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July 24, 2009

INDEPENDENT REGULATORY
REVIEW COMMISSION

To Whom it may concern:

UPMC Senior Communities is southwestern Pennsylvania's only provider of senior care housing owned and operated by an academic medical center. Our organization has fifteen senior living communities, including five personal care facilities. As an interested and active stakeholder in senior services, our organization is providing written comments to the proposed Assisted Living Regulatory package as provided on June 24, 2009, for additional consideration prior to the Department's final submission for approval.

UPMC Senior Communities values this opportunity to provide public comment on these regulations and appreciates your consideration of the suggestions provided to amend the regulations.

Respectfully submitted,

A handwritten signature in cursive script that reads "Daniel B. Grant".

Daniel Grant, Vice President, Operations
on behalf of UPMC Senior Communities

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From: Grant, Daniel G. [grantd@upmc.edu]
Sent: Friday, July 24, 2009 2:08 PM
To: IRRC
Subject: UPMC Senior Communities DPW Final Draft Letter
Attachments: ALR2800 Draft July 2009 comments (2).doc; ALF Reg LetterJuly 09.docx

Please accept our letter of comment for the DPW final draft regulations for Assisted Living Residences (55 Pa. Code Chapter 2800).
Thank you

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The below items represent UPMC Senior Communities' most significant areas of concern with the proposed regulations and suggested revisions:

2800.11 Licensure fees.

2800.11(c) (1, 2) The licensure fees proposed in this section represent an extraordinary increase over current fees, and are out of step with licensure fees nationwide. Currently, Assisted Living Residences are licensed as Personal Care Homes. Personal Care Homes have a tiered licensure whereby a residence with 100 beds pays \$50.00. Under the proposed regulations, a 100 bed residence will pay a flat licensure fee of \$300 dollars with an additional bed assessment of \$7,500 dollars for a total licensure fee of \$7,800.00.

Suggested Language:

(c)After the Department determines that a residence meets the requirements for a license, the Department's issuance or renewal of a license to a residence is contingent upon receipt by the Department of the following fees based on the number of beds in the residence as follows:

(1) A \$300.00 license application or renewal fee.

(2) A \$10.00 per bed fee that may be adjusted by the Department annually at a rate not to exceed the consumer price index proportionately to increases in Medical Assistance reimbursement for Assisted Living services. The Department shall publish a notice in the Pennsylvania Bulletin when the per bed fee is increased.

No Assisted Living Residence shall be required to pay more than \$1000 dollars when aggregating the \$300 license application or renewal fee in paragraph (1) and the per bed fee in paragraph (2).

2800.11 Dual Licensure.

Dual licensure as a Personal Care Home and an Assisted Living Residence is addressed in Act 56 Section 1021 (C). 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 strongly suggest that residences be afforded flexibility to meet the needs of their residents. We recommend that the regulations permit providers to licensure their facilities by bed numbers and doors. This will allow facilities that have some rooms that do not meet all the physical plant requirements for assisted living units to license those as Personal Care rooms. The ability to float the licensed bed to another room would truly allow the residents to age in place in the apartment of their choice.

2800.11(g)(1): Personal Care Home residents who have outspent their resources and is the beneficiary of benevolent care by a non-profit facility would not be permitted to apply for an ALR waiver and be transferred to a unit licensed as an assisted living unit. With the increasing number of residents of our facilities receiving benevolent care, many would likely seek waiver assistance for their long term care. Transfer of the resident must be removed.

Suggested Language

11(g)(1) A facility that is dually licensed shall not segregate residents from one licensed facility to another based on payment source.

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2800.16 Reportable Incidents.

2800.16 (a) (3) Reportable incidents

The proposed regulations require providers to report illnesses requiring treatment at a hospital or medical facility. UPMC Senior Communities recommends that illness be removed from the list of reportable incidents as this is a commonplace occurrence among the population of residents in these settings. The reporting of illnesses is unnecessarily burdensome, and is contrary to the goal of fostering aging in place.

Suggested Language

16(a)(3) A serious bodily injury or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

2800.19 Waivers.

2800.19 (1) (a) Waivers should be reviewed and responded to by the Department on a timely basis after the 30 day comment period. We suggest within 10 days of the 30 day comment period.

Suggested Language

19(3)(b) Following receipt of a waiver request, the Department will post the waiver request on the Department's website with a 30-day public comment period prior to final review and decision on the requested waiver. The Department will process approval for the waiver within 10 days of the close of the 30-day comment period.

2800.19(3)(c): UPMC Senior Communities encourages 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.

Suggested Language

19(3)(c) The scope, definitions, applicability or residents' rights, assisted living service delivery requirements, special care designation requirements, disclosure requirements, complaint rights or procedures, notice requirements to residents or the resident's family, contract requirements, reporting requirements, fire safety requirements, assessment, support plan or service delivery requirements under this chapter may not be waived.

2800.22 Application and admission.

In subsection .22(a)(2), the addition of initial creates unneeded additional documentation and question the ability with contributing to improved quality care. Further, the elimination of the 15 day post admission timeframe only serves to ensure that valuable staff time will be taken away from residents and 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 experience changes in 30 days. In subsection .22(a) (3), the same flawed logic is applied to Support plans. UPMC Senior Communities does not support these changes and consider this a non-negotiable item. The 15 day post admission timeline present in the first draft of the proposed regulation must be reinstated.

Suggested Language

22(a)(2) Assisted Living resident assessment completed within 15 days after admission on a form specified by the Department.

22(a)(3) Support plan developed and implemented within 30 days after admission.

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 statues, does not meet the standards for permissible discrimination and therefore cannot be required.

UPMC Senior Communities requests the Department delete the paragraph in its entirety.

2800.22(c)(1-3): The new addition of this subsection is redundant and excessive. UPMC Senior Communities encourages 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.

UPMC Senior Communities requests that the subsection be deleted 1 through 3.

2800.22 (e) (3) Resident handbooks

The proposed regulations require the Department to approve the Resident Handbook. This is neither appropriate nor practical given the volume of Handbooks that would need to be approved initially as well as when revisions are made. This provision does not exist in any other continuum of care.

UPMC Senior Communities supports striking this language from the regulations and replacing with a provision that a copy of residence rules and resident handbooks will be available.

2800.25 Resident-residence contract.

2800.25 (b) Resident contracts

The proposed regulations state differing timeframes for contract termination notice for residents and providers, with residents allowed a 14-day time period and providers having a 30-day notice. This inconsistency should be corrected with both parties having a standard 30-day timeframe.

Suggested language:

25(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees. The contract shall run month-to-month with automatic renewal unless terminated by the resident with 30 days notice or by the residence with 30 day notice in accordance with 2800.226 (relating to transfer and discharge).

2800.30 Informed Consent.

The standard of "imminent risk of substantial harm" is an inappropriately high threshold before a facility 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 employees of a facility. No

individual has the right to submit another to a risk of harm, and the threshold set by this language is untenable. 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 maybe far more situations than instances where the resident is exercising independence in directing care.

Suggested Language

30(h) An informed consent agreement must be voluntary and free of force, fraud, deceit, duress, coercion or undue influence, provided that a licensee retains the right to issue a notice of involuntary discharge in the event a resident’s decision, behavior or action creates a dangerous situation and places persons other than the resident at risk of harm and, after a discussion of the risk, the resident declines alternatives to mitigate the risk.

2800.53 Qualifications and responsibilities of administrators.

UPMC Senior Communities request the addition of a grandfather clause that exempts individuals currently serving as Personal Care Home Administrators from section 2800.53. Current Personnel Care Administrators have the same duties and obligations along with experience and training to more than adequately serve in the role of an Assisted Living Administrator.

UPMC Senior Communities requests current Personnel Care Administrators be approved and licensed as an Assisted Living Administrator when regulations are implemented.

2800.54 Qualifications for direct care staff persons.

2800.54(a)(4): UPMC Senior Communities interprets this new addition to indicate 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 discrimination.

UPMC Senior Communities does not support this impractical and potentially discriminating requirement and therefore requests the Department to omit this proposed language.

2800.56 Administrator staffing.

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. UPMC Senior Communities contends that the skilled nursing facility requirement is an appropriate standard.

Suggested Language

56(a) The administrator or designee shall be present in the residence an average of 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 supervise during their absence unnecessary and cost prohibitive. The language as proposed would mandate a residence have

qualified administrators at all times. This level of substitute coverage of Administrator is not even required in the high level Skilled nursing facilities.

Suggested Language

56(b) The administrator shall designate a staff person to supervise the residence in the administrator's absence. The designee shall have the same qualifications as defined in 2800.53(a)(1-5) required for an administrator.

2800.60 Additional staffing based on the needs of the residents.

2800.60(d): UPMC Senior Communities already employ nurses in their Personal Care Homes. It is expected this practice would continue from those organizations who will seek assisted living licensure. Our suggested language eliminates the redundancy of having a licensed nurse on-call if one is already present in the building.

Suggested Language

60(d) In addition to the staffing requirements in this chapter, the residence shall have a licensed nurse available in the building or on call at all times. The licensed nurse shall be either an employee of the residence or under contract with the residence.

2800.63 First aid, CPR and obstructed airway training.

2800.63(a): UPMC Senior Communities does not see the reason to mandate of a minimum 1:20 ratio of CPR/First Aid trained staff to residents. This requirement alone requires potentially higher staffing needs than the 1 or 2 hour per resident day requirement. During sleeping hours, between 11pm and 7am, this ratio will represent a significant staffing challenge.

Suggested Language

63(a) Residences must have at least 2 CPR/First Aid qualified staff present in the residence at all times to meet the emergency needs of the residents.

2800.64 Administrator training and orientation

2800.64(b)(19): Training specific to the resident composition is newly added requirement. The language is unclear and depending on the intent, could mean training would have to occur 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.

UPMC Senior Communities suggests deleting this regulation.

2800.64(h): UPMC Senior Communities has 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. UPMC Senior Communities recommends 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.

Suggested Language

64(h) A certified personal care home administrator who is employed as an administrator of Personal Care Home prior to _____ (effective date of the regulations), is exempt from the 100 hour training course, but shall pass a competency test to be developed by the Department.

2800.65 Staff Orientation and direct care staff person training and orientation.

2800.65(c): The CPR requirement in this subsection conflicts with 2800.63(a) and represents an unnecessary requirement. Having 2 CPR qualified staff members at all times in the facility under 2800.63 provides facilities time to qualify new staff in CPR/First Aid.

UPMC Senior Communities suggest deleting this regulation.

2800.65(f): UPMC Senior Communities believes it is unnecessary when coupled with other mandated training requirements in this chapter, to require 18 hours of training. This is a new requirement in this version of the proposed regulatory package. UPMC Senior Communities encourages the Department to grandfather current direct care staff employed in Personal Care Homes.

Suggested Language

65 (f) Direct care staff persons may not provide unsupervised assisted living services until completion of training in the following areas:

2800.65(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. UPMC Senior Communities urges the Department to consider this attempt to increase the training hours and understand this requirement to increase training time will be difficult to attain.

Suggested Language

65(g) Direct care staff persons shall have at least 12 hours of annual training relating to their job duties.

2800.98: Indoor activity space

2800.98 (b) Many of the activities and programs for residents of UPMC Senior Communities are conducted in the dining room, especially with entertainers. Requiring another separate area to accommodate all the residents at one time will add additional cost for construction. We believe this requirement alone will have many providers choose not to license for ALF for this reason only. We recommend allowing the use of the dining room as an indoor activity space.

Suggested Language

98(b) The residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. There must be at least 15 square feet per living unit for up to fifty living units. There must be a total of 750 square feet if there are more than 50 living units. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors. The dining room may be counted as living space under this subsection.

2800.101 Resident living units

2800.101 (d) (2) (iii) Resident living units

The requirement for providers to provide a stovetop for hot food preparation in a common area is a significant safety issue.

UPMC Senior Communities request this requirement be removed from the proposed regulation.

2800.141 Resident medical evaluation and health care.

2800.141 (a) Resident medical evaluation

UPMC Senior Communities recommends that a provision be added also for a medical evaluation post admission. It is not always feasible to have an evaluation performed prior to admission, such as for an emergency placement. UPMC Senior Communities suggests the language to permit the medical evaluation be completed within 60 days prior to admission and or 15 days after admission.

Suggested Language

141(a) A resident shall have a medical evaluation by a physician, physician’s assistant or certified registered nurse practitioner documented on a form specified by the Department, within 60 days prior to admission or within 15 days after admission. The evaluation must include the following:

2800.171 Transportation

2800.171(a) The proposed regulations require a residence to provide or coordinate transportation to and from medical and social appointments. As written this requirement is limitless and could include significant transportation to every social appointment made by residents. UPMC Senior Communities recommends removing social appointments from the requirement and providing scope to the transportation service.

Suggested Language

2800.171 (a) A residence shall be required to provide or arrange transportation to and from medical appointments within a reasonable local area and social activities scheduled by the residence. As prominently displayed in the agreement, residences may charge an amount as listed, and require a minimum of 48 hours advance scheduling.

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 strict timeframes outlined in this section. The windows of time outlined are 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 meet this requirements.

UPMC Senior Communities request removal time constraints of 1 hour and replace with will make every effort to pick up the resident.

2800.220 Service Provision

UPMC Senior Communities is concerned with the addition the phrase “and other household services” into this paragraph. This is an overly broad and inclusive phrase that could mandate a residence to engage in household chores above and beyond what prudence would dictate.

Suggested Language

2800.220(a)(6) Housekeeping services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences.

2800.220(b)(9): Supervision has specific legal ramifications with regards to some licensed professionals code of conduct. UPMC Senior Communities therefore recommends the following language.

Suggested Language

2800.220(a)(9) Supervision as necessitated in the support plans of the residents, as well as 24 hour monitoring and emergency response.

2800.220(c)(1)(vii): UPMC Senior Communities is supportive of the idea of having a bundled package of services in a core package to be delivered to all residents. The items and services included in core package therefore should be only those services that all residents will utilize. To include services that are more narrowly focused would result in some residents being charged for services that they may never utilize.

UPMC Senior Communities requests that basic cognitive support services be removed from the basic core package, as these are services that not all residents within the residence will require.

2800.220(c)(2): UPMC Senior Communities does not support the concept of an enhanced core package. 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. 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. UPMC Senior Communities would advocate that the resident be permitted to purchase only those services that the resident requires on an as-needed basis.

Suggested Language

Services provided by the residence that are not included in the basic core package may be purchased by the resident according to the changing needs of the resident and as indicated in the support plan.

2800.220(d) (7): This paragraph has the potential to be 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. Given the cost component, not to mention the shortage of staff many providers are currently facing, this mandate is unnecessarily onerous. We strongly recommend that the phrase requested by the resident be stricken.

Suggested Language

2800.220(d)(7) Escort service if indicated in the resident's support plan to and from medical appointments.

2800.224 Initial assessment and preliminary support plan.

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 assessment that allows both Providers and referral sources to

quickly 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 a duplicative process without any true benefit is created. In fact, after completing the components of this section, residences would likely have to repeat this same process upon admission to capture any changes in the resident's condition.

UPMC Senior Communities urge the return to the system that is currently in place and working well in Personal Care Homes.

2800.225 Additional assessments.

The proposed regulations state that the administrator or designee, or licensed practical nurse, under the supervision of a registered nurse, may complete the assessment. The requirement that the licensed practical nurse be under the supervision of a registered nurse is not necessary and will add significant cost without any benefit to quality of care.

UPMC requests this oversight requirement be removed from the language in this section.

2800.227 Development of final support plan

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. It is suggested that this timeframe be changed from quarterly to semi-annually to allow more staff time for resident care instead of administrative tasks.

2800.227(k): While UPMC Senior Communities certainly agrees that all residents should be fully apprised of the services they can expect to receive while in the care of the residence, the attachment and inclusion of the support plan into the resident-residence contract is unnecessary. The Support Plan is supposed to be a working document to be used on the floor by nurses and care givers. It should not be physically attached to the resident contract which is typically located in the business office files. 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.

UPMC Senior Communities therefore insists that the sentence that was added to the initial proposed regulation be deleted.

2800.228 Transfer and discharge

UPMC Senior Communities raises serious potential consequences with the existing language based upon direct provider experience dealing with transfer and discharge. 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. The existing section must be stricken.

2800.229 Excludable conditions; exceptions.

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.

Suggested Language

2800.229(c)(3) The Department will respond to the exception request in writing within 48 hours of receipt.

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.

UPMC Senior Communities recommend the paragraph be stricken.

2800.232(b) This regulation references 2800.101 which would require additional room accommodations that may be contraindicated in a special care unit.

2800 SPECIAL CARE UNITS:

UPMC Senior Communities has significant concerns with the inclusion of the intense neurobehavioral rehabilitation and brain injury component to the Special Care Unit subpart. Services provided for INRBI are highly specialized and do not align with best practices for treatment of Alzheimer's Disease and dementia. The two populations are very distinct and should not be governed under the same umbrella of regulations.

UPMC request that the Department consider the creation of a separate INRBI designation under 2800.11(f). This would require a number of sections in the Special Care Unit subpart to be reworded so as to bifurcate an SCU from and INRBI Unit.

2800.231(f)(1): The requirement that an individual diagnosed with Alzheimer's Disease or dementia and residing in a Secured Dementia Unit be assessed quarterly to determine whether the placement is appropriate is excessive. Assessments that coincide with an annual Support Plan revision are sufficient.

Suggested Language

231(f)(1) In addition to the requirements in 2800.225 (relating to additional assessments), residents of a special care unit for Alzheimer's Disease or dementia shall also be assessed annually for the continuing need for the special care unit for Alzheimer's Disease or dementia.

2800.234(d)(1): As with 231(f), quarterly support plan updates go beyond what is required. Residences are constantly monitoring the progress of individuals in Special Care Units to assess their care needs. The requirement already exists that if there is a change in the resident's condition that the support plan will be updated, and that coupled with a minimal annual renewal is quite sufficient.

Suggested Language

231(d)(1) The support plan for a resident of a special care unit for residents with Alzheimer's disease or dementia shall be reviewed, and if necessary, revised at least annually and as the resident's condition changes.

2800.235(b): The family or the resident's representative has every right to expect the residence to cooperate in the process of discharging the individual. However, it should not be the sole responsibility of the residence to ensure that the process is started, implemented, and completed. This paragraph appears to place that burden on the residence. The word provided must be replaced with coordinate.

Suggested Language

235(b) If a resident of a special care unit for INRBI, or when appropriate, the resident's designated person or the resident's family, request discharge to another facility, another assisted living residence or an independent living arrangement, transitions services shall be coordinated by the special care unit.

2800.251(c): The language contained in the proposed paragraph appears to limit the residence's to the use of paper forms. UPMC Senior Communities request this be expanded to account for standardized electronic forms to allow for the advent of electronic medical records.

Suggested Language

251(c) The residence shall use a standardized method, whether paper or electronic forms, to record information in the resident's record.

2800.251(e): UPMC Senior Communities has concerns when its members are mandated to allow access to resident records. This paragraph raises concerns with possible HIPPA violations.

Suggested Language

Resident records shall be made available to the resident and the resident's designated person during normal working hours. Resident records shall be made available upon request to the resident and family members, within the confines of applicable state and federal law.