This document is a comment on the preliminary DRAFT final regulation. On June 24, 2009, the Department of Public Welfare provided a DRAFT final regulation for public review and comment. The DRAFT final can be found at : http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2712/AGENCY/Document-12700.pdf.

This is an informal process. The Department will consider these comments in preparation of a formal final regulation to be submitted at a later date.

THE EASTON HOME

a part of PRESBYTERIAN SENIOR LIVING

2712

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

July 23, 2009

RE: Proposed Assisted Living Regulations

To Whom it May Concern:

I am the Administrator of the Easton Home a 53 personal care home in Easton, Pa. licensed for 61 beds. In my community, we have a 21 bed secured dementia unit. I am writing to you to submit my comments on the proposed Assisted Living regulations prior to the Department's final submission for approval. Based on the proposed regulations, my facility would not be able to provide assisted living services simply based on the physical plant requirements. Major renovations would be needed in order to meet these new requirements which would be cost prohibitive .

The proposed regulations and changes from the previous version continue to impose significant new costs on homes and residents. They seem to focus on the construction of physical plant amenities and duplicative administrative documentation that have little to no bearing on the care delivered to the resident, and which are likely to make the assisted living level of care too costly for many Pennsylvanians to afford. We currently provide services to our residents in a beautifully restored 100 year old mansion and provide charitable care to over 15 of our residents. To pass along the costs associated with compliance with the new regulations to our residents, it would cause many of them to go through their savings quicker and convert to charitable care, which would severely impact the ability to operate our facility.

Below is a list of my concerns with the new proposed regulations:

1. Licensure Fees: While the Department has adjusted the initially proposed licensure fees, the newly proposed $300 initial application fee coupled with the per bed fee of $75 would still results in a significant burden on facilities. My facility would have to divert $4,875.00 allocated to Resident care services to even apply for licensure. This cost would need to be passed on to our private paying residents. It is still a significant barrier to entrance and will result in large areas of the Commonwealth left without Assisted Living Services.

2. Physical Plant Requirements: The square footage requirement for existing facilities is excessive and not necessary for residents seeking this level of service. In order to meet this requirement we would have to renovate our rooms and end up losing 8-10 rooms in the process to meet the requirement. Renovations of this type would surely be over $800,000, not to mention the lost revenue we would incur during the renovation process, and in the future having 10 less rooms. That is 10 seniors that we would no longer be able to serve.

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Most residents in this setting do not want or need rooms of this size. In fact, smaller rooms may be safer for those residents who are a fall risk and have other safety concerns. This population also does not want or need a kitchenette in their room. They prefer to have their meals prepared for them and any light snacks or microwaving is done in our country kitchen. To provide each apartment in our secured dementia unit with a kitchenette would be unsafe and unnecessary. I will note that my community is consistently above 95% occupancy and serves both a private pay and charitable market, an indication that the market has and should decide what the physical plant requirements should be, not regulation.

3. Discharge of Residents: The residence must be permitted to maintain control over the transfer and discharge of its residents as is called for in Act 56 of 2007. Certain provisions that were advanced in previous proposed regulations have been appropriately disposed, however newly inserted language forces this issue to remain as a preeminent concern for us.

4. Administrator Requirements: The requirement for the Administrator to be on site for 40 hours a week is higher than the requirement for higher levels of care such as skilled nursing. This is also impractical as conferences, CEU education, marketing and community events are all a normal part of the Administrator's job and take place off site. Also, an exception for licensure as an Assisted Living Administrator should be granted to Personal Care Home Administrators by passing a competency test, rather than attend a 100 hour training course.

5. Proposed Regulations Ignore Key Provisions of Act 56 of 2007: The Department's proposed regulations at several points either exceed the authority granted by Act 56 of 2007 or are contrary to the statute. Those areas include:

a. TRANSFER AND DISCHARGE. The proposed regulations exceed the statutory framework with regards to transfer and discharge. Act 56 clearly notes that the residence, through its medical staff and administration, will determine what services it is comfortable having provided on its campus, and when it feels the needs of the resident can no longer be served at that level may initiate a transfer in Section 1057.3(f) and Section 1057.3(h). The regulations at 228(b)(2) counter the statutory framework when it mandates that the —residence may not transfer or discharge a resident if the resident or his designated person arranges for the needed services.

b. USE OF OUTSIDE PROVIDERS. Supplemental health care service provision is another area in which the regulations deviate from what the legislature intended. The legislation states that the provider —may require residents to use providers of supplemental health care services designated by the assisted living residence, so long as it is stated in the contract. Section 1057.3(a)(12). The regulations in Section 142(a) scale back the clearly articulated right of providers to designate preferred providers in contradiction to the statute.

c. **KITCHEN CAPACITY**. Another item on which the regulations over-reach, and are contrary to the statute, relates to Kitchen capacity. The legislation states that the living units shall have —kitchen capacity, which —may mean electrical outlets to have small appliances such as a microwave and refrigerator. There is no mandate in the statute that the residence provide anything more than space and electrical outlets to support kitchen appliances. The regulations go well beyond this definition. The Department proposes not electrical outlets to support microwaves and refrigerators, but the actual provision of microwaves and refrigerators. In addition, the proposed regulations mandate that newly constructed facilities include a sink with hot and cold water. The appliances and sinks are amenities that should be market driven, not called for in a regulation. If a provider is required to provide these amenities, they will naturally have to charge their residents to recover the cost. This means the resident will bear the burden of the cost whether it is an item they want or not. Regulations should establish minimum requirements and allow the greatest flexibility for consumers and providers.

6. Survey Process - 2800.3(b): The proposed regulations give the Department very broad authority to survey Assisted Living Residences. The language permits the Department to survey a residence at any time, without and standard for justification, and as frequently as it wishes. No other long-term care provider is subject to such a standard. The regulations should require annual surveys, with additional inspections when evidence of reliable complaint.

7. Access 2800.5(a): There is a concern with mandating access to organizations or individuals to information on residents that could be sensitive in nature. In particular, any record involving medical information could lead to HIPPA violations. Language should be included that resident records and information would be provided appropriate levels of confidentiality consistent with federal and state law.

8. Resident handbooks 2800.22(b)(3): We strongly believe that it is inappropriate for the Department to have the authority to approve or disapprove of an Assisted Living Residence's resident handbook. This provision exists nowhere else in the continuum of care, and should not exist here either. The presumption is that not only will the Department have to approve the initial release of the handbook, but also approve any alterations and amendments to the handbook. We fail to see how the Department will have the resources to allocate to the review and approval of all resident handbooks and all amendments to existing handbooks. Delays and backlogs are inevitable, and providers will be left to wait and watch as the Department tries to keep pace. This provision should be stricken.

9. Contract Termination - 2800.25(b): We are concerned with the lack of equity in the allowance to terminate a residency contract. Automatic renewal of the residency contract on a month-to-month basis is an appropriate method of treating the relationship. However, there is no basis for allowing the resident to terminate the contract with 14 days notice to the provider, while binding the provider to 30 days notice of termination to the resident. The administrative responsibilities placed upon the residence in order to discharge a resident, whether at the provider's request or the resident, demands a 30 day timeframe. Moreover, the general principle in contract law is to all both parties 30 days notice to terminate a month-to-month contract. It

seems reasonable to uphold that principle. **Both parties should be held to the same notification requirements, and the appropriate time frame is 30 days.**

10. Room Furnishing 2800.42(l): We currently enjoy having residents decorate and furnish their living spaces with personal items from their own home, but this is not without real concerns. Should a resident choose to include a gas burning fireplace as part of their furnishings, dire consequences could result. We ask the Department to include language that would allow unsafe items that are inconsistent with Fire safety/Life safety regulations to be prohibited without fear of regulatory violations under this section.

11. Training - 2800.65([e](g)): The combined educational requirements set forth in this proposed regulatory package exceed those required for Nursing Home Administrators and Registered Nurses. This poses an insurmountable burden for assisted living residences. We urge the Department to abandon this new attempt to increase the training hours and return this requirement to the previously agreed upon 12 hours annually.

12. Indoor Activity Space - 2800.98: We are concerned that the requirement to have two rooms available for indoor activities, as opposed to the one room that is currently required of Personal Care Homes, will be cost prohibitive and may prevent a number of facilities from pursuing an Assisted Living license without incurring construction/remodeling costs. This is especially true if one of those congregate rooms must be at least 15 square feet per living unit up to 750 square feet. **These costs may be quite significant and may have a great impact on the accessibility of Assisted Living in Pennsylvania.**

13. Medical Evaluations - 2800.141(a): We strongly recommend that allowances be made for a medical evaluation post-admission. It is not always feasible and practicable, for instance during an emergency placement, for the residence to have an evaluation performed prior to the resident's admission to the residence. The current 2600 Personal Care Home regulations currently allow for a medical evaluation for up to 30 days after admission, and this provision has been working well.

14. Special Care Units - 2800: We have significant concerns with the inclusion of the intense neurobehavioral rehabilitation and brain injury component to the Special Care Unit subpart. Services provided for INRBI are highly specialized and do not necessarily align with best practices for treatment of Alzheimer's Disease and dementia. In some cases, approaches to the two conditions may be diametrically opposed to each other. For instance, 2800.232(d) prescribes that a residence having a secured dementia unit will —minimize environmental stimulation. While this is sound practice when caring for an individual with an INRBI, it absolutely runs counter to best practice for caring for an individual with Alzheimer's Disease, and makes this provision inappropriate for a Special Care Unit. The two populations are very distinct and should not be governed under the same umbrella of regulations. We strenuously urge the Department to consider the creation of a separate INRBI designation under 2800.11(f). Also, the requirement that an individual diagnosed with Alzheimer's Disease or dementia and residing in a Secured

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Dementia Unit be assessed quarterly to determine whether the placement is appropriate is excessive. Once an individual has progressed to the point where it has become necessary to place them in a Secured Dementia Unit, their condition is not going to reverse. Alzheimer's Disease is a degenerative disease from which there is no escape and no cure. Assessments that coincide with an annual Support Plan revision are sufficient.

Respectfully submitted ,

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The Easton Home

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