14-514 K-64

PENNSYLVANIA ASSISTED LIVING CONSUMER ALLIANCE

#2712

September 10, 2008

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

Arthur Coccodrilli, Chair
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

Dear Ms. Weidman and Chairman Coccodrilli:

The Pennsylvania Assisted Living Consumer Alliance hereby submits comments to the Proposed Assisted Living Regulations - # 14-514.

PALCA is a coalition of organizations and Pennsylvanians that formed in January of 2008 to ensure that the concerns of consumers are heard in the formation of Assisted Living licensure rules for Pennsylvania. Organizations participating in the Alliance include:

- The Pennsylvania Health Law Project (www.phlp.org)
- The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) (http://www.carie.org)
- The Disability Rights Network of Pennsylvania (http://drnpa.org)
- Mental Health Association in Pennsylvania (MHAPA) (http://www.mhapa.org)
- Mental Health Association of Southeastern PA (http://www.mhasp.org)
- The National MS Society—PA chapters (www.nationalmssociety.org)
- Liberty Resources (http://www.libertyresources.org)
- Pennsylvania Statewide Independent Living Council (http://www.pasilc.org)
- Pennsylvania Association of Area Agencies on Aging (http://www.p4a.org)

- SEIU Healthcare Pennsylvania (http://www.seiuhealthcarepa.org)
- Elder Law Section of the Pennsylvania Bar Association (http://www.pabar.org/public/sections/elderlaw)
- Community Legal Services Elderly Law Project (www.clsphila.org)
- Acquired Brain Injury Network of Pennsylvania (www.abin-pa.org)
- Pennsylvania Council on Independent Living (www.pcil.net)
- Pennsylvania HomeCare Association (www.pahomecare.org)
- Eldernet (www.eldernetonline.org)
- Vision for Equality (www.visionforequality.org)
- AIDS Law Project of Pennsylvania (www.aidslawpa.org)
- SeniorLAW Center (www.SeniorLAWCenter.org)
- Pennsylvania Jewish Coalition (www.pajewishcoalition.org)

Many of us have worked for years to see assisted living licensure come to pass. We are excited to see that licensure for assisted living is finally happening. We are excited because consumers need licensure for assisted living.

We emphasize the importance of having good assisted living regulations. Assisted living is a critical part of the continuum of long term care and is invaluable for rebalancing our long term care system towards providing care in more home-like settings than nursing facilities.

Everyone who has ever had to look for care for a loved one, care that can no longer be provided at home, knows that this search is painful and difficult. There is a delicate balance between the most home-like environment possible, and the institutional supports that must be provided. Although it may appear contradictory, promoting independence, dignity, privacy, and choice requires Pennsylvania to set clear standards in order for those in need of assisted living to find it in our Commonwealth.

Our Alliance formed earlier this year to give voice to consumers, family members, and their advocates who are all seeking to ensure that assisted living facilities are equipped, enabled, and accountable for providing all their loved ones with quality care, provided by appropriate amounts of adequately trained staff in a home-like setting that is safe, accessible, and stimulating.

We have analyzed these regulations and many of us reviewed preliminary drafts, as we participated in the Assisted Living Workgroup of the Department of Public Welfare. We applaud the many good things the Department did in the proposed assisted living regulations as these provide some hope of quality care. However, the regulations do not go far enough towards the promise of quality care.

The regulations for personal care homes served as the platform from which the state proposes to build assisted living licensure. Several of the proposed requirements represent crucial enhancements to the personal care home regulatory requirements. These are essential changes for meeting the care needs of the population that Assisted Living residences are intended to serve. These are changes of which we are wholly supportive and we list all of these herein. More provisions, however, were left exactly the same as in the personal care home system, even though changes are critical for ensuring that Assisted Living facilities are able to safely serve Pennsylvania's assisted living consumers.

While the personal care home regulations are the floor for the proposed regulations assisted living regulations, it is critical to remember that Assisted Living is a new licensure category and, thus, grandfathering of staff qualifications, physical site or other elements of the new regulations is not appropriate. Historically, "grandfathering" has a limited use where an existing licensed system is facing a hardship by an updating of standards, as happened in 2005 with the Personal Care Home regulations. This situation must be distinguished as the state is not updating an existing set of regulations but creating a new licensed entity to operate under a new regulatory system. Grandfathering is **not** appropriate as a regulatory construct when creating a brand new licensed entity. There is no hardship to the facility; it faces no harm by the new requirements as it can continue to operate exactly as it always has under the Personal Care Home licensure should it choose not to meet the new standards.

While the proposed regulations make small steps in the right direction, we do not believe that the proposed regulations make adequate strides towards 1) meeting residents' care needs, 2) guaranteeing that all consumers have meaningful rights of which they are aware and that they are free to exercise their rights, 3) assuring safe and accessible physical site, 4) ensuring care is provided by appropriate amounts of adequately trained staff, and 5) answering critical unanswered questions that the public needs answered. We urge the Department to take additional steps towards ensuring that consumers can be safely, happily, and healthily served in Pennsylvania's assisted living facilities.

Our comments are broken down as follows: **First, we offer our overarching concerns we have about the proposed regulations. We then outline the crucial improvements from what we have in the personal care home system, improvements which we feel must be retained in the final regulations. Third, we list by section the outstanding problems with the regulations. Finally, as an attachment, we offer line-by-line recommended edits to the entire set of proposed regulations to delineate how our comments could be implemented.**

I. Overarching concerns with the proposed regulations:

A. The regulations do not ensure that facilities can and will meet Residents' Care Needs.

As proposed, a consumer would have to move in, sign a contract for residency and services, and begin payment to the facility weeks before the facility would be required to identify the consumer's care needs and explain to the consumer and her family whether the facility can meet her needs, how it proposes to meet those needs or even how much the consumer's care would actually cost. Although the rules provide for a short-form, pre-screening checklist to determine whether the consumer could be safely admitted to an ALR or if he has conditions or needs that would require exclusion from the facility, an ALR is only required to perform a comprehensive assessment "within 15 days" after admission to the facility. In addition, the facility has until 30 days after admission to develop the resident's actual care plan. The result is that consumers are put in the untenable position of having to move into a facility without knowing for certain if the ALR can meet their needs and if they will be able to remain in the facility. With the possible exception of an immediate discharge to the Assisted Living facility from a hospital, an ALR should be required to perform a comprehensive assessment of a potential resident prior to admission in order to determine: whether she can live in the facility successfully; her care needs; whether her needs can be met in a way that comports with consumer choice around how and when to receive care; and the costs associated with meeting her care needs in that facility.

As written, the proposed regulations provide no sufficiently clear statement as to the specific assisted living services a consumer should expect to receive from an ALR, nor do they articulate a minimum, core package of benefits If consumers are not assured that every ALR must provide at least a uniform minimum core benefit package with the admission price, consumers cannot meaningfully compare and choose among facilities. Without a minimum core benefit, consumers cannot understand the differences in costs/ extra services from one facility to the next or the value added if they purchase an "enhanced" benefit package. Not only will it be impossible to understand how facilities differ in what they offer and cost, but it will be impossible to tell exactly what care will regularly cost in the chosen facility, as consumers may end up being "nickeled and dimed" at every turn. We are sure that the last thing the state wants to see is a consumer being forced to choose between three nutritious meals a day and having their care needs met in an ALR.

The proposed regulations give the facility total control over where residents get all medical care and supportive services. Consumers want to be able to choose and use their own trusted healthcare providers. The personal care home system recognizes this and allows consumers to use their own physicians and pharmacies. The proposed ALR regulations, however, do not provide residents with any ability to choose and to use outside providers. Instead, a facility can mandate that residents use providers of its choosing. This clearly flies in the face of consumer freedom of choice provisions found within Medicare, Medicaid and other insurance programs. The vague regulatory

language in the proposed rules that facilities not "unreasonably withhold approval of outside provider when consumers have insurance" does not fully redress this problem. Protecting residents' rights to choose and use their own providers provides a check and balance against poor care, conflicts of interest, and complete isolation within the facility. It also allows consumers to use the marketplace to meet their medical needs when quality care is not provided in their supportive, apartment- like assisted living setting.

The Informed Consent Process fails to adequately protect residents. The proposed regulations create an informed consent system that does not include adequate protections for residents. ALRS cannot be allowed to use the informed consent process on a regular basis as a means to get around their responsibility to provide good care and/or their liability when such care is not provided. Residents who are at the mercy of those who are caring for them must be assured they will not be forced to hastily release the facility from its responsibilities when that may not be in the resident's best interests. There must be an independent entity designated to help consumers determine and understand the merits and consequences of entering into an informed consent agreement. Ombudsmen are inappropriate to serve in this role.

Consumers are disadvantaged where the facility has total control over whether a consumer can stay or has to find a new place to call home. The proposed regulations suggest the **possibility** of consumers aging in place, yet at the same they set out a blanket list of excludable conditions that, if present, would warrant a facility to discharge the consumer without exception. The excludable conditions provisions in the proposed regulations draw black and white lines in areas where there are clearly shades of gray. For example, why should a resident be DISCHARGED for developing stage 3 or 4 decubitus ulcer? Why not transfer the resident to a hospital and readmit when she has healed if that is what the consumer wants? A tenant would never be evicted from a rental apartment for having to go to a hospital for a couple weeks, especially if she is continuing to pay the rent. The excludable conditions provisions must allow for exceptions and for fair and reasonable considerations so as to protect residents' ability to remain in the place the resident has come to call home. Additionally, there is a process for facilities to seek exceptions to the excludable conditions prohibitions. There is no mechanism for insuring that these exceptions are fairly sought and that facilities do not discriminate against two similar residents based on payment source or history of complaints against the facility, etc.

B. The proposed regulations do not guarantee that all consumers have meaningful rights of which they are aware and that they are free to exercise their rights.

It is critical that ALR applicants have enumerated rights and that the rights of applicants and residents are all set out in a regulatory section on rights. The proposed regulations simply provide ALR residents the same rights provided personal care home residents, despite the differences in the facilities and the greater frailty and dependence of the population being served in ALRs. Additionally, the "rights" section is what residents are provided as their list of "rights". It is also what is posted in the facility

as the residents' rights. Yet, the residents' rights section of the proposed regulations does not articulate **a consolidated statement of all the rights the resident has**. For example, the resident's rights to view their own records or to be notified of egregious incidents or serious regulatory violations within the ALR are embedded elsewhere in the regulations. Because these rights do not appear in the official statement of "rights" however, most consumers are unaware of these other rights and how to exercise them. **All** residents' rights must be contained in a distinct rights section of the regulations to which consumers and their families can turn to understand how or whether they are protected. Residents must also be provided additional rights and protections beyond what are already set out in the personal care home regulations. The proposed regulations set forth no ALR applicant rights. This must be addressed to assure applicants such important rights as the right to a written decision regarding their application, the right to reasons/the basis of the decision if their application is denied, and the right to receive a list of facility services and costs upon request and prior to signing an admission agreement.

The proposed regulations contain NO resident or applicant appeal rights or appeal process. While the providers have a place to turn should they need to challenge a state licensing decision or a penalty imposed, the proposed regulations give the resident **no** ability to challenge the facility's unilateral determination that her needs can no longer be met and that she must be discharged. The resident is provided no articulated rights 1) to appeal a discharge to the Department's Bureau of Hearings and Appeals and 2) to continue to reside in the facility pending the outcome of their appeal. These must be provided to residents.

C. The proposed regulations do not assure that Pennsylvania's assisted living residents will be cared for in safe and accessible facilities.

As proposed, facilities that exist as of the day the regulations take effect would not have to meet the current standards or practices for fire safety or even for wheelchair accessibility. The regulations do not address the issues of older construction that do not meet current fire or life safety or facilities that were grandfathered years back and never had to come up to current standards for safety and accessibility. The purposed of assisted living licensure is to create facilities to care for people who need long-term care and the ability to aging in place. Such facilities need to be accessible to persons with physical disabilities. No one has a right to operate an assisted living facility. Existing personal care homes can continue to operate as personal care homes if they cannot be brought up to current safety standards. Similarly, these facilities are not required to admit service animals for residents who need them.

As proposed, newly constructed living units must have 250 square feet of living space. This is in line with the state housing agencies' recommendations. Existing construction, however, need only have 175 square feet of living space. We urge that the existing construction provision be removed because 175 square feet is too small to be accessible for anyone using a walker or a wheelchair.

D. The proposed regulations do not ensure that care is provided by sufficient numbers of adequately trained staff.

As written, the proposed regulations rely on the archaic labeling of residents as "mobile" and "immobile" and rely solely on those labels to determine whether the resident needs 1 versus 2 hours of direct care. This formula in turn defines how many staff an ALR must employ to care for residents. Instead, the regulations should establish a floor of at least 2 hours of care per resident per day with the actual care hours determined based on the assessed needs of each resident.

The proposed ALR regulations simply adopt the direct care staff qualifications and training required of personal care home staff despite the differences in the facilities and the greater care needs often found in ALR residents. As proposed, direct care staff would not have to complete a minimum amount of training hours and not all direct care staff must be trained in first aid and CPR. No minimum training or qualifications are articulated for third party contractors serving as direct care staff and there are no requirements that all supervisory staff meet at least the direct care staff training requirements. ALL staff and ALL Administrators are not required to be trained in cognitive support services and care for cognitively impaired residents. Finally, the regulations contain no affirmative statement ensuring that training requirements will not be waived.

E. The proposed regulations do not address many key areas and leave unanswered too many questions that must be addressed in order for the public to understand what assisted living means and what they can expect from an ALR.

The regulations fail to address marketing or set forth any parameters on how facilities can market or present themselves as "assisted living residences". We understand from state officials that they anticipate facilities having an ALR license but also having at least part of the facility licensed as a personal care home or a skilled nursing facility. Yet the regulations do not address this issue at all. The regulations do not set out any parameters nor do they address the requirements that would have to be met in order for a dual licensure to be allowed. The regulations also fail to define key terms and take no steps towards improving upon the inadequate enforcement provisions inherited from the personal care home regulatory system.

II. <u>The proposed regulations contain some crucial improvements over the personal care home system. These provisions must, at a minimum, be retained.</u>

It is crucial that the Assisted Living regulations go beyond the regulations for personal care homes. There are a number of provisions of the proposed regulations that are clear improvements upon the regulations for personal care homes. These provisions must be included in the final regulations and serve as a minimum for what the regulations include. Specifically, the proposed regulations:

1) Establish licensure fees that are meaningful and potentially sufficient to fund the licensure, oversight and relocation efforts of the Department, as required by Act 56. 2800.11
2) Require fire safety approval to be renewed every 3 years (in the past approval was at the outset and was never required to be renewed). 2800.14
3) Exclude many regulatory provisions from the list of provisions for which a facility could seek a waiver (so that they not have to comply.) 2800.19.
4) Add a few critical pre-admission disclosures that facilities will have to make to potential residents. 2800.22(b).
5) Standardize that the resident-residence contracts should all run month to month with 14 day advance notice by the resident required for termination. 2800.25(b)
6) Add a requirement that the person who manages and controls the operations of the facility have prior experience in the health or human services field. 2800.53
7) Require the facility to, at all times, be under the supervision of a person who is trained in how to operate and manage the facility. This is a substantial improvement over the personal care home system where the only person with training and knowledge in how to manage, operate, and supervise need only be present in the facility 20 of the 168 hours in a week. 2800.56
8) Require a nurse to be on call 24 hours a day and a dietician to be involved in meal planning for residents' whose support plans call for special diets. 2800.60
9) Call for Air Conditioning for the entire facility, contrary to personal care homes which have never been required to have air conditioning, despite the care needs or health conditions of their residents. 2800.83
10) Require all stairs and steps to have strips to help ensure evacuation for those with vision impairments. 2800.94
11) Require newly constructed facilities to have larger rooms than in personal care homes, with 250 square feet of living space (this is only for new construction). 2800.101
12) Require living units to have kitchenettes with counter space, cabinet, microwave, fridge, and access to a sink. 2800.101
13) Require facilities to disclose their policies about pets and whether pets are already in the facility. 2800.109
14) Require smoke detectors in each living unit. 2800.129
15) Require access to **all** exits required to be marked with readily visible signs indicating the direction to travel. 2800.133
16) Prohibit unreasonable withholding of provider's approval of resident's choice of healthcare provider where resident has insurance. We wholly oppose limits on resident choice of provider. And, this does not exist in the personal care home system. We are only minimally comforted by the idea that, and include this in

the list of positive attributes of the proposed regulations only because, a facility cannot unreasonably limit resident choice where health insurance or long term care insurance may pay only for specific providers. Please note, however, unreasonable withholding is not defined and there are no appeals processes or rights for consumers to challenge such determinations made by a provider. 2800.142

17) Require assistance with meals and cueing for meals for residents who require this in order to make it to or through a meal. 2800.162.
18) Require vehicles for transportation to be accessible to residents with wheelchairs and other devices. 2800.171
19) Require facilities to provide medication administration. 2800.182
20) Require facilities to obtain medications prescribed for resident and to maintain an adequate amount of the residents' medications on site. 2800.185
21) Require all residences to provide cognitive support services. 2800.119
22) Require a written decision if residency is denied with an explanation of why. 2800.224
23) Requires a nurse to review and approve the support plan, whereas in the current system, there are neither qualifications nor specific training requirements for the individual who conducts assessments or trainings. 2800.227
24) Mandate that a facility must ensure that residents that are discharged have a safe and orderly discharge and that the resident's medications, durable medical equipment, and personal belongings go with the resident. 2800.228
25) Improve upon the termination notice that consumers must receive, providing them more information on why they are being discharged and what limited steps they may take about the discharge. 2800.228
26) Require tracking of admissions and discharges and transfers by the facility – including those involving excludable conditions. 2800.228 and 2800.229.
27) Adopted a good standard for when an exception to the excludable conditions prohibitions would/should be granted. 2800.229.

III. Specific Problems with the Proposed AL Regulations Published on 8/9/08 for Public Comment by 9/15/08, provided by section number:

GENERAL PROVISIONS

Section. 2800.1 through 2800.5

1) 2800.4 - Definitions.
    a. The proposed regulations left out definitions of Assisted Living Services, Assistive Technology, NFCE, Third-Party Provider, HCBS Waivers, Living Unit and other key terms that require clear definition.
    b. The proposed regulations left in the definitions of Mobile and Immobile resident, terms that many find offensive. Staffing levels are elsewhere linked in the regulations to whether a resident is mobile or has mobility needs regardless of actual care needs.
    c. The proposed regulations failed to improve upon the definitions of Aging in Place, Supplemental Health Care Services, Ancillary Staff Person, Designee, and Neglect as we had recommended.
    d. The proposed regulations added a definition of Health care or human services field (because it relates to the work qualifications an Administrator must have) and this definition raises some concern (as the proposed regulations included a "kitchen sink" final phrase pulling in any background that involved human beings, it appears). 2800.4
2) 2800.5 – Access to the facility and the residents
    a. Proposed regulations do not state that a facility must permit family members, the resident's attorney, law enforcement, or building code inspectors to enter and access the facility.

GENERAL REQUIREMENTS

Section 2800.11 through 2800.30

3) 2800.11 Omits any standard by which the state will judge whether a personal care home is suitable for transitioning to an Assisted Living Residence. We recommend such things as in full compliance with new regulatory requirements and exemplary compliance history with prior applicable regulations.
4) 2800.14 – Fire Safety Approval – This needs to indicate the impact to the facility's license if the fire safety approval is withdrawn by the appropriate fire safety agency. The facility should be put on a provisional license and should be required to remedy fire safety problems immediately or residents should be relocated until the facility is safe again.
5) 2800.16 – Reportable Incidents – The regulations need to indicate that the facility must write up a report on the facility's incident investigation findings to make available at inspections and that the state should be compiling and publishing data on the nature and scope of reportable incidents that occur in ALRs.
6) 2800.18 – Applicable Laws. To the extent that the state expects to permit old existing buildings to be converted to assisted living use, it is critical that the

regulations require facilities to satisfy applicable fire safety and life safety laws as if they were new construction. This would ensure that the best practices for keeping residents safe are applied and not the outdated methods that were in place when the many year old structure was build.

7) 2800.19 – Waivers. These are brand new regulations for a brand new licensure category. No exceptions or waivers to these requirements should be granted to a facility when first seeking to become an assisted living facility. At a later date, a facility that complied with the requirements that wants to try to do something a little differently could potentially be granted a waiver of the regulations, but only if the request goes through a process that includes public input. This section needs to say this.
8) 2800.20 – Financial Mgmt – The regulations need to, but do not currently, prohibit the facility from requiring that the administrator or any employee of the facility serve as any residents' representative payee for Social Security payments.
9) 2800.22 – Application and Admission – The regulations would allow medical evaluations, needs assessments, and support plans to all be completed after admission – even after the contract is signed and the consumer has lived in the facility for weeks. These must all be completed prior to admission, except in the event of an urgent discharge to a facility from a hospital.
10) 2800.25 – Resident-Residence Contract. The contract must make reference to a core package of benefits that is included in the base price of admission. The core package of benefits must be uniform from facility to facility. This is not currently in the proposed regulations and must be added. See also, comments to 2800.220.
11) 2800.28 Refunds. The proposed regulations permit a facility to hold onto a resident's money for 30 days after they move out. Many residents have limited funds to begin with and need that money in order to afford to move out. The final regulations must mandate that a resident is given back her money on the day she moves out, unless the facility did not have advance notice of the move, in which case the facility should have 7 days.
12) 2800.30. Informed consent. The informed consent process lacks protections so that consumers are not forced to regularly or hastily release facilities of their responsibility to provide care and their liability for failure to do so. No independent entity is designated to help consumers determine the merits of entering into an informed consent agreement.

RESIDENT RIGHTS

Section 2800.41 through 2800.44

13) We urge the addition of a section 2800.40 on Applicants rights so that applicants can know, across all facilities, what to expect in the application process. See our specific recommended language in our line by line comments.
14) 2800.41 Complaint procedures. There should be standardized procedures that all facilities should follow when they receive a complaint from a resident. This is absent from the proposed regulations.

15) 2800.42 – Specific Rights. The proposed regulations fall short in that they fail to include many fundamental consumer rights. Residents should have and be unequivocally aware that they have the right to:
    a. Know all their rights and have them articulated fully in one discrete section.
    b. To choose ADL and IADL providers, healthcare providers, and supplemental healthcare providers.
    c. To use their health insurance to pay for covered services.
    d. To lock their door.
    e. To terminate their residency at any time
    f. To terminate an informed consent agreement at any time
    g. To privately communicate with friends, family and others
    h. To reside and receive services all year without sudden disruptions for vacations or holidays.
    i. To reasonable accommodations of resident needs and preferences.
    j. To refuse treatments or services prescribed or recommended.
    k. To self-administer medicine
    l. To file complaints and grievances
    m. To receive oral and written communications from the facility in a manner that is accessible
    n. To have records kept confidentially.
    o. To appeal decisions made by the facility
    p. To continue to reside in the facility pending the outcome of the appeal.

    And more...
16) We urge the addition of a section 2800.42a on Rights upon Transfer or Discharge and make specific recommendations as to these rights.

STAFFING

Section 2800.51 through 2800.69

17) 2800.51 – Criminal History Checks. All persons working for or under contract with the facility should have to go through criminal history checks and the criminal history checks should be ones that meet state constitutional standards. This is not currently in the regulations.
18) We urge the creation of a 2800.54a – Qualifications and training for ancillary staff, other staff or volunteers to address minimum training and qualifications for food service, housekeeping, administrative or supervisory staff, medical directors, service planners/care managers, and third party contractors. All supervisory staff should have at least the direct care staff training requirements.
19) 2800.57 – Direct Care Staffing - The proposed regulations label consumers as either "mobile" and "immobile" and key staff levels at 1 or 2 hours accordingly, regardless of actual resident needs. Staffing levels should allow for at least 2 hours per day per resident with actual care hours determined based on assessed needs of residents. The regulations do not do this.
20) 2800.60 – Additional staffing. The proposed regulations do not require that a facilities have a nurse on staff or under contract to participate in all initial or ongoing needs assessments.

21) 2800.63 – First Aid and CPR. The proposed regulations fail to require that all staff be trained in first aid and CPR. This is essential and must be remedied.
22) 2800.64 – Administrator training and orientation. Administrators should have 150 hours of training and this training should include training in numerous additional areas than are listed in the 100 hour personal care home administrator training, including how to care for residents with cognitive impairments, how to control infection, prevention of decubitus ulcers, malnutrition and dehydration, and hazard prevention. The regulations should also clearly state that the requirements must be met without grandfathering of any kind.
23) 2800.65 – Direct Care Staff person training and orientation. The proposed regulations would require no additional training for direct care workers in an assisted living facility than in a personal care home, despite the different needs of the populations intended to be served. The regulations include no minimum number of training hours. The final regulations must at least adopt the minimum 77 hour core competency training crafted by stakeholders for the Department of Labor and Industry. The regulations should also clearly state that the requirements must be met without grandfathering of any kind.
24) We urge the addition of a 2800.70 on Third Party Care Providers that states that all those employed by the facility must meet the direct care worker requirements of the regulations or their licensure requirements (if they are separately licensed in the state).

PHYSICAL SITE

Section 2800.81 through 2800.109

25) 2800.83 – Temperature. We would like to see a statement of the minimum and maximum temperatures the inside of the facility can be during the cold of winter and the heat of summer.
26) 2800.86 – We recommend that facilities be required to use carbon monoxide detectors.
27) 2800.88 – Surfaces – We recommend that any asbestos on site that is found be appropriately remediated.
28) 2800.90 – Telephones – The facilities should have at least one phone on each floor and they must be accessible to all residents.
29) 2800.96 – First Aid Kit – It is not appropriate for the facility to have only one first aid kit for the whole facility. The requirement should be that the each facility have enough first aid kits in accessible locations throughout the facility to ensure that the staff can swiftly administer first aid treatments.
30) 2800.98 – Indoor Activity Space – All indoor activity space needs to be accessible to all residents. All hallways and common areas must be accessible to wheelchair users.
31) 2800.101 – Living Units - The proposed regulations authorize grandfathering of bedrooms (and facilities with bedrooms that are only 175 sq feet. This is not accessible to a wheelchair, why should it be acceptable? We likewise do not believe that having a ceiling height at an average of 7 feet is accessible to chair lifts and other assistive devices nor is safe in the event of a fire. Ceiling height should be no less than 8 feet, throughout the 250 square feet of living space. If

there is a dormer or other low ceiling area in a portion of the living unit that does not get counted towards the living space, that would be permissible. With regard to shared rooms, it is not appropriate to require roommates to share dresser drawers, lamps, and night tables. This is supposed to be a home-like setting where one resident can continue to read despite their roommate having chosen to go to sleep. Residents need privacy and autonomy and the dignity of their own storage space. Not even a college student is required to share dresser drawers with a roommate.

32) 2800.105 – Laundry. Personal laundry must be cleaned at least once a week, unless more frequently due to care needs. Laundry must be a part of the core benefit package a consumer gets with their price of admission.
33) 2800.106 – Swimming pools. If a facility has a pool or swimming pond, it must be fenced in and their must be lifeguards on duty during any hours that residents are permitted to swim.
34) 2800.108 - Firearms are permitted, whereas the prior draft would have prohibited firearms in an ALR.
35) 2800.109. Facilities are not required to accept service animals which provide critical support to persons with various disabilities.

FIRE SAFETY

Section 2800.121 through 2800.133

36) 2800.129 – Chimneys that are used must be regularly cleaned.
37) 2800.130 – Smoke Detectors need to be located throughout the facility and not just in living units.

RESIDENT HEALTH

Section 2800.141 through 2800.144

38) 2800.141 – Medical Evaluation – This must be done more frequently than annually. As a matter of course, these should be completed every 6 months, upon a change in condition, and 30 days after a discharge from a hospital.
39) 2800.142 – Assistance with health care and supplemental healthcare services – We find it unthinkable that the consumer could be made to forfeit choice of all doctors, specialists, psychiatrists, and supplemental healthcare providers by virtue of moving in to an assisted living facility. While we understand the facility should be able to have minimum expectations of any outside provider (such as: licensed, insured, willing to follow facility's operating rules/procedures), this goes far too far! While this section attempts to guide the facility's determination of who provides residents with care, it must more strongly prohibit facilities from interfering with access to providers whose services are paid for by Medicare, Medicaid, and private health and long term care insurance.

NUTRITION

Section 2800.161 through 2800.164

40) 2800.161 – Meal Planning. All meal planning should be done in consultation with a dietician and meal preparation should be done under the guidance of the same dietician.

TRANSPORTATION

Section 2800.171

41) An ALR must be required to transport or ensure transportation to medical and social appointments. If "coordinate" is meant to mean review and explain public transportation schedule that may get the consumer to the appointment or event but not necessarily at the appropriate time, which is not adequate to fulfill the obligation to ensure that consumers get transported to where they need to go. The ALR must ensure transportation and they must provide the transportation in a way that coordinates with the time the consumer needs to be at the place to which he/she is being transported.

MEDICATIONS

Section 2800.181 through 2800.191

42) We would like more details around how it is determined whether a resident is capable of self administering medications. We want to see a determination being made that the resident is able to use the medication as prescribed in the manner prescribed, for example, including but not limited to being capable of placing medication in own mouth and swallowing completely, applying topical medications and not disturbing the application site, properly placing drops in own eyes, correctly inhaling inhalants, and properly inhaling nasal therapies.

SAFE MANAGEMENT TECHNIQUES

Section 2800.201 through 2800.203

43) 2800.203 The proposed regulations do not use the bedrail provision from the PCH system and the Federal Government recommendations – what the proposed regulations have is less than PCHs and federal recommendations and needs to be revised.

SERVICES

Section 2900.220 through 2800.229

44) 2800.220 – Services – The regulations need to be clear 1) what are all the assisted living services that each facility must be equipped to provide and 2) what is the minimum core package of benefits that each consumer can expect to receive as part of their monthly fee. Each residence must provide a base core package of services that residents must purchase and can trust they will receive. We add several services to the list of "assisted living services" and we specifically recommend language for what should be contained in the base core package

of services, allowing, of course, for facilities to provide enhanced packages or ala carte extra services on top of the base core package.

45) We urge the Department to add a section right after services that speak to marketing of assisted living; the section must address such things like how facilities present the ability to age in place, to continue residence even when care needs change or money runs out.

46) 2800.225 – Assessments – Under the proposed regulations, assessments of individual resident needs are not required to be completed by the facility until after 15 days of residence. These are not required to be completed by a nurse, and are only required to be completed annually. It is imperative that these be completed prior to admission, by or with a nurse (at present the proposed regulations do not even demand that an assessor has to have any training in assessing care needs), and quarterly not annually as well as after a change in condition or hospitalization. The assessment section should also articulate areas the facility must be sure to identify

47) 2800.227 – Support Plans. Under the proposed regulations, support plans are not required to be completed by the facility until after 30 days of residence. These are only required to be completed annually or upon change in condition. It is imperative that these be completed prior to admission, by a nurse, and quarterly as well as after a change in condition or hospitalization.

48) 2800.228 – Discharge and Transfer. We have many concerns about the lack of protections for consumers in this section. There are no appeal rights and no appeal process. The ombudsmen are charged with doing a job they are not currently equipped or trained or funded to undertake. Many among us would also say that they are not authorized, under federal authorizing legislation, to take on the designed role. Consumers must be provided with a right to appeal, a process through which to challenged facility decisions, an ability to remain in the residence pending the outcome of an appeal, and faith in an independent panel to hear their appeals. Additionally, the grounds for discharge must be limited to those which are fair. We have provided specific language about these concerns.

49) 2800.229. There are still excludable conditions that draw black and white lines in areas where there realistically are some shades of gray. For example, why should a resident be DISCHARGED for developing stage 3 or 4 decubiti? Why not transfer to hospital and readmit when healed? A tenant would never be evicted from a rental apartment for having to go to a hospital for a couple weeks, especially if continuing to pay the rent. And yet, the regulations require a discharge in the event of stage 3 or 4 decubitus ulcers, unless the facility opts to request an exception from the state in order to retain the resident.

SPECIAL CARE UNITS

Section 2800.231 through 2800.239

50) 2800.231 – Admission – We believe this section needs to be stronger to ensure that consumers are fairly treated in the discussion and decision about whether they move to a special care unit. We provide specific language to make sure

that alternatives to moving are discussed and that appropriate family members and healthcare providers are involved in the discussion.

51) 2800.235 – Discharge – The section should not be different from the general section for resident discharge in 2800.228. This section would give consumers with cognitive impairments fewer protections than other consumers.

52) 2800.238 – Staffing – We do not think the state should continue to label consumers as mobile or immobile. We make specific staffing level recommendations in 2800.57 above and in our line-by-line recommendations. These should apply to consumers living in special care units as well.

RESIDENT RECORDS

Section 2800.251 through 2800.254

53) 2800.252 – Resident Record – The proposed regulations do not identify key items that should be retained in the resident's record to track needs and progress.

ENFORCEMENT

Section 2800.261 through 2800.270

54) We urge the Department to include a section 2800.260 on "dual licensure" and provide recommendations for when and how a facility could be dually licensed as assisted living and something else.

55) 2800.261 and .262 – Critical steps need to be taken to improve these provisions on plans of correction and the Department's expectations.

IV. Recommended Line-By-Line Changes to the Proposed Regulations:

Please see **Attachment A** for our "track changes" edited version of the proposed regulations. We provide these line-by-line recommended changes along with margin comments, throughout, explaining the importance of making the recommended changes.

We thank you for the opportunity to provide input into the inception of assisted living in Pennsylvania. Please call Alissa Halperin (215)435-3257 or e-mail her at ahalperin@phlp.org should you have any questions or need additional information.

Sincerely,

The Pennsylvania Assisted Living Consumer Alliance

PENNSYLVANIA
ASSISTED
LIVING
CONSUMER
ALLIANCE

Attachment A

to the Comments Submitted by the PA Assisted Living Consumer Alliance (PALCA)

www.paassistedlivingconsumeralliance.org

CHAPTER 2800. Assisted Living Residences

GENERAL PROVISIONS

Section.

GENERAL REQUIREMENTS

RESIDENT RIGHTS

STAFFING

2800.51. Criminal history checks.
2800.52. Staff hiring, retention and utilization.
2800.53. Qualifications and responsibilities of administrators.
2800.54. Qualifications for direct care staff persons.
2800.55. Portability of staff qualifications and training.
2800.56. Administrator staffing.
2800.57. Direct care staffing.
2800.58. Awake staff persons.
2800.59. Multiple buildings.
2800.60. Additional staffing based on the needs of the residents.
2800.61. Substitute personnel.
2800.62. List of staff persons.
2800.63. First aid, CPR and obstructed airway training.
2800.64. Administrator training and orientation.
2800.65. Direct care staff person training and orientation.
2800.66. Staff training plan.
2800.67. Training institution registration.
2800.68. Instructor approval.
2800.69. Additional dementia-specific training.

PHYSICAL SITE

2800.81. Physical accommodations and equipment.
2800.82. Poisons.
2800.83. Temperature.
2800.84. Heat sources.
2800.85. Sanitation.
2800.86. Ventilation.
2800.87. Lighting.
2800.88. Surfaces.
2800.89. Water.
2800.90. Communication system.
2800.91. Emergency telephone numbers.
2800.92. Windows and screens.
2800.93. Handrails and railings.
2800.94. Landings and stairs.
2800.95. Furniture and equipment.
2800.96. First aid kit.
2800.97. Elevators and stair glides.
2800.98. Indoor activity space.
2800.99. Recreation space.
2800.100. Exterior conditions.
2800.101. Resident living units.

2800.102. Bathrooms.
2800.103. Food service.
2800.104. Dining room.
2800.105. Laundry.
2800.106. Swimming areas.
2800.107. Emergency preparedness.
2800.108. Firearms and weapons.
2800.109. Pets.

FIRE SAFETY

2800.121. Unobstructed egress.
2800.122. Exits.
2800.123. Emergency evacuation.
2800.124. Notification of local fire officials.
2800.125. Flammable and combustible materials.
2800.126. Furnaces.
2800.127. Space heaters.
2800.128. Supplemental heating sources.
2800.129. Fireplaces.
2800.130. Smoke detectors and fire alarms.
2800.131. Fire extinguishers.
2800.132. Fire drills.
2800.133. Exit signs.

RESIDENT HEALTH

2800.141. Resident medical evaluation and health care.
2800.142. Assistance with health care and supplemental health care services.
2800.143. Emergency medical plan.
2800.144. Use of tobacco.

NUTRITION

2800.161. Nutritional adequacy.
2800.162. Meals.
2800.163. Personal hygiene for food service workers.
2800.164. Withholding or forcing of food prohibited.

TRANSPORTATION

2800.171. Transportation.

MEDICATIONS

2800.181. Self-administration.
2800.182. Medication administration.
2800.183. Storage and disposal of medications and medical supplies.
2800.184. Labeling of medications.
2800.185. Accountability of medication and controlled substances.
2800.186. Prescription medications.
2800.187. Medication records.
2800.188. Medication errors.
2800.189. Adverse reaction.
2800.190. Medication administration training.
2800.191. Resident education.

SAFE MANAGEMENT TECHNIQUES

2800.201. Safe management techniques.
2800.202. Prohibitions.
2800.203. Bedside rails.

SERVICES

2900.220 Assisted living residence services.
2800.221. Activities program.
2800.222. Community social services.
2800.223. Description of services.
2800.224. Preadmission screening.
2800.225. Initial and annual assessment.
2800.226. Mobility criteria.
2800.227. Development of the support plan.
2800.228. Transfer and discharge.
2800.229 Excludable conditions; Exceptions.

SPECIAL CARE UNITS

2800.231. Admission.
2800.232. Environmental protection.
2800.233. Doors, locks and alarms.
2800.234. Resident care.
2800.235. Discharge.
2800.236. Training.
2800.237. Program.

RESIDENT RECORDS

ENFORCEMENT

GENERAL PROVISIONS

§ 2800.1. Purpose.

(a) The purpose of this chapter is to protect the health, safety and well-being of assisted living residents.

(b) Assisted living residences are a significant long-term care alternative to allow individuals to age in place. Residents who live in assisted living residences that meet the requirements in this chapter will receive the assistance they need to age in place and develop and maintain maximum independence, self-determination, and personal choice.

§ 2800.2. Scope.

(a) This chapter applies to assisted living residence as defined in this chapter, and contains the minimum requirements that shall be met to obtain a license to operate an assisted living residence.

(b) This chapter does not apply to personal care homes, domiciliary care homes, independent living communities or commercial boarding residences.

§ 2800.3. Inspections and licenses.

(a) The Department will annually conduct at least one onsite unannounced inspection of each assisted living residence.

(b) Additional announced or unannounced inspections may be conducted at the Department's discretion.

(c) The Department may conduct an abbreviated annual licensure visit if the assisted living residence has established a history of exemplary compliance but only for as long as the residence remains in full compliance without any violations.

Comment: What is an abbreviated inspection? Shouldn't this be defined? How extensive are the abbreviated surveys? Are they extensive enough to catch problems?

(d) A license will be issued to the legal entity by the Department if, after an investigation by an authorized agent of the Department, the requirements for a license are met.

(e) The assisted living residence shall post the current license, a copy of the current license inspection summary issued by the Department, a copy of this chapter, any waivers that have been approved, and any complaints over the prior 18 months that have been founded and the right to request copies of these documents in a conspicuous and public place in the assisted living residence. Applicants or residents requesting written copies of these documents shall be provided them with no cost.

Deleted: and

§ 2800.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ADL—Activities of daily living—The term includes eating, drinking, ambulating, transferring in and out of a bed or chair, toileting, bladder and bowel management, personal hygiene, securing health care, managing health care, self-administering medication and proper turning and positioning in a bed or chair.

Abbreviated inspection -

Abuse—The occurrence of one or more of the following acts:

(i) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(ii) The deprivation by the assisted living residence or its staff persons of goods or services which are necessary to maintain physical or mental health.

Deleted: willful

(iii) Sexual harassment, rape or abuse, as defined in 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

(iv) Exploitation by an act or a course of conduct, including misrepresentation or failure to obtain informed consent which results in monetary, personal or other benefit, gain or profit for the perpetrator, or monetary or personal loss to the resident.

(v) Neglect of the resident, which results in physical harm, pain or mental anguish.

(vi) Abandonment or desertion by the assisted living residence or its staff persons.

Adult—An individual who is 18 years of age or older.

Ancillary staff person—An individual who provides services for the residents other than direct assistance with activities of daily living. Ancillary staff may include staff who do not provide direct care but who conduct assessment, care planning or care management activities, and who meet the direct care staff qualifications and training requirements. Ancillary staff may also include RNs, LPNs, Dieticians, or Skilled professionals who meet the requirements of their professional licensure and the direct care staff requirements, if they also provide direct assistance with activities of daily living. Other ancillary staff may include activities planners, housekeepers, cooking staff, or facilities staff.

Comment: This must be better spelled out because it impacts staff training and staffing levels.

Age in place or aging in place - Receiving care and services at a licensed assisted living residence to accommodate a resident's changing needs and preferences in order to allow the resident to remain in the assisted living residence over time despite progressing needs. Aging in place requires that a resident not be discharged for needing specific services unless the resident needs a healthcare service that the facility is not required to and does not provide and which the resident cannot, without reasonable assistance, secure from outside providers.

Comment: A clear standard must be articulated for what a consumer can actually expect aging in place to mean for her. This suggested language does it.

Area agency on aging - The local agency designated by the Department of Aging as defined in Section 2202-A of the Act of April 9, 1929 (P.L. 177, No. 175), known as the Administrative Code.

Assisted living residence or residence - Any premises in which food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding twenty-four hours for four or more adults who are not relatives of the operator, who require assisted living services which include such things as assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration and the facility is capable of providing or arranging for provision of assisted living services.

Assisted living residence administrator - An individual who is charged with the general administration of an assisted living residence, whether or not such individual has an ownership interest in the residence or his function and duties are shared with other individuals.

Assisted living services – Services that shall be available to residents in any Assisted Living residence including assistance with ADLs, assistance with IADLs, financial management, 24 hour supervision and monitoring, meals, housekeeping, laundry, activities and socialization, space and equipment for activities, medication administration, healthcare services, cognitive support services, supplemental health care services, hospice, and transportation to medical and social appointments.

Comment: Section 2800.220 lists the services but, there is no definition of assisted living services.

Assistive Technology – Any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities." Examples of assistive technology devices are wheelchairs; augmentative communication devices; hearing aids; other durable medical equipment, medical supplies, orthotics, and prosthetics; adapted telephones, and environmental controls.

Agent—An individual authorized by the Department to enter, visit, inspect or conduct an investigation of an assisted living residence.

Appropriate assessment agency—An organization serving adults who are older or adults with disabilities, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency.

Deleted: or an individual in an occupation maintaining contact with adults who are older and adults with disabilities, such as medicine, nursing or rehabilitative therapies

CAM—Complementary and alternative medications—Practices, substances and ideas used to prevent or treat illness or promote health and well-being outside the realm of modern conventional medicine. Alternative medicine is used alone or instead of conventional medicine. Complementary medicine is used along with or in addition to conventional medicine.

CPR—Cardiopulmonary resuscitation.

Cognitive support services - Services provided to an individual who has memory impairments and other cognitive problems which significantly interfere with his ability to carry out activities of daily living without assistance and who requires that supervision, monitoring and programming be available as needed by the resident up to 24 hours per day, seven days per week, in order to reside safely in the setting of his choice. The term includes assessment, health support services and a full range of dementia-capable activity programming and crisis management.

Commercial boarding residence—A type of residential living facility providing only food and shelter, or other services normally provided by a hotel, for payment, for individuals who require no services beyond food, shelter and other services usually found in hotel or apartment rental.

Complaint—A written or oral criticism, dispute or objection presented by or on behalf of a resident to the Department regarding the care, operations or management of an assisted living residence.

Day—Calendar day.

Dementia—A clinical syndrome characterized by a decline of long duration in mental function in an alert individual. Symptoms of dementia may include memory loss, personality change, chronic wandering and the loss or diminishing of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

Department—The Department of Public Welfare of the Commonwealth.

Designated person—An individual who may be chosen by the resident and documented in the resident's record, to be notified in case of an emergency, termination of service, assisted living residence closure or other situations as indicated by the resident or as required by this chapter. A designated person may be the resident's legal representative or an advocate.

Designee—A staff person who has completed the administrator training and satisfies the direct care staff qualifications and who is authorized in writing to act in the administrator's absence.

Comment: See our comments to 2800.56. This is a critical piece.

Direct care staff person—A staff person who directly assists residents with activities of daily living, and instrumental activities of daily living and provides services or is otherwise responsible for the health, safety and well-being of the residents.

Discharge - Termination of an individual's residency in an assisted living residence.

Emergency medical plan—A plan that ensures immediate and direct access to medical care and treatment for serious injury or illness, or both.

Exemplary compliance-Three consecutive years of deficiency-free inspections.

Financial management—

A personal care service requested or required by the resident in accordance with his support plan, which includes taking responsibility for or assisting with paying bills, budgeting, maintaining accurate records of income and disbursements, safekeeping funds, and making funds available to the resident upon request and for SSI recipients, preserving eligibility for SSI.

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(ii) The term does not include solely storing funds in a safe place as a convenience for a resident.

Fire safety expert—A member of a local fire department, fire protection engineer, Commonwealth-certified fire protection instructor, college instructor in fire science, county or Commonwealth fire school, volunteer trained and certified by a county or Commonwealth fire school, an insurance company loss control representative, Department of Labor and Industry building code inspector or construction code official.

Health care or human services field – Includes the following:

(i) Child welfare services.
(ii) Adult Services
(iii) Older adult services.
(iv) Mental health/mental retardation services.
(v) Drug and alcohol services.
(vi) Services for individuals with disabilities.
(vii) Medicine.
(viii) Nursing.
(ix) Rehabilitative services.
(x) Any other human service or health-related occupation that maintains contact with adults who are older or adults and children with disabilities.

Comment: We object to this "kitchen sink" provision tacked onto the definition of Health care or human services field as it completely deteriorates from the import of having experience in a human services field to define human services field as including any occupation that involves contact with people, which is most all occupations. For this reason, we urge the insertion of "health-related" as indicated.

Comment: We think it essential that the state define right into the regulations what it means by HCBS waiver and that it only means the assisted living waiver that is due to be approved by CMS. A fundamental guiding principle of the disabilities advocacy community is that waiver slots must be directed to keeping consumers in their own homes, which is where the overwhelming majority of consumers wish to be, rather than being used to finance congregate care settings. All of the undersigned groups therefore feel very strongly that it is unacceptable for slots from existing waivers to be diverted from home-based settings to this new congregate care setting. Any waiver slots used for assisted living must be those approved under a new assisted living waiver which DPW has announced that it plans to seek from CMS. We think it is essential that this commitment be embodied in the regulations.

HCBS Waiver – An Assisted Living Waiver as may be granted by CMS to permit Medicaid funding for services specifically for eligible individuals who reside in an Assisted Living facility. With the exception of programs available to fund consumers with brain injury, no other waivers may be utilized in assisted living residences.

Housekeeping—The cleaning of the living unit and common areas. Cleaning of the living unit includes at least weekly dusting, sweeping, vacuuming, mopping,

emptying trash, and cleaning of bathroom, counter space (if applicable), refrigerator and microwave. Housekeeping for common areas means keeping them in clean sanitary condition.

Comment: We are pleased with this definition and believe it must be included in a core benefit package that all consumers must be able to expect to receive upon admission.

IADL—Instrumental activities of daily living—The term includes the following activities when done on behalf of a resident:

(i) Doing laundry.

(ii) Shopping.

(iii) Securing and using transportation.

(iv) Financial management.

(v) Using a telephone.

(vi) Making and keeping appointments.

(vii) Caring for personal possessions.

(viii) Writing correspondence.

(ix) Engaging in social and leisure activities.

(x) Using a prosthetic device.

(xi) Obtaining and keeping clean, seasonal clothing.

(XII) Housekeeping.

Informed consent agreement - A formal, mutually agreed upon, written agreement which:

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(i) Results after thorough discussion among the assisted living residence staff, the resident and any individuals the resident wants to be involved.

(ii) Documents the resident's choice to accept or refuse a service offered by or at the residence.

Deleted: (ii) Identifies how to balance the assisted living residence's responsibilities to the individuals it serves with a resident's choices and capabilities with the possibility that those choices will place the resident or other residents at risk of harm.¶

Legal entity—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of an assisted living residence.

Legal representative—An individual who holds a power of attorney, a court-appointed guardian or other person authorized to act for the resident.

License—A certificate of compliance issued by the Department permitting the operation of an assisted living residence , at a given location, for a specific period of time, for a specified capacity, according to Chapter 20 (relating to licensure or approval of facilities and agencies).

Licensee- A person legally responsible for the operations of an assisted living residence duly licensed in accordance with this chapter.

Living Unit – The resident living space that cannot be shared with more than one person except upon the request of the resident, that includes no less than 250 square feet of usable space in the living unit, in addition to the space occupied by the bathroom, kitchen area, closets, and storage spaces. All living units must have lockable doors. Any double occupancy units shall have separate bedrooms with lockable doors to the living space and a lockable bathroom door. All units must be accessible to potential residents who use wheelchairs.

Long-term care ombudsman—A representative of the Office of the State Long-Term Care Ombudsman in the Department of Aging who investigates and seeks to resolve complaints made by or on behalf of individuals who are 60 years of age or older who are consumers of long-term care services. These complaints may relate to action, inaction or decisions of providers of long-term care services, of public agencies, of social service agencies or their representatives, which may adversely affect the health, safety, well-being or rights of these consumers.

see comment

Neglect—The failure of an assisted living residence or its staff persons to provide goods or services essential for the maintenance of a resident's physical or mental health. Neglect includes the failure or omission to provide the care, supervision and services necessary to maintain the resident's health, safety and well-being, including personal care services, food, clothing, medicine, shelter, supervision and medical services. Neglect may be repeated conduct or a single incident.

NFCE

OTC—Over the counter or nonprescription.

Personal care services—Assistance or supervision in ADL or IADL, or both.

Premises—The grounds and buildings on the same grounds, used for providing

Comment: We object to the 175 square foot proposal of the administration. Facilities must meet the 250 square foot requirement for living units. Any facility under 250 square feet need not apply for an assisted living license.

Comment: We recommend wholesale removal of the term mobile resident. All facilities must have adequate staff to meet the unplanned and unscheduled needs of their resident population, including evacuation needs, plus adequate staff to meet the scheduled, contracted for care needs.

Deleted: *Mobile resident*— ¶
(i) A resident who is physically and mentally capable of vacating the [personal care home] assisted living residence on the resident's own power or with limited physical or oral assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path. ¶
(A) Physical assistance means assistance in getting to one's feet or into a wheelchair, walker or prosthetic device. ¶
(B) Oral assistance means giving instructions to assist the resident in vacating the [personal care home] assisted living residence. ¶
(ii) The term includes an individual who is able to effectively operate an ambulation device required for moving from one place to another, and able to understand and carry out instructions for vacating the [personal care home] assisted living residence.

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Deleted: that the [personal care home] assisted living residence has voluntarily, or by contract, agreed to provide and that are

Comment: NFCE must be defined or the regulations must cross-reference some official definition/standard.

services required by residents.

Protective services unit—The local area agency on aging unit designated by the Department of Aging to investigate allegations of abuse of adults who are 60 years of age or older and assess the need for protective interventions.

Referral agent—An agency or individual who arranges for or assists, or both, with placement of a resident into an assisted living residence.

Relative—A spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

Resident—An individual who resides in an assisted living residence, and who may require personal care services or supplemental health care services, or both.

Deleted: , unrelated to the legal entity,

See Comment—

Comment: We recommend wholesale removal of the term resident with mobility needs. All facilities must have adequate staff to meet the unplanned and unscheduled needs of their resident population, including evacuation needs, plus adequate staff to meet the scheduled, contracted for care needs.

Restraint—A manual, chemical or mechanical device used to limit or restrict the movement or normal function of an individual or a portion of the individual's body.

SSI—Supplemental Security Income.

Secretary—The Secretary of the Department.

Deleted: *Resident with mobility needs*—An individual who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit a building.

Special care designation - A licensed assisted living residence or a distinct part of the residence which is specifically designated by the Department as capable of providing cognitive support services to residents with severe cognitive impairments, including dementia or Alzheimer's disease, in the least restrictive manner to ensure the safety of the resident and others in the residence while maintaining the resident's ability to age in place.

Staff person—An individual who works for the assisted living residence for compensation either on payroll or under contract.

Supplemental health care services - The provision by an assisted living residence of any type of health care service that allows residents to age in place, either directly or through contractors, subcontractors, agents or designated providers, except for any service that is required by law to be provided by a health care facility pursuant to the act of July 19, 1979 (P.L. 130, No. 48), known as the "Health Care Facilities Act." Supplemental health care services include such things as: occupational therapy, physical therapy, speech therapy, home health care, nursing care, and durable medical equipment.

Support plan—A written document that describes for each resident the resident's care, service or treatment needs based on the assessment of the resident, and when the care, service or treatment will be provided, and by whom.

Third Party Provider - Any contractor, subcontractor, agents or designated providers under contract with the resident or residence to provide services to any resident.

Transfer - Moving a resident from one living unit to another living unit within the assisted living residence or to a temporary -- placement outside the assisted living residence.

Volunteer—

(i) An individual who, of his own free will, and without monetary compensation, provides direct care services for residents in the assisted living residence.

(ii) The term does not include visitors or individuals who provide nondirect services or entertainment on an occasional basis.

§ 2800.5. Access.

(a) The administrator or a designee shall provide, upon request and as required by applicable law, immediate access to the residence, the residents and records to:

(1) Agents of the Department.

(2) Representatives of the area agency on aging including protective services staff.

(3) Representatives of the Long-Term Care Ombudsman Program.

(4) Representatives of the protection and advocacy system for individuals with disabilities designated under the Protection and Advocacy for Individual Rights Program of the Vocational Rehabilitation and Rehabilitation Services Act (29 U.S.C.A. § 794e), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C.A. §§ 10801-10851) and the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15041-15043).

(5) The resident's attorney or legal representative, or both, if requested by the resident.

(6) The resident and family members.

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Comment: Any non-temporary transfer is a DISCHARGE.

considered by the Dept. They are good and must be reinserted.

(7) Law Enforcement.
(8) Any state or local governing construction/ building oversight agencies

Comment: These are critical. Perhaps they seem too obvious but, we don't want there to be any administrator not trained to know they must permit access to law enforcement and building code officials.

(b) The administrator or a designee shall permit community service organizations and representatives of legal services programs to have access to the residence during visitation hours or by appointment for the purpose of assisting or informing the residents of the availability of services and assistance. A resident or a resident's designated person if so authorized may decline the services of the community service organization or the legal service program.

GENERAL REQUIREMENTS

§ 2800.11. Procedural requirements for licensure or approval of assisted living residences.

(a) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to assisted living residences.

(b) Before a residence is initially licensed and permitted to open, operate or admit residents, it will be inspected by the Department and found to be in compliance with applicable laws and regulations, including this chapter. The Department will reinspect newly licensed residences within 3 months of the date of initial licensure.

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(c) An existing personal care home or other licensed care facility seeking to transition to licensure as an assisted living residence must:

a. Meet all requirements of the Assisted Living regulations including those for staffing, staff training and physical site.
b. Have full inspection.
c. At the time of application, be in complete compliance with the regulations governing the facility type they were/are.
d. At the time of application, have an exemplary compliance history.

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Comment: We recommend this language here to answer the unanswered question as to how a PCH or other facility could become an ALR.

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(c) After the Department determines that a residence meets the requirements for a license, the Department's issuance or renewal of a license to a residence is contingent upon receipt by the Department of the following fees based on the number of beds in the residence, as follows

(1) A $500 license application or renewal fee.

(2) A $105 per bed fee that may be adjusted upward by the Department annually at a rate not to exceed the consumer price index. The Department shall publish a notice in the Pennsylvania Bulletin when the per bed fee is increased.

(d) No person, organization or program shall use the term "assisted living" in any name or written material, except as a licensee in accordance with this chapter. Corporate entities which own subsidiaries that are licensed as assisted living residences may not use the term "assisted living" in any written material to market programs that are not licensed in accordance with this chapter.

§ 2800.12. Appeals.

(A) *General rule. Subject to the provisions of subsection* (B), *appeals related to* the licensure or approval of the assisted living residence shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure (GRAPP)).

(B) Exception. The 10-day appeal period provided in 1 Pa. Code § 35.20 (relating to appeals from the actions of the staff) of the GRAPP is superseded by a 30-day appeal period.

§ 2800.13. Maximum capacity.

(a) The maximum capacity is the total number of residents who are permitted to reside in the residence at any time. A request to increase the capacity shall be submitted to the Department and other applicable authorities and approved prior to the admission of additional residents. The maximum capacity is limited by physical plant space and other applicable laws and regulations.

(b) The maximum capacity specified on the license may not be exceeded.

§ 2800.14. Fire safety approval.

(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101-7210.1103) is required.

(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction. The Department will immediately issue a provisional license to the facility and issue a plan of correction that must be satisfied within 15 days or the Department will begin an emergency relocation of all residents.

Comment: This enforcement tool needs to be included and providers need to know of the repercussions upfront for losing their fire safety approval.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued or if the building will be serving a new purpose or new or different population than was previously served, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall

be submitted to the Department within 15 days of the completion of the renovation or alteration.

(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.

(E) Fire safety approval must be renewed at least every 3 years or more frequently if requested by the Department.

§ 2800.15. Abuse reporting covered by law.

(a) The residence shall immediately report suspected abuse of a resident served in the residence in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.701-10225.707) and 6 Pa. Code § 15.21-15.27 (relating to reporting suspected abuse) and comply with the requirements regarding restrictions on staff persons.

(b) If there is an allegation of abuse of a resident involving a residence's staff person, the residence shall immediately develop and implement a plan of supervision or suspend the staff person involved in the alleged incident.

(c) The residence shall immediately submit to the Department's assisted living residence office a plan of supervision or notice of suspension of the affected staff person.

(d) The residence shall immediately notify the resident and the resident's designated person of a report of suspected abuse or neglect involving the resident.

§ 2800.16. Reportable incidents and conditions.

(a) A reportable incident or condition includes the following:

(1) The death of a resident.

(2) A physical act by a resident to commit suicide.

(3) An injury, illness or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

(4) A violation of a resident's rights in §§ 2800.41-2800.44 (relating to resident rights).

(5) An unexplained absence of a resident for 24 hours or more, or when the support plan so provides, a period of less than 24 hours, or an absence of a resident from a special care unit.

(6) Misuse of a resident's funds by the residence's staff persons or legal entity.

(7) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions).

(8) Food poisoning of residents.

(9) A physical or sexual assault by or against a resident.

(10) Fire or structural damage to the residence.

(11) An incident requiring the services of an emergency management agency, fire department or law enforcement agency, except for false alarms.

(12) A complaint of resident abuse, suspected resident abuse or referral of a complaint of resident abuse to a local authority.

(13) A prescription medication error as defined in § 2800.188 (relating to medication errors.)

(14) An emergency in which the procedures under § 2800.107 (relating to emergency preparedness) are implemented.

(15) An unscheduled closure of the residence or the relocation of the residents.

(16) Bankruptcy filed by the legal entity.

(17) A criminal conviction against the legal entity, administrator or staff that is subsequent to the reporting on the criminal history checks under § 2800.51 (relating to criminal history checks).

(18) A termination notice from a utility.

(19) A violation of the health and safety laws under § 2800.18 (relating to applicable laws).

(20) An absence of staff or inadequate staff to supervise residents.

(b) The residence shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents and conditions.

(c) The residence shall report the incident or condition to the Department's assisted living residence office or the assisted living residence complaint hotline within 24 hours in a manner designated by the Department. Abuse reporting shall also follow the guidelines in § 2800.15 (relating to abuse reporting covered by law).

(d) The residence shall submit a final report, on a form prescribed by the Department, to the Department's assisted living residence office immediately following the conclusion of the investigation. While the Department may treat this as a complaint warranting a complaint investigation, the licensee must prepare to present full documentation of the incident and the incident investigation process and results at the next licensing inspection.

Comment: This is critical for licensing office to follow-up during inspections.

(e) If the residence's final report validates the occurrence of the alleged incident or condition, the affected resident and other residents who could potentially be harmed or his designated person shall also be informed immediately following the conclusion of the investigation.

(f) The residence shall keep a copy of the report of the reportable incident or condition.

(g) The Department will annually track and make public the number and nature of reportable incident.

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Comment: These are important factors the public should get to know.

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§ 2800.17. Confidentiality of records.

Resident records shall be confidential, and, except in emergencies, may not be accessible to anyone other than the resident, the resident's designated person if any, staff persons for the purpose of providing services to the resident, outside providers of healthcare, supplemental healthcare or other services, agents of the Department and the long-term care ombudsman without the written consent of the resident, an individual holding the resident's power of attorney for health care or health care proxy or a resident's designated person, or if a court orders disclosure.

§ 2800.18. Applicable laws.

A residence shall comply with applicable Federal, State and local laws, ordinances and regulations. All applicants for assisted living licensure shall comply with such laws, ordinances, and regulations as "new construction" or

"new facilities" to ensure the most current application of fire safety, accessibility, life safety, and similar standards.

Comment: This is critical to correct for OLD buildings that may have been grandfathered under construction, fire safety, or ADA rules and thus are not the most safe for the acuity level of assisted living.

§ 2800.19. Waivers.

In order to be granted licensure status as an Assisted Living Facility, a licensee must demonstrate compliance with all requirements of this chapter. After initial licensure approval as an Assisted Living facility in full compliance with all requirements of this chapter, a licensee may request waiver of certain provisions as follows.

Comment: Existing PCHs should not be given waivers of regulations so that they can "become" ALRs. New facilities should not be granted waivers either.

(a) (a) Waiver Request A residence may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request must be on a form prescribed by the Department. The request must state

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(1) the purpose of the waiver
(2) the requested duration of the waiver
(3) the scope of resident impact by the waiver and
(4) how the waiver meets the standard in 2800.19(c)

Comment: Having a uniform requirement for the process will help ensure the process if followed fairly.

(b) Public Process for Waiver requests. Upon receipt of a waiver request, the Department shall publish the request in the PA Bulletin with 30 days time for public comment prior to final review and decision on the requested waiver.

Comment: Many other state agencies – NHs, Hospitals, etc. – require licensee requests for exceptions to their rules to be published for public input....

(c) Standard for Waiver Approval. The Secretary, or the Deputy Secretary, may grant a waiver of a specific requirement of this chapter if the following conditions are met:

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(1) There is no jeopardy to the residents.

(2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the residents.

(3) Residents will benefit from the waiver of the requirement.

(b) The scope, definitions, applicability or residents' rights, assisted living service delivery requirements, special care designation requirements, disclosure requirements, complaint rights or procedures, notice requirements to residents or family, contract requirements, reporting requirements, fire safety requirements, assessment, support plan or service delivery requirements under this chapter or any other state regulation or statute shall not be waived.

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(c) At least 30 days prior to the submission of the completed written waiver request to the Department, the residence shall provide a copy of the completed written waiver request to the affected resident and designated person to provide

the opportunity to submit comments to the Department. The residence shall provide the affected resident and designated person with the name, address and telephone number of the Department staff person to submit comments.

(d) The residence shall discuss the waiver request with the affected resident and designated person upon the request of the resident or designated person.

(e) The residence shall notify the affected resident and designated person of the approval or denial of the waiver. All individuals applying for residency or inquiring regarding residency shall be provided with a disclosure as to any waivers pending or approved. A copy of the waiver request and the Department's written decision shall be posted in a conspicuous and public place within the residence.

(f) Waiver shall only be approved for fixed durations not to exceed 12 months.The Department will review waivers annually to determine compliance with the conditions required by the waiver. The Department shall revoke the waiver if the conditions required by the waiver are not met.

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§ 2800.20. Financial management.

(a) A resident may manage his personal finances unless he has a guardian of his estate.

(b) If the residence provides assistance with financial management or holds resident funds, the following requirements apply:

(1) The residence shall keep a record of financial transactions with the resident, including the dates, amounts of deposits, amounts of withdrawals and the current balance.

(2) Resident funds shall be disbursed during normal business hours within 24 hours of the resident's request.

(3) The residence shall obtain a written receipt from the resident for cash disbursements at the time of disbursement.

(4) Resident funds and property shall only be used for the resident's benefit.

(5) Commingling of resident funds and residence funds is prohibited.

(6) If a residence is holding more than $200 for a resident for more than 2 consecutive months, the administrator shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.

(7) The legal entity, administrator and staff persons of the residence are prohibited from being assigned a power of attorney or guardianship of a resident or a resident's estate.

(8) The administrator may not be appointed to serve as representative payee unless the resident, family, and legal representative are first given a standardized disclosure form provided by the Department which explains:

a. what Representative Payee means,
b. that other agencies may be available to provide representative payee service for little or no fee (e.g., mental health associations, Associations of Retarded Citizens (ARC), etc.),
c. that representative payee is voluntary,
d. that the resident can terminate the representative payee relationship at any time, and
e. how to terminate the relationship.

No facility shall make the administrator (or any other staff) serving as the resident's representative payee a condition for admission to the facility.

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Comment: This must be added. We have seen too many financially abusive situations where the resident is too beholden to the provider because they serve as rep payee. And yet, the provider doesn't always fulfill their federal obligations as rep payee.

(9) The residence shall give the resident and the resident's designated person, an itemized account of financial transactions made on the resident's behalf on a quarterly basis.

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(10) A copy of the itemized account shall be kept in the resident's record.

(11) The residence shall provide the resident the opportunity to review his own financial record upon request during normal business hours.

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§ 2800.21. Offsite services.

If services or activities are provided by the residence at a location other than the premises, the residence shall ensure that the residents' support plans are followed and that resident health and safety needs are met. This may include personal assistant attending offsite activities with resident and travelling on arranged transportation with resident.

§ 2800.22. Application and Admission.

(A) The following admission documents shall be completed for each resident:

(1) Preadmission screening completed prior to admission on a form specified by the Department.

(2) Medical evaluation completed 60 days prior to admission on a form specified by the Department. In the event of an urgent admission upon

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discharge from a hospital, the medical evaluation may be completed up to 72 hours after admission.

(3) Assisted living residence assessment completed prior to admission on a form specified by the Department. In the event of an urgent admission upon discharge from a hospital, the assessment may be completed up to 72 hours after admission.

(4) Support plan developed prior to and implemented within 7 days after admission. In the event of an urgent admission upon discharge from a hospital, the support plan may be developed up to 14 days after admission and implemented up to 21 days after admission.

(5) Resident-residence contract completed prior to admission or within 24 hours after admission. The contract must reference the care needs that have been assessed and will be provided as articulated in the support plan.

(6) Medical Evaluations, Resident Assessments, and Support Plans may be subsequently updated as needed but no less frequently than required in 2800.225-227.

(B) Upon application for residency and prior to admission to the residence, the licensee must provide each potential resident or potential resident's designated person with written disclosures that include:

(1) A list of the nonwaivable resident rights.

(2) A copy of the agreement the resident will be asked to sign.

(3) A copy of the residence rules and resident handbook.

(4) Specific information about:

(i) What services are offered by the residence including which services are provided by the facility and which services the resident can obtain from outside providers

(ii) The cost of those services to the potential resident.

(iii) The contact information for the department.

(iv) The licensing status of the most recent inspection reports and instructions for access to the Department's public website for information on the residence's most recent inspection reports.

(v) Disclosure of any waivers that have been approved for the residence and are still in effect.

Comment: These are the essential timeframe changes the Dept must make to the assessment and support plan timeframes to ensure that residents are not completely disadvantaged in the admission and contracting processes.

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b. Written decision of admission. Following application for admission, the licensee will provide each applicant with a written admission decision stating the decision and the basis for the decision.

§ 2800.23. Activities.

(a) A residence shall provide each resident with assistance with ADLs as indicated in the resident's assessment and support plan.

(b) A residence shall provide each resident with assistance with IADLs as indicated in the resident's assessment and support plan.

§ 2800.24. Personal hygiene.

A residence shall provide the resident with assistance with personal hygiene as indicated in the resident's assessment and support plan. Personal hygiene includes one or more of the following:

(1) Bathing.

(2) Oral hygiene.

(3) Hair grooming and shampooing.

(4) Dressing, undressing and care of clothes.

(5) Shaving.

(6) Nail care.

(7) Foot care.

(8) Skin care.

§ 2800.25. Resident-residence contract.

(a) Prior to admission, or within 24 hours after admission, a written resident-residence contract between the resident and the residence shall be in place. The administrator or a designee shall discuss and complete this contract with the resident, the resident's designated person, and attorney, where one is identified. Once final, the administrator or designee shall review its contents with the resident and the resident's designated person and attorney if any, prior to signature.

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(b) The contract shall be signed by the administrator or a designee and the resident and the payer, if different from the resident. The residence may not require a cosigner on the agreement. The contract shall run month-to-month with automatic renewal unless terminated by the resident with 14 days' notice or by the residence with 30 days' notice in accordance with § 2800.228 (relating to transfer and discharge).

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Comment: The Nursing Home Reform Law prohibits this in Nursing homes. It is inappropriate for a family member to be forced to be on the hook for the cost of care.

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(c) At a minimum, the contract must specify the following:

(1) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid. A personal needs allowance is the amount that a resident shall be permitted to keep for his personal use.

(2) A rental amount.

(3) An articulation that the consumer is purchasing the core benefit package as well as any a la carte or enchanced options along with the price for these. The core benefit package includes:

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(i) Assistance with unscheduled adls and supplemental health care services.

(ii) Three meals a day and snacks as provided in § 2800.161 (relating to nutritional adequacy).

(iii) Laundry services as provided in § 2800.105 (relating to laundry).

(iv) Housekeeping as provided in § 2800.4 (relating to definitions).

(v) Transportation in accordance with § 2800.171 (relating to transportation)

(vi) Medication managment or administration as provided in §§ 2800.181 and 2800.182 (relating to self-administration and medication administration).

(vii) Daily planned social activities and socialization as provided in § 2800.221 (relating to activities program).

(viii) 24 hour a day monitoring

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(3) An explanation of the annual assessment, medical evaluation and support plan requirements and procedures, which shall be followed if either the assessment or the medical evaluation indicates the need of another and more appropriate level of care.

(4) The party responsible for payment.

(5) The method for payment of charges for long distance telephone calls.

(6) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.

(7) The financial arrangements if assistance with financial management is to be provided.

(8) The residence's rules related to residence services, including whether the residence permits smoking.

(9) The conditions under which the resident-residence contract may be terminated including residence closure as specified in § 2800.228 (relating to transfer and discharge).

(10) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the residence's request to change the contract price.

Comment: The regulations must make clear that the facility has no right to unilaterally change an existing contract. They could terminated and negotiate a new one but not unilaterally modify one that is already agreed to and in place.

(11) A list of personal care services or supplemental health care services, or both, to be provided to the resident based on the resident's support plan, a list of the actual itemized rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made.

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(12) Charges to the resident for holding a bed during hospitalization or other extended absence from the residence.

(13) Written information on the resident's rights and complaint procedures as specified in § 2800.41 (relating to notification of rights and complaint procedures).

(d) A residence may not seek or accept payments from a resident of any funds received by the resident under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1-4751-12). If the residence will be assisting the resident to manage a portion of the rent rebate, the requirements of § 2800.20 (relating to financial management) may apply. There may be no charge for filling out this paperwork.

Comment: The personal care home regulations contain a nearly identical provision which prohibits homes from keeping more than half of a resident's rent rebate, regardless of whether the resident receives SSI. We are very surprised and disappointed if these proposed regulations intend to extend this protection only to non-SSI recipients, and we wonder whether this was in fact an error. SSI recipients are poorer than other residents and are equally, if not more, in need of this protection. Moreover, since the assisted living regulations are required to meet or exceed the personal care home regulations requirements, we do not see how the proposed regulations can eliminate this crucial financial protection for the poorest residents."

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(e) The resident, or a designated person, has the right to rescind the contract for up to 72 hours after the initial dated signature of the contract or upon receipt of the initial support plan. The resident shall pay only for the services received. Rescission of the contract must be in writing addressed to the residence. This right to rescission must be listed prominently in the contract.

(f) The residence may not require or permit a resident to assign assets to the residence in return for a life care contract/guarantee. A life care contract/guarantee is an resident-residence contract between the legal entity and the resident that the legal entity will provide care to the resident for the duration of the resident's life. Continuing care communities that have obtained a Certificate of Authority from the Insurance Department and provide a copy of the certificate to the Department are exempt from this requirement.

(g) A copy of the signed admission contract shall be given to the resident and a copy shall be filed in the resident's record.

(h) The service needs addressed in the resident's support plan shall be available to the resident every day of the year.

(I) The assisted living services included in the package the individual is purchasing shall be the contract price. Supplemental health care services must be packaged, contracted and priced separately from the resident-residence contract. Any other services other than supplemental health care services must be priced separately from the service package in the resident-residence contract.

§ 2800.26. Quality management.

(a) The residence shall establish and implement a quality management plan.

(b) The quality management plan shall address the periodic review and evaluation of the following, to assure compliance with law and with the relevant standard of care::

(1) The reportable incident and condition reporting procedures.

(2) Complaint procedures.

(3) Staff person training.

(4) Licensing violations and plans of correction, if applicable.

(5) Resident or family councils, or both, if applicable.

(c) The quality management plan shall include the development and implementation of measures to address the areas needing improvement that are identified during the periodic review and evaluation.

§ 2800.27. SSI recipients.

(a) If a resident is eligible for Supplemental Security Income (SSI) benefits, the residence's charges for actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current personal needs allowance.

(b) The administrator or staff persons may not include funds received as lump sum awards, gifts or inheritances, gains from the sale of property, or retroactive government benefits when calculating payment of rent for an SSI recipient or for a resident eligible for SSI benefits.

(c) The administrator or staff persons may not seek or accept any payments from funds received as retroactive awards of SSI benefits, but may seek and accept such payments only to the extent that the retroactive awards cover periods of time during which the resident actually resided in the residence and for which full payment has not been received.

(d) The administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

(1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.

(2) Laundry services for personal laundry, bed linens and towels, but not including dry cleaning or other specialized services.

(3) Personal care services.

(e) Neither SSI recipients nor third-parties acting on behalf of SSI recipients may be charged for room, board, or services required to be provided by the facility outside of the SSI plus SSI Supplement contract amount.

(f) HCBS waiver consumer residents may be charged for room and board but shall not be charged for services of any kind.

§ 2800.28. Refunds.

(a) If, after the residence gives notice of transfer or discharge in accordance with § 2800.228(b) (relating to transfer and discharge), and the resident moves out of the residence before the 30 days are over, the residence shall give the resident a refund equal to the previously paid charges for rent, personal care services and supplemental health care services, if applicable, services for the remainder of the 30-day time period. The refund shall be issued on the date of

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Comment: We like the way this has been reworded from what we have in the PCH regulations.

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Deleted: (e) Third-party payments made on behalf of an SSI recipient and paid directly to the residence are permitted. These payments may not be used for food, clothing or shelter because to do so would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services for the resident that are not food, clothing or shelter.

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transfer or discharge, unless advance notice was not provided by the resident, in which case the facility should have 7 days. The resident's personal needs allowance shall be refunded within 2 business days of transfer or discharge.

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(b) After a resident gives notice of the intent to leave in accordance with § 2800.25(b) (relating to resident-residence contract) and if the resident moves out of the residence before the expiration of the required 14 days, the resident owes the residence the charges for rent, personal care services and supplemental health care services, or both for the entire length of the 14 day time period for which payment has not been made.

(c) If no notice is required, as set forth in subsection (d), the resident shall be required to pay only for the nights spent in the residence.

(d) If the residence does not require a written notice prior to a resident's departure, the administrator shall refund the remainder of previously paid charges to the resident within 7 days of the date the resident moved from the residence.

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(e) In the event of the death of a resident under 60 years of age, the administrator shall refund the remainder of previously paid charges to the resident's estate within 30 days from the date the living unit is cleared of the resident's personal property. In the event of a death of a resident 60 years of age and older, the residence shall provide a refund in accordance with the Elder Care Payment Restitution Act (35 P. S. §§ 10226.101-10226.107). The residence shall keep documentation of the refund in the resident's record.

(f) Within 30 days of either the termination of service by the residence or the resident's leaving the residence , the resident shall receive an itemized written account of the resident's funds, including notification of funds still owed the residence by the resident or any further refund owed the resident by the residence. Such further refunds shall be made within 30 days of discharge.

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(g) Upon discharge of the resident or transfer of the resident, the administrator shall return the resident's funds being managed or stored by the residence to the resident within 2 business days from the date the living unit is cleared of the resident's personal property.

§ 2800.29. Hospice care and services.

Hospice care and services that are licensed by the Department of Health as a hospice may be provided in an assisted living residence.

§ 2800.30. Informed consent process.

(a) Initiation of process.

(1) When a licensee determines that a resident has been placed at imminent risk of substantial harm by the resident's wish to exercise independence in directing the manner in which he or she receives care, the licensee may initiate an informed consent process to address the identified risk and to reach a mutually agreed-upon plan of action with the resident or, as applicable, the resident's designated person. The initiation of an informed consent process does not guarantee that an informed consent agreement, which is agreeable to all parties, will be reached and executed.

(2) When a resident wishes to exercise independence in directing the manner in which they receive care, the resident may initiate an informed consent process to modify the support plan and attempt to reach a mutually agreed upon plan of action with the licensee. A cognitively impaired resident shall be eligible for an informed consent agreement only if the resident's guardian or agent under a power of attorney is included in the negotiation of the informed consent agreement and executes the agreement.

(3) The informed consent process must follow written policies and procedures developed by the licensee, which must be consistent with this section and available for review by the Department.

(b) Notification.

(1) When the licensee chooses to initiate an informed consent process the provider shall do so by giving written and oral notice to the resident and, if applicable, the resident's representative, of the risk threatened by the resident's wish to exercise independence in directing the manner in which he or she receives care . The notice shall include a request to meet to discuss the issue, a list of any care planning alternatives, and an explanation of the potential need for an informed consent agreement. The notice shall include a statement that there is an independent review committee, created by the Department, that is available to review and protect the resident's interests in an informed consent process and shall also include the contact information for the independent review committee. For cognitively impaired residents, the independent review committee shall be automatically notified by the licensee. Notification shall be documented in the resident's file by the licensee.

(2) When a resident or, if applicable, the resident's legal representative, chooses to initiate an informed consent negotiation, the resident or the resident's legal representative shall do so by notifying the licensee in writing or orally. Notification shall be documented in the resident's file by the licensee.

(c) Independent Review Committee. The Department shall create and make available to all residents an independent review committee to review and

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Comment: It is essential that an outside entity be available to assisted consumers in understanding the impact of waiving their rights to receive certain care or protections.

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evaluate the consumer's interests when faced with an informed consent agreement. The Independent Review Committee shall provide guidance on an "informed consent" agreement, what it means, how it works, what to consider, and whether it is fair and appropriate. Every informed consent agreement must disclose the availability of the independent review committee to assist and advise the resident.

(d) Resident's involvement. A resident that is not cognitively impaired shall be entitled, but is not required, to involve his legal representative and physician, and any other individual the resident wants involved, to participate or assist in the discussion of the resident's wish to exercise independence and, if necessary in developing a satisfactory informed consent agreement that balances the resident's choices and capabilities with the possibility that the choices will place the resident at risk of harm.

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(e) Informed consent meeting.

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(1) In words the resident can understand the licensee must discuss the resident's wish to exercise independence in directing the manner in which he receives care. The discussion shall relate to the decision, behavior or action that places the resident in imminent risk of substantial harm and hazards inherent in the resident's action. The discussion shall include reasonable alternatives, if any, for mitigating the risk, the significant benefits and disadvantages of each alternative and the most likely outcome of each alternative. In the case of a resident with a cognitive impairment, the resident's legal representative shall participate in the discussion.

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(2) A resident shall not have the right to place persons other than himself at risk, but, consistent with statutory and regulatory requirements, may elect to proceed with a decision to exercise independence in directing the manner in which he or she receives care, foregoing alternatives for mitigating the risk, after consideration of the benefits and disadvantages of the alternatives. The licensee shall evaluate whether the resident understands and appreciates the nature and consequences of the risk, including the significant benefits and disadvantages of each alternative considered, and then must further ascertain whether the resident is consenting to accept or mitigate the risk with full knowledge and forethought.

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Deleted: including his wish to exercise independence in directing the manner in which he receives care

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(e) Successful negotiation. If the parties agree, the informed consent agreement shall be reduced to writing and signed by all parties, including all individuals engaged in the negotiation at the request of the resident, and shall be retained in the resident's file as part of the service plan.

(f) Unsuccessful negotiation. If the parties do not agree, the licensee shall notify the resident, the resident's legal representative and all individuals engaged in the informed consent negotiation at the request of the resident. The licensee shall

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include information on the local ombudsman or the appropriate advocacy organization for assistance relating to the disposition and whether the licensee will issue a notice of discharge. Discharge will be allowed only as allowed by relevant law, including this chapter.

(g) Freedom from duress. An informed consent agreement must be voluntary and free of force, fraud, deceit, duress, coercion or undue influence, provided that a licensee retained the right to issue a notice of involuntary discharge consistent with relevant law if, after a discussion of the alleged risk, the resident declines alternatives to mitigate the risk. Any discharge shall be appealable to the Department's Bureau of Hearings and Appeals with continued residency pending the outcome of the appeal.

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(h) Individualized nature. An informed consent agreement shall be unique to the resident's situation and his wish to exercise independence in directing the manner in which he receives care. The informed consent agreement shall be utilized only when a resident's wish to exercise independence in directing the manner in which he or she receives care places the resident at imminent risk of substantial harm. A licensee shall not require execution of an informed consent agreement as a standard condition of admission.

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(i) Liability. Execution of an informed consent agreement shall not constitute a waiver of liability beyond the scope of the agreement or with respect to acts of negligence or tort. An informed consent agreement shall not relieve a licensee of liability for violation of statutory or regulatory requirements promulgated under this chapter nor affect enforceability of regulatory provisions including those provisions governing admission or discharge or the permissible level of care in an assisted living residence.

(j) Change in resident's condition. An informed consent agreement must be updated following any change in the resident's condition that affects the risk potential to the resident.

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(k) Terminating the Agreement. A resident may terminate the informed consent agreement at any time. Such termination will be effective upon issuance, without advance notice.

(l) Reporting to the Department. A licensee shall submit a copy of each informed consent agreement to the Department so that the Department can track the use and scope of these agreements. Additionally, a licensee must report to the Department any discharge resulting from an unsuccessful informed consent negotiation. The Department will track and report patterns and practices on the use of informed consent agreements and sanction the misuse of the process.

Applicant and RESIDENT RIGHTS

2800.40 APPLICANT RIGHTS

(a) The right to have an initial interview and tour of the ALR prior to admission.
(b) The right to have an initial screening upon deciding to apply for admission.
(c) The right to a written decision regarding acceptance into ALR including the reason for denial of admission.
(d) The right to appeal (or seek exception) to the Department if admission denied because of an excludable condition.
(e) The right to have a medical evaluation from a provider of the resident's choice prior to admission.
(f) The right to have a comprehensive needs assessment, to participate (along with others invited by the resident) in the assessment process prior to admission or within 72 hours of admission, in the case of an urgent or emergent admission due to hospital discharge, and to receive a copy of her current assessment upon completion, without charge.
(g) The right to participate (along with others invited by the resident) in the process of developing a comprehensive support plan prior to admission or within 14 days of admission following an urgent or emergent admission due to hospital discharge that accommodates one's needs and preferences and that facilitates independence, and to receive a copy of her current support plan upon completion, without charge.
(h) The right to receive at the interview written information including:
    a. The range and pricing of each of the services provided at the residence, including services provided directly and services provided through identified third-party providers.
    b. The amount of rent for the resident's living unit, including any packaged services such as housekeeping, laundry and basic meals.
    c. The rules, policies and procedures expected to be adhered to by all residents.
    d. The current needs of the prospective resident, including any need for physician services and whether the licensee expects to be able to accommodate the current needs of the prospective resident including any physician services needs.
    e. The types of daily program activities and socialization opportunities offered through the assisted living residence.
    f. The availability of health care and social services not provided at the assisted living residence but which are available in the community, such as hospice care, home health care, transportation and similar services to support a resident who is aging in place.
    g. Any additional information required by the department.

Comment: We must have a statement in the regulations explaining to applicants or those who guide potential applicants as to what their rights are in the application process. Consumers should have some rights in the application process. Again, many of these items are listed as requirements imposed upon the facility – like that they make certain mandatory disclosures. But, if the consumer receives no statement indicating their rights to receive these – they'll never know to complain about a facility that didn't follow the rules. And, they won't be fairly prepared for residency.

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(i) The right to receive at or before the initial interview certain "mandatory disclosures" of important information, including:
    a. Contact information for:
        i. The department, for the purpose of obtaining information on the licensing requirements and licensing status of assisted living residences.
        ii. The long-term care ombudsman, with information on the ombudsman's role and availability.
        iii. The department's 24-hour hotline for making complaints, along with information on how a resident can make a complaint and the department's investigation process.
    b. A delineation of resident rights.
    c. The following additional information:
        i. A copy of the assisted living residence's policies and procedures affecting residents.
        ii. Information regarding the assisted living residence's quality improvement program.
        iii. Details about the internal dispute resolution process used by the licensee.
        iv. Information on transfer and discharge policies.
        v. Copies of all charge schedules and rates, including those separate charges for each of the following: utilities, telephone, cable television, internet access, garage fees, maintenance or management services, minimum or extended meal plans, bed and linen fees, if any, and any additional services related to occupancy of the resident's unit; and assisted living services and cognitive support services.
        vi. A copy of the standardized form residency/services agreements that the resident will be asked to sign.
        vii. Written information regarding the "informed consent" process and protections.
(j) The right to a standardized written admission/residency agreement in plain English that references the support plan that is completed and signed prior to or, in the event of an emergency admission, within 24 hours after admission.
(k) The right to consult a department established "independent review panel" for guidance on an "informed consent" agreement, what it means, how it works, what to consider, and whether it is fair and appropriate.
(l) The right to not be forced to contract for services that consumer does not want.
(m) The right to rescind the residency agreement for up to 72 hours after the initial dated signature of the contract and pay only for the services received. rescission of the contract must be in writing addressed to the home.
(n) The right to share a room with a spouse or significant other.

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§ 2800.41. Notification of rights and complaint procedures.

(a) Upon admission, each resident and, if applicable, the resident's designated person, shall be informed of resident rights and the right to lodge complaints without intimidation, retaliation, or threats of retaliation of the residence or its staff persons against the reporter. Retaliation includes transfer or discharge from the residence.

(b) Notification of rights and complaint procedures shall be communicated in an easily understood manner and in a language understood by or mode of communication used by the resident and, if applicable, the resident's designated person.

(c) The Department's poster of the list of resident's rights shall be posted in a conspicuous and public place in the residence.

(d) The facility shall follow standardized complaint procedures developed by the Department, including procedures for how the facilities complete an investigation of complaints filed by residents.

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(e) A copy of the resident's rights and complaint procedures shall be given to the resident and, if applicable, the resident's designated person upon admission.

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(f) A statement signed by the resident and, if applicable, the resident's designated person acknowledging receipt of a copy of the information specified in subsection (d), or documentation of efforts made to obtain signature, shall be kept in the resident's record.

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§ 2800.42. Specific rights.

(a) A resident may not be discriminated against because of race, color, religious creed, disability, ancestry, sexual orientation, national origin, age or sex.

(b) A resident may not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way. A resident must be free from mental, physical, and sexual abuse and exploitation, neglect, financial exploitation and involuntary seclusion.

(c) A resident shall be cared for and treated with dignity, respect, courtesy and fairness.

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(d) A resident shall be informed of the rules of the residence and given 60 days' written notice prior to the effective date of a new residence rule.

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(e) A resident shall have access to a telephone in the residence to make calls in privacy. Nontoll calls shall be without charge to the resident.

(f) A resident has the right to receive and send mail.

(1) Outgoing mail may not be opened or read by staff persons unless the resident requests.

(2) Incoming mail may not be opened or read by staff persons unless upon the request of the resident or the resident's designated person.

(g) A resident has the right to communicate privately with and access the local ombudsman.

(h) A resident has the right to practice the religion or faith of the resident's choice, or not to practice any religion or faith.

(i) A resident shall receive assistance in accessing health care services and securing transportation to these services.

(j) A resident shall receive assistance in obtaining and keeping clean, seasonal clothing. A resident's clothing may not be shared with other residents.

(k) A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to access, review and request corrections to the resident's record. Access to records shall be provided immediately. A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to purchase, at a cost not to exceed the community standard, photocopies of the resident's records or any portions of them within 24 hours of a request, excluding weekend days.

(l) A resident has the right to furnish his living unit and purchase, receive, use and retain personal clothing and possessions.

(m) A resident has the right to leave and return to the residence as she chooses.

(n) A resident has the right to lock the door to her living unit and not be subjected to unannounced entries into her living unit.

(o) A resident has the right to terminate her residency at any time, with 14 days advance notice.

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Comment: (n) was moved to our proposed section on rights of a consumer upon discharge.

Deleted: (n) A resident has the right to relocate and to request and receive assistance, from the residence, in relocating to another facility. The assistance shall include helping the resident get information about living arrangements, making telephone calls and transferring records.

(o) A resident has the right to freely associate, organize and communicate privately with his friends, family, physician, attorney and any other person.

(p) A resident shall be free from any and all restraints, including chemical and physical restraints.

(q) A resident shall be compensated in accordance with State and Federal labor laws for labor performed on behalf of the residence. Residents may voluntarily and without coercion perform tasks related directly to the resident's personal space or common areas of the residence.

(r) A resident has the right to receive visitors at any time provided that such visits do not adversely affect other residents. A residence may adopt reasonable policies and procedures related to visits and access. If the residence adopts such policies and procedures they shall be binding on the residence.

(s) A resident has the right to privacy of self and possessions. Privacy shall be provided to the resident during bathing, dressing, changing and medical procedures.

(t) A resident has the right to file complaints on behalf of himself and others with any individual or agency and recommend changes in policies, residence rules and services of the residence without intimidation, retaliation or threat of discharge.

(u) A resident has the right to remain in the residence, as long as it is operating with a license, except as specified in § 2800.228 (relating to transfer and discharge).

(v) A resident has the right to reside in the residence and receive services as reflected in the comprehensive assessment and support plan and as reflected in the residency and services agreement 365 days a year.

Deleted: contracted for in the resident-residence contract

(w) A resident has the right to use both the residence's procedures and external procedures to appeal involuntary discharge.

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(x) A resident has the right to a system to safeguard a resident's money and property.

(y) The resident has the right to choose all healthcare providers, including physicians and pharmacies. To the extent prominently displayed in the written resident-residence contract, a residence may require residents to use providers of supplemental health care services as provided in § 2800.142(a) (relating to assistance with health care and supplemental health care services). When the residence does not designate, the resident may choose the supplemental health care service provider.

Comment: The right to choose healthcare providers is fundamental. And, Act 56 only permits the facility to control the choice of supplemental healthcare providers. We are so disheartened by this provision of the law. Notwithstanding, the regulations must NOT exceed the scope of the law.

(z) A resident has the right to freely contract for services from providers of resident's choosing at one's own expense, as long as caregiver complies with the residence's reasonable policies and procedures.

(aa) A resident has the right to reasonable accommodations of resident needs and preferences.

(bb) A resident has the right to refuse treatments or services prescribed or recommended

(cc) A resident has the right to self administer medications.

(dd) A resident has the right to file complaints, grievances, or appeals with any individual or agency and recommend changes in policy, home rules, and services without retaliation, intimidation or threat of discharge.

(ee) A resident has the right to not have the ALR or any ALR employee assume power of attorney or guardianship or representative payee. The right to choose to have the ALR or ALR administrator serve as representative payee if and only if certain conditions are met. The ALR or administrator may not be appointed to serve as representative payee unless the resident, family, and legal representative are first given a standardized disclosure form provided by the department that explains the following: what representative payee means, that other agencies may be available to provide representative payee service for little or no fee (i.e., mental health associations, associations of retarded citizens (arc), etc.), that representative payee is voluntary, that the resident can terminate the representative payee relationship at any time, and how to terminate the relationship. This section must also include a provision that the administrator becoming the resident's representative payee cannot be a condition for admission.

(ff) A resident has the right to receive all written and oral communications in a format that is accessible to persons with cognitive and sensory disabilities.

(gg) A resident has the right to receive all written and oral communications in a language that is understood by the resident with limited English proficiency.

(hh) A resident has the right to choose and involve a personal advocate.

(ii) A resident has the right to notice to resident or designated person of a report of suspected abuse or neglect involving the resident.

(jj) A resident has the right to age in place, including the right to receive hospice care where prescribed.

(kk) A resident has the right to have records kept confidentially.

(ll) A resident has the right to notice of and to challenge waivers of regulations that are requested by an ALR and to challenge such a request. In addition, residents should be given written notice of any waivers that are, granted or that are being need to be rescinded.

(mm) A resident has the right to view inspection reports, incident reports, fire safety approvals, violation reports, and other licensure and enforcement documents on file at the facility.

(nn) A resident has the right to receive notice of violations and change in licensure status from the facility.

(oo) A resident has the right to consult the independent review panel about an informed consent agreement the facility wants the consumer to sign.

Comment: These recommended rights from (z) through (ww) evolve from 1) rights imbedded in other sections of the regulations, 2) correcting for bad outcomes that have been experiences by consumers in the personal care home system with the same limited rights, 3) good examples from other states, and 4) concepts of fundamental fairness.

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(pp) A resident has the right to not be forced to share a room.
(qq) A resident has the right to accessible design to maximize independence.
(rr) A resident has the right to have and use assistive technology and to take it with them upon discharge or transfer.
(ss) A resident has the right to have transportation provided or arranged to medical appointments or community and social activities of the resident's choosing.
(tt) A resident has the right to conduct one's own ADLs or IADLs if so desire.
(uu) A resident has the right to manage one's own financial affairs. The facility may not require a resident to deposit personal funds with the facility.
(vv) A resident has the right to form or participate in a resident council.
(ww) The right to terminate an informed consent agreement immediately without advance written notice.

§ 2800.42a – RESIDENTS' RIGHTS UPON DISCHARGE OR TRANSFER

Comment: We think it critical that discharge and transfer rights be separately listed.

(a) from 2600.42(n) A resident has the right to relocate and to request and receive assistance, from the home, in relocating to another facility. The assistance shall include helping the resident get information about living arrangements, making telephone calls and transferring records.

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(b) A resident has the right to decide the location to which resident will be discharged or relocated.
(c) A resident has the right to Age in Place (which needs to be defined in the definitions section).
(d) A resident has the right to terminate their residency or service agreement with 14 days advance written notice.
(e) A resident has the right to a refund of the resident's pre-paid rent within 7 days of discharge in the event of an urgent or emergent transfer or discharge where less than 30 days notice is provided.
(f) A resident has the right to a refund of the resident's pre-paid rent on the day of discharge in the case where 30 day notice has been provided.
(g) A resident has the Right to a full accounting and to return of monies held by the facility (under financial management agreement with the resident) within 7 days of discharge.
(h) A resident has the right to safe and orderly transfer and discharge consistent with 2800.228.
(i) A resident has the right to remain in the facility, to age in place, and to not be involuntarily discharged unless the facility has documented that:
    a. the resident presents an imminent physical threat or danger to self or others which cannot be managed by interventions or service planning;
    b. The resident has failed to pay after reasonable efforts by the facility to obtain payment and is not eligible for publicly funded programs that can provide payment;
    c. The resident has medical needs which cannot be met in an assisted living facility, even with all reasonable assistance from third-party providers Or

d. The facility closes;

(j) The resident shall have the right to choose among the available alternatives after an opportunity to visit the alternative facilities. These procedures shall apply even if the resident is placed in a temporary living situation.

(k) The resident shall have the right to appeal the discharge decision through the DPW administrative hearing process and to remain in the facility pending a decision in the appeal. The hearing shall be held within 14 days from the date of the appeal. In emergency situations, the Department shall provide for an interim telephone hearing within 3 business days, at which it shall be determined whether the resident may remain in the facility pending a full hearing. In the event that a resident is transferred from the facility pending a full hearing, the facility shall hold the resident's bed and/or waiver slot pending the full hearing.

(l) A resident has the right to participate in decision around transfer to secured dementia unit.

(m)A resident has the right to a 30 day room-hold while hospitalized or longer if continue to pay residency agreement/rental amounts owed.

(n) A resident has the right to refuse a room transfer.

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§ 2800.43. Prohibition against deprivation of rights.

(a) A resident may not be deprived of his rights.

(b) A resident's rights may not be used as a reward or sanction.

(c) Waiver of any resident right shall be void.

§ 2800.44. Complaint procedures.

(a) Prior to admission, the residence shall inform the resident and the resident's designated person of the right to file and the procedure for filing a complaint with the Department's assisted living residence office, local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc. or law enforcement agency.

(b) The residence shall permit and respond to oral and written complaints from any source regarding an alleged violation of resident rights, quality of care or other matter. The residence shall receive and respond to such complaints without retaliation or the threat of retaliation.

(c) If a resident indicates that he wishes to make a written complaint, but needs assistance in reducing the complaint to writing, the residence shall assist the resident in writing the complaint.

(d) The residence shall ensure investigation and resolution of complaints. The residence shall designate the staff person responsible for receiving complaints and determining the outcome of the complaint.

(e) Within 2 business days after the submission of a written complaint, a status report shall be provided by the residence to the complainant. If the resident is not the complainant, the resident and the resident's designated person shall receive the status report unless contraindicated by the support plan. The status report must indicate the steps that the residence is taking to investigate and address the complaint.

(f) Within 7 days after the submission of a written complaint, the residence shall give the complainant and, if applicable, the designated person, a written decision explaining the residence's investigation findings and the action the residence plans to take to resolve the complaint. If the resident is not the complainant, the affected resident shall receive a copy of the decision unless contraindicated by the support plan. If the residence's investigation validates the complaint allegations, a resident who could potentially be harmed or his designated person shall receive a copy of the decision, with the name of the affected resident removed, unless contraindicated by the support plan.

(g) The telephone number of the Department's assisted living residence office, the local ombudsman or protective services unit in the area agency on aging, Pennsylvania Protection & Advocacy, Inc., the local law enforcement agency, the Commonwealth Information Center and the assisted living residence complaint hotline shall be posted in large print in a conspicuous and public place in the residence.

STAFFING

§ 2800.51. Criminal history checks.

All Administrators, direct care staff persons, other employees, third party contractors, and volunteers shall submit to a criminal background check that meets state constitutional standards. The results must be used by the ALR to exclude persons who pose an unacceptable level of risk to residents. All retention and utilization of employees, third party contractors, and volunteers shall be in accordance with the state requirements.

Comment: We are very concerned that the state's proposed language references a provision of law that has been struck down by the state supreme court. Additionally, the regulations must require background checking for all these workers in a facility, not just some.

Deleted: Criminal history checks and hiring policies shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102), 6 Pa. Code Chapter 15 (relating to protective services for older adults).

§ 2800.52. Staff hiring, retention and utilization.

Hiring, retention and utilization of all employees and contractors with the facility shall be in accordance state constitutional standards and other applicable regulations.

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§ 2800.53. Qualifications and responsibilities of administrators.

(a) The administrator shall have one of the following qualifications:

(1) A license as a registered nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(2) An associate's degree or 60 credit hours from an accredited college or university in a human services field and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(3) An associate's degree or 60 credit hours from an accredited college or university in a field that is not related to human services and 2 years, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(4) A license as a licensed practical nurse from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(5) A license as a nursing residence administrator from the Department of State and 1 year, in the prior 10 years, of direct care or administrative experience in a health care or human services field.

(b) The administrator shall be 21 years of age or older.

(c) The administrator shall be responsible for the administration and management of the residence , including the health, safety and well-being of the residents, implementation of policies and procedures and compliance with this chapter.

(d) The administrator shall have the ability to provide assisted living services, supplemental healthcare, and personal care services or to supervise or direct the work to provide assisted living services, supplemental healthcare, and personal care services.

(e) The administrator shall have knowledge of this chapter.

(f) The administrator shall have the ability to comply with applicable laws, rules and regulations, including this chapter.

(g) The administrator shall have the ability to maintain or supervise the maintenance of financial and other records.

(h) At all times, the administrator shall be free from a medical condition, including drug or alcohol addiction, that would limit the administrator from performing duties with reasonable skill and safety.

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§ 2800.54. Qualifications for direct care staff persons.

(a) Direct care staff persons shall have the following qualifications:

(1) Be 18 years of age or older, except as permitted in subsection (d).

(2) Have a high school diploma, GED or active registry status on the Pennsylvania nurse aide registry.

(3) At all times, be free from a medical condition, including drug or alcohol addiction, that would limit direct care staff persons from providing necessary assisted living services and personal care services with reasonable skill and safety.

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Comment: Since (b)(c) and (d) are NOT direct care staff persons, we recommend moving this to its own section – which we have added as 2800.54a – a section on qualifications for ancillary and other staff.

2800.54a. **Qualifications and training for ancillary staff, other staff or volunteers.**

(a) Food services or housekeeping staff may be 16 years of age or older.

(b) Any other staff person who serve in an administrative or supervisory role such as a service planner, medical director, or assistant administrator and any third party contractor under agreement with the facility providing direct care shall have at least the training and qualifications of a direct care staff person.

(c) Employees or third party contractors providing supplemental healthcare services must also complete the orientation required under 2800.65(a) and (b) prior to work with residents in the facility.

(d) A volunteer who performs or provides assistance with ADLs shall meet the direct care staff person qualifications and training requirements specified in this chapter.

(e) A resident receiving personal care services may be employed to complete tasks around the facility and must be compensated in accordance with 2800.42(g). A resident receiving personal care services may not be employed or otherwise relied upon by the facility as a volunteer to provide direct care or other assistance with ADL or IADL.

Deleted: (b) A volunteer who performs or provides ADLs shall meet the direct staff person qualifications and training requirements specified in this chapter. ¶
(c) A resident receiving personal care services who voluntarily performs tasks in the residence will not be considered a volunteer under this chapter.¶
(d) Food services or housekeeping staff may be 16 or 17 years of age

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§ 2800.55. Portability of staff qualifications and training.

A staff person who transfers to another licensed residence, or from a licensed personal care home shall be given credit for any completed hours of training that are required on an annual basis and that have been completed in the calendar year of transfer, provided however, that such staff person shall complete any additional training required by these regulations for assisted living residence direct care staff.

§ 2800.56. Administrator staffing.

(a) The administrator shall be present in the residence an average of 40 hours or more per week, in each calendar month. At least 30 hours per month shall be during normal business hours.

(b) The administrator shall designate a staff person to supervise the residence in the administrator's absence. The administrator's designee shall have satisfactorily completed the same training required for an administrator under this chapter.

§ 2800.57. Direct care staffing.

(a) Direct care staff persons shall be available to provide at least 2 hours per day of assisted living services to each resident.
(b) Actual Staffing hours provided by direct care staff above the minimum required in (a) shall be provided to meet the scheduled needs of the residents as specified in the resident's assessment and support plan plus sufficient allowance in extra staffing to meeting unexpected/unscheduled needs of residents.
(c) The direct care staffing level in this chapter is minimum only. The Department may require additional direct care staffing as necessary to protect the health, safety and well-being of the residents. Requirements for additional direct care staffing will be based on the resident's assessment and support plan, the design and construction of the residence and the operation and management of the residence.
(d) ALRs shall use a department designed tool to "calculate" the hours. The Department can then use this measurement in its inspections process.

§ 2800.58. Awake staff persons.

(a) All direct care staff persons on duty in the residence shall be awake at all times. There must be 24 hour a day awake direct care staff in each building of the ALR regardless of resident composition.

Comment: This is ok only so long as the designee has the administrator training.

Comment: We are very pleased to see that the Department recognizes the critical import of having an appropriately trained person in charge at all times. This is in concert with our prior recommendation, although some PALCA members thought the designee should have the qualifications of the Administrator as well as the training of the Administrator.

Comment: We believe it is a mistake for the Department to hold on to the archaic terminology of "mobile" and "immobile" residents in determining staff levels. The terms are offensive and often do not accurately correlate to the amount of care a consumer actually needs.

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Comment: Moved from 2800.60

Deleted: (a) At all times one or more residents are present in the residence a direct care staff person who is 21 years of age or older and who serves as the designee, shall be present in the residence. The direct care staff person may be the administrator if the administrator provides direct care services. ¶
(b) Direct care staff persons shall be available to provide at least 1 hour per day of personal care services to each mobile resident. ¶
(c) Direct care staff persons shall be available to provide at least 2 hours per day of personal care services to each resident who has mobility needs. ¶
(d) At least 75% of the personal care service hours specified in subsections (b) and (c) shall be available during waking hours.

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§ 2800.59. Multiple buildings.

(a) For a residence with multiple buildings on the same premises that are within 300 feet of one another, the direct care staff person required in § 2800.57 (relating to direct care staffing) shall be on the premises and available by a two-way communication system at all times residents are present in the residence.

(b) For a residence with multiple buildings on the same premises regardless of the distance between buildings, the direct care staffing requirements in § 2800.57 apply at all times residents are present in the residence.

§ 2800.60. Additional staffing based on the needs of the residents.

(a) In addition to direct care staff, administrators, and other staff who provide laundry, housekeeping, transportation or maintenance services, an ALR shall have:

1. A licensed nurse on staff or under contract to participate in all initial and ongoing needs assessment and support plan development activities.
2. Adequate staff to meet the requirements of 2800.--- on activities and socialization.

(b) Staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan. All residence staff or third party contractors providing who provide services to the residents in the residence such as dietician services or supplemental healthcare services must meet the professional licensure requirements and be in good standing with their professional licensure agency to provide the services for which they are being employed to provide.

(c) Additional employee hours, or contractual hours, shall be provided as necessary to meet the transportation, laundry, food service, housekeeping and maintenance needs of the residence and other non-ADL or IADL requirements of the residency and service contracts with the residents..

(d) In addition to the staffing requirements set forth in this chapter the residence shall have a licensed nurse on call at all times. The on-call nurse shall be either an employee of the residence or under contract with the residence.

(e) The residence shall have a dietician on staff or under contract to conduct menu and food preparation planning and oversight and to provide for any special dietary needs of a resident as indicated in his support plan.

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Comment: We are VERY pleased to see this change was made. We had recommended this.

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Deleted: (b) The staffing level in this chapter is minimum only. The Department may require additional staffing as necessary to protect the health, safety and well-being of the residents. Requirements for additional staffing will be based on the resident's assessment and support plan, the design and construction of the residence and the operation and management of the residence. ¶

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Comment: We are very pleased to see this addition. We had recommended this. Although, our recommendation was that there be a licensed nurse on call at all times. This must be a licensed nurse, however.

Comment: We are very pleased to see this addition. We had recommended this. Although, our recommendation was that a dietician be involved in all menu planning and meal preparation oversight.

§ 2800.61. Substitute personnel.

When regularly scheduled direct care staff persons are absent, the administrator shall arrange for coverage by substitute personnel who meet the direct care staff qualifications and training requirements as specified in §§ 2800.54 and § 2800.65 (relating to qualifications for direct care staff persons; and direct care staff person training and orientation).

§ 2800.62. List of staff persons.

The administrator shall maintain a current list of the names, addresses and telephone numbers of staff persons including substitute personnel and volunteers.

§ 2800.63. First aid, CPR and obstructed airway training.

(a) All staff must be certified in 1st Aid and CPR.

Comment: This is essential, especially in the absence of medical staff on duty at all times.

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Deleted: There shall be sufficient staff trained in first aid and certified in obstructed airway techniques and CPR present in the residence at all times to meet the needs of the residents.

(b) Current training in first aid and certification in obstructed airway techniques and CPR shall be provided by an individual certified as a trainer by a hospital or other recognized health care organization.

(c) Licensed, certified and registered medical personnel meet the qualifications in subsection (a) and are exempt from the training requirements in subsections (a) and (b).

(d) A staff person who is certified in first aid or certified in obstructed airway techniques or CPR shall provide those services in accordance with his training, except for procedures contraindicated by a resident's do not resuscitate order, if the resident has a do not resuscitate order issued by an attending physician and as permissible under state law governing do not resuscitate orders.

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§ 2800.64. *Administrator training and orientation.*

(a) Prior to initial employment as an administrator, a candidate shall successfully complete the following:

(1) An orientation program approved and administered by the Department as developed in consultation with stakeholders including consumers, advocates, etc..

(2) A 150-hour standardized Department-approved administrator training course as developed in consultation with stakeholders including consumers, advocates, and others. The training shall underscore the philosophy of choice, independence, and aging in place. The training provided for in § 2800.69

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(relating to additional dementia-specific training) shall be included in the 150-hour training course.

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(3) A Department-approved competency-based training test with a passing score.

[(4) Paragraphs (1), (2) and (3) do not apply to an administrator hired or promoted prior to October 24, 2005.]

(b) The standardized Department-approved administrator training course specified in subsection (a)(2) shall include the following:

(1) Fire prevention and emergency preparedness.

(2) Medication procedures, medication effects and side effects, universal precautions and personal hygiene.

(3) Certification in CPR and obstructed airway techniques and training in first aid.

(4) Personal care services.

(5) Local, State and Federal laws and regulations pertaining to the operation of a residence.

(6) Nutrition, food handling and sanitation.

(7) Recreation.

(8) Care for residents with mental illness.

(9) Resident rights.

(10) Care for residents with cognitive and neurological impairments and other special needs.

(11) Care for residents with mental retardation.

(12) Community resources, social services and activities in the community.

(13) Staff supervision and staff person training including developing orientation and training guidelines for staff.

(14) Budgeting, financial recordkeeping and resident records including:

(i) Writing, completing and implementing initial assessments, annual assessments and support plans.

(ii) Resident-residence contracts.

(15) Gerontology.

(16) Abuse and neglect prevention and reporting.
(17) Cultural competency.
(18) Incidents Management.
(19) Safety management and hazard prevention
(20) Infection control;
(21) Care for individuals with mobility needs, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.
(22) Incident reporting.
(23) Emergency HealthCare responses.
(24) Additional training specific to the actual resident composition of the ALR, including age appropriate assistance with ADLs.
(25) Education on disabilities, disease states, progressions, etc.
(26) Training on the philosophy of choice and aging in place.
(27) Availability of services to support aging in place.
(28) Availability of and proper use of assistive technology.

(29) The requirements of this chapter.

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(c) An administrator shall have at least 24 hours of annual training relating to the job duties. The Department-approved administrator training course specified in subsection (a) fulfills the annual training requirement for the first year.

(d) Annual training shall be provided by Department-approved training sources listed in the Department's assisted living residence training resource directory or by an accredited college or university.

(e) An administrator who has successfully completed the training in subsections (a)—(d) shall provide written verification of successful completion to the Department's assisted living residence office.

(f) A record of training including the individual trained, date, source, content, length of each course and copies of certificates received shall be kept.

(g) No exceptions to or waivers of the administrator training requirements will be permitted.

(h) Any personal care home administrator may complete an abbreviated initial training module that covers the content of these assisted living regulations and all training areas not included in the PCH regulations only if the PCH administrator:

1) Was employed on the effective date of these regulations
2) Was hired after 10/25/2005
3) has satisfactorily completed the 2600 initial training for new personal care home administrators
4) has demonstrated competency in all training areas and
5) has remained current in annual training requirements

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Comment: It is unacceptable that those who were grandfathered in under the PCH regs might be grandfathered in under the ALR regs. That said, we recognize the fairness of abbreviated training for those who met the 2600 qualifications and training requirements since 10/2005.

§ 2800.65. Staff Orientation and Direct care staff person training and orientation.

(a) Prior to or during the first work day, all direct care staff persons and other staff persons including ancillary staff persons, substitute personnel and volunteers shall have an orientation in general fire safety and emergency preparedness that includes the following:

(1) Evacuation procedures.

(2) Staff duties and responsibilities during fire drills, as well as during emergency evacuation, transportation and at an emergency location if applicable.

(3) The designated meeting place outside the building or within the fire-safe area in the event of an actual fire.

(4) Smoking safety procedures, the residence's smoking policy and location of smoking areas, if applicable.

(5) The location and use of fire extinguishers.

(6) Smoke detectors and fire alarms.

(7) Telephone use and notification of emergency services.

(b) The Direct Care Staff shall complete an initial orientation program approved by the Department prior to first day of providing direct care to residents.

(c) All direct care staff must be certified in 1st Aid and CPR prior to the first day of providing direct care to residents.

(d) Direct care staff persons, substitute direct care personnel and volunteers shall complete at least 77 hours of training in a Department approved core curriculum and articulated areas – must be completed prior to providing any residents with care without being directly supervised by a train staff person who is present and accountable for the care being provided. The direct care staff person must complete the set hours of required training within the first 160

Comment: It is imperative that there be a minimum number of hours of training. 77 hours is the number of hours recommended by the Department of Labor and Industry stakeholder group on the basic training that every direct care worker should undergo.

working hours. In order to "complete" such a training program, a direct care staff person shall demonstrate competency in the content of the program in a manner prescribed by the Department. The training program shall include the following:

1) A demonstration of job duties, followed by supervised practice.
2) Successful completion and passing the Department-approved direct care training course and passing of the competency test.
3) Initial direct care staff person training to include the following:

a) Resident rights.

b) Emergency medical plan.

c) Mandatory reporting of abuse and neglect under the Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102).

d) Reporting of reportable incidents and conditions.

e) Safe management techniques.

f. Assisting with ADLS and IADLS.
g. Personal hygiene.
h. Care of residents with dementia, mental illness, cognitive impairments, NEUROLOCIAL IMPAIRMENTS, mental retardation and other mental disabilities.
i. Behavioral management techniques
j. The normal aging-cognitive, psychological and functional abilities of individuals who are older.
k. Understanding of the resident's assessment and of how to implement the resident's support plan.
l. Nutrition, food handling and sanitation.
m. Recreation, socialization, community resources, social services and activities in the community
n. Gerontology.
o. Staff person supervision, if applicable.
p. Care and needs of residents with special emphasis on the residents being served in the residence.
q. Safety management and hazard prevention.
r. Universal precautions.
s. The requirements of this chapter.
t. The signs and symptoms of infections and infection control.
u. Care for individuals with mobility needs, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration, if applicable to the residents served in the residence.

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Deleted: (b) Within 40 scheduled working hours, direct care staff persons, ancillary staff persons, substitute personnel and volunteers shall have an orientation that includes the following: ¶ (1)

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v. The philosophy of choice, autonomy, and aging in place

(e) Direct care staff persons shall have at least 16 hours of annual training relating to their job duties. The training required in § 2800.69 (relating to additional dementia-specific training) shall be in addition to the 16 hour annual training.

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(6) Core competency training that includes the following:

(i) Person-centered care.

(i) Communication, problem solving and relationship skills.

(iii) Nutritional support according to resident preference.

(c) Ancillary staff persons shall have a general orientation to their specific job functions as it relates to their position prior to working in that capacity.

(f) Available training topics for the annual training for direct care staff persons shall include the following:

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(1) Medication self-administration training.

(2) Instruction on meeting the needs of the residents as described in the preadmission screening form, assessment tool, medical evaluation and support plan.

(3) Care for residents with dementia, cognitive, and neurological impairments and other special needs.

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(4) Infection control and general principles of cleanliness and hygiene and areas associated with immobility, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.

(5) Personal care service needs of the resident.

(6) Safe management techniques.

(7) Care for residents with mental illness or mental retardation, or both, if the population is served in the residence.

(g) Direct care staff persons, ancillary staff persons, substitute personnel and regularly scheduled volunteers shall be trained annually in the following areas:

(1) Fire safety completed by a fire safety expert or by a staff person trained by a fire safety expert. Videos prepared by a fire safety expert are acceptable for the training if accompanied by an onsite staff person trained by a fire safety expert.

(2) Emergency preparedness procedures and recognition and response to crises and emergency situations.

(3) Resident rights.

(4) The Older Adult Protective Services Act (35 P. S. §§ 10225.101-10225.5102).

(5) Falls and accident prevention.

(6) New population groups that are being served at the residence that were not previously served, if applicable.

(h) If a staff person has completed the required initial direct care staff person training within the past year as a direct care staff person at another residence, the requirement for initial direct care staff person training in this section does not apply if the staff person provides written verification of completion of the training.

(h) A record of training including the staff person trained, date, source, content, length of each course and copies of any certificates received, shall be kept.

(i) No exceptions to or waivers of the staff training requirements will be permitted.

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Comment: Again, with so many of the PCH staff having been grandfathered in 2005 and never having to complete any initial training, there must be NO grandfathering for any preexisting staff to be permitted to skip the fundamental core curriculum training we recommend.

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§ 2800.66. Staff training plan.

(a) A staff training plan shall be developed annually.

(b) The plan must include training aimed at improving the knowledge and skills of the residence's direct care staff persons in carrying out their job responsibilities. The staff training plan must include the following:

(1) The name, position and duties of each direct care staff person.

(2) The required training courses for each staff person.

(3) The dates, times and locations of the scheduled training for each staff person for the upcoming year.

(c) Documentation of compliance with the staff training plan shall be kept.

§ 2800.67. Training institution registration.

(a) An institution and the course of study offered by an educational institution, association, professional society or organization for the purpose of educating and qualifying applicants for certification as assisted living residence administrators shall be registered and approved by the Department prior to offering the course of study.

(b) An application for registration of an institution and approval of a course of study shall be submitted to the Department on a form provided by the Department and include the following information:

(1) The full name, address, telephone number, facsimile number and electronic mail address of the prospective training provider, each instructor and the program coordinator.

(2) The training objectives, instructional materials, content and teaching methods to be used and the number of clock hours.

(3) The recommended class size.

(4) The attendance certification method.

(5) Proof that each course instructor is certified by the Department to conduct administrator training.

(6) The subject that each instructor will teach and documentation of the instructor's academic credentials, instructional experience and work experience to teach the subject.

(7) The location of the training site, which shall accommodate the number of anticipated participants.

(c) A request to amend a Department-approved course of study shall be submitted for the Department's review and approval prior to implementation of a change in the course of study.

(d) The training institution shall issue a training certificate to each participant who successfully completes the Department-approved course and passes the competency test. Each training certificate must indicate the participant's name, the name of the training institution, the date and location of the training and the number of clock hours completed for each training topic.

§ 2800.68. Instructor approval.

(a) Training for assisted living residence administrators provided by an individual who is not certified as an instructor by the Department will not be considered valid training.

(b) To receive the Department's certification as an approved instructor for assisted living residence administrators, an instructor shall successfully complete the Department's train-the-trainer course. The train-the-trainer course is designed to provide and reinforce basic training skills, including the roles and responsibilities of the trainer, training methodology, the use of instructional aids and recordkeeping.

(c) An instructor shall demonstrate competent instructional skills and knowledge of the applicable topic and meet the Department's qualifications for the topic being taught.

(d) An instructor is subject to unannounced monitoring by the Department while conducting training.

(e) The Department will establish approval standards that include the following:

(1) The mechanism to measure the quality of the training being offered.

(2) The criteria for selecting and evaluating instructors, subject matter and instructional materials.

(3) The criteria for evaluating requests to amend a course.

(4) The criteria for evaluating the effectiveness of each course.

(5) The instructor qualifications for each subject being taught.

(f) The Department may withdraw approval under the following conditions:

(1) Failure to follow the approved curriculum.

(2) Lack of trainer competency.

(3) A pattern of violations of this chapter by a residence conducting the training.

§ 2800.69. Additional dementia-specific training.

Administrative staff, direct care staff persons, ancillary staff persons, substitute personnel and volunteers shall receive at least 4 hours of dementia-specific training within 30 days of hire and at least 2 hours of dementia-specific training annually thereafter in addition to the other training requirements of this chapter.

Comment: This seems insufficient. We recommend that dementia-specific training be part of the initial training for Administrator and Direct Care Staff.

2800.70 Third Party Service Providers

Individuals or entities under contract with the facility to provide supplemental healthcare services to the residents must meet the requirements for direct care staff. Providers under contract directly with the resident, at the resident's choosing and the resident's own expense, must comply with requirements imposed by their independent payment source and/or licensure status and with the facility's policies and procedures.

PHYSICAL SITE

§ 2800.81. Physical accommodations and equipment.

(a) The residence shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a resident with a disability and to allow safe movement within the residence and exiting from the residence.

(b) Wheelchairs, walkers, prosthetic devices and other apparatus used by residents must be clean, in good repair and free of hazards.

§ 2800.82. Poisons.

(a) Poisonous materials shall be stored in their original, labeled containers.

(b) Poisonous materials shall be stored separately from food, food preparation surfaces and dining surfaces.

(c) Poisonous materials shall be kept locked and inaccessible to residents unless all of the residents living in the residence are able to safely use or avoid poisonous materials.

§ 2800.83. Temperature.

(a) (a) There must be heat and air conditioning so that the ALR is no cooler than 70°F in the winter and no warmer than 75°F in the summer.

(b) A residence in existence prior to _____ (Ed. Note: effective date) shall provide central air conditioning. If central air conditioning is not feasible or is cost prohibitive window air conditioning units shall be provided. The residence shall submit justification to the Department for the use of window air conditioning units.

Deleted: The indoor temperature, in areas used by the residents, must be at least 70°F when residents are present in the residence. ¶

Comment: We strongly support the Department's requirement of air conditioning for all assisted living facilities. It would not appropriate to grant a license to any facility that cannot keep residents cool during the summer and warm in the winter. There have been a number of reported situations of residents suffering heat stroke in personal care homes because air conditioning is not required.

(C) For new construction after _____ (Ed. Note: effective date), the residence shall provide central air conditioning.

§ 2800.84. Heat sources.

Heat sources, such as steam and hot heating pipes, water pipes, fixed space heaters, hot water heaters and radiators exceeding 120°F that are accessible to the resident must be equipped with protective guards or insulation to prevent the resident from coming in contact with the heat source.

§ 2800.85. Sanitation.

(a) Sanitary conditions shall be maintained.

(b) There may be no evidence of infestation of insects or rodents in the residence.

(c) Trash shall be removed from all living units and the premises at least once a week.

(d) Trash in kitchens and bathrooms shall be kept in covered trash receptacles that prevent the penetration of insects and rodents.

(e) Trash outside the residence shall be kept in covered receptacles that prevent the penetration of insects and rodents.

(f) For a residence that is not connected to a public sewer system there shall be a written sanitation approval for its sewage system by the sewage enforcement official of the municipality in which the residence is located.

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§ 2800.86. Ventilation.

(a) All areas of the residence that are used by the resident shall be ventilated. Ventilation includes an operable window, air conditioner, fan or mechanical ventilation that ensures airflow.

(b) A bathroom that does not have an operable, outside window shall be equipped with an exhaust fan for ventilation.

(c) Carbon Monoxide detectors shall be employed throughout a residence with a potential for carbon monoxide emissions.

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§ 2800.87. Lighting.

The residence's rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, evacuation routes, outside walkways and fire escapes shall be lighted and marked to ensure that residents, including those with vision impairments, can safely move through the residence and safely evacuate.

§ 2800.88. Surfaces.

(a) Floors, walls, ceilings, windows, doors and other surfaces must be clean, in good repair and free of hazards.

(b) The residence may not use asbestos products for renovations or new construction.

(c) If asbestos is found in a building or contained in any part of the structure, the building must have a certification from an asbestos remediation company that the building is safe for residents and that the asbestos does not pose a risk.

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§ 2800.89. Water.

(a) The residence must have hot and cold water under pressure in each bathroom, kitchen and laundry area in an adequate amount to accommodate the needs and preferences of the residents in the residence.

(b) Hot water temperature in areas accessible to the resident may not exceed 120°F.

(c) A residence that is not connected to a public water system shall have a coliform water test at least every 3 months, by a Department of Environmental Protection-certified laboratory, stating that the water is below maximum contaminant levels. A public water system is a system that provides water to the public for human consumption, which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

(d) If the water is found to be above maximum contaminant levels, the residence shall conduct remediation activity to reduce the level of contaminants to below the maximum contaminant level. During remediation activity, an alternate source of drinking water shall be provided to the residents.

(e) The residence shall keep documentation of the laboratory certification, in addition to the results and corrections made to ensure safe water for drinking.

§ 2800.90. Communication system.

(a) The residence shall have a working, noncoin operated, landline telephone that is accessible in emergencies and accessible to individuals with disabilities. At least one phone shall be located on each floor of occupancy and shall be accessible to persons with sight and hearing impairments.

(b) For a residence serving 9 or more residents, there shall be a system or method of communication such as an intercom, public address, pager, or cell phone system that enables staff persons to immediately contact other staff persons in the residence for assistance in an emergency.

§ 2800.91. Emergency telephone numbers.

Telephone numbers for the nearest hospital, police department, fire department, ambulance, poison control center, local emergency management department and assisted living residence complaint hotline shall be posted on or by each telephone with an outside line.

§ 2800.92. Windows and screens.

Windows, including windows in doors, must be in good repair and securely screened when doors or windows are open.

§ 2800.93. Handrails and railings.

(a) Each ramp, interior stairway, hallway and outside steps must have a well-secured handrail.

(b) Each porch must have a well-secured railing.

§ 2800.94. Landings and stairs.

(a) Interior and exterior doors that open directly into a stairway and are used for exit doors, resident areas and fire exits must have a landing, which is a minimum of 3 feet by 3 feet.

Comment: As written, this language is confusing. Not clear what is really intended to be included here.

(b) Interior stairs, exterior steps and ramps must have nonskid surfaces.

(c) All stairs shall have strips for those with vision impairments.

§ 2800.95. Furniture and equipment.

Furniture and equipment must be in good repair, clean and free of hazards.

§ 2800.96. First aid kit.

(a) The residence shall have first aid kits positioned throughout the residence to ensure swift access and swift delivery of first aid care to residents. The first aid kits shall include an automatic electronic defibrillation device, nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, adhesive tape, scissors, breathing shield, eye coverings and tweezers.

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(b) Staff persons shall know the location of the first aid kits.

(c) The first aid kits must be in locations that are easily accessible to staff persons.

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§ 2800.97. Elevators and stair glides.

Each elevator and stair glide must have a certificate of operation from the Department of Labor and Industry or the appropriate local building authority in accordance with 34 Pa. Code Chapter 405 (relating to elevators and other lifting devices).

§ 2800.98. Indoor activity space.

(a) The residence shall have common areas for all residents for activities such as reading, recreation and group activities. One of the common rooms shall be available for resident use at any time.

Deleted: at least two indoor wheelchair accessible common rooms

Comment: They should design one common area that can be used without disruption to others.

(b) The residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. There must be at least 15 square feet per living unit for up to fifty living units. There must be a total of 750 square feet if there are more than 50 living units. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors.

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(c) The residence shall have a working television and radio available to residents in a living room or lounge area.

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(d) All common areas and hallways must be wheelchair accessible.

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§ 2800.99. Recreation space.

The residence shall provide regular access to outdoor and indoor recreation space and recreational items, such as books, newspapers, magazines, puzzles, games, cards and crafts.

§ 2800.100. Exterior conditions.

(a) The exterior of the building and the building grounds or yard must be in good repair and free of hazards.

(b) The residence shall ensure that ice, snow and obstructions are removed from outside walkways, ramps, steps, recreational areas and exterior fire escapes.

§ 2800.101. Resident living units.

(a) Residences must provide a resident with the resident's own living unit unless the conditions of subsection (c) are met.

(b)(1) Each living unit for a single resident must have at least 250 square feet of floor space measured wall-to-wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.

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(2) Each living unit must have a bathroom and storage closet and adequate storage space for resident storage of durable medical equipment or assisted devices.

Deleted: For residences in existence prior to (effective date), each living unit must have at least 175 square feet measured wall to wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.

(3) Each living unit must have a telephone jack and individually controlled thermostats for heating and cooling.

(4) All doors in living units including entrance doors, shall be accessible or adaptable for wheelchair use.

(5) Living unit doors must be lockable by the resident, unless contraindicated by the support plan. In all instances, the residence must respect the privacy of the resident and ensure that entries are announced and minimally intrusive.

(c) Two residents may voluntarily agree to share one living unit provided that the agreement is in writing and contained in each of the resident-residence contracts of those residents. A licensee shall not require residents to share a living unit. The maximum number of residents in any living unit shall be two residents.

(d) Kitchen Capacity.

(1) New construction. For new construction of residences after _____ (effective date), the kitchen capacity, at a minimum, shall be built as a visually distinct portion of the living unit shall contain a small refrigerator with a freezer compartment, a microwave, a cabinet for food storage, a small bar-type sink with hot and cold running water and space with electrical outlets suitable for small cooking appliances such as a microwave oven. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident chooses not to have cooking capability in his living unit.

Comment: We support this as the bear minimum necessary for kitchen capacity in new construction.

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Comment: New construction must provide microwaves just as existing construction must.

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(2) Existing facilities. Existing facilities that convert to residences after_____(effective date) must meet the following requirements related to kitchen capacity:

(i) The residence shall provide a small refrigerator, microwave, storage space, and counter top in each living unit.

(iii) The residence shall provide access to a sink for dishes, a stovetop for hot food preparation and a food preparation area in a common area. A common resident kitchen shall not include the kitchen used by the residence staff for the preparation of resident or employee meals, or the storage of goods.

Deleted: (ii) The residence shall provide a microwave oven in each living unit.¶

Comment: We accept this, with our changes in (2)(i) as the minimum for kitchens in existing construction.

(iv) The kitchen space shall be a visually distinct portion of the living unit.

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(e) Ceiling height in each living unit must be at least 8 feet.

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(f) Each living unit must have at least one window with direct exposure to natural light.

(g) A resident's bedroom in the living unit shall be used only by the occupying resident unless two consenting adult residents agree to share a bedroom and the requirements of subsection (c) are met.

(h) Each living unit shall have a door with a lock, except where a lock in a unit under a special care designation would pose a risk or be unsafe.

(i) A resident shall have access to his living unit at all times.

(j) A residence shall ensure that each resident has at least the following in the living unit:

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(1) A bed with a solid foundation and fire retardant mattress that is in good repair, clean and supports the resident.

(2) A chair for each resident that meets the resident's needs.

(3) Pillows, bed linens and blankets that are clean and in good repair.

(4) A storage area for clothing that includes a chest of drawers and a closet or wardrobe space with clothing racks or shelves accessible to the resident.

(5) A bedside table or a shelf.

(6) A mirror.

(7) An operable lamp or other source of lighting that can be turned on at bedside.

(8) If a resident shares a bedroom with another resident, the items specified in paragraphs (4)—(7) may not be shared with that resident.

Comment: It is not consistent with the assisted living philosophy to make two residents share dresser drawers and a single reading lamp. Autonomy, dignity, and privacy necessitate that residents have their own space and get to make decisions about such things as when it is time for lights out.

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(k) Cots and portable beds are prohibited.

(l) Bunk beds or other raised beds that require residents to climb steps or ladders to get into or out of bed are prohibited.

(m) A living unit may not be used as a exit from or used as a passageway to another part of the residence unless in an emergency situation.

(n) The living unit must have walls, floors and ceilings, which are finished, clean and in good repair.

(o) In living units with a separate bedroom there must be a door on the bedroom.

(p) Space for storage of personal property shall be provided in a dry, protected area.

(q) There must be drapes, shades, curtains, blinds or shutters on the living unit windows. Window coverings must be clean, in good repair, provide privacy and cover the entire window when drawn.

(R) Each living unit shall be equipped with an emergency notification system to notify staff in the event of an emergency.

§ 2800.102. Bathrooms.

(a) There shall be one functioning flush toilet in the bathroom in the living unit.

(b) There shall be at least one sink and wall mirror in the bathroom of the living unit.

(c) There shall be at least one bathtub or shower in the bathroom of the living unit.

(d) All toilet and bath areas in the residence must have grab bars, hand rails or assist bars. Bathtubs and showers must have slip-resistant surfaces.

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(e) Privacy in the living unit shall be provided for toilets, showers and bathtubs by partitions or doors. Bathroom doors in a double occupancy living unit must be lockable by the resident, unless contraindicated by the support plan.

(f) An individual towel, washcloth and soap shall be provided for each resident unless the resident provides his own supplies of these items.

(g) Individual toiletry items including toothpaste, toothbrush, shampoo, deodorant, comb and hairbrush shall be made available to residents who are not recipients of SSI. If the residence charges for these items, the charges shall be indicated in the resident-residence contract. Availability of toiletry items for residents who are recipients of SSI is specified in § 2800.27(d)(1) (relating to SSI recipients).

(h) Toilet paper shall be provided for every toilet.

(i) Bar soap or a dispenser with soap shall be provided within reach of each bathroom sink. Bar soap, however, is not permitted when a living unit is shared unless there is a separate bar clearly labeled for each resident sharing the living unit.

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(j) Towels and washcloths shall be in the possession of the resident in the resident's living unit unless the resident has access to the residence's linen supply.

(k) Use of a common towel is prohibited.

(l) Shelves or hooks for the resident's towel and clothing shall be provided.

(m) A residence shall have at least one public restroom that meets applicable local, state and federal laws and guidelines and that is convenient to common areas and wheelchair accessible.

(N) Each bathroom shall be equipped with an emergency notification system to notify staff in the event of an emergency.

§ 2800.103. Food service.

(a) A residence shall have an operable kitchen with a refrigerator, sink, stove, oven, cooking equipment and cabinets or shelves for storage.

Deleted: If the kitchen is not in the residence, the residence shall have a kitchen area with a refrigerator, cooking equipment, a sink and food storage space.

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(b) Kitchen surfaces must be of a nonporous material and cleaned and sanitized after each meal.

(c) Food shall be protected from contamination while being stored, prepared, transported and served.

(d) Food shall be stored off the floor.

(e) Food served and returned from an individual's plate may not be served again or used in the preparation of other dishes. Leftover food shall be labeled and dated.

(f) Food requiring refrigeration shall be stored at or below 40°F. Frozen food shall be kept at or below 0°F. Thermometers are required in refrigerators and freezers.

(g) Food shall be stored in closed or sealed containers.

(h) Food shall be thawed either in the refrigerator, microwave, under cool water or as part of the cooking process.

(i) Outdated or spoiled food or dented cans may not be used.

(j) Eating, drinking and cooking utensils shall be washed, rinsed and sanitized after each use by a method specified in 7 Pa. Code Chapter 46, Subchapter D (relating to equipment, utensils and linen).

§ 2800.104. Dining room.

(a) An assisted living residence shall have an accessible common dining space outside the resident living units. A dining room area shall be equipped with tables and chairs and able to accommodate the maximum number of residents scheduled for meals at any one time. There must be at least 15 square feet per person for residents scheduled for meals at any one time.

(b) Dishes, glassware and utensils shall be provided for eating, drinking, preparing and serving food. These utensils must be clean, and free of chips and cracks. Plastic and paper plates, utensils and cups for meals may not be used on a regular basis.

(c) Condiments shall be available at the dining table.

(d) Adaptive eating equipment or utensils shall be available, if needed, to assist residents in eating at the table.

(e) Breakfast, midday and evening meals shall be served to residents in a dining room except in the following situations:

(1) Service in the resident's living unit shall be available at no additional charge when the resident is unable to come to the dining room due to illness.

(2) When room service is available in a residence, a resident may choose to have a meal served in the resident's living unit. This service shall be provided at the resident's request and may not replace daily meals in a dining room.

§ 2800.105. Laundry.

(a) Laundry service for bed linens, towels and personal clothing shall be provided by the residence to all residents, and, at no additional charge, to residents who are recipients of or eligible applicants for SSI benefits or HCBS Waiver Services. Laundry service does not include dry cleaning.

(b) For residents who are not recipients of or eligible applicants for SSI benefits or HCBS Waiver Services, laundry service for bed linens, towels and personal clothing for the residents shall be provided by the residence unless otherwise indicated in the resident-residence contract.

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Deleted: (c) The supply of bed linens and towels shall be sufficient to ensure a complete change of bed linen and towels at least once per week.

(d) Bed linens and towels shall be changed at least once every week and more often as needed to maintain sanitary conditions. Personal laundry shall be cleaned at least once a week with more frequent laundry service where the resident's care needs require it.

(e) Clean linens and towels shall be stored in an area separate from soiled linen and clothing.

(f) Measures shall be implemented to ensure that residents' clothing is not lost or misplaced during laundering or cleaning. The resident's clean clothing shall be returned to the resident within 24 hours after being removed from the resident's living unit.

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(g) To reduce the risks of fire hazards, lint shall be removed from the lint trap and drum of clothes dryers after each use. Lint shall be cleaned from the vent duct and internal and external ductwork of clothes dryers according to the manufacturer's instructions.

§ 2800.106. Swimming areas.

If a residence operates a swimming area, the following requirements apply:

(1) Swimming areas shall be operated in accordance with applicable laws and regulations.

(2) Written policy and procedures to protect the health, safety and well-being of the residents shall be developed and implemented.

(3) Staff certified as Red Cross Life Saving staff must be present when residents are using the pool or other body of water.

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(4) All pools and ponds shall be fenced and have automatic latched gate.

§ 2800.107. Emergency preparedness.

(a) The administrator shall have a copy and be familiar with the emergency preparedness plan for the municipality in which the residence is located.

(b) The residence shall have written emergency procedures that include the following:

(1) Contact information for each resident's designated person.

(2) The residence's plan to provide the emergency medical information for each resident that ensures confidentiality.

(3) Contact telephone numbers of local and State emergency management agencies and local resources for housing and emergency care of residents.

(4) Means of transportation in the event that relocation is required.

(5) Duties and responsibilities of staff persons during evacuation, transportation and at the emergency location. These duties and responsibilities shall be specific to each resident's emergency needs.

(6) Alternate means of meeting resident needs in the event of a utility outage.

(c) The residence shall maintain at least a 3-day supply of nonperishable food, all resident medications and drinking water for residents.

(d) The written emergency procedures shall be reviewed, updated and submitted annually to the local emergency management agency.

§ 2800.108. Firearms and weapons

Comment: We do not believe there are any circumstances under which firearms should be permitted in assisted living facilities. We strongly urge reversion to the prior position of the Department that would have prohibited firearms in assisted living facilities.

(a) A residence shall have a written policy regarding firearms.
(b) The policy shall include, at a minimum, procedures regarding the safety, access and use of firearms, weapons, and ammunition.
(c) Firearms, weapons and ammunition shall be permitted on the licensed premises of a residence only when the following conditions are met:

(1) Firearms and weapons shall be contained in a locked cabinet located in a place other than the residents' living unit or in a common living area.

(2) Ammunition shall be contained in a locked area separate from firearms and weapons, and located in a place other than the residents' living unit or in a common living area.

(3) The key to the locked cabinet containing the firearms, weapons and ammunition shall be in the possession of the administrator or a designee.

(4) The administrator or a designee shall be the only individual permitted to open the locked cabinet containing the firearms and weapons and the locked area containing the ammunition.

(5) If a firearm, weapon or ammunition is the property of a resident, there shall be a written policy and procedures regarding the safety, access and use of firearms, weapons and ammunition. A resident may not take a firearm, weapon or ammunition out of the locked cabinet into the living area.

§ 2800.109. Pets.

(a) The residence rules shall specify whether the residence permits pets on the premises. Service animals must be permitted.

(b) Cats and dogs present at the residence shall have a current rabies vaccination. A current certificate of rabies vaccination from a licensed veterinarian shall be kept.

(c) Pets that are accessible to the residents shall be in good health and nonaggressive to the residents.

(d) If a residence has additional charges for pets, the charges shall be included in the resident-residence contract.

(E) A residence shall disclose to applicants whether pets are permitted and present in the residence.

§ 2800.121. Unobstructed egress.

(a) Stairways, hallways, doorways, passageways and egress routes from living units and from the building must be unlocked and unobstructed.

(b) Except as provided in § 2800.101 (relating to resident living units), doors used for egress routes from living units and from the building may not be equipped with key-locking devices, electronic card operated systems or other devices which prevent immediate egress of residents from the building, unless the residence has written approval or a variance from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.

§ 2800.122. Exits.

Unless otherwise regulated by the Department of Labor and Industry, the Department of Health or the appropriate local building authority, all buildings must have at least two independent and accessible exits from every floor, arranged to reduce the possibility that both will be blocked in an emergency situation.

§ 2800.123. Emergency evacuation.

(a) Exit doors must be equipped so that they can be easily opened by residents from the inside without the use of a key or other manual device that can be removed, misplaced or lost.

(b) Copies of the emergency procedures as specified in § 2800.107 (relating to emergency preparedness) shall be posted in a conspicuous and public place in the residence and a copy shall be kept.

(c) For a residence serving nine or more residents, an emergency evacuation diagram of each floor showing corridors, line of travel to exit doors and location of the fire extinguishers and pull signals shall be posted in a conspicuous and public place on each floor.

(d) If the residence serves one or more residents with mobility needs above or below grade level of the residence, there shall be a fire-safe area, as specified in writing within the past year by a fire safety expert, on the same floor as each resident with mobility needs.

§ 2800.124. Notification of local fire officials.

The residence shall notify the local fire department in writing of the address of the residence, location of the living units and bedrooms and the assistance needed to evacuate in an emergency. Documentation of notification shall be kept.

§ 2800.125. Flammable and combustible materials.

(a) Combustible and flammable materials may not be located near heat sources or hot water heaters.

(b) Combustible materials shall be inaccessible to residents.

§ 2800.126. Furnaces.

(a) A professional furnace cleaning company or trained maintenance staff person shall inspect furnaces at least annually. Documentation of the inspection shall be kept.

(b) Furnaces shall be cleaned according to the manufacturer's instructions. Documentation of the cleaning shall be kept.

§ 2800.127. Space heaters.

(a) Portable space heaters are prohibited.

(b) Nonportable space heaters must be well vented and installed with permanent connections and protectors.

§ 2800.128. Supplemental heating sources.

(a) The use of kerosene burning heaters is prohibited.

(b) Wood and coal burning stoves shall be used only if a local fire department or other municipal fire safety authority, professional cleaning company or trained maintenance staff person inspects and approves them annually. Wood and coal burning stoves that are used as a regular heating source shall be cleaned every year according to the manufacturer's instructions. Documentation of wood and coal burning stove inspections and cleanings shall be kept.

(c) Wood and coal burning stoves must be securely screened or equipped with protective guards while in use.

§ 2800.129. Fireplaces.

(a) A fireplace must be securely screened or equipped with protective guards while in use.

(b) A fireplace chimney and flue shall be cleaned when there is an accumulation of creosote. Written documentation of the cleaning shall be kept.

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(c) A fireplace chimney and flue that is used shall be serviced annually and written documentation of the servicing shall be kept.

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§ 2800.130. Smoke detectors and fire alarms.

(a) There shall be an operable automatic smoke detector located in each living unit, in addition to those located in common areas, storage rooms, laundry rooms, dining rooms, and kitchen areas.

(b) Smoke detectors and fire alarms must be of a type approved by the Department of Labor and Industry, the appropriate local building authority or local fire safety expert, or listed by Underwriters Laboratories.

(c) If the residence serves nine or more residents, there shall be at least one smoke detector on each floor interconnected and audible throughout the residence or an automatic fire alarm system that is interconnected and audible throughout the residence.

(d) If one or more residents or staff persons are not able to hear the smoke detector or fire alarm system, a signaling device approved by a fire safety expert shall be used and tested so that each resident and staff person with a hearing impairment will be alerted in the event of a fire.

(e) Smoke detectors and fire alarms shall be tested for operability at least once per month. A written record of the monthly testing shall be kept.

(f) If a smoke detector or fire alarm becomes inoperative, repair shall be completed within 48 hours of the time the detector or alarm was found to be inoperative.

(g) The residence's emergency procedures shall indicate the procedures that will be immediately implemented until the smoke detector or fire alarms are operable.

(h) In residences housing five or more residents with mobility needs, the fire alarm system shall be directly connected to the local fire department or 24-hour monitoring service approved by the local fire department, if this service is available in the community.

§ 2800.131. Fire extinguishers.

(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor and living unit, including the basement and attic.

(b) If the indoor floor area on a floor including the basement or attic is more than 3,000 square feet, there shall be an additional fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen and in the living units. The kitchen extinguisher must meet the requirements for one floor as required in subsection (a).

(d) Fire extinguishers must be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(e) Fire extinguishers shall be accessible to staff persons. Fire extinguishers shall be kept locked if access to the extinguisher by a resident could cause a safety risk to the resident. If fire extinguishers are kept locked, each staff person shall be able to immediately unlock the fire extinguisher in the event of a fire emergency.

(f) Fire extinguishers shall be inspected and approved annually by a fire safety expert. The date of the inspection shall be on the extinguisher.

§ 2800.132. Fire drills.

(a) An unannounced fire drill shall be held at least once a month.

(b) A fire safety inspection and fire drill conducted by a fire safety expert shall be completed annually. Documentation of this fire drill and fire safety inspection shall be kept.

(c) A written fire drill record must include the date, time, the amount of time it took for evacuation, the exit route used, the number of residents in the residence at the time of the drill, the number of residents evacuated, the number of staff persons participating, problems encountered and whether the fire alarm or smoke detector was operative.

(d) Residents shall be able to evacuate the entire building to a public thoroughfare, or to a fire-safe area designated in writing within the past year by a fire safety expert within the period of time specified in writing within the past year by a fire safety expert. For purposes of this subsection, the fire safety expert may not be a staff person of the residence.

(e) A fire drill shall be held during sleeping hours once every 6 months.

(f) Alternate exit routes shall be used during fire drills.

(g) Fire drills shall be held on different days of the week, at different times of the day and night, not routinely held when additional staff persons are present and not routinely held at times when resident attendance is low.

(h) Residents shall evacuate to a designated meeting place away from the building or within the fire-safe area during each fire drill.

(i) A fire alarm or smoke detector shall be set off during each fire drill.

(j) Elevators may not be used during a fire drill or a fire.

§ 2800.133. Exit signs.

The following requirements apply for a residence serving nine or more residents:

(1) Signs bearing the word "EXIT" in plain legible letters shall be placed at all exits.

(2) Access to exits shall be marked with readily visible signs indicating the direction to travel.

(3) Exit sign letters must be at least 6 inches in height with the principal strokes of letters at least 3/4 inch wide.

RESIDENT HEALTH

§ 2800.141. Resident medical evaluation and health care.

(a) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner documented on a form specified by the Department, within 60 days prior to admission as required in (b) the evaluation must include the following:

Comment: These must be completed prior to admission. Whereas with the assessment and support plan we recognize a potential need for delay due to urgent discharge from hospital, this is not appropriate here. There are no circumstances in which a medical evaluation needs to be delayed. Even a person being discharged from the hospital would like have some medical evaluation. This is part of the determination of whether the discharge from hospital/rehab facility to ALR is appropriate.

(1) A general physical examination by a physician, physician's assistant or nurse practitioner.

(2) Medical diagnosis including physical or mental disabilities of the resident, if any.

(3) Information about resident's day-to-day personal care needs.

(4) Medical information pertinent to diagnosis and treatment in case of an emergency.

(4) Special health or dietary needs of the resident.

(5) Allergies.

(6) Immunization history.

(7) Medication regimen, contraindicated medications, medication side effects and the ability to self-administer medications.

(8) Body positioning and movement stimulation for residents, if appropriate.

(9) Health status.

(10) Mobility assessment, updated annually or at the Department's request.

(11) An indication that a tuberculin skin test has been administered with negative results within 2 years; or if the tuberculin skin test is positive, the result of a chest x-ray. In the event a tuberculin skin test has not been administered, such test shall be administered with in 15 days after admission.

(12) Information about a resident's day-to-day personal care needs.

(b) A resident shall have a medical evaluation:

(1) At least every 6 months.

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(2) If the medical condition of the resident changes prior to the 6 month medical evaluation.

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(3) Immediately following any hospitalization and again 30 days following discharge from the hospital.

§ 2800.142. Assistance with health care and supplemental health care services.

(a) The residence shall assist the resident to secure medical care and supplemental health care services. To the extent prominently displayed in the written admission agreement, a residence may require residents to use providers of supplemental health care services approved or designated by the residence if it can make a showing that the resident's choice of provider is not insured, in good standing with its licensing agency, or unwilling to follow residence rules. If the resident has health care coverage for the supplemental health care services, access to participating providers shall not be restricted. Access to resident choice of provider shall not be unreasonably or unlawfully limited or withheld. The residence shall document the resident's need for the medical care and

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supplemental health care services, including updating the resident's assessment and support plan.

(b) If a resident refuses routine medical or dental examination or treatment, the refusal and the continued attempts to educate and inform the resident about the need for health care shall be documented in the resident's record.

(c) If a resident has a serious medical or dental condition, reasonable efforts shall be made to obtain consent for treatment from the resident or the resident's designated person.

(d) The residence shall assist the resident to secure preventative medical, dental, vision and behavioral health care as requested by a physician, physician's assistant or certified registered nurse practitioner.

§ 2800.143. Emergency medical plan.

(a) The residence shall have a written emergency medical plan that includes the following:

(1) The hospital or source of health care that will be used in an emergency. This shall be the resident's choice, if possible.

(2) Emergency transportation to be used.

(3) An emergency-staffing plan.

(b) The following current emergency medical and health information shall be available at all times for each resident and shall accompany the resident when the resident needs emergency medical attention:

(1) The resident's name and birth date.

(2) The resident's Social Security number.

(3) The resident's medical diagnosis.

(4) The resident's physician's name and telephone number.

(5) Current medication, including the dosage and frequency.

(6) A list of allergies.

(7) Other relevant medical conditions.

(8) Any language, speech, hearing and/or vision need which requires accommodation and/or awareness of during oral and/or written communication (such as needing an interpreter for a particular language or American sign language)

(9) Insurance or third party payer and identification number.

(9) The power of attorney for health care or health care proxy, if applicable.

(10) The resident's designated person with current address and telephone number.

(11) Personal information and related instructions regarding advance directives, do not resuscitate orders or organ donation, if applicable.

§ 2800.144. Use of tobacco.

(a) A residence may permit smoking tobacco in a designated smoking room of the residence.

(b) The residence rules shall specify whether the residence is designated as smoking or nonsmoking.

(c) A residence that permits smoking inside or outside of the residence shall develop and implement written fire safety policy and procedures that include the following:

(1) Proper safeguards inside and outside of the residence to prevent fire hazards involved in smoking, including providing fireproof receptacles and ashtrays, direct outside ventilation, no interior ventilation from the smoking room through other parts of the residence , extinguishing procedures, fire resistant furniture both inside and outside the residence and fire extinguishers in the smoking rooms.

(2) Location of a smoking room or outside smoking area a safe distance from heat sources, hot water heaters, combustible or flammable materials and away from common walkways and exits.

(3) Prohibition of the use of tobacco during transportation by the residence.

(d) Smoking outside of the smoking room is prohibited.

NUTRITION

§ 2800.161. Nutritional adequacy.

(a) Meals shall be offered that meet the recommended dietary allowances established by the United States Department of Agriculture. Meal planning and preparation shall be under supervision of a staff or consulting dietician.

(b) At least three nutritionally well-balanced meals shall be offered daily to the resident. Each meal shall include an alternative food and drink item from which the resident may choose.

(c) Additional portions of meals and beverages at mealtimes shall be available for the resident.

(d) A resident's special dietary needs as prescribed by a physician, physician's assistant, certified registered nurse practitioner or dietitian shall be met. Documentation of the resident's special dietary needs shall be kept in the resident's record.

(e) Dietary alternatives shall be available for a resident who has special health needs or religious beliefs regarding dietary restrictions.

(f) Drinking water shall be available to the resident at all times.

(g) Between-meal snacks and beverages shall be available at all times for each resident, unless medically contraindicated as documented in the resident's support plan.

(h) Residents have the right to purchase groceries and prepare their own food in addition to the three meal plan required in § 2800.220(b) (relating to assisted living residence services) in their living units unless it would be unsafe for them to do so consistent with their support plan.

§ 2800.162. Meals.

(a) There may not be more than 15 hours between the evening meal and the first meal of the next day. There may not be more than 6 hours between breakfast and lunch, and between lunch and supper. This requirement does not apply if a resident's physician has prescribed otherwise.

(b) When a resident misses a meal, food adequate to meet daily nutritional requirements shall be available and offered to the resident.

(c) Menus, stating the specific food being served at each meal, shall be prepared for 1 week in advance and shall be followed. Weekly menus shall be posted 1 week in advance in a conspicuous and public place in the residence.

(d) Past menus of meals that were served, including changes, shall be kept for at least 1 month.

(e) A change to a menu shall be posted in a conspicuous and public place in the residence and shall be accessible to a resident in advance of the meal. Meal substitutions shall be made in accordance with § 2800.161 (relating to nutritional adequacy).

(f) A resident shall receive adequate physical assistance with eating or be provided with appropriate adaptive devices, or both, as indicated in the resident's support plan.

(g) All appropriate cueing shall be used to encourage and remind residents to eat and drink.

§ 2800.163. Personal hygiene for food service workers.

(a) Staff persons, volunteers and residents involved in the storage, preparation, serving and distributing of food shall wash their hands with hot water and soap prior to working in the kitchen areas and after using the bathroom.

(b) Staff persons, volunteers and residents shall follow sanitary practices while working in the kitchen areas.

(c) Staff persons, volunteers and residents involved with the storage, preparation, serving and distributing of food shall be in good health.

(d) Staff persons, volunteers and residents who have a discharging or infected wound, sore, lesion on hands, arms or any exposed portion of their body may not work in the kitchen areas in any capacity.

§ 2800.164. Withholding or forcing of food prohibited.

(a) A residence may not withhold meals, beverages, snacks or desserts as punishment. Food and beverages may be withheld in accordance with prescribed medical or dental procedures.

(b) A resident may not be forced to eat food.

(c) If a resident refuses to eat or drink continuously during a 24-hour period, the resident's primary care physician and the resident's designated person shall be immediately notified.

(d) If a resident has a cognitive impairment that affects the resident's ability to consume adequate amounts of food and water, a staff person shall encourage and remind the resident to eat and drink.

TRANSPORTATION

§ 2800.171. Transportation.

(a) A residence shall be required to provide or arrange transportation to and from medical and social appointments.

Comment: An ALR must be required to transport or ensure transportation to medical and social appointments. If "coordinate" is meant to mean review and explain public transportation schedule that may get the consumer to the appointment or event but not necessarily at the appropriate time, that is not adequate to fulfill the obligation to ensure that consumers get transported to where they need to go. The ALR must ensure transportation and they must provide the transportation in a way that coordinates with the time the consumer needs to be at the place to which he/she is being transported. For this reason we recommend "arrange" instead.

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(b) The following requirements apply whenever staff persons or volunteers of the residence provide transportation for the resident:

(1) The occupants of the vehicle shall be in an appropriate safety restraint at all times the vehicle is in motion.

(2) The driver of a vehicle shall be 18 years of age or older and possess a valid driver's license.

(3) The driver of the residence vehicle cannot be a resident.

(4) At least one staff member transporting or accompanying the residents shall have completed the initial new hire direct care staff person training as specified in § 2800.65 (relating to direct care staff training and orientation).

(5) The vehicle must have a first aid kit with the contents as specified in § 2800.96 (relating to first aid kit).

(6) During vehicle operations, the driver may only use a hands-free cellular telephone.

(7) Transportation shall include, when necessary, an assistant to the driver who assists the driver to escort residents in and out of the residence and provides assistance during the trip.

(c) The residence shall maintain current copies of the following documentation for each of the residence's vehicles used to transport residents:

(1) Vehicle registration.

(2) Valid driver's license for vehicle operator.

(3) Vehicle insurance.

(4) Current inspection.

(5) Commercial driver's license for vehicle operator if applicable.

(d) If a residence supplies its own vehicle for transporting residents to and from medical and social appointments, any vehicle used for this purpose shall be accessible to resident wheelchair users and any other assistive equipment the

resident may need. If the residence arranges or contracts for transportation, it must ensure that contractors and arranged transportation is accessible to resident wheelchairs and assistive devices.

Comment: We strongly support this requirement.

MEDICATIONS

§ 2800.181. Self-administration.

(a) A residence shall provide residents with assistance, as needed, with medication prescribed for the resident's self-administration. This assistance includes helping the resident to remember the schedule for taking the medication, storing the medication in a secure place and offering the resident the medication at the prescribed times.

(b) If assistance includes helping the resident to remember the schedule for taking the medication, the resident shall be reminded of the prescribed schedule.

(c) The resident's assessment shall identify if the resident is able to self-administer medications as specified in § 2800.227(e) (relating to development of the support plan). A resident who desires to self-administer medications shall be assessed by a physician, physician's assistant or certified registered nurse practitioner regarding the ability to self-administer and the need for medication reminders.

(d) If the resident does not need assistance with medication, medication may be stored in a resident's living unit for self-administration. Medications stored in the resident's living unit shall be kept in a safe and secure location to protect against contamination, spillage and theft. The residence shall provide a lockable storage unit for this purpose.

(e) To be considered capable to self-administer medications, a resident shall:

(1) Be able to recognize and distinguish his medication.

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(2) Be able to use the medication as prescribed in the manner prescribed, for example, including but not limited to being capable of placing medication in own mouth and swallowing completely, applying topical medications and not disturbing the application site, properly placing drops in own eyes, correctly inhaling inhalants, and properly inhaling nasal therapies

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(3) Know how much medication is to be taken.

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(4) Know when medication is to be taken.

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(f) The resident's record shall include a current list of prescription, CAM and OTC medications for each resident who is self-administering his medication.

§ 2800.182. Medication administration.

(a) A residence shall provide medication administration services for a resident who is assessed to need medication administration services in accordance with § 2800.181 (relating to self-administration) and for a resident who chooses not to self-administer medications.

Comment: We support this change. It is essential that ALRs provide assistance with medication administration for consumers who require it.

(b) Prescription medication that is not self-administered by a resident shall be administered by one of the following:

(1) A physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.

(2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the residence.

(3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the residence.

(4) A staff person who has completed the medication administration training as specified in § 2800.190 (relating to medication administration training) for the administration of oral; topical; eye, nose and ear drop prescription medications; insulin injections and epinephrine injections for insect bites or other allergies.

(c) Medication administration includes the following activities, based on the needs of the resident:

(1) Identify the correct resident.

(2) If indicated by the prescriber's orders, measure vital signs and administer medications accordingly.

(3) Remove the medication from the original container.

(4) Crush or split the medication as ordered by the prescriber.

(5) Place the medication in a medication cup or other appropriate container, or in the resident's hand.

(6) Place the medication in the resident's hand, mouth or other route as ordered by the prescriber, in accordance with the limitations specified in subsection (b)(4).

(7) Complete documentation in accordance with § 2800.187 (relating to medication records).

§ 2800.183. Storage and disposal of medications and medical supplies.

(a) Prescription medications, OTC medications and CAM shall be kept in their original labeled containers and may not be removed more than 2 hours in advance of the scheduled administration. Assistance with insulin and epinephrine injections and sterile liquids shall be provided immediately upon removal of the medication from its container.

(b) Prescription medications, OTC medications, CAM and syringes shall be kept in an area or container that is locked. This includes medications and syringes unless kept in the resident's living unit.

(c) Prescription medications, OTC medications and CAM stored in a refrigerator shall be kept in an area or container that is locked unless the resident has the capacity to store such medications in the resident's own refrigerator in the resident's living unit.

(d) Only current prescription, OTC, sample and CAM for individuals living in the residence may be kept in the residence.

(e) Prescription medications, OTC medications and CAM shall be stored in an organized manner under proper conditions of sanitation, temperature, moisture and light and in accordance with the manufacturer's instructions.

(f) Prescription medications, OTC medications and CAM that are discontinued, expired or for residents who are no longer served at the residence shall be destroyed in a safe manner according to the Department of Environmental Protection and Federal and State regulations. When a resident permanently leaves the residence, the resident's medications shall be given to the resident, the designated person, if any, or the person or entity taking responsibility for the new placement on the day of departure from the residence.

(g) Subsections (a) and (e) do not apply to a resident who self-administers medication and stores the medication in his living unit.

§ 2800.184. Labeling of medications.

(a) The original container for prescription medications shall be labeled with a pharmacy label that includes the following:

(1) The resident's name.

(2) The name of the medication.

(3) The date the prescription was issued.

(4) The prescribed dosage and instructions for administration.

(5) The name and title of the prescriber.

(b) If the OTC medications and CAM belong to the resident, they shall be identified with the resident's name.

(c) Sample prescription medications shall have written instructions from the prescriber that include the components specified in subsection (a).

§ 2800.185. Accountability of medication and controlled substances.

(a) The residence shall develop and implement procedures for the safe storage, access, security, distribution and use of medications and medical equipment by trained staff persons.

(b) At a minimum, the procedures must include:

(1) Documentation of the receipt of controlled substances and prescription medications.

(2) A process to investigate and account for missing medications and medication errors.

(3) Limited access to medication storage areas.

(4) Documentation of the administration of prescription medications, OTC medications and CAM for residents who receive medication administration services or assistance with self-administration. This requirement does not apply to a resident who self-administers medication without the assistance of a staff person and stores the medication in his living unit.

(5) To the extent indicated in the resident's support plan, the residence shall obtain prescribed medications for residents and keep an adequate supply of resident medication on hand at all times.

Comment: We strongly support this change.

§ 2800.186. Prescription medications.

(a) Each prescription medication must be prescribed in writing by an authorized prescriber. Prescription orders shall be kept current.

(b) Prescription medications shall be used only by the resident for whom the prescription was prescribed.

(c) Changes in medication may only be made in writing by the prescriber, or in the case of an emergency, an alternate prescriber, except for circumstances in which oral orders may be accepted by nurses in accordance with regulations of the Department of State. The resident's medication record shall be updated as soon as the residence receives written notice of the change.

§ 2800.187. Medication records.

(a) A medication record shall be kept to include the following for each resident for whom medications are administered:

(1) Resident's name.

(2) Drug allergies.

(3) Name of medication.

(4) Strength.

(5) Dosage form.

(6) Dose.

(7) Route of administration.

(8) Frequency of administration.

(9) Administration times.

(10) Duration of therapy, if applicable.

(11) Special precautions, if applicable.

(12) Diagnosis or purpose for the medication, including pro re nata (PRN).

(13) Date and time of medication administration.

(14) Name and initials of the staff person administering the medication.

(b) The information in subsection (a)(13) and (14) shall be recorded at the time the medication is administered.

(c) If a resident refuses to take a prescribed medication, the refusal shall be documented in the resident's record and on the medication record. The refusal shall be reported to the prescriber within 24 hours, unless otherwise instructed by

the prescriber. Subsequent refusals to take a prescribed medication shall be reported as required by the prescriber.

(d) The residence shall follow the directions of the prescriber.

§ 2800.188. Medication errors.

(a) Medication errors include the following:

(1) Failure to administer a medication.

(2) Administration of the wrong medication.

(3) Administration of the wrong amount of medication.

(4) Failure to administer a medication at the prescribed time.

(5) Administration to the wrong resident.

(6) Administration through the wrong route.

(b) A medication error shall be immediately reported to the resident, the resident's designated person and the prescriber.

(c) Documentation of medication errors and the prescriber's response shall be kept in the resident's record.

(d) There shall be a system in place to identify and document medication errors and the residence's pattern of error.

(e) There shall be documentation of the follow-up action that was taken to prevent future medication errors.

§ 2800.189. Adverse reaction.

(a) If a resident has a suspected adverse reaction to a medication, the residence shall immediately consult a physician or seek emergency medical treatment. The resident's designated person shall be notified, if applicable.

(b) The residence shall document adverse reactions, the prescriber's response and any action taken in the resident's record.

§ 2800.190. Medication administration training.

(a) A staff person who has successfully completed a Department-approved medications administration course that includes the passing of the Department's

performance-based competency test within the past 2 years may administer oral; topical; eye, nose and ear drop prescription medications and epinephrine injections for insect bites or other allergies.

(b) A staff person is permitted to administer insulin injections following successful completion of a Department-approved medications administration course that includes the passing of a written performance-based competency test within the past 2 years, as well as successful completion of a Department-approved diabetes patient education program within the past 12 months.

(c) A record of the training shall be kept including the staff person trained, the date, source, name of trainer and documentation that the course was successfully completed.

§ 2800.191. Resident education.

The residence shall educate the resident of the right to question or refuse a medication if the resident believes there may be a medication error. Documentation of this resident education shall be kept.

SAFE MANAGEMENT TECHNIQUES

§ 2800.201. Safe management techniques.

The residence shall use positive interventions to modify or eliminate a behavior that endangers the resident himself or others. Positive interventions include improving communications, reinforcing appropriate behavior, redirection, conflict resolution, violence prevention, praise, deescalation techniques and alternative techniques or methods to identify and defuse potential emergency situations.

§ 2800.202. Prohibitions.

The following procedures are prohibited:

(1) Seclusion, defined as involuntary confinement of a resident in a room or living unit from which the resident is physically prevented from leaving, is prohibited. This does not include the admission of a resident in a secured dementia care unit in accordance with § 2800.231 (relating to admission).

(2) Aversive conditioning, defined as the application of startling, painful or noxious stimuli, is prohibited.

(3) Pressure point techniques, defined as the application of pain for the purpose of achieving compliance, is prohibited.

(4) A chemical restraint, defined as use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior, is prohibited. A chemical restraint does not include a drug ordered by a physician or dentist to treat the symptoms of a specific mental, emotional or behavioral condition, or as pretreatment prior to a medical or dental examination or treatment.

(5) A mechanical restraint, defined as a device that restricts the movement or function of a resident or portion of a resident's body, is prohibited. Mechanical restraints include geriatric chairs, handcuffs, anklets, wristlets, camisoles, helmet with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets, chest restraints and other types of locked restraints. A mechanical restraint does not include a device used to provide support for the achievement of functional body position or proper balance that has been prescribed by a medical professional as long as the resident can easily remove the device or the resident or his designee understands the need for the device and consents to its use.

(6) A manual restraint, defined as a hands-on physical means that restricts, immobilizes or reduces a resident's ability to move his arms, legs, head or other body parts freely, is prohibited. A manual restraint does not include prompting, escorting or guiding a resident to assist in the ADLs or IADLs.

§ 2800.203. Bedside rails.

(A) Bedside rails may not be used unless the resident can raise and lower the rails on his own. Bedside rails may not be used to keep a resident in bed. Use of any length rail longer than half the length of the bed is considered a restraint and is prohibited. Use of more than one rail on the same side of the bed is not permitted.

(b) Half-length rails are permitted only if all of the following conditions are met:

> **(1) A physician has completed an assessment during the past six months and completed a signed, time-limited, written order for the use of the rails which specifies the specific medical symptoms that warrant the use of bedside rails;**
> **(2) The rails meet Food and Drug Administration safety guidelines;**
> **(3) Staff persons complete a physical check of each resident who uses a half-length rail at least every 15 minutes during the time the bedside rail is in use;**

is required in personal care homes. We cannot provide less protection in an ALR which will have potentially frailer and more care dependent residents.

(4) The resident's assessment or support plan, or both, addresses the medical symptoms necessitating the use of half-length rails and the health and safety protection necessary in order to safely use half-length rails.

(2) The residence has attempted to use less restrictive alternatives.

(3) The resident or legal representative consented to the use of half-length rails after the risks, benefits and alternatives were explained.

SERVICES

§ 2800.220 Assisted living residence services.

(a) Services. The residence must provide all assisted living services and provide or arrange for the provision of all supplemental health care services articulated herein. Each residence must provide a base core package of services that residents must purchase and can trust they will receive. Other individuals or agencies may furnish services directly or under arrangements with the residence or residents in accordance with a mutually agreed upon charge or fee between the residence, resident and other individual or agency. These services shall be supplemental to the services provided by the residence and shall not supplant them.

Comment: Please note the definitions we have added of "assisted living services" which was previously undefined.

Deleted: core services as specified in subsection (b).

(b) Assisted Living Services. Services that shall be available to residents in any Assisted Living residence including

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(1) Nutritious meals and snacks in accordance with §§ 2800.161 and 2800.162 (relating to nutritional adequacy; meals).

(2) Laundry services in accordance with § 2800.105 (relating to laundry).

(3) A daily program of social and recreational activities in accordance with § 2800.221 (relating to activities program).

(4) Assistance with performing ADLs and IADLs in accordance with §§ 2800.23 and 2800.24 (relating to activities and personal hygiene).

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(5) Assistance with self-administration of medication or medication administration as indicated in the resident's assessment and support plan in accordance with §§ 2800.181 and 2800.182 (relating to self-administration and medication administration).

(6) Housekeeping and other household services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences.

Comment: This is defined in the definitions. "household services" is not. Not sure what it is meant to mean but, want to make sure no one misses out on housekeeping.

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(7) Transportation in accordance with § 2800.171 (relating to transportation).

(8) Financial Management.

(9) 24 Hour supervision, monitoring and emergency response

(10) Activities and Socialization

(11) space and equipment for activities

(12) medication administration

(13) cognitive support services

(c) Core Service Packages. The residence must, at a minimum, provide the following base core service packages:

(1) The **base (independent) core package** would be made available only to consumers who **do not need assistance with activities of daily living**. This base (independent) core package would include:

1. 24 hour supervision, monitoring and emergency response
2. Nutritious meals and snacks in accordance with §§ 2800.161 and 2800.162 (relating to nutritional adequacy; meals).
3. Housekeeping
4. Weekly Laundry service for linens and towels
5. Assistance provided for a short term (several weeks or during defined recovery period) with unanticipated ADLs
6. Daily Socialization and Activities

(2) The **base (Assisted Living) core package** must be available to consumers who need assistance with activities of daily living. It must include:

1. 24 hour supervision, monitoring and emergency response
2. Nutritious meals and snacks in accordance with §§ 2800.161 and 2800.162 (relating to nutritional adequacy; meals) prepared as instructed by a staff or consulting dietician
3. Housekeeping
4. Laundry service for linens and towels at least weekly and more frequently as meet the individualized needs of the resident.
5. Assistance with unanticipated ADLs
6. Limited IADLs –

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Comment: In our view there are two basic core packages – one is for consumers who need assistance with activities of daily living and one is for consumers who do not need assistance with activities of daily living.

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a. Changing of personal laundry at least weekly and more frequently as meet the individualized needs of the resident
b. Providing or arranging transportation to medical appointments must be a part of the core service package.

7. Unanticipated Assistance with Healthcare Services
8. Daily Socialization and Activities
9. Medication Administration

(3) Additional services. Additional services for consumers who need assistance with activities of daily living could be charged ala carte or through enhanced packages.

(d) Supplemental Services. The residence shall provide or arrange for the provision OF supplemental health care services by a licensed provider, where such a license exists, including but not limited to:

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(1) Hospice services.

(2) Occupational therapy.

(3) Skilled nursing services.

(4) Physical therapy.

(5) Behavioral health services.

(6) Home health services.

(7) Escort services to and from medical appointments if transportation is coordinated by the residence.

(e) Cognitive support services. The residence shall provide cognitive support services to residents who require such services, whether in a special care unit or elsewhere in the residence.

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(f) Residents may contract with outside providers to provide scheduled assistance with ADLs and scheduled assistance with supplemental health care services and all assistance with IADLs.

§ 2800.220 Marketing

The Department needs to add something here.

Comment: We support regulatory guidance on what is appropriate marketing. Marketing must follow state consumer protection laws against fraud and deceptive practices amongst ethical considerations raised by the Ursinus people. This is done in many healthcare related circumstances such as Medicare, Medicaid, and insurance marketing and is an appropriate topic for the regulations to cover.

§ 2800.221. Activities program.

(a) The residence shall develop a program of daily activities designed to promote each resident's active involvement with other residents, the resident's family and the community. The residence shall encourage the residents' active participation in the development of the daily activities calendar.

(b) The program must be based upon individual and group interests and provide social, physical, intellectual and recreational activities in a planned, coordinated and structured manner and shall encourage active participation in the community at large.

(c) The week's daily activity calendar shall be posted in advance in a conspicuous and public place in the residence. The residence must provide verbal cueing and reminders of activities, their start times and locations within the residence.

§ 2800.222. Community social services.

Residents shall be encouraged and assisted in the access to and use of social services in the community which may benefit the resident, including a county mental health and mental retardation program, a drug and alcohol program, a senior citizens center, an area agency on aging or a home health care agency.

§ 2800.223. Description of services.

(a) The residence shall have a current written description of services and activities that the residence provides including the following:

(1) The scope and general description of the services and activities that the residence provides.

(2) The criteria for admission and discharge, which must be consistent with 2800.228.

(3) Specific services that the residence does not provide, but will arrange or coordinate.

(b) The residence shall develop written procedures for the delivery and management of services from admission to discharge.

§ 2800.224. Preadmission screening.

(a) A determination shall be made by the administrator or designee within 30 days prior to admission and documented on the Department's preadmission

screening form that the needs of the potential resident can be met by the services provided by the residence.

(b) A potential resident whose needs cannot be met by the residence shall be provided with a written decision denying their admission and provide a basis for their denial. The potential resident shall then be referred to a local appropriate assessment agency.

(c) The preadmission screening shall be completed by the administrator or designee. If the potential resident is referred by a State-operated facility, a county mental health and mental retardation program, a drug and alcohol program or an area agency on aging, a representative of the referral agent may complete the preadmission screening.

(d) A potential resident need not require supplemental healthcare services to qualify for admission to an assisted living residence.

(e) An initial screening shall not be required to commence supplemental health care services to a resident of a residence under any of the following circumstances:

(1) If the resident was not receiving such services at the time of the resident's admission.

(2) To transfer a resident from a portion of a residence that does not provide supplemental health care services to a portion of the residence that provides such service.

(3) To transfer a resident from a personal care home to a residence licensed by the same operator.

(f) Each residence must demonstrate the ability to provide or arrange for the provision of supplemental health care services in a manner duly protective of the health, safety and well-being of its residents utilizing employees, independent contractors or contractual arrangements with other health care facilities or practitioners licensed, registered or certified to the extent required by law to provide such service.

(g) Persons requiring the services of a licensed long-term care nursing facility, may reside in a residence, provided that appropriate supplemental health care services are provided and the design, construction, staffing and operation of the residence allows for them to be safely served in the residence.

§ 2800.225. Initial and quarterly assessment.

Comment: We strongly support this change.

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(1) A resident who may require supplemental health care services in the future.¶
(2) A resident who wishes to obtain assistance in obtaining such services.
(3) A resident who resides in a facility in which such services are available.

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(a) A resident shall have a written initial assessment that is documented on the Department's assessment form prior to admission. A licensed nurse, under the supervison of a registered nurse, must complete the initial assessment.

(b) A residence may use its own assessment form if it includes the same information as the Department's assessment form.

(c) The resident shall have additional assessments as follows:

(1) Quarterly.

(2) Immediately following a hospitalization or if the condition of the resident significantly changes prior to the quarterly assessment. Change in condition may include , but is not limited to, skin breakdown, falls, assaultive behaviors, new medical diagnosis requiring revised care plan, or new onset of confusion or worsening confusion with decrease in functional (ADL and IADL competencies).

(3) At the request of the Department upon cause to believe that an update is required.

(d) The resident assessment shall determine such things as, but not limited to, the resident's:

(1) Need for assistance with ADLs and IADLs

(2) Mobility Needs

(3) Ability to self-administer medication

(4) Medical history, medical conditions, and current medical status and how these impact or interact with care needs

(5) Need for supplemental healthcare services

(6) Special diets or meal requirements

(7) Ability to have a lockable door for a living unit

(8) Discrete needs in the event of an evacuation

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Comment: This is not an exhaustive list. We think the Department must articulate some minimum items that the assessment should capture.

§ 2800.226. Mobility criteria.

(a) The resident shall be assessed for mobility needs as part of the resident's assessment.

(b) If a resident is determined to have mobility needs as part of the initial or annual assessment, specific requirements relating to the care, health and safety of the resident shall be met immediately.

(c) The administrator shall notify the Department within 30 days after a resident with mobility needs is admitted to the residence or the date when a resident develops mobility needs.

§ 2800.227. Development of the support plan.

(a) Each resident shall have a written support plan developed prior to admission and implemented within 7 days of admission to the residence. The support plan shall be documented on the Department's support plan form.

(b) A residence may use its own support plan form if it includes the same information as the Department's support plan form. A licensed practical nurse, the under supervision of a registered nurse, must complete the support plan.

(c) The support plan shall be revised within 30 days upon completion of the quarterly assessment or upon changes in the resident's needs as indicated on the current assessment. The residence shall review each resident's support plan on at least quarterly basis and modify as necessary to meet the resident's needs.

(d) Each residence shall document in the resident's support plan the dietary, medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services if the resident's physician, physician's assistant or certified registered nurse practitioner, determine the necessity of these services. This requirement does not require a residence to pay for the cost of these medical and behavioral care services.

(e) The resident's support plan must document the ability of the resident to self-administer medications or the need for medication reminders or medication administration.

(f) A resident shall be encouraged to participate in the development and implementation of the support plan. A resident may include a designated person or family member in making decisions about services.

(g) Individuals who participate in the development of the support plan shall sign and date the support plan.

(h) If a resident or designated person is unable or chooses not to sign the support plan, a notation of inability or refusal to sign shall be documented.

(i) The support plan shall be accessible by direct care staff persons at all times.

Comment: Many of us agree that all residents should have a support plan. It's a fair assumption that an assisted living facility is for persons who need some help. And if for some reason the resident doesn't need any help, the support plan can say so.

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Comment: We all agree that a licensed nurse, under supervision of an RN, must take on a significant role in the assessment and support plan process that could potentially still include administrators. Most of us agree that a licensed nurse, under supervision of an RN, should bear complete responsibility for needs assessment and support plan development and that this is not a role administrators should have alone.

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(j) A resident or his designated person has a right to request the review and modification of his support plan.

(K) The support plan shall be attached to or incorporated into and serve as a part of the resident/residence agreement.

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§ 2800.228. Transfer and discharge.

(a) Tthe facility shall ensure that a transfer or discharge is safe and orderly and that the transfer or discharge is appropriate to meet the resident's needs. This shall include ensuring that a resident is transferred or discharged with all their medications, durable medical equipment, and personal property. The residence shall permit the resident to participate in the decision relating to their relocation.

(b) If the residence initiates a transfer or discharge of a resident, or if the legal entity chooses to close the residence, the residence shall provide a 30-day advance written notice to the resident, the resident's family or designated person and the referral agent citing the reasons for the transfer or discharge. This shall be stipulated in the resident-residence contract.

(1) The resident or his designated representative may appeal the discharge decision through the DPW administrative hearing process and to remain in the facility pending a decision in the appeal. The hearing shall be held within 14 days from the date of the appeal. In emergency situations, the Department shall provide for an interim telephone hearing within 3 business days, at which it shall be determined whether the resident may remain in the facility pending a full hearing. In the event that a resident is transferred from the facility pending a full hearing, the facility shall hold the resident's bed and/or waiver slot pending the full hearing.

(1) The 30-day advance written notice shall be written in language in which the resident understands, or performed in American Sign Language or presented orally in a language the resident understands if the resident does not speak standard English. The notice shall include the following:

(i) The specific reason for the transfer or discharge.

(ii) The effective date of the transfer or discharge.

(iii) The location to which the resident will be transferred or discharged.

(iv) A statement in not smaller than 12-point bold type of the right to appeal that reads, "You have the right to appeal the assisted living residence's decision to transfer you. If you think you should not have to leave this facility,

you may file a written request for a hearing with the Pennsylvania Department of Public Welfare postmarked within ten (10) days after you receive this notice. If you request a hearing, it will be held within twenty-three (23) days after you receive this notice. If you request a hearing, you will not be transferred from the residence before a decision is reached by the hearing officer and you will only be transferred from the residence if the hearing officer agrees with the residence's decision to discharge you. If you wish to appeal this transfer or discharge, a form to appeal the residence's decision and to request a hearing is attached. If you have any questions, call the Pennsylvania Department of Public Welfare at the number listed below".

(v)The name of the director and the address, telephone number, and hours of operation of the division.

(vi) A hearing request form prescribed by the department.

(vii) The name, address, and telephone number of the state and local long term care ombudsman.

(viii) For residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy currently known as the Disability Rights Network.

(iv) An explanation of the measures the resident or the resident's designated person can take if they disagree with the residence decision to transfer or discharge which shall include the name, mailing address, and telephone number of the state and local long-term care ombudsman.

(2) Prior to initiating a transfer or discharge of a resident on the basis on (h)(1)(c) of this section, the residence shall make reasonable accommodation for aging in place that may include services from outside providers. The residence must demonstrate through support plan modification and other documentation of its attempts to resolve the reason for the transfer or discharge. The residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services. Supplemental services may be provided by the resident's family, residence staff or private duty staff as agreed to by the resident and the residence. This shall be stipulated in the resident-residence contract.

Comment: This must be limited to the attempts to discharge for needing more care than the facility claims it can provide.

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(3) Practicable notice, rather than a 30-day advance written notice is required if a delay in transfer or discharge would jeopardize the health, safety or well-being of the resident or others in the residence, as certified by a physician or the Department. This may occur when the resident needs psychiatric or is abused in the residence, or the Department initiates closure of the residence.

(c) A residence shall give the Department written notice of its intent to close the residence, at least 60 days prior to the anticipated date of closing.

(d) A residence may not require a resident to leave the residence prior to 30 days following the resident's receipt of a written notice from the residence

regarding the intended closure of the residence, except when the Department determines that removal of the resident at an earlier time is necessary for the protection of the health, safety and well-being of the resident and the Department is overseeing the relocation.

(e) The date and reason for the transfer or discharge, and the destination of the resident, if known, shall be recorded in the resident record and tracked in a transfer and discharge tracking chart that the residence shall maintain and make available to the department.

(f) If the legal entity chooses to voluntarily close the residence or if the Department has initiated legal action to close the residence, the Department working in conjunction with appropriate local authorities, will offer relocation assistance to the residents. Except in the case of an emergency, each resident may participate in planning the transfer, and shall have the right to choose among the available alternatives after an opportunity to visit the alternative residences. These procedures shall apply even if the resident is placed in a temporary living situation.

(g) Within 30 days of the residence's closure, the legal entity shall return the license to the Department.

(h) The only grounds for transfer or discharge of a resident from a residence are for the following conditions:

(1) The facility has documented that

a. the resident presents an imminent physical threat or danger to self or others which cannot be managed by interventions or service planning;
b. The resident has failed to pay after reasonable efforts by the facility to obtain payment and is not eligible for publicly funded programs that can provide payment;
c. The resident has medical needs which cannot be met in an assisted living facility, even with all reasonable assistance from third-party providers OR
d. The facility closes;

(i) The residence shall hold a resident's room for 30 days while hospitalized or temporarily receiving services in a rehabilitation setting or longer so long as the resident continues to pay the rental amounts owed.

§ 2800.229. Excludable conditions; exceptions.

Comment: We strongly support this addition, in accordance with our prior comments.

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Deleted: (1) If a resident is a danger to himself or others and the behavior cannot be managed through interventions, services planning or informed consent agreements. ¶
(2) If the legal entity chooses to voluntarily close the residence, or a portion of the residence. ¶
(3) If a residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence under § 2800.229 (relating to excludable conditions; exceptions) or within the scope of licensure for a residence. In that case, the residence shall notify the resident, the resident's designated person and the local ombudsman. The residence shall provide justification for the residence's determination that the needs of the resident cannot be met. If a resident or the resident's designated person disagrees with the residence's decision to transfer or discharge, the residence shall contact the local ombudsman. If the residence decides to proceed with the transfer or discharge then the ombudsman shall notify the department. The department may take any appropriate licensure action it deems necessary based upon the report of the ombudsman. In the event that there is no disagreement related to the transfer or discharge, a plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the department.¶
(4) If meeting the resident's needs would require a fundamental alteration in the residence's program or building site, or would create an undue financial or programmatic burden on the residence. ¶
(5) If the resident has failed to pay after reasonable documented efforts by the residence to obtain payment. ¶
(6) If closure of the residen ... [18]

(a) Except as provided in subsection (b), a residence may not admit, retain or serve an individual with any of the following conditions or health care needs:

(1) Ventilator dependency.
(2) Stage III and IV decubiti and vascular ulcers that are not in a healing stage.
(3) Continuous intravenous fluids.
(4) Reportable infectious diseases, such as tuberculosis, in a communicable state that requires isolation of the individual or require special precautions by a caretaker to prevent transmission of the disease unless the Department of Health directs that isolation be established within the residence.
(5) Nasogastric tubes.
(6) Physical restraints.
(7) Continuous skilled nursing care twenty-four hours a day.

(b) The residence may submit a written request to the Department on a form provided by the Department for an exception related to any of the conditions or health care needs listed in subsection (a) or (e) in order to allow the residence to admit, retain or serve an individual with one of those conditions or health care needs, unless a determination is unnecessary as set forth in subsection (e).

(c) Submission, review and determination of an exception request.

(1) The administrator of the residence shall submit the exception request. The exception request shall be signed and affirmed by an individual listed in subsection (d) and accompanied by a support plan which includes the residence accomodations for treating the excludable condition requiring the exception request. All proposed accomodations must conform with the provisions contained within the resident agreement.

(2) The department will review the exception request in consultation with a certified registered nurse practitioner or a physician, with experience caring for the elderly and disabled in long-term living settings.

(3) The department will respond to the exception request in writing within 5 business days of receipt.

(4) The department may approve the exception request if the following conditions are met:

(i) The exception request is desired by the resident or applicant.

(ii) The resident or applicant will benefit from the approval of the exception request.

(iii) The residence demonstrates to the department's satisfaction that the residence has the staff, skills and expertise necessary to care for the resident's needs related to the excludable condition.

(iv) The residence demonstrates to the department's satisfaction that any necessary supplemental health care provider has the staff, skills and expertise necessary to care for the resident's needs related to the excludable condition.

(v) The residence provides a written alternate care plan that ensures the availability of staff with the skills and expertise necessary to care for the resident's needs related to the excludable condition in the event the supplemental health care provider is unavailable.

Comment: This is considerably improved. We support these changes.

(5) The department will render decisions on exception requests on a case-by-case basis and not provide for facility-wide exceptions.

(d) The following persons may certify that an individual may not be admitted or retained in a residence and must certify that an individual may be safely served in a residence where if the residence follows its proposed plan to meet the resident's needs:

(1) The administrator acting in consultation with supplemental health care providers.
(2) The individual's physician or certified registered nurse practitioner.
(3) The medical director of the residence.

(e) A residence may admit, retain or serve an individual for whom a determination is made by the Department, upon the written request of the residence, that the individual's specific health care needs can be met by a provider of assisted living services or within a residence, including an individual requiring:

(1) Gastric tubes, except that a determination shall not be required if the individual is capable of self-care of the gastric tube or a licensed health care professional or other qualified individual cares for the gastric tube.
(2) Tracheostomy, except that a determination shall not be required if the individual is independently capable of self-care of the tracheostomy.
(3) Skilled nursing care twenty-four hours a day, except that a determination shall not be required if the skilled nursing care is provided on a temporary or intermittent basis.
(4) A sliding scale insulin administration, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the insulin;
(5) Intermittent intravenous therapy, except that a determination shall not be required if a licensed health care professional manages the therapy.

(6) Insertions, sterile irrigation and replacement of a catheter, except that a determination shall not be required for routine maintenance of a urinary catheter, if the individual is capable of self-administration or a licensed health care professional administers the catheter.
(7) Oxygen, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the oxygen.
(8) Inhalation therapy, except that a determination shall not be required if the individual is capable of self-administration or a licensed health care professional or other qualified individual administers the therapy.
(9) Other types of supplemental health care services that the administrator, acting in consultation with supplemental health care providers, determines can be provided in a safe and effective manner by the residence.

(f) A resident may petition the facility to apply for an exception from the Department for a condition listed in this section for which an exception must be granted by the Department. The residence's determination on whether or not to seek such an exception shall be documented on a form supplied by the Department.

Deleted: Nothing herein shall prevent an individual seeking admission to a residence or a resident from requesting that the residence

(g) A written record of the exception request, the supporting documentation to justify the exception request and the determination related to the exception request shall be kept in the records of the residence. The information required by this subsection shall also be kept in the resident's record.

(h) The residence shall record the following decisions made on the basis of this section.

(i) All admission denials.

(ii) Transfer or discharge decisions that are made on the basis of this section.

Comment: We strongly support this and believe it will be very helpful in monitoring how consumers are being treated.

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This information shall be submitted at least annually to the Department and upon the Department's request.

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SPECIAL CARE UNITS

§ 2800.231. Admission.

(a) This section and §§ 2800.232-2800.239 apply to special care units. These provisions are in addition to the other provisions of this chapter. A special care unit is a residence or portion of a residence that provides specialized care and services for residents with Alzheimer's disease or other dementia

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in the least restrictive manner consistent with the resident's support plan to ensure the safety of the resident and others in the residence while maintaining the resident's ability to age in place.

(b) Admission of a resident to a special care unit shall be recommended to the resident and the resident's family or designated person following completion of the medical evaluation, cognitive preadmission screening, assessment, and proposed support plan to be followed for the resident if admitted to the special care unit. Prior to admission into a special care unit, other service options that may be available to a resident shall be considered. The discussions with the resident and family or designated person shall be documented in the resident's record.

Deleted: in consultation with the resident's family or designated person

(b) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department, within 60 days prior to admission. Documentation shall include the resident's diagnosis of Alzheimer's disease or other dementia and the need for the resident to be served in a special care unit.

(c) A written cognitive preadmission screening completed in collaboration with a physician or a geriatric assessment team and documented on the Department's preadmission screening form shall be completed for each resident within 72 hours prior to admission to a special care unit.

(d) A geriatric assessment team is a group of multidisciplinary specialists in the care of adults who are older that conducts a multidimensional evaluation of a resident and assists in developing a support plan by working with the resident's physician, designated person and family to coordinate the resident's care.

(e) Each resident record must have documentation that the resident and the resident's designated person have agreed to the resident's admission or transfer to the special care unit. A resident who has objected or whose designated person has objected to the transfer shall not be transferred.

(f) In addition to the requirements in § 2800.225 (relating to initial and annual assessment), the resident shall also be assessed quarterly for the continuing need for the special care unit.

(g) A spouse, significant other, friend, or family member of a resident who does not have a primary diagnosis of Alzheimer's disease or other dementia may reside in the special care unit if desired by the resident or his designated person.

Deleted: n individual

(1) The individual shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by the Department within 60 days prior to residence , a preadmission screening, and an initial assessment

Deleted: or 15 days after residence

(2) The individual shall have access to and be able to follow directions for the operation of any key pads or other lock-releasing devices if these are used to exit the special care unit.

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(h) The resident-residence contract specified in § 2800.25 (relating to resident-residence contract) must also include a disclosure of services, admission and discharge criteria, change in condition policies, special programming and costs and fees.

(i) For individuals with Alzheimer's disease or dementia, or where the residence holds itself out to the public as providing services or housing for individuals with cognitive impairments, the residence shall disclose to individuals and provide materials that include the following:

(1) The residence's written statement of its philosophy and mission which reflects the needs of individuals with cognitive impairments.
(2) A description of the residence's physical environment and design features to support the functioning of individuals with cognitive impairments.
(3) A description of the frequency and types of individual and group activities designed specifically to meet the needs of individuals with cognitive impairments.
(4) A description of the security measures provided by the residence.
(5) A description of the training provided to staff regarding provision of care to individuals with cognitive impairments.
(6) A description of availability of family support programs and family involvement.
(7) The process used for assessment and establishment of a plan of services for the individual, including methods by which the plan of services will remain responsive to changes in the individual's condition.

(j) The residence shall identify and implement the least restrictive measures to address individuals with cognitive impairments who have tendencies to wander.

§ 2800.232. Environmental protection.

(a) The residence shall provide exercise space, both indoor and outdoor.

(b) No more than two residents may occupy a living unit regardless of its size. A living unit shall meet the requirement in § 2800.101 (relating to resident [bedrooms] living units), as applicable.
(c) The residence shall provide space for dining, group and individual activities and visits.

(d) The residence shall provide a full description of the measures taken to enhance environmental awareness and maximize independence of the residents.

The measures to enhance environmental awareness and maximize independence of the residents shall be implemented.

§ 2800.233. Doors, locks and alarms.

(a) Doors equipped with key-locking devices, electronic card operated systems or other devices that prevent immediate egress are permitted only if there is written approval from the Department of Labor and Industry, Department of Health or appropriate local building authority permitting the use of the specific locking system.

(b) A residence shall have a statement from the manufacturer, specific to that residence , verifying that the electronic or magnetic locking system will shut down, and that all doors will open easily and immediately when one or more of the following occurs:

(1) Upon a signal from an activated fire alarm system, heat or smoke detector.

(2) Power failure to the residence.

(3) Overriding the electronic or magnetic locking system by use of a key pad or other lock-releasing device.

(c) If key-locking devices, electronic cards systems or other devices that prevent immediate egress are used to lock and unlock exits, directions for their operation shall be conspicuously posted near the device.

(d) Doors that open onto areas such as parking lots, or other potentially unsafe areas, shall be locked by an electronic or magnetic system.

(e) Fire alarm systems shall be interconnected to the local fire department, when available, or a 24-hour monitoring service approved by the local fire department.

§ 2800.234. Resident care.

(a) Within 72 hours of the admission, or within 72 hours prior to the resident's admission to the special care unit, a support plan shall be developed, implemented and documented in the resident record.

(b) The support plan must identify the resident's physical, medical, social, cognitive and safety needs.

(c) The support plan must identify the individual responsible to address the resident's needs.

(d) The support plan shall be reviewed, and if necessary, revised at least quarterly and as the resident's condition changes.

(e) The resident or the resident's designated person shall be involved in the development and the revisions of the support plan.

§ 2800.235. Discharge.

Comment: We should delete this section. The discharge section of 2800.228 should apply here too.

Deleted: If the residence initiates a transfer or discharge of a resident, or the legal entity chooses to close the residence, the administrator shall give a 30-day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the transfer or discharge. This requirement shall be stipulated in the resident-residence contract signed prior to admission to the special care unit

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§ 2800.236. Training.

(a) Each direct care staff person working in a special care unit shall have 12 hours of initial training within the first 30 days of the date of hire and a minimum of 8 hours of annual training related to dementia care and services, in addition to the 12 hours of annual training specified in § 2800.65 (relating to direct care staff person training and orientation).

(b) The training at a minimum shall include the following topics:

(1) An overview of Alzheimer's disease and related dementias.

(2) Managing challenging behaviors.

(3) Effective communications

(4) Assistance with ADLs.

(5) Creating a safe environment.

§ 2800.237. Program.

(a) The following types of activities shall be offered at least weekly:

(1) Gross motor activities, such as dancing, stretching and other exercise.

(2) Self-care activities, such as personal hygiene.

(3) Social activities, such as games, music and holiday and seasonal celebrations.

(4) Crafts, such as sewing, decorations and pictures.

(5) Sensory and memory enhancement activities, such as review of current events, movies, story telling, picture albums, cooking, pet therapy and reminiscing.

(6) Outdoor activities, as weather permits, such as walking, gardening and field trips.

(b) Resident participation in general activity programming shall:

(1) Be voluntary.

(2) Respect the resident's age and cognitive abilities.

(3) Support the retention of the resident's abilities.

§ 2800.238. Staffing.

Comment: We removed this in accordance with our suggestions that the mobility/immobility language be removed.

Deleted: Each resident in a special care unit shall be considered to be a resident with mobility needs under § 2800.57(c) (relating to direct care staffing).

§ 2800.239. Application to Department.

(a) The legal entity shall submit a written request to the Department at least 60 days prior to the following:

(1) Opening a special care unit.

(2) Adding a special care unit to an existing residence.

(3) Increasing the maximum capacity in an existing unit.

(4) Changing the locking system, exit doors or floor plan of an existing unit.

(b) The Department will inspect and approve the special care unit prior to operation or change. The requirements of this chapter shall be met prior to operation.

(c) The following documents shall be included in the written request specified in subsection (a):

(1) The name, address and legal entity of the residence.

(2) The name of the administrator of the residence.

(3) The maximum capacity of the residence.

(4) The requested resident population of the special care unit.

(5) A building description.

(6) A unit description.

(7) The type of locking system.

(8) Policy and procedures to be implemented for emergency egress and resident elopement.

(9) A sample of a 2-week staffing schedule.

(10) Verification of completion of additional training requirements.

(11) The operational description of the special care unit locking system of the doors.

(12) The manufacturer's statement regarding the special care unit locking system.

(13) A written approval or a variance permitting locked exit doors from the Department of Labor and Industry, the Department of Health or the appropriate local building authority.

(14) The name of the municipality or 24-hour monitoring service maintaining the interconnection with the residence's fire alarm system.

(15) A sample plan of care and service for the resident addressing the resident's physical, medical, social, cognitive and safety needs for the residents.

(16) A description of the dementia care and programming that the facility provides, pursuant to 2800.237 and otherwise.

Deleted: The activity standards.

(17) The complete medical and cognitive preadmission assessment, that is completed upon admission and reviewed and updated annually.

(18) A consent form agreeing to the resident's placement in the special care unit, to be signed by the resident or the resident's designated person.

(19) A written agreement containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming, costs and fees.

(20) A description of environmental cues being utilized.

(21) A general floor plan of the entire residence.

(22) A specific floor plan of the special care unit, outside enclosed area and exercise space.

RESIDENT RECORDS

§ 2800.251. Resident records.

(a) A separate record shall be kept for each resident.

(b) The entries in a resident's record must be permanent, legible, dated and signed by the staff person making the entry.

(c) The residence shall use standardized forms to record information in the resident's record.

(d) Separate resident records shall be kept on the premises where the resident lives.

(e) Resident records shall be made available to the resident and the resident's designated person during normal working hours. Resident records shall be made available upon request to the resident and family members. Resident records shall be made available to resident and family members following transfer, relocation or the death of a resident.

§ 2800.252. Content of resident records.

Each resident's record must include the following information:

(1) Name, gender, admission date, birth date and Social Security number.

(2) Race, height, weight at time of admission, color of hair, color of eyes, religious affiliation, if any, and identifying marks.

(3) A photograph of the resident that is no more than 2 years old.

(4) Any language, speech, hearing and/or vision need which requires accommodation and/or awareness of during oral and/or written communication (such as needing an interpreter for a particular language or American sign language)

Deleted: Language or means of communication spoken or used by the resident.

(5) The name, address, telephone number and relationship of a designated person to be contacted in case of an emergency.

(6) The name, address and telephone number of the resident's physician or source of health care.

(7) The current and previous 2 years' physician's examination reports, including copies of the medical evaluation forms.

(8) A list of prescribed medications, OTC medications and CAM.

(9) Dietary restrictions.

(10) A record of incident reports for the individual resident.

(11) A list of allergies.

(12) The documentation of health care services and orders, including orders for the services of visiting nurse or home health agencies.

(13) The preadmission screening, initial intake assessment and the most current version of the quarterly assessment.

Deleted: annual

(14) A support plan.

(15) Applicable court order, if any.

(16) The resident's medical insurance information.

(17) The date of entrance into the residence, relocations and discharges, including the transfer of the resident to other residences owned by the same legal entity.

(18) An inventory of the resident's personal property as voluntarily declared by the resident upon admission and voluntarily updated.

(19) An inventory of the resident's property entrusted to the administrator for safekeeping.

(20) The financial records of residents receiving assistance with financial management.

(21) The reason for termination of services or transfer of the resident, the date of transfer and the destination.

(22) Copies of transfer and discharge summaries from hospitals, if available.

(23) If the resident dies in the residence, a copy of the official death certificate.

(24) Signed notification of rights, grievance procedures and applicable consent to treatment protections specified in § 2800.41 (relating to notification of rights and complaint procedures).

(25) A copy of the resident-residence contract.

(26) A termination notice, if any.
(27) A record relating to any exception request under § 2800.229 (relating to excludable conditions; exceptions).
(28) Ongoing resident progress notes tracking such things as, but not limited to:
a. Monthly weight checks
b. Medication administration to resident
c. Unusual incidents involving resident
d. Monitoring of restraints.

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§ 2800.253. Record retention and disposal.

(a) The resident's entire record shall be maintained for a minimum of 3 years following the resident's death, discharge from the residence or until any audit or litigation is resolved.

(b) Records shall be destroyed in a manner that protects confidentiality.

(c) The residence shall keep a log of resident records destroyed on or after _____[Ed. Note: Insert effective date of the final regulation]. This log must include the resident's name, record number, birth date, admission date and discharge date.

(d) Records required under this chapter that are not part of the resident records shall be kept for a minimum of 3 years or until any audit or litigation is resolved.

§ 2800.254. Record access and security.

(a) Records of active and discharged residents shall be maintained in a confidential manner, which prevents unauthorized access.

(b) Each residence shall develop and implement policy and procedures addressing record accessibility, security, storage, authorized use and release and who is responsible for the records.

(c) Resident records shall be stored in locked containers or a secured, enclosed area used solely for record storage and be accessible at all times to the administrator the administrator's designee, or the nurse involved in assessment and support plan development and upon request, to the Department or representatives of the area agency on aging.

ENFORCEMENT

§ 2800.260 Dual Licensure.

a. The Department shall permit only a visually distinct portion (such as a wing, floor, or stand alone building) of a long term care facility to be licensed as a residence despite separate and distinct licensure applied to other distinct portions of said facility.
b. The portion that qualifies as an assisted living residence shall meet nothing less than all requirements of this chapter.
c. The Department shall establish marketing and disclosure requirements specifically addressing dually licensed facilities and what information they can or cannot represent to the public about their status.
d. A dually licensed facility shall be prohibited from segregating or moving consumers around from one licensed area or the other based on payment source.

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Comment: This may need better phrasing.

§ 2800.261. Classification of violations.

(a) The Department will classify each violation of this chapter into one of three categories as described in paragraphs (1)—(3). A violation identified may be classified as Class I, Class II or Class III, depending upon the severity, duration and the adverse effect on the health and safety of residents.

(1) *Class I.* Class I violations have resulted in or have a substantial probability of resulting in death or serious mental or physical harm to a resident.

(2) *Class II.* Class II violations have a substantial adverse effect upon the health, safety or well-being of a resident.

(3) *Class III.* Class III violations are minor violations, which have an adverse effect upon the health, safety or well-being of a resident.

(b) The Department's guidelines for determining the classification of violations are available from the Department.

§ 2800.262. Penalties and corrective action.

(a) Upon finding violations of this chapter or other applicable laws, the Department will issue a notice of violations to the residence.

(b) The residence shall submit a written plan of correction indicating how it will correct the violation, how it will address the cause of the violation, and how it will prevent recurrence of the violation.

(c) The department will promptly determine whether the plan of correction will bring about meaningful compliance and approve or deny the plan accordingly.

(d) The Department will assess a penalty for each violation of this chapter.

(e) Penalties will be assessed on a daily basis from the date on which the citation was issued until the date the residence proves that the violation is corrected, except in the case of Class II and Class III violations. Additional Class II violations will be cited for failure to comply with a plan of correction or for false documentation of compliance with a plan of correction. Deleted: (b)

(f) In the case of a Class II violation, assessment of the penalty will be suspended for 5 days from the date of citation to permit sufficient time for the residence to correct the violation. If the residence fails to provide proof of correction of the violation to the Department within the 5-day period, the fine will be retroactive to the date of citation. The Department may extend the time period for good cause. Deleted: c

(g) The Department will assess a penalty of $20 per resident per day for each Class I violation. Each Class I violation shall be corrected within 24 hours. Deleted: d

(h) The Department will assess a minimum penalty of $5 per resident per day, up to a maximum penalty of $15 per resident per day, for each Class II violation. Deleted: e

(i) There is no monetary penalty for Class III violations unless the residence fails to correct the violation within 15 days. Failure to correct a Class III violation within the 15-day period may result in a penalty assessment of up to $3 per resident per day for each Class III violation retroactive to the date of the citation. Deleted: f

(j) If a residence is found to be operating without a license, a penalty of $500 will be assessed. After 14 days, if the residence operator cited for operating without a license fails to file an application for a license, the Department will assess an additional $20 for each resident for each day during which the residence operator fails to apply. Deleted: g

(k) A residence charged with a violation of this chapter or Chapter 20 (relating to licensure or approval of facilities and agencies) has 30 days to pay the assessed penalty in full. Deleted: h

§ 2800.263. Appeals of penalty.

(a) If the residence that is fined intends to appeal the amount of the penalty or the fact of the violation, the residence shall forward the assessed penalty, not to exceed $500, to the Secretary for placement in an escrow account with the State Treasurer. A letter appealing the penalty shall be submitted with the assessed penalty. This process constitutes an appeal.

(b) If, through an administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the

penalty shall be reduced, the Secretary will, within 30 days, remit the appropriate amount to the legal entity together with interest accumulated on these funds in the escrow deposit.

(c) Failure to forward payment of the assessed penalty to the Secretary within 30 days will result in a waiver of the right to contest the fact of the violation or the amount of the penalty.

(d) After an administrative hearing decision that is adverse to the legal entity, or a waiver of the administrative hearing, the assessed penalty amount will be made payable to the "Commonwealth of Pennsylvania." It will be collectible in a manner provided by law for the collection of debts.

(e) If a residence liable to pay the penalty neglects or refuses to pay the penalty upon demand, the failure to pay will constitute a judgment in favor of the Commonwealth in the amount of the penalty, together with the interest and costs that may accrue on these funds.

§ 2800.264. Use of fines.

(a) Money collected by the Department under this section will be placed in a special restricted receipt account.

(b) Money collected will be used first to defray the expenses incurred by residents relocated under this chapter.

(c) The Department will use money remaining in this account to assist with paying for enforcement of this chapter. Fines collected will not be subject to 42 Pa.C.S. § 3733 (relating to deposits into account).

§ 2800.265. Review of classifications.

(a) Semiannually, the Department will review the standard guidelines for the classification of violations and evaluate the use of these guidelines. This review is to ensure the uniformity and consistency of the classification process.

§ 2800.266. Revocation or nonrenewal of licenses.

(a) The Department will temporarily revoke the license of a residence if, without good cause, one or more Class I violations remain uncorrected 24 hours after the residence has been cited for the violation.

(b) The Department will temporarily revoke the license of a residence if, without good cause, one or more Class II violations remain uncorrected 15 days after the citation.

(c) Upon the revocation of a license in the instances described in subsections (a) and (b), or if the residence continues to operate without applying for a license as described in § 2800.262(h) (relating to penalties), residents shall be relocated.

(d) The revocation of a license may terminate upon the Department's determination that its violation is corrected.

(e) If, after 3 months, the Department does not issue a new license for a residence, the prior license is revoked under section 1087 of the Public Welfare Code (62 P. S. § 1087).

(1) Revocation or nonrenewal under this section will be for a minimum of 5 years.

(2) A residence, which has had a license revoked or not renewed under this section, will not be allowed to operate, staff or hold an interest in a residence which applies for a license for 5 years after the revocation or nonrenewal.

(f) If a residence has been found to have Class I violations on two or more separate occasions during a 2-year period without justification, the Department will revoke or refuse to renew the license of the residence.

(g) The power of the Department to revoke or refuse to renew or issue a license under this section is in addition to the powers and duties of the Department under section 1026 of the Public Welfare Code (62 P. S. § 1026).

§ 2800.267. Relocation of residents.

(a) If the relocation of residents is due to the failure of the residence to apply for a license, the Department will offer relocation assistance to the residents. This assistance will include each resident's involvement in planning the relocation, except in the case of an emergency. Each resident shall have the right to choose among the available alternatives after an opportunity to visit the alternative residences. These procedures will occur even if the residents are placed in a temporary living situation.

(b) A resident will not be relocated if the Secretary determines in writing that the relocation is not in the best interest of the resident.

§ 2800.268. *Notice of violations.*

(a) The administrator shall give each resident and the resident's designated person written notification of a Class I violation within 24 hours of the citation.

(b) The administrator shall give each resident and the resident's designated person oral or written notification of a Class I or Class II violation, as defined in

§ 2800.261 (relating to classification of violations), which remains uncorrected for 5 days after the date of citation.

(c) If a Class II violation remains uncorrected within 5 days following the citation, the administrator shall give written notice of the violation to each resident and the resident's designated person on the 6th day from the date of the citation.

(d) The Department will provide immediate written notification to the appropriate long-term care ombudsman of Class I violations, and notification of Class II violations which remain uncorrected 5 days after the date of citation.

§ 2800.269. Ban on admissions.

(a) The Department will ban new admissions to a residence:

(1) That has been found to have a Class I violation.

(2) That has been found to have a Class II violation that remains uncorrected without good cause 5 days after being cited for the violation.

(3) Whose license has been revoked or nonrenewed.

(b) The Department may ban new admissions to a residence that has been found to have a repeated Class II violation within the past 2 years.

(c) A ban on admissions will remain in effect until the Department determines that the residence has corrected the violation, and after the correction has been made, has maintained regulatory compliance for a period of time sufficient to permit a conclusion that the compliance will be maintained for a prolonged period.

§ 2800.270. Correction of violations.

The correction of a violation cited under section 1086 of the Public Welfare Code (62 P. S. § 1086) does not preclude the Department from issuing a provisional license based upon the same violation.

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(6) Core competency training that includes the following:

(i) Person-centered care.

(i) Communication, problem solving and relationship skills.

(iii) Nutritional support according to resident preference.

(c) Ancillary staff persons shall have a general orientation to their specific job functions as it relates to their position prior to working in that capacity.

(d) Direct care staff persons [hired after April 24, 2006,] may not provide unsupervised ADL services until completion of the following:

(1) Training that includes a demonstration of job duties, followed by supervised practice.

(2) Successful completion and passing the Department-approved direct care training course and passing of the competency test.

(3) Initial direct care staff person training to include the following:

(i) Safe management techniques.

(ii)

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(iii)

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(iv)

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all staff must be trained to understand dementia – persons with dementia will be in the general population - not just in secured units

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(v)

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(vi)

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initial assessment, annual assessment and support plan

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(1) If a resident is a danger to himself or others and the behavior cannot be managed through interventions, services planning or informed consent agreements.

(2) If the legal entity chooses to voluntarily close the residence, or a portion of the residence.

(3) If a residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence under § 2800.229 (relating to excludable conditions; exceptions) or within the scope of licensure for a residence. In that case, the residence shall notify the resident, the resident's designated person and the local ombudsman. The residence shall provide justification for the residence's determination that the needs of the resident cannot be met. If a resident or the resident's designated person disagrees with the residence's decision to transfer or discharge, the residence shall contact the local ombudsman. If the residence decides to proceed with the transfer or discharge then the ombudsman shall notify the department. The department may take any appropriate licensure action it deems necessary based upon the report of the ombudsman. In the event that there is no disagreement related to the transfer or discharge, a plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the department.

(4) If meeting the resident's needs would require a fundamental alteration in the residence's program or building site, or would create an undue financial or programmatic burden on the residence.

(5) If the resident has failed to pay after reasonable documented efforts by the residence to obtain payment.

(6) If closure of the residence is initiated by the Department.

Documented, repeated violation of the residence rules.

(8) A court has ordered the transfer or discharge.