

PACKAGE 3

- **Strongly encourage the Commission to vote “NO” on Package 3 today**
- **Significant concerns with Change of Ownership (CHOW) provisions:**
 - Simultaneous notice requirement (we support transparency, but the provider should manage timeline to ensure uninterrupted care)
 - Note: Same issue applies with Closure notice requirements in Package 2
 - Giving notice so early is especially inappropriate in cases where DOH ultimately disapproves or the CHOW doesn't otherwise go through
 - There is a significant increased burden on providers for document submission, yet no accountability for DOH to make determination in reasonable timeframe
 - Potential for delays in review by DOH is very high, with negative consequences to the facilities
 - Timeliness of DOH's decisions is critical to preventing closures of NFs that are under significant stress and assuring that residents receive best care possible
- **Requiring Facility Assessment quarterly rather than annually does not improve quality in meaningful way and creates an unnecessary administrative burden**
 - DOH has not offered an objective assessment of time and energy required
 - Providers, the public, and DOH already access and review similar information on a frequent basis from other sources such as the Payroll Based Journal, Quality Measures, required incident reporting, and the Federally required QAPI program
 - Request deletion of the quarterly facility assessment from the regulatory package unless DOH can produce evidence that more frequent assessments actually result in improved quality
- **Again - Vote NO so Department can resubmit this package and:**
 - Remove requirement for simultaneous notice of a CHOW and grant providers flexibility in timeline
 - Include a reasonable timeframe that the Dept must return CHOW determinations
 - Remove the requirement for a Facility Assessment to be completed quarterly

PATH FORWARD

- **Thank:**
 - Dept for collaboration in reaching more reasonable staffing requirements, and
 - Administration and General Assembly for providing a long overdue MA rate increase
- **Re-emphasize need for additional funding to coincide with the year two staffing increases**
 - Given the lack of any broad rate increase for nearly a decade, Nursing Homes have been required to “do more with less” for too long
 - We strongly urge the Administration and General Assembly to provide the continuing MA rate increases that are needed to support this initiative in the coming years
- **Again - On these Final Form Regulations:**
 - We urge you to disapprove Package 3 so that the Dept can make the needed revisions
 - Given the reality we are at in this final stage, we also reiterate the need for continued support and collaboration from the Department throughout implementation as ambiguous or unachievable requirements from the other three packages are applied in the real world. This includes:
 - Being responsive to input from providers,
 - Offering technical assistance and education rather than sanctions,
 - Supporting a streamlined exemption process to reduce compliance burden of PP facilities, and
 - Staying in tune with the realities of the workforce crisis
- **I and the staff at LeadingAge PA remain ready and willing to assist throughout this process.**

INTRO

Garry Pezzano, President and CEO for LeadingAge PA, which represents over 380 member organizations from across the continuum of aging services in Pennsylvania. I am proud of the members we represent and their pursuit of excellence.

1. Opening comments:
 - On behalf of LeadingAge PA members and staff, we are grateful to the administration for their responsiveness to our concerns, recommendations, and unprecedented collaboration in order to improve care and services to older Pennsylvanians.
 - We especially celebrate the successful negotiations for staffing requirements and reiterate the need for ongoing funding increases to meet year 2 staffing levels and mitigate the Medicaid funding shortfalls.
2. While we acknowledge the progress made, we have the responsibility of highlighting issues still requiring attention.
3. We look forward to and appreciate continued collaboration with the Department through the development of interpretive guidelines and as issues arise throughout implementation if these final form regulations are passed.

AREAS OF CONCERN

PACKAGES 1, 2, AND 4

- Will spend most of my time discussing Pkg 3 in a moment, but must briefly address the other three pkgs too.
- We are offering a public plea for the DOH be responsive to our serious concerns remaining in Packages 1, 2, and 4, even if they are approved as-written today.
- The Dept has declined to re-submit these four regulatory packages as a single proposal, and we have been clear in our comments on why this approach was problematic. As a result, more issues will likely continue to become apparent throughout implementation. Some of the issues we remain concerned about include:
 - Package 1: Imposition of federal rules on 3 Private Pay providers creates an undue burden
 - Dept has been too cavalier about financial and procedural burden on these valued homes
 - Appreciate that DOH has exempted these facilities from completing the MDS, but many of the additional Federal requirements are still not appropriate
 - Urge DOH to work with these providers to create a clear and streamlined exemption process
 - Package 2: Requirement to receive approval from Dept to use rooms offline for 1+ years is too vague
 - Appreciate revisions to the Final Form regulation which restored some flexibility, but still concerned with vagueness and timing of the new language
 - Delays or denials by the Department in granting approval could create unnecessary barriers and exasperate an existing access to care issue
 - Package 4: Requiring provider to make employment determinations for employees with criminal convictions (and to document that information in personnel records) creates a serious liability issue
 - Providers risk breaching attorney/client privilege in order to comply
 - Puts liability on providers while offering no protections or guidance
 - Requirement is unfairly applied in this manner to just one sector of the health care field
 - The Dept should not be trying to create law using the regulatory process.
- All of these issues, if passed, will require continued attention and collaboration from the Dept to address the various problems that will likely arise.

Written Testimony of



Delivered by

Zach Shamberg

President and CEO

**For a Public Hearing on the
Dept. of Health's Proposed Nursing
Facility Regulations: Final Rulemaking**

**Delivered before the
Independent Regulatory Review
Commission**

October 28, 2022

Chairman Bedwick, members of the Independent Regulatory Review Commission — thank you for the opportunity to speak today.

My name is Zach Shamberg, and I am the president and CEO of the Pennsylvania Health Care Association. We are proud to represent long-term care across the commonwealth, including both for-profit and not-for-profit nursing homes, personal care homes and assisted living communities.

There is a great deal to say regarding these four regulatory proposals — proposals that will ultimately have a dramatic impact on nursing home operations in Pennsylvania. But because we only have five minutes this morning, I will focus on just two of the Department of Health's proposed rulemakings.

First, Rulemaking 4: in July 2021, this proposal initially included an unfunded staffing mandate that would have required nursing homes to hire nearly 10,000 workers at a cost of upwards of \$630 million each year. Not only was this unattainable, but it would have further exacerbated the 'access to care' crisis throughout the commonwealth.

In the time since we last provided comment on this proposal, the Wolf administration and the Department of Health, to their credit, brought PHCA and other stakeholders to the table to forge the best path forward to enhance and support care.

We are proud to tell this commission that the updated proposal in Rulemaking 4 reflects those collaborative efforts, and we strongly support this new rulemaking. With a focus on realistic staffing ratios and overall staffing minimums, providers will now have an attainable goal — especially given the increased Medicaid funding that was approved by the General Assembly and Governor Wolf in the most recent state budget.

I must say, however, that while a Medicaid increase was approved this year, reimbursement rates for long-term care providers still fall short of the true cost of care. We have taken big steps in the right direction with this proposal, but continued investments will be necessary to sustain care — and to support these new mandates — for our aging population.

We are grateful to the Department of Health and the Wolf administration for bringing us to the table, and we hope that, moving forward, continued collaboration will take place between our providers, the Department, and its surveyors so we can ensure the industry and its regulators are operating in unison, and measuring compliance in a reasonable and fair manner — especially as these new staffing ratios are implemented.

Once again, we were proud to work on — and we're proud to support — Rulemaking 4.

Unfortunately, we have remaining questions, concerns and reservations regarding Rulemaking 3.

Rulemaking 3 is focused on revising the change of ownership process in Pennsylvania — something we have been advocating for since 2019. We've fought for a more robust process to ensure qualified and proven providers are operating in the commonwealth. We believe a more robust process will help ensure quality care for our nursing home residents.

But this proposal does not create the process we were hoping for. This final version is vague, confusing, and impractical in its demands. It also consistently fails to provide an explanation for the new information that will be requested during a change of ownership or license renewal — and even why it will be beneficial to the process.

Moreover, this rulemaking, from its initial proposal, has essentially morphed into a totally new regulation. Too many dramatic provisions have been added since its original draft. We have bypassed the open, public process that should be in place, which is a violation of this entire regulatory review process.

This is our opportunity to comment on Rulemaking 3. Just minutes before a final vote. This is too important to be forced through the process without ample time for input.

Among a myriad of issues, this proposal will require costly, annual financial audits for struggling providers, it will require a public comment period for every nursing home CHOW that will return us to the days of 'Certificate of Need,' it will require information that violates Right to Know Law standards, it will require information that won't achieve the desired goals of 'transparency' and 'accountability,' and it will demand information without explanation.

Just as we noted in our written comments, we are requesting that this commission delay the implementation of Rulemaking 3. Give stakeholders ample time to work with the Department — just as we did, successfully, on nursing home staffing minimums — to develop a meaningful regulation that can create the change we are all hoping for in Pennsylvania's long-term care continuum.

Thank you for the opportunity to speak today, and for allowing us to be a part of this process.

Thank you for having me speak today. My name is Matthew Yarnell, and I am the President of SEIU Healthcare Pennsylvania. Our union brings together tens of thousands of healthcare workers across the Commonwealth, approximately 4,000 of whom are nursing home workers who provide care to our most vulnerable Pennsylvanians.

For decades, nursing home workers have raised the alarm about our broken long-term care system. Problems like poor staffing, profit-driven business practices, and rampant facility sales to irresponsible owners existed long before this pandemic, but Covid-19 exposed how catastrophic this crisis is. It showed us that we can no longer wait to prioritize quality bedside care — residents can't wait, their families can't wait, and frontline workers definitely can't wait any longer.

Pennsylvania's nursing home workers commend the Department of Health and the Wolf Administration for moving these regulations forward and the General Assembly for enacting a historic investment and funding reform to bedside care after COVID devastated us and our residents. We urge the Independent Regulatory Review Commission to vote to approve them. These regulations, especially the long-needed updates to staffing ratios and the change of ownership process, will transform this industry, which is crucial to caring for our state's aging population.

The proposed staffing ratios embodied in Package 4 of these regulations come at a critical time. Staffing levels have long been tied to good health outcomes, but in this past year even more research has emerged showing that low staffing levels and poor infection controls were a key factor in causing resident deaths during the pandemic. Today, it's common for certified nursing assistants to be asked to care for as many as 20, 30, or even more residents on a single shift. Providing quality care to that many residents is quite frankly *impossible*. Whether it's unanswered call bells, developing bed sores from lack of movement, or getting cold food, nursing staff don't have time to do the basics, let alone offer residents personal time and attention they need and deserve.

Safe staffing ratios will also allow us to address the workforce crisis in long-term care. Even before the pandemic, CNAs in nursing homes had a 128% staff turnover rate. That has only gotten worse. Caregivers are leaving the bedside in droves – understaffed, burned out, and unable to provide the care they know their residents need. People become caregivers because they have a passion for caring for our residents—and when understaffing makes that impossible, people leave. Fewer and fewer people are choosing to join this profession. It's because working conditions in our nursing homes are unacceptable. To solve this crisis we need to bring thousands of new staff into the industry, and we need to raise standards so that caregivers return to the bedside. That means increasing staffing so that caregivers can do their jobs, as

well as raising wages so they're not living in poverty. These regulations are a key step forward in making these jobs ones that our caregivers want to stay at and return to.

The staffing ratios put forward here are the product of years of work and significant compromise; workers, industry, regulators and the state legislature came together to agree on achievable staffing levels and ensure the resources were there to provide them. Our union fought for, and the union ultimately passed, \$600 million in new funding so that facilities would have the money to staff at these levels. Now we call on you to take the final step and vote to approve them.

I also want to share how significant it is for these updated nursing home regulations to include a public and transparent change of ownership process. Our members have talked about how they experienced their own kind of "pandemic" well before anyone else: Rampant and unchecked sales to irresponsible operators, which have plagued the PA nursing home industry for too long. It is critical that we put a stop to irresponsible owners acquiring more facilities and ensure that every nursing home owner is capable of and motivated to care for residents. Too often are nursing homes sold to owners with poor financial and regulatory histories, who try – and sometimes succeed – in stripping away caregivers' wages, benefits, seniority, and protections. I've heard stories from some workers who experienced sales of their facilities to bad actors, where despite receiving funding from the state, their homes began to run out of food and basic medication for residents.

These regulations will significantly expand the Department of Health's authority to ensure responsible ownership, so residents, their families, and caregivers will not suffer like they have by bad actors. Most importantly, these regulations introduce a public notice process so caregivers, residents, their families, and the Ombudsman all have a voice in the case of a facility sale and can weigh in. Resident care is too important to be decided behind closed doors, and this updated, public process when a nursing home is sold will help protect residents and workers.

There is still much more work for us across the industry, policy-makers, regulators, consumers, union caregivers, and their elected representatives to do in improving care in our nursing homes. I look forward to continuing to work with the Department of Health, elected leaders, and the industry leaders in making these transformative nursing home reforms a reality. We have already been able to together win historic nursing home funding, 70% of which is meant to go to bedside care. This funding, ongoing training initiatives, and, now, these nursing home reforms will help keep caregivers at the bedside and guarantee Pennsylvanians the care they deserve.



**Independent Regulatory Review Commission (IRRC)
Public Comments on Department of Health Final Nursing Homes Regulations
October 28, 2022**

On behalf of the Delaware Valley and Greater Pennsylvania Chapters of the Alzheimer's Association, including our network of Pennsylvania advocates, we thank the Independent Regulatory Review Commission for your work reviewing the Department of Health's final package of nursing homes regulations, and for the opportunity to provide public comment on them today. We first would like to acknowledge the Department of Health staff for their years of work on this regulatory package and efforts to be inclusionary, transparent and accessible to the Alzheimer's Association and other advocate organizations throughout this process. I also would like to thank the many advocacy organizations and key stakeholders for ensuring that the health, well-being and safety of residents and their families were at the core of discussion.

The Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support, and research. Our mission is to eliminate Alzheimer's and other dementia through the advancement of research; to provide and enhance care and support for all affected; and to reduce the risk of dementia through the promotion of brain health. Together, our Pennsylvania Chapters focus on carrying out our mission for the nearly 400,000 Pennsylvanians living with Alzheimer's or other dementia, the 401,000 Pennsylvanians providing unpaid care for them and countless others impacted by this devastating disease. We also advocate for person-centered, high quality care for residents in long term care facilities living with Alzheimer's or other dementia, making up nearly half of the residents in nursing homes alone.

The need for a complete rewrite of Pennsylvania's dated nursing home regulations was necessary prior to the COVID-19 pandemic; however the devastation witnessed in Pennsylvania nursing homes throughout the pandemic brought into sharp focus the need for urgent, comprehensive changes. This package of regulations includes significant enhancements that will further protect safety and well-being of residents in nursing homes, specifically: enhancements and safeguards related to change in ownership and new facility owners, transparency of this process to residents and families, and an opportunity for public comment; additional notification to residents and families when a facility announces closure; and once per quarter facility assessments. For these reasons, and in recognition of the enormous amount of work by all parties that has gone into us being here today, the Alzheimer's Association will support the final package of regulations.



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That being said, it is vital that I also share the Association's disappointment that the fourth package did not further and more specifically safeguard those residents who are the MOST vulnerable in nursing homes and make up nearly half of resident census - those living with Alzheimer's or other dementia. These individuals have unique care needs that fluctuate on a daily basis, challenging professional care staff to pivot care delivery and adapt to the individual's needs. As a result, the Alzheimer's Association advocated for competency-based dementia training requirements and continuing education for all staff, comprehensive person-centered resident care plans, and staffing models based on resident acuity, all evidence based practices in place in many states.

We were disappointed to see the fourth package of regulations only reference minimal dementia training as part of staff orientation, a reliance on federal regulations to adopt resident care plans, and allocation of a staffing ratio that does not allow for the facility's flexibility or ability to fully meet the unique care needs of those living with dementia. We look forward to continuing our work with the Department of Health, the Pennsylvania General Assembly and stakeholders through the implementation process of these regulations, and other means, to more comprehensively address some of these top concerns.

With these reservations, we do also believe the regulations before you today include important enhancements and, recognizing the time constraints in the process, urge the Independent Regulatory Review Committee to vote in favor of the final nursing home regulatory packages. Thank you again for the opportunity to share our comments with you today.

Respectfully submitted,

Jennifer Ebersole, Director of State Government Affairs - PA
Alzheimer's Association
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OFFICE OF THE LONG-TERM CARE OMBUDSMAN

EST. WITHIN THE PA DEPARTMENT OF AGING

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

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 Office of the Long-Term Care Ombudsman works to resolve concerns on behalf of individuals residing in long-term care settings, including skilled nursing facilities. Ombudsmen empower residents by educating them on their rights under federal and state law and advocate for those who are unable to advocate for themselves, to ensure that they receive the highest quality of care. We also work to bring about change that improves care at the local, state, and national levels.

Since 2018, and especially as a result of the pandemic, the Pennsylvania Department of Health has worked to update its regulations, and our advocacy office appreciates the opportunity to have consulted and offered comment on the proposed rulemaking packages, which will help to improve the quality of care and quality of life for those living in nursing homes across the commonwealth.

While I am disappointed that the final form regulations do not include higher staffing minimums, greater emphasis on resident rights, and more accountability for providers who abdicate their commitments to care for our most vulnerable elders and individuals with disabilities, the proposed regulations do include much-needed improvements and transparencies in the provision of skilled nursing care in Pennsylvania.

Among key improvements are the change in ownership notification requirements, heightened scrutiny of a proposed provider's financial and performance history, and clarified language throughout to address the failures of care observed during the COVID-19 public health emergency.

Specifically:

§ 201.12. Application for license of a new facility or change in ownership.

- § 201.12a. Notice and opportunity to comment. (New Section on final-form) - Section 201.12a is a new section providing notice about an application for a new facility or change in ownership and an opportunity to comment.
 - Section 201.12a(a) requires a new facility applicant to provide notice to the Long-Term Care Ombudsman.
 - Section 201.12a(b) requires a change of ownership applicant to provide notice to residents, resident representatives, employees, and the Long-Term Care Ombudsman.
 - Section 201.12a(d) states that the Department post notice of the receipt of an application for license of a new facility or change in ownership, and a copy of the completed application form submitted under Section 201.12 on the Department's website and provide a 10-day public comment period.

§ 201.12b. Evaluation of application for license of a new facility or change in ownership

- Section 201.12(b)(7) adds new provisions including a requirement that a prospective licensee submit the names, addresses, e-mail addresses, and phone numbers of a parent company, a shareholder and any related party of the persons identified in paragraphs (1) through (6).
 - Section 201.12(b)(8) adds requirements for annual financial reporting with specific requirements to improve transparency into ownership and related parties.
 - Section 201.12(b)(13) adds a new requirement that a prospective licensee is required to identify whether an immediate family relationship exists between a prospective licensee, a person identified under paragraph (1) (regarding ownership and ownership interest) and a person under paragraph (7) (regarding parent companies, stakeholders, and related parties).
 - Section 201.12b(b) adds the Department will post notice of the approval or denial of the application on its website.

The Office of the Long-Term Care Ombudsman, on behalf of the individuals in Pennsylvania's skilled nursing facilities, supports the proposed regulatory changes, noting that they are the minimum standards for how care is delivered. These regulations promote practicable accountability, but are not a metric of quality of that care.

Sincerely,



Margaret Barajas

State Long-Term Care Ombudsman | Office of the Long-Term Care Ombudsman
Commonwealth of PA Office of Advocacy and Reform
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*"Advocate for those who can't,
support those who can,
and ensure all long-term care consumers
live with dignity and respect."*

Cc: irrc@irrc.state.pa.us

Cc: RA-DHLTCRegs@pa.gov



October 25, 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
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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:

Community Legal Services (CLS) appreciates the opportunity to express our support for the Department of Health's final form regulations concerning long-term care nursing facilities. CLS provides free legal assistance to low-income Philadelphia residents in civil matters affecting the most essential human needs, including housing, employment, public benefits, access to health care and long term supports and services. Our Health & Independence Unit provides legal advice and representation to nursing home residents concerning residents' rights, payment issues and quality of care. We work closely with our local long term care ombudsman programs and engage in policy advocacy in this area.

In the spring of 2020, as COVID-19 began to ravage nursing facilities, we joined with CARIE and other aging and disability advocacy organizations across Pennsylvania to advocate for policy changes to make nursing facilities safer. We identified the need for revisions to the Department of Health's outdated nursing facility licensing regulations to better protect residents, and provided the Department with extensive recommendations for revisions. We have also commented on each of the four packages of proposed regulations. While the advocacy community had hoped the final form regulations would include the proposed regulations' higher nursing staffing minimum of 4.1 hours per resident per day, the final form regulations are an important step toward needed change in current policies to improve the standard of care in

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Pennsylvania's nursing homes. The final form regulations contribute – and in fact are critically important - to the protection of public health, safety and welfare, and we therefore strongly urge you to approve them.

While the final form regulations contain provisions throughout which modernize and strengthen protections for residents, we focus our comments on some of the key improvements. First, CLS strongly supports the final form regulations' increases to nursing staffing minimums and ratios. The problem of poor quality of care in nursing facilities has been shameful and well known for decades. However, with the arrival of the COVID-19 pandemic, the inadequate staffing levels present in many nursing facilities contributed to a catastrophic loss of life that finally drew public attention to the need to improve care in these facilities. Myriad reports and academic studies have established that nursing staffing levels are the key to quality care in nursing facilities and that staffing levels below 4.1 hours per resident per day result in adverse care outcomes.¹

Adequate staffing means the difference between a resident receiving assistance walking to and using the bathroom rather than falling trying to ambulate by themselves or being left lying in their own waste for long periods. It means the difference between residents getting help out of bed or being turned and repositioned rather than developing painful, life-threatening pressure ulcers. It is the difference between staff having time to observe infection control procedures rather than risking spreading disease because they don't have time to wash their hands or change gloves between patients. It is also the difference between staff having time to contribute to residents' quality of life by interacting with them instead of rushing past trying to complete essential tasks.

Although we were disappointed that the final form regulations contain lower per resident per day nursing staffing requirements than on proposed, even the more modest staffing increase and the ratios in section 211.12 will improve the availability of staff to meet residents' daily needs and are tremendously important. The ratios will also make it easier for residents and their

¹ See Abt Associates for U.S. Centers for Medicare and Medicaid Services, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001., Phase II, Vol. I. <http://phinational.org/sites/phinational.org/files/clearinghouse/PhaseIIVolumel ofII.pdf> "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001., Phase II, Vol. II. <http://phinational.org/sites/phinational.org/files/clearinghouse/PhaseIIVolumell ofII.pdf> "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001., Phase II, Vol. III; <http://phinational.org/sites/phinational.org/files/clearinghouse/PhaseIIVolumell ofIII.pdf>; The Institute of Medicine Committee on Improving Quality in Long-Term Care, "Improving the Quality of Long-Term Care." 2001. <http://www.iom.edu/~media/Files/Report%20Files/2003/Improving-the-Quality-of-Long-Term-Care/LTC8pagerFINAL.pdf>; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/> citing Schnelle JF, Simmons SF, Harrington C, Cadogan M, Garcia E, BatesJensen B. Relationship of Nursing Home Staffing to Quality of Care, Health Serv Res. 2004, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361005/> and Abt Associates Inc. Nursing Home Staffing Study TEP Presentation. Prepared for the CMS Medicare Nursing Home Compare 5-Star TEP Panel. Durham, NC: Abt Associates Inc; 2011, Harrington C, Kovner C, Kayser-Jones J, et al. Experts recommend minimum nurse staffing standards for nursing facilities in the United States. Gerontologist. 2000, <https://pubmed.ncbi.nlm.nih.gov/10750309/>.



families to monitor whether staffing requirements are being complied with, since they can count the number of staff and residents present.

In response to the proposed regulations, which would have required significantly greater staffing increases than the final form regulations, the industry argued that it could not recruit the workers needed to comply with those staffing levels. However, the current inadequate staffing levels are part of the reason that nursing facilities struggle to attract workers. Nursing staff do not want to work in jobs where they are overworked, and they become demoralized that they cannot meet residents' needs of residents because of inadequate staffing levels. As a result, staff turnover levels in nursing facilities are extremely high. Improving staffing levels will help to make these jobs more attractive and reduce the rate of staff turnover.

In order to support the costs of additional staffing, the Commonwealth's FY 22-23 budget increases the Medicaid nursing facility payment rate by 17.5% effective January 1, 2023. This will provide an additional \$306 million in funding during the first 6 months of 2023 to assist them in staffing up. In addition, nursing facilities will receive an additional \$159 million in one-time American Rescue Plan Act (ARPA) funds during fiscal year 2022-23. The final form regulations also assist facilities in preparing for staffing increases by extending the effective dates to July 2023 and 2024.

Another key revision which is desperately needed concerns applications for licenses for new facility or change of ownership at sections 201.12 – 2012.12b. In recent years, there have been increasing numbers of sales of nursing facilities to private equity and other investors who have little medical or long-term care background and a primary goal of maximizing their short-term profits. Many national and local news articles, studies, and investigations have documented the serious quality of care problems that have occurred in Pennsylvania and throughout the nation as a result. See, e.g., <https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html>. For example, Skyline Healthcare LLC received a license in 2017 to operate facilities formerly owned by Golden Living after the Pennsylvania Attorney General sued that provider for consumer fraud claims stemming from understaffing and poor care. Just 14 months later, the Commonwealth had to install temporary management in these facilities after Skyline experienced a financial collapse that left residents at risk. This is far from the only instance in which the sale of Pennsylvania facilities to investors have led rapidly to staffing cuts and dramatic declines in quality of care.

It is clear from these experiences that the regulations regarding nursing facility ownership and licensing needed to be strengthened to ensure that license applicants are much more thoroughly vetted and that licenses are only approved for applicants that demonstrate the capacity to consistently meet licensing regulations and provide quality care. The revisions in sections 201.12, 201.12a and 201.12b make critical improvements by delineating the criteria which must be considered in determining whether to grant a license, including the regulatory history of the potential licensee. They also require public notice and an opportunity to comment on license applications. This will bring badly needed transparency and public input to this



process which affects residents profoundly but has up until now taken place outside of the public eye.

We also strongly support the requirement for facilities to submit an annual financial statement. This will bring greater transparency concerning how public funds are spent by nursing facilities. Nursing facilities are increasingly being purchased by private entities whose business model is characterized by complex corporate structures and related-party arrangements which make it impossible to tell whether public funds are being used for resident care or company profits. Annual financial statements are essential to generate more transparency and to inform decisions about the level of public funding needed for nursing home care.

We are also very pleased that the final form regulations require nursing homes to conduct a facility assessment on a quarterly, rather than annual, basis. This assessment is an important tool for evaluating how best to serve the specific residents in a given facility and how to staff to meet their collective needs. 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 performing a facility assessment on a quarterly basis will allow necessary adjustments to staffing and policies.

Finally, we applaud the addition of a residents’ rights provision at section 201.29(p), which recognizing residents’ right to care without discrimination on the basis of sexual orientation and gender identity or expression. Older LGBTQ adults and those experiencing disability must be able to access long term services and supports and should not be subjected to discrimination or mistreatment. Nor should they be forced to return to the closet in order to receive the services they need. This provision is an important step forward and we strongly support its inclusion.

In conclusion, the final form regulations will enhance protection of the public health, safety and welfare by improving oversight of the nursing facilities that house and care for Pennsylvania’s most vulnerable citizens. CLS therefore supports the regulations and urges their approval.

Sincerely,

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Center for Advocacy for the Rights and Interests of Elders

October 24, 2022

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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:

For 45 years, the Center for Advocacy for the Rights and Interests of Elders (CARIE) has advocated for the rights, autonomy, and dignity of older adults. When COVID began, CARIE convened Pennsylvania's aging and disability advocacy organizations to address issues impacting residents of long term care facilities. We identified outdated regulations among the reasons for the devastating consequences residents experienced during the pandemic. A detailed description and mark-up of recommended changes to the current regulations were shared with the Department of Health (DOH). In addition, we submitted detailed comments along with a mark-up of the proposed regulatory language for each of the four packages during each comment period. CARIE appreciates that DOH considered and accepted several of our recommendations.

CARIE reviewed the four packages of final form regulations with a focus on policies that will help prevent substandard, unsafe care, and improve the quality of care and life for residents. Our work is



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informed by our experiences working with residents and their loved ones and hearing their concerns. While we had hoped the final form regulations would have included stronger resident rights provisions, higher staffing minimums, and greater staff training especially around dementia capable care, the regulations are an important step toward needed change in current policies to improve the standard of care in Pennsylvania's nursing homes.

The final form regulations strengthen the current regulations especially around change in ownership and the application process. There are many examples of serious problems that have occurred in Pennsylvania and throughout the nation because of the sale of nursing facilities to private equity companies and other investors who have little medical or long-term care experience and whose primary goal is to maximize their profits. Nursing home ownership and financial transparency are critically important to ensuring that residents living in nursing homes get needed care and public funds are used appropriately. The change in ownership provisions will give DOH the ability to help prevent poor performing providers and bad actors from buying and operating more facilities in Pennsylvania. Some examples of improvement include:

§ 201.12. Application for license of a new facility or change in ownership. (#10-223)

- § 201.12a. Notice and opportunity to comment. (New Section on final-form) - Section 201.12a is a new section providing notice about an application for a new facility or change in ownership and an opportunity to comment.
 - Section 201.12a(a) requires a new facility applicant to provide notice to the Long-Term Care Ombudsman.
 - Section 201.12a(b) requires a change of ownership applicant to provide notice to residents, resident representatives, employees, and the Long-Term Care Ombudsman.
 - Section 201.12a(d) states that the Department post notice of the receipt of an application for license of a new facility or change in ownership, and a copy of the completed application form submitted under Section 201.12 on the Department's website and provide a 10-day public comment period.
- § 201.12b. Evaluation of application for license of a new facility or change in ownership. (Section renumbered on final-form) –
 - Section 201.12(b)(7) adds new provisions including a requirement that a prospective licensee submit the names, addresses, e-mail addresses, and phone numbers of a parent company, a shareholder and any related party of the persons identified in paragraphs (1) through (6).
 - Section 201.12(b)(8) adds requirements for annual financial reporting with specific requirements to improve transparency into ownership and related parties.
 - Section 201.12(b)(13) adds a new requirement that a prospective licensee is required to identify whether an immediate family relationship exists between a prospective licensee, a person identified under paragraph (1) (regarding

ownership and ownership interest) and a person under paragraph (7) (regarding parent companies, stakeholders, and related parties).

- Section 201.12b(b) adds the Department will post notice of the approval or denial of the application on its website.

§ 201.13. Issuance of license for a new facility or change in ownership. (#10-223)

- Section 201.13 adds language specifying the difference between regular and provisional licenses.

- § 201.13a. Regular license. (New Section on final-form) - Section 201.13a clarifies a facility will get a regular license when in full or substantial compliance with the statute and regulations.
- § 201.13b. Provisional license. (New Section on final-form) - Section 201.13b explains that provisional licenses for up to 6 months are granted under specified circumstances.
- § 201.13c. License renewal. (Section renumbered on final-form) - Section 201.13c(b) establishes a requirement for facilities to submit an updated annual financial report that meets the requirements set forth in section 201.12(b)(8).

§ 201.15a. Enforcement. (New Section on final-form) (#10-223)

- Section 201.15a is an important new section on enforcement that delineates some of the potential licensure enforcement actions. "Under new § 201.15a (relating to enforcement), actions the Department may take to enforce include, but are not limited to, requiring a plan of correction, issuing a provisional license, revoking a license, appointing a temporary manager, limiting or suspending admissions to a facility, and assessing fines or civil monetary penalties."

CARIE had concerns with DOH's proposing the updated regulations in multiple packages but appreciate that the Department submitted all final form packages at the same time and considered comments, including feedback provided at stakeholder meetings, throughout the process.

In conclusion, the final form regulations are a much needed step to update the Commonwealth's outdated nursing home regulations. CARIE supports the proposed final form regulations and urges their adoption. We also encourage the Department's enforcement of the regulations.

Thank you for your consideration.

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