



August 30, 2021

Lori Gutierrez
Deputy Director
Pennsylvania Department of Health
Office of Policy
Health and Welfare Building
625 Forster Street, Room 814
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

Dear Ms. Gutierrez:

On behalf of our 1.8 million members and all older Pennsylvanians and their families, AARP Pennsylvania appreciates the opportunity to submit comments in response to Rulemaking #10-221 (Long Term Nursing Care Facilities, Proposed Rulemaking 1). We are pleased that the Pennsylvania Department of Health (the Department) has proposed to update its nursing home licensing regulations particularly at this time.

The COVID-19 pandemic has shown a spotlight on some of the real challenges facing Pennsylvania's nursing homes. Transforming the state's decades-old nursing home regulations could enhance the lives of all nursing home residents, staff and families. The need to update our long-term care regulations to improve nursing homes has been known for years. Unfortunately, the failure to take action has resulted in nursing home residents including older adults and people with disabilities paying a terrible price in personal safety and quality of life. As of August 27, 2021, it was reported that of the 28,180 COVID-19 deaths in the Commonwealth, 13,959 (nearly 50%) were residents of long-term care facilities. With the long-term care system now in the spotlight, the moment has indeed arrived to take meaningful actions.

PROCESS COMMENT:

We understand that this proposed rulemaking is the first of five packages that will eventually be combined to create a final, comprehensive nursing home regulatory package. We found it quite challenging and cumbersome to review and comment on this first regulatory package in

isolation of the remaining proposed changes. Yet, we believe that given the importance and need for meaningful nursing home reform, it was vital that we comment.

SUBSTANTIVE COMMENTS:

201.3 Definitions: Although we understand, and generally support, the Department's desire to align its nursing home regulations with federal regulations, as proposed, we do not agree with the Department's proposal to delete the definition of abuse. Pennsylvania's Older Adults Protective Services Act is materially different from federal regulations. The Department's adoption of the current federal regulations (Chapter 7 of the State Operations Manual, and Appendix PP-Guidance to Surveyors) will conflict with relevant state law definitions, will undoubtedly create confusion in the nursing home industry, and will certainly hinder the Pennsylvania Department of Aging's ability to properly uphold the provisions of the Older Adults Protective Services Act, which is their responsibility. The stakes are high for nursing facility residents and families/agents who make decisions on behalf of residents. Neglect and abuse of nursing facility residents is all too common, and nursing facilities often fail to comply with minimum standards for resident care. Last spring, AARP asked family caregivers to tell us what was going on with their loved ones in nursing homes. More than 6,000 accounts were received in just over a week. Poignant stories that depicted fear for older parents, spouses, siblings and other loved ones; along with anger at how they were being treated; and strong calls for change. We recommend the Department ensure alignment in the definition of abuse from current state law. Instead of deleting the definition, cross-reference with appropriate state regulations and statutes. Additionally, we recommend the Department make clear the legal obligations required of nursing facilities under Chapter 7 of the Older Adults Protective Services Act, 35 P.S. Section 10225.101-10225.5102

211.12(i) Nursing Services:

Federal studies have shown that nursing home residents need at least 4.1 hours of direct care – which includes help with bathing, dressing, toileting and eating – within a 24 hour period. The Center for Medicare & Medicaid Services (CMS) has identified minimum staffing thresholds:

- 2.8 hours for nurse aides per resident, per day;
- 1.3 hours for registered nurses (RNs) and licensed practical nurses (LPNs), combined, per resident, per day; and
- 0.75 hours for RNs per resident per day.

We support the Department's proposal to increase the minimum number of direct resident care hours from 2.7 to 4.1. We applaud the state for taking this step and urge that the implementation meets or exceeds the CMS recommendations. AARP has long urged the state to ensure better resident outcomes by increasing standards for resident care, and staffing standard minimums are a good first step in that direction. If Pennsylvania does not address staffing standards for nursing homes during the next year, the chances for such reforms are likely to slip away. Given the fact that nearly 14,000 state residents have died in long-term care facilities as a result of the COVID-19 pandemic, it is essential that we properly address staffing levels now, as other states have. Pennsylvania's policy makers must make a commitment to improving nursing home care and ensure resident dignity and safety by establishing minimum

staffing requirements. Pennsylvania's residents and families deserve to know that any licensed facility they go to will have adequate and safe staffing. Pennsylvania taxpayers have the right to expect that they will get value for the billions of dollars they invest in nursing home care. Much more is needed to better protect nursing home residents and ensure they receive the best care possible. Finally, as noted earlier, addressing staffing standards, in isolation, is just one step of many needed to improve Pennsylvania's long-term care facilities. Many other portions of Section 211 must also be revised to improve quality care for nursing home residents. We look forward to reviewing the additional and necessary revisions in the next four proposals the Department will roll out in the remaining pieces of the nursing home regulatory package.

We appreciate the opportunity to submit these comments and stand ready to assist in this important regulatory review process.

Respectfully,

A handwritten signature in black ink, appearing to read "Bill Johnston-Walsh".

Bill Johnston-Walsh
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