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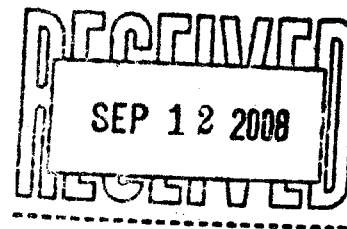


Pennsylvania Catholic Health Association

223 North Street, Box 2835, Harrisburg, PA 17105

717-238-9613 • FAX 717-238-1473

pcha@pacatholic.org



Sister Clare Christi Schiefer, OSF
President

September 12, 2008

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

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

RE: Proposed Regulations for Assisted Living Residences – 55 Pa. Code § 2800 et seq. (No. 14-514)

Dear Ms. Weidman:

On behalf of the Pennsylvania Catholic Health Association and the Pennsylvania Catholic Conference, I write in response to Regulations for Assisted Living Residences – 55 Pa. Code § 2800 et seq. (No. 14-514).

The Pennsylvania Catholic Health Association (PCHA), an associate of the Pennsylvania Catholic Conference (PCC), is a statewide organization that represents the Catholic health ministry in public policy matters. The Pennsylvania Catholic Conference is the public affairs arm of the Pennsylvania bishops and their ten (10) dioceses that speaks for the Church in public policy matters affecting the common good and its ministry interests concerning morality, health, welfare, education and human and civil rights.

The comments provided by PCHA and PCC respond to the Department of Public Welfare (DPW) proposed regulations for Assisted Living Residences (No. 14-514) which were published in the **Pennsylvania Bulletin** on August 9, 2008. The regulations were drafted pursuant to the requirements of Act 56 of 2007 which established the licensing and oversight of Assisted Living Residences.

An initial comment relates to the direction in the statute that regulations for assisted living residences must meet or exceed the standards which apply to personal care homes. Unfortunately, as other commentators will note, the current personal care home regulations have, in some instances, been interpreted in ways which seem contrary to the plain language of the regulations. In other instances, the personal care home regulations lack precision and could be improved upon without running afoul of the law's mandate (62 P.S. 1021(a)(2)(i)). To the extent improvements or clarifications

are possible, the Department should endeavor to do so. If DPW determines that personal care home regulations do not translate well to the assisted living model, it may be necessary to obtain legislative endorsement for a modification of the mandate.

Years ago, the Pennsylvania Catholic Health Association developed a "Framework to Evaluate Legislative-Regulatory Initiatives for Assisted Living Services." That framework includes a number of primary areas of focus to evaluate regulations like those under consideration. The framework focuses on consumers and providers and, therefore, a balancing of interests entered into the evaluation process used by PCHA.

The general framework for review and questions posed to the PCHA work group which reviewed the regulations were as follows:

- Do the proposed regulations encourage personal choice and consumer involvement?
- Do the proposed regulations allow flexibility to accommodate changing needs?
- Do the proposed regulations avoid over-regulating?
- Do they avoid a medical model approach?
- Do the proposed regulations assure that Catholic identity and mission focus are not jeopardized?

The major areas of concern about which PCHA and PCC comments are:

- Licensure Fees
- Administrator Qualifications
- Dual Licensure
- Facility Physical Requirements
- Staff Education/Training Requirements
- Transportation
- Transfers

Before setting forth particular comments about these topics, PCHA and PCC note they are aware that other consumer or provider advocacy groups have looked into every detail of the proposed regulations. There are lengthy, very specific comments, criticisms or suggestions by those groups. Many of the same points cited by those groups were also identified by the PCHA working group and merit careful consideration to assure thorough, fair, reasonable regulations which protect consumers, but which also encourage providers to be part of the expanding continuum of care to provide consumers affordable, safe environments.

- Licensure Fees:
The fee structure (§2800.11(c)) may be a major disincentive to potential licensees and is significantly more than licensing fees and per bed assessments imposed upon personal care homes. Even if a provider bears the cost, it is inevitable that the cost will be shifted to residents. When coupled with other costs which would flow from the regulations, the ALR option may become less and less affordable to the population to be served.
- Administrator Qualifications/Staffing
Section 2800.56 is problematic in two respects. Subsection (a) is puzzling as it seems to not allow for reasonable vacations, attendance at conferences, continuing education requirements, sick leave or holidays. In this respect, the regulation should be amended to address such events.

Subsection (b) seems to require some clarification or modification. In requiring the designation of a person to supervise the residence during the administrator's absence, the regulation seems to demand a designee with the full training required of an administrator. That seems then to mean that the residence will have an administrator or administrator equivalent on site twenty-four (24) hours a day, seven (7) days a week. Clarification is needed and over-regulation in this matter must be avoided. If there is no modification here, the result will be greater costs for the provider and, therefore, greater expense for the consumer.

A point concerning the training of an administrator relates to the absence of a "grandfathering" provision in Section 2800.64 like that which applies to personal care homes at Section 2800.64(g). An exception which permits an individual working as a personal care home administrator to serve as an assisted living residence administrator upon passing a competency test would seem sensible. In like fashion, there should be a means by which a licensed nursing home administrator could qualify to serve as an assisted living residence administrator without meeting the training mandated under the proposed regulations.

- Staffing Education
It is noteworthy that the regulations impose annual training for direct care staff and administrators and require separate dementia care-centered education. It is submitted that the dementia care-centered education should be blended into the annual training requirements. (§2800.64 and §2800.65).
- Dual Licensure
The regulations do not discuss the mechanism by which a residence might hold two licenses. It can reasonably be anticipated that this approach will be explored and that the way to achieve dual licensure should be fully developed and understandable.
- Facility Physical Requirements
The physical requirements are far too demanding, prevent flexibility and, in some respects, are difficult to understand.

It is clear that the goal is to have comfortable, clean, safe surroundings, but the square footage requirements may create standards which simply cannot be achieved for conversion units and may be of a type which adds significant costs for new residences which are prohibitive and, even if possible, will create impossibly high costs for consumers. There is a delicate balance to assure that providers and consumers can afford what the regulations require. If either providers or consumers are unable to bear the cost, the regulations will serve as a disincentive and, thereby, limit the promise of expanded services. (See §2800.101).

In addition, other space requirements which relate to indoor activities should be carefully reviewed to assure that the regulations are not creating a problem. (§2800.98).

- Informed Consent Process

This process will certainly need to be a focal point of education/training programs to be sure its use and structure are fully understood and are properly implemented. The process must be clear so that a residence and its residents cannot be unfairly limited in handling a resident who causes problems. The potential disruption to the effective operation of a residence is a critical issue which must be carefully addressed.

- Transfer

If a dual license is permitted, it is important to clarify whether the notice requirements and process outlined in Section 2800.228 apply to an internal transfer. It is submitted they should not apply.

The regulations provide that the Department may take "appropriate licensure action" against a provider based upon a report from the local ombudsman (§2800.228 (h)(3)). This appears to deny the residence fair notice and the opportunity for a hearing. Since "licensure action" would be contemplated, the residence must be assured appropriate due process and an opportunity to give its view of the ombudsman's report.

- Transport

Section 2800.171 (a) requires that a residence provide or coordinate transportation for medical and social appointments. To assure there is no ambiguity, it is submitted that the regulations should also refer to religious services. Those can hardly be characterized as "social appointments" and are, for many, essential opportunities to be faithful to their religious beliefs.

Assisted living services are an important component of the continuum of long-term care services. With the growing aging population in the Commonwealth, and the desire of many persons to remain in a more home-like setting, the need to provide quality, cost-effective assisted living residences and services will continue to escalate. The Catholic community has a long-standing history of providing those type services with a priority concern for the poor and vulnerable. In accord with Catholic social teaching, PCHA and PCC view access to adequate housing, health care and social services as basic to the dignity and well-being of every person.

PCHA and PCC acknowledge the good effort by DPW to develop regulations for assisted living residences that ensure quality and safe housing, health and social services. Because of the important points raised above, however, and specific comments, criticism and suggestions made by other groups, PCHA and PCC urge the Department to revise the proposed regulations.

Thank you for your attention.

Sincerely,

Sister Clare Christi Schiefer, OSF

Sister Clare Christi Schiefer, OSF
President

SCC/kmm

cc. Commissioner Arthur Coccodrilli
Members, Senate Aging and Youth Committee
Members, House Aging and Older Adults Services Committee
Mr. John Jewett
PCHA Board of Directors
Richard E. Connell, Esq.
Members, PCHA Task Force
Dr. Robert J. O'Hara, Jr.

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The Pennsylvania Catholic Health Association (PCHA) is a statewide organization whose membership is comprised of Catholic hospitals, long-term care facilities, numerous multi-facility health systems and other related health care entities, sponsoring religious congregations and dioceses. PCHA provides support for the Catholic health ministry through Gospel witness in advocacy, communication, education and united action.