

Testimony on the Proposed Assisted Living Regulations

Estelle B. Richman, Secretary

**House Aging and Older Adult Services Committee
September 18, 2008**



Good afternoon Chairman Mundy, Chairman Hennessey, Committee members and staff. I am Estelle Richman, Secretary of Public Welfare and I am joined today by Mike Hall, Deputy Secretary for the Office of Long Term Living. I first want to thank you for convening this meeting today to discuss the proposed assisted living regulations. As you know, this regulation is the culmination of more than a decade's work by many of you and your staffs and the many stakeholders we have heard from today.

Act 56 was enacted on July 25, 2007, and directs the Department of Public Welfare to adopt regulations establishing minimum licensing standards for assisted living residences which "meet or exceed" standards established for personal care homes, while making other specific requirements. Assisted living residences are a combination of housing and supportive services, and are designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice. The implementation of this law will give consumers more options to "age in place" by adding assisted living to the commonwealth's long-term living continuum. Act 56 recognizes that assisted living residences are a significant long-term care resource.

Today I want to discuss the drafting process and highlight some of the key elements in the proposed regulation. I will also provide my reaction to previous testimony you heard today. Deputy Secretary Hall and I would then gladly answer any questions you may have.

Drafting the 2800 Assisted Living Regulations

Act 56's passage in July 2007 marked the end of a twelve year legislative debate on assisted living. Before this law was enacted, Pennsylvania was one of a handful of

states without a definition for assisted living. It took bipartisanship leadership from both chambers, key industry support, and help from consumer organizations and stakeholders to achieve consensus and to put a bill on the Governor's desk. The next step was to begin working on the regulations.

Drawing from the spirit of last year's dialogue, I invited more than 35 stakeholders to participate on a workgroup to draft this proposed regulation. Those invited include advocates for people with disabilities, older adults, consumers, unions, the elder law bar, public housing agencies, for-profit and non-profit long-term care nursing facilities, and many others.

We convened a series of nine stakeholder meetings beginning in October 2007 and ending in April 2008. Meetings were half-day or day-long sessions with two or three subject areas on the agenda, covering a broad array of topics such as resident's rights, training requirements, and the minimum square footage in a living unit. Prior to each meeting, my staff would investigate these topics and prepare comparisons with other states. They would also identify the relevant sections in Pennsylvania's personal care home regulations which served as our baseline throughout the process. This information was shared in advance with the workgroup as well as any suggestions from the workgroup members.

The stakeholder meetings were full of rich dialogue and vigorous debate resulting in some areas of outright disagreement and other areas of compromise. To allow for open debate and reflection, we had an email address where all workgroup members could submit written comment that could be read by all other members. Deputy Secretary Hall and his team made grids of every comment, from the meetings and written submissions,

and convened weekly meetings to analyze these comments and prepare a draft regulation. Interim draft regulations were circulated to the stakeholder group and where disagreement remained, staff took note. A balance was struck in each of the three draft regulations circulated, with each version moving closer to the draft you see today.

In short, the process for drafting the regulations was featured a substantial amount of public input from a wide range of stakeholders. All of this input took place before the regulations were presented to the Independent Regulatory Review Commission and the formal public comment period began.

Key Elements of the Assisted Living Regulations

I believe, from the Department's standpoint, the resulting proposed regulations strike a compromise between consumers, providers and advocates. As you know, assisted living enables individuals – with or without health care needs -- the opportunity to live in a homelike setting and “age in place” as their care needs evolve. This adds a key piece to our long term living continuum by providing an option in between home-based care and care in an institution.

We have heard a quite a bit today about specific provisions of the proposed regulations. I do not want to rehash ground that we have already gone over, but would like to touch briefly upon a couple of key elements of the proposed regulations that make the package worthy of your support.

First, the regulations will help consumers understand their options and make better decisions about where they want to live. Many businesses, usually personal care homes, are already calling themselves “assisted living.” The level of service provided is

highly variable and consumers are often confused about what they are buying. This new licensure category will clarify this market for consumers and their families and help them make better choices about their long term living options.

The proposed regulations will also support people's desire to living in the community as long as possible. Assisted living allows consumers to receive different levels services as their needs change. Our continuum of care is currently limited for consumers requiring a nursing home level of care. Assisted living offers consumers with higher needs a less-restrictive alternative -- namely, nursing home type care in a home-like setting. There are some limitations, such as for persons who require 24-hour skilled care. Even for these individuals, there are provisions to allow exceptions if a consumer wishes to remain in their unit with agreement from the residence.

In addition, the proposed regulations clearly define the kinds of services that Assisted Living residences must provide. Assisted living residences are required to be able to provide for all of their residents' core service needs, such assistance with meals, bathing, dressing, eating, laundry, transportation and medication management. Assisted living also goes beyond the personal care home standard by allowing individuals requiring the care in or of a nursing facility to age in place and receive supplemental health care services.

The proposed regulations also strike a good balance defining the minimum standards for an assisted living residence. The proposed regulations require a private room, bathroom, and residents cannot be required to share a living unit. Living units are required to be a minimum of 175 square feet for existing construction or 250 square feet for new construction and have lockable doors and kitchen capacity where appropriate. In

sum, the regulations create a more apartment-like setting that is clearly different from other alternatives that may be more like a personal care or medical institutions. This has been a controversial area, but I believe we have achieved a good balance.

I also want to note that the proposed regulations have special provisions to meet the needs of residents with Alzheimer's disease and dementia. Many older Pennsylvanians have dementia and require special programming and care to address their cognitive needs. Often times these elders have limited physical needs, but require supervision around the clock. The proposed assisted living regulations create a 'special care designation' that consumers can look to for Alzheimer's and dementia care. This higher standard will require specialized staff training, services, activities, and security measures for residences that wish to serve this population.

Finally, the proposed regulations establish reasonable fees that will be used to protect public and resident safety. The licensure fee is \$500 per residence with a \$105 assessment per bed. The revenue generated from these fees will be used to fund licensing and inspection operations. By setting fees at a reasonable level, the regulations assure adequate funding that will allow the department to inspect, regulate and certify that residents are safe within the assisted living residences.

Conclusion

As you are aware, the public comment period ended Monday. We received 175 letters containing multiple comments and my staff has already begun an intensive review. I anticipate that there are still some changes ahead, but I believe that this compromise before you today is very close to achieving the right balance for

Pennsylvania. You have heard some widely divergent opinions on these proposed regulations. Some say the square footage requirements are too high; others assert that room sizes are too low. Some say the staffing qualifications and training requirements are too strict. Others assert that our staffing standards are too lenient. The strongly held points of view heard at the opposite ends of the spectrum are nearly irreconcilable, but we have worked hard to strike a fair balance, to find the reasonable middle ground, to learn from the experiences of other states and to place Pennsylvania squarely in the mainstream. I thank you for the opportunity to address your committee today and I would be glad to answer any questions at this time.