

# PROPOSED RULEMAKING

## DEPARTMENT OF PUBLIC WELFARE

[ 55 PA. CODE CH. 2800 ]

### Assisted Living Residences

[38 Pa.B. 4459]

[Saturday, August 9, 2008]

#### *Statutory Authority*

The Department of Public Welfare (Department) under the authority of sections 211, 213 and Article X of the Public Welfare Code (62 P. S. §§ 211 and 213 and 1001--1087), intends to adopt the regulation set forth in Annex A.

#### *Purpose of Regulation*

The purpose of these proposed regulations 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 this Commonwealth.

#### *Background*

Act 2007-56 (Act 56) was enacted in this Commonwealth on July 25, 2007. Prior to that time, there was no legal definition for assisted living in this Commonwealth. 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 Chapter 2600 (relating to personal care homes). See 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 to ensure accountability and a balance of availability between institutional and home-based and community-based long-term care for adults who need the care.

Under Act 56, the Department was directed to develop regulations in consultation with industry stakeholders, consumers and other interested parties. See 62 P. S. § 1021(d). To accomplish this legislative directive, the Department commenced a series of nine stakeholder meetings beginning in October 2007 and ending in April 2008. Over 35 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 nonprofit long-term care nursing facilities and many other interested parties. The work group 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 regulations should be crafted. The Department has incorporated many of their recommendations into this proposed rulemaking.

### *Requirements*

The proposed regulations incorporate 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 regulations establish 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 regulations also require 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 regulations also establish 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. Act 56 also provides for an abbreviated annual licensure visit when the residence has a history of exemplary compliance. A 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. A 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 rulemaking. Providers of assisted living residences are also affected.

#### *Accomplishments and Benefits*

This proposed rulemaking establishes the minimum standards for licensure of assisted living residences to allow individuals to age in place. The proposed rulemaking 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 (FY) 2008-2009 and decreasing to \$0.103 million State funds in FY 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 FY 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 rulemaking 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 incidents 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 when a residence wants to admit or retain an individual whose medical condition would otherwise prevent the 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 (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### *Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 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 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 section 5(g) of the Regulatory Review Act, if IRRC has any comments, recommendations or objections to any portion of the proposed regulations, it may notify the Department and the Committees within 30 days after the close of the public comment period. The 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 public publication of the regulation.

ESTELLE B. RICHMAN,  
Secretary

**Fiscal Note:** 14-514. (1) General Fund; (2) Implementing Year 2007-08 is 0; (3) 1st Succeeding Year 2008-09 is \$651,000; 2nd Succeeding Year 2009-10 is \$103,000; 3rd Succeeding Year 2010-11 is (\$78,000); 4th Succeeding Year 2011-12 is \$56,000; 5th Succeeding Year 2012-13 is (\$139,000); (4) 2006-07 Program--\$33,780,000; 2005-06 Program--\$41,588,000; 2004-05 Program--\$34,257,000; (7) County Administration Statewide; (8) recommends adoption. Funds have been included in the budget to cover this increase.

## **CHAPTER 2800. ASSISTED LIVING RESIDENCES**

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## **GENERAL PROVISIONS**

### **§ 2800.1. Purpose.**

(a) The purpose of this chapter is to protect the health, safety and well-being of assisted living residents.

(b) Assisted living residences are a significant long-term care alternative to allow individuals to age in place. Residents who live in assisted living residences that meet the requirements in this chapter will receive the assistance they need to age in place and develop and maintain maximum independence, self-determination and personal choice.

### **§ 2800.2. Scope.**

(a) This chapter applies to assisted living residences as defined in this chapter, and contains the minimum requirements that shall be met to obtain a license to operate an assisted living residence.

(b) This chapter does not apply to personal care homes, domiciliary care homes, independent living communities or commercial boarding residences.

### **§ 2800.3. Inspections and licenses.**

(a) The Department will annually conduct at least one onsite unannounced inspection of each assisted living residence.

(b) Additional announced or unannounced inspections may be conducted at the Department's discretion.

(c) The Department may conduct an abbreviated annual licensure visit if the assisted living residence has established a history of exemplary compliance.

(d) A license will be issued to the legal entity by the Department if, after an investigation by an authorized agent of the Department, the requirements for a license are met.

(e) The assisted living residence shall post the current license, a copy of the current license inspection summary issued by the Department and a copy of this chapter in a conspicuous and public place in the assisted living residence.

#### **§ 2800.4. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*ADL--Activities of daily living--*The term includes eating, drinking, ambulating, transferring in and out of a bed or chair, toileting, bladder and bowel management, personal hygiene, securing health care, managing health care, self-administering medication and proper turning and positioning in a bed or chair.

*Abuse--*The occurrence of one or more of the following acts:

(i) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(ii) The willful deprivation by the assisted living residence or its staff persons of goods or services which are necessary to maintain physical or mental health.

(iii) Sexual harassment, rape or abuse, as defined in 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

(iv) Exploitation by an act or a course of conduct, including misrepresentation or failure to obtain informed consent which results in monetary, personal or other benefit, gain or profit for the perpetrator, or monetary or personal loss to the resident.

(v) Neglect of the resident, which results in physical harm, pain or mental anguish.

(vi) Abandonment or desertion by the assisted living residence or its staff persons.

*Adult--*An individual who is 18 years of age or older.

*Ancillary staff person--*An individual who provides services for the residents other than activities of daily living.

*Age in place or aging in place--*Receiving care and services at a licensed assisted living residence to accommodate a resident's changing needs and preferences in order to allow the resident to remain in the assisted living residence.

*Area agency on aging*--The local agency designated by the Department of Aging as defined in section 2202-A of The Administrative Code of 1929 (71 P. S. § 581-2).

*Assisted living residence or residence*--Any premises in which food, shelter, personal care, assistance or supervision and supplemental health care services are provided for a period exceeding 24-hours for four or more adults who are not relatives of the operator, who require assistance or supervision in matters such as dressing, bathing, diet, financial management, evacuation from the residence in the event of an emergency or medication prescribed for self-administration.

*Assisted living residence administrator*--An individual who is charged with the general administration of an assisted living residence, whether or not the individual has an ownership interest in the residence or his function and duties are shared with other individuals.

*Agent*--An individual authorized by the Department to enter, visit, inspect or conduct an investigation of an assisted living residence.

*Appropriate assessment agency*--An organization serving adults who are older or adults with disabilities, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency or an individual in an occupation maintaining contact with adults who are older and adults with disabilities, such as medicine, nursing or rehabilitative therapies.

*CAM--Complementary and alternative medications*--Practices, substances and ideas used to prevent or treat illness or promote health and well-being outside the realm of modern conventional medicine. Alternative medicine is used alone or instead of conventional medicine. Complementary medicine is used along with or in addition to conventional medicine.

*CPR*--Cardiopulmonary resuscitation.

*Cognitive support services*--

(i) Services provided to an individual who has memory impairments and other cognitive problems which significantly interfere with his ability to carry out ADLs without assistance and who requires that supervision, monitoring and programming be available 24 hours per day, 7 days per week, in order to reside safely in the setting of his choice.

(ii) The term includes assessment, health support services and a full range of dementia-capable activity programming and crisis management.

*Commercial boarding residence*--A type of residential living facility providing only food and shelter, or other services normally provided by a hotel, for payment, for

individuals who require no services beyond food, shelter and other services usually found in hotel or apartment rental.

*Complaint*--A written or oral criticism, dispute or objection presented by or on behalf of a resident to the Department regarding the care, operations or management of an assisted living residence.

*Day*--Calendar day.

*Dementia*--A clinical syndrome characterized by a decline of long duration in mental function in an alert individual. Symptoms of dementia may include memory loss, personality change, chronic wandering and the loss or diminishing of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

*Department*--The Department of Public Welfare of the Commonwealth.

*Designated person*--An individual who may be chosen by the resident and documented in the resident's record, to be notified in case of an emergency, termination of service, assisted living residence closure or other situations as indicated by the resident or as required by this chapter. A designated person may be the resident's legal representative or an advocate.

*Designee*--A staff person authorized in writing to act in the administrator's absence.

*Direct care staff person*--A staff person who directly assists residents with activities of daily living, and instrumental activities of daily living and provides services or is otherwise responsible for the health, safety and well-being of the residents.

*Discharge*--Termination of an individual's residency in an assisted living residence.

*Emergency medical plan*--A plan that ensures immediate and direct access to medical care and treatment for serious injury or illness, or both.

*Exemplary compliance*--Three consecutive years of deficiency-free inspections.

*Financial management*--

(i) A personal care service requested or required by the resident in accordance with his support plan, which includes taking responsibility for or assisting with paying bills, budgeting, maintaining accurate records of income and disbursements, safekeeping funds and making funds available to the resident upon request.

(ii) The term does not include solely storing funds in a safe place as a convenience for a resident.

*Fire safety expert*--A member of a local fire department, fire protection engineer, Commonwealth-certified fire protection instructor, college instructor in fire science, county or Commonwealth fire school, volunteer trained and certified by a county or Commonwealth fire school, an insurance company loss control representative, Department of Labor and Industry building code inspector or construction code official.

*Health care or human services field*--Includes the following:

- (i) Child welfare services.
- (ii) Adult services.
- (iii) Older adult services.
- (iv) Mental health/mental retardation services.
- (v) Drug and alcohol services.
- (vi) Services for individuals with disabilities.
- (vii) Medicine.
- (viii) Nursing.
- (ix) Rehabilitative services.
- (x) Any other human service or occupation that maintains contact with adults who are older or adults and children with disabilities.

*Housekeeping*--The cleaning of the living unit and common areas. Cleaning of the living unit includes at least weekly dusting, sweeping, vacuuming, mopping, emptying trash, and cleaning of bathroom, counters, refrigerator and microwave oven. Housekeeping for common areas means keeping them in clean sanitary condition.

*IADL--Instrumental activities of daily living*--The term includes the following activities when done on behalf of a resident:

- (i) Doing laundry.
- (ii) Shopping.
- (iii) Securing and using transportation.
- (iv) Financial management.
- (v) Using a telephone.

- (vi) Making and keeping appointments.
- (vii) Caring for personal possessions.
- (viii) Writing correspondence.
- (ix) Engaging in social and leisure activities.
- (x) Using a prosthetic device.
- (xi) Obtaining and keeping clean, seasonal clothing.
- (xii) Housekeeping.

*Informed consent agreement*--A formal, mutually agreed upon, written understanding which:

- (i) Results after thorough discussion among the assisted living residence staff, the resident and any individuals the resident wants to be involved.
- (ii) Identifies how to balance the assisted living residence's responsibilities to the individuals it serves with a resident's choices and capabilities with the possibility that those choices will place the resident or other residents at risk of harm.
- (iii) Documents the resident's choice to accept or refuse a service offered by or at the residence.

*Legal entity*--A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of an assisted living residence.

*Legal representative*--An individual who holds a power of attorney, a court-appointed guardian or other person authorized to act for the resident.

*License*--A certificate of compliance issued by the Department permitting the operation of an assisted living residence, at a given location, for a specific period of time, for a specified capacity, according to Chapter 20 (relating to licensure or approval of facilities and agencies).

*Licensee*--A person legally responsible for the operations of an assisted living residence licensed in accordance with this chapter.

*Long-term care ombudsman*--A representative of the Office of the State Long-Term Care Ombudsman in the Department of Aging who investigates and seeks to resolve complaints made by or on behalf of individuals who are 60 years of age or older who are consumers of long-term care services. These complaints may relate to action, inaction or decisions of providers of long-term care services, of public agencies, of social service

agencies or their representatives, which may adversely affect the health, safety, well-being or rights of these consumers.

*Mobile resident--*

(i) A resident who is physically and mentally capable of vacating the assisted living residence on the resident's own power or with limited physical or oral assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path.

(A) Physical assistance means assistance in getting to one's feet or into a wheelchair, walker or prosthetic device.

(B) Oral assistance means giving instructions to assist the resident in vacating the assisted living residence.

(ii) The term includes an individual who is able to effectively operate an ambulation device required for moving from one place to another, and able to understand and carry out instructions for vacating the assisted living residence.

*Neglect--*The failure of an assisted living residence or its staff persons to provide goods or services essential to avoid a clear and serious threat to the physical or mental health of a resident. The failure or omission to provide the care, supervision and services that the assisted living residence has voluntarily, or by contract, agreed to provide and that are necessary to maintain the resident's health, safety and well-being, including personal care services, food, clothing, medicine, shelter, supervision and medical services. Neglect may be repeated conduct or a single incident.

*OTC--*Over-the-counter or nonprescription.

*Personal care services--*Assistance or supervision in ADL or IADL, or both.

*Premises--*The grounds and buildings on the same grounds, used for providing services required by residents.

*Protective services unit--*The local area agency on aging unit designated by the Department of Aging to investigate allegations of abuse of adults who are 60 years of age or older and assess the need for protective interventions.

*Referral agent--*An agency or individual who arranges for or assists, or both, with placement of a resident into an assisted living residence.

*Relative--*A spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

*Resident*-- An individual, unrelated to the legal entity, who resides in an assisted living residence, and who may require personal care services or supplemental health care services, or both.

*Resident with mobility needs*--An individual who is unable to move from one location to another, has difficulty in understanding and carrying out instructions without the continued full assistance of other individuals or is incapable of independently operating an ambulation device, such as a wheelchair, prosthesis, walker or cane to exit a building.

*Restraint*--A manual, chemical or mechanical device used to limit or restrict the movement or normal function of an individual or a portion of the individual's body.

*SSI*--Supplemental Security Income.

*Secretary*--The Secretary of the Department.

*Special care designation*--A licensed assisted living residence or a distinct part of the residence which is specifically designated by the Department as capable of providing cognitive support services to residents with severe cognitive impairments, including dementia or Alzheimer's disease, in the least restrictive manner to ensure the safety of the resident and others in the residence while maintaining the resident's ability to age in place.

*Staff person*--An individual who works for the assisted living residence for compensation either on payroll or under contract.

*Supplemental health care services*--The provision by an assisted living residence of any type of health care service that allows residents to age in place, either directly or through contractors, subcontractors, agents or designated providers, except for any service that is required by law to be provided by a health care facility under the Health Care Facilities Act (35 P. S. §§ 448.101--448.901).

*Support plan*--A written document that describes for each resident the resident's care, service or treatment needs based on the assessment of the resident, and when the care, service or treatment will be provided, and by whom.

*Transfer*--Movement of a resident within the assisted living residence or to a temporary placement outside the assisted living residence.

*Volunteer*--

(i) An individual who, of his own free will, and without monetary compensation, provides direct care services for residents in the assisted living residence.

(ii) The term does not include visitors or individuals who provide nondirect services or entertainment on an occasional basis.

## **§ 2800.5. Access.**

(a) The administrator or a designee shall provide, upon request, immediate access to the residence, the residents and records to:

- (1) Agents of the Department.
- (2) Representatives of the area agency on aging.
- (3) Representatives of the Long-Term Care Ombudsman Program.
- (4) Representatives of the protection and advocacy system for individuals with disabilities designated under the Protection and Advocacy for Individual Rights Program of the Vocational Rehabilitation and Rehabilitation Services Act (29 U.S.C.A. § 794e), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C.A. §§ 10801--10851) and the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15041--15043).

(b) The administrator or a designee shall permit community service organizations and representatives of legal services programs to have access to the residence during visitation hours or by appointment for the purpose of assisting or informing the residents of the availability of services and assistance. A resident or a resident's designated person if so authorized may decline the services of the community service organization or the legal service program.

## **GENERAL REQUIREMENTS**

### **§ 2800.11. Procedural requirements for licensure or approval of assisted living residences.**

(a) Except for § 20.32 (relating to announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to assisted living residences.

(b) Before a residence is initially licensed and permitted to open, operate or admit residents, it will be inspected by the Department and found to be in compliance with applicable laws and regulations including this chapter. The Department will reinspect newly licensed residences within 3 months of the date of initial licensure.

(c) After the Department determines that a residence meets the requirements for a license, the Department's issuance or renewal of a license to a residence is contingent upon receipt by the Department of the following fees based on the number of beds in the residence, as follows:

- (1) A \$500 license application or renewal fee.

(2) A \$105 per bed fee that may be adjusted by the Department annually at a rate not to exceed the Consumer Price Index. The Department will publish a notice in the *Pennsylvania Bulletin* when the per bed fee is increased.

(d) A person, organization or program may not use the term "assisted living" in any name or written material, except as a licensee in accordance with this chapter. Corporate entities which own subsidiaries that are licensed as assisted living residences may not use the term "assisted living" in any written material to market programs that are not licensed in accordance with this chapter.

### **§ 2800.12. Appeals.**

(a) Appeals related to the licensure or approval of the assisted living residence shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure (GRAPP)).

(b) Appeals related to the licensure or approval of the assisted living residence shall be made by filing a petition within 30 days after service of notice of the action.

(c) Subsection (b) supersedes the appeal period of 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

### **§ 2800.13. Maximum capacity.**

(a) The maximum capacity is the total number of residents who are permitted to reside in the residence at any time. A request to increase the capacity shall be submitted to the Department and other applicable authorities and approved prior to the admission of additional residents. The maximum capacity is limited by physical plant space and other applicable laws and regulations.

(b) The maximum capacity specified on the license may not be exceeded.

### **§ 2800.14. Fire safety approval.**

(a) Prior to issuance of a license, a written fire safety approval from the Department of Labor and Industry, the Department of Health or the appropriate local building authority under the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101--7210.1103) is required.

(b) If the fire safety approval is withdrawn or restricted, the residence shall notify the Department orally immediately, and in writing, within 48 hours of the withdrawal or restriction.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the residence shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority.

This documentation shall be submitted to the Department within 15 days of the completion of the renovation or alteration.

(d) The Department will request additional fire safety inspections by the appropriate agency if possible fire safety violations are observed during an inspection by the Department.

(e) Fire safety approval must be renewed at least every 3 years, or more frequently, if requested by the Department.

### **§ 2800.15. Abuse reporting covered by law.**

(a) The residence shall immediately report suspected abuse of a resident served in the residence in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.701--10225.707) and 6 Pa. Code §§ 15.21--15.27 (relating to reporting suspected abuse, neglect, abandonment or exploitation) and comply with the requirements regarding restrictions on staff persons.

(b) If there is an allegation of abuse of a resident involving a residence's staff person, the residence shall immediately develop and implement a plan of supervision or suspend the staff person involved in the alleged incident.

(c) The residence shall immediately submit to the Department's assisted living residence office a plan of supervision or notice of suspension of the affected staff person.

(d) The residence shall immediately notify the resident and the resident's designated person of a report of suspected abuse or neglect involving the resident.

### **§ 2800.16. Reportable incidents and conditions.**

(a) A reportable incident or condition includes the following:

(1) The death of a resident.

(2) A physical act by a resident to commit suicide.

(3) An injury, illness or trauma requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

(4) A violation of a resident's rights in §§ 2800.41--2800.44 (relating to resident rights).

(5) An unexplained absence of a resident for 24 hours or more, or when the support plan so provides, a period of less than 24 hours, or an absence of a resident from a special care unit.

- (6) Misuse of a resident's funds by the residence's staff persons or legal entity.
  - (7) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to specific identified reportable diseases, infections and conditions).
  - (8) Food poisoning of residents.
  - (9) A physical or sexual assault by or against a resident.
  - (10) Fire or structural damage to the residence.
  - (11) An incident requiring the services of an emergency management agency, fire department or law enforcement agency, except for false alarms.
  - (12) A complaint of resident abuse, suspected resident abuse or referral of a complaint of resident abuse to a local authority.
  - (13) A prescription medication error as defined in § 2800.188 (relating to medication errors).
  - (14) An emergency in which the procedures under § 2800.107 (relating to emergency preparedness) are implemented.
  - (15) An unscheduled closure of the residence or the relocation of the residents.
  - (16) Bankruptcy filed by the legal entity.
  - (17) A criminal conviction against the legal entity, administrator or staff that is subsequent to the reporting on the criminal history checks under § 2800.51 (relating to criminal history checks).
  - (18) A termination notice from a utility.
  - (19) A violation of the health and safety laws under § 2800.18 (relating to applicable laws).
  - (20) An absence of staff or inadequate staff to supervise residents.
- (b) The residence shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents and conditions.
- (c) The residence shall report the incident or condition to the Department's assisted living residence office or the assisted living residence complaint hotline within 24 hours in a manner designated by the Department. Abuse reporting must also follow the guidelines in § 2800.15 (relating to abuse reporting covered by law).

(d) The residence shall submit a final report, on a form prescribed by the Department, to the Department's assisted living residence office immediately following the conclusion of the investigation.

(e) If the residence's final report validates the occurrence of the alleged incident or condition, the affected resident and other residents who could potentially be harmed or his designated person shall also be informed immediately following the conclusion of the investigation.

(f) The residence shall keep a copy of the report of the reportable incident or condition.

### **§ 2800.17. Confidentiality of records.**

Resident records shall be confidential, and, except in emergencies, may not be accessible to anyone other than the resident, the resident's designated person if any, staff persons for the purpose of providing services to the resident, agents of the Department and the long-term care ombudsman without the written consent of the resident, an individual holding the resident's power of attorney for health care or health care proxy or a resident's designated person, or if a court orders disclosure.

### **§ 2800.18. Applicable laws.**

A residence shall comply with applicable Federal, State and local laws, ordinances and regulations.

### **§ 2800.19. Waivers.**

(a) A residence may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request must be on a form prescribed by the Department. The Secretary, or the Secretary's appointee, may grant a waiver of a specific requirement of this chapter if the following conditions are met:

(1) There is no jeopardy to the residents.

(2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the residents.

(3) Residents will benefit from the waiver of the requirement.

(b) The scope, definitions, applicability or residents' rights, assisted living service delivery requirements, special care designation requirements, disclosure requirements, complaint rights or procedures, notice requirements to residents or family, contract requirements, reporting requirements, fire safety requirements, assessment, support plan or service delivery requirements under this chapter may not be waived.

(c) At least 30 days prior to the submission of the completed written waiver request to the Department, the residence shall provide a copy of the completed written waiver request to the affected resident and designated person to provide the opportunity to submit comments to the Department. The residence shall provide the affected resident and designated person with the name, address and telephone number of the Department staff person to submit comments.

(d) The residence shall discuss the waiver request with the affected resident and designated person upon the request of the resident or designated person.

(e) The residence shall notify the affected resident and designated person of the approval or denial of the waiver. A copy of the waiver request and the Department's written decision shall be posted in a conspicuous and public place within the residence.

(f) The Department will review waivers annually to determine compliance with the conditions required by the waiver. The Department may revoke the waiver if the conditions required by the waiver are not met.

#### **§ 2800.20. Financial management.**

(a) A resident may manage his personal finances unless he has a guardian of his estate.

(b) If the residence provides assistance with financial management or holds resident funds, the following requirements apply:

(1) The residence shall keep a record of financial transactions with the resident, including the dates, amounts of deposits, amounts of withdrawals and the current balance.

(2) Resident funds shall be disbursed during normal business hours within 24 hours of the resident's request.

(3) The residence shall obtain a written receipt from the resident for cash disbursements at the time of disbursement.

(4) Resident funds and property shall only be used for the resident's benefit.

(5) Commingling of resident funds and residence funds is prohibited.

(6) If a residence is holding more than \$200 for a resident for more than 2 consecutive months, the administrator shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.

(7) The legal entity, administrator and staff persons of the residence are prohibited from being assigned power of attorney or guardianship of a resident or a resident's estate.

(8) The residence shall give the resident and the resident's designated person, an itemized account of financial transactions made on the resident's behalf on a quarterly basis.

(9) A copy of the itemized account shall be kept in the resident's record.

(10) The residence shall provide the resident the opportunity to review his own financial record upon request during normal business hours.

### **§ 2800.21. Offsite services.**

If services or activities are provided by the residence at a location other than the premises, the residence shall ensure that the residents' support plans are followed and that the resident's health and safety needs are met.

### **§ 2800.22. Application and admission.**

(a) The following admission documents shall be completed for each resident:

(1) Preadmission screening completed prior to admission on a form specified by the Department.

(2) Medical evaluation completed 60 days prior to or 15 days after admission on a form specified by the Department.

(3) Assisted living resident assessment completed within 15 days after admission on a form specified by the Department.

(4) Support plan developed and implemented within 30 days after admission.

(5) Resident-residence contract completed prior to admission or within 24 hours after admission.

(b) Upon application for residency and prior to admission to the residence, the licensee shall provide each potential resident or potential resident's designated person with written disclosures that include:

(1) A list of the nonwaivable resident rights.

(2) A copy of the agreement the resident will be asked to sign.

(3) A copy of residence rules and resident handbook. The resident handbook shall be approved by the Department.

(4) Specific information about:

- (i) What services are offered by the residence.
- (ii) The cost of those services to the potential resident.
- (iii) The contact information for the Department.
- (iv) The licensing status of the most recent inspection reports and instructions for access to the Department's public website for information on the residence's most recent inspection reports.
- (v) Disclosure of any waivers that have been approved for the residence and are still in effect.

**§ 2800.23. Activities.**

- (a) A residence shall provide each resident with assistance with ADLs as indicated in the resident's assessment and support plan.
- (b) A residence shall provide each resident with assistance with IADLs as indicated in the resident's assessment and support plan.

**§ 2800.24. Personal hygiene.**

A residence shall provide the resident with assistance with personal hygiene as indicated in the resident's assessment and support plan. Personal hygiene includes one or more of the following:

- (1) Bathing.
- (2) Oral hygiene.
- (3) Hair grooming and shampooing.
- (4) Dressing, undressing and care of clothes.
- (5) Shaving.
- (6) Nail care.
- (7) Foot care.
- (8) Skin care.

**§ 2800.25. Resident-residence contract.**

(a) Prior to admission, or within 24 hours after admission, a written resident-residence contract between the resident and the residence must be in place. The administrator or a designee shall complete this contract and review and explain its contents to the resident and the resident's designated person if any, prior to signature.

(b) The contract shall be signed by the administrator or a designee, the resident and the payer, if different from the resident, and cosigned by the resident's designated person if any, if the resident agrees. The contract must run month-to-month with automatic renewal unless terminated by the resident with 14 days' notice or by the residence with 30 days' notice in accordance with § 2800.228 (relating to transfer and discharge).

(c) At a minimum, the contract must specify the following:

(1) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid. A personal needs allowance is the amount that a resident shall be permitted to keep for his personal use.

(2) A fee schedule that lists the actual amount of charges for the residence's core assisted living services that the individual is purchasing, including:

(i) Assistance with unscheduled ADLs and supplemental health care services.

(ii) Three meals a day and snacks as provided in § 2800.161 (relating to nutritional adequacy).

(iii) Laundry services as provided in § 2800.105 (relating to laundry).

(iv) Housekeeping as defined in § 2800.4 (relating to definitions).

(v) Transportation in accordance with § 2800.171 (relating to transportation).

(vi) Medication management or administration as provided in §§ 2800.181 and 2800.182 (relating to self-administration; and medication administration).

(vii) Daily planned social activities and socialization as provided in § 2800.221 (relating to activities program).

(3) An explanation of the annual assessment, medical evaluation and support plan requirements and procedures, which shall be followed if either the assessment or the medical evaluation indicates the need for another and more appropriate level of care.

(4) The party responsible for payment.

(5) The method for payment of charges for long distance telephone calls.

- (6) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.
- (7) The financial arrangements if assistance with financial management is to be provided.
- (8) The residence's rules related to residence services, including whether the residence permits smoking.
- (9) The conditions under which the resident-residence contract may be terminated including residence closure as specified in § 2800.228 (relating to transfer and discharge).
- (10) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the residence's request to change the contract.
- (11) A list of personal care services or supplemental health care services, or both, to be provided to the resident based on the outcome of the resident's support plan, a list of the actual rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made.
- (12) Charges to the resident for holding a bed during hospitalization or other extended absence from the residence.
- (13) Written information on the resident's rights and complaint procedures as specified in § 2800.41 (relating to notification of rights and complaint procedures).
- (d) A residence may not seek or accept payments from a non-SSI resident of any funds received by the resident under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1--4751-12). If the residence will be assisting the resident to manage a portion of the rent rebate, the requirements of § 2800.20 (relating to financial management) may apply. There may be no charge for filling out this paperwork.
- (e) The resident, or a designated person, has the right to rescind the contract for up to 72 hours after the initial dated signature of the contract or upon receipt of the initial support plan. The resident shall pay only for the services received. Rescission of the contract must be in writing addressed to the residence.
- (f) The residence may not require or permit a resident to assign assets to the residence in return for a life care contract/guarantee. A life care contract/guarantee is an agreement between the legal entity and the resident that the legal entity will provide care to the resident for the duration of the resident's life. Continuing care communities that have obtained a Certificate of Authority from the Insurance Department and have provided a copy of the certificate to the Department are exempt from this requirement.
- (g) A copy of the signed resident-residence contract shall be given to the resident and a copy shall be filed in the resident's record.

(h) The service needs addressed in the resident's support plan shall be available to the resident every day of the year.

(i) The assisted living services included in the package the individual is purchasing shall be the contract price. Supplemental health care services must be packaged, contracted and priced separately from the resident-residence contract. Services other than supplemental health care services must be priced separately from the service package in the resident-residence contract.

### **§ 2800.26. Quality management.**

(a) The residence shall establish and implement a quality management plan.

(b) The quality management plan must address the periodic review and evaluation of the following:

(1) The reportable incident and condition reporting procedures.

(2) Complaint procedures.

(3) Staff person training.

(4) Licensing violations and plans of correction, if applicable.

(5) Resident or family councils, or both, if applicable.

(c) The quality management plan must include the development and implementation of measures to address the areas needing improvement that are identified during the periodic review and evaluation.

### **§ 2800.27. SSI recipients.**

(a) If a residence agrees to admit a resident eligible for SSI benefits, the residence's charges for actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current personal needs allowance.

(b) The administrator or staff persons may not include funds received as lump sum awards, gifts or inheritances, gains from the sale of property or retroactive government benefits when calculating payment of rent for an SSI recipient or for a resident eligible for SSI benefits.

(c) The administrator or staff persons may not seek or accept any payments from funds received as retroactive awards of SSI benefits, but may seek and accept the payments only to the extent that the retroactive awards cover periods of time during which the resident actually resided in the residence and for which full payment has not been received.

(d) The administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

(1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.

(2) Laundry services for personal laundry, bed linens and towels, but not including dry cleaning or other specialized services.

(3) Personal care services.

(e) Third-party payments made on behalf of an SSI recipient and paid directly to the residence are permitted. These payments may not be used for food, clothing or shelter because to do so would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services for the resident that are not food, clothing or shelter.