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Independent Regulatory
Review Commission

Mountain City Nursing & Rehabilitation Center, LLC
403 Hazle Township Boulevard
Hazle Township, PA 18202

August 16, 2021

Department of Health
625 Forster Street
Harrisburg, PA 17120
Attn: Lori Gutierrez, Deputy Director
Office of Policy

Re: Rulemaking 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1)

To Whom It May Concern,

Please accept this letter of comment on the recently proposed rule, "Department of Health, Title 28. Health and Safety, Part IV. Health Facilities, Subpart C. Long Term Care Facilities, 28 Pa. Code §§201.1-201.3: 211.12(i), Long Term Care Nursing Facilities".

This letter is being sent on behalf of the residents we serve and the direct care staff of Mountain City Nursing & Rehabilitation Center. Our nursing facility is a 297 bed facility located in Luzerne County, Hazle Township, Pennsylvania. We employ 325 employees and provide services to 230 residents. As the Nursing Home Administrator, I can attest to our facilities commitment to providing high quality care and prioritizing the needs of the residents we serve each and every day.

After reviewing the proposed regulation, I have grave concerns regarding the amendments to increase the required minimum number of hours of general nursing care from 2.7 to 4.1 hours for each resident and excluding other direct care provided by essential caregivers.

While I would agree that increased staffing *could* increase our ability to provide quality care, meeting a regulatory requirement of 4.1 hours of general nursing care per resident would be an impossibility. While we are budgeted to provide 3.5 hours of care, we are unable to hire enough staff to meet this level of care. Our wages are among the highest in the area along with very generous sign-on and referral bonuses, yet we are still unable to meet our staffing needs at 3.5 hours per patient day. There simply is not enough workforce availability to pull from in the community to meet a mandated staff requirement of 4.1 hours per patient day. At the current time, I cannot even meet our staffing goals through agency use and have had to hire "traveling" CNA's to attempt to meet our needs. You may say that this is just temporary due to COVID-19 and it will change. Unfortunately, I was unable to meet this staffing goal even prior to COVID-19.

Assuming that somehow we would be able to recruit, hire, and retain at these proposed staffing levels – who is going to pay for this? It's barely affordable to pay for current staff and I have no idea how I would be able to pay for this proposed standard without government assistance through recognizing the additional costs and reimbursing us for these new levels. To me, it's unconscionable to suggest that this massive increase would not come with additional

funding from the Commonwealth of Pennsylvania. Without proper funding, it's likely that facilities would close. Does that benefit residents needing placement with fewer beds existing to meet those needs?

Why is it not being considered to include in these proposed hours the work of other essential care staff, such as Physical Therapists, Occupational Therapists, Dietitians, and Activities staff who all work together to care for our residents? Who determined that 4.1 hours is what is needed? Why is it not 3.8 or 4.4? What methods were used to determine this number or was it just "pulled out of the air" because it *looked* like a good number? I am not aware of any legitimate studies that have made this determination. Additionally, I understand that CMS does not support this staffing standard either.

I have been a Nursing Home Administrator for over 40 years. I have seen facilities with systems and programs that were more than able to provide a high level of care to their residents with current staffing standards and I have seen facilities that lacked systems and programs and staffed additional staff because of their inefficiency. That did not translate to better resident care! More does not necessarily mean better. Many times, it just means **more**. Setting a staffing standard minimum too high will not guarantee improved care.

We assess the needs of our residents on a daily basis and make adjustments in staffing as needed when possible. Even that is difficult with the inability to recruit adequately trained staff. The Commonwealth has even made it more difficult by not allowing nursing homes that had a civil money penalty (CMP) assessed to run a nursing assistant training program, even when the deficiencies that resulted in the CMP were not related to care provided by nursing assistants! So now, many are faced with this potential for increased staffing requirements and no ability to train staff to meet those needs. It has been demonstrated that there are not enough Certified Nursing Assistants to meet the current needs. I think the Commonwealth needs to back down from this arbitrary increase in nursing hours and study all of the components of a system that will provide for quality care to the needy residents of Pennsylvania. If after this is done, non-politically, and the determination is made that more hours are needed, then a plan needs to be put in place to make it possible. Simply mandating more nursing hours will achieve none of what is desired and they may, very likely, result in unintended negative outcomes. Staffing needs are unique to each nursing facility – it is **not a one size fits all**. More staff does not necessarily equal better outcomes.

Thank you for your time in reviewing and considering my comments. I are hopeful that the Department of Health will amend the provisions contained in §211.12(i) in a manner that will address the concerns raised in my comments.

Sincerely,

Richard D. Lee, NHA