



Eastern Pennsylvania Geriatrics Society
3576 West Chester Pike
P.O. Box 136
Newtown Square, PA 19073



August 27, 2021

President

Victor Lane Rose, MBA, NHA, FCPP

President-elect

Brian Duke, MHA, MBE

Secretary

Margaret Lang, RN-BC, MSN, CCM,
CPHRM, CHPC

Treasurer

Committee Chairs

Education

Nominating

William Zirker, MD

Legislative Affairs & Advocacy

Sanford L. Pfeffer, Esq.
David Hoffman, JD, FCPP

COSAR Representative

William Zirker, MD

BOARD OF DIRECTORS

Roopa Amnolsingh, MD

Thomas Atkins

Elizabeth A. Cwiklinski, MSW, MBA

Brian Duke, MHA, MBE

Barry Fabius, MD

Todd H. Goldberg, MD, CMD, FACP,
AGSF

Grace Harrison, NHA

David R. Hoffman, JD, FCPP

Randi Y. Johnson, RN, MSN, FNP-BC

Margaret Lang, RN-BC, MSN, CCM,
CPHRM, CHPC

Kristine Mulhorne, PhD

Sanford L. Pfeffer, Esq.

Sara Popkin, MSW, LSW

Donna Raziano, MD, MBA, FACP

Christina Riccardo, EdD RD LDR

Victor Lane Rose, MBA, NHA, FCPP

Cherian Verghese, MD, MRCPsych
(UK), CPI, FCPP

William Zirker, MD

Executive Director

Ilene Warner-Maron, PhD,
RN-BC, NHA, FCPP

Director of Events

Tina Chiu, MEd

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: Proposed Rulemaking – Department of Health – 28 PA Code Chapters 201-203 and 211

Dear Deputy Director Gutierrez:

On behalf of the Eastern Pennsylvania Geriatrics Society (EPGS), the regional affiliate of the American Geriatrics Society (AGS) comprised of an interdisciplinary group of health professionals dedicated to the advancement of high standards of clinical care and quality of life for older adults, we are pleased to see that the Department of Health is proposing to update Pennsylvania's nursing home regulations. COVID-19 has had a tragically devastating impact on nursing home residents and staff and has evidenced the need to update care delivery requirements in order to protect our most vulnerable members of society, our nursing home residents.

Process Comments:

We understand that this proposed rulemaking is one of five packages that will eventually be combined to make a final, comprehensive regulatory package. While it is extremely challenging to review and comment on this first regulatory package in isolation of other proposed changes, we believe that given the importance of this Department initiative, it is important to do so.

Substantive Comments:

Section 201.3 Definitions

While we understand the Department's desire to match the state nursing home regulations with applicable federal regulations, we are concerned that the incorporation by reference of federal regulations and guidance for surveyors violates the regulatory review process. Is it the Department's position that various relevant federal definitions currently in effect will be adopted as of the date of approval of the proposed regulations? What about future changes to these definitions by CMS?

Will future definitional changes be automatically adopted as having the force of law in Pennsylvania? If so, doesn't this entire process by-pass the regulatory review procedures mandated by Pennsylvania law?

Next, the Department's proposed adoption of the definitions contained in current federal regulations, Chapter 7 of the State Operations Manual, and Appendix PP-Guidance to Surveyors, conflict with relevant state law definitions and will create confusion in the provider community. Therefore, we recommend that the Department ensure alignment in definitions from a state law perspective and make clear that 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 and implementing regulations, remain unchanged.

Section 211.12(i) Nursing Services:

Minimum staffing levels must be raised to achieve better continuity of care in the nursing home setting. We support the Department's position that nursing home staffing levels be set at 4.1 hours of direct care per resident per day, not per shift as currently drafted. This standard is consistent with studies and recommendations that have been made for decades. **We note, however, that the change to the number of hours per resident per day reflected in the proposed revision to 211.12(i) alone is not sufficient to ensure that each resident's individual care needs are met. Other portions of the regulations must be revised to ensure that nursing homes can meaningfully care for residents.**

We recommend a multidimensional revision to Chapter 211 that:

- 1) Raises the minimum direct care staffing hours to 4.1 while prohibiting any concomitant decrease in ancillary staff hours.
- 2) Requires total direct care staffing hours for the facility to be adjusted based on facility needs and overall resident acuity as determined by monthly completion of the relevant sections of the facility assessment tool described in 42 CFR 483.40 (e) that pertain to resident acuity.

We also recommend that the Department of Health:

- 1) Work with the Department of Human Services to evaluate the adequacy of Medicaid rates to ensure that they support this staffing level increase. We acknowledge that the rise in staffing level will impact costs and we support increasing Medicaid reimbursement as necessary to support this change.
- 2) Develop strategies to address the staffing shortages facing the nursing home industry. At the press conference announcing these regulations, Acting Secretary of Health Beam noted that the Department of Health is working diligently on strategies to address workforce shortages. We recommend coordination with the Department of Education in increasing availability and support of nurse aide training programs as well as directing funds such as American Rescue Plan Act dollars towards ensuring that the required 4.1 hours per resident per day is achievable.



Eastern Pennsylvania Geriatrics Society
3576 West Chester Pike
P.O. Box 136
Newtown Square, PA 19073

Thank you for the opportunity to comment on the first package of nursing home regulations and we look forward to reviewing and commenting on the remaining packages of proposed changes to these regulations.

Sincerely,

The Eastern Pennsylvania Geriatrics Society

cc: Independent Regulatory Review Commission at irrchelp@irrc.state.pa.us