

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

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October 21, 2014

Mary Peterson, Director
Division of Long Term Care Residents Protection
3 Mill Road
Wilmington, DE 19806

RE: Division of Long Term Care Residents Protection (DLTCRP) Rest (Family) Care Homes Regulation [18 DE Reg. 282 (October 1, 2014)]

Dear Ms. Peterson:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Long-Term Care Residents Protection (DLTCRP) proposal to completely revise its standards covering rest (family) care homes. The Division notes that the current standards, last amended in 1993, are outdated. At 283. Council would like to share the following observations.

1. In §3.1.2.1.1, consider the following amendment: "Violation of any of the provisions of these rules and regulations or 16 Del.C. Ch. 11." The GACEC recognizes that the regulations address the Patient Bill of Rights in §8.0 and that §4.3 is expansively written. However, it may facilitate enforcement and Department of Health and Social Services (DHSS) defense of appeals under §3.1.2.3 if compliance with Chapter 11 is explicitly highlighted. For example, the regulations do not address failure to comply with mandatory reporting (16 Del.C. §1132) or criminal background check standards (16 Del.C. §1141).
2. Section 4.4 could be improved. The following sentence could be added: "The level of care determination shall be made in consultation with the resident's personal primary care licensed independent practitioner, if any." Otherwise, the implication is that an agent of the placement agency (who may have marginal familiarity with the resident) may determine the level of care based on a "one-stop" assessment lacking the long-term familiarity enjoyed by a PCP.
3. In §4.7, consider substituting "admission to" for "placement in". Individuals may voluntarily solicit admission to a family care home. The term "placement in" suggests an involuntary or agency-directed admission. This section covers individuals whose admission is not prompted by

an agency.

4. In §5.4.6.1, Council suspects the term “bcated” should be “located”.

5. Section 5.4.6.2 addresses the slope of any required ramp which generally tracks the historical Americans with Disabilities Act (ADA) one foot rise in 12 foot run standard. However, there are other “safety” aspects to ramps that could be included. See information from <http://www.ada-compliance.com/ada-compliance/ada-ramp>. The most obvious is the requirement of handrails, 36" width and edge protection. Compare §5.9.1 (requiring handrails in stairways).

6. Section 5.6 would categorically disallow use of a portable air conditioner. Individuals vary considerably in their tolerance for heat/cold. Disallowing a room air conditioner undermines “choice” among residents and ignores variations of temperature within a home which uses a central system. For example, an upstairs bedroom facing south or west will generally be hotter than a downstairs room facing east or north. Literally, §5.6 could be interpreted to mean that a resident could not complain if his/her room is 80 degrees in the summer. A room air conditioner simply provides some flexibility. Similar regulations [16 DE Admin Code 3320, §6.10] do not ban even portable heating devices.

7. The regulations do not address stairglides, stairlifts and elevettes/elevators. The Division may wish to consider whether standards should be included.

8. In §5.9.6 delete the apostrophe in “Camera’s”.

9. Section 5.10 could be improved by explicitly disallowing bunk beds. Compare 16 DE Admin Code 3320, §6.6.6. Otherwise, a provider could use bunk beds to circumvent other bedroom standards.

10. Section 5.10.12 allows three residents per bedroom. This is highly offensive. It is not “normal” for three adults to share a bedroom. Compare 16 DE Admin Code 3310, §8.3 and 3230, §5.8.8. There is also some “tension” between this standard and §§4.9 and 8.12. Moreover, the definition of “family care home” refers to “a family living situation”, not a dorm or institutional environment.

11. Section 5.11.3.2 has multiple plural pronouns (they; their) with a singular antecedent (resident). Consider the following substitute: “A resident may choose to provide an individual mattress to be used only by that resident.”

12. Section 5.12 allows one toilet and one bathtub/shower for every eight occupants. This is highly offensive. Many of the residents will require assistance with bathing and toileting so “turnover” of the shower and toilet may be very slow. By analogy, the neighborhood home regulation requires one toilet and one bathtub/shower for every four individuals. See 16 DE Admin Code 3310, §9.0. See also 16 DE Admin Code 3230, §5.9, and 16 DE Admin Code 3301, §5.9. Imagine three residents (§2.0, definition of “family care home) with limited capacities competing with five family members (§2.0, definition of “occupant”) for the bathroom every morning as they try to get ready for work or travel to a day program. Typically, the toilet

will be in the same room as the shower/bathtub so no one will be able to use the toilet while someone is showering. This is an unsustainable arrangement.

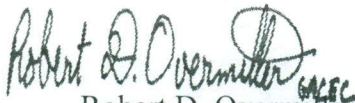
13. Section 5.15.6.4 allows the provider to complete laundry for residents. This standard should be embellished to ban commingling of laundry (including underwear) which can result in the spread of disease, including C-Diff. See Centers for Disease Control (CDC) Question and Answer (Q&A) documented published at http://www.cdc.gov/HAI/organisms/cdiff/Cdiff_faqs_HCP.html . Such embellishment would further the objectives of §7.1.5.3 and §8.14. Temperature and bleach standards could also be included. See 16 DE Admin Code 3201, §7.6 and 16 DE Admin Code 3301, § 5.12.6.

14. Section 7.1.4 should be revised to refer to the “licensed independent practitioner” rather than simply “physician”.

15. Section 7.1.3 does not offer much flexibility if a resident wishes to keep his/her own medications. This is inconsistent with the definition of “family care provider” which adopts a standard of promoting maximum independence through individual choice. By analogy, the assisted living regulation [16 DE Admin Code 3225, §8.4] allows some residents to keep medications in a purse or facility-provided container.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions on our comments.

Sincerely,


Robert D. Overmiller
Chairperson

RDO:kpc