

# 2712



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INDEPENDENT REGULATORY  
REVIEW COMMISSION

TO: Independent Regulatory Review Commission  
FROM: Pennsylvania Assisted Living Association  
DATE: August 25, 2008  
RE: **Assisted Living Residence Regulations 2800**

The Pennsylvania Assisted Living Association (PALA) is a strong, unified, professional non-profit 501-C6 association devoted to encouraging and promoting the development of high standards for the personal care home industry. We are dedicated to helping providers address relevant issues and challenges as they arise in our emerging industry. PALA promotes the philosophy of cost-effective quality care tailored to the individual's needs; fostering independence, dignity and the right of privacy for each resident; allowing resident choice of care and lifestyle; providing a safe, residential environment and making the residence a valuable community asset.

Our membership is comprised of communities ranging from those who care for a few individuals to those who care for hundreds of seniors in our Commonwealth. Currently, we represent more than 11,000 residents who are currently residing in personal care homes. Our membership allows for recognition of different types of homes within the same industry to be represented by a trade association dedicated solely for this very special residential care alternative. Our mission is to increase awareness through education of the public and private sector of our industry and to promote increased quality of life for the population it serves.

PALA was represented on the Assisted Living Workgroup by our President, Edward Corbeil and participated in the drafting of the proposed Assisted Living Residence Regulations 2800. We have found several identifiable fatal flaws that IRRC should evaluate thoroughly and give serious consideration to in their decision.

The mission of IRRC is to review regulations to make certain that the agency has the statutory authority to enact the regulation and determine whether the regulation is consistent with legislative intent. IRRC then considers economic impact, public health and safety, reasonableness, and clarity.

Statutorily, IRRC should be cognizant that:

- The proposed regulations are contrary to the fundamental intent of the new assisted living law passed last Fall by the Commonwealth.
- They are contrary to the fundamental intent of the law in that the law's intent is to create a "consumer focused" and "consumer driven" long term care service option based upon the principles of promoting the resident's independence, respecting their privacy, enhancing their dignity, and fostering the maximum degree of consumer choice in how they are supported with care.
- These draft regulations are not written to express that intent, but rather, from the point of view of "needing to be more stringent than existing personal care home boarding regulations, what PA/DPW has arbitrarily decided is "best practice in assisted living" across the country, and regulations that "keep the resident as safe and secure as possible".
- Older people want to live as independently as possible, they want their privacy respected, they want their dignity protected, and they want to choose how they live their life.

- These regulations consistently constrain and/or contradict all four of those "resident centered" principles: independence, privacy, dignity, and choice.

The regulations have an adverse economic impact on all three major stakeholders involved in the assisted living industry: the consumer who has to pay the cost of the overbearing regulations, the provider who has to both bear unnecessary cost themselves as well as impose it on the consumer, and the Commonwealth itself who, by its restrictive approach, has driven the cost unnecessarily high for assisted living when, in the long term, PA should become the primary buyer of assisted living services through the Medicaid Waiver Program.

The fatal flaws identified include but are not limited to:

#### **2800.11 Procedural requirements for licensure or approval of ALR**

- (1) A **\$500 license application or renewal fee**
- (2) A **\$105 per bed fee** that may be adjusted by the Department annually at a rate not to exceed the consumer price index. The Department shall publish a notice in the *PA Bulletin* when the per bed fee is increased.

**FLAW:** The proposed licensure and per bed fee will create a severe hardship for providers financially. Under the current 2600 PCH regulations, a 100 bed personal care home would pay an application fee or renewal costing \$30 based on the level (3) 51-100 beds equating with a total amount for home of \$30. Under the 2800 regulations, the same facility would pay the \$500 licensure fee and the \$105 bed fee times 100 beds would be a total expenditure of \$11,000. This increase in fee structure would make Pennsylvania's fee structure for assisted living residences twice as expensive as the current fees in Florida. This exorbitant fee structure will limit the number of personal care homes from becoming assisted living residences.

#### **2800.101 Resident living unit**

- (b)(1) **New construction – 250 sq. ft.** (excluding bathroom and closet)  
Shared rooms require an **additional 80 sq. ft**
- (2) **Existing homes - require 175 sq. ft.** (excluding bathroom and closet.)  
Shared rooms require an **additional 80 sq. ft.**

**FLAW:** The square footage requirement of **175 sq. ft.** for an existing residence and **250 sq. ft.** for new construction with an **additional 80 sq. ft.** for a shared room creates an extreme increase in provider cost that will ultimately impact the consumer and have to be absorbed by them.

#### **2800.101 (d) Kitchen Capacity**

- (1) **New construction** The kitchen capacity at a minimum shall contain a small refrigerator with freezer compartment, a cabinet for food storage, a small bar-type sink with hot and cold running water and space with electrical outlets for small cooking appliances such as a microwave.

**(3) Existing Facilities** Facilities that convert to residences after \_\_\_\_\_ (effective date) must meet the following requirements:

The residence shall provide a small refrigerator and microwave oven in each living unit. The residence shall provide access to a sink for dishes, a stovetop for hot food preparation and a food preparation area in a common area. The common resident kitchen shall not include the kitchen used by the residence staff for the preparation of resident or employee meals or the storage of goods.

**FLAW:** New Construction requires a “kitchen” which again increases the cost for providers and is in many cases an amenity that most seniors will not use. The majority of individuals who reside in senior facilities have chosen this life style because they do not want to cook meals and recognize that their daily nutrition will not be compromised if the facility provides 3 meals a day and snacks. A “country kitchen” would suffice for those residents in either existing or new construction assisted living residences.

### **2800.56 Administrator Staffing**

**(a)** The administrator shall be present in the residence an **average of 40 hours or more per week**, in each calendar month. At least 30 hours per month shall be during normal business hours

**(b)** The administrator shall designate a staff person to supervise the residence in the administrator’s absence. The designee shall have the same training required for an administrator.

**FLAW:** The number of on-site hours should be given serious consideration. The requirement that the administrator be present an average of 40 hours or more is double what the current PCH 2600 regulations mandates as 20 hours per week. Both PCH 2600 and ALR 2800 require the administrator to maintain 24 continuing education hours per year. Consideration has not been given to those homes that choose to operate simultaneously as a personal care home and also have a specific number of assisted living residence beds. In that case, provisions should be considered as to the requirements for the administrator.

### **2800.25 Resident Residence Contract and 2800.220 Assisted Living Residence Services**

**(a) Services.** The residence must provide core services as specified in subsection (b).

**(b) Core Services.** The residence must at a minimum, provide the following services:

- (1) Meals and snacks
- (2) Laundry services
- (3) Social and recreational activities
- (4) Assistance with performing ADL’s and IADL’s
- (5) Assistance with self-administration of medication or medication administration as indicated in the resident’s assessment and support plan
- (6) Household services
- (7) Transportation

**FLAW:** This fee schedule and bundling of Core Service is open for interpretation as written. The question remains as to whether the fee schedule for services and accompanying charges for the services to the resident will be permitted. It does not address if the residence has the option to bundle or unbundle specific core services.

### **2800.171 Transportation**

(a) A residence shall be required to provide transportation or coordinate transportation to and from medical and social appointments

(d) If a residence supplies its own vehicle for transporting residents to and from medical and social appointments, any vehicle used for this purpose shall be accessible to resident wheelchair users and any other assistive equipment the resident may need.

**FLAW:** Transportation, in the 2600 PCH states: 2600.171 (a) A home may not be required to provide transportation. In the ALR 2800, transportation is to be provided by the home and that each vehicle must be handicapped accessible. If the residence is required to provide transportation, not all vehicles used by the home should be handicapped. This is an unnecessary expense for the residence. Referencing 2800.171, one would assume the majority of residences will opt to "coordinate" transportation versus provide transportation.

### **2800.225 Initial and Annual Assessment**

(a) A resident shall have a written initial assessment that is documented on the Department assessment form within 15 days of admission. The administrator or designee, or **LPN, under the supervision of a registered nurse** may complete the initial assessment.

### **2800.227 Development of the Support Plan**

(b) A residence may use its own support plan for if it includes the same information as the Department's support plan form A **licensed practical nurse, under the supervision of a registered nurse**, must review and approve the support plan.

**FLAW(s):** The requirement that an Assessment and Support Plan must be completed by an LPN under direct supervision of a Registered Nurse is an unnecessary additional cost for the residence that will ultimately have to be absorbed by the residents.

### **2800.228 Transfer and Discharge**

(h) (3) If the residence determines that a resident's functional level has advanced or declined so that the resident's needs cannot be met in the residence, the residence shall notify the resident, designated person and the local ombudsman.

**FLAW:** The residence must be permitted to maintain control of transfers and discharges of its residents. Involvement of the ombudsman as an active participant is inappropriate. The ombudsman should be a resource for the resident and not their legal representative.

### **2800.183 Storage and Disposal of Medications and Medical Supplies**

(a) Prescription medications, OTC medications and CAM shall be kept in their **original labeled** containers, ...

**FLAW:** The residence should be permitted to dictate the fashion in which prescription drugs are delivered and packaged. They should be able to ensure the integrity of the established medication regimen. To deviate from the established system can lead to medication errors. Therefore, if the resident's pharmacy refuses to package the prescription medications in the manner consistent with the residence's operations, the residence should not be mandated to accept medications from the resident's supplier.

Regulations required in an **Assisted Living Residence** although not required in a **Skilled Nursing Facility**:

1. **2800.56 (b) Administrator Staffing** The administrator shall designate a staff person to supervise the residence in the administrator's absence. The designee shall have the same training required for an administrator.

**Skilled Nursing Facility:** In the absence of the Administrator, the R.N Supervisor will be responsible for the facility. The R.N. Supervisor is not required to be a Nursing Home Administrator or meet the qualifications to be a Nursing Home Administrator.

2. **2800.96 First Aid Kit (a)** The residence shall have a first aid kit that includes an automatic electronic defibrillation device, non-porous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, adhesive tape, scissors, breathing shield, eye coverings and tweezers.

**Skilled Nursing Facility:** Skilled Nursing Facilities are not required to have automatic electronic defibrillation devices in their nursing homes. They are not allowed to administer "emergency medicine". The facilities begin CPR if indicated and then the ambulance crew administers emergency medicine including the automatic electronic defibrillation if needed.

3. **2800.108 (c) Fire Arms and Weapons** Firearms, weapons and ammunition shall be permitted on the licensed premises of the residence only when the following conditions are met:
  1. Firearms and weapons shall be kept in a locked cabinet other than the resident's living unit or common living area, etc

**Skilled Nursing Facility:** No weapons allowed.

4. **2800.131 Fire Extinguishers** There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, living unit, including the basement and attic.

**Skilled Nursing Facility:** Facilities must have sprinkler system in place and fire extinguishers near exit doors within regulations. Fire extinguishers are required in potential fire areas such as kitchens.

<b>Regulation</b>	<b>cost</b>	<b>total</b>
Licensing Fees	\$500 + \$105	\$18,875.00
Fire extinguishers per room	\$125.00	\$21,875.00
Fire extinguisher locking wall cabinet	\$145.00	\$25,375.00
Microfridge	\$375.00	\$65,625.00
2 Administrator Trainings	\$1,900.00	\$3,800.00
6 hours additional Dementia training x 2 administrators	\$150.00	\$300.00
RN Oversight	\$28/hr.	\$58,240.00
Smoke detectors in each living unit w/ 10 yr. lithium battery	\$39.99	\$6,998.25
AED in house and vehicles	\$1,400.00	\$2,800.00
	<b>TOTAL</b>	<b>\$203,888.25</b>



2600 PCH Regulations	2800 Assisted Living Residence Regulations
Access	Same
Procedural Requirements	Same
Fees	\$105 per bed plus \$500.00 application/renewal fee
Maximum Capacity	Same
Fire Safety Approval	<i>Added (e):</i> fire safety approval must be renewed every three years.
Abuse Reporting Covered by Law	Same
Reportable Incidents & Conditions	<i>Added #20.</i> An absence of staff or adequate staff to supervise residents.
Confidentiality of records	Same
Applicable Health & Safety Laws	Same
Waivers	(b) Expanded to include no waiver for: AL service delivery requirements, special care designation requirements, complaint rights or procedures, notice requirements to resident and family, support plan or service delivery requirements
Offsite Services	Same
Application & Admission	<p>Time frame for completion of forms same except medical evaluation - 60 days prior or 15 days after admission.</p> <p><i>Added:</i> Provide written disclosure to each potential resident and the designee:</p> <ul style="list-style-type: none"> <li>• List of Resident Rights</li> <li>• Copy of Admission Agreement</li> <li>• House Rules and Resident Handbook.</li> </ul> <p>Handbook must be approved by Office of Long Term Living and include:</p> <ul style="list-style-type: none"> <li>• Services offered</li> <li>• Cost of services</li> <li>• Office of Long Term Living contact information</li> <li>• Licensing status of most recent inspection and instructions to website for inspection reports</li> <li>• Any waivers in effect</li> </ul>
Activities	Same
Personal Hygiene	Same
Resident Home Contract	<ul style="list-style-type: none"> <li>• Month to month contract with automatic renewal. Termination by resident allows for 14 days notice or 30 days from the assisted living residence.</li> <li>• Lists a core package of services that must list actual amount charged.</li> </ul>
Quality Management	Same
SSI Recipients	Same
Refunds	Same
Hospice Care & Services	Same



Informed Consent	New Subsection added. Inclusion of Long Term Care Ombudsman. Must follow a process to identify the risk and to reach an agreement with resident and designee...notification in writing, arranged meeting.
Notification of Resident Rights	Same
Specific Rights	All same except (y). Residence can require residents to use supplemental health care providers if it is outlined.
Prohibition against deprivation of rights	Rights are un-waivable
Criminal history checks	Same
Staff hiring, Retention, and Utilization	Same
Qualifications & Responsibility of Administrator	Requires 1 year experience in direct care or administration field for all degrees/diplomas.
Qualifications for Direct Care Staff	16 & 17 year old employees are only allowed employment in the housekeeping department or food service delivery.
Portability of Staff Qualifications & Training	Personal care staff training hours transfer to Assisted Living Residence employment provided the staff person completes and additional Assisted Living training requirements.
Administrator Staffing	<ul style="list-style-type: none"> <li>• Must be present in home 40 hrs. or more</li> <li>• 30 hours must be during normal business hours</li> <li>• Designee must be an Assisted Living Residence Administrator.</li> </ul>
Direct Care Staffing	Same
Awake Staff Persons	Different language from 2600
Multiple Buildings	Same
Additional Staffing based on needs	<ul style="list-style-type: none"> <li>• "All residence staff shall meet applicable professional licensure requirements"</li> <li>• On-Call Nurse</li> <li>• Dietician or contract Dietitian to provide dietary needs.</li> </ul>
Substitute Personnel	Same
List of Staff Persons	Same
First Aid, CPR, and Obstructed Airway Training	States "sufficient staff".
Administrator Training & Orientation	<ul style="list-style-type: none"> <li>• 1 Exception. 6 additional hours to 100 hours (Dementia specific training)</li> <li>• No portability of administrator training. Personal Care to Assisted Living Residence.</li> </ul>
Direct Care Staff Training & Orientation	<p>SAME, except 2800 includes...</p> <p>Core Competency Training that includes the following:</p> <ul style="list-style-type: none"> <li>• Person Centered Care</li> <li>• Communication, problem solving &amp; relationship skills</li> <li>• Nutritional support according to resident preference.</li> </ul>





Staff Training Plan	Same
Training Institution Registration	Same
Instructor Approval	Same
Additional Dementia Specific Training	All staff must have 6 hours additional training. 4 hours within 30 days hire and 2 hours annually
Physical Site	Same
Poisons	Same
Temperature	Central air conditioning required or provide window unit air conditioners
Heat Sources	Same
Sanitation	Same
Ventilation	Same
Lighting	Same
Surfaces	Same
Water	Same
Communication System	Same
Emergency Telephone Numbers	Same
Windows and Screens	Same
Handrails and railings	Same
Landings and Stairs	ADDED: All stairs shall have strips for those with vision impairments
Furniture & Equipment	Same
First Aid Kit	Same
Elevators and Stair Glides	Same
Indoor Activity Space	<ul style="list-style-type: none"> <li>• Must have 2 indoor wheelchair accessible common rooms.</li> <li>• Living room must accommodate all residents at one time...square footage is noted in this section. ***</li> </ul>
Recreation Space	Same
Exterior Conditions	Same
Resident Bedroom	<p>Square footage increase:</p> <ul style="list-style-type: none"> <li>• New construction - 250 sq. ft.</li> <li>• Existing buildings- 175 sq. ft.</li> <li>• Shared - additional 80 sq. ft. for new and existing</li> <li>• Individual controls for heat/air</li> <li>• Door must be wheelchair accessible</li> <li>• Shared units only if resident agrees and is documented</li> <li>• Must have kitchen capacity: refrigerator w/freezer, sink, food cupboard, and microwave. Designed to be removable if unsafe for resident.</li> <li>• Existing buildings must provide refrigerator/freezer, microwave and a common area for sink and cook top.</li> <li>• Each unit must have a lock</li> </ul>



	<ul style="list-style-type: none"> <li>• Doors on bedrooms where a separate living area is provided.</li> <li>• Must have emergency notification system</li> </ul>
Bathrooms	<ul style="list-style-type: none"> <li>• Flush toilet in each living unit</li> <li>• Shower or bathtub in each living unit</li> <li>• Must have 1 public restroom to accommodate guests &amp; be wheelchair accessible</li> <li>• Emergency notification system in each bathroom</li> </ul>
Food Service	Same
Dining Room	Must have 15 sq. ft. floor space per resident in dining room
Laundry	Same
Swimming Areas	Same
Emergency Preparedness	Same
Firearms and weapons	Addition: Must have a written policy
Pets	Addition: Residence must disclose to applicants whether pets are permitted or present in building
Unobstructed Egress	Same
Exits	Same
Emergency Evacuation	Same
Notification of Local Fire Officials	Same
Flammable and Combustible Materials	Same
Furnaces	Same
Space Heaters	Same
Supplemental Heating Sources	Same
Fireplaces	Same
Smoke Detectors and Fire Alarms	<ul style="list-style-type: none"> <li>• Smoke detector in <b>each</b> living unit</li> </ul>
Fire Extinguishers	1 fire extinguisher per floor and in <b>each living unit</b>
Fire Drills	Same
Exit signs	Same
Resident Medical Evaluation	<ul style="list-style-type: none"> <li>• Medical evaluation must be 60 days <b>PRIOR</b> to admission</li> <li>• Tuberculin Test</li> <li>• Addition: information regarding resident day-to-day personal care needs</li> </ul>
Assistance with Healthcare & Supplemental Home Care	Addition: Supplemental Health Care Must permit supplemental health care to their insurance or designated by home. Updated support plan required if services are obtained.
Emergency Medical Plan	Same
Use of Tobacco	Same
Nutritional Adequacy	Addition: Between meal snacks and beverages available at all t



	times. Resident may purchase groceries and prepare meals in living unit.
Meals	<ul style="list-style-type: none"> <li>• Addition: Resident must receive assistance with eating and provide adaptive devices as necessary</li> <li>• Cueing shall be done when eating</li> </ul>
Hygiene for Food Service Workers	Same
Withholding or Forcing Food	Same
Transportation	<ul style="list-style-type: none"> <li>• Required to provide transportation for medical and social appointments.</li> <li>• First aid kit including an automatic electronic defibrillation device</li> <li>• Vehicle must be wheelchair accessible</li> </ul>
Medication self administration	Same
Medication administration	Same
Storage & disposal of meds and med supplies	<ul style="list-style-type: none"> <li>• Refrigerated prescription medications can be kept in resident's personal refrigerator.</li> </ul>
Labeling of medications	Same
Accountability of Medication and Controlled Substances	Addition: Residence must obtain an adequate supply of medications for residents at all times
Prescription Medications	Same
Medication Records	Same
Medication Errors	Same
Adverse Reactions	Same
Medication Administration Training	Same
Resident Education	Same
Safe Management Techniques	Same
Positive Interventions	Addition: re: device used to provide support... "device has been prescribed by medical professional...resident must be able to remove device and understand what the device is and used for"
Bedside Rails	New subsection: Same language as in the PCH 2600 Licensed Measurement Instrument
Assisted Living Residence Service	New Subsection: <ul style="list-style-type: none"> <li>• Lists core package of services included in the fee</li> <li>• Lists supplemental services available for fee</li> </ul>
Activities Program	<ul style="list-style-type: none"> <li>• Residents must actively participate in the planning of activity calendar</li> <li>• Lists types of activities that must be conducted.</li> </ul>
Community Social Services	Same



Description of Services	Same
Preadmission Screening	<ul style="list-style-type: none"> <li>• Person who is denied admission must be provided written decision identifying the reason for denial.</li> <li>• Services required or requested section –increased documentation required see guidelines</li> <li>• Initial screening...not necessary in 3 specific instances</li> <li>• Residence must demonstrate ability to provide or arrange supplemental health services.</li> <li>• Resident requiring Nursing Care can remain in the residence based on the conditions outlines in subsection.</li> </ul>
Initial and Annual Assessment	<ul style="list-style-type: none"> <li>• NEW: Only administrator or Registered Nurse can complete form. LPN may complete the assessments under supervision of RN.</li> <li>• Must be updated annually, if resident condition changes or as requested by the Office of Long Term Living</li> <li>• Must be developed and written within 30 days</li> <li>• RN must review and approve the Support Plan</li> <li>• Reviews must be done quarterly</li> <li>• Must include dietary needs</li> <li>• Resident has right to modify plan</li> </ul>
Mobility Criteria	<p>NEW SUBSECTION</p> <ul style="list-style-type: none"> <li>• Assess and document mobility needs</li> <li>• Department must be notified within 30 days when resident with mobility needs is admitted or current resident develops mobility needs</li> </ul>
Transfer & Discharge	<ul style="list-style-type: none"> <li>• Ensure safe/orderly transfer/discharge. Lists criteria necessary</li> <li>• Residence must give 30 day notice in writing listing reason, date, and location going to, address and phone of ombudsman</li> <li>• If resident or designee does not agree with the reason, the resident may contact ombudsman to intervene on his/her behalf.</li> <li>• Before resident is transferred, residence must attempt to provide supplemental services. Residence must notify department 60 days prior to closure</li> <li>• Stipulates 8 reasons for discharge and transfer.</li> </ul>
Excludable Conditions; Exceptions	<ul style="list-style-type: none"> <li>• May not admit residents for 7 reasons as outlined.</li> <li>• Residence may request exception. Decision made by department on a case by case basis.</li> </ul>
Special Care Units	<ul style="list-style-type: none"> <li>• Medical Evaluation 60 days prior or 15 days after</li> <li>• Residence must provide written materials to consumers regarding dementia unit with 7 different criteria the unit must contain</li> </ul>



	<ul style="list-style-type: none"><li>• Must identify measures to address resident who wander</li></ul>
Environmental Protection	Same
Doors, Locks, & Alarms	Same
Resident Care	Same
Discharge	Same
Training	<ul style="list-style-type: none"><li>• Increased from 6 hrs to 8 hrs.</li><li>• Must be completed within 30 days of hire; annually thereafter, in addition to 12 required hours of continuing education</li><li>• Includes 5 topics staff must be trained in</li></ul>
Program	Same
Staffing	Same
Application to Department	Same
Resident Records	Same
Content of Resident Records	<ul style="list-style-type: none"><li>• Record relating to any exception request</li><li>• Ongoing resident progress notes</li></ul>
Record Retention and Disposal	Same
Record Access and Security	Same
Classification of Violations	Same
Penalties and Corrective Action	Same
Appeals of Penalty	Same
Use of fines	Same
Review of Classifications	Same
Revocation or Nonrenewal of Licenses	Same
Relocation of Residents	Same
Ban on Admissions	Same
Correction of Violations	Same