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August 23, 2021

Ms. Lori Gutierrez
Deputy Director, Office of Policy
PA Department of Health
625 Forster Street, Room 8114
Health and Welfare Building
Harrisburg, PA 17120

RE: Proposed Nursing Facility Regulations

Dear Ms. Gutierrez:

This letter is written in response to the proposed updates to the nursing facility regulations in particular the proposed 4.1 hours per day increase. I am the incoming President and CEO of one of the largest non-profit senior care organizations in Pennsylvania. I am also the Chair of the LeadingAge PA Board of Directors and a 35-year licensed nursing home administrator. I have spent my career committed to improving the lives of seniors in our nursing communities and I strongly urge that the Department of Health refrain from moving forward with its current proposal for a multitude of reasons.

4.1 Nursing Hours

First and foremost, simply increasing nursing hours per patient day by over 50% does not ensure quality care for many reasons. There are many factors that contribute to appropriate staffing including resident acuity, mix of staff, training, building design, and other factors weigh into this complex equation.

I've been in the field long enough to remember when the Department of Health surveyors were partners in quality and service to seniors. In my early career, we often worked hand-in-hand with the department and surveyors to help improve the services of our residents. Now our surveys have simply become punitive and adversarial as fines and other sources have at times become more important than focusing on the quality of the residents.

In addition, we are in the middle of 100-year pandemic and in the most difficult period of staffing and recruitment and retention in my 35-year career. We're also currently facing mandates which will likely cause an extreme shortage in caregivers, some of which may never return to our field. So you might consider this a short-term problem for providers in the business but we know it will take years to recover from the pandemic and from decisions made by our state and federal government during this time. Staffing and wage pressures may force the closure

or sale of many quality communities across the state in the coming year. This all in the time when our senior population is growing and our ability to find homecare workers is extremely difficult. It is the perfect storm.

This is the time to seek out creative solutions and develop a partnership with the Department of Health to help to improve resident care and to assist communities in developing quality stable staff members who can work together for consistent quality outcomes.

As you look at all the surrounding states, a change to 4.1 nursing hours per day would put Pennsylvania highest on the list. Also, the projected cost of increasing to these hours per day level has been grossly underestimated. Anyone with an understanding of business realizes that it's not just about having to pay more for our nursing assistant staff as we seek to achieve the staffing levels but this creates a compression issue that will impact our entire salary structures. This at the same time that we've received no increase in medical assistance reimbursement for the past seven years and are hearing no increase is coming for the next year.

We cannot continue to cost shift the burden of care to a small percentage of private payers who have borne the brunt of the lack of commitment on the part of state government to providing adequate reimbursement

We need to see creative solutions in what types of staff members may be counted in care hours. Can we look at medication technicians that are so common in other states to relieve some of the burden on our registered nurses? Can we look at homemaker and activity staff who, in many cases, are already providing direct care and services to our residents in part of the equation? Some of these ideas could be discussed in a potential partnership.

Therefore, I strongly urge the department to refrain from making the difficulties of all providers more severe at this critical time. As we look into the five and 10 year future these new regulations will clearly be disastrous for our industry. It is essential we take the necessary time to look at a full range of options to meet the needs of our most vulnerable seniors. As the age wave is coming, quality nursing homes will be even more important in the next 5 to 10 years than they are today. Homecare and in-home services will never be able to adequately serve this population without the support of quality nursing and assisted-living/personal care communities.

Other Issues

Another adverse financial impact of these proposals is language that states that a violation of federal regulations will also be a violation of state regulations. This could result in both state and federal fines for the same incidences. Duplicate fines and penalties are not likely to lead to the desired outcome of increasing quality in poor providers. I believe they will simply exhaust limited financial resources faster. Accordingly, the proposal should not include duplicative fines and penalties for citations.

Finally, the process by which these regulations are being generated and released in up to five parts places an undue burden on facilities as they attempt to evaluate requirements and implement appropriate changes. Releasing these packages in a piecemeal fashion may lead to

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confusion by providers, regulators, and the general public. There could also be significant discrepancies and lack of clarity utilizing this strategy. Department of Health should not be able to implement any part 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. Only by following these well-established approaches can the Department of

Health, the industry, and our seniors be assured that the regulations are well defined and more likely than not to have a positive impact.

For these reasons, I believe that the protocols as drafted require significant revision in both content and process. Thank you again for this opportunity to express our concerns regarding these proposed regulation revisions.

I strongly urge your serious reconsideration of this entire effort and hope that you will partner with organizations like LeadingAge PA to develop more appropriate solutions and alternatives for the years to come.

Sincerely,

A handwritten signature in blue ink that reads "James B. Pieffer". The signature is written in a cursive, flowing style.

James B. Pieffer
Senior Vice President

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Cc: Rep. Carrie Lewis DelRosso