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INDEPENDENT REGULATORY  
REVIEW COMMISSION

September 10, 2008

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Gail Weidman  
Office of Long-Term Care Living  
Bureau of Policy and Strategic Planning  
P.O. Box 2675  
Harrisburg, PA 17105

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REFER TO \_\_\_\_\_

Dear Ms. Weidman,

My name is Brian Hortert and I am the Vice President of Assisted Living Services for Concordia Lutheran Ministries. Currently we have 490 licensed personal care beds in Butler and Allegheny counties. I applaud the Department for working toward official licensure of Assisted Living in Pennsylvania; however, there are a number of major concerns with the proposed regulations.

As a matter of background, I have worked in the personal care home industry since 1986. During that time I have both owned personal care homes and also worked as a staff member in companies that had personal care homes as part of their care services. I have seen many changes in personal care over that time, and there is no doubt that personal care homes are providing services for more frail elderly at this time than in any time in the past. Some of the increased oversight under the 2600 Regulations has been a welcomed and needed change in the regulatory process.

Several of the most significant concerns with the proposed Assisted Living regulations are as follows:

1. Licensure Fee: A \$500 Licensure Fee plus \$105 per bed is a significant cost to pass on to our residents. As I have stated, the licensure of our 490 beds (5 locations) would cost \$53,950 per year. That would translate into the potential reduction of between .5-1 full-time caregiver depending on location. We currently already provide over \$1,000,000/year in subsidies to our residents. I do not see how we can continue to increase costs and remain viable. Additionally, the reimbursement to facilities has yet to be defined. I have heard numbers ranging around \$60/day. Currently our cost on average is around \$100/day per resident. There is little incentive to provide assisted living services at this time.

**VISION STATEMENT**

Serving the Triune God by providing for the needs of His people.

**MISSION STATEMENT**

To serve our aging community with the highest quality of services through a continuum of caregiving options provided in a Christian environment, and to serve those with limited funds to the best of our ability.

2. Administrator Requirements: The section covering this requirement appears to be stating that an Administrator or someone with the same credentials and training as the Administrator be on-site 24 hours a day. This would be the equivalent of having to have over 4 full-time administrators on staff. This is far above the requirement for a Skilled Nursing Facility. The cost of employing 3 extra administrators would equate to the cost of adding 6-8 caregivers per week.

The number of on-site hours is also a concern – making the requirement an average of 40 hours a week does not allow for vacations, sick time, etc. There also is no provision for an administrator to cover multiple buildings even if they are on the same campus. Since the buildings will have separate licenses, facilities would be required to employ even more full-time administrators. In our case, we have 2 buildings on the same campus within 300 yards of each other who share staff. It is unbelievable to me that one administrator cannot effectively oversee both buildings. The Department of Health does not even require a Nursing Home Administrator in both buildings. (I am also a licensed NHA).

3. Physical Plant Requirements: The proposed square footage of 175 per unit for existing and 250 for new construction is entirely too large. While all of our current rooms meet the 175 square foot requirement, there are many providers that need the number closer to 125 square feet, which ensures adequate space for residents.

At 250 square feet, the additional construction cost for a new building would be in the neighborhood of \$750,000 for a 75-bed facility. If a provider makes the decision to build, these extra construction costs will significantly reduce their ability to serve low-income individuals. You will be setting the stage of a 2-tiered system – one for the rich and one for low income. This problem will further be exacerbated by the requirement to have a kitchen capacity in each living unit. Not only does this increase the cost of construction, the need for a full kitchen decreases as residents become more frail. A better option would be to have a requirement of a “country kitchen” for all residents to use.

4. Supervision by an RN in Assessments and Care Plans: This provision will only increase the cost of providing services and be of no benefit to the residents. The cost of a full-time RN, who would not be providing care, is roughly equivalent to the cost of hiring 2 full-time direct caregivers. Having a nurse (RN or LPN) review the plans may be a viable option.

5. Dual Licensure: While the legislation calls for this provision, the package, as proposed, is silent on the issue. If the intent is to allow residents to age-in-place, then there needs to be clarification on the issue. Many facilities have certain rooms that qualify for Assisted Living; however, they may be confined to certain areas of the home. To provide proper care and to allow residents to maintain contact with current caregivers, it would only make sense to allow for a room-by-room license.
6. Reportable Incidents: To require a facility to report every illness will be burdensome to both the providers and the Department. There are many illnesses that are common to the elderly and should not rise to the level of a reportable incident. I believe the current 2600 regulations cover the intent of this regulation.
7. Waivers: It is my belief that the current wording of the regulation gives the Department too much latitude in denying waivers. If the conditions are met, then the Department should be required to grant a waiver. In this way, the Department still has the ability to decide if the conditions are met. There should also be a requirement for a time frame for the Department to grant a waiver. Within 30 days would be a reasonable amount of time. Additionally, if a waiver is denied/revoked, there should be an appeal process.
8. Application and Admission: Requiring a facility to provide essentially all written materials to prospective residents is quite burdensome and costly. Most facilities do multiple tours that do not become admissions. To require this information to be given to everyone is not practical. Having informed residents/families is very important, but this can easily be done by simply stating "Prior to Admission" and dropping the line that states "Upon Application".  
  
Also, requiring the Department to "approve" the Resident's Handbook is far beyond anything in existence in any other care facility. I do not see how the Department will be able to keep up with this provision, and it will lead to a significant backlog. Additionally, the regulations are already very specific in the requirements of services and, therefore, there is no need to regulate internal handbooks.
9. Transportation: Requiring all vehicles used by the facility to be handicapped accessible would be very costly. While we do have one lift van for transportation, we also have several cars that are not. It only makes sense to transport residents who do not need a lift van in a car. This not only reduces

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the cost to the facility, it also provides dignity to the residents who may not want to be viewed as handicapped.

10. Administrator Training: There should be a provision that allows a current NHA to manage an Assisted Living facility, provided the requirements by the NAB continue to be met.
11. Support Plans: While I agree that support plans should be updated as a result of a change in condition, the requirement to review and update the plans quarterly would place most of the emphasis on being "paper compliant" rather than focusing resources on resident care. A semi-annual review, and in the case of a change in condition, would be sufficient to meet resident care needs.

In conclusion, I would like to state that while the new regulations are needed to keep up with the aging population of our state, we need to be careful that we do not force good providers out of the market and reduce the overall choices Pennsylvanians have for receiving care. I have also seen first-hand that the regulations are really secondary to what the Department will put in their interpretive guidelines. I recently had an inspection in one of our homes and the interpretation of a regulation changed overnight, with no advanced warning, and was implemented literally on the day of inspection. The Interpretive Guidelines are really the "Rules" that we must comply with, and the Interpretive Guidelines should require full IRRC Review Process before they go into effect.

Thank you for your time and consideration.

Sincerely,



Brian K. Hortert  
Vice President, Assisted Living