



June 26, 2022

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Director - Office of Policy
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VIA EMAIL to: RA-DHLTCRegs@pa.gov

Re: Rulemaking 10-224 (Long-Term Care Facilities, Proposed Rulemaking 4) 28 PA Code Sections 201.18-21, 201.24-31, 207.2, 209.3, 211.2-211.17

Deadline: June 27, 2022

Greetings:

Thank you for the opportunity to provide comments on the Pennsylvania's proposed nursing home regulations. The Pennsylvania Health Funders Collaborative is an association of over 30 health foundations throughout Pennsylvania that advocates for health care policies that benefit vulnerable populations. The need to modernize Pennsylvania's nursing facility regulations is long overdue, as it has been almost three decades since it was last done.

We believe that these regulations must be evaluated within the context of the current Pennsylvania nursing facilities environment and with an eye to the needs that are anticipated in the future, while equally acknowledging the dual role the state plays as both the major payor and regulator of these facilities.

Today, not only are residents of nursing homes vulnerable, but so too is the nursing home industry and workforce. 80,000 Pennsylvania residents receive food, meals, medication and care in nursing facilities in our state. Fourteen facilities have closed in the last few years, with the latest one, the Philadelphia Nursing home, scheduled to close requiring 268 residents to be relocated. These closures are most often due to financial and workforce issues. The financial issues are caused in part by the fact that the Pennsylvania Medical Assistance Program which pays for 74% of all nursing home residents in the state, but with low reimbursements that have not kept up with either inflation or workforce costs, or the increased acuity of residents over the years.

The two plus years of COVID-19 have also played a devastating role, with more than half the COVID deaths in PA occurring in Pennsylvania's long term care facilities. COVID has impacted vacancy rates caused by these deaths and the concerns of families who have chosen not to place their family members in NF – these factors have combined to add to the financial results of NFs.

At the same time, the labor force in these PA facilities decreased 15% since the onset of COVID. AARP reports that 29.5% of PA nursing facilities report they are short staffed, and that is most likely an undercounting of the situation. This is due to low staff salary and benefits, due to low Medical Assistance rates, inadequate training and status given to those staff who provide the most care to residents. Often facilities must hire agency staff to meet regulatory staffing minimums at a much higher cost than employing staff, exacerbating financial situation. If NFs could afford to pay their existing staff a more reasonable rate, they could provide continuous care to residents at a lower cost.

The PA nursing home environment was further harmed by private equity owners buying PA facilities with the intent to extract large profits while burdening the facilities with large debt and inadequate resources to provide needed care. Pennsylvania's antiquated regulations have done little to address this issue. Despite the fact that taxpayer funds pay the bulk to nursing facility care, there is no requirement in PA, as there is in other states, that a substantial portion of that payment actually go for the care of the residents. As a result, PA facilities are increasingly becoming investment properties, versus caring communities. There is a growing inability to monitor or understand how public resources are allocated due to the lack of transparency regarding nursing homes' operations finances, quality measures and ownership.

The first conclusion in the recent report by The National Academies of Science, Engineering and Medicine, "The National Imperative to Improve Nursing Home Quality", sums it up:

The way in which the United States finances, delivers, and regulates care in nursing home settings is ineffective, inefficient, fragmented, and unsustainable. Despite significant measures to improve the quality of nursing home care in OBRA 87, the current system often fails to provide high-quality care and underappreciates and underprepares nursing home staff for their critical responsibilities.

It may be decades again before Pennsylvania's nursing facility regulations are significantly revamped again. It is critical that this opportunity be used to boldly address the following critical issues:

- Address direct care staffing and with adequate minimum levels and higher amounts as needed based on residents' assessed needs, overall acuity or facility factors (such as specialized dementia units or other behavioral health needs.)

- Increase training requirements, so that direct care staff are prepared for their critical responsibilities, including participating in quality improvement efforts.
- Require best practice infection control, prevention, emergency and pandemic planning capacities. Pennsylvania can never again allow what happened in our nursing facilities with COVID.
- Require information on and review of **proposed** change of ownership of facilities to preclude private equity owners from obtaining ownership of facilities, who have bad histories in our or other states.
- Update residents' rights and requirements to help residents' and their guardians' understanding of those rights and recourses if they are violated.
- Increase transparency on nursing facilities' operations, finances and ownership even if there is no change of ownership
- Improve federal regulatory protections and enhance understanding of the interplay of state and federal requirements by integrating the relevant federal regulations with state regulations, so the industry, advocates and the public can see and understand the state and federal regulatory requirements.

As importantly, the state and the Department of Human Services must:

- Determine actuarially sound rates for providing nursing facility care for adequately paid staff with good benefits on an annual basis, and include those rates in the capitation rate to MCOs. Require Community HealthChoices managed care plans to pay at least these rates to the nursing facilities, and require nursing home providers to pass on the pay rates and benefits to staff working in the facility.
- Require nursing home providers receiving Medical Assistance to use a substantial amount of that payment on resident care. (DHS presently limits the profitability of HealthChoices MCOs.)

Comments on the Fourth Draft Regulatory Package

Management. Do not drop section (d) that affirmatively requires governing bodies to adopt effective administrative and resident care policies, etc. We support the requirement that facilities report changes to their governing body within 30 days. There should be a requirement that the administrator report monthly to the board on facility operation, so they are informed and can fulfill their oversight requirements.

Return of personal property and residents' funds.

- Require a deadline for personal property to be returned after death or discharge.
- Do not delete (f) on residents' funds, expenditures and disbursements, which requires a record of all that has been done with those funds available at all times, instead of just a quarterly statement.
- Do not allow 3 days for residents to access their own funds. Funds should be available on 1 day.

Staff Development

- Facility-specific and resident-specific orientation needs to be conducted for staff, so that they understand facility specific policies and procedures and resident specific care.
- Do not remove the requirement for annual staff training. Ongoing training is important for remediating care or safety issues, for continuous quality improvement, and adoption of emerging best practices.

Use of Outside Resources

- Do not delete the requirement that the facility contract with appropriately qualified services or that they use such resources if they cannot provide the services with staff.

Admission Policy

- Do not remove the following language from the PA regulations that prohibit:
 - A facility from requiring a resident to have a representative.
 - A resident from being forced to sign a waiver of rights.
 - A facility from making a resident release the facility from liability for failure to fulfill care.
- In order to have the records necessary to conduct Civil Rights Compliance surveys, require facilities to keep reports on who they have denied admission or turned away, including through discharge planners.
- Similarly, to enable Civil Rights complaints to be investigated and followed upon, require that written notice of denial be sent to applicants or those interested in application with steps to file a grievance or appeal.

Discharge Policy

- Do not delete language requiring discharge and transfer planning for residents and instead include Department regulations on the required process.
- Require a written notice to residents facing unwanted discharge or transfer and information on how to appeal that decision before a person can be unwillingly discharge or transferred from the nursing facility residence.

Power of Attorney

- Do not delete the prohibition that facility staff cannot serve as power of attorney for a resident.

Residents' Rights

- Do not delete the state regulatory language on areas covered by federal law as they are both needed for a single point of reference to understand rights.
- Support involving residents in the development, implementation and review of policies regarding residents' rights.
- Do not delete the section that staff be trained annually and involved in implementation of policies regarding residents' rights.
- Do not delete the requirement that the Department's hotline and local legal services number be physically posted in a prominent location in large print.
- Do not delete the requirement that a facility "treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life".
- Add language that establishes a resident's right to visitors and essential caregiver.
- Do not delete language that requires a written copy of resident rights be provided on admission and requiring accommodation of LEP or low-literacy individuals.
- Resident should have the right to participate or not participate in approved experimental treatments, however no experimental treatment should be administered by the nursing home without Department approval.
- Support residents having the right to be free of any discrimination.

Access Requirements

- Do not delete language prohibiting the facility from interfering with access by others.
- Add language that expands access to a variety of forms of communication including telephone calls, zooms, etc.

Transfer Agreement

- Do not delete this section.
- Add: In non-emergency situations, residents have a choice of hospitals.
- Add: Facilities must assist residents in determining which providers are considered in network providers for residents' insurance coverage.

Restraints

- Add a prohibition that restraints may not be used for discipline or because of lack of staff for supervision and may not be used in a manner which causes injury to the resident.
- Add a provision that physical restraints must be removed periodically to allow the resident to move about.

- Add a provision that the use of restraints must be reviewed every 30 days by an inter-disciplinary team. The results of the review must be documented in resident's chart.
- Add that use of chemical restraints must be monitored for any adverse reaction.

Resident Care Plan

- Do not delete this section but add more requirements to ensure that the care plan is resident-centered, includes input from the residents on what is important to them, e.g., their preferences, what they do not want, etc.

Nursing Services

- Supporting increased staffing ratios is laudable, but this cannot be realized without an increase in Medical Assistance rates to make this possible. These ratios should be minimums with additional staffing required if indicated by the actual needs of each resident as outlined in their comprehensive assessments and person-centered service plans.

Dental Services

- Do not delete this section, but require facilities to help residents access dental services.

Social Services

- Support the requirement that all facilities have a licensed social worker available on a consistent basis.

New Section That Needs to be Added

- Specific requirements for dementia care/memory units that meet the care and safety needs of residents.
- Statement of what services a licensed nursing facility must be able to provide.
- All federal requirements that were deleted should be reinstated/included.

Respectfully submitted,

Ann S. Torregrossa, Director

PA Health Funders Collaborative