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July 20, 2009  
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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**09 JUL 22 AM 9:36**  
BUR OF LTC PGMS  
REFER TO \_\_\_\_\_

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

**RE: Proposed Assisted Living Residence Regulatory Package**

Dear Mr. White:

It is evident that a great deal of revision and effort has gone into addressing the comments following the first release of these 2800 regulations for public comment. However, the last draft of these regulations published on June 24, 2009 do not fully serve to improve either service or access of assisted living to those who need them most. The proposed regulations, changes from the previous version and the new content that was added continue to impose significant new costs on facilities and residents served. There is no demonstrated evidence that they will increase the quality of the services provided. They add additional requirements for personal square footage, common space square footage, administrative training, annual licensure fees and staff training that would only serve to increase the cost of providing the Assisted Living and thereby eliminate a significant complement of people they were initially intended to serve. Additional costs of operating and providing service will inevitably add cost to the consumer of the service.

In reviewing the draft released on June 24, I make the following comments.

**1. Section 2800.4, Definitions:**

- a. **Ancillary staff person:** The definition of ancillary staff person is unclear in that it defines ancillary staff as an individual "who provides services...and who meets the direct care staff qualification and training requirements". Is this section to define ancillary staff or direct care staff, and do the ancillary staff require the same qualifications and training requirements as that of direct staff? If so, this would create a financial burden as well as a recruiting burden. Sections 2800.54 direct staff qualifications and section 2800.65 direct care staff person training and

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orientation should be clarified to specifically state the intent of the Department as it relates to direct staff and ancillary personnel.

- b. **Common living Area:** This definition section includes common living area and states that it **shall** include a swimming area. However, in reading this section 2800.106, a swimming area is an optional area. Therefore, it is recommended that this definition include optional swimming area rather than “shall” include swimming area.
  - c. **IADL’s:** The term includes the following activities when done on behalf of the resident including (x) *using a prosthetic device*. This sentence makes no sense in that someone else would not be using a prosthetic device in lieu of the resident, but rather may be assisting with application of a prosthetic device for a resident. This should be clarified.
  - d. **Specific definitions, specialized cognitive support services.** This section states that these services include *close of the day programming*. This should be listed as an optional program rather than a required program.
  - e. **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. I suggest the survey process be defined as one that surveys for both Assisted Living and for Personal Care be conducted by a team of surveyors able to conduct both surveys simultaneously and coordinated at the same date and time so as to provide minimal disruption to the facility’s operation and service provision.
2. **2800.11 (c)(2):** The fee of \$75, although adjusted from a fee of \$105 per bed annually remains inconsistent with national standards. The cost of approximately \$5,000 - \$10,000 per facility per year is an exorbitant fee for a re-licensure fee. It will be a fee that will cause an undue burden to organizations and will result in an increase to the already costly area of living, thus making this unavailable to those intended to be served. This fee will cost Landis Homes \$9600 annually for relicensure of the beds. This fee will be result in an additional cost to residents.
  3. **2800.11 (g)(2):** This section is unclear in that it addresses the 2800.56 section related to administrative staffing but does not indicate whether 40 hours or 20 hours or 60 hours would be required to share an administrator between a personal care facility and an assisted living facility.
  4. **2800.11 (g)(1):** States that a facility that is duly licensed “*shall not segregate residents or transfer residents based on payment source*”. However, the transfer of a resident from a personal care facility to an assisted living facility could be

based on an office of aging assessment which would be done at during the application for SSI. Therefore, that assessment based on payment stream could determine the appropriate location for an individual resident, and therefore the transfer would occur based on payment source. Facilities should also have the option to discharge or transfer an individual based on their inability to pay, particularly if they have intentionally impoverished them selves. It is agreed that resident should not be segregated based on payment sources, however the clause related to transferring should be eliminated.

5. **2800.16: Under reportable incidences and conditions (20)(c)** states that a residence shall immediately report an incident or condition to the resident's family and the resident's designated person. These should be optional based on the resident's desire to have other people notified. As CMS continues to promote person centered care and choice, it seems that these regulations move in a direct opposite direction by forcing communication about a resident to someone else without the resident consent, thereby stripping a person of their rights.
6. **2800.22, Application and admission (b) (1):** This section requires a certification be made prior to admission. The definition of that certification is unclear.
7. **2800.22, Application and admission (b) (3):** Requires that a person whose needs cannot be met by the resident shall be provided a written decision denying their admission and the basis for that denial. This places an undue burden on facilities that might deny an admission based on bed availability or based on financial assessment as required by the organization.
8. **2800.22.(a) (2) ; (a)(3); (a)(4)** It is unreasonable to assume that an assessment, and a support plan can be developed 30 days prior to admission and that it will not change . It is duplicative to then have to review that plan as a *final* support plan within 30 days after admission. A better alternative is to retain the original language as was it the first draft of these proposed regulations i.e., to retain the 15 days post admission requirement
9. **2800.25, Residents' contract (k):** This section discusses the core package and the individual purchasing of services. The word "core packages" is not included in the definition and therefore it is unclear as to what is meant by *core packages*.
10. **2800. 30.(j) Informed consent:** The current language would indicate that the signing of an informed consent does not release the facility from liability. It is suggested that this be changed to state clearly that execution of an informed consent agreement shall release the provider from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement.

11. **2800.42, Specific Rights (b):** States that a resident must be free from mental, physical, sexual abuse and exploitation. There are certain situations where a resident will refuse to be protected because of an abusive relationship within a family. This regulation would state that the facility must prohibit that relationship to continue to exist, which may be against the resident's desire. This is clearly not within the purview of the facility and clearly infringes upon the rights of individuals to direct their own care. The facility should not be placed with the responsibility to intercede in family matters.
12. **2800.42 (y):** The last sentence should state that these procedures should not be in conflict with either federal or state laws governing residents.
13. **2800.44: Complaint procedures (h):** This states that nothing in this section shall affect in any way the right of the resident to file suit. Does this statement preclude the addition of arbitration agreements within the contract? Legally I doubt that we could prevent any one from filing suit if they so desired, so this (h) is not necessary.
14. **2800.56 Administrator training (b):** This states the administrator designee shall have the same training required for an administrator. Even though this standard has been somewhat relaxed in this revision, the requirement for that designee to have the same training as an administrator creates a financial burden for the individual facility and in essence is not really a change from the original draft language. It seems reasonable to have the administrative designee have the same qualifications, however the same training is an additional cost to the facility.
  - a. **Section 2800.56 (a)** The requirement to be present 40 hours or more per week is burdensome in that organizations may define full time as less than 40 hours weekly.
15. **Section 2800.61, Substitute Personnel:** This requirement for all staff who are scheduled as direct care staff meet the direct care staff qualifications, training requirements and staff orientation places an undue burden on a facility who may occasionally require the use of supplemental staffing agency personnel. I would suggest that there be a time of a stated number of hours per month whereby a staff member who works more than that would be required to meet that standard.
16. **2800.64, Administrator Training and Orientation (22)(d):** This section discusses the approved providers for educational training. It should be noted that the Bureau of Professional and Occupational Affairs in the Department of State is not the certifying agency for the Commonwealth of Pennsylvania but rather the State Board of Examiners of Nursing Home Administrators who approves educational courses for administrator credit in the Commonwealth of Pennsylvania.

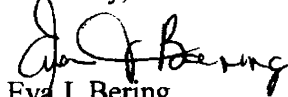
17. **2800.65, Staff Orientation and Direct Care Staff Training (b):** What is the anticipated time frame for the department to develop an orientation program in order that staff are available at the time of assignment to an assisted living facility? **I would suggest that the Department have all training programs completed prior to the effective date of the effective date of these regulations.** To do otherwise will limit the assisted living licensure for many organizations.
18. **2800.228 (b) (2) 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.”
19. **2800. 101.(4).(i.) Resident Living Unit:** Landis Homes maintains 16 secure accommodations for those with memory impairment. The requirement for a kitchen would create a safety concern for this group of residents. We suggest that the kitchen be clearly an option based on the population served.
20. **2800.102.(c) Bathrooms:** Landis Homes maintains 16 secure accommodations, These accommodations do have private bathrooms however they do not have showers or tubs. The physical space would not permit these rooms to accommodate a shower or tub without significant compromise to the floor space, which therefore would eliminate them from being licensed as Assisted Living. Individual showers to tubs would pose a safety concern for this population of residents without the addition of staff to provide a higher staff ration and constant supervision.
21. **2800.171(a) Transportation :** It is unreasonable to require the residence to arrange for or provide all transportation to and from both medical and social appointments. This requirement is logical if the residence is the sponsor of the social appointment , however to require this for all social appointments will place an unnecessary burden upon the residence.
22. **2800.171 (e) (1) Transportation:** The requirement as written and has been added to the proposed regulations require the residence to pick up the resident from the appointment within 15 minutes before or after the scheduled pick up time. This is outside the control of the residence. The residence can arrange for the pick up for a specific time, but has not control over when it actually occurs.
23. **2800.220 (c )(1)(vii): Service Provision:** Landis Homes 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 that core package, therefore should be only those services that nearly 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. Based on this, we suggest 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.

- 24. 2800.224 Initial Assessment and Preliminary Support Plan:** This newly added section to the regulations will result in unnecessary paper work and a duplicative effort that is absolutely unnecessary for the quality of service to the resident. The preadmission assessment as was proposed in the original draft of the proposed regulation suffices to provide an assessment of the potential resident and to assure that the resident can be provided for in the residence. The newly proposed regulations would require this process to be repeated at the time of admission in order to develop the preliminary support plan. This is duplicative work, undue paper burden to the residence and an increase in staff time.
- 25. 2800.232.(d): Environmental Protection:** The requirement that the Special Care unit create an environment that minimizes environmental stimulation is opposed to the best practice for individuals with dementia and Alzheimer's disease. This requirement should be removed from this section and inserted into a separate section devoted to Intensive Neurobehavioral Rehabilitation and Brain Injury Units.

In conclusion, thank you for considering these comments. I trust that your goal is to assure that assisted living is available across the Commonwealth to those who would desire and benefit from this service.

Sincerely,



Eva J. Bering

Vice President of Operations

Cc: The Honorable John C. Bear, Harrisburg, PA  
The Honorable John M. Hall, Secretary of Aging  
Ms. Kim Kaufman, Independent Regulatory Review Commission