

2712

L20 ✓



RECEIVED

JUL 3 1 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

July 23, 2009

Bill White
Office of Long Term Living
Bureau of Policy & Strategic Planning
P.O. Box 2675
Harrisburg, Pa. 17105

Re: Assisted Living Comments

Dear Mr. White:

PACAH, the Pennsylvania Association of County Affiliated Homes, appreciates the opportunity to offer comments on this latest draft of the final-form regulations governing assisted living in Pennsylvania. PACAH represents all county nursing facilities in the Commonwealth, as well as other not for profit and for profit facilities. As we have followed the debate and the process over the years to get us to this point in the development of regulations, PACAH continues to be very concerned about the final product. We believe there is a high likelihood of many existing personal care homes deciding not to become licensed as assisted living facilities, which will lay the groundwork for a two-tiered system – assisted living facilities for the private pay resident and personal care homes for the Medicaid or indigent residents.

In fact, within PACAH, several facilities that currently operate personal care homes have indicated they have no plans to seek assisted living licensure. This brings up an important point within the assisted living regulations: Nothing in these regulations should be construed to require a personal care home that meets the requirements of the personal care regulations to seek licensure as an assisted living facility.

There is also a concern that sections of these regulations, especially related to informed consent, have the effect of reinterpreting the law, and create more onerous liabilities for facilities.

Some specific comments:

2800.3 Inspections & Licenses – Item © was deleted from this draft – it should be added back.

2800.4 Definitions

Agent – This definition is too broad and needs refined.

Ancillary Staff Person – What is the reason for this definition? What purpose does it serve?

Appropriate Assessment Agency – This definition is also too broad, especially in reference to the “individual in an occupation maintaining contact...”

Exemplary Compliance – Why was this deleted? It should be added back.

Informed Consent Agreement (iii) – Why was this deleted? It should be added back.

2800.5 Access (b) – Define better what “access to the residence” means.

2800.11 Licensing Fees – While the fees have been lowered they are still excessive and are more expensive than all but one other state.

2800.16 Reportable Incidents and Conditions – (20) – Very subjective – it needs to be deleted or defined better.

2800.19 Waivers (b) – How long does the Department have to issue a decision on a waiver request?

2800.22 Application & Admission – (a) Requiring this information 30 days prior to admission is unrealistic.

(d) This section should be deleted. These are regulations for assisted living, not nursing facilities.

2800.26 Quality Management – (b) – The underlined section relates to a legal standard that doesn't need to be there – recommend deletion.

2800.30 Informed Consent – (i) Remove the last two sentences that were added to this paragraph. In addition the emphasis seems to have shifted from a mutual agreement between the residence and the resident to an agreement favoring the

resident. This is important and may be sufficient enough to cause some existing personal care homes to not seek an assisted living license.

2800.56 Administrator Staffing – (a) Delete 40 hours per week requirement. That may not be the normal work week of the facility.

2800.63 First Aid, CPR and Obstructed Airway Training – (a) Delete the one to 20 requirement.

2800.82 Poisons – (c) – Revise to say Dementia unit instead of residence.

2800.101 Resident Living Units – (b) (1) – The 250 square foot requirement will be problematic for facilities to comply. (d) – The main concern regarding a microwave is the ability of the resident to safely use the appliance.

2800.132 Fire Drills – It is not clear whether all residents are to be evacuated. It should not be a requirement that they need to leave the facility.

2800.143 Emergency Medical Plan (a) (1) – The entity used must be willing to comply with assisted living regulations.

2800.144 Use of Tobacco – Is this section consistent with Pennsylvania’s new smoking law?

2800.171 Transportation – (d) and (e) – These times are too prescriptive and may be out of control of facility to comply.

2800.220 Service Provision – The inclusion of many services in the core service package may have the unintended effect of limiting the numbers of people interested in such services. If many services are included in the core services package the cost will be higher than a “pick and choose” approach to services. How is this section alike/different from existing personal care regulations. Will there be a clear distinction so a consumer knows the difference? Also (7) should be deleted.

2800.224 Initial Assessment & Preliminary Support Plan – There appears to be duplication between the initial assessment and preliminary support plan creating duplicative work load for the facility.

2800.227 Final Support Plan – (e) – What is the rationale for adding “...ability of the resident to safely operate key-locking devices”?

2800.228 Transfer & Discharge – (2) – The facility should retain the ability to say who provides services. For example what happens if the private duty nurse or physical therapist does not show up for the services?

2800.229 Excludable Conditions; Exceptions – (b) Care must be taken to be in compliance with HIPAA and personal health information if the Department grants an exception that is resident specific.

2800.231 Admission – With the emphasis on special care units in these regulations, will personal care homes be allowed to continue to operate special care units? What would be the difference between the two? (g) Spouse, friend or family member is a very broad definition and could pose difficulties for those facilities with a small special care unit.

2800.266 Revocation or Nonrenewal of Licenses – (f) More clarification is need for this section.

Sincerely,

Michael J. Wilt
PACAH Executive Director
17 North Front Street
Harrisburg, Pa. 17101