

September 11, 2008

Ms. Gail Weidman
Office of Long-Term Living
Bureau of Policy and Strategic Planning
PO Box 2675
Harrisburg, PA 17105
Re: Regulation 14514

Dear Ms. Weidman,

Thank you for the opportunity to comment on these important proposed regulations to adopt minimum standards for assisted living residences operated in the Commonwealth of Pennsylvania. The following comments are submitted on behalf of AARP Pennsylvania.

AARP understands that these standards have been the subject of significant efforts over the past few years by the legislature, the Department of Public Welfare and many dedicated stakeholders. As such, it is gratifying to see the enabling legislation and subsequent regulations package move forward.

AARP has appreciated the opportunity to participate in the stakeholder meetings convened by the Department of Public Welfare and pledges to continue our advocacy efforts to promote quality assisted living services for the residents of Pennsylvania.

On the national level, AARP was an active participant in the Assisted Living Workgroup established in 2001 by the U. S. Senate Special Committee and Aging continuing through 2003 when the workgroup's final report was completed. To continue and expand the work of the workgroup, 11 organizations, including AARP, founded the Center for Excellence in Assisted Living (CEAL) in 2005. CEAL promotes high quality, affordable assisted living by disseminating research and information and providing technical assistance.

AARP believes that successful promulgation of assisted living residence regulations will:

- Promote expanded choice options for persons in need of long-term care and services;
- Provide safe alternatives to permit individuals to age in place; and

- Lay the foundation for Pennsylvania to qualify for assisted living Medicaid waiver programs.

AARP respectfully submits the following comments for consideration during the rulemaking process. We offer these comments with the idea they may improve what we believe is already a good and thoughtful attempt in these proposed regulations to balance the needs of assisted living residents with the ability of providers to offer assisted living services. We have included in these comments suggestions for changes and additions as well as support for existing language we feel is particularly important.

§ 2800.25. Resident-residence contract.

- Information on advanced directives should be provided to the resident at the time of admission. The completion of an advanced directive should never be a condition of admission or retention, but providing information is an important part of resident choice and making sure that resident's wishes are respected if they are no longer able to make decisions on their own behalf.
- A copy of the completed advanced directive should be a part of the resident's file and a copy provided to the resident's personal physician.
- Specific provisions should be added to require that the contract use language that is understandable to the resident and his or her legal representative.

§ 2800.29 Hospice care and services.

- The regulations should also make clear that home health care and services are also permitted in assisted living residences.

§ 2800.30. Informed consent.

- AARP supports a process for legitimate negotiated risk agreements between residences and residents, allowing residents to enhance their autonomy and independence and providers to maintain safe and appropriate environment.

§ 2800.42. Specific rights:

- Subsection (p) should also list the right be free from seclusion. While this is mentioned in Section 2800.202 as a "safe management technique", it needs to be included as a resident right as well.
- Subsection (y) should permit resident choice of health care providers and pharmacy services. An individual's right to choose a health care provider should never be abrogated. Federal Medicare Conditions of Participation provide skilled nursing facility residents with the right to choose a personal attending physician [42 CFR 483.10 (d)(1)].
- This section should also include a resident's right to register and vote in elections.

§ 2800.58. Awake staff persons.

- The regulations should specify that at least one person shall be awake at all times, regardless of whether that person is a direct care staff person.

§ 2800.65. Direct care staff person training and orientation.

- We recommend that training on cultural sensitivity be included as a part of the direct care staff person training requirements.

§ 2800.82. Poisons.

- Provisions should be made for certain personal care products or commonly-used cleaning products to be kept in a locked cabinet in the resident's room. Some personal care or cleaning products are considered poisonous if ingested, but this should not preclude competent residents from safely storing and using these products.

§ 2800.101. Resident living units.

- We support the provisions in subsection (a) and (c) that:
 - Resident's shall have their own living space unless the residents voluntarily agree to share one living unit;
 - The licensee may not require residents to share units; and
 - The maximum number of residents in any living unit shall be two residents.

Studies show that consumers strongly prefer private rooms and bathrooms, which they see as essential to dignity and any meaningful protection of privacy.

- While the regulations require that doorways be accessible and handrails and grab bars be available, living units should be fully accessible (including sinks, showers, toilets, etc.) and available to residents.
- The minimum square footage requirements clearly recognize the importance of the need for adequate space to maximize each resident's dignity, independence, autonomy and privacy.

§ 2800.107. Emergency Preparedness.

- Each residence should maintain a current listing of those residents who are not ambulatory or otherwise need assistance with evacuation. This listing should be available to first responders and staff who are assigned duties to assist with evacuation.
- The written emergency plan should contain provisions for both internal and external disasters since the approach to disaster response may be very different in these circumstances.
- Each residence should work with the local emergency preparedness agency to determine the most appropriate options for evacuation sites in advance of a disaster. Residents with more complex health care needs may not be appropriate for a general population shelter but need to evacuate to another residential or health facility.

§ 2800.142. Assistance with health care and supplemental health care services.

- Consistent with the comment for Section 2800.42. (y), subsection (a) should permit resident choice in selecting health care providers and pharmacy services.

§ 2800.163. Personal hygiene for food service workers.

- Food service workers and all persons who provide personal care and supplemental health services should be required to have a current TB test. (The proposed regulations requires this of residents as a condition of admission, but it is not required of residence staff)
- Staff with discharging or infected wounds, sores or lesions should not be providing direct personal care, or serving food (in addition to not working in the kitchen area as specified in the proposed regulations).

§ 2800.221. Activities program.

- Activities should include those that are meaningful to residents and acknowledge each resident's personal or professional interests.

§ 2800.225. Initial and annual assessments.

- The requirement for the residence to have a written initial assessment within 15 days of admission seems reasonable given that federal Medicare Conditions of Participations require skilled nursing facilities to conduct initial assessments within 14 calendar days of admission [42 CFR 483.20 (b)(2)(i)].
- We recommend that residents have the right to participate in and review the initial and annual assessments as well as assessments triggered by a change in condition.

§ 2800.228. Transfer and discharge.

- This section should be amended to clearly specify the resident's right to file a complaint with the Department of Public Welfare if the permitted grounds for transfer or discharge have not been met [as per subsection (h)].
- The regulations also need to ensure a fair and timely hearing process for residents who wish to challenge proposed transfers or discharge decisions. The process should include the same due process protections that apply to Medicaid fair hearings.

§ 2800.229. Excludable conditions; exceptions.

- This section should make clear that services required by law to be provided by a health care facility are not permitted (consistent with the provisions of with Senate Bill 704, Session of 2007). We question whether the provisions that permit exceptions to these excludable conditions may be in violation of the statute.
- Subsection (c) dealing with the submission, review and determination of an exception request, should also include the criteria that any exception request cannot place other residents, visitors or residence staff at risk.

§ 2800.237. Program. (pertains to Special Care Units)

- Activities should include those that are meaningful to each resident and acknowledge each resident's personal or professional interests.

§ 2800.262. Penalties and corrective action.

- The penalty amounts specified in regulation are nominal in nature and do not provide adequate consequence for the most serious of violations. While we recognize that this range of penalties may be consistent with other categories of regulated care, and we believe that a ban on admissions is a powerful incentive for correction, we wish to go on record as to the inadequacy of these penalties.

Additional comments:

- Theft and Loss Program: Provisions should be added to require that residences have a theft and loss program that includes a property inventory upon admission, requires the residence to make reasonable efforts to safeguard stolen or lost property, and requires written documentation or log of lost or stolen property.
- Family and Resident Council: AARP supports the inclusion of requirements for a family and resident council. The provisions should include permitting the posting of meeting notices, providing a meeting room within the residence, and providing a contact person to respond to the council's concerns.

Summary

AARP appreciates the opportunity to provide comment on this important regulations proposal. We respectfully request that the changes and improvements to the draft regulations, as identified in this submission, be considered for inclusion in the final form regulations.

AARP supports approval of this rulemaking package to establish standards for assisted living residences in Pennsylvania.

Sincerely,

Ray Landis
Advocacy Manager
AARP Pennsylvania
717-237-6482



PROPOSED ASSISTED LIVING REGULATIONS WILL SUFFOCATE GROWTH OF MUCH-NEEDED LEVEL OF CARE

PHCA, PALA and PANPHA 'deeply believe' in value of assisted living, but proposed regulations would hurt the very seniors they were designed to help

HARRISBURG (Sept. 18, 2008) – The Pennsylvania Health Care Association/Center for Assisted Living Management, PANPHA, and the Pennsylvania Assisted Living Association today testified jointly before the House Aging and Older Adult Services Committee, saying that while all three associations unequivocally support assisted living as a new category of long-term care in Pennsylvania, the proposed regulations will hurt the very consumers they are supposed to help.

Dr. Stuart Shapiro, PHCA President and CEO, told the committee, "Because our associations, and our members, believe deeply in the value of assisted living, we collectively have been working tirelessly to see this program implemented in a manner that will encourage this sector to develop to serve a senior population which is projected to grow rapidly, and which desires a wide variety of care and services in the future.

"But despite the optimism created by Act 56, and the good intentions on the part of the Department of Public Welfare, we believe that the proposed regulations will likely raise the cost of assisted living in Pennsylvania so greatly that they will suffocate development of assisted living and ensure that the potential for a vibrant assisted living sector will NOT become a reality," Dr. Shapiro said.

The associations further testified that the proposed regulations would result in:

- Few high-quality personal care homes converting to assisted living.
- Few, if any, new assisted living residences being built.
- Few, if any, Medicaid-eligible individuals becoming residents in these facilities because the physical plant/space/staffing/licensing fee mandates in the proposed regulations will

require charges to the Medicaid program far in excess of what the Commonwealth is likely to pay, or the federal government is likely to approve.

- Many nursing-home eligible individuals on Medicaid currently living in personal care homes will be required to shift to nursing homes when they need certain health-care services because of an inadequate supply (number) of assisted living facilities. This will impose unnecessary costs on the Medicaid program and frustrate the intent of Act 56.
- An undesirable two-tiered system of assisted living may become a living reality in which only the wealthy will be served.

Studies by AARP and others have clearly demonstrated that Pennsylvanians want this new option along the continuum of long-term care. In addition to providing a needed level of housing and services, assisted living also has the potential to stretch the Commonwealth dollar further if care for lower acuity (less sick) individuals can be safely and effectively delivered in an assisted living facility rather than in a nursing home.

W. Russell McDaid, Vice President of Public Policy at PANPHA, said fees proposed by DPW would make Pennsylvania's assisted living licensing among the most expensive in the nation, and would prohibit growth of this new category of care.

McDaid also questioned DPW's disregard for the potential to have "dually licensed" facilities.

"Without the ability to dually license locations, many providers who have the capacity to provide access to quality assisted living will be forced to remain licensed personal care homes. This will deny their current and future residents access to many of the benefits that assisted living can offer," McDaid said. "If this regulation is adopted as proposed, most seniors will be unable to afford it. We're not sure how creating a level of care that no one can afford serves Pennsylvanians well."

Timothy W. Coughlin, President and CEO of LifeServices Management Corp., testified on behalf of PALA about the regulations' proposed square footage requirements for resident rooms, which far exceed those of other states.

"Over 70 percent of the states have a minimum requirement of 100 square feet or less and 80 percent have a requirement of 150 square feet or less. If Pennsylvania establishes 250 square feet on new construction, as the minimum, we will have succeeded in becoming one of only two states in America with that high of a requirement and we will have created an insurmountable barrier to new construction rather than an attractive opportunity to stimulate growth in assisted living supply," Coughlin said.

To read the joint testimony from all three associations, go to www.phca.org

PHCA is a statewide advocacy organization for Pennsylvania's most vulnerable older residents and their providers of care. Members comprise for-profit, nonprofit and government providers. PHCA, along with its sister agency, the Center for Assisted Living Management, represents more than 310 long-term care and senior service providers that care for almost 33,500 elderly and disabled individuals.

PANPHA, an association of nonprofit senior services, represents more than 360 non-profit long-term-care nursing facilities, personal care homes, housing providers and continuing care retirement communities.

The Pennsylvania Assisted Living Association (PALA) is a professional not-for-profit trade association representing personal care homes and assisted living communities for-profit and not-for-profit that vary in size from small owners to large state and national corporations. For more information, visit www.pala.org.

#

Contact:

Alison Everett, PHCA, aeverett@phca.org or (717) 221-7935

David La Torre, PANPHA, david@latorrecommunications.com or (717) 608-6337

Daneen Reese, PALA, DReeseatpala@aol.com or (570) 586-4292

