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Independent Regulatory Review Commission

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August 17, 2021

Lori Gutierrez, Deputy Director

Office of Policy

625 Forster Street, Room 814

Health and Welfare Building

Harrisburg, PA 17120

RE: Department of Health Proposal to Update Nursing Facility Regulations

Dear Ms. Gutierrez:

I write to you as a 35 year licensed Nursing Home Administrator and Health Care Executive in nursing facilities, who started my career before OBRA 87. I have experienced several changes to regulations on a Federal and State level. The timing and content of the he most recent proposal regarding changes in staffing requirements is inappropriate in the current environment.

Changes in Staffing Requirements:

At the Wesley Enhanced Living communities we strive to have a PPD level in excess of the minimum standards. The requirement of a 4.1 PPD we will require hiring staff that are currently not available in the hirable labor pool. There have been projected shortages of clinical personnel for several years prior to the pandemic. It is well known that it is extremely difficult to hire workers now, clinical and non-clinical. Providers struggle to make the state minimum of 2.7 PPD, and now a proposal for a 4.1 PPD compounds the hiring issue.

Due to the pandemic and the labor environment, candidates apply and don't show up for the interview (no call/no show), show up for the interview to show proof of seeking employment, accept the position and don't show up for first day new hire orientation, or they cannot pass the numerous pre-employment requirements.

In Pennsylvania, the DOH is understaffed, as stated by surveyors, to the extent that surveys are behind up to 2 years between surveys.

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Staffing is in a crisis status in all industries and most directly the health care industry. It is well known, discussed in the media, discussed through trade associations, and experienced throughout nursing facilities. Raising the PPD to 4.1 will make the crisis worse – it will not improve the situation. It will cause undue stress on an industry that has endured through the pandemic with quality providers of care and service bearing the brunt of pressures to sustain operations. These changes will not miraculously create a pool of qualified professional and non-professional applicants for the increased requirements.

We are experiencing more and more staff leaving because more demands being placed on them, burning them out, because they are caring, moral and ethical people who unfortunately will walk away from their work because they cannot bear to see how the requirements are unattainable and they will not sacrifice their integrity.

CMS has never required a minimum PPD, but it does require that staffing is sufficient to meet the care needs of residents based on acuity. State surveyors are required to enforce this requirement through the survey process, but this appears to be driven by the 2.7 minimum PPD instead. CMS has the trust in each provider to determine each resident's care needs and provide the staff appropriately to meet those needs. The 4.1 PPD appears to be very arbitrary.

The proposal, as it stands, does not explain what personnel would qualify to be included in the 4.1 PPD. In other areas of the provision of long term care services the staffing is counted by all who provide any ADLs and direct care services. Therapists are clinicians who provide care, therapeutic recreation, social workers, etc. These are all professional people who provide care and services for residents. They should be counted in the PPD, the time spent with a resident is for therapeutic reasons to benefit the resident, contribute to the resident's individualized care plan, and assist in meeting their needs.

Financial Impact:

Based on one of our facilities need to add 16 C.N.A. positions only – the additional cost per annum, including benefits, would conservatively be $500,000 plus.

Our communities are 65% Medical Assistance, and have not seen an increase in our funding through Medical Assistance in several years. There is no additional funding that has been approved to support facilities and provide additional staffing. The costs associated cannot be passed on to the limited private pay residents, in total; and Medicare and managed care funding will not pay for this increase either. Many facilities are continuing to have shortfalls as a result of funding and the pandemic has caused many to suffer greater losses.

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Proposed Regulation and Five Part Introduction & Potential Violation of PA State Law:

What is the "Five Part Introduction"? Because DOH has not provided a comprehensive list of the "five parts" of proposed regulations, it is impossible for a provider to prepare for changes in PPD or any other aspect of the regulations.

Conclusion:

The proposed regulatory changes need be transparent. All five parts should be released, reviewed and commented on by the public, followed by a regulatory review process.

Any proposed staffing level increases should be phased in over a period of 3-5 years and only after Medical Assistance funding has been corrected to meet the needs or providers.

An impact study of the facilities and providers should be considered before any changes are communicated in a public forum

Finally, the regulations have not changed in 25 years – we as providers and State legislators have a responsibility to our elder population to get this right. Hasty changes to address a perceived need in skilled facilities without consideration of the impact is unwarranted and unjust burden on quality providers of care and services for our most vulnerable citizens.

Sincerely,

Daniel C. Frost, DM, MBA, NHA

Executive Director

cc: Jeff A. Petty, President/CEO

Submit: RA-DHLTCRegs@pa.gov