Attachment 7

Independent Regulatory Review Commission
333 Market St. 14th Floor
Harrisburg, PA 17101

# Comments Concerning Final Regulation #14-475: Personal Care Homes

February 24, 2005

Presented by: The Hickman
John Schwab
Sue Hartz

## Comments related to Final Regulation #14-475: Personal Care Homes

In addition to our written comments of February 11, 2005, staff and residents of the Hickman would like to make the following comments

**Verbal Orders**

*2600.186 Prescription medications.*
( c ) "Changes in medication may only be made in writing by the prescriber, or in the case of an emergency , an alternate prescriber, except for circumstances in which oral orders may be accepted by nurses in accordance with regulations of the Department of State. The resident's medication record shall be updated as soon as the home receives written notice of the change".

The verbal order section as written, requiring that nurses are the only staff permitted to take emergency orders endangers the health, safety, and welfare of the very residents they are supposed to be protecting. Homes that can not afford to staff nurses round the clock will be unable to implement a verbal order.

This regulation will force smaller homes to close their doors due to the unrealistic staffing cost associated with staffing nurses 24/7. (Nurses at $40-60,000/yr).

This will cause PCH's to become very much like a medical model instead of the Department statement that PCH's would remain a home like model. In a home setting the Doctor will give changes verbally to his patient or their caregiver.

Residents in PCHs without nurses to take verbal orders will end up in the hospital emergency room frequently and many of these visits may not be covered by insurance.

Last and most serious of all is the limited access to PCH's for older individuals with chronic conditions, needing frequent changes in their medications. These individuals will be forced to access more expensive and unnecessary nursing home care.

## Cost

The Hickman wishes to dispute the cost projection to implement the following sections:

*2600.26 Quality management*
The Department states:
"There are a few new costs associated with administrative requirements required by the regulations such as the development of policies and procedures, incident reporting and quality management. The Department will develop model policies and procedures so that the impact on the home will be negligible."

To implement the requirements of the Quality Management program, a home must: provide "...periodic review and evaluation of the following:

- The reportable incident and condition reporting procedures
- Complaint procedures
- Staff person training
- Licensing violations and plans of correction, if applicable
- Resident or family councils, or both, if applicable

The quality management plan shall include the development and implementation of measures to address the areas needing improvement that are identified during the periodic review and evaluation."

Our previous comments indicated an estimated cost of $17,000 (a half time position) to implement the above Quality Management Program even with the Department providing the model policies and procedures. $17,000 is not a negligible amount to The Hickman.

*2600.64 Administrator Training and orientation.*
(c ) "An administrator shall have at least 24 hours of annual training relating to the job duties."
The Department estimates the cost of the annual 24 hours of training for the administrator to be $180. Twenty-four (24) hours is equal to 4 days of work because of meals, breaks and travel you can only get 6 hours of training credit in an 8 hour day. An administrator making $52,000 per year with a 30% benefit package cost $32.50 per hour. Twenty-four hours of training will cost an employer 4 days or 32 hours of pay. Thirty-two (32) hours at $32.50 equals $1,040.00. $860.00 more then the Departments estimates. This does not include the travel expenses and/or the tuition cost for the training.

*2600.130 Smoke Detectors and fire alarms*
(e) "If one or more residents or staff persons are not able to hear the smoke detector of the fire alarm system, a signaling device approved by a fire safety expert shall be used and tested so that each resident and staff person with a hearing impairment will be alerted the event of a fire."
The Department states:
"The estimated cost of installing a full strobe light and bed vibrator system is $170 per person".
In 2003 The Hickman installed a full strobe light (not bed vibrator) system at a cost of $134,516.00 ($1978.18 per person), $1808.18 per person more then the estimate provided by the Department. This was the least expensive system we could find. (see attached quote from Keystone Protection Industries)

*2600.225 Initial and annual assessment*
*2600.227 Development of the support plan*
In its comments to IRRC dated February 11, 2005, the Department states:
"There will be minimal cost and paper work for the home since the functions can be absorbed by existing staff persons".
It is unrealistic to assuming existing staff will be able to absorb the additional paper work involved in developing an assessment and support plan that considers such things as: medical, dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident
Our previous comments on the cost associated with this, estimates the need for one full time staff person for our 70 resident home.

In its comments to IRRC dated February 11, 2005, the Department states:
"... There will be no costs to the general public or to local government as a result of this final-form rulemaking."
I suppose, in a technical sense, this may be correct but the residents of the Hickman, who have reviewed every line of every version of these draft regulations know all to well that there will be additional cost to them.
And, for the SSI recipients who are displaced to nursing homes because the cost of care exceeds the $30 per day PCH reimbursement, local, state and federal governments will incur additional cost.
And, a hidden cost identified by many providers is the deteriorating quality of life of many low to middle income individual who, because they can not afford a PCH, have chosen to remain at home with inadequate supports and ultimately expensive interventions when the crises hits.

The residents and staff respectfully request the Independent Regulatory Review Commission disapprove this regulation due to the significant cost associated with their implementation and the human cost associated with making this program unaffordable to many middle and low income Pennsylvanians.

**KEYSTONE PROTECTION INDUSTRIES**

108 Park Drive, Suite 3
Montgomeryville, PA 18936-9612
215.641.0100
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March 19, 2003

Matthew Shea
Business Manager
The Hickman
400 North Walnut Street
West Chester, PA 19380

Good Morning Mr. Shea,

This letter revises our proposal for the fire alarm system deducting the heat detectors in the bathrooms.

Our total proposed price for your alarm project was **$139,879.00.** Our new price is **$134,516.00.**

We will need a deposit of thirty percent (30%) to begin the project. This deposit will pay for engineered drawings; permit fees, and partial equipment.
The deposit amount is: $40,355.00.

We intend to establish a progress payment schedule based upon our work schedule.
I expect we will have three (3) equal payments of **$26,903** with a final payment of **$13,452** (10%) upon turnover completion..

Should there be any additions to the project we will consult with Ted Hartz for approval and bill accordingly.

Thank you for your business.

Best regards,

Tim West #1218

Tim West
Director, Sales & Marketing
Keystone Protection Industries

Accepted by _____ Hickman House

**Estimated Numbers of Households in Pennsylvania by Income Based on the 1995 Current Population Survey of Households with Householder and/or Spouse Age 65 and Older in Mid-Atlantic Census Region**

| *Household Income* | *Family Households* | | | *Persons Living Alone* | | | *Non-relatives Living Together* | | | *All Households* |
|---|---|---|---|---|---|---|---|---|---|---|
| | Accumulative | | | Accumulative | | | Accumulative | | | |
| $$ | % | % | Estimated Number | % | % | Estimated Number | % | % | Estimated Number | Grand Totals |
| 0 - 2,499 | 1.0 | 1.0 | 6,945 | 2.9 | 2.9 | 14,316 | 11.4 | 11.4 | 2,487 | 23,748 |
| 2,500 - 4,999 | 0.4 | 1.4 | 2,778 | 3.7 | 6.6 | 18,266 | 3.2 | 14.6 | 698 | 21,742 |
| 5,000 - 7,499 | 1.1 | 2.5 | 7,640 | 16.2 | 22.8 | 79,975 | 5.9 | 20.5 | 1,287 | 88,902 |
| 7,500 - 9,999 | 2.1 | 4.6 | 14,585 | 18.6 | 41.4 | 91,823 | 2.4 | 22.9 | 524 | 106,931 |
| 10,000 - 12,499 | 4.9 | 9.5 | 34,031 | 15.5 | 56.9 | 76,519 | 5.4 | 28.3 | 1,178 | 111,728 |
| 12,500 - 14,999 | 6.5 | 16.0 | 45,143 | 11.7 | 68.6 | 57,760 | 6.9 | 35.2 | 1,505 | 104,408 |
| 15,000 - 17,499 | 5.9 | 21.9 | 40,976 | 7.6 | 76.2 | 37,519 | 10.0 | 45.2 | 2,181 | 80,677 |
| 17,500 - 19,999 | 8.7 | 30.6 | 60,423 | 4.4 | 80.6 | 21,722 | 9.4 | 54.6 | 2,051 | 84,195 |
| 20,000 - 22,499 | 6.8 | 37.4 | 47,227 | 3.3 | 83.9 | 16,291 | 6.0 | 60.6 | 1,309 | 64,827 |
| 22,500 - 24,499 | 6.5 | 43.9 | 45,143 | 3.5 | 87.4 | 17,279 | 0.3 | 60.9 | 65 | 62,487 |
| 25,000 or more | 56.1 | 100.0 | 389,622 | 12.6 | 100.0 | 62,203 | 39.1 | 100.0 | 8,530 | 460,354 |
| Total | 100.0 | | 694,514 | 100.0 | | 493,671 | 100 | | 21,815 | 1,210,000 |
| Households (a) 1990 | | | 740,366 | | | 526,264 | | | 23,255 | 1,289,885 |
| Households 1995 Estimated | | | 694,514 | | | 493,671 | | | 21,815 | 1,210,000 |

Source: Penn State Data Center, 1995 Current Population Survey (CPS) for the Mid-Atlantic Census Region

(a) The distribution of households by type as determined in the 1990 Census count were used was applied to the total number of households headed by persons over 65 years of age as projected for 1995 by the U.S. Bureau of the Census to estimate the distribution for 1995. The income distribution for the Mid-Atlantic states was then used to calculate the numbers of Pennsylvania households by income category.

Compiled by the Pennsylvania Department of Aging, September 1996

15,000 = $41.67 per day
20,000 = $54.79 per day
25,000 = $69.44 per day

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## Population Projections for Older Pennsylvanians: 1990 - 2020

Preferred Series (A)

| Year | Total Population | % change 5-year | 60 and older Number | % change 5-year | 75 and older Number | % change 5-year | 85 and older Number | % change 5-year |
|---|---|---|---|---|---|---|---|---|
| 1990 | 12,130,981 | | 2,436,512 | | 763,242 | | 171,836 | |
| 1995 | 12,430,868 | 2.5% | 2,452,172 | 0.6% | 855,856 | 12.1% | 199,696 | 16.2% |
| 2000 | 12,655,319 | 1.8% | 2,431,452 | -0.8% | 949,933 | 11.0% | 238,477 | 19.4% |
| 2005 | 12,802,344 | 1.2% | 2,467,168 | 1.5% | 1,000,544 | 5.3% | 278,163 | 16.6% |
| 2010 | 12,925,327 | 1.0% | 2,631,334 | 6.7% | 977,213 | -2.3% | 314,054 | 12.9% |
| 2015 | 13,084,070 | 1.2% | 2,893,565 | 10.0% | 956,054 | -2.2% | 334,238 | 6.4% |
| 2020 | 13,275,534 | 1.5% | 3,227,709 | 11.5% | 1,004,130 | 5.0% | 326,627 | -2.3% |

Source: U.S. Bureau of the Census, Current Population Reports, P25-1111, Population Projections for States, by Age, Sex, Race, and Hispanic Origin: 1993 to 2020

Compiled by the PA Department of Aging

PPA1990A.XLS Tot6085
11/7/97

The Hickman
Activities Statement

| | DEC 04 | Budget | $ Over Budget | % of Budget | YTD | YTD Budget | YTD $ Over Budget | YTD % of Budget | Annual Budget | Actual Last 6 Months |
|---|---|---|---|---|---|---|---|---|---|---|
| **Income** | | | | | | | | | | |
| 40100 · Board - Permanent | 159,944 | 188,655 | -28,711 | 85% | 2,087,236 | 2,263,861 | -176,625 | 92% | 2,263,861 | |
| 40200 · Board - Transient | 55 | 125 | -70 | 44% | 1,075 | 1,500 | -425 | 72% | 1,500 | |
| 40400 · Board - Deferred | 9,380 | -2,077 | 11,457 | -452% | -157,621 | -107,262 | -50,359 | 147% | -107,262 | |
| 40500 · Registration Fees | 200 | 167 | 33 | 120% | 1,900 | 2,000 | -100 | 95% | 2,000 | |
| 40600 · Admissions Fees | 0 | 3,333 | -3,333 | 0% | 38,850 | 40,000 | -1,150 | 97% | 40,000 | |
| 40700 · Private Duty and Other Income | 179 | 67 | 112 | 267% | 5,099 | 800 | 4,299 | 637% | 800 | |
| 40800 · Miscellaneous | 7 | 42 | -35 | 17% | 7,134 | 500 | 6,634 | 1,427% | 500 | |
| 41010 · FNB - Hickman #23003607258 | 3,871 | 3,443 | 428 | 112% | 42,790 | 41,261 | 1,529 | 104% | 41,261 | |
| 41020 · FNB - Fitzsimmons #23002846089 | | | | | 2,379 | 3,300 | -921 | 72% | 3,300 | |
| 41110 · Wachovia - Hickman #1513846679 | 22,867 | 22,319 | 548 | 102% | 91,470 | 89,276 | 2,194 | 102% | 89,276 | |
| 41120 · Wachovia - Consol. #1519036747 | 5,339 | 5,213 | 126 | 102% | 21,355 | 20,853 | 502 | 102% | 20,853 | |
| 41210 · FID Corp - Angevine | 32,125 | 35,302 | -3,177 | 91% | 64,804 | 70,604 | -5,800 | 92% | 70,604 | |
| 41220 · FID Corp - Endowment | 28,332 | 36,170 | -7,838 | 78% | 58,974 | 72,339 | -13,365 | 82% | 72,339 | |
| 41230 · FID Corp - Anna Moore Beq | 3,530 | 3,918 | -388 | 90% | 7,121 | 7,835 | -714 | 91% | 7,835 | |
| 41320 · CC Community Foundation | | | | | 506 | | | | | |
| 41500 · Interest Income | 336 | 163 | 173 | 206% | 2,097 | 2,000 | 97 | 105% | 2,000 | |
| 43010 · Unrest. - General Contribution | 18,424 | 7,083 | 11,341 | 260% | 60,410 | 85,000 | -24,590 | 71% | 85,000 | |
| 43020 · Unrest. - Designated Talbot | | | | | 27,000 | | | | 0 | |
| 43110 · Temp Rest. - Operating Contrib. | 0 | 192 | -192 | 0% | 83,565 | 152,300 | -68,735 | 55% | 152,300 | |
| **Total Income** | 284,589 | 304,115 | -19,526 | 94% | 2,445,944 | 2,746,167 | -300,223 | 89% | 2,746,167 | 1,240,958 |
| **Expense** | | | | | | | | | | |
| 51000 · Dietary | 61,368 | 57,004 | 4,364 | 108% | 560,639 | 559,365 | 1,274 | 100% | 559,365 | |
| 52000 · Housekeeping | 27,846 | 31,553 | -3,707 | 88% | 297,174 | 326,688 | -29,514 | 91% | 326,688 | |
| 53000 · Residental Care | 69,252 | 75,273 | -6,021 | 92% | 610,474 | 700,956 | -90,482 | 87% | 700,956 | |
| 55000 · Security | 8,619 | 7,393 | 1,226 | 117% | 71,391 | 69,498 | 1,893 | 103% | 69,498 | |
| 63000 · Maintenance | 18,119 | 16,816 | 1,303 | 108% | 177,984 | 163,071 | 14,913 | 109% | 163,071 | |
| 71000 · Office | 7,026 | 6,225 | 801 | 113% | 60,218 | 62,598 | -2,380 | 96% | 62,598 | |
| 72000 · Administration | 55,546 | 59,160 | -3,614 | 94% | 640,751 | 799,806 | -159,055 | 80% | 799,806 | |
| **Total Expense** | 247,776 | 253,424 | -5,648 | 98% | 2,418,631 | 2,681,982 | -263,351 | 90% | 2,681,982 | 1,244,627 |
| **Net Income** | **36,813** | **50,691** | **-13,878** | **73%** | **27,313** | **64,185** | **-36,872** | **43%** | **64,185** | **-3,669** |

# The Hickman
## Resident Care Contracts and Performance Analysis

| 2004 Residents | January | February | March | April | May | June | July | August | September | October | November | December | Monthly Budget |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Independent | 39 | 40 | 42 | 41 | 41 | 40 | 40 | 40 | 39 | 38 | 38 | 38 | 32 |
| ≤ 1 Hour of Care per Day [$805/month] | 16 | 16 | 17 | 17 | 19 | 17 | 18 | 17 | 17 | 18 | 17 | 16 | 26 |
| ≤ 2 Hour of Care per Day [$1,610/month – Jeanes Unit] | 13 | 13 | 12 | 12 | 12 | 12 | 11 | 10 | 9 | 11 | 9 | 9 | 12 |

| Benchmark Ratios | January | February | March | April | May | June | July | August | September | October | November | December | YTD |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Debt Service Coverage** | | | | | | | | | | | | | |
| Loan providers track this ratio to make sure a venture has the capacity to repay the loan. The minimum for FNB CC is 1.2 | | | | | | | | | | | | | |
| *Profit + Depreciation + Amortization + Interest Expense / Debt Service* | (75.3) | (23.6) | 18.7 | (11.4) | (20.0) | 132.6 | (82.5) | 18.5 | 17.0 | 1.2 | 5.3 | 27.3 | 1.8 |
| Additional Profit Needed to Reach 1.2 | 90,406 | 29,368 | - | 14,894 | 25,072 | - | 98,884 | - | - | - | - | - | - |
| **Operating Margin** | | | | | | | | | | | | | |
| An indicator of operating efficiency. Benchmark is 32% to 40%. | | | | | | | | | | | | | |
| *Net Operating Income (including depreciation) / Net Revenues* | -64% | -24% | 3% | -17% | -27% | 44% | -67% | 4% | 3% | -8% | -5% | 7% | -7% |
| Additional Income Needed to Reach 32% | 157,869 | 102,401 | 62,652 | 87,086 | 86,805 | - | 168,096 | 56,400 | 62,559 | 74,904 | 85,821 | 70,577 | 951,255 |
| **Per Capita Operating Expenses** | | | | | | | | | | | | | |
| An indicator of operating efficiency. Benchmark is $67 to $73 | | | | | | | | | | | | | |
| *Operating Expenses (including depreciation) / Number of Residents* | $ 130 | $ 107 | $ 96 | $ 98 | $ 85 | $ 85 | $ 135 | $ 95 | $ 106 | $ 99 | $ 95 | $ 137 | $ 105 |
| **Days Cash on Hand** | | | | | | | | | | | | | |
| The number of days the home could operate without income. | | | | | | | | | | | | | |
| *Unrestricted Cash and Investments / Daily Operating Budget* | 230 | 227 | 243 | 226 | 222 | 243 | 267 | 267 | 265 | 264 | 263 | 266 | |

Attachment J

Testimony of Alissa Eden Halperin
of the Pennsylvania Health Law Project
before the Independent Regulatory Review Commission
on the Department of Public Welfare's
Final-Form Personal Care Home Regulations

February 24, 2005

Good Morning Commissioners. Thank you for allowing me to speak here this morning. My name is Alissa Eden Halperin and I am a Managing Attorney with the Pennsylvania Health Law Project. The Pennsylvania Health Law Project is a legal services organization that provides free legal assistance to consumers across Pennsylvania who are having trouble accessing quality care. We are here on behalf of the Philadelphia Welfare Rights Organization, the Armstrong County Low-Income Rights Organization, the Butler County Welfare Rights Organization, the Clarion County Welfare Rights Organization, and all the individual clients who live or have lived in one of the Commonwealth's Personal Care Homes.

The Pennsylvania Health Law Project has represented dozens of consumers who reside in personal care homes as well as their families. Consumers come to us for assistance in remedying their living conditions and protecting their rights. We file complaints with the Department of Public Welfare's regional licensing offices and work to ensure that actions are taken to remedy the problems. We do not file civil lawsuits for consumers or their surviving family members, although too many times the situations have been so egregious that we have encouraged them to speak to private attorneys about their legal rights.

For years, exposes and news stories have reported of consumers being abused, neglected, and otherwise mistreated in personal care homes. I am deeply troubled by the experiences my clients have had over the years. In addition to what I have seen in my experience representing individuals facing lack of care or poor quality in personal care homes, I have some experience as a researcher on the issue.

Five years ago, the Consumer Subcommittee of the Medical Assistance Advisory Committee asked the Pennsylvania Health Law Project to undertake a study of the conditions in the personal care homes. Looking only at documents of public record available at regional licensing offices for approximately 100 of the 1800 personal care homes, plus newspaper articles, and our own client files, we uncovered rampant violations of every single section of the regulations. What stuck out most in our research is the same thing that sticks out most from my direct

representation work: **the extent to which violations were attributable to serious inadequacies in the regulations that govern personal care homes.**

For at least five years, our clients have prodded us to recommend regulatory changes to remedy the shortcomings of the current regulations. The final form regulations fall far short of the recommendations we have repeatedly proffered. However, because they reflect a meaningful step in the right direction, they must be made final and implemented expeditiously.

Here are four examples of areas that drastically need regulatory improvement:

**Problem: The staffing qualifications and training requirements are dangerously inadequate.** Currently, a 16 year old with no minimum elementary or high school education and no training can provide unsupervised care to frail consumers. So, they may bathe, diaper, dress, hand out medications to, and transfer a frail elder before they have ever been trained in how to do so properly and safely.

> *The new regulations would ensure that only individuals with some minimum demonstrated ability to read and understand written instructions and provide direct care can provide the most delicate personal care services. The new regulations would also better ensure that Administrators have adequate qualifications to administer personal care homes and supervise the care given.*

**Problem: Existing training requirements are in name only.** Currently, a person must merely attend a 40 hour session to be qualified to run a personal care home and supervise staff and the daily care of residents. The person need not demonstrate that they actually learned anything and some have been known to sit in a training session reading books or newspapers while the trainer talks around them.

A direct care staff person need not be "trained" in any direct care responsibilities until 6 months after they start working as a direct care staff person. And, while the current regulations require that a direct care person be "trained" by the 6 month mark, nothing says what "trained" means, who does it and how anyone could determine if they actually know what they are doing.

> *The new regulations would ensure that a defined training is completed prior to providing any resident with unsupervised care. The new regulations would also ensure that all training is*

*competency based so that individuals must actually be able to demonstrate knowledge in the training areas before being declared "trained".*

**Problem: Residents' individual needs are not adequately assessed and no document articulates how they will be met.** When a consumer of a fancy and expensive personal care home developed edema and an urinary tract infection then pneumonia and then died after not having been bathed for 11 days and not having been helped to walk, no licensure action was taken. The reason: nothing said how often the resident needed to be bathed or walked. There was no written document, no contract terms saying what the resident's needs were and how the resident's needs would be met.

Currently, the standard contract simply says that personal care services will be provided, as needed. Without any individualized record of what is needed and how services will be provided, neither the provider nor the consumer can easily defend arguments that the provider didn't provide what was needed or that the consumer didn't get what was needed.

*The new regulations would ensure that individual needs are assessed and support plans developed so that there is no question by the provider, the consumer, the family, or the licensing agency as to what the consumer needed and what they should have received.*

**Problem: Residents Rights are just a sound bite.** In my work, I have seen records and reports of residents who have been tied to chairs, locked in bedrooms, unbathed, unfed, and with medical needs unmet. I've seen consumers made to bark like a dog to receive a cigarette, grabbed by the arm and told not to complain about bad conditions or their days at the personal care home are done, and beat up because they've asked for more food. And, I've seen residents get discharged for complaining about their circumstances. Absent clearly articulated residents' rights, state agencies can take no licensing action in the face of these violations and residents are too afraid of being evicted to complain about conditions.

*The new regulations would ensure that consumers have articulated rights and that they cannot be evicted for exercising them. The regulations would also enable to Department to take adequate licensure action against personal care homes that violate residents' rights.*

The final-form regulations also make invaluable improvements to the fire-safety standards in personal care homes. We are well aware of the concerns some providers are raising about the costs of compliance with these requirements. We respond by noting several things:

- These changes merely bring personal care homes in line with fire safety requirements for Mental Retardation Group Homes and Children's Residential Facilities. The populations served in these homes are generally more mobile, less care dependent, and of lower acuity.
- The cost complaints by providers have historically been inflated and not reflective of real, net cost increases. Alleged increased costs have never reflected depreciation tax deductions or decreased liability insurance premiums that would result from making the changes. In addition, providers have alleged some outrageous costs like the one of upwards of $10,000 per year for cleaning lint-traps on their clothes-dryers.
- The Department's recent survey of providers indicates that a super-majority of homes already comply with most of the standards proposed.

The final-form personal care home regulations should have gone substantially further to insure the quality of care, the quality of life, and the safety of residents in personal care homes. For example, existing staff, some of whom have never had any defined training, should not have been grandfathered out of being trained. However, since we understand the words negotiation and compromise to include conciliation, we did not expect all our recommendations to be adopted.

On behalf of the Philadelphia Welfare Rights Organization, the Armstrong County Low-Income Rights Organization, the Butler County Welfare Rights Organization, the Clarion County Welfare Rights Organization, and all the individual clients who live or have lived in one of the Commonwealth's Personal Care Homes, I urge you to approve the final form personal care home regulations. They are the result of 5 years of work by the Ridge, Schweiker, and now Rendell administrations. Five years of stakeholder meetings, discussions, and, in many areas, consensus on the means to achieve change.

Thank you again for allowing me to speak today.

Original: 2294

# EMBARGOED MATERIAL

Hello, my name is Sherry Andreo and I am the owner of a licensed 16 bed facility Bristol House Personal Care Home. I take great pride in owning, operating, and managing this business. As a professional women holding a Masters Degree in Social Work and Master's Degree in Health Education, I am very involved in my profession as a Personal Care Home Administrator and strive to enrich the services that I provide as well as develop and implement new programs. Last year, I was appointed to the Department of Public Welfare Personal Care Home Advisory Committee and continue to be involved in the profession as the President of the Westmoreland County Personal Care Home Administrator's Associations. This local association has had a core group of members working with the Officers to enrich this profession through continuing education, networking, and providing information about the business. When the first draft of Chapter 2600 was rolled out we have worked endless hours reviewing Chapter 2600 and providing written comments to the Department, IRRC, and key members of the House and Senate and many others. Many of us opened our doors to the Department, local legislators, and invited any one interested in the business to see what is happening in our Homes and provide a first hand look inside the Homes. The populations we serve are generally the average working class senior. Not the wealthy, not the mental health client, not the acute care, not offenders of the law – just simply Mom and Pop who has worked all their lives and has little savings. They live with us because they need help with simply every day activities such as cooking, cleaning, taking a shower, and remembering to take medications. Chapter 2600 will not allow for these services to be offered. A small Home will not be able to comply with the excessive paperwork, the excessive training of the staff, the over regulations, and the cost to changes of the physical site. Some of the physical changes that would be required will not be feasible because of building codes, local codes for sewage, and local fire codes just to name a few. I strongly believe that Chapter 2600 is written following the medical model. Personal Care Homes are simply Homes that must follow a social model. I am here today to repeat all the comment that you have already received about Chapter 2600 and would like to express my concern about the underhandedness fashion that the Department has proceeded through this regulatory procedure. Once the first draft was released many providers expressed interested in being part of the process and were seeking information about the process and had great willingness to work to find common ground to truly find win-win situations. We were greeted with lies, lack of information, inconsistent information, unwillingness to hear an owner's point of view, and sneaky deceptive ways to

push the regulatory process to keep us out. I am here today to tell you that I am a committed professional businesswoman and the residents at Bristol House are my concern. The Department has not fairly included me as one, a professional Home owner and two, an Advisory Committee member. I was not privileged to conference calls during work group meetings nor have I been given the courtesy to a response about my concerns of being excluded. Not only is Chapter 2600 debilitating to my business but also the process has been unfair. Chapter 2600 does not allow for grandfathering any existing business regardless of the quality of services. Nor is there any consideration for a Home to continue to exist if funds are limited, staff is limited, training not flexible, and many, many other over regulations that do not have anything to do with improving resident care. The current regulations must stay inplace and Chapter 2600 must not be approved. We all need to seek common ground and sincerely work in the client's best interest. The Department needs to have more enforcement power and get rid of those people who are not truly professional and providing quality services to the population in which they service. Please consider the future of our seniors, do not warehouse the seniors they deserve more; after all, they were the folks that gave us our foundation. Thank you for your time to hear me today.

Sherry Andreo, M.S.W. M.Ed.

Bristol House Personal Care Home

100 Bristol Lane

Irwin PA 15642

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Original: 2294

# EMBARGOED MATERIAL

13

**IRRC**



**From:** Jewett, John H.
**Sent:** Thursday, February 24, 2005 8:49 AM
**To:** IRRC; Gelnett, Wanda B.; Hoffman, Stephen F.; Pagan, Elena V.
**Cc:** Wyatte, Mary S.; Harris, Mary Lou; Schalles, Scott R.; Stephens, Michael J.
**Subject:** FW: Personal Care Home Chapter 2600

Please file this email and its attachment as embargoed "final comments" for #2294.

Thanks!

-----Original Message-----
**From:** Sherry Andreo [mailto:bristolhouse1@alltel.net]
**Sent:** Thursday, February 24, 2005 8:54 AM
**To:** Jewett, John H.
**Subject:** Personal Care Home Chapter 2600

Good Morning John

I am forwarding the attached comments regarding Chapter 2600 to you. Due to the weather I am unable to attend the meeting today. I realize that perhaps my comment may not be accepted without my personal testimony. I do not have anything different to say than what my colleagues will be highlighting but I am hopeful that someone will consider the concerns of many providers. Thank you, Sherry Andreo

-- Original Message -----

**From:** Jewett, John H.
**To:** lionrun3@combuserve.com ; bristolhouse1@alltel.net ; ksipple@thehickman.org ; msbear@wpa.net
**Sent:** Friday, November 19, 2004 2:33 PM
**Subject:** #2294, Proposed Regulation #14-475, Personal Care Homes, Department of Public Welfare

Attached is a copy of the letter that IRRC delivered to DPW yesterday concerning the delay in considering the regulation.

If you would like to send formal comments on the regulation to the Commission, please send them to IRRC by fax at (717) 783-2664, by email to irrc@irrc.state.pa.us, or by regular mail using the address listed below. Written comments should reference the regulation number: #14-475 (#2294).

Written comments sent to IRRC will be included in IRRC's public record file.

Interested parties may submit written comments on the regulation to IRRC (addressed to John R. McGinley, Jr., Chairman), the House and Senate Committees, and legislators, and "cc" the Department of Public Welfare.

I hope this information is helpful. If you have comments or questions, please contact me via email or telephone.

John H. Jewett, Phone: (717) 783-5475

INDEPENDENT REGULATORY REVIEW COMMISSION
333 Market Street, 14th Floor, Harrisburg, PA 17101
Phone: (717) 783-5417, Fax: (717) 783-2664
E-mail: irrc@irrc.state.pa.us, Website: www.irrc.state.pa.us

Attachment A

**IRRC PUBLIC MEETING**
**PERSONAL CARE HOMES REGULATION**
**THURSDAY, FEBRUARY 24, 2005**

## SECRETARY RICHMAN'S OPENING REMARKS

I am Estelle Richman, Secretary of Public Welfare. With me are Niles Schore, Executive Assistant and Karen Kroh, Regulatory Consultant. I am pleased to be with you today for my first visit to the IRRC to present this very important regulation.

This regulation protects more than 53,000 vulnerable adults who live in Pennsylvania's 1,688 personal care homes. Residents of personal care homes include adults with a mental or physical disability or dementia-related disease. Residents need assistance from others to meet their basic needs such as eating, walking, toileting, hygiene, taking medications, laundry and using transportation.

Major benefits of this regulation for the residents include: improved living conditions relating to environmental safety, improved fire safety, better qualified and trained staff, services based on the individual needs of each resident, medication oversight, clarity of resident rights and strengthened protections for residents in dementia care.

I appreciate and value the many comments and suggestions we have received from the community throughout this 5-year regulation development process. The diversity of the various homes, especially by size, was a strong consideration in developing the final-form regulation. My staff met with and discussed issues and concerns with providers, advocates, the legislative committees and the IRRC to develop compromises that balance the health and safety protections of the residents with the costs and business interests of the homes. This regulation represents a careful balance of resident protections and business concerns. During the recent tolling process, we worked with the legislature and the IRRC to respond to comments and to negotiate over 30 additional substantive changes in response to community concerns.

Most commentators agree that the protections in the regulation are appropriate and necessary. The remaining disagreement between the interested parties is how much the regulation will cost. I take this concern very seriously. I understand that some homes disagree with the cost estimates that we have included in the preamble and regulatory analysis form. We prepared the estimates based on average costs. I understand that costs will vary home by home based on the structural nature of the home and the size of the home. We recently completed a study to assess the impact and plan for implementation of the regulation. The impact study shows a minimal system-wide impact on existing homes, as well as a low impact on the majority of individual homes. The benefits of the strengthened protections for the residents outweigh the costs. This regulation achieves maximum protections based on the lowest reasonable costs.

There are three major areas for which there continue to be concerns: staff training, fire safety and service planning. I will respond to the concerns we have heard regarding these three areas.

1. We have heard that homes are concerned about the cost and availability of the increased staff training. Staff training is the critical foundation to the management of a safe personal care home. Improved training of administrators and direct care staff will improve health and safety protections for the residents, as well as improve the quality of life for the residents. Effective training also improves the staff's outlook on their job and improves the continuity of care. Knowledgeable, well-trained staff is the lynchpin of an improved personal care service system in Pennsylvania. The requirements for 24 hours of annual training for an administrator and 12 hours of annual training for direct care staff are equal to or less than the regulatory training requirements for other residential human services licensed by the Department. The cost for the additional direct care staff training is negligible; homes can provide or arrange for training at very low or no cost at all. Many homes already provide more than the minimum number of training hours. The benefit of providing increased protection to the residents through the proper training of staff outweighs any minimal costs for the additional training.

Direct care staff must have 12 hours of training each year, averaging to one hour per month. Up to 6 hours of the training may be "on the job training" meaning that the training may occur at the home and during the staff person's normal work duties and work hours. The remaining 6 hours of training may be provided at any location, including at the home, such as in-service training at staff meetings. The list of training topics for direct care staff are those topics that may be counted toward the 12 hour per year training requirement. Each staff person does not need to receive training on all of these topics each year. The training should be tailored to the particular staff person's duties, knowledge and experience, as well as to the specific needs of the residents served.

2. We have heard that homes are concerned about the costs for the new fire safety requirements, in particular exits and alarms for people who cannot hear the fire alarm. Implementation of these two fire safety protections is delayed for 2 years to allow homes time to research options and make any physical site changes needed. Very few homes are affected by these requirements statewide.

Based on the Impact Study, we estimate that only 24 homes statewide do not have 2 exits per floor. Homes serving 9 or more residents are already required to have 2 exits per floor based on state fire safety regulations. It is critical to provide a second exit for residents in the event of a fire or other emergency that may block one exit.

The requirement for persons who cannot hear the fire alarm to be automatically alerted in the event of a fire is a matter of equal protection. This applies only to those who cannot hear the fire alarm, and not to all residents with a hearing impairment. Options for compliance include strobe lights, personal body devices or bed vibrators. Many homes already have strobe lights connected to the fire alarms throughout the home. Based on the Impact Study, we estimate 100 homes statewide may need to install special alarms to alert residents who cannot hear the fire alarm.

3. We have heard that homes are concerned about the paperwork and staff time to develop assessments and support plans, as well as the perceived focus on a medical

versus a social model. There will be no additional staff time to complete a simple assessment of the resident's needs at the time of admission. Many homes already ask basic questions such as the need for assistance for mobility, medications and toileting in order to determine if the home can meet the needs of the residents. The Department will provide a model assessment form. The support plan is developed based on the needs identified in the assessment. This is not a complicated document. No team or professionals are required to develop the plan. It is simply a written document listing the services the home will provide to meet the resident's needs and any recommended referral services such as dental, vision or mental health. The Department will provide a model support plan. The assessment and support plan is not based on a medical model, but is similar to the human service model used in other Departmental residential regulations.

Finally, I want to address our plans for implementation. The regulation will not be effective until mid-October. During the first year of implementation, until October 2006, we will focus on providing education and technical assistance to individual homes, rather than on enforcement. That does not mean that we will not record violations, nor does it mean we will not take necessary enforcement actions, but homes should be assured that we will focus on education for first year.

Secondly, we will develop forms for all of the required documents. Some of the forms will be required for use and others will be model forms for use or alteration by the home. This will eliminate the cost of paperwork development by the homes.

Third, many of the new requirements will not apply to existing homes. Existing homes are grandfathered and do not need to meet these new requirements:

- Qualifications for administrator and direct care staff
- Initial training and competency testing for administrator and direct care staff
- Bedroom space for immobile residents
- Fire retardant mattresses
- New bathtub/shower ratios

There is also a gradual, delayed implementation for several requirements:

- 2 years for the fire alarms, fire exits and medications admin training
- 1 year for training and competency testing for new direct care staff

Last, we will invite statewide provider representatives and community organizations to review our implementation strategies such as the reportable incident system, model forms, the licensing inspection instrument explaining how the regulation will be applied and the new training programs.

Thank you very much for the opportunity to work with the Commission in the development of this regulation. Your staff has been responsive, cooperative and helpful in discussing the issues and options. I will be pleased to respond to any specific questions you may have at this time or following public discussion.

Attachment L

Statement of Pamela Walz of the Elderly Law Project,
Community Legal Services, Inc.
Before the Independent Regulatory Review Commission
On the Department of Public Welfare
Final-Form Personal Care Home Regulations

February 24, 2005

Good morning and thank you for allowing me to speak here in this morning. My name is Pamela Walz and I am the Director of the Elderly Law Project of Community Legal Services. The Elderly Law Project is a legal services organization that provides free legal assistance to mainly low-income elderly people in Philadelphia. Our clients are low-income and many have physical or mental disabilities which cause them to need assistance on a daily basis. Over the years, I have represented many clients who live in personal care homes. While there are homes in Philadelphia and around the Commonwealth which provide good care and a supportive environment, I have also had very frequent experiences with personal care homes where my clients had a bed, but received almost no care and where the environment ranged from the merely unpleasant and degrading to the frankly unsafe.

Our project advocates for individual clients by filing complaints with the Department of Public Welfare and then following up to try to ensure that action is taken in response. What we have discovered, however, is that the current regulations are often inadequate to address the problems which occur. For example, I have been in close to two dozen homes where the residents are generally dirty and unkempt, with dirty and ragged clothing. However, because the contract between the resident and the home does not have to spell out with any specificity which personal care services the resident is entitled to receive and how often, it is more or less impossible to establish that the home is failing to provide adequate services. The final form regulations will make this kind of neglect much easier to address by requiring each home to perform an assessment of the residents' needs and a plan for how those needs will be addressed

Another area in which the final-form regulations constitute a major improvement concerns qualifications and training for both administrators and staff. Many of the complaints my clients have, concerning poor care, neglect or abuse, or violations of their rights, stem from the abysmally low level of the qualifications and training required to run or work in a personal care home. Under the current regulations, an administrator need have only 40 hours of training to run a facility, even a very large one, which is responsible for frail and ill individuals who may have complex care needs. It is generally acknowledged that the quality of many of these courses is poor, and there is no testing at the end to determine whether the administrator has learned the material. All too often, I hear stories from providers of aspiring PCH administrators addressing Christmas cards or doing crossword puzzles during this brief training. The final-form regulations are a vast improvement, increasing the number of hours, specifying the important content areas to be covered, requiring competency-based testing to ensure that the material is learned, and creating a process to ensure the quality of the training provided.

The current training situation is even worse for direct care staff. Unbelievably, under the current regulations direct care staff can be on the job providing care to residents for up to six months before being trained on their job functions. There are no educational qualifications for direct care staff and they may be as young as sixteen, yet these workers - who may have no training at all during their first six months on the job - administer medications to residents. Although there is a fiction that staff are merely offering medication to residents for self-administration, many residents are confused or mentally ill and simply passively take the medication handed to them by the staff person without having any idea whether it is the correct medication, time of day or dose. The low level of staff training is outrageous and is reflected in the high medication error rate in personal care homes, the fire-related deaths which have occurred all too often, the frequent incidents where confused residents wander away and are found dead or injured, and the deaths caused by staff's failure to recognize and respond to acute care needs.

The final-form regulations are the product of five years' discussion, negotiation and compromise amongst providers, consumer advocates and Department staff. The Department had an extensive and extremely open process in which stakeholders participated in shaping the final-form regulations. In 2003, five stakeholder groups met many times over a period of months to make recommendations to the Department in the areas of staffing/training, residents' rights, assessment and support plan, medications administration and differences between small and large homes. The opportunity to join these stakeholder groups was well-publicized by the Department, including through its Personal Care Home Advisory Committee, and the groups were open to any interested stakeholder. In addition to consumer advocates and state agency staff, all of the major industry organizations and many individual providers participated actively in the process.

The stakeholder groups worked hard to achieve consensus, and in the process compromises were made by consumer advocates and by providers. Ultimately, the stakeholder groups' recommendations were forwarded by the Department's Personal Care Home Advisory Committee to the Department and many of them are incorporated into the final-form regulations. The final-form regulations on assessment/support plan and training/qualifications for administrators and staff contain most of the stakeholder groups' recommendations. The only significant ways in which the final-form regulations deviated from the stakeholder recommendations were **reductions** in requirements. Specifically, the Department:

- lowered the qualification levels for direct care staff,

- lowered the qualification levels for administrators in homes with 8 or fewer residents,

- reduced the training hours required for both administrators and direct care staff,

- grandfathered all currently employed administrators and direct care staff entirely so that they are not subject to the new training or qualification requirements, and

- extended the timeframe for completing an initial assessment from 72 hours to 15 days from admission.

Even after making these changes in the final-form regulations to address providers' expressed concerns, the Department then tolled the regulations and made still more concessions requested by providers. The final-form regulations which result contain the bare minimum which is necessary in order to begin to address the serious quality problems which have been permitted to exist in too many of the Commonwealth's personal care homes, especially those which serve low-income individuals.

In conclusion, we ask you to approve the Department's final-form personal care home licensing regulations. These regulations amply address and balance the cost concerns of providers while upgrading standards in a way which will make a significant difference in the quality of care and life for thousands of elderly and disabled residents. Thank you for this opportunity to speak before the Commission.

Attachment I



February 22, 2005

Mary S. Wyatte
Acting Executive Director/Chief Counsel
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

Via FAX 717- 783-2664 & Mail

Dear Ms. Wyatte:

I am writing on behalf of CARIE, the Center for Advocacy for the Rights and Interests of the Elderly, to request that the Independent Regulatory Review Commission approve the Department of Public Welfare's final form personal care home regulations scheduled for a vote on February 24, 2005. CARIE provides ombudsman services for residents in more than two hundred long-term care facilities in Philadelphia, half of which are personal care homes. It is our experience that having effective standards are vital to implementing quality care.

There is a significant amount of evidence pointing to the need for major reforms within the personal care home system in Pennsylvania. The final form regulations are the result of five years of discussion and compromise among the Department, providers and consumer advocates. Since there are over 1,600 personal care homes in Pennsylvania caring for more than 53,000 residents, there is much at stake. While the final form regulations do not contain all of the provisions required to make all needed reforms, they are an improvement over the current regulations and a step in the right direction. Most importantly, the regulations would increase staff training, improve fire safety, and require that an assessment and care plan be connected to the resident's contract.

On a regular basis, CARIE ombudsmen witness a mismatch between the ability of staff to care for residents with increased needs. Improving training will help staff obtain the skills required to meet the challenges of caring for a population with multiple needs as well as prevent many negative outcomes related to resident care. Since at least 55 residents have died in personal care home fires in the past decade, it is reassuring to see that the regulations would implement an increase in fire safety protections. These fire safety improvements, especially the requirement of a second fire exit, target the conditions which resulted in these deaths so that future tragedies will be prevented. It is imperative that the safety of residents,

More Than 25 Years 25 in Service to the Elderly

Center for Advocacy for the Rights and Interests of the Elderly
100 North 17th Street, Suite 600 Philadelphia, PA 19103
T: 215.545.5728 F: 215.546.9963 W: www.carie.org

A United Way Agency

staff and fire fighters no longer be placed in jeopardy. It is essential that an individualized assessment of needs and a care plan be completed for each resident particularly since residents' needs are not addressed in many homes. Residents should know what specific services they should receive, how often they should receive them, and what, if any additional costs will be incurred.

We are also pleased that the regulations under consideration include important protections for residents who make complaints, increased qualifications and training for administrators, and advanced training for staff that help to administer medications to vulnerable residents. Additionally, we see now lax enforcement strengthened by unannounced visits, actual correction of violations, and bans on new admissions as an enforcement tool to prevent poorly-performing homes from continuing to operate as usual while appealing license revocation, often for months or years.

The thousands of vulnerable personal care home residents throughout the Commonwealth deserve better standards of care and better enforcement of these standards. We hope we can count on you to help ensure the safety and well being of these residents. There should be no further delays in implementing regulations that will work to improve the standard of care in personal care homes. The time for change is long overdue. Please contact me at (215) 545-5728 or menio@carie.org should you have any questions or require additional information.

Sincerely,

Diane A. Menio
Executive Director

Addenda to CARIE letter to IRRC 2/22/05

Residents' Rights/Grievance Procedures:

- Residents' rights violations seem to be the most difficult complaints for DPW to verify because it often comes down to a matter of one person's word against another.

- The grievance process outlined in the new regulations would at least create a paper trail that could be used to establish patterns of residents' rights violations in order to verify complaints.

- When investigating the complaint that a specific staff person was verbally abusive towards residents at one PCH the Ombudsman was told that DPW could not verify the complaint unless it was witnessed directly by DPW staff. It is a consistent theme that residents have the burden of proof when making a complaint that their rights have been violated and the right to written responses to residents' complains is a tool that will help them to do so.

- The proposed regulations would also protect residents from being discharged as retaliation for making complaints. Residents are often afraid of making complaints due to fear of retaliation, and there is currently nothing to prevent providers from discharging residents for making complaints. Our Ombudsman has personally witnessed residents being intimidated for making complaints, has had countless residents withdraw consent for intervention for the stated reason that they were intimidated (including threats of discharge), and the Ombudsman has been threatened by providers with the discharge of residents whom Ombudsman was working on behalf of.

Unannounced Visits:

- On more than one occasion during facility visits the Ombudsman was told by residents that DPW would be visiting soon and that they were aware of this because the home was being cleaned and repaired.

- One home had no staff people present during the day for years. DPW was never aware of this because of announced inspections. After receiving a complaint from the Ombudsman, DPW verified this problem at the first unannounced visit.

- There have been other PCH's where no staff persons were present during the day. It is not uncommon for the Ombudsman, when doing unannounced visits to find problems such as homes that are unclean, homes that have indoor temperatures that are either too high or too low, finding residents that are not permitted to go into their room during daytime hours, and not having required postings such as menus, activities calendars, residents' rights and the phone number for the Ombudsman.

Medication Training:

- The administration of medications has been an ongoing problem in PCH's. We received a complaint from a resident who consistently did not receive his blood sugar tests at prescribed times and would have adverse physical effects as a result.

- There was another resident who was not receiving medications at the times prescribed by his doctor, despite making several complaints. Staff would often bring him his medication at times outside the timeframe ordered by a doctor. When this would happen he would refuse to take the medication for fear of an adverse reaction. The staff documented that he was noncompliant with his medications and then stopped providing it.

- Another resident ran out of one of her medications while the administrator was away on vacation. The staff person who was dispensing medications in the administrator's absence did nothing to see that the resident received the medications.

- It is essential that staff receive training so that they have a basic understanding of medication management.

Ban on Admissions:

- DPW made the decision not to renew the license for one PCH in August of 2003 after issuing 33 deficiencies over a two-year time period. The PCH appealed and continued to operate as normal including accepting new admissions for one year until voluntarily closing in August 2004.

- Facilities that have extensive problems that pose life and safety risks for residents should at a minimum not take on additional residents.

Notification of Termination:

- Two weeks ago a PCH provider who had decided to voluntarily cancel her license several months previous and had already started moving residents made the decision on a Friday that it would be her last day as a PCH operator. Six residents still lived there. They were notified when they returned from their day programs that they were to move that day—DPW managed to get the provider to agree to keep the residents for the weekend and they were relocated the next week. The Ombudsman had learned of this situation just the day before.

- Residents and their representatives should be given adequate notice whenever a discharge is planned for whatever reason.

Attachment K

**Independent Regulatory Review Commission**
**Meeting of the Final Form Regulations**
**2/24/05**

My name is Judy Banks. I am here representing the Coalition for Personal Care Home (PCH) Reform and my organization, Pennsylvania Protection and Advocacy, Inc. PP&A is a non-profit organization responsible for providing protection and advocacy services to Commonwealth residents with disabilities as mandated by federal law. Most residents living in PCHs are elderly, people with physical and mental disabilities.

I've come today in support of the final form PCH regulations published by DPW because these regulations set a much higher standard of care over the existing PCH regulations. These regulations are far from what we had hoped, as they do not provide for other important protections needed by some of our most vulnerable residents of the state. They do represent an acceptable compromise.

As a PP&A advocate for the last 14 years, I have seen the personal tragedies that continue to persist in PCHs. These include physical and sexual abuses, neglect of care and the unfortunate and preventable deaths of residents. In the past six months residents have died in PCHs in fires, from medication errors, and neglect. Unfortunately, residents of PCHs have learned that their voices are not heard. Therefore their individual attempts to make changes that will improve their lives have fallen on deaf ears. They depend on commissions like IRCC and on others that care about their safety and well-being to assure that systems of safety are in place.

PCH providers are complaining about many things associated with these regulations. They say that the regulations will cost them too much to implement. They say that they will no longer be able to operate their home(s). They say too much paperwork. I want to know, what price would they be willing to put on a person's life? How much is a person's life worth?

DPW did a survey to study the costs associated with these regulations. These costs are not insurmountable and many are one-time and tax deductible costs. These regulations are no more rigorous than regulations governing other DPW and DOH licensed homes for people with disabilities, such as community homes for people with mental retardation and non state ICF-MR. These residential models, just as PCH model, provide people opportunity to live in community, non-medical environment with necessary supports.

There are four areas that I would like to highlight in my testimony concerning the final form PCH regulations.

1. Medication training- Presently PCH staff is not required to receive any training for the administering of medications. Most residents rely on the PCH staff to provide them their medications. This means that the majority of PCH residents are given their medications by non-trained direct care and administrative staff. While some staff is of adult age, some staff persons

dispensing 5-6 medications, multiple times a day to residents are 16 and 17 years old. Sometimes these teenagers are left alone to manage the PCH without having any understanding of the medications and the side effects of the medications that they are giving to residents. Medication errors are one of the top two PCH violations cited by licensing inspectors. These errors include multiple occurrences of missed dosages of insulin, high blood pressure medications, and psychiatric medications.

2. Fire Safety Protections- When one person dies in a fire at a PCH, that is one person too many! DPW reports that at least 55 PCH residents have died in PCH fires in the past 10 years. Two fires killed three persons this past summer. The improved provisions in these regulations will no doubt make the difference between the life and death of a resident.
3. Direct Care and Administrator Training – The neglect, abuse and residents' rights violations that we see in PCHs on an ongoing basis can be directly tied to poor training and oversight of direct care staff and poor training and accountability of administrative staff. Presently, there are no training standards for direct care and administrator staff in the existing regulations. As a result, people with complicated health conditions, special treatment needs receive inadequate care. The final form PCH regulations will make improvements in the amount and quality of training for persons in these positions.
4. Individual Support Plans- People living in PCHs are some of the most vulnerable citizens in the state. Many are frail and either have physical illnesses or mental disabilities. Consequently, like all of us, they too need individualized care. Presently, the service and support needs of PCH residents go largely unmet because the existing regulations do not provide for assessments of resident needs and a support plan to meet those needs. The final form regulations will thankfully change that.

I urge you to approve the final form PCH regulations. They will go far to achieve their mission, which is to protect the safety, health and well-being of residents of PCHs.

Thanks you.

Judy Banks
Pennsylvania Protection and Advocacy, Inc.
Deputy Director

Original: 2294

EMBARGOED MATERIAL

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# WATKINS CONCEPTS COMPANY

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Consultants to Management at LIZA'S HOUSE
1357 Blue Mtn Dr., Danielsville, PA 20657
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X

To: The Independent Regulatory Review Commission (IRRC)
33 Market Street, 14th Floor
Harrisburg, PA 17101
Fax: (717) 783-2664
Voice: (717) 783-5417

Subject: TESTIMONY TO IRRC ONFINAL-FORM RULEMAKING, CHAPTER 2600
HEARING FEBRUARY 24, 2005

FEBRUARY 23, 2005
Pages: 8

Dear Sir or Madam:

Weather and travel advisories make it impossible for me to attend the IRRC hearing in person.

I am forwarding a typed copy of the oral testimony I planned to present to the IRRC at the public hearing, February 24, 2005. Is it possible that the recorder, or another representative, can read my oral testimony into the record?

If the hearing receives a weather delay and is rescheduled, I plan to be there to give my testimony in person.

I feel it is urgent that the record shows my concern that the focus of the rule making must be the concerns and needs of the resident. This focus is not present in this final-form rulemaking.

Thank you for your assistance in this matter.

Sincerely,

Wayne C. Watkins

**FEBRUARY 24, 2005 PRESENTATION TO THE INDEPENDENT REGULATORY COMMISSION**

**My name is Wayne C. Watkins. Thank you for the opportunity to make this presentation before the Independent Regulatory Review Commission and assembled stakeholders.**

**I became involved in rewriting this rulemaking after the proposed regulation 2600 was rejection in 2002. I entered with high hopes and eagerness to produce quality rulemaking for the personal care home community. I soon learned this would not be a cooperative venture. Different folks have different agendas. It was and remains a dog fight to preserve or forever lose the personal care home community as we know it.**

**To look at this rulemaking objectively, I took a step back and put on my consulting hat. I found it cost prohibitive and replete with unreasonable requirements.**

**This rulemaking was fundamentally flawed from the beginning. Proposed regulation 2600, presented in 2002, proved lacking, and was returned to the Department for rework. There was a period of very active stakeholder involvement and participation. The Department then went into seclusion to prepare the final-form rulemaking. The outcome final-form rulemaking remains egregiously flawed.**

**The preamble to the final-form rulemaking is replete with "It is the intent of the Department" then gives explanations of rulemaking provisions. What is wrong with this picture? If the Department's rulemaking intended wording is as stated in the preamble, why do they not just say so in the**

rulemaking? You are being asked to approve rulemaking that you know is not final and will be changed. How can you be expected to approve a rulemaking when you do not know what it will say? That is signing a blank check.

I prepared a report responding to the final-form rulemaking. I also prepared an addendum to this report in response to the Regulation Impact Study. These reports do a critical analysis. I concluded that the rulemaking is flawed, and not ready for approval. It may pass the legally correct test, but it fails the social responsible test. It is cost prohibitive and replete with unreasonable requirements. Copies of these reports went to several key oversight and responsible parties. I do have extra copies here for anyone that has not had the opportunity to review them. These reports are the factual backup and elaboration for my comments today.

The resident is the central focus of this rulemaking. They were least represented. They had virtually no input. They are impacted most by the rulemaking outcome. Who is looking out for the resident? Not this rulemaking.

Everyone agrees that the resident needs, wants and deserves an affordable, safe, humane, comfortable and supportive residential setting in which to live. Historically, the State was unable to satisfy this need. They turned to the private sector to fill this need. The personal care home community, with State oversight, was born. Overall, this system has worked well for many years. The need has not gone away. The need will be greater in the future. Will the personal care

home, as we know it, survive to service this need? Not under this rulemaking.

Developing this rulemaking has been a long and bumpy road. A devastating factor to progress was the revolving door of key players in the Department. When you keep changing policy makers, undesirable things happen.

Although significant time, effort and expense went into developing this rulemaking, that is no reason to approve it. This fundamentally flawed regulation requires termination before it consumes more resources and creates a devastating outcome for the lower income resident. We can learn from this failed process and start anew. Maybe we can avoid some of the errors and produce responsible rulemaking. It is worth an honest effort.

The central question in the whole process remains unasked and unaddressed. What is the main concern of the primary stakeholder? You need only ask the resident. They will tell you their main concern is cost. They know little about the final-form rulemaking. They strongly oppose any cost increase. Other resident concerns are location, homelike non-institutional environment, independence, safety and supervision. This sounds like the small or medium size personal care home to me.

Rulemaking must meet the test of reasonable outcomes. This rulemaking fails across the board.

The Department failed to address the main concern of the

**resident. To repeatedly make the statement that some unspecified benefit, to an unidentified recipient outweighs the unknown cost to the resident, is beyond belief. This incomprehensible logic is not a responsible cost estimate.**

**Paragraph 2600.186. (c), prohibits the personal care home from acting on oral orders from a prescriber in emergency situations. This is irresponsible and potentially life threatening. Providers and residents must retain the ability to accept and respond to prescriber's oral orders in an emergency situation. Follow-up written orders can be faxed later, as they do now. The Department solution, to have an RN on duty 7 X 24, is simply amazing and breathtaking. This remedy increases the annual payroll of small and medium homes by $180,000.00. This added expense alone exceeds the gross revenue of many small homes.**

**The additional debt needed to upgrade a grandfathered C-III Category building to meet UCC compliance mandated by the rulemaking, is in the range of $250,000.00. This is 50 times greater than the $5,000.00 estimated by the Department. Additionally, many small homes, due to structural design, may lose one or more resident rooms. This outcome will reduce total low income resident beds. It also may reduce the income earning potential of the grandfathered C-III Category building. To offset lost revenue and service added debt means surviving resident room fees must increase by several hundred dollars a month. These increased fees are over and above the magnitude cost projection fee increases discussed next.**

A magnitude cost projection determines if significant costs are or are not involved. When making this calculation, I used a hypothetical small facility of 30 beds. This is the average of all residents divided by the total number of homes. The resultant probable actual monthly cost increase range per resident is between $ 600.00 to $ 2,400.00. This brings personal care homes fees into the price range of nursing homes.

Where are poor residents going to get additional funds to pay for these cost increases? They do not have it. Their families, if they exist, do not have it. The provider can not absorb it. Resident families, if they exist, have already decided they can not accommodate their loved-one's care needs. These residents can not live alone. This rules out senior housing. All I see left is what the resident fears most, enter a nursing home, if there is a bed available. The very scenario personal care homes were created to prevent.

The rulemaking specifies 9 residents as the breakpoint for large and small facilities. This is fascinating. To say a facility with 1 and 1/2 caregivers, both of whom must be administrator certified, and grossing less than $100,000.00 per year is a large facility is simply unrealistic.

Hang on, it gets better! A facility with 4 residents and 1 and 1/4 caregivers, both of whom must be administrator certified, must maintain more than 125 written policies and procedures to comply with this final-form rulemaking.

Time restrictions prevent even brief comments on other,

**equally egregious examples of unreasonableness and irresponsibility. Suffice it to say that deficiencies are replete throughout the rulemaking.**

**What will happen if this rulemaking gains approval? Plain and simple, a rein of exploding costs and social disruption which will cascade down on residents, their families, providers and eventually on the State. As many as 10,000 to 20,000 residents may be displaced. More than 600 small and medium size personal care homes may be forced to close. The State will be financially strapped as they must pay for more patients in the nursing homes. The personal care home community, as we know it, will cease to be.**

**I am unaware of any Department contingency plan addressing where this magnitude of displaced residents can go or how they can survive. Turning these people out onto the street can not be the intent of this government nor outcome of this rulemaking process.**

**Failure to foresee this probability and have a contingency plan, to include funding, in place, to handle this predictable problem, is a travesty. This oversight is probably more egregious than failing to provide a cost estimate.**

**Again I ask, who is looking out for the dependent elderly? Not this gigantic unfunded mandate thrust upon defenseless elderly. It is cost prohibitive. It fails any test of reasonableness.**

**An objective assessment, comparing the provisions and**

**outcomes of 2620 and the final-form rulemaking 2600, shows 2620 is far superior.**

**The solution to complex questions often comes from simple answers. Now is time to fish or cut bait. Approval leads to predictable devastating results. Disapproval causes a small loss of face, but we all will live to fish another day. There is but one justified conclusion. Disapprove this final-form rulemaking before we bring disgrace upon out beloved Pennsylvania for the way we treat our seniors.**

**Thank you.**

**I will be happy to answer any questions as time permits.**

EMBARGOED MATERIAL (110)

Original: 2294

# A Report About An Unlawful Conspiracy to Defraud Wrongdoing - Illegal Behavior

I was deceived!

We were told that many PCH's are dangerous to the Health and Welfare of their residents. I took it seriously since I only know my three facilities. Therefore, for two years (from 2002), I was on three of the five (6*) DPW workgroups, to try remedy other's shortcomings.
I never missed a day.
I tried to improve Regulation 2600 for the common good.

Whatever the workgroups agreed on, how to sensibly lower cost, almost never became part of the 2600 revision in spite of them being chaired by the DPW. Ultimately, we in the workgroups voted down 2600 in favor of 2620 (the existing regulations) including the Chair. In the end, we found 2620 the less intrusive, less expensive and better overall regulation.

When the workgroups finished their work and presented it to the Personal Care Home Advisory Committee, the Advisory Committee made a motion to vote down 2600 in favor of 2620 and asked the Chair to convey this decision to the Independent Regulatory Review Committee (IRRC). The motion was carried. You must realize this Committee has to have a majority of consumer and advocates, according to their by-laws, not providers.

**THIS IS WHERE THIS REGULATION SHOULD HAVE ENDED**

**IN A WASTEBASKET,** 

**UNDER THE AUSPICIOUS OF DEMOCRATIC PRINCIPLES.**

It took me this long to understand how 2600 has "nine lives." (I apologize for my failure.)

The final form 2600 it is not a revision to improve existing regulation or it's cost but its premise is a moneymaking fraud for the enrichment of the Nursing Home Industry. Regulation 2600 serves no purpose for the interest of the elderly, NONE!

Easy Living Estates
One Corporate Drive
Hunker, PA 15639

It will add 3.8 billion in additional monies to the current yearly expenses which the 43,000 private pay elderly now pay (or the State or the Federal Government will pay as a waiver program).

This is what I did not understand, nor did my PCH administrator colleagues. That is why we worked on the Regulation so diligently until we realized this was not in the interest of the elderly.

This Regulation has nothing to do with improving the health and safety of the elderly who are in personal care homes. The only purpose of this Regulation is to **significantly increase the daily cost** to the elderly and to create parity between the cost of a PCH and the cost of a Nursing Home.

HOW?

By making parity among regulation requirements for both types of facilities.

WHY?

At a State-wide meeting of Personal Care Home Administrators in Carlisle, DPW Secretary Estelle Richman, cited a study that determined that 40 % – 60 % of the nursing home patients could be taken care of in PCH's for about ¼ of the cost.

The governor set his mind to lowering the nursing home cost, by reversing the flow.

No business, no nursing home can survive this drastic loss of business (40% to 60 %.)

If the regulations of the PCH's are made as stringent as for Nursing Homes, then the Personal Care Home's cost will be similar to that of Nursing Homes.

Then in reality instead of moving the 40% to 60% out of the nursing homes, you just declare a portion of the Nursing Home as a PCH without major income loss.

**This is the aim of Regulation 2600**.

*Let me tell you how to achieve this fraud...*

In 2000, the Medical Assistance Advisory Committee asked the Pennsylvania Health Law Project to undertake a study of the conditions in PCH's. No one asked why even though no funding for PCH's comes from this Committee. If it can be proved that conditions in PCH's are terrible and this idea can be sold, then new expensive regulations can be enacted. The Medical Assistance Advisory Committee has currently nothing to do with the PCH industry, only with Medicare, Medicaid and consequently with Nursing Homes. PCH's do not get any assistance now, yet they will when the price goes up because the waiver program will then be available to the PCH industry.

Let me describe briefly how the Pennsylvania Health Law Project accomplished this fraud. The DPW never before tabulated and published the results of yearly mandatory inspections. It was easy to "Cook the Books" and sell the idea that the PCH's provide inferior care - it is a sentimental argument without proof of innocence.

The first time the DPW published the inspection results was in 2004, therefore, it was easy to falsely condemn the industry, in 2000 - 2002. The 2004 published statistics did not back up the conclusion, that PCH's are the "Black Hole of Care." (White Paper)

In the Chart on the next page you will see that ...

In the first quarter, there were **five (5) Class I** violations* -- 4 out of 5 of these were under the heading of Building as the temperature of the water was either not hot enough or too hot. In the second quarter there was **one (1) Class I** violation (about civil rights.) There were no published results for the remainder of 2004. The DPW chose not to publish the 3rd and 4th quarter inspection results.

* Class I violations are the <u>serious</u> violations defined as life threatening! For example: operating within a building, which has no Labor and Industry approval.

*fidential*

## PCH Violation Report

Calendar Year 2004 Quarter 1 (January + February + March) Report

Tony Norwood, Human Services Program Specialist

| CLASS I VIOLATIONS | | | |
|---|---|---|---|
| Inspection Month | Number of Class I Violations | Regulation Heading | Subsection |
| January 04 | 2 | Both: 2620.51 Building | Both: ( a ) The home shall have an adequate supply of hot and cold water piped to each wash basin, bathtub, shower, kitchen sink, dishwasher and laundry equipment. Hot water accessible to residents may not exceed 130 ° F at the outlets. |
| February 04 | 2 | 2620.51 Building<br>and<br>2620.54 Housekeeping & Maintenance | 2620.51 Building ( b ) : The heat in rooms used by residents shall be maintained at a temperature of at least 70 ° F.<br><br>2620.54 Housekeeping & Maintenance ( f ) :The home shall be made safe by the elimination of, or protection from, domestic hazards, such as slipping rugs, cleaning fluids, firearms, medication and other hazardous objects or materials |
| March 04 | 1 | 2620.51 Building | ( a ) The home shall have an adequate supply of hot and cold water piped to each wash basin, bathtub, shower, kitchen sink, dishwasher and laundry equipment. Hot water accessible to residents may not exceed 130 ° F at the outlets. |

**PCH Violation Report**

**April through June 2004 (Second Quarter)**

| Class I Violations | | | |
|---|---|---|---|
| Inspection Month | # of Class I Violations | Regulation Heading | Subsection |
| June-04 | 1 | 2620.61 Resident Rights | The resident has the right to be free from abuse. |

A Class I violations could affect licensing. Only Class I violations can, but are not required to be followed up with provisional license; however, provisional licenses can be appealed. The current percent of uncontestable provisional licenses is less than 35/1000 of a percent.

How much better can you get?

Class II or Class III violations are a minor violation without an appeal process (in a democracy)!

**What is the purpose of the new Regulation?**

Therefore, the so-claimed 98 provisional license for the same period of 2000 represent an extreme exaggeration of the severity of the violations fraud. See the "White Paper" published by the Pennsylvania Health Law Project. The publishing of horrifying newspaper articles from other industries' failures masked as PCH's for a period of 24 years is also a fraud.

What I am saying is: to portray PCH's as the "Black Hole of Care" and "Dumping Grounds of the Long-Term Care Market," just to help Nursing Homes survive without competing and to guarantee that PCH's will become part of the Federal Medicare, Medicaid, Waiver Program, is deceitful.

If in the best case scenario, they can rig it that the Federal Government will pay the 3.8 billion that is still my money and your money, taxpayer's money. It would make more fiscal sense to achieve financial Federal help for the lesser cost of a PCH than the higher cost of Nursing Home.

*To lie, to ruin the reputation of an Industry of 1,688 facilities* when the current statistics prove that the additional restrictions are unwarranted, unjustifiable, and beyond the pale, is ***unscrupulous***. There will not be an improvement in the quality of care as there is not a justifiable need, so only an increase in the price.

This story that I am reporting to you constitutes a criminal conspiracy, between the DPW and their secret workgroup (*this is the 6th workgroup which membership was never solicited, their meetings closed and findings and deliberations never published.)

**Personal Care Home Licensure and Enforcement Reform**
**by the Licensing and Legislative Subcommittee**
**of the DPW PCH Advisory Committee**

| | |
|---|---|
| Pam Walz, Chair | Elderly Law Project, Community Legal Services |
| William Gannon | DPW - OSP |
| Patsy Taylor-Moore | DPW – OSP – PCH Division |
| Ann Torregrossa | Pennsylvania Health Law Project |
| Alissa Halperin | Pennsylvania Health Law Project |
| Christine Klejbuk | PANPHA |
| Lynn Fosnight | PALA |
| Beth Greenberg | PANPHA |
| Dale Laninga | Intra-Governmental Council on Long Term Care |
| Clarence Smith | CERCA |
| Pat McNamara | PHCA/CALM |
| Cindy Boyne | State Ombudsman |

Note: Clarence Smith who is a PCH provider was not invited to any of the meetings.
Beth Greenberg showed up at the last meeting and was thrown out, she was told she was not welcome; this was the only meeting she knew about.
All others are from DPW, Advocacy, and Organizations who represent nursing homes.

When someone leaked to the providers that there was a meeting they, the providers, made plans to attend. The meeting was then cancelled later it was reported to the providers that there was no need for any providers to attend because they were not in on it in the beginning and they were not welcome. It was secret to the extent that it was never mentioned that there were **six, not five**, workgroups. The sixth workgroup consists of members of the DPW, government, law, and all providers who are non-profit and who have nursing homes. Uninformed about PCH's but not impartial authorities.

PLEASE HELP INVESTIGATE IT AND/OR FORWARD THIS TO THE PROPER AUTHORITIES IF YOU ARE NOT THE ONE!

THAT IS HOW YOU CAN SERVE THE ELDERLY AND THE TAXPAYER'S INTEREST!

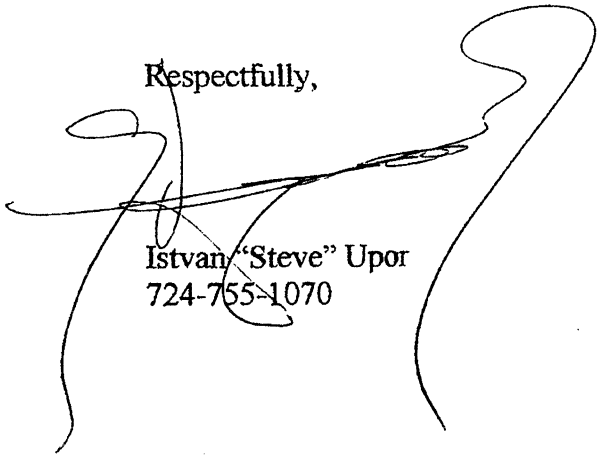
My suggestions to Improve This Situation:

- File suit against all conspirators, regardless of where it leads.
- Levy a Fine - to recuperate the cost to the public of Regulation 2600.
- Rescind the monopoly of existing nursing homes to the market making it open to competition.
- Require that there no longer be any certificate of Needs.
- Open the available Federal Providers numbers, so anybody can open new Nursing Home Facilities.
- Let Nursing Homes compete on a free market as Personal Care Homes do, it will stabilize a fair pricing.
    - Competition will lower the cost and private pay will define equitable cost since the consumers vote with their feet, and/or with their pocketbook. Quality will improve naturally in the Nursing Home as is evidenced in Personal Care Homes.

- Let nursing home providers simplify their own regulations, instead of dictating them.
    - Note: Do not think nursing home regulation is a fair norm. It is over exaggerated since the providers interest was opposite of taxpayers, since Medicare and Medicaid paid 8% cost plus above monthly charges. This is how the norms evolved, the more it cost - better it paid, this was the system until the end of the nineteen nineties. Not much has changed with them, there is no need to compete and it is prohibited for new facilities to enter the market.

- **Please Kill Regulation 2600 For Good!**
- Give me a table across from Patsy Taylor-Moore for 6 months and we will write a modification of Regulation 2620 that will be Hailed!, this will fulfill the need of having at least two persons at DPW who know PCH's and the aged, and the process of aging. I need no thank you or remuneration.

Respectfully,



Istvan "Steve" Upor
724-755-1070

Original: 2294

**THIS IS A GREAT CONCERN!**
**PLEASE FORWARD IT TO THE ATTORNEY GENERAL**
2005 FEB 23 AM 8:35 **& FIRST DEPUTY FOR ACTION**
**AT THE FOLLOWING ADDRESSES:**

Attorney General Thomas Corbett, Jr.
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pa 17120

First Deputy William H. Ryan, Jr.
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, PA 17120

(102)

Original: 2294

MENTAL HEALTH ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA
The Bell of Hope
1211 Chestnut Street, 11th Floor
Philadelphia, PA 19107
Phone: 215-751-1800
Fax: 215-636-6300

# Fax



To: Mary S. Wyatte From: Joseph Rogers

Fax: Date: 2-22-05

Phone: Pages: 4 including cover letter

Re: Final form Personal Care Home Regulations CC:

•Comments: ☑ Urgent ☑ For Review ☐ Please Comment ☐ Please Reply

Hard copy is in the mail

*If you experience any problems with this FAX, please call the SENDER*

The Bell of Hope
MENTAL HEALTH ASSOCIATION OF SOUTHEASTERN PENNSYLVANIA



February 19, 2005

Mary S. Wyatte
Acting Executive Director/Chief Counsel
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

Dear Ms. Wyatte:

The Mental Health Association of SEPA is a non-profit advocacy organization that represents consumers who reside in the Commonwealth's personal care homes. **We strongly urge the Independent Regulatory Review Commission to approve the final form personal care home regulations resubmitted by the Department of Public Welfare on February 11, 2005.**

The final form regulations are the result of **5 years** of discussion, negotiation, and compromise amongst providers, consumer advocates and Department staff about critical life safety and quality of life issues. While these regulations do not contain all of the increased consumer protections which we had hoped for, they are an important improvement over the current licensing regulations and will afford considerably greater protections to vulnerable personal care home residents.

The Mental Health Association of SEPA is especially pleased that the final form regulations make desperately-needed improvements in the amount and the quality of training required for administrators and direct care staff. Under the current regulations, administrators need only have 40 hours of training to run a facility which cares for frail and ill individuals who may have complex needs. There are no standards for administrator training courses, and it is generally acknowledged that the quality of many is dubious. Worse yet, because there is not testing requirement, there is no way to ensure that a new administrator has learned the course content or even paid attention while in class. The current situation is even worse for direct care staff, who can be employed for up to six months before receiving any training at all on their job functions. These standards are simply outrageous and are reflected in the tragedies – deaths and injuries from medication errors, fires, bed sores, residents wandering away, and failure to

1211 Chestnut Street, 11th Floor • Philadelphia, PA 19107 • 215.751.1800 • Fax: 215. 636.6300
Website: www.mhasp.org • Email: mha@mhasp.org

recognize and respond to acute care needs – which occur on a regular basis. The current training requirements are outdated for a setting where residents have become increasingly frail and medically complicated in recent years. The Department has been more than responsive to providers' concerns about costs by grandfathering all current administrators and staff, as well as reducing the required number of training hours even below the number to which provider representatives agreed in the stakeholder groups.

We are also particularly pleased that the final form regulations require that an individualized assessment of needs and service plan to be completed for each resident. Currently, it is our experience that residents' needs go unidentified and/or unaddressed in many homes. Moreover, residents have no way to determine which specific services they are entitled to expect and how often they should receive them. During the Department's extended and very open process, a stakeholder workgroup which included all of the industry trade groups as well as small providers approved by consensus the assessment and service plan provisions which appear in the final form regulations.

We also see as a key element of these regulations the increase in fire safety protections. At least 55 residents have died in personal care home fires in the past decade. These fire safety improvements, especially the requirement of a second fire exit, target the conditions which resulted in these deaths so that future tragedies will be prevented.

The following changes are also important improvements:

1) Increasing the qualifications required to become an administrator of a personal care home from their current very minimal level,
2) Creating a medications administration course so that untrained staff will no longer dispense medications to residents,
3) Requiring annual, unannounced inspections so that licensing staff will get an accurate picture of conditions in each home,
4) Requiring homes to prove actual correction of violations and not just simply submit a plan of correction before being relicensed,
5) Implementing the statutorily permitted ban on new admissions as an enforcement tool to prevent poorly-performing homes from continuing to operate as usual while appealing license revocation, often for months or years,
6) Creating a process for residents to have their complaints addressed by the home within specified timeframes, and
7) Strengthening residents' rights.

The Mental Health Association of SEPA believes, in fact, that the regulations should be even more stringent in certain areas – especially including administrator training and assessments – where the Department has eased requirements from the proposed regulations in response to provider cost concerns. However, we firmly believe that the final form regulations make essential strides towards improving and protecting the lives of personal care home residents. While the regulations do not go as far in some

areas as we had hoped, they represent meaningful improvement to a system that has seen too many preventable tragedies in recent years. Additionally, we appreciate that all compromise involves conciliation and know that it would be unrealistic to have expected all our recommendations to have been included.

It should be noted that the costs which will be incurred by providers in order to comply with these regulations have been significantly reduced from those which would have resulted from the proposed regulations, in response to concerns raised by providers during the regulatory process. Limiting application of several regulations to only those homes with nine or more residents, eliminating most written policies and procedures requirements, and grand-fathering on staff training, qualifications, and some physical site requirements in the proposed regulations were all done to reduce provider costs. Some of the larger one-time costs will result in improved standards and safety that will significantly reduce the providers' risk of liability and, consequently, their annual liability insurance costs. Also, many of the costs are capital improvements for which tax deductions will be taken.

In conclusion, we again urge you to approve the final form personal care home regulations. These regulations shore up many of the gaps in the current system and provide protections for our vulnerable citizens, while balancing the needs of the personal care home industry.

Sincerely,

Joseph Rogers
President & CEO

98

*An Association of Nonprofit Senior Services*

PANPHA

Original: 2294

1100 Bent Creek Boulevard
Mechanicsburg, PA 17050



February 22, 2005

John R. McGinley, Jr, Chairman
Independent Regulatory Review Commission
333 Market St, 14th Flr.
Harrisburg, PA 17101

Dear Chairman McGinley:

PANPHA, an association of Pennsylvania non-profit senior service providers, represents 233 personal care homes (PCHs) with over 14,100 units statewide. On November 17, 2004, we provided the Independent Regulatory Review Commission (IRRC) with comments on Regulation #14-475. These comments were also shared with the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. As a result of our comments and those of other stakeholders, the regulations were tolled to allow for necessary changes to the regulations.

The Department re-submitted the regulation package in final on February 11, 2005. PANPHA has reviewed the final package and the changes made to the regulation since its initial submission on November 4, 2004. While the Department made several of the key revisions that PANPHA and other provider groups suggested, our member Task Force charged with reviewing policy issues affecting personal care homes continues to have significant concerns about this regulation. Specifically, we continue to believe that even with the changes the Department made to final regulation #14-475, the package inappropriately shifts the focus of personal care from a "social" model to a "medical" model. This is highlighted by the new requirements for care planning and assessment as well as the need to have a nurse to accept the type of verbal medication orders that are critical to meeting the residents' needs in personal care. PANPHA members also continue to believe that the regulations will undoubtedly raise the cost of personal care to a level that will further reduce the access of low-income individuals on supplemental security income (SSI). In 1999, PANPHA authored a report for the DPW Personal Care Home Advisory Committee which demonstrated a daily cost for personal care of $59.65/day. The same study included a comprehensive literature review of similar cost studies, which showed daily costs of personal care to be in that range and up. Meanwhile, SSI recipients in Pennsylvania currently bring roughly $30/day to the table to pay for their personal care stay. This all points to a personal care regulation which is very likely to force many providers to make very difficult decisions on serving SSI residents, forcing many to seek the care and services they need elsewhere—with nursing facility placement a distinct possibility. Given the Administration's current priority around "re-balancing" the care continuum, the decision to move forward with this onerous regulation is all the more confusing.

PANPHA continues to believe that there are many provisions in regulation #14-475 which are not in the public interest. In our assessment, the additional costs associated with this regulation and the risk it places on access to personal care services for the most vulnerable among us far outweigh the benefit to PCH residents. As a result, we respectfully request that the IRRC to disapprove this regulation.

Sincerely,

W. Russell McDaid

W. Russell McDaid
V.P. Public Policy

cc: Sen. Scott Johnson
Rep. Melanie Brown

PANPHA

## FAX COVER SHEET

DATE: 2/22/05

TO: Chairman McGinley

FAX: (717) 783-2664

FROM: Russ McDaid, VP for Public Affairs

RE: REGULATION #14-475

PHONE: (717) 763-5724
FAX: (717) 763-1057

RECEIVED
2005 FEB 22 AM 9:15
REVIEW COMMISSION

NUMBER OF PAGES INCLUDING COVER SHEET 2

MESSAGE:

PANPHA • 1100 Bent Creek Boulevard • Mechanicsburg, PA 17050
717.763.5724 PHONE 717.763.1057 FAX 717.763.0608 FAX ON DEMAND info@panpha.org E-MAIL www.panpha.org WEBSITE

Original: 2294

**IRRC**

EMBARGOED MATERIAL

**From:** adamshs@verizon.net
**Sent:** Tuesday, February 22, 2005 11:35 AM
**To:** IRRC
**Subject:** Proposed Final Form Regulations,DPW

Honorable George T. Kenney, Jr. Chairman;
Honorable Frank L. Oliver, Chairman

Dear Sirs;
I am writing this to ask you to consider the ramifications of the proposed regulations for personal care homes. I support raising standards in the personal care industry, but I cannot support the added costs to all the homes. These costs will certainly put many homes out of business and leave many residents with nowhere to go.
I am concerned with many items in the regs, but I will name a few that have exhorbitant costs attatched to them.

1. Staff training-12 hours training for all staff yearly, and this training must be done by DPW approved trainors at a cost to the homes of $25-$50 per hour. This training must be done on all new-hires before they can work with residents. The cost of replacement staff must be added to this cost while they are being trained. Many new-hires quit before two weeks pass.
2. Administrator training-100 hours to become an administrator, also with "approved"trainors and a yearly training requirement of 24 hours. This is 4 times what it is now. It cost me $500 get my administrator license and it will cost me almost that much to keep it up yearly. I also have a co-administrator on staff and will pay that for her also each year.
3. Resident right to pick a chair of his or her own choice for their bedroom. If they all pick a cheap recliner, it will cost our home about $4000. and I think you know how often they will break them. Our rooms are not large enough to accomodate the larger chairs such as this. So that would mean I would have to evict one resident from each room and have half as many residents as I now have. This loss would amount to $10,000 per month. This is about the cost of my payroll. There is no way to recoupe this cost. My residents are low-income and I cannot (by law) raise their rates.

Please consider these issues and many others that I'm sure will be brought before you. Thank you for your consideration.

Karen Adams, LPN,Administrator
The Adams House
Charleroi, PA

Original: 2294

**EMBARGOED MATERIAL**

107

**IRRC**

**From:** adamshs@verizon.net
**Sent:** Tuesday, February 22, 2005 11:10 AM
**To:** IRRC
**Subject:** DPW proposed Final Form Regulations for pch's

Honorable Harold F. Mowery, Chair
Dear Sir;
I am writing this as a plea to you to consider the ramifications of the Proposed Regulations for pch's that DPW has put before you.
They are far reaching and will cause many of us providers to close our homes. The costs will be exhorbitant. I certainly support raising standards in the homes, but I cannot support the costs.
Some examples:

1. Staff Training will be reqired to be 12 hours yearly. This will cost $12 per hour plus the cost to staff the home in their absence. We must give this training to all new staff before they may work with residents. This does not include the cost to the home of the trainor who must be approved by DPW. These approved trainors will charge $25-$50 per hour.
2. Administrator Training will be 24 hours a year (currently 6). Also with "approved" trainors or at an accredited college or university. I have an assistant administrator so this cost will be doubled. I usually spend from $50-150 for my training per year, this will be 4 times higher, and the same for my assistant.

These two costs alone will break my back, and I cannot say at this time if I can continue to keep my home open. 99% of my residents are low income I cannot (by law) raise their rates to cover these increased costs. If I ask them to move, I have an empty home and they have nowhere to go. I currently have 19 residents.
These are just two of my very sincere concerns, but just the tip of the iceberg. Thank you in advance for considering my letter.

Sincerely,
Karen Adams, LPN
Administrator
The Adams House

101

Original: 2294

RECEIVED

2005 FEB 22 AM 9:23

INDEPENDENT REGULATORY REVIEW COMMISSION

February 22, 2005

Mary S. Wyatte
Acting Executive Director/Chief Counsel
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

Via FAX 717- 783-2664 & Mail

Dear Ms. Wyatte:

I am writing on behalf of CARIE, the Center for Advocacy for the Rights and Interests of the Elderly, to request that the Independent Regulatory Review Commission approve the Department of Public Welfare's final form personal care home regulations scheduled for a vote on February 24, 2005. CARIE provides ombudsman services for residents in more than two hundred long-term care facilities in Philadelphia, half of which are personal care homes. It is our experience that having effective standards are vital to implementing quality care.

There is a significant amount of evidence pointing to the need for major reforms within the personal care home system in Pennsylvania. The final form regulations are the result of five years of discussion and compromise among the Department, providers and consumer advocates. Since there are over 1,600 personal care homes in Pennsylvania caring for more than 53,000 residents, there is much at stake. While the final form regulations do not contain all of the provisions required to make all needed reforms, they are an improvement over the current regulations and a step in the right direction. Most importantly, the regulations would increase staff training, improve fire safety, and require that an assessment and care plan be connected to the resident's contract.

On a regular basis, CARIE ombudsmen witness a mismatch between the ability of staff to care for residents with increased needs. Improving training will help staff obtain the skills required to meet the challenges of caring for a population with multiple needs as well as prevent many negative outcomes related to resident care. Since at least 55 residents have died in personal care home fires in the past decade, it is reassuring to see that the regulations would implement an increase in fire safety protections. These fire safety improvements, especially the requirement of a second fire exit, target the conditions which resulted in these deaths so that future tragedies will be prevented. It is imperative that the safety of residents,

staff and fire fighters no longer be placed in jeopardy. It is essential that an individualized assessment of needs and a care plan be completed for each resident particularly since residents' needs are not addressed in many homes. Residents should know what specific services they should receive, how often they should receive them, and what, if any additional costs will be incurred.

We are also pleased that the regulations under consideration include important protections for residents who make complaints, increased qualifications and training for administrators, and advanced training for staff that help to administer medications to vulnerable residents. Additionally, we see now lax enforcement strengthened by unannounced visits, actual correction of violations, and bans on new admissions as an enforcement tool to prevent poorly-performing homes from continuing to operate as usual while appealing license revocation, often for months or years.

The thousands of vulnerable personal care home residents throughout the Commonwealth deserve better standards of care and better enforcement of these standards. We hope we can count on you to help ensure the safety and well being of these residents. There should be no further delays in implementing regulations that will work to improve the standard of care in personal care homes. The time for change is long overdue. Please contact me at (215) 545-5728 or menio@carie.org should you have any questions or require additional information.

Sincerely,

Diane A. Menio
Executive Director

95

Original: 2294

February 21, 2005



Presbyterian SeniorCare

A Regional Network of Living & Care Options

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Proposed Personal Care Home Regulations

Dear Mr. McGinley:

Presbyterian SeniorCare (PSC) is a Christ-centered network of facilities and services committed to excellence in enhancing the quality of life of older adults in Oakmont, PA. PSC operates five personal care homes that serve 280 residents of which approximately 40% are low income and many of those only receiving SSI and the State Supplement which is $30/day. Our administrators have reviewed the Final Form Regulations for Personal Care Homes dated 2/7/05 and we have many concerns. Presbyterian SeniorCare applauds the Department of Public Welfare's effort to enhance the safety of older adults living in personal care homes. However, there is great concern that the additional costs and paperwork associated with the proposed regulation will not have the desired outcome.

While the statistics show that 10,425 residents of the 53,240 residents served in personal care homes receive SSI and the State Supplement, there are many of the remaining 42,815 residents who cannot pay the full amount of the cost of the PCH and whose income is only slightly above the SSI level. It is all of these residents and those on SSI who will be affected by the proposed regulation because they may sooner than later be transitioned to a nursing home due to the financial inability of the home to care for them. All would be nursing home eligible under the current PDA waiver guidelines.

As noted in the Final Form Rulemaking, Statutory Authority the demand for residential care option is increasing, however without additional changes to the DPW Proposed Regulations this model will only be available to those who can afford it, and it may begin to look very much like a nursing home.

The Department of Public Welfare stated that they solicited comments and recommendations from providers, stakeholders, state agencies and others, yet in writing the section on Dementia Units it was obvious recommendations were not solicited form the experts such as the Alzheimer's Association or even Geriatric Assessments Units. Specifics on this section will be attached to this letter. Another example of this lack of collaboration is the suggestion made in the response to 3ft landings requirement that "this requirement can be met by reversing the door swing so that a resident would have to step back to open the door before proceeding down the stairwell." This is contrary to the NFPA code.

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PSC does not believe enough consideration has been given to the time and cost it will take to implement the proposed PCH regulations, both for providers and for the state. Not only will all the DPW surveyors need to be trained, but also all providers from the 1,689 licensed personal care homes. New forms have to be developed and distributed, as well as the training programs and competencies tests for administrators and direct care staff. Not a small task, especially for a large state that currently with consistency across the state.

Attached are the comments specific to dementia units that are of concern to our administrators and those comments from PANPHA with who we are in complete agreement.

Considering the previous 776 comments from all stakeholders and our own concerns, Presbyterian SeniorCare and its personal care administrators **oppose** the Proposed Personal Care Home Regulations. Instead PSC would recommend holding providers accountable under the current regulation, provide funding so that there is an incentive for other providers to accept those SSI residents who would be displaced when homes are closed, and the added funding would assist those low income older adults so they would not have to choose marginal providers because of their income. We would also suggest that the time has come to define Assisted Living in Pennsylvania and develop legislation and regulations in collaboration with all stakeholder groups that will enhance the health and well-being of **all** older adults.

Thank you for your consideration of our recommendation to **deny** the Proposed Personal Care Home Regulations.

Sincerely,

Susan Collins
Vice President Assisted Living

Dementia Units

2600.231(e) Individuals with Alzheimer's Disease or related disorders by definition have a decline in mental and cognitive function. Those who have been assessed as needing a secured unit have poor judgement, wander, do not recognize a dangerous situation and/or are exit seeking. It is therefore expected that the resident will not always, and usually never, be in agreement with placement options. Families and/or POA's should be in agreement with placement and documentation from them should be satisfactory.

2600.231(g) The dementia unit/facility should be able to determine their own admission criteria. If someone without dementia chooses to reside in a dementia environment, they should not have the directions to release the door. It would place those residents with dementia at risk.

2600.232(d) I am not sure of the intent of this statement, but in our dementia facility it is the environmental design (not environmental awareness) that maximizes independence and promotes socialization of residents.

2600.233(d) To conspicuously post the directions for the operation of the door is placing dementia residents at **extreme risk**. People with dementia can read and follow directions. Visitors may also inadvertently allow residents to exit. The purpose of the secured (locked) unit has just been negated.

2600.234(a) This requirement for implementation of a support plan 3 days prior to admission makes no sense. In reality even with a comprehensive assessment prior to admission, the person with dementia may respond and behave differently in a strange environment.

2600.237(a) Why it is necessary to prescribe specific activities for persons with dementia when it is not prescribed in 2600.221 for all residents? Are not all residents in need of activities?

2600.238 By classifying all residents with dementia as a "resident with mobility needs", all bedrooms in a dementia unit/facility should be 100 sq.ft. as noted in 2600.101(c).

# *PANPHA's Top Needed Changes to Final Regulation #14-475: Personal Care Homes*

## 1. Fire Safety Upgrade Requirements beginning with 2600.130, Pg. 48

**A. 2600.130 (e) Smoke Detectors/Fire Alarms**
**PANPHA COMMENT:** The requirements in this section, while of good intent, will be extremely costly and time consuming to implement. 2600.130(e) will likely require a new alarm system, including new wiring and the labor costs to install the system in many homes with elderly residents.
**RECOMMENDED CHANGE:** Give PCHs more time to budget for and implement this requirement. Two years would be adequate.
**DPW RESPONSE:** ***The Department has agreed to change to the Preamble to allow 18 months from the effective date of the regulation to implement 2600.130(e) (relating to smoke detectors and fire alarms).***
**STATUS:** PANPHA Continues to believe that more than 18 months of budget planning and implementation time is necessary. Suggest the Department revise their change in the preamble to read "effective January 1, 2007".

**B. 2600.130 (f) Monthly testing of Smoke Detectors**
**PANPHA COMMENT:** The requirement in subsection (f) that smoke detectors be tested for operability at least once monthly is extremely costly for some types of sophisticated detectors (e.g, Providers have indicated this is a two person job which can take a great deal of time, and often needs to be performed by fire safety firms which can be very costly).
**RECOMMENDED CHANGE:** If, as indicated by DPW, the fire drill can be counted as the monthly test for operability of the smoke detectors, that will be helpful, however, this should be clarified.
**DPW RESPONSE:** ***Verbal assurance that monthly fire drill may be used as test for smoke detectors. No tolling change.***
**STATUS:** PANPHA believes this should be clarified via tolling to prevent selective interpretation of this requirement under subsequent Administrations.

**C. Monthly Unannounced Fire Drills – 2600.132(a)**
**PANPHA COMMENT:** Fire drills must be conducted monthly under the current regulations, but they may be announced. Unannounced fire drills may be less effective than announced fire drills, especially since they must be conducted with such frequency.
**RECOMMENDED CHANGE:** Study whether unannounced fire drills improves or impeded fire safety. Consider a mixture of primarily announced and several unannounced fire drills per year, held on a monthly basis, so that residents don't become desensitized to the drills.
**DPW RESPONSE:** ***No Change***
**STATUS:** PANPHA continues to believe that further study of the benefit of unannounced fire drills is warranted rather than locking in the requirement for unannounced drills without input from fire safety experts.

**D. Consultation with Fire Safety Expert – 2600.132(d)**
**PANPHA COMMENT:** Many communities have volunteer fire departments, so the fire safety expert has to have a job in addition to his or her fire safety duties. The fire safety expert should be allowed to be a staff person of a personal care home and provide advice and oversight o the inspections and fire drills. This ensures that the fire safety expert has an excellent working knowledge of the home and its residents and it would be a hardship for the fire safety expert, the volunteer company, and the home to require otherwise.

**RECOMMENDED CHANGE:** Change the last sentence of 2600.132(d) to read "For purposes of this subsection, the fire safety expert may not be a staff person of the home, unless the fire safety expert is part of a volunteer fire company."
**DPW RESPONSE:** ***No Change***
**STATUS:** PANPHA continues to believe that further study of the benefit of unannounced fire drills is warranted rather than locking in the requirement for unannounced drills without input from fire safety experts.

**E. Fire Drills – 2600.132(k)**
**PANPHA COMMENT:** It is impractical to hold a fire drill within five days of every new hire, and this requirement is inconsistent with the requirement for monthly fire drills under Sec. 2600.132 (a).
**RECOMMENDED CHANGE:** Delete 2600.132(k). If fire drills are held once per month, new staff will experience a fire drill very soon after hire.
**DPW Response:** ***2600.132 (k) deleted***

## 2. Operable Kitchen- 2600.103(a), Pg. 43

**PANPHA COMMENT:** We have numerous CCRC providers who prepare resident meals elsewhere on the campus, meeting all of the food service requirements under the regulation, and use a service kitchen in the PCH to distribute the meals. This requirement MUST be changed to allow for food preparation elsewhere as long as the home can meet the remainder of the requirements.
**RECOMMENDED CHANGE:** Add new (b): "Homes that are able to meet the requirements of 2600.161 (nutritional adequacy) and 2600.162 (meals) need not meet the requirements of 2600.103(a) as long as their kitchen area contains the necessary appliances to allow for safe storage of unconsumed resident food and for preparation of limited snack items."
**DPW RESPONSE:** ***Potential Tolling change to permit the use of a service kitchen in another building if there is a kitchen area with a refrigerator, cooking equipment, sink and food storage space in the home itself.***
**STATUS:** PANPHA appreciates the Department's potential willingness to toll this item which is of significant concern to many of our members with multiple levels of care on the same campus. We do not believe that their change proposed in the response shared with PANPHA on January 19, 2005 will eliminate the concern. It is our understanding from discussions with DPW staff that they have two major concerns in advancing this requirement. The first is assuring that meals served to residents are prepared in an appropriate manner and maintained at the necessary temperature to ensure safety and quality. The second is that PCH residents have as "home-like" an environment as possible, where residents can access unconsumed food outside scheduled meal times. PANPHA believes that the language provide above accomplishes both goals and maintains the integrity of the new requirements.

## 3. Prohibition on the use of Verbal Orders - 2600.186(c), Pg. 58

**PANPHA COMMENT:** Discontinuation of the use of oral orders in the personal care setting fails to recognize Pennsylvania's consensus on the use of oral orders as defined in "scope of practice" laws by state boards with oversight of clinicians with prescriptive authority. We do not believe it is in the best interests of the resident who's medication should be changed or discontinued immediately, but will have to continue receiving the medication until their physician can issue a written order.
**RECOMMENDED CHANGE:** "Verbal changes in medication can be made only by the prescriber, or in the case of an emergency, an alternate prescriber, and shall be documented in writing in the resident's record as soon as the home is notified of the change. A copy of the written order shall be provided to the facility on the next business day."
**DPW RESPONSE:** ***Toll to clarify subsection (c) relating to oral orders from a physician, to permit nurses to accept oral orders in accordance with regulations of the Department of State.***

**STATUS:** Addressed by the Department

## 4. Notification of Termination - 2600.228(b), Pg. 64

**PANPHA COMMENT:** The regulation as currently drafted prohibits the resident from being transferred to safeguard their health, safety or well-being unless a physician or the Department certifies this. Act 185 clearly states that personal care homes are not to serve residents who need the services "in or of a nursing facility", and places the burden of compliance with this requirement on the home. In fact, under the current regulations, a home's failure to initiate discharge/relocation to an appropriate care setting is considered a Class II violation, indicating a "substantial adverse effect upon the health, safety, and well-being of a resident" results if the discharge does not occur. Yet, in the final form regulation, this section has been amended to completely remove the PCH from the decision process on a discharge that it is held accountable for under the Act. PANPHA members have expressed a great deal of concern about this provision.

**RECOMMENDED CHANGE:** Amend the language to read "If THE PROVIDER, an appropriate assessment agency, or the resident's physician determine that a resident needs a higher level of care"

**DPW RESPONSE:** ***Toll to clarify that the home makes the initial discharge decision: if the resident/designated person disagrees, an appropriate assessment agency or the resident's physician shall be consulted to determine the resident's level of care.***

**STATUS:** Addresses PANPHA's concern with 2600.228(h) as presented to the standing committee staff and the IRRC. However, this still does not address PANPHA's concern regarding 2600.228(b) 30-day notice of discharge requirement unless a delay would jeopardize health safety or well-being of the resident or others in the home, as certified by a physician or the Department.

## 5. Training Requirements and Qualifications for Administrators and Direct Care Staff –2600.54, 2600.55, 2600.64 and 2600.65, 2600.68 Pgs. 26, 27, 29-32, 32-36, 37-38.

**PANPHA COMMENT:** PANPHA members are concerned that the new requirements on qualifications for administrators and direct care staff will prevent many people who otherwise would be good caregivers from entering the profession. Additionally, the training requirements are not clear nor do they recognize the realities that PCH operators face when recruiting and retaining Administrators and Staff.

**RECOMMENDED CHANGES:**

A. On page 27, allow nurse aides deemed competent by successfully completing a state approved nurse aide training program to meet the minimum qualifications to serve as direct care staff in a PCH. Since the knowledge and competency they must demonstrate qualifies them to work with residents of skilled nursing facilities, it is logical to assume that their preparation more than qualifies them to care for the lower acuity residents residing in PCHs.

B. On page 27, allow all others who have proven they are competent through passing the Department developed competency exam for direct care workers to serve in that capacity regardless of whether or not they have a high school diploma or GED. Discussions with Department staff indicated that the H.S. diploma/GED requirement stems from the isolation in which many PCH direct care staff must operate and the role that staff literacy plays in resident safety. PANPHA concurs that literacy of direct care staff is important, but does not believe that the attainment of a H.S. diploma or GED is an appropriate way to ensure literacy given the personal challenges that members of our workforce often face. PANPHA suggests that DPW add a written section of the competency test to ensure literacy for those individuals who do not have a H.S. diploma or GED. Suggested language follows: "2600.55(c) The staff qualification requirements of 2600.54(a)(2) do not apply if a person can demonstrate successful completion of a state approved Nurse Aide Training course and passes the Nurse Aide competency test or if a person completes the Department-approved direct care training course and passes the competency test."

**DPW RESPONSE:** ***Allow Certified nurse aides (by PDE) to become direct care staff in personal care homes.***

**STATUS:** PANPHA appreciates the Department's willingness to add this provision. We have a remaining concern on the language to ensure that the PDE nurse aide training is cited appropriately. We also would respectfully request consideration of our full language above that allows direct care staff to demonstrate both competency and literacy through the required competency test, eliminating the requirement that all direct care staff have a H.S. diploma/GED.

C. On page 37, it is not clear whether 2600.68 applies to administrator training or to both administrator training and the direct care worker training. This must be clarified. We believe that 2600.68 is intended to apply to administrator training instructor approval only. To clarify that 2600.68 applies only to administrator training, change 2600.68(a) to "(a) ADMINISTRATOR training provided by an individual who is not certified as an instructor by the Department will not be considered valid training." (If section 2600.68 applies to both administrator training and direct care worker training, the train-the-trainer course should be offered as part of the administrator training so that the administrator is approved to train the direct care workers. There should also be opportunities for poster in-services and on-line courses. The Department should also allow direct care staff to pretest and not have to go through the training if they already know the materials to be presented. Finally, if the section applies to direct care worker trainers, the in-service person must be allowed to receive the certification and arrange for other subject experts who do not have the certification (such as the clinical records person, local fire marshall, etc.) to provide the training. It is impractical to send to the train-the-trainer course every potential person who could teach direct care staff to the train the trainer course and to be certified.)

**DPW RESPONSE:** ***Clarify that the requirement for instructor approval applies to administrator training and not to direct care staff training.***

D. Nurse Aides should be exempt from the direct care worker ADL training except for 2600.65(d)(3)(xiv) (the requirements of this chapter).
**RECOMMENDED CHANGE:** 2600.65 to add a new (e) "Nurse Aides deemed competent shall be exempt from 2600.65 (d)(2)and 2600.65 (d)(3)(i) through 2600.65(d)(3)(xiii), 2600.65(d)(3)(xv) through 2600.65(d)(3)(xvi)."
**DPW RESPONSE:** ***No change***
**STATUS:** PANPHA requests that the Department re-consider this decision. Since the knowledge and competency that nurse aides must demonstrate qualifies them to work with residents of skilled nursing facilities who have greater care and ADL needs than residents of PCHs, it is logical to assume that their preparation more than qualifies them to care for the lower acuity residents residing in PCHs.

E. Assure that 2600.65(e) annual training for direct care workers may be completed at the work site, through on-the-job training or in-service.
**DPW RESPONSE:** ***Verbal assurance of intent. No change in written language.***
**STATUS:** PANPHA believes this should be clarified via tolling to prevent selective interpretation of this requirement under subsequent Administrations.

## 6. Volunteer definition includes IADL assistance, may require direct care worker training - 2600.4, Pg. 10

**PANPHA COMMENTS:** The definition of volunteer needs clarification. Since direct care services now include IADLs, and IADL definition includes activities such as (iii) securing and using transportation, (vi) making and keeping appointments, (vii) caring for personal possessions, (viii) writing correspondence, and (ix) engaging in social and leisure activities, there is concern that volunteers providing these services will need the same training in ADL and IADL provision as direct care staff. If this is the intent, it will virtually eliminate the willingness of many to volunteer in the personal care setting, reducing the quality of life for residents.
**RECOMMENDED CHANGE:** Add "2600.65(g) Volunteers are not required to complete the training specified in 2600.65(d) unless they provide unsupervised ADL services more than 10 hours per week to persons who are not members of their family." Additionally, the orientation should be offered to, not required of volunteers. Compliance will be extremely difficult. Change 2600.65(b) to "Within 40 scheduled working hours, direct care staff persons, ancillary staff persons AND substitute personnel [and volunteers] shall have AND VOLUNTEERS SHALL BE OFFERED an orientation that includes the following: (1) Resident rights. (2) Mandatory reporting of abuse and neglect under the Older Adult Protective Services Act." Add new (c) and renumber: "Within 40 scheduled working hours, direct care staff persons, ancillary staff persons AND substitute personnel [and volunteers] shall have an orientation that also includes the following: (1) Emergency medical plan. (4) Reporting of reportable incidents and conditions."
**DPW RESPONSE:** ***Revised 2600.54(c) ( volunteer to meet staff person qualifications and training requirements) to clarify that this applies only to a volunteer who performs ADLs.***
**STATUS:** The Department partially responded to PANPHA's concerns. We continue to believe that the language we provided above is the most appropriate way to deal with this issue.

## 7. Resident Contract Concerns - 2600.25, Pg. 18

**PANPHA COMMENT:** The providers we discussed this provision with are completely supportive of full disclosure of costs for their residents. There is, however, great concern about the level of detail in cost breakout that is presumed in this section of the regulation and more importantly, the extent to which the resident contract will need to be continually amended as the resident's condition and needs change. PANPHA members have concerns about adding a support plan to a contract that the resident already signed It would be reasonable instead to

have the resident or designated person sign the support plan. Especially of concern are 2600.25(b)(2) and 2600.25(b)(11).
**RECOMMENDED CHANGE:** Change 2600.25(b)(2) to "A fee schedule that lists the actual [amount of allowable] resident charges for [each of the home's available services] SERVICES ROUTINELY AVAILABLE THROUGH THE HOME. Change 2600.25(b)(11) to a list of personal care services to be provided, a list of the actual rates that the resident will be periodically charged for food, shelter and services and how, when and by whom payment is to be made. The resident or their designated person shall have the opportunity to review and sign the support plan. [Services listed in the resident's assessment and support plan shall be added to the resident-home contract upon completion of the resident assessment and support plan.]
**DPW Response: 2600.25(c)(11) – Delete the last sentence requiring an amendment of the contract each time an amendment is made to the resident's assessment and the support plan.**
**STATUS:** Partial response to PANPHA's concern about the onerous nature of needing to amend the contract each time a resident's assessment and support plan changes. We continue to have concerns about the level of detail that will be required in resident contracts.

## ADDITIONAL PANPHA PRIORITY CONCERNS:

- 2600.63(d) – change to: "A staff person who is trained in first aid or certified in obstructed airway techniques or cardiopulmonary resuscitation shall provide such services in accordance with their training, UNLESS THE PERSON HAS A VALID OUT OF HOSPITAL DNR UNDER THE DO-NOT-RESUSCITATE ACT, 20 PA.C.S. CHAPTER 54."
  **DPW RESPONSE:** ***Propose to clarify that this does not apply if there is a do not resuscitate order.***

- 2600.4 The definition of dementia is not consistent with *Taber's Cyclopedic Medical Dictionary*. Note that the medical definition does not include wandering as a symptom. Use the Tabors definition instead of the definition in the final form regulations: "A broad term that refers to cognitive deficit, including memory impairment. There are many causes. The current classifications include dementia of Alzheimer's disease; vascular dementia AIDS dementia; dementia due to head trauma; dementia due to Parkinson's, Huntington's, or Creutzfeldt-Jakob disease; and dementia induced by substance abuse. Symptoms: The onset of primary dementia may be slow, over months or years. Memory deficits, impaired abstract thinking, poor judgment, and clouding of consciousness and orientation are not present until the terminal stages; depression, agitation, sleeplessness, and paranoid ideation may be present. Patients become dependent for activities of daily living and typically die from complications of immobility in the terminal stage."

- 2600.233(d) - Posting the directions for exiting the secured unit near the door. Although this has been the policy of the Department for several years, it does not work. People with dementia are able to figure out the code. In addition, visitors who do not realize the person asking for help in exiting has dementia may unlock the device for the resident. Delete the word "conspicuously".
  **DPW RESPONSE:** ***Propose to clarify the definition of dementia that symptoms of dementia "may" include those examples specified.***

- The cost of complying with the training, assessment, and building requirements continues to concern PANPHA members.
  **DPW RESPONSE:** ***Protections are essential; some costs are necessary to achieve protections.***

(97)

Original: 2294

**Pennsylvania Association of Resources**
**for People with Mental Retardation**

1007 North Front Street
Harrisburg, PA 17102
Phone 717-236-2374
Fax 717-236-5625

February 21, 2005



John R. McGinley, Jr., Esq., Chairman
Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

**Re: Final-Form and Tolled Changes Department of Public Welfare Personal Care Home Regulations/Regulation Number: 14-475 IRRC Number: 2294**

Dear Mr. McGinley,

Thank you for the opportunity to provide feedback on the above-referenced final-form regulations and tolling changes. The Pennsylvania Association of Resources for People with Mental Retardation (PAR) is a statewide association whose members provide the full range of supports and services to individuals with mental retardation of all ages in over 3,200 sites in the Commonwealth in addition to numerous non-residential and in-home supports.

There is general consensus within PAR that Pennsylvania's Personal Care Homes are in need of enhanced regulations to improve health and safety for consumers. The process that the Department engaged us in to make necessary changes to the proposed regulations and the negotiations around the final-form regulations that resulted in changes through the tolling process was successful in producing a set of regulations that we can support. **PAR is therefore writing in support of the final-form Personal Care Home (PCH) Regulations provided that the changes recommended by DPW through the tolling process are incorporated into the final regulations.**

We provided comments on the proposed rulemaking for Personal Care Homes (PCH) on November 2, 2002 and on the PCH regulations preview on April 12, 2002. PAR was pleased that the Department of Public Welfare (DPW) responded to several of our comments and recommendations, including the following:

- To submit a revised cost estimate. (Note: While the revised cost estimate does not reflect all true costs and is still insufficient, it is better than the 2002 cost estimate of $680 per licensed home.)

- To address costs by grandfathering existing homes from certain requirements including new qualification requirements for staff.
- To address cost issues for smaller homes. The final-form regulations exempt smaller homes from certain requirements.
- To address the problems with the requirement to have an individual staff training plan. This requirement was deleted.
- To clarify that pets are allowed in homes.
- To acknowledge costs of the requirement for homes to have written sanitation approval for its sewage system. The final-form regulations exempt homes with 9 or fewer residents.
- To acknowledge the costs associated with the requirement for plastic covered mattresses. The final-form regulations remove this requirement.
- To address institutional requirements in the section on kitchens/dining rooms. The requirement to rotate, date, and inventory food was deleted; the prohibition on animals in the kitchen and dining room was deleted; and the requirement to have garbage stored in a covered container was deleted.
- To address exit signs in homes. Small homes were exempt from the requirement to have exit signs.
- To address the costs associated with the increased requirements for smoke detectors and fire alarms. Small homes were exempted from these increased requirements.
- To extend the amount of time for completing an initial assessment from 72 hours to 30 days. The final-form regulations extend this timeframe to 15 days.
- To extend the amount of time for developing a support plan from 15 days to 30 days. 30 days is now the timeframe.

PAR is also pleased to learn that DPW engaged in the IRRC's new tolling process by recommending several changes to the final-form regulations before the Commission takes final action. In discussions with the Department, PAR raised several issues of concern that the Department agreed to address in recommendations made through the tolling process. The Department's willingness to address these issues has been critical to PAR's support of the final-form regulations. PAR thanks the IRRC for allowing the Department to engage in the tolling process to make important changes. These changes include:

**1. Modifications to training requirements for direct support staff.** *(Refer to: §2600.65 (Direct care staff person training and orientation); §2600.67 (Training institution registration); §2600.68 Instructor approval)*

Sections 2600.67 and 68 are new, and in general require institutions providing training to be registered and approved by the Department and also require instructors to complete the Departments train-the-trainer course and to be approved by the Department. The final-form regulations establish new requirements for prior Department approval for each instructor, institution and course. This is excessive and costly for the entire system. It also would eliminate some of the best instructors (i.e., national experts who would never complete a train-the-trainer course given by DPW). In response to PAR's concerns, the Department agreed to exclude direct support staff


Pennsylvania Association of Resources for People with Mental Retardation
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from the pre-approval requirements, although administrators would still be subject to them. While PAR prefers that sections 2600.67 and 68 are completely removed, we appreciate the exclusion of direct support staff from these sections, as the negative impact would have derived more from application to direct support staff training than administrator training.

**2. Corrections to errors regarding timeframes.** *(Refer to §2600.23 (Admission); §2600.225 (Initial and annual assessment); §2600.227(Development of the support plan)*

There were conflicting timeframes in the sections referenced above in the final-form regulations. The Department corrected the error through the tolling process, assuring PAR that the longer timeframes for the initial assessment (15 days vs. 5 days) and development of the support plan (30 days vs. 15 days) would be the timeframes included in the regulations.

While PAR appreciates the Department's attention to all of the issues discussed above, we remain concerned about the following major area:

- **Unannounced inspections.** *(§2600.3 "The Department will annually conduct at least one onsite unannounced inspection of each personal care home.")*

*§2600.11* specifically waives §20.31 and 20.32, which requires the facility or agency to be advised in advance of the annual inspection. While unannounced inspections outside of licensure are an appropriate and necessary monitoring tool, unannounced inspections for the purpose of licensure are not cost-effective and not indicated by national research as being the most effective or cost-effective means of conducting licensing inspections.

Annual licensing inspections should be announced to give providers the opportunity to gather the necessary information and to ensure they have adequate staff coverage for the inspection. This advance notice also ensures that licensing inspectors will have the most thorough, comprehensive information at hand.

Providers should know that they are subject to unannounced inspections, including complaint inspections, throughout the year. This is sufficient; the annual licensing inspections don't need to be unannounced as well. **PAR therefore requests that the Department look at the research and the costs more closely in developing its future regulations.**

**********

Thank you for considering our comments and recommendations. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


Pennsylvania Association of Resources for People with Mental Retardation
1007 N. Front Street ❖ Harrisburg, PA ❖ 717.236.2374

Shirley A. Walker

Shirley A. Walker
President and CEO

cc: Karen Kroh, Human Services Policy Specialist
Department of Public Welfare


Pennsylvania Association of Resources for People with Mental Retardation
1007 N. Front Street ❖ Harrisburg, PA ❖ 717.236.2374

## IRRC

**From:** Shirley Walker [Shirley@par.net]
**Sent:** Monday, February 21, 2005 9:29 PM
**To:** IRRC
**Subject:** PAR Comments 2005.0221 Final Form and Tolled Changes PCH Regulations

Comments
05.0221 Final Form

<<Comments 2005.0221 Final Form and Tolled Changes PCH Regulations.doc>>

(94)

Original: 2294



RETIREMENT AND SENIOR
CARE SERVICES

February 21, 2005

Independent Regulatory Review Commission
John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
333 Market St., 14th Fl.
Harrisburg, PA 17101

Dear Representative,

As a provider of personal care services in Pennsylvania, I am very concerned with the Final Form Personal Care Home Regulations which are receiving a hearing this week. While I wholeheartedly support the strengthening of regulations to ensure the health and safety of our residents, I am struck by the haphazard nature of the Final Form Regulations which actually may **cause harm to our residents** and do not provide for homelike, residential care as indicated in the DPW response to provider concerns.

I provide you with the following examples:

- 2600.xxx gives the resident the right to choose their own health care provider **without limitation** by the home. Our facility has instituted criteria that care providers must have to enter our home which are no different than the criteria we have for staff, including criminal background checks, liability insurance, tuberculin testing and workers compensation. Under these new regulations, we would be jeopardizing the safety of all residents by not being able to reject those outside caregivers that don't have these criteria.
- 2600-xxx provides for no mechanism for a physician to provide instruction to the personal care home staff on medication adjustments required for the health of the resident, especially for those medications that need immediate adjustment based on resident vital signs or the results of testing. As indicated in the DPW response, there is no requirement for licensed nursing staff in the facility, however, there is no ability to meet resident's urgent needs without one. Most homes without a nurse will have no choice but to transfer a resident requiring an urgent medication adjustment to the emergency room.

In addition to these examples, there are multiple examples throughout the regulation of areas that are critical to the operation of personal care homes, but which have not been clarified by DPW in the regulation itself. This provides for multiple interpretations of the regulations by individual surveyors and provides no ability to appropriately plan for their implementation.

Finally, I am concerned that the Final Form Regulations impose many new costs on providers that DPW has indicated are negligible. I am aware of smaller homes that do not currently meet these regulations and am concerned that they may no longer be able to operate. These are the homes that serve primarily SSI residents. Our homes' ability to provide subsidy to our residents is already stretched and it is unlikely that these additional charity care residents would be able to be absorbed by our homes or other providers.

I believe DPW has not worked with providers on ensuring that the regulations truly improve the health and safety of our residents and have downplayed the fiscal impact on every provider, as well as the community. For these reasons, I do not support the Final Form Personal Care Home Regulations and urge you to do the same.

Sincerely,

Diane Burfeindt
Presbyterian Homes
Camp Hill, PA

1217 Slate Hill Road, Camp Hill, PA 17011

# FAX

**To:** John McGinley, Chairman - IRRC

**Voice Phone Number:**

**From:** Diane Burfeindt

**Company:** PHI

**Fax Number:** 570-323-9202

**Voice Number:** 717-979-5241



MESSAGE

**Date:**

**Pages:** 1 of

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Original: 2294

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**John R. McGinley, Jr., Chairman**
**Independent Regulatory Review Commission**
**333 Market St., 14th Fl.**
**Harrisburg, PA 17101**
**(717) 783-2664**



**Dear Mr. McGinley,**

RE; Response to proposed Personal Care Home Regulations

While many of us in the Personal Care industry are grateful to the Department of Public Welfare for agreeing to some changes in the proposed 2600 regulations, there remain several outstanding issues that will cause much undue burden on providers and likely force many good providers out of business.

Specifically, 2600.30 (f) relating to monthly testing for smoke detectors. While the Department has verbally stated that they would accept a monthly fire drill as a test for the smoke detectors, the regulation does not state this. With the current wording in place, there is much interpretation allowed by inspectors with no protection for providers. While fire safety is a concern for all of us, the regulation, as written would cause much financial harm to facilities. Some larger home would incur up to an additional $2,000 per month to have an outside vendor test all smoke detectors and alarms. These homes have highly sophisticated systems that allows for internal monitoring of the independent devices. While the specific cost to smaller (4-15 bed homes) would be less per month, it would in reality be a higher % of their monthly budget for expenses.

2600.186(c) relating to Verbal orders would be a large safety hazard to residents. The regulation could likely delay the implementing of an order until a licensed staff member could contact the physician. Specifically, if a home were to employ a nurse for even 2 out of 3 shifts for the day and a resident would require a change in insulin orders due to a significant event, the home would be require to either 1) send the resident to the hospital for treatment, causing undue stress on the resident and the medical system, or 2) delay the treatment until a licensed nurse could talk with the physician personally. In many instances were there are residents that require frequent

medication changes this regulation will force providers to opt to have the resident assessed for a higher level of care (while it may not necessarily be needed there are no physicians or assessment agencies that will deny a move to a higher level to protect themselves). This will further cause an increase in state funded care through Nursing Facilities.

2600.54,55,64,65,68 relating to staff/administrator training are very problematic. In addition to increased costs to the providers, there is currently no system in place for DPW to provide the training. It is unlikely that they would be able to develop and implement a program prior to the effective date of the proposed regulations.

2600.233 (d) relating to Dementia units were not well thought out. Should a spouse of a dementia resident want to reside with that spouse, there are grave concerns that should the non-demented spouse be able to open the doors without supervision, there would be the risk of elopement by other residents.

In summary, the proposed regulations do not address the core issue. New regulations will not ensure accountability. While they give some increased authority to the Department, if the current regulations are not enforced consistently for poor performers, why do we think more stringent regulation will be followed through upon? Poor performing home would be closed even under the existing regulation, if enforced consistently. This new set of regulations will only force more facilities out of business and increase the State Medicaid census for Nursing Facilities. In a critical budget crisis for the State, adding additional cost will further burden the taxpayers of the Commonwealth. I would request the the proposed 2600 regulation be rejected.

Thank you for your time in this matter

Sincerely,

Brian K. Hortert

Brian K. Hortert
Director of Assisted Living
Concordia Lutheran Ministries

Concordia
Lutheran Ministries

Adult Day Care Services
Assisted Living Services
ConcordiaCare Visiting Nurses
Concordia Haven Apartments
Skilled Nursing Services
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## *Facsimile Cover Letter*

**To:** John R. McGinley Jr. IRRC **From:** Brian Hanlon

**Fax Number:** (717) 783-2664 **Date:** 2-21-05

**Company: Concordia Lutheran Ministries** **Subject:** Proposed PCH Regulations

**Number of Pages (Including Cover Letter)** 3



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THANK YOU

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**IRRC**

**From:** Phil Krause [pkrause1@comcast.net]
**Sent:** Friday, February 18, 2005 9:47 AM
**To:** IRRC
**Subject:** Response to Proposed Personal Care Home Regulations

Good Morning, Committee Members!

Attached are our responses to the proposed personal care home regulations. Thank you for your consideration.

Sincerely,

Phillip H.Krause
Personal Care Provider

Original: 2294

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# Schoolyard Square

"An Assisted Living Community"
11-13 High St.
Pine Grove, PA 17963
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Dear Members of the Independent Regulatory Review Commission:

Please consider these comments on the final form regulation, 55 Pa. Code Chapter 2600 personal care home regulations proposed by the Pennsylvania Department of Public Welfare. We will cite the proposed section of the regulation, it's corresponding page number, and include our remarks afterwards.

Before doing so, however, we would like to commend those who drafted these final form regulations for the scope of their work. In particular, we recognize the effort they employed pouring over earlier proposals to come up with a more clear, concise, and readable version. As personal care home providers with 20 years of service to the medically and psychologically frail elderly citizens of this Commonwealth, we are grateful for the improved, more simplified style. Our primary concern, however, remains with substance of these proposed regulations rather than their style.

Our remarks will follow. Thank you for considering them.

Sincerely,

*Phillip H. Krause*

Phillip H. Krause
Proprietor

Cc: PALA
Representative Bob Allen
Senator Jim Rhoades

## Comments on Proposed Regulations

**2600.4 Definitions.**

**Purpose:** The proposed regulation reads, "The purpose of this final-form rulemaking is to protect the health, safety and well-being of personal care home residents." For quite some time there has been talk among the personal care home "stakeholders" and those who have drafted legislation leading up to these proposed regulations about creating two levels of care to replace the previous definition of personal care. It seemed to be highly preferred and recommended to change the "name" of these levels to "assisted living." This is consistent with the name used in many other States when referring to this level of care and one that has become more easily recognizable in the marketplace. Interestingly and curiously, the assisted living nomenclature has been omitted from these proposed regulations. We prefer the use of the term "assisted living" for the level of care/services, proposed in these regulations and would suggest that all reference to personal care be substituted to read "assisted living." We have never supported the creation of two levels of care as recommended by some in our profession. Instead, we would prefer to see a designation of "small" home and "large" homes with appropriate adjustments to the same set of regulations governing each made through the survey process. This will more closely address the uniqueness of each home benefiting it and the individuals served in that setting.

*Personal care home, home*: The proposed definition indicates that a personal care home is, "a premise in which food, shelter and personal assistance or supervision are provided... but who do require assistance or supervision in...." This proposed definition indicates that a resident of a personal care home requires assistance or supervision. Any adult who chooses to live in a personal care home and can afford to pay the cost to do so, should be allowed to choose this housing option. As written, the proposal eliminates the choice of an independently functioning adult to live in a personal care home. Therefore, we propose that the definition read, "... but who may require assistance or supervision...."

*Resident*: Similar to the remark above, the proposed definition of a resident should read " an individual unrelated to the legal entity, who resides in a personal care home and who may require personal care services, but who does not require the level of care provided by a hospital or long-term care facility."

*Support plan*: This is a new concept being foisted upon the personal care home operators. It sounds noble but is unpractical, unwieldy and will make for a lot of extra paperwork for a home. ? Historically the care of individuals residing in personal care homes has been overseen by the resident's personal physician. As providers, our mission always has been "to carry out the directions of the resident's physician." We see no reason to change this. We see no reason to impose the additional requirement of any written support plan.

What the proposed regulation seems to want to accomplish should be accomplished by accurately documenting compliance with the doctor's orders. We do it now; it should remain.

In addition, it is unclear by the definition of the support plan whether this plan includes all services, even those beyond the services provided by the home or employees of the home such as physical therapy or podiatry. What control will the home have over the provision of services by these other providers? How responsible will the home be or should the home be for the proper or improper provision of services by outside agencies? Scrap the support plans!

**Section 2600.5 Access.** The revision states that the administrator or designee shall provide, upon request, immediate access to the home, the residents and records to (2) Representatives of the Area Agency on Aging. This should be spelled out more clearly. Who from Aging should have this broad access and, frankly, why? Also, section © should be amended to read that these individuals coming into the building either during normal visiting hours or by appointment, should be required to report to the administrator's office and to sign into the building so as to memorialize their visit.

**Section 2600.16 Reportable incidents and conditions.** This list has become longer and much more intrusive into the daily life in the resident's home. The breadth and depth of this list it implies a much more adversarial relationship between the provider and the client. While we understand the reasons behind the lengthening of the list of reportable incidents, we plead for the Department to maintain the relationship it has had with the provider community by acting in concert for the benefit and welfare of the residents we serve.

**Section 2600.17 Confidentiality of records** Throughout the revision of these regulations, the presence of the Ombudsman has increased. Does anyone know why, can anyone explain the value of this position within the process? If it is to serve as an unbiased, third-party to resolve conflict between the consumer and provider, then we welcome its presence. If it is to serve as an overseer or neo-regulator, then we oppose its presence. We have a consumer, a provider of services and a licensee who oversees the provision of the services. What else is needed? Why have an Ombudsman and why provide him/her access to a resident's record? Let the surveyors and the survey process be responsible for the enforcement of these regulations.

**2600.23. Admission.** Omit number four (4). Support plans should be deleted from the new regulations.

**2600.25 Resident Home Contract.** (11). Many homes operate under a simple "one charge for all services" concept. This proposed change in a provider/resident agreement assumes that each service provided will be charged separately. The bookkeeping and paper trail could be a nightmare and necessitate more staff. As the resident's needs change, the services provided can change. We need to be flexible enough to make these changes as they occur, as quickly and/or frequently as the need arises.

In section (h), it states that," the service needs addressed in the resident support plan shall be available to the resident every day of the year. "This need not be stated because "the thing speaks for itself." It should be eliminated. Besides, as stated earlier, we disagree with the need for a support plan.

**2600.26 Quality Management.** The proposed regulation states, " The home shall establish and implement a quality management plan." While we support this concept in principle, development of such a program is an extremely time-consuming effort and likely will not improve resident care. Improvement of care and services in the personal care home is better overseen, evaluated and corrected through the survey process. A Quality Management program is just a paper-work requirement and should be eliminated.

**2600.42 Specific Rights.** Letter (l) states, " a resident as the right to furnish his room and purchase, received, use and retain personal property clothing and possessions. This is very broad and general and has the potential to be abused by the resident. It would be better to include a statement that qualifies this matter by saying that all items must conform to the use, maintenance and storage of personal possessions established in the home's "house rules."

In section (x) it states, " a resident and has the right to repayment if the home fails to safeguard a resident's money and property." The end of that sentence should be revised to read, "if the home fails to safeguard a resident's money or property, about which it has been made aware through the resident's admission's inventory or subsequent notice of possession of the item presented in writing to the administrator. Families and friends bring items into the home for the residents all the time and never tell anyone they are doing so. It is unreasonable to hold the home accountable for these items.

**2600.54. Qualifications for direct care staff persons.** In section (b) it states that, "...A staff person who is 16 or 17 years of age may not perform tasks related to incontinence care, bathing or dressing of residents without supervision." This should be eliminated. May of the staff hired in this category are high school students who are considering careers in nursing or allied health services. With proper training and support they can be very valuable members of the workforce while at the same time forming opinions about whether or not they are suited for a career in healthcare. They are often members of nursing clubs in school. In Pennsylvania, these young people are old enough to drive a car independently, without supervision. Their decisions behind the wheel clearly affect the welfare and safety of everyone else on the road at the time they are driving. They are also old enough to bear children and care for them. Simply put, we are asking these young people to change diapers, give baths and put on clothing; skills that they must employ if they are parents. It seems silly to require that these youngsters perform these elementary functions of basic care with supervision. If the issue is that a youngster should not be working alone in a home while performing these tasks, then say that.

**2600.64 Administrator training and orientation.** This is a huge area of overkill! Establish a minimum academic requirement for entry as an administrator, provide a solid orientation to these individuals in personal care home management and let the market

determine who continues in the field. The annual requirement of 24 credit hours of course work is superfluous. Most of the other academic exercises are a waste of a provider's time. As a nursing home administrator for over twenty years, I have taken over 480 hours of course work in the ten biennia represented. Very little of the course work was relevant to the daily operations of a healthcare facility. There is no consistency in the class offerings region-to-region, school-to-school, or instructor-to-instructor. It just ends up being a lot of time spent away from the home-time that would be better spent attending to the care of the residents and the affairs of the home. Again, the 24-hour or any academic requirement beyond the basic orientation is unnecessary. It is great business for the educational institutions but of little value to the homes.

A better way to improve the professional development of the administrator while at the same time making good use of an administrator's time would be to implement an annual requirement of two days of Department- supervised, consistently designed and presented training for each administrator to inform him/her of the latest issues or trends in personal care administration and regulation. This would be a responsible, welcomed alternative to the proposed requirement.

**2600.65 Direct care staff person training and orientation.** In section (d) (2) it states that direct care staff shall have, "successful completion and passing the Department-approved direct care training course and passing of the competency test." As providers, it is our hope that this department-approved direct care training course can be downloaded from the Internet or taken on-line and readily available to our staff as needed. This will greatly speed up the hiring process. The provider would be entrusted to administer and grade the test or, of course, it could be handled on-line.

**2600.66 Staff training plan.** While we believe it is important to emphasize staff training, we believe that the new regulations are overkill in this area.

**2600.67 Training institution registration.** The Department could do away with this issue if they would develop a standard competency-based program that is affordable and easily accessible to the provider/employer and the employee. It could all be set up through computer-assisted instruction.

**2600.68 Instructor approval.** Again, this is superfluous. Why not just standardize the effort and have one competency-based program developed by the Department of Public Welfare. The Department then could establish minimum competency requirements in the areas that they are planning to review and for which they are planning to hold the home accountable.

**2600.91 Emergency telephone numbers.** In an area where 911 service is available, eliminate the requirement to have all of the other emergency numbers posted by the phone. Eliminate the requirement to have the complaint hotline posted on or by each telephone with an outside line. Instead post this number in a conspicuous place elsewhere in the building. Let's promote a spirit of cooperation and being advocates of the residents, rather than a spirit of complaining and being adversaries to the residents.

**2600.171 Transportation.** The proposed item (6) states that, "during vehicle operation, the driver may only use a hands-free cellular phone." How can we possibly legislate safe driving in these regulations? Take it out!

**2600.188 Medication errors.** The proposed item (b) reads, "A medication error shall be immediately reported to the resident, the resident's designated person, and the prescriber. This seems to be a bit of an overreaction. It makes sense to report immediately to the resident and to report as soon as possible within a 24-hour period to the prescriber, but it makes no sense to immediately report this information to the resident's designated person. With our years of experience, we can assure you that no family member or designated person will want to be bothered with this information, particularly late at night or early in the morning. The error will be documented and available for review during the home's normal business hours. This should be sufficient for the family or designated person's "need to know." Of course, if there is an adverse reaction to this med error, resulting in emergency treatment or hospitalization, the family member or designated person will be contacted immediately. As it is proposed, this requirement is unwieldy and unnecessary.

**2600.191 Resident Education.** This addition has the potential to open a Pandora's box. Documentation of resident education is unwieldy and unclear as to content and frequency. Is the resident to be "educated," each time, there is a medication change? This is superfluous and unnecessary. The resident certainly should be informed of the doctor's decision to make a change in medication or treatment regimen, but it seems unnecessary to document each and every "resident education."

**2600.227 Development of the support plan.** This is one area that I'm sure the entire provider community questions. The majority of us recognize the need for accountability in the delivery of our services. The development and maintenance of support plan's foist upon us unnecessary and unwieldy paper compliance that will most likely not result in the improved care or well being of our residents. This is simply a paper compliance matter. It will surely require additional personnel to complete the tasks of documentation. It will have no direct benefit to the resident. Most providers would rather place the time spent in this effort into direct care of our residents. Again, we maintain that our responsibility in the care and welfare of our residents is to follow the resident's physician's orders. The physician, by virtue of his or her medical education, medical history and diagnosis of the resident is best qualified to make a determination about what is best for the health and welfare of a resident. It would be best if we, as providers, would not in any way interfere with his role. Additionally, the creation of such a requirement is similar to the comprehensive medical assessment that is required in a skilled nursing facility. We do not want to become, nor should we become, quasi-nursing homes.

**2600.234 Resident care.** Again, there appears to be no reason to develop a formal support plan for individuals living in a secure dementia care unit.

**2600.236 Training.** The revised regulation (2) (xi) states, "Each direct care staff person working in a secure dementia unit shall have 6 hours of annual training related to dementia care and services in addition to the 12 hours of annual training specified in section 2600.63. Again, this seems like overkill. A significant number of residents in personal care deal with some dementia-related issues from mild memory loss to severe loss of cognitive skills. It is reasonable and appropriate to include emphasis on dementia care and services in the over all training of each employee, but within the minimum requirement of 12 hours, not in addition to that requirement.

**2600.239 Notification to Department.** (3) (a). This should be changed to read,"... department's personal care home regional office...."

**2600.269 Ban on admissions.** The proposal in section (a) (2) states that the Department will ban new admissions if there is, "A repeated Class II violation within 2 years. This is a rather harsh sanction for this violation. Because the nature and severity of Class II violations have not yet been defined, and there can be such subjectivity applied to the interpretation of his class, it would be quite easy to have a repeated violation within two years. For example, failure to maintain rinse water at a level above 190°F in a dishwasher is a can be interpreted to "have a substantial adverse affect upon the health...of a resident." and is therefore a Class II violation. A ban on admissions seems to a harsh response to this type of situation.