



From: [Jennifer Garman](#)
To: [DH, LTCRegs](#)
Subject: [External] Comments on Proposed Rulemaking 10-222 (Long-Term Care Nursing Facilities, Proposed Rulemaking 2)
Date: Monday, November 8, 2021 3:29:45 PM
Attachments: [Disability Rights Pennsylvania Comments on NH Regulation Package 2 Final.pdf](#)

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Attached please find comments from Disability Rights Pennsylvania on the above mentioned matter. Thank you.

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VIA EMAIL

November 8, 2021

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

Re: Proposed Rulemaking 10-222 (Long-Term Care Nursing Facilities, Proposed Rulemaking 2) Department of Health, 28 Pa. Code Section 201.23, Chapters 203-205, and Section 207.4

Disability Rights Pennsylvania (DRP) is the federally mandated, state designated Protection and Advocacy (P&A) system for persons with disabilities in Pennsylvania, and it has been providing legal and advocacy services to Pennsylvanians with disabilities for over 40 years. We are pleased to be given the opportunity to comment on package two of the Department of Health's (DOH) proposed rulemaking updating the Commonwealth's nursing home regulations.

Previously, DRP noted our disagreement with the process for disseminating the proposed changes to the public, as well as its process for soliciting public comment. We have since learned that commenters cannot offer feedback pertaining to all five sections throughout the entire commenting process. If they do so, comments that pertain to earlier sections will be ignored. This means that the Department has created a process where, if commenters' feedback on an earlier section changes once read in conjunction with a later section, there is no formal way to have these comments recognized. Stakeholders will be unable to provide

meaningful public comments, and the Department will not be able to fully understand the impact of its proposed regulations based on stakeholder feedback. Since this approach makes it difficult to review the subsections without the context of the remaining sections, we urge the Department of Health to formally commit to accepting comments related to any of the five sections at any time throughout the entirety of the proposed rulemaking process.

Section 201.23. Closure of facility:

Section 201.23(a): DRP has significant concerns about the proposed changes to this section. We disagree with the Department's decision to eliminate subsection (a), which required a 90-day notice period, in favor of adopting the 60-day requirement found in federal regulations. The federal regulations are a floor, not a ceiling. The Commonwealth should be striving to provide residents of nursing homes with *more* protection than is required under the federal rules. It does not make sense that DOH is proposing to provide less protection, simply because this is the minimum requirement under federal law.

It is not easy to find a quality nursing home placement in a short period of time, particularly when residents are competing against each other for the available beds in the region, as during a closure, all facility residents will find themselves in the same position of needing to find an alternative place to live at the same time. All residents do not have the capacity to arrange for their own discharge, nor do they have a support system outside of the facility to assist them. This may result in some residents relying on facility staff to arrange for alternative living situations, at a time when the facility may be short staffed due to employees quitting because they know their employment at the facility will soon end. There are far too many variables involved in discharge planning, and more time provides all parties with the opportunity to ensure residents are kept safe and have somewhere of quality to go upon the facility's closure.

A safe and orderly transfer of all residents takes time and planning. We urge the Department not to take away what, in essence, is a consumer protection by reducing this time frame to 60 days.

Section 201.23(b): We encourage the Department to keep and revise section 201.23(b) to require the facility to make contact with residents and

their designated representatives in writing (as currently required) and also in the manner in which the resident and their representative prefer contact. This is not a new concept. The CHC-MCOs are required to capture and honor the preferred manner of communication. It is part of person-centered care.

Section 201.23(c): We also disagree with the Department’s decision to eliminate subsection (c). While the federal regulations require a facility to have a plan for orderly discharge and transfer of residents, it does not provide residents with a right to “sufficient time” to effectuate said orderly discharge and transfer. This right is found in the current iteration of the state regulations. The requirement to have a plan is not the same as a requirement to comply with the plan. The deleted language is what gives the resident the right to require the facility to actually comply with the plan and/or to allow enough time for an orderly transfer. For this reason, we encourage the Department to retain subsection (c).

Section 201.23(g): The Department proposes to delete (g) because the facility “closure plan must include, among other things, a plan for continuing payment of salaries and other expenses incurred by the facility during the closure process.” A closure plan is not evidence of ability to pay for salaries and other expenses in accordance with the plan. We urge the Department not to remove this provision requiring the facility to demonstrate its ability to comply with the plan it has submitted.

Chapter 204. Physical Environment and Equipment Standards for Alterations, Renovations or Construction of Long-Term Care Nursing Facilities:

Section 204.1(c): DRP requests that subsection (c) be rewritten. As written, it can be interpreted to allow facilities that were once in compliance with Chapter 204, but ceased to be in compliance due to a failure to maintain the facility, to nonetheless be deemed to comply. This is problematic.

We believe the intent of this subsection is to allow for the grandfathering of older facilities that remain in compliance with an older version of the FGI Guidelines which were once used by the Department, until such time as they make alterations to the facility. In other words, we do not believe this

section is meant to protect facilities that are in disrepair and fail to comply with *any* version of the FGI Guidelines.

Therefore, we think the language should be more specific and explain under what circumstances facilities will be deemed to be in compliance. DRP suggests that Subsection (c) should say:

“A facility which remains in compliance with an older version of the FGI Guidelines and was previously determined by the Department to be in compliance with this subpart, will be deemed to be in compliance until such time that the facility completes alterations, renovations or construction.”

Sections 204.2(d)-(e): DOH must provide additional detail and clarify exactly what these subsections cover because as drafted, the language is unclear. For example, how does the Department define occupancy and use? Is a room that no one ever enters but is being used to store one item “occupied or used”?

In addition, it is important that the Department provide for some flexibility in emergency situations (such as the COVID-19 pandemic) where it became necessary to isolate people and spread them out to the maximum extent possible. There should be language in the regulations which states that Department approval for restarting occupancy or use is not needed in certain specified emergency situations.

Section 204.5, Resident Rooms:

This section no longer contains the language that was in 205.20 (d) and (e) establishing minimum square footage requirements for resident rooms. Square footage is included elsewhere in the draft regulations, as relates to dining room space, but not here. This may be covered in the FGI, which we do not have access to review. Unless the FGI sets a requirement that is greater than what is contained in the current regulations, these provisions (which set a low but minimum bar) must be reinserted.

Section 204.5 (d): The Department must revise this section to be more precise as to what is a safety hazard. We are concerned that without a definition of “safety hazard”, a facility will have too much leeway to deny the residents’ choices and preferences. At a minimum, the Department should

add language that allows the resident a certain level of risk/informed decision making and language that prevents the facility from using arbitrary or ambiguous reasons as a basis for denying the resident's wishes.

Section 204.5(f): The Department must revise this section to require education to residents about right to locked drawer or cabinet. Many residents are not aware of the right to have a locked drawer or cabinet. Additionally, it is important to add language that requires the nursing facility to educate the consumer and/or representative during their first care plan meeting about their right to have a locked drawer or cabinet to protect residents' rights. Residents must also be educated about the importance in letting staff know when they lose a key, the drawer is broken, or something is stolen so that issues can promptly be investigated and resident rights are protected. A resident cannot effectively advocate on their own behalf if they are not being educated about their rights.

Add Subsection 204.5(g): In addition, we believe that the Department should add a subsection (g) to this section of the Chapter, which requires that all new construction house no more than two residents to a room. COVID-19 has shown the importance of maintaining distance between residents of congregate care settings for the purposes of infection control. While COVID-19 has shown how quickly infectious diseases can spread in congregate care settings, outbreaks of other infectious diseases such as the flu occur on an annual basis. The fewer residents that are permitted to be housed in the same room, the less likely it will be that infectious diseases will be able to spread within a facility. For this reason, the Department must require that any newly constructed facilities limit the number of residents who will be housed in the same room to no more than two.

Section 204.6, Locks: DRP requests that language be added to the regulations to ensure that staff must knock prior to entering a resident room. To implement this, facilities should be required to put a doorbell outside of each room. There is little dignity, respect, or privacy in staff just walking into resident rooms unannounced. This will ensure resident privacy which is an important resident right.

Section 204.11, Toilet Room Equipment: The Department must add additional language in this section. The existing regulations have this requirement at 205.23 which was not carried over here and needs to be: "A

resident bedroom shall have adjoining toilet facilities and shall be located conveniently near bathing facilities.” As written, these regulations do not require an adjoining toilet. Also, the section with ratios of toilets to residents is missing. It is possible that these issues are covered in the FGI, which we could not access to review. If it is the Department’s intention to cover these through the FGI, there must be a reference made to those standards so that the public is aware of what to review to learn of the requirements under this section.

Add Section 204.19: DRP also suggests that the Department add a Section 204.19. We previously recommended and continue to recommend the addition of section titled “Configurations for Infection Control”. Our proposed language is “(a) Consistent with their Department-approved Emergency, Pandemic, and Disaster Preparedness Plans, facilities may repurpose rooms as necessary for cohorting residents and staff and implementing infection controls during an outbreak of infection. (b) Residents may be moved from their bedroom to another bedroom as part of a cohorting effort related to infection control. Residents retain the right not to be moved unnecessarily and to be moved as few times as necessary to ensure the infection control goals of cohorting.”

Add Section 204.20: Finally, the Department should add as 204.20, a “Hand Sanitization Station”. DRP previously recommended and continue to recommend the addition of a section titled “Hand Sanitization Stations” that would say “Stations for hand cleaning and sanitizing shall be installed outside every bedroom and at least every 20 feet in hallways and common areas.”

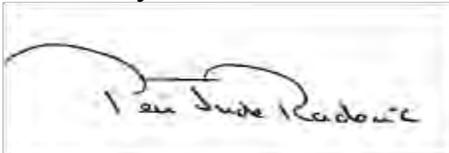
Chapter 205. Physical Environment and Equipment Standards for Long-Term Care Nursing Facilities Alterations, Renovations or Construction Approved Before _____ :

Section 205.66: DRP requests that the Department not delete and instead add to 205.66(i). We strongly recommend that this section not be deleted, and that the Department add this language to this section: “HEPA air filtration systems must be installed or mobile HEPA air filtration devices must be employed in existing construction. HEPA air filtration systems and devices must be adequate and rated as appropriate for the size of the spaces in which they are used. Filters for HEPA air filtration systems and devices must be replaced in accordance with manufacturer specifications.”

Add Section 205.69: We had previously recommended that this be added and continue to recommend this additional language. “A facility shall have Wi-Fi, broadband, and internet technology as well as devices for the facility, staff, and residents to use in operating the facility and communicating with individuals outside of the facility.” More and more, residents will need access to the internet in order to communicate with family and friends, access resources, keep up with current events, engage in activities and remain connected with the outside world. Access to the internet has become essential and is particularly needed to avoid the risk of isolation that institutional settings pose.

We thank you for consideration of our concerns and suggestions. Please contact Jennifer Garman, Director of Government Affairs at 717-236-8110 ext. 327 with questions.

Sincerely,

A rectangular box containing a handwritten signature in black ink. The signature is cursive and reads "Peri Jude Radecic".

Peri Jude Radecic
Chief Executive Officer