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Frederick RECEIVED
Mennonite Community
2008 SEP 16 PM 3:34
Retirement Living in a Country Setting

INDEPENDENT REGULATORY REVIEW COMMISSION

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September 8, 2008

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

Dear Ms Weidman:

I am the Chief Operating Officer and Nursing Home Administrator of Frederick Mennonite Community, a CCRC which includes skilled, adult day care, assisted and residential living. I have worked in long term and personal care for the past 15 years.

Frederick Mennonite Community has a 112 year tradition of caring for the elderly. Our tag line "Live well with us" exemplifies the excellent care and services that we offer to our residents. Our130 bed licensed personal care community includes a 26 bed secured dementia unit and is known as Assisted Living. This term appears on all our marketing brochures, in advertising and on all our signage. Unless we apply for the AL licensure FMC will need to expend considerable money to change everything to Personal Care.

Should the regulations be finalized as written the impact would impose significant costs to FMC and we would not be able to apply for the new AL license as I will further explain. FMC would have to either increase costs to the resident or significantly reduce its care and services which would place a further burden on our frail elders. In 2007 FMC has provided $ 135,435 of benevolent care to the AL residents who otherwise would not have been able to live here and $ 81,313 thus far in 2008.

Although the intent of the regulations to provide Medicaid waiver program for personal care residents under new assisted living regulations appeared as a positive alternative to care the impact to communities to meet the new requirements is overwhelming.

In reviewing the regulations, these are areas of specific concern to me:

1. **Licensure Fees**: 2800.11 (c) The increase of $500 licensure fee with a $105.00 assessment per bed fee would result in FMC paying an annual fee of $14,150. This is a huge increase from the $50.00 that we currently pay. Our Department of Health annual license costs $250. This additional cost could result in not being able to add 0.54 FTE that would be needed to care for the higher level of care residents of assisted living.

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2. **Reportable incident and conditions**: **2800.16 (3).** Reporting every time a resident is sent to the hospital for a medical illness is more extreme than is required in skilled nursing. Our nurses notify the attending physician when a medical intervention is needed and the physician decides whether the resident needs to be sent to the hospital for further evaluation. This additional paperwork only adds to more time that a nurse has to spend away from resident care in order to comply with a burdensome regulation.
3. **Waivers 2800.19** (a) Requests for waivers that meet the specific requirements of this chapter, if the conditions are met, should be granted. Therefore, the language should be changed from "Secretary's appointee may grant" to **shall** grant. **2800.19 (e)** Language should include that a waiver request shall be approved or denied within 30 days of receipt of the request by the Secretary. Otherwise a facility waits for an unspecified time frame for an answer. **2800.19 (f)** A provider should have the opportunity to be granted an appeal, consistent with Section **2800.12** (Appeals) if the Department revokes a standing waiver.
4. **Application and Admission 2800.22 (b)** Regulating that each **potential resident** receives the required written materials will be another added expense of at least a cost of $5200 or 0.2FTE's that we no longer could afford. The materials that are mandated should only be required to be provided to individuals who have decided that they will be moving into our community. **2800.22 (b) (3).** The provision requiring resident handbook approval by the Department should be purged. No where else in the continuum of care does a regulation like this exist. What happens when revisions need to be made to the initial handbook? Will the Department even have the time to approve initial handbooks not to mention those that a residence will need to update at a later time?
5. **Resident-residence contract 2800.25 (b)** Allowing residents to terminate the contract with only 14 days notice will jeopardize our ability to operate efficiently when filling vacancies and is inequitable. Since we must give 30 days notice of termination to the resident the contract should be reciprocal for the resident. In addition significant administrative time is involved with meeting with family members and the resident in completing the contract, meeting with the Social Worker, completing all the mandatory assessment forms by nursing, developing a support plan with resident and family, obtaining physician orders and setting up medication administration, and room preparation by Maintenance and Housekeeping. There is no doubt that this will increase the average cost of our operations which will be passed on to all residents in increased rates. **2800.25 (c) (v) Transportation** should not be part of the core service package. We currently charge residents separately for transportation. Not all residents have the same needs some will need extensive transportation while others none. We also encourage family participation in transporting residents when possible, thus giving the residents the choice. We will experience a loss of annualized revenue of $14, 763 if transportation becomes bundled. This will increase the cost to residents.**2800.25 (e)** Please see comments **2800.25 (b)** regarding time involved to rescind contracts.

6. **Informed consent process 2800.30.** At no time should a resident be permitted to place another resident or employee at risk of harm, regardless of imminence or whether the harm is substantial. In addition if we determine that the resident's actions or decisions creates a dangerous situation for the resident we are still liable for outcome to the resident and to others and we may be in violation of regulatory requirements [2800.30 (i)]. If the level of risk is unacceptable to the facility or untenable we should be able to make a final determination whether the resident's request can be honored. Language to this effect should be included in this section and also language that requires the resident to cease and desist any action or behavior that prompted the initial negotiation [2800.30 (d) (2)]. Trying to initiate an informed consent with a cognitively impaired resident requires the resident to fully comprehend choices and consequences. This is impossible even if the legal representative understands the informed consent and outcome decision, how can it be implemented when the resident doesn't understand it? As proposed there is not enough protection for facilities and the level of risk associated with informed consent is unacceptable.
7. **Qualifications of administrators and direct care staff 2800.53 and .54** A grandfather provision should be included in these sections. Personal Care Administrators who are currently serving in that capacity have duties and responsibilities that are almost identical to those proposed for Assisted Living.
8. **Staffing 2800.56.** Requiring the administrator to be present 40 hours **or more** per week per each month is impossible. How can they have any time off for vacation, sick time or time to obtain the mandated training hours? Requiring the designee to have the same training as the administrator is incredulous. That means we will need to pay the designee to attend the 100 hour course costing $2000 and 24 hours annual training costing another $400 per year, plus annual training for the Administrator (another $400 or more). Another cost added to our residents.
9. **Administrator training 2800.64** The requirement of 4 additional hours of dementia training within 30 days of hire should be incorporated into the 100 hour training course under section (b) (10). Courses that are produced by the National Association of Board of Examiners of Long Term Care Administrators (NAB) and National Continuing Education Review Services (NCERS) should be acceptable as credits as well as those sanctioned by the Department of State and Bureau of Professional and Occupational Affairs. [.64 (d)] For anyone who holds a NHA license requiring additional Department approved courses would increase costs significantly; once again to residents. In addition this section should include a statement that allows a licensed NHA and a current PC Administrator who are working, and hired prior to a specific date, to be exempt from the training and education requirements of the chapter and be required to pass the Department approved competency test.
10. **Additional dementia specific training 2800.69** Please change the 4 hour (within 30 days of hire) dementia training requirement and the 2 hour annually thereafter to be included in the 12 hour annual requirement for direct staff. With turnover of direct care staff it is burdensome and costly to keep up this monthly training.
11. **First aid kit 2800.96.** We have one AED that is centrally located in the Medical Suite and easily accessible to staff 24/7. In the 5 years that we have had the AED

it has never been used for a PC resident. First aid supplies are located in the Medication Room on each floor. To meet the requirements as proposed we would have to purchase 4 additional AED's which would cost us $9200. In addition regulation 2800.171 (b) (5) requires first aid kits with the same contents to be in each transportation vehicle. FMC has 4 vehicles for resident transporting that means we would need to purchase 4 more AED, another $9200, totaling $ 18, 400. This equates to 0.7 FTE's that we may no longer be able to afford. Or we will no longer be available to help support the benevolent care fund.

12. **Living Units 2800.101**. We are currently beginning a 3.5 million dollar renovation of the oldest part of our assisted living units. There is no way that we will be able to meet the resident living unit requirements as written. For example a kitchen with sink with hot and cold water and a microwave in each is not possible. We have experienced several fire safety issues involving having the fire company respond when residents used their microwaves improperly. **101 (j) (1)** Please consider allowing an exception for residents who choose to bring their own mattress. Our residents choose to bring their own beds and mattresses. If all existing mattresses need to be fire retardant (current residents), the cost to replace them would be anywhere from $54,000- $108,000. This will be another added expense to the residents.
13. **Fire extinguishers 2800.131 (a).** Our facility has a full sprinkler system and automated fire alarm system. Placing a fire extinguisher in each living unit is a potential hazard to residents. We have had several instances where the resident has caused the smoke detector to alarm because something was left in the microwave too long. I can just see residents attempting to use a fire extinguisher and cause injury or harm to themselves. Fire extinguishers should not be placed in living units. Please remove this requirement.
14. **Resident medical evaluation and health care. 2800.141.** Frequently we are requested to take admissions the same day due to a hospital discharge or emergency situation. Requiring a medical evaluation by a physician prior to admission is not practical. The current PC regulations allows for an evaluation to occur up to 30 days after admission; please change this requirement to be the same.
15. **Assistance with health care & supplemental health care services 2800.142 (a).** We need to be sure that any provider that comes to our facility who will be providing care to our residents meets certain criteria such as criminal background checks, appropriate licensing, has liability insurance, workers compensation and a medical evaluation (TB screening). We need to have the right to maintain a list of preferred supplemental health care providers who have written agreements with us. The language needs to reflect this. Otherwise there is no control or assurance that a provider chosen by the resident is indeed legitimate or safe.
16. **Meals 2800.162 (g).** The language seems to indicate that all residents need cuing to eat and drink. Please change this to only those residents who were identified as needing cuing in accordance with their support plan.
17. **Transportation 2800.171 (4) (5)** There are times that only one transportation driver is needed to transport residents to an activity such as shopping. To require that the transportation driver completes the same training as a direct care staff is

not appropriate. This section references back to 2800.65 which has an extensive list of required training that I agree is appropriate for those who do direct nursing care; but only section (a) and (b) should be necessary for transportation drivers. Please refer to comments in 2800.96 that address the first aid kits and AED. **2800.171 (d)**. Requiring that every vehicle used to transport residents be handicapped accessible is too extreme. Not all residents are handicapped. We own 4 vehicles, 2 are handicap accessible and 2 are not. If we have to replace the two vehicles in order to meet this regulation it would cost us about $50,000. This translates into 1.9 FTE's. We cannot afford to pass this cost on to residents.

18. **Prohibitions 2800.202 (4).** When a physician has made the clinical judgment that a resident needs a PRN (pro re nata) medication for a specific condition like to alleviate anxiety this should not be considered to be a chemical restraint.
19. **AL services 2800.220 (7).** Further clarification is needed. Does escorting simply mean that a driver takes them to and from an appointment or does it mean that the escort is accompanying the resident into the office when the resident sees the physician. If the intent is the latter then this becomes a huge privacy and resident rights issue and should be removed.
20. **Preadmission screening 2800.224(b).** There may be reasons why an admission is not appropriate and giving a written reason to the potential resident could be devastating. Informing them that their behavior may affect the safety of other residents or staff could demoralize them and be very harmful to their mental well-being.
21. **Mobility criteria 2800.226 (c).** As currently written this regulation is burdensome and time consuming for Administrators (and the Department) to have to notify the Department whenever a resident develops mobility needs. This regulation should mirror the personal care regulation that allows the residence maintain a list of residents with mobility needs.
22. **Support plan 2800.227 (c).** It takes at least 2 hours of a nurse's time per each resident assessment and support plan creation or revision. The team that meets with the resident and family member(s) to review the support plan takes at least ½ hour or more. Taking these times and calculating the amount of money, it costs us about $18,069 to do this process one time. If needing to do this quarterly the cost is $72,276; this is a conservative estimate and does not take into account the times that revisions need to be made with change of condition or when lengthy family meetings are held. This money could better be spent in adding a FTE to provide direct resident care. A semi-annual support plan update is much more reasonable.**2800.227 (k).** A copy of the support plan should be offered and provided to the resident and designated person if so requested. Making copies that will not be useful to either party is a waste of resources.
23. **Transfer and discharge 2800.228 (b) (2).** This regulation prohibits the facility from transferring or discharging a resident when a facility has determined that this is needed and the designated person arranges for needed services. See 2800.142 (a) comments. We had a couple that, soon after admission to the personal care area, definitely needed to be in the secure dementia unit. They were wandering all over the community and getting lost, needed assistance with dressing and oversight with meals and medication. We feared that they would wander outside

and be hit by a car; we are located next to a highly trafficked road. We negotiated with the family for a transfer to the secure dementia unit. The family would have had to bring in services 24/7 which would have quickly depleted their resources. The professional judgment indicated that they needed to be in a secure area where they could freely and safely wander about and be cared by experts in the field of dementia.

24. **Special Care; Admission 2800.231 (e).** It is unreasonable to request a cognitively impaired resident to sign a document that he/she does not understand. That is the antithesis of informed consent. **2800.231 (f) and 2800.234(d).** See 2800.227 (c) comments for the need to have semi-annual and not quarterly support planning.

Respectfully submitted,

Zenta Benner, NHA
Chief Operating Officer

CC: Senator Robert Wonderling
Representative Bob Mensch