



Genesis HealthCare<sup>SM</sup>

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INDEPENDENT REGULATORY

REVIEW COMMISSION

101 East State Street  
Kennett Square, PA 19348  
Tel 610 444 6350

September 15, 2009

Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

Re: Proposed Regulatory Requirements for Assisted Living Residences

Dear Sir or Madam:

As the Regional Vice President for Operations, Central Area, Genesis HealthCare Corporation, I have operational responsibility for eleven assisted living facilities in Pennsylvania. While each of our assisted living centers differ in size, geography, age of physical plant, offered services, and price, there are common denominator – they meet the shelter, nutrition and service needs of frail populations without inducing dependencies. Our operational emphasis is on promoting dignity, self-help, self-motivation and quality of life. In many instances, these centers are located in close proximity of one of the 36 skilled nursing centers operated by Genesis HealthCare in Pennsylvania, and they compliment our eldercare services mission with emphasis on both quality of life and quality of care.

As a member of PHCA/CALM, I have participated in the careful professional review of the proposed regulatory requirements for assisted living and in the drafting of the extensive comments submitted by the association on our behalf. Additionally, I have provided input to the comments that are being submitted by the Genesis HealthCare corporate government relations staff.

I share the concerns expressed in both the association and corporate office comments, that the proposed regulations fall short. Rather than encourage shelter and services options for dependent populations, they impede their development. In the following comments, I highlight a handful of the issues that are most burdensome. As emphasized in the PHCA/CALM submission, there is a tremendous current and future demand for appropriate shelter and supportive services within Pennsylvania. Act 56 was written to stimulate responsive investment and capital infusion to help meet that demand. Unfortunately, the proposed rules both increase costs and undermine the opportunities to advance appropriate, meaningful shelter and care.

The following are suggestions for improving the proposed regulations:

2800.11 – Licensure fees:

The proposed rule siphons off excessive dollars to pay for the regulatory oversight. Costs that are added to care and services are passed onto the consumer as higher prices. To the extent that SSI

and Medicaid fall short of paying its fair share, there is a cost shift to private paying consumers. In essence, fees become unfunded mandates that become user fee taxes for private paying residents. My initial estimate is that the \$500.00 application fee and \$105.00 per bed fee translates into an average cost of between \$8,000 to \$14,000 per assisted living facility operated by Genesis HealthCare. This cost is exorbitant.

#### 2800.28 – Refunds:

What is the processing time for the Commonwealth of Pennsylvania to provide a refund? Interesting question; it certainly is not 14 days. In fact, the Department of Revenue website suggests that a tax refund – the advanced loan made by taxpayers to the state – takes on average 45-60 days to process a refund. What is the average timeframe for DPW to refund using a manual check? It certainly is not 14 days! Mandates should reflect reality, not wishful thinking. It is right to have rigorous consumer protections; it is wrong to make those protections a burdensome costs and a virtually unenforceable standard. The requirement should be changed from 14 days to 30 days to allow for appropriate processing time of refunds. 14 days creates a hardship to refund within timeframe.

#### 2800.30 – section (i) Liability:

An informed consent agreement should release facility from liability. Current proposed regulations do not release licensee from liability. Current proposed regulations do not meet the legislative requirement of Act 56. Act 56 requires the informed consent agreement “releases the facility from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement”.

#### 2800.53 – Qualifications and responsibilities of administrators:

Request addition of grandfather clause or provision which allows current PCH certified administrators to function as ALF administrators with out the extensive training and new certifications. Timeframe shall be an administrator with 5 years experience may be grandfathered.

#### 2800.56 – Administrator Staffing

Proposed regulation asks for 40 hours of on site administrator coverage per week. This doubles the current 2600 regulation of 20 hours. Suggest reduction to 20 hours to mirror 2600 regulations.

In addition clarification is needed. Can the ALF administrator oversee the PCH if the building is dually licensed? If not, this is a burdensome requirement because a dually licensed facility would then require a 40 hour ALF administrator AND a 20 hour PCH administrator.

#### 2800.93 – Handrails and railings

Remove “hallways”. By requiring hallways to have a handrail, it institutionalizes a residential setting.

#### 2800.94 – Landings and stairs

Vision markers on stairs should only be required in stairwell or in emergency exit areas. This again reduces the residential feel of a facility.

#### 2800.98 – Indoor activity space

The requirement for 15 square feet per resident is excessive. This should apply to new construction only and have a grandfather provision.

#### 2800.101 – Residential living units

New construction n requirement of 250 sq feet an existing residence requirement of 175 sq feet, exclusive of bathrooms or closets is excessive. Recommend 125 sq feet, exclusive of bathroom and closet for existing facilities.

#### 2800.102 – Bathrooms

Recommend that sink and mirror does not have to be directly in bathroom, but may be directly outside of the bathroom. Many facilities, much like hotels, have the bathroom sink directly outside of the shower and toilet area. This would be separate from the kitchen sink.

#### 2800.104 – Dining Room

The requirement of 15 square feet per resident for dining space is excessive and should be effective with the new 2800 regulations.

#### 2800.162 (f) – Meals

Financial burden to provide “adaptive devices”. Recommend language to allow for provide to charge for devices.

Request clarification of “physical assistance” with eating. Regulation shall not require that the facility “feed” residents. Regulation shall allow for discharge to higher level if this occurs, this choice shall be provider driven.

#### 2800.225 – Initial and annual assessment

LPN must be supervised by RN. Recommend that RN not be required. This will cause financial hardship.

#### 2800.227 – Support Plan

LPN must be supervised by RN. Recommend that RN not be required. This will require financial hardship.

## 2800.228 – Transfer and Discharge

Current proposed regulations do not allow the facility to discharge to higher level of care. Current regulations state “residence shall make reasonable accommodation for aging in place which may include services from outside providers” Facilities must maintain control over the transfer and discharge process. Current proposed regulation requires the intervention of the Ombudsman to make a final determination. The ombudsman should only provide advice and advocacy for the resident, not have the power to make a final determination.

## 2800.229 – Excludable conditions

Conditions prohibiting admission are listed in the proposed regulation. BUT the proposed regulation allows for the request of exception to those conditions. This can/will affect appropriate admissions into the skilled care setting and that will in turn create competition between ALF providers and SNF providers for the same residents. The regulation should not allow for the request of these exceptions

### Summary:

For those of us who are professionals, dedicated to enhancing the quality of life of our residents with respect for their dignity and well-being it is challenging to understand the rationale for much of the regulatory restraints embodied in these draft rules. One gets the immediate sense that the rules were written to prevent the development of a viable, vibrant assisted living market rather than to facilitate it.

Let me be very clear, we, too, are advocates for our residents and for the dependent populations of the Commonwealth. Just as important, we are prepared to invest our time, efforts and resources in developing meaningful, responsive shelter and service alternatives to traditional nursing homes and under performing personal care homes. We appeal to the state to work with us. Together, we can make appropriate, affordable, responsive assisted living a viable option for Pennsylvanians.

Sincerely,

*Kristen Santangelo*

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Regional Vice President Operations