ReedSmith

lshi

Life Sciences Health Industry Alert

If you have questions or would like additional information on the material covered in this Alert, please contact the authors:

Karl A. Thallner
Partner, Philadelphia
+1 215 851 8171
kthallner@reedsmith.com

Amie E. Schaadt
Associate, Philadelphia
+1 215 851 8106
aschaadt@reedsmith.com

...or any other member of the Reed Smith Life Sciences and Health Industry group with whom you work if you would like additional information or if you have any questions.

Client Alert 10-174

July 2010

reedsmith.com

Pennsylvania Assisted Living Residences Final Regulations

INTRODUCTION

On July 17, 2010, the Pennsylvania Department of Public Welfare ("DPW") published its final regulations for assisted living residences ("ALRs") operating within the Commonwealth. 40 Pa.B. 4073. The final-form regulations were drafted to fulfill the statutory requirements of Act 56, which was enacted by the Pennsylvania General Assembly on July 25, 2007. Act 56 amended the statute regulating and licensing personal care homes by creating, defining and providing for the licensing and regulation of ALRs.

DPW had published proposed ALR regulations on August 9, 2008, and Reed Smith summarized the contents of DPW's proposal in bulletin that is available on the internet at http://www.lifescienceslegalupdate.com/2008/08/articles/health-care/pennsylvania-proposes-regulations-for-a-new-provider-type-assisted-living-facilities/. The final ALR regulations do incorporate some significant changes from the proposed regulation, although much has remained the same. This bulletin will highlight the important differences between the proposed and final regulations.

I. LICENSURE, INSPECTIONS

A. Licensure

A significant change between the final regulations and the proposed regulations is that the final regulations allow for dual licensure. Specifically, a facility may hold licenses as both a personal care home ("PCH") and an ALR. Under the final regulations, a licensed PCH may submit an application to DPW requesting dual licensure if the PCH and the ALR are located in distinct areas of the same building. The regulations define "distinct part" as a portion of a building that is visually separated, such as a wing or floor, or sections or parts of floors. A facility with a dual license may not segregate residents or transfer residents from one part to another based on source of payment. Upon approval from DPW, a dual licensed facility may be permitted to share an administrator.

Fees for licensure have been decreased by the final regulations. DPW will collect a $300 license application or renewal fee and a $75 per bed fee. Furthermore, under the final regulations, multiple buildings on the same premises may apply for a single ALR license.

Additionally, a licensed ALR may submit an application and a $150 fee to DPW requesting special care designation. Special care designation is recognition by DPW that the ALR is capable of providing cognitive support services to residents with service cognitive impairments in the least restrictive manner to ensure the safety of the resident and others.

B. Inspections

Under the proposed regulations, an ALR with a history of exemplary compliance would only be subject to "abbreviated annual licensure visit[s]." However, this provision was removed in the final-form regulations. Thus, all facilities will be subject to regular annual licensure visits.

II. ADMISSION, RESIDENT CONTRACT, RECORDS

A. Admission

Some substantial changes were made to the provisions regarding application and admission. DPW renamed the provision relating to preadmission screening of potential residents as initial assessment and preliminary support plans. Moreover, the timing for medical evaluations and assessments is more precisely delineated. Under the final regulations, medical evaluations are to be completed within 60 days prior to admission on a form specified by DPW. The medical evaluation may be completed within 15 days after admission if one of the following conditions applies: (i) the resident is being admitted directly to the ALR from an acute care hospital; (ii)

the resident is being admitted to escape from an abusive situation; or (iii) the resident has no alternative living arrangement.

Each resident must undergo an initial assessment. An individual is required to have a written initial assessment that is documented on DPW's assessment form within 30 days prior to admission. However, a resident must have a written initial assessment that is documented on DPW's assessment form within 15 days after admission if one of the same conditions as listed above applies. An ALR may use its own assessment form if it includes the same information as DPW's assessment form. The written initial assessment must, at a minimum, include the following:

- The individual's need for assistance with activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs").
- The mobility needs of the individual.
- The ability of the individual to self-administer medication.
- The individual's medical history, medical conditions and current medical status and how they impact or interact with the individual's service needs.
- The individual's need for supplemental health care services.
- The individual's need for special diet or meal requirements.
- The individual's ability to safely operate key-locking devices.
- The individual's ability to evacuate from the ALR.

The final regulations also provide that preliminary support plans must be developed within 30 days prior to admission, in contrast with the proposed regulations, which specified implementation after admission. The preliminary support plan may be completed within 15 days after admission if one of the following conditions applies: (i) the resident is being admitted directly to the ALR from an acute care hospital; (ii) the resident is being admitted to escape from an abusive situation, or (iii) the resident has no alternative living arrangement. However, the final support plan is to be implemented within 30 days after admission in all cases. The written preliminary support plan must document the dietary, medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the individual, or referrals for the individual to outside services if necessary. An ALR is not required to pay for the cost of these medical and behavioral care services, however.

The regulations mandate that the preliminary support plan document the assisted living services and supplemental health care services, if applicable, that will be provided to the individual. The plan must be documented on DPW's support plan form, or an ALR's own support plan form that includes the same information as DPW's support plan form. A licensed practical nurse, under the supervision of a registered nurse, or a registered nurse must review and approve the preliminary support plan. Under the final regulations, residents must be encouraged to participate in the development of their preliminary support plans. Additionally, a resident may include a designated person or family member in making decisions about these services. A final support plan must be developed and implemented within 30 days after admission to the ALR.

Additional assessments of residents, beyond those described above, are required by the final regulations. These additional assessments include, at a minimum, the following:

- The resident's need for assistance with ADLs and IADLs.
- The mobility needs of the resident.
- The ability of the resident to self-administer medication.
- The resident's medical history, medical conditions, and current medical status and how these impact or interact with the individual's service needs.
- The resident's need for supplemental health care services.
- The resident's need for special diet or meal requirements.
- The resident's ability to safely operate key-locking devices.

Medical evaluations, resident assessments, and support plans may be subsequently updated as needed, and must be updated no less frequently than annually for the assessment and quarterly for the final support plan.

The final regulations mandate that a certification be made, prior to admission, that the needs of the potential resident can be met by the services provided by the ALR. A potential resident whose needs cannot be met by the ALR must be provided with a written decision denying admission, which gives a basis for the denial. The potential resident must then be referred to an appropriate local assessment agency.

A potential resident who requires assisted living services but does not currently require assistance in obtaining supplemental health care services may be admitted to the ALR, provided the resident is only furnished with supplemental health care services required or requested by the resident. When supplemental health care services are required, the ALR must develop a preliminary support plan for the resident.

B. Resident Contract

Under the final regulations, the resident-residence contract must address whether the ALR collects the resident's rebate under the Senior Citizens Rebate and Assistance Act, how much it collects and the intended use of the funds. Additionally, the contract is required to identify the core service package that the resident is purchasing and the total price for those services. Supplemental health care services must be packed, contracted, and priced separately from the resident-residence contract. Services that are not supplemental health care services provided or contracted by the ALR must be priced separately from the service package in the contract.

C. Records

Under the final regulations, a patient of an ALR may designate a person to receive immediate access to the patient's records upon the patient's request. The designated person's access is limited to the records of the designating resident only.

III. SERVICES

A. Medical Care & Supplemental Health Care Services

The regulations require that all ALRs demonstrate the ability to provide or arrange for the provision of supplemental health care services in a manner that protects the health, safety and well-being of the residents. The supplemental health care services may be provided using employees, independent contractors or contractual arrangements with other health care facilities or licensed practitioners. Furthermore, ALRs must permit residents to select or retain their own primary care physicians. However, to the extent prominently displayed in the written admission agreement, a ALR may require residents to use providers of supplemental health care services approved or designated by the ALR.

The ALR must provide or arrange for the provision of supplemental health care services, including, but not limited to, the following:

- Hospice services.
- Occupational therapy.
- Skilled nursing services.
- Physical therapy.
- Behavioral health services.
- Home health services.
- Escort service if indicated in the resident's support plan or requested by the resident to and from medical appointments.
- Specialized cognitive support services.

Also noted in the final regulations is the requirement for ALRs to document the resident's need for medical care, including updating the resident's assessment and support plan

B. Services Provisions

ALRs must offer and provide assisted living services and core service packages to all residents. In the final regulations, the required assisted living services to be provided have been expanded to include financial management, 24-hour supervision and emergency response, activities and socialization, and basic cognitive support services. The core service packages that must be supplied include the following:

- *Independent Core Package.* This core package must be provided to residents who do not require assistance with ADLs. The services include the following:
  - 24-hour supervision, monitoring and emergency response.
  - Nutritious meals and snacks.
  - Housekeeping services essential for the health, safety and comfort of the resident based upon the resident's needs and preferences.
  - Laundry services.
  - Assistance with unanticipated ADLs for a defined recovery period.
  - A daily program of social and recreational activities.
  - Basic cognitive support services.

  Enhanced Core Package. This core package must be available to residents who require assistance with ADLs. The services include the following:
  - The services provided in the basic core package.
  - Assistance with ADLs and unanticipated ADLs.
  - Transportation.
  - Assistance with self-administration of medication or medication administration as indicated in the resident's assessment and support plan.

  If a resident wishes not to have the ALR provide a service, the resident-ALR contract must specify the service not being provided and the corresponding fee schedule charge adjustment that takes into account the reduction in service.

  Under the final regulations, an ALR must provide the space and equipment for daily activities for the residents and offer the opportunity to participate.

IV. STAFFING, BUILDING, MAINTENANCE

A. Staffing

The final regulations clarify that all hiring policies of ALRs must be in compliance with the Pennsylvania Department of Aging's Older Adult Protective Services Act policy as posted on its website. The final regulations add to and amend the qualifications required for staff. The final regulations permit an individual who have experience as a PCH administrator be an administrator of an ALR, provided that the individual was employed as a PCH administrator for 2 years prior to the effective date of the regulation and completed the administrator training requirements, including passing a DPW-approved training test. Additionally, administrators must be trained in infection control, person-centered care, informed consent, aging in place, issues specific to resident composition, and incident management and reporting. However, a licensed administrator who is employed as an administrator prior to the effective date of the regulation is exempt from the qualification and training requirements if the administrator continues to meet the applicable licensing requirements. The final regulations also permit an administrator who is unable to meet hourly requirements due to a temporary absence to assign a qualified administrator designee.

In another change from the proposed regulations, all staff, rather than just direct care staff, must participate in orientation that includes general fire safety and emergency preparedness. Direct care staff only must complete an initial orientation approved by DPW and must also be certified in first aid and CPR, with a sufficient number certified in obstructed airway techniques. Direct care personnel may not commence the provision of services until 18 hours of training are fulfilled and must complete 16 hours of annual training relating to job duties.

B. Building Requirements

The final regulations provide that newly constructed ALRs must have single resident living units of at least 225 square feet (rather than 250 as in the proposed regulations), excluding bathrooms and closets. For residents who share space, there must be at total of 300 square feet in the living area. Exceptions to the size of the living unit may be made at the discretion of DPW.

For ALRs existing prior to enactment of the regulations, each single resident living unit must be at least 160 square feet (rather than 175), excluding bathrooms and closets. If residents share

space, there must be at total of 210 square feet in the living area. Again, exceptions to the size of the living unit may be made at the discretion of DPW. All rooms are required to have space with electrical outlets for small appliances, including a small refrigerator.

Upon entering an ALR, a new resident or the resident's designated person must be asked if the resident wants to have a cooking appliance and/or small refrigerator. The ALR is required to supply the appliances if so desired by the resident or designee. The final regulations mandate that the appliances be easily removable if necessary.

V. SPECIAL CARE UNITS

A. Admission

As noted above, special care units are specially licensed facilities or areas of a facility that provide high-level cognitive services. Specifically, a special care unit provides specialized care and services for residents with Alzheimer's disease or dementia in the least restrictive manner consistent with the resident's support plan to ensure the safety of the resident and others in the ALR while maintaining the resident's ability to age in place. An special care unit may also or solely provide intense neurobehavioral rehabilitation for residents with severely disruptive and potentially dangerous behaviors as a result of brain injury in the least restrictive manner consistent with the resident's rehabilitation and support plan to ensure the safety of the resident and others in the ALR. The admission of an intense neurobehavioral rehabilitation after brain injury ("INRBI") resident must be in consultation with the resident or potential resident and, when appropriate, the resident's designated person or the resident's family, or both.

Prior to admission, other less restrictive service options that may be available to a resident or potential resident of a special care unit must be considered. A resident or potential resident is required to have a medical evaluation by a physician, physician's assistant or certified registered nurse practitioner, documented on a form provided by DPW, within 60 days prior to admission. Documentation for a special care unit for residents with Alzheimer's disease or dementia must include the resident's diagnosis of Alzheimer's disease or dementia and the need for the resident to be served in a special care unit. Documentation for a special care unit for INRBI must include the resident's or potential resident's diagnosis of brain injury and need for residential services to be provided in a special care unit for INRBI.

B. Screening

The final regulations mandate that residents of a special care unit have a separate preadmission screening. A written cognitive preadmission screening completed in collaboration with a physician or a geriatric assessment team and documented on DPW's form must be completed for each resident within 72 hours prior to admission to a special care unit. Specifically for INRBI, a written cognitive, physical, behavioral ("CPB") preadmission screening must be completed in collaboration with a physician, neuropsychologist or cognitive, physical, behavioral assessment team within 72 hours prior to admission to a special care unit for INRBI. The rehabilitation plan developed for an INRBI patient must identify the resident's behavioral and emotional needs. In any case, specialists working with the resident's physician and, when appropriate, designated person and/or family, will develop a care plan for the resident.

Additionally, each resident of a special care unit for Alzheimer's disease or dementia must be assessed quarterly for the continuing need for the special care unit. Each resident of a special care unit for INRBI is also required to be assessed at least semi-annually or more frequently as necessary to assure the continuing need for ALR in the special care unit for INRBI. Further, the support and rehabilitation plan for an INRBI resident should be reviewed monthly and revised if necessary as the resident's condition changes.

C. Training

Under the final regulations, each direct care staff person working in a special care unit for INRBI is required to have 8 hours of initial training within the first 30 days of the date of hire and a minimum of 8 hours of annual training related to brain injury, in addition to the 16 hours of annual training specified in the provisions related to staff orientation, and any continuing education required for professional licensing. The training for each direct care staff person working in a special care unit for INRBI must at a minimum include an overview of brain injury including the common cognitive, physical and behavioral effects. It must also include training in the specific areas of understanding and managing challenging behaviors which follow from the cognitive, physical and behavioral effects of brain injury; tailoring activities and interactions to provide individualized rehabilitation and support in accordance with the resident's rehabilitation and

support plan; coaching and cueing, interactive problem solving, promoting the initiation of self-soothing activities, and timing the fading of supports

CONCLUSION

Act 56 and the final regulations for ALRs represent a significant change in the manner in which the Commonwealth views the continuum of care for seniors and individuals with chronic disabilities. The establishment of ALRs within Pennsylvania will provide residents in need of health care and personal services with an alternative to nursing homes and with the ability to exercise independence and age in place. ALRs will need to comply with DPW's new regulatory requirements, some of which represent material changes from what DPW had proposed two years earlier.

The contents of this Memorandum are for informational purposes only and do not constitute legal advice.

About Reed Smith

Reed Smith is a global relationship law firm with nearly 1,600 lawyers in 22 offices throughout the United States, Europe, Asia and the Middle East. Founded in 1877, the firm represents leading international businesses, from Fortune 100 corporations to mid-market and emerging enterprises. Its lawyers provide litigation services in multi-jurisdictional matters and other high-stakes disputes; deliver regulatory counsel; and execute the full range of strategic domestic and cross-border transactions. Reed Smith is a preeminent advisor to industries including financial services, life sciences, health care, advertising, technology, media, shipping, energy trade and commodities, real estate, manufacturing, and education. For more information, visit **reedsmith.com.**