

Original: 2294

October 31, 2002

Independent Regulatory Review Commission  
333 Market Street – 14<sup>th</sup> Floor  
Harrisburg, PA 17101

RECEIVED  
OCTOBER 5 2002 9:18  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Independent Regulatory Review Commission:

On October 5, 2002, the PA Department of Public Welfare published proposed Personal Care Home Regulations, 55 Pa. Code Chapter 2600 in the Pennsylvania Bulletin for public review and comment. As such, the purpose of this correspondence is to submit written comments that hopefully you will find helpful during this formal regulatory review process.

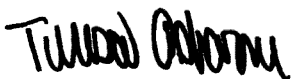
As a member of the Department of Public Welfare Personal Care Home Advisory Committee, I commend the Department for the time and effort committed to drafting the proposed regulations. In particular, the following Department representatives: Deputy Secretary William Gannon; Director – Bureau of Home and Community Based Services, Beverly Doherty; and Director - Office of Licensing and Regulatory Management, Teleta Nevius, have demonstrated patience and professionalism as they listened to and led a diverse statewide stakeholder group through the drafting of these regulations.

It is imperative that the current regulations, 55 Pa. Code Chapter 2620 Personal Care Home Regulations be revised and enhanced to ensure that the elderly and disabled men and women who require the services of a personal care home are cared for with dignity and respect. It is just as important that the regulations afford the Department personnel overseeing personal care homes the tools and means necessary to protect the health, welfare and safety of those in need of personal care home services.

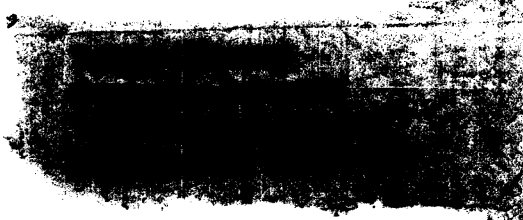
The current 2620 Personal Care Home Regulations are 20 years old and have not been updated in over a decade. Considering that 77,000 of the 101,000 persons residing in regulated residential settings are in personal care facilities, the Department of Public Welfare has elected to undertake revising the personal care home regulations as a "priority." In a June 22, 2001 letter, the Department noted that the "changing character of (personal care home) residents and the proliferation of Personal Care Home licensees doing business as Assisted Living" led the Department to recognize the importance of regulation revision. In addition, at that same time the Department announced that they would be considering changes in internal licensing practices while revising the 2620 regulations.

I have attempted to be thorough in my comments by providing data in order to validate the changes and enhancements proposed for incorporation into the new 2600 regulations. Thank you in advance for reviewing these comments. I am available should you have any questions and can be reached at (570) 558-3203 or [teo@theadvocacyalliance.org](mailto:teo@theadvocacyalliance.org). In addition, I would like to receive a notice of the final form regulations when available, so that I may remain involved in this important public policy process.

Respectfully,



Teresa Osborne



**Comments to the Proposed Personal Care Home Regulation  
55 Pa. Code Chapter 2600  
as published in the Pennsylvania Bulletin on October 5, 2002**

During the past two years, consumers, providers, provider associations, consumer advocates, consumer advocacy organizations and agencies, and representatives from various state departments have met, discussed and provided comments to several drafts of the new 2600 regulations. The Department of Public Welfare, herein referred to as the Department, is to be commended on its efforts to solicit input and feedback from stakeholders across the Commonwealth in order to draft the new 2600 Personal Care Home Regulations.

**Effects:**

**Private Sector – General Public**

In drafting the proposed rulemaking, the Department advises that that they gave “careful consideration to the effect the regulations will have on the cost of providing or receiving services.” The Department indicates that “there will be no costs to the general public as a result of this proposed rulemaking.” It is my contention that this expectation is not accurate.

**Public Sector – Commonwealth**

In drafting the proposed rulemaking, the Department advised that they anticipate that this proposed rulemaking will have no impact on State revenues. In their explanation, the Department indicates that personal care home residents who meet eligibility requirements can use government funds to pay to live in a personal care home. The Department then cited the numbers of low-income residents in the commonwealth who receive monthly SSI payments and commented that these residents are also eligible to receive a supplement to their monthly SSI check. The supplement was increased in fiscal year 2001-2002 by 20% (or \$15 million state dollars).

What the Department neglected to point out was that over 20% of residents in personal care homes statewide are SSI recipients or have incomes equal to SSI recipients, who are low income, elderly and persons with disabilities. Pennsylvania's State Supplement to SSI began in 1976 as a public funding source for individuals in Domiciliary Care Homes and was expanded in fiscal year 1982-83 to serve as a funding source for personal care home residents. The resident uses their monthly federal SSI check and their monthly state supplement check to pay the personal care facility. In 1999, the personal care home supplement amounted to \$774.30 (\$500 federal and \$334.30 state monies). Currently, the supplement amounts to \$925.30 (\$525 federal and \$394.30 state monies). In addition, the SSI resident also receives a personal needs allowance, which since its inception, remains woefully inadequate. In 1983, the personal needs allowance was \$25.00 and was raised to \$30.00 in 1990. In 1993, the personal needs allowance was increased to \$60.00. Although the supplement increased in 2001-2002, the personal needs allowance for the resident did not.

Consumer advocates worked very hard to encourage the legislature to increase the SSI supplement, which truly benefits the provider, and to increase the personal needs allowance in order to benefit the resident. Unfortunately, while the SSI supplement increased, the personal

needs allowance did not. Only the personal care home providers benefited from the increase, not the residents. SSI residents are permitted to retain \$2.00 per day for all of their personal needs. Why is this important? Because although personal care homes provide food, sheets, towels, and laundry services for SSI residents, they do not provide many of the basic items one might need. So, the SSI resident relies on \$2.00 a day/\$60 a month to pay for things such as a haircut, new shoes, a candy bar, Christmas gifts, and birthday presents. In order to enhance the standards by which we care for the elderly and disabled adults by drafting new regulations for personal care homes, the Department of Public Welfare must also anticipate and acknowledge that State dollars will be needed. Already, many personal care home providers have stated during public meetings that they have no problem with implementing new regulations because the increased costs they anticipate will be passed on to the resident

Below are my section-by-section comments to the Proposed 2600 Personal Care Home regulations as published in the Pennsylvania Bulletin on October 5, 2002. The regulation section being commented on is referred to in the left hand side of the page and the reason for concern and/or recommended change is specified to the right. Proposed language for consideration/incorporation into the new Chapter 2600 regulations appears as a bold font so that it is distinguished from the comments.

Regulation	Reason for Concern and/or Recommended Change
2600.1	<p>This section identifies the <b>Purpose</b>. The language from 2620.1 – Introduction must be retained and needs to be reinserted to the new Purpose in 2600.1. It sets the tone for the full intent of the regulations. Therefore, please add the following sentences to 2600.1: <b>Unnecessary institutionalization will be prevented and individuals who might otherwise be required to stay in institutions will be able to live in a Personal Care Home in the community. Personal Care Home licensees are encouraged to use the placement services of local agencies (i.e., area agency on aging) in assessing resident needs so that necessary services and the appropriate level of care may be identified and promptly secured.</b></p> <p>The Department is commended for replacing “aging, blind and disabled” with “dependent adults”.</p>
2600.3	<p><b>2600.3 (a)</b> pertaining to <b>Inspections</b> needs to be clarified. The frequency of inspections must be included in this section. Suggested change: <b>An authorized agent of the Department will conduct onsite inspections of the personal care home at least yearly or at the discretion of the Department.</b> Please note that additional comments regarding the frequency of inspections occurs in 2600.11.</p>
2600.4	<p><b>Definition of ADL – Activities of Daily Living</b> – The Department is commended for adding this to the regulations and ensuring that it mirrors that of</p>

the PA Department of Aging (PDA). This Office of Licensing and Regulatory Management was introduced as a cross-systems licensing project and needs to consistently implement definitions that are common across systems.

**Definition of Abuse** – Some additional language is needed to clarify the definition of Abuse. The need to keep the cross-systems concept in mind in the definitions of abuse is very important and the Department must carefully reflect such by deferring to the Older Adult Protective Services Act (10225.103(e)) each time abuse allegations are made and investigations are needed. Suggested definition:

**(iv) Exploitation refers to an act or course of conduct by an owner, administrator, ancillary staff person, direct care staff person or another person against the resident or the residents resources without the informed consent of the resident or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the resident.**

**Definition of Ancillary Staff** – Needs to be expanded. Suggestion: **Employees whose responsibilities do not include providing personal care services or direct care services but does include cooking, cleaning, and other non-hands on care services required in the personal care home.**

**Definition of Complaint** – Need to clarify *to whom* the written or verbal complaint must be submitted. Suggested definition: **A written or verbal criticism, dispute, or objection presented to the Department, its regional field office, or to the PDA Ombudsman by the resident or designee regarding the care, operations or management policies of the personal care home.**

**Definition of Designee** – Needs to be clarified as this is a co-mingled definition from the currently used 2620 personal care home regulations and is very confusing. Throughout 2600, (i.e., 2600.143) the word designee is used to refer three different persons: (1) a representative of the administrator; (2) a representative of the resident; and (3) a representative of the Department all of which leads to the confusion. Suggested definitions:

**Designated Person** – **An individual chosen by the resident to be notified in case of an emergency, termination of service, home closure or other situations as indicated by the resident.**



**Designee** – The person appointed, assigned, or authorized by the Personal Care Home Administrator to act in the administrator’s absence.

**Definition of Emergency Medical Plan** – Need to add some clarifying language to this definition:

**A written plan that identifies how the resident will receive immediate and direct access to emergency medical care and treatment.**

**Definition of Financial Management** – Need to be consistent with personal care home services being provided. Suggestion:

**A personal care service provided when the personal care home owner or administrator assumes the responsibility of maintaining a resident’s financial resources or serves a representative payee for the resident.**

**Definition of Long Term Care Ombudsman** – While PA Department of Aging regulations define the role of the ombudsman in accordance with federal statutes, it is important to clarify in the new 2600 regulations that the services of the Ombudsman are available to personal care home residents regardless of age. Suggested change in language: **Change “older individuals” in the first sentence to: “adults who are consumers of long term care services, including personal care home services.”**

**Definition of Neglect** – Please clarify this definition. While it is vital that we remember to implement definitions across systems, the 2<sup>nd</sup> sentence of the definition proposed is the responsibility of the protective service investigator to determine during the investigation under the Older Adult Protective Services Act. A resident consenting to the provision of protective services has no bearing on the personal care home regulations. Suggested definition:

**The failure of the personal care home owner, administrator, or staff to provide personal care services essential to avoid a clear and serious threat to the resident’s physical or mental health, and neglect as defined in 18 Pa. C.S.A. 101 and the Older Adult Protective Services Act.**

**Definition of Personal Care Services** – Need to be consistent with what constitutes personal care services. Consumers of such services need to understand exactly what services the provider is responsible for and what is not considered a personal care service. Therefore, it is essential that Activities of Daily Living and Instrumental Activities of Daily Living (which are both defined in the new 2600 regulations) be a part of this definition. Suggested definition: **Assistance given or supervision of a resident in need of help with one or more activities of daily living, instrumental activities of daily living, and medication management.**

2600.5

**Access Requirements** – This section needs to be strengthened so that its intent is clear to the providers and the residents. In part (a), the wording at the end of the sentence reads: ...”inspect or examine the residents.” It is not clear if the inspector is supposed to examine the resident (i.e., an actual person) or the residence (i.e., the personal care home). If the intent of this regulation was to allow the inspector the opportunity to “examine” a resident, I recommend that this wording be changed as the only person who should “examine” any resident is a medical doctor, not a Department inspector. To keep this wording is disrespectful to the resident and should be changed to “inspect or examine the home.” In part (b - 1) of this section, this section needs to be expanded so that its intent is clear. Suggested wording of (b-1): **Agents of the Department and/or other State agencies, including agents of the PA Department of Aging, and other appropriate legal entities, including the Pennsylvania Protection and Advocacy Agency.** Note: Pennsylvania Protection and Advocacy has federal statutory authority to investigate complaints regarding conditions in residential settings where persons with disabilities reside.

Currently, our state’s Older Adult Protective Services Act only authorizes the local area agencies on aging to investigate allegations of abuse and neglect for an adult 60 years of age and older. If a resident in a personal care home is age 18 to age 59, and there is an allegation of abuse or neglect requiring an investigation, there is no single entity responsible to investigate the situation. The Commonwealth’s rapidly growing elderly population, combined with initiatives of the PA Office of Mental Health and Substance Abuse to downsize state mental health facilities, and the PA Office of Mental Retardation’s Transformation Project focusing on community inclusion, have all increased the demand for residential facilities with supportive services. The changing profile of the personal care home resident necessitates that all appropriate entities be allowed to enter and inspect every licensed personal care home and that such entities be allowed to meet, speak with, and if necessary, interview every personal care home resident. Therefore, until our state legislature delegates the responsibility of investigating allegations of abuse, neglect, exploitation, and abandonment to the PA Department of Aging for all elderly and care dependent adults, the Pennsylvania Protection and Advocacy Agency must be identified as an appropriate legal entity. Additionally, if (b-2) remains in the new regulations, a suggested change is: **Representatives of the Department of Aging, including Older Adult Protective Service Investigators and representatives of the long term care Ombudsman Program.**

2600.11

This section on **Procedural Requirements for Licensure** is **totally unacceptable**. The Department is responsible to conduct timely announced annual or semi-annual license renewal inspections, and now at a time when oversight of our Commonwealth’s approximately 1800 personal care homes is so needed, the Department actually proposes to lessen their responsibility by

inspecting all homes at least once every three years. Not one of the previous drafts of the proposed 2600 regulations suggested staggering inspections over a three-year period. The entire second sentence in this section must be deleted. **Homes need to be inspected at least annually, and at the discretion of the Department, more frequently is necessary. Homes must be inspected, at a minimum annually, and inspection visits can be unannounced.** Both Auditor General Robert P. Casey, Jr.'s Report on Personal Care Home Licensing in 2001 and recommendations made by the Personal Care Home Advisory Committee in January 2002 acknowledged that the Department has completed licensure and renewal inspections in a timely fashion. Both reports also encouraged the Department to consider enhancing its policies in this area. Instead, the Department has proposed to scale back its inspection of personal care homes, which is inappropriate and irresponsible. The Department must embrace the fact that their mission is not simply to issue licenses to personal care homes, but must understand that their duty also includes protecting the health, safety, and welfare of the elderly and disabled men and women who reside in a personal care home.

**2600.14** (b) needs to include penalties for those providers who do not notify the Department.

**2600.15** **Abuse Reporting** – The Department is to be commended for enhancing the abuse reporting section in the proposed regulations. However additional language could benefit the enhancement. Suggested language change to (a): **Employees of the personal care home shall immediately report suspected abuse of a resident served in the home in accordance with the Older Adult Protective Services Act relating to Reporting Abuse (35 P.S. – 10225.302 and 10225.701), which includes voluntary reports and mandatory reporting and 6 Pa Code 15. 21 – 15. 27, relating to suspected abuse.** (b) needs a time frame put in to identify how long the provider has to submit a plan of supervision to the personal care home regional field office. Also, this section should reference and model the Older Adult Protective Services Act (15.56 – Restrictions on Employees which outlines the responsibilities of the facility should an employee be the alleged perpetrator or the target of an investigation.

**2600.16** The Department needs to be commended on the enhancements to this section on **Reportable Incidents**. Several language clarifications are suggested to the following:

**2600.16 (8) Food poisoning of a resident or residents.**

**2600.16 (13) A complaint or allegation of resident abuse, the referral of an allegation of resident abuse to the PA Department of Aging, local area agency on aging, law enforcement, or the Long Term Care Ombudsman for investigation or the results of any investigation conducted by the personal care home of possible resident abuse.**

**2600.16 (17) This Reportable Incident refers the reader to 2600.51, which discusses resident abuse and criminal background checks. Section 2600.51, references the Older Adult Protective Services Act. The reference number is not correct, whereby 10225.5102 should be 10225.502.**

**2600.16 (b) Need to add language at the end of this sentence that reflects that the written policies and procedures on the prevention, reporting, notification, investigation, and management of reportable incidents is in accordance with applicable state laws, including the Older Adult Protective Services Act. In addition, the Department needs to clarify the responsibility of the personal care home provider to "investigate" an allegation of a reportable incident, especially an allegation of abuse. Personal care homes do not have experience or expertise in these types of investigations and would need to rely on the Department for technical assistance on how to perform this function.**

**2600.16 (c) The word "designee" needs to be defined and/or clarified. The definition section of the regulations does not address/explain who the "designee of the Department" would be. In addition, the "manner designated by the Department" for reporting incidents must be defined right now within the regulations. Is the provider going to be responsible to call, write, fax, or email the Regional Office? What about reports that occur on a holiday or during a weekend? Considering that the regulations were drafted as part of a cross systems licensing project, additional collaboration on the regulations should take place between the Department and the PA Department of Aging, which already has in place the manner and method of reporting for facilities when resident abuse is suspected. Similarly, DPW's Office of Mental Retardation has a policy and procedure for reporting and investigating unusual incidents and allegations of abuse. It would behoove the Department to implement Letters of Understanding and/or Memorandums of Understanding across systems and within their own department so that efforts do not have to be duplicated and the bottom line focuses on providing quality services while protecting the health, welfare, and safety of the residents who live in licensed personal care homes.**

**2600.16 (d) The time frame must be clarified. "5" days is too long. The time to report to the field office should be within 24 hours of the incident. And protocols would need to be put in place for reporting incidents that occur on the weekend and on holidays. However, this time frame remains, the days need to**

specified as five working/business days or consecutive days. The expectations of the Department must be clear.

**2600.16 (e)** The time frame for conducting and completing an investigation must be determined and defined in this regulation. The PA Department of Aging allows 20 days for Protective Service Investigators to conduct an investigation of an older adult who may be the victim of abuse. The Office of Mental Retardation allows a provider 30 days for a consumer receiving mental retardation services (regardless of age) to conduct an investigation. As a cross-systems licensing project, the Department must be clear in their intent so that the personal care home providers have full knowledge of their responsibilities in order to protect the consumers they serve. Training and technical assistance must also be made available to the personal care home providers who will need to have working knowledge of how to conduct an investigation of an unusual incident or an allegation of abuse.

**NOTE:** In 1998, the Personal Care Home Task Force of the Pennsylvania Departments of Public Welfare, Health and Aging issued a report, "Personal Care Home Task Force Final Report". In this Final Report, the Task Force strongly recommended that the Department of Public Welfare has "an implicit responsibility to advocate for personal care home residents, to ensure they receive quality care. No other level of government will fill these needs statewide".

**2600.17**

Language needs to be consistent throughout the regulations. This section on **Confidentiality** needs to mirror section 2600.5 on Access. Suggested addition for clarification and consistency: **Resident records shall be confidential, and, except in the event of an emergency or during the course of an abuse investigation, may not be open to anyone other than the resident, the resident's designated person (i.e., Power of Attorney, family, or guardian), if any, agents of the Department and other State agencies, including agents of the PA Department of Aging Protective Services, Ombudsman, or OPTIONS for the determination of an appropriate level of care, and the Pennsylvania Protection and Advocacy.**

**2600.18**

This section on **Applicable Health and Safety Laws** must be clarified. Personal Care Homes are expected to be in full compliance with all applicable Federal, State, and local statutes, ordinances, and regulations prior to a license being issued by the Department. The home is then expected to remain in compliance. Suggested change: **A personal care home shall be in compliance with all applicable Federal, State, and local statutes, ordinances, and regulations. Particular attention will be paid to those statutes, ordinances, and regulations regarding fire and panic, public health, civil rights, neglect of a**

**care dependent person, and older adult protective services. Failure for a personal care home to comply with any of the aforementioned or any other applicable law will amount to a violation of this section.**

2600.19

This section on **Waivers** is not clear and needs to be concise so that personal care home providers understand the following: (1) the home will disclose to potential residents and current residents all pending and/or approved waivers for the facility; (2) the resident will have the right to appeal the waiver; (3) the Department will ensure that waivers are time limited and not indefinite; (4) the regulation will specify who at the Department has the right to grant a waiver. Is it the Regional Office, the Deputy Secretary or the Secretary? Or will the Department rely on Labor and Industry to determine the appropriateness of a certain Waivers? **All of this needs to be incorporated into the Waiver Section.**

**Comment/Concerns regarding this section:** Until 1991, the majority of the waivers granted by the Department were for structural deficiencies, not involving residents' rights. Since then, however, waivers have increasingly been used to obtain permission to have a secured unit, which waived the right for residents to be free from restraints. According to a March 2000 report submitted to the Department by the "Personal Care Home Advisory Board Subcommittee on Licensing and Legislation Looking at Secured Unit Waivers", in 1994, when the Department conducted its first waiver review, there were 24 personal care homes with waivers approved by the Department. By January 2000, this number soared to 145 personal care homes with approved waivers to secure units, floors or homes. By June 2001, 194 personal care homes were granted waivers by the Department.

To obtain a waiver currently, the personal care home has to submit a request to the Department. There is no opportunity for the public or the residents to comment on the appropriateness of the waiver requested and there is no process for those who oppose the waiver to express their opinion or concern. After granting a waiver, the Department periodically reviews waivers to "determine whether acceptable conditions exist for renewal of the waiver" and can revoke the waiver if the conditions of the waiver are not being met by the personal care home. A 1999 review by the Pennsylvania Health Law Project on licensure and enforcement activities of the Department found "numerous violations of waiver conditions, but never a resulting revocation of the waiver." In other situations, Department records and news articles from across the Commonwealth revealed apparent situations where facilities should have obtained waivers for secured units to prevent wandering of persons with dementia and did not. In addition, situations were discovered where residents with dementia were not properly supervised and wandered into situations that placed the resident at risk or caused their death.

For instance, in Scranton, an 84 year old male resident was found lying outside the personal care home where he lived, clad only in underwear, at about 4:30am. The temperature at the time was 3 degrees. The personal care home was found not to be negligent in this case because facilities are not required to have an alarm on the door that would alert caregivers that someone has left the building. Despite the fact that the facility was caring for residents with dementia, the home did not have a waiver. However, several years earlier this home did apply for a waiver in order to operate a secured unit. The Department denied the home's request, and yet, the home was caring for a resident with dementia, who probably would not have wandered out in the freezing cold and died if he had been placed into a more appropriate facility.

**2600.19 (a)** – needs to clarify to whom the personal care home must submit the waiver request to. Suggestion language: **A licensed personal care home may submit a written request to the Secretary of the Department of Public Welfare for a waiver of a specific requirement contained in this chapter. The waiver request shall be on a form prescribed by the Department. The Secretary of the Department may grant a waiver of a specific section of this chapter if the following.....**

**2600.19 (c)** – Consistency is needed as to where and to whom the written requests for a waiver and where comments regarding the waiver request are to be sent.

**2600.19 (d)** – Language suggestion for clarity and consistency: **A personal care home seeking a waiver shall submit a written request for a waiver to the Secretary of the Department. A waiver granted by the Department shall be in writing, also be part of the home's permanent record and shall be displayed in a public area of the home for review by visitors to and residents of the home.**

**Regulation**  
**2600.20**

**Reason for Concern and/or Recommended Change**

This section on **Resident Funds** needs to be renamed and language needs to be enhanced so that the regulations are consistent in what is required of a personal care home which assumes responsibility for the resident's finances. As an advocate, I am personally opposed to a personal care home administrator serving as representative payee for a resident. I believe it is a conflict of interest and have frequently investigated situations whereby an administrator easily accessed the resident's finances for his/her own personal gain. However, it has been brought to my attention from my peers and co-workers who work and/or live in some of the rural parts of the Commonwealth, that finding an agency willing to provide financial management services is very difficult and often not available.

As such, additional language is needed to ensure that the resident's rights and financial assets are best protected should a facility assist with financial management.

Suggested change: **2600.20 needs to be called Financial Management rather than Resident Funds.** The Definition section (2600.4) of the regulations defines what is meant by Financial Management and does not define what is meant by Resident Funds. Also, 2600.26 on Resident Home Contracts refers to Financial Management. Since financial management is a personal care service, we must be consistent throughout the regulations and rename this section appropriately.

**Additional changes:**

**2600.20 (a) – Add language: If the personal care home administrator assumes the responsibility of *maintaining, assisting, or supervising* the financial resources for a resident, the following records shall be maintained for each resident:**

**2600.20 (a-1) – Add language: A separate record of *each resident's* financial resources, including the dates, amounts of deposits, amounts of withdrawals and the current balance.**

**2600.20 (a-2) – Add that *withdrawals* must also be documented with *dated* written receipts.**

**2600.20 (b-1) – What is meant by there shall be documentation of “counseling sessions” ? This needs to be defined.**

**2600.20 (b-2) – Need to clarify the language: The home may not prohibit the resident's right to manage *his/her* own finances.**

**2600.20 (b-5) – Need to add that written receipts must be *dated*.**

**2600.20 (b-8) – More detail is needed. Considering that changes made to the guardianship laws encourage guardianship appointments to be limited when possible rather than plenary, it is imperative that we specify that guardianships are appointed by the Court, while powers of attorney are assigned by the resident. Suggested change: The owners of the home, its administrators and employees are prohibited from being assigned power of attorney or appointed guardian of person or guardian of estate of a resident.**

**COMMENT:** We need to consider adding an 8a after the above in order to clarify the role of the representative payee should the administrator assume this role. Residents must understand that Representative Payee is an appointment by the Social Security Administration after an application for this financial assistance is made to the Social Security Office. The regulations must clarify that if a personal care home is appointed as Representative Payee for a resident, then no fee can



be charged by the facility for this service. The resident and, if appropriate his/her designated person must be notified of what Representative Payee means and what service will be provided by the appointee. Also, the regulations must clearly state that having a Representative Payee cannot be a condition of admission to the facility. I have witnessed on many occasions administrators forcing a potential resident to apply for the appointment of a representative payee so that that the facility becomes the payee and ensures that the first bill paid is the monthly rent to the facility. In addition, residents for whom the home serves as representative payee often do not receive their personal needs allowance or only receive a portion of the \$60.00 allowed to them.

**2600.20 (b-9)** – need to change the “his” in the second sentence to “his/her” = **The home shall provide the resident the opportunity to review his/her own financial record upon request during normal working hours.**

**2600.20 (b-10)** – Time frames need to be put into this section that are consistent with 2600.26 pertaining to the resident home contract.

**Comment/concern:** A study conducted by the Pennsylvania Health Law Project revealed that many residents of personal care homes require financial management assistance because they are confused or cognitively impaired and unable to manage their money on their own. Department inspection reports, however, revealed that some facilities were cited year after year for failing to comply with the regulations and yet these facilities continued to ignore the fiscal requirements because they were not fined or closed. Specifically, a facility administrator in Mathers, PA was cited from 1984 to 1997 for not having financial records for residents whose money he was managing. Plans of correction were completed by the administrator, but were never implemented. The facility was never fined. Unless the Department enforces penalties against homes that are out of compliance with the regulations and do not implement Department approved plans of correction, what incentive does the home have to actually comply.

**2600.24**

This section on **Tasks of Daily Living** must be consistent with the definition provided in 2600.4 of Instrumental Activities of Daily Living. The Department is to be commended for incorporating the definition of instrumental activities of daily living that is consistent with the definition used by the PA Department of Aging.

**Suggested language: A home shall provide residents with assistance with Instrumental Activities of Daily Living as indicated in his/her assessment and support plan, including one or more of the following:**

**(1) Using or securing transportation; (2) Shopping; (3) Making and keeping appointments; (4) Financial management; (5) Using a telephone; (6) Care of personal possessions; (7) Doing personal laundry; (8) Participating in social and leisure activities; (9) Securing health care services; (10)**

## **Ambulation and care of prosthetic devices; and (11) Medication Management**

2600.25

This section on Personal hygiene should be renamed and be called: **Personal Care Services** as that is what is defined in section 2600.4. The regulations do not define personal hygiene and we need to be consistent in our use of language and in definitions for services that are to be provided. The Department is commended for including a definition for Activities of Daily Living that is consistent with the definition used by the PA Department of Aging.

Personal care homes exist to provide its residents with certain basic necessities such as food and shelter. In addition to these basic necessities, personal care homes must provide each resident with all of the personal care services needed by the resident services listed in the regulations. Therefore, it is imperative that the regulations are concise and consistent in their definition of services to be provided. Personal care home residents are dependent on the staff of the facility for all of the services needed for their well-being.

**Suggested language: A personal care home shall provide residents with assistance with activities of daily living as indicated in his/her assessment and support plan, including one or more of the following: (1) Bathing; (2) Dressing and undressing; (3) Grooming; (4) Eating; (5) Transferring in and out of bed; (6) Toileting; (7) Bladder Management; (8) Bowel Management; (9) Shaving; and (10) Nail Care.**

2600.26

This section on the Resident Home Contract needs some sections to be further clarified so that the resident and provider understand clearly what is expected of them.

**2600.26(1) – “Payor” is not defined in 2600.4. There is thus confusion as to what the difference is between the payer and the designee. Suggested change: The contract shall be signed by the administrator or designee and the resident or the resident’s Power of Attorney, Guardian of Person and/or Guardian of Estate, and if appropriate the resident’s designated person if different from the above responsible parties. If the individual responsible to ensure that the resident’s rent is paid (i.e., a bank or trust officer) is identified, all efforts shall be made to have the contract signed by them as well.**

**2600.26 (1-iv) – Add language to clarify: The party responsible for payment if not the resident.**

**2600.26 (1-vii) – Needs to be clarified as this wording is confusing. Also, financial management services must be consistent throughout the regulations,**

including sections 2600.35, 2600.26 and 2600.20. Suggested change: **Whether the personal care home is providing assistance with financial arrangements.**

**2600.26 (1-x)** – Additional language needs to be added considering that the resident may be dependent upon a Power of Attorney, Guardian of Person, or Guardian of Estate, or other responsible party to assist with decision making and/or to assist with financial management. If this is the case, the responsible person must also receive notification that the resident has been notified of a change in the contract. Suggestion: **A statement that the resident or his/her Power of Attorney, guardian of person, guardian of estate, or other designated person, if applicable, will be provided at least 30 days advance written notice of the home's intent to change the contract.**

**2600.26 (3)** – It should first be noted that after (3) there is a (b), (c), and (d), but there is no (a). The lettering is incorrect and should be fixed so that (3 b) is (3 a), (3 c) is (3 b), and (3 d) is (3 c). Also, the new (3 b) language needs to be enhanced so that the regulations are consistent. Suggestion: **A copy of the signed admission contract shall be given to the resident, and his/her Power of Attorney, Guardian of Estate, Guardian of Person, and party responsible for payment, if applicable.**

**2600.27**

This section on **Quality Management** needs to be taken out from the regulations. Although I am an advocate for quality and quality management, assessment and outcomes, "Quality Management" does not belong in regulatory form and language.

**2600.28**

This section on **Supplemental Security Income (SSI)**, in particular, (e) must be reviewed again by the Department and the legislature. SSI recipients represent a vulnerable population on a very fixed, low income. Personal Care Homes must provide food, sheets, towels, and laundry services for SSI individuals, they do not provide many of the basic items one might need. For instance, a haircut, buying new shoes, or a sweater, are all difficult for a SSI resident to do with only \$2.00 a day or \$60 dollars a month, which is the current personal needs allowance for a SSI recipient. On numerous occasions, the Department has uncovered situations leading to the personal care facilities being cited for taking their residents personal needs money, leaving the resident without a cent and no money to buy shoes or clothing. However, a study performed by the Pennsylvania Health Law Project found no evidence that these situations were reported to the PA Department of Aging or one of its local area agencies on aging so that the case be investigated. In addition, this section needs to be consistent with 2600.42(j) which lists the need for the personal care home to ensure the resident receives assistance with obtaining clean, seasonal clothing that is age and gender appropriate. Regulations need to be consistent.

2600.41

This section on **Notification of rights and complaint procedures** must be consistent in language and intent. The complaint process must include the resident's right to file a complaint with the Department. Suggested changes: **2600.41(a) – Upon admission, each resident and, if applicable, the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable, shall be informed of the resident rights and the right to file a complaint with the Personal Care Home, Department, or Ombudsman without fear of retaliation, or the fear of threats of retaliation of the home or its staff against the person making the complaint. Retaliation includes discharge or transfer from the home.**

**2600.41 (b) – Must be consistent in language. Suggested addition is that the information be communicated to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (c) – Must be consistent in language. Suggested addition is that a copy of the resident's rights must be given to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (d) – Must be consistent in language. Suggested addition is that the statement of acknowledgement must be given to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (e) – Must be consistent in language. Suggested addition is that the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable be informed of how to file a complaint with the Department, the home, or the Ombudsman.**

**2600.41 (g) – Must be consistent in language. Suggested addition is that home inform the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable of the outcome of a complaint.**

**2600.41 (i) – Information pertaining to the Governor's Action Center Toll Free Line must be deleted as this number is not functioning and the toll free number to the PA Department of Aging be posted so the Protective Services can be contacted.**

2600.42

This section on Specific Rights has some areas that need clarifying language so that the intent is not confusing or misinterpreted. The Department is to be commended for their enhancements to the specific rights for each personal care home resident.

Suggested changes:

**2600.42 (i) – A resident shall receive assistance from the personal care home in accessing medical, behavioral health, rehabilitation services, and dental treatment in order to protect the resident’s health, welfare, and safety.**

**2600.42 (j) – A resident shall receive assistance from the personal care home in obtaining clean, seasonal clothing that is age and gender appropriate.**

**2600.42 (k) – A resident, and upon his/her request, the resident’s designated person, Power of Attorney, or Guardian of Person and/or Estate, shall have the right to access, review, and request modifications to the resident’s support plan or resident record.**

**2600.42 (u) – This item is totally unacceptable. The regulations must be consistent in their intent. This section must also be consistent with 2600.228 regarding Notification of Termination. This section is very discriminatory against the resident. Too frequently the provider is allowed to abandon a resident in a hospital setting without giving prior notice of termination. Personal Care Homes often refuse to take a resident back after the resident has successfully been treated in an inpatient psych setting. As written (2) and (3) need to identify the responsibilities of the provider should a higher level of care be needed or if the resident needs behavioral health services. In addition (3), as written, is not a decision for the home to render. Currently, the Mental Health Act sets the criteria to be followed when determining if and when a person is considered a danger to him/herself or others and this decision is made by either a psychiatrist or mental health delegate, not a provider or the Department. The suggestion is to either delete this item or substitute the language as follows: **A resident shall have the right to remain in the personal care home, as long as it is operating with a license, except in the circumstances of: (1) Nonpayment of monthly rent for two consecutive months followed by a documented effort to obtain payment; (2) Higher level of care needs that are addressed in the resident’s support plan with appropriate referrals being made to the local area agency on aging, who along with the Department will assist with alternative placement options; (3) The resident is determined by a psychiatrist or mental health delegate to be a danger to him/herself and is referred for immediate inpatient psychiatric treatment. If the resident meets any of these criteria, the home shall be required to serve the resident or his/her designated person with a 30 day discharge notice. It must be clear that the home is not the entity responsible to determine if a resident is a danger to him/herself or others. It is****

just as important that homes not be allowed to abuse or misuse the mental health act and the potential need for inpatient or outpatient psychiatric treatment as a reason for immediate discharge. For the Department to allow this to happen is a violation of the resident's right to be treated with dignity and respect.

- 2600.51** This section on **Resident Abuse and criminal history checks** has an error in it, whereas the reference to the Older Adult Protective Services Act is incorrect. The wrong reference is 10225.5102 and should be 10225.502.
- 2600.52** This section on **Staff hiring, retention and utilization** has an error in it, whereas the reference to the Older Adult Protective Services Act is incorrect. The wrong reference is 10225.5102 and should be 10225.502.
- 2600.53** This Department is to be commended for incorporating many of the suggestions made by the stakeholder groups in this section on **Administrator qualifications**.
- 2600.56** This section on **Staffing** has area that needs clarification:  
**2600.56(e)** should be deleted and no shared staff is to be permitted on any campus settings.
- 2600.57** This section on **Administrator Training** has some areas that need clarification and/or language changes.  
**2600.57 (a)** – Once again, the word **designee** is used to refer to a designee of the Department. This form of “desingee” has not been defined in the regulations. The Department must clarify who this “designee” is and what their responsibilities are with regard to training of administrative staff and carrying out competency tests.  
**2600.57 (c )** – Training on the **Older Adult Protective Services Act** must be included in the list of training topics for the first 60 hours. Considering that administrators, owners, and employees of personal care homes are mandatory reporters combined with the fact that Neglect of a Care Dependent Person statues directly relate to the protection of personal care home residents, it is prudent and appropriate that training on this topic be provided prior to an administrator serving in that capacity.  
**2600.57 (1-iv)** – **Marketing** training does not belong on competency based training for administrators. How owners, operators and administrators of facilities market their facility has nothing to do with the quality of the care provided to the residents. Nor should the Department be taking the time to offer training on marketing.

**2600.57 (2-iv) Maintenance** needs to be clarified. Maintenance of what? And what does maintenance have to do with staff supervision, budgeting, financial record keeping and training? This should be deleted unless the intent is made clear.

**2600.57 (2-v) Safety** – needs to be clarified. Safety of what? Resident safety? Staff safety? Either explain or expunge.

**2600.91** This section on **Emergency Telephone Numbers** needs to be clarified. Suggestion: **Emergency telephone numbers shall be posted on or by each telephone with an outside line in the home. 911 is suffice, however in areas without 911 service, the numbers for the nearest police, fire, ambulance and hospital shall be used.**

**2600.104** **(e)** in this section needs to be deleted. This personal care home is just that, the resident's home. Some "homes" are small facilities where animals are commonly in the living room, dining room, bedroom, etc. and do not interfere with the sanitary conditions of the facility. This provision should also be deleted in **2600.103(l)**.

**2600.145** This section on **Supervised Care** needs to be expanded. The second sentence directs that a referral to the appropriate assessment agency is to be made if a resident's needs are beyond those available in the personal care home. However, this requirement must identify what the assessment agency is responsible for and what the Department and the provider are then responsible for based on the results of the assessment agency. For instance, the assessment agency can determine the most appropriate level of care based on the resident's needs.

**Comment:** The PA Departments of Health, Welfare and Aging have been working very hard at ensuring that long term care services be understood as a continuum of care with home and community based services being the ideal. Older adults and persons with disabilities are offered services that enable them to remain in their homes and communities instead of going into an institution. Personal care residents consider the facility to be their "home" and more and more facilities are designed to be "homelike". Waiver services for persons should be allowed and offered to persons residing in personal care homes. A resident should be allowed to "age in place" and if a resident is clinically appropriate for nursing home placement and financially eligible for medical assistance, it would be less costly to supplement the services in the personal care home than to place the resident in a nursing home. Waiver services can easily supplement, not replace, the services offered and available through the

personal care home and must be considered as an alternative to nursing home placement when appropriate.

**2600.181**

**Medications** – The Department must reconsider its stance on not utilizing the Department Medication Training Program that is currently used by the Office of Mental Retardation. Considering that the Office of Licensing and Regulatory Management is a cross-systems licensing project, it would behoove the Department to implement already existing and successful programs when appropriate to the benefit of those served by the Department. Comments made by the Department when discussing implementing the Office of Mental Retardation’s medication training program focused on the fact that the Department is going to update that training and therefore they did not want to use it. The argument is that since the program, although in need of some minor updates, is already successful, it should be replicated as a starting point for the personal care homes.

**2600.201**

**Safe Management Techniques** needs to be taken out of the regulations. These areas are covered in the Administrator and Staff Training sections and are not appropriate to be in regulatory language.

**Note:** Any questions or concerns regarding the comments contained within the 19 pages of this document can be referred to Teresa Osborne at [teo@theadvocacyalliance.org](mailto:teo@theadvocacyalliance.org) or (570) 558-3203.



Original 2002  
William F. Stover  
P.O. Box 216  
Manorville, PA 16238

RECEIVED

October 31, 2002

20021031-6 AM 9:33

P.O. Box 216

LABORATORY  
REVIEW COMMISSION

Manorville, PA 16238

Teleta Nevius  
Director  
Office of Licensing and Regulatory Management  
Department of Public Welfare  
Room 316 Health and Welfare Building  
P.O. Box 2675  
Harrisburg, PA 17120

Dear Teleta Nevius:

It has come to my attention that the Department of Public Welfare is proposing additional regulations governing the operation of Personal Care Homes. Upon reviewing some of these regulations, I feel that they will have a serious impact on the affordability of my family's ability to keep my mother in a Personal Care Home. Presently, she is a resident of Melody Manor Personal Care Home in Kittanning, PA. My mother is 83 years old and is in the early stages of Alzheimer's disease. Fortunately, she is a very healthy lady, but is unable to perform the every day tasks necessary for every day living. She is very comfortable and is being well cared for in this facility. Her Social Security and small pension income has to be offset by a contribution from the family in order for her to reside at this facility. I fear that the proposed regulations will increase her cost of care beyond the limit of affordability.

In reviewing some of the regulations, I find that these regulations are written by typical bureaucrats of government, that in the mainstay want to seek more control and/or create jobs that do not produce real meaningful results. One hundred fifty six (156) pages of regulations over the Personal Care Home is a prime example of bureaucratic mumbo jumbo.

The existing regulations would suffice if the Department of Public Welfare would have been doing its job over the past decade. I agree there may be certain Personal Care Homes in Pennsylvania which should not be in operation. But passing regulations that increases the cost to residents in order to close these homes is not the way government should operate. This is the typical bureaucratic answer to problem solving.

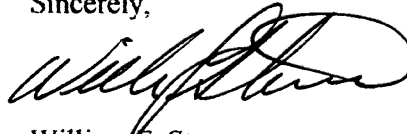
Evidently, Ms. Nevins, you and the Department of Public Welfare have not done your job in past years by not enforcing existing regulations on the books. The Department of Public Welfare needs to take a serious look at the intent of a Personal Care Home, one which is not to be a nursing home or medical facility. Your regulations seem to promote Personal Care Homes as a nursing home or medical facility. A typical response from a bureaucrat was published in an article by Gary Rotstein in the Pittsburgh Post Gazette on Thursday, October 3, 2002, and I quote

“Department of Public Welfare spokesman Jay Pagni said any home forced to close for lack of a nurse might be one that consumers should have concern about using in the first place. “The purpose of these regulations is to ensure the health and safety of individuals in Personal Care Homes”, Pagni said, “Health safety is seen as an area that needs to be strengthened and improved”. These blanket statements are typical of those given by bureaucrats in generalizing issues. There may be some minor issues with Personal Care Homes, but none at the magnitude that warrants these proposed excessive regulations.

When my family members or I visit my mother at Melody Manor Personal Care Home, we find the residents to be well cared for and happy. Your proposed regulations may have such an impact that it will place a burden on families, such as mine, by forcing us to bring our parents into homes where all the family members are working and will not be home during the day to give their parents the individual care and attention that they are now receiving at a Personal Care Home. In my opinion, this would not be ensuring the health and safety of our loved ones requiring personal care.

I urge you and your bureaucratic colleagues as public servants, to consider the public’s wishes in this matter. Enforce the current regulations with minor adjustments for employee training and the administration of medication.

Sincerely,

A handwritten signature in black ink, appearing to read "William F. Stover", written in a cursive style.

William F. Stover

cc: Feather Houstoun, Secretary, Department of Public Welfare  
Independent Regulatory Review Commission  
Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee  
George T. Kinney, Jr., Chairman, House Health and Human Services Committee

October 31, 2002

Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
333 Market Street - 14th Floor  
Harrisburg, PA. 17101

To Whom It May Concern:

I am writing to you as a concerned grand-daughter of a 90 year old woman in an assisted living facility. Recently we have been informed of impending new regulations. Many of these regulations seem too extreme and unfair to the smaller facility already giving adequate care at reasonable rates. Furthermore, people on Social Security Income will be priced completely out of the system. Somehow, that seems like discrimination to me!!

I ask you, where is it going to stop. Older people should be able to enjoy their last days here on earth without being forced out of a nursing home because of their low income.

For the above reasons I implore you not to approve these extreme regulations as they will do more harm than good to many members of the senior community.

Yours truly,

*Sheila Schell*

*Sheila Schell  
85 Bertolet School Rd  
Spring City, PA. 19475-*

RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION  
2002 NOV -4 AM 9:12

Original: 2294



PENNSYLVANIA  
ASSISTED LIVING  
ASSOCIATION

536 Edella Road  
Clarks Summit, PA 18411

(570) 586-4292  
Fax (570) 586-4024  
www.pala.org

October 31, 2002

Ms. Teleta Nevius, Director  
Office of Licensing and Regulatory Management  
Department of Public Welfare  
316 Health and Welfare Building  
P.O. Box 2675  
Harrisburg, PA 17120

RECEIVED  
GENERAL COMMISSION  
NOV 1 2002

Dear Ms. Nevius:

Pennsylvania Assisted Living Association (PALA) commends the efforts of your office in drafting the proposed CH 2600 Personal Care Home Regulations, however we would like to take this opportunity to voice several serious reservations concerning specific provisions and requirements which we believe will impact not only the providers of service statewide, but, more important the 60,000 plus seniors who reside in these communities.

PALA and our National Affiliate - The Assisted Living Federation of America (ALFA) are acutely aware that we represent a profession entrusted with the responsibility of caring for seniors in the Commonwealth. We recognize and accept the responsibility that the profession will, and should be held accountable to the highest standards of quality in the provision of these services. Consequently, we support state regulatory systems designed to foster such accountability.

While the Department has proposed new regulations, it is equally critical, however, to identify the characteristics that distinguishes personal care/assisted living from other long term care options. Personal Care/Assisted Living is consumer-directed care. There is a need to develop a balance that assures quality while adhering to a customer-choice concept. Consumer-driven care sets assisted living apart from other long term care alternatives.

PALA and ALFA believe that this balance between the need to assure quality while allowing for "customer choice" should be included in the implementation of the regulatory system. One approach may be to concentrate on the standards that function independently of the processes of "how" the care is actually provided. These are standards that all professionals must adhere to within any regulatory system. The two constants are service outcomes and customer satisfaction.

For example: The "how" of food service is less important than the fact that the food be both nutritious and appealing. The "how" of resident assessment is less important than the fact that it provide the foundation for an adequate plan of care and that the customer feels a part of the process. The "how" of medication management is less important than the avoidance of drug errors. It is not the "how" of care - e.g. the process that is important; it is the result - e.g. the outcome. Each process chosen by the regulatory system is one less choice made available to the customer.

As you are aware, the residents in Personal Care Homes do not have the complexity of needs or the severity of illnesses that one would find in a nursing home and we question why Personal Care Homes should be held to higher standards than nursing homes. In addition, there are requirements that we agree with, and there are also areas that in our opinion, require modification.

Specifically, these regulations require modification:

**2600.53 Staff Titles and Qualifications for Administrators**

Comment: We support enhanced Administrator Training – 60 hours classroom and 80 hours “on the job” training for new administrators with competency based training. Agree with higher education requirements although no consideration has been given to job experience. Possibly a competency test similar to NHA allowance.

**2600.57 Administrator Training and Orientation**

Comment: 24 hours of annual training should be reduced to 12 hours. Reason – A certified Registered Nurse requires 15 hours yearly to maintain certification. A Nursing Home Administrator is required to maintain 24 hours of continuing education yearly.

**2600.60 Individual Staff Training Plan**

Comment: Agree with the proposed staff training regulation provided that the training be in conjunction with supervised “on the job” training and that the “direct care staff” be defined as those who directly assist residents with personal care services and tasks of daily living.

**2600.101 Resident Bedrooms**

Comment: Modify. Allow for any current waivers regarding conditions of a room that are currently approved by the Department to be grandfathered in.

**2600.132 Fire Drills**

Comment: Modify. Eliminate the requirement for 2 ½ minute resident evacuation and require that each home follow and perform fire drills as recommended and approved by their local fire authority.

**2600.161 Nutrition Adequacy**

Comment: Modify. Change to “Other beverages shall be made available in a common area during waking hours.” Remove from Regulation the necessity to “offer at least every two hours”

**2600.181 Self-Administration Medication**

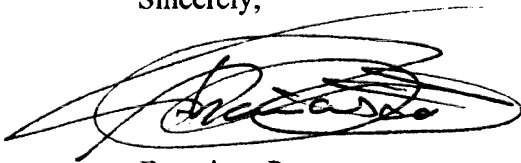
Comment: Modify. The proposed regulation prohibits trained personal care attendants from assisting residents with medication administration. We are committed to the development of a state-approved medication training program that would be offered in-house, that would certify unlicensed personnel to administer medications.

**2600.226 Development of a Support Plan**

Comment: Modify. Services should be offered to the resident as documented in the Initial Assessment and reassessed annually or as deemed necessary contingent upon a change in the resident's medical condition.

These recommendations identify only a fraction of our concerns with the proposed regulations. We hope these comments will serve as a vehicle for the Department of Public Welfare, Independent Regulatory Review Commission and the Standing Committees in the House and Senate for consideration in establishing regulations which will maximize the well-being, health, safety and welfare of each resident in a personal care/assisted living residence within the Commonwealth of Pennsylvania. On behalf of Pennsylvania Assisted Living Association and our membership, I thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Francisco Peters", enclosed within a large, loopy scribble.

Francisco Peters  
President

Cc: The Honorable Mark S. Schweiker  
Senator Hal Mowery, Chairman - Public Health and Welfare Committee  
Senator Timothy Murphy  
Representative George Kenney, Jr., Chairman - Aging and Older Adults Services Committee  
Representative Frank Oliver  
Feather O. Houston, Secretary, PA Department of Public Welfare  
Independent Regulatory Review Commission  
Mrs. Beverly Doherty  
Mrs. Kathleen Gerrity  
Ms. Patsy Taylor-Moore  
Interested Parties

Original: 2294

October 31, 2002

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

RECEIVED  
2002 NOV - 5 AM 9:18  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Chairman McGinley:

On October 5, 2002, the PA Department of Public Welfare published proposed Personal Care Home Regulations, 55 Pa. Code Chapter 2600 in the Pennsylvania Bulletin for public review and comment. As such, the purpose of this correspondence is to submit written comments that hopefully you will find helpful during this formal regulatory review process.

As a member of the Department of Public Welfare Personal Care Home Advisory Committee, I commend the Department for the time and effort committed to drafting the proposed regulations. In particular, the following Department representatives: Deputy Secretary William Gannon; Director – Bureau of Home and Community Based Services, Beverly Doherty; and Director - Office of Licensing and Regulatory Management, Teleta Nevius, have demonstrated patience and professionalism as they listened to and led a diverse statewide stakeholder group through the drafting of these regulations.

It is imperative that the current regulations, 55 Pa. Code Chapter 2620 Personal Care Home Regulations be revised and enhanced to ensure that the elderly and disabled men and women who require the services of a personal care home are cared for with dignity and respect. It is just as important that the regulations afford the Department personnel overseeing personal care homes the tools and means necessary to protect the health, welfare and safety of those in need of personal care home services.

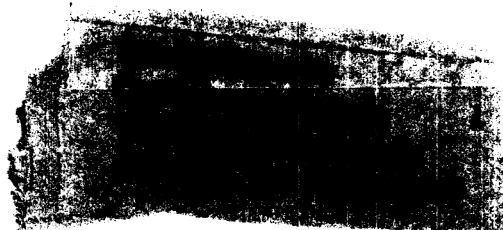
The current 2620 Personal Care Home Regulations are 20 years old and have not been updated in over a decade. Considering that 77,000 of the 101,000 persons residing in regulated residential settings are in personal care facilities, the Department of Public Welfare has elected to undertake revising the personal care home regulations as a "priority." In a June 22, 2001 letter, the Department noted that the "changing character of (personal care home) residents and the proliferation of Personal Care Home licensees doing business as Assisted Living" led the Department to recognize the importance of regulation revision. In addition, at that same time the Department announced that they would be considering changes in internal licensing practices while revising the 2620 regulations.

I have attempted to be thorough in my comments by providing data in order to validate the changes and enhancements proposed for incorporation into the new 2600 regulations. I hope that you will find my comments helpful as I have offered revisions that clarify and/or improve the regulation cited. Thank you in advance for reviewing these comments. I am available should you have any questions and can be reached at (570) 558-3203 or [teo@theadvocacyalliance.org](mailto:teo@theadvocacyalliance.org). In addition, I would like to receive a notice of the final form regulations when available, so that I may remain involved in this important public policy process.

Respectfully,

*Teresa Osborne*

Teresa Osborne



**Comments to the Proposed Personal Care Home Regulation  
55 Pa. Code Chapter 2600  
as published in the Pennsylvania Bulletin on October 5, 2002**

**Effects:**

**Private Sector – General Public**

In drafting the proposed rulemaking, the Department advises that that they gave “careful consideration to the effect the regulations will have on the cost of providing or receiving services.” The Department indicates that “there will be no costs to the general public as a result of this proposed rulemaking.” It is my contention that this expectation is not accurate.

**Public Sector – Commonwealth**

In drafting the proposed rulemaking, the Department advised that they anticipate that this proposed rulemaking will have no impact on State revenues. In their explanation, the Department indicates that personal care home residents who meet eligibility requirements can use government funds to pay to live in a personal care home. The Department then cited the numbers of low-income residents in the commonwealth who receive monthly SSI payments and commented that these residents are also eligible to receive a supplement to their monthly SSI check. The supplement was increased in fiscal year 2001-2002 by 20% (or \$15 million state dollars).

What the Department neglected to point out was that over 20% of residents in personal care homes statewide are SSI recipients or have incomes equal to SSI recipients, who are low income, elderly and persons with disabilities. Pennsylvania’s State Supplement to SSI began in 1976 as a public funding source for individuals in Domiciliary Care Homes and was expanded in fiscal year 1982-83 to serve as a funding source for personal care home residents. The resident uses their monthly federal SSI check and their monthly state supplement check to pay the personal care facility. In 1999, the personal care home supplement amounted to \$774.30 (\$500 federal and \$334.30 state monies). Currently, the supplement amounts to \$925.30 (\$525 federal and \$394.30 state monies). In addition, the SSI resident also receives a personal needs allowance, which since its inception, remains woefully inadequate. In 1983, the personal needs allowance was \$25.00 and was raised to \$30.00 in 1990. In 1993, the personal needs allowance was increased to \$60.00. Although the supplement increased in 2001-2002, the personal needs allowance for the resident did not.

Consumer advocates worked very hard to encourage the legislature to increase the SSI supplement, which truly benefits the provider, and to increase the personal needs allowance in order to benefit the resident. Unfortunately, while the SSI supplement increased, the personal needs allowance did not. Only the personal care home providers benefited from the increase, not the residents. SSI residents are permitted to retain \$2.00 per day for all of their personal needs. Why is this important? Because although personal care homes provide food, sheets, towels, and laundry services for SSI residents, they do not provide many of the basic items one might need. So, the SSI resident relies on \$2.00 a day/\$60 a month to pay for things such as a haircut, new shoes, a candy bar, Christmas gifts, and birthday presents. In order to enhance the standards by which we care for the elderly and disabled adults by drafting new regulations for personal care homes, the Department of Public Welfare must also anticipate



and acknowledge that State dollars will be needed. Already, many personal care home providers have stated during public meetings that they have no problem with implementing new regulations because the increased costs they anticipate will be passed on to the resident

Below are my section-by-section comments to the Proposed 2600 Personal Care Home regulations as published in the Pennsylvania Bulletin on October 5, 2002. The regulation section being commented on is referred to in the left hand side of the page and the reason for concern and/or recommended change is specified to the right. Proposed language for consideration/incorporation into the new Chapter 2600 regulations appears as a bold font so that it is distinguished from the comments.

<u>Regulation</u>	<u>Reason for Concern and/or Recommended Change</u>
2600.1	<p>This section identifies the <b>Purpose</b>. The language from 2620.1 – Introduction must be retained and needs to be reinserted to the new Purpose in 2600.1. It sets the tone for the full intent of the regulations. Therefore, please add the following sentences to 2600.1: <b>Unnecessary institutionalization will be prevented and individuals who might otherwise be required to stay in institutions will be able to live in a Personal Care Home in the community. Personal Care Home licensees are encouraged to use the placement services of local agencies (i.e., area agency on aging) in assessing resident needs so that necessary services and the appropriate level of care may be identified and promptly secured.</b></p> <p>The Department is commended for replacing “aging, blind and disabled” with “dependent adults”.</p>
2600.3	<p><b>2600.3 (a)</b> pertaining to <b>Inspections</b> needs to be clarified. The frequency of inspections must be included in this section. Suggested change: <b>An authorized agent of the Department will conduct onsite inspections of the personal care home at least yearly or at the discretion of the Department.</b> Please note that additional comments regarding the frequency of inspections occurs in 2600.11.</p>
2600.4	<p><b>Definition of ADL – Activities of Daily Living</b> – The Department is commended for adding this to the regulations and ensuring that it mirrors that of the PA Department of Aging (PDA). This Office of Licensing and Regulatory Management was introduced as a cross-systems licensing project and needs to consistently implement definitions that are common across systems.</p> <p><b>Definition of Abuse</b> – Some additional language is needed to clarify the definition of Abuse. The need to keep the cross-systems concept in mind in the definitions of abuse is very important and the Department must carefully reflect such by deferring to the Older Adult Protective Services Act (10225.103(e)) each</p>

time abuse allegations are made and investigations are needed. Suggested definition:

**(iv) Exploitation refers to an act or course of conduct by an owner, administrator, ancillary staff person, direct care staff person or another person against the resident or the residents resources without the informed consent of the resident or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the resident.**

**Definition of Ancillary Staff – Needs to be expanded. Suggestion: Employees whose responsibilities do not include providing personal care services or direct care services but does include cooking, cleaning, and other non-hands on care services required in the personal care home.**

**Definition of Complaint – Need to clarify *to whom* the written or verbal complaint must be submitted. Suggested definition: A written or verbal criticism, dispute, or objection presented to the Department, its regional field office, or to the PDA Ombudsman by the resident or designee regarding the care, operations or management policies of the personal care home.**

**Definition of Designee – Needs to be clarified as this is a co-mingled definition from the currently used 2620 personal care home regulations and is very confusing. Throughout 2600, (i.e., 2600.143) the word designee is used to refer three different persons: (1) a representative of the administrator; (2) a representative of the resident; and (3) a representative of the Department all of which leads to the confusion. Suggested definitions:**

**Designated Person – An individual chosen by the resident to be notified in case of an emergency, termination of service, home closure or other situations as indicated by the resident.**

**Designee – The person appointed, assigned, or authorized by the Personal Care Home Administrator to act in the administrator's absence.**

**Definition of Emergency Medical Plan – Need to add some clarifying language to this definition:  
A written plan that identifies how the resident will receive immediate and direct access to emergency medical care and treatment.**

**Definition of Financial Management** – Need to be consistent with personal care home services being provided. Suggestion:

**A personal care service provided when the personal care home owner or administrator assumes the responsibility of maintaining a resident's financial resources or serves a representative payee for the resident.**

**Definition of Long Term Care Ombudsman** – While PA Department of Aging regulations define the role of the ombudsman in accordance with federal statutes, it is important to clarify in the new 2600 regulations that the services of the Ombudsman are available to personal care home residents regardless of age. Suggested change in language: **Change “older individuals” in the first sentence to: “adults who are consumers of long term care services, including personal care home services.”**

**Definition of Neglect** – Please clarify this definition. While it is vital that we remember to implement definitions across systems, the 2<sup>nd</sup> sentence of the definition proposed is the responsibility of the protective service investigator to determine during the investigation under the Older Adult Protective Services Act. A resident consenting to the provision of protective services has no bearing on the personal care home regulations. Suggested definition:

**The failure of the personal care home owner, administrator, or staff to provide personal care services essential to avoid a clear and serious threat to the resident's physical or mental health, and neglect as defined in 18 Pa. C.S.A. 101 and the Older Adult Protective Services Act.**

**Definition of Personal Care Services** – Need to be consistent with what constitutes personal care services. Consumers of such services need to understand exactly what services the provider is responsible for and what is not considered a personal care service. Therefore, it is essential that Activities of Daily Living and Instrumental Activities of Daily Living (which are both defined in the new 2600 regulations) be a part of this definition. Suggested definition:

**Assistance given or supervision of a resident in need of help with one or more activities of daily living, instrumental activities of daily living, and medication management.**

2600.5

**Access Requirements** – This section needs to be strengthened so that its intent is clear to the providers and the residents. In part (a), the wording at the end of the sentence reads: ...”inspect or examine the residents.” It is not clear if the inspector is supposed to examine the resident (i.e., an actual person) or the residence (i.e., the personal care home). If the intent of this regulation was to allow the inspector the opportunity to “examine” a resident, I recommend that this wording be changed as the only person who should “examine” any resident is a

medical doctor, not a Department inspector. To keep this wording is disrespectful to the resident and should be changed to "inspect or examine the home." In part (b - 1) of this section, this section needs to be expanded so that its intent is clear. Suggested wording of **(b-1): Agents of the Department and/or other State agencies, including agents of the PA Department of Aging, and other appropriate legal entities, including the Pennsylvania Protection and Advocacy Agency.** Note: Pennsylvania Protection and Advocacy has federal statutory authority to investigate complaints regarding conditions in residential settings where persons with disabilities reside.

Currently, our state's Older Adult Protective Services Act only authorizes the local area agencies on aging to investigate allegations of abuse and neglect for an adult 60 years of age and older. If a resident in a personal care home is age 18 to age 59, and there is an allegation of abuse or neglect requiring an investigation, there is no single entity responsible to investigate the situation. The Commonwealth's rapidly growing elderly population, combined with initiatives of the PA Office of Mental Health and Substance Abuse to downsize state mental health facilities, and the PA Office of Mental Retardation's Transformation Project focusing on community inclusion, have all increased the demand for residential facilities with supportive services. The changing profile of the personal care home resident necessitates that all appropriate entities be allowed to enter and inspect every licensed personal care home and that such entities be allowed to meet, speak with, and if necessary, interview every personal care home resident. Therefore, until our state legislature delegates the responsibility of investigating allegations of abuse, neglect, exploitation, and abandonment to the PA Department of Aging for all elderly and care dependent adults, the Pennsylvania Protection and Advocacy Agency must be identified as an appropriate legal entity. Additionally, if **(b-2)** remains in the new regulations, a suggested change is: **Representatives of the Department of Aging, including Older Adult Protective Service Investigators and representatives of the long term care Ombudsman Program.**

2600.11

This section on **Procedural Requirements for Licensure** is totally **unacceptable.** The Department is responsible to conduct timely announced annual or semi-annual license renewal inspections, and now at a time when oversight of our Commonwealth's approximately 1800 personal care homes is so needed, the Department actually proposes to lessen their responsibility by inspecting all homes at least once every three years. Not one of the previous drafts of the proposed 2600 regulations suggested staggering inspections over a three-year period. The entire second sentence in this section must be deleted. **Homes need to be inspected at least annually, and at the discretion of the Department, more frequently is necessary. Homes must be inspected, at a minimum annually, and inspection visits can be unannounced.** Both Auditor General Robert P. Casey, Jr.'s Report on Personal Care Home Licensing in 2001 and recommendations made by the Personal Care Home Advisory

Committee in January 2002 acknowledged that the Department has completed licensure and renewal inspections in a timely fashion. Both reports also encouraged the Department to consider enhancing its policies in this area. Instead, the Department has proposed to scale back its inspection of personal care homes, which is inappropriate and irresponsible. The Department must embrace the fact that their mission is not simply to issue licenses to personal care homes, but must understand that their duty also includes protecting the health, safety, and welfare of the elderly and disabled men and women who reside in a personal care home.

**2600.14** (b) needs to include penalties for those providers who do not notify the Department.

**2600.15** **Abuse Reporting** – The Department is to be commended for enhancing the abuse reporting section in the proposed regulations. However additional language could benefit the enhancement. Suggested language change to (a): **Employees of the personal care home shall immediately report suspected abuse of a resident served in the home in accordance with the Older Adult Protective Services Act relating to Reporting Abuse (35 P.S. – 10225.302 and 10225.701), which includes voluntary reports and mandatory reporting and 6 Pa Code 15. 21 – 15. 27, relating to suspected abuse.** (b) needs a time frame put in to identify how long the provider has to submit a plan of supervision to the personal care home regional field office. Also, this section should reference and model the Older Adult Protective Services Act (15.56 – Restrictions on Employees which outlines the responsibilities of the facility should an employee be the alleged perpetrator or the target of an investigation.

**2600.16** The Department needs to be commended on the enhancements to this section on **Reportable Incidents**. Several language clarifications are suggested to the following:

**2600.16 (8) Food poisoning of a resident or residents.**

**2600.16 (13) A complaint or allegation of resident abuse, the referral of an allegation of resident abuse to the PA Department of Aging, local area agency on aging, law enforcement, or the Long Term Care Ombudsman for investigation or the results of any investigation conducted by the personal care home of possible resident abuse.**

**2600.16 (17)** This Reportable Incident refers the reader to 2600.51, which discusses resident abuse and criminal background checks. Section 2600.51,

references the Older Adult Protective Services Act. **The reference number is not correct, whereby 10225.5102 should be 10225.502.**

**2600.16 (b)** Need to add language at the end of this sentence that reflects that the written policies and procedures on the prevention, reporting, notification, investigation, and management of reportable incidents is in accordance with applicable state laws, including the Older Adult Protective Services Act. In addition, the Department needs to clarify the responsibility of the personal care home provider to “investigate” an allegation of a reportable incident, especially an allegation of abuse. Personal care homes do not have experience or expertise in these types of investigations and would need to rely on the Department for technical assistance on how to perform this function.

**2600.16 (c)** The word “designee” needs to be defined and/or clarified. The definition section of the regulations does not address/explain who the “designee of the Department” would be. In addition, the “manner designated by the Department” for reporting incidents must be defined right now within the regulations. Is the provider going to be responsible to call, write, fax, or email the Regional Office? What about reports that occur on a holiday or during a weekend? Considering that the regulations were drafted as part of a cross systems licensing project, additional collaboration on the regulations should take place between the Department and the PA Department of Aging, which already has in place the manner and method of reporting for facilities when resident abuse is suspected. Similarly, DPW’s Office of Mental Retardation has a policy and procedure for reporting and investigating unusual incidents and allegations of abuse. It would behoove the Department to implement Letters of Understanding and/or Memorandums of Understanding across systems and within their own department so that efforts do not have to be duplicated and the bottom line focuses on providing quality services while protecting the health, welfare, and safety of the residents who live in licensed personal care homes.

**2600.16 (d)** The time frame must be clarified. “5” days is too long. **The time to report to the field office should be within 24 hours of the incident.** And protocols would need to be put in place for reporting incidents that occur on the weekend and on holidays. However, this time frame remains, the days need to be specified as five working/business days or consecutive days. The expectations of the Department must be clear.

**2600.16 (e)** The time frame for conducting and completing an investigation must be determined and defined in this regulation. The PA Department of Aging allows 20 days for Protective Service Investigators to conduct an investigation of an

older adult who may be the victim of abuse. The Office of Mental Retardation allows a provider 30 days for a consumer receiving mental retardation services (regardless of age) to conduct an investigation. As a cross-systems licensing project, the Department must be clear in their intent so that the personal care home providers have full knowledge of their responsibilities in order to protect the consumers they serve. Training and technical assistance must also be made available to the personal care home providers who will need to have working knowledge of how to conduct an investigation of an unusual incident or an allegation of abuse.

**NOTE:** In 1998, the Personal Care Home Task Force of the Pennsylvania Departments of Public Welfare, Health and Aging issued a report, "Personal Care Home Task Force Final Report". In this Final Report, the Task Force strongly recommended that the Department of Public Welfare has "an implicit responsibility to advocate for personal care home residents, to ensure they receive quality care. No other level of government will fill these needs statewide".

2600.17

Language needs to be consistent throughout the regulations. This section on **Confidentiality** needs to mirror section 2600.5 on Access. Suggested addition for clarification and consistency: **Resident records shall be confidential, and, except in the event of an emergency or during the course of an abuse investigation, may not be open to anyone other than the resident, the resident's designated person (i.e., Power of Attorney, family, or guardian), if any, agents of the Department and other State agencies, including agents of the PA Department of Aging Protective Services, Ombudsman, or OPTIONS for the determination of an appropriate level of care, and the Pennsylvania Protection and Advocacy.**

2600.18

This section on **Applicable Health and Safety Laws** must be clarified. Personal Care Homes are expected to be in full compliance with all applicable Federal, State, and local statutes, ordinances, and regulations prior to a license being issued by the Department. The home is then expected to remain in compliance. Suggested change: **A personal care home shall be in compliance with all applicable Federal, State, and local statutes, ordinances, and regulations. Particular attention will be paid to those statutes, ordinances, and regulations regarding fire and panic, public health, civil rights, neglect of a care dependent person, and older adult protective services. Failure for a personal care home to comply with any of the aforementioned or any other applicable law will amount to a violation of this section.**

2600.19

This section on **Waivers** is not clear and needs to be concise so that personal care home providers understand the following: (1) the home will disclose to

potential residents and current residents all pending and/or approved waivers for the facility; (2) the resident will have the right to appeal the waiver; (3) the Department will ensure that waivers are time limited and not indefinite; (4) the regulation will specify who at the Department has the right to grant a waiver. Is it the Regional Office, the Deputy Secretary or the Secretary? Or will the Department rely on Labor and Industry to determine the appropriateness of a certain Waivers? **All of this needs to be incorporated into the Waiver Section.**

**Comment/Concerns regarding this section:** Until 1991, the majority of the waivers granted by the Department were for structural deficiencies, not involving residents' rights. Since then, however, waivers have increasingly been used to obtain permission to have a secured unit, which waived the right for residents to be free from restraints. According to a March 2000 report submitted to the Department by the "Personal Care Home Advisory Board Subcommittee on Licensing and Legislation Looking at Secured Unit Waivers", in 1994, when the Department conducted its first waiver review, there were 24 personal care homes with waivers approved by the Department. By January 2000, this number soared to 145 personal care homes with approved waivers to secure units, floors or homes. By June 2001, 194 personal care homes were granted waivers by the Department.

To obtain a waiver currently, the personal care home has to submit a request to the Department. There is no opportunity for the public or the residents to comment on the appropriateness of the waiver requested and there is no process for those who oppose the waiver to express their opinion or concern. After granting a waiver, the Department periodically reviews waivers to "determine whether acceptable conditions exist for renewal of the waiver" and can revoke the waiver if the conditions of the waiver are not being met by the personal care home. A 1999 review by the Pennsylvania Health Law Project on licensure and enforcement activities of the Department found "numerous violations of waiver conditions, but never a resulting revocation of the waiver." In other situations, Department records and news articles from across the Commonwealth revealed apparent situations where facilities should have obtained waivers for secured units to prevent wandering of persons with dementia and did not. In addition, situations were discovered where residents with dementia were not properly supervised and wandered into situations that placed the resident at risk or caused their death.

For instance, in Scranton, an 84 year old male resident was found lying outside the personal care home where he lived, clad only in underwear, at about 4:30am. The temperature at the time was 3 degrees. The personal care home was found not to be negligent in this case because facilities are not required to have an alarm on the door that would alert caregivers that someone has left the building. Despite the fact that the facility was caring for residents with dementia, the home did not have a waiver. However, several years earlier this home did apply for a



waiver in order to operate a secured unit. The Department denied the home's request, and yet, the home was caring for a resident with dementia, who probably would not have wandered out in the freezing cold and died if he had been placed into a more appropriate facility.

**2600.19 (a) – needs to clarify to whom the personal care home must submit the waiver request to. Suggestion language: A licensed personal care home may submit a written request to the Secretary of the Department of Public Welfare for a waiver of a specific requirement contained in this chapter. The waiver request shall be on a form prescribed by the Department. The Secretary of the Department may grant a waiver of a specific section of this chapter if the following.....**

**2600.19 (c ) – Consistency is needed as to where and to whom the written requests for a waiver and where comments regarding the waiver request are to be sent.**

**2600.19 (d) – Language suggestion for clarity and consistency: A personal care home seeking a waiver shall submit a written request for a waiver to the Secretary of the Department. A waiver granted by the Department shall be in writing, also be part of the home's permanent record and shall be displayed in a public area of the home for review by visitors to and residents of the home.**

**Regulation  
2600.20**

**Reason for Concern and/or Recommended Change**

This section on **Resident Funds** needs to be renamed and language needs to be enhanced so that the regulations are consistent in what is required of a personal care home which assumes responsibility for the resident's finances. As an advocate, I am personally opposed to a personal care home administrator serving as representative payee for a resident. I believe it is a conflict of interest and have frequently investigated situations whereby an administrator easily accessed the resident's finances for his/her own personal gain. However, it has been brought to my attention from my peers and co-workers who work and/or live in some of the rural parts of the Commonwealth, that finding an agency willing to provide financial management services is very difficult and often not available. As such, additional language is needed to ensure that the resident's rights and financial assets are best protected should a facility assist with financial management.

**Suggested change: 2600.20 needs to be called Financial Management rather than Resident Funds.** The Definition section (2600.4) of the regulations defines what is meant by Financial Management and does not define what is meant by Resident Funds. Also, 2600.26 on Resident Home Contracts refers to Financial

Management. Since financial management is a personal care service, we must be consistent throughout the regulations and rename this section appropriately.

**Additional changes:**

**2600.20 (a) – Add language: If the personal care home administrator assumes the responsibility of *maintaining, assisting, or supervising* the financial resources for a resident, the following records shall be maintained for each resident:**

**2600.20 (a-1) – Add language: A separate record of *each resident's* financial resources, including the dates, amounts of deposits, amounts of withdrawals and the current balance.**

**2600.20 (a-2) – Add that *withdrawals* must also be documented with *dated* written receipts.**

**2600.20 (b-1) – What is meant by there shall be documentation of “counseling sessions” ? This needs to be defined.**

**2600.20 (b-2) – Need to clarify the language: The home may not prohibit the resident’s right to manage *his/her* own finances.**

**2600.20 (b-5) – Need to add that written receipts must be *dated*.**

**2600.20 (b-8) – More detail is needed. Considering that changes made to the guardianship laws encourage guardianship appointments to be limited when possible rather than plenary, it is imperative that we specify that guardianships are appointed by the Court, while powers of attorney are assigned by the resident. Suggested change: The owners of the home, its administrators and employees are prohibited from being assigned power of attorney or appointed guardian of person or guardian of estate of a resident.**

**COMMENT:** We need to consider adding an 8a after the above in order to clarify the role of the representative payee should the administrator assume this role. Residents must understand that Representative Payee is an appointment by the Social Security Administration after an application for this financial assistance is made to the Social Security Office. The regulations must clarify that if a personal care home is appointed as Representative Payee for a resident, then no fee can be charged by the facility for this service. The resident and, if appropriate his/her designated person must be notified of what Representative Payee means and what service will be provided by the appointee. Also, the regulations must clearly state that having a Representative Payee cannot be a condition of admission to the facility. I have witnessed on many occasions administrators forcing a potential resident to apply for the appointment of a representative payee so that that the facility becomes the payee and ensures that the first bill paid is the monthly rent to the facility. In addition, residents for whom the home serves as

representative payee often do not receive their personal needs allowance or only receive a portion of the \$60.00 allowed to them.

**2600.20 (b-9)** – need to change the “his” in the second sentence to “his/her” = **The home shall provide the resident the opportunity to review his/her own financial record upon request during normal working hours.**

**2600.20 (b-10)** – Time frames need to be put into this section that are consistent with 2600.26 pertaining to the resident home contract.

**Comment/concern:** A study conducted by the Pennsylvania Health Law Project revealed that many residents of personal care homes require financial management assistance because they are confused or cognitively impaired and unable to manage their money on their own. Department inspection reports, however, revealed that some facilities were cited year after year for failing to comply with the regulations and yet these facilities continued to ignore the fiscal requirements because they were not fined or closed. Specifically, a facility administrator in Mathers, PA was cited from 1984 to 1997 for not having financial records for residents whose money he was managing. Plans of correction were completed by the administrator, but were never implemented. The facility was never fined. Unless the Department enforces penalties against homes that are out of compliance with the regulations and do not implement Department approved plans of correction, what incentive does the home have to actually comply.

**2600.24**

This section on **Tasks of Daily Living** must be consistent with the definition provided in 2600.4 of Instrumental Activities of Daily Living. The Department is to be commended for incorporating the definition of instrumental activities of daily living that is consistent with the definition used by the PA Department of Aging.

**Suggested language: A home shall provide residents with assistance with Instrumental Activities of Daily Living as indicated in his/her assessment and support plan, including one or more of the following:**  
**(1) Using or securing transportation; (2) Shopping; (3) Making and keeping appointments; (4) Financial management; (5) Using a telephone; (6) Care of personal possessions; (7) Doing personal laundry; (8) Participating in social and leisure activities; (9) Securing health care services; (10) Ambulation and care of prosthetic devices; and (11) Medication Management**

**2600.25**

This section on **Personal hygiene** should be renamed and be called: **Personal Care Services** as that is what is defined in section 2600.4. The regulations do not define personal hygiene and we need to be consistent in our use of language

and in definitions for services that are to be provided. The Department is commended for including a definition for Activities of Daily Living that is consistent with the definition used by the PA Department of Aging.

Personal care homes exist to provide its residents with certain basic necessities such as food and shelter. In addition to these basic necessities, personal care homes must provide each resident with all of the personal care services needed by the resident services listed in the regulations. Therefore, it is imperative that the regulations are concise and consistent in their definition of services to be provided. Personal care home residents are dependent on the staff of the facility for all of the services needed for their well-being.

**Suggested language: A personal care home shall provide residents with assistance with activities of daily living as indicated in his/her assessment and support plan, including one or more of the following: (1) Bathing; (2) Dressing and undressing; (3) Grooming; (4) Eating; (5) Transferring in and out of bed; (6) Toileting; (7) Bladder Management; (8) Bowel Management; (9) Shaving; and (10) Nail Care.**

#### 2600.26

This section on the **Resident Home Contract** needs some sections to be further clarified so that the resident and provider understand clearly what is expected of them.

**2600.26(1) – “Payor” is not defined in 2600.4. There is thus confusion as to what the difference is between the payer and the designee. Suggested change: The contract shall be signed by the administrator or designee and the resident or the resident’s Power of Attorney, Guardian of Person and/or Guardian of Estate, and if appropriate the resident’s designated person if different from the above responsible parties. If the individual responsible to ensure that the resident’s rent is paid (i.e., a bank or trust officer) is identified, all efforts shall be made to have the contract signed by them as well.**

**2600.26 (1-iv) – Add language to clarify: The party responsible for payment if not the resident.**

**2600.26 (1-vii) – Needs to be clarified as this wording is confusing. Also, financial management services must be consistent throughout the regulations, including sections 2600.35, 2600.26 and 2600.20. Suggested change: Whether the personal care home is providing assistance with financial arrangements.**

**2600.26 (1-x) – Additional language needs to be added considering that the resident may be dependent upon a Power of Attorney, Guardian of Person, or Guardian of Estate, or other responsible party to assist with decision making and/or to assist with financial management. If this is the case, the responsible**

person must also receive notification that the resident has been notified of a change in the contract. Suggestion: **A statement that the resident or his/her Power of Attorney, guardian of person, guardian of estate, or other designated person, if applicable, will be provided at least 30 days advance written notice of the home's intent to change the contract.**

**2600.26 (3)** – It should first be noted that after (3) there is a (b), (c), and (d), but there is no (a). The lettering is incorrect and should be fixed so that (3 b) is (3 a), (3 c) is (3 b), and (3 d) is (3 c). Also, the new (3 b) language needs to be enhanced so that the regulations are consistent. Suggestion: **A copy of the signed admission contract shall be given to the resident, and his/her Power of Attorney, Guardian of Estate, Guardian of Person, and party responsible for payment, if applicable.**

- 2600.27** This section on **Quality Management** needs to be taken out from the regulations. Although I am an advocate for quality and quality management, assessment and outcomes, "Quality Management" does not belong in regulatory form and language.
- 2600.28** This section on **Supplemental Security Income (SSI)**, in particular, (e) must be reviewed again by the Department and the legislature. SSI recipients represent a vulnerable population on a very fixed, low income. Personal Care Homes must provide food, sheets, towels, and laundry services for SSI individuals, they do not provide many of the basic items one might need. For instance, a haircut, buying new shoes, or a sweater, are all difficult for a SSI resident to do with only \$2.00 a day or \$60 dollars a month, which is the current personal needs allowance for a SSI recipient. On numerous occasions, the Department has uncovered situations leading to the personal care facilities being cited for taking their residents personal needs money, leaving the resident without a cent and no money to buy shoes or clothing. However, a study performed by the Pennsylvania Health Law Project found no evidence that these situations were reported to the PA Department of Aging or one of its local area agencies on aging so that the case be investigated. In addition, this section needs to be consistent with 2600.42(j) which lists the need for the personal care home to ensure the resident receives assistance with obtaining clean, seasonal clothing that is age and gender appropriate. Regulations need to be consistent.
- 2600.41** This section on **Notification of rights and complaint procedures** must be consistent in language and intent. The complaint process must include the resident's right to file a complaint with the Department. Suggested changes: **2600.41(a) – Upon admission, each resident and, if applicable, the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable, shall be informed of the resident rights**

**and the right to file a complaint with the Personal Care Home, Department, or Ombudsman without fear of retaliation, or the fear of threats of retaliation of the home or its staff against the person making the complaint. Retaliation includes discharge or transfer from the home.**

**2600.41 (b) – Must be consistent in language. Suggested addition is that the information be communicated to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (c) – Must be consistent in language. Suggested addition is that a copy of the resident's rights must be given to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (d) – Must be consistent in language. Suggested addition is that the statement of acknowledgement must be given to the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable.**

**2600.41 (e) – Must be consistent in language. Suggested addition is that the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable be informed of how to file a complaint with the Department, the home, or the Ombudsman.**

**2600.41 (g) – Must be consistent in language. Suggested addition is that home inform the resident and if applicable the resident's Power of Attorney, Guardian of Person and/or Estate, and designated person, if applicable of the outcome of a complaint.**

**2600.41 (i) – Information pertaining to the Governor's Action Center Toll Free Line must be deleted as this number is not functioning and the toll free number to the PA Department of Aging be posted so the Protective Services can be contacted.**

## **2600.42**

This section on **Specific Rights** has some areas that need clarifying language so that the intent is not confusing or misinterpreted. The Department is to be commended for their enhancements to the specific rights for each personal care home resident.

Suggested changes:

**2600.42 (i) – A resident shall receive assistance from the personal care home in accessing medical, behavioral health, rehabilitation services, and dental treatment in order to protect the resident's health, welfare, and safety.**

**2600.42 (j) – A resident shall receive assistance from the personal care home in obtaining clean, seasonal clothing that is age and gender appropriate.**

**2600.42 (k) – A resident, and upon his/her request, the resident's designated person, Power of Attorney, or Guardian of Person and/or Estate, shall have the right to access, review, and request modifications to the resident's support plan or resident record.**

**2600.42 (u) – This item is totally unacceptable. The regulations must be consistent in their intent. This section must also be consistent with 2600.228 regarding Notification of Termination. This section is very discriminatory against the resident. Too frequently the provider is allowed to abandon a resident in a hospital setting without giving prior notice of termination. Personal Care Homes often refuse to take a resident back after the resident has successfully been treated in an inpatient psych setting. As written (2) and (3) need to identify the responsibilities of the provider should a higher level of care be needed or if the resident needs behavioral health services. In addition (3), as written, is not a decision for the home to render. Currently, the Mental Health Act sets the criteria to be followed when determining if and when a person is considered a danger to him/herself or others and this decision is made by either a psychiatrist or mental health delegate, not a provider or the Department. The suggestion is to either delete this item or substitute the language as follows: **A resident shall have the right to remain in the personal care home, as long as it is operating with a license, except in the circumstances of: (1) Nonpayment of monthly rent for two consecutive months followed by a documented effort to obtain payment; (2) Higher level of care needs that are addressed in the resident's support plan with appropriate referrals being made to the local area agency on aging, who along with the Department will assist with alternative placement options; (3) The resident is determined by a psychiatrist or mental health delegate to be a danger to him/herself and is referred for immediate inpatient psychiatric treatment. If the resident meets any of these criteria, the home shall be required to serve the resident or his/her designated person with a 30 day discharge notice. It must be clear that the home is not the entity responsible to determine if a resident is a danger to him/herself or others. It is just as important that homes not be allowed to abuse or misuse the mental health act and the potential need for inpatient or outpatient psychiatric treatment as a reason for immediate discharge. For the Department to allow this to happen is a violation of the resident's right to be treated with dignity and respect.****

**2600.51**

This section on **Resident Abuse and criminal history checks** has an error in it, whereas the reference to the Older Adult Protective Services Act is incorrect. The wrong reference is 10225.5102 and should be 10225.502.

- 2600.52** This section on **Staff hiring, retention and utilization** has an error in it, whereas the reference to the Older Adult Protective Services Act is incorrect. The wrong reference is 10225.5102 and should be 10225.502.
- 2600.53** This Department is to be commended for incorporating many of the suggestions made by the stakeholder groups in this section on **Administrator qualifications**.
- 2600.56** This section on **Staffing** has area that needs clarification:  
**2600.56(e)** should be deleted and no shared staff is to be permitted on any campus settings.
- 2600.57** This section on **Administrator Training** has some areas that need clarification and/or language changes.
- 2600.57 (a)** – Once again, the word **designee** is used to refer to a designee of the Department. This form of “desingee” has not been defined in the regulations. The Department must clarify who this “designee” is and what their responsibilities are with regard to training of administrative staff and carrying out competency tests.
- 2600.57 (c)** – Training on the **Older Adult Protective Services Act** must be included in the list of training topics for the first 60 hours. Considering that administrators, owners, and employees of personal care homes are mandatory reporters combined with the fact that Neglect of a Care Dependent Person statues directly relate to the protection of personal care home residents, it is prudent and appropriate that training on this topic be provided prior to an administrator serving in that capacity.
- 2600.57 (1-iv)** – **Marketing** training does not belong on competency based training for administrators. How owners, operators and administrators of facilities market their facility has nothing to do with the quality of the care provided to the residents. Nor should the Department be taking the time to offer training on marketing.
- 2600.57 (2-iv) Maintenance** needs to be clarified. Maintenance of what? And what does maintenance have to do with staff supervision, budgeting, financial record keeping and training? This should be deleted unless the intent is made clear.
- 2600.57 (2-v) Safety** – needs to be clarified. Safety of what? Resident safety? Staff safety? Either explain or expunge.



- 2600.91 This section on **Emergency Telephone Numbers** needs to be clarified. Suggestion: **Emergency telephone numbers shall be posted on or by each telephone with an outside line in the home. 911 is suffice, however in areas without 911 service, the numbers for the nearest police, fire, ambulance and hospital shall be used.**
- 2600.104 **(e)** in this section needs to be deleted. This personal care home is just that, the resident's home. Some "homes" are small facilities where animals are commonly in the living room, dining room, bedroom, etc. and do not interfere with the sanitary conditions of the facility. This provision should also be deleted in **2600.103(I)**.
- 2600.145 This section on **Supervised Care** needs to be expanded. The second sentence directs that a referral to the appropriate assessment agency is to be made if a resident's needs are beyond those available in the personal care home. However, this requirement must identify what the assessment agency is responsible for and what the Department and the provider are then responsible for based on the results of the assessment agency. For instance, the assessment agency can determine the most appropriate level of care based on the resident's needs.
- Comment:** The PA Departments of Health, Welfare and Aging have been working very hard at ensuring that long term care services be understood as a continuum of care with home and community based services being the ideal. Older adults and persons with disabilities are offered services that enable them to remain in their homes and communities instead of going into an institution. Personal care residents consider the facility to be their "home" and more and more facilities are designed to be "homelike". Waiver services for persons should be allowed and offered to persons residing in personal care homes. A resident should be allowed to "age in place" and if a resident is clinically appropriate for nursing home placement and financially eligible for medical assistance, it would be less costly to supplement the services in the personal care home than to place the resident in a nursing home. Waiver services can easily supplement, not replace, the services offered and available through the personal care home and must be considered as an alternative to nursing home placement when appropriate.
- 2600.181 **Medications** – The Department must reconsider its stance on not utilizing the Department Medication Training Program that is currently used by the Office of Mental Retardation. Considering that the Office of Licensing and Regulatory Management is a cross-systems licensing project, it would behoove the Department to implement already existing and successful programs when appropriate to the benefit of those served by the Department. Comments made

personal care home and must be considered as an alternative to nursing home placement when appropriate.

**2600.181**

**Medications** – The Department must reconsider its stance on not utilizing the Department Medication Training Program that is currently used by the Office of Mental Retardation. Considering that the Office of Licensing and Regulatory Management is a cross-systems licensing project, it would behoove the Department to implement already existing and successful programs when appropriate to the benefit of those served by the Department. Comments made by the Department when discussing implementing the Office of Mental Retardation’s medication training program focused on the fact that the Department is going to update that training and therefore they did not want to use it. The argument is that since the program, although in need of some minor updates, is already successful, it should be replicated as a starting point for the personal care homes.

**2600.201**

**Safe Management Techniques** needs to be taken out of the regulations. These areas are covered in the Administrator and Staff Training sections and are not appropriate to be in regulatory language.

**Note:** Any questions or concerns regarding the comments contained within the 19 pages of this document can be referred to Teresa Osborne at [teo@theadvocacyalliance.org](mailto:teo@theadvocacyalliance.org) or (570) 558-3203.

14-475 (LeDD)

Phyllis N. Mrosco  
R.D.#1, Box 261P  
New Stanton, PA 15672-9608  
412-580-6940

RECEIVED  
REVIEW COMMISSION  
OCTOBER 31 PM 3:27

October 31, 2002

Teleta Nevius, Director  
Department of Public Welfare  
Room 316 Health & Welfare Building  
P. O. Box 2675  
Harrisburg, PA 17120

Dear Teleta Nevius:

Beyond the rationale for requiring staff to have a GED or high school diploma, where are you going with the requirement that all direct care staff be 18 years of age? In many of the rural areas, there are many wonderful 16 and 17 year olds who want to work and are good workers who can supplement the care staff.

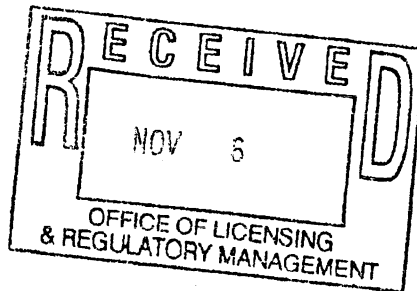
In many cases, the staff become like family to the resident. What possible reason can there be for this requirement?

I can be reached anytime at the above phone number or daily at my office, 412-244-9901. You can also fax me at 412-244-1548 or e-mail me at [pmrosco@grane.com](mailto:pmrosco@grane.com).

Thank you for your time in responding to my concerns.

Sincerely,

*Phyllis N. Mrosco*  
Phyllis N. Mrosco



10/31/02 3:27  
REVIEW COMMISSION

Phyllis N. Mrosco  
R.D.#1, Box 261P  
New Stanton, PA 15672-9608  
412-580-6940

October 31, 2002

Teleta Nevius, Director  
Department of Public Welfare  
Room 316 Health & Welfare Building  
P. O. Box 2675  
Harrisburg, PA 17120

Dear Teleta Nevius:

My uncle lives in a personal care home, which accepts SSI as full payment. He has no assets and very little family. The staff at the home takes excellent care of Jerry, but I'm very concerned about the new regulations, which have been proposed.

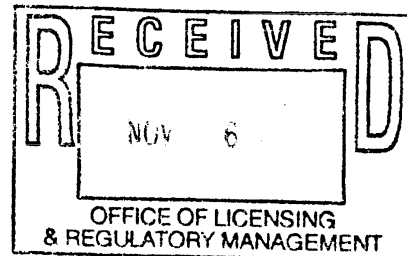
Because of the increased training requirement, the requirement for an RN or LPN to pass meds, the provision for free local phone calls, and the support plans, there will be increased costs. It is irresponsible for you to say otherwise.

How should we begin to prepare for the eventual closing of all the SSI facilities throughout the state? Are you prepared to relocate the 10,000+ SSI residents? What is the emergency plan? I work for a facility as an administrator, but we are unable to accept SSI residents because of the very low reimbursement. Where do we go from here?

Please respond.

Sincerely,

*Phyllis N. Mrosco*  
Phyllis N. Mrosco



Dear Telexa Nevius:

Original: 2294

We recently attended an informational meeting on the new proposed rules & regulations for Personal Care and Assisted Living Homes in Pennsylvania. Please reconsider what is being asked of these establishments. We have been using these facilities for the past 5 yrs, for the care and well being of our parents and other family members. You have no doubt heard a lot of personal stories and I'm not going to tell you any of ours. What we would like to ask of you is to truly realize the difference between Personal Care Homes and Nursing Care Facilities! Guidelines need to be reviewed and updated periodically and then enforced to ensure proper care is given, but the residents in these Personal Care Homes must be able to live in an environment as close to their previous independent home life as possible.

Please meet with the owners and administrators of the Personal Care Homes in Pennsylvania and consider with an open mind the changes they are proposing. I'm sure new rules and regulations can be agreed upon that will be fair to all parties!

Thank you for the opportunity to communicate with you and hopefully your office and the NAPCHAR will act swiftly and fairly for the well-being of all needy residents, now and in the future.

Sincerely;  
Edward T. Ludwick  
Garnet M. Ludwick

cc To:

Independent Reg. Rev. Comm.  
Harold F. Mowery, Jr.  
George T. Kinney, Jr.,

Edward T & Garnet M Ludwick  
RR 5 Box 389-B  
Kittanning PA 16201-8319

October 31, 2002

Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
333 Market Street - 14th Floor  
Harrisburg, PA. 17101

To Whom It May Concern:

I am writing to you as a concerned daughter of my 90 year old mother in an assisted living facility. Recently we have been informed of impending new regulations. Many of these regulations seem too extreme and unfair to the smaller facility already giving adequate care at reasonable rates. Furthermore, people on Social Security Income will be priced completely out of the system. Somehow, that seems like discrimination to me!!

I ask you, where is it going to stop. Older people should be able to enjoy their last days here on earth without being forced out of a nursing home because of their low income.

For the above reasons I implore you not to approve these extreme regulations as they will do more harm than good to many members of the senior community.

Yours truly,

Betty J Kunkle  
1496 Krumsville Rd  
Lenhartsville, PA. 19534

*Betty J Kunkle*

Original: 2294

October 31, 2002

Mary Ann Gueguen  
111 Glade Park East  
Kittanning, PA 16201

INDEPENDENT REGULATORY REVIEW COMMISSION  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

To Whom It May Concern:

I am writing to you because as a registered voter in Pennsylvania I feel the need to address some concerns regarding health care regulations being drafted for our local personal care facilities. I know all too well what these facilities do to provide a secure, safe and controlled environment for our elderly.

My mother was in Erdley's Sunnyside Personal Care Home, Kittanning PA in 1996 and received a wonderful, loving place to live out her remaining years. Both my sister & I knew she was in an environment where she could get the help she needed for the things she no longer could do for herself such as cooking meals, bathing as well as some assistance getting in and out of a chair.

My sister's mother-in-law is now a resident of Erdleys. My brother-in-law as well as his brother and sisters have been most pleased with the outstanding care their mother has received as well as knowing that all of her needs are met.

The majority of the residents at Erdley's as well as the other 36 personal care homes in Armstrong County are middle-class people that have worked hard all their lives for their families and now need a little more help. With the proposed regulations these individuals are forced to endure a \$1000 to \$1500 monthly increase! Many of these individuals will not be able to meet these requirements! What then?? If my mother were living today she most definitely would be in the same position.

In addition, the regulations are possibly forcing the homes out of business due to the financial increases to staff an LPN or a Registered Nurse 24 hours a day to administer medications, to increase staff per resident as well as an increase in paperwork. Olivia Erdley has voiced her concerns about these changes and is in jeopardy of losing her home! No information was given her or the other 35 other homes prior to the proposed regulations. Don't you think the people running the homes are entitled to a say in changes to their business since they run it on a daily basis?

Please take into consideration the thousands of individuals that will be affected should these changes occur. I urge you to re-evaluate these proposed regulations. Let the administrators and families voice their concerns, for the elderly can't speak for themselves.

Sincerely,

*Mary Ann Gueguen*

Original: 2294

**F A X**

**TO:** Independent Regulatory Review Commission  
**FAX NO:** 717-783-2664

**SUBJECT:** Proposed Personal Care Home Regulations **DATE:** October 31, 2002

---

My 92-year-old mother who has dementia has been a resident of a wonderful personal care home for 2 ½ years. My husband and I chose this facility not only because it was highly recommended to us by the family of another resident, but also because we knew that Mother would be more comfortable in its small, "homey" setting rather than in a large, institutional setting such as a nursing home.

This personal care home has operated very efficiently for years under the current state regulations; and we as a family have been extremely happy and satisfied with the excellent and personalized overall care my mother has always received.

Now we have learned that the proposed changes to the regulations governing how Pennsylvania personal care homes operate are moving closer to being adopted. Unfortunately, some of those proposed changes are so unreasonable and would cost so much extra money in personal care homes' operating expenses that it would raise residents' rates to unaffordable levels and cause some personal care homes to actually go out of business. What a shame it would be for many personal care home residents to be forced to leave the personalized care and the "homey" setting that they prefer and to perhaps be totally unable to find another care facility that they can afford, since Pennsylvania nursing home fees are already prohibitive!

My husband and I urge you to give serious thought and personal consideration to how totally unreasonable some of the proposed regulation changes are. If these proposed changes were to affect an elderly loved one of yours and the resulting costs of the changes were to prohibit him or her from living in the safe, caring, "homey" setting of a personal care home, how would you feel? Please do not allow these revised regulations to be adopted.

Sincerely,  
Carole and Theodore Gerwing

210 Rustic Drive  
North Huntingdon, PA 15642

RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION  
OCT 31 10 00 AM '02



Original: 2294

#14475 (260)

' SAME Commenter as  
# 37, 38, 90, 91, 136, 137,  
145, 146, 252, 253 &

W.C.P.C.H.A.A. 259"  
P.O.Box 73  
Crabtree, PA.  
15624

October 31, 2002

Teleta Nevius, Director of OLRM  
Department of Public Welfare  
Room 316, Health and Welfare Building  
P.O.Box 2675  
Harrisburg, PA. 17120

Dear Teleta Nevius,

This will be one of several memos which you will receive from the Westmoreland County Administrators Association. We will be sending our consensus viewpoint on Chapter 2600 by November 4. I would like to submit comment on just one important issue today.

W.C.P.C.H.A.A. would like to discuss:  
**2600.11 Procedural requirements for Licensure or Approval of homes.**  
(b) PCH shall be inspected as often as required by 52 P.S. 211(1), and more often as necessary. After initial approval, homes need not be visited or inspected annually except that the Dept. will schedule inspections in accordance with a plan that provides for the coverage of at least seventy-five percent of the licensed homes every two years and all homes shall be inspected at least once every three years.

We find this to be outrageous. Especially, when you take into consideration that the Chapter 2600 requires 59 separate documentation requirements of which some will be rather lengthy, coupled with over 30 separate policies and procedures.

HOW DOES OVER-REGULATION WITH LESS INSPECTIONS ADD UP TO IMPROVED QUALITY OF CARE??

Less inspections would NOT ensure the health, safety, and welfare of our residents.

**Our recommendations; to keep Chapter 2620 but make inspections every 6 months!!**

I'm sure that the advocates that you are so influenced by would agree with more inspections.

Sincerely yours,

*Rosewood Menow*  
*Richard E. Nicker*  
*Carol Danaher* } Administrators  
*Members of WCPCHAA*  
*WCPCHAA*

October 31, 2002

Teleta Nevius, Director  
Office of Licensing and Regulatory Management  
Department of Public Welfare  
Room 316 Health & Welfare Building  
PO Box 2675  
Harrisburg, PA 17120

2002 NOV -6 AM 9:34  
REGULATORY  
REVIEW COMMISSION

Ms. Nevius,

I am writing to request that you reconsider your changes on the regulations for personal care homes in Pennsylvania. My mother has been a resident at Grey's Personal Care Home, Kittanning, PA for over eight years. I am not capable nor have the training to provide the care for her in my home that she receives in the personal care home. I am employed full time therefore I can not provide her 24 hour care that she receives at the personal care home. It is a piece of mind to me to know that she is receiving excellent care and she is very content. If these new regulations go into effect this will cause Grey's to close their personal care home putting my mother and many other residents out on the street. My mother will be devastated if she has to be moved out of Grey's Personal Care Home, which I fear could cause her additional medical problems due to the devastation. Apparently you have never had a loved one that has required this type of care because then you would understand how ridiculous these regulations really are.

The state's idea of relocating these residents to large facilities is not better. When it comes to a person needing assisted living larger is not better. You will be taking them away from their community and their familiar surroundings. The smaller setting is better because the residents and staff become family and it would not be that way in a larger facility. I have found that in a large facility you become a number and don't have a sense of belonging. That sense of belonging is very important to everyone, but especially someone that is in a personal care home. Many of the residents in a personal care home have no family other than their fellow residents and staff. The majority of people that require assisted living don't adapt well to change and the change of them having to be relocated could cost lives.

I would like to know your justification why you are choosing to put personal care home residents on the streets. It isn't fair to these residents because it is no fault of their own that they require assisted living. It agitates me as a taxpayer that we continue to spend millions of dollars on supporting criminals especially murderers. If you are requiring the new regulations for the personal care homes then provide the funding. How can you justify allocating a SSI recipient \$29.25 per day versus allocating \$67.00 per day for a criminal?

TAMMY CROYLE  
184 SALINA EXT RD  
AVONMORE, PA 15618

A personal care resident doesn't require the medical care to justify having a 24-hour registered nursing staff on board. These people need assistance with their daily living that they are not capable of doing on their own. A personal care resident doesn't require the medical care that a nursing home resident needs. The hospitals and nursing homes across Pennsylvania are having difficulty filling their staffing needs due to a shortage of registered nurses. How do you plan on staffing the personal care homes with registered nurses with the shortage? How can you justify making tougher regulations on personal care homes versus the regulations with hospitals and nursing homes? How can you justify changing the personal care home regulation manual from 44 pages to 154 pages, when the state has failed to abide by the 44-page regulation manual?

Personal care homes were started when the state determined it was not cost efficient to keep the elderly, mentally retarded and disabled people at the state hospitals. If you pass the new regulations for personal care homes you will be forcing these Pennsylvania citizens on the streets. Where do you plan to place these residents once they are forced out of their personal care homes, since the state hospitals are no longer an option? The majority of the personal care home residents don't qualify to be in a nursing home because they don't meet the medical needs that a nursing home patient requires.

I would greatly appreciate if you would reconsider your decision and abolish the new regulations. I believe there is only a small percentage of personal care homes in Pennsylvania that don't meet the standards, so please focus on making them meet the required standards. Please realize that you are trying to fix something that isn't broken and the devastation that it will cause by mandating the new regulations.

Sincerely,



Tammy Croyle

Cc: Independent Regulatory Review Commission  
Harold F Mowery, Jr, Chairman  
George T Kinney, Jr, Chairman

Original: 2294

RECEIVED  
2002 NOV - 6 AM 9:31  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Thursday, October 31, 2002

Robert Nyce, Executive Director  
Independent Regulatory Review Director  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Mr. Nyce:

I am writing to you regarding our concerns with certain proposed new regulations for personal care homes. My brothers and I are writing on behalf of our father, Mr. John W. Griffith who resides at Green Hills Manor, a Personal Care Facility in Reading, PA. We are writing to you out of our personal concerns and at the request of Barbara Seymour, the Administrator at Green Hills Manor.

We, my brothers and I, are college-educated and we have a broad base of knowledge as well as a great deal of commonsense. I am also a Registered Nurse. We certainly do understand the intent and purpose of the proposed regulations to be the enhancement of the care and the environment of the residents in these facilities.

It is, however, a major concern that these proposed regulations will result in significant expense for many facilities that will result in substantially higher fees for residents. Our father is not in a position to afford an increase above current levels. Please understand that our father does have some limited resources but they are being steadily depleted each month as his fees exceed his SSI and pension.

The time is visible when his resources will be exhausted and we ask you, where will our father live then? Many facilities are no longer able to house SSI patients because of the ever-increasing burdens of regulatory compliance. We are very concerned about the well-being and welfare of our father. Because of many employment and other life obligations, we would be unable to accommodate our father in our homes.

We are asking that you please more fully consider the impact that these proposed regulations will have and the financial burdens that will inevitably result if they are enacted. No doubt that some time is necessary to do this additional review but it will be time very well invested in the lives of thousands of residents and their families. Thank-you for your consideration.

Sincerely,

  
Linda M Carter

  
Randy L. Griffith

  
Gary J. Griffith

# CARIE

**Executive Director**  
Diane A. Menio, MS

**Board of Directors**  
Steven J. Devlin, PhD  
Chair

Emily Amerman, MSW  
Vice-Chair

Elizabeth R. Balderston, MSS  
Secretary

Ann Sholly, PA-C  
Treasurer

Willo Carey  
Louis G. Colbert, MSW  
Nora Dowd, JD  
Carl George  
Florina Gogarnoiu, MBA  
John M. Harris, MBA  
Trudy Haynes  
William Kavesh, MD  
Rose Koren Moody  
Arnold Phillips  
Rebecca Snyder Phillips, MSN, RN  
Arnold Tiemeyer, MDiv

**Members Emeritus**  
Margaret Burns  
Thomas W. Clark, MD  
Rev. Francis A. Shearer  
Bernice Soffer, MSW  
Roger K. Stephens, MSW  
Josephine Terrell  
Margaret Yeakel, DSW

**National Advisory Council**  
Robert Applebaum, PhD  
William F. Benson  
Msgr. Charles J. Fahey, DDiv  
Terry Fulmer, PhD  
Iris Freeman, MSW  
Elma Holder, MPH  
Robert Hudson, PhD  
Rosalie Kane, PhD  
Brian Lindberg, MMHS  
Karl Pillemer, PhD  
Lori Rosenquist Griswold, PhD  
Robyn Stone, DrPH

Original: 2294

October 31, 2002

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

20021101-4 AM 9-23

INDEPENDENT REGULATORY REVIEW COMMISSION

RE: Personal Care Home Regulations

Dear Chairman McGinley:

On behalf of the Center for Advocacy for the Rights and Interests of the Elderly (CARIE), thank you for the opportunity to comment on the proposed regulations for personal care homes. CARIE appreciates the Department of Public Welfare's (DPW) process to obtain input from both providers and advocates in making much needed revisions to Pennsylvania's personal care home regulations. The proposed regulations contain many improvements over the current regulations. However, we continue to have concerns with certain provisions contained in the proposed regulations.

Since there are about 1,800 licensed personal care homes caring for approximately 79,800 residents, there is much at stake. We hope that the election of a new Governor and a new administration will not impede the progress of making needed reforms with personal care home regulations. There is a mountain of evidence pointing to the need for major reforms with the personal care home system in Pennsylvania. For example, The Pennsylvania Health Law Project recently released a White Paper, *A Report On Pennsylvania's Personal Care Homes And Assisted Living Residences: Licensure Violations And The Department of Public Welfare's Enforcement Efforts For Personal Care Homes And Assisted Living Residences With Less Than Full Licenses*, that reviewed DPW inspection records of 98 personal care homes throughout the Commonwealth with less than full licensure status. The report concludes, "DPW's own licensing records provide clear and convincing evidence of the inadequacy of existing statutes and regulations..." Interestingly, many of the report's recommendations have been the same recommendations made repeatedly over the past 30 years! (The report can be found at [www.phlp.org](http://www.phlp.org).)

More Than 25 Years  
**25**  
in Service to the Elderly

**Center for Advocacy for the Rights and Interests of the Elderly**  
100 North 17th Street, Suite 600 Philadelphia, PA 19103  
T: 215.545.5728 F: 215.545.5372 W: [www.carie.org](http://www.carie.org)



A United Way Agency

CARIE serves as the long-term care ombudsman providing complaint handling and general advocacy services for about 7,500 residents of approximately 140 nursing homes and personal care facilities located in various Philadelphia neighborhoods. It is through this experience that we offer the following comments. We hope you will consider our concerns and make needed revisions before the final regulations are published.

**Section 2600.3. Inspections and licenses or certificates of compliance**

Facilities should have **unannounced** inspections. Nothing in statute precludes a regulation requiring inspections be unannounced. Unannounced inspections provide a more accurate reflection of what a particular facility is like rather than giving a provider the opportunity to fix problems one day out of the year. Inspections should also be staggered and not done on the same date or in the same month each year.

**Section 2600.4. Definitions**

For the definition of *long-term care ombudsman*, the reference to older individuals should be changed to residents since the ombudsman help residents of all ages.

Language should be added to the definition for *Personal care home or home* to indicate the hours of operation are 24 hours a day and 365 days a year.

CARIE recommends adding a definition for *Reportable Incidents* to ensure clarity in the regulations.

Additionally, a definition should be included for “Older Adults Protective Services” ...the agency housed in each Area Agency on Aging across the commonwealth with responsibility for receiving and investigating allegations of abuse and neglect of care dependent persons as per (35 P.S. §§ 10225.701—10225.707) and 6 Pa. Code § 15.21 – 15.27.

**Section 2600.11. Procedural requirements for licensure or approval of personal care homes**

(b) As ombudsman we have witnessed how quickly the conditions in a personal care home can change. Both Auditor General Casey's audit of personal care homes and the Pennsylvania Health Law Project's recently released *White Paper* about personal care homes have documented the need for annual inspections and better enforcement. This proposed change to every two to three years is an alarming proposition. Given the documented problems in many personal care homes, there is no way to ensure the health and safety of residents with this proposed licensing requirement. Therefore, CARIE recommends that inspections must be conducted at least annually.

**Section 2600.14. Fire safety approval**

Language should be added to require personal care homes to obtain updated fire safety approval once every three years, since buildings deteriorate over time.

**Section 2600.15. Abuse reporting covered by statute**

(b) In cases where the alleged abuser is the administrator of the personal care home, provisions should be added for DPW's oversight for the plan of supervision.

**Section 2600.16. Reportable incidents**

(a)(1) All deaths that occur in a personal care home should be considered reportable incidents since staff is not equipped to assess all the circumstances related to a particular death.

(a)(13) Language should be added to include neglect and exploitation as defined by the Older Adult Protective Services Act as reportable incidents.

Since (a)(7) through (18) are incidents that may affect all residents of a facility, the personal care homes should be required to inform the residents or their legal representatives of any incident that affects all residents.

(f) A copy of the incident report should also be given to the consumer or his/her legal representative.

Finally, this section should include information about what sanctions will be imposed to a facility that fails to report an incident or fails to report in a timely manner.

**Section 2600.19. Waivers**

(c) Personal care homes should also be required to provide a copy of the completed written waiver request to the local long-term care ombudsman at the same time notice is given to residents since some residents may need assistance in understanding their rights or articulating their concerns.

A time frame should be specified in (f) instead of "periodic review." CARIE recommends an annual review. In addition, the Department should consider any complaints made by residents or others when determining whether to renew the waiver and should take time during annual inspections to talk with residents about the waiver.

**Section 2600.20. Resident funds**

Under (b)(2), include a provision preventing a facility from requiring the resident to make the facility his/her representative payee as a condition for admission or remaining in the facility. The Department should further require any facility or its staff found to have misappropriated or misused a consumer's funds to promptly reimburse the consumer and make the appropriate referrals to law enforcement and/or Older Adult Protective Services.

**Section 2600.26. Resident-home contract: information on resident rights**

(a)(1)(i) The following statement should be added: "Staff shall be prohibited from accepting any portion of the resident's personal needs allowance as a gift or in exchange for providing services." Recently, a resident had given away all of her personal needs allowance to staff to express her appreciation for their help and then went on the street to beg for money.

(a)(3) CARIE recommends changing the resident's or designee's right to rescind the contract from 72 hours to three business days to accommodate delays that may occur over a weekend.

(c) A copy of the admission contract should be given to the resident and/or their legal representative.

The Department should also require that the contract as well as all information about the contract and resident rights be written and communicated in a manner understandable to consumers.

### **Section 2600.29. Refunds**

This section appears to conflict with section 2600.20 "Resident funds." Section 2600.20 requires the personal care home to provide residents with more immediate access to their funds. Access to these funds may be critical for residents who need or want to transfer to another facility. Section 2600.29 (d) permits a personal care home up to 30 days to reimburse funds to the resident's estate. Many families rely on this money to help with burial expenses. Therefore, 30 days is not a reasonable amount of time. The requirement should be changed to up to 7 days.

### **Section 2600.41. Notification of rights and complaint procedures**

(a) Residents should also have protection against retaliation when they file complaints with the Department or with the long-term care ombudsman. The word reporter should be changed to resident for situations where someone other than the resident voices a complaint. The statement should be revised as follows: "Upon admission each resident and, if applicable, the resident's family and advocate, if any, shall be informed of the resident's rights and the right to lodge complaints with the personal care home, the Department, or the long-term care ombudsman without retaliation, or the fear or threats of retaliation of the home or its staff against the reporter or resident."

(c) In addition to providing a copy of the resident's rights and complaint procedures, the resources described in (i) should also be given to the resident and, if applicable, the resident's family and advocate, if any, upon admission and upon request.

(e) The rights outlined here need to be broader. A resident should be allowed to make any complaint and exercise all of their rights.

(f) should also be amended so that it is not limited to complaints regarding a violation of the resident's rights. Procedures should address all complaints made by residents regarding their care and services.

(g) Allowing 14 calendar days for the personal care home's response to a complaint is too long for complaints that relate to the resident's health or well-being. A response within 72 hours would be more reasonable in these situations.



**Section 2600.42. Specific rights**

Existing personal care home regulations lack clear language supporting residents' rights to privacy, dignity, and free choice in what is supposed to be their home. The lack of sufficient transfer and discharge rights for residents is an important example. Currently in Pennsylvania, providers are not required to give a reason for the discharge, nor are they required to provide assistance to residents seeking a new home. They are only required to give thirty days written notice to the resident. There is no option for appeal. This policy discourages residents from voicing complaints, particularly individuals with limited incomes who would have difficulty relocating to another facility. Once residents learn that they can be discharged for any reason, they are reluctant to voice their concerns for fear they will be forced to move. The proposed regulations bring a welcome change to the current policy. Below are some recommended changes for this section.

(b) Residents should not be subjected to any form of discipline. Therefore (b) should be revised as follows: "A resident may not be neglected, abused, mistreated, subjected to corporal punishment, or disciplined in any way."

(d) should be revised to not only include information about the personal care home's rules and policies but also information about services and charges. Therefore, (d) should be revised as follows: "A resident shall be informed of the rules, services and charges of the personal care home and given 30 days' written notice prior to the effective date of a new rule, service change and /or rate change of the home."

(l) should be revised to read: "A resident shall have the right to purchase, receive and use personal property, including clothing."

(q) Since some residents may not be able to perform personal housekeeping tasks, this provision should read: "Residents may perform personal housekeeping tasks related directly to the resident's personal space..."

(t) should be revised to read: "A resident shall have the right to voice complaints and recommend changes in policies and services of the personal care home without retaliation or the fear of reprisal, intimidation or retaliation."

(w) should be revised to include language giving residents the right to remain in the personal care home during the appeal process.

CARIE strongly recommends that the following rights be added to this section:

- A resident shall receive a written copy of residents' rights.
- A resident shall have access to and information regarding the Long-Term Care Ombudsman Program
- A resident shall have the right to be provided with 30-day advance written notice of the personal care home's intent to discharge the resident and the reason for discharge.
- A resident shall have the right to request and receive assistance in relocating from the home.

- The resident shall have the right to maintain at least \$60 per month in a personal needs allowance.
- A resident shall have the right to vote and to exercise all civil rights. Residents may not be subjected to "search and seizure" by the personal care home under any circumstances.

**Section 2600.57. Administrator training and orientation**

(c) We recommend adding the following topics: "Abuse and neglect identification, prevention and reporting" and "cultural competency."

**Section 2600.58. Staff training and orientation**

(c) We recommend adding the following topics: "Abuse and neglect identification, prevention and reporting" and "cultural competency."

(f) We recommend adding the following topics: "Abuse and neglect identification, prevention and reporting" and "cultural competency."

**Section 2600.83. Temperature**

(b) Given the number of heat related deaths and health complications among older adults caused by excessive heat, we recommend that all personal care homes have and use air conditioning when the temperature exceeds 80 degrees. At the very least, not only should fans be made available to residents but they should also be placed in common areas.

**Section 2600.101. Resident bedrooms**

(a), (b), and (c) should be consolidated to simply state, "Each resident shall have 100 square feet of floor space measured wall to wall, including space occupied by furniture."

(d) should be revised to state: "No more than two residents may share a bedroom and every effort should be made to provide single rooms for those who choose." Privacy and any quality of life cannot occur with more than two individuals sharing a bedroom.

**Section 2600.102. Bathrooms**

(c) There should be one bathtub or shower for every six users, not fifteen. Adequate access and the cleanliness of the shower or bath cannot be ensured with fifteen individuals sharing the same bathtub or shower.

**Section 2600.109. Firearms**

Firearms and weapons of any kind should not be allowed within the personal care home for any reason. We recommend striking the language contained in this section and language prohibiting the use or storage of firearms and ammunition should be included. The risk to the safety of the residents and staff is too great to allow firearms and weapons on the premises

**Section 2600.161. Nutritional adequacy**

(b) Since there can be a long time between the evening meal and breakfast, we recommend adding the following statement: "An evening snack shall be provided that includes a food and drink item."

**Section 2600.162. Meal preparation**

(c) The proposed regulation of allowing no more than 14-16 hours between the evening meal and breakfast is too long. A personal care home provider could potentially serve dinner at 4 PM and serve breakfast at 8 AM and still be in compliance. We believe that this is too long of a period to not have a meal served. The regulation should be changed to 12-14 hours.

(j) Language should be added to require that menus be followed.

**Sections 2600.261 through 2600.264. Enforcement**

The enforcement sections overall are very disappointing since the proposed regulations do not begin to address the reforms needed to enforce current standards or ensure quality care is provided in Pennsylvania's personal care homes. Current regulations (Section 2620.1.) require personal care homes to provide, "safe, humane, comfortable and supportive residential settings for the aged, blind and disabled, and other dependent adults who require assistance beyond the basic necessities of food and shelter but who do not need hospitalization or skilled or intermediate nursing care." CARIE has visited homes that fit this description; however, in far too many instances, we have visited homes that are dirty, bug infested, understaffed and where the residents are clearly being neglected.

Last year, an ombudsman was denied access to a personal care home on multiple occasions and sought intervention by DPW. DPW was also denied access and issued a citation to the provider but stopped trying to enter the home. The ombudsman sought the assistance of the state ombudsman office and they assisted in getting DPW to do a joint visit with the ombudsman to gain access. When the ombudsman and DPW investigator finally gained access, they found a bathroom ceiling had fallen down, broken toilets, a sharp pipe protruding from a wall, a cord laying across the stairwell, a broken mirror, clutter, odor, and filthy conditions. Nine days later the home caught on fire causing the evacuation of all the residents with one of the nine being admitted to the hospital. Four months after the fire, the ombudsman received a copy of a letter sent to the provider stating the Department's intent to revoke her license.

The closure of personal care homes by DPW is a recent phenomenon. This past summer, there were a few personal care homes that were closed in Philadelphia. These facilities exemplified horrific living conditions and had been out of licensing compliance for years. During the closure process, some residents were transferred to a facility with a "Cease and Desist" order owned by the same owner as the facility being closed. These residents, most of whom were older or had mental health problems, ultimately had to endure the traumatic experience of being moved again. Issues surrounding closures both voluntary and involuntary need to be addressed in the regulations.

The audit report released by the Pennsylvania Office of the Auditor General, *A Performance Audit of the Department of Public Welfare's Oversight of Personal Care Homes in Pennsylvania*, describes serious deficiencies in DPW's oversight of personal care homes and made over 30 recommendations. (The audit can be found at [www.auditor.gen.state.pa.us/Department/Press/PCH-PR.html](http://www.auditor.gen.state.pa.us/Department/Press/PCH-PR.html).) Auditor General Casey said, "The nature of these violations, which posed significant risk to residents, underscores both the vital importance of intensive oversight and the gravity of DPW's failure to provide it." As a long-term care ombudsman, we too witness many problems with DPW's failure to respond to problems. Chronically poor performing facilities who remain out of compliance may be issued "Cease and Desist" orders by DPW. However, personal care homes may appeal this decision and, if unsuccessful, may be granted automatic reconsideration. During this time, providers can continue to admit new residents into a facility and receive SSI payments for eligible residents. In other words, business continues as usual. There are no grounds upon which the personal care home must base its appeal. More disturbing is that some facilities operate under "Cease and Desist" orders for years!

One facility in Philadelphia illustrates the problem of a chronically poor performing provider continuing to operate after negotiating its way out of DPW enforcement actions. The owner is well known to the ombudsman in the Philadelphia area for operating facilities that are chronically out of compliance as well as her lack of willingness to resolve complaints. The ombudsman noted problems at this facility related to vermin and cockroaches, food (poor quality, insufficient amounts), residents accessing their personal funds, residents receiving mail that has been opened, and a general chaotic atmosphere. Residents lacked activities at the facility and were often dressed in ill fitting, dirty clothing. Neighbors also voiced complaints and concerns about the facility. Here is a history of the aforementioned facility:

- In December 1991, a Cease and Desist order was issued after a resident suffered first and second degree burns from being bathed in water that was too hot. A settlement was agreed in February 1992 that allowed the facility to remain open.
- In December 1993, a Cease and Desist order was issued for insufficient staff and violation of the 1992 settlement. Another agreement in July 1994 allowed the facility to remain open.
- In November 1996, a Cease and Desist Order was issued for all facilities owned by this provider in Philadelphia for rent rebate fraud. In June 1997, this order was rescinded for all homes except the one being described. In December 1997, the Commonwealth Board of Finance ruled in the provider's favor.
- In February 1999, a Cease and Desist order was issued based on problems cited by Philadelphia Licensing and Inspection, but the facility appealed.
- In April 2001, the facility was operating under a Cease and Desist order that was still under appeal.
- In October 2001, the facility received a letter stating that it no longer was licensed to operate as a personal care home and was instructed to relocate the residents as soon as possible.

- In November 2001, the facility had not attempted to move any residents claiming they were appealing the decision.
- Over the next eight months, the ombudsman visited on a regular basis and heard multiple complaints from residents. In one case, the ombudsman spoke with a resident who was coerced into doing manual labor and was afraid to complain even though he was suffering from back pain.
- In July 2002, the facility was finally closed as per a court order. Even after all this time, the facility was still filthy and in disrepair, the residents were observed to be lacking adequate hygiene and were in dirty clothing, and the administrator continued to be uncooperative with DPW and the ombudsman. The residents moved to new homes in August 2002.

The well publicized fatal beating of a resident in a Bucks County personal care home and DPW's renewal of the home's license following the death of the resident, raise serious concerns about DPW's oversight of personal care homes. We recommend that the Department implement the *Recommendations on Personal Care Home Licensing and Enforcement Reform by the Licensing and Legislative Subcommittee of the DPW PCH Advisory Committee*. This document is attached to our written comments. It is important to note that the Personal Care Home Advisory Committee, DPW's appointed advisory committee comprised of consumers, providers, and advocates, unanimously approved the recommendations described in the document.

### **Conclusion**

Founded in 1977, CARIE is a non-profit organization dedicated to improving the quality of life for frail older adults. CARIE's focus of concern spans the long term care continuum of long-term care needs from those who are homebound to those who are institutionalized. Older adults who experience physical or psychological impairment frequently have difficulty advocating for themselves and are often a silent group. CARIE works to protect their rights and promote awareness of their special needs and concerns.

There are thousands of vulnerable personal care home residents throughout the Commonwealth who deserve better standards of care and better enforcement of these standards. There should be no further delays in implementing regulations that will work to improve the standard of care and work to ensure the health and well being of the residents. The time for change is long overdue. If you need any further clarification regarding these comments, please do not hesitate to contact me at (215) 545-5728, extension 244 or at [menio@carie.org](mailto:menio@carie.org). We look forward to your response to the comments raised about the regulations.

Sincerely,



Diane A. Menio  
Executive Director

Original: 2294



CONFIDENTIAL

CONFIDENTIAL

Department of Public Welfare  
Ms. Teleta Nevius, Director  
Office of Licensing and Regulatory Management  
Health and Welfare Building, Room 316  
P.O. Box 2675  
Harrisburg, PA 17120

October 31, 2002

Dear Ms. Nevius,

As a provider of personal care, as well as a full range of services for older adults in Pennsylvania, I respectfully submit comments on the proposed rulemaking in respect to Department of Public Welfare 55 PA. CODE CHS 2600 AND 2620.

While we acknowledge the effort that went into developing these recommendations, as well as the original intent, we are concerned with the significant costs associated with several of the regulations, as well as the amount of staff time that is taken away from direct resident care.

Most of the facilities within our company provide services to 21-50 residents. Based on these proposed regulations, the average home would incur a *minimum* of \$17,000 in additional expense without taking into account additional staff time related to unclear regulatory language regarding transportation staffing requirements, additional paperwork and increased dementia training. These minimum additional costs could result in several actions including increased rates to consumers, decreases in services provided in facilities and will most likely result in less time being spent with residents due to additional paperwork requirements.

I ask that you consider the ramifications of these regulations as they relate to the current state of nursing homes and the resulting reduction in care time in those facilities due to increased regulation and paperwork. The success of personal care in Pennsylvania will rest on operators' ability to maintain a quality relationship with residents without regulations that detract from our ability to care for residents.

Attached, please find comments related to specific sections of the proposed rulemaking for your review. Should you have any questions, please feel free to contact me at 717-737-9700.

Sincerely,

Diane Burfeindt, NHA, MBA  
Corporate Director, Assisted Living

1217 Slate Hill Road, Camp Hill, PA 17010

**Comments regarding proposed rulemaking in respect to Department of Public Welfare 55 PA. CODE CHS 2600 AND 2620**

**2600.42 Specific rights**

(u) There is no allowing of discharge from the facility due to other circumstances than those specific areas listed. In some circumstances there are residents who are disruptive to the residents due to personality and/or behaviors and contribute to a decreased quality of life for all residents. In these limited circumstances and with proper notice, administrators should continue to have the flexibility of determining who is appropriate to reside in the home for the good of all of the residents.

(x) Need to clarify what funds are to be reimbursed. Often, residents will complain that someone has taken money or clothes from their room due to their dementia. With almost 50% of residents in personal care homes having some level of dementia, the occurrences of these accusations is quite common and, upon investigation, mostly unfounded and easily correctable. If this regulation was clarified to specify it is in regard to those funds being managed by the facility, then it is acceptable.

**2600.57 Administrator training and orientation**

(b) The requirement for additional administrator training will significantly increase the cost to the home without the intended increase in quality. Based on a typical size home of ours, the per-occurrence increase in orientation costs will be approximately \$3200 with an additional \$1700 in annual costs due to the increase in annual education hours. Again, the training requirements equal those of NHAs who have more complex, acute residents with very different needs.

Would like to have clarification on who can provide the competency-based internship. If there is a licensed designee in the facility that the new administrator will be working in, can the internship be done in that facility?

(g) Need to provide clarification of what is meant by “employed as a personal care home administrator” prior to the effective date of the regulations. In many companies, including our own, supervisors of personal care home administrators have their NHA license and the personal care home exemption so that they can provide appropriate supervision and backup in the event of the absence of the personal care home administrator. This needs to be considered in the regulation as meeting the requirement to remain a licensed administrator.

**2600.59 Staff training plan**

**2600.60 Individual staff training plan**

These regulations will not significantly enhance the quality of services provided to residents because it is merely an increase in paperwork. If facilities are providing the content of the training specified in the final regulation, they will be increasing the skills of the staff without going through unnecessary paperwork that will detract from time spent on resident care.

**2600.58 Staff training and orientation**

The Department proposes that annual training for all staff is 24 hours which is intended to enhance the health and safety of residents. While continuing education is a requirement for good quality care, the number of hours required is cost prohibitive and unnecessary. Skilled nursing regulations require half of this amount for a population that is significantly more frail and medically complex. While the content of the training is generally acceptable, this can be accomplished in much fewer hours. For a typical facility in our organization, the cost of this additional training would be \$15,000 per year for existing staff. With most of our facilities running with tight budgets and nonexistent excess revenue, this additional expense would most likely result in the reduction in services to our residents and the inability to continue providing charitable care at the current levels.

(g)(6) In relation to the requirement of volunteer training, it is not acceptable for volunteers to be trained on personnel policies of the facility as they are not employees of the facility. This needs to be removed from requirements of volunteer training.

(g)(1) Many municipalities cannot secure training by a fire expert because of the unwillingness of the locale to submit themselves to additional liability. In this case, the definition of a fire safety expert needs to be defined so that alternatives to government employees can be used without being cost-prohibitive.

**2600.132 Fire drills**

(d) It is not realistic to assign a timeframe of 2.5 minutes to the evacuation of a personal care home due to the condition of the residents and the time of day the drill may be done. It is also not realistic to expect a fire safety expert who is not an employee of the facility to provide documentation and recommendations on fire safety due to their liability concerns.

**2600.161 Nutritional adequacy**

(g) Not reasonable to offer beverages every 2 hours because of ability of residents to make choices for themselves and be afforded some measure of privacy. This is a skilled nursing regulation that is not appropriate for personal care residents who would see it as an erosion of their independence. Availability of drinking water at all times is appropriate to meet the needs of the residents.

**2600.171 Transportation**

(a) (1) It is unclear how the staffing requirements of 1-2 hours per day per resident relates to the provision of staff when transporting residents. If a resident is away on a bus trip for 2 hours, this could be construed as the provision of their allotment of care time for the day. This regulation is not clear on what staffing is required for transporting any number of residents and should be at the discretion of the administrator based on the care needs of the resident.



(a)(5) Because a driver does not need to provide medications, write support plans, give baths, etc., it is unreasonable to require this person to participate in the direct care staff training. Basic annual education is a sufficient amount of training to meet the needs of the residents while driving. It would cost an additional \$300 for our average facility to meet the direct care staff training requirements. Provision of staff in addition to the driver is currently provided on an as-needed basis as required by resident need. If a minimum of one additional person is required per trip, this would be extremely cost-prohibitive due to the need to backfill at the facility to meet staffing needs. Due to the large number of residents needing transportation, this could easily result in the addition of one staff member to the facility for a cost of \$17,000 per year.

**2600.184 Accountability of medications and controlled substances**

(a)(1) Personal care homes do not administer medications, nor is there any way to document the receipt of medications if the resident self-administers.

(a)(2) Not clear how this regulation applies to PCHs since they are only assisting residents with medications, not administering. Not able to investigate for those residents who self-administer.

**2600.185 Use of medications**

(c) This regulation implies that any staff member can take a verbal order from a physician for a change in medication. This should only apply as it relates to current nursing practice and regulation.

**2600.186 Medication records**

(d) Residents in personal care homes have been able to make decisions regarding their medication in the past and should continue being able to do so without having to notify the physician every time they do not wish to take particular medications. For instance, one of our facilities has a resident who occasionally does not take their Colace every day because their bowels have already moved twice in one day. There are also residents who chose not to take their sleeping pills on occasion because they are already tired. Physician notification of every occurrence would result in increased staff time and would not necessarily contribute to enhanced quality.

**2600.187 Medication errors**

Since this regulation relates only to those residents who self-administer, there is no reasonable expectation that the facility will be aware of all instances when a resident provides him/herself with the improper medication. Since staff do not administer medications and only assist, there are no medication errors to track other than those voluntarily disclosed by the resident.

**2600.225 Initial assessment and the annual assessment**

(b)(2)(7)(8) Since neither the administrator nor the designee is required to have a nursing license, it is not reasonable to require these individuals to perform medical, medication or psychological assessment. These areas are appropriately addressed in the physician exam and screening.

(d)(4) Need to clarify what is acceptable as an update to the tool for a hospital discharge since there may be changes in only one area of the resident's health status and would create additional unnecessary paperwork to re-do the entire assessment.

**2600.237 Staff training on dementia**

It is assumed that this additional training is in addition to the 24 hours of training required by direct care staff. With the current proposed standard of training being cost prohibitive, this additional dementia training makes it even more prohibitive and will decrease both the amount of time spent with residents as well as the amount of services available due to the increasing staff education expenses.

# IRRC

---

**From:** dburfeindt@phi-preshomes.org  
**Sent:** Monday, November 04, 2002 3:56 PM  
**To:** IRRC  
**Subject:** comments on personal care home regulations



Mac Word 3.0

Attached, please find a copy of the comments I have submitted to DPW and submit them to you as well for your consideration. Comments are made on behalf of Presbyterian Homes, Inc.

(See attached file: DPW letter re regulations.doc)

NOV 04 2002 3:56 PM  
17.5.02 3:56 PM  
dburfeindt@phi-preshomes.org

October 31, 2002

Robert Nyce, Executive Director  
Independent Regulatory Review Commission  
333 Market Street - 14th Floor  
Harrisburg, PA. 17101

To Whom It May Concern:

I am writing to you as a concerned grand-daughter of a 90 year old woman in an assisted living facility. Recently we have been informed of impending new regulations. Many of these regulations seem too extreme and unfair to the smaller facility already giving adequate care at reasonable rates. Furthermore, people on Social Security Income will be priced completely out of the system. Somehow, that seems like discrimination to me!!

I ask you, where is it going to stop. Older people should be able to enjoy their last days here on earth without being forced out of a nursing home because of their low income.

For the above reasons I implore you not to approve these extreme regulations as they will do more harm than good to many members of the senior community.

Yours truly,

*Deane Billig*

*Deane Billig  
2663 Sechler Ct.  
Kutztown, PA 19530*

INDEPENDENT REGULATORY REVIEW COMMISSION  
2002-10-31 4:19 PM  
17101

Original: 2294

**Theodora Beatty**  
Box 394 C  
R.R.# 5  
Kittanning, Pa. 16201  
Armstrong  
Home Phone 724 548 8049

2011 NOV -8 AM 9:25  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

October 31, 2002

Independent Regulatory Review Commission  
333 Market Street  
14th floor  
Harrisburg, Pa. 17101


Dear Director,

I am writing concerning the proposed changes in the regulations governing personal care homes. For the last ten years I have the sole care-giver of my aged mother. As you probably know, caregivers receive no help from the government. Finally, last year I found a wonderful personal care home just minutes away from my home. My mother, who has just turned ninety, has been wonderfully taken care of there. The staff is warm and caring and the atmosphere is homelike. Mom is happy socially and I finally have some semblance of a life. And best of all, WE CAN AFFORD IT. Mom gets limited Social Security and I am retired, so cost is an important factor in getting her quality care we can afford.

The new regulations would subject personal care homes to standards that are stricter than hospitals or nursing homes yet the mandates provide no funding for the increased costs. This seems ludicrous to me when the existing regulations have not even been enforced. **WHY ADD MORE THAT WOULD BE COST PROHIBITIVE?**

These new regulations would limit our choice to have a small, home-like setting that is PERSONAL. Also one that we can afford. If the care home my mother is in has to comply with these new regulations the cost per patient would almost double and I would have to care for my mother at home. This would be a hardship on her and me. She would not have social contacts with people her age, a large area where she can walk safely in all weather, a large staff that is available 24 hours a day. I would not be able to leave her alone in our home nor could I take her with me even to the grocery store.

**PLEASE DO NOT TAKE AWAY THE ONLY SOLUTION THAT GIVE QUALITY OF LIFE TO SO MANY SENIORS** for both my mom and I are seniors.  
**I STRONGLY URGE YOU TO DO WHAT YOU CAN TO DO AWAY WITH THE PROPOSED NEW REGULATIONS CONCERNING PERSONAL CARE HOMES!**



Theodora Beatty

cc:Harold F. Mowery, Jr.  
George T. Kinney, Jr  
Independent Regulatory Review Commission

Dear Robert,

Original: 2294

~~residents~~ I am writing on behalf of the residents of the assisted living facilities. I think the new proposed regulations on the Senior Citizens are way out of line. I realize they are meant to better things at the home. But the people at Green Hills Manor where my sister lives are quite satisfied with the way things are going at present. If these regulations become law it will be disastrous to the people on Social Security with no other income. Where will all the people that will be affected go? I know there are people that do complain that things are not right but you have them in all situations. From my observations I think the people that run these ~~places~~ places do the best they can for the people. I can't imagine what will happen to me in a few years if this goes through. I'll be out in the street. I am using up all the money I had saved for my future living arrangements to supplement my sister. I have to pay her health insurance and other bills she has every month. My money is dwindling fast. Now I am confronted with this. Where will it all end the only thing I have to look forward to is death. I certainly hope for all the over!

senior citizens that these regulations do not become law,

I am 71 years old myself. I don't feel like this is a free country anymore. Not when you have to fear what will become law next that will ~~upset~~ upset any plans you have for your senior years.

What will you do with all the baby boomers a lot of them are not in good health already. They take more medicine for their age group than any generation has in the past. They do not really save money either.

Our terrible economy is dragging down their 401Ks

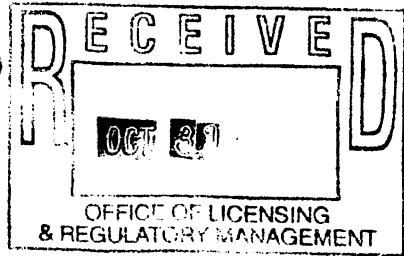
This is no time to rock the boat.

Stop the world I want to get off.

Sincerely  
Eleanor Bagenstose

Eleanor J. Bagenstose  
638 N 5th St.  
Hamburg, PA 19526-1004

#14-475 (279)



Oct 29th - 02

Dear Talata News.

I invite you to visit the home in which I work & where my grandparents lived in 1983 up until they passed away 3 years later.

My grandmother had dementia - could not do everyday tasks that we take for granted. My grandfather was not capable of taking care of them both. My mother at the time recently divorced worked two jobs to support herself. She stopped every night to help my grandmother & look for both parents. It was a lot of stress for my mother. This was back in 1983 when there were only 8 personal care homes in Armstrong County.

Then my grandfather fell off a roof & broke his ribs. Then a family friend saw him run through a red light at a major intersection in Kittinging - she called my mother & reported this incident to her. As a result was not allowed to drive - this added more stress to



family. This added more responsibility for care of my grandparents - they had to be taken to doctors-hospitals when was needed. Th

The family looked into 24 hour care at their home - cost at that time was more than my grandparents' social security income combined + miners pension my grandfather received.

~~From~~ my since private care was not a choice my mother + her sisters + brothers looked into a personal care home in immediate area. They provided a home setting (my grandparents were allowed to have their own rockers in their room) + the love, safety, + health care they needed. The owners went out of their way to provide comfort, a good balanced diet with home cooked meals. The staff treated my grandparents wonderful as did the owner.

I believe in regulations - but you are trying to overregulate. Are you going to take care of added costs? If your regulations

p 2

would have been enforced we would not need new regulations which will add to financial burden of families & force them to place them in nursing homes which are way more expensive

Why penalize these small homes because of homes that don't have caring staffs?

By passing your new law you are taking choices away from the elderly - the choice to have a loving & caring & safe environment in which to live.

In closing;  
Thank you for listening & Let God give you the wisdom & courage to make the right decision. The laws you pass will be enforced when you are elderly & can't take care of yourself.

Sincerely,  
Sherry Z. Wells  
Kittanning R.D. - Pa.  
16201 Box 369

14-475 (386)

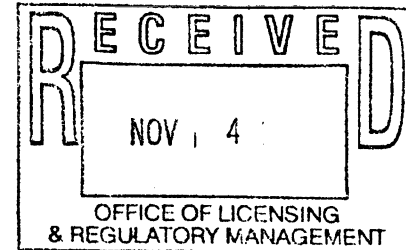
Original: 2294

October 31, 2002

SECTION -7 AMN-10  
REGULATORY  
REVIEW COMMISSION

P.O. Box 216  
Manorville, PA 16238

Teleta Nevius  
Director  
Office of Licensing and Regulatory Management  
Department of Public Welfare  
Room 316 Health and Welfare Building  
P.O. Box 2675  
Harrisburg, PA 17120



Dear Teleta Nevius:

It has come to my attention that the Department of Public Welfare is proposing additional regulations governing the operation of Personal Care Homes. Upon reviewing some of these regulations, I feel that they will have a serious impact on the affordability of my family's ability to keep my mother in a Personal Care Home. Presently, she is a resident of Melody Manor Personal Care Home in Kittanning, PA. My mother is 83 years old and is in the early stages of Alzheimer's disease. Fortunately, she is a very healthy lady, but is unable to perform the every day tasks necessary for every day living. She is very comfortable and is being well cared for in this facility. Her Social Security and small pension income has to be offset by a contribution from the family in order for her to reside at this facility. I fear that the proposed regulations will increase her cost of care beyond the limit of affordability.

In reviewing some of the regulations, I find that these regulations are written by typical bureaucrats of government, that in the mainstay want to seek more control and/or create jobs that do not produce real meaningful results. One hundred fifty six (156) pages of regulations over the Personal Care Home is a prime example of bureaucratic mumbo jumbo.

The existing regulations would suffice if the Department of Public Welfare would have been doing its job over the past decade. I agree there may be certain Personal Care Homes in Pennsylvania which should not be in operation. But passing regulations that increases the cost to residents in order to close these homes is not the way government should operate. This is the typical bureaucratic answer to problem solving.

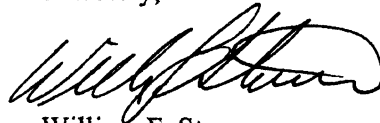
Evidently, Ms. Nevins, you and the Department of Public Welfare have not done your job in past years by not enforcing existing regulations on the books. The Department of Public Welfare needs to take a serious look at the intent of a Personal Care Home, one which is not to be a nursing home or medical facility. Your regulations seem to promote Personal Care Homes as a nursing home or medical facility. A typical response from a bureaucrat was published in an article by Gary Rotstein in the Pittsburgh Post Gazette on Thursday, October 3, 2002, and I quote

“Department of Public Welfare spokesman Jay Pagni said any home forced to close for lack of a nurse might be one that consumers should have concern about using in the first place. “The purpose of these regulations is to ensure the health and safety of individuals in Personal Care Homes”, Pagni said, “Health safety is seen as an area that needs to be strengthened and improved”. These blanket statements are typical of those given by bureaucrats in generalizing issues. There may be some minor issues with Personal Care Homes, but none at the magnitude that warrants these proposed excessive regulations.

When my family members or I visit my mother at Melody Manor Personal Care Home, we find the residents to be well cared for and happy. Your proposed regulations may have such an impact that it will place a burden on families, such as mine, by forcing us to bring our parents into homes where all the family members are working and will not be home during the day to give their parents the individual care and attention that they are now receiving at a Personal Care Home. In my opinion, this would not be ensuring the health and safety of our loved ones requiring personal care.

I urge you and your bureaucratic colleagues as public servants, to consider the public’s wishes in this matter. Enforce the current regulations with minor adjustments for employee training and the administration of medication.

Sincerely,



William F. Stover

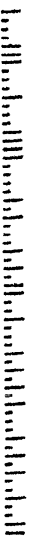
cc: Feather Houstoun, Secretary, Department of Public Welfare  
Independent Regulatory Review Commission  
Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee  
George T. Kinney, Jr., Chairman, House Health and Human Services Committee

William F. Stover  
P. O. Box 216  
Manorville, PA 16238

Telata Nevius, Director  
Office of Licensing and Regulatory  
Management  
Department of Public Welfare  
Room 316 Health and Welfare Building  
P. O. Box 2675  
Harrisburg, PA 17120



17105+2675 99



14-475  
340

October 31, 2002

2002 NOV -4 PM 3:35

REGULATORY  
REVIEW COMMISSION

Department of Public Welfare  
Office of Licensing and Regulatory Management  
Teleta Nevius, Director  
Room 316 Health and Welfare Building  
P.O.Box 2675  
Harrisburg, PA. 17120

To Whom It May Concern:

I am writing to you as a concerned grand-daughter of a 90 year old woman in an assisted living facility. Recently we have been informed of impending new regulations. Many of these regulations seem too extreme and unfair to the smaller facility already giving adequate care at reasonable rates. Furthermore, people on Social Security Income will be priced completely out of the system. Somehow, that seems like discrimination to me!!

I ask you, where is it going to stop. Older people should be able to enjoy their last days here on earth without being forced out of a nursing home because of their low income.

For the above reasons I implore you not to approve these extreme regulations as they will do more harm than good to many members of the senior community.

Yours truly,

*Sheila Schell*

