#2712



September 14, 2008

Gail Weidman
Office of Long Term Living
Department of Public Welfare
6th Floor, Bertolino Building
Harrisburg, PA 17102

Dear Ms. Weidman:

On behalf of the Pennsylvania Assisted Living Association [PALA], please accept my comments regarding the proposed Assisted Living regulations. PALA is a not for profit trade association representing over 300 personal care home providers across Pennsylvania. Our membership represents the interests of more than 11,000 citizens currently residing in personal care homes across the Commonwealth.

PALA participated in all meetings of the Assisted Living Workgroup which had been convened by The Department of Public Welfare in an attempt to extrapolate the ideas, opinions and best practices of a diverse stakeholder group. After careful consideration however, PALA does not believe the proposed regulations are written in a manner that is consistent with the intent of Act 56. The Act, passed in July 2007 sought to create a consumer-driven, resident-centered long term care service option predicated on the moral compass issues of resident independence, dignity and choice. Under Act 56, the department was directed to develop regulations in consultation with industry stakeholders, consumers, and other interested parties. To accomplish this legislative directive, the Department commenced a series of nine stakeholder meetings beginning October 2007 and ending April 2008. Although the workgroup was comprised of a variety of participants, it failed to include any senior consumers that are currently residing in personal care homes or who would have a vested interest in considering an alternative living opportunity. We find that unacceptable considering that the majority of consumers will be seniors from the Commonwealth. It is unfortunate that their interests and opinions were not considered a vital component of developing regulations that would directly impact their future residence. Older people want to live as independently as possible, they want their privacy respected, they want their dignity protected, and they want to choose how they live their life. These regulations consistently constrain and/or contradict all four of those "resident centered" principles: independence, privacy, dignity, and choice.

Regrettably, the regulations, as proposed, do little more than address issues of physical structure and paperwork compliance. These regulations do not bring Pennsylvania into the 21st century of the assisted living industry. Worse, they do little to meet the overwhelming financial crisis confronting the state's long term care service continuum. As Pennsylvania continues to spend millions of dollars on costly and out-dated service options that do not meet or exceed consumer demand or choice, the list of Pennsylvania's low-income seniors seeking access into assisted living continues to grow. The proposed regulations prevent access to this service option due to excessive and dramatically costly mandates. The cost of compliance to both existing homes and new construction are so significant that there is little, if any, motivation for providers to submit application under these regulations.

PALA respectfully offers its observations to select answers rendered by The Department on the Regulatory Analysis Form as well as noting concerns on the most severe fatal flaws in the proposed regulations.

Sincerely,

Edward J. Corbeil
President
Pennsylvania Assisted Living Association

**Regulatory Analysis**

**#12 – Q: State the public health, safety, environmental or general welfare risks associated with non-regulation.**

**A: In enacting Act 56, the General Assembly found that it is in the best interests of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need such care.**

- ***I do not believe this answers the question. It rather is an excerpt from the Act itself. It does not speak to any jeopardy in public health and safety, no environmental tragedies, and the general welfare is not at risk without the commencement of these regulations.***

**#13 – Q: Describe who will benefit from the regulation ( quantify the benefits as completely as possible and approximate the number of people who will benefit)**

**A: Individuals who choose to live in Assisted Living will benefit from the proposed regulations.**

- ***This answer does not address the concept "as completely as possible". There are presently 1,468 personal care homes with a licensed capacity of 69,393 residents. There are approximately 49,960 personal care residents across the Commonwealth. The benefits of the regulations have not been quantified and the Office of Long Term Living estimates that 100 assisted living residences will be licensed in fiscal year 2009-2010. Using this estimate [as cited in numbers 15 and 17 of the analysis], the department is estimating that 7500 residents will receive the benefits of the 2800 regulations in 2009-2010 as projected revenues are based on a 75 bed AL residence model.***

**#14 – Q: Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.**

**A: No adverse effects are anticipated from the promulgation of this regulation.**

- ***Due to the lack of significant and substantial congruence between the intent of Act 56, which was to create a consumer focused and consumer driven long term care service option, and the proposed regulations, many of Pennsylvania's citizens are potentially in harms way should the regulations be passed. There are far too many low income, impoverished seniors across the state that have been waiting, if not praying for a mechanism that would enable them to access the private pay assisted living / personal care threshold. Act 56 was created to give hope to this vastly undetermined population. Regrettably, in their current form, the Provider community views the cost of compliance as being out of proportion with the cost of submission. If passed, in all likely-hood, Pennsylvania will have a created an industry of which no one partakes. Citizens can not reside where there are no homes.***

***#15: Q: List the person, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply)***

**A: Facilities that seek to operate as assisted living residences will be effected by the regulation. It is anticipated that 100 assisted living residences will be licensed in FY 2009-2010; 150 in FY 2010-2011; 200 in FY 2011-2012; and 250 in FY 2012- 2013.**

- ***To date, PALA has surveyed 1300 personal care facilities across Pennsylvania. 35% of the surveys have been responded to and not one of the 455 homes has answered in the affirmative that they endeavor to apply for assisted living licensure. Unanimously, all facilities cite the cost of the regulations as presenting a significant obstacle to pursuing licensure under the 2800's.***

**#16: Q: Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**

**A: The Department developed the proposed regulations in consultation with the Assisted Living Residence Regulation Workgroup that was comprised of industry stakeholders, consumers and other interested parties. The Department held meetings with the workgroup on October 17, 2007; November 6, 2007; November 27, 2007; December 11, 2007; January 8, 2008; January 29, 2008; February 11, 2008; February 26, 2008 and April 1, 2008. Over 35 stakeholders were invited to participate in the workgroup which included disability advocates, advocates for older adults, consumers, union representatives, an elder law attorney, public housing agencies, trade associations for profit and non-profit long-term care nursing facilities and many other interested parties.**

- ***There are literally thousands of seniors served in personal care homes across Pennsylvania. The Assisted Living Federation of America [ALFA] estimates that roughly 650,000 seniors reside in approximately 36,000 assisted living communities across the nation. Yet, the Workgroup never once invited a senior citizen that resides in a personal care home to participate in any of the nine meetings. Representatives from all three Provider Trade Associations offered to facilitate an invitation to fruition but the offer was ignored.***

**#17: Q: Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

**A: Costs are expected to be incurred by the regulated community beginning in Fiscal Year 2009-2010 ranging from $0.008 million to $0.365 million per assisted living residence based on a 75 bed assisted living residence. At a minimum, all assisted living residences would be required to pay a licensure fee amounting to the $0.008 million on average.**

- ***The current licensure fee is roughly $50 per residence. The department's estimated cost increase based on size of facility and number served is between $8,400 and $365,000. This increase can be further impacted by additional costs for staffing, training, fire safety compliance and construction costs. Essentially, in all likely-hood providers can see their current costs rise in too dramatic a fashion to possibly estimate at this time. Conservatively, costs under the 2800 regulations would rise at a minimum of 200%.***

**# 24: Q: Are there any provisions that are more stringent than Federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

**A: There are no provisions that are more stringent than Federal law.**

- ***The Department can confidently state that there are no provisions as strong as or greater than Federal standards because there are no federal standards for Assisted Living. Assisted Living is licensed in all 50 states, not on a federal level.***

**# 25: Q: How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

**A: Surveys of other states have shown a variety of standards for building, equipment, operation, care, program and services, training, staffing, and for the issuance of licenses for assisted living residences. Based on review of those surveys the Department has determined that the proposed regulations will not put the Commonwealth at a competitive disadvantage with other states.**

- ***If enacted, the regulations will catapult the annual licensure fee rendered by Providers to possibly the highest in the nation. This fee based on a flat $500 + $105 per bed was never at any time discussed during the work group meetings. It serves as an example of the numerous proposed regulations that will ultimately prove to be too onerous for providers to seek entry into the state's new, albeit poorly crafted assisted living industry. Creating and enforcing a multitude of burdensome, tedious, unnecessary regulations will have a dramatic impact in solidifying Pennsylvania's competitive disadvantage in the assisted living market place. Essentially, a large number of Pennsylvania's personal care home providers have always viewed themselves to be assisted living providers but they have always been forced to comply with the personal care home regulations; with great insight however, Pennsylvania's esteemed Legislature sought to correct this oversight. Act 56 was a spirited attempt to respond to consumer demand across the state. Seniors in particular stand to benefit the most from a sound and reasonably regulated assisted living industry. Regrettably, The Office of Long Term Living has manufactured a series of regulations that are not consistent with Act 56. They do not promote access and if enacted, will severely inhibit the concept of "aging in place". Today when states across our great nation are strategizing methods to better serve their citizenry by opening doors previously shut by bureaucratic red tape, lack of sufficient funding and over-bearing regulations, it is incomprehensible for Pennsylvania to enact the 2800 Regulations. Pennsylvania will be at a material disadvantage competitively with the enactment of these regulations as written in their current form in that providers locally, regionally and nationally recognized as typical assisted living provides cannot meet these regulations as proposed, in terms of their real estate design and their current operating approach.***

**THE FOLLOWING ARE PALA'S DETAILED COMMENTS ON THE PROPOSED ASSISTED LIVING REGULATIONS. RECOMMENDED LANGUAGE IS PROVIDED WHERE APPLICABLE:**

**2800.11(c) : The current licensure fee for personal care homes is based on a tiered system predicated on the number of licensed beds a provider operates.**
**The present tier is as such:**

**20 beds or less = $15**
**21 - 50 beds = $20**
**51 – 100 beds = $30**
**Over 100 beds = $50**

**Under the proposed regulation, the fee escalates to a flat $500 PLUS an additional $105 per bed. This estimate is simply not acceptable. Using this possible licensure fee formula, fees paid to the department can range as high as $220,000 per year and are subject to an annual cost of living increase which can then add an additional $6,000 to $8,000 per year. By year three of the regulations, it is possible that some providers will be paying nearly a quarter of a million dollars per year in licensure fees alone.**

***Recommended 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 $5 per bed fee that will remain in effect for during fiscal years 2009-2010 and 2010-2011. The bed fee may be adjusted by the Department after FY 2010-2011 at a rate not to exceed the consumer price index.***
***(2) No Assisted Living Residence shall be required to pay more than $1000.00 for licensure fee application or renewal application.***

**2800.16(a)(3): This regulation governing "reportable incidents" adds "illness" to the list of reportables. In the largely senior population served in assisted living, illnesses of all types are a common occurrence. Submission of a reportable incident report each and every time this were to occur creates unnecessary and burdensome paperwork compliance.**

***Recommended Language:***
***A reportable incident is defined as an injury or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.***

**2800.19(a): While the criteria and guidelines surrounding waiver application appear to be resident-centered and thereby commendable, providers whose applications meet the criteria should obligate the Department to approve them.**

***Recommended Language:***
***A residence may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request must be on a form prescribed by the Department. The Secretary, or the Secretary's appointee, shall grant a waiver of a specific requirement of this chapter if the following conditions are met:***

**2800.19(f): The department should have the right to review all waivers to ensure compliance is being upheld to the standards with which they were granted. However, an appeals process should be available to providers should a standing waiver be revoked.**

***Recommended Language:***
***When the Department revokes a standing waiver from an Assisted Living Residence, that Residence may appeal the revocation consistent with Section 2800.12. (Appeals).***

**2800.22(b): On average, a personal care/assisted living community can receive upwards of 20 new visitors per week submitting application into the home. Mandating providers supply each potential resident/designated person with a copy of the resident agreement [average 15-40 pages in length]; handbook, etc is overtly costly and not environmentally conscious when considering the abundant use of paper in these transactions.**

**2800.25: There is no equity in the allowance to terminate a resident agreement/contract. As is current practice, an automatic renewal on a month-to-month basis remains the accepted standard. However, there are no grounds to permit a resident to terminate his/her contract with just 14 days notice while requiring a provider to provide 30 days notice of its intent to terminate a contract.**

***Recommended Language:***
***The contract shall run month-to-month with automatic renewal unless terminated by the resident with 30 days notice or by the residence with 30 days' notice in accordance with 2800.226 (relating to transfer and discharge).***

**2800.25(2)(i): Whereas it is wholly understandable that in the spirit of full disclosure, providers should list out their various fees for service, it is not reasonable to ask providers to estimate costs associated with unscheduled ADLS and supplemental healthcare. These services, when rendered, may take as little as 5 minutes or all day as in the case of coordinating various supplemental healthcare appointments and necessities.**

**2800.25(e): This provision permits the resident/designated person to rescind the contract upon receipt of the initial support plan. Yet, regulation 2800.227 permits a residence to submit a support plan up to 30 days post-admission. This rescission within 72 hours is technically extended to 30 days as well. It is therefore not congruent in its application.**

***Recommended Language***
***The resident, or a designated person, has the right to rescind the contract for up to 72 hours after the initial signature of the contract.***

**2800.25(i): Supplemental healthcare services by definition may be provided by a vendor other than the assisted living residence. Mandating providers include pricing from out side providers in their agreements is not practical.**

**2800.30(a)(1): Regulations containing an informed consent process have been necessary for quite some time. In the spirit of Act 56, the 2800 regulations are constructed provide such safeguards for both residents and providers alike. It is however recommended that the ceiling for executing an informed consent agreement not be set at imminent risk of "substantial" harm.**

***Recommended Language***
***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 risk of harm by the resident and/or designated person's wish to exercise independence in directing the manner in which they receive care, the licensee may initiate an informed consent process.***

**2800.30 (b)(1): The Long-Term Care Ombudsman plays an important role in the advocacy of people residing throughout long term care continuum. In many instances providers are extremely proactive in calling upon their services for assistance and guidance. Under the circumstance of informed consent agreements, one can see why an ombudsman may be needed. However, notifying an ombudsman for cognitively impaired residents leaves wide open the interpretation of this regulation as numerous residents, even those seemingly lucid, may be diagnosed with varying degrees of dementia. It is recommended that further explanation and definition of "cognitively impaired" be provided by the Department.**

**2800.30 (f): As is often the case, consensual agreement is difficult to achieve. The current language does not provide ample protection to providers who do not accept the terms of the risk agreement. It may very well be the case that the agreement still presents a highly unacceptable level of risk to other residents, staff persons or the originating resident.**

***Recommended Language***
***The provider retains the right not to sign an informed consent agreement if it deems the level of risk of harm to be too high to the resident, other residents and/or staff.***

**2800.30(i): Act 56 specifically included safeguards for providers to liability from the execution of informed consent agreements. As written, the language in this regulation does not emulate the language provided in the statute.**

***Recommended Language [per Act 56]***
***Execution of an informed consent agreement shall release the provider from liability from liability for adverse outcomes resulting from actions consistent with the terms of the informed consent agreement. The agreement shall not constitute a waiver of liability with respect to acts of negligence or tort.***

**2800.53 and 2800.54: Residents, families and service organizations across both the state and the country are eternally grateful to the dedicated professionals who employ their God given talents in personal care and assisted living residences. These employees are highly qualified and dedicated to serving their residents and each other consistently day in and day out. They have received hundreds, possibly thousands of hours in both formal classroom and on-the-job training. Administrators, department coordinators and direct care staff alike have demonstrated leadership, competence and compassion in their duties. It is simply unconscionable for these regulations to be written in a manner which does not provide a method for grandfathering all current personal care home administrators, direct care and medication administration trained staff. It is HIGHLY recommended that all such aforementioned administrators and staff currently working in personal care homes across the Commonwealth be grandfathered into these regulations on the date they take effect.**

**2800.53(3) Mandating a newly hired Administrator in the prior 10 years have at least 2 years of direct care or healthcare administrative experience precludes many qualified individuals seeking employment in assisted living. In many cases, providers are apt to hire highly qualified administrators from outside the continuum of long term care or healthcare. Individuals with a documented successful history in service industries such as hotel management, hospitality, etc should be exempt from this provision.**

**2800.56: The standards proposed in this regulation are excessive and pose yet another costly mandate to providers. Implementing the standard of a back up administrator with all qualifications and annualized training can easily cost providers upwards of $5000 per year as the initial course for personal care administrators ranges from $1,900 to $2,500. Costs associated with registration and travel for additional annual training will be exorbitant. The total cost to the "regulated community" using the Department's estimate of 100 providers in year one is roughly $500,000.**

***Recommended Language***
***56(a) The administrator shall be present in the residence an average of 20 hours per week in each calendar month.***
***56(b) The administrator shall designate a staff person to supervise the residence in the administrator's absence.***

**2800.64(d): The approved annual training should also encompass training approved by the National Association of Boards of Examiners of Long Term care Administrators [NAB] and the National Continuing Education Review Services [NCERS]. These long standing accreditation organizations are currently widely recognized throughout the country's assisted living industry.**

**2800.96: A mandate to include automatic electronic defibrillation devices [AED's] in every first aid kit, when such devices are not even mandated in skilled care facilities is another example of an over the top costly and unnecessary regulation. On average, an AED will cost in the neighborhood of $2,500. Most providers have at minimum 3 first aid kits. The approximate amount of costs added to providers to comply with this regulation would be $7,500 per residence. Again using the Department's estimation of 100 providers applying for licensure the first year, the "regulated community" will be taxed with the burden of an additional $750,000. It is also important to note that and AED is installed in a manner that would make it separate and apart from a first aid kit as its size will not permit it to be part of an actual first aid kit. AED's are typically stored in a wall-mounted box.**

**2800.98 Regulations mandating increased space for existing providers will almost virtually ensure a relatively limited, if any, participation in the state's new assisted living industry. Construction costs to renovate existing properties such as would be needed here to meet the requirement for two rooms available for indoor activities as opposed to the current directive of one room under the personal care home regulations are expensive and extremely cost prohibitive. Requirements of at least 15 square feet per person in these two rooms with an aggregate floor space of 750 square feet have no significant frame of reference and will undoubtedly limit and quite possibly prohibit consumer access to the assisted living market. If the Department seeks compromise on this regulation, it is recommended that a residence's dining room be permitted to count as living space in order to ensure compliance with square feet and resident accommodation requirements.**

**2800.101(b) (1) and (2): The proposed square foot regulations pertaining to living units of 175 sq ft for existing residences and 250 sq ft for new construction are perhaps the greatest barriers presented in the draft 2800 regulations. They are representative of the Department's failure to include the actual voice of even one senior on the AL workgroup. In actuality, the size and configuration of a living unit does not readily translate into high quality, resident centered care predicated on the moral principles of dignity, respect, compassion and aging in place. One would challenge the fact that many if not all people move into assisted living residences due to the need for greater socialization. Seniors are down-sizing at this time in their lives. Large homes or apartments are exactly what they are turning away from in order to overcome the loss of a spouse or the challenge of a limited income. Standing by these sq ft mandates will ultimately close the door to assisted living for so many seniors and others in need across the Commonwealth as the construction costs will simply be too prohibitive.**

***Recommended Language***
***101(b)(1) For new construction of residences after _____ ( effective date of regulations), each living unit for a single resident must have at least 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 60 square feet in the living unit.***

***101(b)(2) For residences in existence prior to _____ (effective date of regulations), each living unit must have at least 125 square feet measured wall to wall, excluding bathrooms and closet space. If two residents share a living unit, there must be an additional 60 square feet in the living unit.***

**2800.101(D)(2)(iii): Existing facilities will be hard pressed to provide a stove top for hot food preparation accessible to all residents, especially if the stove top can not be the one used in a residence's main kitchen. Regardless, this regulation provides an unsafe environment to the residents of the assisted living residences. The average age of a personal care/assisted living resident is 84 years old. Cooking is no longer a viable option for nearly all of the residents served currently across Pennsylvania. In many instances, the inability to prepare and cook their own meals leads to their move into a personal care home. Providing a stove top is not only unsafe it is also contrary to one of the many services already provided in personal care home residences through the provision of 3 well balanced, nutritious meals per day.**

**2800.101(j)(1): Many residents will move into their new assisted living home preferring to bring their own mattress. It is recommended that an exception be made to a fire retardant mattress when a resident brings their own.**

**2800.108: Firearms and weapons of any kind should not be permitted in any assisted living community. The consequence of forgetfulness of a senior should be limited to missing an activity, or worse, missing a medication. Forgetting to secure a weapon in a home housing residents diagnosed with severe depression, anxiety and/or dementia could lead to tragedy.**

**2800.124: The notification to the fire department of the location of resident living units and the assistance needed should be clearly defined as to the frequency of the notice. Most personal care providers have established standards with their local fire department [such as weekly] or when significant changes occur in a home such as a large number of resident move ins or move outs or some internal room change or care level change.**

**2800.131 (a) and (c): It is a grave concern to think of an assisted living resident attempting to combat a fire. Installing 2 fire extinguishers [one 2-A and one 2A-10BC] in each resident living unit implies that a resident is capable of extinguishing life threatening flames. Fire extinguishers are heavy and if misused, capable of causing significant harm. Particularly disconcerting is to think of installing fire extinguishers in special care living units which typically provide a home to residents with Alzheimer's Disease or dementia.**

***Recommended Language***
***There shall be at least one operable fire extinguisher with a minimum 2-A rating every 3000 square feet including the basement and attic.***
***A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen excluding kitchens inside resident living units.***

**2800.141: Many residents and families resist moving into a long term care residence until an unfortunate event such as an injury, illness or wandering in public forces an immediate call to action. In many cases residents and their designated persons are unaware of the heavy, sometimes burdensome requirements which must be met prior to one's admission into a personal care community. It is for this reason that it is highly recommended that the required medical evaluation mandated for admission be permitted to be completed for up to 30 days post admission. This will permit residents and families to gain safe haven and shelter while still ensuring ample time for regulatory compliance.**

**2800.142: The right granted providers in the statute to control what outside providers are permitted to render services to its residents should be strictly adhered to under this provision. Act 56 states that to the extent prominently disclosed in a written admission agreement, an assisted living residence may require residents to use providers of supplemental healthcare services designated by the assisted living residence. This provision should be constructed in a manner identical to the intent of the statute; which was to supply protections against having unwanted outside providers on the premises. In many instances, assisted living residences have knowledge of reputable and non-reputable supplemental healthcare providers. Assisted Living residences are more apt to permit only reputable outside providers on their premises to care for their residents.**

**2800.171(d): As previously stated, socialization and maintaining a healthy balance of in-house activity and community based events is essential to one's well-being. Providers are currently charged with coordinating the medical and social calendars of its residents in section (a) of this regulation relating to transportation. Mandating an expensive purchase in year one of compliance is extreme. Providers wishing to provide transportation to their residents in addition to coordinating it should be given upwards of 3 years to purchase an accessible vehicle. This time frame is necessary as it will more than likely take at least 3 years for the regulated community to have collected data related to the cost of operating under the new regulations. In addition, the price of a fully accessible vehicle is upwards of $60,000. Assuming that even one third of the Department's estimated 100 first year providers opt to purchase this vehicle, the cost to the regulated community will be at least $1.2 million once all costs, tags, registration and delivery fees are taken into account.**

**2800.202(4): Never at any time should a resident be subjected to any harm, abuse or restraint, including chemical restraints. Clarification however on this provision as it relates to pro re nata [PRN] medication orders is required before the regulations can be passed. Often ordered to alleviate an acute episodic event, PRN orders have proven to be essential to the care of residents experiencing extreme symptoms of anxiety. Strict documentation regarding their directed use and subsequent administration must be enforced.**

**2800.220(b) (4) and (5): The clear intent of Act 56 was to create a consumer driven and consumer focused long term care option for seniors which promoted the concept of aging in place. The mandated "Core Services" states that a residence must, at a minimum, provide.... assistance with activities of daily living [ADL's] (4) and assistance with self administration of medication or medication administration (5). This mandate is completely and utterly contrary to the intent of the law in that these services, if rendered as a core service package, prohibits the provider's ability to charge separately for these services. Giving care to a highly frail senior with multiple physical limitations and severe incontinence can take up to an hour. Administering medications to a resident with severe dementia can take up to a half an hour. In today's shrinking labor pool, providers should be seeking the most qualified and talented individuals to serve their residents. As such, covering the cost of these extensive labor costs is essential to not only quality of care but also preservation of the concept of aging in place. Bundling services at a higher rate does not translate into effective pricing for the consumer, but rather, having available an effective, personalized assessment process ensures each resident access to the services they and they alone, require.**

**2800.220(c)(7): This provision implies that the residence is responsible for escorting each resident on their medical appointments. As written, as a practical matter, it is simply not feasible for a residence to operationalize such a mandate. Pulling one or more staff persons "off the floor" to escort residents on medical appointments leaves the home vulnerable from a staffing perspective in case of overall care and service and potential emergency situations.**

**2800.224: It is not customary to inform every potential resident in writing that they are not accepted into the residence. As previously indicated, a home can have upwards of 10-20 potentially new residents per week inquiring about admission. Mandating a residence contact each one in writing for the purpose of notification of a denial of one's application is time consuming and potentially creates liability for the provider. This was not the intent of the Act.**

**2800.255 (a) and 227(b): These provisions would mandate the hiring or the contracting of registered nurse services. It is simply not necessary for an RN to supervise the completion of a resident assessment and/or support plan. This provision and others like it which mandate RN services is overly clinical and does not guarantee a higher standard of care. It does however further emphasize the concept of limited access to assisted living due to the costs of hiring a nurse of which there already is a limited supply.**

**2800.227(c): Resident support plans are extremely valuable, important and vital documents. When properly prepared, all facets of a resident's life are appropriately considered, strategized and communicated to all parties, including the resident, the resident's designated person, physician, the home's personnel and other interested parties [if applicable]. Mandating that each resident's plan be reviewed and modified on a quarterly basis is an excessive use of time and manpower. Consider an average home that may serve 75 residents [using the Department's model]. On average, there is also at least 60% turn-over of residents annually. Using this example, a home is expected to review and potentially modify 120 resident support plans per year or about 30 per quarter. As previously indicated, it requires an in-depth amount of time to complete an effective detailed resident support plan.**

**2800.228(a) and (b)(2): Discharged residents regardless of which party initiated the discharge should have the ultimate say in where they relocate. A facility can work to ensure a smooth transfer or discharge but should not be held accountable as to the appropriateness of placement for a resident once they leave, particularly in cases of resident choice. Additionally, permitting supplemental health care services to be provided on site by untrained family members and unknown private duty staff greatly increases a provider's liability and more importantly potentially jeopardizes the health and welfare of the resident.**

**2800.228(3): no notice period should be required for providers when discharging a resident due to the unacceptable behavior of family members and/or designated persons. The mandate to provide a 30 day notice should be waived if said persons engage in threatening or other law encroachment behavior made toward or against the residence' employees and/or other residents and designated persons.**

**2800.229(c)(4): as indicated with the previous section regarding application for waivers, the Department "shall" grant waivers if all requirements of the waiver application are adequately submitted. Its is also highly recommended that the Department be required to provide an answer to all waiver requests within 48 hours after their submission as 5 business days can feel like a life time for a resident waiting for admission to an assisted living residence.**

**2800.231: The statement "Prior to admission into a special care unit, other service options that may be available to a resident shall be considered" requires further explanation. As written, it suggests some type of liability on the provider for the actions or lack thereof of family members/designated persons prior to moving the resident into the assisted living residence.**

**2800.231(b): The mandate for a medical evaluation prior to admission into a special care unit should be amended to the previously recommended time frame of up to 30 days post-admission to account for both emergency resident move-in's that are often precipitated by an unsafe or sometimes near tragic event. Amending this time frame also takes into account those residents residing in assisted living residences that may regress to the point of requiring the services of a special care unit.**

**2800.231(e): Moves into special care units are often decimating to families and loved ones. Often by the time a move is necessary, the resident is indicating severely impaired cognition. Requiring a resident's signature agreeing to their admission into the special care unit, while readily recognizing the provision of one's rights, calls into question their cognitive impairment. Would one without cognitive impairment freely agree to sign themselves into a special care unit?**

**2800.231(f): Resident support plans should without question be updated upon a change in condition. A very thorough assessment process implemented semi-annually should suffice for this requirement. They are time consuming and if done under these regulations must be done under the supervision of an RN.**
***Recommended Language***
***In addition to the requirements in §2800.225 (relating to initial and annual assessment), the resident shall also be assessed semi-annually for the continuing need for the special care unit.***