



From: [Townsend-Fisher, Melissa](#)
To: [DH, LTCRegs](#)
Subject: [External] Letter in Response to PA LTC Regulatory Proposal
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Lori Gutierrez
Deputy Director
Office of Policy
625 Forster Street
Room 814
Health and Welfare Building
Harrisburg, PA 17120

Dear Deputy Director Gutierrez;

This letter is written to address my grave concern with the Department of Health's proposed update to Pennsylvania's nursing facility LTC regulations in the Pennsylvania Bulletin on July 31. I understand that the comment period is open through August 30, 2021 and that the Department must consider each comment received and include responses when proposed regulations are released. I further understand that the DOH began updating LTC regulations in 2017, which have not been updated since 1999, and the departments intent is to improve the quality of care, increase safety, minimize procedural burdens, create consistency between Federal and State requirements by adopting Federal requirements in the state requirements and increase the number of direct care hours.

My concerns with the proposal are outlined in four categories, as follows:

- **Changes in Staffing Requirements**
 - The proposed regulations would increase staffing hours per patient day from 2.7 to 4.1.
 - A NHPPD 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.
 - For consistency with federal regulation, the state could consider allowing for acuity as determined by MDS assessments and care plans to drive staffing.
 - DOH does not seem to understand the reality of the current staffing crisis.
 - Our budgeted NHPPD levels are already above the 2.7 minimum.
 - A 4.1 NHPPD 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.
- 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.
 - 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.)
 - Financial concerns - NFs 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.
 - We have already been limiting admissions because of staffing issues.
- **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.
 - **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.
 - **The Proposed Regulation May Violate PA State Law**
 - The proposed regulations may violate the Regulatory Review Act because DOH has included federal guidances or interpretations issued by CMS.
 - Guidances may be changed by CMS at any time without notice or public process.
 - CMS makes it clear that these guidances 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 guidances, 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.

Please reevaluate the proposal, and identify ways to accomplish your objective, without placing onerous and impossible requirements that no SNF is able to implement. Thank you

Thank you

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