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UPMC | University of Pittsburgh Medical Center

UPMC SENIOR COMMUNITIES

September 15, 2008

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Office of Long Term Care Living
Bureau of Policy and Strategic Planning
Department of Public Welfare
PO Box 2675
Harrisburg, PA 17105

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Reference: Proposed 2800 regulations, IRRC No. 14-514

Dear Madams and Sirs:

UPMC Senior Communities is southwestern Pennsylvania's only provider of senior care housing owned and operated by an academic medical center. Our organization has fifteen senior living communities, including five personal care facilities. As an interested and active stakeholder in senior services, our organization is providing written comments to the proposed Assisted Living Regulations under Act 56.

Our comments focus on the concern that the regulations apply a mandated approach to residential services, significant administrative burdens, and substantial increase in operation costs while having little to no effect on improving the care delivery system. Overall the regulations have a stringent, prescriptive philosophy which is in direct conflict with the spirit of flexibility, choice and independence that current personal care offers. The regulations promulgate a medical model environment rather than the social model atmosphere desired by consumers and providers alike. We respect the goal of ensuring quality of care and resident safety, but have concerns that these regulations will "institutionalize" what are currently attractive, flexible alternatives to long-term skilled nursing facilities.

The additional capital and operational costs related to compliance with the regulations will significantly affect the financial viability of many personal care homes.

Furthermore, because assisted living is primarily a private pay product, the additional costs associated with regulatory compliance will ultimately lead to increased consumer costs resulting in less availability and access to those unable to pay.

The purpose of the proposed regulations was to adopt minimum standards for issuance of licensure for assisted living residences operated in our Commonwealth. When we contrast the proposed regulations against those designed for skilled care, many of the Assisted Living regulations exceed that which is required in facilities that provide the highest level of long term care. The assisted living residence regulations intent of developing a long term care alternative for aging in place potentially places the industry and resident care at risk. To comply with the regulations homes must provide higher levels of care and services, increased operational costs, higher utilization of employee resources and costly physical plant upgrades.

The below items represent UPMC Senior Communities' most significant areas of concern with the proposed regulations and suggested revisions:

Dual licensure
Dual licensure as a Personal Care Home and an Assisted Living Residence is addressed in Act 56 Section 1021 (C). This section outlines the inspection criteria for dual licensed facilities. The AL regulations do not address the issue of dual licensure. Facilities should have the option to provide both levels to assure an aging in place for their residents.

Pharmacy and Prescription Drug Accountability
The facility should be permitted to dictate the manner in which prescription drugs are delivered and packaged by a pharmacy. The facility must be able to ensure the integrity of its medication administration regimen, and to deviate from that system is not prudent as it has the potential to lead to medication administration errors. Accordingly, if a pharmacy refuses to package prescription drugs in a manner consistent with the facility's operation, the facility should not be forced to accept drugs from that source.

2800.11 (c) (1, 2) Licensure fees
The required licensure fees of $500 per application and $105 per bed are excessive and would be a significant burden on providers. At this rate a 100-unit facility would pay $11,000. This is much greater than the current fees of $30 for a 100-unit Personal Care Home or $300 for a 100-bed Skilled Nursing Facility. Furthermore, this would place Pennsylvania as having one of the most expensive fee structures in the country.

2800.16 (a) (3) Reportable incidents
The proposed regulations require providers to report illnesses requiring treatment at a hospital or medical facility. UPMC Senior Communities recommends that illness be removed from the list of reportable incidents as this is a commonplace occurrence among the population of residents in these settings. The reporting of illnesses is unnecessarily burdensome, and is contrary to the goal of fostering aging in place.

2800.19 (1) (a) Waivers
Additional language should be added in this section to include the possibility of providing a waiver for an aspect of the regulations for which the residence and resident have signed an informed consent agreement. Waivers should be reviewed and responded to by the Department on a timely basis (suggest within 30 days) and the Department shall approve those waivers that demonstrate compliance with the guidelines.

2800.22 (b) (3) Resident handbooks
The proposed regulations require the Department to approve the Resident Handbook. This is neither appropriate nor practical given the volume of Handbooks that would need to be approved initially as well as when revisions are made. This provision does not exist in any other continuum of care. UPMC Senior Communities supports striking this language from the regulations and replacing with a provision that a copy of residence rules and resident handbooks will be available.

2800.25 Resident contract
(b) The proposed regulations state differing timeframes for contract termination notice for residents and providers, with residents allowed a 14-day time period and providers having a 30-day notice. This inconsistency should be corrected with both parties having a standard 30-day timeframe.

(e) The proposed regulations allow for the resident to rescind the contract upon receipt of the initial support plan. However, the support plan may be provided up to 30 days after the resident is admitted to the facility. It is not reasonable to rescind a contract after this length of time. UPMC Senior Communities recommends removing this provision from the regulations. The resident continues to have the option of rescinding the contract after 72 hours of signing it, which is appropriate. After 72-hours, the resident may initiate a 30-day notice to terminate the contract.

2800.30 Informed Consent
The standard of "imminent risk of substantial harm" is an inappropriately high threshold before a facility may initiate an informed consent process. No resident should be permitted to be placed in any risk of harm, regardless of imminence or whether the harm is substantial, due to the actions or behavior of another resident. The same is also true for employees of a facility. No individual has the right to submit another to a risk of harm, and the threshold set by this language is untenable.

Language should also be added to this section to require the resident to cease and desist any action or behavior that prompted the negotiation of an informed consent agreement during the negotiation of an acceptable agreement. It is also necessary to provide for the contingency that the facility deems the resident unable to grasp the discussions of the negotiation. If the resident is unable to comprehend the discussions, the negotiation should be treated as unsuccessful.

2800.53 Qualifications and responsibilities of administrators
UPMC Senior Communities suggests adding a grandfather clause that exempts individuals currently serving as Personal Care Home Administrators from section 53. This is fitting and appropriate as the duties and obligations of Personal Care Home Administrators are practically the same those proposed for Assisted Living Administrators.

Licensed Nursing Home Administrators (NHA) should also be grandfathered as assisted living administrators. If the Commonwealth has licensed the NHAs to administer facilities that provide the highest level of long term care, it is logical that the NHAs should not be required to attend assisted living classes or re-take board examinations.

2800.56 Administrator staffing
The proposed requirement of having the administrator present in the residence an average of 40 hours or more per week does not allow time necessary for continuing education and other off-site responsibilities as may be necessary to ensure the residents receive quality care and programming. Suggest that this provision be changed to 20 hours or more per week, which is the standard for Personal Care Homes.

The proposed regulations require that the administrator shall designate a staff person to supervise the residence in the administrator's absence and that this designee will have the same training required for the administrator. This implies that there would need to be multiple administrators for each residence. Clearly this would add significantly to the operating costs and is not practical.

2800.60 Additional staffing
The requirement for a provider to have a nurse on call at all times is unnecessary as the regulations already state that staffing shall be provided to meet the needs of the residents as specified in the resident's assessment and support plan. This requirement would also add significant costs to providers, which ultimately are reflected in higher resident fees.

2800.64 Administrator training
The proposed language does not provide an exception for a Nursing Home Administrator with a valid license from substituting credits to keep their Nursing Home Administrator license current. Nursing Homes are the most skilled level of long term care, and individuals who have attained this level of license should have their license and credits be applied to an Assisted Living Residence. It is recommended that language be added to allow for such an exception.

There are also concerns that access to Assisted Living will not be possible at the outset because the regulations require that facilities have administrators who have completed the 100 hour training course and passed the competency test prior to starting operations. Since no individual in the Commonwealth is qualified until the course and test have been completed and passed, it will be months before Assisted Living can exist as a care setting. It is recommended that the regulations require the Department to

have the course and test prepared prior to the effective date of the regulations. In addition, we would recommend that existing Personal Care Home Administrators be exempted from the 100 hour course and test.

2800.96: First aid kit
The requirement to have an AED in each first aid kit would be cost prohibitive. Large buildings have 4-5 first aid kits along with kits in their vans. The approximate cost of $2,300.00 per AED would be a burden to homes. A facility should not be required to have more than one AED on its campus.

2800.98: Indoor activity space
Many of the activities and programs for residents of UPMC Senior Communities are conducted in the dining room, especially with entertainers. If a separate area is needed to accommodate all the residents at one time an additional cost would be incurred for this construction. We recommend allowing the use of the dining room as an indoor activity space.

2800.101 (d) (2) (ii) Resident living units
The requirement for providers to provide a stovetop for hot food preparation in a common area is a significant safety issue. UPMC Senior Communities request this requirement be removed from the proposed regulation.

2800.131 (a, c) Fire extinguishers
The placement of fire extinguishers in every living unit is a cause of concern as fire extinguishers are capable of causing harm when misused and placing these devices in living units with elderly individuals who may have the onset of dementia, may place these residents at risk of harm. It is suggested that the language be modified to require fire extinguishers be placed in public walkways every 3,000 square feet, excluding living units. This is consistent with National Fire Protection Act specifications.

2800.141 (a) Resident medical evaluation
UPMC Senior Communities recommends that a provision be added to also for a medical evaluation post admission. It is not always feasible to have an evaluation performed prior to admission, such as for an emergency placement. UPMC Senior Communities suggests the language to permit the medical evaluation be completed within 60 days prior to admission and or 30 days after admission.

2800.162 (g) Meals
The proposed regulations include a requirement that appropriate cueing shall be used to encourage and remind residents to eat and drink. It is suggested that the phrase "if provided for in the resident's support plan" be added to this statement so as not to infringe on the privacy and independence of the residents.

2800.171 Transportation
(a) The proposed regulations require a residence to provide or coordinate transportation to and from medical and social appointments. As written this

requirement is limitless and could include significant transportation to every social appointment made by residents. UPMC Senior Communities recommends removing social appointments from the requirement and providing scope to the transportation service. Suggested language to read:

> 2800.171 (a) A residence shall be required to provide or coordinate transportation to and from medical appointments and any social activities scheduled by the residence.

2800.220 Assisted living residence services
(b) (6) The requirement for the residence to provide household services based upon the resident's needs and preferences is vague and needs scope to be refined. Suggest this section be changed to read:

> 2800.220 (b) (6) Housekeeping services in accordance with section 2800.4 (relating to housekeeping)

2800.220 (c) (7) As written the language suggest that the residence is responsible for providing escort services to and from every medical appointment that the residence coordinates. Given the aging in place phenomenon, and the amount of individual medical appointments, this would be impractical and add significantly to the staffing needs and operating costs. These costs would be passed on to the consumer which increase the costs to the residents. Suggest this be rewritten as follows:

> 2800.220 (c) (7) The home shall assist a resident with the coordination of transportation to and from medical appointments, if requested by the resident, or if indicated in the resident's support plan.

2800.224 (b) Preadmission screening
The requirement for a written basis of denial for admission is problematic. This requirement opens the provider to potential liability [to fair housing or ada ?] and should be changed to read:

> 2800.224 (b) A potential resident whose needs cannot be met by the residence shall be informed of the decision and shall then be referred to a local appropriate assessment agency.

2800.225 (a) Initial and annual assessment and 2800.227 Support plan
The proposed regulations state that the administrator or designee, or licensed practical nurse, under the supervision of a registered nurse, may complete the initial assessment. The requirement that the licensed practical nurse be under the supervision of a registered nurse is not necessary and would be costly. It is suggested that this oversight requirement be removed from the language in this section.

Similar language requiring RN oversight of an LPN is found in section 2800.27 (Development of the support plan). As stated above, it is suggested that this oversight requirement be removed from the language as it is not clinically necessary.

2800.226 (c) Mobility criteria
The requirement of the administrator to notify the Department within 30 days after a resident with mobility needs is admitted to the residence or the date when a resident develops mobility needs is not practical. Suggest this language be changed to read:

> 2800.226 (c) The administrator or designee shall maintain a monthly list of residents who have mobility needs.

2800.227 (c) Development of support plan
With the requirement of support plans to change as the resident's condition changes, it is excessive to require quarterly updates as well. It is suggested that this timeframe be changed from quarterly to semi-annually to allow more staff time for resident care instead of administrative tasks.

2800.228 Transfer and discharge
Several areas of this section are troublesome. In subsection (a) there is a requirement for providers to ensure the residents transfer or discharge is appropriate to meet the resident's needs. While this is certainly the provider's goal and desire, it is not reasonable to place the onus of this on the provider as the resident can and should have free will regarding discharge and transfer.

UPMC Senior Communities values this opportunity to provide public comment on these regulations and appreciates your consideration of the suggestions provided to amend the regulations.

Respectfully submitted,

Daniel Grant, Vice President, Operations
on behalf of UPMC Senior Communities

cc: Representative Phyllis Mundy
Representative Tim Hennessey
Senator Edwin Erickson
Senator Vincent J. Hughes