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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 5, 2002

Honorable Feather O. Houstoun, Secretary
Department of Public Welfare
333 Health and Welfare Building
Harrisburg, PA 17105

Re: Regulation #14-475 (IRRC #2294)
Department of Public Welfare
Personal Care Homes

Dear Secretary Houstoun:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
Enclosure
cc: Honorable George T. Kenney, Jr., Majority Chairman, House Health and Human Services Committee
Honorable Frank L. Oliver, Democratic Chairman, House Health and Human Services Committee
Honorable Harold F. Mowery, Jr., Chairman, Senate Public Health and Welfare Committee
Honorable Vincent J. Hughes, Minority Chairman, Senate Public Health and Welfare Committee
Nia Wilson, Legal Counsel, House Health and Human Services Committee
Stanley Mitchell, Chief Counsel, House Health and Human Services Committee

Comments of the Independent Regulatory Review Commission

on

Department of Public Welfare Regulation No. 14-475

Personal Care Homes

December 5, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Department of Public Welfare (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. **Comments from the General Assembly. – Legislative intent; Statutory authority; Fiscal impact; Reasonableness; Setting lesser standards of compliance for small businesses when lawful and feasible; Implementation procedure; Clarity.**

During our review of this regulation, we identified issues that raised questions related to the criteria of the Regulatory Review Act. Many of these issues were also raised in the comments submitted by the House Health and Human Services Committee (House Committee, Senator Vincent Hughes, Minority Chairman of the Senate Public Health and Welfare Committee, and Senator Mary Jo White, Majority Caucus. Comments and concerns raised by the House Committee and Senators Hughes and White are included in the Commission's Comments.

2. **General. – Consistency with the statute; Protection of public health, safety and welfare; Fiscal impact; Reasonableness; Clarity.**

Services provided by personal care homes

Several commentators expressed concerns as to whether this proposed regulation imposes a "medical model" rather than a "social model" on personal care homes (PCHs). The statute at 62 P.S. § 1001 defines a "personal care home" as:

> … any premises in which food, shelter and personal assistance or supervision are provided for a period exceeding twenty-four hours for more four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility but who do require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation of a residence in the event of an emergency or medication prescribed for self administration.

By statute, PCHs are designed for people who are not eligible for a long-term care facility. However, this proposed regulation requires PCHs to provide services that are similar to those provided in long-term care facilities. For example, the proposed requirements for secured units in Sections 2600.231 and 2600.232 are similar to standards for long-term care facilities and

existing regulations at 28 Pa. Code §§ 205.2 and 211.8. Other examples are the new requirements for assessments and support plans for residents in Sections 2600.225 and 2600.226. These are very similar to the existing regulations for long-term care facilities at 28 Pa. Code § 211.11 (relating to resident care plans). The Department should explain how this regulatory model matches the statutory definition that residents of a PCH are persons "who do not require the services in or of a licensed long-term care facility."

Inspections

The Department, in Section 2600.11(b), proposed reducing the frequency of required inspections from the current annual requirement. A majority of the commentators support retaining annual inspections. They contend that this would better protect the health, safety and welfare of the residents of PCHs. The Department's rationale for this change should be contained in the preamble of the final-form regulation.

Cost

PCH owners and operators assert that the actual costs of complying with the proposed regulation will be greater than the cost estimates included in the regulatory analysis form prepared by the Department. Commentators contend that the increased costs of compliance will be significant and burdensome, resulting in increased rates or cuts in services, or both. The impact will be especially significant for small PCHs given their limited revenue base. Did the Department consider the fiscal impact of this proposed regulation on smaller PCHs?

One anticipated cost increase is developing plans and procedures including emergency plans and incident reporting. Providers contend that costs in dollars and human resources will be burdensome and possibly prohibitive, and will divert staff from direct care to administrative duties. Has the Department considered developing standardized forms and procedures, which might be used by PCHs across the Commonwealth?

The Department should re-assess its cost estimates for this regulation, and examine their impact on the PCH industry as a whole and on smaller PCHs in particular. Provisions within the regulation where the cost impact should be examined include:

- Section 2600.57. Administrator training and orientation.
- Section 2600.58. Staff training and orientation.
- Section 2600.59. Staff training plan.
- Section 2600.60. Individual staff training plan.
- Section 2600.90. Communication system.
- Section 2600.101. Resident bedrooms.
- Section 2600.130. Smoke detectors and fire alarms.
- Section 2600.225. Initial assessment and the annual assessment.
- Section 2600.226. Development of the support plan.

3. Section 2600.4. Definitions. – Protection of public health, safety and welfare; Consistency with other regulations; Reasonableness; Clarity.

Advocate, designee, designated contact person, designated person, and responsible person

These terms are used in numerous provisions within the regulation but only one of them is defined in this section. The meaning of each term needs to be defined and used consistently throughout the regulation. In addition, the definition should describe the legal authority, if any, of each individual.

The definition of "designee" is included in this section and reads:

> The person authorized to act in the absence or in capacity of another. The authorization shall be documented in the resident's records when it concerns a resident's designee, and documented in the personnel records when it concerns the administrator's designee.

The definition gives the term a dual meaning that requires a reader to use the context of a provision to determine whether the word "designee" refers to the resident's designee or administrator's designee. This may cause unnecessary confusion.

Rather than use the term "designee" for someone who is authorized to make decisions for the resident, the final-form regulation should use a separate term for this function. For example, the Department of Health includes a definition of "responsible person" in its existing regulations for long-term care nursing facilities at 28 Pa. Code § 201.3 that reads:

> A person who is not an employe of the facility and is responsible for making decisions on behalf of the resident. The person shall be so designated by the resident or the court and documentation shall be available on the resident's clinical record to this effect. An employe of the facility will be permitted to be a responsible person.

Ancillary staff

The definition says that ancillary staff "does not provide services provided by direct care staff." This is unclear. May ancillary staff assist with IADL (Instrumental activities of daily living) but not provide assistance with ADL (Activities of daily living)?

Direct care staff

Does direct care staff also assist with IADL?

IADL

Should "securing health care" be added as one of the IADLs?

Long-term care ombudsman

Some commentators have indicated that the phrase "older individuals" should be replaced with "residents," since these ombudsmen serve anyone in certain categories of need, regardless of age.

Neglect

This definition is identical to the statutory definition of this term in the Older Adults Protective Services Act (OAPSA) at 35 P.S. § 10213. Rather than repeat the definition verbatim, the final-form regulation should reference the definition in Section 10213 of the OAPSA.

Personal care home or *home*

First, the existing regulations use the acronym "PCH." The regulation should use one term consistently rather switching between "home" or "personal care home." To avoid confusion and be concise, the regulation should use "PCH." Second, the word "home" is used throughout the regulation, in various contexts that may be referring to the physical facility, administrator, other staff, or another entity. For clarity, these references should specify the "legal entity," "direct care staff," or the precise person or agency.

Restraint

Subparagraph (ii) of this definition says, "The term does not include devices used to provide support… as long as the resident can easily remove the device." What if the device is needed as described, but the resident cannot remove it independently? Needing assistance with the device might be the reason he moved to the PCH. This definition should be consistent with the use of the term in Section 2600.202.

Volunteer

Subparagraphs (i) and (ii) are substantive. The provisions in these subparagraphs should be placed in the Staffing section.

4. **Section 2600.5. Access requirements. - Statutory authority; Protecting public welfare; Reasonableness; Consistency with other regulations; Clarity.**

Subsection (a)

This subsection authorizes the Department to enter, visit and inspect any PCH, and to have full and free access to the PCH's records and residents. Does the Department intend to conduct inspections at any time of the day or night, or only during normal business hours? Also, does the Department intend to inspect the private living space and personal property of residents? If so, do residents have the right to object? How will the Department be provided with access to records if the inspection is conducted at a time when the staff responsible for the records under Section 2600.254(b) is not available? We question the Department's statutory authority to provide for administrative inspections without time, place and scope restrictions. (See *New York v. Burger*, 482 U.S. 691 (1987)).

Subsection (b)

This subsection requires the administrator and staff to provide immediate access to other state agencies, representatives of the Department of Aging's OAPSA Program and the Long-Term Ombudsman Program to the PCH's residents and records. We have several questions and concerns with this provision.

First, as noted above, there are no place, time and scope restrictions. Second, we question the Department's jurisdiction for requiring access for personnel of the Department of Aging and other state agencies. Third, by granting access to personnel of other state agencies, this section violates a resident's right to confidentiality, secured under Section 2600.17.

5. **Section 2600.11. Procedural requirements for licensure or approval of personal care homes. – Protection of public health, safety and welfare.**

Commentators have argued both for and against announced versus unannounced inspections. Please clarify your intent and rationale for whether inspections will be announced or unannounced under Subsection (a).

6. **Section 2600.16. Reportable incidents. – Protection of public health, safety and welfare; Reasonableness; Clarity.**

We have several questions and concerns.

Will a resident's designee or responsible person be notified of any reportable incidents?

Are there others who should be notified in the event of certain incidents, outside of the Department's representatives? Some advocates contend that certain third parties, such as the Area Agency on Aging, should be notified.

Will the Department conduct investigations of reportable incidents? Under what circumstances, would the Department investigate?

Subsection (a)(1)

Some advocates contend that a resident's death, regardless of the reason, should be reported, because such a requirement would eliminate the need for an administrator to judge whether the death resulted from "unusual circumstances," or other possibly subjective reasons.

Subsection (a)(5)

Unexplained absence for 24 hours (or less, according to the support plan) is listed as a reportable incident. Should "elopement from a *secured unit* for any period of time" be added to the list of reportable incidents?

Subsection (b)

Is the Department developing standard or model procedures that may be used by all PCHs for reportable incidents? Such a model would enhance consistency of reporting, give reasonable assurance to providers that they are meeting the Department's objectives, and save providers time and money.

Subsection (c), (d) and (e)

The regulation proposes that each incident will be reported "immediately" in a manner to be determined, and then a preliminary written notification shall be submitted, followed by a final written report. Many providers were concerned with the addition of burdensome paperwork. Has the Department considered listing reportable incidents, along with corresponding levels of reporting requirements for each?

7. **Section 2600.17. Confidentiality of records. – Protection of public health, safety and welfare; Clarity.**

Please see comments for 2600.5. This section should be consistent with 2600.5 (access) and 2600.254 (Record access and security).

8. **Section 2600.19. Waivers. – Clarity.**

Subsection (a)(1) indicates that the Department may grant a waiver if "There is no jeopardy to the residents of the home." Since there are no absolute guarantees of safety in any case, we suggest substituting "There is no reason to believe the waiver will jeopardize the residents of the home."

Considering the provisions in Subsection (a)(1), why is (a)(3) needed?

The proposal in Subsection (g) states, "A structural waiver will not be granted to a new facility..." Does the Department intend to grandfather existing facilities? Please clarify.

9. **Section 2600.20. Resident funds. – Protection of public health, safety and welfare; Feasibility; Reasonableness; Clarity.**

Subsection (a)

If the PCH assumes responsibility for maintaining a resident's financial resources, who may have access to these records and funds?

Does "maintaining" mean the same as "managing," as defined in Subparagraph (i) under the term "financial management" in Section 2600.4? If not, please clarify.

Subsection (b)(1)

This subsection states that when the PCH "assumes the responsibility of maintaining a resident's financial resources," then "there shall be documentation of counseling sessions, concerning the use of funds and property, if requested by the resident." This kind of counseling goes beyond the

definition of "financial management." A number of providers point out that they are not qualified to provide the kind of counseling described in this section, and do not attempt to provide it. Would a professional financial advisor conduct this kind of counseling session? If so, does the Department intend for the PCH to secure a professional financial advisor for the resident? Therefore, would the professional financial advisor keep the record of counseling, and must the PCH also keep these records?

Subsection (b)(4)

We have several concerns.

The proposal states, "The resident shall be given funds requested within 24 hours if available, and immediately if the request is for $10 or less. This service shall be offered on a daily basis."

What does "if available" mean? Does it mean cash on hand in the PCH, or in the resident's bank account?

Since the service is to be provided "immediately" and "offered on a daily basis", even $10 cash on hand per resident might be a large amount of cash stored in the PCH, especially for large PCHs, and especially during days on which banks are closed. Some providers have expressed concern regarding the possibility of theft, or the possibility of errors in records procedures, if staff members must have access to cash during hours when an administrator is not present. This service should be limited to business hours.

Subsection (b)(12).

The proposal states, "Upon discharge or transfer of the resident, the administrator shall immediately return the resident's funds being managed or being stored by the home to the resident." We have several concerns.

Please clarify "immediately." Immediate transfer of funds might not be feasible without notice.

Please clarify "transfer," especially in the case of a resident's temporary placement elsewhere.

Further, we suggest that the regulation address how the PCH should handle pending charges that the resident owes.

10. Section 2600.26. Resident-home contract: information on resident rights. – Protection of public health, safety and welfare; Reasonableness; Clarity.

Subsection (a)(1)(ii)

This provision states that the initial contract shall specify "the actual amount of allowable resident charges for each service or item." Must additional or optional services, which are not included in the basic contract, be itemized?

Must the list of services included in the contract be listed, along with the charge to the resident for each of these services? Many PCHs "bundle" the services covered by the agreed-to contract price. Must they list each ADL and IADL with a price for each item?

Subsection (a)(1)(viii) and (ix)

This section indicates that the PCH's rules and "requirements related to home services" shall be listed in the contract, "including whether the home is designated as a smoking or non-smoking home." How are these rules enforced? In conjunction with Sections 2600.42(u) and 2600.228, does a resident's breaking of the rules in the contract constitute a breach of contract, for which the PCH may discharge the resident? For example, what may the PCH do to protect the health and welfare of other residents if one resident continues to smoke in a non-smoking facility, or continually violates the civil rights of other residents?

Please give some examples to illustrate "requirements of home services."

Subsection (a)(1)(x)

This section requires 30 days' advance notice if the PCH intends to change a contract. What recourse does a PCH have to make immediate changes to the contract, if needed for the health and welfare of a resident?

Subsection (a)(3)

The new resident is given 72 hours to rescind a contract. Should a similar right-of-rescission be extended to the PCH, in the event that further information indicates the placement might be inappropriate?

Subsection (d)

This provision states, "The service needs addressed in the resident's support plan shall be available to the resident 365 days a year." Should "personal care" or "ADL" be inserted prior to "service needs?" Depending on what is in the support plan, some optional services and IADLs might be occasionally unavailable, for example on holidays.

Resident choice

In its comments under this section, the Elder Law Project of Community Legal Services, Inc., noted the need to protect residents from unforeseen changes in the food choices and menus at a PCH. It cited examples of new owners of an established PCH imposing an all-vegetarian diet on their residents, and a PCH that decided to suddenly take coffee and other sources of caffeine off the menu.

PCH residents may have limited access to other residential alternatives or difficulty in finding, and moving to, new residential facilities. The Department should consider what steps could be taken to protect residents from sudden and unforeseen changes in the food offered by a PCH. Perhaps, this section could give guidance in addressing this issue in the contracts between PCHs and residents.

11. Section 2600.29. Refunds. – Clarity.

The second sentence of the Subsection (d) states, "In the event of the death of a resident, the administrator shall refund the remainder of previously paid charges to the estate of the resident when the room is vacated and within 30 days of death." Please clarify how to determine the due date of a refund "when the room is vacated and within 30 days of death."

12. Section 2600.41. Notification of rights and complaint procedures. – Protection of public health, safety and welfare; Reasonableness.

Some commentators have pointed out that some residents do not maintain relationships with family members, or have no family. Throughout this and other sections, should "family" be replaced with "resident's designee" or "responsible person"?

Subsections (a) and (e) state that the resident shall have the right to lodge complaints, etc., "without fear or threats of retaliation…." The PCH has no control over whether a resident has "fears." The Department should consider deleting the words "fear or."

13. Section 2600.42. Specific rights. – Protecting public health, safety and welfare; Reasonableness; Clarity.

Subsection (a)

This section lists a number of bases for which a resident may not be discriminated against. We have two questions and concerns.

Is it considered discrimination if a resident is discharged due to the development of a disability that a PCH is not equipped to handle, either because of the design of the physical plant, or lack of qualified staff?

Has the Department considered using the Pennsylvania Human Relations Act as guidance for protected classes?

Subsection (e)

This section states, "Local calls shall be without charge."

Does this prohibit a PCH from providing telephone service with pay phones or charging residents for basic phone service?

Subsections (i)and (j)

These subsections state, "A resident shall receive assistance in accessing (various kinds of health care)" and "A resident shall receive assistance in attaining clean, seasonal clothing that is age and gender appropriate." Please clarify the following terms: "assistance," "accessing" and "attaining." Do these services include paying for a resident's health care and clothing? Who is responsible for providing the services?

Subsection (l)

This sections states, "A resident shall have the right to purchase, receive and use personal property." May personal storage space availability be taken into account?

Subsection (n)

If a resident wishes to relocate to another facility, please clarify the nature and extent of the "assistance" that the PCH must provide.

Subsection (q)

The second sentence states, "Residents shall perform personal housekeeping tasks directly related to the resident's personal space but may not perform tasks in lieu of a staff person who is otherwise required to perform these tasks."

Will this provision require residents to perform housekeeping tasks in their personal spaces? As an alternative, should "shall" be changed to "may"?

Are residents permitted to perform tasks as a volunteer if they so desire? Some commentators indicated that many able residents take pleasure in performing meaningful tasks that they enjoyed doing prior to moving to the PCH, and that there are benefits to the mental and emotional health of residents when they participate in these activities. Does the Department intend to prohibit residents from performing duties or working in PCHs as volunteers? Who would be responsible for monitoring compliance with this subsection?

Subsection (u)

In conjunction with Sections 2600.26(a)(1)(viii) and (ix) and 2600.228, what course may a PCH pursue if a resident violates rules agreed to in the contract? For example, what may the PCH do to protect the health and welfare of other residents if one resident continues to smoke in a non-smoking facility, or continually ignores civil rights of other residents?

Subsection (w)

To whom does the resident have the right to appeal a discharge?

May the resident remain in the PCH while his discharge decision is being appealed? Does the Department review appeal policies and procedures?

Subsection (x)

This section states, "A resident shall have the right to immediate payment by the personal care home to [of] resident's money stolen or mismanaged by the home's staff." Commentators questioned the intent and meaning of the word "mismanaged." The final-form regulation should define this term.

Subsection (z)

Please explain the role of the PCH in protecting a resident's "right to be free from excessive medication." Commentators noted that the level of medication is either by choice of a resident or under the supervision of a physician.

14. Section 2600.53. Staff titles and qualifications for administrators. - Reasonableness; Clarity.

Subsection (a) lists qualifications for becoming an administrator. Commentators indicate that not all prospective administrators meet these criteria, yet would do well in that capacity. The Department should consider adding an additional level of qualification for a person who has either graduated from high school or obtained a GED and has a specified amount of direct care experience.

15. Section 2600.55. Exceptions for staff qualifications. - Clarity.

Subsection (c) states, "a 16 or 17 year old may be employed as a staff person..." This does not indicate whether staff in this age group may work as direct care staff. For clarity, the Department should add "direct care" in front of "staff" in this subsection.

16. Section 2600.56. Staffing. - Clarity.

Subsection (a)

This subsection contains the phrase "resident with special needs." What does the Department consider to be "special needs"? This phrase should be defined in Section 2600.4 (relating to Definitions).

Subsection (c)

Commentators indicate that requirements in this subsection are creating confusion, and may be interpreted to require an administrator or his designee to be present at the PCH 24 hours per day. If that is the Department's intention, the language should be clarified in Subsection (c) to make this clear. If it is not, we suggest splitting Subsection (c) into two subsections. The first sentence should remain as Subsection (c), and the second sentence should become a new subsection.

Subsection (d)

The two sentences in this subsection are not directly related and should be in separate subsections. The first sentence includes several subject areas that should be in separate paragraphs or a list format (See § 2.1. Arrangement of Code, § 2.8. Sentence length,
and § 2.9. Paragraph and sentence structure on pages 4, 6 and 7 of the *Pennsylvania Code & Bulletin Style Manual*).

17. Section 2600.57. Administrator training and orientation. – Reasonableness; Clarity.

Subsection (b)

This Subsection includes the phrase, "...has successfully completed and passed 80 hours of competency-based internship..." What does the Department deem to be "successfully completed"? Will there be a Department-required examination at the end of the internship? What is required for one to pass?

Subsection (c)(6)

This subsection combines mental illness and gerontology on the list for administrator competency-based training. These are two different areas of study, and should be separated.

Subsection (e)

This subsection requires "at least 24 hours of annual training relating to the job duties, which include the following..." for administrators. We have two questions.

First, how did the Department determine the 24-hour training requirement?

Second, is the administrator required to have annual training each year for each of the subject areas in the list in this subsection? If this is merely a list of subjects from which a person may choose, the Department should clarify this language in the final-form version.

18. Section 2600.58. Staff training and orientation. – Protection of public health, safety and welfare; Reasonableness; Clarity.

Subsection (c)

This subsection has the phrase, " Prior to direct contact with residents, all direct care staff shall successfully complete..." This indicates that before an employee can have any contact with a resident, the competency-based training must be completed and passed. However, we understand that supervised on-the-job training is acceptable. To reflect the Department's intention, our suggestion is to add "unsupervised" before "contact."

Subsection (e)

Commentators indicated that increasing the continuing education requirements to 24 hours annually is both unnecessary and excessive. This provision is more prescriptive than continuing education requirements for hospital nursing staffs. At 28 Pa. Code § 109.52, the existing regulations of the Department of Health do not set a minimum number of hours for continuing education. The Department should consider reducing the required minimum of hours.

Subsection (g)

This subsection requires that volunteers meet the annual 24-hour training requirement. What is the need for this training when a volunteer does not perform direct care tasks?

Also, the Department defines the phrase "Direct care staff," in Section 2600.4 (relating to Definitions), to include volunteers. This section also includes "ADL-Activities of daily living." The definition of "ADL" in this section includes the phrase, "and additional personal care activities such as nail care and hair care." If the Department removes volunteers from direct care requirements, does it also intend to prohibit volunteers from performing hair and nail care in the PCH?

Subsection (h)

This subsection states that the requirement for training does not apply when training is completed "prior to the staff person's date of hire." In what timeframe before the date of hire does the Department want this training to have been completed?

19. Section 2600.60. Individual staff training plan. – Economic impact; Reasonableness.

Commentators have indicated that the requirements in this section for the PCH to create written individual staff training plans for each employee is unnecessary and would be burdensome. They indicate that the requirements for individual plans would have already been covered in the staff training plan and the annual performance reviews. Before requiring PCHs to complete the individual training plans, the Department should consider the time and fiscal impact of the provision.

20. Section 2600.83. Temperature. – Protection of public health, safety and welfare.

We have received statements from commentators that a constant temperature above 80° F may be too warm for some residents, due to their medical conditions or medication regimen. To protect the public health, safety and welfare of all residents, should Subsection (b) establish a maximum indoor temperature?

21. Section 2600.85. Sanitation. – Reasonableness; Clarity.

Subsection (b) includes the phrase "or other animals." Commentators have indicated that this can be interpreted to mean that pets, or service or therapy animals, are not allowed in the PCH. Does the Department intend to eliminate pets from PCHs?

22. Section 2600.90. Communication system. – Fiscal impact; Clarity.

Commentators have indicated that Subsection (b) would be cost prohibitive if it requires a new, high-tech communications system. However, Department staff has indicated that the requirements in this subsection are not meant to be that extensive. The language in Subsection (b) should be clarified to reflect the Department's intention.

23. Section 2600.96. First aid supplies. – Protection of public health, safety and welfare; Reasonableness.

Subsection (a) requires a PCH to have a first aid kit "...at a minimum, in each building." Depending on the size of the building, the response time to reach the other side of a building may not be beneficial to aiding the resident in a timely manner. For larger buildings, the Department should consider requiring that a first aid kit be kept on each floor or for a designated number of rooms.

24. Section 2600.98. Indoor activity space. – Clarity.

This section is intended to set forth the requirements for the indoor activity area in a PCH. However, Subsections (c), (d) and (e) do not relate to this topic. These subsections should be deleted from this section and their contents should be included in a more appropriate section, such as Section 2600.221 (relating to Activities program).

In addition, the third sentence in Subsection (f) uses non-regulatory language that is suitable for a guidance document. This sentence should be deleted or reworded.

25. Section 2600.101. Resident bedrooms. – Reasonableness; Clarity.

Subsections (a), (b) and (c)

These Subsections deal with square footage requirements for resident bedrooms. However, there is no "grandfather" provision for current facilities. Commentators have indicated that this could hinder their ability to keep some of their current residents in the facility. Has the Department considered "grandfathering" current facilities?

Subsections (k)(1) and (2)

PCHs and residents indicated that many residents supply their own mattresses. Subsection (k)(1) requires that a bed in a PCH have a fire retardant mattress. Did the Department consider the costs to residents or PCHs of replacing their current mattresses and the need for this expense if the PCH is a smoke-free facility?

Subsection (k)(2) requires: "A mattress that is plastic-covered if supplied by the home." Is it necessary for every resident to use a plastic-covered mattress if they are not incontinent?

Subsection (r)

This subsection requires that all bedrooms shall have at least "one comfortable chair." Although this language is in the existing regulation, commentators have indicated that this would become quite costly if they are responsible for purchasing any chair that the resident deems comfortable. Who is responsible for determining what is comfortable? Who is responsible for supplying the chair?

26. Section 2600.102. Bathrooms. – Reasonableness.

In Subsection (c), what is the Department's rationale for increasing the ratio from the current 8 people to 15 people for each bathtub or shower?

27. Section 2600.105. Laundry. – Reasonableness; Clarity.

Subsection (g) requires lint to be removed from all clothes, to reduce the risk of fire. Did the Department intend to require instead that lint be removed from dryers?

28. Section 2600.107. Internal and external disasters. – Clarity.

Subsection (a) requires the PCH to have their emergency procedures "approved by qualified fire, safety and local emergency management offices." Is this intended to be same as the defined term, "Fire safety expert"? For clarity, the Department should describe whom the Department deems to be "qualified" to make these judgments.

Subsection (c)(1) is "Contact names." Is this intended to be the resident's designated person? The Department should clarify what the term "contact names" is supposed to encompass.

29. Section 2600.123. Emergency evacuation. – Reasonableness; Clarity.

Subsection (d) refers to "an emergency evacuation plan as specified in § 2600.107 (relating to internal and external disasters)." However, the term "emergency evacuation plan" cannot be found in Section 2600.107. To what "plan" is Subsection (d) referring? The regulation should define such terms and use them consistently in the regulation.

30. Section 2600.130. Smoke detectors and fire alarms. – Fiscal impact; Reasonableness.

Some commentators state that requirements in Subsection (e) will be cost prohibitive, requiring that an expensive new fire alarm system be installed throughout the entire building. Has the Department considered allowing alternatives such as permitting a PCH to install a fire alarm for a hearing impaired person only in areas that would be utilized by that person?

31. Section 2600.132. Fire drills. – Reasonableness.

Subsection (d) requires PCHs to evacuate their residents in 2½ minutes when conducting a fire drill. Commentators claim that this requirement will lead to injuries and undue stress on residents. The Department should consider maintaining the current five-minute standard.

Also, commentators have indicated that evacuating residents completely out of the building in certain weather conditions could also lead to injuries and stress. In contrast, the regulations for fire drills in long-term care facilities at 28 Pa. Code § 209.8 do not require complete evacuation of the facility. Can an alternate "fire safety area," referenced in subparagraphs (d) and (h) be a location within the PCH? The Department should clarify.

32. Section 2600.141. Resident health exam and medical care. – Fiscal impact; Reasonableness; Feasibility; Need; Clarity.

Subsection (a)

This subsection requires a resident to have a comprehensive health examination documented on a standardized form provided by the Department. The examination must occur 60 days prior to admission to the PCH or within 30 days after admission. If the resident remains in the PCH, he or she is to have an annual health examination. The subsection also sets forth 11 items that must be included in the examination.

We have three concerns.

First, there is no indication of who is responsible for payment for this examination. In contrast, Section 2600.142(a) (relating to medical and behavioral services) includes this statement: "This requirement does not mandate a home [PCH] to pay for the cost of these medical and behavioral care services."

In addition, a health care provider who is independent of the PCH, and not a PCH's home doctor, should perform the thorough health examination. In many situations, residents may have health coverage plans that pay for health examinations. These residents would not want to pay higher rates for the PCH to cover similar expenses. The final-form regulation should clearly identify who is responsible for paying for the health examination.

Second, if the resident is seeing a primary care provider on a regular basis, has a comprehensive and documented medical record, and has undergone a complete examination within the last year, why is it necessary for the resident to have another examination within 60 days before admission to a PCH? Part of this subsection is based on statute at 62 P.S. § 1057.3(a)(2), which states that each resident of a PCH is required to "receive a complete medical examination by a physician prior to, or within thirty days of, admission." While the statute uses the 30-day period for obtaining an examination after admission, it does not set a time period for examinations before admission. The Department should explain the basis for the 60-day period.

Third, it is unclear whether the "standardized form" referenced in this subsection is the same as the current form MA-51 with which many PCH owners and operators are familiar. If it is the same form, the final-form regulation should reference the MA-51.

PANPHA identified several concerns with the list of required contents for the health examination. These concerns include:

- "Body positioning and movement stimulation for residents, if appropriate" in Subsection (a)(8) appeared to be a condition of people who need to be in a nursing home. Hence, it should be deleted.

- In Subsection (a)(9), the meaning of "Health status with required written consent in accordance with applicable laws" is unclear. PANPHA asked if this phrase meant "Do Not Resuscitate orders." In addition to clarifying this phrase, the subsection should contain specific reference to the "applicable laws" in the final-form regulation.

- Subsection (a)(10) reads: "Specific precautions to be taken if the resident has a communicable disease, to prevent spread of the disease to other residents." These words should be deleted since there is already training for staff on personal hygiene, and proposed training for staff on universal precautions for communicable diseases. PANPHA observed: "If the resident has active TB, most (if not all) personal care homes do not have the physical plant requirements to safely care for such a resident." Hence, the Department should explain the need for this subsection in the final-form regulation or delete it.

- To follow the structure of the list, Subsection (a)(11) should read: "Mobility Assessment, update annually or at the Department's request."

Subsection (b)

This subsection reads:

> Residents shall have access to medical care. If a resident needs assistance obtaining this care, the home shall make the arrangements for the resident.

These statements and their intent are unclear and could be readily seen as having a significant, if not unlimited, scope. Commentators including the Department of Aging suggested revisions. The second sentence could be read to require that PCHs provide medical care. If this is the case and the PCH is required to provide medical services, the character of the facility has changed from a PCH to a long-term care facility or hospital. If the intent is that PCHs may not hinder access to medical care, this is what the section should state. If the intent is that a PCH provide transportation to medical care, Subsection (b) should be deleted because it is redundant since this requirement is set forth in Subsection 2600.171.

33. Section 2600.142. Physical and behavioral health. – Fiscal impact; Protection of public health, safety and welfare; Reasonableness; Consistency with other regulations; Implementation procedures; Clarity.

Subsection (a)

There are four concerns.

First, this subsection describes items that PCHs will include in the resident's support plan. Either the language of this subsection should be moved to Section 2600.226 relating to the development of the support plan, or this subsection should include a reference to Section 2600.226 in the final-form regulation.

Second, rather than requiring each PCH to "address in the resident's support plan the dental, vision, hearing, mental health or other behavioral care services" that will be available, the PCH should be directed to discuss these services with the resident or resident's responsible person and document the services in the plan.

Third, the subsection refers to health care services as "deemed necessary by the health exam." In the final-form regulation, this subsection should state that the resident's physician determines the necessity of these services.

Finally, according to Paxton Ministries, a resident might have a case manager from a mental health service provider and that agency, rather than the PCH, would make referrals. The final-form regulation should recognize that PCHs must work with the mental health services provided by the county and that the responsible authorities will make the decisions and referrals.

Subsection (b)

If a resident refuses routine medical or dental examination or treatment, this subsection requires the PCH to document "the refusal and the continued efforts to ***train*** the resident about the need for health care" in the resident's record. PANPHA suggests that the word "train" should be changed to "educate" or "inform." We agree. Also, the final-form regulation should identify who is responsible for the efforts to "educate" and "inform" the resident.

Subsection (c)

In a situation where the resident has a serious medical or dental condition, this subsection states "reasonable efforts shall be made to obtain consent for treatment from the resident or a designee, in accordance with applicable laws." There are three concerns.

First, who is responsible for these "efforts"?

Second, if the PCH administrator is responsible, should this subsection also require documentation of these efforts in the resident's records?

Finally, what are the "applicable laws"? In the final-form regulation, this subsection should include specific references or citations to the applicable laws.

34. Section 2600.143. Emergency medical plan. – Fiscal impact; Protection of public health, safety and welfare; Reasonableness; Clarity.

Subsection (a)

The first sentence of this subsection reads: "The home shall have a written emergency medical plan that ensures immediate and direct access to emergency medical care and treatment." Commentators expressed concern with the intent of this wording by stating that PCHs are not medical facilities. PANPHA wrote that a plan cannot ensure or guarantee immediate and direct access to emergency care and treatment. There are many factors beyond the control of a PCH that affect the availability of emergency care. This sentence should be clarified regarding its intent, or it should be deleted from the final-form regulation.

Subsection (d)

The regulation requires that specific information be made available at all times for each resident in case of a medical emergency. There are concerns with the following items in the list of contents for this information:

Subsection (d)(9) requires that the emergency information include a "power of attorney." Some commentators questioned this phrase and suggested clarifications. Is this contact information for the responsible person who is authorized to exercise the "power of attorney" for the resident? In addition, one commentator suggested that the words "if applicable" should be added because a resident may not have a designated power of attorney. The intent of this subsection should be explained in the final-form regulation.

Subsection (d)(10) requires that the information include the current address and telephone numbers of "a designated contact person." What if a resident does not have a designated contact person?

Subsection (d)(12) appears to be redundant and should be deleted, unless the Department can justify its retention. It requires "an individualized plan to contact the resident's family or designated emergency contact person." This is very similar to Subsection (d)(10), which requires the PCH to contact a designated person who could be a relative.

Subsection (e)

If a physician determines that the resident's medical condition indicates a need for transfer to a hospital or long-term care facility, the PCH administrator is required to notify the resident's designated contact person or family member, or both, if appropriate. Paxton Ministries indicated that there are legal limitations regarding contacts made when an individual is hospitalized for psychiatric reasons pursuant to federal regulations under the federal Health Insurance Portability and Accountability Act (HIPAA). The Department should review the HIPAA regulations to ensure that this subsection is not in conflict with federal directives.

35. Section 2600.144. Use of tobacco and tobacco-related products. – Protection of public health, safety and welfare; Reasonableness; Clarity.

Subsection (b)(2)

This subsection requires a PCH to ensure that proper safeguards are taken at all times to protect the rights of nonsmoking residents. Commentators indicated that the language was vague. The final-form regulation should indicate what specific steps a PCH should implement to protect nonsmoking residents. If it means that a designated area for smoking must be in a separate room that is ventilated to prevent smoke from entering the rest of the PCH, this requirement should be set forth in the final-form regulation.

Subsection (d) and (e)

Subsection (d) prohibits smoking during transportation of residents by the PCH. Subsection (e) prohibits smoking in resident bedrooms. One commentator suggested that rather than creating mandated prohibitions, the regulation should require PCHs to disclose its policies concerning the use of tobacco to prospective residents. The Department should explain the justification for these prohibitions or delete them from the final-form regulation. In addition, the final-form regulation should require that PCHs disclose their policies on smoking and methods to protect nonsmokers to prospective residents regardless of whether the prohibitions are retained.

Subsection (f)

This provision requires that the designated smoking area be included in the written fire safety procedures. However, this subsection provides no guidance on how the designated smoking area is to be addressed in the fire safety procedures. Does it mean that fire safety procedures for the smoking area should be developed and discussed? The final-form regulation should clarify this requirement.

Subsection (g)

Subsection (g) appears to be a subpart of Subsection (f) and may be unnecessary. It should be deleted or its one sentence should be incorporated into Subsection (f) in the final-form regulation.

36. Section 2600.145. Supervised care. – Reasonableness; Clarity.

This section states that a resident in need of services beyond what is available at the PCH shall be referred to the appropriate assessment agency. Commentators indicated that this section should include a reference to the resident's physician as well as identify the types of assessment agencies to which a resident is to be referred. PANPHA noted that the Area Agency on Aging (AAA) is the appropriate assessment agency for publicly funded elderly persons. Whether it is the county AAA, county mental health agency or another agency, the final-form regulation should indicate the types of assessment agencies that are appropriate for different types of PCH residents.

37. Section 2600.161. Nutritional adequacy. – Consistency with other regulations; Reasonableness; Clarity.

Subsection (b)

The first sentence states: "At least three nutritionally well-balanced meals shall be ***provided*** daily to the resident" [Emphasis added]. In contrast, Subsection (a) reads: "Meals shall be ***offered*** which meet the nutritional needs of the residents..."[Emphasis added]. Since many PCH residents may leave their PCHs at will and may go out for meals with relatives or friends, the word "offered" is more appropriate and should be used in both Subsections (a) and (b).

Subsection (d)

Please explain why Subsection (d) is needed, since Subsection (a) contains the requirements for nutritional needs, and Subsection (b) requires "three nutritionally well-balanced meals."

Subsection (e)

This subsection mandates: "Dietary alternatives shall be available for a resident who has special health needs, religious beliefs regarding dietary restrictions or vegetarian preferences." There are two concerns.

First, this subsection is in conflict with Subsection (d) that requires each meal contain items from all four food groups. For example, many vegetarians do not consume dairy products.

Second, commentators indicated that many PCHs do not have the resources available to offer alternative diets. Rather than mandating this service, the final-form regulation should require that a PCH discuss food preferences or dietary requirements with a prospective resident. The PCH can inform a prospective resident as to whether it can accommodate the resident's dietary needs, and the prospective resident can either choose that PCH or look for another PCH or a different type of facility.

Subsection (f)

This subsection requires PCHs to provide "therapeutic diets as prescribed by a physician or certified nurse practitioner." Commentators stated that not every PCH offers this service. Most do not have a dietitian on staff. In addition, PCH residents have the right to come and go from the PCH at will and the PCH cannot be sure that the resident remains on the therapeutic diet. In PCHs where most of the residents are SSI recipients, it may be cost prohibitive to provide this service. This subsection should be deleted or amended in the final-form regulation to apply only to PCHs that offer this type of service. If a PCH cannot provide this type of service, the final-form regulation should require that the PCH disclose this to prospective residents or to agencies or parties seeking to place others at the PCH.

Subsection (g)

The second sentence of this subsection reads: "Other beverages shall be available and offered to the resident at least every 2 hours." Many commentators criticized this requirement as expensive, impractical and unnecessary. Many PCH residents are capable of getting their own beverages. The Department should either delete this sentence from the final-form regulation or should provide a rationale for it.

38. Section 2600.162. Meal preparation. – Protection of public health, safety and welfare; Consistency with other regulations; Reasonableness; Clarity.

Subsection (a)

This provision requires PCHs to prepare foods in a consistency that meets the needs of the residents. Paxton Ministries indicated that this type of requirement would be cost prohibitive for a non-medical facility serving SSI recipients. Instead of making it mandatory, this type of service or the lack of it should be disclosed to prospective residents before they move into the PCH and be set forth in the "Resident-home contract" pursuant to Section 2600.26.

Subsection (c)

The first clause of this subsection reads: "There may not be more than 14-16 hours between the evening meal and the first meal of the next day, unless a resident's physician has prescribed otherwise…." Commentators observed that this rule would allow a PCH to serve the evening meal at 8 p.m. and wait until noon the next day to serve breakfast. They indicated that this was not healthy or safe. The final-form regulation should reduce this period to 14 hours or require that a snack be offered during the period between the evening meal and breakfast.

Subsection (d)

PCHs must procure food "from sources approved or considered satisfactory by Federal, State or local authorities." There are two concerns. First, what is meant by "considered satisfactory"? Second, what agencies are included in the phrase "Federal, State or local authorities"?

Subsection (e)

If a resident misses a meal, this subsection requires the PCH make available and offer food to the resident that is adequate to meet nutritional requirements. Commentators indicated that this was an unreasonable and impractical requirement for many PCHs. Rather than mandating that all PCHs provide food 24 hours per day, the final-form regulation should require that PCHs inform residents of their policies concerning missed meals.

Subsection (f)

Meals at PCHs are required to include a variety of hot and cold food pursuant to this subsection. PHCA-CALM noted that depending on the season or weather, the PCH with resident input may decide not to offer both hot and cold food at some meals. The subsection should be amended in the final-form regulation to allow a PCH to adjust its menu based on the preferences of its residents.

Subsection (h)

This subsection requires that adaptive eating equipment or utensils be made available and meet the needs of the residents. This is unnecessary since this requirement is already set forth in Section 2600.104(d) in the rules for dining rooms. The words "and utensils" should be moved to Section 2600.104(d) and Section 2600.162(h) should be deleted.

39. Section 2600.164. Withholding or forcing food prohibited. – Protection of public health, safety and welfare; Reasonableness; Clarity.

There are three concerns.

First, Subsection (a) reads: "A home may not withhold meals, beverages, snacks or desserts as punishment." Paxton Ministries suggested adding language stating that food and drink may be withheld when necessary due to scheduled medical or dental procedures. This clarification should be added to the final-form regulation.

Second, there is a need for clarification of Subsection (b), which provides: "A resident may not be forced to eat food." The Elder Law Project and Pennsylvania Protection and Advocacy, Inc., recommended that the regulation be amended to require the PCH staff to use "all appropriate cueing to encourage and remind residents to eat and drink." However, if the PCH staff cannot do this, the regulation should require referrals to medical care personnel and transfer to an appropriate facility.

Third, Subsection (c) requires PCH staff to observe whether a resident refuses to eat consecutively during a 24-hour period. If the resident is not eating, the resident's physician or family should be contacted. Paxton Ministries notes that it will be very difficult to verify that all residents are eating in a large independent living facility where residents are free to come and go, and may go out for meals. Generally, this behavior would be noted in addition to other symptoms of physical or psychiatric deterioration. The Department should review this subsection and determine whether it needs to include observations of other symptoms to include situations when the PCH staff is unable to observe a resident at each meal.

40. Section 2600.171. Transportation. – Protection of public health, safety and welfare; Reasonableness; Consistency with other regulations; Clarity.

This section sets forth requirements for transportation of residents provided by the PCH via staff or volunteers. There are five concerns.

First, it is not clear how the various requirements in Section 2600.56, which are based on hours and needs of the residents, would translate into staffing level during the transport of one or more residents under Subsection (a)(1). This subsection states that the staff-to-resident ratios specified in Section 2600.56 will apply during transportation. Section 2600.56 contains 13 subsections. The intent of Subsection (a)(1) needs to be explained in the final-form regulation.

Second, what is the purpose of the requirement in Subsection (a)(5) that one of the staff members transporting residents has completed the initial new hire direct care staff training? The final-form regulation should be amended to recognize the value and experience of existing staff.

Third, unless there is a need for the inclusion of "syrup of ipecac" as one of the required items in the vehicle's first aid kit as set forth in Subsection (a)(6), it should be deleted. One commentator noted that the American Red Cross did not recommend this item.

Fourth, this section should also instruct PCHs to utilize the Medical Assistance Transportation program for SSI recipients. This should be included in the final-form regulation. In addition, the Department should assist PCHs in linking SSI residents with this program.

41. Section 2600.181. Self-administration. – Protection of public health, safety and welfare; Reasonableness; Consistency with other regulations; Clarity.

Associations representing PCH owners and operators, organizations of advocates for PCH residents, the City of Philadelphia Behavioral Health System, and many individual commentators were united in calling for a program to properly train PCH staff in medication administration. Such a program would resolve many of the concerns with medications administered to PCH residents.

Several commentators, including the City of Philadelphia, noted the existence of medication administration training programs for staff in other residential settings. These programs could readily be used as models for a program for PCH staff. The program would include training and a written examination to determine competency. We agree with commentators. Has the Department explored the development of such a program for PCH staff? The final-form regulation should be amended to include certification of PCH staff who assist residents in medication administration.

In addition to the need for a training program, there are specific concerns with the proposed regulation.

First, Subsection (c) should be amended in the final-form regulation to recognize that it is the resident's physician who determines whether the resident can self-administer medications.

Second, the ability of a person to self-administer medication is a determination that should be based on the clinical experience, observations and judgment of a health care professional such as a physician or certified nurse practitioner. PCH staff should be required to defer to the judgment of

these licensed professionals rather than refer to a regulation to determine who can self-administer. This should be clarified in Subsection (e).

42. Section 2600.182. Storage and disposal of medication and medical supplies. – Protection of public health, safety and welfare; Reasonableness; Consistency with other regulations; Clarity.

Many commentators generally found the requirements in this section to be unclear and unworkable. For example, Subsection (d) requires that "prescription, OTC [over the counter] and CAM [complimentary and alternative medications] shall be stored separately." One commentator asked from what are these medications to be stored separately. In addition, several PCHs indicated that it was safer and more efficient to store medications for same individual together.

The application of this section is unclear when residents administer their own medications without assistance and store their medications in their rooms. If a resident is using nonprescription medications without assistance, why is it necessary for the PCH to be involved?

43. Section 2600.183. Labeling of medications. – Reasonableness; Clarity.

One commentator questioned the use of the term "original container." It indicated that many residents receive medications in "bubble packs" provided by pharmacies. It was unclear whether this section matches this situation.

Commentators also questioned the requirement in Subsection (d) concerning "sample medications." The subsection requires sample medications to be identified by the "resident's use and accompanied by a physician's order." Many PCH residents receive sample medications from physicians outside the PCH who do not always communicate to the PCH the reasons for these medications. Commentators are unclear how this regulation would apply to these situations. The final-form regulation should recognize that there are a variety of residents with different relationships to their PCHs. In many situations, the PCHs are not involved in arranging medical care for their residents.

44. Section 2600.185. Use of medications. – Protection of public health, safety and welfare; Reasonableness; Clarity.

Subsection (c) states: "Verbal changes in medication may only be made by the prescriber..." One commentator asked that this subsection be deleted because there are situations when the original prescriber is unavailable, but an available practitioner needs to make changes in the medication order due to negative side effects. The final-form regulation should be amended to recognize the need for flexibility in emergency situations.

In addition, commentators suggested that this section include language stating that medications shall only be administered to the resident for whom they were prescribed. We agree.

45. Section 2600.186. Medication records. – Reasonableness; Consistency with other regulations; Clarity.

Subsection (a) states: "If a resident stores medications for self-administration in the resident's room, a current list of prescribed medications taken by the resident as reported to the home shall be maintained in that resident's record." There are two concerns:

First, what types of medications does this subsection cover? Is it referring to prescription, CAM and OTC medications?

Second, how is this provision consistent with the storage requirements set forth in Section 2600.182? If a resident stores medications in her or his room, is the PCH responsible for the proper storage of these medications?

46. Section 2600.225. Initial assessment and the annual assessment. - Reasonableness; Clarity.

This section requires the completion of a written assessment on standardized forms provided by the Commonwealth within 72 hours of, or before, admission. Subsection (a) states that the PCH administrator, a designee, whether this person represents the PCH or resident is unclear, or a human service agency may complete the assessment. Subsection (b) requires that the initial and annual assessment include the following eight areas:

- Background information
- Medical assessment
- Social assessment
- ADL (activities of daily living) assessment
- IADL (instrumental activities of daily living) assessment
- Mobility assessment
- Medication assessment
- Psychological assessment

The section provides no guidance regarding the content of these assessment areas or the qualifications of the individuals who would complete the annual assessments. Furthermore, there is no indication about who is to pay for these assessments. Some PCHs recommend that this assessment should be the responsibility of the referring agency. The Department needs to explain how this requirement will be implemented.

In addition, the terms "human service agency" in Subsection (a) and "State agency" in Subsection (d)(3) should be defined.

47. Section 2600.228. Notification of termination. – Protection of public health, safety and welfare; Reasonableness; Clarity.

This section requires that if a PCH initiates a discharge or transfer of a resident, it must provide the resident with a 30-day advance written notice. Commentators expressed concerns with situations when a PCH would need to immediately remove a resident from the facility because the resident may be threatening the health and safety of other residents or staff. One example was a PCH where most of the residents have mental health issues.

Subsection (d) provides that the Department may determine that removal of the resident at an earlier time is necessary to protect the resident. But, this subsection only addresses removal or discharge when the PCH intends to close. The final-form regulation should be amended to address situations when a resident needs to be removed quickly to protect both the resident and others at the PCH or for other reasons that impact the other residents of the PCH. This section should be consistent with Sections 2600.42(u) and 2600.26(a)(1)(viii) and (ix).

48. Sections 2600.231 – 2600.241. Secured units – Protection of public health, safety and welfare; Consistency with other regulations; Reasonableness; Clarity.

The eleven sections, §§ 2600.231 – 2600.241, relate to secured units in PCHs. However, commentators indicated that the provisions were incomplete. For example, both Community Legal Services and the Office of the State Ombudsman in the Department of Aging stress the need for the development of criteria to determine who may be admitted to a secured unit, staffing requirements and provisions for oversight by the Department.

Commentators also noted confusing requirements that either conflict with, or appear to duplicate, other provisions in other sections of the regulation. Examples include the provisions for restraints in Section 2600.231 which conflict with the "specific rights" listed in Section 2600.42(p), and Section 2600.231(10) relating to lighting which is also covered by Section 2600.87. The Department should address these issues in the final-form regulation.

49. Sections 2600.261 – 2600.264. Enforcement – Protection of public health, safety and welfare; Reasonableness; Clarity.

These four sections contain provisions concerning the classification of violations, penalties, revocation or nonrenewal of licenses, and implementation of policies and plans. PCHs, advocates and the City of Philadelphia urged the Department to adopt the recommendations of the Personal Care Home Advisory Committee. They believe that the enforcement tools and policies set forth in the recommendation of the Advisory Committee would address concerns with PCHs.

The recommendations of the Advisory Committee include unannounced annual licensure inspections, implementation of the current classification system of violations, ban on admissions for PCHs without full license, increased requirements for plans of correction, quicker decisions by the Department on appeals, better disclosure of public information that pertains to PCHs and the establishment of a complaint investigation team. The Department should incorporate these recommendations into the final-form regulation.

50. Section 2600.263. Revocation or nonrenewal of licenses. – Protection of public health, safety and welfare; Implementation procedure;

The Northern Area Personal Care Home Administrators Association made two recommendations to improve enforcement activities and provide information to prospective residents. First, it suggested that there should be a ban on admissions for PCHs with a provisional license due to violations.

Second, it suggested that information regarding provisional licenses due to violations be made available on the Department website. The Department should consider these recommendations for enhancing enforcement and providing consumers with useful information about PCHs.

51. Forms prescribed by the Department. – Reasonableness; Implementation procedures; Clarity.

Several provisions of the regulation refer to standardized forms or form provided by the Department. Section 2600.141(a) requires that a health examination be documented on standardized forms provided by the Department. Section 2600.225(a) requires that an initial assessment of a resident be documented on a standardized form "provided by the Commonwealth, within 72 hours of admission or within 72 hours prior to admission." The Department should include information in the final-form regulation on how residents and PCH staff can obtain copies of these required forms. For example, a toll-free telephone number could be used to make requests, or copies could be made available on the Department's website.

52. Referencing other laws and regulations and approval by other agencies. – Consistency with other regulations; Clarity.

In certain sections of this regulation, the Department references other regulations, laws and statutes, and approvals or methods approved by other regulatory agencies. The provisions of this regulation require PCHs to follow these other regulations, policies and statutes. To avoid confusion, the Department should cite the specific regulations or statutes that set forth these requirements. Sections missing specific references include:

- Section 2600.13 (relating to Maximum capacity)
- Section 2600.14(e) (relating to Fire safety approval)
- Section 2600.18 (relating to Applicable health and safety laws)
- Section 2600.43(a) (relating to Prohibition against deprivation of rights.)
- Section 2600.52 (relating to Staff hiring, retention and utilization)
- Section 2600.53(g) (relating to Staff titles and qualifications for administrators)
- Section 2600.57(e)(6) (relating to Administrator training and orientation.)
- Section 2600.103(j) (relating to Kitchen areas.)
- Section 2600.106(1) (relating to Swimming areas.)
- Section 2600.130(c) (relating to Smoke detectors and fire alarms)
- Section 2600.182(f) and (h) (relating to Storage and disposal of medications and medical supplies.)
- Section 2600.231(8) (relating to Doors, locks and alarms)
- Section 2600.240(xiii) (relating to Notification to Department)

This proposed regulation includes Fire Safety Approval standards in Section 2600.14 and applicable Fire Safety standards in Sections 2600.121 through 2600.133. To avoid confusion and conflict, the Department should consider deleting the applicable provisions in these proposed sections and incorporate by reference all applicable fire safety standards from Department of Labor and Industry regulations.

53. Editorial Changes. – Clarity.

Section 2600.1. Purpose; Section 2600.19(g)

"Assure" should be "ensure."

Section 2600.4. Definitions

Insert a comma between "visit" and "inspect" in the definition of "agent." "A premise" should be replaced with "Any premises" in the definition of "personal care home."

Section 2600.42. Specific rights.

In Subsection (g), "365 days" should be "365 days per year."

Under Subsection (x), the word "to" between "home" and "resident's" should be changed to the word "of."

Section 2600.171. Transportation.

There are two typographical errors in Subsection (a)(2). The letter "a" between the words "appropriate" and "safety" should be deleted, and the word "restraint" should be "restraints."

Section 2600.184. Accountability of medication and controlled substances.

In Subsection (b)(3), the phrase "Limited access to medication storage areas" is incomplete.