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INDEPENDENT REGULATORY REVIEW COMMISSION

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July 22, 2009

Office of Long Term Living Services
Bureau of Policy and Strategic Planning
P. O. Box 2675
Harrisburg, PA 17105
Attention: Bill White

Reference: Proposed 2800 regulations

Dear Sir:

I am the Administrator of Pine Run Lakeview, a not-for-profit personal care residence that is part of Pine Run Community, a CCRC, and is owned by Doylestown Hospital. I have worked in long term care for thirty years, have been a licensed Nursing Home Administrator for 25 years and have worked in personal care for the past ten years.

Since opening in 1998 Lakeview has used the term assisted living on our signage and in our advertising and brochures. Lakeview is licensed for 107 residents, which includes a 13 room secured dementia care unit. The average age of our residents is 88 years of age. We are extremely proud of our residence and truly believe our residents are able to have a very high quality of life and of care during their last years. We operate with licensed nurses around the clock and provide supplemental health care and oversight for our residents.

I expressed my concerns regarding the proposed regulations to the Independent Regulatory Review Council Commission in September of 2008 and since many of my concerns still exist in the Final Draft, feel it is necessary to repeat many of them to you. My overall opinion of the proposed 2800 regulations is that in many cases, though the intent of some of the regulations may be positive, the reality does not reflect the needs of the population that we serve. All of our residents have private bedrooms, except that we have 7 larger rooms that

spouses may share. Should the regulations be finalized with the current square footage requirements for "living units" we will not be able to apply for licensure as assisted living due to the size of some of our rooms. Since we would not be able to provide supplemental health services as a personal care residence, this would have a terrible impact on all the residents that live at Lakeview.

It is my understanding that these regulations have been developed with the intent to provide an option for "community based services" under the Medicaid waiver program, which is basically positive. Trying to mandate physical plant requirements with aging in place in mind also sounds positive. In reality, mandating larger units, kitchen capacity etc so that a "younger" disabled population has this option will eliminate the ability of many existing personal care homes to become assisted living and will seriously limit access for our frail elderly.

Specifically, I have comments about the following regulations:

2800.11(c) The proposed licensure fees remain exorbitant. As a personal care residence with 107 residents, our current annual fee is $50. If these fees were to become final it would cost $ 8475 per year, including the additional fee for our specialized dementia care unit. This cost will inevitably increase the cost of room and board for our residents. Our residence has always staffed at higher than the regulated hours of direct care per day; however this additional cost could result in a reduction of a half an FTE per day in our direct care area. Please reconsider the amount of the per bed fee.

2800.16 (a)(3) As written, this requires that we report to the Department every time one of our residents requires treatment for an illness at a hospital or medical facility. Our residents move into residences like ours due to failing health and are frequently hospitalized for treatment of their illnesses. Another scenario would be that a resident receiving treatments for an illness like cancer at a cancer treatment center would be reportable. This will place undue burden on both the residence and the licensing office.

2800.16 (c) The requirement that we immediately report any reportable incident to the resident's family and to the resident's designated person is excessive. The Residency Agreement (Contract) specifies a designated person to notify. This should be sufficient.

2800.22 (b.3) this requirement that we provide anyone who is denied admission with a written basis for denial puts the residence in an

intolerable situation. In a congregate living environment some decisions must be based on whether or not an individual's personality and/or emotional status will affect the well being of others. Putting a decision like this in writing could be place a residence in significant jeopardy of legal action.

2800.25 (b) Since our ability to operate efficiently is dependent upon having our rooms occupied, requiring only 14 day notice for a resident to terminate the residency agreement, this regulation will also have an impact on the cost to every resident as rates rise per resident due to a decreased number to spread the cost upon. Our overall cost per resident day for our fiscal year ending June 30, 2008 was $148.44 based on 98% occupancy. When a resident gives 30 days notice this allows up appropriate time to fill the room without too many days of vacancy. To eliminate 16 of these days on each discharge could result in a nearly $3.00 per day increase to the cost which in turn must be passed on in increased rates to our residents.

2800.25(c) (iii and v) Laundry and transportation should not be included in the core services for private paying residents. We currently charge separately for these services, which allows each resident or his/her designated person to choose what he/she wishes to pay for. Bundling these costs raises the basic charges to all residents and eliminates the resident's choice of having families provide these services to reduce costs.

2800.28 (b) Please see 2800.25 (b) comment.

2800.30 (a) (1) Please consider reducing the degree of risk and harm that permits a residence to initiate an informed consent process. There may be circumstances where a resident chooses to direct his/her care in a manner that is against the advise of the residence and has risk of harm that is not necessarily imminent, but may be long term risk and that harm may be significant but not substantial. In addition at no time should the resident's decision behavior or action be permitted to put another resident or staff member at risk of any harm. As a veteran of 31 years in long term care, I think the regulation should read

"When a licensee determines that a resident's decision, behavior or action creates a dangerous situation and places the resident at risk of harm by the resident's wish to exercise independence in directing the manner in which he/she receives care, the licensee may initiate an informed consent process to address the identified risk and to reach a mutually agreed-upon plan of action with the resident or the resident's designated person. The initiation of an

informed consent process does not guarantee that an informed consent agreement, which is agreeable to all parties, will be reached and executed."

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2800.30 (g) see 2800.30 (a) (1) comment.
2800.30 (h) see 2800.30(a) (1) comment

2800.42 (l) Please add language to allow the residence to intervene in what the resident has in his/her room, when the resident's possessions and furnishings create an unsafe environment for the resident or others in the residence.

2800.51 (a) (4) Please consider rewording this requirement. While the intention of the requirement is good, the current wording seems to indicate that every direct care staff person must be able to speak whatever language any resident in the residence may speak.

2800.56 (a) First there is concern about the standard of 40 hours per week that the administrator must average in the residence in ever calendar month. The administrator must be able to attend meetings, educational conferences as well as have sick, vacation and holiday time. If the intent of these regulations is to provide a less institutional setting than the nursing home, why are higher standards being required? The skilled nursing home administrator is only required to be n the building 36 hours per week.

2800.56 (b) There is major concern about the requirement that a staff person be designated to supervise the residence during the administrator's absence with the same training requirement as the administrator. It is unlikely like residences will be able to recruit and retain qualified administrators, who meet the training requirements, to only act as administrator during the absence of the administrator. A person with these qualifications and the training would be seeking a position of administrator with the compensation appropriate. To mandate this will place every assisted living residence in a position of non-compliance.

2800.61 Requiring substitute personnel to meet the requirement of staff orientation under 2800.65 is unrealistic. Substitute personnel are called in only as a last resort when every option to fill an opening with our own staff has been exhausted.

2800.64 (c) This seems to be in conflict with 2800.63 (a) which requires a ratio on one staff person trained in CPR and First Aid per twenty residents. With turnover in staff and limited availability of certified training in CPR and First Aid, this requirement places an impossible burden on a residence.

2800.65 (d) (f) the number of hours determined as required to teach the items contained in the regulations are overly burdensome and not needed. Twelve hours is sufficient time to teach the items required.

2800.65 (e-g) This regulation is setting up annual training hours that exceeds the requirements in skilled nursing facilities of twelve hours. It is burdensome and excessive.

2800.83 (b) and (c) Central air-conditioning is only one method of providing appropriate air temperature. Many of our buildings, including most skilled nursing facility use individual through the wall heating and air conditioning units in each resident room and central air conditioning in common areas. Please reconsider this wording.

2800.96 I would ask that the Department considered broadening the requirement of a first aid kit, to permit first aid supplies that are maintained in a designated location. We have two entire rooms dedicated to resident wellness and these include cabinets dedicated to all the required first aid supplies.

2800.101 (b) This is the most troublesome of the proposed regulations. Our residence has 50% of our rooms with less than 175 sq ft when the bathrooms and closets are excluded. Our elderly residents have lovely private rooms that are comfortable and adequate. Many of the residents choose to bring their own furniture and have been able to do so in these rooms. They do not spend most of the day in their rooms as they are involved in social activities throughout our residence. If this square footage is not reduced Pine Run Lakeview will not be able to apply to be an assisted living residence. We will not be permitted to provide the supplemental health services that our residents require and our residents will be forced to make other living arrangements. This is grossly unfair to them. Size of the rooms should be a market consideration.

2800.101 (d) Please reconsider the requirement for kitchen capacity in an assisted living unit. Our residents (again average age 88) are served high quality, nutritionally balanced meals in a fine dining setting. Out of 107 very few have chosen to have refrigerators in their room and only one has chosen to have a microwave. This should be a matter of choice. To purchase these units to place in

every room would cost us $40,000 dollars and to spend this kind of money for something that would not be used is not reasonable. In addition the new wording in this draft requiring that every resident be asked upon moving into the residence, if he/she would like a cooking appliance, does not take into consideration does not take into consideration whether the resident is safe to use one.

2800.125 (b) Please allow for residents to have access to personal hygiene and toiletry products that may be flammable, unless contraindicated by his/her support plan.

2800.141 (a) Please consider permitting the medical evaluation to be completed within 15 days post admission to allow for emergency circumstances.

2800.171 (a) There must be reasonable restrictions on what medical and social appointments for which we can be responsible to arrange transportation. We currently have a resident who would like to go to the Mayo Clinic in Florida for consultation. This is not the recommendation of her private physician and we cannot be responsible to arrange her transportation for this. In addition there must be reasonable hours during which we arrange transportation.

2800.171 (d) These requirements cannot be imposed upon an assisted living residence. Having experienced the fact that under personal care regulations, every incidence that is not in compliance, whether controllable or not, is considered a "violation". It would be impossible for us to control weather and traffic delays and to therefore be out of compliance and guilty of a violation.

2800.220 (b) (6) Please eliminate the phrase "and other household" from this requirement. It is ambiguous and could cause unrealistic expectations as to what the residence must provide.

2800.220 (b) (9) It is my understanding that 24 hour supervision has recently been interpreted by DPW as strict one on one supervision. The majority of assisted living residents do not require this. Please change this language to be "Supervision as indicated in the support plan of the resident".

2800.220 (b) (c) 1 Basic Core package should not include things that every resident does not wish to pay for or does not need. Laundry and transportation should be optional charges and not included in the basic package raising the cost for everyone. Also many residents in assisted living do not require basic cognitive services.

2800.220 (d) (7) Providing escort services to and from medical appointment is appropriate if indicated in the support plan but should not be required at the request of the resident. This will place unnecessary costs on the residence which will in turn be passed onto the resident.

2800.224 (b) Please consider the complications that a residence must consider to determine if an applicant is appropriate for the residence in order to ensure the well being of the existing population of the residence. At times decisions not to admit must be made that may not be appropriate to document to the applicant. For example, if a resident has socially inappropriate behaviors that would impact on the quality of life of the other residents, he or she may consider it insulting to be told so.

2800.226 (c) Since the Department has decided that personal care residences no longer are to send notice to them when a resident is admitted with mobility needs or when mobility needs develop, I suggest that this regulation also be changed to require that the residence be required to maintain a list.

2800.228 (a) The requirement that the residence ensure a transfer or discharge is appropriate to meet the needs of the resident is not always possible. A competent resident, a designated person, power of attorney or guardian, may be the person making this choice. Please consider changing this wording and placing the burden on the residence to fully inform the resident, designated person, etc. of the possible consequences and to inform the local Protective Services.

2800.228 (b) (2) Permitting a resident's family to provide supplemental services as a reasonable accommodation for aging in place is not a tolerable circumstance for a residence. Family members may not be adequately trained or qualified to provide these services.

2800.231 (e) Requiring a resident with dementia, or another significant cognitive impairment to document agreement to admission to a specialized unit is not logical. The nature of dementia or significant cognitive impairment may make it impossible to truly consent, so the signature may be meaningless.

2800.231 (f) and 2800.234 (d) Please consider making the assessment and support plan annually rather than quarterly. Once a resident's dementia/memory impairment has progressed to the point of needing a special dementia care unit, it is not going to get better.

The amount of time spent in paperwork detracts from the quality time spent in caring for the resident.

Thank you for reviewing and considering these comments. In closing, it seems that some of these requirements will work against the intention of Act 56 to create a true assisted living level of care for the citizens of Pennsylvania. Assisted Living across the country has been a market driven, consumer-choice driven and remains a largely private pay option. I have spoken with many of my colleagues, who operate residences under personal care licensure that in most other states would be licensed as assisted living. We have been permitted for years to use this title in our signage, our advertising and brochures. We have been permitted to allow our residents to age in place and to provide them with non-skilled health care services as long as we have trained staff to do so. Now the square footage issue will be the primary determinate of whether or not we can choose to be licensed and continue to operate as assisted living and can continue to serve the needs of the residents who have chosen us as their home.

Respectfully submitted,

Kathleen Krick, CNHA, MHA
Fellow, ACHCA
Administrator

cc: Independent Regulatory Review Commission
The Honorable Patricia Vance
The Honorable Phyllis Mundy
The Honorable Charles McIlhinney
The Honorable Marguerite Quinn
PANPHA