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September 11, 2008

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RECEIVED  Saint Mary's Home of Erie

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

2008 SEP 19 AM 9:32

SAINT MARY'S AT ASBURY RIDGE  
SAINT MARY'S EAST

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Re: Proposed Department of Public Welfare Assisted Living Regulations

RECEIVED  
08 SEP 15 AM 10:14  
BUR OF LTC PA  
REFER TO

Dear Ms. Weidman:

As the President/CEO of Saint Mary's Home of Erie, a Continuing Care Retirement Community, in Erie, Pennsylvania that operates two (2) facilities in Erie, PA - 1) Saint Mary's East and Saint Mary's at Asbury Ridge, I am writing to convey my deep concerns regarding the proposed Assisted Living Regulations and the costs related to those proposed regulations. These costs will have a great impact on the cost of Assisted Living and, in fact, make it unlikely that many people will be able to afford such a Program. There is so much regulation here that there is not much room for consumer choice - the manner in which they are written.

The following are major areas of concern:

**2800.1 (b) Purpose**

"Aging in place" is a wonderful goal but, in certain instances it is not feasible and for consumer safety there needs to be provision in place for defining when this is not possible. I would suggest that could be done within the Admission Contract.

"Self-determination and personal choice" - these regulations do not promote self determination as to square footage one might choose to live with, whether one want to have a microwave, etc in one's room, and many other area. Personal choice as to what one could afford is totally left out of the picture. These regulations will increase the cost to consumers and make Assisted Living unaffordable for the vast majority of the very people who would choose it.

**2800.11 (c) (1) and (2) Procedural requirements - licensure fee**

The present fee for Personal Care is \$50.00. The fees proposed for Assisted Living (AL) are exorbitant! The \$500 for an application or renewal fee is way too much. The \$105.00 per bed fee that "may be adjusted by the Department annually at a rate "not to exceed the consumer price index" represents an exorbitant fee for the residences and for the consumers.

**Projected Cost for both facilities**

$$\$500.00 + \$105 \times 104 = \$11,420$$

$\$500 + \$105 \times 164 = \$17,720.00$

**TOTAL = \$29,090**

**2800.56 Administrator Staffing and 2800.64 Administrator training, etc.**

The requirement that “the administrator shall be present in the residence an average of 40 hours or more per week, in each calendar month” is not a realistic expectation of anyone! This regulation would require that two (2) employees be educated, trained and paid as an administrator in order to physically provide this required coverage. The administrator must be able to go to meetings, educational programs and be off for vacation and sick time and still be responsible for the care. This is not possible for one (1) individual and would require two (2) administrators which calls into question the issue of accountability. Two (2) people is just not effective and is extremely cost prohibitive.

**Projected cost for both facilities**

Education and training approximately	\$ 5,000.00
Annual salary and benefits	\$64,392.00
Annual InService	\$ 3,000.00
	\$72,392.00 X 2 facilities =
<b>TOTAL</b>	<b>\$144,784.00</b>

In addition to the above, the regulation does not permit a person to serve as both the Administrator of the Personal Care Home and the Assisted Living Facility – given the facility can be dually certified. Which is not clear. Thus one would need to hire the administrators for AL based on meeting all of the regs and hour requirements and still maintain the current director for the Personal Care residents. The Personal Care and Assisted Living (AL) residents would be living in the same areas and receiving services from the same staff members. This is clearly unneeded duplication of services and costs and would be extremely confusing for residents, families, responsible parties, and staff in addition to increasing costs for both the facilities and the consumers.

**Projected Cost for both facilities**

\$144,784.00 as above X 2 more people

**TOTAL = \$289,568.00**

**2800.64 (a) (2)**

Not accepting a person with an NHA (Licensed Nursing Home Administrator) or a Personal Care Education as Administrator or Assisted Living is an unreasonable burden and creates additional costs for facilities and consumers.

Not “grandfathering” current Personal Care and NHAs is also unreasonable. An NHA should qualify as a Personal Care and an Assisted Living Administrator with no additional education or training required, as long as they remain licensed.

**2800.69 Additional dementia-specific training**

This should be part of the training and not a separate requirement and should

not have its own hour complement. Time does not make an educational offering a good offering. It should be folded into the other InService as one of the topics that are required.

**2800.85 (c) Sanitation**

If one has a trash compactor one does not always need to have it emptied and “removed from the premises at least once a week”.

This is unnecessarily regulatory and should just in plain language say the premises should be sanitary and all trash removed in a timely manner. It is way too prescriptive.

One (1) of our facilities has a every 2 week trash compactor schedule so although there would not be a cost for more trash there would be for the additional pickup and mileage = approximately \$425.00/month.

**PROJECTED COST = \$ 5,100.00**

**2800.96 First Aid Kit and AED**

The regulation requires an AED (automatic electronic defibrillator) in each first aid kit. We believe an AED should be accessible but this is cost prohibitive. It also includes one in each mode of transportation – what about transportation that is coordinated? This is cost prohibitive and not at all practical.

One of our facilities would need 7 additional AEDs in addition to the one they presently have. They cost \$2000.00 each. The AED company’s procedure is to check the device and test it daily – daily hours would be approximately 2 hours x \$12.00 an hour due to the size of the facility. The other facility would need two additional AEDs in addition to the one they have.

We recommend AEDs be placed strategically for accessibility to all staff.

The facility vans do not lend themselves to a person/driver applying an AED. 911 should be called and the person transferred to an ambulance for care.

**Projected Costs for both facilities**

9 AEDs	\$18,000
daily checking 1 year	\$13,140
<b>TOTAL = \$ 31,140.00</b>	

**2800.98 Indoor Activity Space**

A lounge area that accommodates all residents at one time is over prescriptive.

Where is consumer choice in facilities? Both of our facilities are very large and 164 and 139 people in a large lounge is just too much! This is not a “home-like”

environment. Several different lounge spaces and areas for activities should be permitted and not prescribed. Not everyone wants to do the same thing and/or at the same time. This too is a waste of space and money. An area for everyone to go when there is a special event within proximity to the residence should be permitted especially in a CCRC – shared space among services.

### **2800.101 Resident Living Units**

In one of our facilities the Personal Care Home is licensed for 131 persons having 104 rooms some of which are apartments. Of these rooms:

41 meet the 175 square foot requirement for Assisted Living. If the Department does not permit “dual licensing” and the 175 sq. ft. requirement remains, in the proposed AL regulations, Saint Mary’s East may be unable to use over ½ of our Personal Care Rooms. This will be a significant hardship for both the facility and the area consumers.

#### **Projected Cost or Loss**

\$128,895.00 monthly

**TOTAL = \$1,546,740 annually**

**Saint Mary’s East already provides annual Benevolent Care in the approximate amount of \$500,000 annually**

Saint Mary’s East has 44 rooms between 125 to 175 sq. ft. with 10 of these rooms under 125 sq. ft.. All of these rooms have baths and closets, which you do not include in the square footage requirement. We request that the square footage requirements be eliminated in order to serve all residents under the AL Regulations. In the least – current facilities should be “**grandfathered**” into the regulations.

**We believe that size should be a consumer choice and not regulated.**

I has been said that “dual licensing” of Assisted Living and Personal Care will not be permitted. We believe that “**dual licensing**” should be permitted. This further allows people to age in place – where are they going to go otherwise? Again, we submit this is a consumer choice not a regulatory issue.

**The square footage requirement is excessive and cost prohibitive for the facilities and consumers. It will simply drive some preferred (choice) out of the market or make prices prohibitive for some consumers. There are top of the line cars and compacts – that is consumer choice.**

### **2800.101(d) (1) Kitchen Capacity**

At our East location we have placed refrigerators and microwaves in many of our rooms and continue to do so as the Resident’s request. We would like to be able to make this same service available in all AL Rooms - resident choice if they want it or not. It may be a safety issue in “aging in place”. All rooms are near enough to kitchenettes to have access to a sink with running water and stovetop.

**Projected Cost**

**TOTAL = approximately \$600.00 per room**

**2800.101 (j) (1) Resident Living Units**

The regulation states the unit must have a bed with a solid foundation and a fire retardant mattress. We do permit our residents to provide their own furniture and their own bed with fire retardant mattress. This is resident choice, culture change, and homelike. Sleep surfaces are very personal. Each person has their own idea of what is comfortable. Providing a box spring and mattress at \$400.00 each total is very costly and that is a very conservative number for a twin bed.

**Projected Cost**

164 twin size box spring and mattress (total possible)	\$65,600.00
104 twin size box spring and mattress (total possible)	\$41,600.00
<b>TOTAL</b>	<b>\$107,200.00</b>

**2800.130 (a) Smoke detectors and fire alarms**

Currently, smoke detectors are required to be not further than 15 ft. from each Resident door. Adding smoke detectors in each room will be financially prohibitive as our fire alarm systems are not capable of an expansion of this dimension. Saint Mary's requests a definition of "automatic smoke detectors" – if the definition includes battery operated detectors we would be able to meet the requirement at an approximate cost of:

**Projected Cost**

$\$25.00 \times 104 = \$2600$  + annual battery changes x 2 requiring approximately 20 maintenance hours each spring and fall x average maintenance per hour of \$20.00 or  $20 \times \$20.00 \times 2 = \text{TOTAL} = \$800.00$  (East facility only)

**2800.131 Fire Extinguishers**

Requires that a fire extinguisher be located in each kitchen and in the living unit. Also states that the fire extinguisher shall be kept locked if access to it by the resident could cause a safety risk, but each staff member must be able to immediately unlock the extinguisher – if needed.

**This regulation is a safety risk not an enhancer.**

Fire extinguishers are already available per regulation. What good is a locked extinguisher in each resident room (timing to unlock – not accessible to visitors, etc.)? The Department already by other parts of the regulation seems to imply many will have a diagnosis of "dementia" – why put them in the rooms?

**Projected Cost**

$\$85.00 \times 104 = \$8,840.00$  + monthly maintenance checks (approx. 5 hrs./mon.) = \$10,040 per year plus annual outside inspection costs

$\$85.00 \times 90 = \$7650.00 =$  monthly inspection + monthly inspection of each extinguisher (5 hrs. at  $\$20.00/\text{hr.}/\text{year}$ ) =  $\$8850.00$  plus annual outside inspection costs

Plus replacement of extinguisher (every 4 years per safety standard must be replaced or refilled. Our plan to replace  $\$1,000$  each year at each facility) =  $\$2,000.00$

**TOTAL = \$ 20,890 plus annual outside inspection costs**

### **2800.171 Transportation**

Requires a facility to “provide or coordinate” transportation and assistance to and from “medical and social appointments”.

We already coordinate services with various transportation providers; however, this regulation seems to imply that both the transportation and the assistance should be at the cost of the facility. Most of the time the family is able to provide transportation and assistance – if this regulation were to be implemented the facility would be providing all transportation and assistance. This would be cost prohibitive for both the consumer and the facility. Nursing hours would need to be increased and there would be a cost for more vehicles and drivers. Nursing hours would increase because the employees could not leave the facility and residents to accompany another resident who needs assistance. Additional nursing staff would need to be hired to accompany residents to appointments.

LIFT transportation is provided in our area. Our residents have memberships and use this service regularly as well as private transportation services in the area. We presently have a handicapped accessible van for activities and outings.

### **Projected Costs**

Vehicle (wheelchair accessible)	$\$30,000 \times 2 = \$60,000.00$
	Plus maintenance and fuel costs
Driver $\$15.00/\text{hour}$	$\$31,200.00/\text{year} \times 2 = \$62,400.00$
Nurse Aide $\$9.94/\text{hour}$	$\$20,675.00/\text{year} \times 2 = \$41,350.00$
(2-3 trips per day @ 6-8 hrs/day) x 2	

**TOTAL = \$163,750.00 this does not include maintenance and fuel costs which would be exorbitant**

**GRAND TOTAL OF PROJECTED COSTS = \$2,339,062.00** for our Continuing Care Retirement Community

**This does not include:** addition of more microwaves or refrigerators nor vehicle gas and maintenance. The question of the smoke detector system required could significantly increase these numbers.

This also **does not take into consideration** the **almost \$500,000.00 of Benevolent Care/year** we currently provide to these residents. No matter what

subsidy you may be thinking of – these costs will probably increase the need for additional subsidy and where will it come from with the costs we have just approximated? People will spend down faster and be forced into Medical Assistance faster and in growing numbers. Where will the ones who fall through the cracks go?

These proposed Assisted Living Regulations have other areas of question but these appear to be the ones with major impact on our operational costs of the Assisted Living/Personal Care Areas thus effecting the cost of living at our facilities.

In just one of our facilities, for example, the current daily rate for a personal care resident living in a 396 square foot apartment is approximately \$122.00. **The implementation of the proposed regulations will increase the daily rate approximately \$5.66 per day or \$2,066.00 per year!** The rate in that case in that facility (not even talking about cost of living raises) would be \$127.66 per day or \$46,595.90 per year. This is an astronomical increase for very few additional consumer choice items but mostly regulatory items that consumers may not choose. They will deplete their resources faster and require Medical Assistance or subsidy much sooner. When they are unable to pay – where do they go?

**I ask that the current implementation of the Proposed Assisted Living Regulations be stopped immediately until they can be thoughtfully and thoroughly reviewed and the issues addressed.**

In addition, I ask the consideration of the Department to go back to the Legislature and change the law so that **one set of regulations** – which would be the current and recently revised Personal Care Regulations - be the regulations that are implemented with the very few changes the Provider Groups had recommended, in the first place. They would become the template for Personal Care/Assisted Living. **One set of regulations, one set of inspectors, one license, and one Administrator.** This is going to be too cost prohibitive, and more importantly, too confusing – Personal Care versus Assisted Living - for the consumers of our services and their responsible parties. Way too confusing. It also provides them with little choice in their chosen home. I thought we were trying to get away from over regulation?

Thank you for the opportunity to comment on these Proposed Assisted Regulations and I hope these comments are helpful. If you have any questions, please feel free to call me at (814) 459-0621.

Respectfully submitted,



Sister Phyllis McCracken, RN, MS, NHA  
President/CEO  
Saint Mary's Home of Erie