



COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF PUBLIC WELFARE**  
P.O. BOX 2675  
HARRISBURG, PENNSYLVANIA 17105-2675

**Estelle B. Richman**  
Secretary

Telephone 717-787-2600/3600  
FAX 717-772-2062

**JUL 28 2008**

The Honorable Edwin B. Erickson  
Senate of Pennsylvania  
Harrisburg, Pennsylvania 17120

Dear Senator Erickson:

Enclosed is a copy of a proposed regulation that establishes the minimum standards for building, equipment, operation, care, program and services, training, staffing and for the issuance of licenses for assisted living residences operated in Pennsylvania.

Act 2007-56 was enacted in Pennsylvania on July 25, 2007. Prior to that time, there was no legal definition for assisted living in Pennsylvania. Act 56 directed the Department of Public Welfare (Department) to adopt regulations establishing minimum licensing standards for assisted living residences which "meet or exceed" standards established for personal care homes under Title 55 Pa.Code Chapter 2600 (relating to personal care homes).

The regulation protects consumers' health and safety, privacy and autonomy while at the same time balancing providers' concerns related to liability and individual choice.

This proposed regulation, which amends the Pennsylvania Code, Title 55, by adding a new Chapter 2800, Assisted Living Residences, is submitted for review by your committee pursuant to the Regulatory Review Act.

The Department will provide your Committee with any assistance required to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in cursive script that reads "Estelle B. Richman".

Estelle B. Richman

Enclosure

CDL-1

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved  
as to form and legality.  
Attorney General

By: Angela M. Elliott  
(Deputy Attorney General)  
JUL 24 2008

Date of Approval

Check if applicable  
Copy not approved.  
Objections attached.

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated  
by:

DEPARTMENT OF PUBLIC WELFARE

(Agency)

LEGAL COUNSEL: Ruth D. O'Brien

DOCUMENT/FISCAL NOTE NO. # 14-514

DATE OF ADOPTION: \_\_\_\_\_

BY: Estelle B. Richman

TITLE: SECRETARY OF PUBLIC WELFARE  
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to  
form and legality. Executive or  
Independent Agencies

By: Andrew C. Clark

JUN 6 2008

Date of Approval

(Deputy General Counsel)  
(~~Chief Counsel, Independent Agency~~)  
(~~Strike-inapplicable title~~)

Check if applicable. No Attorney  
General approval or objection  
within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

OFFICE OF LONG TERM LIVING

[55 Pa. Code Chapter 2800]

Assisted Living Residences

## Statutory Authority

Notice is hereby given that the Department of Public Welfare (Department) under the authority of sections 211, 213 and Article X of the Public Welfare Code, Act of June 13, 1967, P.L. 31 No. 21 (62 P.S. §§ 211, 213 and 1001-1087), intends to adopt the regulation set forth in Annex A.

## Purpose of Regulation

The purpose of this proposed regulation is to adopt the minimum standards for building, equipment, operation, resident care, program and services, staffing qualifications and training, and for the issuance of licenses for assisted living residences operated in Pennsylvania.

## Background

Act 2007-56 was enacted in Pennsylvania on July 25, 2007. Prior to that time, there was no legal definition for assisted living in Pennsylvania. Act 56 directed the Department to adopt regulations establishing minimum licensing standards for assisted living residences which "meet or exceed" standards established for personal care homes under Title 55 Pa.Code Chapter 2600 (relating to personal care homes). 62 P.S. § 1021(a)(2)(i).

Act 56 was intended to recognize that assisted living residences are a significant long-term care alternative nationwide. Assisted living residences are a combination of housing and supportive services, as needed. They are designed to allow people to age in place, maintain their independence and exercise decision-making and personal choice. In enacting Act 56, the General Assembly found that it is in the best interests of all Pennsylvanians that a system of licensure and regulation be established for assisted living residences in order to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need such care.

Under the Act, the Department was directed to develop regulations in consultation with industry stakeholders, consumers and other interested parties. 62 P.S. § 1021(d). To accomplish this legislative directive, the Department commenced a series of nine stakeholder meetings beginning in October of 2007 and ending in April 2008. Over thirty-five stakeholders were invited to participate, including disability advocates, advocates for older adults, consumers, union representatives, an elder law attorney, public housing agencies, trade associations for profit and non-profit long-term care nursing facilities and many other interested parties. The workgroup advised the Department on many of the novel features of Act 56 related to assisted living residences and also provided varied and diverse perspectives on how the regulation should be crafted. The Department has incorporated many of their recommendations into this proposed rulemaking.

## Requirements

The proposed regulation incorporates the new definitions in Act 56 that are unique to assisted living residences. These include:

- Age in place or aging in place
- Assisted living residence
- Assisted living residence administrator
- Cognitive support services
- Informed consent agreement
- Special care designation and
- Supplemental health care services

In addition, the proposed regulation establishes requirements for individual living units within the assisted living residence, including square footage and kitchen capacity requirements. Requirements for special care units for individuals with cognitive impairments such as Alzheimer's disease or dementia are also included in this proposed rulemaking.

The proposed regulation also requires that individuals, prior to admission, or within 24 hours after admission to the assisted living residence, be provided with a written contract containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming, costs and fees.

To further ensure that individuals residing in assisted living residences are allowed to age in place, the proposed regulation also establishes requirements for assisted living residence services including core services and supplemental health care services.

New requirements related to informed consent agreements are also proposed to allow individuals and providers to manage risks that may result from consumers who wish to direct their own care while residing in the assisted living residence. The proposed rulemaking also creates standards for transfer and discharge.

Act 56 also directed the Department to set fees for application for assisted living licensure as well as license renewal. These new fees are included in the proposed rulemaking. The Act also provides for an abbreviated annual licensure visit when the residence has a history of exemplary compliance. The proposed regulation defines "exemplary compliance". Preadmission screening, resident assessments and support plans as well as enhanced administrator and staff qualifications and training are also covered in the proposed rulemaking. The proposed regulation also provides for certain medical conditions that would exclude an individual from being admitted or retained in an assisted living residence; however, the regulation also provides for exceptions to be granted in certain instances.

## Affected Individuals and Organizations

Individuals who choose to live in an assisted living residence are affected by the proposed regulation. Providers of assisted living residences are also affected.

## Accomplishments and Benefits

This proposed regulation establishes the minimum standards for licensure of assisted living residences to allow individuals to age in place. The proposed regulation protects consumers' health and safety, privacy and autonomy while at the same time balancing providers' concerns related to liability and individual choice.

## Fiscal Impact

The Department estimates administrative costs to implement this change at \$0.651 million state funds in Fiscal Year 2008-2009 and decreasing to \$0.103 million state funds in Fiscal Year 2009-2010 as a result of revenues collected from assessment of the licensure fee to the regulated community.

The Department estimates that the costs incurred by the regulated community beginning in Fiscal Year 2009-2010 will range from \$0.008 million to \$0.365 million per assisted living residence based on a 75-bed assisted living residence. At a minimum, all assisted living residences would be required to pay a licensure fee amounting to the \$0.008 million on average. This cost assumes a flat application or renewal fee of \$500 per home and an additional fee of \$105 per bed. Additional costs may be incurred, which when added to the licensing fee brings the total potential cost up to the maximum estimated average cost of \$0.365 million in the first year. These costs may or may not be incurred depending upon each facility's current status in relation to potential new costs imposed by the regulation. The majority of the costs relate to additional personnel expense in administering medication, enhanced reporting and additional administrative costs for resident care. It is assumed that those facilities that choose to apply for Assisted Living Residence licensure will already comply with the facility structural requirements of the proposed regulations, so no costs are assumed for structural modifications. It is assumed that 100 assisted living residences will incur these costs in FY 2009-2010.

## Paperwork Requirements

This proposed regulation contains the paperwork requirements for the Commonwealth and for providers who apply for licensure as assisted living residences. The following forms will be required:

### *Preadmission screening*

Within 30 days prior to admission a preadmission screening form must be completed for all potential residents to assess whether the individual's service needs can be met by an assisted living residence.

### *Assessment*

An assisted living residence will be required to complete a written initial assessment form within 15 days of admission of an individual. Additional assessments

must be completed at least annually or upon significant change in the resident's condition.

#### *Incident Reporting*

An assisted living residence will be required to submit written reports to the Department in instances such as the death of a resident, attempted suicide, an injury, illness or trauma suffered by a resident that requires treatment at a hospital or medical facility, violations of a resident's rights, misuse of a resident's funds by the residence's staff or legal entity, outbreak of serious communicable diseases, and other incidences relating to the resident's well-being.

#### *Excludable Conditions*

An assisted living residence will also be required to submit a form to the Department in instances where a residence wants to admit or retain an individual whose medical condition would otherwise prevent their admission or continued stay in the residence. These are referred to as "excludable conditions".

#### *Support Plans*

An assisted living residence is also required to develop and implement a support plan within 30 days of a resident's admission that documents the resident's medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services. In addition, the assisted living residence is required to review each resident's support plan quarterly and revise the support plan as the resident's needs change.

#### *Waivers*

An assisted living residence will also be required to submit a written request to the Department for a waiver of a specific requirement contained in the regulations.

#### *Training Institution Registration*

An educational institution, association, professional society or organization must submit an application to the Department for registration as an institution and for approval of a course of study for the purpose of qualifying applicants for certification as assisted living residence administrators.

#### *Application for Licensure*

In addition, assisted living residences will be required to complete an application for licensure, resident-residence contract and informed consent agreements.

#### *Effective Date*

The proposed effective date for the regulation is July 1, 2009.

## Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department at the following address: Gail Weidman, Office of Long Term Care Living, within 30 calendar days after the date of publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference Regulation No. 14-514 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users).

## Regulatory Review Act

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **JUL 28 2008** the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided the IRRC and the Committees with a copy of a Regulatory Analysis Form prepared by the Department. A copy of this form is available to the public upon request.

Under § 5(g) of the Regulatory Review Act, if the IRRC has any comments, recommendations or objections to any portion of the proposed regulation, it may notify the Department and the Committees within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review by the Department, the General Assembly and the Governor, of any comments, recommendations or objections raised, prior to final publication of the regulation.

## CHAPTER 2800. Assisted Living Residences

### GENERAL PROVISIONS

#### Section

- 2800.1. Purpose.
- 2800.2. Scope.
- 2800.3. Inspections and licenses.
- 2800.4. Definitions.
- 2800.5. Access.

### GENERAL REQUIREMENTS

- 2800.11. Procedural requirements for licensure or approval of assisted living residences.
- 2800.12. Appeals.
- 2800.13. Maximum capacity.
- 2800.14. Fire safety approval.
- 2800.15. Abuse reporting covered by law.
- 2800.16. Reportable incidents and conditions.
- 2800.17. Confidentiality of records.
- 2800.18. Applicable laws.
- 2800.19. Waivers.
- 2800.20. Financial management.
- 2800.21. Offsite services.
- 2800.22. Application and Admission.
- 2800.23. Activities.
- 2800.24. Personal hygiene.
- 2800.25. Resident-residence contract.
- 2800.26. Quality management.
- 2800.27. SSI recipients.
- 2800.28. Refunds.
- 2800.29. Hospice care and services.
- 2800.30. Informed consent process.

#14-514

JUL 22 2008

## RESIDENT RIGHTS

- 2800.41. Notification of rights and complaint procedures.
- 2800.42. Specific rights.
- 2800.43. Prohibition against deprivation of rights.
- 2800.44. Complaint procedures.

## STAFFING

- 2800.51. Criminal history checks.
- 2800.52. Staff hiring, retention and utilization.
- 2800.53. Qualifications and responsibilities of administrators.
- 2800.54. Qualifications for direct care staff persons.
- 2800.55. Portability of staff qualifications and training.
- 2800.56. Administrator staffing.
- 2800.57. Direct care staffing.
- 2800.58. Awake staff persons.
- 2800.59. Multiple buildings.
- 2800.60. Additional staffing based on the needs of the residents.
- 2800.61. Substitute personnel.
- 2800.62. List of staff persons.
- 2800.63. First aid, CPR and obstructed airway training.
- 2800.64. Administrator training and orientation.
- 2800.65. Direct care staff person training and orientation.
- 2800.66. Staff training plan.
- 2800.67. Training institution registration.
- 2800.68. Instructor approval.
- 2800.69. Additional dementia-specific training.

## PHYSICAL SITE

- 2800.81. Physical accommodations and equipment.
- 2800.82. Poisons.
- 2800.83. Temperature.
- 2800.84. Heat sources.
- 2800.85. Sanitation.
- 2800.86. Ventilation.
- 2800.87. Lighting.
- 2800.88. Surfaces.
- 2800.89. Water.
- 2800.90. Communication system.