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Pennsylvania Association of Elder Law Attorneys

A State Chapter of the National Academy of Elder Law Attorneys

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July 27, 2009

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

To the Office of Long Term Living:

The Pennsylvania Association of Elder Law Attorneys hereby submits the following comments on the interim draft 2800 Regulations for Assisted Living Facilities. We appreciate having the opportunity to comment, and want to commend the Office of Long Term Living for the important improvements it has made in this draft.

We have reviewed and fully support the comments and concerns submitted by PALCA. We strongly urge you to take them into account in the final regulations. In particular, we want to stress the following:

1. Other than involving the Ombudsman, the regulations offer no course of action that provides a consumer with an avenue of appeal to any adverse decision. Under the Assisted Living system outlined in the interim draft regulations, a consumer and their legal practitioner or Agent has no practical way to challenge a denial of admission or a decision to discharge. Consumers must have the right to appeal and a process through which to challenge the decisions made by a facility relating to the extent of their care, the cost of their care, and the basis for terminating the care delivery and requiring discharge. Protections should also be in place whereby a resident is not evicted from a residence without a prior hearing by an appropriate tribunal.
2. We believe the interim draft regulations offer a clearer method of distinction between personal care and assisted living with greater clarity on the services one can expect to receive and with defined benefit packages. However, the dual licensure provisions added to the interim draft do not specify how dually licensed facilities must behave in their marketing to consumers. It is imperative that consumers not be misinformed and misled as to what type of facility they are entering and what services they can expect.

*Certified Elder Law Attorney by the National Elder Law Foundation
as authorized by the Pennsylvania Supreme Court*

3. The most likely inhabitants of assisted living facilities will be the frail elderly. This population is easily influenced, and often more easily deceived. Some seek the counsel of attorneys before making life-changing decisions but many do not. Some have appointed a legal Agent, or have close family who can advise them; but this is not universally so. Elderly consumers need to be protected against deceptive practices that cause them to believe certain services are available that are not. Some measure of safe-guards that require a facility to adhere to "truth in advertising" should be a part of the Regulations.

4. The informed consent provisions in § 2800.30 (a-j) are insufficient to protect the rights of the resident/consumer when a dispute occurs over resident behaviors and choices. The waiver of residence liability through the "informed consent" process articulated in the interim draft regulations is a very serious step that should not be taken without appropriate counsel to the resident or their legal representative. A full and complete disclosure to the resident and their representative as to the care planning alternatives available should be made in writing to the resident prior to any negotiation meeting. Further, a procedure should be established for monitoring the use of these agreements and the repercussions to consumers for refusal to sign.

Thank you for the opportunity to comment on these important regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Marielle F. Hazen", with a stylized flourish at the end.

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