



20 August 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 who work at HCF Management. As the Regional Manager, I oversee seven nursing homes operating across the Commonwealth. Collectively, these facilities are licensed for 840 beds, employ over 900 employees and serve more than 720 residents. Our organization is committed to providing high quality care and prioritizing the needs of the residents we serve each and every day.

After reviewing your proposed regulation, we have concerns regarding the mandatory increase of the minimum number of hours of general nursing care from 2.7 to 4.1 hours for each resident, which excludes other direct care provided by essential caregivers.

I have worked for HCF Management for nearly 10 years, and I have working in Long Term Care for over 22 years; HCF has always taken pride in budgeting staffing level at 3.2; above the state minimum of 2.7. HCF Management's philosophy is to provide highest staffing possible in order to provide the best quality of care to the residents in the communities we serve. This budgeted number, at times, was hard to attain; we often could not find enough people to hire in order to consistently maintain our goal of a 3.2 staffing ratio. In recent months, our ability to even maintain a 2.7 staffing ratio has become extremely challenging. This challenge has not come as a result of any lack of trying. We receive very few applicants, in spite of offering generous sign-on bonuses. Open shifts are often not filled in spite of offering additional shift bonuses and increased hourly rates. Our desire is to staff at a higher ratio than what the State requires (more reasonably 3.2; 4.1 is not attainable for many reasons that I will discuss later in this letter), but we have found that there are not enough people to hire. Long Term Care is a very scary industry now for many, so people don't want to enter its workforce. We are competing with other industries that have a much larger profit margin for the same workforce are apprehensive to enter the healthcare industry. As a result of these higher profit margins, other industries are offering higher wages than we can even dream about considering. Also, many applicants to whom we have offered employment have turned down the offer since they are "earning" more by staying on unemployment (this, however, is a discussion for a different letter).

Secondly, from a staff scheduling standpoint, increasing that State minimum to 4.1 is not as simply as simply scheduling more staff to the 4.1 level. As I mentioned previously, we budget our staffing level, and try to schedule, at 3.2 hours. Part of the reason for this number is to ensure a buffer of staff levels, in the event some employees cannot make it into work, we will

not fall below the current 2.7 requirement. Therefore, in order to ensure we don't fall below a 4.1 requirement, we would need to schedule staff at a higher ratio than 4.1 to ensure staffing hours do not fall below the proposed 4.1 hours. The financial impact this would have, not just on my organization, but on the entire industry would be catastrophic. The increased costs in payroll alone would be in excess of \$500,000 each Care Community in my region **annually** (other estimates show this number rising above \$750,000 annually). With reimbursement as it stands now, the Long Term Care industry in Pennsylvania would be completely shut down. We are caring for nearly 80,000 of Pennsylvania's most frail, and most vulnerable individuals; without Long Term Care Communities, where will these individuals go?

I made an interesting observation during the live presentation on 21 July 2021 when the proposed increased staffing requirement was introduced. There was an LPN that spoke, Kim Jackson, who'd been a nurse for over 20 years. She commented on the first place that she worked, where there was plenty of staff scheduled and how good it was to have the appropriate number of caregivers working and caring for residents in that nursing home. Ironically, I worked with Kim in that nursing home. I can attest to the fact that the home in reference did not staff any more than just over the current state minimum of 2.7 hours. In fact, there were occasions where we had a difficult time back then filling the schedule and open shifts. One of those times was evident during a DOH Survey when at least one of the days reviewed was very scarcely meeting the state minimum requirement. So, my question is: If the staffing was so good in that facility where we almost fell short of 2.7, why is that number no longer sufficient? The point being, more staff doesn't necessarily translate to better care, it could just mean there are more staff (or "too many staff"). If we did staff at 4.1, has anyone considered how a resident would feel with so many people constantly entering and exiting his/her room for the sake of "better care"? I for one would say "leave me alone".

We would love to increase our staffing and consistently run at 3.2 hours. But, I am opposed to increasing the state minimum staffing, especially to 4.1, because being able to do so has several barriers. This appears to be an unfunded mandate that is being considered. We cannot do this without additional funding; overall, it would add in excess of \$400,000,000 in increased costs **ANNUALLY**, to the Long Term Care industry in Pennsylvania if a 4.1 staffing mandate is approved. From where would this money come? I can certainly tell you, the providers in this state would not be able to afford such an expense. Secondly, there are not enough people to fill the increased number of positions (approximately 7,000 **NEW** employees would need to be hired). At the very least, consideration of other Essential Direct Caregivers must be included in any State Minimum staffing requirement number (Therapists, Social Workers, Activity Staff, etc.).

We cannot find people to hire now; where will we find people to hire if this proposal is approved? People will not appear out of thin air just because the State approved a proposal to increase staffing in nursing homes from 2.7 to 4.1 hours. There is very little incentive for people to work in nursing homes, increasing the staffing requirement from 2.7 to 4.1 will not entice people to apply, interview or work in our industry. This is where we need your help.

We have been forced to use Agency Staffing in order to meet staffing needs. While the use of agency is intended to be a short term solution in order to get through a temporary challenge, we are finding it more and more difficult to staff our buildings without them. The other point to this challenge is that the rates being charged being charged by these agencies keeps increasing nearly every two months, if not sooner. This is where the focus needs to be, not on an unfunded mandate.

Long term care needs your help. We don't need unfunded unrealistic mandates that are derived from arbitrary numbers. Instituting a mandate without the assistance to accomplish the directive will not work. We will see long term care providers leaving the state. We already see that to some degree through the sale of nursing homes and outside providers stepping in to purchase. What occurs when this takes place is a decrease in the quality of care. If the Department truly cares about Pennsylvania's most frail, this proposed mandate must be stopped and initiatives to help providers find, hire, afford to pay and retain staff will be considered instead.

To make it explicitly clear, I do not support the proposal to increase the state minimum staffing requirement from 2.7 to 4.1. We need your help, this proposal will do the exact opposite. Any increase to the minimum state staffing requirement would put an unnecessary hardship on our industry.

Thank you for your time in reviewing and considering our comments. We are hopeful that the Department of Health will address our concerns and work with providers and staff to ensure continued access to long-term care services in Pennsylvania. We 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 our comments.

Sincerely,

Aaron V. Praetzel
Regional Manager, HCF Management