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creating the future of aging services for pennsylvania

panpha
an association of nonprofit senior services

July 24, 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

RE: Proposed Assisted Living Residence Regulatory Package

Dear Secretary Hall:

PANPHA, an association of more than 370 non-profit senior services providers, 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. As a designated member of the Department's working group on these regulations, we appreciated the opportunity to participate in all meetings of the working group, which was convened by the Department of Public Welfare to provide input on the content of the proposed Assisted Living Regulations. In spite of the additional revisions made as a result of the most recent discussions between the Department, the Pennsylvania Assisted Living Consumer Alliance (PALCA), and provider representatives, PANPHA continues to have significant reservations about this regulatory package as proposed **still do not believe that the benefits of the proposed regulations for Assisted Living Residences outweigh the significant increases in cost and lost access to the Assisted Living level of care that they are likely to cause.**

We have heard overwhelmingly from experts in the profession and our members, that the proposed changes would do little to improve the health or safety of the 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, homes must increase costs to the resident, reduce care and services, or allow the costs to impact the viability of the provider. As non-profit providers, PANPHA members already provide significant subsidies so that they can continue to provide the care and services residents need. Further burdening providers with deeper revenue shortfalls jeopardizes the availability of a level of care that is already a predominantly private pay phenomenon.

As a matter of equal concern, PANPHA believes 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, PANPHA 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 PANPHA'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 for Pennsylvania's seniors of all income levels.

Below is the list of PANPHA's most significant concerns with the proposed regulations:

1. **Licensure Fees**: PANPHA 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 the provider. Organizations interested in providing Assisted Living Services would still be met with a cost prohibitive entrance fee into the market – resulting in many of PANPHA's 370 member, state-wide organizations taking the discussion of ALR licensure off the table. A 100 bed facility would have to divert $7,800.00 allocated to Resident care services to even apply for licensure. Our members are unwilling to take those vital dollars away from resident care only to meet an arbitrary licensure fee. It is still a significant barrier to entrance and will result in large areas of the Commonwealth left without Assisted Living Services.

2. **Bundling of Core Services**: The proposed bundling of "Core Services" in this version of the proposed regulations represents a radical departure from the previous proposal. PANPHA believes this section is now more onerous and will not support it as written.

   As previously stated, PANPHA 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.

PANPHA strongly urges the Department to reevaluate this section in its entirety and closely examine our recommended language. Otherwise, renewing our previous stance, it will be difficult for us to support passage of this regulatory package.

3. **Administrator Requirements**: PANPHA applauds the Department's attention to our concern about this issue and their attempt to clarify the language dealing directly with Administrator requirements. 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.

   PANPHA urges 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. PANPHA is 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, PANPHA 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.

   With these simple elaborations, PANPHA could support this provision as proposed.

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 PANPHA and our members.

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.

   PANPHA strongly suggests that facilities and providers be afforded the greatest flexibility possible in order to meet the needs of their residents. Accordingly

PANPHA recommends that the regulations permit providers to licensure their facilities by door. This flexibility will allow facilities that have suites or pockets of rooms that will not meet all of the physical plant requirements for assisted living units to license those as Personal Care rooms.

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

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 pre-condition 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. Our proposed revision provides the residence, which is ultimately responsible and potentially liable for actions occurring in the residence, the operational flexibility to address the presenting problem.

   The proposed revision also reflects the statutory intent of the legislation as it relates to releasing the residence, "from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement". The language in Act 56 on this matter could not be more clear, and we fear that the proposed regulation is an attempt to dilute the clear intent of the legislature. The changes in the proposed revision not pertaining to liability serve to balance the rights of the residents, the residence and the residence's obligations to its other residents. The proposed revisions support the belief that resident input is necessary and appropriate in this process, but any final clinical judgment, pertaining to the informed consent agreement, must be in the hands of the professional.

9. **Proposed Regulations Ignore Key Provisions of Act 56 of 2007**: The Department's proposed regulations at several points either exceed the authority granted by Act 56 of 2007 or are contrary to the statute. Those areas include:
   a. **TRANSFER AND DISCHARGE.** The proposed regulations exceed the statutory framework with regards to transfer and discharge. Act 56 clearly notes that the residence, through its medical staff and administration, will determine what services it is comfortable having provided on its campus, and

when it feels the needs of the resident can no longer be served at that level may initiate a transfer in Section 1057.3(f) and Section 1057.3(h). The regulations at 228(b)(2) counter the statutory framework when it mandates that the "residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services."

b. **USE OF OUTSIDE PROVIDERS.** Supplemental health care service provision is another area in which the regulations deviate from what the legislature intended. The legislation states that the provider "may require residents to use providers of supplemental health care services designated by the assisted living residence," so long as it is stated in the contract. Section 1057.3(a)(12). The regulations in Section 142(a) scale back the clearly articulated right of providers to designate preferred providers in contradiction to the statute.

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

THE FOLLOWING ARE PANPHA'S DETAILED COMMENTS ON THE PROPOSED ASSISTED LIVING REGULATIONS.

2800.3(b): The proposed regulations give the Department very broad authority to survey Assisted Living Residences. The language permits the Department to survey a residence at any time, without and standard for justification, and as frequently as it wishes. No other long-term care provider is subject to such a standard. PANPHA proposes that the regulations require annual surveys, with additional inspections when evidence of reliable complaint.

Suggested Language

3(b) Additional announced or unannounced inspections may be conducted [at] by the Department[~~'s discretion~~] **upon receipt of reliable information suggesting the existence of harmful conditions at the residence**.

2800.3(c): <u>This is a statutory requirement.</u> The statute clearly instructs the Department to conduct "an abbreviated licensure visit in the assisted living [if the] residence has established a history of exemplary compliance. The language should remain intact to provide the Department future ability to develop a program of monitoring rather than return to the regulations at some future date. **The removal of this language in the proposed regulation is unacceptable to PANPHA and its members.**

> ***Suggested Language***
> **<u>3(c) The Department may conduct an abbreviated annual licensure visit if the assisted living residence has established a history of exemplary compliance.</u>**

2800.4 Definitions

Appropriate Assessment Agency: The current definition fails to provide for Hospital social workers and other licensed staff to be able to conduct necessary assessments. PANPHA recommends the insertion of "or organization" to overcome this issue.

> ***Suggested Language***
> *Appropriate assessment agency*--An organization serving adults who are older or adults with disabilities, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency or an individual **<u>or organization</u>** **<u>[</u>**~~in an occupation~~**<u>]</u>** maintaining contact with adults who are older and adults with disabilities, such as medicine, nursing or rehabilitative therapies.

Basic Cognitive Support: By the very nature of the definition of "Basic" one cannot reasonably include a component such as "Specialized communication techniques." This could require the professional use of a licensed Speech Therapist or Behavioral Therapist, neither of which are basic.

> ***Suggested Language***
> ~~(vi) Specialized communication techniques.~~

Common Living Area: The requirements of this definition are somewhat unclear with regard to the swimming area. In section 2800.106, swimming areas appear to be an optional amenity that a residence may choose not to install. However, the language in the definition of "common living area" does not explicitly state that swimming areas are optional. Therefore, PANPHA recommends the following change

> ***Suggested Language***
> (iv) swimming area**<u>, if present in the residence</u>**

Department: With the passage of HB 1152 of 2009, and introduction of similar bills in the Senate, it is likely that the licensure function of Assisted Living Residences will reside within the newly reorganized Department of Aging and Long Term Living

Services. PANPHA believes it is more prudent to address this likelihood now, as opposed to attempting to revisit the definition in some future regulatory fix.

> ***Suggested Language***
> ***Department*** **– The Department of the Commonwealth of Pennsylvania legally charged with the licensure function for Assisted Living Residences.**

Distinct Part: Currently the Department has not included a definition for how compliance will be measured when surveying a "distinct part" of an assisted living residence. For clarity and uniformity, PANPHA would support the suggested definition.

> ***Suggested Language***
> *Distinct Part*—~~[A portion of a building that is visually separated such as a wing or floor.]~~ **Any combination of two or more contiguous or neighboring rooms, including rooms that are across from each other in the same hall, which meet or exceed the physical plant standards established for Assisted Living Residences within this regulation and that the residence has set aside for the provision of assisted living services. These rooms shall be clearly delineated on the Residence's floor plan printout, which will be provided to the Department's licensing agents at time of inspection.**

Dual Licensure: **This is a statutory requirement.** Act 56 of 2007 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. To avoid future inconsistencies, PANPHA suggests the inclusion of a definition.

> ***Suggested Language***
> ***Dual Licensure*—A facility may be licensed as both an Assisted Living Residence and as a Personal Care Home. The facility shall prominently display both the Assisted Living Residence license and the Personal Care Home license in a public area. The rooms covered by the Assisted Living Residence license shall be contained within a distinct part of the facility (as defined in this subsection), and shall be in compliance with all regulations attendant to Assisted Living licensure. All inspections of dually licensed facilities shall be conducted by a team of surveyors comprised of both personal care home and assisted living residence surveyors, and coordinated to be at the same date and time so as to provide minimal disruption to the facility's operations and delivery of care. All violations of the Assisted Living Regulations must be noted by the Assisted Living survey team, and all violations of the Personal Care Home Regulations must be noted by the Personal Care Home survey team. A violation cited by the Assisted Living survey team of the Assisted Living Residence does not necessitate the citing of a violation of the Personal Care Home by the Personal Care Home survey team.**

Exemplary Compliance: **This is a statutory requirement.** This provision is designed to allow the Department to focus its resources on consistently poorly performing providers. However, it is important to note that not all deficiencies relate to poor quality of care. Accordingly, when defining "Exemplary Compliance" perfect compliance for an arbitrary number of years should not be the standard. Rather, the regulations should allow abbreviated inspections for facilities that are free of deficiencies that substantively and directly impact upon the health and welfare of the resident.

Suggested Language
Exemplary Compliance- **Two** ~~three~~ consecutive years of ~~deficiency-free~~ inspections **which are free of deficiencies that substantively and directly impact upon the health and welfare of the resident**.

Informed Consent Agreement: **This is a statutory requirement.** PANPHA did not object to the definition of "Informed Consent Agreement" in the Department's publication of the proposed 2800 regulations on August 9, 2008 because the definition clearly indicated that part of this process was to document the resident's "choice to accept or refuse a service offered" by the Assisted Living Residence. PANPHA finds this to be an important component of the process of developing an informed consent agreement, as the statue clearly speaks to this. PANPHA therefore urges the department to reinsert subparagraph (iii) from the original proposed regulatory publication into the final regulatory publication.

Suggested Language
(iii) Documents the resident's choice to accept or refuse a service offered by or at the residence.

Poison: PANPHA encourages the Department to provide a definition for poisons in order to avoid any inadvertent deprivation of resident's rights to possess personal toiletry items such as hairspray, deodorant, perfume and cologne. Given recent interpretation difficulties with the Personal Care Home regulations, PANPHA strenuously urges the addition of clarifying language for poisons in the regulatory package.

Suggested Language
Any substance that causes injury, illness, or death when ingested. Personal hygiene and toiletry products—including, but not limited to, shampoo, toothpaste, hand sanitizer, and soaps—are exempted from this definition.

Third Party Provider: The current definition provided is much too broad, essentially encompassing any person, other than visitors, that provide services to the residents of an assisted living residence. The definition currently would include such persons as landscapers, construction subcontractors, and the like. PANPHA supports this definition if its intent is clarified to apply only to those persons providing direct care services to the resident.

Suggested Language
Third Party Provider—Any contractor, subcontractor, agents or designated providers under contract with the resident or residence to provide **direct care** services to any resident.

2800.5(a) Access–PANPHA is concerned with mandating access to organizations or individuals to information on residents that could be sensitive in nature. In particular, any record involving medical information could lead to HIPPA violations. PANPHA asks that language be included that resident records and information would be provided appropriate levels of confidentiality consistent with federal and state law.

Suggested Language
5(a) The administrator or a designee shall provide, upon request immediate access to the residence, the residents and, records—**provided such access is consistent with federal and state confidentiality law and regulation, including but not limited to HIPPA provisions**—to:

2800.11(c): The licensure fees proposed in this section represent an extraordinary increase over current fees, and are out of step with licensure fees nationwide. Currently, Assisted Living Residences are licensed as Personal Care Homes. Personal Care Homes have a tiered licensure whereby a residence with 20 beds or less pay $15.00, a 21-50 bed residence pays $20.00, a 51-100 bed residence pays $30.00, and a residence with over 100 beds pays $50.00. Under the proposed regulations, a 100 bed residence will pay a flat licensure fee of $300.00, with an additional bed assessment of $7,500.00, for a total licensure fee of $7,800.00.

Suggested Language:
(c)After the Department determines that a residence meets the requirements for a license, the Department's issuance or renewal of a license to a residence is contingent upon receipt by the Department of the following fees based on the number of beds in the residence as follows:
(1) A $300.00 license application or renewal fee.
(2) A ~~$75.00~~ **$10.00** per bed fee that may be adjusted by the Department ~~annually at a rate not to exceed the consumer price index~~ **proportionately to increases in Medical Assistance reimbursement for Assisted Living services**. The Department shall publish a notice in the Pennsylvania Bulletin when the per bed fee is increased.
No Assisted Living Residence shall be required to pay more than $1000.00 when aggregating the $300.00 license application or renewal fee in paragraph (1) and the per bed fee in paragraph (2).

2800.11(g)(1): This section is particularly disturbing to PANPHA's members – the potential operators of assisted living residences. As written, no current Personal Care Home resident who has outspent their resources and is the beneficiary of benevolent care by a non-profit facility would be permitted to apply for an ALR waiver and be "transferred" to a unit licensed as an assisted living unit. With a great number of

residents of our member's facilities receiving benevolent care, many would likely seek waiver assistance for their long term care. **PANPHA strongly recommends that the words "or transfer" be removed.**

Suggested Language
11(g)(1) A facility that is dually licensed shall not segregate [~~or transfer~~] residents from one licensed facility to another based on payment source.

2800.12: PANPHA encourages the Department to insert language that would provide for the approval of waivers if the provider does not receive a response to the waiver request within the 30 day time period provided in subsection .12(b).

Suggested Language
12(d) The Department has 120 days from the filing of the appeal to render a decision or the appeal will be deemed approved.

2800.16(a)(3): The provision as proposed is taken from the 2600 Personal Care Home regulations, but adds the requirement that illnesses requiring treatment at a hospital or medical facility also be reportable. PANPHA does not believe that the addition of illness to reportable incidents is necessary. Residents in Assisted Living Residences will be old, frail individuals who will be susceptible to illness. Often times, these individuals will be receiving care intermittently in Assisted Living and Nursing Homes. Mandating a report for each time a resident changes level of care for what will commonly be routine illness, is not necessary. PANPHA endorses the reporting requirements currently found in the 2600 Personal Care Home Regulations

Suggested Language
16(a)(3) A[~~n~~] **serious bodily** injury[~~, illness,~~] or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

2800.19(3)(b): PANPHA applauds the criteria and guidelines listed under subsection (a). However, PANPHA advocates that if a waiver application demonstrates compliance with those guidelines and is approved, the determination should remain posted on the Department's website after the conclusion of the public comment period.

Suggested Language
19(3)(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. **All approved waivers shall be permanently posted on the Department's website**.

2800.19(3)(c): PANPHA encourages the Department to consider that many highly qualified staff like Certified Nurse Assistants, are likely to apply for direct care positions within newly licensed assisted living residences. **Currently, this proposed provision would require those staff to have to repeat all the required training and this is likely to present as a barrier to recruit a trained workforce.** We ask that the Department eliminate staff training requirement from the items listed as exempt from waiver requests.

Suggested Language

19(3)(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 may not be waived.

2800.22(a): PANPHA is unsure why the Department has chosen to substantially alter a provision that was not universally identified by members of the workgroup or commentators (during the public comment period) as problematic. As proposed in this version of the regulatory package, numerous issues abound. In subsection .22(a)(2), the addition of "initial" creates unneeded additional paperwork that in no way contributes to improved quality care. PANPHA would ask the Department to produce any empirical, clinically-driven evidence that would support duplicative administrative processes leading to improved quality outcomes for assisted living residents. Further, the elimination of the 15 day post admission timeframe only serves to ensure that more valuable staff time will be taken away from residents and instead focused on completing paperwork requirements when the "30 day prior" assessment has to be repeated during the first week of admission because of resident condition changes. Even those in relatively good health can suffer dramatic changes in 30 days. In subsection .22(a)(3), the same flawed logic is applied to Support plans. **This represents a significant step backward from the originally proposed regulations. It is imperative that the suggested language below be adopted.**

Suggested Language

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

22(a)(3) [~~Preliminary s~~] Support plan developed **and implemented** within 30 days [prior to] **after** admission.

~~[22(a)(4) Final support plan developed and implemented within 30 days after admission.]~~

2800.22(b.3): In consideration of Federal statutes such as; Fair Housing (**Sec. 804.c [42 U.S.C. 3604]**) and the Americans with Disabilities Act, the language as written potentiates liability and gives rise to federal code violation(s) for providers. A written basis of denial is in direct conflict with the stated statues, does not meet the standards for permissible discrimination and therefore cannot be required. PANPHA urges the Department to delete the paragraph in its entirety.

Suggested Language

~~22(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.~~

2800.22(c)(1-3): The new addition of this subsection is redundant and excessive. PANPHA encourages the Department to remove this section as the criteria for admission to an assisted living residence is covered in many other sections as well as exclusionary factors prohibiting individuals from being served by an assisted living residence. **The addition of this section does not improve the quality of care, safety of residents, nor serve any tangible purpose.**

Suggested Language

(c) A potential resident who requires assisted living services but does not currently require assistance in obtaining supplemental health care services may be admitted to the residence, provided the resident is only provided assisted living services required or requested by the resident. When services are required, the residence shall develop a preliminary support plan as required in 2800.225 (relating to initial assessment and preliminary support plan). [~~This subsection applies to residents under any of the following circumstances:~~

~~(1) A resident who may rquire supplemental health care services in the future.~~

~~(2) A resident who wishes to obtain assistance in obtaining the services.~~

~~(3) A resident who resides in a facility in which the services are available.~~]

2800.22(d): This is a statutory requirement. Individuals permitted to reside in assisted living residences are specified within the Act creating assisted living. PANPHA urges the Department to forego this revision and return to the language that is in the statutory prescription.

Suggested Language

22(d) [~~Persons requiring the services of a licensed long-term care nursing facility, may reside in a residence, provided that appropriate supplemental health care services are provided and the design, construction, staffing and operation of the residence allows for safe emergency evacuation.~~] **Each assisted living residence shall demonstrate the ability to provide or arrange for supplemental health care services in a manner duly protective of the health, safety and well-being of its residents utilizing employees, independent contractors or contractual arrangements with other health care facilities or practitioners licensed, registered or certified to the extent required by law. To the extent prominently disclosed in a written agreement, an assisted living residence may require residents to use providers of supplemental health care services designated by the residence.**

2800.22(b)(3): PANPHA strongly believes that it is inappropriate for the Department to have the authority to approve or disapprove of an Assisted Living Residence's resident handbook. This provision exists nowhere else in the continuum of care, and should not exist here either. The presumption is that not only will the Department have to approve the initial release of the

handbook, but also approve any alterations and amendments to the handbook. We fail to see how the Department will have the resources to allocate to the review and approval of all resident handbooks and all amendments to existing handbooks. Delays and backlogs are inevitable, and providers will be left to wait and watch as the Department tries to keep pace. This provision should be stricken.

Suggested Language
22(e)(3) A copy of residence rules and resident handbook. ~~The resident handbook shall be approved by the Department.~~

2800.25(b): PANPHA is concerned with the lack of equity in the allowance to terminate a residency contract. Automatic renewal of the residency contract on a month-to-month basis is an appropriate method of treating the relationship. However, there is no basis for allowing the resident to terminate the contract with 14 days notice to the provider, while binding the provider to 30 days notice of termination to the resident. The administrative responsibilities placed upon the residence in order to discharge a resident, whether at the provider's request or the resident, demands a 30 day timeframe. Moreover, the general principle in contract law is to all both parties 30 days notice to terminate a month-to-month contract. It seems reasonable to uphold that principle. **Both parties should be held to the same notification requirements, and the appropriate time frame is 30 days.**

Suggested Language
25(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees. The contract shall run month-to-month with automatic renewal unless terminated by the resident with ~~14~~ **30** days notice or by the residence with 30 days' notice in accordance with 2800.226 (relating to transfer and discharge).

2800.25(c)(2): PANPHA questions the rationale for a fee schedule of services that are included in a "basic core package", as provided in Section 220, when the consumer will not have the opportunity to opt out of those services. If a core package is the intent, then requiring a fee schedule for services in the package is unnecessary.

Suggested Language
25(c)(2) ~~[A fee schedule that lists the actual amount of charges for]~~ **An enumeration of** each of the services that are included in the resident's core package in accordance with 2800.220 (relating to service provision).

2800.25(f): PANPHA believes that the term 'Intended Use' contained in paragraph (f)(2) inappropriately interferes with business practices; residents have reasonable expectation to know how much will be used and why the facility believes it needs the money, but will not support the language advanced by the Department. Instead, PANPHA urges the adoption of the provided language.

Suggested Language

25(f) If the residence collects a resident's rent rebate under subsection (3), the resident-residence contract must include [~~the following:~~

~~(1) T~~] the dollar amount or percentage of the rent rebate to be collected.

~~(2) The residence's intended use of the revenue collected from the rent rebate.~~]

2800.25([i](k)): As referenced in the opening paragraphs of our comments, this subsection is inconsistent with 2800.25(c)(2). The Department must make clear the intended requirement for assisted living residence pricing and bundling of services. Also as mentioned, PANPHA can only support the adoption of our suggested language for 2800.220.

Suggested Language

25(k) The resident-residence contract shall identify the assisted living services included in the core package the individual is purchasing [~~and the total price for those services~~]. Supplemental health care services shall be packaged, contracted and priced separately from the resident-residence contract. Services provided by or contracted for by the residence other than supplemental health care services must be priced separately from the service package in the resident-residence contract.

2800.28(b): The language of this provision matches the language of .25(b), providing for only 14 days of notice of termination by the resident. As mentioned in the comment to .25(b), 14 days is an insufficient time allotment to process a discharge. PANPHA suggests 30 days notice of termination for both the Assisted Living Residence and the resident.

Suggested Language

28(b) After a resident gives notice of intent to leave in accordance with 2800.25(b) (relating to resident-residence contract) and if the resident moves out of the residence before the expiration of the required ~~14~~ 30 days, the resident owes the residence the charges for rent, personal care services and supplemental health care services, or both for the entire length of the ~~14-day~~ 30-day time period for which payment has not been made.

2800.30: This is a statutory requirement. 2800. 30(b)(1): The standard of "imminent risk of substantial harm" is an inappropriately high threshold before a residence may initiate an informed consent process. No resident should be permitted to be placed in any risk of harm, regardless of imminence or whether the harm is substantial, due to the actions or behavior of another resident. The same is also true for the employees of a residence. No individual has the right to submit another to a risk of harm, and the threshold set by this language is untenable.

Moreover, the phrase "by the resident's wish to exercise independence in directing the manner in which they receive care" is overly limiting to situations that may necessitate an

informed consent agreement. There maybe far more situations than instances where the resident is exercising independence in directing care.

> ***Suggested Language***
> 30(b)(1) When a licensee determines that a resident's decision, behavior or action creates a dangerous situation and places the resident, other residents or staff members at ~~imminent~~ risk of ~~substantial~~ harm ~~by the resident's wish to exercise independence in directing the manner in which they receive care~~, the licensee may initiate an informed consent process...

2800.30(e)(1): For an informed consent to be meaningful, the resident must fully comprehend the choices and consequences. For this reason, the need for the residence to discuss those options "in a manner that the resident to understand" is vital. PANPHA would like to see this refined, however, to accommodate those with cognitive impairment. To discuss options in a manner that a resident with cognitive impairments can understand may be problematic. It is likely to lead to a frustrating experience for the residence. Since the legal representative of a resident with cognitive impairment is required to be involved in the process, in these instances it is more appropriate for the residence to discuss the informed consent in a manner that the legal representative can understand.

PANPHA also wants the remainder of the paragraph to match the suggested language for section 30(a)(1).

> ***Suggested Language***
> 30(e)(1) In a manner that the resident can understand**, or, in the case of an individual with cognitive impairment, in a manner the legal representative can understand**, the licensee must discuss the resident's wish to exercise independence in directing the manner in which he receives care. The discussion shall relate to the decision, behavior or action that places the resident or persons other than the resident in ~~imminent~~ risk of ~~substantial~~ harm and hazards inherent in the resident's action. The discussion shall include reasonable alternatives, if any, for mitigating the risk, the significant benefits and disadvantages of each alternative and the most likely outcome of each alternative. In the case of a resident with a cognitive impairment, the resident's legal representative shall participate in the discussion.

2800.30(e)(2): PANPHA would like to add language to this section that requires the resident to cease and desist any action or behavior that prompted the negotiation of an informed consent agreement during the negotiation of an acceptable agreement. It is also necessary to provide for the contingency that the residence deems the resident unable to grasp the discussions of the negotiation. If the resident is unable to comprehend the discussions, the negotiation should be treated as unsuccessful.

Suggested Language

30(e)(2) A resident shall not have the right to place persons other than himself at risk, but, consistent with statutory and regulatory requirements, may elect to proceed with a decision, behavior or action affecting only his own safety or health status, foregoing alternatives for mitigating the risk, after consideration of the benefits and disadvantages of the alternatives including the wish to exercise independence in directing the manner in which he receives care. **During the negotiation of the informed consent agreement, the resident shall cease the actions and/or behavior that prompted the initiation of the negotiation and comport himself according to the original care plan and according to all rules an policies of the provider.** The licensee shall evaluate whether the resident understands and appreciates the nature and consequences of the risk, including the significant benefits and disadvantages of each alternative considered, and then must further ascertain whether the resident is consenting to accept or mitigate the risk with full knowledge and forethought. **If the licensee determines that the resident does not understand and appreciate the nature of the discussion, the negotiation shall be treated as unsuccessful according to subsection (f).**

2800.30(g): PANPHA is concerned that the proposed language does not provide sufficient protection to providers who do not accept an informed consent agreement due to an unacceptable level of risk associated with the resident's desired alternative.

Suggested Language

30(g) If the parties do not agree, the licensee shall notify the resident, the resident's legal representative and all individuals engaged in the informed consent negotiation at the request of the resident. **The provider retains the right not to sign an informed consent agreement if it is determined by the provider that an unacceptable level of risk will be attendant to the resident's requested behavior or course of action. When the negotiation concludes unsuccessfully,** the residence shall include information on the local ombudsman or the appropriate advocacy organization for assistance relating to the disposition and whether the licensee will issue a notice of discharge.

2800.30(h): PANPHA wants the language regarding the acceptable level of risk to be consistent with the suggested language for section 30(b)(1).

Suggested Language

30(h) An informed consent agreement must be voluntary and free of force, fraud, deceit, duress, coercion or undue influence, provided that a licensee retains the right to issue a notice of involuntary discharge in the event a resident's decision, behavior or action creates a dangerous situation and places persons other than the resident at ~~imminent~~ risk of ~~substantial~~ harm and, after a discussion of the risk, the resident declines alternatives to mitigate the risk.

2800.30(i): PANPHA wants the language regarding the acceptable level of risk to be consistent with the suggested language for section 30(b)(1).

Suggested Language

30(i) An informed consent agreement shall be unique to the resident's situation and his wish to exercise independence in directing the manner in which he receives care. The informed consent agreement shall be utilized only when a resident's decision, behavior or action creates a situation and places the resident or persons other than the resident at ~~imminent~~ risk of ~~substantial~~ harm. A licensee shall not require execution of an informed consent agreement as a standard condition of admission.

2800.30(j): PANPHA is concerned with the consistency of the proposed language of this subsection, and maintaining the ability of the resident to direct their own care. If the resident wishes to enter into an informed consent agreement that may be inconsistent with a regulatory provision, it should be left to the resident's discretion to opt out of them, provided the Assisted Living Residence agrees. PANPHA also feels that the proposed language should mirror the language provided in the statute.

Suggested Language

30(i) Execution of an informed consent agreement **shall release the provider from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement. Execution of an informed consent agreement** does not constitute a waiver of liability [~~nor shall it be considered to affect or relate to any claim~~] with respect to acts of negligence, tort, **or** products defect.[~~, breach of fiduciary duty, contract violation, or any other claim or cause of action. An informed consent agreement shall not relieve a licensee of liability for violation of statutory or regulatory requirements promulgated under this chapter nor does it affect the enforceability of regulatory provisions including those provisions governing admission or discharge or the permissible level of care in an assisted living residence. The informed consent is merely a manner of describing self-directed care in those limited instances where it shall be permitted as applicable. The execution of said agreement has no bearing on any suit or claim for damages.~~]

2800.42(b): This section imposes significant and serious additional responsibilities on assisted living residences with the addition of language in this version of the proposed regulatory package. It would require assisted living residences to intercede in family matters and personal relationships between ALR residents and their friends to "ensure" a resident is free from abuse. PANPHA absolutely believes and supports providing a safe environment which is within the control of the residences, but could not possibly achieve the intent of this regulation at all times as it is written. **As such, PANPHA recommends the Department to limit the responsibility of the ALR to circumstances over which it has control and provides suggested language for consideration.**

Suggested Language

42(b) A resident may not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way. [~~A~~

~~resident must be free from mental, physical, and sexual abuse and exploitation, neglect, financial exploitation and involuntary seclusion.]~~

2800.42(l): PANPHA members currently enjoy having residents of their communities decorate and furnish their living spaces with personal items from their own home, but this is not without real concerns. Should a resident choose to include a gas burning fireplace as part of their furnishings, dire consequences could result. PANPHA asks the Department to include language that would allow unsafe items that are inconsistent with Fire safety/Life safety regulations to be prohibited without fear of regulatory violations under this section.

Suggested Language

42(l) A resident has the right to furnish his living unit and purchase, receive, use, and retain personal clothing and possessions**, provided that the resident's possessions and furnishings do not create an unsafe environment for himself or others**.

2800.43(d): As identified in our comments on the previous section, 2800.43(c), we would ask the Department to insert an additional subsection that addresses prohibited items such as those that would be inconsistent with the safety and wellbeing of residents.

Suggested Language

43(d) It shall not be considered a deprivation of resident's rights in the event an assisted living residence does not permit items that would pose a risk to the life, safety and/or well-being of the residence at-large.

2800.51(b): PANPHA does not support the inclusion of any language in a regulatory package that references "interim" policies. What occurs when the policy changes, expires or becomes permanent? The Department must omit this addition.

Suggested Language

~~(b) The hiring policies shall be in accordance with the Department of Aging's Older Adult Protective Services Act interim policy.~~

2800.54(a)(4): PANPHA reads this new addition to the regulatory package to mean that all staff would need to be fluent in every and all languages in order to comply. The Department must realize this is not possible, nor is it feasible. Additionally, from a Human Resources perspective, selective hiring for applicants who have diverse ethnic and racial backgrounds could result in a disparate impact – discrimination. PANPHA does not support discrimination in any manner and therefore requires the Department to omit this proposed language.

Suggested Language

~~(4) Be able to communicate in a mode or manner understood by the resident.~~

2800.55: PANPHA strongly supports the Department's foresight to include training portability in this proposed regulatory package. This leadership represents a strong commitment to ensure a trained and highly qualified workforce to care for residents of assisted living residences.

2800.56(a): The Department's proposed standard of 40 hours per week in paragraph (a) will make it virtually impossible for administrators to meet the proposed continuing education requirements and other off-site obligations as may be necessary to ensure the residents receive quality care and programming. The current standard for Personal Care Homes is 20 hours or more per week in each calendar month, and in skilled nursing facilities is 36 hours or more per week in each calendar month. **PANPHA contends that the skilled nursing facility requirement is an appropriate standard.**

Suggested Language

.56(a) The administrator or designee shall be present in the residence an average of ~~40~~ 36 hours or more per week, in each calendar month. ~~At least 30 hours per month shall be during normal business hours.~~

2800.56(b): The Department's proposed paragraph (b), in which it mandates that an individual with the "same training required for an administrator" be designated to substitute for the administrator when the administrator is absent is cost prohibitive and unnecessary. The language as proposed would mandate that a residence have qualified administrators on the payroll. Administrators are currently in short supply and finding a second administrator for each residence, with the second being relegated to a "substitute" position, is neither feasible nor practicable. The individual serving as the stand-in administrator will also demand equal pay as the primary administrator since that individual will hold equal qualifications and background, and this will be crippling.

Suggested Language

.56(b) The administrator shall designate a staff person to supervise the residence in the administrator's absence. The designee shall have the same **[~~training~~] qualifications as defined in 2800.53(a)(1-5)** required for an administrator.

2800.56(c): PANPHA advocates for the insertion of a new paragraph (c) to this section. This paragraph would clearly state that an administrator at a facility that is dually licensed as both a Personal Care Home and an Assisted Living Residence may have the hours on duty logged concurrently. This would allow an administrator's 36 hour per week requirement to automatically cover the 20 hour per week requirement of the Personal Care Home regulations.

Suggested Language

56(c) If a facility is dually licensed as both an Assisted Living Residence and as a Personal Care Home, a single administrator may serve both licensed entities concurrently. Fulfillment of the hourly requirements of this section shall function as fulfillment of the hourly requirements of 55 Pa. Code 2600.56.

2800.60(a): PANPHA believes the inclusion of the final sentence of this section is unnecessary and simply redundant. The Department is encouraged to accept the deletion provided in our suggested language.

> ***Suggested Language***
> .60(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.~~

2800.60(d): Many PANPHA members already employee nurses round the clock in their Personal Care Homes and/or Skilled Nursing facilities. It is probable that this practice would continue from those organizations who may seek assisted living licensure. Our suggested language eliminates the redundancy of having a licensed nurse on-call if one is already present in the building.

> ***Suggested Language.***
> 60(d) In addition to the staffing requirements in this chapter, the residence shall have a licensed nurse **available in the building or** on call at all times. The ~~on-call~~ licensed nurse shall be either an employee of the residence or under contract with the residence.

2800.61: Due to the overwhelming cost of utilizing "agency staff" many facilities routinely attempt to cover unanticipated staff absences with regular staff who meet the training requirements specific to this proposed regulatory package. In extreme cases though, agency staff may need to be utilized. By the very nature of the staffing emergency, it is impossible for members to ensure that an agency employee contracted to cover one shift could be appropriately oriented per the proscriptive requirements of this chapter. This new addition to the previously submitted regulatory package is untenable. **PANPHA recommends an exception to the staff orientation requirement and seek its removal and return to the previous version.**

> ***Suggested Language***
> 61 When regularly scheduled direct care staff persons are absent, the administrator shall arrange for coverage by substitute personnel who meet the direct care staff qualifications and training requirements as specified in §§ 2800.54 and 2800.65 (relating to qualifications for direct care staff persons; and ~~staff orientation and~~ direct care staff person training and orientation).

2800.63(a): PANPHA's members do not see the mandate of a minimum 1:20 ratio of CPR/First Aid trained staff to residents as reflecting the real world applicable needs of a residence. During sleeping hours, between 11pm and 7am, this ratio will represent a significant staffing challenge. This is in light of relative rarity of CPR being required in a residence and the reality that advance directives and do not resuscitate orders are disproportionately represented in this demographic.

Suggested Language

63(a) For every ~~20~~ **50** residents there shall be at least one staff person trained in first aid and certified in obstructed airway techniques and CPR present in the residence at all times to meet the needs of the residents.

2800.64(b)(19): The Department added an additional requirement that was not previously included in the first proposed regulatory package and has not been discussed in workgroup meetings. The language is unclear and depending on the intent, could mean training would have to occur nearly weekly as the demographics, medical needs and psychosocial needs of the resident population changes. The inclusion of this language represents a clear disconnect with operational realities.

Suggested Language

~~.64(b)(19) Training specific to the resident composition.~~

2800.64(h): PANPHA has concerns that access to Assisted Living will not be possible at the outset because the regulations require that facilities have administrators who have completed the 100 hour training course, and passed the competency test prior to commencing operations. Since no individual in the Commonwealth is qualified until the course and the test have been completed and passed, it will be a period of months before Assisted Living can exist as a care setting. Of course that is assuming that the Department is prepared Day 1 with a curriculum and test. PANPHA recommends that the regulations require the Department to have the 100 hour course curriculum and competency test prepared prior to the effective date of the regulations.

In addition, we would recommend that any individual working as a Personal Care Home Administrator prior to the effective date of the regulations be exempted from the 100 hour course, and simply be required to pass the competency test. This will ensure that there is no significant void between the effective date of the regulations and the existence of Assisted Living.

Suggested Language

64(h) A certified personal care home administrator who is employed as an administrator of Personal Care Home prior to _____ (effective date of the regulations), is exempt from the 100 hour training course, but shall pass a competency test to be developed by the Department.

2800.65(c): The CPR requirement in this subsection conflicts with 2800.63(a) and represents an overly burdensome requirement. The provisions in PANPHA's comment to 63(a) are more than sufficient to provide emergency interventions for an assisted living residence population, again given the fact that advance directives and do not resuscitate orders being disproportionately represented in this demographic.

Suggested Language

~~.65(e) Direct care staff persons shall be certified in first aid and CPR before providing direct care to residents.~~

2800.65([d](f)): PANPHA supports the listed items of required training, but believes it is unnecessary when coupled with other mandated training requirements in this chapter, to require 18 hours of training. **This is a new requirement in this version of the proposed regulatory package.** We reiterate our previous stance that 12 hours is sufficient time to cover the required topics listed in this section and encourage the Department to retract this addition, adopting our suggested language.

Suggested Language

.65 (f) Direct care staff persons may not provide unsupervised assisted living services until completion of ~~18 hours of training~~ in the following areas:

2800.65([e](g)): The combined educational requirements set forth in this proposed regulatory package exceed those required for Nursing Home Administrators and Registered Nurses. This poses an insurmountable burden for assisted living residences. **PANPHA urges the Department to abandon this new attempt to increase the training hours and return this requirement to the previously agreed upon 12 hours annually.**

Additionally, the requirement that dementia care-centered education be in addition to the already mandated educational requirement removes staff from direct care duties, and can easily be included in the within the 12 hour yearly allotment. Dementia care education should be required, but not in addition to an already robust requirement.

Suggested Language

65(g)Direct care staff persons shall have at least [~~16~~]12 hours of annual training relating to their job duties. [~~The training required in 2800.69 (relating to additional dementia-specific training) shall be in addition to the 12 hour annual training.~~]

2800.83(b) and 2800.83(c): It is important for an Assisted Living Residence to regulate the temperature within the residence. However, it is not necessary for a residence to have central air conditioning to moderate the temperature. Window air conditioning units are sufficient to provide the comfort residents of a residence require. Window units have not be proven unsafe and unfit for congregate living facilities, and accordingly are an acceptable method to cool a residence.

Suggested Language

83(b) A residence [~~in existence prior to _____ (Ed. Note: The blane refers to the effective date of adoption of this proposed rulemaking.)~~ shall provide **a means of controlling temperature for each resident's living unit. A residence may utilize permanent heating and cooling units in each living unit or** central air conditioning. If **permanent heating and cooling units in each living unit or**

central air conditioning is not feasible or is cost prohibitive window air conditioning units shall be provided. [~~The residence shall submit justification to the Department for the use of window air conditioning units.~~]

~~83(c) For new construction after _____ (Ed. Note: effective date), the residence shall provide central air conditioning.~~

2800.85(c): Some PANPHA members embrace the latest cost-saving technology such as "compactors" which can typically store so much more refuse than a traditional "dumpster" that trash can be removed out of the facility daily, yet only need to be disposed of once per month. PANPHA therefore recommends the following language:

Suggested Language
85(c) Trash shall be removed from the premises at least once a week, unless the residence possesses trash compacting capabilities, in which case trash shall be removed from the premises at least once a month.

2800.90(b): Due to the fact that communications technology is advancing at such a rapid pace, PANPHA would like to amend this subsection to allow for emerging technology.

Suggested Language
90(b) For a residence serving 9 or more residents, there shall be a system or method of communication such as an intercom, public address, pager, [~~or~~] cell phone**, or other communication technology** system that enables staff persons to immediately contact other staff persons in the residence for assistance in an emergency.

2800.91: While PANPHA understands that the requirement for the various telephone numbers was pulled directly from the 2600 regulations, we suggest the addition of a subsection .91(b) to permit successful compliance with the intent of this regulation as offered below. By 2003, all areas of the Commonwealth were afforded access to 911 services. The rationale for the use of 911 and for the use of a "911" sticker are the same; save time in an emergency by calling one abbreviated number that can immediately connect callers to the appropriate resource.

Suggested Language
.91(B) Alternatively, compliance with this regulation may be achieved by affixing a "In Case of Emergency, Dial 911" sticker to all phones with outside calling capabilities.

2800.98: PANPHA is concerned that the requirement to have two rooms available for indoor activities, as opposed to the one room that is currently required of Personal Care Homes, will be cost prohibitive and may prevent a number of facilities from pursuing an Assisted Living license without incurring construction/remodeling costs. This is especially true if one of those congregate rooms must be at least 15 square feet per living unit up to 750 square feet. **These costs may be quite significant and may have a great impact on**

the accessibility of Assisted Living in Pennsylvania. An appropriate compromise would be to allow the dining room to function as the lounge area and count as one of the two wheelchair accessible rooms. Without this allowance accessibility will suffer.

Suggested Language

98(a) The residence shall have at least two indoor wheelchair accessible 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 such use does not affect or disturb others. **One of these rooms may be the same space living space or lounge area as required in 98(b).**

98(b) The residence shall have at least one furnished living room or lounge area for residents, their families and visitors. The combined living room or lounge areas shall accommodate all residents at one time. There must be at least 15 square feet per living unit for up to fifty living units. There must be a total of 750 square feet if there are more than 50 living units. These rooms or areas shall contain tables, chairs and lighting to accommodate the residents, their families and visitors. **The dining room may be counted as living space under this subsection.**

2800.101(b): PANPHA renews our strong objection to this proposed regulation. The proposed square footage requirements of 175 per living unit for existing facilities and 250 per living unit for newly constructed facilities are simply unacceptable. 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. (See Attachment B) 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. A square footage minimum of 125 for existing facilities and 150 for newly constructed facilities provides an appropriate 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. Many providers will offer rooms well beyond the 125 or 150 square foot minimum due to market realities where they are operating. **Allowing the consumers to set the minimum, with both their feet and their dollars, is the most appropriate course to pursue.**

Suggested Language

101(b)(1) For new construction of residences after _____ (Ed. Note: effective date), each living unit for a single resident must have at least ~~250~~ **150** 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~~ **60** square feet in the living unit.

101(b)(2) For residences in existence prior to _____ (Ed. Note: effective date), each living unit must have at least ~~175~~ **125** square feet measured wall to

wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional ~~80~~ 60 square feet in the living unit.

2800.101(d): Along with the minimum square footage requirement, the proposed regulations cite 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 capable of delivering hot and cold running water will not be insignificant. These costs will probably not prevent facilities from building new Assisted Living Residences, but probably will prevent potential residents with less means from being able to afford the care package at such a facility. The enabling legislation makes no mention of required or intended equipment relating to individual kitchens in unit and is in fact overreaching by requiring such. Act 56 specifically directs the Department to establish "minimum guidelines" (pg 6, line 21) and further clarifies in Section 1021(a)(2)(iv) "Kitchen capacity, which may mean electrical outlets to have small appliances". The market should be the ultimate arbiter as to which amenities a living unit should possess.

Suggested Language

~~[101(d)(1) New Construction. For new construction of residences after _____ (Ed. Note: effective date), the kitchen capacity, at a minimum shall contain a small refrigerator with a freezer compartment, a cabinet for food storage, a small bar-type sink with hot and cold running water and space with electrical outlets suitable for small cooking appliances such as a microwave oven.~~

~~(i) Upon entering the assisted living residence the resident or his designated person shall be asked if he wishes to have a cooking appliance. The cooking appliance shall be provided by the residence if desired by the resident or his designated person. If the resident or his designated person wishes to provide their own cooking appliance, it shall meet the residence's safety standards.~~

~~(ii) The cooking appliance shall be designed so it can be disconnected and removed for resident safety or if the resident chooses not to have cooking capability within his living unit.]~~

101(d)~~(2) Existing Facilities. Facilities that convert to residences after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), must meet the following requirements related to kitchen capacity:~~

~~(i) The residence shall provide a small refrigerator in each living unit.~~

~~(ii) Space with electrical outlets suitable for small cooking appliances such as a microwave oven.~~

~~(A) Upon entering the assisted living residence the resident or his designated person shall be asked if he wishes to have a cooking appliance. The cooking appliance shall be provided by the residence if desired by the resident or his designated person. If the resident or his designated person wishes to provide their own cooking appliance , it shall meet the residence's safety standards.~~

~~(B) The cooking appliance shall be designed so it can be disconnected and removed for the resident safety or if the resident chooses not to have cooking capability within his living unit.~~

~~(iii) The residence shall provide access to a sink for dishes, a stovetop for hot food preparation and a food preparation area in a common area. A common resident kitchen may not include the kitchen used by the residence staff for the preparation of resident or employee meals, or the storage of goods.~~

Assisted Living Residences must meet the following requirements related to kitchen capacity:

(1) The residence shall ensure an area located within the individual living unit is equipped with electrical outlets that meet all code requirements sufficient for supporting the use of small appliances if the resident so chooses to obtain and use them.

(2) The residence shall provide access to a sink for dishes, a stovetop for hot food preparation and a food preparation area in a common area. A common resident kitchen shall not include the kitchen used by the residence staff for the preparation of resident or employee meals, or the storage of goods.

2800.102: The statute and the regulations mandate that each living unit in an Assisted Living Residence shall be equipped with its own private bathroom. This provision, along with the minimum square foot requirement, represents the most crucial determinant as to whether a residence will pursue an Assisted Living license. Many current Personal Care Homes are not equipped with private bathrooms in each living unit, and to retrofit current structures to accommodate this requirement will be costly and time consuming. **PANPHA recommends a five year delayed implementation of this requirement sufficient to allow facilities who wish to undergo the necessary renovations time to complete the construction.**

Suggested Language

102(o) The application of the provisions of Section 102 for current facilities constructed prior to the effective date of these regulations shall be delayed for a period of 5 years after the effective date.

2800.103(b): The language contained in this subsection could be interpreted to mean all surfaces of any object in the kitchen. This concern rises from an interpretation of a similar provision in the 2600 regulations whereby a number of personal care homes were cited for being in violation because drawers and cupboard doors were made of wood, and therefore porous. PANPHA therefore recommends the following change:

Suggested Language

103(b) **Horizontal** kitchen surfaces **used for food preparation** must be of a nonporous material and cleaned and sanitized after each meal.

2800.107 (d): The requirement that written emergency procedures be reviewed and submitted annually to the local emergency management agency is unnecessary. It will suffice to perform this review and submit to the local EMA once every 3 years, unless a major renovation to the physical plant

Suggested Language
107(d) The written emergency procedures shall be reviewed, updated and submitted [annually] every three years to the local emergency management agency. Should the residence undergo a major renovation to its physical plant, the residence shall review and submit an updated plan to the local emergency management agency once the renovation is completed.

2800.125(b): PANPHA is concerned that an expansive reading of this regulation as drafted would prevent residents from retaining possession of certain toiletries and hygienic products, such as hair spray and hand sanitizer. It is therefore recommended that the following change be made.

Suggested Language
125(b) Combustible materials**, except for personal hygiene and toiletry products,** shall be inaccessible to residents.

2800.129(c): The inclusion of the language in this sub-paragraph is rather broad, and would include chimneys and flues that are not functionally necessary for wood burning fireplaces, but also fireplaces that contain propane/gas assemblies. Chimneys and flues for non-wood burning fires such as these do not accumulate flammable substances such as creosote, and do not necessitate an annual service regimen.

Suggested Language
129(c) A **wood-burning** fireplace chimney and flue that is used must be serviced annually and written documentation of the servicing shall be kept. **Annual service and documentation for a chimney or flue attached to a propane or natural gas fireplace assembly is not required.**

2800.131(a): PANPHA applauds the change made to this section from the previous proposed regulation. The requirement that each living unit have its own fire extinguisher would have been both costly and potentially hazardous. PANPHA is pleased that the Department adopted the NFPA standard of one extinguisher for every 3,000 square feet of living space. However, the inclusion of the phrase "public walkways and common areas" may be interpreted to include areas attached to the exterior of the building. Even if these areas are covered by awnings, there is minimal threat of fire emergencies in these areas. PANPHA accordingly recommends the following language.

Suggested Language
131(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, including **indoor** public walkways and common areas, every 3,000 square feet, the basement and attic.

2800.131(c): With the requirement that each living unit have kitchen capacity, it could be interpreted that fire extinguishers could still be required for each living unit that does contain kitchen appliances. To ensure clarity, PANPHA would like language to be added that specifies only kitchens in common areas be required to contain a fire extinguisher.

Suggested Language
131(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each **common** kitchen of the residence. The kitchen extinguisher must meet the requirements for one floor as required in subsection (a).

2800.133(1): PANPHA's concern with this provision again comes from an interpretation of a similar regulation contained in the 2600 Personal Care Home regulations. Personal Care Homes have been given violations for not having exit signs posted on doors leading out of interior rooms into common *interior* corridors. The result of these citations are that some homes have been forced to put exit signs above every door in the facility, including resident rooms. Therefore, PANPHA requests clarifying language that exit signs only be required above doors leading to the exterior of the building.

Suggested Language
133(1) Signs bearing the word "EXIT" in plain legible letters shall be placed at all **exterior** exits.

2800.141(a): PANPHA strongly recommends that allowances be made for a medical evaluation post-admission. It is not always feasible and practicable, for instance during an emergency placement, for the residence to have an evaluation performed prior to the resident's admission to the residence. The current 2600 Personal Care Home regulations currently allow for a medical evaluation for up to 30 days after admission, and this provision has been working well. Previous sections in this regulatory package allow for 15 days post admission and for this reason, PANPHA advises that the residence be allowed to perform the medical evaluation for up 15 after admission to the residence.

Suggested Language
141(a) A resident shall have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner documented on a form specified by the Department, within 60 days prior to admission or within ~~30~~15 days after admission. The evaluation must include the following:

2800.142(b)(iii): This is a statutory provision. Act 56 clearly notes that the residence "may require residents to use providers of supplemental health care services designated by the assisted living residence." The inclusion of paragraph (b)(iii) is directly counter to the provisions of Act 56 in 1057.3(12). Since the legislature clearly spoke on the issue of the residence having the final say on what health care providers may and may not operate in the residence, PANPHA recommends that the paragraph be deleted.

Suggested Language

~~142(b)(iii) If the resident has health care coverage for the supplemental health care services, the approval may not be unreasonably withheld~~.

2800.171(a): PANPHA is concerned with the inclusion of social appointments in this provision. To mandate that the residence procure transportation to every social appointment that each resident makes will represent a serious administrative burden and divert allocation of resource away from care. There is also no limitation to the requirement. For example, a resident of a residence may want to attend the graduation of a grandchild from college in a distant location, perhaps out of state. The language as drafted would still demand that the residence bear the burden of providing or coordinating that trip. PANPHA recommends that the language be amended to include only social activities scheduled by the residence.

Suggested Language

.171(a) A residence shall be required to provide or arrange for transportation to and from medical and social appointments within a reasonable local area. As prominently displayed in the agreement, residences may charge an amount as listed, and require a minimum of 48 hours advance scheduling.

2800.171 (d)(1-4) and (e)(1-4): The provisions in these paragraphs are simply untenable as drafted. The residence cannot be held liable for adhering to the timeframes outlined in these sections. The windows of time outlined are outright mandates, without any concern for external factors such as weather and traffic delays. Metropolitan mass transit systems are not held to these requirements, and it is unreasonable to insist that an Assisted Living Residence must be.

Suggested Language

(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.

(1) The residence shall schedule a pick-up time to transport the resident to the medical or social appointment. The residence shall **make every effort to** pick-up the resident within 15 minutes before or after the scheduled pick-up time.

(2) The [~~resident may~~] **residence shall make every effort** not to [~~be~~] drop[~~ped~~] off **the resident** at the medical or social appointment more that 1 hour prior to the time of the appointment.

(3) The [~~resident~~] **residence** shall **make every effort to** [~~be~~] pick[~~ed~~] up **the resident** from the medical appointment no later than 1 hour after the medical appointment.

(4) The [~~resident~~] **residence** shall **make every effort to** [~~be~~] pick[~~ed~~] up **the resident** from the social appointment no later than 1 hour after the end of the social appointment.

(e) If a residence arranges for transportation for residents to and from medical and social appointments the following shall apply:

(1) The residence shall schedule a pick-up time to transport the resident to the medical or social appointment. The residence shall **make every effort to** pick-up the resident within 15 minutes before or after the scheduled pick-up time.

(2) The [~~resident may~~] **residence shall make every effort** not to [~~be~~] drop[~~ped~~] off **the resident** at the medical or social appointment more that 1 hour prior to the time of the appointment.

(3) The [~~resident~~] **residence** shall **make every effort to** [~~be~~] pick[~~ed~~] up **the resident** from the medical appointment no later than 1 hour after the medical appointment.

(4) The [~~resident~~] **residence** shall **make every effort to** [~~be~~] pick[~~ed~~] up **the resident** from the social appointment no later than 1 hour after the end of the social appointment.

2800.183(d): The current language would prevent the residence from keeping "floor stock medications". This is common practice and allows for the residence to order OTC medications in bulk, thus keeping costs down for the residents.

Suggested Language
183(d) **Except for floor stock medications,** only current prescription, OTC sample and CAM for individuals living in the residence may be kept in the residence.

2800.202(4): PANPHA strongly endorses the intent of this section and believes that all residents should be free from restraints, but recommends clarification so as to avoid similar issues faced by the application of the 2600 regulations in Personal Care Homes. Often medications are prescribed on a *pro re nata* with the intent of alleviating anxiety for the resident. Documentation then is often construed by surveyors as application of a chemical restraint resulting in a violation where none exists. Clarification at this point is paramount.

Suggested Language
202(4) A chemical restraint, defined as use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior, is prohibited. A chemical restraint does not include a drug ordered by a physician or dentist to treat the symptoms of a specific mental, emotional or behavioral

condition, or as pretreatment prior to a medical or dental examination or treatment. **Medication ordered *pro re nata* for treatment of specific conditions is permitted to be administered by unlicensed staff if accompanied by specific instructions from the ordering physician stating in what circumstances it may be administered.**

2800.220(b)(6): PANPHA is concerned with the insertion of the phrase "and other household services" into this paragraph. This is an overly broad and inclusive phrase that could mandate a residence to engage in household chores above and beyond what prudence would dictate.

Suggested Language
220(a)(6) Housekeeping [~~and other household~~] services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences.

2800.220(b)(9): The inclusion of the word supervision gives rise to concern. This word has specific legal ramifications with regards to some licensed professionals code of conduct, and could be interpreted as a "line of sight" provision. PANPHA therefore recommends the following language.

Suggested Language
220(a)(9) [~~24 hour~~] Supervision **as necessitated in the support plans of the residents, as well as 24 hour** monitoring and emergency response.

2800.220(c)(1)(i): The inclusion of the word supervision gives rise to concern. This word has specific legal ramifications with regards to some licensed professionals code of conduct, and could be interpreted as a "line of sight" provision. PANPHA therefore recommends the following language.

Suggested Language
220(a)(9) [~~24 hour~~] Supervision **as necessitated in the support plans of the residents, as well as 24 hour** monitoring and emergency response.

2800.220(c)(1)(vii): PANPHA is supportive of the idea of having a bundled package of services in a "core package" to be delivered to all residents. The items and services included in that core package, therefore should be only those services that nearly all residents will utilize. To include services that are more narrowly focused would result in some residents being charged for services that they may never utilize. To this end, PANPHA requests that "basic cognitive support services" be removed from the "basic core package," as these are services that not all residents within the residence will require.

Suggested Language
~~220(c)(1)(vii) Basic cognitive support services as defined in 2800.4 (relating to definitions).~~

2800.220(c)(2): PANPHA does not support the concept of an enhanced core package. Once the resident has progressed beyond what is provided in the basic core package, it is not economical to charge that resident for services they may not require. That is the danger with the concept of an enhanced core package. It is entirely conceivable that an individual would need assistance with certain ADL's but not need assistance with medication administration or transportation. This provision would require that resident to purchase medication administration assistance and transportation services when those are not required. Likewise, there may be a great number of residents who simply want assistance with transportation who would then be forced to purchase the enhanced core package unnecessarily. PANPHA would advocate that the resident be permitted to purchase only those services that the resident requires on an as-needed basis.

Suggested Language

220(c)(2) [~~*Enhanced Core Package*. This core package shall be available to residents who require assistance with ADLs. The services shall include the following:~~

~~(i) The services provided in the basic core package under subsection (c)(1)(i) through (vii).~~

~~(ii) Assistance with ADLs and unanticipated ADLs for an undefined period of time.~~

~~(iii) Transportation in accordance with § 2800.171 (relating to transportation).~~

~~(iv) Assistance with self-administration of medication or medication administration as indicated in the resident's assessment and support plan in accordance with §§ 2800.181 and 2800.182 (relating to self-administration; and medication administration).~~]

All other services. Services provided by the residence that are not included in the basic core package may be purchased by the resident according to the changing needs of the resident and as indicated in the support plan.

2800.220(d)(7): This paragraph has the potential to be unduly costly in regards to staffing. Staffing is the highest cost driver a provider must face. This provision would require that an Assisted Living Residence send an escort with a resident any time a resident requests one. Given the cost component, not to mention the shortage of staff many providers are currently facing, this mandate is unnecessarily onerous. We recommend that the phrase "requested by the resident" be stricken.

Suggested Language

220(d)(7) Escort service if indicated in the resident's support plan [~~or requested by the resident~~] to and from medical appointments.

2800.224 This section of newly proposed regulatory language represents a significant burden to providers without any direct or indirect benefit to residents or quality of life/quality of care. A Preadmission screening, as required in Personal Care Homes and previously included in Assisted Living proposed regulations, represented an abbreviated snap-shot that easily allowed for both Providers, referral sources like hospitals and rehabilitation services, and potential residents, to quickly, easily and accurately determine if a minimum set of services offered by the provider could meet resident needs. With the change to an "Initial assessment and preliminary support plan", we read as proposed, a duplicative process resulting in increased cost and time without any benefit. In fact, after completing the components of this section, as a matter of operational realities, Assisted living residences would likely have to repeat this same process upon admission to capture any changes in the resident's condition. Result: twice the paperwork, cost and time, with no benefit in increase quality of care/life for the resident. We urge the return to the system that is working well in Personal Care Homes so that the above identified resources can be allocated to things that will actually improve resident care.

Suggested Language

224. ~~Initial assessment and preliminary support plan.~~ **Preadmission Screening**.
~~(a) *Initial Assessment.*~~

~~(1) The administrator or designee, or licensed practical nurse, under the supervision of a registered nurse or a registered nurse shall complete the initial assessment.~~

~~(2) A resident shall have a written initial assessment that is documented on the Department's assessment form within 30 days prior to admission unless one of the conditions contained in paragraph (3) apply.~~

~~(3) A resident shall have a written initial assessment that is documented on the Department's assessment form within 15 days after admission if one of the following conditions applies:~~

~~(i) The resident is being admitted directly to the residence from an acute care hospital.~~

~~(ii) The resident is being admitted to escape from an abusive situation.~~

~~(iii) A situation where the resident has no alternative living arrangement.~~

~~(4) A residence may use its own assessment form if it includes the same information as the Department's assessment form.~~

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

(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.

(b) An initial [screening] assessment will not be required to commence supplemental health care services to a resident of a residence under any of the following circumstances:

(i) If the resident was not receiving the services at the time of the resident's admission.

(ii) To transfer a resident from a portion of a residence that does not provide supplemental health care services to a portion of the residence that provides such service.

(iii) To transfer a resident from a personal care home to a residence licensed by the same operator.

(c) *Preliminary Support Plan.*

(1) A resident requiring services shall have a written preliminary support plan developed within 30 days prior to admission to the residence unless one of the conditions contained in paragraph (2) applies.

(2) A resident requiring services shall have a written preliminary support plan developed within 15 days after admission if one of the following conditions applies:

(i) The resident is being admitted directly to the residence from an acute care hospital.

~~(ii) The resident is being admitted to escape form an abusive situation.~~

~~(iii) Any other situation where the resident has not alternative living arrangement.~~

~~(3) The written preliminary support plan shall document the dietary, medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services if the resident's physician, physician's assistant or certified registered nurse practitioner, determine the necessity of these services. This requirement does not require a residence to pay for the cost of these medical and behavioral care services.~~

~~(4) The preliminary support plan shall be documented on the Department's support plan form.~~

~~(5) A residence may use its own support plan form it if includes the same information as the Department's support plan form. A licensed practical nurse, under the supervision of a registered nurse or a registered nurse shall review and approve the preliminary support plan.~~

~~(6) The resident's preliminary support plan must document the ability of the resident to self-administer medications or the need for medication reminders or medication administration and the ability of the resident to safely operate key-locking devices.~~

~~(7) A resident shall be encouraged to participate in the development of the preliminary support plan. A resident may include a designated person or family member in making decisions about services.~~

~~(8) Individuals who participate in the development of the preliminary support plan shall sign and date the preliminary support plan.~~

~~(9) If a resident or designated person is unable or chooses not to sign the preliminary support plan, a notation of inability or refusal to sign shall be documented.~~

~~(10) The residence shall give a copy of the preliminary support plan to the resident and the resident's designated person.~~

(a) A determination shall be made by the administrator or designee within 30 days prior to admission and documented on the Department's preadmission screening form that the needs of the potential resident can be met by the services provided by the residence.

(b) A potential resident whose needs cannot be met by the residence shall be informed of the decision and shall then be referred to a local appropriate assessment agency.

(c) The preadmission screening shall be completed by the administrator or designee. If the potential resident is referred by a State-operated facility, a county mental health and mental retardation program, a drug and alcohol program or an area agency on aging, a representative of the referral agent may complete the preadmission screening.

(d) A potential resident who requires assisted living services but does not currently require assistance in obtaining supplemental health care services may be admitted to the residence, provided the resident is only provided assisted living services required or requested by the resident. Where services are required, the residence shall develop a support plan as required in § 2800.227 (relating to development of the support plan). This subsection applies to residents under any of the following circumstances:

(1) A resident who may require supplemental health care services in the

(2) A resident who wishes to obtain assistance in obtaining such services.

(3) A resident who resides in a facility in which such services are available.

(e) An initial screening shall not be required to commence supplemental health care services to a resident of a residence under any of the following circumstances:

(1) If the resident was not receiving such services at the time of the resident's admission.

(2) To transfer a resident from a portion of a residence that does not provide supplemental health care services to a portion of the residence that provides such service.

(3) To transfer a resident from a personal care home to a residence licensed by the same operator.

(f) Each residence must demonstrate the ability to provide or arrange for the provision of supplemental health care services in a manner duly protective of the health, safety and well-being of its residents utilizing employees, independent contractors or contractual arrangements with other health care facilities or practitioners licensed, registered or certified to the extent required by law to provide such service.

(g) Persons requiring the services of a licensed long-term care nursing facility, may reside in a residence, provided that appropriate supplemental health care services are provided and the design, construction, staffing and operation of the residence allows for safe emergency evacuation.

2800.226(c): In order to maintain a focus on resident care versus becoming purely administrative, and to clarify the Department's expectation of notification, the language should be amended as recommended below. This will save the Department from multiple daily notifications of mobility changes and allow residences to comply with the intent of the regulation in a more meaningful manner.

Suggested Language

The administrator or designee shall notify the Department within 30 days after a resident with mobility needs is admitted to the residence and compile a monthly list of when a resident develops mobility needs**, which shall be available to the Department upon request**.

2800.227(b): A licensed practical nurse has the requisite knowledge and expertise to review and approve a support plan. Supervision by a Registered Nurse is not necessary, and simply represents an additional cost.

Suggested Language

227(b) The residence may use its own support plan form if it includes the same information as the Department's support plan form. A licensed practical nurse~~, under the supervision of a registered nurse,~~ must review and approve the support plan.

2800.227(c): With the requirement of support plans to change as the resident's condition changes, it is excessive to require quarterly updates as well. The focus of implement meaningful resident services and care will be lost if resident care staff are required to complete more than semi-annual documentation updates. From a programmatic standpoint, the focus would become purely administrative resulting in a compromise of service.

Suggested Language

227(c) The support plan shall be revised within 30 days upon completion of the annual assessment or upon changes in the resident's needs as indicated on the current assessment. The residence shall review each resident's support plan on a ~~quarterly~~ **annual** basis and modify as necessary to meet the resident's needs.

2800.227(e): The language added in this version of the proposed regulations, "ability to operate key-lock", is unnecessary and fails to address emerging technology.

Suggested Language

The residents final support plan must document the ability of the resident ot self-administer medications or the need for medication reminders or medication

administration. [~~and the ability of the resident to safely operate key-locking devices.~~]

2800.227(k): While PANPHA certainly agrees that all residents should be fully appraised of the services they can expect to receive while in the care of the residence, the attachment and inclusion of the support plan into the resident-residence contract is wholly inappropriate. The Support Plan is supposed to be a living document, to be used on the floor by nurses and care givers. It should not be physically attached to the resident contract, which should only be kept in the resident's file in the business office. The contract should not be mobile within the residence, and the support plan should not be anchored in an office. Conversely, the contents of a contract should remain static through the life of the contract, with as few amendments and alterations as possible. Incorporating a resident's Support Plan, which will change regularly, into the contract runs counter this notion. PANPHA therefore recommends that the sentence that was added to the initial proposed regulation be deleted.

Suggested Language

227(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.~~]

2800.228(a): PANPHA raises serious potential consequences with the existing language based upon direct provider experience dealing with transfer and discharge. As written, the requirement that the "facility *ensure* the transfer and discharge is appropriate to meet the resident's needs" runs afoul of resident rights. For example, a cognitively impaired resident wishing to be discharged home alone and without support services due to refusal, would clearly not permit the residence to meet the intent of this section. No alternative for compliance exists since the resident ultimately has the right to make poor decisions. Adult Protective Services may monitor the resident post-discharge, but will not take any action until harm occurs, and similarly, the residence cannot be expected to assume any type of guardianship to ensure safe choices on behalf of the resident with cognitive impairment. PANPHA would like the entire paragraph be deleted, and supports the adoption of the following suggested language.

Suggested Language

228(a) [~~The facility shall ensure that a transfer or discharge is safe and orderly and that the transfer or discharge is appropriate to meet the resident's needs. This includes ensuring that a resident is transferred or discharged with all his medications, durable medical equipment and personal property. The residence shall permit the resident to participate in the decision relating to the relocation.~~] **At the resident's request, in accordance with the notice requirements indicated in the resident's agreement, the residence shall provide assistance in relocating to the resident's own residence or to another residence that meets the needs of the resident to ensure a safe and orderly relocation. In the event that such assurances cannot be determined, the residence must show documentation that the resident was apprised of possible consequences, the**

designated person (if applicable) was made aware, and the local Office on Aging, Adult Protective Services was notified for follow-up post discharge.

2800.228(b)(1): PANPHA is concerned that this section as proposed represents a potentially serious logistical and cost burden to attempt to make available at all times, a translator for every possible language. With the simple and reasonable addition of our proposed language, the same outcome is achieved.

Suggested Language

.228(b)(1) The 30-day advance written notice must be written in language in which the resident or designated person 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:

2800.228(b)(1)(v): This sub-paragraph was an unnecessary addition. The resident's rights are clearly delineated in residence-resident contract, the facility cannot waive these rights, and therefore this provision is unwarranted. PANPHA recommends its deletion.

Suggested Language

~~228(b)(1)(v) The resident's transfer or discharge rights, as applicable.~~

2800.228(b)(2): Reiterating PANPHA's objection to the previously noted section, the language as written severely limits the residence's ability to ensure protection of resident rights as related to their choice of where they call home. Additionally, few if any, providers will choose to become licensed as an Assisted Living Residence if made to assume the liability of having non-trained, non-professional family members attempting to provide care that the residence has already determined is beyond their trained, professional abilities. This section, as written raises many difficult questions which are not addressed in the language, such as; will resident and/or resident families be required to meet the training requirements outlined in previous sections, how will residences assure appropriate documentation, should a family member caregiver injury result – who would be liable? PANPHA's members readily make available to resident's under the 2600 regulations additional supports and services as needed, in order to facilitate aging in place. The state should not force additional liability and potentially cause greater harm to resident's by requiring providers to allow residents to remain in their communities after a professional determination that the care requirements exceed their ability is made. PANPHA strongly insists that the entire paragraph simply be removed.

Suggested Language

228(b)(2) ~~Prior to initiating a transfer or discharge of a resident, the residence shall make reasonable accommodation for aging in place that may include services from outside providers. The residence must demonstrate through support plan modification and documentation the attempts to resolve the reason for the transfer or discharge. The residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services. Supplemental services may be provided by the resident's family, residence staff or private duty~~

~~staff as agreed to by the resident and residence. This shall be stipulated in the resident-residence contract.~~

2800.228(e): PANPHA strongly disagrees with the requirement that the residence must track transfers and discharges in a tracking chart. To require that transfers or discharges of residents be noted anywhere in addition to that particular resident's chart is unnecessary and inappropriate. Nowhere else does this mandate exist, and it should not be placed on Assisted Living Residences either. This provision should be deleted.

Suggested Language

228(e) The date and reason for the transfer or discharge, and the destination of the resident, if known, shall be recorded in the resident record [~~and tracked in a transfer and discharge tracking chart that the residence shall maintain and make available to the Department~~].

2800.228(h)(1-3): This is a statutory requirement. The Act is very clear on the issue of when a residence may transfer and discharge residents. PANPHA recommends the following language in order to more accurately adhere to the framework outlined in the statute.

Suggested Language

(h) The only grounds for transfer or discharge of a resident from a residence are for the following conditions:

(1) If a resident is a danger to himself or others and the behavior cannot be managed through [~~interventions,~~] services per 2800.220[~~planning~~] or informed consent agreements.

(2) If the legal entity chooses to voluntarily close the residence, or a portion of the residence.

(3) If a residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence. [~~under § 2800.229 (relating to excludable conditions; exceptions) or within the scope of licensure for a residence. In that case, the residence shall notify the resident and the resident's designated person. The residence shall provide justification for the residence's determination that the needs of the resident cannot be met. In the event that there is no disagreement related to the transfer or discharge, a plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident and the resident's designated person, if any.~~] **The residence shall provide all supporting documentation regarding the discharge to the Department, upon request.** If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental

retardation program or drug and alcohol program, for assistance. The administrator shall also contact the Department.

2800.228(h)(5): PANPHA believes it necessary provide a definition of "reasonable" as it relates to the efforts of the residence to collect payment.

Suggested Language
228(h)(5) If the resident has failed to pay [~~after reasonable documented efforts by the residence to obtain payment~~] for 90 days, and has received three consecutive months of notification of delinquency.

2800.229(c)(2): The Department should provide for minimum experience qualifications for medical personnel providing consultation on exception requests. This would ensure the outcome is based on sound medical practices and would serve the best interests of the resident.

Suggested Language
229(c)(2) The Department will review the exception request in consultation with a certified registered nurse practitioner or a physician with **at least five (5) years** experience caring for the elderly and disabled in long-term living settings.

2800.229(c)(3): In an effort to be responsive to the resident's need for an exception, the Department must realize that often family members who are unfamiliar with the long term care system, would be making decisions about placement in the event of an adverse determination for the exception. Five days as written would cause an undue burden upon the resident who is waiting to find out if they would be forced from their home.

Suggested Language
229(c)(3) The Department will respond to the exception request in writing within ~~5 business days~~ **48 hours** of receipt.

2800.229(c)(4): The providers must have confidence that the Department will act in the best interest of providing services for residents, and thus the resident directly if an exception is requested and the provider has met all of the statutory requirements as set forth by the subsequent 5 sections. PANPHA encourages the Department to adopt the following suggested language in order to strengthen support among residents and providers.

Suggested Language
229(c)(4) The Department ~~may~~ **shall** approve the exception request if the following conditions are met.

2800.229(f): This is a statutory requirement. Act 56 clearly indicates that the power to request an exception lies with the residence alone. To provide the consumer with the opportunity to request this exception, or even to allow the consumer to demand the

residence to apply for the exception on the consumer's behalf, exceeds the scope and authority of the statute. The paragraph must be stricken.

Suggested Language

~~(f) *Request for exception by resident.* Nothing herein prevents an individual seeking admission to a residence or a resident from requesting that the residence 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.~~

2800.229(h)(1-2): Paragraph (h) is not necessary as all record keeping and notations required under the statute are provided for elsewhere in section 229. This sub-paragraph should be deleted.

Suggested Language

~~[(h) *Decisions.* The residence shall record the following decisions made on the basis of this section.~~

~~(1) Admission denials.~~

~~(2) Transfer or discharge decisions that are made on the basis of this section.]~~

2800 SPECIAL CARE UNITS: PANPHA has significant concerns with the inclusion of the intense neurobehavioral rehabilitation and brain injury component to the Special Care Unit subpart. Services provided for INRBI are highly specialized and do not necessarily align with best practices for treatment of Alzheimer's Disease and dementia. In some cases, approaches to the two conditions may be diametrically opposed to each other. For instance, 2800.232(d) prescribes that a residence having a secured dementia unit will "minimize environmental stimulation." While this is sound practice when caring for an individual with an INRBI, it absolutely runs counter to best practice for caring for an individual with Alzheimer's Disease, and makes this provision inappropriate for a Special Care Unit. The two populations are very distinct and should not be governed under the same umbrella of regulations. PANPHA strenuously urges the Department to consider the creation of a separate INRBI designation under 2800.11(f). This would require a number of sections in the Special Care Unit subpart to be reworded so as to bifurcate an SCU from and INRBI Unit.

2800.231(f)(1): The requirement that an individual diagnosed with Alzheimer's Disease or dementia and residing in a Secured Dementia Unit be assessed quarterly to determine whether the placement is appropriate is excessive. Once an individual has progressed to the point where it has become necessary to place them in a Secured Dementia Unit, their condition is not going to reverse. Alzheimer's Disease is a degenerative disease from which there is no escape and no cure. Assessments that coincide with an annual Support Plan revision are sufficient.

Suggested Language

231(f)(1) In addition to the requirements in 2800.225 (relating to additional assessments), residents of a special care unit for Alzheimer's Disease or dementia shall also be assessed [~~quarterly~~] **annually** for the continuing need for the special care unit for Alzheimer's Disease or dementia.

2800.232(d): As indicated above, in PANPHA's comment on the Special Care Unit generally, the requirement that the Special Care unit create an environment that minimizes environmental stimulation is opposed to the best practice for individuals with dementia and Alzheimer's disease. This requirement should be removed from this section and inserted into a separate section devoted to INRBI Units.

Suggested Language

232(d) The residence shall provide a full description of the measures implemented to enhance environmental awareness, ~~minimize environmental stimulation~~ and maximize independence of the residents in public and private spaces based on the needs of the individuals being served.

2800.234(d)(1): As with 231(f), quarterly support plan updates go beyond what is required. Residences are constantly monitoring the progress of individuals in Special Care Units to assess their care needs, but to mandate that the residence utilize valuable staff time simply to process paperwork is unduly burdensome. The requirement already exists that if there is a change in the resident's condition that the support plan will be updated, and that coupled with a minimal annual renewal is quite sufficient.

Suggested Language

231(d)(1) The support plan for a resident of a special care unit for residents with Alzheimer's disease or dementia shall be reviewed, and if necessary, revised at least [~~quarterly~~] **annually** and as the resident's condition changes.

2800.235(b): When the resident of a special care unit or the resident's family request a move, the process is likely to difficult and emotional. The family or the resident's representative has every right to expect the residence to cooperate in the process of discharging the individual. However, it should not be the sole responsibility of the residence to ensure that the process is started, implemented, and completed. This paragraph appears to place that burden on the residence. The word "provided" must be replaced with coordinate.

Suggested Language

235(b) If a resident of a special care unit for INRBI, or when appropriate, the resident's designated person or the resident's family, request discharge to another facility, another assisted living residence or an independent living arrangement, transitions services shall be [~~provided~~] **coordinated** by the special care unit.

2800.251(c): The language contained in the proposed paragraph appears to limit the residence's to the use of paper forms. PANPHA would like to expand this provision to

account for standardized electronic forms to allow for the advent of electronic medical records.

Suggested Language
251(c) The residence shall use **a** standardized **method, whether paper or electronic** forms, to record information in the resident's record.

2800.251(e): PANPHA has concerns when its members are mandated to allow access to resident records. This paragraph raises concerns with possible HIPPA violations, as it requires the release of information to family members, who otherwise have no legal right to access health information. PANPHA asks that language be added to account for HIPAA compliance.

Suggested Language
Resident records shall be made available to the resident and the resident's designated person during normal working hours. Resident records shall be made available upon request to the resident and family members**, within the confines of applicable state and federal law.**

2800.266(e): PANPHA is aware that adequate enforcement is a necessity for a regulatory framework to be meaningful. However, when developing enforcement procedures it would seem that the licensing agency should have discretion in the penalties it is permitted to levy. The provisions in this paragraph do not permit the Department to exercise any discretion, or to account for the totality of the circumstances that may be underlying the violation. PANPHA therefore suggests that the language be amended to permit the Department to exercise judgment when assessing penalties in enforcement proceedings.

Suggested Language
266(e) If, after 3 months, the Department does not issue a new license for a residence, the prior license is revoked under section 1086 of the Public Welfare Code (62 P.S. 1087).

(1) **The Department is authorized to issue a** revocation or nonrenewal under this section [~~will be for a minimum of 5 years~~].
(2) A residence, which has had a license revoked or not renewed under this section, will not be allowed to operate, staff or hold an interest in a residence which applies for a license for [~~5 years~~] **a time to be determined by the Department** after the revocation or nonrenewal.

2800.266(f): PANPHA is aware that adequate enforcement is a necessity for a regulatory framework to be meaningful. However, when developing enforcement procedures it would seem that the licensing agency should have discretion in the penalties it is permitted to levy. The provisions in this paragraph do not permit the Department to exercise any discretion, or to account for the totality of the circumstances that may be underlying the violation. PANPHA therefore suggests that the language be amended to

permit the Department to exercise judgment when assessing penalties in enforcement proceedings.

> ***Suggested Language***
> 266(f) If a residence has been found to have Class I violations on two or more separate occasions during a 2-year period without justification, the Department will **have the option to** revoke or refuse to renew the license of the residence.

Conclusion

PANPHA would like to reiterate that it endorsed Act 56, which created the framework for a system of licensure and regulation that has the potential to provide consumers an important housing and services alternative along the continuum of long term living.

Unfortunately for potential consumers of assisted living, and despite the optimism created by Act 56, the proposed final regulations that were distributed on June 24, 2009 will most likely prevent assisted living from becoming a robust industry in Pennsylvania and prevent access to care except for those individuals with substantial financial resources.

Respectfully submitted,

W. Russell McDaid

W. Russell McDaid
Vice President of Public Policy
PANPHA, *An Association of Non-Profit Senior Services*

Attachment A

A 100 Bed facility would pay the following in each state:

Arizona-- $1,350/yr

California-- $1,314/yr

Delaware-- $550/yr

Florida-- $5,935/yr

Illinois-- $800/yr

Indiana-- $700/yr

Massachusetts--$6,350/yr

Michigan-- $627/yr

Minnesota-- $625/yr

New Jersey-- $3,000/yr

New York-- $500+$50 a resident over 400% of poverty, with a maximum cap of $5,000

North Carolina--$1,600/yr

Ohio-- $170/yr

Oregon-- $160/yr w/ Alz Unit

Texas-- $600 for a 2 year license

Virginia-- $140/yr

Washington-- $7,900/yr.

Attachment B