November 23, 2020

Dr. Rachel Levine, Secretary  
Pennsylvania Department of Health  
Health and Welfare Building  
8th Floor West  
625 Forster Street  
Harrisburg, PA 17120

Sent via E-mail: ralevine@pa.gov

Re: Recommendations to Improve Pennsylvania’s Nursing Facility Regulations

Dear Secretary Levine,

We are writing to urgently request that our enclosed nursing facility licensing regulations recommendations be considered prior to the publication of proposed regulations. Nearly 63,762 Pennsylvanians are currently residents of roughly 690 licensed nursing homes. These residents are among our most vulnerable citizens, and they rely on the protections provided by government licensing regulations and inspections of the facilities where they live. As we know, the Pennsylvania Department of Health (DOH) serves as the state survey agency and is thus responsible for inspecting nursing homes and ensuring that each facility meets both federal and state standards, as well as for ensuring that complaints are received, investigated and resolved. DOH’s nursing facility regulations have not been updated since the 1990s, and we understand that the Department is working to update and revise its nursing facility licensing regulations.

Updates to Pennsylvania’s nursing home regulations were necessary before the coronavirus pandemic, and as we journey through the ninth month of this public health crisis, the pandemic has shone an even brighter light on the holes and inconsistencies that currently exist in our nursing home regulations. Presently, many portions are outdated, other provisions do not comport with current best practices, and perhaps most importantly, some provisions do not comply with current minimum federal nursing facility regulations.

Since we believe that much of the regulation review process took place prior to the pandemic – in which nursing homes became ground zero for COVID-19 – we strongly believe that revisions should be considered in light of what we have learned in the past eight months. To this end, we describe in this document recommendations for revision of these licensing regulations that we find critical. We are providing these recommendations both in this cover letter and in a track-changes, marked up version of the existing regulations. These two documents should be read together.
Terminology: There are several terms that we recommend revising or adding to be consistent with federal standards and with current best policy practices. For example, the references to individuals who reside in nursing facilities as “patients” is antiquated and should be replaced with “residents”.

**Recommendations**

**201.2 – Requirements**

There are cross-references to sections that are incorrect or that no longer exist. We recommend that this section should be checked and updated.

**201.3 – Definitions**

1) The definition of “abuse” neither mirrors the federal definition nor the state definition contained in state protective services laws. The definition should be revised and made compliant with the federal definition and consistent with the state protective services laws.

2) We recommend the addition of definitions for:
   - Exploitation
   - Intimidation
   - Long-term care ombudsman
   - Neglect
   - Person-Centered Care
   - Resident Representative
   - Serious bodily injury
   - Sexual abuse

3) And we recommend revision to the Interdisciplinary team definition, to reflect person-centeredness.

**201.11 – 201.19 - Ownership and Management**

Many national and local news articles, studies, and investigations have revealed the serious problems that have occurred in Pennsylvania and throughout the nation as a result of the sale 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. See, e.g., https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html.

Here in Pennsylvania, Skyline Healthcare LLC received a license in 2017 to operate facilities formerly owned by Golden Living after that provider was sued by the state Attorney General 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, licensing and management must be revised 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 Long-Term Care Community Coalition in New York recently released a report entitled “Meaningful Safeguards: Promising Practices & Recommendations for Evaluating Nursing Home Owners”, which explores this problem and describes promising state practices to achieve this. See https://nursinghome411.org/evaluating-nursing-home-owners/.
It is of critical importance that the Department do a thorough review of every application to evaluate the applicant’s performance history, capability, and readiness to provide high quality care in a fully compliant manner. To bring badly needed transparency and input to this process, we strongly urge the Department to follow the lead of states such as Massachusetts by requiring applicants to issue public notice that they are seeking a nursing facility license and considering public comment prior to issuance of a license. Outdated licensure application fees must be updated and, at a minimum, made to be annual fees with amounts that get adjusted for inflation to support licensing activities.

Facility operation and compliance expectations must be detailed. In accordance with federal regulations, governing bodies must be required. Facility policies and procedures must be pre-reviewed to ensure the facility is prepared for successful implementation of all requirements.

Federally mandated facility assessments are required to identify the present staffing, equipment, supply, and other needs of the facility. Since it is critically important for a facility and the state to understand each facility’s actual, determined needs, we urge that facilities be required to conduct facility assessments quarterly.

**201.20 - Staff Development**
We recommend revising this section to specify initial orientation topics for all staff as well as specific topics for orientation of direct care staff. It should also be revised to require that initial orientation be completed prior to independent work with residents and include a requirement of demonstrating competency. The section outlines more specific details about ongoing training topics and minimum hours in excess of what is required for annual training of personal care home staff.

**201.22a, 201.22b, and 201.22c. - Prevention, control and surveillance of COVID-19 and other infection viruses or diseases**
These are three new sections that we recommend the Department add to the regulations related to responding to COVID-19 and other outbreaks or pandemics. Additionally, we recommend adding language detailing a requirement that facilities develop, adopt, and implement Emergency, Pandemic, and Disaster Preparedness Plans, specifically tailored to the facility and its residents.

**201.23 - Closure of facility**
We add essential requirements around notifying residents and the Long-Term Care Ombudsman Program.

**201.24 - Admission policy**
We add important language that protects residents’ family members who are not otherwise legally responsible from being coerced or tricked into assuming personal liability for nursing home bills. Additionally, here and in 201.26, we recommend adding language to protect residents from having facility employees serve as their representative, guardian, surrogate, or fiduciary.

**201.25 - Discharge or transfer policy**
We add essential language protecting residents who are being discharged or transferred.

**201.27 and 201.27a. - Advertisement of special services.**
This section has not sufficiently prevented against facility misrepresentation and so we add language to strengthen it to protect residents and potential residents. Additionally, we add a section to specifically
outline requirements of a Dementia Care or Memory Unit and that a facility cannot advertise having one unless the Department has approved its Dementia Care or Memory Unit.

201.29 - Resident Rights
This section required multiple updates to be brought up to date with federal regulations and person-centered requirements and best practices.

201.31 - Access requirements.
This section is updated to be more transparent about the requirements for facilities to permit physical and virtual access to named agencies or organizations that are required to be provided with access.

205.28 - Nurses’ station.
We add language requiring adequate PPE supplies, hand sanitizing, and cleaning supplies at each nurses’ station.

205.41 - Hand Sanitization Stations.
We add this section to establish requirements for the placement of hand sanitizing stations throughout the facility.

205.66 and 205.66a. - Special Ventilation requirements for new construction and for existing construction.
We add requirements for HEPA air filtration systems to new and existing construction.

205.75 - Supplies.
We add language requiring a sufficient amount of PPE, as based on a burn-rate calculation, to keep residents and staff safe.

207.2 - Administrator’s responsibility.
We add language making the administrator responsible for ensuring that housekeeping and maintenance staff are trained in and following infection control procedures.

209.1-8 - Fire protection and resident safety
We revise this language to update smoking restrictions and to expand to other types of emergency situations, not just fires. Specifically, in addition to fire drills, we recommend requiring broader emergency, pandemic, and disaster preparedness and drills for other emergency situations.

211.1-11 - Program Standards for LTC Nursing Facilities
We revise this chapter to address the impact of COVID-19, to address changes over the past several decades around the use of restraints, to incorporate person-centeredness requirements and best practices, and to ensure employee hygiene in dealing with residents.

211.12 - Nursing services and staffing minimums and baseline ratios.
We recommend renaming and revising this section to account for the following:
1) Existing staffing levels are too low and must be raised in accordance with research and best practices that demonstrate that higher staffing levels are necessary to provide quality care to residents.1 The Pennsylvania Department of Education recommends 120 hours as a baseline for

1 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/
Certified Nursing Assistant training\(^2\) and we support this recommendation and incorporate it into our comments.

2) Existing ratios are likewise inadequate and require upwards adjustment based on research and best practices.

3) Minimum staffing levels and ratios should act as floors, not ceilings, and staffing levels must reflect the actual needs of each resident as identified in their comprehensive needs assessments and in the facility assessment, which we would require facilities to complete quarterly instead of annually in order to ensure that this important information accurately reflects the needs of facilities’ resident populations.

211.13 - Infection Preventionist and 211.14 - Ancillary Staff.
We add language requiring a full-time infection preventionist. Infection control violations are and have been widespread in LTC facilities, long pre-dating the outbreak of COVID-19. The GAO recently released a report on widespread and persistent infection control deficiencies prior to COVID-19.\(^3\) These years of infection control violations have occurred in nursing facilities notwithstanding a federal nursing home regulation that requires facilities to develop infection control programs and to designate a person to serve as infection preventionist.\(^4\) Federal regulations, however, only require that the individual designated to serve as infection preventionist be a staff person who works at least part-time at the facility. The experience of COVID-19 has demonstrated that the part-time infection preventionist is insufficient. LTC facilities around the country that have successfully staved off COVID-19 from entering are the ones that have a full-time infection preventionist.\(^5\)

We recommend defining who are ancillary staff and make the regulations clear that ancillary staff levels must be calculated separately from direct care staffing levels.

211.16 - Social services, supports, and minimizing isolation.
We revise this section title and function to reflect the invaluable role of preventing isolation and supporting residents to engage in social activities.

Enforcement
As a final note, we believe the Department can and must do better in its enforcement activities. Too often, violations are not cited, or their severity is not accurately reflected in the enforcement action taken. We urge the Department to enhance their efforts and activities around enforcement.

Resident’s Rights and Residents First
We urge the Department to consider resident’s rights first. Adopting its own commitment to person-centeredness, we encourage the Department ensure that residents are at the center of the Department’s work. Enforcement should be dependent upon ensuring that resident rights are protected and secure. By building stronger relationships and ongoing communication with state and local ombudsman, the Department can have a strong ally in enforcing resident rights in every aspect of the regulatory process.

\(^2\) [https://www.education.pa.gov/K-12/Career%20and%20Technical%20Education/Nurse%20Aide%20Training%20Program/Pages/default.aspx](https://www.education.pa.gov/K-12/Career%20and%20Technical%20Education/Nurse%20Aide%20Training%20Program/Pages/default.aspx)

\(^3\) [https://www.gao.gov/assets/710/707069.pdf](https://www.gao.gov/assets/710/707069.pdf)


Along with the Department, we are dedicated to helping improve the lives of nursing facility residents, and appreciate the dedication the Department has shown, particularly during this difficult time. We would appreciate the opportunity to meet with your staff in the weeks ahead to further discuss our recommended revisions to the regulations. You can reach us by emailing Pamela Walz at pwalz@clsphil.org and/or Diane Menio at menio@carie.org.

Sincerely,
Diane A. Menio, Executive Director
Center for Advocacy for the Rights and Interests of the Elderly
menio@carie.org

Pamela Walz, Supervising Attorney
Community Legal Services
pwalz@clsphil.org

David Hoffman, JD, FCPP, President
David Hoffman & Associates, PC
dhoffman@dhoffmanassoc.com

Peri Jude Radecic, Chief Executive Officer
Disability Rights Pennsylvania
pradecic@disabilityrightspa.org

Laval Miller-Wilson, Executive Director
Pennsylvania Health Law Project
lmillerwilson@phlp.org

Karen C. Buck, Executive Director
SeniorLAW Center
KBuck@SeniorLAWCenter.org

cc: Andrew Sharp, Deputy Secretary of Intergovernmental Affairs, Office of the Governor - andsharp@pa.gov
Secretary Teresa Miller, Department of Human Services – teresamill@pa.gov
Secretary Robert Torres, Department of Aging - rotorres@pa.gov
Keara Klinepeter, Senior Advisor to the Secretary, Department of Health - kklinepete@pa.gov
Sarah Boateng, Executive Deputy Secretary, Department of Health -sboateng@pa.gov
Susan Coble, Deputy Secretary, Quality Assurance, Department of Health - sucoble@pa.gov
Susan Williamson, Director, Division of Nursing Care Facilities, Department of Health - suswilliam@pa.gov
Jamie Buchenauer, Deputy Secretary, Office of Long-Term Living - jbuchenaue@pa.gov
Dan Jurman, Executive Director, Office of Advocacy and Reform - djurman@pa.gov
Margaret Barajas, Pennsylvania State Ombudsman - mbarajas@pa.gov