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Submitted by e-mail to: RA-DHLTCRegs@pa.gov; irrc@irrc.state.pa.us

Lori Gutierrez
Deputy Director, Office of Policy
PA Department of Health
625 Forster Street, Room 814
Health and Welfare Building
Harrisburg, PA 17120

November 4, 2021

Dear Ms. Gutierrez:

LeadingAge PA, an association representing more than 380 providers of senior services appreciates the opportunity to offer comments on Rulemaking 10-222 (Long-Term Care Facilities, Proposed Rulemaking 2) as published in the October 9, 2021 [Pennsylvania Bulletin](#).

The proposed package contains a number of significant revisions to the requirements for 'facility alteration, renovations and construction' of nursing facilities that we would like to comment on below

Occupying portions of buildings not used for one year or more. LeadingAge PA appreciates the efforts to bring physical environment standards for new construction and significant renovations to the Facility Guidelines Institute (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities (Guidelines)*. Though the aforementioned is reasonable, we have concerns with requirements for unoccupied beds to comply with these newer standards in advance of their being occupied. This requirement is specifically noted in changes proposed in Chapter 204.2(e). This provision specifically cites:

If a facility intends to occupy or use a space that has been unoccupied or unused for 1 year or more, the occupancy or use shall be considered an alteration, renovation or construction and the facility shall submit architectural plans and blueprints related to its occupancy or use to the Department as required under § 51.3(d). The facility may not use or occupy the space unless approved by the Department.

This is problematic for a number of reasons- not the least of which, it was never discussed during the stakeholder process that LeadingAge PA participated in that ended rather abruptly in 2018.

Unfortunately, many nursing facilities are currently forced to limit admission as they struggle to recruit, hire, and retain staff sufficient to provide the level of quality care that residents deserve. These limitations on admissions have caused reductions in census below licensed capacity. In many instances facilities are forced to optimize staffing efficiency and leaving areas and wings vacant.

The workforce crisis across the country is showing no signs of easing, and the same holds true for Pennsylvania's nursing facilities. As such, it seems there are likely to be many nursing facilities that will have areas unoccupied, and very likely these spaces could be unoccupied for more than a year. Under the proposed regulation, in order to re-occupy the section, the area that was previously unoccupied will need to comply with the new physical environment regulations proposed in chapter 204.

This requirement could impose the unintended consequence of causing the facility to permanently delicense those beds, causing a reduction in our commonwealth's capacity to serve our aging population. This is of course assuming that the state has endeavored upon this regulatory package in good faith to assure resident health, safety, and access to services; not with the intent to close nursing homes unable to comply with burdensome and unnecessary regulations. However, it may be reasonable to require facilities to undergo a life safety survey of the previously unoccupied areas to assure the locations are safe and habitable. LeadingAge PA respectfully requests the removal of Chapter 204.2(e).

The proposed inclusions of the FGI and novel requirements for facility alteration, renovations and construction lacks a definition or threshold for what classifies as a 'facility alteration' or 'renovation' or 'construction.' Without these definitions or thresholds included, it is unclear what would classify for submission of approval as an 'alteration' or 'renovation.' This could limit nursing homes seeking to make small changes to improve their physical environment which could offer significant improvements for residents and staff, though not having financial means to complete full renovations that would comply with chapter 204.

LeadingAge PA urges the Department to reconsider inclusion of outdated standards. As mentioned previously, stakeholder negotiations with the Department on regulatory reforms ceased to meet in early 2018. At that time there was no discussion and certainly not any consensus on inclusion of the Facility Guidelines Institute (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*. These guidelines are not regulatory in nature, and we respectfully request that the Department revert to the agreed upon language which currently states in Chapter 203.1 that all facilities will comply with the applicable edition of the National Fire Protection Association 101 *Life Safety Code*.

If the Department does not incorporate language that was discussed during the workgroup, we request that the Department modify the proposed language to allow for adoption of future versions of the FGI and not reference the 2018 version. It is our understanding that the FGI is revised approximately every four years and that often revisions to the standards include innovations or modifications that promote more home-like environments for residents. Adoption of future updates will also allow for more consistent administration and compliance with the standards, as outdated standards may be difficult to keep track of.

Release of Regulatory Package in Sections Lacks Transparency and Clarity. The proposed rules are noted to be the second in a series of five related rulemaking packages that DOH expects will eventually update the entirety of the current nursing facility regulations. Without view of the comprehensive package, neither the regulated community nor the public can assess the full scope of changes that may be promulgated as final. This could happen for any number of reasons; none more important than each package likely requiring individual approval by the Independent Regulatory Review Commission and oversight committees in the General Assembly. This could result in incongruous enactment and confusion that will not further DOH's stated goals of improving the quality of care.

LeadingAge PA would respectfully request that DOH combine the regulatory packages into one coherent whole before publishing as proposed. Further, it is of utmost importance that DOH provide opportunity for public comment on proposed regulations as a whole prior to publishing as final. The regulated community and the public cannot anticipate how the changes to definitions, for example, will impact regulations that have not yet been revealed, nor can they understand how various portions of the regulations will interact with one another.

The Nursing Home Taskforce previously met on a number of occasions and worked extensively with DOH and the administration towards common ground and viable regulatory changes. We respectfully recommend that DOH reconvene the Nursing Home Task Force to discuss how public/private partnerships could help to elevate long term care.

The members and staff of LeadingAge PA are always ready to assist you with any issues or questions relating to caring for our seniors. We look forward to working with you so the Commonwealth's seniors have quality long-term care services and supports system if needed.

Please feel free to contact me if you have any questions regarding these comments of if we can be a resource to the Department.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne M. Henry".

Anne Henry
Senior Vice President & Chief Government Affairs Officer
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