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Pennsylvania House Aging and Older Adult Services Committee

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Proposed Assisted Living Regulations

Chairman Mundy, I would like to thank you and members of the House Aging and Older Adult Committee for sponsoring this hearing on the proposed Assisted Living regulations. My name is M. Crystal Lowe and I am the Executive Director of the Pennsylvania Association of Area Agencies on Aging, Inc. I am pleased to offer comments on behalf of the Commonwealth's 52 area agencies on aging which serve as community focal points for information and support services for older adults, their families and the community. Area agencies on aging play several key roles with and on behalf of consumers who would be seeking assisted living such as: providing information and referral, completing level of care assessment, as well as performing ombudsman and protective services functions. AAAs currently serve in these same capacities in personal care facilities and in nursing homes. We complete more than 100,000 assessments and recertifications per year and the ombudsmen respond to more than 10,000 individual complaints per year, so we do have experience in dealing with consumers, families and facilities.

I participated in the Assisted Living Work Group and found the process to be extremely helpful in identifying the varying perspectives of stakeholders. Throughout the months we worked together, we were able to examine assisted living regulations in other states as well as to compare it with our current personal care home regulations. The process was engaging and informative. In many instances our discussion moved stakeholder's positions closer together and, in some instances, consensus was actually achieved. Consensus building, however, was not the goal of the work group.

A regulated Assisted Living Program has been in the works for more than 12 years. We hope that this important feature in our long term living services system will finally become a reality for older people and disabled adults to enable them to "age in place". Further, we want to assure that assistive living becomes a **real option** for moderate to low income adults.

We have formally submitted comments to the Independent Regulatory Commission and are also a member of the PA Assisted Living Consumer Alliance. We offer these comments to emphasize several key areas. We hope that consideration will be given to clarifying, and modifying the language in order to better assure that consumers are to receive the services they need promptly and that the functions being proposed for the Ombudsman are appropriate.

Many of the residents who will enter assisted living will have physical and cognitive impairments; some of which will be quite significant. Therefore, it seems incongruous that the time to complete the evaluation, assessment and plan for services is so protracted. To illustrate the point:a preadmission screening is to be completed prior to admission; the medical evaluation is to be completed 60 days prior to or **15 days after** admission; the assisted living resident assessment completed within **15 days after admission;** and the support plan developed and implemented within **30 days after admission**.

We recommend that most of these time frames be shortened. A medical evaluation should be conducted prior to admission. After all, this is a group residence and there could be a risk to staff as well as to other residents. An assessment should be completed within three days of admission and the support plan within seven days. Consumers need to have adequate supports in place quickly, as well as to understand the costs associated with the care.

Staff that are conducting the assessments and developing the support plans need to have sufficient experience/training in assessing consumer's needs. While many of the consumers in assisted living will be fairly independent, these new regulations enable consumers with very significant needs to enter and "age in place". While it is their home, there is the explicit understanding that services and supports to meet needs will be provided (some for an additional fee) and that the staff have the capacity to identify and deal with unanticipated problems. The assessment is a critical component.

The Ombudsman program in Pennsylvania is a valuable resource; however, we are very worried that the regulations seem to expand the scope of the Ombudsman beyond what the system can handle and what federal requirements allow.

On the capacity side, there are insufficient resources to provide the assistance that currently is required. These new requirements amount to additional unfunded mandates. The federal and state allocation for Ombudsman is approximately $900,000 which averages to about $15,000 for each AAA: less than the cost of 1/2 time staff member per AAA. There are nearly 90,000 licensed nursing home beds and another 50,000 personal care home beds. Recall that we normally assist 10,000 consumers with individual complaints. It is not hard to conclude that existing resources do not meet the needs. AAAs supplement the federal/state Ombudsman funding with Penn Care Block Grant resources, however, in the current environment of flat funding, agencies have no financial resources to meet these additional requirements.

An even more critical issue is our concern that the regulations suggest ombudsman move beyond being resident-centered, with actions beginning and ending with the resident. According to federal law and guidance issued from the National Long Term Ombudsman Resource Center, the ombudsman must be directed at all times by what the resident wants and always seeks to empower the resident. This entails working with the resident to identify what the real issue is, determining what the resident wants done about the problem, making sure that the resident has all the information needed to make a decision, exploring possible solutions with the resident, and empowering the resident or negotiating on the resident's behalf to arrive at a satisfactory resolution.

These regulations imply that the ombudsman has additional investigation and oversight responsibilities. For example, under 2800.228 Transfer and Discharge (3), if the residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence, the residence has to notify the resident, the designated person and the local ombudsman. We recommend the language be modified to state "the residence has to notify the resident and their designated person. They shall also provide contact information for the local Ombudsman."

We also have concerns about 2800.30 (f) Informed Consent which reads, "When the licensee chooses to initiate an informed consent process, the provider shall do so by notifying the resident and, if applicable, the resident's designated person in writing and orally. The notification must include a statement that the long-term care ombudsman is available to assist in the process and include the contact information for the ombudsman. For cognitively impaired residents, the ombudsman shall be automatically notified by the licensee". We believe this provision is problematic on the capacity side as well as that it seems to overstep the bounds of what we understand the ombudsman should do. Notification implies that action will be taken. For the cognitively impaired resident, the role of the ombudsman is unclear. Further, the Ombudsman should not be the central point of contract for transfer and discharge.

We strongly believe that there must be some neutral party involved, but the ombudsman is not neutral. They always must represent the consumers' wishes. While the actions being taken may be appropriate, the ombudsman must respect and empower the wishes of the consumer. Ombudsmen do negotiate with facilities under the direction of the consumer, but not with the resident on behalf of the facility.

We further recommend the establishment of a formal appeal process, such as the Office of Hearings and Appeals, when a resident wants to appeal a transfer/discharge notice. This will assure that residents are guaranteed a system of due process.

Lastly, we believe that having a regulated assisted living industry is essential as we balance our long term living system and consumers. . As Pennsylvania balances its long term living system, assisted living will become a fundamental ingredient. It must be of high quality and carefully balance the interests of consumers with the interests of providers and funders.

We must stress that passage of assisted living regulations still leaves low and moderate income consumers largely shut out. There is no public mechanism for funding assisted living services for low income consumers, with the exception of those who might qualify for Medicaid Waivers. It is sad to say that under our current financial system, if these regulations are put in place beginning in July 2009, a 95 year-old woman who has lived in an assisted living facility for the past five years, has an income of $1,000 per month and has expended all of her $200,000

nest egg, will have no other choice but to move to a personal care home which accepts the state supplement. I know many of you realize that is a commodity as rare as a 5% return on your savings account. We can and must do better.

Thank you again for providing the opportunity to provide input. I will be happy to answer any questions.

M Crystal Lowe

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