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INDEPENDENT REGULATORY REVIEW COMMISSION

Weidman-Jones, Gail

From: IRRC [IRRC@IRRC.STATE.PA.US]
Sent: Tuesday, September 16, 2008 9:01 AM
To: Weidman-Jones, Gail; O'Brien, Ruth
Subject: FW: Attached please find PA Association of Area Agencies on Aging's Comments on Assisted Living - A hard copy will be mailed today.

Comments received on regulation #2712 – Assisted Living.

From: Crystal Lowe [mailto:Crystal@p4a.org]
Sent: Monday, September 15, 2008 3:05 PM
To: IRRC
Subject: Attached please find PA Association of Area Agencies on Aging's Comments on Assisted Living - A hard copy will be mailed today.

I am pleased to offer comments on behalf of the Commonwealth's 52 area agencies on aging which serve as community focal points for information and support services for older adults. Area agencies on aging play several key roles with and on behalf of consumers who would be seeking assisted living such as: providing information and referral, level of care assessment, as well as ombudsman and protective services. AAAs currently serve in these same capacities in personal care facilities and in nursing homes.

A regulated Assisted Living Program has been in the works for more than 12 years. We hope that this important feature in our long term living services will finally become a reality for older people and disabled adults to enable them to "age in place". Further, we want to assure that assistive living becomes a real option for moderate to low income adults.

We were able to actively participate in the Assisted Living Work Group and found the process to be extremely helpful in identifying the varying perspectives of stakeholders. Through the months we worked together, we were able to examine assisted living in other states as well as to compare it with our current personal care home regulations. The process was informative. In many instances our discussion moved stakeholder's positions closer together and, in some instances consensus was actually achieved.

We are a member of the PA Assisted Living Consumer Alliance which is submitting detailed comments which reflect a comprehensive review on the proposed regulations. We offer these comments to emphasize several key areas. We hope that consideration will be given to clarifying, and modifying the language in order to better assure that consumers are adequately informed about the service they are purchasing; that adequate consumer protections are in place; that there are sufficient trained staff to care for the changing needs of older and disabled adults; and lastly that the functions being proposed for the Ombudsman are appropriate.

Consumer Protection

Part of the intent of the regulations is to provide consumers with a clear understanding of what assisted living is and is not. The proposed regulations still leave a number of key areas blurred.

1. 2800.220 continues to leave unclear about requirements for the pricing for the core package of services. We believe it is advisable to have the basic core package be an inclusive rate and to ensure the core package is the same from facility to facility. A totally ala-carte menu puts low income and moderate income consumers at a disadvantage and could force them to make decisions about a basic service package, such as whether to get help with a bath or eat three meals per day.

On a related issue, we rely on consumers to "beware" and require them to exercise due diligence, to do comparisons in order to make "informed" choice about which residence best meets their needs. However, the regulations fail to address marketing or set forth any parameters on how facilities can market or present themselves as "assisted living residences".

2. Many of the residents who will enter assisted living will have physical and cognitive impairments; some of which can be quite significant. Therefore, it seems incongruous that the time to complete the evaluation, assessment and plan for services is so protracted as noted in the follow section:

2800.22. Application and admission.

(a) The following admission documents shall be completed for each resident:

(1) Preadmission screening completed prior to admission on a form specified by the Department.

(2) Medical evaluation completed 60 days prior to or **15 days after** admission on a form specified by the Department.

(3) Assisted living resident assessment completed within **15 days after admission** on a form specified by the Department.

(4) Support plan developed and implemented within **30 days after admission**.

(5) Resident-residence contract completed prior to admission or within 24 hours after admission.

We recommend that most of these time frames be shortened. A medical evaluation must be conducted prior to admission; after all, this is a group residence and there could be risk to staff as well as to other residents. An assessment should be completed within 3 days of admission and the support plan within "7" days. Consumers need to have adequate supports in place quickly as well as understand the costs associated with the care.

Sufficiently trained staff

As noted previously, Assisted Living will care for individuals who may have much greater care needs than are currently cared for in assisted living and while these facilities are not and should not be nursing homes, there should be trained staff available to care for needs as well as to be able to identify the unanticipated health problems which need further medical evaluation.

1. We are pleased to see that qualifications and training requirement 2800.53 for the administrator have been increased over the current Personal Care Regulations, However under 2800.65 Direct Care Staff person training and orientation, the proposed regulations would require no additional training for direct care workers in an assisted living facility than in a personal care home, despite the different needs of the populations intended to be served. Given the looseness of the language, all topics could be covered between 4-80 hours depending on the depth of information provided. We strongly suggest a minimum number of hours be designated for training and orientation.

2. We also believe that all direct care staff have first aid and CPR training as opposed to 2800.63 which simply indicates there must be be sufficient staff trained in first aid and CPR.

4. We strongly suggest that under 2800.64 administrators be trained in the informed consent process. Informed consent must not be used on a routine basis to avoid liability or to limit a consumer's right to make

decisions about their care.

5. 2800.60; the on-call nurse should be required to be on site within one hour of a call. When a resident is approved under the exceptions request as listed under 2800.229 (a) and (e), a registered nurse should be on site. As the number of consumers with higher care needs, not able to self-care, are cared for in a facility, the necessity for on-site nursing increases. Ratios should be considered being included in the regulations.

6. 2800.229 (e) (1) If the resident is not capable of self-care of a gastric tube and the regulation continues to reflect that a nurse not be required to be on site, then individuals with gastric tubes not capable of self care should not remain in the assisted living residence.

7. 2800.63 (a) First Aid CPR training should be required for all direct care staff.

Appropriate use of the Ombudsman

1. The Ombudsman program in Pennsylvania is a valuable resource; however, there are insufficient resources to provide the assistance that are currently required. These new requirements amount to additional unfunded mandates. Currently the federal and state allocation for Ombudsman is about approximately $900,000 which averages to about $15,000 for each AAA: less than the cost of 1/2 full time staff member per AAA. There are nearly 90,000 licensed nursing home beds and another 50,000 personal care home beds. It's not hard to conclude that existing resources do not meet the needs. AAAs supplement the federal funding with Penn Care Block Grant, however in the current environment of no increase in funding, agencies have no additional financial resources to meet these additional requirements. These regulations will significantly increase reports to ombudsman and, in some cases, imply that the ombudsman has additional investigation and oversight responsibilities. No cost impacts have been made for the Ombudsman Program.

2. Under 2800.228 Transfer and Discharge (3) If the residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence, the residence has to notify the resident, the designated person and the local ombudsman. We recommend the language be modified to state "the residence has to notify the resident and their designated person." They shall also provide contact information for the local Ombudsman.

3. We also have concerns about 2800.30 (f) Informed which reads, "When the licensee chooses to initiate an informed consent process, the provider shall do so by notifying the resident and, if applicable, the resident's designated person in writing and orally. The notification must include a statement that the long-term care ombudsman is available to assist in the process and include the contact information for the ombudsman. For cognitively impaired residents, the ombudsman shall be automatically notified by the "licensee." We believe this provision is problematic on the capacity side as well as that it seems to overstep the bounds of what we understand the ombudsman should do. Notification implies that action will be taken. In the presence or absence of the consumers designated person the role of the ombudsman is unclear.

We believe that having a regulated assisted living industry is essential as we balance our long term living system of care to assure that consumers can age in the most appropriate setting possible. If you have any questions regarding the comments submitted, please free to contact me.

Thank you again for providing the opportunity to provide input.

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