

COALITION FOR PERSONAL CARE HOME REFORM

~THE ADVOCACY ALLIANCE~

~THE ARC OF PA~

~ CARIE ~

~ DISABILITIES LAW PROJECT~

~ ELDERLY LAW PROJECT OF COMMUNITY LEGAL SERVICES~

~ THE HOMELESS ADVOCACY PROJECT ~

~ MENTAL HEALTH ASSOCIATION OF FAYETTE COUNTY ~

~ MENTAL HEALTH ASSOCIATION OF PA~

~ MENTAL HEALTH ASSOCIATION OF SE PA~

~PENNSYLVANIA HEALTH LAW PROJECT~

~PA MENTAL HEALTH CONSUMERS ASSOCIATION~

~PENNSYLVANIA PROTECTION AND ADVOCACY~

~ PENNSYLVANIA VA MEDICAL CENTER – BEHAVIORAL HEALTH ~

November 4, 2002

Teleta Nevius
DPW – OLRM
PO Box 2675
Harrisburg, PA 17101

RECEIVED
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COMMUNITY RELATIONS
DPW - OLRM

Re: Comments on Proposed Personal Care Home Regulations

Dear Ms. Nevius:

We are a newly formed coalition of non-profit advocacy organizations. We represent residents and potential residents of personal care homes.

We begin these comments by applauding the Department of Public Welfare for engaging in a lengthy public process that began more than 2 years ago and that has included attendance at dozens of meetings with dozens of groups.

Details of DPW's Open Public Process

The Personal Care Home Advisory Committee (PCHAC) is a group of personal care home operators and consumer advocates appointed by the Secretary of the Department of Public Welfare to provide advice and guidance on the licensure and oversight of the Commonwealth's Personal Care Homes. While some of our organizations have not been (or were only recently appointed to be) on the Personal Care Home Advisory Committee, all PCHAC meetings are sunshine meetings and many of us regularly attend the PCHAC meetings. Additionally, the Chair of the PCHAC has been very open during meetings to comments and opinions of non-members and invites non-members to actively participate in PCHAC Workgroups, formulating recommendations for the PCHAC to consider. Some of us have participated in all Workgroups convened over the past two years.

Over the past two years, the following meetings took place with both PCH owners/providers and advocates present. At these meetings, the Department, primarily the Office of Licensure and Regulatory Management (OLRM), has gathered input on licensure requirements in PCHs:

- May 2001 – OLRM held 1 3-day session in Lancaster on the first draft of proposed regulations.
- October 11, 2001 - PCHAC – OLRM staff attended meeting to discuss proposed regulations

- November 28, 2001 - Workgroup on Licensing and Enforcement – at Pennsylvania Health Care Association (PHCA)
- December 14, 2001 – Workgroup on Licensing and Enforcement – at Dept of Aging
- January 8, 2002 – Workgroup on Licensing and Enforcement – at Dept of Aging
- January 10, 2002 – PCHAC – OLRM staff attended meeting to discuss proposed regulations
- March 14, 2002 – PCHAC – OLRM staff attended meeting to discuss proposed regulations
- March 27, 2002 – Workgroup on Staffing, Workgroup on Waivers - at PHCA
- March 28, 2002 – Workgroup on Assessment – at PHCA
- April 11, 2002 – Workgroup on Staffing, Workgroup on Assessment – at Country Meadows PCH
- May 29, 2002 – Workgroup on Staffing, Workgroup on Assessment – at PHCA
- June 13, 2002 – PCHAC – OLRM Staff Attended meeting to discuss proposed regulations
- June 13, 2002 – Workgroup on Assessment – at Dept of Aging
- August 22, 2002 – Workgroup on Assessment – at Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA)
- August 29, 2002 – Workgroup on Staffing and Medications – at Dept of Aging
- September 5, 2002 – PCHAC – OLRM staff attended meeting to discuss proposed regulations
- September 5, 2002 – Workgroup on Assessment – at Dept of Aging

In addition to the above meetings, we are aware that OLRM staff made numerous visits to PCHs across the Commonwealth and met with many provider groups around the state, hearing concerns and receiving suggestions for the proposed regulations. The Pennsylvania Health Law Project twice met with OLRM staff. We are unaware of other groups that may have had meetings with OLRM staff on the content of what would appear as the proposed regulations.

In addition, there were public comment periods for the three previously produced drafts of proposed regulations. The first was the May 2001 draft released just prior to the meeting in Lancaster. Public Comments were accepted for months following this release. The second draft was released in January 2002. Public Comments were accepted on this draft for at least 2 months. The third was the March 2002 "PREVIEW" of the proposed regulations. Public Comments were accepted on this draft until at least August 2002, when comments were provided by the Medical Assistance Advisory Committee and its subcommittees.

The need for Improvement to the Regulations

The Personal Care Home licensure system has been the subject of considerable public scrutiny over the past several years. In October 2001, the Pennsylvania Auditor General issued a scathing report on the Department's licensure and inspection of these facilities. (<http://www.auditor.gen.state.pa.us/Department/Press/PCH-PR.html>) In February 2002, the Pennsylvania Health Law Project provided the Department with an advance copy of its White Paper entitled "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 - A Call For Reform That Has Been Unheard For Over Twenty Years". The White Paper encapsulated a review PHLP conducted into the conditions in personal care homes across the Commonwealth (based on a review of the Department's own public files) and into the Department's inadequate licensure and enforcement actions in response to those conditions. (The White Paper can be found at www.phlp.org).

Personal care homes house some of the Commonwealth's most vulnerable consumers. Persons with disabilities and frail elderly comprise most of the PCH residents. A very large proportion of residents in personal care homes have Mental Health diagnoses. Over the years, the acuity level of persons residing in PCHs has markedly increased. In fact, in 1995, the president of the Personal Care Home Administrators Association publicly stated that PCHs house sicker and sicker people making them more like a nursing home alternative than like a homelike setting for persons who do not require nursing home level of care services.¹

The public scrutiny of personal care homes has revealed a twofold problem with the Personal Care Home system. First, the regulations are wholly inadequate to insure the health and safety of the resident population. Under the current regulations, a staff person caring for residents can be 16 years old and can work for six months before receiving any training on their job responsibilities. It is not surprising therefore that the PHLP review of DPW's public licensure records discovered numerous medication errors and failures to provide personal care services to the elderly and care dependent residents in need of appropriate care. Second, the regulations are not enforced. The Department has repeatedly failed to utilize the enforcement tools currently required to be utilized under the 2620 regulations and underlying statute and therefore are negligent in their duty to protect the health, welfare, and safety of the personal care home residents. It is imperative that the Department recognizes that its role is not merely to issue licenses to personal care homes, rather the Department must also accept and act upon their responsibility to protect those who live in the Commonwealth's 1800+ personal care homes.

What these regulations offer

The proposed Personal Care Home regulations released on October 5, 2002 by the Department of Public Welfare **represent a marked improvement over the existing regulations at 55 PA Code 2620.**

The proposed regulations incorporate many of the areas that have been discussed in great depth and with much passion by the providers and the advocates in attendance at various Personal Care Home Advisory Committee meetings and its workgroup meetings listed in the meeting dates listed above. We are pleased that recommendations offered by these workgroups in areas such as: staffing levels based on the residents' assessed needs; when assessments and care plans are developed; requiring that administrator and staff training include competency testing; have been accepted by the Department and subsequently incorporated into the draft regulations. In addition, the proposed regulations include other improvements found in the sections addressing residents' rights, the contract between the home and resident, the staff training and qualification requirements, and the staffing levels required. They also include new sections requiring a care plan for residents that the homes must follow in providing services and articulating formal criteria for having a secured unit to serve persons with cognitive impairments.

What still needs improvement in the regulations

On the whole, these regulations represent an long needed improvement to a personal care home system in ill-repair. However, there are many areas that still require further revision to remedy long-standing problems. In addition, the proposed regulations include a few major steps backward

¹ Kaufman, Marc, and Pam Belluck. "Homes that Warehouse Adult Orphans: they're Far From Personal and Anything But Home." Philadelphia Inquirer March 5, 1995: A-1.

that must be eliminated. For example, the formal shift from annual inspections of personal care homes to potential tri-annual inspection of personal care homes is a woeful addition to this draft set of regulations.

1. Licensure and Enforcement

We are most disappointed that these proposed regulations include NO improvements to the existing licensure and enforcement system. **The proposal to switch to inspections every three years is even more surprising in light of the detailed recommendations unanimously passed by the PCH Advisory Committee on how to improve licensure and enforcement in the Commonwealth.** The PCH Advisory Committee decided in November of 2001 to form a subcommittee to address the Auditor General's report and to make recommendations on what DPW could do to improve its performance in the licensure and enforcement areas. After meeting for three full days and circulating drafts, the workgroup presented its recommendations to the full committee, which unanimously adopted the recommendations and submitted them to the Department on March 14, 2002. It was the intent of the committee that the Department would incorporate these recommendations into the proposed 2600 regulations in order to vastly improve the licensure and inspection system. A copy is attached as Appendix A. DPW's Deputy Secretary of the Office of Social Programs and his Western Regional Division leader were both at the table with the workgroup working on the recommendations. Inexplicably, none of these recommendations were included in the draft regulations. If half the problem with personal care homes is inadequate regulatory standards and the other half is inadequate licensure and enforcement, the Department has missed a perfect opportunity by failing to propose needed improvements in licensure and enforcement.

See our specific comments on section 2600.3 and 2600.11 below.

2. Abuse and Reportable Incident Reporting

We are disappointed that the reporting of abuse or neglect or of other reportable incidents does not prompt any department investigation into the circumstances surrounding the reported conduct. In most cases, the PCH is being called on to self-identify problems and then to self-evaluate the cause with no outside input or scrutiny of potentially serious risks to resident health and safety. While it is possible that many PCHs in good conscience perform this task honestly, the public records indicate otherwise. DPW regularly finds that PCHs fail to report suspicious deaths, the arrest of an administrator, the serious bodily injury of a resident, etc. For this reason, these incidents must be reported and the report must prompt an investigation by the department and failure to report something must warrant a citation and a fine. We also believe that the list of "reportable incidents" must be expanded.

See our specific comments on section 2600.15 and 2600.16 below.

3. Waivers

We are pleased to see the addition of notice and opportunity for comment by residents when a PCH applies for a waiver of any regulation. However, we believe that the residents' families and the public must also be notified of waiver requests through publication in the PA Bulletin.

The existing waiver section is still problematic in that it lacks: 1) disclosure to potential residents of any approved or pending waivers for their facility, 2) consumer rights to appeal a waiver, 3) insurance that waivers are time limited and not indefinite, and 4) clarification of who at DPW has the authority to grant a waiver. These all must be inserted. A standard form needs to be developed that includes a place to state the particular item that is to be waived, the alternate method, etc.

Additionally, the waiver section must state that **waivers can only be granted in exceptional circumstances and that the burden falls on the PCH to provide a reasonable and appropriate basis for being granted an exception to the regulations.** The Waiver and Grandfathering Workgroup, a subcommittee of the DPW Personal Care Home Advisory Committee,

reached consensus about adding these pieces, many of which the Department currently does but, has not carried forward from internal policies into the regulations.

See our specific comments on section 2600.19 below.

4. Resident Funds and Refunds of Rent

We have seen too many problems with residents not receiving their funds (which are being held/managed by the home) or refunds as required upon their discharge, transfer, or relocation from the home. Our primary comments relate to the proposed timeframes in which funds and refunds must be returned to residents. In a nutshell, it is unreasonable to allow a PCH to hold a resident's funds for 30 days after a discharge or termination. Lower-income residents especially need every cent they have to pay for relocation or for the rent at a new facility. There is no reason a home, especially one that has had 30 days advance notice and that has been required to maintain adequate records of residents money, would need 30 days to iron out a resident's account. Residents must be given their monies upon date of discharge.

We are also concerned about the obvious conflict in a PCH administrator also taking on the duties of a representative payee for Social Security purposes. However, there may be circumstances in which no one else is available to serve as representative payee. The administrator should not be appointed to serve as representative payee unless the resident, family, and legal representative are first given a standardized disclosure form provided by the department that explains the following: what Representative Payee means, that other agencies may be available to provide representative payee service for little or no fee (i.e., mental health associations, Associations of Retarded Citizens (ARC), etc.), that representative payee is voluntary, that the resident can terminate the representative payee relationship at any time, and how to terminate the relationship. This section must also include a provision that the administrator becoming the resident's representative payee cannot be a condition for admission.

Because we have seen so many instances recently where residents are given their money in the form of a check that bounces, there must be a provision included that requires **"the return of funds is to be by cash or a valid check, failure to issue a valid check will be a violation of this chapter and interest will accrue in the amount of 1% per day from the date the check was issued until funds are available at the bank from which the resident can obtain her monies and a valid check has been reissued."**

See our specific comments on section 2600.20 and 2600.29 below.

5. Written Contract

We are pleased to see some improvements in the content of the resident contract. This document is a critical piece to insuring that residents obtain the care they require. For this reason, it is imperative that the home clearly articulate the costs to the resident for the care that resident requires, and that the support plan (required in section 2600.227) that articulates the amount and type of care the resident requires be attached as a part of the binding contract. We have seen instances where a resident complains to the department of a PCH's failure to provide needed care, but the department finds the complaint unfounded because there is no written document that articulates what care the person required and clarifies who is to provide the care. The newly required support plan will go a long way, however, it must be included as a binding part of the resident-PCH agreement.

See our specific comments on section 2600.26 below.

6. Residents' Rights, Notification of Rights, and Complaint Procedures

It is a huge improvement that a resident's rights now include the right to be free from actual retaliation for exercising their rights. Until now, there was no provision that could be used to prevent a resident from being evicted for having complained to the PCH, the department, or even just another

resident about the conditions in the PCH (even though the resident theoretically had the right to complain about this). It is also a huge improvement that residents now formally have the right to receive needed services 365 days a year, as this was placed in doubt under some questionable OSP Bulletin about 2 years ago.

What this section lacks, however, is a clear articulation that residents also have a right to lodge their complaints to the department or Ombudsman directly at any time, and not be required to go to the PCH first. This section also lacks an assurance that a resident who challenges a discharge notice has the right to remain in the home while the appeal is being decided by the department.

See our specific comments on section 2600.41 and 2600.42 below.

7. Staff Training and Qualifications and Staffing Levels

The staff and administrator training provisions are significant and essential improvements over the existing provisions of 2620. Most of the regulatory improvements arise directly from the suggestions made by the PCH Advisory Committee Workgroup on staffing. We are pleased to see that staff must be trained and complete competency testing prior to beginning work in their position as administrator or direct care staff. The section needs some further clarification on who will test competency and how this will be done. Additionally, some of the previously submitted recommendations that were made and approved by the Personal Care Home Advisory Committee have not been included in these proposed regulations. In addition, some important topics previously recommended to the Department for inclusion in the proposed regulations were also omitted from the list of training areas. Because we feel so strongly about the need to include these areas in the new 2600 regulations, we are making the recommendations again. Finally, we also feel strongly that the Department should develop a training manual with the assistance of stakeholders, which would provide the model for all department approved training programs.

See our specific comments on sections 2600.53 through 2600.59 below.

8. Privacy in Bedrooms and Bathrooms

More needs to be done to provide and insure privacy to residents in bedrooms and bathrooms. It is inappropriate for a resident to be forced to share a bedroom with 3 strangers and to have less personal space in that bedroom than is afforded to a prisoner in the criminal justice system. Residents must not be required to share a bedroom with more than one other person and they must be afforded more personal space. Privacy in the bathrooms must also be insured.

See our specific comments on section 2600.101 and 2600.102 below.

9. Annual health exam and assessment.

Because we have seen too many instances where residents are not getting the healthcare services they require and their health needs are going unattended, it is critical that the annual health exam be performed by an independent doctor of the resident's choosing. Too often a PCH has a "home doctor" who provides all the care and completes all the resident evaluations and never finds a person inappropriate for that PCH, no matter how great their care needs have become. It is also essential that the resident have the right to have an assessment of their needs completed by an independent assessor. The Area Agency on Aging performs these assessments regularly.

At issue here is the reality of conflict of interest. A "home" doctor is unlikely to find a resident inappropriate for the PCH, except if the Administrator is trying to discharge the resident. A home assessor may find that a person requires less care than would an independent assessor (who is not the one getting paid for providing the care).

We also believe that PCH residents should have a bi-annual psychiatric exam performed by an independent psychiatrist. This is crucial in light of the number of residents with a Mental Health diagnosis. It is also critical because many residents are prescribed psychotropic medications by

"home" doctors where such a medication may not be prescribed by a provider less interested in controlling resident behavior. Residents in some homes have been intentionally overmedicated. See our specific comments on section 2600.141 and 2600.224 through 2600.227 below.

10. Medications

We feel very strongly that medications be administered to PCH residents by a specially trained medication technician with proven competency. Presently, direct care staff receive no appropriate training on medication administration, which leads to numerous medication errors. Such errors were repeatedly found in the PHLP review. The onus must be placed on responsible, trained staff to insure that resident medications are taken as prescribed, and that all refusals or adverse reactions are noted and reported to doctors.

Overwhelmingly, agreement on the part of providers, provider associations and consumer advocates led to the recommendation that the Department adopt a Medication Technician Training Program similar to the program already in place and used by the Department's Office of Mental Retardation whereby properly trained and tested staff administer medications to persons who need this type of assistance. The providers would like to be allowed to administer medications, which they currently are not, and the consumers/advocates would like to be assured that those who administer or assist in self-administration are capable and competent to do so. It would behoove the Department to adopt currently utilized, successful programs from its other divisions (i.e., Office of Mental Retardation, Office of Children and Youth Services, Office of Mental Health and Substance Abuse Services) in order to improve the ability of the Office of Social Programs to protect the health, welfare and safety of the personal care home residents.

11. Notification of Termination and Relocation

We are pleased that discharge criteria have finally been added to the regulations. This will protect residents from being discharged for complaining about conditions in the home. This section, however, needs to be more clear that the responsibility lies with the Department to coordinate relocation efforts in the face of a voluntary or involuntary closure of a home and that the PCH owner or administrator may not be permitted to interfere with or interrupt that relocation effort.

We also need to protect the resident against being relocated to an inappropriate setting. Residents must be allowed to remain in the home and receive needed services while the relocation efforts are locating an appropriate setting. Residents must not be relocated to a homeless shelter or forced into a nursing home because no other wheelchair accessible PCH has available beds.

See our specific comments on section 2600.228 below.

12. Secured Unit Requirements

We are pleased to see that the criteria for operating a secured unit, which have long been part of a non-public waiver process, are being made formal and public. The provisions in this section are a good start, however, several crucial elements have been omitted.

First, it is not clear that these requirements are "in addition" to all the other requirements of the regulations and that none of the provisions regarding secured units can be waived under 2600.19.

Second, this section has omitted crucial elements such as: who is admissible to a secured unit, what disclosure must be made to prospective residents and their families, and what DPW oversight there will be of secured units. In fact, the proposed regulations leave out any requirement that DPW inspect and be satisfied that the secured unit meets all requirements prior to the unit opening and admitting residents. All the requirements must be in place prior to a facility receiving approval for a secured unit.

Third, the regulations seem to imply that a PCH can open a secured unit simply by submitting a "notice" to the department that the home is opening and operating such a unit. This must be

rewritten to make clear that the home must submit an "request for approval of secured unit" and that the department must come out and inspect and find that the home meets all the requirements of this chapter and section and affirmatively grant approval for the home to open and operate a secured unit.

Fourth, the proposed regulations fail to include a disclosure requirement and this must be included. The home that operates a secured unit must be required to disclose to potential residents and their families or legal representatives what requirements the department imposes, proof/verification that the home meets these requirements, a description of what services the home provides, as well as what safety mechanisms are in place for the secured unit to protect the health and safety of its cognitively impaired residents.

Fifth, secured units of personal care homes should be subject to regular unannounced inspections more frequently than once per year.

See our specific comments on section 2600.229 below.

13. **Disclosure Prior to Admission**

The regulations still fail to require **any** disclosures to consumers prior to admission. By failing to require this, the Department is guaranteeing that consumers cannot shop around or receive any notice of their rights and responsibilities until they actually sit down to sign the agreement. This places consumers and their families at a terrible disadvantage.

Personal care homes must be required to provide prospective residents with a copy of their resident rights, the contract they will have to sign, and specific information about (1) who the provider serves and what services are offered; (2) the cost of those services to the consumer; (3) contact information for the regulatory agency; (4) rules and policies of the facility that will affect the consumer; and (5) any waivers that have been granted to the regulations for that program.

14. **The Mental Health Consumer as Resident**

The regulations fail to adequately recognize the needs of the mental health consumer as resident. While residents with cognitive impairments will, we hope, be protected in the new secured units, inadequate protections exist for residents with mental health diagnoses. For example, there is no requirement that residents with MH diagnosis have annual psychiatric visits and evaluations, just physical health evaluations. This should be added. Additionally, there should be recognition of the need to insure that homes that serve residents with MH must be familiar with the MH system and must link residents to local MH/MR authorities.

As the drafting of new regulations began as part of a cross-systems approach, it is clear that the Department recognized the need for some cross-systems licensing, monitoring, and coordination. It would behoove the Department to enter into letters of agreement or memorandums of understanding with other state offices (i.e., Office of Mental Health and Substance Abuse Services, Office of Mental Retardation, and the PA Department of Aging), which oversee services provided to older and care dependent persons, in order to improve the ability of the Office of Social Programs to protect the health, welfare and safety of the personal care home residents.

Below are our section by section comments. These pertain solely to areas for which we suggest further revision to the draft proposed regulations. **For all areas of the regulations upon which we are not herein providing comments, we offer our strongest possible support for their retention as is, and without diminution in response to comments from providers.**

GENERAL PROVISIONS:

2600.1 Purpose

The last 2 sentences of 2620.1 must be reinserted. Thus, it is essential that the final regulations include at the end of what is written in 2600.1:

“Unnecessary institutionalization will be prevented and individuals who might otherwise be required to stay in institutions will be able to live in a PCH in the community. PCH licensees are encouraged to use the placement services of local agencies in assessing resident needs so that necessary services and the appropriate level of care may be identified and promptly secured.”

2600.2 Scope

2600.2(b) must be revised as follows to make clear that a PCH that is operated by a religious org for the care of clergy or other persons in a religious profession are only exempt if they provide care solely for that group and not just that group plus other members of the public.

(b) This chapter does not apply to commercial boarding homes **that do not house 4 or more persons who need personal care services** or to facilities operated by a religious organization **solely** for the care of clergy or other persons in a religious profession.

2600.3 – Inspections and licenses or certificates of compliance

When, in the last draft, we pointed out the conflict between the provision of 2600.11 that allowed for inspections every 3 years and the provision of 2600.3 calling for inspection every year, we urged annual unannounced inspections. **We are shocked and disturbed to see that the Department responded to this comment by eliminating the requirement of 2600.3 that inspections take place annually. This is woefully inadequate. An annual inspection requirement must be reinserted here and for 2600.11.**

Additionally, all PCH must be accessible to persons with disabilities. Federal law requires that PCHs be physically accessible. This requirement must be specifically articulated in the regulations as a condition of licensure.

Thus, we suggest that 2600.3 and 2600.11 be consolidated. Additionally, the Department must add some valuable enforcement language here to improve the poor enforcement process and to be responsive to the enforcement recommendations **unanimously supported by the entire Personal Care Home Advisory Committee.** The new 2600.3 should read:

- (a) “An authorized agent of the Department shall conduct an **unannounced** on-site inspection of a personal care home at least annually”
- (b) “A certificate of compliance shall be issued to the legal entity by the Department if, after an inspection by an authorized agent of the Department, it is determined that **the personal care home is in full compliance with all requirements and that the requirements for a certificate of compliance are met.**
- (c) **In addition to the annual inspection, the department shall inspect as often as required by 62 P.S. 211(I) and more often as necessary.**

- (d) **Where a violation is found, submission and compliance with an acceptable plan of correction followed by actual verified correction of violations shall be required to achieve full compliance for licensure purposes. Only a plan of correction that clearly articulates the facility's understanding of the reason for the violation, the impact or consequences of the violation and which specifically corrects the present violation and provides a process to ensure that there will not be future violations shall be accepted by the department.**
- (e) **An applicant for a license for a new facility shall, if in full compliance with all regulatory requirements that can be met prior to admitting residents, receive a "New Facility Full License". An applicant that is found to have violations shall not be issued a new facility license until the facility is in full compliance.**
- (f) **All homes shall have adequate fiscal resources to pay utilities, staff, insurance, taxes, etc. prior to licensure.**
- (g) **All homes shall have an adequate amount of liability insurance or bond to cover negligence and theft.**

2600.4 – Definitions

Abuse – Add another item (vii) Sexual contact between staff and residents.

Need to clarify definition of ancillary staff because saying that Ancillary staff don't provide the services provided by direct care staff is not the same as saying that they **cannot** provide those services. Thus, we suggest instead: **"Ancillary Staff are employees whose tasks are not the provision of personal care services or direct care but, are the cooking, cleaning, and other non-direct care services required in the personal care home. Ancillary staff who have completed direct care training may provide direct care services, as provided herein."**

The term "cease and desist" is not defined in these regulations. Because it is used and may not be clear to consumers and providers, it must be defined.

Add to "Department" definition: **"The Department of Public Welfare of the Commonwealth, including its state and regional offices and local authorities."**

Need better definition for financial management. Add after first sentence: **"Includes taking responsibility for or assisting with paying bills, budgeting, maintaining accurate records of income and disbursements, safekeeping funds, making funds available to resident upon request, and for SSI recipients, preserving eligibility for SSI."**

Instrumental Activities of Daily Living definition has omitted several of the IADLS that exist in the current regulations at 2620.33. These should be included. (iii) should be changed to "Securing and using transportation". And, the following should be added:

- (vi) **Making and keeping appointments**
- (vii) **Securing health care**
- (viii) **Correspondence**
- (ix) **Care of personal possessions**

The Long Term Care Ombudsman definition is erroneous. LTC Ombudsman, although charged by the Department of Aging, serve all residents regardless of age. Thus, the language must be changed as follows "complaints made by or on behalf of ~~elder individuals~~ **residents**"

The Neglect definition needs to be revised to fit the PCH context. The "caretaker" in this context is the PCH, which is responsible for providing adequate housing, furnishings, and access to medical care to its residents and should absolutely not be excused from a finding of neglect based on its inability to properly provide services. Thus, the second sentence of the definition should be deleted.

Add to the Restraints definition that mechanical restraints include **"lap trays when not being used for meal service."**

SP—Support plan – Change the "or"s to "and"s. These items must be inclusive and not an option to pick one.

Left out and need to reinsert the definitions for:

1. Applicant
2. Designated Person – This term, from the current regulations, seems to have been collapsed in with "designee", which formerly just referred to the administrator's designee. Using the same term for both is confusing. "Designated person" should be retained as the term for an emergency or other family/friend, etc. contact person for a resident and "designee" should be used for the Administrator's designee.
3. Home – all throughout the regulations the term "home" is used without any clarity that "home" means "licensed personal care home"
4. Licensee
5. PCH Operator
6. Personal Care Staff

2600.5 – Access requirements.

With regard to 2600.5 Access requirements:

(a) access must be at any and all times and without any notice. The language should clearly indicate this so that there is no question by any PCH as to the Department's right to access at any and all times and without any notice.

(b) must be amended to include Protection and Advocacy. Pennsylvania Protection and Advocacy has federal statutory authority to investigate any complaints about conditions in residential settings where persons with disabilities reside. By law, PP&A staff must be afforded access to people, facilities, and records in those facilities.

Additionally, it is not clear why the regulations need to spell out purposes for the visit. But, if it must, then it must include the purpose of assisting residents in exercising their rights under the law.

Add as (d), **"The personal effects of residents shall not be searched without the resident's consent"** or something similar.

Also, local MH/MR Authorities should be provided access to PCHs in order to assess and serve persons with mental health/mental retardation.

GENERAL REQUIREMENTS:

2600.11 – Procedural Requirements for Licensure or Approval of Homes.

Given the vulnerable, isolated population residing in PCHs and their dependency on the PCH for more of their needs, it is imperative that onsite inspections of PCHs occur at least annually. As written, 2600.11(b) is absolutely unacceptable. To require inspections to take place **only** once every 3 years entirely contravenes the goal of the regulations, to insure health, safety, and welfare, and the goal of inspection, to insure compliance with regulations.

As a matter of policy, all personal care homes must be inspected for licensure compliance through annual unannounced inspections. Where a personal care home has demonstrated full compliance with all regulations for three consecutive annual licensure inspections, we encourage the use of abbreviated or inferential inspections. However, there should not be any year in which a facility does not receive a complete compliance inspection until it has demonstrated a pattern of good practice.

The requirement of an annual inspection must be maintained and improved upon. We have suggested consolidation of this section with 2600.3 and provided suggested language above.

2600.13 – Maximum Capacity

Section (a) says that the maximum capacity set for the “personal care section” of the home. “Personal care section” is not defined, however, and must be clarified. A provider could easily view this as being distinct and separate from a “personal care + memory care section” of the home, etc.

2600.14 – Fire Safety Approval

Language needs to be added to (b) stating what actions the department will take to ensure the safety of residents if/when it is notified that fire safety approval has been withdrawn or restricted.

Fire safety approval needs to be updated if the home begins to serve a resident population with different needs in addition to structural changes. Thus, if a PCH has never served persons who are blind and suddenly admits 2, unless their fire safety approval originally took into account the possibility of serving that population, they must get a new fire safety approval. Additionally, the timeframe in (c) - 30 days – is too long.

2600.14(c) must be revised as follows:

“If the building is structurally renovated or altered after the initial fire safety approval is issued or if the home begins to serve a resident population with different needs or abilities than the residents served at the time of the last fire safety approval, the home shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the department **no more than 2 weeks after completion of the structural alteration or renovation or the admission of a member of a new or different resident population within ~~30 days of the completion of the renovation or alteration.~~”**

Because buildings can deteriorate over time and fire safety standards are improved upon over time, fire safety approvals need to be renewed on a regular basis. Thus, we suggest that you add as (f):

"Fire safety approvals must be renewed at least once every 3 years."

The department also needs to articulate a standard for the fire safety expert to use in granting approval. This should be obtained from the Department of Labor and Industry and be articulated here.

2600.15 - Abuse reporting covered by statute

It is essential that any Abuse or Neglect (or complaints about abuse or neglect) be immediately brought to the attention of the Department and all others, as required by law. It is also essential that any of these items prompt immediate onsite investigations by the Department. Neither of these two essential components have been included in the proposed regulations.

Additionally, family members or legal representatives must be notified of reports of Abuse or Neglect and the personal care home must be required to swiftly provide family members or legal representatives with this notice. Finally, the regulations should provide for penalties for failure to report abuse or neglect.

2600.16 - Reportable Incidents

It is essential that any Reportable Incidents be immediately brought to the attention of the Department and all others, as required by law AND that any of these items prompt immediate onsite investigations by the Department, and, where appropriate referral to the Ombudsman. This essential investigation component has been excluded from the proposed regulations.

Additionally, family members or legal representatives must be notified of Reportable Incidents and the personal care home must be required to swiftly provide family members or legal representatives with this notice.

It should not be up to the home to determine whether deaths are suspicious. There is a **glaring** conflict of interest in asking them to report the deaths that are due to abuse, neglect, malnutrition, etc.. As a result, it is essential that the department require the home to report **ALL** deaths. The report can be on a one page standard fax or e-mail-able form so that the department can review the death and cause of death for anything suspicious. The same is true for hospitalizations. Any treatment at a hospital or medical facility should be reported in addition to any serious injury, trauma or medication error. The way it is worded, it could mean that serious physical injury, trauma or medication error only need to be reported if they required treatment at a hospital or medical facility. Thus we urge that the language of 2600.16(a) be changed as follows:

(a)(1) A death of a resident **and the cause as placed on the death certificate, including whether** due to accident, abuse, neglect, homicide, suicide, malnutrition, dehydration, or other unusual circumstances."

(3) Take out all of what was there at (3) and insert: **Any healthcare situation requiring treatment at a hospital or medical facility, not to include routine healthcare visits.**

(5) **Elopement of a resident from a secured unit or -----**

(12) A condition that results in an unscheduled **evacuation**, closure of the home ...

(13) **"An observed situation or a** complaint of resident abuse **or neglect**, or suspected abuse **or neglect**, referral of a complaint of resident abuse **or neglect** to a local authority for an investigation of the results of any investigation conducted by the personal care home of possible resident abuse **or neglect**.

(15) A situation in where there are no staff **or inadequate staff** to supervise **or provide care in** the home.

(17) Criminal ~~convictions~~ **actions** taken against Administrator or staff (the Department should be told and should do its own complaint investigation any time a criminal action is taken against an Administrator or staff person – even if the conduct does not lead to criminal liability it may well violate a regulatory requirement).

(20) **Lawsuits filed against a legal entity, administrator, or staff person by a present or former resident**

(21) **Any sexual contact between staff and residents.**

(22) **Any injury of unknown origin.**

(23) **Any refusal to eat or drink for 48 hours.**

Subsections (b) and (e) contemplate that the facility must investigate the reportable incident, but the regulation does not specifically state this and should be edited to do so.

Additionally, the initial unusual incident reporting must be done by immediate technology tools only, such as phone, fax, or e-mail.

Thus, we suggest that 2600.16(c) be revised as follows: (c) The home shall immediately report **to 24 hour hotline, by phone, fax, or e-mail** ... We also suggest that 2600.16(g) should be added and should state: (g) **The home shall inform the family members or legal representatives by phone of residents of the occurrence of an unusual incident affecting their single resident or of an unusual incident affecting all residents. This shall be done within 24 hours of the occurrence.**

The cross-reference in subsection (f) to 2600.243(b) is incorrect; there is no subsection (b).

2600.17 – Confidentiality of Records

Resident records must be made available to Pennsylvania Protection and Advocacy as well as others with legal authority to review them. The regulation must state this.

2600.18 Applicable health and safety laws

This section should be revised to make clear that PCHs are expected to be in compliance before a license will be granted as well as throughout licensure. Thus this section should read:

"A personal care home shall be in compliance with **all** applicable Federal, State, and local statutes, ordinances, and regulations, especially those statutes or regulations pertaining to fire and panic, public health, civil rights, and protective services **prior to and throughout licensure. Failure to be in compliance with any other applicable law will amount to a violation of this section.**"

2600.19 – Waivers

We are pleased to see the addition of notice and opportunity for comment by residents however, we believe that the family and public must also be notified of waiver requests through publication in the PA Bulletin.

The existing waiver section is still problematic in that it lacks: 1) disclosure to potential residents of any approved or pending waivers for their facility, 2) consumer rights to appeal a waiver, 3) insurance that waivers are time limited and not indefinite, and 4) clarification of who at DPW has the authority to grant a waiver. These all must be inserted. A standard form needs to be developed that includes a place to state the particular item that is to be waived, the alternate method, etc.

Additionally, the waiver section must state that **waivers can only be granted in exceptional circumstances and that the burden falls on the PCH to demonstrate and reasonable and appropriate basis for being granted an exception to the regulations.** The *Waiver and Grandfathering Workgroup, a subcommittee of the DPW Personal Care Home Advisory Committee*, was in agreement about adding these pieces, many of which the Department currently does but, has not carried forward from internal policies into the regulations.

Section 2600.19 should be revised as follows:

(a) "The home may submit a written request for a waiver on a form prescribed by the Department, and the **Division Chief of the Department** may grant a waiver of a specific section of this chapter if **the home reasonably justifies to the department the need for a waiver, which may be found if** the following conditions exist:

(1) The waiver poses no jeopardy to the **health, safety or well-being of any of the** residents of the home

(2) There is an **equivalent or better alternative method for meeting the intent of the regulation** for ~~providing an equivalent level of health, safety, and well-being protection of the residents of the home~~

(3)

(4) **The waiver is needed for a fixed period of time in order for the facility to come into compliance with these regulations."**

(b) "The scope, definitions, applicability, residents rights, **personal care service requirements, complaint rights or procedures, notice requirements to residents or family, contract requirements or reporting requirements** under this chapter **or any other state regulation or statute** shall not be waived."

(f) "Waivers are subject to **annual periodic** review by the Department to determine whether acceptable conditions exist for renewal of the waiver."

2600.20 – Resident Funds

2600.20(a) is applicable where "the home assumes the responsibility for maintaining a resident's financial resources." Is this the same as providing financial management? If so, the term financial management should be used for clarity's sake.

2600.20(a)(1): This needs to include a requirement that the home keep receipts for any purchases made on the consumer's behalf. We have now seen too many incidents where the home's records show that purchases were made but, there are no receipts and no goods to go with the

records. The first sentence should be edited as follows: "(1) A separate record of **each resident's** financial resources, including the dates **of transactions**, amounts of deposits, amounts of withdrawals, **receipts for all expenditures**, and the current balance ..."

The first sentence of 2600.20(a)(2) should be edited as follows: "Deposits, **withdrawals**, and expenditures shall be documented with **dated** written receipts."

2600.20(a)(4): The words "if available" should be deleted. Any funds which the facility is holding for the resident must be available to be given to the resident, upon request, within 24 hours.

2600.20(a)(5) should be edited to require the home to obtain a **dated** written receipt from the resident for cash disbursements.

2600.20 (a)(9) should be edited to provide that a resident may consent to the review of his financial records by his designated person or other third party.

2600.20 (b)(10)-(12): There are some crossovers and inconsistencies between this section and 2600.29. Our comments relate to the timeframes in which funds and refunds must be returned to residents.

The language in these sections is unclear, inconsistent, and, thus, hugely problematic. The primary cause of the problem is the use of "discharge or termination" and "termination of service" as triggers for certain actions. This is problematic because "discharge and termination" are processes and not dates certain, and it is not clear what "termination of service" means. Thus, if the language in (11) means that within 30 days of written notice of discharge or termination, the resident shall receive an itemized written account of funds, etc... this is less objectionable than if the Department means that within 30 days of the actual date of departure resulting from a discharge or termination process.

Instead of the confusing usage of these terms as triggers, the required actions should be triggered by the residents actual date of departure. How soon after the date of departure the PCH should be required to provide the residents funds and accounting will differ based on whether the departure was unexpected or planned with 30 days written notice. The regulation have not accounted for circumstances we have too often seen this summer, where there is a voluntary closure, Department closure or emergency evacuation of a PCH.

In all circumstances, funds and accountings must be provided to residents far sooner than 30 days from date of departure. In most circumstances the money is needed to bury the former resident or pay a new provider, etc. Requiring the facility to return a resident's own money swiftly doesn't prevent the facility from collecting or billing for unpaid services. Additionally, a provision must be added to require any funds held by a facility to be returned to a resident upon the facility's being shut down by the Department.

Thus, in 2600.20(b)(10), where the resident dies, the residence should have 48 hours.

Thus, in 2600.20(b)(12) The resident's funds that are being held by the home must be returned to the resident with a full accounting of funds "**on or before the day of departure**" not "immediately [which is not defined] upon discharge or termination". This needs to apply when the resident has given notice of moving out, when the resident is being discharged involuntarily, when the home is being closed by the owner, and when the Department is relocating the all residents due

to a licensure action. Only when there is an emergency or unanticipated departure or relocation should the home be allowed a little more time to return the clients funds. Thus, the language should be revised as follows:

(12) "Upon discharge or transfer of the resident, **whether due to the termination of services by the home, the voluntary closure of the home, the decision of the resident to leave the home where the resident has provided appropriate advance notice, or licensure action of the Department to relocate the resident**, the administrator shall immediately return the resident's funds being managed or being stored by the home to the resident **on or before the day of departure.**"

2600.20(b)(13) should be added and it should state that where the resident's departure is unanticipated or emergency departure due to change in condition or emergency relocation by a state agency, the home has 48 hours to return the residents funds.

There can be an obvious conflict in a PCH administrator also taking on the duties of a rep payee. However, there may be circumstances in which no one else is available to be representative payee. The administrator serving as rep payee should only be allowed if the resident, family, and legal representative are given a standardized disclosure form provided by the department that explains what Rep Payee means, that others are available to do it for free (MHA's do it, ARCs do it), that it is voluntary, that they can terminate the rep payee relationship at any time, and how to terminate the relationship. This section must also include a provision that having the administrator be rep payee cannot be a condition for admission.

There needs to be a provision included that requires **"the return of funds to be by cash or a valid check, failure to issue a valid check will be a violation of this chapter and interest will accrue in the amount of 1% per day from the date the until funds are available at the bank from which the resident can obtain her monies and a valid check has been reissued."**

A provision should be added prohibiting the owners of a facility, its administrators or employees from borrowing funds from residents, as this kind of financial exploitation has occurred.

Lastly, 2600.20(6) has an error. It prohibits commingling of the residents "personal need allowance" and the PCH funds. This should prohibit commingling of the residents "personal funds" and the PCH funds.

2600.23 – Personnel Management

(1) This timeframe for maintaining records is inadequate in light of legal rights of residents. While, generally, a resident has 2 years to sue for a tort, he/she has 7 years to sue over breach of contract. Thus, for a facility to be able to demolish all records before 7 years has passed would be to allow facilities to obviate legal duties they otherwise have to retain those documents. This section needs to be revised to make the minimum 7 years and the maximum 8 years.

Also for (1), the PCH should not only be required to keep records of who is/was scheduled to work but who actually showed up to work so that what staff members and what amount of staffing was really available is recorded.

2600.24 Tasks of Daily Living

Need to articulate that PCHs should assist in shopping for clothing, personal items, etc. The regulations also need to include as part of the obligation to secure healthcare an obligation to assist in obtaining needed medications. PCH must be required to assist in filling prescriptions and to have prescribed medication available. Also if a resident's prescription is denied because of formulary or other problems, the PCH must be responsible for immediately informing the prescribing provider so that appropriate steps can be taken to get the medication or an appropriate alternative.

One critical task of daily living is the securing of healthcare. All too often, PCHs meet this obligation by having a "home doctor" come in. Some require the resident to use that home doctor. PCHs are not medical facilities. Physical and Mental Health care should be provided off-site in the offices of licensed physicians and clinicians. If services are allowed on-site, oversight by DPW is imperative and must include regular (annual) review of medical and psychiatric billing, review of records, medical necessity and appropriateness of the services provided.

2600.25 Personal Hygiene

Residents in substandard facilities, in addition to appearing generally unkempt, often have long, dirty nails. Assistance with clipping nails on fingers and toes should be added to the list of personal hygiene items with which consumers shall be provided assistance.

2600.26 – Resident/home Contract

The Resident/home contract needs to have more clarity. The contract should be a standard contract used for all residents (thus, each home can have its own contract but, the contract should not differ in form from resident to resident). This language is in the current regulations but has not been included in the proposed regulations. The section should be revised as follows:

2600.26 (a): "Prior to... The administrator or his designee is responsible for completing this contract **with the resident or the resident's** designated person. The administrator or his designee shall, prior to signature, review and explain the contract's contents to the resident and the designated person in a language or mode of communication which the resident and designated person can understand. The contract shall be signed by the administrator or his designee **with authority to act on behalf of the home** ... At a minimum, the contract shall specify **and include** the following **in accordance with all requirements of this chapter:**"

2600.26(a)(2): **The language here is very unclear.** It seems that in this section the Department is trying to have the home provide the resident with a price list of what all available services cost along with a individualized statement as to what the resident's needed services will cost. However, this is NOT clear. To clarify, the language should be revised as follows:

"The actual ~~amount of allowable resident~~ charges for each service or item **offered by the home.** The actual ~~amount of the~~ periodic – for example, monthly – charge for food shelter, services and **any** additional charges **that will be charged to the resident.** **In addition, the contract shall specify** ~~and~~ how, when, and by whom payment is to be made.

2600.26(a)(3): Language needs to be clarified. "An explanation of the annual screening, medical evaluation, and support plan requirements and procedures **along with the procedures which** shall be followed if either the screening or the medical evaluation indicates the need for another and more appropriate level of care."

2600.26(a)(4): This language needs to be clarified as well. We have seen too many examples of family members believing they were signed a form regarding the arrangement of payment and the home trying to hold them liable for payments. There is a difference between a daughter signing off saying, "As my mother's power of attorney, I will mail you a monthly rent check from my mother's account" and a daughter signing off saying, "I will pay you the monthly rent and bear responsibility for my mother's bills." Thus, "The party responsible for payment" is not clearly defined. 2600.26(a)(4) should be revised to state:

"The party personally responsible or liable for the payments and amounts owed to the home. If a third party agrees to accept personal liability for payment to the facility, his he must sign a separate written document agreeing to be personally responsible or liable for the payments to the home."

2600.26(a)(4) should be edited to add "The conditions under which refunds will be made... upon a resident's death **or voluntary departure from the facility.**"

(a)(8): Remove the phrase, "including whether the home is designated as a smoking or nonsmoking home." If smoking areas are properly vented, the rest of the house should be smoke-free.

2600.26(a)(11), add language in bold – "A list of personal care services **that will be provided to meet the resident's needs as identified in the assessment and in the manner articulated in the support plan including** and their costs ~~to be provided to the resident based on the outcome of the resident's support plan.~~ **A copy of the current support plan must be attached."**

In 2600.26(a)(13), the provision on residents' rights (2600.32) should be referenced, as well as 2600.31. This subsection should also be edited to require that the actual list of resident's rights, as it appears in these regulations, should be provided rather than "written information" on resident's rights, as facilities have been known to provide edited, watered-down versions of resident's rights in their admissions documents.

2600.26(a)(15): The PCH should only be permitted to keep a pro-rata share of half the rent-rebate check if the resident did not live in the residence the entire year for which the application is submitted. Additionally, there must be a requirement that the PCH provide the resident with her share within 3 business days of receipt of the check from the state. . The prohibition on a facility's keeping more than one-half of a resident's rent rebate check should also be affirmatively stated as a requirement in a separate provision, as well as being a prohibited term in resident contracts.

2600.26(b): A PCH that is part of a continuing care community must disclose to residents that **"Although the PCH regulations prohibit our requiring or permitting you to assign your assets to us in return for a life care contract/guarantee, we are exempt from this requirement because was are a Continuing Care Community with a Certificate of Authority from the Insurance Department."**

2600.28 – SSI recipients

This section should be revised as follows:

(a) For a resident eligible for SSI, the PCH charges for **the resident's** actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current

PNA. The Department shall set the PNA amount annually and publish it in an OSP bulletin. This amount shall never be less than \$60.

Additionally, the SSI payment amount is meant to cover the costs of food, shelter, and clothing. Many residents who have SSI are forced to pay for the purchase of clothing out of the \$2 they get each day. This is inappropriate, in light of the fact that the entire SSI payment goes to the PCH, with only a portion of the state's SSI PCH supplement going to the resident for pocket money. Thus, the regulations must include a prohibition on charging residents for clothing. The PCH must provide toiletries, laundry, and adequate clothing to meet climate and cleanliness conditions.

2600.29 – Refunds OF PREPAID RENT

Similar to our comments to 2600.20, our comments relate to the timeframes in which funds and refunds must be returned to residents. The language in these sections needs to be clearer as to exactly when a resident gets his refund. The timeframes allowed in this section are too long.

How soon after the date of departure the PCH should be required to provide the resident with a refund will differ based on the circumstances surrounding the departure. The regulations have not accounted for circumstances we have too often seen this summer, where there is a voluntary closure, Department closure or emergency evacuation of a PCH.

In all circumstances, refunds must be provided to residents far sooner than 30 days from date of departure. In most circumstances the money is needed to pay a new provider, etc.

Thus, in 2600.29(a):

"If, after the home gives notice of discharge or transfer in accordance with 2600.26 (...), notifies the department of a decision to voluntarily close, is closed by the department through licensure action, or if the resident is relocated subject to an emergency relocation, and the resident moves out of the home before the ~~30 days are over~~ any notice period is over, the home shall give the resident a refund equal to the previously paid charges for rent and personal care services for the remainder of the ~~30-day time period~~ pre-paid time period starting at the date of departure from the home. If the home had notice of the date the resident would be departing, the refund shall be issued ~~within 30 days of discharge~~ on the date of departure from the home. If the home had no notice of the date of departure from the home, the refund shall be paid to the consumer within 48 hours of the time of departure. The resident's personal needs allowance account shall be refunded ~~within one week of discharge or transfer~~ on the date of departure from the home."

2600.29(b) is problematic and confusing in that it cross-references 2600.26, which does not address notice requirements for voluntary departures. In the current regulations, the almost identical 55 Pa.Code 2620.28(b) cross-references 55 Pa. Code 2620.26(c), which permits an administrator to require a 30 day prior written notice from a resident who chooses to leave the facility. Without this cross-reference, this provision could appear to create a presumption that 30 days' notice is required unless the contract explicitly states no notice is required.

There needs to be a provision included that requires **"The refund of rent must be by cash or a valid check. Failure to issue a valid check will be a violation of this chapter and interest will accrue in the amount of 1% per day from the date the check was issued until funds are available at the bank from which the resident can obtain her monies and a valid check has been reissued to resident."**

RESIDENT RIGHTS:

2600.31 (2600.41 per PA Bulletin version)– Notification of Rights and Complaint Procedures

The complaint process must include the right to file a complaint with the Department.

2600.31(a) should be revised as follows:

"Upon admission each resident and, if applicable, the resident's family and/or advocate shall be informed of the residents rights and the rights to lodge complaints **with the PCH or the Department or the Ombudsman**

(c) Move the "upon admission" phrase to just behind the "resident". This will make the phrase more meaningful.

(c) needs to be improved to make sure that rights are provided to residents upon request. This can simply be done by adding "**and upon request**" to the end of the sentence.

(f) Each home must have and follow standardized complaint investigation procedures, and the right to make a complaint should not be limited to resident's rights but also problems with care, etc. This should be added to the language of (f) as follows: "The home shall ensure... resident's rights, the provision of care or other concern. **Investigation and resolution shall be done through standardized home procedures which** ~~the procedures shall include ...~~"

(g) 14 business days is entirely unreasonable for the PCH to respond to a complaint. In Mental Health facilities, homes have 48 hours. Here, there should be at most 72 hours to respond. Thus (g) should read: "The home shall render a decision within **72 hours** ~~14 business days~~ upon receipt" Additionally, PCHs must be required to keep in their records copies of all internal complaint investigation reports.

2600.31 (h) and (i) appear to require the filing of a complaint with the facility as a prerequisite to filing a complaint with the Department, ombudsman, or other advocacy agencies (2600.31(h) speaks of filing complaints "beyond the home's internal system", while 2600.31(i) states that the resident can address complaints to other entities "when the resident ... feels that complaints have not been properly resolved through the home's complaint procedure"). This is completely unacceptable and such language must be deleted. All of these outside entities are and must be available at any time to accept and investigate complaints by residents. In many cases, residents are frightened to complain to the facility; they are afraid that staff or administrators will be angry at them and that their care will be affected or that they will be evicted. This will continue to be a barrier, despite the proposed regulations' prohibition on retaliation (especially if the appeals procedures for involuntary discharges are not beefed up, as discussed *infra*). In fact, residents may not be aware of their rights until they have contacted the ombudsman or another outside entity about their concerns. Additionally, add to (h) At the end of the paragraph, add the words, "near a telephone."

(h) The postings that include phone numbers, etc. need to indicate that the numbers are available 24 hours a day and are placed next to the telephone.

(j) The resident's designee must also have the right to access the resident's records.

2600.32 (2600.42 in PA Bulletin version) - Specific Rights

(b) This needs to include a right to be free from intimidation.

(e) should be revised to insure safety, private, accessibility, and a homelike environment.

Thus, it should read: "A resident shall have private access to **an accessible** telephone **on each floor** in the home **24 hours a day, with no limit on use of the phone.**"

The assistance the resident receives needs to be the amount of assistance that the resident has been documented as needed in assessment and support plan. Thus, (f) and (i) should be revised as follows:

(f) Resident shall only have mail opened *upon resident request* as articulated in the resident's assessment and support plan.

(g) This section needs to be clarified so that it says that a PCH shall be open and provide services as needed in care plan 365 days per year, not 365 days.

(i) Resident shall receive assistance **from the home as required by the resident's assessment This shall include assistance in accessing prescription medications.**

(m) A resident must be able to leave and return to the home at reasonable times without home rules limiting the resident's ability to do this. Thus, the section should be revised to say "A resident shall have the right to leave and return to the home at reasonable times ~~consistent with the home's rules.~~"

(q) This section is unclear and requires clarification. There is no explanation of what is meant by a "resident's personal space". The home is responsible for the cleaning of the home. This section, as written, could be read to imply that residents are required to do all cleaning in their own rooms, etc., which cannot possibly be what is intended.

Thus, the language in the second sentence should be revised as follows: "Residents shall perform personal housekeeping tasks related directly to the resident's personal space **belongings** but shall not perform tasks in lieu of a staff person who is otherwise required to perform these tasks." However, the section should also be clear that providers may hire residents to perform staff tasks, assuming residents are properly trained and paid to do so.

(s) The right to privacy should include the right to privacy while receiving care.

It is not enough to protect consumers from fear of retaliation as in (t). This section must be changed. The regulations must expressly articulate that:

(t) A resident shall have the right **to exercise all rights afforded in this chapter and** to voice complaints **to any person or agency** and recommend changes in policies and services of the home without **retaliation, or** fear of reprisal or intimidation **by the administrator or staff.**

Residents' rights to remain in the home must be consistent with the provisions of 2600.228 – Notification of termination. Thus, 2600.33(u) should be revised as follows:

(u) "A resident shall have a right to remain in the home, so long as it is operating with a license, **except as set forth in 2600.228 (h).**"

(w) The resident needs to have the right to appeal discharge and termination decisions to the Department. Additionally, the resident must have the right to reside in the facility with continued supports pending the outcome of a complaint investigation. This has many times been discussed and recommended to the Department. What good is the right to complain without retaliation if the

resident cannot appeal and have the Department look into a retaliatory eviction? A facility which is willing to evict a resident as retaliation for asserting his or her rights patently cannot be counted on to provide a fair hearing to the resident when he or she appeals that eviction.

Need to add:

(aa) A resident shall have the right to choose his own healthcare providers from those within his own health insurance plan and the facility shall help the resident arrange care through his insurance plan.

(bb) A resident has the right to reasonable accommodations of his disabilities.

(cc) A resident has the right to receive assistance in applying for public funding if private funding is exhausted.

(dd) A resident has the right to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered.

STAFFING:

2600.53 - Staff titles and qualifications for administrators.

(a)(2) Add to the end of this the phrase, **"with an emphasis in human services, administration, or nursing."**

(k) Need to add that all administrators must meet all administrator requirements prior to becoming/serving as a PCH's administrator. Thus, even after initial licensure, if an Administrator leaves and need to hire someone new, that person will be required to meet the requirements prior to starting work. This is not made clear in the proposed regulations. Thus, (k) should be added to state:

"An administrator shall meet all the requirements of this section prior to serving as an administrator for any home."

2600.54 – Staff titles and qualifications for direct care staff

The direct care staff must meet complete the department approved training and satisfy all other regulatory requirements prior to serving as direct care staff. What this means, is that even when the person is receiving on-the-job training, they are not serving as direct care staff and not being counted in the staffing levels. Thus, (5) and (6) should be added, which read:

(5) "Have an orientation as well as have completed and passed the department approved competency-based training."

(6) "A direct care staff person shall meet all the requirements of this section prior to serving as direct care staff for any home."

2600.55 – Exceptions for Staff Qualifications

(a) is inadequate to ensure the health and safety of consumers. Staff must be allowed 1 year in which to test out or be trained anew. We cannot allow under-qualified staff to remain under-qualified just because they were under-qualified at a fortuitous time. Thus, (a) must be revised to state:

"The staff qualification requirements for administrator and direct care staff shall be met by all ~~do not apply to~~ staff persons hired or promoted to the specified positions prior to the effective date of this chapter within 1 year of the effective date of these regulations. Passing the

competency test devised by the department under 2600.57 (for administrators) or 2600.58 (for other staff) will constitute satisfaction of the qualification and training requirements. -as long as they maintain current license."

The Workgroup agreement on break in service was that a direct care staff person who meets all the requirements of the regulations can have a break in service of up to a year. That was premised on the fact that they met the requirements prior to the break in service. The language in (b) allows for a break in service and return to work after 1 year even if the person never met the regulatory requirements. This is not what was agreed to and is not acceptable. If the staff person tests out, they can go back to work within 1 year and without having to sit through a training class, etc. But, this can happen if and only if the person passes the competency test.

(c) A person age 16-17 can serve as a **direct care staff person** (the words "direct care" have been left out of the proposed regulations) with the included limits on job function BUT **only if** they have satisfactorily completed the training and competency testing.

2600.56 - Staffing

This section refers to immobiles and residents with special needs. Nowhere has the Department defined who is a resident with special needs. As this is critical to determining staffing levels, the Department must do this.

The language in many places of this section is unclear. To clarify, we suggest the following:

(a) "A home shall employ.... At minimum, **the home shall staff to provide that** each mobile resident shall receive an average . . . "

(b) "If a resident's support plan indicates that the resident's personal care needs exceed the minimum staffing levels **hours** in subsection (a), the home shall provide a sufficient number of trained direct care staff to provide the necessary level of care **and hours of care** required by the resident's support plan...."

Subsection (f), which requires an administrator, designee *or direct care staff person* to be present on the premises when residents are present is in contradiction with subsection (c), which requires an administrator or designee (rather than a direct care staff person) to be present on a 24 hour basis.

(h) needs to include that the home shall maintain at least one but no fewer than the amount of overnight staff in the amount necessitated by the resident's care plans.

2600.57 – Administrator training and orientation

Generally speaking, this section is an improvement over prior drafts. We are pleased to see that the administrator and staff will be required to completed an appropriate amount of competency-tested training. However, the regulations fail to make clear several critical elements. Specifically:

(a) and (b) The trainer needs to be a person with appropriate training and background in the area on which he/she is training. Especially in the training areas such as Mental Illness, Alzheimer's/Dementia, etc. Thus, (a) and (b) should be revised to state that the Department-approved training **provided by an appropriately trained person or agency**. In all

circumstances, the Department approved training should be developed with input from stakeholders as to what are best practices, etc.

(b) needs to make clear that "Prior to licensure and **at all times during licensure** the legal entity is to appoint **and maintain on staff** an administrator who has successfully completed and passed...."

Several crucial areas of training have been left out of (c) and (d). For example, according to (c) as it is written now, the administrator would not get any training in the requirements of the regulations, incident reporting, how to provide personal care services, abuse and neglect reporting requirements, etc. Also, strangely, many training areas have been identified as training areas for annual training but not for initial training, like safe management techniques. Additionally, Residents Rights are not specific to Mental illness and gerontology and should not be listed as a training area under these but as its own critical training area. Likewise, mental illness, mental retardation, and gerontology are three wholly separate areas and should not be collapsed into one.

Thus we suggest that (c) be revised as follows:

(2) First Aid training, **accessing healthcare services through Medical Assistance and other insurance companies**, medications, medical terminology and personal hygiene...

(6) **Overview of Mental Illness, mental retardation, substance abuse, dual diagnoses,** and gerontology, which shall **be provided by trained specialists and which shall** include, but not be limited to:

(i) ~~residents rights~~

(ii) care for persons with **mental illness, mental retardation**, or dementia/cognitive impairments

(iii) ~~care for persons with mental retardation~~

(iv) **symptoms, medication side effects, and behaviors of major mental illness (i.e. schizophrenia, schizo-affective disorder, major depression, bi-polar disorder and personality disorders), mental retardation, aging, and dementia/cognitive impairments.**

(v) **community and healthcare services, programs, and systems available for persons with mental illness, mental retardation, etc.**

(vi) **Confidentiality laws.**

(vii) **De-escalation techniques and interventions.**

(9) **The requirements of this chapter.**

(10) **Ethics.**

(11) **Preventing, identifying, and reporting abuse and neglect.**

(12) **Incident Reporting**

(13) **Cultural Competency**

And, we suggest that (d) be revised as follows:

(7) **How to provide personal care services**

The language from 2600.57(e)(9)(iv) needs to be added as both 2600.57(c)(6) and 2600.57(d)(5).

Also, critical but omitted from both (c) and (d) of the proposed regulations is the obvious requirement that someone test and measure the competency of the applicant. Competency-based testing is meaningless unless someone is evaluating competency. Thus, language should be added to (c) as (c)(14) so that once an administrator completes the classroom part of her training, she receives verification of this and can move on to begin her on-the-job portion. This language should also be

added after (d) so that an applicant is measured for competency upon completion of her on-site training. Thus, add as (c)(9) and (d)(8):

(c)(14) "The Department or Department approved trainer shall measure the performance of the applicant and provide the successful applicant with a written verification of her successful completion of the training."

(d)(8) "The Department trained administrator who provides the 80 hours of competency based training to the applicant shall measure the applicant-administrator's performance in a manner approved by the Department and shall provide the applicant-administrator with a written verification of her successful completion of the training."

(e)(11) is duplicative of (e)(5) and should be deleted.

(g) The proposed regulations mistakenly put the administrator time at 40 hours. This needs to say 140.

(h) The record of training needs to be maintained for all administrators and staff. This should be more clear. Thus, the section should be amended:

"A record of training for all administrators and staff..."

2600.58 – Staff Training and Orientation

MH/MR training must include at least one trainer with the condition or who has a family member with the condition, which is the subject of the training. Additionally, the training must include where to obtain additional supports.

Again, having "competency-based" training but no mechanism for measure competency is useless. So, language needs to be added here as well that:

For the in class portion of the training: **"The Department or Department approved trainer shall measure the performance of the applicant and provide the successful applicant with a written verification of her successful completion of the training."**

And, for the on-site portion of the training: **"The Department trained direct care staff or administrator who provides the 12 hours of competency based training to the applicant shall measure the applicant-direct care staff's performance in a manner approved by the Department and shall provide the applicant-direct care staff person with a written verification of her successful completion of the training."**

Additionally, (a) needs to include as part of orientation for all staff a component on mandatory reporting obligations. All staff in personal care homes are mandatory reporters under our protective services laws. They must be oriented to identifying and reporting obligations.

(h) has no time period. Thus it implies that a person that completes a training today could be exempt from training again when they go to apply for a job in 8 years. That is simply not reasonable. (h) should be revised to read:

"If a staff person has completed any of the required training identified in this section within a year prior to"

2600.59 – Staff Training plan

The Department approved training for both staff and administrators must be based on or built on a training program that the Department develops with stakeholder input based on best practices. The Department should devise a training manual to insure a minimum standard training program that will insure that the requirements of this chapter are likely to be met.

The following language should be added:

"All training shall meet the standards established by the Department in consultation with a multi-disciplinary team. The multi-disciplinary team shall include, but not be limited to, representatives from Labor and Industry, Area Agency on Aging, Office of Mental Health and Substance Abuse Services, Office of Mental Retardation, Office of Medical Assistance, Department of Health, and an advocate.

The staff training plan should be developed based on the training manual the department devises.

PHYSICAL SITE:

Need to add to this section, perhaps as 2600.80 a requirement that PCHs comply with all applicable local, state, and federal occupational and health and safety standards for the protection of employees as well as residents. Language as follows: **"All facilities will meet applicable state and federal occupational, safety, and health standards."**

Section 2600.81 Physical accommodations and equipment

The current language in the proposed regulation should become new subsection (a). This language is too generic and provides no guidance to personal care home operators or staff. Thus, we recommend the additional language set out below.

A new subsection (b) should be added with the following language

"Personal care homes designed or built after March 13, 1991 shall comply with the accessibility requirements of the Fair Housing Amendments Act, 42 U.S.C. 3601, et seq., including the regulations thereunder found at 24 C.F.R. Part 8."

A new subsection (c) should be added with the following language:

"No personal care home shall discriminate against any persons with disabilities, including persons with physical mobility impairments, in the provision of equal housing opportunities or other services in a personal care home."

Section 504 of the Rehabilitation Act requires DPW to insure that PCHs that receive state and federal monies be accessible to persons with disabilities. A new subsection (d) should be added with the following language:

"No state or federal money, including the SSI supplement, authorized pursuant to 55 Pa. Code Sec 297.4 (b)(3), shall be provided to any resident of a personal care home which is not accessible to and usable by persons with disabilities, including persons with physical mobility impairments."

2600.82 – Poisons and Toxic Substances

Add as (d) **Substances which could be dangerous to a resident if ingested shall be locked up in secured units.**

2600.83 - Temperature

It needs to be recognized that a large population of the personal care home residents are mental health consumers. Psychotropic drugs are one class of drugs that do not work properly if the body is at an extreme temperature. Additionally, persons with heart conditions and other conditions are placed in physical harm and at risk by being forced to linger in extreme heat. We must ensure residents' health and safety.. This can only be done through requiring air conditioners in all personal care homes. Fans simply move hot air around. They do not cool. And, moving hot air has a greater heat effect just as moving cold air has a greater chill factor.

(b) Replace with "The indoor temperature must be a maximum of 80 degrees Fahrenheit when residents are present in the home." Further, bedrooms must be included as persons may not be able to leave their bedroom because of medical conditions.

2600.85 – Sanitation

It is unclear how an inspector would ever be able to enforce (a)'s requirement that a home maintain sanitary conditions without some cross-reference or definition of what these are or where they should be found. Our perception of sanitary conditions are likely to be different than those of a college fraternity. And, without a definition or reference, the Department will not be able to insure the kind of "sanitary conditions" we would want for homes to be in.

2600.87 – Lighting

The lighting needs to be not only operable but sufficient for safely evacuating and safely and comfortably performing the activities that are likely to be performed in the area. Thus, the sentence should be revised to add to the very end **"in an amount adequate for safely evacuating and safely and comfortably performing the activities that are likely to be performed in each area."**

2600.88 – Surfaces

Add a (c) that speaks to lead paint.

Must add as (d) **If asbestos is found in a building or contained in any part of the structure, the building must have a certification from an asbestos remediation company that the building is safe for residents and the asbestos does not pose a risk.**

2600.89 – Water

Again, having hot and cold water under pressure for the residents is not the same as having enough to accommodate the needs of the actual residents. Thus, the sentence of (a) should be revised to read: "The home shall have hot and cold water under pressure in all bathrooms, kitchen, and laundry areas **in an amount adequate** to accommodate all of the **needs and preferences of the residents** in the home."

2600.90 – Communication System

(a) This needs to be revised. For health and safety purposes, there must be at least one phone on each floor of a residence and the floor must be accessible so that a resident with disabilities can use it. Thus (a) should be: "The home shall have a working, non-coin operated, **private telephone system** with an outside line that is accessible **and available** in emergencies. **At least one phone shall be located on each floor of occupancy...**"

2600.92 – Screens

It is essential that all windows and doors have screens and that the language in this section not be limited to windows and doors that are open. We have seen instances in which PCHs complied with this requirement to screen open windows and doors simply by keeping all windows and doors closed. Instead, the language should require that all windows and doors should have screens.

2600.93 – Handrails and railings.

In homes that serve people with all levels of disabilities, it is invaluable to prevent against unnecessary risks. A person with disabilities can fall, stumble, etc. on 2 steps or of a porch and be injured even if the drop is only 30 inches. Thus, we suggest that "exceeding two steps" be removed from (a) and "that has over a 30-inch drop" be removed from (b).

2600.94 – Landings and stairs

Add as follows:

(c)All stairs shall have contrast strips for those with vision impairments.

2600.95 – Furniture and equipment

Furniture must be appropriate to a home setting and comfortable to the residents. No discarded chairs from a dentist's waiting room should be used as living room furniture. This needs to be included in this section. Just like in section 2600.101 on Bedrooms regarding the resident's chair, it should be up to resident judgment as to what is comfortable furniture. We suggest doing so as follows:

"Furniture and equipment shall be in good repair, **functional, comfortable**, clean, free of hazards, **and appropriate for a home-like environment. The residents shall determine whether the furniture is comfortable.**"

2600.96 – First Aid Supplies

It is unreasonable to have one set of first aid supplies in every building, especially in larger homes where there can be huge 200-person buildings. It is also unreasonable to have one first aid kit for a building with 5 or 6 stories. The notion of first aid is that some immediate help is available to prevent further injury by delay or until the professionals arrive. If I cut myself and am gushing blood, having to wait for a staff person to find their way to supplies located clear across a 200-resident building will not be best for my health and safety. There should be **one set of first aid supplies on every floor or wing of each building.**

2600.97 – Elevators and stair glides

A valid certificate of operation does not ensure that the equipment is operational. As with smoke detectors, 1) if this equipment becomes inoperative, repair shall be completed within 48 hours of the time the equipment was found to be inoperative and 2) the home shall develop emergency procedures that will be immediately implemented until the equipment is operable. These items are important, as there may be persons who rely on that equipment daily to get around the facility.

It is worthless to have a certificate of operation if the elevator or stair glide is not working. Thus the section to be revised to include that:

"Each elevator and stair glide **shall be in operating condition...**"

2600.98 -- Indoor activity space

A common problem in many personal care homes is that few meaningful activities are offered, and those which are provided are often appropriate and meaningful for only a portion of the resident population. For example, it is not uncommon for bingo to be the major activity offered, despite the presence of a significant younger population in the home. As a result, residents in many facilities spend most of their time simply sitting in the hallways with nothing to do. In order to make meaningful activities available, subsection (d) should be revised as follows: "The program shall provide social, physical, intellectual and recreational activities **designed to meet the interests and the physical, mental and psychological well-being of each resident** in a planned, coordinated and structured manner."

All too often, we have seen residents stuck watching programs and listening to music at a volume and of a variety that the staff choose. We have seen homes where terribly loud music is turned on in the common room where the residents are gathered so that the staff can hear and enjoy the music while they are cleaning bedrooms two doors down from the common room. This is not the purpose of having TV and Music in the home. Thus, (f) should include language at the end such as "**TV and music volume and programming shall be at the choice of the residents.**"

2600.99 – Recreation space AND EQUIPMENT

The title of this section should be recreation space and equipment. Additionally, residents should have some choice in the items available to them for recreation purposes and the items available should be age and disability appropriate. Recreation equipment, things like jump rope, football, and other more physical exercise type equipment, should be included in the list of examples of equipment that PCHs should have. Thus, the section should be revised to read:

"The home shall provide regular access to **and choice of** outdoor and indoor recreation space and **age and disability appropriate** recreational items including but not limited to: books, **current** magazines ..."

2600.100 – Exterior Conditions

In (a), the exterior conditions must also be free of debris, litter, dangerous pieces of discarded furniture, and other junk. We have seen this too often. The language must be included.

In 2600.100 (b), the home must be required to insure that the snow and ice removal is done **at least daily and more frequently if necessary** to insure the health, **accessibility** and safety of the residents.

2600.101 – Resident Bedrooms

While we are pleased that the department has increased the space each resident gets to call her own for residents in single rooms and for residents with disabilities (where a doctor indicates a need for space), this is not enough. It has long been noted that the space afforded a resident is less than that afforded in a prison cell. Simply put, (a), (b), and (c) should all be consolidated to simply state that **"Each resident shall have 100 square feet of floor space measured wall to wall, including space occupied by furniture."**

In 2002, it is time to no longer force 4 strangers to live together in tiny spaces. For any new construction, new additions, or increase in census, bedrooms should have no more than 2 to a room (although 1 would be truly preferable). With occupancy only at 68%, there are adequate beds available to cover 2 to a room. Thus, (d) should read:

(d) For facilities built or space or beds added after the effective date of these regulations, no more than 2 residents shall share a bedroom and only by choice. For facilities, wings, and licensed capacities in place prior to effective date of these regulation, no more than 4 shall share a bedroom.

(e) Change the 7 to 8. The children's regulations require at least 7½ feet. If a light or fan hangs down from the ceiling the clearance in the room is even less. The minimum ceiling height must be 8 feet. Perhaps existing homes could be grand fathered in at 7½, but an 8-foot standard should be set.

(i) should be amended to read: **"Curtains or partitions bedrooms shall be employed equipped to insure the resident's privacy."**

(k) should be revised as follows **"Each resident shall have the following in their bedroom"**

(k)(2) must include a **"durable mattress pad"** for each resident, especially if the mattress is to be wrapped with plastic.

(n) Remove the "unless in an emergency situation" phrase. Bedrooms should be private and each resident should be encouraged not to enter another bedroom without an invitation. We would be giving a mixed message to some residents if we say it is okay to enter a room in an emergency. Further, exits must be more clearly identified than to go through someone's bedroom.

(q) Each bedroom must have walls and doors that extend from floor to ceiling. We are terribly aware that the Department has allowed residents to live in large open room areas with office type cubicle walls dividing one "4-person room" from another. This wholly violates the concepts of privacy and dignity and must not be allowed.

(s) or and... a minimum of one lamp per resident, with one operated by the light switch.

(s) Revise this to read, **"In each bedroom, there should be a wall switch that is connected to at least one operable ceiling light or lamp for general lighting when entering a dark room. And, each room shall have a minimum of one operable lamp per resident."**

2600.102 – Bathrooms

We have seen PCH bathrooms that are not maintained in sanitary conditions. We know of consumers in PCHs where they are not allowed to flush their waste or the toilet paper they use to wipe themselves. The regulations must require that PCH maintain sanitary conditions in bathrooms and that if septic systems are used, they must be sufficient and must be required to be regularly emptied to handle all waste. Additionally, the existing regulations require adequate ventilation. There is no good reason to remove this requirement. The language proposed does not insure privacy in the bathroom. One shower for every 15 users is simply not enough. And, among the individual toiletry items that should be supplied should be sanitary napkins and disposable razors, especially for SSI residents without funds to pay for these expensive but essential grooming items. Generally, given the proposed ratios in the draft regulations, there are potential problems if six residents use one bathroom (one sink, one toilet, one shower). If all fixtures are in one bathroom, then someone using one fixture would tie up all the fixtures. Lastly, the bathrooms must be accessible to persons with disabilities.

Thus, we propose the following revisions to the proposed regulations:

(a) In addition to the ratios of fixtures, there must be a minimum of two toilets.

(b) In addition to the ratios of fixtures, there must be a minimum of two sinks.

(c) Clearly there must have been a mistake to change this number from 8 to 15. There must be one bathtub or shower for every six (6) residents, similar to the children's regulations (55§3800). Additionally, each resident must be given the opportunity to bathe/shower at least once a day. Thus revise (c) as follows: "There shall be at least one bathtub or shower for every ~~six~~ fifteen or less ..."

(e) "Privacy shall be provided for toilets, showers and bathtubs by partitions or doors.

(i) Privacy shall be provided for each toilet by partitions and doors.

(ii) Privacy shall be provided for each shower by partitions and doors or curtains.

(iii) Privacy shall be provided for each bathtub by partitions and doors or curtains."

(g) Individual toiletry items including toothpaste, toothbrush, shampoo, deodorant, comb, **sanitary napkins, disposable razors and shaving cream**, and hairbrush shall be made available.

(h) Toilet paper shall be provided for every toilet **and paper towels shall be provided for every sink.**

(k) **Sanitary conditions must be maintained and the bathroom(s) must be cleaned and sanitized once a day with monitoring during each shift.**

(l) **Any home using a septic system shall have a sufficient system to handle and shall regularly empty and maintain their system to handle all waste. Residents shall not be prevented from sanitary disposal of waste.**

(m) **All bathrooms shall have appropriate fans or ventilation systems to insure adequate ventilation.**

(n) **All bathrooms shall be accessible to residents with disabilities.**

2600.103 – Kitchen areas.

All equipment in the kitchens must be working and in good repair. "Operable" is not enough to insure that it works as it is supposed to and poses no harm to residents are employees. Thus, the language in (a) should be revised.

Likewise, the cleaning of utensils must be after each meal by an operable mechanical dishwasher that appropriately cleans and sanitizes the eating, drinking, and cooking utensils. Additionally, any PCH housing four or more residents should be required to have a dishwasher.

2600.105 – Laundry

It must be clear that PCH staff are responsible to change bedding and towels. Additionally, Administrators and staff must implement measures to insure that residents' clothing are not lost or misplaced.

Thus, these sections should be revised as follows:

- (d) Bed linens and towels shall be changed **by PCH staff** at least once every week.
- (e)
- (f) The administrator shall **implement and staff follow** ~~take reasonable~~ measures to ensure that ... cleaning. **The use of a "community closet" in which residents' clothing is taken from them and distributed for the use of other residents is prohibited.**
- (g) Clarify this. Was it meant to mean that "lint is removed from all dryers daily"?

2600.106 – Swimming Areas AND OTHER BODIES OF WATER

(1) Not all applicable laws and regulations require fencing and self-closing latched gates. These two items have been shown to prevent significant numbers of accidental deaths by drowning and must be required by any personal care home that has a pool, regardless of the local regulations.

The title must be changed to cover other swimmable bodies of water. Must add essential safety features such as:

(c) Staff certified as Red Cross Life Saving staff must be present when residents are using the pool or other body of water.

(d) All pools and ponds shall be fenced and have automatic latched gate.

2600.107 – Internal and external disasters

As we have done in prior sets of comments, we urge the Department to define what these are. Nothing about the terms clearly indicates what would or would not amount to a disaster.

Additionally, some sections are too ambiguous. For example, (c)(1) requires disaster plans to include contact names without indicating for whom or what. Also the section fails to require the "disaster plan" to include an evacuation plan. These pieces must be added to (c).

2600.108 – General health and safety

It is important to insure that the conditions at the home shall not pose a threat to the health or safety of the residents or staff or any visitors that come onto the premises. The language in this section should be expanded to specify this. Additionally, the conditions must meet all federal, state, and local standards of occupational safety and health. The language should read: "**Conditions at**

the home shall not pose a threat to the health or safety of the residents or staff and shall meet all federal, state and local standards.”

2600.109 Firearms and weapons

As a standard, “Firearms, ammunition, and weapons should be prohibited on the premises and during transportation of residents.” However, if a waiver is desired, then it should meet the requirements drafted here, but these requirements should not be in regulation!

FIRE SAFETY:

2600.121 – Unobstructed Egress

The last part of (a) must be eliminated since 2600.14 does require everyone to have fire safety approval. There is no reason why locking of a door should be permitted. A door has the appearance of permitting egress in an emergency. People will go toward the door to exit. If exiting to a safe area is not an option, then the door needs to be replaced with a wall or window.

There must be alarms placed on all doors of homes that house wanderers (who are not in secured units) to prompt notice of egress.

2600.124 – Notification of local fire officials

There must be a statement that this be updated within 7 days of admission of a resident whose evacuation calls for fire department assistance/attention. Add this to end of sentence.

2600.129 – Fireplaces

Only working fireplaces should have to be inspected and they should also be cleaned. Thus (b) should say: “A **working** fireplace chimney and flue shall be inspected **and cleaned** at least once a year. . .”

2600.130 Smoke detectors and fire alarms

Add an item before (a): Most if not all smoke detector companies recommend a minimum of one detector on each floor, including the basement and attic, with specific directions on where to locate the detector. This general requirement should be the first item on this list.

2600.133 Exit Signs

(b) should not start with the phrase “if the exit or way to reach the exit is not immediately visible”, this should be removed. Access to **all** exits should be marked with readily visible signs, regardless of whether the exits or way to reach them is not immediately visible.

RESIDENT HEALTH:

2600.141 – Resident health exam and medical care

It is imperative that the resident’s annual health examination be performed by her own primary care physician and not by a “home” doctor. Similarly, there must be a bi-annual psychiatric

evaluation at minimum every two years to insure that mental health needs of residents are being met.

The health examination must be completed within 7 days of admission unless admission was sudden/unscheduled and the home needs 30 days to get the resident in to a doctor. 2600.141(a)(2) should be amended as follows: "**All [m]edical diagnoses ...**".

Where the doctor's own assessment calls for regular doctor's visits and health examinations more frequently than annually, these must be obtained by the home.

It is critical that the home be obligated to insure that the resident gets needed healthcare. Saying, as is said in proposed (b) that a resident shall have access to medical care and that the home shall help arrange this if the resident needs this is not the same as requiring the home to know and recognize when a resident needs medical care and to insure that the medical care is obtained. This must be inserted in the final regulations. (b) should also provide that the facility shall assist residents in accessing dental and psychiatric care, if needed. Replace the second sentence with "**The home shall assist any resident to the degree necessary to ensure that medical needs are being met. The assistance shall consider the resident's desires and be a least intrusive as possible, but may require comprehensive assistance.**"

2600.142 - Physical and behavioral health

In (a), medical or physical health service needs should be included in those to be addressed in the support plan.

2600.143 - Emergency medical plan

Subsection (d)(3) should be amended to require that all diagnoses be listed, as follows: "Resident's medical **diagnoses.**"

Subsection (d)(9) should include a resident's health care proxy, as well as power of attorney.

(d)(12) must say that the home "shall develop **and follow** a plan to contact the resident's family or designee **as indicated in the support plan**", because "if applicable" is unclear.

2600.144 - Use of tobacco and tobacco-related products

Subsection (b)(2) should be made more specific: "Ensure the protection of the rights of nonsmoking residents. A facility shall have one or more common areas large enough to accommodate all of the non-smoking residents at one time where smoking is not permitted and which is free of smoke or the odor of cigarette smoke."

If smoking tobacco is permitted inside, then there must be a separate room designated for smoking that is properly ventilated to prevent smoke from entering the rest of the house.

NUTRITION:

2600.161 - Nutritional Adequacy

Amend (b) to read "At least three nutritionally well-balanced meals shall be provided daily to the residents. Each meal shall include an alternative **food item** and an **alternative drink item**...."

Add (h) to read: "**Night-time snack consisting of food and drink shall be provided no later than 4 hours after evening meal has been served.**"

2600.162 – Meal Preparation

The time lapse the proposed regulations would allow between dinner and breakfast is way too long. 14-16 hours is not a healthy or safe time lapse. This would allow a home to serve dinner at 8:00 and not serve a meal the next day until noon. There must be no more than 12-14 hours between the evening meal and the morning meal.

2600.163 Personal hygiene for food service workers

(a) In order to convey what is intended, replace the last "or" with "and".

2600.164 – Withholding or forcing of food prohibited

This section needs to include language about cueing cognitively impaired individuals as well as responding to refusals to eat. We suggest the revision of (b) as follows:

(b) A resident shall not be forced to eat food. **All appropriate cueing shall be used to encourage and remind residents to eat and drink. Repeated or continuous (lasting 24 hours) refusal to eat or drink shall be reported to appropriate treating professional and family or legal representative.**

The following should be added as (d):

(d) **"Home shall provide nutrition and hydration. If a home has a resident with cognitive impairments that affect his/her ability to eat and drink adequate amounts of food and water, then staff must be trained in proper cueing and feeding techniques."**

TRANSPORTATION:

2600.171 – Transportation

(a)(2) needs to be reworded for clarity. "All vehicle occupants shall be in appropriate a safety restraints ..."

(a) (3) Teenage drivers are high risk for a reason. The driver of a vehicle in the children's regulations (55§3800) is required to be 21 years of age and the driver here must meet that same standard.

The following must be added, or else the Department will be assisting a provider in balance billing an MA recipient, in contravention of the state and federal laws.

(c) **For SSI recipients and other residents on Medical Assistance, the home shall not charge an SSI recipient for transportation to/from a medical provider. The home shall utilize the Medical Assistance Transportation Program through which the SSI recipient is entitled to reimbursement or a paratransit ride to their medical provider at no cost to the SSI recipient.**

MEDICATIONS:

2600.181 - Self-Administration

As discussed below, it is very problematic and disturbing that the proposed regulations continue the current regulations' dangerous practices concerning "self-administration" of medication. Providers, advocates and regulators are all well aware that residents who cannot distinguish between their medications and do not know the correct doses or purposes of their medications have their medications administered to them every day by untrained PCH direct care staff, many of whom have low educational and literacy levels themselves. The notion that the staff person is merely "assisting in self-administration" by handing the pills to be taken (after the staff person has consulted the bottle as to the dose and counted it out) is a fiction. A medication administration training program is desperately needed to ensure that trained, qualified staff are present in personal care homes to administer medications safely.

Subsection (e) takes a step in the right direction by attempting to define when a resident is capable of self-administration. It is unclear, however, whether this subsection is describing a resident who is capable of self-administering medications without assistance (and who could therefore store their medications in their own room) or one who needs assistance from staff. In addition, it is not clear what the "examples" given in the last sentence are meant to be examples of. The "examples" all address whether the resident is physically capable of ingesting or applying a medication, not whether he or she can understand the purpose and dosage, etc. of the medication, which the previous section addresses. This provision must make clear that a resident who is capable of placing a pill in his mouth and swallowing but has no idea what the purpose of the medication is not "capable of self-administering medication".

2600.184 - ACCOUNTABILITY FOR MEDICATIONS AND CONTROLLED SUBSTANCES.

At 2600.184 the PCH should be required "to obtain medications for residents and keep an adequate supply of resident medication on hand at all times".

2600.185 -- Use of medications

An additional provision should be added stating that medications may only be administered to the resident for whom they were prescribed. There have been instances of facility staff purposely giving a resident another resident's medication.

2600.186 – Medication records

Subsection (b) should include the condition which each medication is intended to treat.

2600.187 – Medication errors

Subsection (a) contains numerous references to mistakes in "self-administering" medication. It is unclear whether this refers to an error by a resident who is capable of self-administering and therefore taking his own medication or to a staff error with *assistance in self-administration*. Although the latter is presumably intended, the former is the more common-sense interpretation. In addition, licensed staff do administer medication in personal care homes; errors in medication administration need to be included, as well.

SERVICES:

2600.221 – Activities program

The second sentence of this provision should be amended to provide that "The program shall provide social, physical, intellectual, and recreational activities **designed to meet the interests and the physical, mental and psychological well-being of each resident** in a planned, coordinated and structured manner."

2600.223 – Description of Services

The regulations must include as (a)(4):

(a)(4) The services required to be provided by this chapter.

2600.224 – Pre-Admission Screening Tool

The Pre-Admission Screening tool should still be a department approved/provided form. The pre-admission screening must include a mobility assessment, as has always been required.

The term "human service agency", used in (a), should be defined.

Additionally, much of the omitted language from 2620.21 must be reinserted. Thus, should reinsert:

"The **pre-admission screening** instrument will be provided by the Department and provide basic information about the person and the suitability of the home to provide care for that person. Copies of this instrument are available from the appropriate PCH licensing field office."

2600.225 – Initial Assessment and Annual Assessment

The PCHAC Assessment workgroup of providers and advocates agreed that the assessments should be done within 72 hours of a discharge from hospital or of notice of change of condition. Thus, (d)(2) and (4) should be revised to reflect this agreement.

2600.226 – Development of the Support Plan

Until the support plan is complete, services must be provided as articulated in the assessment. This was agreed to by the PCHAC Workgroup and makes tremendous sense so that all on staff know what the resident's needs are from the beginning and can sufficiently meet them.

(a) should be amended as follows:

(a) "This plan shall also be revised within ~~30 days upon~~ **72 hours of** completion of the annual assessment or upon any changes in the level of functioning of the resident as indicated on the assessment. It shall **articulate how address** all of the needs **identified in** the resident's current assessment including their personal care needs **will be met. The support plan shall be attached to or incorporated into and serve as a part of the resident/home contract.**"

(b) All three entities (resident, resident's family, and advocate) shall be informed. The use of the word "or" permits a choice of who is informed.

(c) If the resident's family declines to participate or cannot attend meetings to develop the support plan, then the reason shall be documented. We need to further delineate "reasonable efforts", as interested family members may work when meetings are typically scheduled. The meetings must be scheduled jointly with those who plan to attend.

2600.227 – Copies of Support Plan

Copies of support plan must also be attached to the contract so that something that is binding articulates what services the resident needs and is supposed to be receiving as well as how and when they are supposed to be receiving them.

The home shall make a copy of the support plan for the resident and for the participants in the development of the support plan. A copy of the current plan will be maintained in the resident's records and available to the resident on request.

2600.228 – Notification of Termination

Subsection (a) should be amended to provide that "A resident shall have the right to request and receive assistance **from the facility** in relocating...".

This section needs to be clearer that a home cannot charge a resident for more than the 30 day notice period and should have a provision that exempts the resident from paying the full 30 days where the resident is intimidated, threatened, or coerced to leave early. Thus, the language from 2620.26(c) should be reinserted and improved upon as follows:

" The administrator may require a 30-day prior written notice from a resident who chooses to leave the home. The resident may be charged for up to 30 days of rent and personal care services after the date of the notice whether or not the resident remains in the home for the entire period. However, no rent shall be charged after the date of departure if the resident complains of and the Department finds that the resident's departure has been the result of coercion or intimidation to leave early or the result of a reduction in or a denial of personal care services."

(a) should be revised to read "A resident/**their designated person** shall ..."

(b) should be revised to read "... a 30 day advance written notice to the resident **and the resident's designated person**".

We need to protect the resident against being relocated to an inappropriate setting. Thus, the regulations must include the language of 2620.27(2) that has been omitted. This language, in cases where the resident is a danger to self or others, calls for the administrator to take appropriate steps to protect the other residents while insuring that the dangerous resident is served until appropriately relocated. This language needs to be reinserted.

We also need to **include the lessons we learned from the relocations of the summer of 2002**. Section (f) needs to be revised to make it clear that a Department closure gives rise to the same relocation assistance as does a voluntary closure. Additionally, it needs to be revised to make clear that the administrator shall not interfere with the relocation process. Thus, the language should be revised as follows:

"If the legal entity chooses to voluntarily close the home or the Department has prevailed in legal action to close the home....Each resident shall These procedures shall Neither the legal entity, administrator, nor staff shall be involved in or interfere in the relocation efforts."

Section 2600.228(h)(3) needs to be revised to be clear that the change to a resident's needs must be confirmed by the resident's physician or the area agency on aging and cannot be solely left to the determination of the home. This was in 2620.27 and has been omitted here. Additionally, it is unclear how the resident's functional level could have "advanced" such that the home can not meet his needs. "Advanced" implies an improvement. The use of this word is not clear and not necessary. Thus, this should be revised as follows:

"If a resident's functional level has ~~advanced~~ or declined such that the resident's physician or a local appropriate assessment agency has confirmed that the resident's needs cannot be met in the facility"

Section 2600.228(h)(5) needs to be amended to track with the resident's right to remain in the home unless she has **"failed to pay after reasonable documented efforts by the home to obtain payment."** This was language long ago agreed to to protect against a resident who is being evicted for failure to pay but was never made aware of monies that were owing. This language was added to the resident's rights section but needs to be included here as well.

SECURED UNIT REQUIREMENTS:

2600.229 (2600.231 in PA Bulletin Version) – Secured Unit Requirements

It is not clear that these requirements are "in addition" to the other requirements. Additionally, none of these provisions must be waived. Statements must be added to reflect these two items.

This section has omitted crucial elements such as: who is admissible to a secured unit, what disclosure must be made, and what DPW oversight there will be of secured units. In fact, the proposed regulations leave out any requirement that DPW inspect and be satisfied that the secured unit meets these requirements prior to the secured unit opening and admitting residents. All the requirements must be met prior to the facility receive approval as a secured unit. Additionally, this section must clearly indicate that none of these provisions can be waived!

The section should begin with a paragraph saying that:

"Secured Units to serve residents with confirmed cognitive impairments and a need for restrictions on their mobility are permissible for homes that meet all licensure requirements of this chapter and this section. Prior to opening or operating a secured unit, the Department shall confirm that all requirements are met and certify in writing that the home has met the requirements and is authorized to operate a secured unit."

(b)(1) needs to expressly state that there must be adequate wandering space. "Exercise" space implies a designated exercise or gym area. The reality is that persons with cognitive impairments are prone to wandering and need adequate open space in which to safely do this.

(c)(5) **"The home shall maintain a written agreement containing everything required in the agreement section of these regulations plus a full disclosure of the regulatory**

requirements of this section (2600.229) and certification that the PCH has met these secured unit requirements."

(f) and (g) should specify how many additional hours of orientation and training must be completed.

There are many problems in section (j). Of primary objection is the implication that these units can be opened and operated simply by submitting a "notice" to the department that the home is opening and operating such a unit. This must be seriously rewritten to make clear that the home must submit an "request for approval of secured unit" and that the department must come out and inspect and find that the home meets all the requirements of this chapter and section and affirmatively grants approval for the home to open and operate a secured unit. Thus, (j)(1) should read:

(j)(1) "60 day prior to **desired date of** the secured unit becoming operational for the first time, the legal entity shall **submit to** ~~notify~~ the appropriate Department Regional Office in writing a **request for approval of secured unit indicating** the home's need or desire to implement a secured unit within the home."

(j)(2) "If the home makes any **later** changes to **an approved** secured unit..."

(j)(3) "The following document shall be included in the written **request for approval of secured unit** ~~notification~~"

The proposed regulations fail to include a disclosure requirement and this must be included as section (k). The home that operates a secured unit must be required to disclose to potential residents and their families or legal representatives what requirements the department imposes, proof/verification that the home meets these requirements, a description of what services the home provides and of what safety mechanisms are in place for the secured unit to protect the health and safety of the cognitively impaired residents.

MOBILITY STANDARDS:

2600.230 (2600.241 in PA Bulletin Version) – Mobility Standards

Section (b) is unclear as to what "specific requirements" are being referenced. The final regulations should cross-reference other sections (such as staff levels, bedroom space, etc.) and allow for additional requirements as imposed by the department.

There is no reasonable explanation for why the home could need or should be provided 30 days to notify the licensing office that an immobile has moved in. The home should have 72 hours to fax a standardized notice form and the department can then decide whether it wants to come out and check that all the different and additional requirements for serving immobiles have been met.

Must add as (d): **A PCH without a secured unit shall not provide services for a person whose assessment indicates or who the PCH has other reason to know is likely to wander into dangerous conditions, unless the facility has alarm bells on all exits and separate additional staffing to visually monitor that resident at all times.**

2600.232 Environmental standards

(4) This need to be further delineated or clarified. One option is to say – **"The home shall provide a full description of the adaptive devices and equipment to be utilized for the**

resident population to enhance environmental awareness, such as but not limited to: Braille on railings, audio aides, shaker beds, large numbered or pictured telephone buttons, etc.”

RESIDENT RECORDS:

2600.242 (2600.252 in PA Bulletin Version) Content of records

(a)(3) The photograph must be no more than a year old. People’s looks change

(b) Add a number (9): This section must include information on the resident’s dentist and other specialty doctors that the resident uses (e.g., cardiologist, neurologist, pulmonary specialist, ophthalmologist, allergist, audiologist, oncologist, dermatologist, surgeons, etc.)

2600.243 (2600.253 in PA Bulletin Version) Record retention and disposal

(b) and (c) One item should speak to how long records must be kept and the other item should speak to when and under what conditions the records must be destroyed. There is a potential conflict between these two items. Clarification is needed. What happens if an audit or litigation is finished after two years? One solution would be:

(b) The resident’s record shall be maintained for a minimum of 3 years following the resident’s discharge from the home.

(c) The resident’s record will be destroyed 4 years after their discharge from the home. If at the end of 4 years, there is any unresolved audit or litigation; then the record will be destroyed 6 months after any audit or litigation is resolved.

2600.244 (2600.254 in PA Bulletin Version) Record Access and Security

Residents must have a right to see and obtain a copy of their record.

ENFORCEMENT:

2600.251-253 (2600.261-263 in PA Bulletin Version) – Enforcement

The Department of Public Welfare’s appointed advisory board, the Personal Care Home Advisory Committee, unanimously recommended numerous mechanisms for improvement to the Department’s enforcement that could be accomplished within the statutory scheme. None of these have been included in this section. This is woefully inadequate and disappointing. The PCHAC has been provided with no explanation as to why the Department has rejected it’s thoughtful recommendations.

In addition to this items proposed by the PCHAC subcommittee, we believe that Multidisciplinary monitoring team(s) (to include a doctor/nurse, L&I, psych and aging professionals from (MH and Aging) provider agencies, advocates, consumers) should be created to perform all licensing inspections, to include record reviews, clinical reviews, client interviews, etc. Expanding the expertise beyond that of current OSP staff is recommended to review and adequately address the range of specialized needs that consumers require. This team should be involved in the License

Revocation Recommendations. This team should also review and approve any Correction Plans generated as a result of License deficiencies.

Also, Local entity(s) must approve safety-related issues in the Correction Plan. If the provider does not comply with the more substantive findings of the local L&I, OSP will suspend and/or not renew license as well as require relocation of all consumers. Provider must report all local L&I violations to OSP monitoring staff within 2 working days. OSP will notify local L&I of all violations of PCH regulations.

Because the PCHAC subcommittee did not address this, the regulations should also include specifics about closures. In recent months, many consumer advocates were involved in a closure process that involved hundreds of residents. The Department must formalize its multidisciplinary relocation protocol and address this in the regulations.

2600.252 (2600.262 in PA Bulletin Version) Penalties

- (c) Remove the sentence, "This time period may be extended for good cause."
- (g) Remove the word "may" and replace it with "shall".

We reiterate that the proposed regulations contain many improvements over the existing regulations found at 55 PA Code 2620. We urge the Department to take our recommended additional steps to protect and insure the health and safety of the often isolated, vulnerable, and frail resident population.

Please do not hesitate to contact us. We can be reached individually at the e-mail addresses listed below. You may also reach us via Alissa Halperin, Staff Attorney at the Pennsylvania Health Law Project (215)625-3897, ahalperin@phlp.org.

Sincerely,

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IRRC

From: David Gates [dgates@phlp.org]
Sent: Tuesday, November 05, 2002 3:07 PM
To: IRRC
Subject: comments on DPW's personal care home proposed regs



Final Coalition Regs
Comments....

Attached please find a copy of the comments on DPW's proposed personal care home proposed regs which we filed with DPW yesterday.

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