

Jordan United Church of Christ

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August 20, 2021

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 express strong opposition to the proposed Department of Health regulations in *Rulemaking 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1)*: the mandate to increase nursing hours per patient day (NHPPD) from 2.7 to 4.1.

Financial Concerns

My first and most important concern is the financial impact this mandate would have on Phoebe's four skilled nursing facilities (NFs). Increasing to 4.1 NHPPD would add an additional **\$4 million** in annual expenses for Phoebe—an increase which is neither feasible nor sustainable for our company.

The financial implications of the 4.1 mandate seem incredulous at a time when NFs are already significantly underfunded and have not seen a Medical Assistance (MA) rate increase in seven years. While the Department of Human Services has made some cost projections, there is no guarantee that these funds will be included in the budget, or that increased payments will be made to NFs by Community HealthChoices Managed Care Organizations. Phoebe has already been informed by UPMC that there will be no rate increase next calendar year. Additionally, there is nothing in the regulations to account for NFs that may need to raise private pay rates—thus increasing the numbers of individuals who spend down assets while increasing the MA rolls.

Additionally, for providers who are not able to staff at 4.1, closures and sales to out-of-state providers will follow. NFs will have less flexibility to accept residents with complicated medical needs, and those individuals will back up in hospital beds.

All of these factors point to inevitable breakdown in the quality care this very mandate seeks to achieve.

Staffing Concerns

The announcement of the 4.1 mandate has come at the worst possible time in recent history. Has the Department of Health forgotten that nursing homes are still reeling in the wake of the still-active pandemic? COVID-19 decimated long-term care populations and killed thousands of health care workers in unrelenting waves of sickness and death over the last 17 months.

Phoebe Ministries was not immune to these events. And now, like every other NF in Pennsylvania, we are enduring what may be the worst staffing crisis in our 118 years of operation. In support of our mission to provide the highest quality care for our residents, Phoebe has employed 74 Temporary Nursing Assistants to fill staffing gaps, because Nursing Assistants are not available in the job market. (Training programs were closed during the pandemic, leading to a significant lack of available recruits in our service areas.)

Adding to the immense pressure is the weight of the proposed regulations. There is no certainty around the timing of the mandate, no idea what other staffing requirements might be coming in the other four packages of this five-part regulation, and no ability to plan ahead. There are still providers in the Commonwealth who are limiting admissions because they don't have enough staff to care for residents. How will this mandate work out for them?

Achieving a 4.1 NHPPD is simply not attainable at this time. The suggestion of operationalizing this mandate was not only unrealistic, but very tone-deaf at such a moment in American history.

Quality Care Via Quality Assessment

At the federal level, The Centers for Medicare and Medicaid Services (CMS) chose *not* to mandate a minimum NHPPD. Their appropriate use of assessment of the populations we care for is a much more sensible effort to reach appropriate staffing than a flat mandate of 4.1 NHPPD.

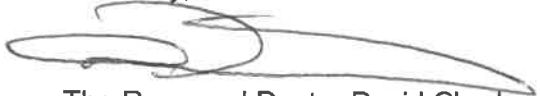
The regulation, painted with a Pennsylvania-sized brush, may not be appropriate for every unique facility based on the population being served there. Every nursing home has different qualities, such as acuity of residents, training, competency and tenure of staff, and the characteristics of the building. For Phoebe, having the flexibility to manage across these differences between our own facilities was a key part of our strategic planning during the height of the pandemic.

Additionally, nurses and nurse aides are not the only staff who provide direct care to nursing home residents. CMS recognizes therapists, life enrichment staff, and others who provide care and services that add to the overall wellbeing of residents and complement direct care staff.

CMS also understands that mandating a minimum might stifle the kind of creativity and problem-solving that is part of Phoebe's vision as a leader of innovative services. The Pennsylvania Department of Health should take the lead of federal guidance in this situation.

For the continued ability of Phoebe Ministries to serve older Pennsylvanians, and for the greater good of the 700 other nursing facilities in our great Commonwealth, I implore you: do not enact the 4.1 NHPPD mandate for nursing facilities.

Sincerely,



The Reverend Doctor David Charles Smith, Senior Pastor
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