



August 30, 2021

Lori Gutierrez
Deputy Director, Office of Policy
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, Deadline: August 30, 2021

Dear Ms. Gutierrez:

The Center for Medicare Advocacy (Center) is a national, private, non-profit law organization, founded in 1986, that provides education, analysis, advocacy, and legal assistance to help people nationwide, primarily the elderly and people with disabilities, to obtain necessary health care, therapy, and Medicare. The Center focuses on the needs of Medicare beneficiaries, people with chronic conditions, and those in need of long-term care and provides training regarding Medicare and health care rights throughout the country. We advocate on behalf of beneficiaries in administrative and legislative forums, and serve as legal counsel in litigation of importance to Medicare beneficiaries and others seeking health coverage. These comments are based on our experiences talking with and representing Medicare beneficiaries and their families and on a recent Center project, “Improving Nurse Staffing Levels in Nursing Facilities: Strategies, Approaches, Recommendations.”

The Center strongly supports proposed regulations published by the Pennsylvania Department of Health to require nursing facilities to maintain 4.1 hours of direct care nursing services per resident per day. There is no question that nurse staffing is the single most important predictor of the quality of care that residents receive. Without sufficient numbers of nursing staff, who must also be well trained, well compensated, and well treated by owners and managers, residents can neither receive the high quality of care nor enjoy the high quality of life that the 1987 Nursing Home Reform Law promises residents and requires facilities to provide.

Decades of research,¹ including a four-volume research study commissioned by the federal government more than two decades ago,² confirm the critical importance of nurse staffing to residents’ well-being. The coronavirus pandemic has brought to public attention as never before

¹ Charlene Harrington and Jack Schnelle, “The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes,” *Health Services Insights* 2016:9 13-19, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/>

² Abt Associates, *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* (Dec. 2001).

the devastating consequences of understaffing, as studies and reports document that nursing facilities with higher nurse staffing levels have fewer COVID-19 cases and deaths.³

The Center strongly supports proposed regulations published by the Pennsylvania Department of Health to require nursing facilities to maintain 4.1 hours of direct care nursing services per resident per day, including their recognition that the 4.1 hour standard is a minimum standard that facilities may be required to increase, based on the actual and assessed needs of their residents.

In addition, based on studies and our research and work, the Center recommends that

- **staffing ratios be mandated for each type of direct care staff on each shift.** Without such specific ratios, nursing facilities may hire lower-paid aides and licensed practical nurses, rather than registered nurses,⁴ and may concentrate their staff on daytime hours, rather than ensure full staffing around the clock.
- **nursing facilities be required to maintain staffing levels for non-nursing staff (housekeeping, food service, and activities, among others).** Without such a maintenance-of-effort requirement, nursing facilities may reduce non-nursing staff, as researcher found occurred in California and Ohio when ratios were implemented for nursing staff.⁵
- **the Department effectively monitor nursing facilities' compliance with staffing ratios and conduct appropriate audits.** Since staffing requirements are not self-executing, the Department needs to enact mechanisms to determine whether facilities are in compliance with staffing ratios and other staffing requirements. Compliance is required on an ongoing basis, and not just during the annual survey. A 2003 report issued by the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services reported that Arkansas and Vermont reviewed monthly staffing data, which both states

³ Li Y, Temkin-Greener H, Shan G, Cai X (2020), "COVID-19 infections and deaths among Connecticut nursing home residents: Facility correlates," *J Am Geriatr Soc* 68: 1899-1906, <https://agsjournals.onlinelibrary.wiley.com/doi/epdf/10.1111/jgs.16689> (finding 20 additional minutes of registered nurse time per resident per day were correlated with 22% fewer COVID-cases and 26 % fewer COVID-19 deaths); New York State Attorney General Letitia James, *Nursing Home Response to COVID-19 Pandemic* (Jan. 2021), <https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf> (finding that facilities in New York City and neighboring counties that had 5- star ratings in staffing had half the death rate of facilities with lower staffing ratings).

⁴ John Bowlblis, "Staffing Ratios and Quality: An Analysis of Minimum Direct Care Staffing Requirements for Nursing Homes," *Health Services Research* 2011 Oct.; 46(5): 1495-1516, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3207189/pdf/hesr0046-1495.pdf>; Min M. Chen, David C. Grabowski, "Intended and Unintended Consequences of Minimum Staffing Standards for Nursing Homes," *Health Economics*, Vol. 24, No. 7, pages 822-839 (July 2015), <https://onlinelibrary.wiley.com/doi/abs/10.1002/hec.3063> (abstract)

⁵ Min M. Chen, David C. Grabowski, "Intended and Unintended Consequences of Minimum Staffing Standards for Nursing Homes," *Health Economics*, Vol. 24, No. 7, pages 822-839 (July 2015), <https://onlinelibrary.wiley.com/doi/abs/10.1002/hec.3063> (abstract)

required facilities to submit outside the annual survey process.⁶ Vermont audited the monthly reports, comparing the reports with payroll records.⁷

- **the Department impose specified remedies, including financial penalties, at facilities that fail to meet staffing ratios and other staffing requirements.** Penalties need to be higher than the cost of compliance with requirements. If penalties are not higher than costs of compliance, some facilities may view penalties as the cost of doing business. Bans on admission of new residents may also be necessary for egregious noncompliance. The purpose of penalties is ensuring that facilities actually meet staffing ratios that the Commonwealth enacts.

The Center supports the comments and detailed recommendations of the National Consumer Voice for Quality Long-Term Care and of the Center for Advocacy for the Rights and Interests of the Elderly and Community Legal Services.

Thank you for the opportunity to submit comments.

Sincerely,



Toby S. Edelman
Senior Policy Attorney

⁶ Jane Tilly, Kirstein Black, Barbara Ormond, The Urban Institute, State Experiences with Minimum Nursing Staff Ratios for Nursing Facilities: Findings from Case Studies of Eight States, p. 11 (Nov. 2003), <https://aspe.hhs.gov/sites/default/files/pdf/72726/8state.pdf>

⁷ *Id.*