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INDEPENDENT REGULATORY REVIEW COMMISSION

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15 Years of Excellence in Long-Term Care Medicine

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SEP 15 2008

September 14, 2008

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

Re: Comments on Proposed Rulemaking for Department of Public Welfare
Assisted Living Residences (Re: Regulation No. 14-514)

Dear Ms. Weidman:

As President of PMDA/Pennsylvania's Association for Long-Term Care Medicine (formerly known as the Pennsylvania Medical Directors Association) I am offering comments on behalf of PMDA to the Pennsylvania Office of Long-Term Living on the Proposed Rulemaking for Department of Public Welfare (DPW) Assisted Living Residences published in the Pennsylvania Bulletin on August 9, 2008.

PMDA as a professional association is one of the oldest and largest State chapters of the American Medical Directors Association, the Nations' leader in long-term care medicine. Our organization includes over 200 Pennsylvania physicians dedicated to the practice of long-term care medicine, most of whom are Medical Directors of one or more long-term care (LTC) facilities including personal care homes (PCH) and assisted living facilities (ALF). Many of our members and most of our Board members, Committee Chairs, and Officers are career Geriatricians with a professional focus in clinical practice and Medical Direction in the LTC setting. Most of the physicians in our leadership group are educators as well. Many of our members are Medical Directors of, and practice clinical medicine in, the PCH/ALF setting. PMDA offers these comments and recommendations as the professional association representing long-term care clinicians and specialists in Pennsylvania.

Comments on specific regulations:

2800.96(a) as written requires the AL residence first aid kit to include an automatic external defibrillator (AED). The use of AEDs in the LTC setting is controversial and routine AED use in this setting has not been shown to be highly successful, nor has it been established as appropriate and routine care in this setting. There is also a substantial danger that ADEs could be used inadvertently on residents who do not desire resuscitation due to their advance care directives. The medical literature in this area has left questions about the effectiveness of AEDs for frail, elderly LTC residents and the use of AEDs in the setting should not be regarded as routine, and should certainly not be a requirement. PMDA recommends that the requirement for an AED to be part of the first aid kit be dropped from the regulations due to these concerns. While PMDA would be interested in providing LTC physician expert advice in exploring the use of AEDs in the LTC setting with the Department, any such regulatory requirement at this time would not be considered evidence based.

2800.141(a) as written prevents unplanned/urgent admission to an AL facility such as might be required within the setting of a Continuing Care Retirement Community (CCRC), or similar continuum of care community, when a resident is stable and ready for transfer to an AL unit from their nursing facility, or an admission for observation and care from an independent living unit on the same campus. If this occurs on an evening, night, weekend, or holiday it is not reasonable to expect that the physician written medical evaluation will be available to the facility. This violates the rights of Pennsylvania LTC residents and will result in additional costs that may be borne by CMS or DPW/Medicaid. PMDA recommends that the regulation be changed to read: "within 60 days prior to admission or within 30 days following admission." It is reasonable to require orders for medications and treatments to be obtained prior to, or at the time of, ALF admission and this practice is consistent with other current licensure regulations. The 30 day allowance is also consistent with the ACOVE guidelines on transitions of care (Assessing Care of Vulnerable Elders Project, Rand Corporation).

2800.186(c) as written prevents physicians other than the original prescriber to make changes in medication orders. PMDA views this regulation as a dangerous step toward preventing optimal medication management for AL residents, and will put AL residents at high risk for adverse medication events. Any such proposal is dangerous to residents and will clearly lead to an increase in medical errors. Any physician caring for a patient must be permitted to alter the medication orders in order to ensure adequate treatment and to prevent adverse outcomes; full prescribing authority is allowed by physicians' licensure scope of practice. It is especially important that a resident's Primary Care Physician be able to override, alter, and adjust the medication orders of specialist physicians who may also be prescribing to prevent polypharmacy, and to avoid potential drug-drug and drug-disease interactions that can result from multiple prescribers. PMDA urges DPW to eliminate the restriction on changes to the medication regimen in this proposed regulation.

2800.203(a) as written prevents bedside rails to be used as positioning aids (enablers) for AL residents who are unable to raise and lower the rails by themselves. In the arena of aging in place in long-term care there will be a high percentage of Pennsylvania elders who will not have the physical dexterity and strength needed to raise and lower side rails on some beds and will therefore be unable to use side rails to assist with bed positioning. While this regulation is surely intended to be a safety measure for residents it will result in significant hardship and functional limitations for residents. PMDA believes this regulation should be dropped or modified.

2800.229(a) lists conditions that exclude residents from admission or re-admission to AL facilities. The process for requesting an exception that is outlined in this regulation allows a 5 day response period for DPW. This regulation will result in current residents of an AL residence who are hospitalized or who are residents of a nursing facility to wait unnecessarily in another care setting while awaiting a response from DPW. This wait may be longer if it occurs over a weekend or holiday. This policy will result in financial hardship for AL residences and residents and will result in unreasonable and excessive costs to be borne by providers (including hospitals and nursing facilities) and insurers (including CMS and DPW/Medicaid). PMDA believes that an interim (temporary) plan should be allowed so that the application for exception can be made from the AL facility while the resident is receiving appropriate care including the appropriate use of supplemental health care services. PMDA estimates that this issue of delay in transfer to AL residence resulting from this regulation will increase the fiscal burden and cost incurred per year by the regulations to well in excess of $5 million per year, thus resulting in gross underestimation of the fiscal impact of the overall AL regulations. In light of this, PMDA requests that the "cost incurred" estimates be recalculated and reviewed in collaboration with the State Office of the Auditor General prior to the final issuance of AL regulations.

General Comments:

In the past, the use of facility-based Do Not Resuscitate (DNR) and Do Not Hospitalize (DNH) orders in the PCH/ALF setting has been interpreting in a variety of ways by DPW surveyors. PMDA is aware that some DPW field offices have disallowed the use of physician orders for Do Not Resuscitate to be issued for residents of PCHs. This restriction violates the rights of residents for self determination. The Commonwealth has already been given a grade of "D" in end of life care and prohibiting patient self determination would only help to lower this low rating to an "F" and create a regulation that is unconstitutional. All patients have the right to refuse any treatments they do not want. Licensure regulations may not supersede this right. PMDA recommends that the AL regulations specifically address this issue and explicitly state that physician orders for DNR and DNH shall be honored in ALFs.

PMDA/Pennsylvania's Association for Long-term Care Medicine, as the leader in LTC medical care in Pennsylvania encourages your careful consideration of these comments and recommendations. We realize that our perspective as long-term care specialists is unique among physician specialty practices and we are grateful for the opportunity to

provide our clinical insights regarding care in this challenging area. We look forward to working with you further as you develop policy and regulations in this area. Thank you.

Sincerely,

Thomas Lawrence MD

Thomas Lawrence, MD
President, PMDA

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Pennsylvania's Association for Long-Term Care Medicine

FAX Cover

September 15, 2008

To: Gail Weidman

From: Thomas Lawrence, MD
President, PMDA

Re: Reference Regulation No 14-514

Comments on AL Residence Regs.

Thank you

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