



From: [Lora Gomboc](#)
To: [DH, LTCRegs](#)
Subject: [External] 51 PA Bulletin 4074 (July 31, 2021) Public Comments
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Lori Gutierrez
Deputy Director, Office of Policy
625 Forster Street, Room 814
Health and Welfare Building
Harrisburg, PA 17120

Dear Ms. Gutierrez,

I am writing to provide comments to the proposed Department of Health nursing facility regulations which seek to require nursing homes to increase the requirements for staff from 2.7 Nursing Hours **Per Patient Day** (NHPPD) to 4.1 NHPPD **on each shift**. First, the language and terminology is confusing when it refers to a "4.1 NHPPD" and "on each shift". Is the proposed regulation really a 12.3 NHPPD (which equals 4.1 NHPPD for each shift)?

Also, a particular NHPPD does not equal quality. Each nursing home has unique qualities such as acuity of residents, training, competency and tenure of staff, and characteristics of the building (i.e. private rooms, households). I would ask that you consider the federal government's approach to allowing the facility assessment and resident care plans be what PA follows in order to determine appropriate staffing instead of 4.1 NHPPD, which does not necessarily equate to quality care.

This regulatory change could not have come at a worse time. We are currently experiencing the worst staffing crisis of our time. We have gone 6 months with almost no LPN applications. We do not have enough nursing assistant applicants to fill all of our openings. The COVID pandemic, including the ongoing unemployment benefits, the vaccine mandates, the countless hours of working in full PPE is driving people out of the health care field. If we cannot find nurses and nursing assistants to hire, how will we ever meet the demands of a 4.1 NHPPD? Not to mention the additional stress and anxiety this requirement places on the nursing leaders who are also leaving the field due to the stress of trying to find quality, caring staff. In addition to their regular responsibilities, these nurse leaders have been direct care workers for over a year and half to fill open shifts and positions that will be open indefinitely with no end in sight.

I am extremely concerned about the timing of when the regulation will be effective and not having enough time to fill our open positions. How are we supposed to maintain a 4.1 NHPPD when a staff person resigns or is terminated? We do not have an endless supply of nurses and

nursing assistants waiting to be hired. The proposed regulations state that the 4.1 NHPPD will become effective on the date of publication as final. There is no way to know when this might occur. It's especially concerning if the final publication is on a Saturday.

Again, we cannot plan to increase staffing without notice and time. I would ask you give at least one year from publication of the final regulations to comply with any increase in staffing minimums in order to give nursing homes time to try to meet any new staffing mandate. Nurses and nurse aides are not the only staff that provide care to nursing home residents. Therapists, chaplains, social workers, life enrichment staff, and others provide care and services that add to the overall wellbeing of residents. The Centers for Medicare and Medicaid Services (CMS) even recognizes this in their definition of direct care staff. Please consider modifying the proposal to include other staff that provide care and services to residents in the calculation of the 4.1 staffing proposal.

As you know, our nursing facilities are significantly underfunded for the care of our residents who receive Medical Assistance. We have not seen a Medical Assistance (MA) rate increase in seven years. While DHS has made some projections of costs, there is no guarantee that these funds will be included in the budget or that increased payments will be made to nursing facilities by the Community Health Choices Managed Care Organizations. Additionally, there is no recognition that we may need to raise private pay rates hence increasing the numbers of individuals that spend down assets thus increasing the MA rolls. Even if the Department of Human Services (DHS) includes the average salary cost, they are missing the costs to recruit and the cost of benefits.

There is absolutely no recognition that private pay rates may also need to be raised in order to provide the staffing called for in this proposal. The proposed regulation will absolutely impact private citizens when private pay rates have to be increased to pay for an increase in staffing. The proposal will also impact our elders through further deterioration of access to quality care. Nursing homes have been closing beds, selling to out-of-state providers with track records of providing bad care, or closing buildings. Providers that are not able to staff at 4.1 may be less likely to serve residents who are difficult to care for and who may back up in hospitals. At a time when the hospitals are desperate to free up their beds for COVID patients, we have had to limit admissions because of staffing issues, even prior to the pandemic.

Finally, regulations will be promulgated in five packages with this being the first. This first package only deals with a subsection of the nursing services section. DOH has stated that they are also looking at adding staffing ratios in package 4. It will be nearly impossible to implement a new minimum staffing number when we don't have information about what a staffing ratio might look like when it is introduced sometime in the future.

Thank you in advance for your time. I implore you to carefully consider the unintended

consequences of a 4.1 NIHPPD as part of the Department of Health's proposed regulations. Quality care and quality of life for our residents can be achieved without this new staffing mandate.

Sincerely,
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Director of Health Care Services
Garden Spot Communities



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