

# Kendal~Crosslands® Communities

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*Kendal at Longwood*      *Crosslands*      *Coniston*      *Cartmel*  
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INDEPENDENT REGULATORY  
REVIEW COMMISSION

PHILIP G. DeBAUN, Executive Director  
*Crosslands and Cartmel*

September 9, 2008

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

The Honorable Dominic Pileggi  
100 Evergreen Drive  
Suite 113  
Glen Mills, PA 19342

Independent Regulatory Review Commission  
c/o Arthur Coccodrilli, Chairman  
333 Market Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17101

The Honorable Chris Ross  
P.O. Box 835  
Unionville, PA 19375

Dear Sirs and Madam:

We are the Executive Directors of Kendal~Crosslands Communities, a Quaker-directed non-profit charitable organization which operates two continuing care retirement communities (CCRCs) in Kennett Square, PA. Both Crosslands and Kendal at Longwood have licensed personal facilities by the Department of Public Welfare, offering a total of 104 personal care beds (44 and 60, respectively) to our own CCRC residents, and to direct entrants from the wider community.

We have evaluated the proposed 2800 regulations in regard to our current personal care programs, our future plans for those programs, and in regard to how we see them affecting our peers in the field. While we have no doubt that the proposed regs are intended to ensure the quality of assisted living services, we have grave concerns that the regulations make mandates in areas that do not connect directly with quality of care, and also make mandates that will drive up the costs of assisted living to the detriment of assisted living clients. We have summarized our concerns below.

**Dual Licensure:** SB704 clearly stated that dual licensure of personal care and assisted living was permissible, even describing how facilities with dual licensure should be surveyed by the Department of Public Welfare. However, the proposed 2800 regulations do not explain how dual licensure is to be pursued. We believe consumers will be best served by a system which allows for flexibility by provider, and recommend that the regulations allow providers to license their facilities by room, or group of rooms. This will allow more providers to offer assisted living in the rooms they have which meet the physical requirements of the regulations, and license other



accommodations as personal care. We think this would provide consumers with more providers in the marketplace, and therefore more choices of providers.

**Mandated Physical Facilities:** The proposed square footage requirements (**2800.101(b)**) of 175 per living unit for existing facilities and 250 for newly constructed facilities are too high and would place Pennsylvania's minimum standard in the top 10% nationwide. We don't believe that square footage, by itself, contributes to quality of care, but setting such high minimums will translate directly into higher costs for clients. We would suggest minimums of 125 and 175 sq. ft., respectively. Likewise, the large mandates for common spaces (**2800.98**) and kitchen capacity in newly constructed facilities (**2800.101(d)**) are counterproductive.

Setting such high space requirements will ensure that assisted living costs will be higher than they might be in all facilities, and will reduce choice for consumers. We're sure that some consumers are willing to pay a bit more for larger accommodations with kitchens, and that some providers will meet that demand. But greater costs in all assisted living facilities will put the service out of the reach of many consumers whose needs could be met in a more modest, less costly accommodation. Furthermore, fewer providers will choose to offer licensed assisted living with the higher space mandates, especially those thinking of converting from existing personal care licensure.

**Administrator Requirements:** The requirements for Administrators (**2800.56**) seem unrealistic. For example, the department's proposed requirement that the administrator be present at least 40 hours per week in the facility leaves no time for that person to receive even the mandated continuing education, much less meet other important off-site obligations necessary for the benefit of the residence. Furthermore, the current drafting of the regulation (paragraph b) states that a person with full administrator qualifications substitute for the administrator when he/she is not present. This can certainly not be the intent, as it would require that each assisted living residence have two fully qualified administrators at the same time.

We suggest that the current personal care requirement that administrators be present 20 hours per week in the residence is adequate, and that the administrator be required to designate a staff person to supervise the residence in their absence.

It is also extremely important that existing personal care administrators and other staff members be grandfathered into the qualification requirements for assisted living, which is not now permitted in the draft of **2800.53** and **2800.54**. It would be terribly counterproductive to limit the supply of dedicated and experienced potential employees in this already understaffed field.

Finally, it is critical that the Department accept continuing education credits (**2800.64**) from courses produced by the National Association of Boards of Long Term Care Administrators (NAB) and National Continuing Education Review Services (NCERS).

**Bundling of Core Services:** While we support the notion of requiring core services to be made available, we feel the language in **2800.25(c)** should make clear that residences have the flexibility to either bundle or charge separately for services as long as the pricing structure is clear to residents. This gives the consumers the right to make their own choices. For example, it

would be a mistake to bundle charges for laundry and transportation services, as many residents would choose to have those functions done for them by family members, and save on cost in doing so.

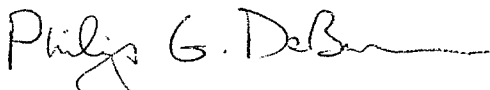
**Informed Consent:** The language in **2800.30(d)(1)** does not accommodate residents with cognitive impairments, and should be amended to allow a legal representative or health care decisionmaker appointed by the resident to speak on their behalf. We are also concerned that **2800.30(f)** does not support the right of the provider to decline an informed consent agreement if the level of risk is unacceptable. It is important that the provider make the final decision as to whether or not it can accept the burden of liability imposed by an agreement.

**Safety Equipment:** We are concerned about the mandate that Automatic External Defibrillators (AEDs) be included in every first aid kit (**2800.96**) in the residence, and that each vehicle owned by the facility have a first aid kit meeting the same requirements (**2800.171 (b)(5)**). While requiring AEDs at assisted living residences may be sensible, defining first aid kits in this way discourages providers from deciding to have additional first aid kits available without AEDs, and it is highly burdensome for AEDs to be required for each vehicle.


We also believe that the way **2800.131** is drafted presents a safety hazard, as it requires the placement of a fire extinguisher in every assisted living unit. This presents the distinct possibility that some residents will attempt to operate a fire extinguisher themselves, either intentionally or unintentionally, at great risk of harm. We believe that only trained staff and emergency response personnel should operate extinguishers, and that National Fire Protection Act (NFPA) specifications for placement of fire extinguishers would be the safest requirement.

We appreciate this opportunity to comment on the proposed regulations. Our concern is that their current form will create a definition of assisted living which goes far beyond the intent of SB704. The current draft regulations would cause there to be less assisted living offered in Pennsylvania because of the restrictions and costs imposed on would-be providers, and exclude many vulnerable seniors from the service because of those same costs. There are many additional concerns to be expressed on the subject, and we would direct your attention to the detailed comments provided to you by PANPHA. Either of us would be happy to respond further if you have any questions. Thanks again.

Sincerely,



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