



August 29, 2021

To Lori Gutierrez, Deputy Director, Office of Policy;

This letter is in reference to the proposed regulations would increase staffing hours per patient day from 2.7 to 4.1. This substantial increase in minimum requirements will not only not achieve the intent of the proposal, which one assumes is to improve quality of care and services, it will also place a financial burden on many already financially strapped organizations (due to Covid-19) and could cause them to be unable to continue to operate. With many rural communities having limited options, a closure of one will undoubtedly decrease opportunities for those needing care.

There are many reasons that an increase such as this should not be considered and those are listed below:

- **A standard PPD does not equal quality** - A standard NHPPD does not account for the uniqueness of each SNF - acuity of residents, training, competency and tenure of staff, and characteristics of the building.
- **An increase such as this may stifle innovation** - The federal government chose not to mandate a minimum staffing hour PPD. One of the reasons given was that they did not want to stifle innovation.
- **Staffing Crisis** – Our budgeted PPDs are already well beyond the state minimum, yet we cannot get enough staff to meet those budgeted PPDs. The COVID-19 pandemic has excruciatingly accelerated the decline of an already difficult labor market, making it the worse labor market I have seen in my 30 years serving older adults. Nurses and caregivers have left their professions out of burn-out and concern for their own safety. Finding adequate levels of staff seems virtually impossible.
- **Financial concerns** - SNFs are already significantly underfunded and have not seen a MA rate increase in seven years. There has been no guarantee of additional DHS funds being included. This appears to be yet another unfunded mandate. Also with the staffing crisis noted above, we have had to limit admissions in order to keep our staffing at adequate levels.
- **Potential for Citations and Fines from both the State and Federal Government for the same issue** - The proposed regulation adds language that a violation of federal regulations will also be a violation of state regulations. This could result in both state and federal fines for the same incidences which will duplicate fines and penalties for citations.

In addition, to this regulation potentially causing both harm to nursing facilities and the people they serve, this proposed regulation may violate Pennsylvania Law:

- The proposed regulations may violate the Regulatory Review Act because DOH has included federal guidance's or interpretations issued by CMS.
- Guidance's may be changed by CMS at any time without notice or public process.

- CMS makes it clear that these guidance's or interpretations are only to be referenced by surveyors in assisting them with the survey process, and that they are not statutory or regulatory in nature.
- By reference to these CMS guidance's, DOH regulations could be changed without going through any sort of process including PA legislative review or oversight as outlined in the Regulatory Review Act.

Another concern is that the proposed regulation will be issued in five parts. This first part of the regulation package only addresses definitions and staffing minimums. By releasing these in 5 portions, may lead to confusion by providers, regulators, and the general public. It could be argued that DOH cannot implement any part of the regulatory package until all parts are issued and there is a minimum of a 30-day public comment period on the entire regulatory package. The full regulatory package should have to go through the full regulatory review process.

Finally I offer the following recommendations:

- For consistency with federal regulation, the state should consider allowing for acuity as determined by MDS assessments and care plans to drive staffing.
- If an increase in NHPPD is finalized a window to ramp up is necessary. This is not currently being accounted for. The proposed regulations state that the NHPPD will become effective on the date of publication as final. A recommended window is at least one year from publication of the final regulations to comply.
- If an increase in NHPPD is found to be necessary, an appropriate increase in government funding should be provided to nursing homes to cover the additional expense.
- If an increase in NHPPD is found to be necessary, consider whether other staff may be counted in the NHPPD - Nurses and nurse aides are not the only staff that provide care. (i.e. Therapists, life enrichment staff, etc. CMS even recognizes this in their definition of direct care staff.)

Thank you for your time and consideration.

Respectfully,



Dan Davis  
Senior Vice President  
Chief Operating Officer