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Independent Regulatory Review Commission

From: Suzanne Hauber
To: DH, LTCRegs
Subject: [External] Comment on Proposed Minimum Staffing Regulation for PA Nursing Homes
Date: Friday, August 13, 2021 1:33:35 PM

Dear Ms. Gutierrez:

I am writing today in response to the proposed minimum staffing regulation increase from 2.7 Nursing Hours Per Patient Day (NHPPD) to 4.1. From 1996 to 2018, the Department of Human Services (Department) used a case-mix prospective payment methodology to set per diem rate payments for Medical Assistance (MA) nursing facility providers. “In 2006, the Department noted that "since the case-mix payment system was implemented in 1996, MA nursing facility payment rates have risen more than 56% and, since 2000, have increased by 27.4% overall. During this same period, expenditures for MA nursing facility services have grown to nearly $3 billion and expenditures for MA services to the elderly and [people with disabilities] now consume approximately 70% of the $14 billion MA Program budget."”[1] It is easy to see that the increase in expenses is due to market basket adjustments and the greying of America. As of 2020, Pennsylvania is number 8 in the country with 18.2% of the population over the age of 65.

Today, the Base Rate for MA nursing facilities is $199.96. With the current Budget Adjustment Factor (BAF) set at 0.80409%, the rate becomes $160.79. **This does not even approach one half of the private pay rate at many facilities**. During the past 12 fiscal years the BAF has been in place, operating the Commonwealth's MA nursing facilities has been adversely impacted by use of the BAF. In 2017 Saint Mary's Home of Erie saw a $1.9MM deficit and in 2018 it was $2.0MM. This has continued every year since its inception and our 2020 deficit was $2.1MM.

The proposed minimum staffing regulation increase from 2.7 Nursing Hours Per Patient Day (NHPPD) to 4.1 is coming on the heels of the **worst pandemic and staffing crisis of our time**. Facilities are struggling to maintain the current minimum NHPPD due to the lack of ready and willing employees for work. The Unemployment incentives have kept many employees out of the workforce. This has resulted in facilities like ours implementing major wage adjustments to keep employees working. In addition, we have doubled recruitment bonuses for existing employees to recruit new employees.

The final action we had to take to help meet the current minimum staffing guidelines was to contract with agency staff. This is extremely costly and these staff perform the job required of them but they don’t have the dedication to the facility and to the residents we care for.

In implementing the new guidelines, there is no ramp up period. We budget for 3.6 NHPPD and to meet our budget, we have to hire one additional RN and 1 additional CNA.

With minimum staffing proposed at 4.1 NHPPD, we must budget in excess of this to adjust for vacancies and absenteeism. With a budget of 4.6 NHPPD, we will need to recruit and hire an additional 3 RNs, 6 LPNs and 6 CNAs. This is a monumental task facing us with the scarcity of candidates. Candidates apply and then "ghost" us by not returning phone calls for an interview. Others come in for an interview and then disappear. Finally some start work and then are a no call/no show. This employment challenge is across all sectors, not just nursing homes.

As previously stated, we are significantly underfunded and have not seen an MA rate increase in seven years. Without increased Federal and State increases in MA funding, we will be forced to increase private pay rates. This will have a direct impact on the number of residents who expend their assets and end up needing help from MA to pay for their care.

In addition to having less funding to operate, 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 incidents. Federal fines in particular are already very expensive and may not lead to the desired outcome of increasing quality in poor providers. Providers should not see duplicative fines and penalties for citations.**

This proposal could actually further deteriorate 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.**

As an improvement, the proposal could also be modified to include other staff that provide care and services to residents in the calculation of the 4.1 staffing proposal. For example, speech therapists may assist individuals to eat while they evaluate swallowing.

Additionally, it is my hope that consideration is given in implementing these new guidelines with a phased-in approach, to not only look at the care of our seniors but also at the operators providing this care.

Respectfully,

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[1] 47 Pa.B. 3562, Saturday, June 24, 2017