

OFFICE OF THE LONG-TERM CARE OMBUDSMAN



EST. WITHIN THE PA DEPARTMENT OF AGING

August 30, 2021

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625 Forster Street, Room 814
Health and Welfare Building Harrisburg, PA 17120
VIA EMAIL to: RA-DHLTCRegs@pa.gov

Re: Rulemaking 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1) 28 PA Code Chapters 201-203 and 211

To Whom it May Concern:

The Office of the Long-Term Care Ombudsman is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by residents of long-term care facilities within Pennsylvania.

The Office of the Long-Term Care Ombudsman is a resident-directed advocacy service. The resident of a long-term care facility, regardless of the source of the complaint, is the main focus. Ombudsman services are targeted to those over the age of 60, but are provided to adult long-term care consumers, regardless of age.

Long-term care ombudsmen shall make every reasonable effort to investigate and resolve complaints to the satisfaction of the resident.

Summary:

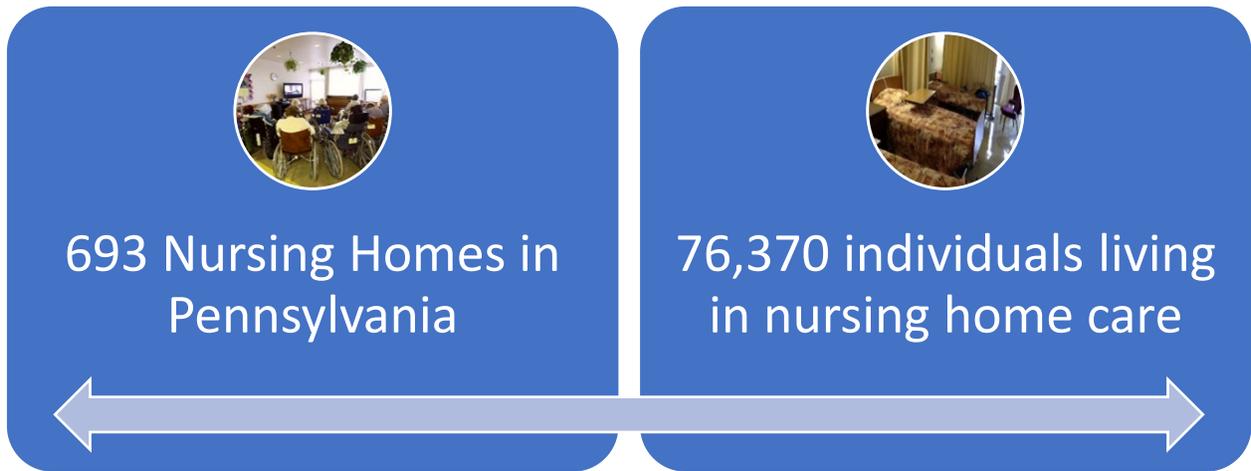
Nursing-home care complaints related to staffing have been in our top three complaint categories for the last three years.

During our most recent federal reporting year, it has again been the top complaint that was further exacerbated by the COVID-19 global pandemic.

Residents and long-term care ombudsmen have recognized for many years that the minimum staffing requirement in Pennsylvania falls short of meeting the needs for quality of care and quality of life.

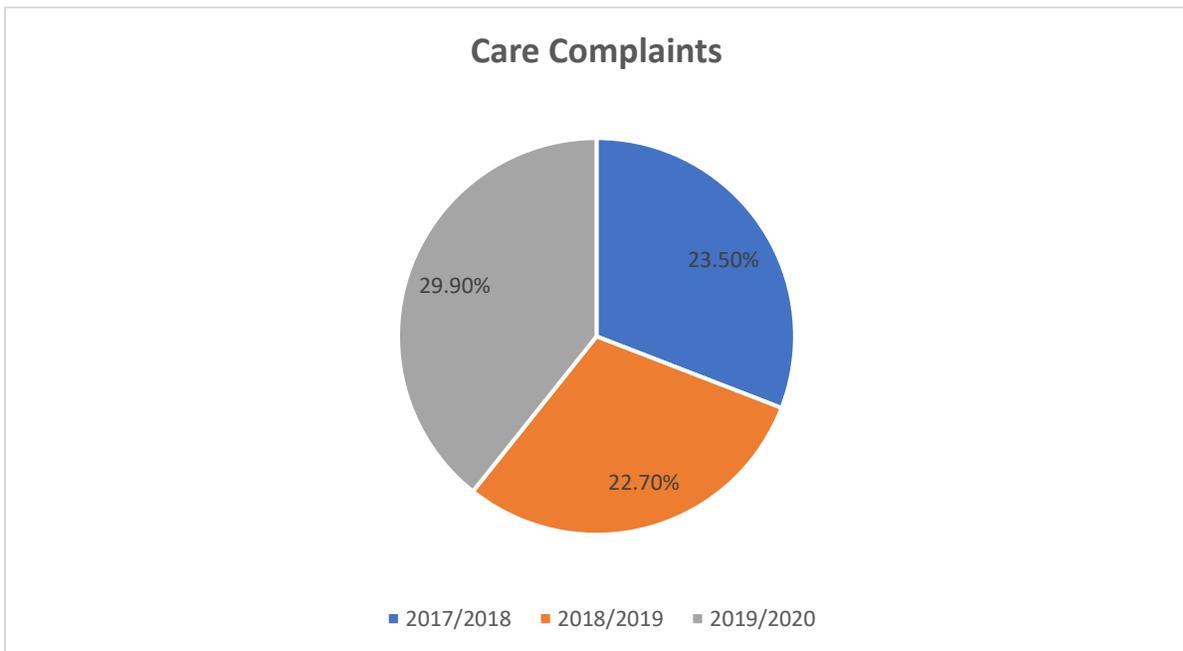
On behalf of the individuals residing in skilled nursing facilities across Pennsylvania, and their loved ones, we write to express our strong support for the Pennsylvania Department of Health's proposed regulations requiring skilled nursing facilities to maintain 4.1 hours of direct-care nursing per resident per day.

Who Will Be Impacted?



NURSING HOME COMPLAINT TOTALS

The 2017-2020 data compiled by the PA Office of the LTC Ombudsman reflects **7,495 care complaints related to staffing** brought forth from the residents of nursing homes. Those complaints comprise **66 percent of the 11,416 total complaints** our office received.



FEDERAL DATA

Based on a report from Health Services Insights 2016, nurse staffing levels are too low in half of U.S. nursing homes. Total facility-reported median staffing levels gradually increased from 3.7 hours per resident per day in 2009 to 3.97 hours per resident per day in 2014. And RN hours increased from 0.5 to 0.7 hours per resident per day in the same period, with wide variations across states.

Despite improvements, data shows that the median nursing home has Registered Nurse, Certified Nursing Assistant, and total staffing levels, which are below the Center for Medicare and Medicaid Services (CMS) recommended standard. Data also shows that nursing homes in the lowest quartile on staffing reported CNA staffing below 2.08 hours per resident per day in 2014, which translates into ratios of about 10-11 residents to one CNA in the day and evening shifts when the most labor-intensive care (e.g., feeding assistance and incontinence care) has to be provided. The lowest quartile of nursing homes also reported half or less of the average RN staffing, which reduces the probability that CNAs with high workloads are well-managed.

Nursing homes with low total staffing are highly likely to have low RN and LVN/LPN nurse staffing as well. Thus, half of the nursing homes have low staffing and at least a quarter have dangerously low staffing.

Staffing levels need to be adjusted for resident acuity. Because it is widely agreed that staffing levels should be increased beyond the CMS minimum recommended level when resident acuity levels increase, CMS's Medicare Nursing Home Compare Five-Star Rating System developed a method to determine the minimum nurse staffing levels needed for each U.S. nursing home based on its resident acuity.

CMS and experts recommend higher minimum staffing levels. A USCMS study in 2001 established the importance of having a minimum of 0.75 RN hours per resident per day (HPRD), 0.55 LVN/LPN HPRD, and 2.8 (to 3.0) CNA HPRD, for a total of 4.1 nursing HPRD to meet the federal quality standards.

As part of this study, a simulation model of CNAs established the minimum number of staff necessary to provide five basic aspects of daily care in a facility with different levels of resident acuity.

The results found that the minimum threshold for CNA staffing is 2.8 HPRD to ensure consistent, timely care to residents. This recommended minimum threshold level was later confirmed in a 2004 observational study of nursing-home staffing and in a reanalysis by ABT Associates in 2011.

Across the entire distribution of staffing levels, there is a strong association between higher total staffing levels and better outcomes.

Currently Pennsylvania only requires a minimum 2.7 nursing hours per resident day.

REGULATORY REQUIREMENT

§483.35 NURSING SERVICES The facility must now have not only sufficient nursing staff, but staff with appropriate competencies and skills sets to assure resident safety as well as to attain or maintain the resident's highest level of well-being. Sufficient staff with appropriate competences and skills sets is determined by resident assessments and individual care plans (previously required) and new language requiring the number, acuity, and diagnoses of the facility's residents to be taken into consideration as required by a newly mandated facility assessment required under §483.70(e).

STAFFING COMPLAINTS

Staffing complaints run the spectrum from accidents and falls to failure to respond for calls for assistance, medication, and/or incontinence care. The ombudsman data collection system prior to 2019 allowed for the collection of shortage of staffing complaints. However, the National Ombudsman Reporting System (NORS) consistency consolidation at the federal level eliminated those complaint categories for the 2020 reporting year and rolled them into the care complaints, because of the direct connection to staffing.

CONSISTENT MESSAGES FROM RESIDENTS

Long-term care ombudsmen, more consistently than any other resident complaint, report that lack of staffing is the key element to their overall quality of care and quality of life in any facility.

In 2017, Pennsylvania's Office of the Long-Term Care Ombudsman met with residents in focus groups to provide feedback to the Department of Health on staffing and issues that impact residents quality of life and quality of care. This request followed the [2016 PA Auditor General Report on of the Department of Health's \(DOH\) oversight of nursing homes.](#)

The audit, which covers Jan. 1, 2014, to Oct. 31, 2015, identifies three issue areas:

- Inadequate review of nurse staffing levels,
- Complaint handling, and
- Sanctions against poor-performing facilities.

In all facilities, it was determined that adequate numbers and consistent staff assignments were most impactful in resident satisfaction with nursing-home care. When surveyed, 62% of residents were dissatisfied with the physical care they received.

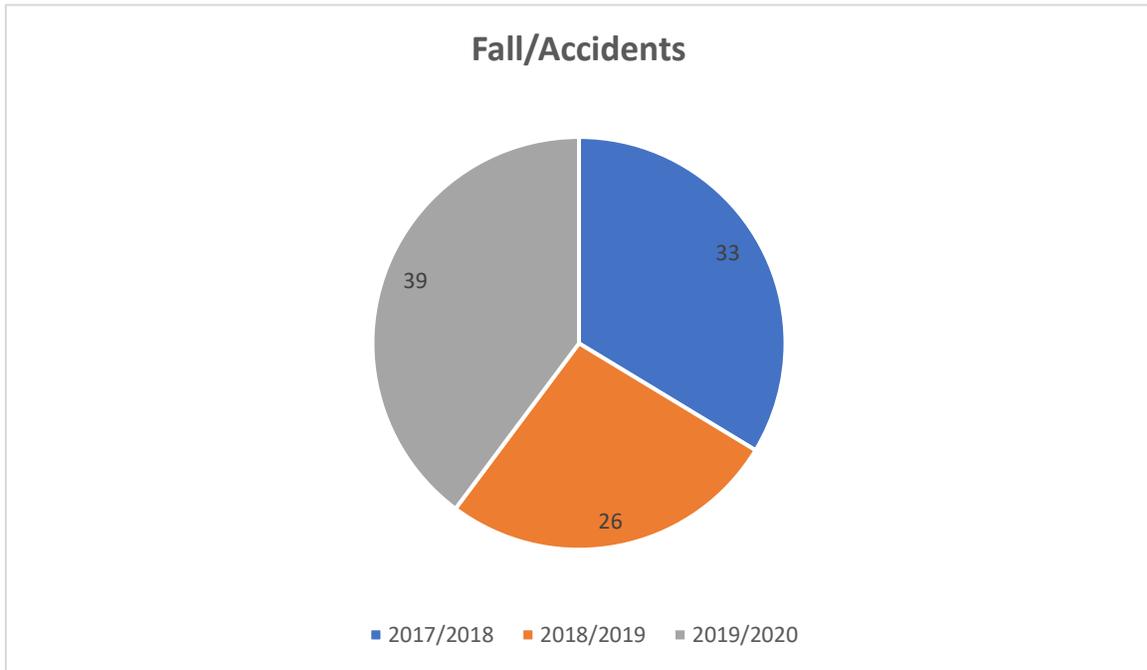
When asked how they would change laws and regulations, 37% of those surveyed indicated they would increase staffing levels and training. It was also determined that there was a significant difference noted in satisfaction with care and staffing in homes that were not for profit vs. those that were for profit. Our complaint data also substantiates that there are more complaints regarding care and staffing in for-profit vs. not-for-profit homes.



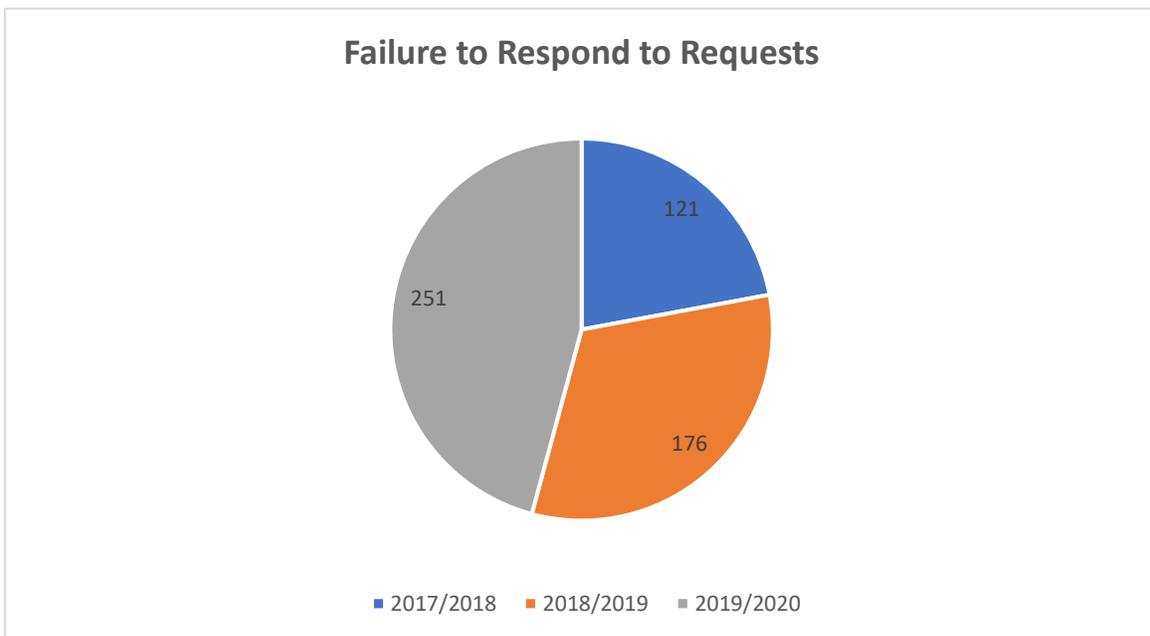
INCREASED COMPLAINTS

The Office of the LTC Ombudsman compiles data annually on the types of complaints received. Care complaints reflect a diminished quality of life for those experiencing them. Providers will justify this care by citing that it is too expensive to do a better job providing for our most vulnerable. The cost of inadequate care is much more costly.

- Falls and Accident complaints increased from 2017-2020

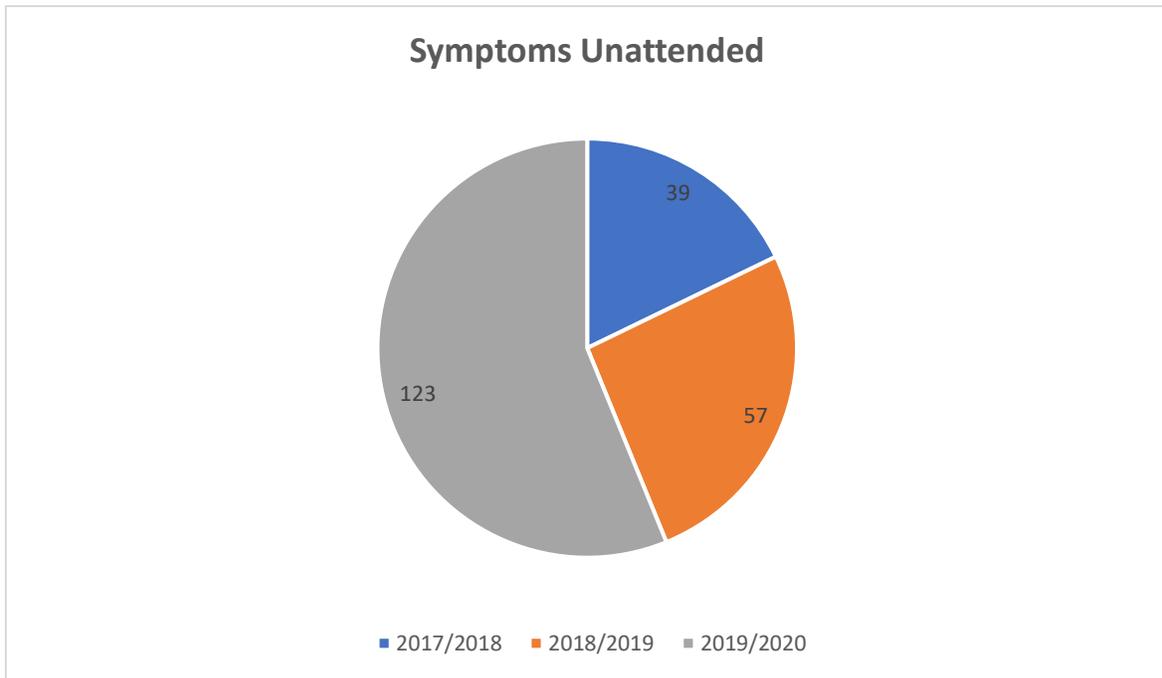


- Failure to respond to requests for assistance increased from 2017-2020

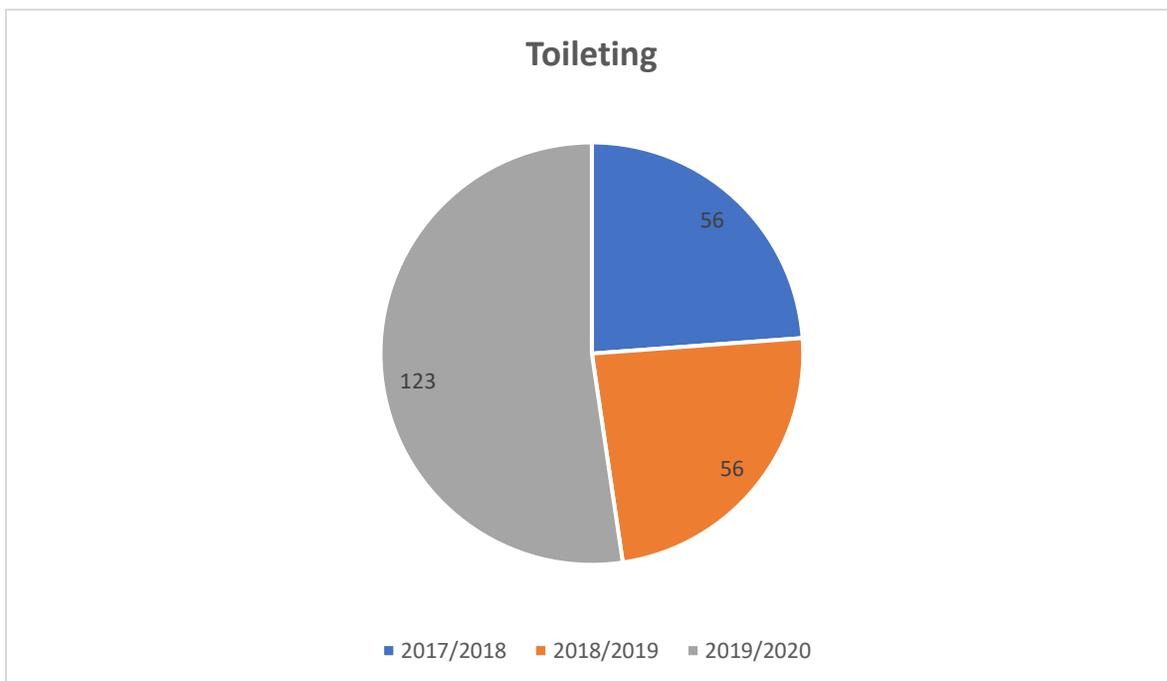


Additional Areas of Concern

- Symptoms Unattended



- Toileting/Incontinent Care



RESIDENT STORIES

A resident in a nursing facility shared a terrifying story of how she was unable to get assistance after a tracheotomy and nearly died. She stated that if it weren't for her roommate's quick thinking to summon emergency help, the outcome would have been devastating.

Residents commonly share waits of one hour or more for toileting assistance. It is common for care staff to come in and turn off the call bell without assistance rendered.

A resident who requires two staff to assist with transfers from her bed shared that she has to be awake for morning care at 4:30 a.m. prior to the first shift, so that there is adequate staffing and time to assist her to get ready for the day. She shared a recent experience that required her to be up and sitting in her wheelchair for several hours before a meeting that started at 9 a.m.

Pennsylvania can do more and must do better in assuring the health, safety, and well-being of our most vulnerable older adults and individuals with disabilities. We're the leaders they've been waiting for.

Margaret D Barajas

Margaret Barajas
PA State Long-Term Care Ombudsman

