

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Friday, October 28, 2022
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The October 28, 2022 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:05 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 John J. Soroko, Esq.
 Murray Ufberg, Esq.
 Dennis A. Watson, Esq.

II. APPROVAL OF THE OCTOBER 20, 2022 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the October 20, 2022 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Chairman Bedwick seconded, and the motion passed 5-0.

III. NEW BUSINESS

The commissioners reviewed mail submitted to the Commission on the meeting's regulations.

A. ACTION ITEMS

1. **No. 3312 Department of Health #10-221: Long-Term Care Nursing Facilities**
2. **No. 3316 Department of Health #10-222: Long-Term Care Nursing Facilities**
3. **No. 3335 Department of Health #10-223: Long-Term Care Nursing Facilities**
4. **No. 3343 Department of Health #10-224: Long-Term Care Nursing Facilities**

Laura Campbell, Regulatory Analyst, explained the Department of Health (Department) submitted four final-form regulations amending standards for long-term care (LTC) nursing facilities. The Department states the intention of these rulemakings is to update regulations to

reflect substantial changes in the means of delivering care and providing a safe environment for residents in LTC facilities. Ms. Campbell described each rulemaking:

- Regulation No. 3312, addressing general applicability and definitions, creates consistency between federal and state requirements for facilities by expanding the adoption of Federal regulations.
- Regulation No. 3316, addressing general operation and physical requirements, eliminates provisions that are outdated and duplicative of federal requirements, amends provisions regarding closure of a facility, and amends regulations for construction, alteration or renovation of a facility.
- Regulation No. 3335, addressing applications for ownership, management and changes of ownership, and health and safety, creates consistency between federal and state requirements, and amends licensure provisions, including new a facility and change in ownership (CHOW).
- Regulation No. 3343, addressing qualifications, training, job duties, recordkeeping, program standards, and resident rights and services, requires facilities to have a full- or part-time qualified social worker, adopts graduated implementation dates for minimum staffing levels for licensed practical nurses and nurse aides to align with the number of direct resident care hours, updates licensure standards, and creates consistency between federal and state requirements.

She stated comments from the regulated community have been received supporting and raising concerns with the final-form regulations. Members of the regulated community will be speaking on these issues.

A comment from Rep. Dan Frankel was received supporting the four final-form rulemaking packages. She concluded by stating the House and Senate Committees deemed the four final-form regulations approved.

Commissioner Soroko requested elaboration on the increase of direct resident care hours from 2.7 to 4.1. Ms. Campbell responded that direct resident care hours were proposed to be amended in regulation No. 3312 but were withdrawn from that rulemaking and are amended in on final-form in regulation No. 3343. Further, 2.87 hours of direct resident care for each resident will begin on July 1, 2023, and 3.2 hours of direct resident care for each resident will begin on July 1, 2024.

Dr. Denise Johnson, MD, Acting Secretary of Health and Physician General, Rachel Boss, Deputy Director, Office of Policy, and Pamela Smith, Assistant Counsel, Department were present to answer any questions.

Dr. Johnson said the Department is seeking to update the standards for LTC facilities to protect the Commonwealth's senior population. She added "every current and future nursing home resident" would benefit from the regulations. She argued those providing comment illustrated the need for the regulations. She highlighted provisions adopting federal health and safety standards, increasing vetting of those who own the facilities, and increasing minimal direct care staffing hours and updating staffing ratios. She encouraged approving the regulations.

Commissioner Watson asked for an explanation on how the 3.2 required hours of direct residence care is calculated. Dr. Johnson responded the hours depend on the nursing staff and its effectiveness. She indicated the number of hours fluctuates, but historically three hours is the average.

Vice Chairman Mizner noted his hometown considers Dr. Johnson "on loan to Harrisburg" and offered praise for her work.

Commissioner Ufberg pondered if the regulations concern those within the facility or the facility itself. Dr. Johnson answered the Department examines facility structures and their certifications. She noted the situation inside a facility should also be examined to ensure patient needs are being met.

Chairman Bedwick inquired if facility assessments benefit patients and the facility structures. Dr. Johnson commented it is a worthwhile business practice to assess the needs of a facility and its patients.

The following members of the public spoke on the regulations:

1. Zach Shamberg, President and CEO, Pennsylvania Health Care Association (PHCA)
2. Matthew Yarnell, President, Service Employees International Union (SEIU) Healthcare PA
3. Garry Pezzano, CEO, LeadingAge PA
4. Jennifer Ebersole, Director of State Government Affairs, Alzheimer's Association
5. Margaret Barajas, State Long-Term Care Ombudsman, Office of the Long-Term Care Ombudsman, Department of Aging
6. Pamela Walz, Supervising Attorney, Community Legal Services
7. Kathy Cubit, Advocacy Manager, Center for Advocacy for the Rights and Interests of Elders

Mr. Shamberg argued prior staffing hour requirements were unobtainable. He expressed praise for the regulations concern for new staffing ratios. He criticized regulation No. 3335 for its lack of transparency and its requirements for patient information. He urged the Commission to allow for discussions between care providers and the state government.

Vice Chairman Mizner questioned if the Right-to-Know Law has provisions allowing an agency to protect confidential or proprietary information from the public. Mr. Shamberg replied he believes the regulations could leave information like email addresses vulnerable.

Chairman Bedwick wondered how frequently ownership of a care facility changes. Mr. Shamberg stated he has observed reorganization of facilities occur more often since the start of the COVID-19 pandemic. He suggested the increase of Medicare funding would curtail facilities from switching owners.

Chairman Bedwick asked if the Department commits to discussing issues with PHCA would help amend the regulations before their effective date. Mr. Shamberg replied he and PHCA are always open to discussion. He added he supports defining a new CHOW process.

Mr. Yarnell asserted facilities across the Commonwealth experienced a "nightmare" due to the pandemic. He underscored issues with nursing turnover and the lack of support to facilities. He argued the regulations would ensure quality care and manageable workforce ratios. "The way we treat our caregiving workforce is a direct reflection on how we treat our residents that we're serving ... and a reflection of our values as a Commonwealth," he declared. He concluded by praising the regulations maintaining transparency on care facility's actions.

Commissioner Watson expressed his gratitude towards Mr. Yarnell and his organizations efforts throughout the COVID-19 pandemic.

Mr. Pezzano noted his thanks for increases in funding through next year to hire nurses. He raised issue with the lack of transparency for the CHOW process, the requirement for additional facility assessments, and requirements for providers to make employment determinations for individuals with a criminal history. He urged a negative vote for regulation No. 3335 as it could negatively impact care.

Chairman Bedwick asked if incorporating a federal waiver process within the regulations would be acceptable. Mr. Pezzano answered in the affirmative and claimed providers are looking for an efficient waiver process. Chairman Bedwick inquired if the regulation allows facilities to open and close on an emergency basis. Mr. Pezzano responded the vagueness of the waiver process is problematic.

Ms. Ebersole detailed the pandemic's effects on the Commonwealth and called for "a complete rewrite of Pennsylvania's dated nursing home regulations." She contended the regulations would positively impact those seeking treatment across the state. She criticized regulation No. 3343 for not addressing patients with Alzheimer's or dementia and requiring minimal dementia training for nurses. She encouraged an affirmative vote on the regulations.

Ms. Barajas detailed her agency's work supporting individuals seeking or utilizing LTC. She praised the regulations for changing CHOW notification requirements, strengthening security for a proposed facility owner's financial and performance history, and the clarifying language.

Ms. Walz echoed sentiments that Pennsylvania's nursing regulations were outdated. She described the provisions for the CHOW process as critical and argued patients could be at risk of losing care. She voiced concern over the lowered staffing requirements and lack of transparency for the CHOW process.

Ms. Cubit communicated her unease with the weak resident rights and staffing provisions. She professed her support for approval of the regulations, despite her concerns. She concluded by detailing the large impact a change of facility owner could have on patient care.

Dr. Johnson thanked all the commenters for their help developing the regulations. She added the Department is willing to collaborate with others in the future. She explained the Department is required to examine a potential facility owner's history to identify the potential owner is responsible. She stated the Department supports updating state regulations to a minimum standard.

Commissioner Watson wondered if the current regulations were all adopted in 1998. Ms. Smith replied minor changes to the regulations occurred, but the most significant changes happened in 1998.

Vice Chairman Mizner noted it was positive to hear that the Department cooperated with other agencies and professionals to fine-tune the regulations. He stated the system should function as a collaborative process that incorporates multiple ideas. He commended all the commenters for their work. Chairman Bedwick and Commissioners Watson and Ufberg voiced their adulation towards the commenters and regulations.

1. No. 3312 Department of Health #10-221: Long-Term Care Nursing Facilities

Commissioner Watson made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

2. No. 3316 Department of Health #10-222: Long-Term Care Nursing Facilities

Vice Chairman Mizner made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

3. No. 3335 Department of Health #10-223: Long Term Care Nursing Facilities

Commissioner Ufberg made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

4. No. 3343 Department of Health #10-224: Long Term Care Nursing Facilities

Vice Chairman Mizner made a motion for approval. Chairman Bedwick seconded, and the motion passed 5-0.

IV. OTHER BUSINESS

1. Referral of Committee Request to the Joint Committee on Documents

Chairman Bedwick made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

2. Approval of Vouchers

Vice Chairman Mizner made motions to approve vouchers and expenses for the period October 21, 2022 through October 28, 2022. Commissioner Ufberg seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, November 17, 2022, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 11:42 am.