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#2712

September 8, 2008

Mr. Arthur Coccodrilli
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: **Regulation No. 14-514. Proposed Assisted Living Regulations**

Dear Mr. Coccodrilli:

I am writing to comment on the Department of Public Welfare's proposed rule making for assisted living regulations published in the PA Bulletin on August 9, 2008.

My comments are based on my experience as a professional in the field of personal care/assisted living and nursing homes for twenty years. I am both a licensed nursing home administrator and personal care home administrator. I am currently the Executive Director of a large personal care home with a skilled nursing facility located in the same building.

There are some regulations being proposed that I believe are highly unnecessary for the population being served and if implemented will greatly limit the amount of licensed assisted living residences in the state of Pennsylvania. Many of these regulations would also cause increased fees to the consumers of assisted living due to the cost of implementing and complying with these regulations.

My understanding of the intent of these regulations is to provide a level of service between personal care and nursing home care which gives the consumer the choice to age in place as well as providing the consumer with a uniformed set of core services that are to be expected of every assisted living residence.

What I find most unusual and most perplexing are the regulations pertaining to size of the unit and living quarter requirements which reflect the desires of a more independent population, yet regulations that allow for a higher level of care than many personal care residents now receive or require. There needs to be a balance between what is reasonable to expect a facility to provide and what the consumer can expect for a reasonable fee. What is an "ideal" resident living unit comes with a price that many consumers will not be able to afford. A price that Medical Assistance will not likely reimburse when/if the time comes that the state of Pennsylvania provides Medicaid funding for assisted living residences. Medical Assistance certainly does not reimburse the cost of a private room in a nursing home or hospital and is unlikely to do so in an assisted living setting.

I believe there are some regulations being proposed that need much further review and that these regulations in their current form should not be approved.

My specific comments and concerns are as follows:

2800.11 Procedural requirements for licensure or approval of assisted living residence.

The $105 fee per bed is exorbitant and will be cost prohibitive for many facilities. There needs to be a reasonable, affordable fee per bed.

2800.14 Fire Safety Approval

Has anyone investigated whether the agencies responsible for fire safety approval have agreed to renew the approval at least every three years?

2800.22 Application and admission.

(a)(2) Medical evaluation completed 60 days prior to or 15 days after admission. Fifteen days may not be enough time to get the physician to see the resident after admission. The time frame should be 30 days after admission like the personal care regulations require.

(b)(3) Why is it necessary to have the Department approve the resident handbook that the facility will provide? The handbook should contain facility-specific information that the resident should be aware of. I do not believe the Department needs to approve the information the facility chooses to cover in the handbook.

2800.25 Resident-residence contract

(13)(e) The resident should have the right to rescind the contract up to 72 hours after admission, but not up to 72 hours after the initial support plan is provided. The support plan needs to be completed within 30 days. Allowing the resident to rescind within 72 hours after the support plan is completed would potentially allow the resident to rescind the contract 33 days after admission with no consequence. This is too long a period of time to be able to rescind a contract. The facility is not given the same time frame. The 30 day notice required in the PCH regulations is reasonable and should be the requirement.

2800.56 Administrator Staffing.

(a) The number of on-site hours needs to be reconsidered. This is double what is being required in personal care and as the regulation is currently written, seems to indicate that if a full time administrator went on a week's vacation, he/she would have to make up those 40 hours during the other three weeks to make the average of 40 hours a week for the month which is unrealistic and unreasonable.

(b) To designate a staff person to supervise the residence in the administrator's absence who has the same training requirements as the administrator, as written, would require two licensed administrators for every assisted living residence. This is not even required of nursing homes which provide for a higher, more complex level of care. There should not be a requirement for the designee in the administrator's absence to have the same training as the administrator. This is unnecessary and very costly.

This requirement needs to be removed from the regulations as it is written. Perhaps a resolution would be that a minimum of 40 hours per week for a facility over (certain amount) of beds is required during 90% of the weeks of the year. 20 hours our more for a facility of (certain amount) or less is required during 90% of the weeks of the year.

2800.60 Additional staffing based on the needs of the residents.

(b) Who would be responsible for determining if a facility requires more than the minimum number of direct care staff hours? A licensing rep? The Department Regional Director? This is very subjective and open to significant debate and interpretation and should be removed from the regulations. Established minimums should be the only requirement.

(c) The residence should not be responsible for *providing* transportation. This is not a requirement in personal care homes or nursing homes.

(d) Having a nurse on-call at all times is going to be cost prohibitive to some facilities. If this requirement remains, the cost of complying with this regulation will be passed on to the consumer in the way of higher fees. Perhaps establishing a minimum amount of LPN hours required in the facility weekly based on number of beds is a resolution.

2800.96 First Aid kits

(a) The requirement of an external defibrillator seems very unnecessary when there is a regulation requiring staff to be present in the facility at all times who is trained in CPR. The cost of these dibrillators is very costly, several thousand dollars. And AED is not required for personal care homes or nursing homes.

2800.98 Indoor activity space

(a) It may be unnecessary and unfeasible in smaller facilities to have two indoor common areas for activities. One common area should be the minimum for existing facilities.

2800.101 Resident living units.

(b)(1) and (2) The square footage requirements are excessive and unnecessary. They exceed what is required in nursing homes which care for residents with a higher level of care and even more extensive mobility issues. These square footage requirements will make it impossible for many existing residences to become licensed as assisted living residences and new construction will be so costly that the cost of providing this square footage will certainly be passed back on to the consumer in the way of much higher fees, to the point where many assisted living residents will not be able to afford such units.

(c) There are residences that provide for low income individuals that can not afford the cost of a private or double room. For a resident on SSI, a triple room may be all that they can afford. Why do we want to limit the occupancy of a unit to only two residents and eliminate a segment of the low income population that will not be able to afford to live in an assisted living residence based on this criterion?

(d) Kitchen capacity. While microwaves and refrigerators may be desired by some, speaking from experience, the desire for kitchen capacity in this population is very low. This should not be a requirement for assisted living. It is not required for personal care and assisted living residents could potentially be even sicker and more dependent than the personal care residents. Providing such amenities is non-essential and would result in higher cost to the consumer for having to provide them in every unit. Providing such amenities should be at the discretion of the provider. And paying for such amenities should be at the discretion of the resident.
(iii) Existing facilities should be exempt from the requirement of a common kitchen as this may not be feasible in some residences.

2800.102 Bathrooms

Existing residences should be exempt from meeting the requirement of a private bathroom in every room. There are going to be many residences that have rooms with and without private bathrooms. Some have bathrooms without a shower or tub. It does not seem reasonable to exclude units without bathrooms or are lacking a shower in the bathroom from being licensed as assisted living based on this criterion. There are facilities that have wheelchair accessible common shower/tub rooms which would accommodate the needs of these residents if not available in the living unit and having such accommodations should be sufficient with existing facilities to be licensed as assisted living.

2800.104 Dining Room

(a)This square footage requirement exceeds what is required in nursing homes that provide for residents with higher care needs and even more extensive mobility issues. The Dept of Health requires nursing homes to have 15 sq feet for every 100

residents and 13.5 sq feet for every resident over 100. Assisted living regulations should not require more stringent regulations than nursing homes.

2800.131 Fire Extinguishers

(a) It is unnecessary to require a fire extinguisher in every living unit mainly due to the fact that the vast majority of residents living in this setting would not even be able to operate a fire extinguisher. Secondly, if every unit was to have an extinguisher, the cost of purchasing these extinguishers would be quite costly. The fire extinguisher regulations in the personal care home regulations are sufficient.

2800.132 Fire Drills

(h) This is required in the PCH regulations and is illogical to me to me there as well. It is not always safer to move residents from their rooms if they are behind a fire rated door to the corridor. Doing so would remove a level of fire/smoke barrier which can protect the resident. This is not the standard evacuation process used in hospitals or nursing homes and should not be the mandatory practice in personal care or assisted living residences that have multiple fire safe zones with fire rated walls and doors.

2800.141 Resident medical evaluation and health care.

(11) Who is responsible for administering the tuberculin test? The facility? The resident's physician office? Who is responsible for the cost of this? This should not be a cost of the resident.

2800.171 Transportation

(a) Residences should be not required to *provide* transportation. They should be responsible for *coordinating* transportation if needed.

(d) There should be no stipulation for what type of vehicle the home has available for transportation. Requiring such may be very cost prohibitive to the residence.

2800.154 Labeling of medications

Surely this regulation allows for pharmacy "bubble packed" medications, however, the regulation is unclear.

2800.220 Assisted living residence services.

(b) Whether a facility can bundle or unbundle core services is unclear. This area needs further clarification.

(b) (6) What exactly are "household services essential for health, safety and comfort of the resident"? This is vague an open to very broad interpretation.

2800.225 Initial and annual assessment.

(a) and (b) This regulation seems to be saying two different things. The administrator can have a designee complete the assessment, but it does not define what qualifications the designee must have. And it refers to an LPN completing the assessment under the supervision of an RN. It is unnecessary to have a RN supervise the LPN in the completion of an assessment. An LPN is certainly capable of completing an assessment in this setting without the supervision of an RN.

This regulation needs clarification.

Because of the nursing shortage, finding RN's to do this job could prove very difficult and cost prohibitive for many residences. If the RN requirement were to remain, this expense will go back to the consumer in the way of higher fees.

2800.227 Development of the support plan.

(b) It is unnecessary to have a RN give supervision to an LPN with the development of a support plan. An LPN is certainly capable via their professional scope of practice to complete an assessment of a resident in this setting.

2800.228 Transfer and Discharge

(3) It is unnecessary to make it mandatory that the ombudsman be notified when a resident's level of care has advanced to the point where a higher level of care is needed. The ombudsman is not qualified to do a level of care assessment so this is unnecessary to the process. Has anyone discussed with the Dept of Aging Ombudsman offices as to whether they choose to be or have the time to be involved with every resident that needs to move to a higher level of care?

The residence must be able to determine their own capability in meeting the needs of the residents it provides care to. This decision making authority should not go to an ombudsman. The ombudsman and the Department are available to any resident who believes they may be discharged unfairly and can be involved as necessary.

2800.229 Excludable conditions; exceptions.

(3) Refers to the medical director of the residence. There is little said in these regulations about the medical director and this needs further clarification. Is having a medical director the decision of the residence or is this going to be required?

(7) What is the definition of a qualified person to administer oxygen? Assisting with oxygen is something a lay person can be taught and does not require any specific level of qualification.

(8) What is the definition of a qualified person to administer inhalation therapy? Assisting with inhalation therapy is something that can be taught to a lay person and does not require any specific level of qualification.

2800.261 Classification of violations.

There needs to be a defined written appeal process made available to providers if they disagree with a violation including who/where the appeal is to be sent and what time frame is expected to get a decision on the appeal. **This is lacking in the personal care home regulations and must be addressed with the assisted living regulations.**

I thank you for your time and attention to these concerns. As I stated previously, there are far too many issues with these regulations as currently written to approve without further discussion and review from involved parties.

Sincerely,

Karen Russell