



From: [Ann Torregrossa](#)
To: [DH_LTCRegs](#)
Subject: [External] k Comments of PA Health Funders Collaborative to 3rd package of DOH draft NH regs
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Attached please find the PA Health Funders Collaborative comments to the 3rd package of DOH NH regs. Thank you. Ann Torregrossa

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April 18, 2022

Lori Gutierrez
Director - Office of Policy
625 Forster Street, Room 814
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Harrisburg, PA 17120
VIA EMAIL to: RA-DHLTCRegs@pa.gov

Re: Rulemaking 10-223 (Long-Term Care Facilities, Proposed Rulemaking 3) 28
PA Code Sections 201.12-201.17, 201.22, 209.1, 209.7, 209.8 and 211.1;
Chapter 201

Greetings:

The Pennsylvania Health Funders Collaborative is an association of over thirty health foundations across Pennsylvania, concerned about health policies that impact our most vulnerable residents. Among Pennsylvania's most vulnerable are residents of our long-term care facilities. Revision of Pennsylvania's long-term care facility regulations are long overdue. This subsection of regulations demonstrate this need for revision, perhaps more than others—the need to regulate ownership of these facilities and their operation and preparation for and care safeguards during a pandemic.

Concern has been mounting about the incompatibility of nursing home ownership by private equity enterprises seeking returns on investment of 20% or more a year and acceptable long-term services and supports in nursing facilities¹. Most recently, President Biden raised concerns that nursing facility residents in homes owned or operated by private equity firms had outcomes that were significantly worse² and the National Academies issued a comprehensive report raising similar concerns and calling for reforms.³

Most of the payment for nursing home care comes from Medicaid and Medicare, which do not accommodate the kind of return on investment private equity seeks without significant and unacceptable compromises of care. Private equity firms have

¹ <https://news.weill.cornell.edu/news/2021/11/private-equity-ownership-of-nursing-homes-linked-to-lower-quality-of-care-higher> ; <https://www.nber.org/papers/w28474> ; <https://journals.sagepub.com/doi/10.1177/0046958017742761> ; <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2786442> ; GAO conducting investigation of nursing home ownership including private equity, <https://khn.org/news/article/private-equity-ownership-of-nursing-homes-triggers-federal-probe/>

² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>

³ https://nap.nationalacademies.org/resource/26526/Nursing_Homes_Highlights.pdf

already been able to assume ownership of long-term care facilities in Pennsylvania, often by purchasing a facility with an existing license.⁴ It is critical that Pennsylvania adopt regulations that let future investors know that they will face serious scrutiny and preclusion by Pennsylvania if they have caused issues with care in other states. Strong regulations put these private equity investors on notice that seeking ownership of nursing facilities in Pennsylvania is not advisable to pursue.

Too often these private equity ownership models are owned or leased by complex ownership structures with interlocking holding companies and subsidiaries designed to maximize investment revenue at every level, avoid regulatory oversight and litigation, and hide profits. Therefore, it is critical that the regulations require financial transparency of all these entities at time of application for a license or change in ownership.

Also, we must learn from the terrible toll in deaths and illness that the COVID-19 pandemic caused in Pennsylvania's long-term care facilities. Over half of Pennsylvania's COVID related deaths were in long-term care facilities⁵. The regulations must require preparation plans, training, protective supplies, testing and expertise to avoid another unacceptable outcome as we have recently seen.

More specifically, our comments are as follows:

1. Require greater transparency by the license applicant of any entities that are part of the interlocking private equity fiscal arrangement. All entities that have any ownership or control of the facility must be disclosed in the application to assure that they are capable and are not bad actors who have caused bad care in other states. Because private equity ownership can involve 8 or more interlocking entities all trying to maximize profit for each of their spheres of influence, it is critical that the Department have the financial information to understand the underlying cash flows and ownership and to assure that adequate funds remain for residents' services and supports.
2. Require submission of annual consolidated financial reports for each facility, including for parent organizations and other related entities providing services or goods. Most of nursing facility care is paid for by state and federal agencies. To assure that these funds are being appropriately utilized for resident care, annual financial reports that are audited or reviewed by a certified public account are essential for appropriate Department oversight.
3. Include criteria in the regulations that would result in automatic denial of the application, to discourage applications in the first place. Examples are

⁴ <https://pestakeholder.org/report/pulling-back-the-veil-on-todays-private-equity-ownership-of-nursing-homes/>

⁵ https://lancasteronline.com/news/local/68-of-pennsylvania-coronavirus-deaths-are-from-nursing-and-personal-care-homes/article_22baa7c2-e181-11ea-88ce-5f7bae6c70c2.html

suspension, denial, or loss of license in another state, commission of a felony against a nursing home resident, or staff, etc. In the past, it has taken Pennsylvania years due to nursing home litigation to get rid of bad actors. Hopefully strong regulations and a reputation for strong enforcement will keep those seeking to drain resources out of nursing homes at the price of bad care and conditions for residents from even applying.

4. Use of provisional license and inspection for all new licenses or change in ownership. Provisional licenses have been an important regulatory tool for the Department in the past and should be retained and used for new licensees or for approved change in ownership. Inspections within 6 months of the approval will help assure that residents' health and welfare is being assured, and will hopefully allow us to get rid of bad actors more quickly.
5. Require Quarterly Facility Assessments as a minimum for assuring ongoing quality of care. Most nursing facilities have ongoing resident turnover and changes in levels of care for residents who are in the facility. Staffing levels and job description openings also change on an ongoing basis. Facility assessments of the level of care needed for each resident, the required staffing and resources needed to meet that level of care and operating funds to meet that need should be done no less than quarterly. This is a minimum quality assurance function to assure that resident needs are being met by staff and financed.
6. Set a Decrease in the Minimum Staffing level that is a reportable incident. Many of the reportable incidents included in the draft regulations occur due to inadequate staffing. Rather than waiting for actual resident harm to occur due to substantial under staffing, the regulations should require reporting to the Department if staffing falls below a certain percentage, so the Department can investigate and require this issue to be addressed before serious harm to residents occur.
7. Provide notice to the public, residents and the Ombudsman of an application to change ownership and an opportunity to comment. For something as important as being licensed to care for our most vulnerable resident in a facility, where the residents must rely exclusively on that entity for food, nursing care, assistance with activities of daily living, laundry service, medications, etc., it is reasonable to let residents and their families, the Ombudsperson and the public know about the proposed entity and have an opportunity to comment to the Department.
8. Require the facilities to comply with all guidelines of the CDC, HHS, CMS and the Department regarding infection control, treatment, surveillance and other matters regarding infectious diseases and pandemics. These regulations should

reflect all lessons learned from the terrible experience and loss of life in Pennsylvania's nursing facilities during the COVID-19 pandemic.

Thank you for the opportunity to comment on this third and very important package of draft nursing home regulations. We look forward to reviewing and commenting on the fourth set and on the draft regulations as a whole.

Sincerely,

Ann S. Torregrossa

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Director

PA Health Funders Collaborative