This document is a comment on the preliminary DRAFT final regulation. On June 24, 2009, the Department of Public Welfare provided a DRAFT final regulation for public review and comment. The DRAFT final can be found at : http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2712/AGENCY/Document-12700.pdf.

This is an informal process. The Department will consider these comments in preparation of a formal final regulation to be submitted at a later date.

2712

July 22, 2009

Independent Regulatory Review Commission

333 Market Street, 14th Floor

Harrisburg, PA. 17101

Please find enclosed for review a letter of comment pertaining to the proposed Assisted Living Residence Regulatory package. We are a small non-profit facility currently providing Personal Care Services in the commonwealth. Assisted Living licensure at this time appears to be out of our reach due to the many costly regulatory requirements.

We look forward to the final regulations with anticipation to see if the legislators really heard what the elderly population and family members in Pennsylvania feel they need in order to "age in place".

Sincerely,

Deb Carbaugh,

Personal Care Administrator

The Quarters at Shook Home

July 22, 2009

The Honorable John M. Hall
Secretary, Department of Aging
Office of Long-Term Care Living
Bureau of Policy and Strategic Planning
P. O. Box 2675
Harrisburg, PA 17105

The Quarters at Shook Home, a small non-profit senior services provider, submits these comments on the proposed Assisted Living Residence Regulatory package as provided on June 24, 2009, for additional consideration prior to the Department's final submission for approval. While some smaller changes have been made, we still raise the concerns addressed in this comment letter.
The proposed regulations and changes from the previous version continue to impose significant new costs on homes and residents that would not improve the health or safety of the residents. They would instead focus on the construction of physical plant amenities and duplicative administrative documentation that have little to no bearing on the care delivered to the resident, and which are likely to make the assisted living level of care too costly for many Pennsylvanians to afford. To pay for these requirements, homes must increase costs to the resident, reduce care and services, or allow the costs to impact the viability of the provider.

Below is our list of concerns with the proposed regulations:

1. **Licensure Fees**: While the Department has adjusted the initially proposed licensure fees, the newly proposed $300 initial application fee coupled with the per bed fee of $75 still results in a significant burden on the provider. Organizations interested in providing Assisted Living Services would still be met with a cost prohibitive entrance fee and result in taking the discussion of ALR licensure off the table. Our small facility would be burdened with a $3,675.00 initial application fee. Those dollars would ultimately be passed on to perspective residents, should we pursue the assisted living licensure.

2. **Bundling of Core Services**: The proposed bundling of —Core Services in this version of the proposed regulations represents a radical departure from the previous proposal. While we understand the reasoning for bundling core services we continue to strongly urge the Department to adopt a basic set of core services, including the items enumerated in 2800.220(b)(1-10). The additional items that the

Department seeks to have Assisted Living Residences offer can easily be listed by facilities choosing to provide those services, under a —Enhanced Services Charges addendum. Each item could (those listed in 2800.220(b)&2800.220(c) be listed with individual charges as applicable. To offer any other comprehensive bundling will result in residents who do not use those services having to bear the responsibility of covering their costs. Only residents who use the individual services should be charged for the service. This avoids a hidden —Use tax, as proposed. We would request that this entire section be re-evaluated.

3. **Administrator Requirements**: We would request additional clarification on this issue and recommend that in 2800.56(b) training be clarified as *—qualifications as defined in 2800.53(a)(1-5).*

The proposed regulation sets forth a requirement for the Administrator to be in the building 40 hours or more per week. This is above the current Skilled Nursing Home requirement for Nursing Home Administrators – they are required to be present 36 hours per week. This recognizes the inherent off-site needs to successful operations of long term living organizations, so to should the Assisted Living regulations. We urge the adoption of the same 36 hours per week average. There is also the issue of training requirements for administrators. Although encouraged to see that the Department has allowed for an exemption from the training course for individuals holding a license as a Nursing Home Administrator, we express the need to make an exception for individuals currently serving as Personal Care Home Administrators. This ensures there is an adequate supply of administrators available for this new sector of care; and to take into account the experience and coursework registered by current Personal Care Home Administrators.

4. Physical Plant Requirements: The proposed square footage requirements of 175 per living unit for existing facilities and 250 per living unit for newly constructed facilities are excessive and will place Pennsylvania providers at a competitive disadvantage if implemented at these levels. The higher the square footage of the living unit, the higher the cost profile to the provider and by extension the higher the cost to the consumer. Having a square footage minimum that is within the top 10% nationally does not enhance the level of care or intrinsically heighten the dignity of the resident occupying the room. That accomplishment is only possible through the delivery of quality care at reasonable costs.

What it does ensure is that low-income individuals will not be able to buy their way into an Assisted Living residence in vast expanses of the Commonwealth. The square footage minimum of 125 for existing facilities and

150 for newly constructed facilities, which providers have suggested, provides an appropriate regulatory floor that ensures a dignified quality of life for residents, is within the mainstream nationally, and does not close the market on significant portions of Pennsylvania's geography. Market forces will result in many providers offering rooms well beyond the 125 or 150 square foot minimum.

Along with the minimum square footage requirement, is the necessity for all newly constructed facilities to equip living units with a kitchen that possesses a sink with hot and cold running water. The costs associated with equipping each living unit with plumbing for the kitchen will not be insignificant. This is an amenity many will not request or use, as three full meals will be provided by the residence. Again, many providers will opt to equip all living units with a kitchen sink of some type, but the market should decide whether that is a necessity for Assisted Living.

5. **Supervision by RN in Assessment and Support Plan Development:** An RN is not a clinical necessity in the completion of an Assessment or in the development of a Support Plan. This is a mandate that simply increases the cost profile of delivering care.

6. **Discharge of Residents**: The residence must be permitted to maintain control over the transfer and discharge of its residents as is called for in Act 56 of 2007. Certain provisions that were advanced in previous proposed regulations have been appropriately disposed, however newly inserted language forces this issue to remain as a preeminent concern for assisted living licensure consideration.

7. **Dual Licensure**: When SB 704 was enacted, the legislation clearly and definitively addressed the issue of dual licensure. The legislature delineated in Section 1021(C) that dual licensure was permissible, even going so far as to outline how facilities with dual licensure were to be surveyed by the Department. The regulatory package currently addresses the issue of dual licensure, but does not frame the process in a manner that would allow the greatest flexibility for providers. We request that facilities and providers be afforded the greatest flexibility possible in order to meet the needs of their residents. Our facility is supportive of PANPHA's recommendation that the regulations permit providers to license their facilities by door. This flexibility will allow facilities that have suites or pockets of rooms that will not meet all of the physical plant requirements for assisted living units to license those as Personal Care rooms.

There will be no additional strain on the state beyond coordination of the survey dates. The statute notes that when a dually licensed facility is to be surveyed that the Personal Care portion of the facility will be surveyed by Personal Care Home

Surveyors, and that the Assisted Living units will be surveyed by Assisted Living Residence Surveyors. The bulk of the responsibility will be with the provider, to coordinate scheduling, to track services and staff, and to comply with the differentiation of the regulations. Allow the provider to assume that responsibility, if they so choose.

8. **Informed Consent:** The regulatory language proposed by the Department distorts the legislative language outlined in the statute, which was developed after lengthy and thoughtful discussions. The proposed regulation, as pertaining to liability, imposes the extreme pre-condition on a residence of having to determine that residents or staff is at —imminent risk of substantial harm before it may initiate actions to address a —dangerous situation caused by a resident. This standard, which is similar to that necessary for involuntary committal for mental health treatment, is simply unreasonable from a personal security safety perspective and liability perspective. Such a standard is assuredly inappropriate in the context of a residence's having to react promptly and effectively to a —dangerous situation caused by a resident. We are in agreement with PANPHA's proposed revision as it provides the residence, which is ultimately responsible and potentially liable for actions occurring in the residence, the operational flexibility to address the presenting problem. The proposed revision also reflects the statutory intent of the legislation as it relates to releasing the residence, —from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement. The language in Act 56 on this matter is quite clear, and we fear that the proposed regulation may dilute the clear intent of the legislature. The changes in the proposed revision not pertaining to liability serve to balance the rights of the residents, the residence and the residence's obligations to its other residents.

9. **Proposed Regulations Ignore Key Provisions of Act 56 of 2007**: The Department's proposed regulations at several points either exceed the authority granted by Act 56 of 2007 or are contrary to the statute. Those areas include:

a. **TRANSFER AND DISCHARGE.** The proposed regulations exceed the statutory framework with regards to transfer and discharge. Act 56 clearly notes that the residence, through its medical staff and administration, will determine what services it is comfortable having provided on its campus, and when it feels the needs of the resident can no longer be served at that level may initiate a transfer in Section 1057.3(f) and Section 1057.3(h). The regulations at 228(b)(2) counter the statutory framework when it mandates that the —residence may not

transfer or discharge a resident if the resident or his designated person arranges for the needed services.

b. **USE OF OUTSIDE PROVIDERS.** Supplemental health care service provision is another area in which the regulations deviate from what the legislature intended. The legislation states that the provider —may require residents to use providers of supplemental health care services designated by the assisted living residence,|| so long as it is stated in the contract. Section 1057.3(a)(12). The regulations in Section 142(a) scale back the clearly articulated right of providers to designate preferred providers in contradiction to the statute.

c. **KITCHEN CAPACITY**. Another item on which the regulations over-reach, and are contrary to the statute, relates to Kitchen capacity. The legislation states that the living units shall have —kitchen capacity, which —may mean electrical outlets to have small appliances such as a microwave and refrigerator. There is no mandate in the statute that the residence provide anything more than space and electrical outlets to support kitchen appliances. The regulations go well beyond this definition. The Department proposes not electrical outlets to support microwaves and refrigerators, but the actual provision of microwaves and refrigerators. In addition, the proposed regulations mandate that newly constructed facilities include a sink with hot and cold water. The appliances and sinks are amenities that should be market driven, not called for in a regulation. Consumers will vote with their feet and dollars. If a provider is required to provide these amenities, they will naturally have to charge their residents to recover the cost. This means the resident will bear the burden of the cost whether it is an item they want or not. Regulations should establish minimum requirements and allow the greatest flexibility for consumers and providers.

THE FOLLOWING ARE DETAILED COMMENTS ON THE PROPOSED ASSISTED LIVING REGULATIONS.

2800.3(b): The proposed regulations give the Department very broad authority to survey Assisted Living Residences. The language permits the Department to survey a residence at any time, without and standard for justification, and as frequently as it wishes. No other long-term care provider is subject to such a standard.

2800.3(c): This is a statutory requirement. The statute clearly instructs the Department to conduct —an abbreviated licensure visit in the assisted living [if the] residence has established a history of exemplary compliance. The language

should remain intact to provide the Department future ability to develop a program of monitoring rather than return to the regulations at some future date. **The removal of this language in the proposed regulation is unacceptable.**

2800.4 Definitions

Appropriate Assessment Agency: The current definition fails to provide for Hospital social workers and other licensed staff to be able to conduct necessary assessments.

Basic Cognitive Support: By the very nature of the definition of —Basic|| one cannot reasonably include a component such as —Specialized communication techniques.|| This could require the professional use of a licensed Speech Therapist or Behavioral Therapist, neither of which are basic.

Dual Licensure: This is a statutory requirement. Act 56 of 2007 clearly and definitively addressed the issue of dual licensure. The legislature delineated in Section 1021(C) that dual licensure was permissible, even going so far as to outline how facilities with dual licensure were to be surveyed by the Department. To avoid future inconsistencies we are in support of the inclusion of a definition for dual licensure.

Exemplary Compliance: This is a statutory requirement. This provision is designed to allow the Department to focus its resources on consistently poorly performing providers. However, it is important to note that not all deficiencies relate to poor quality of care. Accordingly, when defining —Exemplary Compliance|| perfect compliance for an arbitrary number of years should not be the standard. Rather, the regulations should allow abbreviated inspections for facilities that are free of deficiencies that substantively and directly impact upon the health and welfare of the resident.

Informed Consent Agreement: This is a statutory requirement. Informed Consent Agreement|| in the Department's publication of the proposed 2800 regulations on August 9, 2008 clearly indicated that part of this process was to document the resident's —choice to accept or refuse a service offered|| by the Assisted Living Residence. We find this to be an important component of the process of developing an informed consent agreement, as the statue clearly speaks

to this. Therefore we urge the department to reinsert subparagraph (iii) from the original proposed regulatory publication into the final regulatory publication.
(iii) Documents the resident's choice to accept or refuse a service offered by or at the residence.

Poison: We encourage the Department to provide a definition for poisons in order to avoid any inadvertent deprivation of resident's rights to possess personal toiletry items such as hairspray, deodorant, perfume and cologne. Given recent interpretation difficulties with the Personal Care Home regulations, we request the addition of clarifying language for poisons in the regulatory package.

Third Party Provider: The current definition provided is much too broad, essentially encompassing any person, other than visitors, that provide services to the residents of an assisted living residence. The definition currently would include such persons as landscapers, construction subcontractors, and the like. We would support this definition if its intent is clarified to apply only to those persons providing direct care services to the resident.

2800.5(a) Access–Our facility is concerned with mandating access to organizations or individuals to information on residents that could be sensitive in nature. In particular, any record involving medical information could lead to HIPPA violations.

2800.11 (c): the licensure fees proposed in this section represent an extraordinary increase over current fees, and are out of step with licensure fees nationwide.

2800.11(g)(1): This section is particularly disturbing to – the potential operators of assisted living residences. As written, no current Personal Care Home resident who has outspent their resources and is the beneficiary of benevolent care by a non-profit facility would be permitted to apply for an ALR waiver and be —transferred|| to a unit licensed as an assisted living unit.

2800.16(a)(3): The provision as proposed is taken from the 2600 Personal Care Home regulations, but adds the requirement that illnesses requiring treatment at a hospital or medical facility also be reportable. We do not believe that the addition of illness to reportable incidents is necessary.

Residents in Assisted Living Residences will be old, frail individuals who will be susceptible to illness. Often times, these individuals will be receiving care intermittently in Assisted Living and Nursing Homes. Mandating a report for each time a resident changes level of care for what will commonly be routine illness, is not necessary.

2800.19(3)(c): We encourage the Department to consider that many highly qualified staff like Certified Nurse Assistants, are likely to apply for direct care positions within newly licensed assisted living residences. **Currently, this proposed provision would require those staff to have to repeat all the required training and this is likely to present as a barrier to recruit a trained workforce.** We ask that the Department eliminate staff training requirement from the items listed as exempt from waiver requests.

2800.22(a) As proposed in this version of the regulatory package, subsection .22(a)(2), the addition of —initial|| creates unneeded additional paperwork that in no way contributes to improved quality care. Further, the elimination of the 15 day post admission time frame only serves to ensure that more valuable staff time will be taken away from residents and instead focused on completing paperwork requirements when the —30 day prior|| assessment has to be repeated during the first week of admission because of resident condition changes. Even those in relatively good health can suffer dramatic changes in 30 days. In subsection .22(a)(3), the same flawed logic is applied to Support plans.

2800.22(b.3): In consideration of Federal statutes such as; Fair Housing **(Sec. 804.c [42 U.S.C. 3604])** and the Americans with Disabilities Act, the language as written potentiates liability and gives rise to federal code violation(s) for providers. A written basis of denial is in direct conflict with the stated statutes, does not meet the standards for permissible discrimination and therefore cannot be required.

2800.22(c)(1-3): The new addition of this subsection is redundant and excessive. We encourage the Department to remove this section as the criteria for admission to an assisted living residence is covered in many other sections as well as exclusionary factors prohibiting individuals from being served by an assisted living residence. **The addition of this section does not improve the quality of care, safety of residents, nor serve any tangible purpose.**

2800.22(d): This is a statutory requirement. Individuals permitted to reside in assisted living residences are specified within the Act creating assisted living. PA.

2800.22(b)(3): We strongly believe that it is inappropriate for the Department to have the authority to approve or disapprove of an Assisted Living Residence's resident handbook. This provision exists nowhere else in the continuum of care, and should not exist here either. The presumption is that not only will the Department have to approve the initial release of the handbook, but also approve any alterations and amendments to the handbook. We fail to see how the Department will have the resources to allocate to the review and approval of all resident handbooks and all amendments to existing handbooks. Delays and backlogs are inevitable, and providers will be left to wait and watch as the Department tries to keep pace. This provision should be stricken.

2800.25(b): Our facility is in agreement with PANPHA's concern for the lack of equity in the allowance to terminate a residency contract. Automatic renewal of the residency contract on a month-to-month basis is an appropriate method of treating the relationship. However, there is no basis for allowing the resident to terminate the contract with 14 days notice to the provider, while binding the provider to 30 days notice of termination to the resident. The administrative responsibilities placed upon the residence in order to discharge a resident, whether at the provider's request or the resident, demands a 30 day timeframe. Moreover, the general principle in contract law is to allow both parties 30 days notice to terminate a month-to-month contract. It seems reasonable to uphold that principle. **Both parties should be held to the same notification requirements, and the appropriate time frame is 30 days.**

2800.25(c)(2):There is no rationale for a fee schedule of services that are included in a ―basic core package‖, as provided in Section 220, when the consumer will not have the opportunity to opt out of those services. If a core package is the intent, then requiring a fee schedule for services in the package is unnecessary.

2800.25(f): The term ‗Intended Use'contained in paragraph (f)(2) inappropriately interferes with business practices; residents have reasonable expectation to know how much will be used and why the facility believes it needs the money.

2800.25([i](k)): As referenced in the opening paragraphs of our comments, this subsection is inconsistent with 2800.25(c)(2). The Department must make clear the intended requirement for assisted living residence pricing and bundling of services.

2800.28(b): The language of this provision matches the language of .25(b), providing for only 14 days of notice of termination by the resident. As mentioned in the comment to .25(b), 14 days is an insufficient time allotment to process a discharge.

2800.30: This is a statutory requirement. 2800. 30(b)(1): The standard of ―imminent risk of substantial harm‖ is an inappropriately high threshold before a residence may initiate an informed consent process. No resident should be permitted to be placed in any risk of harm, regardless of imminence or whether the harm is substantial, due to the actions or behavior of another resident. The same is also true for the employees of a residence. No individual has the right to submit another to a risk of harm. Moreover, the phrase ―by the resident‘s wish to exercise independence in directing the manner in which they receive care‖ is overly limiting to situations that may necessitate an informed consent agreement. There may be far more situations than instances where the resident is exercising independence in directing care.

2800.30(e)(1): For an informed consent to be meaningful, the resident must fully comprehend the choices and consequences. For this reason, the need for the residence to discuss those options ―in a manner that the resident is able to understand‖ is vital. We would like to see this refined, however, to accommodate those with cognitive impairment. To discuss options in a manner that a resident with cognitive impairments can understand may be problematic. It is likely to lead to a frustrating experience for the residence. Since the legal representative of a resident with cognitive impairment is required to be involved in the process, in these instances it is more appropriate for the residence to discuss the informed consent in a manner that the legal representative can understand.

2800.30(g): There is concern that the proposed language does not provide sufficient protection to providers who do not accept an informed consent agreement due to an unacceptable level of risk associated with the resident‘s desired alternative.

2800.42(b): This section imposes significant and serious additional responsibilities on assisted living residences with the addition of language in this version of the

proposed regulatory package. It would require assisted living residences to intercede in family matters and personal relationships between ALR residents and their friends to —ensure|| a resident is free from abuse. We are in support of providing a safe environment which is within the control of the residences, but could not possibly achieve the intent of this regulation at all times as it is written.

2800.42(l): Our facility currently enjoys having residents decorate and furnish their living spaces with personal items from their own home, but this is not without real concerns. Should a resident choose to include a gas burning fireplace as part of their furnishings, dire consequences could result. We would ask the Department to include language that would allow unsafe items that are inconsistent with Fire safety/Life safety regulations to be prohibited without fear of regulatory violations under this section.

2800.43(d): As identified in our comments on the previous section, 2800.43(c), we would ask the Department to insert an additional subsection that addresses prohibited items such as those that would be inconsistent with the safety and well being of residents.

2800.51(b): Our facility does not support the inclusion of any language in a regulatory package that references —interim|| policies. What occurs when the policy changes, expires or becomes permanent? The Department must omit this addition.

2800.54(a)(4): This new addition to the regulatory package as written means that all staff would need to be fluent in every and all languages in order to comply. The Department must realize this is not possible, nor is it feasible. Additionally, from a Human Resources perspective, selective hiring for applicants who have diverse ethnic and racial backgrounds could result in a disparate impact – discrimination. We do not support discrimination in any manner and therefore require the Department to omit this proposed language.

2800.55: We strongly support the Department's foresight to include training portability in this proposed regulatory package. This leadership represents a strong commitment to ensure a trained and highly qualified workforce to care for residents of assisted living residences.

2800.56(a): The Department's proposed standard of 40 hours per week in paragraph (a) will make it virtually impossible for administrators to meet the proposed continuing education requirements and other off-site obligations as may

be necessary to ensure the residents receive quality care and programming. The current standard for Personal Care Homes is 20 hours or more per week in each calendar month, and in skilled nursing facilities is 36 hours or more per week in each calendar month.

2800.56(b): The Department's proposed paragraph (b), in which it mandates that an individual with the —same training required for an administrator|| be designated to substitute for the administrator when the administrator is absent is cost prohibitive and unnecessary. The language as proposed would mandate that a residence have qualified administrators on the payroll. Administrators are currently in short supply and finding a second administrator for each residence, with the second being relegated to a —substitute|| position, is neither feasible nor practicable. The individual serving as the stand-in administrator will also demand equal pay as the primary administrator since that individual will hold equal qualifications and background, and this will be crippling.

2800.60(d): Our facility already employees' nurses round the clock in our Personal Care Home. We object to a regulation of having a licensed nurse on-call if one is already present in the building.

2800.61: Due to the overwhelming cost of utilizing —agency staff|| many facilities routinely attempt to cover unanticipated staff absences with regular staff who meet the training requirements specific to this proposed regulatory package. In extreme cases though, agency staff may need to be utilized. By the very nature of the staffing emergency, it is impossible for members to ensure that an agency employee contracted to cover one shift could be appropriately oriented per the proscriptive requirements of this chapter. This new addition to the previously submitted regulatory package is untenable. **Our facility is in support of PANPHA's request to require an exception to the staff orientation requirement and seek its removal and return to the previous version.**

2800.64(b)(19): The Department added an additional requirement that was not previously included in the first proposed regulatory package and has not been discussed in workgroup meetings. The language is unclear and depending on the intent, could mean training would have to occur nearly weekly as the demographics, medical needs and psychosocial needs of the resident population changes. The inclusion of this language represents an idea with no foundation in operational realities.

2800.64(h): We support PANPHA's concerns that access to Assisted Living will not be possible at the outset because the regulations require that facilities have administrators who have completed the 100 hour training course, and passed the competency test prior to commencing operations. Since no individual in the Commonwealth is qualified until the course and the test have been completed and passed, it will be a period of months before Assisted Living can exist as a care setting. Of course that is assuming that the Department is prepared Day 1 with a curriculum and test. We are in support of PANPHA's recommendation that the regulations require the Department to have the 100 hour course curriculum and competency test prepared prior to the effective date of the regulations.
In addition, we would recommend that any individual working as a Personal Care Home Administrator prior to the effective date of the regulations be exempted from the 100 hour course, and simply be required to pass the competency test. This will ensure that there is no significant void between the effective date of the regulations and the existence of Assisted Living.

2800.65([e](g)): The combined educational requirements set forth in this proposed regulatory package exceed those required for Nursing Home Administrators and Registered Nurses. This poses an insurmountable burden for assisted living residences. Additionally, the requirement that dementia care-centered education be in addition to the already mandated educational requirement removes staff from direct care duties, and can easily be included in the within the 12 hour yearly allotment. Dementia care education should be required, but not in addition to an already robust requirement.

2800.83(b) and 2800.83(c): It is important for an Assisted Living Residence to regulate the temperature within the residence. However, it is not necessary for a residence to have central air conditioning to moderate the temperature. Window air conditioning units are sufficient to provide the comfort residents of a residence require. Window units have not been proven unsafe and unfit for congregate living facilities, and accordingly are an acceptable method to cool a residence.

2800.98: We as a facility are concerned that the requirement to have two rooms available for indoor activities, as opposed to the one room that is currently required of Personal Care Homes, will be cost prohibitive and may prevent a number of facilities from pursuing an Assisted Living license without incurring construction/remodeling costs. This is especially true if one of those congregate rooms must be at least 15 square feet per living unit up to 750 square feet.

2800.101(d): Along with the minimum square footage requirement, the proposed regulations cite the necessity for all newly constructed facilities to equip living units with a kitchen that possesses a sink with hot and cold running water. The costs associated with equipping each living unit with plumbing for the kitchen capable of delivering hot and cold running water will not be insignificant. These costs will probably not prevent facilities from building new Assisted Living Residences, but probably will prevent potential residents with less means from being able to afford the care package at such a facility. The enabling legislation makes no mention of required or intended equipment relating to individual kitchens in unit and is in fact overreaching by requiring such. Act 56 specifically directs the Department to establish —minimum guidelines|| (pg 6, line 21) and further clarifies in Section 1021(a)(2)(iv) —Kitchen capacity, which may mean, electrical outlets to have small appliances||. The market should be the ultimate arbiter as to which amenities a living unit should possess.

2800.107 (d): The requirement that written emergency procedures be reviewed and submitted annually to the local emergency management agency is unnecessary. It will suffice to perform this review and submit to the local EMA once every 3 years, unless a major renovation to the physical plant.

2800.125(b): We are concerned that an expansive reading of this regulation as drafted would prevent residents from retaining possession of certain toiletries and hygienic products, such as hair spray and hand sanitizer.

2800.129(c): The inclusion of the language in this sub-paragraph is rather broad, and would include chimneys and flues that are not functionally necessary for wood burning fireplaces, but also fireplaces that contain propane/gas assemblies. Chimneys and flues for non-wood burning fires such as these do not accumulate flammable substances such as creosote, and do not necessitate an annual service regimen.

2800.131(c): With the requirement that each living unit have kitchen capacity, it could be interpreted that fire extinguishers could still be required for each living unit that does contain kitchen appliances. To ensure clarity, we would like language to be added that specifies only kitchens in common areas be required to contain a fire extinguisher.

2800.133(1): Our concern with this provision comes from an interpretation of a similar regulation contained in the 2600 Personal Care Home regulations. Personal Care Homes have been given violations for not having exit signs posted on doors

leading out of interior rooms into common *interior* corridors. The result of these citations is that some homes have been forced to put exit signs above every door in the facility.

2800.141(a): It is not always feasible and practicable, for instance during an emergency placement, for the residence to have an evaluation performed prior to the resident's admission to the residence. The current 2600 Personal Care Home regulations currently allow for a medical evaluation for up to 30 days after admission, and this provision has been working well.

2800.142(b)(iii): This is a statutory provision. Act 56 clearly notes that the residence —may require residents to use providers of supplemental health care services designated by the assisted living residence.|| The inclusion of paragraph (b)(iii) is directly counter to the provisions of Act 56 in 1057.3(12). The legislature clearly spoke on the issue of the residence having the final say on what health care providers may and may not operate in the residence.

2800.171(a): Our facility is concerned with the inclusion of social appointments in this provision. To mandate that the residence procure transportation to every social appointment that each resident makes will represent a serious administrative burden and divert allocation of resources away from care. There is also no limitation to the requirement.

2800.171 (d)(1-4) and (e)(1-4): The provisions in these paragraphs are simply untenable as drafted. The residence cannot be held liable for adhering to the timeframes outlined in these sections. The windows of time outlined are outright mandates, without any concern for external factors such as weather and traffic delays. Metropolitan mass transit systems are not held to these requirements, and it is unreasonable to insist that an Assisted Living Residence must be.

2800.183(d): The current language would prevent the residence from keeping —floor stock medications||. This is common practice and allows for the residence to order OTC medications in bulk, thus keeping costs down for the residents.

2800.202(4): Our facility agrees with PANPHA who endorses the intent of this section and believes that all residents should be free from restraints, but recommends clarification so as to avoid similar issues faced by the application of the 2600 regulations in Personal Care Homes. Often medications are prescribed on a *pro re nata* with the intent of alleviating anxiety for the resident. Documentation

then is often construed by surveyors as application of a chemical restraint resulting in a violation where none exists. Clarification at this point is paramount.

2800.220(c)(2): Once the resident has progressed beyond what is provided in the basic core package, it is not economical to charge that resident for services they may not require. That is the danger with the concept of an enhanced core package. It is entirely conceivable that an individual would need assistance with certain ADL's but not need assistance with medication administration or transportation. This provision would require that resident to purchase medication administration assistance and transportation services when those are not required. Likewise, there may be a great number of residents who simply want assistance with transportation who would then be forced to purchase the enhanced core package unnecessarily. The resident should be permitted to purchase only those services that the resident requires on an as-needed basis.

2800.220(d)(7): This paragraph has the potential to be unduly costly in regards to staffing. Staffing is the highest cost driver a provider must face. This provision would require that an Assisted Living Residence send an escort with a resident any time a resident requests one. Given the cost component, not to mention the shortage of staff many providers are currently facing, this mandate is unnecessarily onerous. We recommend that the phrase —requested by the resident|| be stricken.

2800.224 This section of newly proposed regulatory language represents a significant burden to providers without any direct or indirect benefit to residents or quality of life/quality of care. A Preadmission screening, as required in Personal Care Homes and previously included in Assisted Living proposed regulations, represented an abbreviated snap-shot that easily allowed for both Providers, referral sources like hospitals and rehabilitation services, and potential residents, to quickly, easily and accurately determine if a minimum set of services offered by the provider could meet resident needs. With the change to an —Initial assessment and preliminary support plan||, we read as proposed, a duplicative process resulting in increased cost and time without any benefit. In fact, after completing the components of this section, as a matter of operational realities, Assisted living residences would likely have to repeat this same process upon admission to capture any changes in the resident's condition. Result: twice the paperwork, cost and time, with no benefit in increase quality of care/life for the resident. We urge the return to the system that is working well in Personal Care Homes so that the above identified resources can be allocated to things that will actually improve resident care.

2800.226(c): In order to maintain a focus on resident care versus becoming purely administrative, and to clarify the Department's expectation of notification, the language should be amended .This will save the Department from multiple daily notifications of mobility changes and allow residences to comply with the intent of the regulation in a more meaningful manner.

2800.227(b): A licensed practical nurse has the requisite knowledge and expertise to review and approve a support plan. Supervision by a Registered Nurse is not necessary, and simply represents an additional cost.

2800.227(c): With the requirement of support plans to change as the resident's condition changes, it is excessive to require quarterly updates as well. The focus of implement meaningful resident services and care will be lost if resident care staff are required to complete more than semi-annual documentation updates. From a programmatic standpoint, the focus would become purely administrative resulting in a compromise of service.

2800.227(e): The language added in this version of the proposed regulations, —ability to operate key-lock||, is unnecessary and fails to address emerging technology.

2800.227(k): The Support Plan is supposed to be a living document, to be used on the floor by nurses and care givers. It should not be physically attached to the resident contract, which should only be kept in the resident's file in the business office. The contract should not be mobile within the residence, and the support plan should not be anchored in an office. Conversely, the contents of a contract should remain static through the life of the contract, with as few amendments and alterations as possible. Incorporating a resident's Support Plan, which will change regularly, into the contract runs counter this notion.

t.] **2800.228(a)** As written, the requirement that the —facility *ensure* the transfer and discharge is appropriate to meet the resident's needs|| runs afoul of resident rights. For example, a cognitively impaired resident wishing to be discharged home alone and without support services due to refusal, would clearly not permit the residence to meet the intent of this section. No alternative for compliance exists since the resident ultimately has the right to make poor decisions. Adult Protective Services may monitor the resident post-discharge, but will not take any action until

harm occurs, and similarly, the residence cannot be expected to assume any type of guardianship to ensure safe choices on behalf of the resident with cognitive impairment.

2800.228(b)(1): We are concerned that this section as proposed represents a potentially serious logistical and cost burden to attempt to make available at all times, a translator for every possible language.

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2800.228(b)(2): Few if any, providers will choose to become licensed as an Assisted Living Residence if made to assume the liability of having non-trained, non-professional family members attempting to provide care that the residence has already determined is beyond their trained, professional abilities. This section, as written raises many difficult questions which are not addressed in the language, such as; will resident and/or resident families be required to meet the training requirements outlined in previous sections, how will residences assure appropriate documentation, should a family member caregiver injury result – who would be liable? The state should not force additional liability and potentially cause greater harm to resident's by requiring providers to allow residents to remain in their communities after a professional determination that the care requirements exceed their ability is made. Our facility is in agreement with PANPHA who strongly insists that the entire paragraph simply be removed.

2800.228(e): To require that transfers or discharges of residents be noted anywhere in addition to that particular resident's chart is unnecessary and inappropriate. Nowhere else does this mandate exist, and it should not be placed on Assisted Living Residences either. This provision should be deleted.

2800.228(h)(1-3): This is a statutory requirement. The Act is very clear on the issue of when a residence may transfer and discharge residents.

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2800.229(c)(2): The Department should provide for minimum experience qualifications for medical personnel providing consultation on exception requests. This would ensure the outcome is based on sound medical practices and would serve the best interests of the resident.

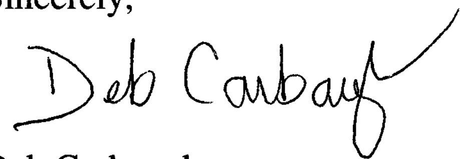
2800.229(c)(3): In an effort to be responsive to the resident's need for an exception, the Department must realize that often family members who are unfamiliar with the long term care system, would be making decisions about placement in the event of an adverse determination for the exception. Five days as

written would cause an undue burden upon the resident who is waiting to find out if they would be forced from their home.

2800.229(f): This is a statutory requirement. Act 56 clearly indicates that the power to request an exception lies with the residence alone. To provide the consumer with the opportunity to request this exception, or even to allow the consumer to demand the residence to apply for the exception on the consumer's behalf, exceeds the scope and authority of the statute. The paragraph must be stricken.

I would like to thank the department for the opportunity to participate in the comment process as it has proven to be very educational. I look forward to updates and revisions on the ALR as at this time the current version proves to be cost prohibitive for consideration for our small non-profit facility.

Sincerely,



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