

#2712



Independence...Friendship...Respect
INDEPENDENT REGULATORY
FEDERAL COMMISSION

October 2, 2008

Dear Executive Director Kaufman:

Many thanks for taking the time on Monday to meet with the folks from the PA Health Care Association and with me. It was very interesting to speak with you and your team.

Although we have been supporters of SB 704 (Act 56) throughout its legislative process, we are concerned that the proposed Assisted Living regulations over-reach the language and the intent of the legislation. Although there are numerous minor concerns with these proposed regulations, we feel especially concerned about two key areas:

- **Discharge and Transfer**- The Act states that “Any of the following individuals may certify that a consumer may not be admitted or retained in an assisted living residence...” ALR Administrator, Consumer’s physician or ALR Medical Director (Page 16, Line 13-22). This language clearly gives the ALR or the physician the key role in determining appropriateness of a resident, not the ombudsman. DPW’s role is to establish the standards, most of which are clearly laid out in the excludable conditions (2800.229). The proposed regulation in 2800.228 #3 creates a very complex discharge process involving the ombudsman and DPW. Most shockingly, the regulation threatens that DPW “may take any appropriate licensure action it deems necessary based on the report of the ombudsman”. This is a dramatic departure from the legislative intent.
- **Informed consent**- The legislation offers informed consent as a way to promote aging in assisted living residences providing that it is “mutually agreed upon” by the ALR and the resident (Page 7, Line 27-29). The process described by the proposed DPW regulations in 2800.30 is extremely complicated and puts an inordinate burden of responsibility on the ALR to “notify in writing AND orally”; to hold a formal meeting and discuss “in a manner the resident can understand”. The discussion must include “reasonable alternatives and their significant benefits and disadvantages” and the “likely outcome” of each alternative. The ALR must also “evaluate the resident’s understanding” of the above and then “ascertain if the resident is consenting with full knowledge and forethought”. This burdensome and potentially liability-charged process makes it very unlikely that an ALR would voluntarily consider an informed consent agreement. The intent of the legislation was to encourage the use of informed consent agreements as a way of promoting aging in place; these regulations do the opposite.

We appreciate your efforts to give careful consideration to these regulations. We believe the current version does not reflect the intent of Act 56 and will not promote the development of assisted living in the Commonwealth.

Yours very truly,

David C. Leader
Chief Operating Officer