



Original; 2294

## IRRC

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**From:** Mark [msbear@wpa.net]  
**Sent:** Wednesday, November 17, 2004 11:12 AM  
**To:** IRRC  
**Subject:** DPW 2600

November 16, 2004

Dear I.R.R.C.

We are the Westmoreland County Personal Care Home Administrator's Association and represent 82 homes and over 3,000 residents. We believe the final-form regulations are inconsistent, unclear and burdensome – and will have a profoundly negative impact on personal care for elderly Pennsylvanians. We are strongly urging you to report a Concurrent Resolution Disapproving the Regulation, 55 Pa. Code, Chapter 2600, Personal Care Homes for the following reasons:

1. **Social vs. Medical Model**

These regulations mirror existing regulations for long-term care facilities 28 Pa. Code, while, by definition, residents of a PCH are individuals “who do not require the level of care provided by a hospital or long-term facility.” Over-Regulation does not equate to quality of care. Excessive paperwork actually reduces the quality of care and greatly increases the cost which is passed on to the resident and family.

2. **Fiscal Impact**

The cost of the building requirement without grandfathering, the cost of implementing a quality assurance program which is a standard in a medical model, and the cost of the excessive training requirements, both starting work and annually, are economically prohibitive. These excessive costs must be passed on to the residents and their families and will make personal care out of reach of the private pay sector because the costs will be comparable to nursing home rates.

3. **Enforcement**

Excessive rulemaking is not needed to protect the health, safety and well-being of personal care home residents. Increased enforcement of the current regulations would strengthen health and safety concerns. Adding inspectors to enforce current regulation would add no cost to the residents and minimal cost to the state as opposed to the exorbitant cost of the proposed regulations.

We are appalled by the silent actions to have these regulations approved during a lame duck and shortened legislative session. Hundreds of thousands of Pennsylvanians (residents, families, providers, employees and their families) will be adversely affected without a representative voice. Stakeholders were not notified in accordance with Pennsylvania's Regulatory Review Act. A large majority are still unaware of the final-form regulation.

**Please do not allow these regulations to pass due to your inaction!**

**Respectfully,**

**WCPCHAA**

11/17/2004

**Mark Sayre, Vice-President (724-423-6114)**

11/17/2004

Original: 2294

11

RECEIVED *Victorian Cottage Personal Care*

2004 NOV 18 AM 7:08

Susan Jones Murphy RN, Administrator  
RR 5, Box 64-E  
Mt. Pleasant, PA 15666

WESTMORELAND COUNTY  
REGULATORY  
REVIEW COMMISSION

Phone: (724) 423-8706

November 17, 2004

RE: DPW Chapter 2600 Regulations

Dear Sir:

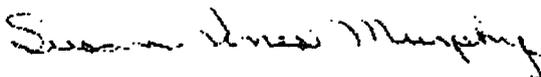
I attended a Westmoreland County Personal Care Home Administrators Association meeting today and am appalled by the sneaky and back-door way that DPW is trying to get their Chapter 2600 Regulations passed.

These regulations were posted a few days ago because DPW knows this is a lame duck month when minimal to no legislative business will be accomplished. Personal Care Home Administrators were not notified of the deadline for these regulations and now we have only two days to voice our comments. The voices of those affected by these regulations must be allowed to be heard. Since legislators have the time to discuss their own pay raises they must take the time to save the livelihoods of hundreds of low and moderate income PCH owners like myself from the devastation of these regulations.

My PCH business is my retirement plan and these regulations, as written, will force me to close my doors and forfeit the thousands of dollars that I have invested in it. The cost of the requirements of these "over-regulating" regulations will destroy hundreds of "Mom and Pop" homes like my 13 bed home. Please keep the present 2600 regulations but require DPW to enforce them! Hundreds of wonderful homes like mine are subject to this new scrutiny because DPW has allowed serious violations to continue and failed to enforce the comprehensive regulations that already exist! These regulations will have no affect on the few criminal offenses (offenses cited by advocacy groups ) that occurred in a minute percentage of homes. DPW wants smaller homes like mine to close so our residents will have to relocate to large "warehouse" institutions. That way DPW won't have as many home inspections to make and they vision their jobs will be easier. Our residents will no longer have the choice to live in an intimate family home. I strongly support many of the new regulations as improvements but I haven't the space here to list the many over-regulating details that will force my small business (and many like it) to close permanently.

Legislators **MUST** act quickly and vote NO or resolve to disapprove the 2600 Regulations. Immediate action by Friday, November 19, 2004, is absolutely essential to thwart DPW's plan for the regulations to slide through and pass without a vote.

Sincerely,



Susan Jones Murphy, RN



Original: 2294

In Association of Nonprofit Senior Services

PANPHA

November 17, 2004

1100 Bent Creek Boulevard  
Mechanicsburg, PA 17050

RECEIVED

2004 NOV 17 AM 9:14

INDEPENDENT REGULATORY  
REVIEW COMMISSION

John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Mr. McGinley:

PANPHA, an association of Pennsylvania non-profit senior service providers, represents 233 personal care homes (PCHs) with over 14,100 units statewide. We have completed a review of Regulation #14-475 delivered to the Independent Regulatory Review Commission (IRRC) in FINAL FORM on Thursday, November 4, 2004, the final day of the Department's two (2) year window to publish the regulation as final.

Virtually all providers of personal care agree that the current Ch. 2620 regulations for personal care homes (PCH's) are no longer adequate to ensure the health and safety of the residents for which we care due to changes in how services are delivered. Since their inception almost a decade ago, PANPHA has been intimately involved in the discussions with the Department around a Ch. 2600 regulations package, and has consistently taken the stance that there is room for significant enhancement of the existing regulations. As a result, there are numerous provisions of this regulation that PANPHA supported in proposed and continues to support in the "final" stage.

Unfortunately, there are many other provisions of this regulation which are inconsistent, unclear, and burdensome. Some of them so defy the realities within which PCH operators staff their homes, they may in fact *harm* the health and safety of residents rather than improve it. The inconsistencies and areas where additional clarification are needed are so numerous that it calls to question the Department's readiness to promulgate this regulation in final form. In particular, there are several new provisions for the completion of needs assessments and support plans for which there are different timeframes for completion in separate sections of the package. *(Attached is a comprehensive list of the technical corrections that we believe must be addressed for this regulation to move forward).*

Perhaps more importantly, there are a number of what we believe to be "fatal flaws" in this regulatory package which violate either the provisions of the Regulatory Review Act or the intent of the regulatory review process, including:

**1. Incomplete Analysis of the Fiscal Impact of the Regulation**

We have grave concerns about the Department's lack of inclusion of a complete fiscal analysis as required under Section 5.2 (b)(1) of the Regulatory Review Act. This section of the Act requires the IRRC to assess the fiscal impact of the regulation on the regulated community and government when determining whether the regulations are indeed "in the public interest".

The Department's cost estimate included in box number 17 of the regulatory analysis form (RAF) lists seven new costs for personal care homes under the final form regulations, and no new costs to state government under box number 19. A review by

numerous PANPHA member facilities indicates that this cost estimate underestimates the fiscal impact of some of the items included in the Department's analysis (e.g., the cost estimate for fire alarms for the hearing impaired does not include the labor/installation costs of the alarm system, which can entail running wiring through walls and other physical revisions beyond the placement of alarms), and completely fails to account for numerous other additional costs that homes will incur. Among the new costs not found in the Department's analysis are the costs of providing the required the annual staff training, new resident assessment and care planning, and additional required revisions to the physical plant. *(A comprehensive listing of the additional costs related to the regulation and several examples of fiscal impact studies provided by PANPHA PCH providers are attached).*

In addition, the Department failed to acknowledge that there will be any additional costs to state government while implementing the most sweeping revisions to personal care home licensure regulations in over 15 years. It defies logic to assume that such sweeping change and revision would result in no additional cost to the Department, yet they have included none in their analysis.

Given the Department's incomplete assessment of the costs associated with this regulation, we do not believe the IRRC or standing legislative committees are able to accurately assess the true fiscal impact of this regulatory package on government and the regulated community and meet the requirement in the Regulatory Review Act of determining whether the regulation is indeed in the public interest. **Absent a full and complete fiscal analysis from the Department, PANPHA does not believe the Department has met the requirements for promulgating this regulation in final form.**

## **2. Definitional Changes from Proposed to Final Form Regulations without Comment**

In addition to the lack of clarity and consistency in the final form regulations, there have been many significant changes made from the proposed to the final form regulations without opportunity for comment. Among the most concerning are the additions to the definitions of ADL and IADL in the regulation which fundamentally expand the scope of services considered to be ADL's or IADL's without any opportunity for those affected by the regulation to review them and provide input to the Department regarding their benefit to residents and feasibility of implementation. For example, the Department responded to comments voicing concern about the training requirements for volunteers in the proposed regulations by removing volunteers from the definition of direct care staff persons. But, by adding assistance with IADLs to the definition of direct care staff persons, volunteers who provide assistance with IADLs (such as help with correspondence or shopping) will be required by the final form regulations to go through the same level of training as direct care staff. This requirement troubles PANPHA providers, who believe that the assistance of volunteers enhances residents' lives and who know that this training requirement will make it more difficult to recruit and retain volunteers for these functions. Additional changes have been made to definitions and other sections of the regulations without the opportunity for public comment until the regulation was issued in final form.

## **3. Revisions to Section 2600.228 inhibit Providers' ability to meet their statutorily imposed requirements under Act 185 of 1988, and did not receive public comment.**

Act 185 clearly states that personal care homes are not to serve residents who need the services "in or of a nursing facility". When a resident's needs change and require a level of service that is greater than allowed, the home is required to take action to relocate a resident who is in need of a higher level of care. 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.

Under the proposed regulation, Section 2600.228 (h)(3) stated that grounds for discharge exist "If a resident's functional level has advanced or declined so that the resident's needs cannot be met in the facility . . .", laying out the standard that a PCH must use when making the determination.

In the final form regulation, this section has been amended to read "If a appropriate assessment agency or the resident's physician determines that a resident needs a higher level of care", appearing to take the PCH completely out of 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.

In closing, PANPHA would like to reiterate that the Association believes there is a need for revision to the existing personal care home regulations. However, in light of the Department's unwillingness to provide a complete estimate of the costs to government and the regulated community, fundamental changes in key definitions in the regulation without comment, and inconsistencies that would make consistent implementation of the regulation virtually impossible, we cannot support this regulation as submitted.

**We urge the IRRRC to disapprove this regulation absent revision by the Department to address these concerns.** If the opportunity presents itself, PANPHA remains committed to working with the Department and other stakeholders to enhance the health and safety of residents in personal care homes.

Sincerely,



W. Russell McDaid  
V.P. Public Policy

### PANPHA Comments on Regulation #14-475

<b>Suggestions for Technical Revisions to Final Form Personal Care Home Regulations</b>		
<b>SECTION</b>	<b>DISCUSSION</b>	<b>PAGE</b>
2600.4	IADL definition: includes two new IADLs (compared to the current regulations.) and xi was added without opportunity for public comment: "(xi) Obtaining and keeping clean, seasonal clothing", "iv managing money" (which is not in current regulations) was changed to "managing finances" which appears more broad in scope. In addition ""(iii) Securing transportation" was changed to "securing AND USING transportation" a significant increase in provider time and responsibility....without the opportunity for public comment. (Note: three IADLs are missing from the current list of tasks of daily living: securing health care, ambulation, and eating, but have been added to ADL definition).	page 8
2600.4	incorrect definition of dementia added without public comment. Tabor's definition does not include wandering. Not all people with dementia wander.	page 7
2600.4	Direct care staff person changed to add IADLs without public comment	page 7
2600.4	resident resides in the home and receives PCH services (ADLs and IADLs) Does this mean those who don't receive PCH services are not residents? And do not have to go through the required paperwork?	page 9
2600.4	what does last line of PCH definition mean? Holds itself out as PCH but doesn't provide the services.	page 9
2600.4	definition of staff person added without public comment; includes contractors (staff physicians??)	page 10
2600.4	definition of volunteer is improved but changes to definition of direct care staff (to add IADLs) seem to mean person who assists with correspondence or taking person shopping will need full direct care staff training. If this is correct interpretation, this is a major concern because volunteers will not want to do this training and cannot be required to receive mandatory inservices. If this is not correct interpretation, the language is unclear. (page 10)	page 10
2600.5	adds (4) access for PP&A without public comment. If they have authority now, this provision is redundant. If they do not have this authority, this provision should have been discussed.	page 11
2600.5	(c) should be (b). Also, this should be subject to the residents' wish to see these people. If they don't want to be bothered by CLS, they shouldn't have to be.	page 11
2600.16(f)	"resident" should be plural "the affected resident and other residentS"	page 14
2600.23	time frame for assessment conflicts with .225 (5 days vs. 15 days to complete)	page 17
2600.23	time frame for support plan (within 15 days) conflicts with .227 (within 30 days of admission)	page 17
2600.23	time frame for preadmission screen may be confusing: prior to admission compared to .224 within 30 days prior to admission	page 17

## PANPHA Comments on Regulation #14-475

2600.24	Personal hygiene - includes nail care, foot care, skin care. New costs and concern about responsibility/liability if doing these tasks for people with diabetes. No opportunity for public comment for these new requirements	page 18
2600.28(e)	can the home keep that part of the funds that would have paid for room rent since the resident under 60 years of age still has belongings in the room? Lack of clarity in this requirement that is new since the proposed regs.	page 20
2600.41(a)	missing [ and perhaps a sentence or two.	page 22
2600.42(y)	Right to choose own healthcare providers including pharmacist if agrees to supply in way compatible with home's system for handling <b>self-administration of meds (what about medication administration?)</b>	page 24
2600.58(b)	"If a home serves one or more but less than 16 residents with mobility needs..." confusing	page 28
2600.61	reference to 2600.5 relating to direct care staff person training and orientation is incorrect.	page 29
2600.63(b)	We believe the intent is to have training in first aid and certification in CPR/obstructed airway techniques to be PROVIDED by (rather than completed by) an individual certified as a trainer .... Or that the training would be completed WITH the trainer. Otherwise this requirement seems to mean the trained staff person must be certified as a trainer by a hospital.	page 29
2600.64(a)(4)	administrators hired prior or promoted prior to December 1, 2004....yet regulation will likely not be effective yet and trainers will not have courses approved yet. Void in new administrators from Dec 1, 2004 until new course, test, trainer approval system, etc. is set up.	page 30
2600.64(b)(10)	comma missing after "dementia"	page 30
2600.65((d)(3)	missing ]	page 33
2600.102(f) and (i)	individual soap for each resident AND dispenser with soap at each sink. Bar soap not permitted unless separate bar marked for each resident who shares a bathroom.	page 42
2600.104(c)	condiments available at the dining table will not work for people with dementia	page 43
2600.132	Fire drills within 5 days of employment, but not more than one fire drill in a month. How to comply?	page 49
2600.144(c)(1-3)	If smoking is allowed in the home, home must develop and implement written fire safety policy and procedures to include no interior ventilation from the smoking room through other parts of the home, no smoking near common walkways and exits, not smoking during transportation by the home. These are not the home's policies and procedures; these are either DPW requirements or not.	page 52
2600.163(c)	staff involved with food service shall be in good health (Overly broad requirement: there are not communicable diseases that should not prevent one from working in food service)	page 54
2600.184(c)	extra "]" between "and" and "accompanied"	page 57
2600.185(b)(4)	does this duplicate requirement for MAR in 2600.187?	page 58
2600.186(c)	<b>without public input removed ability to have verbal changes in medication.</b>	page 58



PANPHA Comments on Regulation #14-475

<b>New Requirements of Final Form Personal Care Home Regulation that May Increase Costs</b>		
<b>SECTION</b>	<b>DESCRIPTION</b>	<b>PAGE NUMBER</b>
2600.3	Unannounced inspections	page 6
2600.4	Addition to IADL: <b>Securing and using</b> transportation	page 8
2600.4	New IADL: Obtaining and Keeping clean, seasonal clothing	page 8
2600.16	Notify resident and designated person of incidents	page 13
2600.16	Increase in reportable incidents (all deaths, all medication errors)	page 12-13
2600.19	Waiver creates condition that is better for resident, not just equivalent	page 15
2600.19	No waivers of residents rights	page 15
2600.19	Notify residents of waiver	page 15
2600.19	Request all waivers annually	page 15
2600.19	All current waivers no longer in effect	page 15
2600.20	Document any changes in resident funds; provide quarterly written account	page 17
2600.20	no commingling of resident funds and home funds (how many accounts is this?)	page 17
2600.20	Resident funds shall be disbursed during normal business hours within 24 hours of request	page 16
2600.24	Personal hygiene now includes undressing, foot care, nail care, skin care - is this different than you now provide?	page 18
2600.25	New requirements for resident contracts - (seems to me you'd want a legal review to change contracts)	page 18-19
2600.25	Listing costs and services in contract - does this mean signing a new contract or addendum when service changes	page 19
2600.25	72-hour right to rescind (only for residents; home must give 30 days notice)	page 19
2600.26	Establish and implement a quality plan that reviews and evaluates ....	page 20
2600.42(e)	Free local telephone service	page 23
2600.42(i)	assistance with securing health care is now a resident right	page 23
2600.42(n)	Right to receive assistance in relocating to another facility (help get resident information, make calls, transfer records)	page 23
2600.42(u)	<b>Right to remain in PCH unless nonpayment; higher level of care; danger to self or others, violate house rules, etc.</b>	<b>page 23</b>
2600.42(w)	<b>Right to appeal involuntary discharge</b>	<b>page 23</b>
2600.42(x)	Right to repayment by the home if the home fails to safeguard a resident's money or property	page 23
2600.42(y)	Right to choose own healthcare providers including pharmacist is agrees to supply in way compatible with home's system (reasonableness of location, etc?)	page 23
2600.42(r)	Right to receive visitors 12 hours per day/7 days per week (was 8 hours daily)	page 23
2600.44	Complaint procedures: 48 hour status report and 7 day written complaint reports	page 24-25

PANPHA Comments on Regulation #14-475

2600.44	very prescriptive procedure; the status report and written decision/explanations could take a great deal of staff time and energy.	page 24-25
2600.53	Administrator qualifications (RN, LPN+ 1 yr; AA, NHA) (Current administrators grandfathered)	page 26
2600.56	Administrator on-site an average of 20 hours per week in each calendar month	page 28
2600.58	Awake staff persons for homes with 16 or more residents	page 28
2600.60	additional staffing can be required to meet needs or by DPW	page 29
2600.41(b)	Requiring PCHs to furnish interpreters and signers will add costs.	page 23
2600.41(b,d,e)	distributing, explaining and having residents sign that they received the notification of rights and the complaint procedures will take time and therefore either add costs or take away time staff currently spend with residents	page 23
2600.54(a)(2)	High school diploma or GED or pass literacy test for new Direct care staff (current staff grandfathered)	page 26-27
2600.64	Administrator training (initial) (100 hours compared to 40 hours for current) (Current administrators grandfathered)	page 29
2600.64(c)	24 hours continuing education for administrators (all)	page 31
2600.65((3)(i)	PANPHA has consistently voiced concern over the inappropriateness and cost of safe management techniques training for direct care staff.	page 33
2600.65(2)	ADL training prior to providing direct care services (including supervised practice and competency test)	page 33
2600.65(e)	12 hours continuing education for staff	page 34
2600.66(c)	Document compliance with staff training plan	page 36
2600.65	Orientation for staff (direct care, volunteers, ancillary staff)	page 33
2600.66	Develop a staff training plan annually includes training courses for each staff person and when these will occur	page 36
2600.85	Covered trash receptacles	page 38
2600.86	Although this requirement is in the current regulations, loss of a waiver may force VERY expensive renovations to install exhaust fans.	page 38
2600.89	Water testing for homes with well water	page 39
2600.89(b)	new water temperature of may not exceed 120 degrees may be difficult for homes previously not exceeding 130 degrees to maintain	page 39
2600.90	Land line telephone	page 39
2600.92	way to immediately contact other staff persons	page 39
2600.93	Handrails on all steps and porches (was just if more than two steps)	page 39
2600.94	safe landings - 3x3' landing for doors that open onto a stairway and are part of the exit path	page 39
2600.96	First aid kits on each floor of the home	page 40
2600.99	Indoor and outdoor recreation space	page 41

PANPHA Comments on Regulation #14-475

2600.99	Crafts, newspapers, magazines	page 41
2600.100	Snow and ice removal from outdoor recreation areas	page 41
2600.101	100 Sq Ft bedrooms for people with mobility needs (DPW summary says wheelchair)	page 41
2600.101	Average 7 foot ceiling	page 41
2600.101	Fire retardant mattresses (grandfathered for current homes)	page 41
2600.101	Operable lamp or other lighting source at bedside (can be shared)	page 41
2600.101	Mirror (current requirement, but some argue that a mirror is not appropriate for some people with dementia)	page 41
2600.102(d)	<b>Grab bars in toilet and bath areas</b>	<b>page 42</b>
2600.102(f) and (i)	individual soap for each resident AND dispenser with soap at each sink. Bar soap not permitted unless separate bar marked for each resident who shares a bathroom.	page 42
2600.103(a)	<b>now must have operable kitchen rather than ability to provide a meal. Many CCRCs have one kitchen for all levels of care.</b>	<b>page 43</b>
2600.104	adaptive eating equipment or utensils shall be available to assist residents in eating at the table.	page 43
2600.105	Laundry now must be returned to the resident within 24 hours after laundering.	page 44
2600.106(2)	Written swimming pool policy and procedures shall be developed and implemented, if there is a swimming pool.	page 45
2600.107	three-day supply of water	page 45
2600.107	Emergency management plan and procedures updated and submitted to EMA annually	page 45
2600.121(b)	need variance from L&I, DOH or local building authority for secured units??	page 46
2600.122	Unless otherwise regulated by L&I must have two independent and accessible exits form every floor	page 46
2600.123(d)	If the home serves one or more residents with mobility needs above or below grade level of the home there shall be a fire-safe area, as specified in writing within the past year by a fire safety expert, on the same floor as each resident with mobility needs.	page 47
2600.126	Furnace inspected annually	page 47
2600.130(a)	smoke detector within 15 feet of each bedroom door	page 48
2600.130(b)	smoke detectors also in hallways	page 48
2600.130(e)	Signaling devices for people with hearing difficulties	page 48
2600.130(f)	<b>smoke detectors and fire alarms shall be tested for operability at least once per month. Very time-consuming expensive proposition for larger homes that have fairly sophisticated smoke detectors/fire alarms...two person job, with one to smoke the detector and the other to read the panel.</b>	<b>page 48</b>
2600.130(i)	5 or more residents with mobility needs: alarm system directly connected to fire dept or monitoring service, if available.	page 48
2600.144(c)(1)	If smoking is allowed in the home, home must develop and implement written fire safety policy and procedures	page 52

PANPHA Comments on Regulation #14-475

2600.144(c)(1-3)	Policy and procedures include no interior ventilation from the smoking room through other parts of the home, no smoking near common walkways and exits, not smoking during transportation by the home.	page 52
2600.171(b)(4)	at least one staff member transporting or accompanying the resident shall have completed the initial new hire direct care staff person training (costly and not necessary....will make it difficult for people to volunteer.)	page 54
2600.171(b)(5)	first aid kits in the vehicle(s) if the home provides transportation	page 55
2600.182	medication administration training	page 56
2600.185	develop and implement procedures for safe storage, access, security, distribution and use of medications and medical equipment by training staff persons.	page 57
2600.187	MAR required	page 58
2600.188	medication errors: definition very broad	page 59
2600.190(a)	medication administration training repeated every two years	page 59
2600.191	home shall educate resident of his right to question or refuse a medication if he believes there may be a medication error. Documentation of this resident education shall be kept.	page 60
2600.201	use of safe management techniques	page 60
2600.223(b)	The home shall develop written procedures for the delivery and management of services from admission to discharge.	page 61
2600.225	Assessments (initial, annual and updates as necessary) for all residents	page 62
2600.227	support plans	page 63
2600.254(c)	Resident records shall be stored in locked containers or a secured, enclosed area used solely for record storage and be accessible at all times to the administrator..."	page 74
		16-Nov-04

## **Sample cost estimates from PANPHA personal care home providers**

### **Home 1**

Just wanted to let you know a quick estimate of our home and this is taking into consideration that we already employ LPN and staff higher than what is required. Roughly we would have to invest \$14,000.00 to meet the new regs. Remember that we already have Human Resources and plans already in place, because of being part of a corporation that has skilled buildings.

But, when you look at the \$14000.00 that would add an additional \$2.00 per day to each resident or 60.00 a month. It currently cost us 52.50 per day to provide care add 2.00 and that's 54.50 per day per resident without any reimbursement. Considering that SSI on pays 29.80 that is 22.70 a day per resident that is not captured. Which for 35 residents is a loss here each day of 864.50, each month 26367.25, and a year of 316407.00. I guess my whole point is, It can't be done now for what we are being paid, why would we do anything to increase our expenses?

### **Break-out of Home 1 costs**

For the Administrator training I used what I now do for PANPHA. Which with the seminar, lodging, and travel costs is approximately \$1000.00.

It will also cost us to train 15 employees \$1800 and \$1800 to replace them on the floor for 12 a year

\$800.00 to purchase and train the administrator or some else the medication course.

\$900.00 to obtain new contracts for 35 residents (this would include attorneys, staff time and paper products.)

\$500.00 for quality plan. Staff time to come up with plan and to implement it

\$200.00 First aid kits. We would have to purchase 7 at 20.00 each and brackets to hang them in an accessible area \$60.00

\$1000.00 Emergency Management Plan. We have no official plan here now so we would have to plan, implement, and train.

\$5000.00 to switch our doors on our landings. This is just an estimate I came up with. We would have to pull the casing of 14 doors and switch them around.

Hope this helps. And as I said we already operate at a higher standard. So a lot of the new things are already being done here.

**Home 2**

<b>Description</b>	<b>First Year Costs</b>	<b>Subsequent Years Annual Costs</b>
Incremental Increase in Continuing Education Requirement for PCHAs	\$ 3,545	\$ 3,545
New continuing education requirements for Resident Assistants	7,786	7,786
Medication Administration Course for "Team Leaders"	1,819	
Medication Administration Course Instructor - "Train the Trainer" Costs	1,389	
Resident Assistant Training Course Instructor - "Train the Trainer" Costs	1,719	
LPN Position - Assessment Coordinator	40,000	40,000
Computer Software & Hardware Additions	11,500	
Annual Software Maintenance & Licensing Costs	1,500	1,500
Legal Fees for the revision of our Admission Agreement	5,000	
Brochure Revisions - Printing Costs	1,000	
<b>Total</b>	<b>\$ 75,258</b>	<b>\$ 52,831</b>



#### **Home 4**

Estimates for a 96 accommodation facility with a "capacity" of 104 residents:

##### **ONE TIME COSTS:**

Legal review of New contract with changes necessitated by the New Regulations: **\$500.00**

Developing and Implementing a quality plan which reviews and evaluates services and their effects: **\$2500.00**

Costs of maintaining services to client needing a higher level of care than the facility provides during the time it takes to properly respond to and dispatch the resident's right to appeal an involuntary discharge: Varies with each case. Assuming the need for increased staffing at four hours per day at overtime including benefits: for four days per appeal **\$320.00 per appeal**.

Covered Trash receptacles \$50.00 per unit **\$5200 for this facility.**

Six walkie talkies--assuming current methods of contacting all staff in the facility are not acceptable to comply with new regulation: **\$500.00**

Installing and assuring safety in the newly required outdoor recreation space, depending on interpretation of what constitutes this type of space: **\$5000.00**

Facility provided lamp or other lighting source per accommodation: \$75.00 per unit **\$7500 for this facility**

Creation and printing of Service Plans: **\$1500.00**

Attend Training on Incident Report completion: Travel costs estimate **\$100.00**

Acquiring training for staff in "nail care" Estimate of **\$200.00**

Grab bars in Toilet Areas: **\$37,500 to outfit all rooms**

Signaling devices for residents with hearing impairments: If required for every resident room which could house a resident who could be determined to have a hearing impairment--This cost can be unlimited. This will depend upon how it is to be determined that a resident has a hearing problem and whether a strobe alarm and/or bed vibrating system is required and how it is to be maintained and tested: **Conservatively, \$40,000 for this facility**

##### **Recurring costs per year:**

Adaptive equipment to assist residents in eating: Pure estimate of **\$750.00**

Staff time in helping all residents, not the current practice of providing this service only to those residents who need it, in securing and using transportation: **\$2500.00**

Yearly Administrator Training inclusive of tuition and travel: **\$1000.00**

Yearly direct service staff training of scheduling staff for two Mandatory in-service days for the 12 hours of required, documented training: **\$5000.**

Daily Documentation on Service Plans, beyond that which is currently written by Direct Service Staff: Pure estimate of **\$12000.**

Yearly increased staffing costs due to shrinking of labor pool by requiring training in advance of hiring/providing service: **\$10000**

*November 17, 2004*

Original: 2294

**IRRC**

---

**From:** Linda Carlson [lindac@lutheranhomekane.org]  
**Sent:** Wednesday, November 17, 2004 4:04 PM  
**To:** jscarnati@pasen.gov  
**Cc:** IRRC; Beth Greenberg  
**Subject:** PERSONAL CARE HOME REGULATIONS

Goodafternoon:

I am writing to ask for your help and to contact the IRRC Reference #14-475 (#2294) - Appose the Personal Care Regulation Changes.

As you are aware, The Lutheran Home at Kane, (McKean Co) has operated a personal care facility since 1983, and has been providing care to low income residents. It is our understanding that proposed regulations: Title 55, Public Welfare, Part IV, Adult Services Manual, Chapter 2600 - Personal Care Homes would place an extreme burden on personal care facilities. We only receive \$29.80 per day for the SSI residents, and our costs exceed \$60.00 per day. Just because there is a lack of enforcement with current facilities, changing the regulations won't help, it will force good facilities to close. The training requirements, staffing issues, and other issues are inconsistent. One matter was unclear (hold a fire drill within 5 days of hiring a new employee), no hold a fire drill once a month. There are problems with the regulations regarding discharges, assessments and care planning. Personal care homes are not skilled nursing units, and don't receive the funding to provide additional levels of care.

We realize many facilities do not have updated buildings, but there is no funding sources to help make these improvements, and these regulations place more burden onto the organizations trying to provide alternative care.

Our association, PANPHA (Pennsylvania Association of Non-Profit Homes for the Aging) has submitted a request that these regulations not be approved.

Please share our concerns! House - Health and Human Services and Senate - Public Health and Public Welfare Committees

I remember when you visited our facility, and how proud we felt to have you here. Help us help our seniors, don't let these regulations pass.

Linda Carlson, Administrator  
Lutheran Home at Kane  
100 High Point Dr.  
Kane, Pa. 16735

cc: Panpha and IRRC



To whom it may concern  
At The IRRC,

Original: 2294

I am writing in Opposition to Chapter 2600.PCH. I wish to identify myself as Carole E. Beam of R.D.9 Box 41, Greensburg, Pa. 15601. I have P.O.A. for my 83 year old cousin, who is a resident in a small family-style personal care home, where he is personally receiving very good care.

I have been informed that this new set of regulations in Chapter 2600.PCH has been submitted on the last day (Nov. 4th, '04) during a lame duck session which may change the entire face of the Personal Care Industry in Pa. I understand this could be approved without any of the legislative bodies having discussion of it. NOW I ASK YOU...IS THIS FAIR...NO,NO,NO!!!

Should Chapter 2600.PCH be approved and passed, it could have a devastating effect on my loved one's peace of mind should the personal care home in which he now resides, close its doors due to the added expense of the administrative cost, new regulations to be recognized and all the paper work involved (time consuming, which takes away time that would normally be spent on the care of its residents. He is one of approximately 3,000 in our county alone (Westmoreland County) which has 82 personal care homes at this writing, that could be affected by the new regulations and I am speaking out on their behalf.

I strongly oppose the Chapter 2600's approval and ask you to allow time for a public hearing and to give the legislative bodies time to pro and con it. I am requesting a concurrent resolution to dissolve this Chapter 2600 and want you to know that you, in doing so, my faith in Good government would be restored! Please take into consideration the elderly who cannot afford more expensive nursing type homes and must make ends meet on limited fixed incomes.

There are already good and sound regulations in place. They only need to be ENFORCED!

I OPPOSE Chapter 2600.PCH Title 55.Public Welfare

Sincerely yours, Carole E. Beam

RECEIVED  
2004 NOV 17 AM 11:43  
INDUSTRIAL REGULATORY  
REVIEW COMMISSION

2 pages

RECEIVED

2004 NOV 17 AM 11:43

INDEPENDENT REGULATORY  
REVIEW COMMISSION

11/17/04

To: Independant Regulatory  
Review Commission

FAX# 717-783-2664

From Carole E Beam

FAX# 724-837-7341

Opposing Chapter 2600. PCN  
Title 55. Public Welfare

Original: 2294

RECEIVED **Carmella's House**

2004 NOV 18 AM 7:08

Box 73 Cemetery Road

Crabtree, PA 15624

INDEPENDENT REGULATORY  
REVIEW COMMISSION

724-837-4811 Fax: 724-853-1862

TO: Mike Stevens -IRRCFAX: 717783-2664FROM: ELGIN PANICHELLE, R.N., ADM.DATE: NOVEMBER 17, 2004 PAGES:           

I am writing out of desperation, regarding the Final form of Regulation #14-475 (IRRC #2294), more easily recognized as Chapter 2600-Personal Care Homes, Title 55 Public Welfare.

**I urge and beg of you for a concurrent resolution to STOP THIS PIECE of regulation.**

This set of regulation needs to be carefully considered, and discussion should be extended to the Personal Care Home providers, and not just to the Advocates.

The implications of this set of regulation will be devastating to a cottage industry that has been economically independent of any government monies. The projections of this impact are that at least 75% (or more) of the existing personal care homes will go out of business within the first year of activation of these regulations. As of last month, there were 1,689 licensed PCH with a resident capacity of 75,958, and a total of 10,425 receive Supplemental Security Income (SSI). This means that **1,267 PCH will be ruined, and 56,968 residents will be displaced!!!** In my county alone, that means 2297 folks will lose their comfortable surroundings.

**HOW CAN SOMEONE IN YOUR CAPACITY SIT BACK, AND DO NOTHING, AND ALLOW THIS TO HAPPEN??** If you do nothing, then it is deemed approved.

Is the Commonwealth able to handle this degree of havoc? Is the Commonwealth prepared for a class action suit?

This set of regulation is not fixable...PLEASE demand a CONCURRENT RESOLUTION TO STOP IT. PLEASE do something that is noble and right for the residents living in personal care homes. PLEASE do not make them go through this emotional & wrenching experience.

There are **3** major components that make this entire set of regulation a very bad choice for PA.

**1.) It forces the industry in to a MEDICAL MODEL VS A SOCIAL MODEL.** This is not what our residents choose. These regulations mirror the existing regulations for long-term care facilities 28 Pa Code. Please explain how this regulatory model matches the statutory definition that residents of a PCH are persons "who does not require the level of care provided by a hospital or long-term care facility."

An over-regulated mini-nursing home, with no funding to support the extreme and exaggerated administrative costs, is NOT what our residents need or want.

**2.) OVER-REGULATION does not equate to quality of care.** Excessive paperwork actually reduces the quality of care and greatly increases the cost which is passed on to the resident and family.

**3.) COST-COST-COST.** This set of regulation is NOT economically feasible.

# Carmella's House

Box 73 Cemetery Road  
Crabtree, PA 15624  
724-837-4811 Fax: 724-853-1862

PAGE 2

The mandated changes to existing buildings, without offering a grandfather in, is a death sentence. 2600.101 (c) requires at least 100sq.feet per resident with mobility needs. Our private rooms are 80 sq.feet, so in order to accomodate this type of resident, we would have to remove a bed in a semiprivate room...thus reducing our income by 50%. We need that income for other essentials such as oil and food.

And the part about getting a medical order for an exception would be dangerous to any physician's liability insurance, (which is another topic!)

There are numerous problems. Without the grandfather in, then we also do not have a business to sell, which is our only retirement plan. We are self-employed, there are no percs.

Another deadly factor for the COST is that of the EXCESSIVE TRAINING REQUIREMENTS...both starting work and annually. The cost of the training is economically prohibitive, and would knock any business plan in the red. The training is also EXCESSIVE and is more then the usual standards for any other profession.

There are numerous issues throughout this document. Issues that were not carefully weighed. The balance of the entire set of regulations was tipped by the Advocates who represent only 5% of our population. I agree with them, that the cases that they represent, and the stories that they speak of are horrible, but tougher regulations are not going to stop the tales or protect the residents. Most of the tales are CRIMINAL cases, and no set of regulation can protect anyone from criminal occurances. Example: the man that was stomped to death... that is a homicide. That is a police matter - not an inspectors matter.

4. Every other type of problem can already be handled by our current regulations of Chapter 2600 IF the department would enforce them. DPW needs to use it's enforcement power rather than add regs.

In closing, I would also like for you to ponder another implication. The backbone of the Commonwealth of PA has always been small business. It's the American dream- the small, family owned and operated business. These regulations will annihilate an entire industry that is predominantly small business. And in doing so, will pave the way for the very large, corporate-style establishments. This does 2 things: it robs residents of their preferred choice, and it destroys the capitalism that our state was built upon.

I am also very dissappointed in the fact that these set of regulations, that will change our lives forever, are not even being discussed. They were presented on the deadline day of Nov.4, and then the PCH industry was not notified. I was a registered stakeholder. I have been involved with the process for over 3 years, and only received my copy on 11-15. That's WRONG! And it was turned in after an election, and when noone cares....because it's getting close to the holidays. If you can take the time to discuss payraises for legislatures, then you have time to discuss our needs as well.

*Please do not ignore us.*

*Please inform me of your action.*

*Thank you, Elgin Carmichelle*

# AARP Pennsylvania

Original: 2294  
November 17, 2004

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

31  
RECEIVED  
2004 NOV 19 AM 11:04  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Chairman McGinley,

AARP Pennsylvania has had the opportunity to review the final form personal care home regulations which have been issued by the Department of Public Welfare.

These final form regulations are the result of an extensive review process and comment period begun over two years ago by the Department of Public Welfare. AARP Pennsylvania was one of more than 750 individuals and organizations which made formal comments on the proposed regulations.

Although we have concerns about some aspects of the final form regulations, AARP Pennsylvania urges the Independent Regulatory Review Commission to approve these final form regulations. We believe that Pennsylvania consumers who utilize personal care home services will benefit from the approval of these regulations. The final form regulations are a significant improvement over existing regulations, particularly in the area of fire safety and unannounced inspections. Personal care home residents will be safer and more secure as a result of these regulations.

AARP would like to point out one important issue still unresolved by these regulations. They do not serve as a substitute for defining and regulating assisted living as a separate form of long-term care under Pennsylvania law. Facilities identifying themselves as assisted living in Pennsylvania will still be governed by these regulations. Legislation should be passed by the General Assembly to help consumers understand what services will be provided by facilities which call themselves assisted living residences.

AARP Pennsylvania appreciates the opportunity to comment on these final form regulations. Please do not hesitate to contact us if we can provide further information on this issue.

Sincerely,



Fred Griesbach  
AARP Pennsylvania State Director

Cc: Members of the Independent Regulatory Review Commission

Original: 2294



RECEIVED

2004 NOV 18 AM 9:26

INDEPENDENT REGULATORY  
REVIEW COMMISSION

November 16, 2004

IRRC  
333 Market St.  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

To Whom It May Concern:

I administrate a 43 personal care home in New Holland, Lancaster County, Pa. The administration of the Home is greatly concerned of the ramifications of the proposed regulations, should they pass as they now stand. Typically, 65 to 70% of our residents are SSI recipients, paying the home \$30 a day. Our costs continue to climb and are currently between \$48 and \$53 per day per resident.

The Welsh Mountain Home has a long standing excellent reputation and relationship with the local communities surrounding it. However, if the proposed regulations go thorough it is highly unlikely we will be able to sustain our current operation. The money will have to follow the regulations in order for us and many other small personal care homes in the commonwealth to survive. You will see many good quality homes closing and my question to you is where will all these poor people go?

The resident care assessment plan will require a tremendous amount work and time. The biggest concern is that the SSI person needing more care and services obviously will not be able to pay for them. However, personal care homes will still be required to provide these services. The additional staff training hours required, albeit they may be needed, will also require a lot of extra time and money to implement. These are only a few of the proposed changes which will place huge burdens on the small providers.

The Department of Public Welfare and/or the legislators will need to proceed cautiously before promulgating the proposed regulations. They will actually do a disservice to the poor of the commonwealth of Pennsylvania if they pass the proposed regulations. May God grant you the wisdom to make the right decision and may he have mercy on us all.

Sincerely,

Harold E. Yoder, Administrator

(4)

Original: 2294

**Nelda A. Teel  
Suite 804  
5250 Valley Forge Drive  
Alexandria, VA 22304**

November 16, 2005

VIA FACSIMILE TO: 717 783-2664

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2004 NOV 16 PM 3:57

RECEIVED

*Independent Regulatory Review Commission  
Commonwealth of Pennsylvania*

*RE: Final Form Regulation for Chapter  
2600.PCH Title 55.Public Welfare*

*Dear Senator Mowery:*

*This concerns the above referenced proposed legislation and my concerns for the adverse impact it likely will have on my brother.*

*Howard Schmitt is sixty-two years old, beset with several chronic health problems as well as being mentally challenged. The latter condition has been present since his birth; his ability to function independently is akin to that of a seven-year-old. Currently he resides at Carmella's House, a Personal Care Facility (PFC) in Crabtree, Pennsylvania.*

*Carmella's House provides all the assistance my brother requires to function on a daily basis. He is fed nutritiously, receives excellent personal hygiene supervision, is always clad in appropriate and clean clothes, and his medical regime is properly administered. The care he receives is exactly like that he would receive if I were able to have him in my home. (Because I am a widow who has to work, I cannot keep him with me.) His counsellors also appear quite satisfied with his care and treatment. He does not, however, require the level of care of a skilled nursing facility!*

*Nonetheless, it would appear that those sponsoring the above legislation want to impose such a level of care by requiring the hiring of overly qualified individuals to assist with my brother's bathing and eating! PFCs are not -- nor were they intended to be -- institutions for medical care. Why is there this attempt to convert them to such a facility?*

*My brother's income and benefits are limited to that provided by the Social Security and Medicaid programs. That income barely covers his costs at Carmella's House. If those costs have to be increased because of the need to pay higher salaries to more skilled employees, it is likely that my brother will have to be moved elsewhere. The question becomes "To where?" If all PFCs have to achieve nursing home levels of care, all will have to raise their rates. My*

*brother, and others like him, will not be able to afford to continue to live in PFCs. Where will they go to get the care that would otherwise be provided in one's own home by relatives, not skilled nursing personnel?*

*I implore you to reconsider approval of this legislation. It is not necessary and it is certainly going to wreak havoc with so many in need of daily assistance. Please allow the PFCs and/or their representatives sufficient time to provide appropriate input and comment. I am not properly knowledgeable enough to present adequate specific rationale and those who are have been given very little time to respond.*

*Thank you for your consideration in this important matter.*

*Sincerely,*

*Nelda A. Teel*

3

Original; 2294

**STONE BROOK MANOR PERSONAL CARE HOME  
P.O. BOX 606 – 122 ROWE RD., MANOR, PA 15665  
E-MAIL: StoneBrookManor@msn.com  
OFFICE PHONE 724-863-0802 OFFICE FAX 724-863-1216**

**11/16/04**

**TO: I.R.C.  
Fax #717-783-2664**

**FROM: Mary Jo and Harry Wright**

**RE: Regulation, 55 Pa Code Chapter 2600  
Personal Care Homes**

RECEIVED  
2004 NOV 16 PM 3:58  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**We have just received a copy of the final-form regulations and have the same serious concerns which we hope you can resolve.**

- 1. Has a complete cost study been completed? If so, is it available to us? The proposed staff training requirements alone are alarming and appear to be excessive.**
- 2. Why are these regulations moving Personal Care from a social model to a medical model? What impact does this have on the medical liability crisis in Pennsylvania?**
- 3. Most personal care operators are not even aware that these proposed regulations have been released. What is the time frame for us to have the opportunity to comment on them?**
- 4. What is the input of the Personal Care Home Advisory Committee? Has this committee had the opportunity to review these regulations and make a statement of approval or disapproval?**

**Please feel free to phone, fax, or e-mail your comments.**

**Thanks for your consideration.**



PHONE: (412) 672-5212



original: 2294

DATE: 11/16/04  
TO: IIRC INDEPENDENT REVIEW COMMITTEE  
FROM: Barbara Marcieski, Owner/Operator  
RE: New Personal Care Home Regulations

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2004 NOV 16 PM 2:05

RECEIVED

Dear Sirs:

Just to let you know I am against the expansion of these new regulations. They will create a huge burden on all the homes, especially homes with a small, home-like environment such as mine. I have a 42 bed facility and this would cause me to not only to ask any SSI residents I have to leave, but it would create an increase to my private pay which they cannot afford anyway.

Also, when I started my business, which is the sole financial support for my family, I was told it was a people business and it truly was and I have flourished. Now it just seems to be getting more and more complicated and involved in a mire of regulations that should be directed at skilled facilities and not the social environments of personal care homes.

Again, I am against the new PCH Regulations and would appreciate your support in seeing the many negatives they would create.

(5)

Original: 2294

November 16, 2005

2004 NOV 17 AM 8:12

RE: FINAL FORM REGULATION FOR CHAPTER 2600.PCH  
TITLE 55.PUBLIC WELFARE

INDEPENDENT REGULATORY  
REVIEW COMMISSION**Independent Regulatory Review Commission**

Dear Sirs:

My brother, Howard Schmitt, is 62 years old and is mentally handicapped. He is unable to live on his own and requires constant supervision and custodial care that my husband and I, who are schoolteachers, are unable to provide. He resides at Carmella's House, a personal care facility in Crabtree, Pennsylvania, and functions well there. My husband and I are very satisfied with the care he receives there. However, Howard's funds are just barely able to cover the expense of living here.

If the proposed regulations are enacted, costs will be increased for the personal care homes and my brother will have no choice but to leave Carmella's House. These regulations are excessive and expensive! They are attempting to turn a personal care facility into a nursing home! Naturally, expenses at a nursing home should be higher because more trained professionals are needed to administer to residents who are in need of a higher level of medical care. However, if you demand similar criteria for personal care homes, they, too, will have to cover the burden of additional expenses. The PCH will either have to raise rates or, worse yet, close down. Either scenario puts my brother and countless others with limited resources in serious jeopardy. There is no need for these expensive changes!

Where will my brother and all the others like him go to live if they can no longer afford the fees required by the PCH to continue

operating? The already overtaxed social agencies which administer to these people will be forced to cope with the additional problems created by having to relocate residents. And where will they put them? Other facilities will charge higher fees as well to cover the cost of the imposed regulations, and, again, these fees will be beyond my brother's financial situation. Have you considered these implications? My brother's financial dependence on the government will become even greater, and the cycle continues!

I appeal to you to seriously consider the dangerous repercussions which will result if these new regulations are enacted. What might sound good on paper can, in reality, create a nightmare situation for so many. Please vote NO to these regulations.

Sincerely,

Waltha Cardone  
3929 Bakerstown Road  
Gibsonia, Pa.

RECEIVED

2004 NOV 17 AM 8:12

INDEPENDENT REGULATORY  
REVIEW COMMISSION

MARS AREA MIDDLE SCHOOL  
1775 THREE DEGREE ROAD  
MARS, PA 16046  
PHONE 724-625-3145 FAX 724-625-4470

# FAX

TO: INDEPENDENT REGULATORY REVIEW COMM.

FROM: WALTHA CARDOVE

DATE : 11-17-04

# PAGES(incl cover): 3

COMMENTS:

717-783-2664

Original: 2294



RECEIVED

2004 NOV 19 AM 10:59

REGULATORY  
REVIEW COMMISSION

79

IRRC  
333 Market St. 14 th floor  
Harrisburg, Pa. 17101

November 14, 2004

After attending the meeting on November 12<sup>th</sup>, I am graciously requesting that you recognize the decision by the committee not to accept the regulations as they stand. Several concerns were voiced by the committee, the first one being financial. Everyone requested the cost comparison that was promised, and felt it was clear that cost was not even considered. Stated that SSI has not had an increase since Governor Casey was in office, and at \$30 a day, the requirements for training and the support could not be implemented.

Another area discussed pertained to the date of 12/01/04 and the grandfather clause. A required number of hours for staff training, yet grand fathering contradicts your requirement for qualifications. Many concerns from trainers of the administrator course, and inspectors as to what exactly they should be saying to relieve all of the fears being expressed. One member was curious as to where a lot of the proposals came from. He checked his minutes and could not find several that now appear in print.

Personally, I can be philosophical and realize that if passed I must comply. Yes, the support plan will now convert my time from a director that gets involved in the day to day events and needs of the residents to one that will be administrative. Upon inspection everything asked will be available for review but the reality will be that the plan cannot be accomplished because we are one of those homes that currently houses 50% SSI. Our home cannot afford to provide the staff. We are not in the position to pass the added expense along to family, and those that can provide are suddenly looking at funds that will not stretch as they thought only months ago.

I very much agree with the comment that updates are necessary and the need to provide quality care is more important than ever in a field that will continue to grow. The belief that one member of the committee now feels five years vested was for nought is unfortunate since the majority could be the new beginning for regulations that are created with realistic, workable goals.

Sincerely,

*Noreen M. Stanomir*  
Noreen M. Stanomir  
Director of Resident Services

Original: 2294 - Rec'd IRRC email box 11/16/04 7:57 a.m.  
315 North Second Street / Harrisburg, Pennsylvania 17101 / (717) 221-1800 / FAX (717) 221-8687



RECEIVED  
2004 NOV 16 AM 8:51  
INDEPENDENT REGULATORY REVIEW COMMISSION

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Harrisburg, PA  
President and CEO

November 15, 2004

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

**Re: Final Form Regulations – Personal Care Homes**

Dear Mr. McGinley:

On November 4, 2004, the Department of Public Welfare ("DPW") issued final form regulations substantially revising regulatory oversight of personal care homes in the Commonwealth. The roughly 300 members of the Pennsylvania Health Care Association ("PHCA") have serious and significant reservations concerning these regulations, which are subject to review by the House Health and Human Services Committee and the Senate Public Health and Welfare Committee prior to review by the Independent Regulatory Review Commission (the "IRRC"). You tentatively have scheduled a public meeting to review these regulations for November 30, 2004.

PHCA and its operating division, the Center for Assisted Living Management, have worked closely with DPW, both directly and through extensive participation in the Personal Care Home Advisory Committee, on prior iterations of these regulations. Despite these extensive efforts by PHCA and other interested parties representing both provider and consumer interests, the final form regulations deviate substantially from prior iterations and contain key provisions that have not been discussed by stakeholders previously. In fact, due in large part to these significant deviations, the Personal Care Home Advisory Committee voted on November 12, 2004 to reject the final form regulations. It is quite telling that the advisory group empanelled by DPW and which had endorsed prior iterations of the regulations has reached this conclusion.

From PHCA's perspective, there are five major concerns with the final form regulations, as well as a number of other important concerns. The former are described in the body of this letter, while the latter are detailed in the attached summary. Given our concerns regarding these final form regulations, we urge you to disapprove the final form regulations absent DPW's agreement to make specific changes before publication of final regulations.

We have five major concerns and a number of more discrete, but nonetheless important, concerns. These issues are described below.

### Major Concerns

- 1. The final form regulations put consumers at risk because they unduly restrict the ability of homes to transfer or discharge residents whose needs cannot be met.**

Under current regulations, homes may transfer or discharge residents when their care needs exceed the ability of the homes to provide services. Under section 2600.228 of the final form regulations, however, homes cannot arrange transfer or discharge unless an agency approved by the government or the resident's personal physician certifies that transfer or discharge is necessary. This provision puts residents at risk, since the home may not be able to provide necessary care and services to residents yet may be unable to discharge or transfer such residents to more appropriate settings.

In this regard, it should be noted that the resident's rights provisions describing the right to remain in a home, section 2600.41(t) is more narrowly drawn than the provision articulating the bases for transfer or discharge, section 2600.228. Obviously, these provisions should be consistent.

- 2. The final form regulations apparently prevent homes from transferring or discharging residents who become eligible for Supplemental Security Income ("SSI"), which fundamentally changes the financial terms under which homes operate and which will increase the costs to other residents while potentially narrowing the scope of services available to all residents.**

Under current practice, homes are not required to admit or retain residents whose sole source of payment is SSI. Pennsylvania pays \$29 per day on behalf of SSI recipients. This represents less than half of the average cost of providing personal care services, and current cost estimates do not include the potentially significant costs of complying with the final form regulations. Section 2600.228 of the final form regulations, however, apparently prevent homes from transferring residents who become eligible for SSI. Consequently, by forcing homes to retain SSI recipients, the final form regulations substantially change current practice, threatening the financial viability of homes. In response, homes are likely to increase rates charged to residents who pay for services themselves, restrict the services provided or both. Such outcomes are not in the best interest of consumers or providers and such a fundamental change in policy should not be implemented without any public discussion or debate.<sup>1</sup>

---

<sup>1</sup> Although the process culminating in the final form regulations has taken a number of years, in no prior discussions or drafts of regulations did DPW suggest that the home's ability to deny admission to or to transfer or discharge residents who become eligible for SSI would be undermined in any way by the final regulations.

**3. The final form regulations inappropriately incorporate by reference many state and federal statutes, which fundamentally alters the legal framework applicable to homes and usurps legislative and judicial authority.**

The final form regulations articulate a lengthy list of federal and state statutes that specifically apply to homes. Section 2600.18(b). Some of these statutes, such as the Older Adult Protective Services Act, clearly do apply to personal care homes, making specific incorporation by reference unnecessary. More insidiously, however, some of these statutes do **not** clearly apply to personal care homes and courts have **not** established whether they should apply to personal care homes. By specifically incorporating these statutes by reference as applicable to personal care homes, DPW has usurped the authority of the General Assembly, the U.S. Congress and state and federal courts to determine whether these provisions apply to personal care homes.

**4. The final form regulations give private advocacy groups unfettered, inappropriate and potentially illegal access to residents and resident information.**

The final form regulations give the Pennsylvania Protection and Advocacy (PP&A), a non-governmental agency, immediate and unrestricted access to all homes, their residents and all resident records. Section 2600.5(a)(4). They also require homes to give community service organizations and community legal services access to homes and residents **without consent of residents**. Section 2600.5(c). Such access is inappropriate, potentially illegal and undermines both the privacy rights of residents and the business interests of homes.

**5. The final form regulations vastly underestimate the costs of regulatory compliance, such that the cost estimate does not satisfy statutory requirements and compliance will substantially increase the fees consumers must pay for services.**

Pennsylvania law requires that DPW estimate the costs of compliance with the final form regulations. The cost estimate accompanying the final form regulations ignores substantial areas of compliance costs and significantly underestimates the compliance costs in the areas the agency has recognized. Naturally, homes likely will be forced to raise charges to consumers, thereby reducing access to services. In addition, the cost estimates are so inadequate that we believe DPW has not satisfied relevant provisions of Pennsylvania law, such that the IRRC should disapprove the final form regulations for failure to comply with statutory obligations.

In addition to these major concerns, there are many other provisions that are problematic and ill-conceived, and that otherwise threaten effective provision of and consumer access to services.

## Discrete Issues

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who have obtained the equipment independent of the home or its services. It is wholly inappropriate to require that homes be obligated to repair and maintain equipment under such circumstances. The regulations should be modified so that homes are required to maintain only such equipment as the home may provide to residents as part of the home's service package.

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**Testing Smoke Detectors:** The final form regulations require that every smoke detector be tested at least once monthly. Section 2600.130(f). This requirement does not add appreciably to protection of residents, since homes also must have fire alarms, they are required to hold fire drills monthly and smoke detector wiring and batteries must be changed at least annually. Monthly tests of smoke detectors, moreover, could be very disruptive and disturbing for residents. A larger home, for example, could have 50 or more smoke detectors. Each test will cause the alarm to sound. This could well frighten or disturb residents. This requirement should be changed, possibly to testing semi-annually.

**Fire Drills:** The final form regulations require that all fire drills be unannounced. Section 2600.132. The International Association of Fire Chiefs (IAFC), however, recently concluded that announced fire drills do not compromise fire safety and are better for vulnerable populations such as those who reside in personal care homes. This provision should be modified to eliminate the requirement that all fire drills be unannounced.

Mr. John R. McGinley, Jr.  
November 15, 2004  
Page 6

**Resident Education:** The regulations specify that homes inform residents of their right to refuse care and services, particularly the right to refuse medications. Section 2600.191. The regulations also require that, when residents refuse health care services, the home continually "educate" the resident to reverse the refusal of health care services. Section 2600.142(b). These requirements impose obligations on homes that potentially will confuse residents. In addition, it is inappropriate and unrealistic to expect the home continuously to try persuading residents to accept services they have chosen to refuse. Finally, the specific provision concerning refusal of medication is legally inaccurate. The regulation specifies that residents may refuse medications only when the resident believes that administration would be a medical error. In fact, residents have a right to refuse medication regardless of the propriety of administration. The regulations should be modified to: (1) clarify the information homes must provide residents regarding the right to refuse care and services, including medications; and (2) eliminate the requirement that homes continually attempt to persuade residents who have refused services to reverse their decisions.

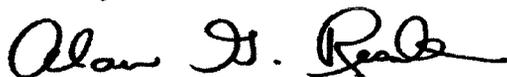
**Timeframes for Screening, Medical Certification and Service Planning:** The final form regulations establish requirements for preadmission screening, medical review in connection with admission and development and implementation of service plans for each resident. Sections 2600.23 & 225. The regulations specify differing requirements for residents who are in special dementia units and those who are in the general population of a home. It appears that these timeframes may be internally inconsistent, such that homes cannot satisfy all regulatory requirements. These timeframes should be reviewed carefully and modified as necessary to avoid the imposition of obligations that will be impossible to satisfy.

**Penalties:** The final form regulations require that DPW impose fines and bans on admission without discretion. Sections 2600.262 & 2600.269. The inability to modify penalties in response to individual circumstances is draconian. The regulations should be modified to afford DPW appropriate discretion regarding the imposition of penalties.

Given our concerns regarding these final form regulations, the substantial deviations these final form regulations have taken from prior iterations and the position of the Personal Care Home Advisory Committee, we believe the final form regulations should be rejected unless DPW agrees to make changes consistent with the concerns expressed above. We would be pleased to discuss our concerns with you or other representatives of the IRRC, and look forward to the public meeting on November 30.

Thank you for your consideration of this matter.

Sincerely,



Alan G. Rosenbloom  
President and CEO

Mr. John R. McGinley, Jr.

November 15, 2004

Page 7

cc: The Honorable Vincent J. Hughes  
The Honorable Harold F. Mowery, Jr.  
The Honorable George T. Kenney, Jr.  
The Honorable Frank L. Oliver



Original: 2294

**IRRC**

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**From:** Pepe, Raymond P. [rpepe@kl.com]  
**Sent:** Monday, November 15, 2004 6:18 PM  
**To:** IRRC  
**Cc:** 'jhummel@phca.org'; Rosenbloom, Alan G. (EXTERNAL); Gwen Bower (E-mail); 'mjacobs@phca.org'  
**Subject:** Objections to DPW's Final-Form Personal Care Home Regulations

Attached are the comments of the Pennsylvania Health Care Association regarding the final-form personal care home regulations of the Department of Public Welfare. Alan Rosenbloom, the President and CEO of the Association, and I will be pleased to answer any questions regarding these comments when we meet with the staff of the Commission at 3:00 p.m. on Wednesday.

---

Raymond P. Pepe  
 Kirkpatrick & Lockhart LLP  
 240 North Third Street  
 Harrisburg, Pennsylvania 17101  
 (717) 231-5988 Phone  
 (717) 231-5986 Fax  
 E-Mail Address: rpepe@kl.com

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If you have received this e-mail in error, please contact Raymond Pepe at rpepe@kl.com or (717) 231-5988.

<<IRRC Ltr on PCH (11-15-04).doc>>

November 15, 2004

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

**Re: Final Form Regulations – Personal Care Homes**

Dear Mr. McGinley:

On November 4, 2004, the Department of Public Welfare (“DPW”) issued final form regulations substantially revising regulatory oversight of personal care homes in the Commonwealth. The roughly 300 members of the Pennsylvania Health Care Association (“PHCA”) have serious and significant reservations concerning these regulations, which are subject to review by the House Health and Human Services Committee and the Senate Public Health and Welfare Committee prior to review by the Independent Regulatory Review Commission (the “IRRC”). You tentatively have scheduled a public meeting to review these regulations for November 30, 2004.

PHCA and its operating division, the Center for Assisted Living Management, have worked closely with DPW, both directly and through extensive participation in the Personal Care Home Advisory Committee, on prior iterations of these regulations. Despite these extensive efforts by PHCA and other interested parties representing both provider and consumer interests, the final form regulations deviate substantially from prior iterations and contain key provisions that have not been discussed by stakeholders previously. In fact, due in large part to these significant deviations, the Personal Care Home Advisory Committee voted on November 12, 2004 to reject the final form regulations. It is quite telling that the advisory group empanelled by DPW and which had endorsed prior iterations of the regulations has reached this conclusion.

From PHCA’s perspective, there are five major concerns with the final form regulations, as well as a number of other important concerns. The former are described in the body of this letter, while the latter are detailed in the attached summary. Given our concerns regarding these final form regulations, we urge you to disapprove the final form regulations absent DPW’s agreement to make specific changes before publication of final regulations.

We have five major concerns and a number of more discrete, but nonetheless important, concerns. These issues are described below.

### Major Concerns

- 1. The final form regulations put consumers at risk because they unduly restrict the ability of homes to transfer or discharge residents whose needs cannot be met.**

Under current regulations, homes may transfer or discharge residents when their care needs exceed the ability of the homes to provide services. Under section 2600.228 of the final form regulations, however, homes cannot arrange transfer or discharge unless an agency approved by the government or the resident's personal physician certifies that transfer or discharge is necessary. This provision puts residents at risk, since the home may not be able to provide necessary care and services to residents yet may be unable to discharge or transfer such residents to more appropriate settings.

In this regard, it should be noted that the resident's rights provisions describing the right to remain in a home, section 2600.41(t) is more narrowly drawn than the provision articulating the bases for transfer or discharge, section 2600.228. Obviously, these provisions should be consistent.

- 2. The final form regulations apparently prevent homes from transferring or discharging residents who become eligible for Supplemental Security Income ("SSI"), which fundamentally changes the financial terms under which homes operate and which will increase the costs to other residents while potentially narrowing the scope of services available to all residents.**

Under current practice, homes are not required to admit or retain residents whose sole source of payment is SSI. Pennsylvania pays \$29 per day on behalf of SSI recipients. This represents less than half of the average cost of providing personal care services, and current cost estimates do not include the potentially significant costs of complying with the final form regulations. Section 2600.228 of the final form regulations, however, apparently prevent homes from transferring residents who become eligible for SSI. Consequently, by forcing homes to retain SSI recipients, the final form regulations substantially change current practice, threatening the financial viability of homes. In response, homes are likely to increase rates charged to residents who pay for services themselves, restrict the services provided or both. Such outcomes are not in the best interest of consumers or providers and such a fundamental change in policy should not be implemented without any public discussion or debate.<sup>1</sup>

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<sup>1</sup> Although the process culminating in the final form regulations has taken a number of years, in no prior discussions or drafts of regulations did DPW suggest that the home's ability to deny admission to or to transfer or discharge residents who become eligible for SSI would be undermined in any way by the final regulations.

**3. The final form regulations inappropriately incorporate by reference many state and federal statutes, which fundamentally alters the legal framework applicable to homes and usurps legislative and judicial authority.**

The final form regulations articulate a lengthy list of federal and state statutes that specifically apply to homes. Section 2600.18(b). Some of these statutes, such as the Older Adult Protective Services Act, clearly do apply to personal care homes, making specific incorporation by reference unnecessary. More insidiously, however, some of these statutes do **not** clearly apply to personal care homes and courts have **not** established whether they should apply to personal care homes. By specifically incorporating these statutes by reference as applicable to personal care homes, DPW has usurped the authority of the General Assembly, the U.S. Congress and state and federal courts to determine whether these provisions apply to personal care homes.

**4. The final form regulations give private advocacy groups unfettered, inappropriate and potentially illegal access to residents and resident information.**

The final form regulations give the Pennsylvania Protection and Advocacy (PP&A), a non-governmental agency, immediate and unrestricted access to all homes, their residents and all resident records. Section 2600.5(a)(4). They also require homes to give community service organizations and community legal services access to homes and residents **without consent of residents**. Section 2600.5(c). Such access is inappropriate, potentially illegal and undermines both the privacy rights of residents and the business interests of homes.

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Mr. John R. McGinley, Jr.  
November 15, 2004  
Page 6

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Sincerely,



Alan G. Rosenbloom  
President and CEO

Mr. John R. McGinley, Jr.

November 15, 2004

Page 7

cc: The Honorable Vincent J. Hughes  
The Honorable Harold F. Mowery, Jr.  
The Honorable George T. Kenney, Jr.  
The Honorable Frank L. Oliver

Original: 2294

LEON H. FOX, JR. <sup>□</sup>  
CRAIG H. FOX <sup>□\*\*</sup>  
JEFFREY V. MATTEO <sup>□</sup>  
PETER H. THOMAS <sup>□</sup>  
SCOTT L. H. RUBIN <sup>□\*\*Δ</sup>  
JOSEPH B. WASSEL <sup>□\*</sup>  
BENJAMIN E. WITMER <sup>□#</sup>  
A. KYLE BERMAN <sup>□</sup>

□ ADMITTED TO PENNSYLVANIA BAR  
\* ADMITTED TO NEW JERSEY BAR ALSO  
+ ADMITTED TO FLORIDA BAR ALSO  
Δ LL.M. IN TRIAL ADVOCACY  
# MASTERS IN BUSINESS ADMINISTRATION

June 29, 2005

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

Re: Personal Care Home Regulations

Dear Sir/Madam:

I had learned that your office was responsible for submitting Personal Care Home Regulation to the Attorney General or to Legislative Committees. If such has been submitted, please accept this as our request for a copy of same or in the alternative, please identify for us the office to which the Regulations have been submitted.

Thank you for your attention.

Sincerely,



Peter H. Thomas  
PHT:tm

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FOX AND FOX  
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2005 JUL -5 AM 9:13

LEON H. FOX  
1901-1982

JAMES P. FOX  
1936-1999

SHIRLEE ANN MILLER  
ESTATE PARALEGAL

## **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!

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 3<sup>rd</sup> and 4<sup>th</sup> quarter inspection results.

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

*Confidential*

### 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 and 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.  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 6<sup>th</sup> 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  
William Gannon  
Patsy Taylor-Moore  
Ann Torregrossa  
Alissa Halperin  
Christine Klejbuk  
Lynn Fosnight  
Beth Greenberg  
Dale Laninga  
Clarence Smith  
Pat McNamara  
Cindy Boyne

Elderly Law Project, Community Legal Services  
DPW - OSP  
DPW - OSP - PCH Division  
Pennsylvania Health Law Project  
Pennsylvania Health Law Project  
PANPHA  
PALA  
PANPHA  
Intra-Governmental Council on Long Term Care  
CERCA  
PHCA/CALM  
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



## **Pennsylvania Health Care Association**

315 North Second Street • Harrisburg, PA 17101  
(717) 221-1800 • (717) 221-8687 FAX • [www.phca.org](http://www.phca.org)

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Good Morning. My name is Jen Drescher and I am the Regional Director of Operations for HCR-Manor Care. HCR-Manor Care, which is based in Toledo, Ohio, owns and operates 9 personal care homes and 48 nursing homes in the Commonwealth. We care for 6,500 older Pennsylvanians every day. We employ over 4,000 people here in Pennsylvania.

I also serve as a member of the Personal Care Home/Assisted Living Task Force of the Pennsylvania Health Care Association ("PHCA"), which represents roughly 300 long term care providers in Pennsylvania.

On behalf of both HCR-Manor Care and PHCA, I am pleased to inform you that we support the final form regulations. While we have concerns regarding the regulations, we nonetheless believe that the package represents a reasonable compromise between legitimate protection of consumers and affording providers flexibility to respond to consumer expectations.

I would be remiss, however, if I did not voice concerns regarding the regulatory package. At the outset, I note our belief that the Department could respond to these concerns in implementation of the regulations.

First, we believe that implementation of Section 2600.41(y) must clearly be limited to licensed health care providers like doctors or pharmacies. This section clarifies that personal care homes may not interfere with the resident's right to choose health care providers. It is essential that implementation of this provision not undermine the fundamental character of personal care homes by preventing facilities from packaging residential and personal care services. Indeed, we believe the Department lacks the statutory authority to impose such a requirement on homes.

Secondly, the revisions continue to grant private organizations inappropriately broad access to personal care homes. We believe that the current final form regulations afforded Pennsylvania Protection and Advocacy ("PPA") access to personal care homes exceeded the scope of authority granted to it under federal law. The underlying federal laws specifically detail the access and investigatory rights conferred on organizations like PPA, which do **not** include unfettered and immediate access to facilities. We had understood the agreement among the

Department, the legislative caucuses and the stakeholders to be that the regulations would not grant a right of access beyond the scope of federal law.

Unfortunately, the revised section 2600.5(a)(4) does not narrow the right of unfettered and immediate access granted to organizations like PPA. The revision simply deletes specific reference to PPA, substituting instead reference to the relevant federal statutes. Since this subsection exists under a global requirement that the personal care home “provide...immediate access to the home, the residents and records,” however, it therefore continues to afford such unfettered and immediate access to organizations like PPA. Again, we understand the Department will respond to this concern through the implementation of the regulation. We strongly urge that they do so.

In addition, we urge the Department to consider carefully the manner in which it implements the requirement that homes report all prescription medication errors. Section 2000.16(a)(13) imposes this requirement. If homes may catalogue relatively minor errors and report them at defined times (e.g., monthly), while reporting more significant errors promptly, it would allow both the Department and the homes to focus on potentially significant problems rather than becoming bogged down in a potentially overwhelming volume of relatively insignificant concerns.

Finally, we believe that the complaint procedures specified in the final regulations remain too detailed. While homes should maintain internal grievance procedures and should inform residents and family members of these procedures, the specific elements should be left to the homes, their residents and the residents' families. Intrusive government micromanagement of such procedures benefits neither those who require care nor those who provide it.

In conclusion, we appreciate the lengthy negotiations and dialogue that have culminated in the final form regulations. We look forward to working with the Department on timely and appropriate implementation and appreciate your consideration of our remarks. I would be happy to answer any questions you may have.

## Comments for IRRC 2-24-05 re: Safety Issues

The stated sentence for the purpose of this final-form rulemaking is to protect the health, safety, and well-being of personal care home residents. And yet there are sections of Chapter 2600 that are the detrimental to the health, safety and well-being.

In the proposed Chapter 2600 there was input from the Alzheimers' Association for safety measures for memory-impaired residents. They recommended requiring a current photo for Identification purposes to be on record for the obvious reasons of wandering or elopement, as well as to correctly ID a confused resident for treatments or medications. This appropriate measure was deleted from the final-form regulation.

While discussing safety issues for residents, a priority issue is that of Fire Safety, As a matter of fact, Chapter 2600 has 8 pages, from 2600.121 through .133 devoted to this topic. However, sections were based on antiquated theory rather than on current studies. I would hope that antiquated ideas would not leak into regulations that are written for the future years.

**The specific section for objection is 2600.132 Fire drills.** The vast majority of the residential populations are individuals with significant physical or mental health problems. The stereotyped resident is frail with chronic health issues such as congestive heart, diabetes, or dementia. **These regulations are devised with total disregard for the population needs and abilities.**

**.132(a)** requires unannounced fire drill. Current studies have shown that there is a risk of injury, usually due to slip and falls, chest pain, or shortness of breath created by the anxiety and rush of the unannounced drill. Further studies prove that all people learn best when they are calm and relaxed. With this updated information, it would be more logical to have announced drills so that the evacuation is carried out in a calm fashion and that true training of the evacuation process can be attained by the residents at risk... those that are frail of body or of mind.

**.132(e)** requires a night time drill every 6 months. There are several safety issues in this mandate. The q 6 month would dictate that one would be during harsher climate. PA does have 4 rather strong seasons, and to deliberately require our resident to be aroused from a sound sleep to evacuate during the darkness in inclement weather is opening the door to disaster!! They are more apt for injury during the stages of disorientation brought on by sudden arousal from slumber.

Our recommendation, which of course was ignored, was to have one resident night drill per year, and another simulated drill to test the response and safety practice of the nightshift staff, and the abilities of the usual "skeleton crew" found after hours.

**.132(h)** commands that residents be evacuated to a meeting place away from the building. This is perhaps the most hazardous provision of all. We are adamantly against this practice, and feel that risk to the residents will be higher than probable, particularly when coupled with other factors such as the nighttime or inclement weather. For the Dept. to anticipate at least one warm, sunny day during the winter months in PA. is yet but another example of the skill of minimizing the inherent issues.

For the frailer populations, this would necessitate a 1:1 staff:resident ratio, to maintain the safety and well-being. During a true emergency, it is likely that there would be additional volunteer firemen to assist with the evacuations and to provide extra people.

*This provision is uncalled for, extremely risky, and is not rational to perform for a monthly fire drill!*

**We have continually asked that this requirement be deleted for three reasons: the health, safety and well being of the residents that we serve!!**

We adamantly oppose Chapter 2600 and ask that it end with a concurrent resolution to dissolve. It is a pathetic example of over-regulation that is going to rob the residents of all choices of where to live by wiping out the small businesses across the Commonwealth. Our residents will continue to suffer due to financial hardships brought on by the increased cost to implement these regulations. Their actual care will diminish as the workforce will be occupied with excessive amounts of paperwork rather than the needs of the residents.

These regulations are hypocritical, as they really do little to help improve the quality of life or care. PCH do not want to be modeled after skilled facilities or the MH/MR homes. We proved 4 years ago that we are unique, and we do not want to lose our primary characteristics of being financially independent from government monies, and providing a social environment in which our residents thrive

We ask that IRRC stop the progression of Chapter 2600!

THANK YOU

(5 Min.) Comments for the IRRC hearing 2-24-05

This experience has been very disheartening. We have tried so hard to effect some changes that would benefit the residents who dwell in PCH. There have been so many underhanded moves throughout the development of Chapter 2600. The sneaky tactics epitomize the corruption and unfairness of the process. **It is inconceivable that regulations can be deemed approved by the House and the Senate if they choose to do nothing.**, that the standing committees do not even have to read a set of regulation that is going to uproot an entire industry, and inactivity will deem it approved. The only way the Dept. could get these regs through is by submitting the tolled revisions to IRRC and both standing committees the day before a planned recess... therefore, there's no vote by either committee. How very clever of the Dept.! **But what does that say about these regulations, if the only way they'll pass is by DEFAULT???**

The same sneaky and calculated tactics were employed last Nov. when they resubmitted Chapter 2600 on the last possible day without any notification to the provider-shareholders. Submitted after an election, with numerous budget issues, on a short month that wouldn't even allow the committees the 20 days for review, and then to schedule the hearing on the first day of hunting. The revised Chapter 2600 had numerous new areas that had never been discussed with stakeholders. The plan was to quietly and quickly get this through while nobody's looking.

To pass a set of regulations by sly moves and default should say something... at the very least that the residents and providers deserve better from the Commonwealth. If this is allowed, it could offer insight as to why so many professionals and business are exiting the keystone state!

The WCPCHAA which represents about 80 homes has already submitted line-by-line critique of Chapter 2600. **We continue to request a concurrent resolution to dissolve this set of regulation.** Sadly enough after 4 years, our main points of concern have been ignored by the Dept., this set of regulation is not fixable by design.

DPW has been heavily influenced by a few specialty groups and oversaturated with input from the advocates to the point of ignoring the providers, inspectors, and residents and their families. They have even excluded the provider groups from dialogue. These extreme specialty groups represent only 5-10% of the residential population.

**The major PCH provider groups and associations are adamantly opposed to these regulations...**we stand firm and united, and most of our concerns are the same. Other provider groups, such as NAPCHAA with over 790 homes, PALA with over 180 homes, and CERCA. Too name a few... **collectively represent over 1,050 PCH ,are opposed to these regulations.** The Depts. own Advisory Committee even recommended abolishing the regs as written. Our homes and their residents, families, and ancillary business associates are against these and yet the Dept has chosen to ignore are major points.

The special interest groups have no knowledge of how to make a business work. Unfortunately, you must have a sound business plan in order to maintain a home. All of the advocates' demands have grossly tilted the scales to the point of complete financial instability, and this becomes even more exaggerated for the homes which cater to the SSI residents.

Cost analyses have been submitted by various groups across the Commonwealth which firmly demonstrates that the cost to comply with these regulations will be exorbitant, and it will force many homes to close. **We have said for 4 years that these regulations are not financially feasible and yet the Dept has not made any of the modifications.** As a matter of fact their own cost analysis was pathetic as it minimized and was a worthless and incomplete attempt.

After all these years, there was finally a division made between small and large homes. Small being 8 and under, and large being over 9 residents. **The breakdown should have been between *small business vs. large business*** which is defined as 50 employees or less. The business plan of an 8 bed facility necessitates that the owners live and work the business, and they are already on the extinction list. The few exemptions made should have been for small businesses.

The PCH industry is predominantly a cottage industry of small, independently owned and operated homes. This has been the backbone across the Commonwealth. The industry has been self sufficient and independent as it is private pay. It has not relied on any governmental department's budget. This makes it even more atrocious as these regulations will annihilate an industry. There have been discussions that these regulations would line Pa for Medicare/ Medicaid dollars. Who ever said that was the direction that the PCH industry would want to go. With all the budget cuts and failing fiscal agendas, it is illogical to destroy a private pay industry and throw it into the pit of budget woes, cuts, and deficits.

These regulations were first introduced as a draft in March 2001 titled "Adult Residential Regulations". We proved our point that one shoe does not fit all, and we were separated out of that project... *or so we thought.* Chapter 2600 mirrors both

the over-regulated nursing homes and the MH/MR group homes with Chapter 6400-DPW's Offices of Mental Retardation. Both of these institutions are funded; the skilled facilities have federal dollars and MH/MR homes have Title 19 funding. Both of these institutions have excessive administrative staffing to comply with the extreme demands of paperwork.

**We resent being shoved into a medical model.** We resent the attempt at overregulation. **Paperwork does not equate to quality of care.** Without funding, our residents are going to heavily pay for the cost of the paperwork that will actually drive the quality of care down.

We also feel that it is **unjust that the state would allow new regulations to come into effect that does not offer a grandfather-in for the existing licensed buildings.** The grandfather-in should be for as long as the building is a licensed PCH, so that current owners would also be able to sell the existing businesses. For many of the owners who are self-employed, the sell of the business is our only retirement plan. Without the provision, the state is robbing us of our livelihoods and our investments and our retirement, after years of taxations.

In Chapter 6400, DPW allowed "grandparenting" of MH/MR homes, for as long as it remained opened. DPW also allowed an exception to the 2 exits of each floor if it were "structurally impossible" to do. So why is this not granted to existing PCH?

There are not any statistics that warrant this type of erratic change. DPW's own reports of violations do not even substantiate that a change is necessary. Our current

**Chapter 2620 can effectively handle almost all the problems mentioned by the advocates, if the Dept. would use the powers that they have to enforce.** The dept. has made a huge effort to correct the problems and have become tough in enforcement. The only problems that cannot be handled by our current regulations are those of a criminal nature. Unfortunately, that is indicative of our pathological society rather than any shortcomings of the dept. or the PCH . Regulations will never protect residents from criminal wrongdoings.

Advocates are such a misnomer – similar to a “hunting preserve” which is a contradictory use of terms. They are really harming the very ones that they purport to help. Dramatically driving the cost up, while closing homes down is a cruel, heart-wrenching hardship afflicted onto our residents, and their families.

***My only closing comment would be to request that you oppose these regulations for the sake of the Commonwealth.***

Thank you,  
Elgin Panichelle

Independent Regulatory Review Commission

My name is Sheree McDevitt and I do not own a personal care home I am an employee. I have worked in Housekeeping, Maintenance, Marketing and Admissions and as an Aide, Med-Aide, Cook, Bookkeeper, Activities Director and Manager for the past 4 years. I know Personal Care. I have also had the privilege to study and serve on the numerous meetings and workgroups involved with Regulation 2600. I am also very familiar with the present Regulation 2620.

The proposed Regulation 2600 will not help the elderly because:

1. It will cost too much. Presently, I handle all the admissions for the three Easy Living Estates I receive three kinds of calls. Ones that have enough money to reside at Easy Living, ones that may be receiving enough social security and money from pensions to just make the cost of a personal care home and they have a little money in the bank, and the rest are those on SSI. The cost to implement 2600 will make it unaffordable for all three possible residents, where are they to go? They will not go anywhere they will stay at home and try to care for themselves when they are not able.
2. 2600 also requires stacks of paperwork. Paperwork is necessary but not this amount. The paperwork will not permit the "personal" things, which personal care homes are. I am referring to polishing nails, reading to them, getting to know whom they are, singing, helping them with their make-up, playing cards, someone to help them in bed and kiss them goodnight. The elderly need others to talk to just as you and I do, people their own age and those of us who work everyday with them. The elderly need someone who cares for them not someone who has to spend hours on paperwork.
3. Regulation 2600 is over-regulation for Personal Care Homes. They will become over-regulated just as Nursing Homes now are. I am not trying to put down Nursing Homes, there is a need for them at times but not to live your entire life there. I have visited many people in nursing homes and I have seen the emptiness in their eyes, not because the staff does not care but because they are over-regulated that they cannot possibly give them the attention. The residents in personal care homes that I have been in are in a home environment living with some quality of life. The staff has time to do the "personal things." Every resident becomes part of our family. Personal care homes are "social" do not turn us into to "medical" that is the purpose of hospitals and nursing homes.

4. I want everyone in this room to look into the future. In about 25 to 30 years I will be of the age where I will need care, some of you sooner, some later. I am looking forward to living in a personal care home - I love it. If Regulation 2600 passes and personal care homes are over-regulated, I will stay home alone and rot. One I will not be able to afford it, the other I do not want to live the rest of my life in a clone to a nursing home, and god knows my kids are not going to stick around and care for me 24 hours a day and I would not really expect them too.
5. This room is full of people who "care," you may think they are here for their own interest. I have seen the books; I know what money comes in and what money goes out. Many of these people are barely getting by; some are not even close to breaking even. They care for the elderly, which is why they are here. Coming here is a sacrifice for most if not all of the providers here today. They have to pay someone, double to triple wages, to take their place while they are here fighting for the elderly, just as they have in the last for the last 5 years. It is time to stop this over-regulation foolishness and look at the health and welfare of those in personal care homes and let us all go back to caring for the elderly with Regulation 2620, it works!

On behalf of my fellow employees and the elderly, I beg you to stop Regulation 2600.

Thank you,



Sheree McDevitt  
724-493-4362

*Attachment* "

TO: IRC  
FROM: Lynn Marting  
Lynn Marting -Personal Care Home Consulting, Inc.  
P.O. Box 98  
Monroeville, PA 15146  
  
Phone# 724-274-2177 Fax# 724-274-1063  
Email: [LMarting@aol.com](mailto:LMarting@aol.com)  
RE: 2600 Personal Care Home Regulations

Dear Committee Members:

I am here today to represent and speak for the hundreds and hundreds of residents and their families who I have helped in the Pittsburgh and surrounding areas over my 18 years of working in the Personal Care Home/Assisted Living Center industry. I have come here to express my deep concern for the passing of the 2600 final form regulations.

I am a placement counselor in the Pittsburgh area who assists residents and their families with finding the right PCH/ALC. Our company takes the frustration and confusion out of helping individuals find the most appropriate PCH/ALC for their loved one. We educate families about these homes and help them with making informed decisions. In addition we are committed to securing a smooth transition into the home and achieving a safe and secure environment.

There is much diversity among the 250 homes I work with in Allegheny, Westmoreland and Beaver Counties. If these regulations are passed most of these homes will be adversely affected. This is not only the small homes of 9 and under but includes many of the 30 bed and 50 and 75 bed facilities as well. These homes are not only the SSI homes but also include homes costing residents up to \$2400.00 a month. I have spoken to many of the administrators and owners of these homes and they tell me they are not going to be able to handle the exorbitant cost increase in going from a social model over to a medical model with all the changes necessary to meet these regulations.

PCH's/ALC's come in many different shapes and sizes. They have various services, professionalism, structural differences, amenities, philosophies, recreational activities and financial differences. It is these differences that make up a "suitable match" for the resident and their family. Implementing the 2600 regulations will change all homes to make it a "one size fits all". This is most damaging for this will create the destruction of choice. Residents will now be giving up **FREEDOM OF CHOICE!!!** No longer will families be able to choose a small or mid size home where nurturing, intimacy and increased attention and more hands on guidance is easily given. In my 18 years these homes have some of the best ratings and quality of care according to the residents and families who reside in these smaller homes.

**\*\*What will happen to one of my 90 year old residents who has severe arthritis and is currently escorted by staff in her small familiar environment because she can only walk very short distances at a time? Will she soon be put into an institution where she is stuck in a wheelchair for long periods of time and wheeled everywhere losing her mobility because she has to go great distances of 1000 feet or more to get to the common living area?**

**\*\*What happens to my 85 year old resident who cannot see or hear well and is quite happy and comfortable sitting in a small PCH where again her familiar environment is all in a radius of 100 feet? She presently sits where staff can see her at all times and provide hands on guidance? Will she soon be put in a large place where her fear escalates to the point of causing great anxiety and now she is being treated for this medically because of the loss of intimacy and no hands on assistance.**

**\*\*Why do state of the art Alzheimer units have what are called small pods or neighborhoods of only 12 or 14 residents to a common living area? This is to be able to keep residents in familiar areas without getting lost and to provide the attention they can get in order to make them feel safe and secure.**

**SAFETY ISSUES** have the potential to become a greater risk of concern when we have residents in larger homes where they are left to initiate more on their own. There is greater risk for falls because they are left for longer periods of time. It is a fact that when you have larger homes there is a definite correlation with having less direct care workers to resident ratio. Transfers too can become more difficult to provide with hands on supervision. In some homes toilet schedules are more difficult to be given on a regular basis in larger homes than the smaller ones. Nursing homes can provide restraints and PCH's cannot. Therefore, there will be a much greater fall risk when the smaller homes are no longer in existence. **SAFETY AND SECURITY** will be lost if we go into a one home fits all.

This is not to say that the large PCH's/ALC's do not provide a great service as well. They have many benefits to offer over the smaller ones. These homes usually offer many more amenities as well as larger space and privacy and sense of control. They too can offer more professionalism and outside services but they will also be greatly affected by the new regulations. The direct quality of care is going to be compromised with much more paperwork and increased cost which will be difficult for residents to afford since these homes are already more expensive.

We will be **"WAREHOUSING"** or **"INSTITUTIONALIZING"** our elderly with PCH regulations that will mirror nursing homes. Nursing homes serve a good purpose but they are NOT a place to live out ones years with any dignity or quality.

I believe we are all here for the common good of making life better for our elderly but we all need to work together in getting it right. Such major decisions are being made by those who have never walked into a Personal Care Home nor do they know much about such homes. PCH's/ALC's are residents homes. They should not be institutions. PCH's