



pennsylvania
DEPARTMENT OF HUMAN SERVICES

JUN 04 2018

Ms. Cynthia A. Haines, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, Pennsylvania 17101

JUN 04 2018

RE: Brookdale Grandon Farms
1100 Grandon Way
Mechanicsburg, Pennsylvania 17055

Dear Ms. Haines:

This is to acknowledge receipt of your request to appeal the Department's decision to revoke the license for Brookdale Grandon Farms. Your request has been forwarded to the Department of Human Services, Bureau of Hearings and Appeals. You will be contacted regarding the date and time of the hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Rowe".

Jacqueline L. Rowe
Director

cc: Mary Lavery (Central), Office of General Counsel

violations resulting from inspections conducted November 15, 2017, November 20, 2017, December 18, 2017, January 25, 2018, February 5, 2018, April 6, 2018, and April 9, 2018 (“Decision”). A true and correct copy of the Decision, mailed on May 21, 2018, with report of violations (“Violation Reports”) is attached hereto as Exhibit “A.”

4. The Violation Reports reflect that the Appellant responded to each alleged violation and implemented a Plan of Correction (“POC”), which was accepted by the Department as recently as May 7, 2018 (Exhibit A).

5. The Department’s Decision should be overturned because it approved the Appellant’s POC, found that the POC was partially implemented with adequate progress, and has offered no evidence that Appellant failed to timely implement a POC to remove any alleged deficiency.

6. The Department’s Decision is arbitrary and capricious in the absence of continued violations of 55 Pa. Code 2600, *et seq.*

7. The Department’s Decision, including revocation, ban on admissions and per day fines, violates Appellant’s rights to substantive and procedural due process of law, as guaranteed by the Constitutions of the Commonwealth of Pennsylvania and of the United States and are not supported by a legitimate government interest.

8. Moreover, the Department’s Decision to continue to assess fines is factually and legally erroneous since it is unsupported by fact, is contrary to law, is inconsistent with law, is arbitrary, capricious, constitutes an abuse of discretion, is not supported by a preponderance of evidence and is constitutionally infirm.

9. At no time during the relevant period did the Department find that conditions at Appellant’s facility constituted an emergency or that a health care crisis existed.

10. The Department's regulations, as written and as applied in this case, are unreasonable and unrelated to any legitimate governmental purpose. The Department's actions herein exceed the authority granted to it under law.

11. The Department's decision violates the Public Welfare Code, 62 P.S. § 101.1, *et seq.*, and the implementing regulations, 55 Pa. Code 2600, *et seq.*

12. To the extent that the Department relied, in any way, on any unpromulgated Department manual, such reliance violates Appellant's rights and is in contravention of the Commonwealth's General Rules of Administrative Practice and Procedure.

13. Appellant denies that it was noncompliant with any of the regulations cited by the Department. The Department has failed to set forth with specificity the alleged deficiencies which supports its conclusion that a violation of these regulations occurred sufficient to justify revocation, ban on admissions and per day fines. To the extent the Department has relied upon conclusory statements of unidentified personnel, such statements are denied and strict proof thereof, if relevant, is demanded at hearing.

14. Appellant denies the factual statements set forth in the Department's Decision and Violation Reports.

15. Appellant denies that the alleged deficiencies cited by the Department constitute violations of the Public Welfare Code or the cited regulations and hereby reserves the right to challenge each one at hearing.

16. Appellant denies that it violated the regulations or any other applicable law.

17. Appellant respectfully submits that all of the above demonstrates that the Department's decision to revoke Appellant's license, ban admissions, and assess ongoing fines is in error and should be reversed and rescinded.

18. Appellant hereby reserves the right to raise additional legal and factual issues and arguments identified during the course of discovery in this matter and as may become apparent at the pre-hearing conference and hearing.

WHEREFORE, Appellant Brookdale Grandon Farms respectfully requests that a hearing be held, that the Department's Decision to revoke the Appellant's license, ban new admissions, and assess continued fines be reversed and that Appellant be awarded other relief as deemed just and reasonable.

Respectfully submitted,

POST & SCHELL, P.C.



Paula G. Sanders, Esquire

Attorney ID #52659

Cynthia A. Haines, Esquire

Attorney ID #71821

17 North Second Street, 12th Floor

Harrisburg, PA 17101

(717) 612-6051

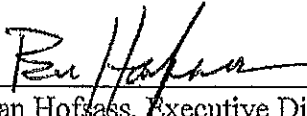
Attorneys for Brookdale Grandon Farms

Date: May 31, 2018

VERIFICATION

I do hereby swear and affirm that the facts and matters set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements made therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

In addition, I also do hereby swear and affirm that I am a duly authorized representative of Brookdale Grandon Farms and am authorized to execute this Verification.



Brian Hofsass, Executive Director
Brookdale Grandon Farms

Date: 5/31/18

EXHIBIT A



pennsylvania
DEPARTMENT OF HUMAN SERVICES

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
MAILING DATE: MAY 21 2018

Ms. Anna Munoz,
Assistant Secretary
Emeritus Corporation
6737 West Washington Street
Suite 2300
Milwaukee, Wisconsin 53214

RE: Brookdale Grandon Farms
1100 Grandon Way
Mechanicsburg, Pennsylvania 17055
Certificate #: 316120

Dear Ms. Munoz:

As a result of the Department's Bureau of Human Services Licensing Inspections on November 15, 2017, November 20, 2017, December 18, 2017, January 25, 2018, February 5, 2018, April 6, 2018, and April 9, 2018 of the above facility, the violations specified on the enclosed Licensing Inspection Summary were found.

As a result of violations with 55 Pa.Code Ch. 2600 (relating to Personal Care Homes), the Department is **REVOKING** your license to operate the above facility. The Department's decision to revoke your license is based on your failure to comply with the Department's regulations and gross incompetence, negligence and misconduct in operating the facility and is made pursuant to 62 P.S. § 1026 (b)(1) and 55 Pa.Code § 20.71(a) (2) ;(6) (relating to conditions for denial, nonrenewal or revocation).

In accordance with 55 Pa.Code § 2600.269 (b) (relating to ban on admissions) no new resident admissions are permitted after the date of this letter.

Pursuant to 62 P.S. 1085-1087 and 55 Pa.Code §§ 2600.261-268 (relating to enforcement), the Department intends to assess a fine for the following violation(s) unless fully corrected on or before the mandated correction date.

Ms. Munoz

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55 Pa.Code Chapter 2600 Section no.	Class of Violation	Census at Inspection X	Fine Per resident Per day	Calculated Fine = Per day	Mandated Correction Date (to avoid Fine)
15a	II	97	\$5	\$485	5 calendar days from mailing date of this letter
82c	II	97	\$5	\$485	5 calendar days from mailing date of this letter

A fine will be assessed on a daily basis beginning with the date of this letter and will continue until the violation is fully corrected, and full compliance with the regulation has been achieved. If the violation is fully corrected, and full compliance with the regulation has been achieved, by the mandated correction date, no fine will be assessed. You must notify the Department's Regional Human Services Licensing office in writing as soon as each violation is fully corrected and submit written documentation of each correction. The Department will conduct an on-site inspection after the mandated correction date, and within 20 calendar days of the date of this letter. If one or more violations is not fully corrected and full compliance with the regulation has not been achieved, you will periodically receive invoices from the Department's Bureau of Human Services Licensing with payment instructions. The fines will continue to accumulate until the violation is fully corrected and full compliance with the regulation has been achieved.

No fine is being assessed at this time; therefore, you may not appeal any fine at this time. If a violation is not corrected and full compliance with the regulation has not been achieved by the mandated correction date, a fine will be assessed and an invoice will be mailed. This invoice will contain the right to appeal the fine.

If you disagree with the decision to REVOKE your license, you have the right to appeal through hearing before the Bureau of Hearings and Appeals, Department of Human Services in accordance with 1 Pa.Code Part II, Chs. 31-35. If you decide to appeal, a written request for an appeal must be received within 10 days of the date of this letter by:

Shivani Patel, Enforcement Manager
Human Services Licensing
Department of Human Services
Room 631, Health and Welfare Building
625 Forster Street
Harrisburg, Pennsylvania 17120


This decision is final 11 days from the date of this letter, or if you decide to appeal, upon issuance of a decision by the Bureau of Hearings and Appeals.

Ms. Munoz

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The enclosed Licensing Inspection Summary specifies plans of correction and dates by which corrections must be made. If you choose to appeal, this plan of correction must be followed during your operation pending your appeal.

Sincerely,



Jacqueline L. Rowe
Director

Enclosure
Licensing Inspection Summary

**VIOLATION REPORT
PERSONAL CARE HOMES - 55 Pa.Code Chapter 2600**

PCH Name: BROOKDALE GRANDON FARMS		License Number: 31612
Address: 1100 GRANDON WAY, MECHANICSBURG, PA 17056		County: Cumberland
Administrator: Brian Hofeass		Region: CENTRAL
Legal Entity Name: EMERITUS CORPORATION		
Legal Entity Address: 6737 W. WASHINGTON ST STE 2300, MILWAUKEE, WI 53214		
Certificate(s) of Occupancy C-2 LP 03/15/2006 L&I		
Staffing Hours Resident Support: 0	Total Daily Staff: 120	Working Staff: 90
Type of Inspection: Partial	BPA Doctor Number:	Notice: Unannounced
Reason(s) for inspection(s) Complaint, Incident		
On-Site Inspection Dates and Department Representatives On-Site 11/16/2017: Hoover, Douglas 11/20/2017: Hoover, Douglas 12/18/2017: Hoover, Douglas; O'Pake, Hope		
Off-Site Inspection Dates and Inspectors, if Applicable		
<p>RECEIVED</p> <p>FEB 1 2 2018</p> <p>Human Services Licensing</p>		
Other Details		
Partial or Full Triggers:	Random Indicators:	
Resident Demographic Data as of Inspection Dates		
Licensed Capacity: 120 Number of Residents Served: 92 Secured Dementia Care Unit in Home: Yes Area: Clarebridge Secured Dementia Unit Capacity, if Applicable: 30 Number of Residents Served in Secured Dementia Care Unit, if applicable: 28 Number of Current Hospice Residents: 6 Number of Hospice Residents in past year: 15	Number of Residents who: Receive Supplemental Security Income: 1 Are 60 Years of Age or Older: 91 Have Mental Illness: 0 Have an Intellectual Disability: 0 Have a Mobility Need: 28 Have a Physical Disability: 3	

Violation Report: 31612 - 11/15/2017 - Hoover, Douglas
PGH Name: BROOKDALE GRANDON FARMS

1. REGULATION 55 Pa.Code §2600
2600.5(a)(1) - The administrator or a designee shall provide, upon request, immediate access to the home, the residents and records to: Agents of the Department.

2a. DESCRIPTION OF VIOLATION
On 11/20/17, a copy of the home's 30-day notice to Resident #1 was requested. The home was unable to provide access to the file as it was locked in the business office. The business office manager was unavailable on 11/20/17.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)
Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

Please see attached POC and supporting documentation.
Page 7A

Repeat Violation: No	Date(s) of Previous Violation(s):
Signature of Legal Entity Representative (Required on EVERY Page)	
Printed Name and Title of Legal Entity Representative (Required on EVERY Page)	
Date	

DEPARTMENT USE ONLY - HOMES MAY NOT WRITE BELOW THIS LINE!

The above plan of correction is approved as of <u>2-12-18</u> (Date)	Plan of correction implementation status as of <u>5/1/18</u> (Date)
The above plan of correction was approved by <u>SP</u> (Initials)	<input type="checkbox"/> Fully Implemented <input checked="" type="checkbox"/> Partially Implemented - Adequate Progress <input type="checkbox"/> Partially Implemented - Inadequate Progress <input type="checkbox"/> Not Implemented

Violation Report: 31612 - 11/16/2017 - Hoover, Douglas
 PCH Name: BROOKDALE GRANDON FARMS

1. REGULATION 55 Pa. Code §2609

2600.15(a) - The home shall immediately report suspected abuse of a resident served in the home in accordance with the Older Adults Protective Services Act (35 P.S. Sections 10225.701 - 10226.707) and 6 Pa. Code Sections 15.21 - 15.27 (relating to reporting suspected abuse) and comply with the requirements regarding restrictions on staff persons.

2a. DESCRIPTION OF VIOLATION

The home did not report abusive sexual assaults by Resident #1 to unidentified female residents in the Secured Dementia Care Unit (SDCU) to the local area agency on aging, as documented in the "Resident Log":

- 07/16/17 - Resident #1 grabbed a female resident's breast inside of her shirt
- 07/04/17 - Resident #1 unzipped pants and placed a female resident's hand inside the pants
- 07/02/17 - Resident #1 put a hand down a female resident's shirt
- 07/02/17 - Resident #1 put a hand down a female resident's shirt and the female resident screamed for help
- 06/20/17 - Resident #1 grabbed at a female resident and said: "Give me a kiss"
- 06/17/17 - Resident #1 was trying to crawl in the bed of a female resident
- 06/13/17 - Resident #1 was found in the bed of a female resident
- 06/13/17 - Resident #1 touched a female resident on the breast
- 06/12/17 - Resident #1 grabbed at the breast areas of 3 female residents

The home did not report an abusive assault to the local area agency on aging when Resident #1 grabbed the arm of an unidentified female resident causing a skin tear on 5/15/17.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)

Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

*Please see attached POC and supporting documentation.
 Page 7A and 7B*

* All staff will receive re-education on the Older Adult Protective Services Act, including the requirements for mandatory reporting procedures. The home shall arrange for this training to be provided by the County Area Agency on Aging, or another outside agency with prior approval from the Department. This re-education shall be completed within 30 days from receipt of this plan. Documentation for the completion of this re-education shall be maintained by the home for Department review.

BAS 5/7/18

Repeat Violation: Yes	Date(s) of Previous Violation(s):	04/21/2017
Signature of Legal Entity Representative (Required on EVERY Page)		<i>[Signature]</i>
Printed Name and Title of Legal Entity Representative (Required on EVERY Page)		<i>Brian Hoffmann</i>
		Date <i>2/10/18</i>

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The above plan of correction is approved as of <u>2-12-18</u> (Date)	Plan of correction implementation status as of <u>5/7/18</u> (Date)
The above plan of correction was approved by <u>gc</u> (Initials)	<input type="checkbox"/> Fully Implemented <input type="checkbox"/> Partially Implemented - Adequate Progress <input checked="" type="checkbox"/> Partially Implemented - Inadequate Progress <input type="checkbox"/> Not Implemented

Violation Report: 31612 - 11/16/2017 - Hoover, Douglas
 PCH Name: BROOKDALE GRANDON FARMS

1. REGULATION 65 Pa.Code §2600

2600.16(c) - The home shall report the incident or condition to the Department's personal care home regional office or the personal care home complaint hotline within 24 hours in a manner designated by the Department. Abuse reporting shall also follow the guidelines in section 2600.15 (relating to abuse reporting covered by law).

2a. DESCRIPTION OF VIOLATION

The home did not submit reportable incident reports to the Department for the sexual assaults by Resident #1 to unidentified female residents in the SDGU as documented in the "Resident Log":

- 07/16/17 - Resident #1 grabbed a female resident's breast inside her shirt
- 07/04/17 - Resident #1 unzipped pants and placed a female resident's hand inside the pants
- 07/02/17 - Resident #1 put a hand down a female resident's shirt.
- 07/02/17 - Resident #1 put a hand down a female resident's shirt and the female resident screamed for help
- 06/20/17 - Resident #1 grabbed at a female resident and said: "Give me a kiss"
- 06/17/17 - Resident #1 was trying to crawl in the bed of a female resident
- 06/13/17 - Resident #1 was found in the bed of a female resident
- 06/13/17 - Resident #1 touched a female resident on the breast

A reportable incident report was not submitted by the home to the Department when Resident #1 grabbed the arm of an unidentified female resident causing a skin tear on 5/15/17.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)

Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

*Please see attached POC and supporting documentation.
 Page 7 B*

Repeat Violation: No	Date(s) of Previous Violation(s):		
Signature of Legal Entity Representative (Required on EVERY Page)			
Printed Name and Title of Legal Entity Representative (Required on EVERY Page)			Date
Brian NoBess			2/10/18

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The above plan of correction is approved as of <u>2-12-18</u> (Date)	Plan of correction implementation status as of <u>5/7/18</u> (Date)
The above plan of correction was approved by <u>BE</u> (Initials)	<input type="checkbox"/> Fully Implemented <input type="checkbox"/> Partially Implemented - Adequate Progress <input checked="" type="checkbox"/> Partially Implemented - Inadequate Progress <input type="checkbox"/> Not Implemented

Violation Report: 91612 - 11/16/2017 - Hoover, Douglas
 PCH Name: BROOKDALE GRANDON FARMS

1. REGULATION 58 Pa.Code §2600
 2600.42(b) - A resident may not be neglected, intimidated, physically or verbally abused, mistreated, subjected to corporal punishment or disciplined in any way.

2a. DESCRIPTION OF VIOLATION

Unidentified female residents in the SDCU were abused by Resident #1 as documented in the "Resident Log":

- 07/16/17 - Resident #1 grabbed a female resident's breast inside her shirt
- 07/04/17 - Resident #1 unzipped pants and placed a female resident's hand inside of the pants
- 07/02/17 - Resident #1 put a hand down a female resident's shirt
- 07/02/17 - Resident #1 put a hand down a female resident's shirt and the female resident screamed for help
- 06/20/17 - Resident #1 grabbed at a female resident and said: "Give me a kiss"
- 06/17/17 - Resident #1 was trying to crawl in the bed of a female resident
- 06/13/17 - Resident #1 was found in the bed of a female resident
- 06/13/17 - Resident #1 touched a female resident on the breast
- 06/12/17 - Resident #1 grabbed at the breast areas of 3 female residents
- 05/15/17 - Resident #1 grabbed the arm of an unidentified female resident causing a skin tear on 5/15/17

The home did not protect female SDGU residents from abuse by Resident #1.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)

Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

*Please see attached POC and supporting documentation.
 Page 7B and 7C*

All staff will receive re-education on the Older Adult Protective Services Act, including the requirements for mandatory reporting procedures. The home shall arrange for this training to be provided by the County Area Agency on Aging, or another outside agency with prior approval from the Department. This re-education shall be completed within 30 days from receipt of this plan. Documentation for the completion of this re-education shall be maintained by the home for Department review.

BAS 5/7/18

Repeat Violation: No Date(s) of Previous Violation(s):

Signature of Legal Entity Representative
 (Required on EVERY Page) *[Signature]*

Printed Name and Title of Legal Entity Representative
 (Required on EVERY Page) *Bryan Ho Bess* Date *2-10-18*

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The above plan of correction is approved as of 2-12-18
 (Date)

The above plan of correction was approved by [Signature]
 (Initials)

Plan of correction implementation status as of 5/7/18
 (Date) *BAS*

- Fully Implemented
- Partially Implemented - Adequate Progress
- Partially Implemented - Inadequate Progress
- Not Implemented

Violation Report: 31612 - 11/15/2017 - Hoover, Douglas
 PCH Name: BROOKDALE GRANDON FARMS

1. REGULATION 65 Pa.Code §2600
 2600.182(b) - Prescription medication that is not self-administered by a resident shall be administered by one of the following:
 (1) A physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic.
 (2) A graduate of an approved nursing program functioning under the direct supervision of a professional nurse who is present in the home.
 (3) A student nurse of an approved nursing program functioning under the direct supervision of a member of the nursing school faculty who is present in the home.
 (4) A staff person who has completed the medication administration training as specified in § 2600.190 for the administration of oral; topical; eye, nose and ear drop prescription medications; insulin injections and epinephrine injections for insect bites or other allergies.

2a. DESCRIPTION OF VIOLATION

Direct Care Staff Members A, B, C, D and E are not medical professionals and did not complete the Department's medication administration training:

Direct Care Staff Member A administered medications to residents on 12/1, 12/2, 12/4, 12/5, 12/7, 12/9, 12/11, 12/13, 12/14 and 12/16 of 2017.
 Direct Care Staff Member B administered medications to residents on 12/3, 12/4, 12/6, 12/13, and 12/17 of 2017.
 Direct Care Staff Member C administered medications to residents on 12/5, 12/6, 12/9 and 12/10 of 2017.
 Direct Care Staff Member D administered medications to residents on 12/5, 12/6, 12/9, 12/10, 12/12, 12/13, 12/14 and 12/15 of 2017.
 Direct Care Staff Member E administered medications to residents on 12/14 and 12/15 of 2017.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)

Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

*Please see attached POC and supporting documentation.
 Page 7C*

Repeat Violation: No	Date(s) of Previous Violation(s):	
Signature of Legal Entity Representative (Required on EVERY Page)		
Printed Name and Title of Legal Entity Representative (Required on EVERY Page)		Date
<i>Brian Noe</i>		<i>2-10-18</i>

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The above plan of correction was approved by <u>BC</u> (Initials)	<input type="checkbox"/> Fully Implemented <input checked="" type="checkbox"/> Partially Implemented - Adequate Progress <input type="checkbox"/> Partially Implemented - Inadequate Progress <input type="checkbox"/> Not Implemented

Violation Report: 31612 - 11/15/2017 - Hoover, Douglas
 PCH Name: BROOKDALE GRANDON FARMS

1. REGULATION 55 Pa.Code §2600
 2600.252 - Each resident's record must include the following information: (1) through (26)

2a. DESCRIPTION OF VIOLATION
 Resident #1 no longer resides at the facility. The resident's record does not include the date of discharge, destination or the reason for discharge.

3. PLAN OF CORRECTION (POC) (Attach pages as necessary. Remember that you must sign and date any attached pages.)
 Include steps to correct the violation described above and steps to prevent a similar violation from occurring again. If steps cannot be completed immediately, include dates by which the steps will be completed.

*Please see attached POC and supporting documents
 Page 7 C and 7D*

Repeat Violation: No	Date(s) of Previous Violation(s):		
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Signature of Legal Entity Representative
 (Required on EVERY Page)

Printed Name and Title of Legal Entity Representative
 (Required on EVERY Page)

Brian Hobbs

Date *2-10-18*

DEPARTMENT USE ONLY - HOMES MAY NOT WRITE BELOW THIS LINE!

The above plan of correction is approved as of <u>2-12-18</u> (Date)	Plan of correction implementation status as of <u>5/7/18</u> (Date)
The above plan of correction was approved by <u>BZ</u> (Initials)	<input type="checkbox"/> Fully Implemented <input checked="" type="checkbox"/> Partially Implemented - Adequate Progress <input type="checkbox"/> Partially Implemented - Inadequate Progress <input type="checkbox"/> Not Implemented

Brookdale at Grandon Farms

Plan of Correction

The following is the Plan of Correction for Brookdale at Grandon Farms in regard to the Statement of Deficiency dated February 1, 2018 for an incident partial inspection on November 15 and 20, 2018 and December 18, 2018. The Plan of Correction report is not to be construed as an admission of or agreement with, the findings and conclusions in the Statement of Deficiencies, or any related sanction or fine. Rather, it is submitted as confirmation of our ongoing efforts to comply with statutory and regulatory requirements. In this document, we have outlined specific actions in response to identified issues. We have not provided a detailed response to each allegation or finding, nor have we identified mitigating factors. We remain committed to the delivery of quality health care services and will continue to make changes and improvements to satisfy that objective.

Regulation 2600.⁵15 (a) (1)

On August 16, 2017 the Executive Director and the Health and Wellness Director met with Resident #1's Power of Attorney and informed her that they were giving her 30 days' notice to find a more appropriate community for Resident #1 due to his behaviors. Suggestions were given for alternate placement. On October 26, 2017 the Power of Attorney sent the community a letter making note of this meeting and stated she was giving 30 day notice to discharge him from Grandon Farms but could not do so until December 6, 2017. On [REDACTED] Resident #1 was discharge home with a caregiver. The Executive Director retrained the management staff on the community policy regarding providing immediate access to records when requested by Agents of the Department on February 9, 2018. The Executive Director or designee will monitor to verify if further action is warranted.

Evidence: 30 Day Notice for Resident #1 from POA,
Training attendance log

Completion Date: February 1, 2018

Regulation 2600.15 (a)

The completed Act 13 form was submitted February 9, 2018 to the Area Office on Aging by the Executive Director. On February 8, 2018 appropriate staff members were re-trained by the

Executive Director on the OAPSA Act and their responsibility to immediately report suspected abuse. Additional topics covered in this training included; "Resident Rights". Phone numbers of the Department of Human Services and Area Office on Aging were posted in the community and copies of the forms were supplied to the management team. The community will continue to provide education on the community's policy regarding Abuse and Neglect at employee orientation. Training will also be conducted in individual circumstances as warranted. The Executive Director or designee will review any allegations of abuse for timely submission to the local area agency on aging and Department. The Executive Director or designee will review orientation and annual training for completion of required trainings monthly to verify if further action is warranted.

Evidence: Attendance in-service sheet
Completion Date: February 11, 2018

Regulation 2600.16 (c)

The completed reportable incident was submitted February 9, 2018 to the Department by the Executive Director. On February 8, 2018 appropriate staff members were re-trained by the Executive Director on the community policy regarding abuse reporting to the Department. Phone numbers of the Department of Human Services and Area Office on Aging were posted in the community and copies of the forms were supplied to the management team. The community will continue to provide education on the community's policy regarding Abuse and Neglect at employee orientation. Training will also be conducted in individual circumstances as warranted. The Executive Director or designee will review any allegations of abuse for timely submission to the local area agency on aging and Department. The Executive Director or designee will review orientation and annual training for completion of required trainings monthly to verify if further action is warranted.

Evidence: Attendance in-service sheet
Completion Date: February 11, 2018

Regulation 2600.42 (b)

On February 12, 2018, the Executive Director will retrain appropriate staff on the community policy on resident rights and protecting them from injury. The community will continue to provide education on this topic at employee orientation and on an annual basis. Training will

be conducted in individual circumstances as warranted. The Health and Wellness Director and Health and Wellness Coordinator will continue to raise awareness regarding resident rights within the community, and they will monitor that residents are being treated with respect at all times. The Executive Director or designee will review orientation and annual training for completion of required trainings monthly to verify if further action is warranted.

Evidence: Training Attendance Sheets

Completed: February 12, 2018

Regulation 2600.182 (b)

Immediately, on December 18, 2018, Direct Care Staff members A, B, C, D, and E were removed from the position of dispensing medications until the medication training documentation on these new hires could be located or until they were successfully retrained. An approved Medication Administration Trainer from another community retrained Direct Care Staff member A, B, C, and D, on December 19 and 20, 2017. Staff Person E no longer passes any medications at the community. When successful completion of the training occurred, Direct Care Staff were returned to the position of Medication Technician with the ability to administer medications. The Health and Wellness Director or designee will review all medication training documentation for compliance on new hires as well as current staff to verify initial and annual training of required trainings and observations monthly are completed as necessary to verify if further action is warranted.

Evidence: Medication Administration Training Documentation for Direct Care Staff A, B, C, D and E

Completed: January 1, 2018

Regulation 2600.252

Immediately, a late entry was noted on resident #1's medical record to indicate that Resident #1 went home with his family on [REDACTED] 17 with the support of a private caregiver. The Executive Director retrained the appropriate staff on February 9, 2018 to complete documentation on all discharges as to the discharge date, destination as well as any other pertinent information relating to discharge in a timely basis. The Health and Wellness

Page 7D of 7

Director or designee will review all discharge records for 2 months for completed discharge documentation to verify if further action is warranted.

Evidence: Training attendance form

Completion Date: February 8, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice Of Appeal and Written Request For Hearing was served on in the manner indicated below:

Via Hand Delivery:

Shivani Patel, Enforcement Manager
Human Service Licensing
Department of Human Services
Health & Welfare Building, Room 631
625 Forester Streets
Harrisburg, PA 17120

Via Hand Delivery and E-Mail

Daniel Fellin, Esquire
Office of General Counsel
Department of Human Services
Health & Welfare Building, 3rd Floor
625 Forester Streets
Harrisburg, PA 17120



Cynthia A. Haines

Date: May 31, 2018



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May 31, 2018

VIA HAND DELIVERY

The Honorable Teresa D. Miller
Secretary
Pennsylvania Department of Human Services
Health and Welfare Building, 3rd Floor
625 Forster Street
Harrisburg, PA 17120

Jay Bausch, Deputy Secretary
Office of Administration
Pennsylvania Department of Human Services
Health & Welfare Building, Room 234
625 Forester Street
Harrisburg, PA 17105

**Re: Application for Supersedeas of
Emeritus Corporation d/b/a Brookdale Grandon Farms Personal Care Home**

Dear Secretary Miller and Deputy Secretary Bausch:

We are counsel to Emeritus Corporation d/b/a Brookdale Grandon Farms ("Brookdale"). Pursuant to 62 P.S. § 1057.1(a)(1) and 37 Pa. Code § 197.87, we respectfully request that the Department of Human Services ("Department") grant a supersedeas from the Department's May 21, 2018 decision, which revoked Brookdale's license to operate a personal care home, banned new admissions to the facility, and imposed fines in the amount of \$970 per day based on the inspections conducted on November 15, 2017, November 20, 2017, December 18, 2017, January 25, 2018, February 5, 2018, April 6, 2018, and April 9, 2018 ("Decision").

Concurrently, we have filed an appeal with the Bureau of Hearing and Appeals requesting the reversal of the Department's Decision to revoke Brookdale's personal care home license, ban new admissions, and assess daily fines. We respectfully request that the Department grant a supersedeas of the Decision pending the outcome of the appeal.

We have initiated discussions with the Department and the Department's counsel regarding this matter. However, the Department has indicated that it cannot engage in substantive discussions unless and until an appeal has been filed and application made for a supersedeas. To that end, we have submitted this application and a notice of appeal. Because of that, factual development remains ongoing, and we reserve the right to supplement this application, and the related notice of appeal, should circumstances warrant.

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Good cause exists for a supersedeas in this matter. Brookdale firmly believes that it will prevail on the merits of its appeal before the Bureau of Hearing and Appeals. While we continue to gather the facts, we believe a hearing will demonstrate that the Department's Decision is not supported by a preponderance of the evidence and is in contravention to the provisions of the Public Welfare Code, 62 P.S. § 101.1, *et seq.*, and implementing regulations, 55 Pa. Code § 2600, *et seq.*

Additionally, the equities of this case weigh heavily in favor of granting a supersedeas to allow Brookdale to pursue discussions with the Department about the potential resolution of this matter. In support of this request, please consider the following:

- Brookdale has been working diligently to improve and enhance its care delivery system. The Department's May 7, 2018 update on implementation status indicates that the facility made "adequate progress" in the implementation of its Plan of Correction. The facility has every confidence that it will continue to move forward with the many initiatives it has implemented. The cumulative effect of the sanctions, however, will jeopardize this progress. The Department's regulations provide for an intermediate measure that is more appropriate where the facility has made progress in implementing the Plan of Correction. By issuing a provisional license, the Department enables the facility to continue working toward full compliance with the regulations. 55 Pa. Code § 20.04.
- The revocation of Brookdale's license, without prior notice or hearing, will inflict irreparable harm on the facility's residents, forcing the discharge and relocation of more than 102 residents and uprooting many of them from the place they have come to know as their home. Moreover, such forced and involuntary relocation will result in transfer trauma for most, if not all, of the displaced residents and their families, particularly if the supersedeas is not granted and all residents must be relocated. Accordingly, residents' health, safety, and psycho-social wellbeing is likely to be jeopardized and severely compromised by the Department's actions. Further, should Brookdale prevail on appeal, which we believe to be likely, it would essentially be impossible to re-open the facility and to return residents, meaning that the current status quo can never be restored.
- The daily fines imposed against Brookdale are punitive in nature, inconsistent with Constitutions of the Commonwealth of Pennsylvania and the United States, and inconsistent with the intent of the General Assembly when it passed the Public Welfare Code, Act of June 13, 1967, P.L. 31, *as amended*, 62 P.S. § 101 *et seq.*, and inconsistent with the Department's Regulations and Policies.

The issuance of a supersedeas will have no adverse effects on the Department or the public. The Department's case will not be prejudiced. Whatever the merits of the allegations regarding past

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incidents, Brookdale is committed to enforcing and maintaining substantial compliance with the regulatory licensure requirements for personal care homes, and has implemented a number of changes to enhance compliance. The health, safety, and welfare of the residents is not at risk, and the Department's own findings support the progress that the facility has made. The inability to admit new residents and pay potentially significant accumulated fines, before the opportunity for meaningful discussions with the Department, has the potential to set back the progress that has been achieved to date.

Finally, the summary revocation of Brookdale's license, prior to providing Brookdale with a meaningful opportunity to defend itself at a hearing, raises substantial constitutional concerns. *See, e.g., Bd. of License & Inspection Review v. 2600 Lewis, Inc.*, 661 A.2d 20, 22 (Pa. Commw. Ct. 1995) ("While the deprivation of property rights without prior notice and hearing has occasionally been upheld by the United States Supreme Court, the preference is clearly in favor of such prior hearing in the absence of extenuating private or public interests of overriding significance.").

For these reasons, a supersedeas is appropriate in this matter.

Enclosed with Secretary Miller's letter is payment of Five Hundred Dollars (\$500.00) for placement in an escrow account with the State Treasurer pending resolution of the appeal pursuant to 55 Pa. Code § 1086(f).

We would be happy to meet with you in person or by phone, at your convenience to discuss this matter further. Please let us know, as well, if you require any additional information to process this request for supersedeas. Thank you for your consideration.

Very truly yours,



Cynthia A. Haines

CAH/cln

cc: Daniel Fellin, Esquire (*via hand delivery*)