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May 22, 2023

Via E-mail: RA-PWOLTLRegsPubCom@pa.gov

Theresa Hartman
Bureau of Human Services Licensing
Department of Human Services
Office of Administration
Health and Welfare Building
625 Forster Street, Room 631
Harrisburg, PA 17120

Dear Director Hartman,

LeadingAge PA, an association representing more than 370 mission-driven providers of senior services, appreciates the opportunity to offer comments on the proposed Adult Protective Services regulation, Regulation No. 14-543, (Protective Services for Adults), listed on the Independent Regulatory Review Commission (IRRC) [website](#) as IRRC # 3364.

We begin by affirming the importance of appropriately protecting adults who need assistance to protect themselves and by acknowledging the delicate balance of doing so, while respecting the rights of the vulnerable adult involved, and refraining from needlessly exacerbating workforce challenges experienced by providers of services to these adults.

LeadingAge PA thanks the Department of Human Services (DHS) for its sensitivity to the significant workforce challenges of providers by working to coordinate the timeframes and methods for reporting with those required under the Older Adult Protective Services Act regulations. This will help to provide clarity and reduce confusion for those who are required to or choose to make reports of abuse. Providers of services are in the midst of the most critical workforce shortage they have ever seen and, therefore, appreciate every effort by state agencies to streamline and coordinate requirements for staff. Additionally, we recommend the following to assist with retaining staff.

§15.136(a) describes the requirement to either suspend or implement a plan of supervision for an employee alleged to have committed abuse. Given that the employee is alleged rather than convicted of committing abuse and noting the challenges that providers face hiring and retaining staff, we would respectfully request that the Department provide that a plan of supervision approved by the agency and a State licensing department with regulatory authority,

where applicable, within three days of submission would be deemed approved. A stated timeframe that must be met by the agency and the Department will assist in preventing exclusion of employees, who may have been accused of abuse in error, and who have not been charged, from being excluded from work while awaiting approval of the supervision plan, where applicable. This would not waive the plan of supervision but could address undue delays that would prevent an employee from earning their livelihood while still ensuring that the employee is supervised. Further, we would encourage the Department to share with providers sample supervision plans that would generally be approvable by the Department or to suggest other measures that could safely and quickly get employees back to work with appropriate supervision.

§15.136(b) describes supervision for an employee of a home health care agency who has been alleged to have committed abuse as “periodic, random direct observation and evaluation of the employee and the recipients...” LeadingAge PA would appreciate if the Department could offer insight into their definition of periodic. How often would the Department expect direct observation?

Definitions: Incident Reporting System – LeadingAge PA respectfully requests that the Department clarify that the Department of Health’s Event Reporting System is considered part of the Enterprise Incident Management System (EIM) so that duplicate reporting is not unintentionally required by the regulations through separate systems.

In addition to staffing-related issues noted above, LeadingAge PA requests clarification from the Department on the following questions and has comments to share.

Definitions: Employee - LeadingAge PA would request clarification on why employees of affiliated corporate entities have been added to the definition of employee.

§15.136(d)(1) would require that, if notified by law enforcement of a decision to file criminal charges against an employee, the facility immediately inform the state agency with jurisdiction or the State-licensed facility or State-operated facility. Would it be reasonable instead for the law enforcement officials to notify the state agency with jurisdiction directly?

§15.138(c) describes penalties for failure to report as they are outlined in Act 70 of 2010 but adds that if the agency learns of a refusal to complete all reporting requirements, the agency shall notify the appropriate law enforcement official within 72 hours. LeadingAge PA would appreciate additional clarification of the term “refusal” and discussion of this requirement. We would also encourage the department to discuss the guidance and encouragement that might be offered by the agency as the reporter navigates the reporting system to assure that there is

appropriate support for the reporter prior to the agency determining that the reporter has refused to complete all reporting requirements.

Stakeholder Input: LeadingAge PA appreciates that the Department has met with stakeholders to encourage input, but these meetings were held from January 2011 through September 2015. We would request that the Department meet again with stakeholders to update itself on any issues of concern, especially since there have been significant policy changes, such as implementation of the Community HealthChoices program, as well as considerable technological innovations since 2015. We further encourage the Department to continue to use a collaborative and educational approach as it moves through the regulatory process and after the regulations are published as final so that all parties know what is expected of them, which will improve compliance and avoid needlessly adding to existing workforce challenges.

Finally, we would request clarification on what constitutes a facility so that the regulated community can understand its reporting requirements. Two definitions and a discussion in the Regulatory Analysis Form make it difficult to determine who is mandated to report because it is not clear what the term facility means. LeadingAge PA would appreciate discussion and clarification by the Department regarding the following definitions and those entities whose employees are mandatory reporters.

Definitions: Health care provider – A definition of health care provider has been added to the Adult Protective Services regulations, but the definition is not provided or used in Act 70. The use of the term "health care provider" is confusing within the discussion of the definition of Facility under § 15.2. Definitions. Facility (8) on page 7 of the proposed regulations, as it appears to refer to only those health care providers that are regulated by the referenced 55 Pa. Code Chapters but could be interpreted to apply more generally and seems to have been interpreted this way in the answers to Questions 15 and 16 of the Regulatory Analysis Form. This definition of health care provider is also used in describing health care providers who may access confidential records under § 15.105, which would appear to be the reason that the term health care provider is defined in the regulations.

Definitions: Facility – In addition, the definition of facility included in Act 70 under § 15.2. Definitions. Facility (8) would appear to be describing the former Medicaid Waiver programs as it states: "An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting." There appears to be variability in the interpretation of this portion of the definition, therefore, clarification on what constitutes a "facility" for the purposes of determining who has the duty of mandatory reporting would be most appreciated.



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Again, thank you for the opportunity to provide comments and questions. The members and staff of LeadingAge PA are always ready to assist you with any issues or questions relating to caring for adults, especially seniors. We look forward to working with you to assure that the Commonwealth has a high-quality long-term care services and supports system for those who need it.

Please feel free to contact me if you have any questions regarding these comments or if we can be a resource to the department.

Sincerely,

A handwritten signature in black ink, appearing to read "Garry Pezzano", written in a cursive style.

Garry Pezzano
President and Chief Executive Officer