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LUTHERCARE
Lutherans in Community Ministry

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July 22, 2009

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

RECEIVED
JUL 31 REC'D
INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Proposed Assisted Living Residence Regulatory Package

Dear Secretary Hall,

LutherCare, a not-for-profit senior living and childcare provider in Lancaster County and Lebanon County, Pennsylvania, submits these comments on the proposed Assisted Living Residence Regulatory package as provided on June 24, 2009, for additional consideration prior to the Department's final submission for approval. LutherCare currently operates three Personal Care Homes licensed by the Pennsylvania Department of Public Welfare and considers the proposed regulation to have the potential to adversely affect the cost and availability of care for our primary customers. While we applaud the Department's efforts and some smaller changes that have been made, we still raise the serious concerns addressed in this comment letter.

The proposed changes would not improve the health or safety of our residents. They would instead focus on the construction of physical plant amenities and duplicative administrative documentation that have little to no bearing on the care delivered to the resident, and which are likely to make the assisted living level of care too costly for many Pennsylvanians to afford. To pay for these requirements, we must increase costs to the resident, reduce care and services, or allow the costs to impact the viability of our organization.

As a matter of equal concern, and as a member of PANPHA, we agree with PANPHA and believe it is important to note and for the Department to consider regulatory packages such as this, should represent the minimum requirements for licensure, provide the least restrictive environment for residents of assisted living residences and focus on quality of life while residents age in place. As such, many areas of this regulatory package are redundant and excessive. From duplicative administrative processes, to wordy and confusing regulations, we cannot see how much of these proposed regulations keep aging and disabled Pennsylvanians as the focus for this new level of care.

We originally voiced concern about lack of publically available information regarding the proposed Medicaid waiver funding referenced in the Act. We continue to hold this concern. Given the significant cost increases that these regulations would initiate, they would not only fail to address the severe insufficiency of the public payment source for low-income Pennsylvanians who need the care provided by an Assisted Living Residence, they could potentially magnify it.

It continues to be Luthercare's belief that the legislature's intent in passing the Assisted Living Licensure Act was not only to define the term Assisted Living and gain a sense of truth in advertising, but also to ensure access to assisted living services to Pennsylvania's seniors. Below is the list of Luthercare's most significant concerns with the proposed regulations:

1. Licensure Fees: Luthercare recognizes that 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 us. Our organization would still be met with a cost prohibitive entrance fee into the market, resulting in Luthercare 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 community has 100 + beds and we 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. Bundling of Core Services: The proposed bundling of Core Service in this version of the proposed regulations represents a radical departure from the previous proposal. We believe this section is now more onerous and will not support it as written.

Luthercare understands the reasoning for bundling core services and continue to strongly urge the Department to adopt a basic set of core services including the items enumerated in 2800.220(b) (1-10). The additional items that the Department seeks to have Assisted Living Residences offer can easily be listed by facilities choosing to provide those services, under an Enhanced Services Charges addendum. Each item would (those listed in 2800.220(b) (11) and 2800.220(c) and (d), could be listed with individual charges as applicable. To offer any other comprehensive bundling will result in residents who do not use those services having to bear the responsibility of covering their costs. Only residents who use the individual services should be charged for the service. This avoids a hidden Use tax as proposed.

3. Administrator Requirements: We applaud the Department's attention to our concern about this issue and their attempt to clarify the language dealing directly with Administrator requirements. PANPHA has stated to us that in discussions with the workgroup, it is now clear the Department does not wish to set the minimum bar for Assisted Living Residences at requiring a fully trained to standard Administrator 24 hours a day 7 days per week, but rather have a qualified person as the Administrator designee.

We urge additional clarification on this issue and recommends that in 2800.56(b) training be clarified as —*qualifications as defined in 2800.53(a) (1-5)*. The proposed regulation sets forth a requirement for the Administrator to be in the building 40 hours or more per week. This is above the current Skilled Nursing Home requirement for Nursing Home Administrators – they are required to be present 36 hours per week. This recognizes the inherent off-site needs to successful operations of long term living organizations, so to should the Assisted Living regulations. We urge the adoption of the same 36 hours per week average.

There is also the issue of training requirements for administrators. We are very gratified to see that the Department has allowed for an exemption from the training course for individuals holding a license as a Nursing Home Administrator. This is an appropriate step to take, and we are encouraged by the Department's willingness to take that step. With that being said, LUTHERCARE reiterates the need to make an exception for individuals currently serving as Personal Care Home Administrators. In order to ensure there is an adequate supply of

administrators available for this new sector of care; and to take into account the experience and coursework registered by current Personal Care Home Administrators.

4. 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 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.

5. 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.

6. Discharge of Residents: The residence must be permitted to maintain control over the transfer and discharge of its residents as is called for in Act 56 of 2007. Certain provisions that were advanced in previous proposed regulations have been appropriately disposed, however newly inserted language forces this issue to remain as a preeminent concern for us.

7. 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.

LutherCare suggests that facilities and providers be afforded the greatest flexibility possible in order to meet the needs of their residents. Accordingly, in agreement with PANPHA, we also recommend 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.

8. Informed Consent: The regulatory language proposed by the Department distorts the legislative language outlined in the statute, which was developed after lengthy and thoughtful discussions. The proposed regulation, as pertaining to liability, imposes the extreme precondition on a residence of having to determine that residents or staff are at imminent risk of substantial harm before it may initiate actions to address a dangerous situation caused by a resident. This standard, which is similar to that necessary for involuntary committal for mental health treatment, is simply unreasonable from a personal security safety perspective and liability perspective. Such a standard is assuredly inappropriate in the context of a residence's having to react promptly and effectively to a dangerous situation caused by a resident. Please review PANPHA's proposed revision which provides the residence, which is ultimately responsible and potentially liable for actions occurring in the residence, the operational flexibility to address the presenting problem.

Regulations should establish minimum requirements and allow the greatest flexibility for consumers and providers. As a member of PANPHA, rather than restate PANPHA's detailed comments on the proposed Assisted Living Regulations submitted by W. Russell McDaid, VP of Public Policy, LutherCare encourages the department to seriously review PANPHA's document.

Thank you for the opportunity to provide additional necessary comments on the proposed regulations.

Respectfully submitted,



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Director of Health & Wellness
LutherCare

CC: PANPHA, Nick Luciano, W. Russell McDaid
Independent Regulatory Review Commission, Kim Kaufman
Senators Mike Brubaker, Mike Folmer, Pat Vance
Representative Phyllis Mundy