



Center for Advocacy for the
Rights and Interests of Elders



October 24, 2022

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**Re: Department of Health Final Form Long-Term Care
Nursing Home Facilities Regulations Rulemaking #10-221,
#10-222, #10-223 and #10-224**

Dear Commissioners:

For 45 years, the Center for Advocacy for the Rights and Interests of Elders (CARIE) has advocated for the rights, autonomy, and dignity of older adults. When COVID began, CARIE convened Pennsylvania's aging and disability advocacy organizations to address issues impacting residents of long term care facilities. We identified outdated regulations among the reasons for the devastating consequences residents experienced during the pandemic. A detailed description and mark-up of recommended changes to the current regulations were shared with the Department of Health (DOH). In addition, we submitted detailed comments along with a mark-up of the proposed regulatory language for each of the four packages during each comment period. CARIE appreciates that DOH considered and accepted several of our recommendations.

CARIE reviewed the four packages of final form regulations with a focus on policies that will help prevent substandard, unsafe care, and improve the quality of care and life for residents. Our work is

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informed by our experiences working with residents and their loved ones and hearing their concerns. While we had hoped the final form regulations would have included stronger resident rights provisions, higher staffing minimums, and greater staff training especially around dementia capable care, the regulations are an important step toward needed change in current policies to improve the standard of care in Pennsylvania's nursing homes.

The final form regulations strengthen the current regulations especially around change in ownership and the application process. There are many examples of serious problems that have occurred in Pennsylvania and throughout the nation because of the sale of nursing facilities to private equity companies and other investors who have little medical or long-term care experience and whose primary goal is to maximize their profits. Nursing home ownership and financial transparency are critically important to ensuring that residents living in nursing homes get needed care and public funds are used appropriately. The change in ownership provisions will give DOH the ability to help prevent poor performing providers and bad actors from buying and operating more facilities in Pennsylvania. Some examples of improvement include:

§ 201.12. Application for license of a new facility or change in ownership. (#10-223)

- § 201.12a. Notice and opportunity to comment. (New Section on final-form) - Section 201.12a is a new section providing notice about an application for a new facility or change in ownership and an opportunity to comment.
 - Section 201.12a(a) requires a new facility applicant to provide notice to the Long-Term Care Ombudsman.
 - Section 201.12a(b) requires a change of ownership applicant to provide notice to residents, resident representatives, employees, and the Long-Term Care Ombudsman.
 - Section 201.12a(d) states that the Department post notice of the receipt of an application for license of a new facility or change in ownership, and a copy of the completed application form submitted under Section 201.12 on the Department's website and provide a 10-day public comment period.
- § 201.12b. Evaluation of application for license of a new facility or change in ownership. (Section renumbered on final-form) –
 - Section 201.12(b)(7) adds new provisions including a requirement that a prospective licensee submit the names, addresses, e-mail addresses, and phone numbers of a parent company, a shareholder and any related party of the persons identified in paragraphs (1) through (6).
 - Section 201.12(b)(8) adds requirements for annual financial reporting with specific requirements to improve transparency into ownership and related parties.
 - Section 201.12(b)(13) adds a new requirement that a prospective licensee is required to identify whether an immediate family relationship exists between a prospective licensee, a person identified under paragraph (1) (regarding

ownership and ownership interest) and a person under paragraph (7) (regarding parent companies, stakeholders, and related parties).

- Section 201.12b(b) adds the Department will post notice of the approval or denial of the application on its website.

§ 201.13. Issuance of license for a new facility or change in ownership. (#10-223)

- Section 201.13 adds language specifying the difference between regular and provisional licenses.

- § 201.13a. Regular license. (New Section on final-form) - Section 201.13a clarifies a facility will get a regular license when in full or substantial compliance with the statute and regulations.
- § 201.13b. Provisional license. (New Section on final-form) - Section 201.13b explains that provisional licenses for up to 6 months are granted under specified circumstances.
- § 201.13c. License renewal. (Section renumbered on final-form) - Section 201.13c(b) establishes a requirement for facilities to submit an updated annual financial report that meets the requirements set forth in section 201.12(b)(8).

§ 201.15a. Enforcement. (New Section on final-form) (#10-223)

- Section 201.15a is an important new section on enforcement that delineates some of the potential licensure enforcement actions. "Under new § 201.15a (relating to enforcement), actions the Department may take to enforce include, but are not limited to, requiring a plan of correction, issuing a provisional license, revoking a license, appointing a temporary manager, limiting or suspending admissions to a facility, and assessing fines or civil monetary penalties."

CARIE had concerns with DOH's proposing the updated regulations in multiple packages but appreciate that the Department submitted all final form packages at the same time and considered comments, including feedback provided at stakeholder meetings, throughout the process.

In conclusion, the final form regulations are a much needed step to update the Commonwealth's outdated nursing home regulations. CARIE supports the proposed final form regulations and urges their adoption. We also encourage the Department's enforcement of the regulations.

Thank you for your consideration.

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