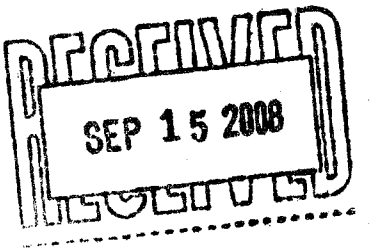
14-514

L-137



#2712

September 15, 2008

Gail Weidman
Office of Long Term Living
Department of Public Welfare
6th Floor, Bertolino Building
Harrisburg, PA 17105

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

3001 Lititz Pike
P.O. Box 5093
Lancaster
17606-5093

The Honorable Micheal Brubaker
22 South Main St., Suite 220
Doylestown, PA 18901

The Honorable Scott Boyd
1032 North Easton Rd.
Doylestown, PA 18902

Reference: Proposed 2800 regulations, IRRC #14-514

Dear Madams and Sir:

I am the Vice President of Health Services at Brethren Village, a not-for-profit retirement community with an established personal care residence I have worked in long term care for twenty-five years, have been a licensed Nursing Home Administrator for 25 years and have worked in Personal Care and Assisted living for the past fifteen years.

Since opening in the mid 1970s Village Manor has used the term assisted living on our signage and in our advertising and brochures. Village Manor is licensed for 114 residents. The average age of our residents is 88 years of age. We are extremely proud of our residence and truly believe our residents are able to have a very high quality of life and of care during their last years. We operate with licensed nurses around the clock and provide supplemental health care and oversight for our residents.

My overall opinion of the proposed 2800 regulations is that in many cases, though the intent of some of the regulations may be positive, the reality does not reflect the needs of the population that we serve. All of our residents have private bedrooms, except that we have larger rooms that spouses may share. Should the regulations be finalized with the current square footage requirements for "living units" we will not be able to apply for licensure as assisted living due to the size of some of our rooms. Since we would not be able to provide supplemental health services as a personal care residence, this would have a terrible impact on all the residents that live at Village Manor.

It is my understanding that these regulations have been developed with the intent to provide an option for "community based services" under the Medicaid waiver program, which is basically positive. Trying to mandate physical plant requirements with aging in place in mind also sounds positive. In reality, mandating larger units, kitchen capacity etc so that a "younger" disabled population has this option will eliminate the ability of many existing personal care homes to become assisted living and will seriously limit access for our frail elderly.

Specifically, I have comments about the following regulations:

2800.11(c) The proposed licensure fees are exorbitant. As a personal care residence with 114 residents, our current annual fee is $50. If these fees were to become final it would cost $12,470 per year. This cost will inevitably increase the cost of room and board for our residents. Our residence has always staffed at higher than the regulated hours of direct care per day; however this additional cost could result in a reduction of our direct care area.

2800.16 (a)(3) Our residents move into residences like ours due to failing health and are frequently hospitalized for treatment of their illnesses. Making this reportable will place undue burden on both the residence and the licensing office. Our licensed nurses contact the primary care physician for our residents whenever they note a concern or change of condition and very often the physician asks that they be seen at the hospital for evaluation.

2800.25(c) (iii and v) Laundry and transportation should not be included in the core services for private paying residents. We currently charge separately for these services, which allows each resident or his/her designated person to choose what he/she wishes to pay for. Bundling these costs raises the basic charges to all residents and eliminates the residents choice of having families provide these services to reduce costs.

2800.25(e) It is hard to understand why an assisted living residence should be held to a standard so much more stringent than that in a personal care residence or nursing home, by allowing a contract to be rescinded after having received the initial support plan, which is not required to be completed until 30 days after admission. Each admission is a process which involves significant administrative cost. For example the Admissions Coordinator visit each potential resident to complete the pre-assessment screening required by the regulations. There is administrative time involved in completing all the contracts, securing the medical evaluation, securing the medications and setting up medication administration records, preparing the room for the new resident to move in and completing the mandatory assessment form, and completing the support plan with the input of the resident and his/her designated person, to name some of the costs. If after all these processes are completed the resident may simply rescind the contract, the costs involved with these processes will certainly increase the average cost of operating a residence and will be passed on to all residents in increased rates.

2800.30 (a) (1) Please consider reducing the degree of risk and harm that permits a residence to initiate an informed consent process. There may be circumstances where a resident chooses to direct his/her care in a manner that is against the advise of the residence and has risk of harm that is not necessarily imminent, but may be long term risk and that harm may be significant but not substantial. In addition at no time should the resident's decision behavior or action be permitted to put another resident or staff member at risk of any harm. As a veteran of 25 years in long term care, I think the regulation should read:

"When a licensee determines that a resident's decision, behavior or action creates a dangerous situation and places the resident at risk of harm by the resident's wish to exercise independence in directing the manner in which he/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 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."

2800.30 (d) (1) Please consider that a resident who is not able to fully understand the choices and consequences of an informed consent, may have appointed a health care decision maker to do so for him/her and this person should be permitted to speak for the resident.

2800.30 (f) This section needs to contain language that supports the right of the residence not to enter into the informed consent agreement if the level of risk is unacceptable. It is imperative that the right of the residence to make the final decision as to whether or not it can accept the burden of liability that would be imposed by the informed consent agreement and that the residence not be forced to provide a service when we know we are not able to do so. This requirement alone may be a determining factor in whether or not a residence chooses to become licensed as assisted living and if many choose not to will limit the access to this level of "community based care" for which the waiver program will be intended.

2800.30 (g) see 2800.30 (a) (1) comment.
2800.30 (h) see 2800.30 (a) (1) comment

2800.56 This regulation places extraordinary burden on the residents and will certainly raise the cost to our residents. First there is concern about the standard of 40 hours per week that the administrator must average in the residence in ever calendar month. The administrator must be able to attend meetings, educational conferences as well as have sick, vacation and holiday time. If the intent of these regulations is to provide a less institutional setting than the nursing home, why are higher standards being required? In addition, there is concern about the requirement that a staff person be designated to supervise the residence during the administrator's absence with the same training requirement as the administrator. Does this mean during the required 40 hours a week or does it mean 24 hours a day? If it means 24 hours a day, it is truly not feasible. If it means for the 40 hours, I respectfully suggest that the person not designated not be held to the same training requirements. The cost of the 100 hour course is approximately $2000.00 and there would also be the additional cost of having the designated person attend the 24 hours of annual training in Department approved courses, probably another $400 per year. I also submit that in reality just one designee probably would not work since there might be times when the administrator and the primary designee needs to attend and educational conference to complete the required training. Also, if the designated staff persons were to leave employment at the residence, the cost would be incurred again and again. Of further concern is that the 100 hour course mandated by the 2600 regulations is not offered in all parts of the commonwealth frequently enough to allow a residence with a vacancy in the designated person to train a new hire to ensure compliance.

2800.64 (d) It is very important that the Department accept credits from courses that areapproved by the National Association of Boards of Examiners of Long Term Care Administration (NAB). As an NHA I will strive to retain my licensure and attend 48 hours of NAB approved credits every two years to do so. To require an additional 24 hours per year at Department approved courses would be costly and would also require additional time out of the residence. Also, unfortunately, the Department approved courses do not always rise to the quality level of the NAB approved courses. For our residence this would amount to several thousand dollars of additional annual costs. As stated so many times in these costs by necessity will add to the daily rates of our residents.

Omitted from the proposed regulations is the section under 2600.64(g) that states a licensed nursing home administrator who was hired prior to a specified date was exempt from the training and education requirements of the chapter. An NHA hired after that date was required to pass the Department Approved competency test (which still does not exist). I request that this be included in the 2800 regulations. The qualifications for NHA are far more rigorous than that of these regulations and this level of licensure should qualify an individual as an assisted living administrator.

2800.96 I would ask that the Department considered broadening the requirement of a first aid kit, to permit first aid supplies that are maintained in a designated location. We have three entire rooms dedicated to resident wellness and these include cabinets dedicated to all the required first aid supplies. In addition, we do currently have an AED that is in the Village Manor Center in a visible location. To have to store it inside a "kit" will only slow access. I ask that the requirement for an AED be limited to one in an accessible area. To allow for additional first aid kits throughout the residence.

2800.101 (d) Please reconsider the requirement for kitchen capacity in an assisted living unit. Our residents (again average age 88) are served high quality, nutritionally balanced meals in a fine dining setting. Out of 114 very few have chosen to have refrigerators or microwave in their room. This should be a matter of choice. To purchase these units to place in every room would cost us $40,000 dollars and to spend this kind of money for something that would not be used is not reasonable.

2800.101(j) (1) Please consider a provision that allows an individual to bring his/her own mattress if desired. Also please consider a phase in for current personal care residences that wish to convert to assisted living. Since the 2600 regulations do not require this for homes that were licensed prior to 10/24/2005, it places another huge cost of the residence to replace all existing mattresses. In our case this would be approximately $30,000.

2800.131 (a) Please reconsider the requirement for a fire extinguisher in each living unit. For one thing the staff are trained to bring an extinguisher to the location of a fire. For another our residents should not attempt to fight a fire themselves.

2800.141 (a) Please consider permitting the medical evaluation to be completed within 15 days post admission to allow for emergency circumstances.

2800.171 (b) (5) Please do not require AEDs to be in the first aid kits in residence vehicles. The average current cost of an AED is $2000.00 and we have four vehicles.

2800.171 (d) Please reconsider this requirement. Our residence currently has a wheel chair accessible bus and a non accessible van. We have not had issues with access to transportation. In addition some residences may provide non accessible transportation but contract out wheel chair accessible.

2800.220 (c)(7) Please clarify that escort service is only required when indicated by the support plan or by resident request.

2800.224 (b) Please consider the complications that a residence must consider to determine if an applicant is appropriate for the residence in order to ensure the well being of the existing population of the residence. At times decisions not to admit must be made that may not be appropriate to document to the applicant. For example, if a resident has socially inappropriate behaviors that would impact on the quality of life of the other residents, he or she may consider it insulting to be told so.

2800.226 (c) Since the Department has decided that personal care residences no longer are to send notice to them when a resident is admitted with mobility needs or when mobility needs develop, I suggest that this regulation also be changed to require that the residence be required to maintain a list.

2800.228 (a) The requirement that the residence ensure a transfer or discharge is appropriate to meet the needs of the resident is not always possible. A competent resident, a designated person, power of attorney or guardian, may be the person making this choice. Please consider changing this wording and placing the burden on the residence to fully inform the resident, designated person, etc. of the possible consequences and to inform the local Protective Services.

2800.231 (e) Requiring a resident with dementia, or another significant cognitive impairment to document agreement to admission to a specialized unit is not logical. The nature of dementia or significant cognitive impairment makes it impossible to truly consent, so the signature is meaningless.

2800.231 (f) and 2800.234 (d) Please consider making the assessment semi annually rather than quarterly. The amount of time spent in paperwork detracts from the quality time spent in caring for the resident.

Respectfully submitted,

David A. Parkhill, NHA
Vice President of Health Services