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Pa. Department of Health
Health & Welfare Building
Office of Policy
625 Forster Street Room 814
Harrisburg, PA 17120

Dear Deputy Director Lori Gutierrez,

The Pa. Association for Justice (PAJ) is a statewide non-profit organization that represents approximately 2,000 trial attorneys and their clients. Our mission is to promote a fair and effective justice system – and to support attorneys as they work to ensure that any person who is injured by the misconduct or negligence of others can obtain justice in Pennsylvania’s courtrooms. Unfortunately for many residents of long-term care facilities and their families, a significant part of our attorneys’ practice involves negligence in these facilities, so to that end, we support the proposed regulatory changes to make residents of such facilities safer.

PAJ writes in support of the proposed regulatory changes to 28 Pa. Code Sections 201 and 211. As noted, revisions to these code sections are long overdue, with the last changes being made over 20 years ago. While all of the changes are laudable and much needed, in particular, the proposed changes to 28 Pa. Code Section 211.12(i), Nursing Services, and minimum staffing requirements are critically important. Many PAJ members have the privilege to regularly represent, as part of their practices, residents of long-term care facilities and their families. As the COVID-19 pandemic has surely taught us, residents of long-term care facilities are the most vulnerable Pennsylvanians. In particular, residents of skilled nursing facilities, more commonly known as nursing homes, require round-the-clock, daily nursing care in order for them live their lives to the fullest extent practicable. While some residents of nursing homes are there for short- or medium-term rehabilitation stays, many others are there permanently and will require nursing care for the remainder of their lives. It is essential that all residents of nursing homes receive adequate nursing care on a daily basis and the change in minimum nursing hours per day per resident from 2.7 hours to the proposed 4.1 hours per day is a key component to ensure that residents of nursing homes in Pennsylvania receive that adequate care.

Our members who represent residents of skilled nursing facilities know that adequate staffing is the linchpin of appropriate care. Adequate staffing is necessary to prevent all too common issues that arise in nursing homes, such as pressure ulcers, falls, and infections. Simply put, the more time spent with a resident on a daily basis, the less chance that the resident suffers a fall, suffers from pressure ulcers, or suffers from an infection that is not identified in a timely fashion. While Pennsylvania has, since at least 1999, always had a minimum staffing standard, that minimum standard of 2.7 nursing hours per resident per day was inadequate, because that standard did not generally ensure that all residents received adequate nursing care. While many nursing homes exceeded that standard, others viewed that

minimum standard as something other than a minimum, and instead staffed to meet the standard as opposed to meeting the needs of the residents. The change to 4.1 hours nursing hours per resident per day as the new minimum standard will go a long way toward ensuring that vulnerable Pennsylvanians who reside in nursing homes will receive adequate and appropriate care so that they can live their lives to the fullest extent practicable. It is also important that this new minimum standard is based on CMS studies that were done in the early 2000's that indicated that 4.1 hours is the absolute minimum required to ensure that vulnerable residents are not placed in jeopardy.

Of course, one size does not fit all, and some residents, particularly those whose acuity levels are higher, will require more than 4.1 hours of daily nursing care. Along those lines, we applaud and support the additions to section 211.12(i) that clearly require nursing facilities to staff each shift, not just to meet the minimum of 4.1 hours of nursing care per resident per day, but rather to meet the needs of the facility's actual residents. Doing so will, as the regulations state "assure resident safety" and assure that facilities are able to "attain the highest practicable physical, mental and psychosocial well-being of each resident."

While the change from 2.7 nursing hours per resident per day to 4.1 nursing hours per resident per day is certainly an excellent and overdue change, there is still work to be done. For example, the minimum hours per day could and should be further refined to require minimum RN hours, LPN hours and CNA hours. These additional refinements would ensure that in addition to care given by CNAs, each resident would receive adequate care provided by nurses as well. We recommend that these further refinements be considered in the future.

In closing, it is important to remember several key points with regard to staffing. First, those that provide direct care to our most vulnerable residents must be provided with adequate support from nursing homes to enable them to do their jobs in a professional and caring manner. These front-line caregivers are the heart and soul of long-term care, and it is critically important that these caregivers not be overworked. Rather, nursing facilities, in addition to ensuring that they meet the needs of their residents, must also make sure that they have adequate numbers of caregivers so that those already in place are not overworked. The jobs these caregivers do, by and large, are done professionally and with care, and it is important to make sure that these caregivers are able to continue to provide compassionate and professional care. Second, it is important to remember why the word "resident" is used with regard to nursing homes as opposed to "patient." Skilled Nursing Facilities are where vulnerable and older Pennsylvanians live. And, because skilled nursing facilities are home to approximately 80,000 Pennsylvanians, it is important that all efforts are made to allow these residents to be comfortable in their homes. Adequate staffing is where that comfort begins, and we commend the Department for its proposed changes.

Respectfully,



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President, PAJ



Bob Daley, Esq.