



From: [GEORGE STAUFFER](#)
To: [DH.LTCRegs](#)
Cc: [GWeidman@PHCA.org](#); [CFisher@PHCA.org](#)
Subject: [External] Proposed Regulations 10-224, Rulemaking 4
Date: Friday, June 17, 2022 12:34:29 PM
Attachments: [Letter to Lori Gutierrez re Proposed Regulations 10-224, Rulemaking 4.pdf](#)
[Letter to Director Lori Gutierrez re Proposed Regulations 10-221.pdf](#)

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Good Afternoon Ms. Gutierrez,
Attached are my comments regarding the Proposed Regulation 10-224, Rulemaking 4. Thank you for your consideration.
George C. Stauffer, NHA, MBA
610-670-4591

June 16, 2022

Lori Gutierrez, Dir of Office & Policy
625 Forster Street, Room 814
Health & Welfare Building
Harrisburg, Pa 17120

Re: Proposed Regulations 10-224 Rulemaking 4

Dear Ms. Gutierrez,

The thought behind the proposed rulemaking in rulemaking 4 and 10-224, I believe, is well intended and the intention was to improve the lives of individuals living in long term care facilities. However, I believe the proposed regulations will not achieve the desired results. Many of the proposed regulations are duplicative and unnecessary. The two proposed regulations that I will comment on are the addition of a qualified social worker and the proposed increase in nursing care hours.

First, the addition of a qualified full-time social worker in a skilled care facility regardless of size would be an asset for the residents of the skilled care facility, but unachievable. There are facilities that have qualified social workers, but in smaller facilities, they may be serving as the Social Services Director/Activities Director/Admissions Director. Some facilities will have someone trained in another professional background and are serving quite well as the social worker or Director of Social Services but may not be professionally trained as a Social Worker. Although well intentioned, the proposed regulations will lead to more turnover of experienced staff that do not meet the technical definition of a qualified social worker. This would result in a very expensive outcome when trying to meet this new regulation of having a full-time qualified social worker.

Second, nursing staff is difficult to employ and retain in all Skilled Care Centers across America. I have now been a licensed Administrator for over 40 years in Pennsylvania, as well as four other states. As I am also aging, I appreciate the thought of increasing staff to meet resident expectations and needs. My concern is how the increases in nursing staff are going to be met when there is a

worldwide shortage of healthcare workers. There was a challenge to provide the desired staffing prior to COVID, but once COVID occurred, many increased pressures exacerbated this shortage of nursing staff, as well as other professional staff members. Concerns such as inflation, shortages of supplies, staffing, competition for staffing by other healthcare facilities, demands for better wages, benefits for the staff, increasing costs due to healthcare staffing agencies, and the unwillingness of some staff to receive COVID vaccinations at the same time being required that all staff receive the vaccines.

Also, as referenced by the proposed regulations, our population over 65 years of age is growing rapidly. While the population and demands are increasing for our Skilled Care Centers in PA, the regulations and demands are increasing, but not the reimbursement. As an experienced Administrator, I have felt for a long time that Long Term Care could be regulated and reimbursed like schools or utility companies. For example, Long Term Care Facilities are the most regulated business in the United States, even more than Nuclear Energy. We have many redundant regulations, and the expectations are so high, and everyone in regulatory government and their consultants agree that long-term care will always be needed to take care of our most vulnerable population. Therefore, why not provide the necessary funding? The addition of these regulations, along with the high staffing requirements and the lack of funding will result in bankrupting long-term care facilities and lead to many additional facilities closing. These new proposed regulations will also lead to additional citations and fines by the PA Department of Health for long-term care facilities that are not able to meet the demands of the new regulations.

Also, I am attaching my comments that I forwarded for proposed regulations 10-221, rulemaking 1.

Thank you for your attention to the concerns outlined above.

Sincerely,

George C. Stauffer, NHA, MBA
Administrator

August 27, 2021

Lori Gutierrez, Deputy Director
PA Department of Health
Office of Policy
8th Floor West H & W Building
625 Forster Street
Harrisburg, PA 17120-0701

Dear Ms. Gutierrez,

First, let me say the proposed regulations regarding the need for an increase in nursing staff hours is laudable, and I appreciate the effort of forming a group of interested parties to have input into the increase in staffing hours, in particular the nursing assistant hours. The large increase in hours could I believe, make a qualitative difference in the lives of the residents we serve, but the Department does not know who will be able to pay for the increase in hours. As a licensed long-term care Administrator for over 30 years, I believe there are many of the long-term care centers that will not have the financial ability to pay for these additional required hours due to their financial instability. The timing of these regulations could not be any worse; many facilities were financial unstable prior to the COVID pandemic, and now due to the additional increasing costs that are related to COVID, and additional costs due to workers leaving the field, accepting other jobs, staff retiring, staffing shortages and agencies nursing staff wages skyrocketing, the entire long-term care industry has become financially unstable. The agency nursing staff has now become the highest paid workers in the long-term care centers, making the possibility of requiring additional staffing even more financially unachievable. At a time when the industry does not know how many of the centers will financial survive, the PA Department of Health decides to promote a steep increase in required staffing hours and costs, which if enacted by the government, would lead to many facilities closing their doors and declaring bankruptcy.

One of the reasons listed in the proposed regulations to increase nursing staff in long-term care facilities is due to the number of Pennsylvanians that are 65 years of age and older and the percentage of adults aged 65 or older in Pennsylvania that are increasing, and the number of those needing long-term care nursing is also increasing. The commenter agrees with these observations and hopes the Department of Health can identify a way to publicly pay for the increase in required hours. The Department of Health outlines the costs as listed below:

According to the information published by the PA Department of Health on July 31, 2021 in the PA Bulletin, in PA there are:

- 595 Private Facilities
- 20 County Homes, and
- 6 Military VA Homes

According to the PA DOH statistics and costs projected in the proposed regulations in the PA Bulletin and based upon information available to the Department of Health as of January 2020, the costs to increase the nursing assistant staffing in PA licensed skilled nursing care facilities by increasing the required minimum hours provided to each resident of a skilled care facility currently receiving 2.7 hours per day to a minimum of 4.1 hours per day, the Department is projecting it will cost:

- \$355,700,000 in increased staffing costs per year in private skilled care facilities divided by 595 private facilities = an average increase of staffing costs in the amount of \$ 597,815.13 per privately owned facility per year. It is proposed, the federal government will pay 52.68% of the increased staffing costs for the first year for the privately owned facility, or \$319,929.01 of the additional staffing costs for the first would be paid by the federal government; the average facility would then pay 47.32% of the first year increased staffing costs for an annual average of \$282,886.12 per facility, and then over \$600,000 for each year after the initial year, and then needing to be paid in perpetuity.
- \$30,000,000 in increased staffing costs per year in County owned skilled care facilities divided by 20 County owned facilities results in an average annual increase of staffing costs in the amount of \$1,500,000.00 per County facility per year. It is proposed the federal government will pay 52.68% of the increased staffing costs for the first year for the County owned facility, or \$790,200 for each county owned facility would be paid by the federal government for the first year; the average County owned facility would then pay 47.32% of the first year increased staffing costs for an annual average increase in staffing in the amount of \$709,800 for the first year, and then over \$1,500,000 of increased staffing increase for each year after the initial year, and then requiring to be paid in perpetuity.
- \$24,723,743.70 in increased staffing costs per year in Military Veteran Facilities divided by 6 Military Veteran facilities in Pennsylvania results in an average of \$4,120,623.95 per facility per year of increased staffing costs when benefits are included with the increase in staffing. It is proposed the federal government will pay 52.68% of the increased staffing costs for the first year for the state owned facilities, or an average of \$2,170,744.70 cost per facility for the first year would be paid for by the federal government; the average state owned facility would then pay 47.32% of the first year costs for increased staffing costs for an annual average increase of staffing costs in the amount of \$1,949,879.25, and then over \$4,120,623.95 in increased annual staffing costs with benefits after the first year, and over \$2,150,000 without benefits for each year after the initial year, and then requiring even greater increased costs for staffing as it continues to escalate in costs which will need to be paid in perpetuity.
- \$12,900,00 per year increase in staffing for Military Veteran Facilities when the costs include just the increase in staffing, and does not include their benefits, divided by 6 Military Veteran facilities results in an average annual increase in just staffing in the

amount of \$2,150,000 per facility per year for increased staffing costs. It is proposed the federal government will pay 52.68% of the increased staffing costs for the first year for the PA state owned facilities for Veterans, or \$1,132,620; the average state owned facility would then pay 47.32% of the first year increased staffing costs for an annual average of increased staffing costs without benefits in the amount of \$1,017,380, and then over \$2,150,000 of increased staffing costs in the second year, not including the cost of benefits, for each year after the initial year, and then needing to be paid in perpetuity by tax payer monies.

The PA Department of Human Services states they do not have sufficient data to determine who will bear the burden of the remaining costs not covered by the Medical Assistance program and believes unrealistically that some of the costs should be borne by each skilled care facility. The Department also believes that while there will be an impact on long-term care nursing facilities as a result of the increase in staffing and the Department feels strongly that the benefits to older Pennsylvanians now and in the future outweighs those costs; this is a very feel good statement if the government is going to pay for these additional costs, otherwise, it is financially not feasible to increase these staffing requirements and costs, without the government funding these newly required staffing hours and costs. Also, the costs that are outlined above are based on an overall staffing level of an average of 4.1 staffing hours in a 24-hour period, however, the proposed regulations are calling for staffing hours of 4.1 for each shift, for staffing hours of 12.1 hours per day that would result in tripling the costs outlined above by the Department.

With the increase in staffing requirements the current shortage for nursing assistants will be exacerbated. Prior to the proposed increase in staffing hours, the Department of Education needed to work more closely with long term care facilities. The DOE needs to allow current Temporary Nursing Assistants to sit for the examination without going through the usual mandated training program prior to taking the certification test; many of these TNAs have already been working as a full-time nursing assistant for over a year. To mandate all functioning TNAs to take the three weeks course prior to being scheduled for taking the test will result in long term care facilities not being able to admit residents, or possibly discharging residents, due to a lack of staffing. Also, due to COVID, Nursing Assistant Training Schools have been closed, and there is a waiting lists for training classes.

A large concern for the long-term care facilities is the turnover of Nursing Assistants. If we are going to raise the staffing hours because we really want to make a difference in the lives of the residents we serve, then we should all work together with the same goal. Currently, the health care system is fractured and every facility does what it can, while the government departments do whatever they feel is best through regulation, but not ever really arriving at a coordinated plan of how for instance, long term care facilities are actually going to hire enough staff to become certified nursing assistants. Each facility does not have the same financial capacity to

pay for these new proposed mandatory minimum hours of nursing staffing and struggles to compete with the county or state facilities that offer better wages, benefits and training. Many long-term care facilities are on the financial edge of bankruptcy and increasing staffing requirements is going to result in skilled care facilities closing.

If the Department of Health wants to make a difference, they also need to work with the Department of Human Services that funds the Medical Assistance Program, since most long-term care facilities survive through using these funds. If the staffing requirements are going to increase so dramatically, there needs to be an immediate pass through of funds due to increased costs, including Medical Assistance Funding and not a process that literally takes years through various means of outdated data and processing, including yearly costs reports to determine what the facility should have been reimbursed a few years ago. Is it really helpful for the PA Department of Health to set the staffing bar so high that most facilities cannot achieve it because they cannot afford it and/or because they cannot hire enough staff to achieve the increased staffing requirements?

There is a belief in our state government an answer to providing the long-term care needs of Pennsylvania Residents in an efficient manner is to close long-term care facilities and add supportive home services in the community. There are some Pennsylvania Residents that will benefit by going home and receiving Home Care Services, but for most residents receiving long-term care services, they require too many services that will not be available in sufficient quantity at home, but are currently available to them in a long-term care facility.

It also would be helpful that when the PA Department of Health, (DOH), & Federal Centers for Medicare & Medicaid Services, (CMS) inspect long-term care facilities, the inspections would be helpful in nature to the long-term care facilities, rather than have an adversarial relationship. Most staffs that choose their career in long-term care is because of their love for their fellow human beings and are very caring individuals, so why does it have to be so stressful and challenging to deliver the necessary care to the individuals that need it? Some reasons for these challenges are:

- The regulations can be onerous and very technical in nature, and some inspectors play the gotcha game. At one time, the Department of Health would travel with a binder full of best policies and willingly share with each of the long-term care facilities to assist in meeting the regulations. If the inspectors saw that a facility had a great outcome in a particular area, they would ask if the appropriate policy could be given to them to share with other facility leaders. Can we please get back to having a cordial and helpful working relationship with our government peers?
- Some residents have been unhappy most of their life and when they come to the skilled care facility, they complain to the PA Department of Health, which automatically results in a complaint inspection that ties up key staff for an entire day, and then usually results in no citation, but an entire day or more has been wasted.

- It is also a challenge to recruit and maintain staff. Many staff leave for another facility for a small amount of money, and/or better benefits.
- In long-term care we spend many hours investigating alleged abuse; the term is thrown around and results many times in a good staff person being suspended for a few days pending investigation; when the staff member is cleared he/she is upset and then leaves because someone accused him/her of such a viscous allegation.
- If the nursing staffing hours are going to be increased we need the funding for these hours to be successful and provide the care for the Residents; otherwise, it is just another unfunded mandate by the government; and, in this case will lead to many facilities closing and disrupting the entire healthcare system of providing care to our valued Pennsylvania seniors that require long term care services in a skilled care facility.

Thank you for your consideration and allowing me to comment on these proposed new regulations regarding increasing the staffing hours.

Sincerely,

A handwritten signature in black ink, appearing to read "George C. Stauffer". The signature is written in a cursive, flowing style with some loops and flourishes.

George C. Stauffer, NHA, MBA