



An affiliate of the County Commissioners Association of Pennsylvania



August 27, 2021

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

RE: Rulemakings 10-221 (Long-Term Care Facilities, Proposed Rulemaking Part 1)

To Whom It May Concern:

PACAH is an affiliate of the County Commissioners Association of Pennsylvania, and a leading advocate for all long-term care facilities in the Commonwealth. Our members care for one of the most vulnerable populations - a population extremely vulnerable to COVID-19. Before and during the COVID-19 outbreak, PACAH members have been the safety net for many counties in Pennsylvania, delivering a level of access to care that other facilities may not provide. This is even more true in the current environment. For the last eighteen (18) months, PACAH members have faced extreme challenges in caring for their residents, and we are grateful for the continued support and attention the Pennsylvania Department of Health ("DOH") has provided.

It is PACAH's intention to communicate to DOH serious concerns related to Part 1 of the proposed regulations to amend existing regulations for long-term care facilities, which were published for comment on July 31, 2021.

I. Timing and Comment Periods

As DOH fully understands, PACAH members are in the midst of an unprecedented fight to care for their residents and their facilities. The COVID-19 pandemic has placed a tremendous burden on residents, families, staff, and facilities. Thirty (30) days to comment on Part 1 of these proposed amendments will not provide the appropriate level of substantive comments to ensure the amendments get the consideration they deserve, especially while PACAH members work tirelessly to maintain stability amongst all their current required reporting and protocols.

Also, with the understanding that there are four (4) more parts to come of the proposed amendments, only allow thirty days (30) for Part 1 without being able to comment on the proposals as a whole is inefficient and creates high probability that the entire proposal will contain conflicts and not represent the full nature of the impact on the long-term care community.

PACAH suggests that the comment period remain open through all five (5) parts of the proposed amendments so the public can ensure that each proposal is aligned, and the public has enough time to consider the overall impact of the full proposal.

II. Staff Hours Ratio Change from 2.7 to 4.1

PACAH understands DOH's reasoning to indicate that a facility shall have a sufficient number of staff to provide nursing care and related services to residents. However, to propose a mandated increase in staff ratios from 2.7 to 4.1 at a time when long-term care facilities are unable to locate or keep qualified staff is, currently, impossible to achieve.

Even before the COVID-19 pandemic began, facilities struggled to find staff to properly meet the demands related to caring for residents. These struggles have only gotten worse as the COVID-19 pandemic grew. For anyone to suggest that the staffing shortage in long-term care facilities only begun during COVID-19 is a complete denial of the staff shortages pre-COVID-19. In fact, pre-COVID-19, some facilities had their in-house training programs forcibly removed if they were found to have a deficiency, deny facilities a clear path in creating a sufficient long-term care work force. Staffing shortages also remain one of the largest drivers associated with access to care. Facilities deny referrals for resident care multiple times a day due to the inability to meet the staffing requirement needed if that resident were to be admitted.

In addition, access to training, money, and other incentives rarely work. Some facilities offer free education to become a Registered Nurse. Others offer to pay student loans, and some increase pay, offer signing bonuses, or shift bonuses. While some facilities have seen some success, it is extremely limited and nowhere sufficient to impact the overall staffing shortages.

Members continue to search for qualified candidates to hire, but many staff have decided to seek other forms of employment, unrelated to health care. One PACAH member hires, on average fifty (50) staff a week with the understanding that fifty percent (50%) of those staff will leave. This is compounded by the same facility currently having a rolling average of one hundred (100) openings a month. These circumstances are constant among all long-term care facilities, and we expect it to only increase with the federal government's recent announcement that all long-term care facility staff must be vaccinated for COVID-19. With this scenario, to mandate an increase to 4.1 when many facilities cannot maintain 2.7 consistently is unrealistic and suggesting many facilities should close their doors.

To compound the effect, many communities across the Commonwealth are facing population decreases. Johnstown, PA has experienced a 12% decrease in its population since its last census, and many community leaders attribute this to younger community residents seeking employment elsewhere. If communities can't maintain their own population, how does the DOH expect facilities to entice staff that aren't present in the community?

Finally, proposing an increase in staff ratios without also addressing the financial environment is ignoring a primary factor to PACAH members' overall success. Many payment rates that facilities rely upon to operate have been reduced or remained stagnant by either the respective agencies or the legislature. The Community Health Choices rates have remained frozen. Private insurance company rates do not come close to covering the full cost of care, and rates for Medicare and Medicaid continue to fall behind the yearly increase in overall costs. Increasing the staff ratios for care without addressing these decrease or stagnate rates associated will only create larger problems and lapses in quality care.

PACAH would like to be clear. PACAH members support any measure that will provide higher quality of care for all their residents. However, if these other issues are not addressed soon, there may be no long-term care facilities to provide care at all.

PACAH believes there are several ways to address the issue of staff shortages as it relates to quality care and DOH's desire to increase the staffing ratio. First, the DOH needs to address the lack of training and staff shortages. Incentives for training programs and coordination with Department of Education and Department of Human Services all need to be developed before mandating higher staffing ratios. If the staff are not there to hire, how does DOH expect the ratio to be met?

Second, PACAH recommends a tiered approach to the increase in staffing ratios with incremental increases triggered by the number of Health Care Professional licenses issued. If the number of active licensed Nurse Aides, Registered Nurses, and other Long-term Health Care Professionals do not increase, DOH should not require an increase in staff ratios. Again, facilities can not hire staff who don't exist.

III. Reference to State Operation Manuals and Other Documents Outside Review Process

PACAH would also like to draw attention to the proposed amendment's use of the reference to Chapter 7 and Appendix PP – Guidance to Surveyors for Long-Term Care Facilities from the Centers of Medicare & Medicaid Services (CMS) State Operations Manual.

PACAH suggests that DOH specifically state the provisions both Chapter 7 and Appendix PP into the rulemaking process and clarify if the DOH is making the state operations manual for surveyors of long-term care is also under review. The state operations manual for long-term care surveyors is a document that has not been part of the rulemaking process before now. If the DOH plans to incorporate Chapter 7 and Appendix PP into the proposed amendments rulemaking process by reference only, PACAH would request that the entire state operations manual being open to the rulemaking process for public comment and review.

Overall, the timing and proposals by DOH could lead to a disastrous effect of many long-term care facilities reducing the numbers of beds they service or, ultimately, closing the facility altogether. As the elder population continues to grow, it is inconceivable what would happen to

those who will not receive the care they need solely due to the regulatory requirements that cause the number of available facilities to close forever.

We thank you for your attention to these comments. If you have any questions or would like to discuss further, please do not hesitate to contact me at ccannon@pacounties.org.

Sincerely,

Chase Cannon

Chase Cannon
Executive Director
Pennsylvania Coalition of Affiliated Health Care & Living Communities
