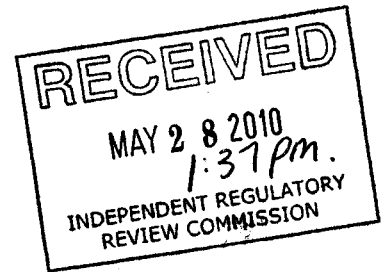


2712
May 28, 2010

Deputy Secretary Jennifer Burnett
Pennsylvania Department of Aging
Office of Long-Term Living
555 Walnut Street
Harrisburg, Pennsylvania 17105-2675



RE: Proposed Assisted Living Residence Regulatory Package

Dear Deputy Secretary Burnett:

On behalf of Senior Care, Inc., enclosed please find the company's comments regarding the proposed final form Assisted Living Regulations as provided on May 3, 2010 for additional consideration during the review process that is to be conducted by The Independent Regulatory Review Commission (IRRC).

Senior Care, through the operation of 15 personal care homes, provides residential care services to nearly 850 seniors across the Commonwealth. Senior Care also proudly employs roughly 300 of Pennsylvania's citizens as administrators, nurses, housekeepers, dietary and maintenance staff and direct care staff.

Senior Care's mission is to enrich the lives of the individuals who live and work in the company's communities by responding to their unique needs and universal desire for dignity and respect. The company's communities, like those residences envisioned in the final form Assisted Living Regulations, are presently designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice.

Senior Care has direct ties to the Assisted Living Residence Regulation Work Group that was comprised of industry stake-holders and other interested parties born from the passage of Act 56. The company truly embraces the Department's belief that it is time for Pennsylvania to enter into the world of Assisted Living licensure and enact regulations that enable the creation of an industry predicated on promoting resident independence, preserving dignity, privacy and choice and one that is based on a true resident-centered philosophy.

Senior Care commends your office for making numerous positive changes to the first draft of the 2800 regulations. Notwithstanding the foregoing, the company still has fairly significant concerns regarding certain regulations, including but not limited to dual licensure, staff qualifications and training, physical plant requirements and core services. If these regulations are enacted "as is", they could potentially jeopardize the ability of Senior Care and other quality personal care home providers to participate in Pennsylvania's "Assisted Living" industry.

Senior Care has a final note regarding the issue of grandfathering administrator and staff qualifications and training. During the Assisted Living Residence Work Group meetings, detractors argued grandfathering should not be permitted under Chapter 2800 because



grandfathering was already extended to the provider community with the inception of the 2600 regulations. This position is inane. Grandfathering under Chapter 2600 allowed personal care homes to make a seamless transition in late 2005 and 2006 as the Department began inspections under the 2600 regulations. As a result, resident health and safety was never in jeopardy. The Department, in its IRRC response, indicated it believes under the 2800 regulations assisted living will serve a higher acuity resident than personal care homes. While the law and regulations ostensibly permit this through the use of an exception/waiver or certification process, by and large, this will not be the case. Personal care home providers have been serving higher acuity residents in a safe and effective manner, and allowing them to age in place for decades. Secretary Hall has also indicated in numerous public forums he does not envision a change in the residents that are currently being served in personal care homes and essentially does not see an interruption of this vitally important industry. Given personal care homes' demonstrated ability to meet the needs of residents (including higher acuity residents), administrator and staff qualifications and training should be grandfathered.

Again, Senior Care appreciates the opportunity to provide its comments on the proposed final form Assisted Living Regulations. If you have any questions or need any additional information regarding the enclosure, please do not hesitate to contact me.

Sincerely,

Edward J Corbeil
Regional Director of Operations
Senior Care, Inc.

Enclosure



ASSISTED LIVING						
Category	Personal Care Home (PCH) Regulations		Assisted Living (AL) Regulations		Comment/Concern	Recommendation
Licensing Fees	2600.11(c)	<p>License application or renewal fee based on the number of beds in the home, as follows:</p> <p>(1) 0-20 beds—\$15.</p> <p>(2) 21-50 beds—\$20.</p> <p>(3) 51-100 beds—\$30.</p> <p>(4) 101 beds and over—\$50.</p>	2800.11(c)	<p>(1) \$300 license application or renewal fee; plus</p> <p>(2) \$75 per bed fee that may be adjusted annually at a rate not to exceed the CPI; plus</p> <p>(3) \$150 application fee for special care designation on license.</p>	<p>Even though the Department reduced the license application or renewal fee in Section 2800.11(c) from \$500 to \$300, and the per bed fee from \$105 to \$75, the Department added a \$150 fee to obtain a special care license designation. The fees are still excessive, and do not appear to be reasonably related to the cost of regulating the AL residence setting.</p> <p>By way of example, today it costs Senior Care \$450 to license 15 personal care homes with an aggregate of 1,146 beds (including three special care units). Under the AL regulations, it would cost Senior Care \$90,075 to license the same facilities, resulting in an annual increase of \$89,625.</p>	<p>For fiscal years 2010 – 2011 and 2011 – 2012, a \$10 per bed fee that may be adjusted annually by the Department after 2012 at a rate not to exceed the CPI; provided, however, in no event shall the fee (including special care designation) exceed \$1,000.</p>
Use of Term “Assisted Living” in Name or Written Materials	N/A	The PCH regulations do not contain an applicable provision.	2800.11(d)	A person, organization or program may not use the term “assisted living” in any name or written material, except as a licensee in accordance with chapter 2800.	The prohibition in Section 2800.11(d) is unduly burdensome and cost prohibitive to personal care home providers. In addition, it is unclear whether a dually licensed personal care home and	The prohibition in Section 2800.11(d) should be deleted.

					assisted living residence could use the name and/or marketing and other written materials if the term “assisted living” is used therein.	
Dual Licensure	N/A	The PCH regulations do not contain an applicable provision.	2800.11(g)(1)	<p>A licensed personal care home may submit an application requesting dual licensure if the personal care home and the assisted living residence are collocated in the same building and are each located in a distinct part of the building.</p> <p>A facility that is dually licensed shall not segregate residents or transfer residents from one licensed facility to another based on payment source.</p>	<p>The mandate for distinct parts under Section 2800.11(g)(1) is unduly burdensome, restricts a resident’s freedom of choice and ability to age in place, and limits an operator’s ability to take advantage of dual licensure. A resident who qualifies for assisted living services may not desire or even be able to utilize the additional space and amenities called for under the AL regulations; however, said resident would nevertheless be required to live in a “living unit” in order to access such care. Dual licensure should be determined based on a facility’s ability to meet the needs of the resident rather than on the facility’s physical plant/layout/amenities.</p> <p>If a dually licensed personal care/assisted living residence qualifies for Medicaid in the future, Section 2800.11(g)(1)</p>	Eliminate the requirement for distinct parts under Section 2800.11(g)(1). In the alternative, allow the resident to “opt out” of the “living unit” requirements under the AL regulations.



					implies a resident in a personal care unit who experiences a change of condition, requires assisted living services and qualifies for Medicaid assistance, could not transfer into an assisted living unit.	
Fire Safety Approval	2600.14	<p>(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. § § 7210.101—7210.1103) is required.</p> <p>(b) If the fire safety approval is withdrawn or restricted, the home shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.</p> <p>(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the home shall submit the new</p>	2800.14	<p>(a) Prior to issuance of a license under chapter 2800, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. § § 7210.101—7210.1103) is required.</p> <p>(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.</p> <p>(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required,</p>	Section 2800.14(e) was added to the AL regulations even though the Department retained requirements similar to Sections 2600.14(a) - (d) of the PCH regulations. Section 2800.14(e) is duplicative, overly burdensome and arbitrary in light of the requirements in Sections 2800.14(a) – (d), which are already designed to ensure ongoing fire safety.	Retain Sections 2800.14(a) – (d) and delete Section 2800.14(e). In the alternative, Section 2800.14(e) should be revised to require fire safety approval renewal no more frequently than every 5 years.



		<p>fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.</p> <p>(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.</p>		<p>from the appropriate fire safety authority. This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.</p> <p>(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.</p> <p>(e) Fire safety approval must be renewed at least every 3 years, or more frequently, if requested by the Department.</p>		
Reportable Incidents and Conditions	2600.16(a)(1) – (19)	The PCH regulations do not contain an applicable provision.	2800.16(a)(20)	A reportable incident or condition includes an absence of staff such that residents receive inadequate care as defined by the respective resident’s support plan.	The Department revised Section 2800.16(a)(20) by adding “such that residents receive inadequate care as defined by the respective resident’s support plan.” The use of “absence of staff” and “inadequate care” (even though tied to a resident’s support plan) is ambiguous.	Section 2800.16(a)(20) should be deleted. In the alternative, the reporting requirement should be triggered if the absence of staff resulted in the facility’s failure to substantially comply with the resident’s support plan, and such failure was the

