



August 13, 2021

Independent Regulatory Review Commission  
333 Market Street,  
14th Floor,  
Harrisburg, PA 17101

**RE: Rulemakings 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1)**

To Whom It May Concern:

On behalf of the County Commissioners Association of Pennsylvania, representing all 67 counties in the commonwealth, I write to submit our comments on the recent Proposed Rulemaking regarding long-term care nursing facilities that was published July 31, 2021 in the Pennsylvania Bulletin (Volume 51 Issue 31). We thank you for the opportunity to provide input on the proposed long-term care facility regulations and ask the Independent Regulatory Review Commission to reject the proposed rulemaking.

We appreciate the Department's continued attention to long-term care and its residents of Pennsylvania during the COVID-19 pandemic. The last year and a half has been extremely challenging for the long-term care community, and we are grateful for the continued support and partnership the Department has provided. County nursing homes and other affiliated long-term care facilities care for one of the most vulnerable populations. Long before the COVID-19 outbreak, these facilities were critical in ensuring the safety and care of that population, and were able to deliver a level of access to care that other facilities may not provide. This is even more true in the current environment. Now, county and county affiliated long-term care facilities have risen to the occasion, providing the same level of support and care that Pennsylvania residents have come to expect. This is especially true for our Medicaid residents, who lack the resources for care that others may have.

There are currently 20 county-owned long-term care nursing facilities across 16 counties, which account for approximately 8% (8,706 beds) of long-term care nursing beds across this commonwealth. The county-owned long-term care nursing facilities are required to participate in either Medicare or Medicaid from residents upon entry into the facility, and thus, operate under a different landscape of financial resources, including lower reimbursement rates that do not cover the full cost to provide care, than private nursing facilities which may not accept residents entering under Medicare or Medicaid.

While we understand the Department intends to promulgate proposed amendments to Part IV Subpart C (relating to long-term care facilities) in five separate parts as an effort to update and

refine regulations that have not changed in over two decades, these amendments do not take into account the changing regulatory landscape outside of this subchapter. Proposed Rulemaking 1 looks at nursing services within long-term care facilities, specifically calling for an increase in the minimum number of direct resident care hours from 2.7 to 4.1. County facilities have typically exceeded the required hours per patient, but due to COVID-19 and other recent pressures, it has been impossible to find sufficient staff to meet even current needs. Even if staff were available to fill all of the roles that this change would require, the Department does not have the necessary data to calculate what the exact cost to these counties will be. However, based on the analysis performed by the Department of Human Services, only some of this cost (estimated at \$30.0 million) will be covered by medical assistance.

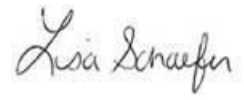
Furthermore, the current employee shortage is impacting every industry and setting. Nursing facilities have always struggled for staff even in more normal times due to the difficult nature of these long-term care and nursing jobs. The labor market is causing more difficulties as jobs are plentiful, making long-term care positions less attractive. If a facility cannot meet the hours and cannot find staff, they likely reach out to agencies to fill positions. Agency staff do not have the facility-specific training that leads to the highest quality of care. If facilities cannot find staff and fall into a perpetual state of non-compliance, their ability to attract and retain staff will be further strained as this creates a tense and high-pressure working environment.

Additionally, the call for an increase in direct care hours may seem overdue as the minimum has not been raised in over two decades; however, this also does not take into account the other regulatory and reporting requirements and increased sanitization needs long-term care staff have had added to their plates. The proposed direct care hours also would apply to all shifts, which means that facilities will have to have the same number of staff to care for residents during the night when residents are sleeping as during the daytime hours, and fewer hours to complete other duties that are essential to ensuring overall resident health and safety within long-term care facilities.

While the effort to increase patient hours is well-intended, given the current environment and the impact on facility operations, the outcomes for residents could actually be negative and hit county nursing facilities disproportionately hard. If counties continue to divest of their nursing facilities, Pennsylvania residents will lose access to the facilities that take residents with Medicaid as their payer at the time of admission. This will create severe access problems for the most vulnerable Pennsylvanians with needs sufficient to qualify for care in a long-term care facility.

We thank you for your attention to these comments. If you have any questions or would like to discuss further, please do not hesitate to contact Ashley Lenker White, CCAP Director of Government Relations, at [awhite@pacounties.org](mailto:awhite@pacounties.org) or 717-319-9396.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Schaefer". The ink is dark and the signature is centered below the word "Sincerely,".

Lisa Schaefer  
Executive Director