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**From:** J. And [jand.jd@juno.com]  
**Sent:** Monday, September 15, 2008 9:18 PM  
**To:** IRRC  
**Subject:** Comments on Proposed Assisted Living Facility Regulations  
**Attachments:** LTR-2-DPW-08-09-15.doc; JAEsq-Comments-Sept15-DPW Proposed Regulations.doc

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Ms Weidman,

Please find attached a letter and comments which I have prepared in response to the proposed DPW regulations for assisted living facilities in the Commonwealth of Pennsylvania.

Judy Anderson

Judith Anderson  
Attorney & Counselor at Law  
POB 17497  
Pittsburgh, PA 15235  
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JUDITH ANDERSON

ATTORNEY AND COUNSELOR AT LAW INDEPENDENT REGULATORY  
P.O. Box 17497 REVIEW COMMISSION  
Pittsburgh, PA 15235  
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by  
2712

September 15, 2008

**DELIVERED BY EMAIL**  
**(Confirmation signature copy to follow by mail)**

Gail Weidman  
Department of Public Welfare  
Office of Long-Term Care Living  
P.O. Box 2675  
Harrisburg, PA 17105.

RE: Comments and recommendations on DPW Proposed Regulations  
DPW reference: Regulation No. 14-514

Dear Ms. Weidman:

Please find attached my comments and recommendations related to my experience and also the experiences of some other interested persons who are members of a family council at an assisted living facility in Pittsburgh where our parents currently reside. Most of this group are also agents under Durable Powers of Attorney for their parents, and have closely managed and overseen the care of their parents at the assisted living facility over an extended period of time because they are unable to undertake such matters on their own behalf.

Thank you for the opportunity to comment and make recommendations.

Very truly yours,

*Judith Anderson*

JUDITH ANDERSON, ESQ.

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**COMMENTS AND RECOMMENDATIONS TO PROPOSED DPW  
ASSISTED LIVING FACILITY REGULATIONS -  
Published 8/9/08**

**2800.26. Quality Management. Family Councils for Assisted Living Facilities**

The regulations should clearly state that a family council at any assisted living facilities (hereafter AALF@) in the Commonwealth may, at its own discretion, organize, function and meet independent of the direction, and control of the ALF's immediate or corporate management. ALF should work directly with the family council to identify and solve problems and clarify issues and obtain solutions. If the event that a facility has a provisional license, the ALF should meet with the family council on a monthly basis until the provisional status has been removed.

ALF staff including the administrator and nursing staff personal should be available to participate with the family council designees to set agenda items and programs for meetings. Family council shall under no circumstances be prohibited from meeting at ALF premises, shall not be prohibited from meeting without the participation of the ALF staff should family council desire to do so. Any punitive action taken by ALF in response to actions, decisions, requests, etc. by family councils should be also deemed a denial of residents= rights under the existing law and regulations. If requested by the family council, an ALF shall provide mailings to family members of all residents on behalf of the council no more than once per month at no or nominal cost. ALF shall provide a mailing list to family council of residents' families should the council desire to send independent mailings to residents= families. Any family council formed at an ALF may be identified by the council for council purposes as the "family council of the ALF's name."

At the time of admission the ALF shall provide notice to the residents and family members of residents of the existence of a family council and the names, phone numbers, and email addresses of its officers, chairperson(s) or other designees, or any other introductory document prepared by the family council.

**2800.42 Residents' Rights. Contracts (formal or informal) for services between Assisted Living Facilities and Third Parties**

Should an ALF contract (formally or informally) with a third party for which the residents of the ALF are a third party beneficiary, and/or shall be required to purchase or use the services of such service provided (or else pay a fee), including without limitation pharmacies, hospices, physical therapists, medical equipment companies, medical directors or physician(s) group(s) who act as resident medical directors at an ALF, the ALF shall require that all such service provider make available in writing for review by residents and/or family councils copies of all policies and procedures and fee structures of such entity. The ALF shall also undertake such required due

diligence to assure that the policies and procedures of such third party meet the needs of the resident, and also comply with DPW regulations. Where providers, such as a pharmacy, has or obtains knowledge about missed medication administration for residents, the pharmacy (regardless of with whom the contractual relationship is deemed to be with) shall provide a timely report to the ALF and also to the resident and/or his family of the occurrence of such missed medication events.

Any pharmacy contracted with by an ALF (formally or informally) shall be able to provide for delivery of medications on an emergency basis, especially upon those occasions when a resident is discharged from hospital in the evenings or on the weekends when the contracted pharmacy is closed. This provision shall not be limited to or left to the discretion of the pharmacy to designate such an event as an “emergency” medication situation to avoid a timely delivery. Should such a pharmacy not be able to provide services or delivery of medications under such circumstances, upon admission of a resident to the ALF, the ALF shall notify residents and their families in writing, and shall develop with the resident, his family, and his physician a plan to obtain such medications through a local pharmacy or hospital, which shall become part of the Resident’s Support Plan. Although a pharmaceutical item may not be deemed an “emergency” by a pharmacist, the Resident or his family or physician (given the Resident’s medical history) may deem that it is in the best interests of the Resident to get the medication earlier than the next scheduled delivery of the pharmacy with which the ALF contracts. The same situation should be addressed when a resident’s pharmacy cannot deliver medication on an emergency or urgency basis.

Residents should never be required to abandon any service provider that they have used in the past. Many times past service providers are part of their medical health team, and know the resident’s history. Requiring a resident to take a new provider at such a critical time in their life is unconscionable, and should not be supported by the regulations or compelled by an ALF.

### **Incident Reporting. By Third Party Providers of Services and Goods**

All third parties providing goods and services to residents of ALFs shall keep and maintain incident reports and records, which shall be made available to residents, residents’ physicians and families, and to any family council to assess the quality of goods and services provided to the resident-group and/or to an individual resident at an ALF. All third parties who provide goods and services to ALFs shall be required to report to the Department of Public Welfare Licensing Division any knowledge that they have of reportable incidents or violations of regulations, including such events as falls, medication errors, etc., for which they have independent knowledge, and should also provide a report to the ALF, the family, agent under a POA, resident and/or the resident’s physician for the resident for whom they are providing services.

### **Medications. Reinstating Medications and Supplements and PRN/Over-the-Counter Medications of Residents who are Returning from Hospitals, Nursing Homes, and Rehab Facilities to Assisted Living Facilities.**

To assure the continuity of care for Residents of an ALF, upon return of the residents to their ALF after a discharge from a Hospital, Nursing Home, and/or Rehab facility, ALF staff shall compare the discharge orders from the discharging facility with the prior standing orders for the resident. Within 24 hours the ALF shall notify the residents= physician, in writing, with copies to the residents= family, and Agent under a Power of Attorney, of differences between the Medication Administration Record and the discharge orders, and prior orders which have not been specifically discontinued by the attending facility at the hospital, rehab or nursing home, requesting that the residents= medical doctor determine within 24 hours whether and when any of the prior orders should be reinstated. PRN orders are often not included in discharge orders from hospitals and nursing homes, and can be significant to the health needs of the Resident the administration of PRNs are delayed because they are discontinued simply because the Resident had a hiatus from the ALF and no orders were written to continue these items or to discontinue these items after their return.

### **Powers of Attorney**

To assure that those desires of Residents, as stated in their Durable Powers of Attorney documents, are met by the ALF, an ALF shall include in their training of administrative and nursing personnel the meaning of legal documents which appoint agents under Powers of Attorney documents, and shall have designated on a Resident's Service Plan who the Agent is under a POA, to assure that important decisions regarding resident's medical, financial, or other issues are made by the POA and not by ALF personnel by default, and shall include specific directives of the Agent when ALF cannot contact the Agent in an emergency situation.

For purposes of violations of Residents' rights to DPW, the rights of a Resident under the law and regulations should be acknowledged in the regulations as accruing to the residents' agents under Powers of Attorney documents.

### **Discharge of Residents**

Discharge of residents - need protections for residents where the facility retains similarly situated residents and discharges others. Protect residents from arbitrary, contrary, and/or vindictive discharges.

### **Rights of Residents. Communications to Residents/Resident's Families/Agents/Guardians.**

Because all information about all eventualities cannot be communicated to Residents and their Families, Agents and Physicians at the moment of the admission of the Resident to an ALF, protocols which involve the Resident's health which an ALF has established and follows, whether or not mandated by DPW regulations, should be included in an orientation manual or packet of

information or orientation program provided to new Residents and their Families. For example, if an ALF has a protocol for handling diarrhea experienced by a Resident after 2 successive reported events, the Resident and/or his family, agent and physician, need to have that information to determine if different orders need to be given to the ALF from the Resident's physician to handle that issue.

The law/regulations should require formal orientation materials for residents and their families, Agents and Guardians. An informed consumer for this type of services is critical to the welfare of the large elderly population in this Commonwealth, and what PA does should be a model for other states to follow. In addition, orientation of these consumers and their families will be a key to improved care, minimization of risk, and an overall better delivery system for assisted living services.

Where an ALF has a policy manual to be followed by personnel that include policies on resident ALDs, IADLs, and other resident care issues, the ALF should make that information available to Residents and their families, agents during an orientation either by writing or by a program.

**2800.101 Physical Site – Living units. ALFs should be handicap (wheel chair) accessible.**

ALFs must be able to accommodate Residents who use wheel chairs.

Where an ALF physical facility does not accommodate resident's with wheel chairs, such as bathroom and kitchen sinks which a resident cannot wheel themselves under the sink, and cannot turn on the water for themselves to take care of such ADLs as washing their hands, getting a drink of water, cleaning their dentures, render a resident dependent upon the ALF for such services that they then have to pay for. This matter needs to be reviewed and assessed so that residents are not subject to further decline in their functioning because the physical plant space at an ALF cannot accommodate such basic needs in the wheel chair. The more that a Resident does for himself the longer he can retain that ability to care for himself. Otherwise, he becomes dependent upon the caregivers prematurely.

**Postings to Residents. Accommodating wheel chair and sight impaired residents.**

Posting to residents must be in large print for those who cannot read small printing, and must be placed in locations where persons in wheel chairs can see and also read the information. This should apply to menus, meeting notices, residents' right, and activities plans, licensing information, and any and all other information required by the law and regulations.

**2800.65. Training of Staff vs Orientation of Staff to individual residents.**

DPW should make a distinction or clarify for ALF employee training purposes the difference between training of staff and orienting new staff to a specific resident – especially, but not inclusively where residents share a room with another resident. The location of a resident’s clothing and personal belongings, and preferences in use of personal hygiene and continence products or methods, etc. should be identified as an “orientation” for a specific Resident, and included in an ALF’s employee training, so that residents do not wear each other’s clothing, and there is continuity in how the Resident wants certain things done for them (just as they did for themselves) – so that those certain things are not done according to the differing elections or preferences of multiple ALF employees. Eg. Wears shirts/tops tucked in, wears shirts/tops out; wants to wear a bra daily; wears protective garments in a certain fashion/mode, wants a sweater on daily, needs feet propped up with a pillow in bed; elevated head while sleeping, do not wash certain clothing or other belongings of a Resident because they are dry clean only, location of their hamper, etc. [Notwithstanding that this should be considered “training”, it is not necessarily included in “orienting” a new employee to a Resident.] And it should be considered to be part of a Resident’s Support Plan – i.e. to identify and document such things that are a component of a particular ADL(s) performed for a Resident.

(Eg. Finding one’s mother in the roommates’ nightgown can be upsetting to the family, and finding one’s roommate dressed in another resident’s clothes can be upsetting to the Resident.)

### **2800.103. Food service. Doctors Orders for Residents’ Diets.**

Training should be provided for food staff personnel and aides (where aides attend to food service at an ALF) so that they know what “mechanically soft” (and other) diets are, and look like, so that a Resident consistently is delivered a meal which meets the directive of their physician and the definition of that term as would a dietitian, and that the Resident is safely eating and not subject to choking.

### **Medications. Medication training:**

Medication administration training and testing should assure that “extended release” medications are never crushed or split.

### **Medications. Administration.**

Crushing or splitting a medication shall be deemed a medication error if the ALF does not have a written order from the Resident’s Physician, or written directive from the Resident’s Pharmacist directing how to crush or split or otherwise alter the medication for administration.

Prescription medications, OTC medications and CAM that are discontinued, expired or for

residents who are no longer served at the residence shall first be disposed by the Resident's pharmacist (as some administration systems such as the "Opus" system allow for crediting Residents or their insurance companies or Medicare for medications not used, and items such as vitamins and nutritional supplements may be used by other family members ) and secondly by the Resident or his family/Agent/Guardian, and never unilaterally by the ALF according to some external regulatory information. An ALF should never be given the authority to dispose of a Resident's medication in such situation without first obtaining the written approval of the resident. The medication/supplement etc. has been paid for by the Resident or his family [supplements are expensive] and the ALF should never be mandated or given authority to make such disposition under any circumstances. This provisions MUST BE CHANGED.

#### **2800.188. Medication errors.**

Reports of medication errors should be made in writing to the resident, the resident's designated person, POA, Guardian and the prescriber, and also to the pharmacist – if the ALF has a house pharmacy.

#### **2800.25 Resident Service Contracts**

All form contracts used by an ALF should be reviewed by DPW for conformity to the DPW regulations upon initial licensing, and thereafter on a regular basis. Review of these form contracts will avoid consumer problems and violations of regulations in advance of issues experienced by Residents who have limited resources to obtain legal opinions on form contracts before signing them, or accepting modifications to terms and conditions.

#### **2800.56 Staffing of Administrator.**

In the assisted living world, the weekend days of Saturday and Sunday are no different from Monday to Friday. Because problems occurring on weekends will not necessarily get the same attention as those which occur during the week, administrative personnel are needed on the weekends as well. As such, "Administrative Staffing" should also be required on Saturday and Sundays during that same period defined as "normal business hours".

#### **2800.143 Emergency Medical Plan**

This section should also include any written directives of the Agent under a Durable Power of Attorney or Guardian of the Person (as defined in PA law or by order of court) signed by that person and notarized, of anything to be done in his or her absence.



A copy of any document containing emergency health information of a Resident shall be provided to a Resident, his Agent under a Durable POA or Guardian for review upon initial preparation and thereafter when changed.

**2800.107 Emergency Preparedness Plans of ALF**

A copy of any emergency preparedness plans prepared by an ALF shall be made available to Residents, and/or families, Agents under POAs, and Guardians.

**2800.221 Activities Programs**

Should be based upon and adapted to the individual and group interests of the “current” resident population.

**2800.227 Support Plan. Accessibility of support plan at all times by direct care staff.**

This provision is so important that should the ALF not provide for easy access to this information at all times by direct care staff, it should be deemed a reportable incident and such a violation of the DPW regulations that sanctions are imposed.

**2800.227 Development of Support Plan.**

The ALF should provide the name, address and phone number of the registered nurse required by this provision to review and approve the support plan for an ALF or resident.

Support Plans for ADLs and for IADLs should be separate documents.

**Current Regulations and bed rails.**

Current regulations address the use of bed rails, and somewhere state that “enablers” are available to assist a Resident to get into bed. Parties interested in using “enablers” could not locate such an appliance or apparatus, and DPW staff could not identify where such items could be purchased. DPW should have support documentation to refer Residents and families to such information when they include that information in the regulations or in the violation reports..

This should apply to all regulations and construction thereof. If DPW cannot identify it or give a resource to a recommendation – it should not be included in any DPW documentation.