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**Lutheran Social Services**  
SOUTH CENTRAL PENNSYLVANIA

July 23, 2009

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Office of Long Term Living  
Bureau of Policy and Strategic Planning  
Attention: Bill White  
1401 North 7<sup>th</sup> Street, Sixth Floor  
Harrisburg, PA 17105

Dear Mr. White:

Please consider the following comments as you continue to assess the proposed Assisted Living regulations for Pennsylvania. The regulations as proposed present significant challenges to Lutheran Social Services as a provider of assisted living/personal care services. As Chief Executive Officer of Lutheran Social Services, I will find it difficult to recommend pursuing Assisted Living Licensure as the regulations are currently written. I would also stress that our willingness to consider these regulations as reported to the Department of Public Welfare in their initial survey of has changes based upon these final regulations.

We have looked to our state association, PANPHA, to assist us in developing our comments and we join forces with the other 369 members of PANPHA in expressing our concerns. We appreciate your thoughtful consideration of our comments.

1. **Licensure Fees:** While the Department has adjusted the initially proposed licensure fees, the newly proposed \$300 initial application fee coupled with the per bed fee of \$75 still results in a significant burden on the provider. Organizations interested in providing Assisted Living Services would still be met with a cost prohibitive entrance fee into the market – resulting in many of PANPHA’s 370 member, state-wide organizations taking the discussion of ALR licensure off the table. A 100 bed facility would have to divert \$7,800.00 allocated to resident care services to even apply for licensure. Our members are unwilling to take those vital dollars away from resident care only to meet an arbitrary licensure fee. It is still a significant barrier to entrance and will result in large areas of the Commonwealth left without Assisted Living Services.
2. **Physical Plant Requirements:** The proposed square footage requirements of 175 per living unit for existing facilities and 250 per living unit for newly constructed facilities are excessive and will place Pennsylvania providers at a competitive disadvantage if implemented at these levels. The higher the square footage of the living unit, the higher the cost profile to the provider and by

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extension the higher the cost to the consumer. Having a square footage minimum that is within the top 10% nationally does not enhance the level of care or intrinsically heighten the dignity of the resident occupying the room. That is accomplished through the delivery of quality care. **What it does ensure is that low-income individuals will not be able to buy their way into an Assisted Living residence in vast expanses of the Commonwealth.**

The square footage minimum of 125 for existing facilities and 150 for newly constructed facilities, which providers have suggested, provides an appropriate regulatory floor that ensures a dignified quality of life for residents, is within the mainstream nationally, and does not close the market on significant portions of Pennsylvania's geography. Market forces will result in many providers offering rooms well beyond the 125 or 150 square foot minimum.

**We renew our belief that it is critical to the viability of Assisted Living here in Pennsylvania that consumers drive the market, with both their feet and their dollars, rather than the Department doing so via square footage requirements that will leave large segments of the Commonwealth without Assisted Living as a viable option.**

Along with the minimum square footage requirement, is the necessity for all newly constructed facilities to equip living units with a kitchen that possesses a sink with hot and cold running water. The costs associated with equipping each living unit with plumbing for the kitchen will not be insignificant. This is an amenity many will not request or use, as three full meals will be provided by the residence. However, the provision of a country kitchen, or a small congregate style kitchen area will adequately meet the needs of residents. Again, many providers will opt to equip all living units with a kitchen sink of some type, but the market should decide whether that is a necessity for Assisted Living.

LSS will not be able to meet these physical plant requirements without significant investment of capital dollars totaling in the millions. As a small organization, we simply will not be able to support that level of capital investment.

3. **Supervision by RN in Assessment and Support Plan Development:** An RN is not a clinical necessity in the completion of an Assessment or in the development of a Support Plan. This is a mandate that simply increases the cost profile of delivering care. A provision that mandates that an RN review Assessments and Support Plans for accuracy may be reasonable, but to require direct supervision during the completion is not warranted.
4. **Dual Licensure:** When SB 704 was enacted, the legislation 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. 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.

PANPHA strongly suggests that facilities and providers be afforded the greatest flexibility possible in order to meet the needs of their residents. Accordingly PANPHA recommends that the regulations permit providers to licensure their facilities by door. This flexibility will allow facilities that have suites or pockets of rooms that will not meet all of the physical plant requirements for assisted living units to license those as Personal Care rooms.

There will be no additional strain on the state beyond coordination of the survey dates. The statute notes that when a dually licensed facility is to be surveyed that the Personal Care portion of the facility will be surveyed by Personal Care Home Surveyors, and that the Assisted Living units will be surveyed by Assisted Living Residence Surveyors. The bulk of the responsibility will be with the provider, to coordinate scheduling, to track services and staff, and to comply with the differentiation of the regulations. Allow the provider to assume that responsibility, if they so choose.

As a provider, LSS respectfully requests this flexibility to allow us to meet the needs of our current and future residents.

5. **Proposed Regulations Ignore Key Provisions of Act 56 of 2007:** The Department's proposed regulations at several points either exceed the authority granted by Act 56 of 2007 or are contrary to the statute. Those areas include:
  - a. **TRANSFER AND DISCHARGE.** The proposed regulations exceed the statutory framework with regards to 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.
  - b. **USE OF OUTSIDE PROVIDERS.** Supplemental health care service provision is another area in which the regulations deviate from what the legislature intended. The legislation states that the provider may require residents to use providers of supplemental health care services designated by the assisted living residence, so long as it is stated in the contract. Section 1057.3(a)(12). The regulations in Section 142(a) scale

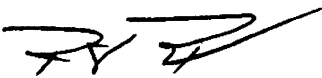
back the clearly articulated right of providers to designate preferred providers in contradiction to the statute.

- c. **KITCHEN CAPACITY.** Another item on which the regulations over-reach, and are contrary to the statute, relates to kitchen capacity. The legislation states that the living units shall have kitchen capacity, which may mean electrical outlets to have small appliances such as a microwave and refrigerator. There is no mandate in the statute that the residence provides anything more than space and electrical outlets to support kitchen appliances. The regulations go well beyond this definition. The Department proposes not electrical outlets to support microwaves and refrigerators, but the actual provision of microwaves and refrigerators. In addition, the proposed regulations mandate that newly constructed facilities include a sink with hot and cold water. The appliances and sinks are amenities that should be market driven, not called for in a regulation. Consumers will vote with their feet and dollars. If a provider is required to provide these amenities, they will naturally have to charge their residents to recover the cost. This means the resident will bear the burden of the cost whether it is an item they want or not. Regulations should establish minimum requirements and allow the greatest flexibility for consumers and providers.

Lutheran Social Services continues to meet the needs of many of South Central Pennsylvania residents. In our effort to sustain our mission, we are very concerned about the impact these proposed regulations will have on our ability to continue to meet those needs and the unwarranted financial constraint that will be placed on both our residents and our available benevolent funds.

Thank you for your consideration of our concerns.

Sincerely yours,



Robert L. Rundle, Jr.  
Chief Executive Office and President

cc: Secretary John Michael Hall, DPW  
Senator Patricia Vance  
Rep. Phyllis Mundy  
Russ McDaid, PANPHA

RR/bd