

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.

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OFFICE OF THE ATTORNEY GENERAL

July 23, 2009

The Office of Long-Term Living
Bureau of Policy and Strategic Planning
Attn: Bill White
P.O. Box 2675
Harrisburg, PA 17015

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

Reference: Proposed 2800 Regulations (Assisted Living Residences)

Dear Madams and Sirs:

We are the President/CEO and Administrator of Church of God Home, a Continuing Care Retirement Community located in Carlisle, Pennsylvania. The Church of God Home is a not-for-profit CCRC facility, currently licensed for 64 Personal Care Beds, 109 Skilled Nursing Beds, and 36 Entrance Fee Independent Living Apartments. For 60 years, our Home has lived by its motto "Committed to Caring" for our Residents, Staff, and Community at large.

We, like many long established CCRC's, maintain an excellent community reputation for providing quality care to our Residents. Our buildings are well maintained, but range in age from 16 years to over 50 years old. We have prided ourselves on the ability to meet and exceed the needs of our Residents as they move from Independent Living to Personal Care to Skilled Nursing.

Conceptually, we are very concerned with the proposed Assisted Living Regulations. Because of the age, size, design, and location of our existing Resident rooms, we do not believe we can meet the proposed regulations regarding square footage, all private rooms, kitchens, and other aspects of the physical requirements without incurring significant financial hardship. Our existing Personal Care Unit currently serves a lower economic population, and approximately 50% of our Personal Care Residents cannot pay the market rate. Our free care for this unit will likely exceed \$300,000 this year alone. Unfortunately, more than half of our Personal Care rooms will not meet the new minimum requirements to be licensed as Assisted Living and the remaining rooms that now can function as semi-private rooms would have to be reduced to private occupancy. With increased capital expenditures to retro fit existing

rooms and taking others out of service our overall occupancy will be significantly reduced and the cost per day will be greatly increased. We feel the only way we can offer Assisted Living will be to only accept private pay Residents and limit the occupancy to about 15 compared to the 40 we currently serve.

We want to be more explicit in our comments so following are some of our more noteworthy concerns with the proposed regulations as currently written.

- “Exemplary Compliance” is defined as three consecutive years of deficiency-free inspections. This seems rather stringent given the fact this is the standard used for determining the focus of the Department of quality of care surveys. The way this is written one can only assume that “any” deficiency that results simply from an isolated minor paperwork problem would be cause for the Department to spend time in good facilities that would be better spent policing the facilities that have not demonstrated consistent quality of care for Residents. We suggest if a facility is free from deficiencies for two consecutive years or free from the deficiencies that directly impact the health and welfare of their Residents, they be considered to be in exemplary compliance. This would allow the Department to focus on the few who are consistently in violation of code requirements that will have an impact on resident quality of care.
- We see that an attempt has been made to provide for dually licensed (Personal Care & Assisted Living) facilities; however, the requirement for Distinct Part that separates the two does not go far enough. Our concept of dually licensed facilities would allow Residents to age in place by not moving them from one Distinct Part to another Distinct Part. For example, someone in room number one initially may only need some Personal Care type services, but if that resident needs additional services that would qualify them for Assisted Living, they would not have to move from their “Home”. We believe this would provide the maximum flexibility to the Residence and the least disruption to the Resident (thus increasing quality of care). Please revise the definition to allow this flexibility to the Residence.
- General Comment – A number of places in the proposed regulations discuss attaching or keeping the document in the Resident’s Record. I know we would all agree the movement toward Electronic Medical Records has already begun and the President’s Stimulus package includes funding to accelerate the progress. With that being said, we believe “attaching” and including documents in Resident records should be expanded to allow electronic records in place of hard copies. This is a more efficient method of filing and takes up less physical office space, which is expensive to build and maintain.
- 2800.11 – We are pleased to see that the annual license fee has been reduced from \$105 to \$75/bed; however, we believe this is still too high. These are costs that must be passed on to our Residents, and with government reimbursement falling short of the actual cost of service, these fees will need to become another tax on our private pay Residents. We recommend a lower license fee (\$10/bed) be assessed and have it

based on the number of private pay resident days rather than number of licensed beds. This way the Residence is only paying a license fee for the filled beds and excluding all Medicaid waiver bed days. This would encourage providers to care for the indigent and pass on the license fees to the private pay population.

- 2800.5 – (b) says we shall permit “community service organizations” to have access to the Residence during visitation hours. We believe the term “community service organizations” should be defined somewhere to give us more guidance. We think the term is too broad and could, in fact, require us to allow private, so called, “community service organizations,” to have access to our “Residents’ homes” and inhibit us from providing the protection from radical organizations that could intimidate our Residents. After all, would the Residents allow “all” “community service organizations” to come into their personal homes?
- 2800.22 (b.3) says we need to give a potential resident whose needs cannot be met a “written decision denying their admission and provide a basis for their denial.” We do not understand the reasoning for this. We are a private organization and should have the freedom to decide who is admitted as a Resident without being “required” to give all the details in a written statement. We fail to see how this additional administrative step affects the quality of care within our facility. It just adds additional costs and paperwork to a system that is already overburdened with administrative requirements that waste taxpayer dollars! We ask that this requirement be taken out of the proposed regulations.
- 2800.22 (e.4.vi) requires the Residence to disclose the number of living units in the Residence that comply with the Americans with Disabilities Act upon application and prior to admission. Why? If we meet the licensure requirements, then we must also be in compliance with the Americans with Disabilities Act; isn’t that enough? This is, again, another example of burdening the Residence with additional administrative requirements that will have no effect upon the decision of the Resident to move into the facility. Again, we ask that this be removed from the proposed regulations so as to reduce administrative paperwork and costs.
- 2800.28 (g) – States refunds are paid to the Resident within two business days from the date the living unit is cleared of the Resident’s personal property. Administratively, 2 days is unreasonable. Small organizations such as ourselves often have one person who is responsible for these administrative tasks and if they are off work for a day or two we would not be able to meet the requirement. We certainly agree a promptly paid refund is in the best interest of the former resident but recommend the 2 day timeframe be revised to a longer period. We suggest at least 10 working days or the number of calendar days DPW takes to pay a clean Medicaid claim, whichever is longer!
- 2800.30 (c(1)) Informed Consent Process – There is a requirement that if the informed consent process is initiated by the licensee, we have a responsibility to automatically notify the ombudsman. This seems overkill in that we are already required to notify

the Resident's designated person orally and in writing. The way this is written, it appears the Department wants to become involved even when there is a responsible party. We recommend if there is not a responsible person or the Licensee believes it is in the best interest of the Resident, the ombudsman must be notified.

- 2800.51 – We are a CCRC and we have staff that have worked here for over 30 years. We do criminal history checks on every newly hired employee no matter what department they work in. Granted, some of our very long term employees may have come to work for us prior to this being the standard policy (15 years ago). We believe a provision should be made to grandfather all our current staff and not require them all to have another criminal history check. This would be an added expense that should not be necessary. We do agree that all new employees should have a criminal history check.
- 2800.53 (b) Qualifications and responsibilities of administrators – The proposed regulations state the administrator shall be 21 years of age or older. We recommend the administrator be a minimum of 25 years of age or older. We believe that maturity and experience are key factors when dealing with the potential emergencies that can occur.
- 2800.56 – Administrator Requirements include a provision that the Administrator is in the building 40 hours per week. This requirement does not provide any opportunity for the Administrator to take care of off-site duties inherent in any business. Also, the requirement is beyond the 36 hours required for Administrators in Skilled Nursing Facilities. We strongly suggest the 40 hours be reduced to 36 hours, the same as Skilled Nursing Facilities.
- 2800.60 (d) Additional staffing based on the needs of the Residents – This section requires the Residence to have a licensed nurse “on call” at all times. We are a CCRC and our Skilled Nursing Facility is on the same campus that any future Assisted Living Facility would be located. This requirement would be a totally unnecessary expense for us and many of our peers. We ask this requirement be modified to only make the requirement mandatory when the Assisted Living Residence is not located on a campus that already has 24/7 licensed staff working in other locations on the campus.
- 2800.66 (b(3)) Requires a staff training plan for the upcoming year to include the dates, times, and locations of the scheduled training for each staff person. Many times, dates, times, and locations of training are not available up to a year in advance. We suggest this requirement be modified to read that a training plan be developed to include the type of training that is required or would benefit the staff member in meeting and exceeding regulatory requirements.
- 2800.81 (a) Physical accommodations and equipment – This requirement says the Residence shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a resident with a disability... We do not disagree with the intent of this requirement; however, the Residence should not be

required to spend an unreasonable amount of money in capital improvements or purchase expensive equipment to comply with this regulation. We suggest this requirement be modified to give the Residence some relief from unreasonable requests.

- 2800.98 – The need for a combined living room or lounge area that must accommodate all Residents at one time is a large burden. Again being a CCRC and having an activity room and chapel large enough to accommodate all Assisted Living Residents should be sufficient. This section should be written in a manner to take CCRC's and the way they are structured into consideration. A large living room type accommodation is not necessary for an Assisted Living type facility, considering all the other alternatives within the campus.
- 2800.101 – This section requires individually controlled thermostats for heating and cooling; this is unrealistic, especially for existing facilities. Having facility central heating and air conditioning is very common in existing buildings and would almost be impossible to revamp this type of system without a huge outlay of capital.
- 2800.101 – (p) Space for storage of personal property needs to be better defined. Does it have to be on site? How many square feet of space? Can the storage space be contained within their individual unit since they are all private rooms? Let's keep in mind that storage space is expensive, and again, will drive up the cost of operations, which will increase rates, making the facility less affordable to those in the lower economic scale.
- 2800.171 Transportation – The requirement for the Residence to provide transportation for “social appointments” is of concern. Without knowing the intent of this provision within the regulations, we can see the interpretation of this requirement could result in a lot of confusion. We recommend this term be defined within the regulations and some boundaries be developed that would not let this become a real expensive burden on the Residence.
- 2800.171 (d) Transportation – This section was added to the regulations since the first draft. The word “shall” should be changed to read “will attempt” to... It is important for the Department to remember we are operating in the real world and traffic, emergencies and accidents happen. Having the ability to pick up and drop Residents off at their appointments within a 15 minute window for every trip is probably impossible to do. We agree that the 15 minute guideline is a reasonable target, but to word it the way it is currently worded would surely result in an annual deficiency!
- 2800.226 – (c) Why should we have to notify the Department within 30 days after a resident develops mobility needs? This is an unnecessary requirement and should be eliminated from the regulations. After all, is the Residence providing the care and developing the care plan assessment based upon their personal interaction, or is the Department dictating care from a remote location without seeing, talking, or interacting with the Resident?

- 2800.268 – Written notice of Class I Violations within 24 hours is one of the most demoralizing and intimidating sections of the proposed regulations. The Department might think all of this is being drafted in the best interest of the Residents and the public at large; however, the impact of this is that it automatically finds the Residence guilty before it has a chance to appeal the Department surveyor’s opinion. Immediately informing the Residents and Families in writing will be a form of abuse to our Residents because they will be concerned about a finding that may not be appropriate and cause them unnecessary stress about what will happen to them in their “Home.”

Let’s rewrite this section on notice of violations to make it a collaborative effort on behalf of the Department and the Residence and staff to correct the deficiency, help the facility develop (or revise) policies and assist in recommendation of training, that in combination, will heighten the level of care and services the elderly so richly deserve. A joint meeting with the Resident, Residence, and Surveyors to give a verbal update at the conclusion of the field work is sufficient in Skilled Nursing Care surveys and should be sufficient notification for Assisted Living. At the conclusion of the joint meeting, the Department should provide a forum to ask questions and receive explanations.

Do not get us wrong, we are not suggesting the Residents be kept in the dark, but inform them of the findings and solutions in a way described above so they can be well-informed; not stressed and wondering if they will have a place to live, which we consider a form of abuse. Let them be happy the Department is doing its job and the facility has demonstrated its willingness to improve. Let’s make this a win/win and not the Department against the Facility with the Resident in the middle! With the writing of new regulations comes an opportunity to make a change in attitudes that could change the course of history and be an example for other States to follow!

- 2800.269 – The writing of this section is second only to 2800.268 above. Again we do not dispute the need for this section, but take exception to the absolute power the Department has in enforcement without any consideration for the Facility or its “Residents.” The wording of (c) which states in part, “has maintained regulatory compliance for a period of time sufficient to permit a conclusion that the compliance will be maintained for a prolonged period” just leaves us cold. What does that mean? How is “a prolonged period” defined? That could be weeks, months, or even years? The additional financial pressures put on a facility during a period of banned admissions can only contribute to additional costs, which ultimately get passed to the Residents.

We think the Department should also be held to a test of time that they must return to the facility within a set time period to certify the deficiency has been corrected and not let the faculty hang until they decide to return and clear the deficiency. After all, if the deficiency was bad enough to put Residents at risk, shouldn’t the Department be back in to clear the faculty as soon as the deficiency is rectified? We recommend the

Department return to the Residence within 2 working days after the deficiency has been corrected by the facility!

We understand the need for the development of Regulations and appreciate the changes that have been made to the initial draft. We hope the Department will give further consideration to making additional improvements in response to our comments.

Very truly yours,



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