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INDEPENDENT REGULATORY
REVIEW COMMISSION

489 Castle Shannon Blvd.
Pittsburgh, PA 15234

July 24, 2009

Submitted via e-mail to: RA-asstdliving@state.pa.us

Office of Long-Term Care Living
Bureau of Policy and Strategic Planning
P. O. Box 2675
Harrisburg, PA 17105
Attention: Bill White

Re: Draft Annex of Final Form Assisted Living Residences Regulations
(55 Pa. Code Chapter 2800)

Dear Mr. White,

Thank you for the opportunity to submit our comments, suggestions, and observations on the proposed final form regulations for Assisted Living Residences. The Baptist Homes Society currently operates a 54 unit assisted living facility on our Mount Lebanon campus and will shortly be opening a second, 84 unit assisted living facility on our Providence Point campus, which is under development in Scott Township, Pennsylvania. We are respectfully submitting the following comments for your consideration in developing final regulations.

§ 2800.11. Procedural requirements

Paragraph (c) (1) and (2) of this section establishes an exorbitant and onerous fee structure for the licensing of an Assisted Living facility. This fee structure should be reduced to that which was originally proposed...a \$300 license or renewal fee plus \$75 per bed.

§ 2800.16. Reportable incidents and conditions

Paragraph (a) (3) of this section states in part that “an illness requiring treatment at a hospital or medical facility” is a reportable condition. Most, if not all, of the residents of an Assisted Living facility, due to their age and underlying medical conditions, have or experience illnesses or related health issues that require evaluation and/or treatment at a hospital or medical facility. This requirement will place an undue reporting burden on facilities as well as create an overwhelming number of reports for the Department to review, neither of which will serve to improve the quality of care offered to the residents.

§ 2800.17.

This section should be revised to be consistent with existing HIPAA statutes and regulations. Specifically, among other potential conflicts with HIPAA, records should be available to insurance companies and other third party payors for payment purposes.

§ 2800.22. Application and admission

Paragraph (b) (3) of this section indicates that “the resident handbook shall be approved by the Department.” This is an unnecessary step in the approval process and will potentially months to the approval process.

§ 2800.25. Resident-residence contract

The time frames for notification of termination of the contract should be consistent for both the resident and the residence. Termination of the contract by a resident should require 30 days’ notice.

§ 2800.30. Informed consent process

Paragraph (a) (1) of this section addresses instances in which a “resident’s decision, behavior, or action creates a dangerous situation and places the resident or other residents or staff members at imminent risk of substantial harm” (emphasis added). In situations where substantial harm is possible, there is no time to initiate an informed consent process to address the decision, behavior or action. Under these circumstances, action must be taken immediately to ensure the safety of residents and staff. This paragraph should be removed.

Paragraph (i) of this section, addressing liability should also be removed. If a resident has the right to make choices regarding their care, even though they may be poor choices, part of the informed consent process should relieve the residence from liability for an adverse outcome resulting from the resident’s informed consent and choice.

§ 2800.53. Qualifications and responsibilities of administrators

The requirements of an associate’s degree or 60 credit hours from an accredited college or university is onerous, restrictive, and should be eliminated or modified. This requirement does

not recognize those dedicated and very capable individuals currently licensed and serving in personal care homes and assisted living facilities who do not meet this qualification. Surely the intent of this proposed regulation is not to deprive these qualified and experienced individuals of the opportunity to continue to serve the elderly residents of the Commonwealth. Therefore, it is our request that those individuals who are currently licensed as personal care home administrators be grandfathered and exempted from the education requirements of this section. If that is not deemed to be acceptable, at the very least these individuals should be afforded a reasonable time period (not less than five years) to obtain an associate's degree or the necessary college credits to enable them to continue to serve as assisted living administrators after the effective date of these regulations.

§ 2800.56. Administrator staffing

Paragraph (a) states that "the requirement that the administrator shall be present in the residence an average of 40 hours or more per week." This is totally unreasonable and unrealistic. There are many legitimate business reasons for an administrator to be out of their facility, including, but not limited to, continuing education seminars, association meetings, meetings with family members and potential residents, various outreach activities, and so forth. In addition, in this era of cell phones, PDA's, Blackberries, and virtually universal internet access, an administrator is typically able to be in communication with their facility 24/7, regardless of their physical presence in the facility. Finally, this requirement will ultimately lead to the necessity of having two licensed administrators at each facility, adding unnecessary cost with no benefit to the quality of the residents' care and life. This paragraph should be eliminated.

The requirement of paragraph (b) whereby an Administrator's designee must have the same training required for an administrator is also onerous. This section should also be modified as per our recommendations under § 2800.53 above.

§ 2800.60. Additional staffing based on the needs of the residents

Paragraph (d) of this section states that "the residence shall have a nurse on call at all times." Does this mean a Registered Nurse (RN) or a Licensed Practical Nurse (LPN)? Does this imply the availability of this individual to come to the residence? If so, are there time frames intended for their availability? Please clarify this paragraph.

§ 2800.69. Additional dementia-specific training

The portion of this section pertaining to requiring volunteers to undergo "at least 4 hours of dementia specific training within 30 days of hire and at least 2 hours of dementia-specific training annually thereafter..." is an onerous and unnecessary. The term volunteers should be removed from this section

§ 2800.83. Temperature

Paragraphs (b) and (c) of this section address the need for central air conditioning as opposed to window air conditioning units. We would request that these paragraphs be clarified/modified to

permit the use of 'through-the-wall' heating and air conditioning units as a means of controlling the temperature within a residence.

§ 2800.101. Resident living units

Paragraph (b)(2) of this section states that "each living unit must have at least 175 square feet..." We are respectfully requesting that existing assisted living facilities be grandfathered to be exempt from this requirement.

§ 2800.94. Landings and stairs.

Please clarify Paragraph (c) to specify what is meant by "strips for those with vision impairment".

§ 2800.101. Resident living units

Paragraph (p) states that "space for storage of personal property shall be provided..." Please clarify how much storage space will be required for each resident.

§ 2800.123. Emergency evacuation

This section should be reconsidered and revised to permit a "defend in place" policy for residences that are appropriately constructed and equipped with smoke detectors and sprinklers or other fire suppression systems.

§ 2800.131. Fire extinguishers

Paragraph (c) of this section should be removed. Requiring fire extinguishers in each kitchen and each living unit would be prohibitively expensive, and would not improve fire safety. The residents are not capable of fire fighting activity.

§ 2800.162. Meals

Paragraph (a) of this section states, "there may not be more than 15 hours between the evening meal and the first meal of the next day." This requirement is not in line with culture change and the trend toward resident-directed care. We are respectfully requesting your consideration of additional language which would permit accommodation of a resident's desire to 'sleep in' and/or otherwise skip the breakfast meal, with or without the resident's physician's prescription, even if this would be on a daily basis. It is our desire to make our resident's lives as independent and self-directed as possible, and we believe that changing this paragraph to acknowledge a resident's right to self determination would help to promote this process. In addition, in light of a residence's monitoring of each resident's nutritional status, meal time hours are not indicative of the resident's nutritional outcome. As the industry moves toward an outcome-based system of quality measurement, the nutritional/health status of the resident should be the driving force of how well a resident's support plan meets their nutritional needs, not when meals are served.

§ 2800.171. Transportation

Please retain the language which makes an automatic external defibrillation (AED) device optional for inclusion in a vehicle. This presents significant cost obstacles. In addition, it is unrealistic to expect an AED device to be used in a vehicle during transport of a resident.

§ 2800.224. Initial assessment

Paragraph (g), and all other similar references in Chapter 2800, should be eliminated. If any residence wishes to provide the services of a long-term care nursing facility, they should be required to apply for licensure as a long-term care nursing facility, and meet all the regulatory requirements imposed upon long-term care nursing facilities.

§ 2800.231. Admission

Paragraph (g) (2) of this section, pertaining to Special Care Units, should be removed. Providing individual residents whose safety and security you are striving to ensure with the access codes and “directions on the operation of key pads and other lock-releasing devices to exit the special care unit” would be extraordinarily dangerous for the residents.

Baptist Homes Society is very appreciative of the opportunity to comment on this proposed rulemaking, and we thank you for your time and consideration of our observations, suggestions, and recommendations.

If you have any questions or would like further clarification of any of these items, please feel free to contact me by telephone at 412.572.8291, or via e-mail at aallison@baptisthomes.org.

Sincerely,

Alvin W. Allison, Jr.
Chief Operating Officer