

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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2712



## Presbyterian SeniorCare

*A Regional Network of Living & Care Options*

July 21, 2009

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

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Dear Secretary Hall:

Please allow me to introduce myself. I am a personal care home administrator and a registered nurse with more than 40 years' experience in health care; 29 of those years have been working in long-term care, both in a nursing home and in personal care homes. The last 19 years have been as an administrator in a personal care home that is in a campus setting and part of a continuum of care and services for older adults.

My organization, Presbyterian SeniorCare, enjoys, but does not take for granted, a reputation for providing quality services in an environment where quality of life is equally important as quality of care. Presbyterian SeniorCare is also known as a pioneer for innovative programs and services for older adults and prides itself on the ability to deliver quality, while providing almost \$3 million annually in unreimbursed care in our personal care homes to those who are low income, receiving SSI or for those slightly over resourced to receive SSI.

I think it is very important to note that Presbyterian SeniorCare is an active member of PANPHA and that I have served on its Personal Care Home subcommittee for many years. While the Commonwealth of Pennsylvania has been actively pursuing assisted living legislation and regulation, Presbyterian SeniorCare has been working closely with PANPHA to ensure rights, needs and expectations of residents are protected, as well as the needs and rights of the provider, so that quality of care and quality of life are preserved.

I appreciate that PANPHA was invited to be a member of the Department's working group. I fully support, in its entirety, PANPHA's comments and suggested changes to the proposed regulations for assisted living residences. I also appreciate that the Department listened to both providers and consumers when the proposed regulations originally were released and made an attempt to correct the areas of greatest concern;



however, I believe there remains significant concerns with this latest version and the best interest of the majority of the stakeholders have not been advanced.

While not improving the health or safety of the residents, the proposed regulations and changes from the previous version continue to impose significant new costs on homes and residents. I am sure you will understand our concerns about these costs and the possible impact it will have on the resident, both in terms of increased rates and potential decrease in services. Although the legislation paved the way for some reimbursement for services, there also is no guarantee when and if those funds will become available.

Let me address the unnecessary high costs associated with the new regulations for assisted living residences.

**2800.11(c) Licensure fees:** One of the greatest costs is the proposed licensure fee. While it was adjusted down, it remains one of the highest in the country and will result in a significant burden on the provider. The \$300 initial application fee coupled with the per bed fee of \$75 will result in an annual fee of \$2,250 for Westminster Place, a 110- room licensed personal care home owned by Presbyterian SeniorCare, if we only license 26 rooms. This is a \$2,200 increase in our licensure fee and will significantly affect our budget and costs. If another 70-room residence in our system chooses to become licensed as assisted living, there will be a \$5,550 charge. How can organizations continue to provide quality residential environments and quality services to low-income residents with fees this high? Most residences license for the number of beds they would have if all or a portion of the rooms were occupied by two people. In essence, the cost will double; therefore, we will be paying for beds that we may not have occupied and are not receiving any revenue to offset the extreme licensure fee.

**2800.101(b) Resident living units:** The proposed square footage requirements of 175 per living unit for existing residences and 250 per living unit for newly constructed residences are unacceptable. Many Personal Care Homes licensed in Pennsylvania will not be eligible to become licensed as Assisted Living Residences due to the square footage requirements for room size along with the kitchen capacity requirement. Of the 26 units that are under consideration to become licensed as assisted living in Westminster Place, only eight of those have the kitchen capacity required under the proposed regulations. The remaining 84 units of the 110 total units in Westminster Place do not meet the square footage requirements. It is completely unnecessary and irresponsible to require in regulation such large size rooms. Likewise, requiring a kitchen with hot and cold running water, cooking appliance and refrigerator is unreasonable when three meals are both required and provided and residents living in assisted living do so because they cannot or no longer want to prepare meals. This will only drive up the cost for those who can afford to pay. **The consumer should be the driver for both the room size and amenities.**

**2800.56 Administrator staffing:** The requirement to have the administrator present in the building an average of 40 hours per week in each calendar month is a higher standard than that set for nursing home administrators. It does not allow time out of the building

for training or other meetings that may be required for organizational efficiency. Additionally, having a designee with the same training requirements as the administrator present at all times is unreasonable and costly. The cost for training an administrator is \$1,000-\$1,500, and coupled with the additional cost of the 24 hours of annual training, makes this regulation prohibitive.

**2800.63(a) First aid, CPR and obstructed airway training:** Requiring sufficient staff for a 1:20 ratio of trained CPR staff to residents is excessive. Increasing this ratio is in conflict with 2800.57(b), which requires only one hour of services per day to each mobile resident. As an example, a 50-bed residence may staff with three direct staff on days, three on evenings, and two on nights. This would equal 64 hours, thus meeting the one-hour of service per day. With the new CPR requirement, the facility would have to add an additional direct care staff person at night to meet the ratio of 1:20. The requirement in the Chapter 2600 regulations of 1:50 is more than adequate to provide emergency intervention in an assisted living environment. This population generally prefers “comfort measures only” during their final years, and many benefit from the services of hospice at end of life.

The above comments are primarily related to the increased costs that will be incurred with licensure of Assisted Living Residences under the proposed regulations; however, there are other concerns with the proposed regulations that will affect operations, but will not improve the quality of care and services.

**2800.220 Service provisions:** This section is at best confusing and does not support residents paying only for those services needed as identified in the support plan. **We strongly support PANPHA’s call to reevaluate this section in its entirety.**

**2800.228 Transfer and discharge:** In section (a), it states that the residence shall ensure a transfer or discharge that is appropriate to meet the resident’s needs. While this is the goal of every transfer or discharge, it may not always be possible when the resident and/or the family may not be realistic about the resident’s needs or service requirements or the facility selected by the resident or family may be unknown to the provider. The residence should only be responsible for a safe and orderly relocation.

In section (2), reference is made to reasonable accommodations for aging in place. Personal care home providers are already making reasonable accommodations to allow for **safe** aging in place for residents and the staff caring for them. Allowing untrained caregivers to provide services poses an additional liability threat, as well as, potential for greater harm. **This section must be deleted.**

**2800.11(g) Dual licensure:** Dual licensure is likely to be requested in older buildings where unit size will be an issue. Some units may meet the requirements, but those units may not be located in one area. I would suggest changing “distinct part” to mean two or more contiguous rooms/units.

Section (g) (1) states that a dually licensed facility cannot move or transfer residents from one licensed facility to another based on payment source. In that case, what would be the

purpose for becoming licensed as an Assisted Living Residence? Secondly, this confirms that personal care homes already are providing assisted living services, but cannot seek reimbursement based solely on the definition of personal care home.

**2800.30 Informed consent process:** Presbyterian SeniorCare supports in its entirety PANPHA's comments on informed consent and the process.

**2800.22(a) Application and admission:** I am not sure why this was changed from the first draft of the regulation, but it now presents an undue paperwork burden on providers, which will not increase the quality of service provided to new residents. The 15-day post admission timeline in the first draft must be reinstated.

Section (b.3) states a potential resident must receive a written decision on the basis for denying admission. A written basis of denial is in direct conflict with Fair Housing and Americans with Disabilities Act and does not meet the standards for permissible discrimination; therefore, it cannot be required. Delete this paragraph.

**2800.65(f) & (g) Staff orientation and direct care staff training:** Again, this is a change in this version of the proposed regulations. Eighteen hours is unnecessary to complete the required training listed in this section. It is recommended to return to the original 12 hours initially and annually.

**2800.202(4) Prohibitions:** We strongly believe that all residents should be free from restraint, but we recommend clarification of this section to avoid interpretive issues faced with the Chapter 2600 regulations. Often, medications are prescribed PRN (as needed) with the intent of relieving anxiety or agitation for residents and unlicensed staff should be permitted to give as prescribed by the ordering physician.

**2800.227(c) Support plans:** Quarterly review of support plans is excessive. The current standard is annually and with significant change. This standard is reasonable and consistent with nursing home language. Requiring more frequent reviews will become just "more paperwork compliance" and the true purpose for support planning will be lost.

**2800.227(k) Support plans:** The support plan should be developed with the resident and the family and each should receive a copy if desired; however, it is impractical to attach the support plan to the Resident Contract. The support plan is a document that directs the care and services of the resident and should be available to staff providing care or ancillary staff providing other services. To comply with the regulation as written, multiple copies of the support plan would be required, which would increase costs.

**2800.228(e) Transfer and Discharge:** This section requires that a residence must track transfers and discharges in a tracking chart. Transfers and/or discharges are noted in the resident chart and that should be sufficient. Nowhere else does this requirement exist. This provision should be deleted.

**2800.229 Excludable conditions, exceptions:** It is recommended that exceptions be made by experienced practitioners with at least five years' experience caring for older

adults and those with disabilities in long-term living settings. It is also important that the response to the exception request be made within 48 hours. Also, the residence should not be responsible for applying for an exception on the consumer's behalf.

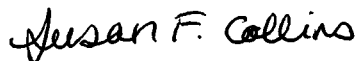
### **2800 Special Care Units**

Presbyterian SeniorCare has been a leader in developing and providing care and services for persons with Alzheimer's disease and related dementias. We have worked very closely with PANPHA and strongly support their comments and recommendations related to this section.

In closing, I have highlighted areas of concern specific for Presbyterian SeniorCare related to both delivery of services and costs. There are other areas that will be of concern to other providers. My caution to you is that we have an opportunity to rework and develop a long-term care system that will truly meet the needs of our older adult population in a way that will not compromise quality yet ensure a level of financial feasibility. Let us not push regulations that are open to interpretation, appear hasty or compromise the quality of care and quality of life we are seeking. Regulations that will create unnecessary paperwork and increase costs to providers are not the answer to this long-standing and crucial problem.

Thank you for your attention and consideration of my comments.

Sincerely,



Susan F. Collins  
Senior Director Assisted Living  
Executive Director, Westminster Place