

14-514

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# ALLEGHENY COUNTY DEPARTMENT OF HUMAN SERVICES

Marc Cherna, Director

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September 11, 2008

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

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2008 SEP 16 PM 3:33  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**RE: Assisted Living Regulation No. 14-514**

Dear Ms. Weidman,

Enclosed please find the Allegheny County Department of Human Services Area Agency on Aging comments regarding the proposed Assisted Living regulations.

The comments herein address three general areas of the proposed regulations:

- (1) Application, Admission and Contracting
- (2) Resident Rights and Protection
- (3) Funding

Our comments pertaining to each of the three areas are presented in the form of a rationale with recommended changes to specific provisions.

Thank you for your time and consideration.

Sincerely,

Dana L. Kunzman  
Government Affairs Associate

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REFER TO \_\_\_\_\_

**I. APPLICATION, ADMISSION and CONTRACTING:**

**Application and admission (2800.22); Resident-residence contract (2800.25)**

*(2800.22) Application and admission.* The time frames currently specified for admissions and contracting should be amended to allow for resident processing that is more timely and responsive to residents' actual conditions and needs at the time of admission. On the one hand, medical evaluations and level of care assessments completed too far in advance do not take into account possible changes in the consumer's condition in the period before admission. On the other hand, the current proposed time frames represent too great a gap between the consumer's admission and the formalization of their support plan. A compression of the proposed time frames should be implemented.

***Recommendations.***

- Medical evaluations are to be completed within seven (7) days after admission. *(2800.22.2)*
- Level of care assessments are to be completed within fourteen (14) days after admission. *(2800.22.3)*
- Support plans are to be developed within fourteen (14) days after admission. *(2800.22.4)*

*(2800.25) Resident-residence contract.* Resident's contracts should not be completed too far in advance of admission in the event that changes in a resident's condition may result in assisted living no longer being appropriate to their needs. Finally, the term, "resident-residence contract," is awkward and could lead to error or misunderstanding.

***Recommendations***

- Resident contracts are to be completed as soon as possible upon admission. *(2800.22.5)*
- Replace the term, "resident-residence," with some combination of terms such as consumer-facility, resident-provider, or simply resident contract. *(2800.22)*

**II. RESIDENT RIGHTS AND PROTECTION:**

**Informed consent process (2800.30); Specific rights (2800.42); Assistance with health care and supplemental health care services (2800.142); Transfer and discharge (2800.228)**

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**(2800.30) Informed consent process.** The use of Ombudsman staff in support of an informed consent process, as stated in the proposed rulemaking, is contrary to the traditional Ombudsman role of an advocate for long-term care consumers, as established in the Older Americans Act. This type of involvement violates the confidentiality of the Ombudsman-resident relationship and the resident's right to refuse Ombudsman participation or notification. In this connection, however, it should be noted that it is a regulatory requirement that the Department of Public Welfare be notified of informed consent proceedings. Finally, the wording of the first paragraph (2800.30.a.1) should be rephrased so that the terms "at imminent risk of substantial harm" are not confused with the Protective Services' context of this wording.

**Recommendations.**

- The wording, "should the consumer so choose," should be added between the words "process" and "and." (2800.30.b.1)
- The wording, "... a resident's decision, behavior or action creates a dangerous situation and places the resident, other residents or staff members at imminent risk of substantial harm . . . ," should be rephrased. (2800.30.a.1)

**(2800.42) Specific Rights.** In section 2800.42.o, the wording should reflect the confidentiality rights of long-term care residents by stating that they have the right to both freely and privately, associate, organize and communicate with individuals of their choosing, including Ombudsman staff. In section 2800.42.c, the consumer's right to fairness in treatment should be stated.

**Recommendations.**

- The words, "and privately" should be added between the words, "freely" and "associate." The word, "Ombudsman," should be added between the words, "attorney" and "and." (2800.4.o)
- The word, "fairness," should be added between the words, "with" and "dignity." (2800.42.c)

**(2800.142) Assistance with health care and supplemental health care services.** The second sentence in 2800.142.a stating, "To the extent prominently displayed in the written admission

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agreement, a residence may require residents to use providers of supplemental health care services approved or designated by the residence,” is a violation of the long-term care resident’s right to choose health care providers. If enacted, this provision could be applied to require residents to utilize only the health care and supplemental health care providers of the residence’s choosing, including its own on-site services.

**Recommendation.** The wording of this section should be replaced with the following proposed wording from the Pennsylvania Assisted Living Consumer Alliance’s PALC Position Statement on Informed Consent and Residents Rights (2800.42.y): “A resident has the right to choose and receive care, healthcare and supplemental healthcare services from his own health care providers who shall be afforded access to the resident at all times. This includes the right to select the resident’s own pharmacist provided that the pharmacy agrees to supply medications in a way that is compatible with the residence’s system for handling and assisting with the self-administration of resident medications.” (2800.142.a)

**(2800.228) Transfer and discharge.** Section 2800.228.h.3 of the proposed rulemaking contains wording that violates provisions of the Older Americans Act relating to the Ombudsman-resident relationship. Specifically, the residence cannot obligate Ombudsman staff to act as an agent or partner in a discharge or transfer without the resident’s consent.

**Recommendations.**

- The wording, “if the resident so chooses,” should be added following “and” and before “the” near the end of the second sentence. (2800.28.h.3)
- Wording to the effect that the Ombudsman shall be involved with a resident’s transfer or discharge only with the consent of the resident (e.g. “if the resident so chooses”) should be added in conjunction with the mention of the Ombudsman in the fourth, fifth and sixth sentences. (2800.28.h.3)

Section 2800.228 does not present a clearly stated, structured appeal process for a resident to contest a discharge or transfer. The absence of an appeal process places the resident in the position of being discharged or transferred solely at the discretion of the residence.

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**Recommendation.** A clearly stated, specific step-by-step process for resident appeal of transfers and discharges should be developed and included in this section, including resident's rights and options relating to outcomes of their appeals. (2800.228)

### III. FUNDING

Nowhere in the proposed rulemaking are the funding sources for the regulations articulated.

**Recommendation.** A clear and detailed identification of the specific funding sources for the new regulations should be developed, and made available for stakeholder review and comment before final enactment of the regulations.

*Compiled by:*  
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