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OCT 26 2022

Independent Regulatory
Review Commission



October 26, 2022

Chairperson George D. Bedwick, Esq.
Vice Chairperson John F. Mizner, Esq.
Commissioner John J. Soroko, Esq.
Commissioner Murray Ufberg, Esq.
Commissioner Dennis A. Watson, Esq.
Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Sent via Electronic Mail to irrc@irrc.state.pa.us
Sent via Electronic Mail to RA-DHLTCRegs@pa.gov

**Re: Department of Health Final Form Long-Term Care Nursing Home
Facilities Regulations Rulemaking #10-221, #10-222, #10-223 and #10-224**

Dear Commissioners:

The Pennsylvania Health Founders Collaborative is an association of 40 health foundations located throughout Pennsylvania, that advocate for improved health policy to benefit Pennsylvanians. We have long been concerned with the outdated Pennsylvania nursing facility regulations. We commented extensively on all four of the draft packets. Although we are disappointed that some of our concerns were not addressed in the final form regulations, including the originally proposed increase in nursing hours per resident, nonetheless, we urge your support for these regulations. In particular, these final form regulations include some improvement with staffing and important improvements on reviewing applications for new ownership and enforcement.

Sincerely,

Ann S. Torregrossa

Ann S. Torregrossa, Director
PA Health Funders Collaborative
215-514-5843

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Chairperson George D. Bedwick, Esq.
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Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101
Sent via Electronic Mail to irrc@irrc.state.pa.us
Sent via Electronic Mail to RA-DHLTCRegs@pa.gov

**Re: Department of Health Final Form Long-Term Care
Nursing Home Facilities Regulations Rulemaking #10-221,
#10-222, #10-223 and #10-224**

Dear Commissioners:

I write in support of the final form nursing home regulations because these regulations provide a major step toward needed change in our current regulatory requirements for purposes of improving the standard of care in Pennsylvania's nursing homes and protecting nursing home residents. The final form regulations strengthen the current regulations especially around the issues of change in ownership and the application process, staffing, facility assessments, and medical directorship.

Background

My firm, David Hoffman & Associates, PC, is a national consulting firm dedicated to ensuring regulatory and clinical compliance and patient/resident safety and, to that end, has served as a Federal and State Monitor for nursing homes that are under Quality Corporate Integrity Agreements with the HHS-Office of Inspector General and state Attorneys' General Offices. Additionally, the firm consults with long-term care providers to assist them in achieving clinical and regulatory compliance. Prior to starting my firm in 2005, I served as an Assistant United States Attorney for the Eastern District of Pennsylvania and started in 1996 what became the Department of Justice's nursing home failure of care initiative. Before joining the DOJ, I was Chief Counsel for the Pennsylvania Department of Aging and in that role, among other responsibilities, was instrumental in implementing the Older Adults Protective Services Act addressing elder abuse and worked closely with the State's Long-Term Care Ombudsman Program.

I am also a Practice Professor of Law at the Kline School of Law at Drexel University who focuses on patient safety and compliance.

Nursing Home Ownership

On April 1 2022, the Kline School of Law at Drexel University convened a conference of experts to discuss private equity and healthcare and focused to a substantial extent on the nursing home industry. As the organizer and a moderator of this program, I can state unequivocally that the issue of nursing home ownership and the resulting negative consequences to residents of facilities whose owners who are driven solely by profit, without regard to resident care, are significant and deeply disturbing. Specific regulatory

requirements that address nursing home ownership, related party transactions, and financial transparency are critically important to ensuring that residents living in nursing homes are provided appropriate care and that the public funds used to pay for that care are spent in a compliant manner. The final form regulations provide significant enhancements in addressing this concern.

Staffing

Next, an incredibly significant and challenging issue facing owners and residents of nursing homes has been the lack of adequate staffing to meet resident needs based on their acuity. The final regulations increase staffing levels and importantly, the regulations require that only direct care provided to residents by RNs, LPNs and nurse aides count toward the number of direct care hours identified in the regulations.

Facility Assessments Performed on a Quarterly Basis

The requirement for a facility assessment, on a quarterly basis, is an important step towards improving nursing home resident care. The facility assessment is a valuable tool for evaluating resident acuity, ensuring adequate staffing and meeting the needs of the specific nursing home resident population. As noted in Appendix PP, State Operations Manual, Guidance to Surveyors, related to the facility assessment regulation: "The facility assessment will enable each nursing home to thoroughly assess the needs of its resident population and the required resources to provide the care and services the residents need. It should serve as a record for staff and management to understand the reasoning for decisions made regarding staffing and other resources, and may include the operating budget necessary to carry out facility functions." Nursing home resident populations change with some frequency so the value of performing a facility assessment on a quarterly basis (at a minimum) is enormous. Additionally, performing a meaningful facility assessment on a quarterly basis will improve internal quality assurance and will identify areas of regulatory non-compliance.

Medical Directors

Another key area that has been addressed in the final form regulations is that of medical directorship. Nursing home Medical Directors play a vital role in ensuring that medical care delivered to nursing home residents meets the appropriate standard of care. Beyond that requirement, pursuant to federal regulation, Medical Directors are mandated to: (1) Coordinate medical care and provide clinical guidance, (2) Oversee the implementation of resident care policies, (3) Ensure policies and procedures align with current standards of practice and (4) Identify and address issues with resident care or quality of life. *See*, CMS Requirements for Long-Term Care Facilities-Administration, 42 CFR Section 483.70(h). Additionally, the American Medical Directors Association notes that the medical director's role includes "the promotion of high-quality clinical care, assistance in reviewing the quality of care, advising on infection prevention and control issues, promoting employee health and safety, and being active in facility-related education and communication."

All too often, however, nursing home Medical Directors are absent from the nursing home, do not participate in Quality Assurance activities and abuse and neglect investigations, and do not oversee and deliver medical care as mandated by law and regulation. Additionally, Medical Directors are oftentimes unfamiliar with the regulatory requirements governing nursing homes, to the detriment of their patients and the entire resident population. The Department of Health's final form regulations strengthen the role of the Medical Director and require additional education that will improve compliance with state and federal requirements and, hopefully, will improve the standard of care being delivered in nursing homes across Pennsylvania.

Conclusion

In conclusion, the final form regulations provide a much needed step towards updating the Commonwealth's nursing home regulations and, more importantly, protecting nursing home residents. For the foregoing reasons, I support the final form regulations, urge passage by the IRRC, and expect vigilant enforcement by the Department of Health.

Thank you for the opportunity to provide comments in support of these important regulations.

Sincerely,



David R. Hoffman
President

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Madison Brame

From: Dan Kurdilla/Mary J Fallon <dkmjf@verizon.net>
Sent: Thursday, October 27, 2022 4:40 AM
To: IRRC
Subject: Dept. of Health Final Form LTC Nursing Home Facilities Regulations Rulemaking # 10-221, #10-222, #10-223 and #10-224.

CAUTION: ****EXTERNAL SENDER**** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioners:

As you know, Pennsylvania's nursing home regulations have not been updated in years. As a former Pennsylvania nursing home administrator and current friend of several Pennsylvania nursing home residents, I believe reform of this "system" is long overdue.

In my opinion the proposed regulations could be stronger, particularly in the areas of stronger resident rights provisions, higher staffing minimums, and greater staff training, but the final form regulations are a much needed step to update the Commonwealth's completely outdated nursing home regulations.

I strongly encourage IRRC to approve all four packages of the final form regulations. (If there is any further information you need from me in order to accept these comments, please let me know.)

Thank you for your consideration,
Mary J. Fallon

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OCT 27 2022

Independent Regulatory
Review Commission

OCT 27 2022

From: Michele Bard
To: DH.LTCRegs
Subject: [External] Comments for Proposed Regulations
Date: Wednesday, October 26, 2022 6:36:41 AM

**Independent Regulatory
Review Commission**

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To Whom It Concerns:

Please find below our comments regarding the Proposed Rulemaking Changes:

Rulemaking 2:

- Requiring facilities that undergo alteration or renovation to have a zero pressure room would create a financial hardship to most facilities. In a new construction situation this is a reasonable request, however many times an alteration or renovation is not so substantial as to allow for such an addition without significant cost and disruption to operations.

Rulemaking 3:

- Requiring a quarterly assessment from established facilities would add additional cost and workload without showing any significant changes quarter to quarter. With the current staffing environment it is imperative that staff be available to provide resident care and not be engaging in paperwork, just for the sake of paperwork that does not produce any meaningful information beyond what the current annual assessment provides.

Rulemaking 4:

- Returning personal property within 30 days of discharge/death: Once family is notified that personal property remains at the facility, what is the facility's obligation specifically as it relates to large items (i.e., shipping, etc.)? (201.18(b)(2))
- Annual review of policies and bylaws by governing body: How does this apply beyond immediate governing body, specifically if bylaws are set by a sponsoring organization that is above the local governing body? (201.18(d))
- Administrator meeting requirements: This creates an undue burden to meet with all of these levels of management, specifically the governing body, on a monthly basis. (201.18(e)(3))
- Facility providing resident's cash: Please include "bank business days" in the timeframe. We do not keep large sums of cash on hand, and if a request is made late on a Friday, providing the cash requested within 1 day would not be possible; likewise, if a check is requested on a Friday and Monday is a holiday, meeting the 3 day requirement would not be a possibility. However, including the "bank business days" in the description would provide the necessary flexibility to meet the resident need and the regulation requirement.
- Orientation/essential services/key personnel within 2 hours: We would request that it be 24 hours depending on definitions of these items. If a resident is admitted late in the

evening, meeting key personnel would be an undue hardship. Introduction to the professional staff on duty within 2 hours is reasonable, but the other introductions and orientation would be better served in a 24 hour window.

- Verbal orders dated and countersigned within 72 hours: This will create very specific challenges for physicians who also have practices outside of the facility. Keeping it at 7 days is far more functional, however 5 days would be a more reasonable option if the 7 day window must be shortened.
- July 1, 2023 Staffing requirements: Because staffing is primarily related to acuity, which can vary on a day-to-day basis, we would request that the PPD be the determining factor in setting staffing and that the specific ratios would be eliminated from the regulation.
- July 2, 2024 staffing requirements: Again, we would request that the staffing ratios be removed from the regulation, allowing the facility to best allocate staff based on the specific acuity and needs of the residents on any given day. Additionally, the 3.2 minimum PPD should be reviewed closer to the July 1, 2024 timeframe to determine if this is a reasonable minimum based on labor force shortages resulting in healthcare staffing limitations.

In closing, we are a 5 star facility that strives to provide excellent care to our residents at all times. Many of these items would create both financial and/or clinical challenges depending on the exact circumstances. We work diligently to comply with the multitude of regulations already in place and believe that our comments above would allow for improved oversight for the state while not creating an undue burden on our facility that would impede our ability and flexibility to meet our residents' needs on a day-to-day basis.

Michele

Michele J. Bard, MBA, CPC

CFO

St. Anne's Retirement Community

3952 Columbia Ave.

West Hempfield, PA 17512

P: (717) 285-1412

F: (717) 285-5950



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From: Lillian Black Leaser
To: DH.LTCRegs
Subject: [External] Lori Gutierrez, Deputy Director office Policy
Date: Wednesday, October 26, 2022 8:15:36 AM

Independent Regulatory
Review Commission

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My husband suffered from Parkinson's. He went to Gwynedd House and received excellent care. I went every day and only witnessed wonderful care for him and the other residents. Foulkeways is doing a suburb job and should be exempt from Federal Medicare regulations imposed on us by the state.

I appreciate you attention.

Lillian B Leaser
1609 Foulkeways
Gwynedd PA 19436

Sent from the all new AOL app for iOS

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From: [redacted]
To: [redacted]
Subject: [redacted]
Date: [redacted]

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From: [redacted]

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Subject: [redacted]
Date: [redacted]

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147 West State Street
Kennett Square, PA 19348

(610) 444-2577
www.fhkennett.org

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Independent Regulatory
Review Commission

Independent Living
Personal Care
Skilled Nursing Care

Linden Hall is a skilled facility of Friends Home of Kennett Square, Pennsylvania.

Friends Home is a non-profit organization that has served the elderly of the community since 1898.

Friends Home founded Linden Hall in 1980 to provide skilled nursing care to the elderly of the community.

I have had the privilege of serving as the Administrator of Linden Hall for the past ten years.

Linden Hall has been surveyed annually by the Pennsylvania Department of Health using the same survey method the DOH uses for all Medicare and Medicaid Certified Facilities. The surveys at Linden Hall, a twenty bed Facility, have been unplanned, usually for 2-3 days with Medicare/Medicaid federally survey qualified surveyors.

Linden Hall has had several deficiency free surveys and has not had any complaint surveys.

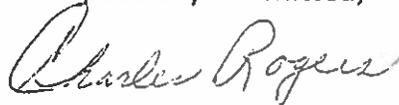
The Department of Health Surveyors have had no difficulty surveying Linden Hall and applying the state DOH licensure regulations to our facility in my ten years at the facility.

Linden Hall has provided high-quality person-centered care to its' residents

Where friends become family

since 1980. The staff has been able to provide quality care and life to our residents by giving more of their time and expertise to our residents. It is our strong opinion that having to spend more staff time with federal regulations to ensure compliance with Medicare/Medicaid regulations that are related to fiscal compliance will take away from the high quality of care we provide and have provided over the past forty plus years.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Charles Rogers".

Charles Rogers, NHA

Administrator

OCT 27 2022

Independent Regulatory
Review Commission

RA-DHLTCRegs@pa.gov

October 25, 2022

UPMC Senior Communities appreciates the opportunity to submit issues of concern and support on the updated DOH final form regulations.

UPMC Senior Communities serves over 3,000 residents daily in skilled nursing, memory care, assisted living, personal care, and independent living in both Continuing Care Retirement Center (CCRC) and stand-alone communities in 28 facilities in 11 counties including Venango, Mercer, Lawrence, Butler, Allegheny, Washington, Westmoreland, Clinton, Potter, Tioga, and Lycoming.

Additional responsibilities for Medical Directors. Reference: Package 4, §211.2(d)

- The COVID-19 pandemic has highlighted the impact of the medical director on a nursing home's timely response to emerging scientific guidelines and implementation of effective resident care policies.¹ We concur with the Department's additional responsibilities (annually 4 hours continuing medical education) of the medical director, and it is imperative to engage them as integral members of the LTC health care team. This can be achieved by acknowledging their medical expertise for improving outcomes, providing them with the authority for decision making, and clearly defining the role.²
- UPMC Senior Communities would recommend an exemption if the medical director were certified by American Board of Post-Acute Long-Term Medicine (AMDA CMD) given that CME is required to maintain certification.

Simultaneous notice requirements in the event of closure or change in ownership and no timeline for DOH evaluation for changes in ownership. Reference: Package 2, § 201.23 (c.3) and Package 3, §201.12 (a)-(c)

- Unless a corresponding deadline for the Department is enacted to ensure timely review of the application, UPMC Senior Communities believes providers must retain control on the timing of communication to prevent uncertainty and discord among staff, residents, and their families. Notifying the public in tandem with the Department presents risks to staff retention and disruption to patient care.

Facility Assessments required quarterly (rather than annually) Reference: Package 3, §201.14 (j)

- Given the persistent workforce and related challenges in long-term care industry, we believe the quarterly assessments only serve to further strain the resources and capacity of our staff (as described below), creating additional administrative burden when efforts could be directed toward patient care which would be better suited.

Staffing shortages only increased as COVID-19 surged in nursing homes across the Commonwealth and the shortages seemed to have taken a toll on nursing homes, including UPMC Senior Communities as illustrated in Exhibit 1 in vacancy rates.

UPMC Senior Communities has 567 current positions in recruitment and vacancy rates in the following disciplines are noted below. We are currently using third-party agency staffing for 145 positions. Pre-pandemic, UPMC Senior Communities spending for agency staff per month was approximately \$800,000. Post-pandemic the spending has ballooned to \$3.3 million per month.

¹ [Nursing Home Medical Directors Should Be Named Publicly, Bill Urges | MedPage Today](#)

² [The Role of the Medical Director in Ontario Long-Term Care Homes: Impact of COVID-19 - Journal of the American Medical Directors Association \(iamda.com\)](#)

At multiple times over the past year, we have needed to refuse to accept new admissions of resident needing care due to staffing limitations.

RN/LPN → 37.82 % vacancy rate

CNA/NA → 33.23 % vacancy rate

*PP=Percentage Points

Exhibit 1

Employee Groups	2019	2020	2021	2021 vs 2020		2021 vs 2019	
				PP	%	PP	%
Overall	10.16	15.06	22.25	7.19	47.7%	12.09	119.0%
RN/LPN	15.8	27.56	40.55	12.99	47.1%	24.75	156.6%
CNA/NA	13.45	18.48	30.01	11.53	62.4%	16.53	122.6%

Observations:

Overall Vacancies have increased by 7.19 percentage points or 47.7% during pandemic, and by 12.09 percentage points or 119% prior to onset of pandemic

RN/LPN Vacancies have increased by 12.99 percentage points or 47.1% during pandemic, and by 24.75 percentage points or 156.6% prior to onset of pandemic

CNA/NA Vacancies have increased by 11.53 percentage points or 62.4% during pandemic, and by 16.53 percentage points or 122.6% prior to onset of pandemic

Thank you for the opportunity to submit comments.

Sincerely,



Mark D. Bondi, JD. President, UPMC Senior Communities, bondimd@upmc.edu

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THE PENNSYLVANIA SOCIETY
FOR POST-ACUTE AND
LONG-TERM
CARE MEDICINE

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Review Commission

President
Molly Langford, MSN, CRNP

October 27, 2022

President-Elect
Dilip K. Elangbam, MD, CMD, FACP

E-mail Transmission
Ann Chronister, Director,
Bureau of Long-Term Care Programs,
Department of Health

Immediate Past President
Brian B. Kimmel, DO, CMD

Treasurer
Daniel R. Steiner, MD, CMD

Secretary
Charles M. Wasserman, DO, CMD

Re: Proposed rulemaking 10-223 (Long-term care nursing facilities, Proposed Rulemaking 3)

Dear Director Chronister,

Board of Directors
Laurissa Ash, CRNP
Schuyler Barbour-Johnson, MSN,
CRNP, ANP-BC
Gary B. Bennett, MD, CMD
Dillard F. Elmore, DO
Todd H. Goldberg, MD, CMD
Sean Heffelfinger, MD, CMD
Danielle A. Snyderman, MD, CMD
Larry W. Spector, DO

The Pennsylvania Society for Post-Acute and Long-Term Care Medicine represents long-term care professionals committed to the improvement of quality care for patients across the long-term care continuum. We would like to thank you for the opportunity to comment on the proposed rule 28 PA Code, Part IV Subpart C. Long-Term Care Facilities.

Executive Director
E. Marie Queen

The Society would like to register its support of § 211.2. Medical Director, and its provision that Medical Directors should complete a minimum of four (4) hours of continuing medical education (CME) pertinent to the field of medical direction in post-acute and long-term care medicine annually. Requiring education specific to the clinical care of this patient population and management unique to this setting, supports the delivery of quality care to this fragile population.

The Society would also like to register its support for § 211.12. Nursing services, and the revised requirements for minimum staffing which now take into consideration both patient safety and the healthcare workforce challenges being experienced in Pennsylvania and nationally.

In summary, we believe that these areas of the proposed rule represent an important step forward in modernizing nursing home regulations that focus on improving quality and safety in Pennsylvania's nursing facilities.

Sincerely,


Molly Langford, CRNP
President, PMDA

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Madison Brame

From: Pastor Angela Finet <pastorangela@mountvillecob.org>
Sent: Thursday, October 27, 2022 1:37 PM
To: IRRC
Subject: Support for Final Form Regulations

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Dear commissioners,

As a congregational minister who cares deeply for the needs of many beloveds receiving care in Pennsylvania nursing homes, I strongly encourage IRRC to approve all four packages of the final form regulations.

Sincerely,
Rev. Angela Finet, MDiv

--

Mountville Church of the Brethren
60 Clay Street, Mountville, PA 17554
717-285-5122
Sharing the love of Jesus in the neighborhood

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Madison Brame

From: Susan Lankin-Watts <lankinwatts@gmail.com>
Sent: Thursday, October 27, 2022 1:31 PM
To: IRRC
Subject: Nursing Home Regulation

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Hello,

Regarding your upcoming October 28th meeting to review Nursing Home Regulations, I strongly encourage IRRC to approve all four packages of the final form regulations.

thank you,

Susan Lankin - Watts, MSS, LSW

Text: 610-389-6036

lankinwattstherapy@gmail.com

www.communityklezmer.org

www.susanwattsmusic.com

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Madison Brame

From: Ann Tydeman Solomon <ann.tydemansolomon@gmail.com>
Sent: Thursday, October 27, 2022 1:38 PM
To: IRRC
Subject: Nursing Home regulations

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Dear Commissioners:

As you know, the PA nursing home regulations have not been updated in years. As somebody who has had a loved one in a facility, I know this overhaul is much needed and long overdue.

While the proposed regulations could be stronger, particularly in the areas of stronger resident rights provisions, higher staffing minimums, and greater staff training, they are a much needed step in the right direction and will improve PA's completely outdated nursing home regulations.

I strongly encourage IRRC to approve all four packages of the final form regulations. (If there is any further information you need from me in order to accept these comments, please let me know.)

Thank you

Ann Tydeman-Solomon
231 W. Haines
Philadelphia, PA 19144
ann.tydemansolomon@gmail.com

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From: Delaney, Beth <delaney@upenn.edu>
Sent: Thursday, October 27, 2022 3:12 PM
To: IRRC <irrc@irrc.state.pa.us>
Subject: urge you to approve all four packages of the final form regulations

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Dear Commissioners:

As a former board member of an advocacy organization for older adults and nursing home residents, I urge IRRC to **approve all four packages of the final form regulations**. Thank you for your consideration,

Beth Delaney
Director of Gift Planning
Phone: 215-898-6171
delaney@upenn.edu
<http://giving.upenn.edu/gift-planning/>

University of Pennsylvania
Office of Gift Planning
Suite 300
2929 Walnut Street
Philadelphia, PA 19104-5099

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Join me as a member of Penn's Harrison Society!
<https://giving.upenn.edu/giving-societies/the-charles-custis-harrison-society/>



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 **INSPIRING IMPACT**
UNIVERSITY of PENNSYLVANIA

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From: James Gaskins <lojimer3@gmail.com>

Sent: Thursday, October 27, 2022 3:41 PM

To: IRRC <irrc@irrc.state.pa.us>

Subject: Reform

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I strongly support the new regulations

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From: [Dave Kreimer](#)
To: [DH.LTCRegs](#)
Subject: [External] Foulkeways should be exempt
Date: Thursday, October 27, 2022 8:25:46 AM

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Foulkeways does not receive Medicare funds. Has not since 2017. They should not have to bear the costs of administration for no benefit. Their level of care is superlative. Leave them alone to continue their most excellent work.

I am a family member of a resident in their skilled nursing care unit and am highly satisfied. Please don't create unnecessary obstacles for this organization.

Sincerely,

Dave Kreimer

Sent from [Mail](#) for Windows

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OCT 27 2022

**Independent Regulatory
Review Commission**



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CITY OF PHILADELPHIA
CITY COUNCIL

Isaiah Thomas
Council Member, At-Large
City Hall, Room 330
Philadelphia, PA 19107

October 27, 2022

To the IRRC,

The rampant sales of nursing homes are hurting seniors, caregivers, and our communities. Since 2018, more than 100 Pennsylvania nursing homes have been reorganized, sold, or changed ownership, including facilities like Somerton Center and Powerback Nursing Home here in Philadelphia.

Last March, we unanimously passed bill #210331, which ensures continuity of care by creating a 90-day transition period where new owners maintain or improve existing staff standards, wages, and benefits to ensure that experienced staff remains at the bedside. I stand in support of workers and union leaders as they push for the Department of Health's third package of final regulations regarding change of ownership that will improve transparency and accountability in nursing home sales.

The Department of Health's change of ownership regulations will expand these protections statewide. I believe this will help protect residents and workers by thoroughly vetting anyone seeking to purchase nursing homes in Pennsylvania, including a more detailed disclosure of the proposed owners' regulatory history, financial capacity, and corporate structure. The new regulations also grant the Department greater authority to prevent irresponsible owners with long histories of poor care from taking over nursing homes in our Commonwealth.

We have a unique opportunity to ensure that those entrusted with the lives of these residents are capable, responsible, and focused on care. For these reasons, I am offering my support for the final regulations by the Department of Health.

Sincerely,

Council Member Isaiah Thomas
Philadelphia City Council, At-Large

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