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INDEPENDENT REGULATORY REVIEW COMMISSION

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September 15, 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 Sunrise Senior Living please accept my comments on the proposed Assisted Living regulations. Sunrise has been caring for and serving seniors since 1981. There are presently 21 Sunrise communities in Pennsylvania serving roughly 2000 seniors. Sunrise is also the employer of choice for nearly 1500 employees across the Commonwealth.

Sunrise commends the Legislature for passing Act 56 defining Assisted Living in Pennsylvania. We further commend and recognize the exemplary work demonstrated by Deputy Secretary Mike Hall for his leadership throughout the regulatory promulgation process. As leaders in the assisted living industry, Sunrise is excited by the possibility of serving seniors under this licensure. However, as is often the case with draft regulations, there are areas of concern that we believe need further clarification and amendment. A list of our questions, comments and concerns follows this letter.

I again thank you for this opportunity to comment.

Sincerely,

Allison Guthertz

Allison Guthertz
Area Vice President

International Headquarters
7900 Westpark Drive, Suite T-900 McLean, VA 22102 *phone* (703) 273-7500 *fax* (703) 854-0150
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2800.16(a)(3): This regulation governing "reportable incidents" adds "illness" to the list of reportable incidents. In the largely senior population served in assisted living, illnesses of all types are a common occurrence. Submitting a reportable incident report every time this is to occur creates unnecessary 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.

2800.25: 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(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 to 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 (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: It is recommended that all such administrators and staff currently working in personal care homes across the Commonwealth be grandfathered into these regulations on the date they take effect. The personal care industry is abundant with highly qualified administrators and direct care and medication staff. These individuals are credentialed, qualified and have received countless training hours under a set of regulations that are nearly identical to the proposed regulations.

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.

2800.101(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.

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.

2800.227(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.

2800.231: 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(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.