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From: Eric Carlson [ecarlson@nsclc.org]
Sent: Monday, September 15, 2008 12:36 PM *Rec'd IRRC*
To: IRRC
Subject: Comments from National Senior Citizens Law Center on proposed regulations for assisted living residences
Attachments: NSCLC comments on ALR regs, 14-514.doc

Comments are pasted in and attached. Thank you for your consideration.

Sincerely,

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For attorneys and other advocates, comprehensive long-term care legal information and analysis is available from NSCLC's bi-monthly *Long-Term Care Law Reporter* and from *Long-Term Care Advocacy*, a treatise written by Eric Carlson and published by Matthew Bender & Co. See www.nsclc.org for more information.

September 15, 2008

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

Arthur Coccodrille
Chair, Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Regulatory Package 14-514 (Assisted Living Residences)

Dear Ms. Weidman and Chairman Coccodrilli:

Since 1972, the National Senior Citizens Law Center has represented the interests of older Americans, particularly those with limited incomes. One of the major areas of emphasis has been long-term care, due to the vital nature of long-term care services and to residents' vulnerability.

We have examined the proposed assisted living regulations, and endorse the comments submitted separately by the Pennsylvania Assisted Living Consumer Alliance. We write separately to emphasize two issues that deserve particular attention.

1. To Convert to Assisted Living Licensure, Currently Licensed Personal Care Homes Should Not Be Allowed to Ignore Any of the Assisted Living Residence Requirements.

The proposed regulations waive certain requirements for currently-licensed personal care homes. Under the proposed regulations, a currently-licensed facility would be required to provide only 175 square feet (rather than 250) and would not be required to have a kitchenette in the living unit. *Proposed Section 2800.101.*

Square footage of 175 is simply too small, particularly for a resident who might require a wheelchair. And assisted living is meant to provide a more home-like environment, so it is appropriate that a resident have access to an in-unit kitchenette, and not be forced to use a common area for food preparation.

The waiver of requirements is presumably based on a grandfathering rationale, but grandfathering is inappropriate for a new classification. It would be different if personal care home regulations were being upgraded – then grandfathering might be appropriate, as it has been during revisions of personal care home regulations in past years. But assisted living is meant to be a new and better level of care, providing an improved package of care to residents who in past years likely would have resided in nursing facilities.

Existing personal care homes can continue operating as personal care homes, but should be required to comply with all assisted living regulations if they intend to operate as assisted living residences. Assisted living licensure should be reserved for those facilities that meet all of the requirements. Assisted living is envisioned as a new level of care that is more homelike than personal care homes, and is able to provide care for higher acuity residents. If the promise of assisted living is to become a reality, standards must be applied across the board.

2. Residents Should Be Allowed to Choose Their Own Health Care Providers.

Proposed regulation section 2800.142 allows a residence to limit a resident's choice of a supplemental health care provider. This is inconsistent with the assisted living philosophy of making a residence as homelike as possible. Why should a certain health care provider be able to establish a monopoly in a particular residence?

We endorse the comments of the Pennsylvania Assisted Living Consumer Alliance on this issue. A resident should have a right to choose a health care provider unless the residence can show that the provider is not covered under the relevant insurance program, is not in good standing with the appropriate licensing agency, or is unwilling to follow legitimate residence procedures.

We appreciate the opportunity to comment on the proposed regulations. Please feel free to call with any questions.

Sincerely,

Eric M. Carlson
Director, Long-Term Care Project