



Lori Gutierrez, Deputy Director
Office of Policy, 625 Forster Street, Room 814, Health and Welfare Building,
Harrisburg, PA 17120.

Dear Ms. Gutierrez,

I have been working in Health Care for over 30 years spending the majority of my time with seniors. As I continue my vocation in the field of long term care, I have serious concerns about the recent proposals regarding changes in regulations. I have outlined my specific concerns below.

Changes in Staffing Requirements

The proposed regulations seek to require nursing homes to increase the requirements for staff from 2.7 Nursing Hours Per Patient Day (NHPPD) to 4.1 NHPPD on each shift.

- *A particular NHPPD does not equal quality.* Each nursing home has unique qualities such as acuity of residents, training, competency and tenure of staff, and characteristics of the building.
- The plan from our federal government to allow the facility assessment and resident care plans be what PA follows in order to determine appropriate staffing is a much more reliable indicator of what is needed to offer high quality care to those we serve rather than a 4.1 NHPPD.
- *Staffing Crisis.* As we evaluate these times, this is, as we described in pandemic times, unprecedented. The reality is that we are in a current, and perhaps the worst, staffing crisis of our time. Looking to recruit, hire and retain staff that will support the dignity and independence of those we serve has been a challenge beyond compare.
- The proposed regulations state that the 4.1 NHPPD will become effective on the date of publication as final. There is no way to know when this might occur but publication is always on a Saturday. This does not allow any preparation time to meet the regulation change. It would be best to give at least one year from publication of the final regulations to comply with any increase in staffing minimums in order to give nursing homes time to try to meet any new staffing mandate.
- *Nurses and nurse aides are not the only staff that provide care to nursing home residents.* Therapists, life enrichment staff, and others provide care and services that add to the overall wellbeing of residents. The Centers for Medicare and Medicaid Services (CMS) even recognizes this in their definition of direct care staff. A given NHPPD does not take this into account

Financial concerns.

- NFs are already significantly underfunded and have not seen a Medical Assistance (MA) rate increase in seven years. While DHS has made some projections of costs, there is no guarantee that these funds will be included in the budget or that increased payments will be made to NFs by the Community Health Choices Managed Care Organizations. Additionally, there is no recognition that you may need to raise private pay rates hence increasing the numbers of individuals that spend down assets thus increasing the MA rolls.
- There is absolutely no recognition that private pay rates might need to be raised in order to provide the staffing called for in this proposal.
- *Further deterioration of access to quality care.* NFs have been closing beds, selling to out-of-state providers with track records of providing bad care, or closing buildings. Providers that are not able to

staff at 4.1 may be less likely to serve residents who are difficult to care for and who may back up in hospitals.

Potential for Citations and Potential Fines from both the State and Federal Government for the same Issue

This proposed regulation adds language that states that a violation of federal regulations will also be a violation of state regulations.

- This is a significant change in position for the state regulations. In the past, federal regulations had been incorporated but the state regulation did not make the statement that federal violations would also be considered state violations. This could result in both state and federal fines for the same incidences. Federal fines in particular are already very expensive and may not lead to the desired outcome of increasing quality in poor providers. Explain that providers should not see duplicative fines and penalties for citations.

The Proposed Regulation May Violate PA State Law

- The proposed regulations may violate the Regulatory Review Act in that it incorporates by reference federal guidance or interpretations (State Operations Manual, Chapter 7 and Appendix PP) issued by the Centers for Medicare and Medicaid Services (CMS). This guidance may be changed by CMS at any time without notice or public process. This approach raises both due process and precedential questions and concerns.
- CMS makes it clear that this guidance or interpretations are only to be referenced by surveyors in assisting them with the survey process, and that they are not statutory or regulatory in nature.
- By reference to this CMS guidance, DOH regulations could change without going through any sort of process including PA legislative review or oversight as outlined in the Regulatory Review Act.

Sincerely,



Nancy J. Bullivant RN, BSN, NHA