



October 25, 2022

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**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 We identified the need for revisions to the Department of Health's outdated nursing facility licensing regulations to better protect residents, and provided the Department with extensive recommendations for revisions.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



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/PhaseIIVolumeIofIII.pdf> "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001., Phase II, Vol. II. <http://phinational.org/sites/phinational.org/files/clearinghouse/PhaseIIVolumeIIofIII.pdf> "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001., Phase II, Vol. III; <http://phinational.org/sites/phinational.org/files/clearinghouse/PhaseIIVolumeIIofIII.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 – 201.12b. 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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