



**From:** [Douglas Motter](#)  
**To:** [DH, LTCRegs](#)  
**Subject:** [External] COMMENT ON Department of Health Proposed Nursing Facility Regulations  
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Lori Gutierrez, Deputy Director, Office of Policy,  
625 Forster Street, Room 814,  
Health and Welfare Building,  
Harrisburg, PA 17120.

Dear Director Gutierrez,

On July 31, the PA Department of Health (DOH) published in the Pennsylvania Bulletin a portion of its proposal to update nursing facility regulations. Please consider this email my comment on the proposed regulations.

**Increase in staffing from 2.7 to 4.1 HPPD – It sounds good; but before such a regulation is implemented, the following issues must be addressed.**

1. Where is the money going to come from? Pennsylvania already short changes nursing homes with the Budget Adjustment Factor. Pennsylvania cannot afford its Medicaid commitment today. How is Pennsylvania going to fund such a mandate? It is inexcusable to mandate such an increase without a means to pay for it.
2. Where are the staff going to come from? We are desperate to find qualified staff now. We have increased nursing assistant pay almost 50% in just the last year. COVID-19 vaccine mandates are driving staff out of the field. You are creating the perfect storm. The department of health needs to have a plan to increase the number of trained individuals to meet this need.
3. What positions count in this number? My nursing home employs twelve hours of life enrichment per day in each of our three small neighborhoods. That is 36 hours of life enrichment for approximately 55 residents (or less), helping with meals, providing meaningful activities, and enriching resident lives. Will they count? We do not count them now; but shouldn't some portion of their time be included? What about the therapists that provide direct resident care? These issues must be addressed in a clear manner.
4. This provision alone will cause many nursing homes to close. Is that the unstated goal? It is not prudent public policy to set a bar too high to force businesses to close.

**Potential for Citations and Potential Fines from both the State and Federal Government for the same Issue**

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 incidences. Federal fines in particular are already very expensive and may not lead to the desired outcome of increasing quality in poor providers. We should not see duplicative fines and penalties for citations.

**The Proposed Regulation will be Issued in Five Parts** This first part of the regulation package only addresses definitions and staffing minimums. Subsequent packages should be released over the next several months but could never be released. 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.

In reality, the department 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.

**The Proposed Regulation May Violate PA State Law** The proposed regulations may violate the Regulatory Review Act in that it incorporates by reference federal guidances or interpretations (State Operations Manual, Chapter 7 and Appendix PP) issued by the Centers for Medicare and Medicaid Services (CMS). Such guidance may be changed by CMS at any time without notice or public process. This approach raises both due process and precedential questions and concerns. CMS makes it clear that these its “guidance” or interpretations are only to be referenced by surveyors in assisting them with the survey process, and that they are not statutory or regulatory in nature. By reference to CMS “guidance”, DOH regulations could change without going through any sort of process including PA legislative review or oversight as outlined in the Regulatory Review Act. This is unethical, lacks foresight and could lead to horrible unintended consequences. All such referenced must be removed.

Thank you for considering my comments.

Sincerely,

Douglas Motter  
President

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