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July 23, 2009

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

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Sirs:

I am writing with comments about the proposed Assisted Living Regulations Department of Public Welfare #14-514(IRRC #2712).

Lakeview is a 100 bed licensed personal care home which is part of the continuum of care at Tel Hai Retirement Community.

Although some changes from the original proposed regulations have been made, we still do not believe that the proposed regulations for Assisted Living Residences advance the public interest.

The proposed regulations and changes from the previous version continue to impose significant new costs on homes and residents. From our assessment, the proposed changes would not 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 our viability as a provider. As a non-profit provider, we provide significant subsidies so that we can continue to provide the care and services residents need. Further burdening providers, such as ourselves, with deeper revenue shortfalls jeopardizes the availability of a level of care that is already a predominantly private pay phenomenon.

We believe that regulations 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. They include duplicative administrative processes, too wordy and confusing regulations.

We continue to hold the concern about available information regarding the proposed Medicaid waiver funding referenced in the Act. 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.

Below is the list of some of the most significant concerns with the proposed regulations:

1. **Licensure Fees:** We 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 us as a provider. Our 100 bed facility would have to divert \$7,800.00 allocated to Resident care services to even apply for licensure.

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. This section is now more onerous and as a community we will not support it as written. Only residents who use the individual services should be charged for the service.

3. **Administrator Requirements:** We request 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. We are 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, we reiterate 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.

4. **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.

5. **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.

We suggest that facilities and providers be afforded the greatest flexibility possible in order to meet the needs of their residents. We recommend 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.

6. 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 precondition on a residence of having to determine that residents or staffs 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.

7. Kitchen Capacity. An 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.

8. Proposed Regulation 2800.3(b): This proposed regulation gives 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. We propose that the regulations require annual surveys, with additional inspections when evidence of reliable complaint.

9. 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.

10. Informed Consent Agreement: This is a statutory requirement. We 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. We find this to be an important component of the process of developing an informed consent agreement, as the statute clearly speaks to this.

11. Regulation 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. We do 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. We endorse the reporting requirements currently found in the 2600 Personal Care Home Regulations.

12. Regulation 2800.22(a): 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. **We will not support these changes and consider this a non-negotiable item. The 15 day post admission timeline present in the first draft of the proposed regulation must be reinstated.**

13. Proposed Regulation 2900.22(b.3): We urge that the entire paragraph be deleted in its entirety.

14. Proposed Regulation 2800.22(d): Individuals permitted to reside in assisted living residences are specified within the Act creating assisted living. We urge the Department to forego this revision and return to the language that is in the statutory prescription.

15. Proposed Regulation 2800.22 (b)(3): We strongly believe that it is inappropriate for the Department to have the authority to approve or disapprove of an Assisted Living Resident'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.

16. Proposed Regulation 2800.25(b): We are concerned with the lack of equity in the allowance to terminate a residency contract. The general principle in contract law is to allow 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.**

17. Proposed Regulation 2800.25©(2): We question 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.

18. Proposed Regulation 2800.42(1): We 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. We ask 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.

19. Proposed Regulation 2800.54(a)(4): We read 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. We do not support discrimination in any manner and therefore require the Department to omit this proposed language.

20. Proposed Regulation 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.

21. Proposed Regulation 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. **We require an exception to the staff orientation requirement and seek its removal and return to the previous version.**

22. Proposed Regulation 2800.63(a): We 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 significant staffing challenge.

23. Proposed Regulation 2800.65(d)(f): We support the listed items of required training, but believe 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.

24. 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, we would like language to be added that specifies only kitchens in common areas be required to contain a fire extinguisher.

25. 2800.141(a): **We strongly recommend 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. Previous sections in this regulatory package allow for 15 days post admission and for this reason, we advise that the residence be allowed to perform the medical evaluation for up to 15days after admission to the residence.

26. Proposed Regulation 2800.171(a): We are 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.

27. Proposed Regulation 2800.171 (d)(1-4): We suggest language to say 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.

28. Proposed Regulation 2800.220(b)(6): We are 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.

29. Proposed Regulation 2800.220(c)(2): We do 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. We would advocate that the resident be permitted to purchase only those services that the resident requires on an as-needed basis.

30. Proposed Regulation 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 than 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.

31. Proposed Regulation 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. 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.

32. Proposed Regulation 2800.227(k): We certainly agree that all residents should be fully apprised 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.

33. Proposed Regulation 2800.228(a) We raise 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. We suggest language such as: **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.**

34. Proposed Regulation 2800.228(b)(1): We are 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.

Thank you for your attention to the concerns of providers such as Tel Hai Retirement Community. If we can provide additional insight as you consider all of the provider community's comment, don't hesitate to in in contact with us.

Sincerely,

**Teresa Long, RN, NHA
Vice President of Health Services**