead) who offer the escort service. **Direct care staff cannot afford to be off-site and away from their other residents. Additional FTE's to support escort service is an undue burden on the facility. Please re-word the regulation to clarify that payment for supplemental services by the residence is not implied.**

2800.224 (d) Preadmission screening: written denial notification to applicant

Providing a written decision to an applicant whose needs cannot be met is an unrealistic expectation. On consideration of other statutes, this language further gives rise to potential liabilities and Federal code violations for providers. **Providers should not be directed by regulation to submit written decisions why needs cannot be met to individuals for whom providers have no formal/legal responsibility.**

2800.224 (f) Preadmission screening: provide or arrange the provision of supplemental health care.

As noted in our response to 2800.220(c), payment for supplemental health care by the provider is neither implied nor denied by regulation. **Clarification of payment source for supplemental healthcare must be defined as the responsibility of the resident.**

2800.227 (b) Development of the support plan.

This regulation adds undue layers of bureaucratic signatures by an LPN and RN, as a supervisor who reviews and approves the support plan. This regulation infers that each facility must have AT LEAST an LPN. If an LPN is on the payroll, then an RN must supervise the LPN, OR the administrator has to be an RN who serves as the LPN's supervisor. **Regulators should remember there is a nursing shortage. This regulation should be eliminated. Our residents**

cannot afford the additional financial burden of an RN supervisor. This regulation serves no useful purpose.

2800.228 (b) (2) Transfer and discharge.

This regulation severely limits the residence's ability to ensure the protection of resident rights. We cannot approve nor assume the responsibility to allow non-trained family members or care providers to provide care that the residence has already determined is beyond their trained abilities. If we as trained caregivers and providers can not safely meet the needs of our residents, how can we ensure as the licensed provider that an untrained, unprofessional family member will safely meet the needs of the resident? **Why would any provider choose to assume this liability as an assisted living residence? This language should be removed from the proposed regulations.**

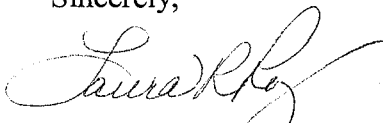
As licensed nursing home administrators with over 40 years combined experience, we wholeheartedly praise the Commonwealth for wanting to ensure services for elders that promote Abundant Life™. It is our mission at Passavant. It is our passion as professionals.

However, we would strongly encourage your consideration of our comments regarding the proposed Assisted Living Regulations. Many of the proposed regulations are more stringent than even those that govern licensed skilled nursing facilities and create a medical, institutional model of care delivery. Our intention in providing these comments is to ensure that we have *reasonable and achievable* regulations that truly benefit the elders we serve while not imposing an undue hardship on the provider, regulator or elder; many of the proposed regulations are neither reasonable, achievable, nor beneficial to the elders we serve.

We appreciate your efforts and hope, for the sake of elders and residences throughout Pennsylvania, that these regulations can be amended with our elders' best interests in mind.

Thank you for your time and attention.

Sincerely,



Laura R. Roy, NHA, CASP
Executive Director



Kathleen M. Jeffers, RN, NHA, CASP
Associate Director/PCH Administrator