



**Southwestern  
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Human  
Services, Inc.**

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Area Agency on Aging, Inc.

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# Area Agency on Aging

#2712

September 15, 2008

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

Reference: Regulation ID#14-514 (IRRC #2712)  
Department of Public Welfare  
Assisted Living Residences

Dear Ms. Weidman,

We have reviewed the Notice of Proposed Rulemaking, Department of Public Welfare, Office of Long Term Living [55 Pa. Code Chapter 2800], Assisted Living Residences; and are submitting comments for your use in this review process.

Please allow me to stress that the Southwestern Pennsylvania Area Agency on Aging is in support of this rulemaking, and welcomes Assisted Living to the Pennsylvania continuum of care. However, we do have some concerns with regard to the role of the Ombudsman, and offer the following for your consideration.

Thank you for the opportunity to comment.

Sincerely

Leslie Grenfell  
Executive Director

**RECEIVED**

**SEP 15 REC'D**

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Cc: Arthur Coccodrilli, Chairman, Independent Regulatory Review Commission  
Wilmarie Gonzalez, Bureau Director, State LTC Ombudsman  
Crystal Lowe, PA Association of Area Agencies on Aging

**LTC Ombudsman definition (pg 12):** The LTC Ombudsman is not clearly defined and the role appears to be misunderstood.

This failure to understand the role of the Ombudsman is reflected in numerous sections including the informed consent process as well as the transfer and discharge process.

Contrary to our mission, the proposed regulations place the Ombudsman in the position of acting as a facility and/or regulatory agent. This represents a conflict of interest, and appears to be in violation of the Ombudsman's role as a consumer directed advocate.

**(2800.22) Application and admission:**

Time frames for admissions and contracting should be amended to allow for more timely and informed consumer decision making. Specifically, the current proposed time frames represent a gap between the consumer's admission, completion of the resident-residence contract, and the formalization of their support plan.

As proposed, a consumer would have to move in, sign a contract for residency and services and begin payment to the facility before the facility is required to identify the consumer's care needs, and explain how they propose to meet those needs.

In addition, there is no clearly articulated explanation of the core package of benefits that must be purchased. As such, consumers can not easily compare facilities and their costs, and can not establish a baseline expectation of what is offered.

**§2800.25 Resident-residence contract. (pg. 23):** "Resident-residence contract" language is awkward and cumbersome. It is potentially confusing to consumers, and could lead to misunderstanding.

All core assisted living services, and their costs should be clearly articulated in this contract.

The entire set of facility house rules should be included in this contract.

All resident rights as well as complaint and appeal procedures should be clearly stated in this contract.

That said, it is recognized that the proposed regulations do not include a formal appeals process. This omission is of significant concern as consumers are at extreme disadvantage without knowledge of the appeal process or their appeal rights.

Recommended Language: The resident-residence contract language should be replaced with either consumer-facility contract or consumer-provider contract.

## **II. RESIDENT RIGHT AND PROTECTION**

**§2800.30 Informed consent process. (pg. 28):** The use of Ombudsman Program staff in the proposed informed consent process appears to be in conflict with the traditional role of the Ombudsman as established in the Older Americans Act. The proposed involvement violates the confidentiality of the Ombudsman-consumer relationship and circumvents the consumer's right to refuse Ombudsman notification, participation or assistance.

Consumers should be provided with the name and contact information for the local Ombudsman, but not be compelled to accept the notification, involvement or assistance of the Ombudsman.

The language used in the initial paragraph of this section should be revised so that "at imminent risk of substantial harm" is not confused with the need for Protective Services.

### **§2800.41 Notification of rights and complaint procedures. (pg. 30):**

It is critical that consumers have clearly articulated rights, and that all rights be stated in a regulatory section on rights. The proposed regulations contain no rights beyond those identified in the Personal Care Home regulations. In addition, all resident rights information should be consolidated into an easily understood and easily accessed rights section.

(d) "A copy of the resident's rights and complaint procedures shall be given to the resident and, if applicable, the resident's designated person upon admission" should be amended to include clearly articulated information about appeals.

It must be reiterated that the proposed regulations do not include a formal appeals process. This omission is of significant concern as consumers are at extreme disadvantage without knowledge of the appeal process or their appeal rights.

(f) Add: The Pennsylvania Department of Aging Ombudsman poster should be visibly posted in a conspicuous and public place.

Recommended Language:

(d) A copy of the resident's rights, complaint and appeals procedures shall be given to the resident and, if applicable, the resident's designated person upon admission.

(f) The Pennsylvania Department of Aging Ombudsman poster should be visibly posted in a conspicuous and public place.

**§2800.42 Specific rights. (pg. 31-33):** This section should emphasize the privacy and confidentiality rights of consumers by stating that they have the right to freely and privately associate, organize and communicate with individuals of their choosing, including the Ombudsman.

Recommended Language: (o) A resident has the right to freely and privately associate, organize and communicate with individuals of their choosing, including the Ombudsman.

**§2800.142 Assistance with health care and supplemental health care services. (pg. 63):** This section is of significant concern as it limits the consumer's right to choose all healthcare providers.

We support the rights of consumers to receive care from a variety of healthcare providers, and promote consumer choice.

**§2800.228 Transfer and discharge. (pg. 80-83)—specific (1)(iv), (h)(3), (h)(7)**

The use of Ombudsman Program staff in the proposed transfer and discharge process appears to be in conflict with the traditional role of the Ombudsman as established in the Older Americans Act. Specifically, neither the facility nor the Department of Welfare may obligate the Ombudsman to act as their partner or agent in the discharge or transfer of a consumer without that consumer's consent.

(2800.228.h.3) should be amended to state "if the resident so chooses or requests"

Wording throughout this section should be amended to emphasize that the Ombudsman will be involved in a resident's transfer or discharge only with the consent of the consumer.

Again, this section does not include a formal appeals process. This omission is of significant concern as consumers are at extreme disadvantage without knowledge of the appeal process or their appeal rights. In addition, a consumer should be able to continue to reside in the facility pending the outcome of transfer or discharge appeal.

Recommended Language: (2800.228.h.3) ...In that case, the residence shall notify the resident, the resident's designated person, and if the resident so chooses or requests, the local Ombudsman...

**Additional Comments:** There is concern that the proposed regulations will have a severe financial impact on each local Ombudsman Program. To that end, a clear and detailed budgetary analysis should be completed, and specific funding sources made available for review and comment prior to final enactment of the regulations.