



Pennsylvania Southeast Conference ~ United Church of Christ



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Secretary



**Rev. William P. Worley,**  
Conference Minister  
ext. 308

[worley@psec.org](mailto:worley@psec.org)

**Rev. Dr. Susan Minasian,**  
Interim Associate  
Conference Minister –  
Search & Call  
ext. 302

[minasian@psec.org](mailto:minasian@psec.org)

**Rev. Cean James,**  
Associate Conference  
Minister-Congregational  
Development  
ext. 303

[james@psec.org](mailto:james@psec.org)

**Ms. Susan Creswell,**  
Executive Assistant/  
Events Coordinator  
ext. 312

[susan@psec.org](mailto:susan@psec.org)

**Ms. Kim Kulesa**  
Bookkeeper  
ext. 309

[bookkeeper@psec.org](mailto:bookkeeper@psec.org)

**Ms. Brea Rarick,**  
Search & Call  
Assistant/Registrar  
ext. 311

[brea@psec.org](mailto:brea@psec.org)

**Ms. Tammie Wisniewski,**  
Financial Operations  
Manager  
ext. 304

[tammie@psec.org](mailto:tammie@psec.org)

August 19, 2021

Lori Gutierrez, Deputy Director  
Office of Policy  
625 Forster Street  
Room 814 Health and Welfare Building  
Harrisburg, PA 17120

Dear Ms. Gutierrez,

My name is Rev. Bill Worley, and I serve on the Governing Board of Phoebe Ministries, a nonprofit organization that offers a full continuum of care—from independent living to skilled nursing—to thousands of residents at four retirement communities in the southeastern part of the Commonwealth.

I am also the Conference Minister of the Pennsylvania Southeast Conference, of the United Church of Christ, representing 160 UCC churches and more than 30,000 members. Phoebe Ministries had their founding more than 100 years ago through the initiative of one of our pastors and his congregation.

I write to express strong opposition to the proposed Department of Health regulations in Rulemaking 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1): the mandate to increase nursing hours per patient day (NHPPD) from 2.7 to 4.1.

#### **Financial Concerns**

My first and most important concern is the financial impact this mandate would have on Phoebe's four skilled nursing facilities (NFs). Increasing to 4.1 NHPPD would add an additional \$4 million in annual expenses for Phoebe—an increase which is neither feasible nor sustainable for our company.

The financial implications of the 4.1 mandate seem incredulous at a time when NFs are already significantly underfunded and have not seen a Medical Assistance (MA) rate increase in seven years. While the Department of Human Services has made some cost projections, there is no guarantee that these funds will be included in the budget, or that increased payments will be made to NFs by Community HealthChoices Managed Care Organizations. Phoebe has already been informed by UPMC that there will be no rate increase next calendar year. Additionally, there is nothing in the regulations to account for NFs that may need to raise private pay rates—thus increasing the numbers of individuals who spend down assets while increasing the MA rolls.

Additionally, for providers who are not able to staff at 4.1, closures and sales to out-of-state providers will follow. NFs will have less flexibility to accept residents with complicated medical needs, and those individuals will back up in hospital beds.

All of these factors point to inevitable breakdown in the quality care this very mandate seeks to achieve.

### **Staffing Concerns**

The announcement of the 4.1 mandate has come at the worst possible time in recent history. Has the Department of Health forgotten that nursing homes are still reeling in the wake of the still-active pandemic? COVID-19 decimated long-term care populations and killed thousands of health care workers in unrelenting waves of sickness and death over the last 17 months.

Phoebe Ministries was not immune to these events. And now, like every other NF in Pennsylvania, we are enduring what may be the worst staffing crisis in our 118 years of operation. In support of our mission to provide the highest quality care for our residents, Phoebe has employed 74 Temporary Nursing Assistants to fill staffing gaps, because Nursing Assistants are not available in the job market. (Training programs were closed during the pandemic, leading to a significant lack of available recruits in our service areas.)

Adding to the immense pressure is the weight of the proposed regulations. There is no certainty around the timing of the mandate, no idea what other staffing requirements might be coming in the other four packages of this five-part regulation, and no ability to plan ahead. There are still providers in the Commonwealth who are limiting admissions because they don't have enough staff to care for residents. How will this mandate work out for them?

Achieving a 4.1 NHPPD is simply not attainable at this time. The suggestion of operationalizing this mandate was not only unrealistic, but tone-deaf to the realities at play in the lives of seniors who desperately need care and those committed to offering it.

### **Quality Care Via Quality Assessment**

At the federal level, The Centers for Medicare and Medicaid Services (CMS) chose not to mandate a minimum NHPPD. Their appropriate use of assessment of the populations we care for is a much more sensible effort to reach appropriate staffing than a flat mandate of 4.1 NHPPD.

The regulation, painted with a Pennsylvania-sized brush, may not be appropriate for every unique facility based on the population being served there. Every nursing home has different qualities, such as acuity of residents, training, competency and tenure of staff, and the characteristics of the building. For Phoebe, having the flexibility to manage across these differences between our own facilities was a key part of our strategic planning during the height of the pandemic.

Additionally, nurses and nurse aides are not the only staff who provide direct care to nursing home residents. CMS recognizes therapists, life enrichment staff, and others who provide care and services that add to the overall wellbeing of residents and complement direct care staff.

CMS also understands that mandating a minimum might stifle the kind of creativity and problem-solving that is part of Phoebe's vision as a leader of innovative services. The Pennsylvania Department of Health should take the lead of federal guidance in this situation.

The members of our congregations and our communities who support Phoebe Ministries with time, talent, and treasure have ensured the endurance and success of this award-winning ministry that effectively balances the resources of the

community with the needs of its most vulnerable elders. The mandate to increase nursing hours per patient day will threaten that balance and the future of one of the best assets we have for senior care in Southeast Pennsylvania.

For the continued ability of Phoebe Ministries to serve older Pennsylvanians, and for the greater good of the 700 other nursing facilities in our great Commonwealth, I implore you: do not enact the 4.1 NHPPD mandate for nursing facilities.

Sincerely,

A handwritten signature in cursive script that reads "Rev. William P. Worley".

Rev. William P. Worley  
PSEC Conference Minister