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Written Testimony of

Pennsylvania Health Care Association

**Delivered by
W. Russell McDaid
President and CEO**

For A

**Public Hearing on Changes Needed to the Assisted Living Residence
Regulations / Law**

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**Before the
House Aging and Older Adult Services Committee**

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Good morning and thank you, Chairman Hennessey, Chairman Samuelson and members of this Committee, for the opportunity to come before you and testify this morning.

I am Russ McDaid, the President and CEO of the Pennsylvania Health Care Association, better known to most of you as PHCA.

I am here to testify this morning on Pennsylvania's Assisted Living Act and regulations, and the changes needed if either were to be amended.

But first, some background on our association. PHCA advocates for compassionate, quality long-term care for Pennsylvania's elderly and disabled residents. Our 500+ members are predominantly long-term care providers, including assisted living residences, personal care homes and nursing homes, whose top priority is to provide quality health care and quality of life for those entrusted to their care.

In the past, this committee has invited PHCA to testify on issues predominately affecting skilled nursing facilities. We're glad to have the opportunity this morning to discuss assisted living residences and personal care homes, which represent a significant part of our membership, including 10 of the 15 largest assisted living and personal care providers in Pennsylvania. We have almost 200 assisted living and personal care providers currently in membership, which equates to more than 15,000 resident beds. We are proud to have represented this growing industry for over 30 years and are committed to its continued growth, as we believe that its role in the long-term care continuum will see significant expansion in the coming years.

Act 56 of 2007 created a new license and set of regulations for 'Assisted Living' in Pennsylvania to support a consumer's desire to age in place.

Currently, there are 35 licensed assisted living residences and 1,203 licensed personal care homes in Pennsylvania.

There is a great deal of similarity between the definitions of assisted living residences and personal care homes. They are both generally defined as premises in which food, shelter, care services, assistance or supervision are provided for a period exceeding 24-hours. Both settings serve residents with similar care and service needs. Because the definitions are so similar, the most common question we hear is, "What is the difference?"

To help answer that question and equip providers with a resource to navigate two separate sets of regulations, PHCA developed an AL/PC Regulatory Comparison Guide or what we refer to as our "Green Book" to help differentiate between the assisted living and personal care regulations.

The regulatory differences fall into three categories: 1) intent, 2) services and 3) physical plant.

First, intent.

In 2007, the stated intent of Act 56 was to “. . . *allow consumers to age in place, maintain their independence and exercise decision making and personal choice*”. While personal care homes offer consumers the opportunity to maintain their independence and exercise personal choice, they are limited in their ability to allow consumers to age in place. When a consumer’s care needs rise to the level of needing “the services in or of a nursing facility”, in accordance with state statute, the personal care home must seek placement for the consumer in a higher level of care. On the other hand, an assisted living residence has an obligation under their license to continue to meet **that** consumer’s needs and allow them to age in place.

Second, services.

Assisted living residences ***must provide or arrange for services to accommodate the changing needs and preferences of consumers with higher care needs*** in their communities, while personal care homes have no obligation to do so under their license.

For example, assisted living residences, are required to provide a core set of assisted living services and provide or arrange for supplemental health care services which include skilled nursing services, physical therapy and home health services. Personal care homes do not have that requirement.

Third, physical plant.

Physical plant requirements refer to the square footage and availability of amenities. When compared to personal care, assisted living physical plant requirements regarding living space and amenities are set at a higher standard. Specifically, assisted living residences, unlike personal care homes, are required to provide more common space, larger resident rooms and full private bathrooms, as well as offer kitchenettes.

In all three categories, there are subtle yet important differences.

Despite these differences, there are many personal care homes that work with families within the construct of the law and develop programs and services to allow the consumer with higher needs to remain in their communities. Some of these personal care homes are looking for a more seamless transition to assisted living residence licensure in order to allow their consumers to age in place.

Remember, there are 35 assisted living residences in the Commonwealth, compared to over 1,200 personal care homes. So you might ask, “Why is there such a disparity given those subtle regulatory differences and a desire amongst some personal care homes to transition to assisted living residence licensure?”

From conversations with some of our members there seem to be two main regulatory barriers preventing personal care homes from transitioning to assisted living residences: physical plant and licensure fees.

Many personal care homes cannot meet the physical plant requirements due to the age of their building or the type of care they provide, such as dementia care. In order to attain assisted living licensure, a personal care home that cannot meet these requirements must request a waiver from the Department of Human Services and demonstrate that residents' quality of care will not suffer due to lack of square footage or a full bathroom. There is no guarantee that waivers will be approved.

The second barrier is licensure fees. There is a vast disparity between the assisted living and personal care licensure fees. An assisted living residence can pay upwards of 260 times more for their annual license renewal than a personal care home. For example, a 100 bed personal care home pays \$30 for their annual renewal. Whereas, a 100 bed assisted living residence pays a \$300 renewal fee and \$75 per bed fee, which equates to an annual renewal cost of \$7,800. With subtle differences in the regulations, providers cannot justify the additional annual expense.

Flexibility in the physical plant requirements and amendments to the licensure fees would certainly ease the transition of a personal care home to an assisted living residence. Having been involved in the development of both Act 56 of 2007 and the Department's drafting of the assisted living regulations, I can tell you that physical plant was among the most difficult issues we addressed. Many felt the market should drive the square footage of resident rooms with a reasonable square footage 'floor' established in regulation, while others believed that the Act was the opportunity to create a setting that was much more like an efficiency apartment with robust square footage and a kitchenette type set up. In the eyes of many, the 'efficiency apartment' type model is not the safest or most effective setting to provide care to residents who are unable to live without some type of assistance or support from others. When the regulations were published, the 'market' lost out to the more onerous physical plant requirements, and kept many personal care homes from converting to assisted living licensure.

Addressing the two most significant barriers in licensure fees and physical plant requirements would likely lead to an increase in the number of assisted living residences, which, in turn, would allow more consumers to age in place in the setting of their choosing.

As this Committee considers this issue, we ask that you please keep in mind that there is an equally important place for personal care homes in Pennsylvania's long-term care continuum. Though not all personal care homes have the ability to offer services for individuals that require higher levels of care, the vast majority of PHCA members **DO** have that capacity and are a valuable and necessary option for many Pennsylvanians.

I would be remiss if I didn't note that PHCA is also committed to working with the Department of Human Services on these issues. In fact, two PHCA staff members are currently participating in a licensing workgroup initiated by the Department where the assisted living regulations will likely be discussed. We believe that by working together, we can identify necessary regulatory changes without compromising safety, quality of care and the intent of the regulations. The ultimate beneficiaries of these changes are older Pennsylvanians and individuals living with disabilities, who would see expanded living options as a result of regulatory changes.

In addition, as the Commonwealth moves to managed long-term care, or 'Community HealthChoices', assisted living residences and personal care homes have the potential to play a key role in building a robust continuum of care for that program's participants. Based on conversations to date on Community HealthChoices, the precise role that the Administration sees these providers playing in the program remains unclear. It continues to be an issue that is high on our priority list as those discussions move forward.

PHCA and our members providing assisted living or personal care services to thousands of Pennsylvanians daily, stand ready to work with the Department and this Committee to make the assisted living regulations work for a broader segment of the Commonwealth's personal care homes and their residents.

I thank you for the opportunity to testify today, and am happy to answer any questions at this time.