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Clarks Summit, PA 18411

INDEPENDENT REGULATORY
COMMISSION

#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:

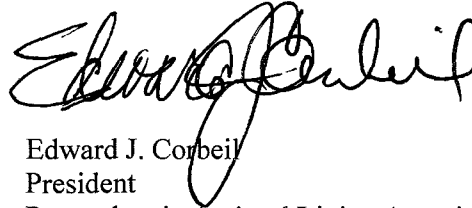
On behalf of the Pennsylvania Assisted Living Association [PALA], please accept my comments regarding the proposed Assisted Living regulations. PALA is a not for profit trade association representing over 300 personal care home providers across Pennsylvania. Our membership represents the interests of 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 likelihood 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.