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MEMORANDUM

DATE: February 25, 2010

TO: Ms. Susan Del Pesco, Director
Division of Long Term Care Residents Protection

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 13 DE Reg. 1018 [DLTCRP Proposed Assisted Living Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Long Term Care Residents Protection's (DLTCRP's) proposal to amend its Assisted Living regulation published as 13 DE Reg. 1018 in the February 1, 2010 issue of the Register of Regulations. SCPD has the following observations.

First, the requirement that the "prescribing practitioner and phone number" be included in the medication log is deleted from the definition in §3.0. The resulting protocol is roughly equivalent to that of nursing facilities. See 16 DE Admin Code 3201, §10.1.7. However, SCPD could not locate a standard in the Assisted Living regulation equivalent to §10.1.4 of the nursing facility regulation in which records of physician orders are maintained by the facility. In the absence of a standard requiring the assisted living provider to maintain a record of physician orders, it may be preferable to at least retain the requirement that the medication log identify the prescribing practitioner and phone number.

Second, Council endorses the requirement that a facility provide clear reasons for rejection of an applicant in §5.1.

Third, in §8.4, the Division may wish to consider amending the first sentence to read "...lockable container or cabinet" to allow a facility to meet the requirement by offering a lockable medicine cabinet. Medications are less likely to be misplaced if kept in the medicine cabinet. Moreover, the Division may wish to consider adding exceptions to the "locked container" or "locked room" expectation for emergency medications such as epipens and inhalers which residents may prefer to keep in a purse or near their person. Finally, the Division may wish to consider an exception

to the “locked container” or “locked room” expectation for non-prescription medications. Compare 16 DE Admin Code 3201, §6.11.2.1 which suggests that non-prescription medications such as antacids and aspirin need not be locked in nursing facilities.

Fourth, the Division is deleting a requirement of at least semi-annual resident satisfaction surveys. SCPD recommends retention of the requirement. An alternative would be to conduct the satisfaction surveys at least annually.

Fifth, the Division should consider adding a regulation as required by recently-amended Title 16 Del.C. §1131C(b) which recites as follows:

(b) The Department shall include in its regulations for all facilities licensed under this chapter a requirement of full cooperation with the protection and advocacy agency in fulfilling functions authorized by this chapter. Without limiting the protection and advocacy agency’s pursuit of other legal remedies, the Department shall enforce violations of such regulations consistent with §§1109 and 1113 of this title.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council