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Housing and Health Care Community

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INDEPENDENT REGULATORY
REVIEW COMMISSION

September 8, 2008

Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Department of Public Welfare-Assisted Living Regulations, 55Pa. Code Chapter 2800

Dear Ms. Kaufman,

As a member of PANPHA, Pennsylvania Association of Non Profit Homes for the Aging and a personal care provider, I feel it is my responsibility to address the long awaited Assisted Living Regulations which were published as proposed on August 9, 2008.

Attached to this letter are comments and questions regarding the proposed regulations. I hope as the oversight agency for the regulatory process, you will address the areas of concern which providers are questioning. Thank you for the ability to forward our thoughts and I would be glad to answer any questions you may have.

Sincerely,

BREVILLIER VILLAGE

Vicky A. Wittuck
Vice President of Health Care

CC: PANPHA
Senator Jane Earl
Representative Curtis Sonney
Representative Patrick Harkins
Representative John Hornaman
Representative Florindo Fabrizio
Representative John Evans



2800.102, 2800.10(b) Physical Plant Requirements

This is first and foremost our major concern:

The requirement of an individual shower/tub unit in each room or apartment. Our Assisted Living Unit is a previous nursing home structure. It would be extremely difficult and cost prohibitive to change the physical structure of our facility. Facilities already built/established need to be grandfathered. If this does not occur, many facilities will not be able to consider participation in Assisted Living level of care.

If that is the case and our facility only provides personal care, I want to know what will happen when residents are appropriate for assisted living? Right now we serve all residents in personal care and do a really excellent job. I want assurances that we would not have to ask residents to seek alternative assisted living facilities. This would be a major shift in our facility's philosophy and mission. I don't want a regulatory agency coming in to our facility and telling people they are not appropriate for a level of care! This is starting to happen now and it is very unfair to the resident and family.

In physical plant, I also have a MAJOR concern about the proposed square footage issue. Our facility accepts residents with SSI payments only and they are required to share a unit with another person. If the regulations on square footage are passed, I would be unable to meet the square footage requirement for a shared unit. This unfortunately would eliminate us from accepting residents on SSI payments. What you are doing with this regulation is ensuring that low income individuals will not be able to buy their way into an Assisted Living in the Commonwealth of Pennsylvania. We are one of the few facilities to accept SSI. If we had to keep all SSI in a private room we could not financially operate our facility. What would happen to all those individuals who spent down their savings? Where would they go? I already lose over \$2,000 a month when I accept SSI subsidy. I could not afford to keep them in a private room on subsidy.

This regulation would ONLY HURT those individuals in need of care the most. Please consider a grandfather clause on existing facilities. In the physical plant regulations, I feel those drafting the regulations did not take into consideration the individual who would be residing in Assisted Living - residents with mild to moderate dementia and Alzheimer's. People who would not be cooking for themselves and would not need a kitchenette.

2800.11 © Licensure Fees

The proposed fee structure is outrageous. This fee is greater than what is assessed in long term skilled facilities. These fees are set high only for the purpose of recouping costs to run the regulatory process. This takes large amounts of funds from direct resident care. It is asking providers to pay for regulations which we did not feel were necessary.

Bundling of Core Services

This entire section is vague and confusing. This would certainly need a more defined explanation. Being someone who has done it both ways, bundle and unbundle, I can say emphatically that residents and families find unbundling very confusing. It also creates a documentation need to substantiate services that rivals skilled nursing care.

2800.171 Transportation

This section concerns many who provide transportation services to residents. I feel the need for a handicapped accessible vehicle for a small provider is unattainable. The regulations for providing your own vehicle are also prohibitive with the training requirements. Once again the regulation works against providing quality care to residents. We could not afford to send a trained escort with every transport. That would increase our budget by over \$36,000 per year if you do 2 transports each day.

2800.64, 2800.56 (9-b.) Administrator Requirements

There needs to be a grandfather clause in this part of the regulation just as there was when the Nursing Home Administrators changed their requirements. I also feel that any individual who holds a NHA (Nursing Home Administrators) License should not have to complete both whether they are the Assisted Living Administrator or the Designee.

Please also review the language which requires an administrator on the property at all times. Once again this exceeds all health care standards and must have been an oversight. Also the number of on site hours concerns many. This is twice the requirement as it exists now. An increase in these hours seems excessive. It creates a situation where someone could not be Administrator of Assisted Living and Personal Care if they are located in the same building. This situation certainly needs clarified.

2800.25 RN Supervision

Again adds an additional cost and not necessary to complete support plans.

2800.228 Discharge of Residents/Consent Agreements

The facility must maintain control the discharge process. I maintain the Ombudsman is available if a conflict arises. If the state wants total control then they need to give total reimbursement for care. This regulation hints that most of us are not competent to run our facilities. It appears we are being punished because of a few problem facilities.

Informed consent is a very vague issue in the regulation. The concept is very progressive but needs much more definition as it applies to regulation. This is a legal matter which requires more guidance from the state's legal department as well as facility legal representative. The idea of who is responsible or not is extremely vague. I think there is a place for informed consent in health care but the legal issues surrounding the concept need to be more defined.

2800.185 Pharmacy and Prescription Drug Accountability

Facilities must be permitted to dictate the manner in which prescription medications are delivered and packaged by a pharmacy. We must be able to ensure integrity of the medication program. To change this would only allow the way for more medication errors and subsequently more staff time to monitor which overall increases the cost of services.

We can not allow residents to use a pharmacy which does not package per facility standards. This is like going back to the "Old Days" of passing from individual pill bottles. This is unacceptable and an issue of safety.

Additional Concerns/Comments

2800.11 Procedural Requirements for Licensure

Want issuance mandated if conditions of licensure met.

2800.16 Reportable Incidents and Conditions

Want illnesses removed from reportable incident list.

2800.19 Waivers

- ★ Should be automatically granted if conditions are met and/or similar waivers already approved. Facilities must be notified within 30 days.
- ★ Need ability to appeal waiver documentation.

2800.25 Resident - Residence Contract

There should be a 30 day notice from residents wishing to move under 2800.25(b). Add clause allowing use of SSI funds not to exceed ½ of the funds under 2800.25(d).

2800.30(d)(1) Informed Consent Process

Include legal representative in case of cognitive impairment, and to include wording addressing no acceptable alternatives leading to an unsuccessful informed consent.

2800.55 Portability Staff Qualifications and Training

Want addition of reciprocity agreement.

2800.60(b) Additional Staffing Based on Needs of the Resident

Specify the time frame for additional staffing compliance. Limit 24 hour on call nurse only to instances where the resident needs/care plans require it.

2800.69 Additional Dementia Specific Training for Staff

Want more reasonable training requirement allowing first year of employment for initial 4 hours and incorporate the direct care working training into their annual 12 hour requirement.

2800.96 Requirement for AED's

Should AED's continue to be required, only 1 should be necessary for a community/residence. To mandate one with every first aid kit would be cost prohibitive without additional benefit. AED should not be required in transportation vehicles.

2800.98 Additional Common Area Space

Requires 2 common areas and a minimum of 15 square feet per resident. Most facilities would have to construct additional common area spaces. The cost associated would effectively eliminate the Assisted Living level of care in Pennsylvania.

2800.101(j)(1) Fire Retardant Mattresses

Requires all mattresses to be fire retardant, does not allow resident to provide own bed/mattress. This violates their resident rights.

2800.104(a) Dining Room Requirements

Must reduce square footage minimum capping it at 750 square feet and allow it to serve dual roles as common area.

2800.124 Evacuation Assistance Notification

Suggest an annual update to local emergency officials. Current language imposes undue and unnecessary burden through interpretation.

2800.131 Fire Extinguishers

Should be available every 3,000 square feet, not required in every living unit. This poses a safety issue due to the mental capacity of some of the residents.

2800.141(a) Admission Medical Evaluation

Add 30 days post admission time frame as current requirement is not always feasible or practical. Current Personal Care Regulations allow for this request.

2800.142(a) Health Care Service Assistance

Providers must have the right to approve who is providing services in their community. Regulation should comply with legislation provision. Currently supersedes right by allowing resident to choose any provider.

2800.162 (f-g) Meal Assistance

Clarify assistance and cueing only needed if identified in support plan. Total assistance with feeding residents in AL is not possible with staffing ratios.

2800.185 (b5) Medication Supply

Supply storage implications. This section needs clarification.

2800.202 (4) PRN Medications

PRN medications should be allowed if prescribed with specific instructions as determined by physician. Alter current language clarifying difference in chemical restraint vs. PRN psychotropics.

2800.220 (c7) Escort Services

Specify escort if transport provided by Assisted Living Facility. As stated, could require staff to accompany resident even if family provides transportation. Many would opt not to provide transportation as it is not feasible to pay staff to accompany residents. This would be difficult and very cost prohibitive!

2800.224 (b) Denial of Admission

Not in line with other federal statutes (Fair Housing, ADA), this section needs significant altering, eliminating written requirement.

2800.226 © Mobility Change Notification

Change to monthly notification to DPW.

2800.227 © Support Plan Development

- ★ Change update requirement to semi annual rather than quarterly.
- ★ MANY OF THESE REGULATIONS ARE BEGINNING TO MIRROR THE SKILLED NURSING REGULATIONS.
- ★ Remove mandatory requirement to provide a copy and change to upon resident request.

2800.228 (a) Transfer and Discharge

Major alteration in respect to resident's right to make poor decision without triggering significant and unreasonable provider action. Add specific notification requirements.

★ 2800.229 (b) omit entire section -

I am very concerned about the liability this places on providers. Providers must be able to discharge/transfer if they feel they can not provide necessary care. This is more stringent than the skilled nursing regulations.

2800.229 (c) (2) Excludable Provisions

- ★ Specify 5 year experience training requirement for professional making determination.
- ★ 2800.229 (c)(3) Change department regulation to 48 hours.
- ★ 2800.229 (c)(4) Eliminate option of department and require waiver to be granted if all provisions are met.

2800.231(a) Special Care Unit Admissions

Remove final sentence in this section. Language is vague and too open to interpretation. This would create unnecessary delay in admissions for those needing services.

★ 2800.231 (e) Alter language to address inability of resident to consent, add “not object.”

2800.234 (d) Resident Care

Change mandatory requirement to semi-annually. As needs often change more frequently this requirement would be burdensome without improving resident care.

2800.251 (e) Resident Records

Include language that asks for written notification and specify time frame for compliance rather than leave providers to the whim of resident requests for their records.

In conclusion, I must say that I am extremely disappointed that this new set of regulations was even proposed and initiated. Once again the government in Pennsylvania has delved into a process that increases the cost to residents, families and providers which will negatively effect the realistic services provided. After being in long term care for 28 years, I continue to find it amazing that government agencies and the legislature continue to believe that regulations solve health care issues.

These regulations as proposed will only allow wealthy Pennsylvanians to access this care. These regulations make it impossible for providers to care for low income residents due to unnecessary regulation.

These are just a few of the costs I foresee increasing - not an inclusive list -

Transportation - additional \$36,000

Daily rates - presently \$102-\$107 per day
increase to \$125-135 per day

Right now we take SSI residents as \$34.00 per day.

Licensure fee - \$5,750

Additional Administrative Staff - \$20,000 per year

AED Requirement - \$2,400

Refrigerator/Microwaves/Fire Extinguishers - \$15,000

I strongly recommend that the Independent Regulatory Review Commission study everyone's comments carefully and see that over regulation of a service provider only hurts those citizens who are frail, low income, and in dire need of our assistance.

Thank you in advance for your consideration. Our elders are counting on you!

Sincerely,

BREVILLIER VILLAGE



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