

March 14, 2018

Mr. Randy Kuykendall, MLS
Division Director
Colorado Department of Public Health & Environment
Health Facilities & Emergency Medical Services Division
4300 Cherry Creek Drive South, HFEMSD
Denver, Colorado 80246-1530

Dear Randy:

We appreciate the opportunity to collaborate with the Colorado Department of Public Health & Environment to evaluate and create updated rules and regulations for Assisted Living Facilities. These comments reflect the collective concerns of the Colorado Assisted Living Association (CALA); the Board of Directors and association members.

It was a pleasure serving on the ALAC committee and I appreciate the regard and relationship between the Colorado Assisted Living Association and the CDPHE.

Several items in these regulations cause us great concern. Small assisted living facilities (less than 20-beds) will be put under a tremendous financial burden given the amount of time required in staffing resources to administrate and implement the details of the new regulations in addition to compliance in other areas. The contention is that the regulations are all inclusive, detailed and prohibitive, opposed to what was discussed as the overall objective of the ALAC committee to develop the *basic minimum guideline*. Each element in our ALAC discussions followed the edict of developing the regulations as the basic minimum guideline.

Our first contention is that there is no specific data presented that indicates an overall failure in regulatory compliance by small assisted living providers. The department has referenced anecdotal occurrences and situations that would give rise to a more detailed and strict regulation, but based on the data from the CDPHE website, it would apply to a relative few. While it has been proven that there are deficient practitioners in CO, we do not believe these deficient practices will be mitigated through additional regulation. The regulations are now very detailed and prescriptive compared to existing regulations and we do not believe that providers are being set up to succeed.

The QMP was implemented so that communities would self-regulate and it has been a complement to the department in making surveys more efficient. The current regulations are not the basic minimum guideline and it is our opinion that the QMP process will be much more complicated, detailed, and time consuming. As a result, the CDPHE surveys that are more intensive and time consuming.

One question that has not been answered is whether during the self-reporting years between formal CDPHE surveys, will ALRs, be subject to issued deficiencies based on what they report?

The increased staffing requirements to implement these regulations will have a devastating impact on existing small assisted living facilities and as a result there will be a significant loss of Medicaid beds in CO. Several Medicaid-certified facilities have recently closed or are transitioning to private pay due to the increased cost without the new regulations being promulgated, the new regulations do not provide any relief and in fact do the opposite because the department made the decision to go against the ALAC committee consensus not to increase fees for HMU providers.

The ALAC committee never scrutinized or vetted the use, or details of the FGI guidelines. It was simply a stated fact that the FGI guidelines were going to be added to the regulations without review. The FGI guidelines are only available in a format that does not allow for comprehensive review unless they are purchased by the user for \$75 for single use (sharing the document comes with heavy consequences) or multiple user for \$200. With the adoption of the FGI guidelines the state will create a near 100% natural barrier to entry for new small assisted living facilities and as the older existing buildings need updating and renovation to serve resident needs, compliance with the FGI guidelines will be nearly impossible. There is a high degree of certainty that as small assisted living facility owners retire or have a need to divest, these facilities will be vacated because sale or renovation will be untenable. For example, it will be nearly impossible for a community in a residential setting to comply with the requirements for parking spaces restroom requirements, separate utility facilities, therapeutic fixtures and finishes etc., especially as they apply to memory care facilities. There are several unanswered questions regarding the FGI guidelines alone that should prohibit these regulations from moving forward.

CALA holds the position that the new regulations should be delayed until the time an applicable feasibility and cost/benefit analysis can be completed for all additional elements of the regulation. Initial results of time-studies conducted on just the implementation of the food service requirements are resulting in adding 1-2 FTEs in small communities. For example, consider a small ALR having a 1:7 staff to resident ratio, one staff member is now required to implement and document the food service requirements, implementation and evaluation of a prescribed engagement (activities) program, documentation of a fall program, documentation of medical waste, documentation of resident overnight checks, documentation of additional training, all in addition to the documentation of medication administration, incident reports, care plan updates, assessments, RCRA compliance documentation, Quality Management Program documentation, additional training requirements for all these elements, etc. With all the of these very specific requirements, when are care staff going to have time to provide care and protective oversight for the residents?

THE RCRA guidelines for medical waste disposal are not clarified or outlined in the regulations leaving interpretation open for compliance.

All these requirements come at a cost that isn't recoverable for Medicaid providers. It is a fact that Medicaid beds in the state of Colorado will reduce dramatically if not

disappear altogether thus driving these residents to nursing homes or in the case of mentally ill and brain injury to likely discharge to the general public. We have already witnessed Medicaid providers either going out of business or transitioning to private pay under the existing regulations. Medicaid certified facilities that provide care to financially disadvantaged residents and clients will disappear.

Compliance with *Person Centered Care* and the CMS community integration mandate of providing a home-like environment to residents will be impossible with these new regulations. Implementation of Person Centered Care demands a basic minimum guideline that allows freedom and relief from the requirements of a **medical model environment**. Assisted Living Facilities CANNOT be compliant with the Centers for Medicare and Medicaid requirements of Person Centered Care and the new CDPHE ALR regulations concurrently. The result of non-compliance with the federal requirements of Person Centered Care could result in the state losing their Medicaid funding at the Federal level.

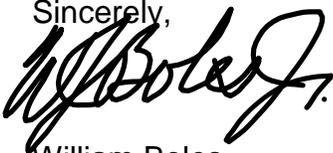
The Department has asked several times in public and in ad-hoc meetings, "What should be eliminated from the new regulations." Here is a brief albeit non-inclusive list of our recommendations.

- A data analysis conducted of how these new regulations will improve the compliance of small facilities, i.e. data should be presented how that small facilities have been non-compliant in their food service programs. Is there is a high incidence of residents in small facilities diagnosed with food-borne illnesses?
- A specific time study and cost analysis conducted based on data accumulated by the CDPHE for Colorado facilities (opposed to national and outdated statistics/studies) for the main areas of impact including but not limited to food service, medical waste disposal, training requirements, administrator training, trends in staff shortages, wages and employee retention, documentation requirements, etc.
- Remove or modify all areas of assessment required by non-qualified staff such as the CPR requirements and staff implementing the DNR for residents and allow the latitude for facilities to write into their policies disallowing CPR for residents, of which will be disclosed and acknowledged by residents/representatives.
- Remove the prohibition of PRN medications to hospice patients. Residents in assisted living facilities have the right to be treated the same as a hospice patient in their own home.
- The FGI guidelines should be removed completely or qualified that they only apply to facilities that are 20-beds or greater.
- Food service should be limited to a basic minimum guideline and in the spirit of self-regulation, require that facilities develop a food service guideline that can be tracked and documented as part of the QMP.

- Activities/engagement programming should follow the same basic minimum guideline requiring that administrators develop and implement a program that is documented as part of the QMP.
- Medical waste management should be defined adequately to remove ambiguity of the RCRA guidelines.
- It is necessary that the regulations be modified to be consistent with the implementation of person centered care. Developing a basic minimum guideline that is relative to the QMP process would accomplish this.
- The experience of a qualified administrator should be reduced from 5-years to 3-years. Small communities are going to experience extreme difficulty in finding and being competitive to hire administrators with 5-years of experience. In addition there is no data that would support that the competency of an individual with 3-years of experience is deficient compared to that of someone with 5-years of experience.
- The increase in re-licensure fees for HMU providers should be suspended.

Given these concerns, it is our position and we recommend that the process to promulgate these regulations be delayed until adjustments can be made that will provide a clear path for all ALR providers and which will be consistent with a basic minimum guideline as well as the requirements of CDPHE and CMS. Thank you for listening to our concerns. We look forward to working with you in finding fair and reasonable solutions.

Sincerely,



William Boles
President
Colorado Assisted Living Association

cc. Dr. Larry Wolk
Executive Director
Department of Public Health & Environment