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Lori Gutierrez
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Room 814 Health and Welfare Building
625 Forster Street,
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Subject: Comments on Department of Health Proposed Nursing Facility Regulations

Ms. Gutierrez,

I am writing in response to the proposed revisions to Nursing Facility regulations as distributed on July 31, 2021. As a member of the Board of Directors of Presbyterian SeniorCare, a highly regarded provider of services to Western Pennsylvania's senior population, I have a number of significant concerns. As proposed, I believe that these regulations will consume resources, place an unmanageable burden on providers, and not contribute to increased quality of care for the residents.

In particular, the proposed increase from 2.7 Nursing Hours Per Patient Day (NHPPD) to 4.1 NHPPD on each shift assumes that nursing hours equates to improved quality of care. This requirement does not consider the residents' needs or the impact of other staff members on care but rather imposes a one-size-fits-all mandate. Also, mandating a fixed staff level assumes that there are no other approaches to improving care and will have the net effect of stifling innovation in care approaches. At the very least, the proposal should include other staff that provide care and services to residents in the calculation of the 4.1 staffing requirement, and resident care plans and approaches should be referenced to determine appropriate requirements for residents.

Furthermore, given the current, well known staffing crisis in the industry (and across the economy in general), stating that the regulations will take effect on the date of final publication is unrealistic. Any changes to staff will require time to plan, recruit and train in order to have a positive impact. The proposal should provide 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.

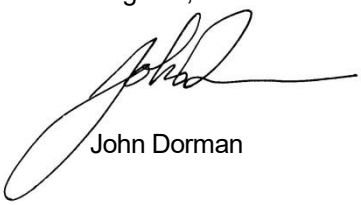
In addition, these requirements will have a significant, unfavorable financial impact on facilities providing Medical Assistance care. These facilities are already significantly underfunded and have not seen a Medical Assistance (MA) rate increase in seven years. While DHS has made some projections of costs, there is no guarantee that these funds will be included in the budget or that increased payments will be made to NFs. Also, in all likelihood, private pay rates will have to be raised increasing the numbers of individuals that spend down assets thus increasing the MA rolls. The net impact of these changes will be to increase the number of under-funded facilities, ultimately leading to facility sales or closures (such as Abramson Center that was sold, or Charles Morris that closed their doors). Access to quality care will be reduced – not increased – by these proposals.

Another adverse financial impact of these proposals is language that states that a violation of federal regulations will also be a violation of state regulations. This could result in both state and federal fines for the same incidences. Duplicate fines and penalties are not likely to lead to the desired outcome of increasing quality in poor providers – rather they will simply exhaust limited financial resources faster. The proposal should not include duplicative fines and penalties for citations.

Finally, the process by which these regulations are being generated and released – in up to five parts – places an undue burden on facilities as they attempt to evaluate requirements and implement appropriate changes. Releasing these packages in a piece-meal fashion may lead to confusion by providers, regulators, and the general public. There could also be significant discrepancies and lack of clarity utilizing this strategy. DOH should not be able to implement any parts of the regulatory package until all parts are issued and there is a minimum of a 30-day public comment period on the entire regulatory package. Additionally, after the comment period of the full regulatory package they should have to go through the full regulatory review process. Only by following these well-established approaches can the DOH, the industry, and our seniors be assured that the regulations are well defined and more likely than not to have a positive impact.

For these reasons, I believe that the proposals as drafted require significant revision in both content and process.

Regards,



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