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Lori Gutierrez, Deputy Director – Office of Policy
625 Forster St, Room 814 Health & Welfare Building
Harrisburg, PA 17120
RA-DHLTCRegs@pa.gov

Re: Proposed Rulemaking – DOH – LTCNF, 28 PA Code, Chapts 201 and 211

Dear Lori,

As a licensed Nursing Home Administrator, responsible for a Long Term Care Nursing Facility, I've comments and concerns about the proposed changes to the staffing requirements. The unfortunate timing casts a pall over facilities' 18 months of pandemic experience; the most difficult experience I've ever had professionally, a notion echoed by colleagues and coworkers in nursing and health management not to mention those on the front lines including nurses and aides. These are the true heroes of recent months.

What's also unfortunate is, reflected even in the proposed rule, that providers seem to be singled out as the culprits regarding all that's wrong with care of the frail elderly. Not to suggest that substandard facilities don't exist, I'm left with the suspicion that political forces see staffing as a main but simplistic solution as that which will fix all problems.

The main issues are as follows.

Availability of Health Care Workers

Trending well before pandemic has been a decline in persons available to work, caring for frail elderly. OUR plan for staffing (budget and scheduling) provides well above 2.7 hours of direct care per resident – closer to 4.0, but are not able to hire persons to get close and in fact have had to limit census in order to remain compliant, which we have.

The rulemaking commentary is clear and correct that the number of person in Pennsylvania, 65 and older, now places us fifth in the nation, with the number steadily growing. To address this already presumes a need for more health care workers. The recommended increase in minimum staffing, in rough terms means that there will need to be to be 50% MORE workers, on the order of 25,000 to 30,000 additional nurses and aides statewide, than are currently working in LTCNFs. This just to satisfy the current configurations. The number will continue to increase precipitously.

Cost

Our organization is able to afford generous staffing above the state mandated minimum currently. But even in our setting we would have to hire between 6-10 persons [on top of those open positions currently] costing an additional $250,000 beyond what is already budgeted. It is also clear that there are facilities that will not be able to afford the increase cost to meet the mandate for staffing. The larger picture is that such a mandate is a move to change significantly the structure and profile of the industry. It is predictable that there are facilities that will close

leaving more and more frail elderly without proper care. Upward pressure on wages (acknowledging that front line workers are worth more than what the market currently allows) is an added dimension of change needed in the industry. To quote Raymond Landis *"... we are again faced with the dilemma we constantly encounter in Pennsylvania (which is) the desire to improve care for our rapidly aging population and the unwillingness to admit that that achieving this desire requires a commitment by the entire population to absorb the costs."* [Penn capital-star].

Managing the Trend

The need for more clinical hours by caregivers may be an answer to what ails LTCNF's. But the regulatory approach is one-sided, heavy-handed, brutal, AND assumes that operators simply need to submit to regulation and apply fix, which will most definitely have an extinctive effect on the industry. What's needed is work on both sides of the equation.

State health officials could and should give attention to the personnel side of the issue finding ways, perhaps linking with other agencies and stakeholders, to promote, encourage and incentivize new entries into the caregiving careers and jobs, in order to build out the health care workforce. There is no ignoring the facts of age demographics and regulating our way out of the aging of the population is not a tenable solution.

Shrinking Medicaid funding, and that of insurance providers, is also a sign that there can be no success in improving LTC systems without increased funding. This will mean increases to state and federal funding, also assuming public funding increases.

Finally, the state should be an advocate for the industry by public promotion of nursing home care in general. The Department of Health (and CMS) has been too much the heavy-handed gatekeeper, historically unable to fence out the bad actors, when it should be also a public health advocate for the 600 facilities, most of which have a high level of commitment to serve the frail elderly. Without this, we are left with public opinion that is defined too much by litigious opportunists, angry, petulant customers and the greed of injury attorney systems.

Thank you for the opportunity to share.

Sincerely,

Steven T. Cherry, NHA