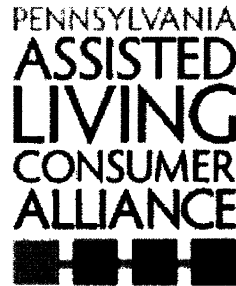


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INDEPENDENT REGULATORY
REVIEW COMMISSION

July 19, 2009

Office of Long Term Living
via e-mail at: RA-asstliving@state.pa.us

To the Office of Long Term Living:

The Pennsylvania Assisted Living Consumer Alliance hereby submits our comments on the interim draft 2800 Regulations for Assisted Living Facilities.

PALCA is a coalition of organizations and Pennsylvanians that formed in January 2008 to ensure that the concerns of consumers are heard in the formation of Assisted Living licensure rules for Pennsylvania. Organizations participating in the Alliance include:

- The Pennsylvania Health Law Project (PHLP) www.phlp.org
- AARP Pennsylvania (AARP) www.aarp.org
- Elder Connections - www.elder-connections.com
- United Way of Southeastern Pa - www.uwsepa.org
- Aid for Friends in Philadelphia - www.aidforfriends.org
- National Nursing Centers Consortium - www.nncc.us
- The AIDS Law Project of Pennsylvania - www.aidslawpa.org
- Pennsylvania Mental Health Consumer Association - www.pmhca.org
- SEIU Healthcare Pennsylvania - www.seiuhealthcarepa.org
- The Pennsylvania Alliance for Retired Americans - www.retiredamericans.org
- Jewish Social Policy Action Network - www.jspace.org
- Mental Health America Allegheny County - www.mhaac.net
- The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) - www.carie.org
- The Disability Rights Network of Pennsylvania (DRN) - www.drnpa.org The Mental Health Association in Pennsylvania (MHAPA) - www.mhapa.org
- The Mental Health Association of Southeastern Pennsylvania (MHASP)- www.mhasp.org
- The Pennsylvania chapters of the National Multiple Sclerosis Society - pae.nationalmssociety.org
- Liberty Resources, Inc. - www.libertyresources.org
- The Pennsylvania Association of Area Agencies on Aging - www.p4a.org

- The Elder Law Section of the Pennsylvania Bar Association - www.pabar.org/public/sections/elderlaw
- Community Legal Services (CLS) - www.clsphila.org
- The Pennsylvania Council on Independent Living (PCIL) - www.pcil.net
- The Pennsylvania Homecare Association (PHA) - www.pahomecare.org
- The Pennsylvania Statewide Independent Living Council (PASILC) - www.pasilc.org
- United Cerebral Palsy - www.ucp.org
- Speaking for Ourselves - www.speaking.org
- The Southwestern Pennsylvania Partnership for Aging (SWPPA) - www.swppa.org
- ElderNet of Lower Merion & Narberth - www.eldernetonline.org
- Vision for Equality - www.visionforequality.org
- The Pennsylvania Jewish Coalition - www.pajewishcoalition.org
- PHI (Paraprofessional Healthcare Institute) - <http://phinational.org/>

We are pleased that we have been provided the opportunity to comment on an interim draft. We would also like to strongly commend the Office of Long Term Living for the critical improvements made in this draft.

While we believe that several additional improvements are necessary, as we outline below, the Department is clearly on the right track. We are very pleased that the interim draft:

- requires assessments and support plans to be completed prior to admission, in most cases, laying out the care needs of the new resident and the plans for addressing them
- requires the support plan to be included as part of the resident's contract
- defines core benefits packages that facilities must offer, thereby allowing consumers to make meaningful comparisons among facilities and to make educated admission decisions
- articulates clear parameters for when a facility can be dually licensed as both an assisted living facility and another type of facility and
- adopts several critical training topics for administrators and direct care staff.

Although the interim draft moves the assisted living regulations very much in the right direction, some important changes recommended by PALCA were not made. In particular, we urge the Department to address several major outstanding quality of life and quality of care issues in the final regulations which we lay out below, in addition to some drafting errors.

Drafting Errors:

We spotted the following drafting errors in our review of the interim draft:

- 1) The definition of "assessment" we believe requires correction. The interim draft defines assessment as if it were a pre-admission screening tool to determine whether a consumer is appropriate for assisted living. However, the subsequent

sections on assessment all reflect an understanding that an assessment is more than just a tool to determine whether a consumer is appropriate for the assisted living admission and is instead a full evaluation of various needs and preferences that influence what care a resident receives.

- 2) The language in 2800.22 still includes the possibility that a medical evaluation could be completed 15 days after admission. However, the subsequent section on medical evaluations at 2800.141 references only the "60 days prior" timeframe. We do not support medical evaluations occurring 15 days after admission. Additionally, allowing 15 days following admission for medical evaluations would not work with the timeframes established for initial assessments and support plans.
- 3) We believe it must be an error that 2800.30 only allows a consumer to rescind an informed consent agreement within 30 days of signing it. It is unimaginable that 6 months into such an agreement, the consumer cannot choose to terminate it. Of course, a consumer who decides he would rather refrain from the action or inaction upon which his informed consent agreement was premised should be allowed to do so and should be released from the informed consent agreement.
- 4) The language in 2800.56 allowing the **designee or** administrator to be on site at least 30 hours a week is unworkable and must be corrected. As now written, a designee with the same training as an administrator must be onsite anytime the administrator is not. However, (a) appears to permit the designee to wholly replace the administrator and undo any obligation for the administrator ever to be onsite. Surely the Department does not intend (a) to eliminate any requirement that the administrator ever be on site, as long as the facility has a designee present. We note that the proposed provision is less stringent than the equivalent personal care home regulation, and as such violates the statutory requirement that the Department enact assisted living regulations which are at least as protective as those for personal care homes. The reason for the enactment of the regulation requiring that PCH administrators be present a minimum number of hours per week was repeated incidents of poor care and management in facilities where the "administrator" was almost never present and left the day to day running of the facility to a designee. We would wholly object to this significant change from the proposed regulations. Additionally, the language in (a) as it relates to designees makes no sense as how could one reconcile a provision requiring a designee on site 30 hours a week with the requirement in (b) that there be a designee on site at all times the administrator is not. We recommend the words "or designee" be removed. At all times there must be an administrator or designee who has satisfactorily completed the administrator training on site. The facility must have one specified administrator and this person must be onsite a minimum of x hours a week.
- 5) While we are pleased that additional training topics were added for the administrator, we cannot imagine how all of the training topics listed could be adequately covered in just 100 hours. Likewise, we are concerned about the number of hours overtaking the importance for assuring that adequate training happens in all modules. It must be an error to fix the hours at the same amount required of PCH administrators while at the same time requiring training on several additional topics. We would like to see the hours increased substantially beyond 100 hours, to somewhere closer to 150 hours. We strongly encourage a

correction that adds in the words "at least" so that the regulations requires "at least 150" hours in the following topic areas. This way, the number or necessary hours are increased and the substance of the training will hold priority over the number of training hours.

Quality of Life Issues:

We cannot imagine residents would have a good quality of life when they are forced to share a dresser, night stand, and lamp with their roommate. There is no dignity or privacy in such an arrangement and it should not be permissible. The provisions of 2800.101 should be revised accordingly to require each resident have his/her own furniture to use.

Where is the quality of life if there are never enough staff around to help residents when they need assistance, requiring them to lay in wait crying out for help? The staffing levels must be changed to require a minimum of 2 hours of staff time per resident with the actual staffing hours above 2 hours per resident per day to be based on the assessed needs of the residents using an assessment tool development by the Department.

What quality of life will residents have when the common areas and hallways are not required to be accessible thus excluding wheelchair users from activities that may be occurring in the inaccessible rooms? All common areas and hallways in facilities must be accessible. Likewise, because existing facilities are allowed to have inaccessible rooms sized at only 175 square feet, residents will be forced, as many are now, to wait in bed for an aide to come and transfer them because they do not have enough room to roll their wheelchair next to the bed and self-transfer. We urge the increase in room sizes to 250 sq ft for all living units.

The final regulations must require that service animals be permitted in the facility when required to meet a resident's needs. Arguably, federal laws require these admissions but leave to the resident the onus of individually challenging her denied access to a service animal. These regulations must recognize the immeasurable value service animals add to independence and quality of life for those residents who need them. For this reason, we urge 2800.109 be revised to require that facilities admit service animals.

There is a serious negative impact on residents' quality of life when meals are not planned and overseen by a dietician able to use nutrition planning to enhance and facilitate overall health and wellness. While it is good to require that a dietician be consulted for consumers whose assessments uncover needs for special diets, this doesn't assure that menu planning and food preparation for those individuals will comport with the special diet, nor will it have any impact on maximizing the health and wellness of other residents. We have received complaints about elderly residents gaining 30+ pounds above their lifetime weight due to their facility's poorly implemented menus. We have heard complaints of special diets being addressed with healthy sized portions of vegetables which are rendered unhealthful when drowned in

heaping portions of cream sauce. A dietician must be involved in a facility's meal planning and in oversight of meal preparation.

The interim draft, as the proposed draft before it, contains no clear articulation of residents' rights and no mechanism through which to challenge the facility's decisions about charges, provision of care and grounds for discharge. These pose quality of life challenges and health and safety worries, all of which are surmountable by clearly delineating all of a resident's rights upon application, during residency and during discharge as well as by providing a fair mechanism through which to challenge the facility's decisions. Absent these, residents live under a regime of fear of retaliatory eviction that is both real and well-founded.

Health and Safety Issues:

Resident health and safety cannot be assured when fire safety standards do not go beyond the existing rules for personal care homes (which involve treating these facilities like hotels and college dorms). We urge the adoption of the NFPA Life Safety 101 for Assisted Living in Pennsylvania. We also firmly believe that the ceiling height provision in 2800.101 is both a health and safety issue and a quality of life issue. While we absolutely recognize that some rooms may have sloped ceilings or dormers near which the ceiling height is not 7ft, it is unacceptable to set a ceiling height at an average of 7 feet. In application this could mean one room at 9 feet ceiling, one at 5.5 ft. It is just unsafe and uncomfortable for anyone living there. The 7 ft number also makes little sense given how construction actually occurs, since drywall for the walls comes in 8ft pieces. Living units must all have **no less than** 7 ft and NOT an average of 7 feet. Rooms that have sloped ceilings or dormers should not be excluded from being used for residents, but instead, the room's size must be measured so as to exclude any space where the ceiling height is less than 7 feet.

Section 2800.203 must be struck in its entirety (not just striking (b) as was done in the interim draft) with 2800.202 clearly referencing bedrails as an impermissible restraint. In the alternative, 203(b) must be retained and revised to include the language from the statement of policy for personal care home use of half-length bedrails. As currently written, 2800.203 is unworkable and objectionable. While we were willing to concede to the industry's recommended deletion of the entire section and an outright prohibition on restraints in section 2800.202 during our negotiation sessions, if the department is determined to include any part of the section 2800.203, it must also include (b) along with the additional language DPW adopted in response to the 4 bedrail deaths that occurred in the Commonwealth.

We do not believe that health and safety can be guaranteed when the facility can dictate all healthcare providers used by a resident except for their primary care physician. While strongly urging the revocation of provision 1057.3 (a)12 in Act 56, we press the Department to do a better job of clarifying the appropriate (and thus precluding the inappropriate) use of this provision.

Health and safety cannot be assured when only one first aid kit is required in a building, regardless of its size. These kits are not expensive, especially now that the

interim draft does not require that they include an AED. There must be no less than one per floor and more if the floor has many resident living units.

Health and safety are not protected when direct care staff persons are given so few hours of initial training or when so few hours of direct care staffing are provided to care for residents. Lack of training and insufficient staff to meet residents' needs are the most common problems consumers and their loved ones complain about when they write to PALCA. We believe the minimum number of hours of training for direct care staff must be increased beyond 18 hours. We strongly recommend 75 hours of initial training and urge the Department to use, as we urged on page 2 above, the words "**at least** 75 hours" so that the topics covered take regulatory priority over the fixed number of hours. Making these changes will assure that if a new issue comes up that requires training existing topics don't have to be skipped or short-changed to make room and time for the new topics.

The health and safety of our loved ones cannot be guaranteed when care needs are only assessed annually. While the facility must "review" the support plan quarterly, this is not the same thing as "reviewing" the resident and her needs and preferences. We feel very strongly that care needs must be reassessed on a more regular basis and continue to press that these reassessments be done quarterly, as well as immediately following a hospitalization or a significant change in the resident's condition.

Attached please find our line-by-line edits for the interim draft. Because we recognize the timing concerns of the department in moving to final regulations, we are only focusing on those that remain the most critical to PALCA.

Please do not hesitate to contact us through the leader of the Alliance, Alissa Halperin at ahalperin@phlp.org or at 215-435-3257.

Sincerely,

Alissa Eden Halperin
on behalf of the Pennsylvania Assisted Living Consumer Alliance



Attachment A
**to the Comments Submitted by the PA Assisted Living
Consumer Alliance (PALCA) to the Interim Draft
Assisted Living Regulations – July 2009**

www.paassistedlivingconsumeralliance.org

§ 2800.3. Inspections and licenses.

(c) [The Department may conduct an abbreviated annual licensure visit if the assisted living residence has established a history of exemplary compliance.]

Comments: We are pleased with and strongly support the deletion of (c).

§ 2800.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Assessment – An instrument that includes screening of a resident or potential resident to determine whether the resident or potential resident requires the services of an assisted living residence.

Comments: This is inconsistent with 2800.226 and 2800.22 re: assessments. An assessment is process as defined herein that evaluates a person's care needs and preferences and is relied upon in making care planning decisions.

Designee--A staff person authorized in writing to act in the administrator's absence.

Health care or human services field--Includes the following:

- (i) Child welfare services.
- (ii) Adult services.
- (iii) Older adult services.
- (iv) Mental health/mental retardation services.
- (v) Drug and alcohol services.
- (vi) Services for individuals with disabilities.
- (vii) Medicine.
- (viii) Nursing.
- (ix) Rehabilitative services.
- (x) Any other human service or occupation that maintains contact with adults who are older or adults and children with disabilities.

Informed consent agreement-- A formal, mutually agreed upon, written understanding which:

- (i) Results after thorough discussion among the assisted living residence staff, the resident and any individuals the resident wants to be involved.
- (ii) Identifies and balances the assisted living residence's responsibilities to the individuals it serves with a resident's choices and capabilities with the possibility that those choices will place the resident or other residents at risk of harm.
- [(iii) Documents the resident's choice to accept or refuse a service offered by or at the residence.]

Comment: This continues to be a kitchen sink exception making anyone who has ever worked with people qualify for being an administrator.

Deleted: *Mobile resident--*
(i) A resident who is physically and mentally capable of vacating the assisted living residence on the resident's own power or with limited physical or oral assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path.
(A) Physical assistance means assistance in getting to one's feet or into a wheelchair, walker or prosthetic device.
(B) Oral assistance means giving instructions to assist the resident in vacating the assisted living residence.
(ii) The term includes an individual who is able to effectively operate an ambulation device required for moving from one place to another, and able to understand and carry out instructions for vacating the assisted living residence.

Deleted: *Resident with mobility needs--*
An [individual] adult who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit a building.

GENERAL REQUIREMENTS

§ 2800.11. Procedural requirements for licensure or approval of assisted living residences; special care designation and dual licensure.

(g) Dual Licensure. A licensed facility may submit an application to the Department requesting dual licensure if the licensed facility and the assistance living residence are collocated in the same building and are each located in a distinct part of the building. If the Department determines that the licensed facility meets all of the requirements of this Chapter, the facility will be issued a dual license.

(1) A facility that is dually licensed shall not segregate residents or transfer residents from one licensed facility to another based on payment source.

(2) A facility that is dually licensed may request approval from the Department to share the administrator for the two licensed facilities by requesting a waiver of the administrator hourly staffing requirements contained in § 2800.56 (relating to administrator staffing). The qualifications for a shared administrator shall be as set for them in this chapter.

Comments: We are pleased with this addition as clarifying dual licensure will help consumers understand the kind of facility they are entering.

§ 2800.14. Fire safety approval.

(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction. The Department will immediately issue a provisional license to the facility and issue a plan of correction that must be satisfied within 15 days of the Department will begin an emergency relocation of all residents.

Comments: This enforcement tool needs to be included and providers need to know of the repercussions upfront for losing their fire safety approval.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued or if the building will be serving a new purpose or new or different population than was previously served, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.

Comments: This, in part, corrects for the flaw that existing construction has not had fire safety approvals since first opening, possibly decades ago.

§ 2800.16. Reportable incidents and conditions.

(a) A reportable incident or condition includes the following:

(20) An absence of staff [or inadequate staff to supervise residents] such that residents receive inadequate care as defined by the respective residents support plans.

Comments: This is objectionable as it calls upon the facility to determine it has provided inadequate care before deciding whether to report the instance of insufficient staff where the licensing agency should be the determiner of whether the lack of staff prompted inadequate care.

(b) The residence shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents and conditions.

(d) The residence shall submit a final report, on a form prescribed by the Department, to the Department's assisted living residence office immediately following the conclusion of the

investigation. While the Department may treat this as a complaint warranting a complaint investigation, the licensee must prepare to present full documentation of the incident and the incident investigation process and results at the next licensing inspection.

Comments: This is critical for licensing office to follow-up during inspections.

§ 2800.17. Confidentiality of records.

Resident records shall be confidential, and, except in emergencies, may not be accessible to anyone other than the resident, the resident's designated person if any, staff persons for the purpose of providing services to the resident, outside providers of healthcare, supplemental healthcare or other services, agents of the Department and the long-term care ombudsman without the written consent of the resident, an individual holding the resident's power of attorney for health care or health care proxy or a resident's designated person, or of a court orders disclosure.

§ 2800.18. Applicable laws.

A residence shall comply with applicable Federal, State and local laws, ordinances and regulations. All applicants for assisted living licensure shall comply with such laws, ordinances, and regulations as "new construction" or "new facilities" to ensure the most current application of fire safety, accessibility, life safety, and similar standards.

Comments: This is critical to correct for OLD buildings that may have been grandfathered under construction, fire safety, or ADA rules and thus are not the most safe for the acuity level of assisted living.

§ 2800.19. Waivers.

(b) Following receipt of a waiver request, the Department will post the waiver request on the Department's website with a 30-day public comment period prior to final review and decision on the requested waiver.

Comment: This is NOT what was agreed to between PALCA and the industry. Publication on OLTL's website is NOT the same as publication in the PA Bulletin, which is what all parties agreed to.

[(b)] (c) The scope, definitions, applicability or residents' rights, assisted living service delivery requirements, special care designation requirements, ~~staff training requirements,~~ disclosure requirements, complaint rights or procedures, notice requirements to residents or the resident's family, contract requirements, reporting requirements, fire safety requirements, assessment, support plan or service delivery requirements under this chapter or any other state regulation or statute shall not be waived,

Comment: We are pleased with this addition.

Deleted: may not be waived.

§ 2800.20. Financial management.

(b) If the residence provides assistance with financial management or holds resident funds, the following requirements apply:

(7) The legal entity, administrator and staff persons of the residence are prohibited from being assigned power of attorney or guardianship of a resident or a resident's estate.

Comment: Based on MANY problems in personal care homes, we urge you to prohibit the administrator serving as representative payee for social security checks absent a whole bunch of protections, which we have suggested herein...

(8) The administrator may not be appointed to serve as representative payee unless the resident, family, and legal representative are first given a standardized disclosure form provided by the Department which explains:

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- a. what Representative Payee means,
- b. that other agencies may be available to provide representative payee service for little or no fee (e.g., mental health associations, Associations of Retarded Citizens (ARC), etc.),
- c. that representative payee is voluntary,
- d. that the resident can terminate the representative payee relationship at any time, and
- e. how to terminate the relationship.

No facility shall make the administrator (or any other staff) serving as the resident's representative payee a condition for admission to the facility.

Deleted:
Comment: This must be added. We have seen too many financially abusive situations where the resident is too beholden to the provider because they serve as rep payee. And yet, the provider doesn't always fulfill their federal obligations as rep payee.

§ 2800.22. Application and admission.

(a) The following admission documents shall be completed for each resident:

(2) Medical evaluation completed within 60 days prior to admission on a form specified by the Department.

Comment: This must be removed. It is unacceptable and inconsistent with subsequent sections on medical evaluations and timelines.

(3) (2) Assisted living resident initial assessment completed [within 15 days after admission] within 30 days prior to admission on a form specified by the Department.

Deleted: or 15 days after

(4) (3) [Support] Preliminary support plan developed [and implemented within 30 days after admission] within 30 days prior to admission.

Comment: We are very pleased by and strongly support these additions.

(4) Final support plan developed and implemented within 30 days after admission.

...

(b.1) A certification shall be made, prior to admission, that the needs of the potential resident can be met by the services provided by the residence.

Comment: It seems as if this certification is meant to determine level and locus of care. It should be a general determination of whether the consumer is assisted living appropriate and NOT whether the consumer is appropriate for one particular residence.

...

(b.3) A potential resident whose needs cannot be met by the residence shall be provided with a written decision denying their admission and provide a basis for their denial. The decision shall be confidential and may only be released with the consent of the potential resident or his designated person. The potential resident shall then be referred to a local appropriate assessment agency.

Comment: What does this mean?
Released to whom?

...
[(b)](e) Upon application for residency and prior to admission to the residence, the licensee shall provide each potential resident or potential resident's designated person with written disclosures that include:

- (1) A list of the nonwaivable resident rights.

Comment: We would really like to see this include applicants' rights, residents' rights, and rights upon discharge and to include all the rights we have set out in our comments starting at 2800.40 through 42a.

§ 2800.25. Resident-residence contract.

(a) Prior to admission, or within 24 hours after admission, a written resident-residence contract between the resident and the residence must be in place. The administrator or a designee shall discuss and complete this contract with the resident, the resident's designated person, and attorney, where one is identified. Once final, the administrator or designee shall and review and explain its contents with to the resident and the resident's designated person and attorney if any, prior to signature.

Deleted: and review and explain its contents to the resident and the resident's designated person if any, prior to signature.

(b) The contract shall be signed by the administrator or a designee and the resident and the payer, if different from the resident. The residence may not require a cosigner on the agreement. The contract must run month to month with automatic renewal unless terminated by the resident with 14 days' notice or by the residence with 30 days' notice in accordance with § 2800.228 (relating to transfer and discharge).

Deleted:

Comment: The Nursing Home Reform Law prohibits this in Nursing homes. It is inappropriate for a family member to be forced to be on the hook for the cost of care.

§ 2800.27. SSI recipient.

(d) The administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

Deleted: , and cosigned by the resident's designated person if any, if the resident agrees.

- (1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.
- (2) Laundry services for personal laundry, bed linens and towels, but not including dry cleaning or other specialized services.
- (3) [Personal care services] Assistance or supervision in ADL or IADL, or both.

(e) Third-party payments made on behalf of an SSI recipient and paid directly to the residence are permitted. These payments may not be used for food, clothing or shelter because to do so

would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services for the resident that are not food, clothing or shelter.

Comments: This is concerning. Conflicts with (d). Should read that facility cannot require 3rd party payments and any 3rd party payments made to the facility must not be for items listed in (d).

§ 2800.28. Refunds.

(a) If, after the residence gives notice of transfer or discharge in accordance with § 2800.228(b) (relating to transfer and discharge), and the resident moves out of the residence before the 30 days are over, the residence shall give the resident a refund equal to the previously paid charges for rent, [personal care] assisted living services and supplemental health care services, if applicable, for the remainder of the 30-day time period. The refund shall be issued within 30-days of transfer or discharge. The resident's personal funds allowance shall be refunded within 2 business days of transfer or discharge.

Comments: This is very unfair to the resident who has given 30 days notice. Under this calculus, I could let the facility know on January 1 that I am moving out on January 31 but not get my prepaid rent refunded to me until March 1. If a resident gives 30 days notice, what exactly does the residence need to calculate that might take 60 days. The resident usually relies on refunded monies to pay their admission fees to the next care setting. These monies should be refunded on the date of discharge, unless 30 days notice was NOT provided.

§ 2800.30. Informed consent process.

(a) The purpose of an informed consent agreement is to document the resident's choice to accept or refuse a service offered by or at the residence.

(l) ,

Comment: We support this insertion here.

(m) Terminating the Agreement. A resident may terminate the informed consent agreement at any time. Such termination will be effective upon issuance, without advance notice.

Deleted: Either party has a right to rescind the informed consent agreement within 30 days of execution of the agreement.

(n) Reporting to the Department. A licensee shall submit a copy of each informed consent agreement to the Department so that the Department can track the use and scope of these agreements. Additionally, a licensee must report to the Department any discharge resulting from an unsuccessful informed consent negotiation. The Department will track and report patterns and practices on the use of informed consent agreements and sanction the misuse of the process.

APPLICANT AND RESIDENT RIGHTS

2800.40 APPLICANT RIGHTS

- (a) The right to have an initial interview and tour of the ALR prior to admission.
- (b) The right to have an initial screening upon deciding to apply for admission.
- (c) The right to a written decision regarding acceptance into ALR including the reason for denial of admission.
- (d) The right to appeal (or seek exception) to the Department if admission denied because of an excludable condition.

Comment: We must have a statement in the regulations explaining to applicants or those who guide potential applicants as to what their rights are in the application process. Consumers should have some rights in the application process. Again, many of these items are listed as requirements imposed upon the facility - like that they make certain mandatory disclosures. But, if the consumer receives no statement indicating their rights to receive these - they'll never know to complain about a facility that didn't follow the rules. And, they won't be fairly prepared for residency.

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- (e) The right to have a medical evaluation from a provider of the resident's choice prior to admission.
- (f) The right to have a comprehensive needs assessment, to participate (along with others invited by the resident) in the assessment process prior to admission or within 72 hours of admission, in the case of an urgent or emergent admission due to hospital discharge, and to receive a copy of her current assessment upon completion, without charge.
- (g) The right to participate (along with others invited by the resident) in the process of developing a comprehensive support plan prior to admission or within 14 days of admission following an urgent or emergent admission due to hospital discharge that accommodates one's needs and preferences and that facilitates independence, and to receive a copy of her current support plan upon completion, without charge.
- (h) The right to receive at the interview written information including:
- a. The range and pricing of each of the services provided at the residence, including services provided directly and services provided through identified third-party providers.
 - b. The amount of rent for the resident's living unit, including any packaged services such as housekeeping, laundry and basic meals.
 - c. The rules, policies and procedures expected to be adhered to by all residents.
 - d. The current needs of the prospective resident, including any need for physician services and whether the licensee expects to be able to accommodate the current needs of the prospective resident, including any physician services needs.
 - e. The types of daily program activities and socialization opportunities offered through the assisted living residence.
 - f. The availability of health care and social services not provided at the assisted living residence but which are available in the community, such as hospice care, home health care, transportation and similar services to support a resident who is aging in place.
 - g. Any additional information required by the department.
- (i) The right to receive at or before the intake interview certain "mandatory disclosures" of important information, including:
- Contact information for:
- i. The department, for the purpose of obtaining information on the licensing requirements and licensing status of assisted living residences.
 - ii. The long-term care ombudsman, with information on the ombudsman's role and availability.
 - iii. The department's 24-hour hotline for making complaints, along with information on how a resident can make a complaint and the department's investigation process.
- b. A delineation of resident rights.
- c. The following additional information:
- i. A copy of the assisted living residence's policies and procedures affecting residents.
 - ii. Information regarding the assisted living residence's quality improvement program.
 - iii. Details about the internal dispute resolution process used by the licensee.
 - iv. Information on transfer and discharge policies.

- v. Copies of all charge schedules and rates, including those separate charges for each of the following: utilities, telephone, cable television, internet access, garage fees, maintenance or management services, minimum or extended meal plans, bed and linen fees, if any, and any additional services related to occupancy of the resident's unit; and assisted living services and cognitive support services.
- vi. A copy of the standardized form residency/services agreements that the resident will be asked to sign.
- vii. Written information regarding the "informed consent" process and protections.
- (j) The right to a standardized written admission/residency agreement in plain English that references the support plan that is completed and signed prior to or, in the event of an emergency admission, within 24 hours after admission.
- (k) The right to consult a department established "independent review panel" for guidance on an "informed consent" agreement, what it means, how it works, what to consider, and whether it is fair and appropriate.
- (l) The right to not be forced to contract for services that consumer does not want.
- (m) The right to rescind the residency agreement for up to 72 hours after the initial dated signature of the contract and pay only for the services received. rescission of the contract must be in writing addressed to the home.
- (n) The right to share a room with a spouse or significant other.

§ 2800.41. Notification of rights and complaint procedures.

- (d) The facility shall follow standardized complaint procedures developed by the Department, including procedures for how facilities complete an investigation of complaints filed by residents.
- (e) A copy of the resident's rights and complaint procedures shall be given to the resident and, if applicable, the resident's designated person upon admission.

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§ 2800.42. Specific rights.

- (c) A resident shall be cared for and treated with courtesy, dignity, respect and fairness.
- (d) A resident shall be informed of the rules of the residence and given 60 days' written notice prior to the effective date of a new residence rule.

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(i) A resident shall receive assistance in accessing health care services and securing transportation to these services.

(k) A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to access, review and request corrections to the resident's record. Access to records shall be provided immediately. A resident and the resident's designated person, and other individuals upon the resident's written approval shall have the right to purchase, at a cost not to exceed the community standard, photocopies of the resident's records or any portions of them within 24 hours of a request, excluding weekend days.

(m) A resident has the right to leave and return to the residence as she chooses.

(n) ↓

(n) A resident has the right to lock the door to her living unit and not be subjected to unannounced entries into her living unit.

(o) A resident has the right to terminate her residency at any time, with 14 days advance notice.

(o) A resident has the right to freely associate, organize and communicate privately with his friends, family, physician, attorney and other persons.

(p) A resident shall be free from any and all restraints, including chemical and physical restraints.

(v) A resident has the right to reside in the residence and receive services as reflected in the comprehensive assessment and support plan and as reflected in the residency and services agreement 65 days a year contracted for in the resident-residence contract.

(z) The resident has the right to choose all healthcare providers, including physicians and pharmacies.

(z) A resident has the right to freely contract for services from providers of resident's choosing at one's own expense, as long as caregiver complies with the residence's reasonable policies and procedures.

(aa) A resident has the right to reasonable accommodations of resident needs and preferences.

(bb) A resident has the right to refuse treatments or services prescribed or recommended

(cc) A resident has the right to self administer medications.

(dd) A resident has the right to file complaints, grievances, or appeals with any individual or agency and recommend changes in policy, home rules, and services without retaliation, intimidation or threat of discharge.

(ee) A resident has the right to not have the ALR or any ALR employee assume power of attorney or guardianship or representative payee. The right to choose to have the ALR or

Deleted: at times consistent with the residence rules and the resident's support plan

Comment: We recommend moving this to the discharge rights section

Deleted: A resident has the right to relocate and to request and receive assistance, from the residence, in relocating to another facility. The assistance must include helping the resident get information about living arrangements, making telephone calls and transferring records

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Deleted: receive services contracted for in the resident-residence contract

Deleted: his primary care physician.

Comments: The right to choose healthcare providers is fundamental. And, Act 56 only permits the facility to control the choice of supplemental healthcare providers. We are so disheartened by this provision of the law. Notwithstanding, the regulations must NOT exceed the scope of the law.

Comments: These recommended rights from (z) through (ww) evolve from 1) rights imbedded in other sections of the regulations, 2) correcting for bad outcomes (that have been experiences by consumers in the personal care home system with the same limited rights, 3) good examples from other states, and 4) concepts of fundamental fairness.

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ALR administrator serve as representative payee if and only if certain conditions are met. The ALR or administrator may not be appointed to serve as representative payee unless the resident, family, and legal representative are first given a standardized disclosure form provided by the department that explains the following: what representative payee means, that other agencies may be available to provide representative payee service for little or no fee (i.e., mental health associations, associations of retarded citizens (arc), etc.), that representative payee is voluntary, that the resident can terminate the representative payee relationship at any time, and how to terminate the relationship. This section must also include a provision that the administrator becoming the resident's representative payee cannot be a condition for admission.

- (ff) A resident has the right to receive all written and oral communications in a format that is accessible to persons with cognitive and sensory disabilities.
- (gg) A resident has the right to receive all written and oral communications in a language that is understood by the resident with limited English proficiency.
- (hh) A resident has the right to choose and involve a personal advocate.
- (ii) A resident has the right to notice to resident or designated person of a report of suspected abuse or neglect involving the resident.
- (jj) A resident has the right to age in place, including the right to receive hospice care where prescribed.
- (kk) A resident has the right to have records kept confidentially.
- (ll) A resident has the right to notice of and to challenge a waiver of regulations that are requested by an ALR and to challenge such request. In addition, residents should be given written notice of any waivers that are granted if there are being need to be rescinded.
- (mm) A resident has the right to view inspection reports, resident reports, fire safety approvals, violation reports, and other licensure and enforcement documents on file at the facility.
- (nn) A resident has the right to receive notice of violations and change in licensure status from the facility.
- (oo) A resident has the right to present the independent review panel about an informed consent agreement the facility wants the consumer to sign.
- (pp) A resident has the right to not be forced to share a room.
- (qq) A resident has the right to accessible design to maximize independence.
- (rr) A resident has the right to have and use assistive technology and to take it with them upon discharge or transfer.
- (ss) A resident has the right to have transportation provided or arranged to medical appointments or community and social activities of the resident's choosing.
- (tt) A resident has the right to conduct one's own ADLs or IADLs if so desire.
- (uu) A resident has the right to manage one's own financial affairs. The facility may not require a resident to deposit personal funds with the facility.
- (vv) A resident has the right to form or participate in a resident council.
- (ww) The right to terminate an informed consent agreement immediately without advance written notice.

§ 2800.42a – RESIDENTS' RIGHTS UPON DISCHARGE OR TRANSFER

- (a) from 2600.42(n) A resident has the right to relocate and to request and receive assistance from the home, in relocating to another facility. The assistance shall include helping the

Comment: We think it critical that discharge and transfer rights be separately listed.

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resident get information about living arrangements, making telephone calls and transferring records.

- (b) A resident has the right to decide the location to which resident will be discharged or relocated.
- (c) A resident has the right to Age in Place (which needs to be defined in the definitions section).
- (d) A resident has the right to terminate their residency or service agreement with 14 days advance written notice.
- (e) A resident has the right to a refund of the resident's pre-paid rent within 7 days of discharge in the event of an urgent or emergent transfer or discharge where less than 30 days notice is provided.
- (f) A resident has the right to a refund of the resident's pre-paid rent on the day of discharge in the case where 30 day notice has been provided.
- (g) A resident has the Right to a full accounting and to return of monies held by the facility (under financial management agreement with the resident) within 7 days of discharge.
- (h) A resident has the right to safe and orderly transfer and discharge consistent with 2800.228.
- (i) A resident has the right to remain in the facility to age in place, and to not involuntarily discharged unless the facility has documented that
 - a. the resident presents an imminent physical threat or danger to self or others which cannot be managed by interventions or service planning;
 - b. The resident has failed to pay a reasonable effort by the facility to obtain payment and is not eligible for publicly funded programs that can provide payment;
 - c. The resident has medical needs which cannot be met in an assisted living facility, even with all reasonable assistance from third party providers Or
 - d. The facility closes.
- (j) The resident shall have the right to choose among the available alternatives after an opportunity to visit the alternative facilities. These procedures shall apply even if the resident is placed in a temporary housing situation.
- (k) The resident shall have the right to appeal the discharge decision through the DPW administrative hearing process and to remain in the facility pending a decision in the appeal. The hearing shall be held within 30 days from the date of the appeal. In emergency situations, the Department shall provide for an interim telephone hearing within 3 business days, at which it shall be determined whether the resident may remain in the facility pending a full hearing. In the event that a resident is transferred from the facility pending a full hearing, the facility shall hold the resident's bed and/or waiver slot pending the full hearing.
- (l) A resident has the right to participate in decision around transfer to secured dementia unit.
- (m) A resident has the right to a 30 day room-hold while hospitalized or longer if continue to pay residency agreement/rental amounts owed.
- (n) A resident has the right to refuse a room transfer.

STAFFING

2800.50 Required Staff

Each residence shall at least have the following staff persons employed or under contract

- 1) administrator(s) at least one specified with staffing in accordance with 2800.56
- 2) direct care staff in amounts specified in 2800.--
- 3) ancillary staff as needed per 2800.---
- 4) on-call nursing as directed in 2800.---
- 5) dietician as required under 2800.---

§ 2800.56. Administrator staffing.

- (a) Each facility must have a specified administrator who meets the qualifications and training requirements herein.
- (b) The administrator shall be present in the residence on an average of 30 hours or more per week, in each calendar month. At least 30 hours per month shall be during normal business hours.
- (b) The administrator shall designate a staff person to supervise the residence in the administrator's absence. The designee shall have the same training required for an administrator.

§ 2800.57. Direct care staffing.

- (a) Direct care staff persons shall be available to provide at least 2 hours per day of assisted living services to each resident.
- (b) Actual Staffing hours provided by direct care staff above the minimum required in (a) shall be provided to meet the scheduled needs of the residents as specified in the resident's assessment and support plan plus sufficient allowance in extra staffing to meeting unexpected or medical needs of residents.
- (c) The direct care staffing level in this chapter is minimum only. The Department may require additional direct care staffing as necessary to protect the health, safety and well-being of the resident. Requirements for additional direct care staffing will be based on the resident's assessment and support plan, the design and construction of the residence and the operation and management of the residence.
- (d) ALRs shall use a department designed tool to "calculate" the hours. The Department can then use this measurement in its inspections process.

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

- (c) Additional staff hours, or contractual hours, shall be provided as necessary to meet the transportation, laundry, food service, housekeeping, activities, care coordination, and maintenance needs of the residence.

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Comments: As written, this is unworkable and must be corrected. (a) appears to permit the designee to wholly replace the administrator and under any obligation for the administrator ever to be onsite. This is also less stringent than the equivalent personal care home regulation. Additionally, the language in (a) as it relates to designees makes no sense as how could one reconcile a provision requiring a designee on site 30 hours a week with the requirement in (b) that there be a designee on site at all times the administrator is not. We recommend that the words "or designee" be removed.

Comment: We believe it is a mistake for the Department to hold on to the archaic terminology of "mobile" and "immobile" residents in determining staff levels. The terms are offensive and often do not accurately correlate to the amount of care a consumer actually needs.

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Comment: Moved from 2800.60 a and enhanced

Comment: Moved from 2800.60

Deleted: § 2800.57. Direct care staffing.¶

(a) At all times one or more residents are present in the residence, a direct care staff person who is 21 years of age or older and who serves as the designee shall be present in the residence. The direct care staff person may be the administrator if the administrator provides direct care services.¶

(b) Direct care staff persons shall be available to provide at least 1 hour per day of [personal care] assisted living services to each mobile resident. ¶

(c) Direct care staff persons shall be available to provide at least 2 hours per day of [personal care] assisted living services to each resident who has mobility needs.¶

... [1]

Comment: We moved (a) and (b) to 2800.57.

Deleted: (a) Staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan. Residence staff or service providers who provide services to the residents in the residence shall meet ... [2]

(d) In addition to the staffing requirements in this chapter, the residence shall have a licensed nurse on call at all times. The on-call licensed nurse shall be either an employee of the residence or under contract with the residence. A licensed nurse shall also be employed or under contract to participate in assessment and care planning as required herein.

(e) The residence shall have a dietician on staff or under contract to conduct menu and food preparation planning and oversight to provide for any special dietary needs of a resident as indicated in his support plan.

§ 2800.63. First aid, CPR and obstructed airway training

(d) A staff person who is certified in first aid or certified in obstructed airway techniques or CPR shall provide those services in accordance with his training, except not for procedures contraindicated by a resident's do not resuscitate order, if the resident has a do not resuscitate order issued by an attending physician and as permissible under state laws governing do not resuscitate orders..

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§ 2800.64. Administrator training and orientation

(a) Prior to initial employment as an administrator, a candidate shall successfully complete the following:

(2) AT LEAST 150-hour standardized Department-approved administrator training course. The training provided in § 2800.69 (relating to additional dementia-specific training) shall be in addition to the 150-hour training course.

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(b) The standardized Department-approved administrator training course specified in subsection (a)(2) must include the following:

(22) Care for individuals with mobility needs, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.

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(23) The requirements of this chapter.

§ 2800.65. Staff orientation and [Direct] direct care staff person training and orientation.

(f) Direct care staff persons may not provide unsupervised [ADL] assisted living services until completion of at least 75 hours of training in the following areas:

Comments: Pennsylvania requires 300 hours of training and passage of a state board exam before a person can be a make-up artist. We certainly need more than 18 hours in the critical care of our loved ones. We urge you to increase these hours.

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§ 2800.83. Temperature.

(a) The indoor temperature, in areas used by the residents, must be at least 70° F in the winter and no warmer than 75° F in the summer when residents are present in the residence.

Comment: In addition to (b) and (c), (a) must be revised to be sure that facilities do not get too hot during the summer.

§ 2800.96. First aid kit.

(a) The residence shall have at least one first aid kit on each floor in each building on the premises that includes [an automatic electronic defibrillation device,] nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, adhesive tape, scissors, breathing shield, eye coverings and tweezers. The residence shall have an automatic electronic defibrillation device located in each building on the premises.

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- (b) Staff persons shall know the location of the first aid kits.
- (c) The first aid kits must be in a location that is easily accessible to staff persons.

§ 2800.98. Indoor activity space.

(a) The residence shall have common rooms for all residents for activities such as reading, recreation and group activities. One of the common rooms shall be available for resident use at any time, provided the use does not affect or disturb others.

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(d) All common areas and hallways must be wheelchair accessible.

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§ 2800.101. Resident living units.

(a) A residence shall provide a resident with the resident's own living unit unless the conditions of subsection (c) are met.

(b)(1) Each living unit for a single resident must have at least 250 square feet of floor space measured wall-to-wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.

Deleted: For new construction of residences after ____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), each

...

(e) Ceiling height in each living unit must be no less than 7 feet for any space that will be counted towards the required square footage of a living unit.

Deleted: (2) For [residences] facilities in existence prior to ____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), each living unit must have at least 175 square feet measured wall to wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 80 square feet in the living unit.]

...

(j) Each resident shall have the following in the living unit:

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(4) A storage area for clothing that includes a chest of drawers and a closet or wardrobe space with clothing racks or shelves accessible to the resident.

(5) A bedside table or a shelf.

(6) A mirror.

(7) An operable lamp or other source of lighting that can be turned on at bedside.

(8) If a resident shares a bedroom with another resident, the items specified in paragraphs (4)--(7) may not be shared with ~~that~~ other resident.

Comment: It is not consistent with the assisted living philosophy to make two residents share dresser drawers and a single reading lamp. Autonomy, dignity, and privacy necessitate that residents have their own space and get to make decisions about such things as when it is time for lights out.
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§ 2800.109. Pets.

(a) The residence rules must specify whether the residence permits pets on the premises. Service animals must be permitted.

§ 2800.130. Smoke detectors and fire alarms.

(a) There shall be an operable automatic smoke detector located in each living unit, in addition to those located in common areas, storage rooms, laundry rooms, dining rooms, and kitchen areas.

§ 2800.141. Resident medical evaluation and health care.

(b) A resident shall have a medical evaluation:

(1) At least every 6 months.

(2) If the medical condition of the resident changes prior to the 6 month medical evaluation.

(3) Immediately following any hospitalization and again 30 days following discharge from the hospital.

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§ 2800.142. Assistance with [health] medical care and supplemental health care services.

(b)

(ii) To the extent prominently displayed in the written admission agreement, a residence may require residents to use providers of supplemental health care services approved or designated by the residence if it can make a showing that the resident's choice of provider is not insured, is not in good standing with its licensing agency, or is unwilling to follow residence rules..

(iii) If the resident has health care coverage for the supplemental health care services, access to participating providers shall not be restricted. Access to resident choice of provider may not be unreasonably or unlawfully withheld.

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(iv) The residence shall document the resident's need for the medical care and supplemental health care services, including updating the resident's assessment and support plan.

§ 2800.161. Nutritional adequacy.

(a) Meals shall be offered that meet the recommended dietary allowances established by the United States Department of Agriculture. Meal planning and preparation shall be under supervision of a staff or consulting dietician.

§ 2800.171. Transportation.

(d) If a residence supplies its own vehicles for transporting residents to and from medical and social appointments, a minimum of one vehicle used for this purpose shall be accessible to resident wheelchair users and any other assistive equipment the resident may need. The residence must ensure that contractors and arranged transportation is accessible to resident wheelchairs and assistive devices.

MEDICATIONS

§ 2800.181. Self-administration.

(e) To be considered capable to self-administer medications, a resident shall:

(3) Be able to use the medication as prescribed in the manner prescribed, for example, including but not limited to being capable of placing medication in own mouth and swallowing completely, applying topical medications and not disturbing the application site, properly placing drops in own eyes, correctly inhaling inhalants, and properly inhaling nasal therapies

(4) Know when medications to be taken.

§ 2800.202. Prohibitions.

(5) A mechanical restraint, defined as a device that restricts the movement or function of a resident or portion of a resident's body, is prohibited. Mechanical restraints include geriatric chairs, handcuffs, anklets, wristlets, camisoles, helmet with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets, chest restraints, bed rails, and other types of locked restraints. A mechanical restraint does not include a device used to provide support for the achievement of functional body position or proper balance that has been prescribed by a medical professional as long as the resident can easily remove the

device or the resident or his designee understands the need for the device and consents to its use.

§ 2800.203. Bedside rails.

[(a)] Bedside rails may not be used unless the resident can raise and lower the rails on his own. Bedside rails may not be used to keep a resident in bed. Use of any length rail longer than half the length of the bed is considered a restraint and is prohibited. Use of more than one rail on the same side of the bed is not permitted.

[(b)] Half-length rails are permitted only if the following conditions are met:

- (1) A physician has completed an assessment during the past six months and completed a signed, time-limited, written order for the use of the rails which specifies the specific medical symptoms that warrant the use of bedside rails;
- (2) The rails meet Food and Drug Administration safety guidelines;
- (3) Staff persons complete a physical check of each resident who uses a half-length rail at least every 15 minutes during the time the bedside rail is in use;

(1) The resident's assessment or support plan, or both, addresses the medical symptoms necessitating the use of half-length rails and the health and safety protection necessary in order to safely use half-length rails.

(2) The residence has attempted to use less restrictive alternatives.

(3) The resident or legal representative consented to the use of half-length rails after the risk, benefits and alternatives were explained.]

SERVICES

§ 2800.220. [Assisted living residence services] Service provision.

[(c)] (d) Supplemental health care services. The residence shall provide or arrange for the provision of supplemental health care services by a licensed provider, where such a license exists, including, but not limited to, the following:

(f) Residents may contract with outside providers to provide scheduled assistance with ADLs and scheduled assistance with supplemental health care services and all assistance with IADLs.

§ 2800.224. [Preadmission screening.] Initial assessment and preliminary support plan.

(5) The written initial assessment shall, at a minimum include the following:

Comments: As agreed to during negotiations with the providers, we would support the complete prohibition of bedrails. If this is not done, then the state must leave in (b) and add the language we have included which is nothing less than the PCH standard.

- (i) The individual's need for assistance with ADLs and IADLs.
- (ii) The mobility needs of the individual.
- (iii) The ability of the individual to self-administer medication.
- (iv) The individual's medical history, medical conditions, and current medical status and how they impact or interact with the individual's service needs.
- (v) The individual's need for supplemental health care services.
- (vi) The individual's need for special diet or meal requirements.
- (vii) The individual's ability to safely operate key-locking devices.
- (viii) The individual's ability to evacuate from the residence.

Comment: We strongly support this articulation.

§ 2800.225. [Initial and annual] Additional assessments.

(c) The administrator or designee, or licensed practical nurse, under the supervision of a registered nurse, or a registered nurse shall complete [the resident shall have] additional written assessments for each resident as follows:

(1) Quarterly.

Deleted: Annually

(2) Immediately following the admission or if the condition of the resident significantly changes prior to the quarterly assessment. Change in condition may include, but is not limited to, skin breakdown, falls, assaultive behaviors, new medical diagnosis requiring revised care plan, or the onset of confusion or worsening confusion with decrease in functional (ADL and IADL competencies).

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(3) At the request of the Department upon cause to believe that an update is required.

§ 2800.227. Development of the final support plan.

(k) The residence shall give a copy of the support plan to the resident and the resident's designated person. [The final support plan shall be attached to or incorporated into and serve as part of the resident-residence contract.]

Comment: We strongly support this.

§ 2800.228. Transfer and discharge.

(b)

(1) The resident or his designated representative may appeal the discharge decision through the DPW administrative hearing process and to remain in the facility pending a decision in the appeal. The hearing shall be held within 14 days from the date of the appeal. In emergency situations, the Department shall provide for an interim telephone hearing within 3 business days, at which it shall be determined whether the resident may remain in the facility pending a full hearing. In the event that a resident is transferred from the facility pending a full hearing, the facility shall hold the resident's bed and/or waiver slot pending the full hearing.

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(1) The 30-day advance written notice must be written in language in which the resident understands, or performed in American Sign Language or presented orally in a language the resident understands if the resident does not speak standard English. The notice must include the following:

(vi) A statement in not smaller than 12-point bold type of the right to appeal that reads, "You have the right to appeal the assisted living residence's decision to transfer you. If you think you should not have to leave this facility, you may file a written request for a hearing with the Pennsylvania Department of Public Welfare, postmarked within ten (10) days after you receive this notice. If you request a hearing, it will be held within twenty-three (23) days after you receive this notice. If you request a hearing, you will not be transferred from the residence before a decision is reached by the hearing officer and you will only be transferred from the residence if the hearing officer agrees with the residence's decision to discharge you. If you wish to appeal this transfer or discharge, a form to appeal the residence's decision and to request a hearing is attached. If you have any questions, call the Pennsylvania Department of Public Welfare at the number listed below".

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(vii) The name of the director and the address, telephone number, and hours of operation of the division.

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(viii) A hearing request form prescribed by the department.

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(ix) The name, address, and telephone number of the state and local long term care ombudsman.

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(x) For residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection and advocacy currently known as the Disability Rights Network.

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(i) If grounds for transfer or discharge is based upon subsection h (1) or (3), a certification from one of the following individuals shall be required to certify that the individual can no longer be retained in the residence.

Comment: We support this addition.

(1) The administrator acting in consultation with supplemental health care providers.

(2) The individual's physician or certified registered nurse practitioner.

(3) The medical director of the residence.

§ 2800.229. Excludable conditions; exceptions.

(d) Certification providers. The following persons may certify that an individual with an excludable condition may not be admitted or retained in a residence and, likewise, must certify that an individual may be safely served in a residence where if the residence follows its proposed plan to meet the resident's needs:

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- (1) The administrator acting in consultation with supplemental health care providers.
- (2) The individual's physician or certified registered nurse practitioner.
- (3) The medical director of the residence.

(f) Request for exception by resident. A resident may petition the facility to apply for an exception from the Department for a condition listed in this section for which an exception must be granted by the Department. The residence's determination on whether or not to seek such an exception shall be documented on a form supplied by the Department.

Deleted: Nothing herein prevents an individual seeking admission to a residence or a resident from requesting that the residence

§ 2800.235. Discharge.

§ 2800.251. Resident records

(e) Resident records shall be made available to resident and family members following transfer, relocation or death of a resident.

Comment: We should delete this section. The discharge section of 2800.228 should apply here too.

Deleted: (a) If the residence initiates a discharge or transfer of a resident, or the legal entity chooses to close the residence, the administrator shall give a 30-day advance written notice to the resident, the resident's designated person and the referral agent citing the reasons for the discharge or transfer. This requirement shall be stipulated in the resident-residence contract signed prior to admission to the special care unit

§ 2800.262. Penalties and corrective action.

(a) Upon finding violations of this chapter or other applicable laws, the Department will issue a notice of violations to the residence.

(b) The residence shall submit a written plan of correction indicating how it will correct the violation, how it will address the cause of the violation, and how it will prevent recurrence of the violation.

(c) The department will promptly determine whether the plan of correction will bring about meaningful compliance and approve or deny the plan accordingly.

(d) The Department will assess a penalty for each violation of this chapter.

(e) Penalties will be assessed on a daily basis from the date on which the citation was issued until the date the residence proves that the violation is corrected, except in the case of Class II and Class III violations. Additional Class II violations will be cited for failure to comply with a plan of correction or for false documentation of compliance with a plan of correction.

Deleted: (b)

(f) In the case of a Class II violation, assessment of the penalty will be suspended for 5 days from the date of citation to permit sufficient time for the residence to correct the violation. If the residence fails to provide proof of correction of the violation to the Department within the 5-day period, the fine will be retroactive to the date of citation. The Department may extend the time period for good cause.

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(g) The Department will assess a penalty of \$20 per resident per day for each Class I violation. Each Class I violation shall be corrected within 24 hours.

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(h) The Department will assess a minimum penalty of \$5 per resident per day, up to a maximum penalty of \$15 per resident per day, for each Class II violation.

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(i) There is no monetary penalty for Class III violation unless the residence fails to correct the violation within 15 days. Failure to correct a Class III violation within the 15-day period may result in a penalty assessment of up to \$3 per resident per day for each Class III violation retroactive to the date of the citation.

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(j) If a residence is found to be operating without a license, a penalty of \$500 will be assessed. After 14 days, if the residence operator cited for operating without a license fails to file an application for a license, the Department will assess an additional \$20 for each resident for each day during which the residence operator fails to apply.

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(k) A residence charged with a violation of this chapter or Chapter 20 (relating to licensure or approval of facilities and agencies) has 30 days to pay the assessed penalty in full.

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§ 2800.57. Direct care staffing.

(a) At all times one or more residents are present in the residence, a direct care staff person who is 21 years of age or older and who serves as the designee shall be present in the residence. The direct care staff person may be the administrator if the administrator provides direct care services.

(b) Direct care staff persons shall be available to provide at least 1 hour per day of [personal care] assisted living services to each mobile resident.

(c) Direct care staff persons shall be available to provide at least 2 hours per day of [personal care] assisted living services to each resident who has mobility needs.

(d) At least 75% of the [personal care] assisted living service hours specified in subsections (b) and (c) shall be available during waking hours.

(a) Staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan. Residence staff or service providers who provide services to the residents in the residence shall meet the applicable professional licensure requirements.

(b) The staffing level in this chapter is minimum only. The Department may require additional staffing as necessary to protect the health, safety and well-being of the residents. Requirements for additional staffing will be based on the resident's assessment and support plan, the design and construction of the residence and the operation and management of the residence.