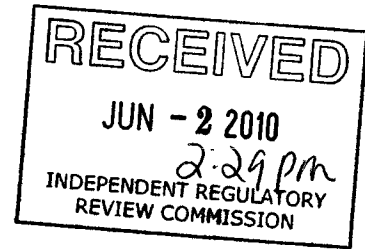




COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE



2712

June 2, 2010

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

Re: Regulation # 14-514 (IRRC ID # 2712)
Department of Public Welfare
Assisted Living Residences (ALRs)

To the Independent Regulatory Review Commission:

The Department of Public Welfare has reviewed the public comments received by the Independent Regulatory Review Commission in response to the final-form regulation. While the final-form regulation represents our attempt to respond comprehensively to IRRC and stakeholder comments, the Department believes it would be appropriate to address an issue raised in the comments submitted by PHCA, PALA and PANPHA. Specifically, the issue relates to the “opt-out” language found at § 2800.220(d) (relating to service provision).

Neither the proposed rulemaking nor the draft final-form regulation contained an “opt-out” provision, as it was the Department’s intent that all potential ALR residents be offered the same core service packages in order for potential residents to be able to compare costs from residence to residence. After the final-form regulation was submitted, however, industry stakeholders expressed concern that not all residents would need all services in these core service packages. These stakeholders recommended the concept of an “opt-out” of certain services. In a meeting last year that included Secretary Richman, Secretary Hall and Representative Phyllis Mundy, the provider associations argued that permitting assisted living residents to opt-out of certain core services would respect consumer choice and preferences.

In direct response to the providers’ recommendation and after much deliberation, the Department submitted the final-form regulation with an “opt-out” provision for specific services (meals, laundry and housekeeping). Now PHCA, PALA and PANPHA, based on the concerns that the “opt-out” provision may affect the overall health of ALR residents and the difficulties it would present to residences in staffing and implementation, have requested that the “opt-out” provision be eliminated. In the Department’s view, however, this “opt-out” provision does enhance consumer choice, while potentially providing savings to individual residents for services that are neither required nor requested. Further, even with the “opt-out” provision, the final-form regulation protects the health and safety of ALR residents by requiring assessments and support plans, which are based on each individual resident’s need. If a resident is assessed to require provision of a certain service (*e.g.*, meal service for assurance of proper nutrition), that service must be included in the resident’s support plan.

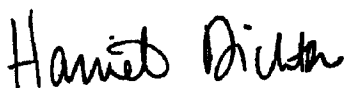
OFFICE OF THE SECRETARY

Having said that, we have reviewed the suggested language provided by the commenters and have determined that, based on the industry's stated need for further guidance as to how to interpret the "opt-out" provision, the Department will issue a draft Statement of Policy that would clarify the opt-out language by requiring that any provision in a resident's contract "opting-out" of a service be consistent with the individual's clinical assessment and support plan under § 2800.227 (relating to development of final support plan).

Issuing a draft Statement of Policy will offer other individuals and associations the opportunity to comment on our suggested clarification. This would be consistent with the assiduously open, comprehensive and responsive public comment process we have used throughout the development of this final-form regulation over the course of the last 2 ½ years. With regard to the other points raised by the industry commenters, we have closely reviewed them and find that the final-form regulation adequately and fairly addresses each issue, in many cases striking a balance between opposing views offered by various stakeholders.

Thank you for the opportunity to respond to this set of comments. If you have any questions or concerns, please contact Ms. Elaine Smith at (717) 346-9168.

Sincerely,

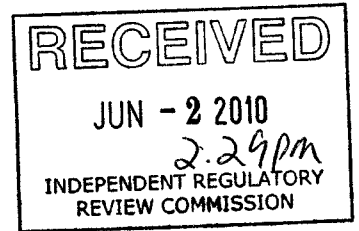


Harriet Dichter
Secretary

c: The Honorable Pat Vance
The Honorable Phyllis Mundy
The Honorable Vince Hughes
The Honorable Tim Hennessey
Deputy Secretary Jennifer Burnett

2712

From: Messinger, Michele L. [mimessinge@state.pa.us]
Sent: Wednesday, June 02, 2010 2:29 PM
To: IRRC
Subject: IRRC Letter - Statement of Policy
Attachments: IRRC Letter - Statement of Policy.pdf



-----Original Message-----

From: Messinger, Michele L. On Behalf Of Dichter, Harriet
Sent: Wednesday, June 02, 2010 1:58 PM
To: 'IRRC@state.pa.us'
Cc: 'pmundy@pahouse.net'; 'thenness@pahousegop.com'; 'vance@pasen.gov';
'hughes@pasenate.com'; Burnett, Jennifer
Subject: IRRC Letter - Statement of Policy

Please see the attached letter re: Regulation # 14-514 (IRRC ID # 2712)