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THE Hickman

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INDEPENDENT REGULATORY
REVIEW COMMISSION

400 North Walnut Street
West Chester, PA 19380-2487

July 24, 2009

Office of Long Term Living
Bureau of Policy and Strategic Planning
P.O. Box 2675
Harrisburg, Pennsylvania 17105

Email: RA-asstdliving@state.pa.us

Re: Comments on Assisted Living Residences (55 Pa. Code Chapter 2800)

Dear Bureau of Policy and Strategic Planning Staff:

Over the past 30 days, The Hickman's Legislative Committee, comprised of three staff members and eight residents, has studied Chapter 2800, Assisted Living Regulations, dated June 24, 2009. We have collected the attached comments, feeling that in many cases the regulations are unduly strict or will lead to unnecessary expenditures.

Such regulations will likely put assisted living residences out of the financial reach of all but the wealthy, leaving the much larger group of low-to-medium income people unable to access them. Existing Personal Care Homes with plans to devote a floor or a wing to assisted living may find implementing these regulations financially prohibitive.

Implementation of the regulations of assisted living lacks a crucial provision for funding of low-income people.

It is important to remember that a vital aspect of an assisted living residence is that it cares for the needs of all qualified people in a homelike, comfortable setting, and that it be affordable to the vast majority of consumers.

We invite you to consider our comments and implement changes that will minimize the cost to implement regulations, thereby maximizing access to assisted living residence for all income brackets.

Sincerely,
John Schwab
On behalf of The Hickman Legislative Committee

The Hickman Legislative Committee

Residents:	Anne Brownlow	Charlotte LeClerc	Staff:	Anthony DeCarolis
	Don Byerly	Elma Mack		Marilee Mohr
	Elaine Coate	Jane Mack		John Schwab
	Frances Fisher	Dot Pyle		

cc: Senator Andrew Dinniman
Senator Patricia Vance
Senator Phyllis Mundy
Representative Barbara McIlvaine-Smith
Independent Regulatory Review Commission
PANPHA

§ 2800.4 – Basic cognitive support services: Item (vi) Specialized communication techniques should be removed from this definition as it is a service that could require the professional services of a speech or behavioral therapist, taking it out of the realm of *basic* services.

§ 2800.4 – Cognitive services: How does an ALR determine when a resident with cognitive weaknesses changes "significantly"? If "significantly" is left undefined, the decision may vary from inspector to inspector or from one day to another day. Let the decision be made by the ALR's clinical staff.

§ 2800.4 – Department: Shouldn't the definition of Department be "Office of Long Term Living, Department of Aging"?

§ 2800.4 (ii) and (iii) – Specialized cognitive support services: "Dining with Dignity" and "Routines and Roles" need to be defined.

§2800.11(c)(2) – Procedural requirements for licensing ALRs: Although the fee has been reduced to $75 per bed, we feel that this is excessive and continues to place an additional cost on each resident. We have determined that $50 per bed is a more reasonable fee.

§2800.11(g) – Procedural requirements for licensing ALRs: Remove the words "and are located in a distinct part of the building". Provided all other requirements are met, we see no reason why a residence can not be licensed by door. This provides flexibility for both the consumer and the provider.

§2800.16(a)(3) – Reportable incidents and conditions: Delete "illness" from line 1. To include illness would be to include too many items to report. Incidents like heart attacks and broken bones need to be reported, but cataract care, urinary infections, infected teeth and the like are normal occurrences that should not be required to be reported.

2800.19(b) – Waivers: The public should not have the right to comment on an individual's waiver request.

§2800.19(3)(c) – Waivers: This is too broad of a list. Individual circumstances may warrant the waiver of some of these items, particularly as it concerns a resident's right to risk and the informed consent process.

§2800.19(3)(d) – Waivers: The contact information for the Department staff person should be provided in this section.

§2800.22(b.2) Application and admission: This item should read, "The certification *may be* made by the following persons:".

§2800.22(b.2) – Application and admission: Add an item (2) as follows: "An R.N. employed by the residence, in consultation with supplemental health care provider." Current item (2) would then be item (3). Current item (3) would then be item (4) and should read: "The medical director of the residence, *if one exists*."

§2800.22(b.3) Application and admission: This will create an untenable situation with the provider exposed to law suits.

§2800.22(c)(1), (2) and (3) Application and admission: The last sentence in section (c) as well as items (1), (2) and (3) are excessive and should be removed. This exclusion should apply to any resident who meets the criteria identified in .22(c).

§2800.22(e)(3) – Application and admission: We request that the following sentence be stricken, "The resident handbook shall be approved by the Department." It should be replaced with the sentence, "If no part of the Resident Handbook is contrary to the existing regulations, approval is not needed."

§2800.25(b) – Resident-residence contract: On line 4, change "14 days" to "30 days". There is no valid reason for a resident to terminate a contract within fewer days' notice than a residence.

§2800.26(b) – Quality management: "Relative standard of care" should be defined, and the question of who determines this should be answered.

§2800.28(b) – Refunds: The time period referred to in this paragraph should be 30 days. (See comment for section 2800.25(b).)

§2800.30(d) – Informed consent: The words "or staff" should be added to the last line of this paragraph, which would then read "choices will place the resident, other residents *or staff* at risk of harm".

§2800.30(e)(1) – Informed consent: Informed consent should be not restricted to imminent risk. There are many circumstances where risk is not imminent, but there is a potential for reasonable risk.

§2800.30(j) – Informed consent: By eliminating the provider's protection against suits and claims, it becomes impossible for a residence to enter into said agreements. We strongly feel this new language proposed by the Department is contrary to the intent of the enabling legislation.

§2800.54(a)(4) – Qualifications for direct care persons: Clarification is required for this item. What are you referring to? Spoken language? American Sign Language?

§2800.56(a) and (b) – Administrator staffing: Clarification is required as to the training required for the administrator's designee. We feel that it is excessive to require the designee to have training equal to that of the administrator. In effect, it will require each ALR to have two administrators, which will drive up costs.

§2800.61 – Substitute personnel: In the event that agency staff is utilized as substitute staff, it is not possible for these personnel to meet the requirements for staff orientation specific to the residence.

§2800.63(a) – First aid, CPR and obstructed airway training: Nursing home regulations call for one trained staff person for entire nursing home. Why 1/20 for ALR?

§2800.65(c) - Staff orientation and direct care staff person training and orientation: It is our belief that it is appropriate to give a person 90 days to receive their training as long as they are working along side a trained individual.

§2800.65(g) - Staff orientation and direct care staff person training and orientation: It is adequate for direct care staff to have 12 hours annual training relating to their job duties.

§2800.82 – Poisons – Poisons should not include toiletry items (i.e., hairspray, shampoo, soaps, perfumes and colognes, toothpaste), items used by residents for household upkeep (i.e., furniture polish, glass cleaner) or hobby supplies (i.e. paint, glue) used by the resident in a safe manner and considered as normal everyday items found in a household.

§2800.98(b) – Indoor activity space: It is our opinion that the dining room should be considered part of the living space of the residence as doing so fosters a residential family-centered environment.

§2800.101(b)(1) –Resident living units: 250 square feet or floor space exclusive of closets and bathrooms is excessive. If 80 sq.ft., suffices for a PCH, certainly 200 sq.ft. is enough for an ALR, whose population is frailer and less mobile. Extra space may be needed in closet(s) and bathroom, not in the main room. Alternatively, retain 250 sq.ft., but have it include bathroom and closet(s), allowing each ALR to select room, bathroom and closet sizes appropriate to the needs of the residents.

§2800.101(b)(2) – Resident living units: 175 sq.ft. in existing residences is excessive and puts an unnecessary burden on existing residences.

§2800.101(d)(1) – Resident living units/New construction: For new construction, kitchen space in every room seems excessive. Somewhere between 10% and 25% of rooms might reasonably be kitchen-supplied. A "country kitchen" would be enough for most residents' needs in either new or existing facilities.

§2800.101(h)(4) – Resident living units/Master keys: Multiple master keys may need to be maintained for multiple buildings at the building site.

§2800.124 – Notification of local fire officials: It is a waste of time and money to notify the fire department whenever there is a resident in need of assistance to evacuate in an emergency. Continuous up-to-date lists of such residents, kept by the Receptionist and by each Resident Care Office in the residence can be handed to firefighters on arrival. This residence's fire department has given written approval for such a plan. Indeed, our fire department prefers not to receive periodic updates.

§2800.125 – Flammable and combustible materials: These materials need to be defined and should not include items used by the resident in a safe manner and considered as normal everyday items found in a household.

§2800.141(b)(1) –Resident medical evaluation and health care: Change "At least annually" to "Within one year and one month of the previous evaluation." "At least annually" means *less than one year* after the preceding evaluation. Many medical insurance policies require medical

evaluations *after more than one year*. The proposal eliminates this conflict, satisfying both the regulation and insurance companies. It also provides leeway in avoiding weekends or holidays when doctors do not do evaluations, gives a cushion to allow for scheduling difficulties, and takes care of such situations as when the resident is ill and has to reschedule an appointment.

§2800.171(a), (b)(1-7), (d)(1-4), (e)(1-4) - Transportation: The requirements set forth in this section seem unreasonable, are unnecessarily burdensome and extremely costly for a facility and ultimately to the residents. Transportation for social appointments should be the responsibility of the resident.

§2800.181(d) – Self-administration of medications: Remove the last sentence. We assume that the resident's lockable living unit suffices as a safe and secure location for medications, those medications already being stored out of sight.

§2800.220 - Service provision: The bundling of services will result in residents who do not use those services having to bear the responsibility for covering their costs. Only residents who use the individual services should be charged for the service.

§2800.220(b)(6) – Service provision/household: "Household services", not having been defined, should either be defined or described enough to determine what is meant by "services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences."

§2800.220(d)(7) – Service provision/escort service: Inclusion of escort services upon the request of the residents, regardless of need or cause, are an unnecessary financial burden to the residence.

§2800.224 – Initial assessment and preliminary support plan: The proposed system perpetuates the inability to accurately capture the care needs of a potential resident. A more thoughtfully designed pre-admission screening tool combined with personal interview and a medical/treatment evaluation is a better process to determine if the facility can successfully care for a resident. It will easily lead you to the conclusion of admit or not admit. Repetitive paperwork in addition to inadequate forms not only enhance frustration on the part of the provider but increases the possibility that an incorrect decision will be made about the residence's ability to care for the resident. A good screening tool should be able to support an assessment and care plan that is developed after admission when staff can compare what they learned on interview with what they are seeing in the reality of everyday care needs.

§ 2800.227(c) - Development of the final support plan: Reviewing each resident's support plan (and in an ALR that probably means every resident) on a quarterly basis seems time consuming and expensive. It makes more sense to review it only when the resident's condition changes. Depending on how many people are involved, such a review, including preparation time and meeting time is estimated to take up a total of 8 staff hours, and cost up to $400 per resident.

§ 2800.227(k) - Development of the final support plan: Rather than saying "the residence shall *give* a copy of the support plan to the resident and the resident's designated person", it would be more realistic to say "the residence shall *offer* a copy…". Our experience in a PCH is that most

residents do not want a copy when it is offered; when declined, time and money are saved. However, not on a quarterly basis as in the previous comment.

§ 2800.228(b)(1)(iii) - Transfer and discharge: It may be impossible to notify a patient of the location of where he/she is going. The residence's knowledge of this information is dependent upon the cooperation of the resident and the resident's family in sharing this information with the residence.

§ 2800.228(b)(2) – Transfer and discharge: The sentence "The residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services" should be eliminated. Our concern is that the residence knows its capabilities and family-arranged services could be inadequate or disruptive to the community.

§2800.229(f) – Excludable conditions; exceptions: We request that this paragraph be stricken. Allowing the consumer to apply for an exception exceeds the scope and authority of Act 56, which gives the power to request an exception to the residence only.

§ 2800.236(a) – Training: There is a concern that the number of hours required for training may be excessive. Eight hours of training related to dementia and 12 hours of annual training, totaling 20 hours, is more than adequate.