The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

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VIA EMAIL to: RA-DHLTCRegs@pa.gov

Re: Rulemaking 10-221 (Long-Term Care Facilities, Proposed Rulemaking 1) 28 PA Code Chapters 201-203 and 211 Deadline: August 30, 2021

To Whom It May Concern:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) is a national non-profit organization that advocates on behalf of long-term care consumers across care settings. Our membership consists primarily of consumers of long-term care and services, their families, long-term care ombudsmen, individual advocates, and citizen advocacy groups. Consumer Voice has more than 40 years' experience advocating for quality nursing home care.

We write to express our strong support for the Pennsylvania Department of Health's (DOH) proposed regulations requiring nursing homes to maintain 4.1 hours of direct care nursing per resident day. For years, nursing home residents across the country and in Pennsylvania have suffered due to inadequate staffing. The absence of a federal minimum staffing standard has allowed facilities to perennially understaff their facilities to maximize profits. As DOH's comments on the proposed regulations note, higher staffing ratios are associated with better resident care and health outcomes. Unfortunately, COVID-19 has also exposed how deadly understaffing can be, with several studies showing a direct correlation between staffing levels and COVID-19 cases and deaths.

By mandating 4.1 hprd, Pennsylvania would join New Jersey in becoming a national leader in implementing a staffing standard that is supported as a best practice by research and experts in nursing. In addition, the positive impact of this standard would be even greater if the requirements mandated specific staff to resident ratios by shift for all direct care staff.

Clearly, DOH has based its proposal on empirical research and data. Consumer Voice appreciates the time and effort that DOH has spent in revising the regulations, and offer the following comments:

Inadequate Staffing Results in Poor Health Outcomes

Over the past 25 years, more than 100 research studies have documented the critical relationship between nurse and nursing assistant staffing levels and outcomes of care. A systemic review of 87 research articles and reports from 1975-2003 found that high total staffing levels, especially licensed staff, were associated with a higher quality of care in terms of resident outcomes, particularly functional ability, pressure ulcers, and weight loss.[1]

In 2001, the federal government also found that higher staffing levels result in better outcomes for nursing home residents[2], and most recently, in 2019 continued to acknowledge this relationship. According to the Centers for Medicare and Medicaid Services (CMS), "There is considerable evidence of a relationship between nursing home staffing levels and resident outcomes. The CMS Staffing Study, among other research, found a clear association between nurse staffing ratios and nursing home quality of care."[3]

COVID-19 and Staffing

COVID-19 revealed to the United States what advocates have known for years-nursing homes were not prepared to protect residents from infectious disease. Pre-existing staffing shortages were perpetuated by facilities locking down, which excluded family members and loved ones, and by staff becoming sick themselves. For decades, facilities have relied on family members to provide direct care that the facility itself should have been providing. After nursing homes were deprived of this unpaid staff, residents were left not only suffering from COVID-19 but from isolation and neglect. Consumer Voice conducted surveys[4] of families recently reunited with their loved ones. The stories of neglect and abuse were horrendous. Frequent complaints received by the Consumer Voice from residents, family members, ombudsmen, and citizen advocates relate to insufficient staff in facilities. Those complaints increased significantly during the pandemic.

Research has also shown that homes with higher staffing levels fared better than their counterparts during the pandemic. In California, nursing homes with higher Medicare five-star ratings and higher RN staffing levels were less likely to have residents infected with COVID-19 and had better outcomes for those residents who did test positive.[5] Facilities that did not meet the recommended RN staffing level of .75 hprd were twice as likely to have COVID-19 infections.[6] A study of eight states found that nursing homes with higher Medicare ratings for staffing had lower COVID-19 rates among residents.[7] In Connecticut, a twenty-minute

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[1] Bostick, J.E., Rantz, M.J., Flesner, M.K. and Riggs, C.J. (2006). Systematic review of studies of staffing and quality in nursing homes. *J. Am Med Dir Assoc*. 7:366-376.

[2] Abt Associates for U.S. Centers for Medicare and Medicaid Services, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001

[3] Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users' Guide. October 2019.

[4] https://theconsumervoice.org/uploads/files/issues/Devasting_Effect_of_Lockdowns_on_Residents_of_LTC_Facilities.pdf; https://theconsumervoice.org/uploads/files/issues/Limitations_on_Visitation_Continue_to_Harm_Nursing_Home_Residents.pdf

[5] Harrington C, Ross L, Chapman S, Halifax E, Spurlock B, et al. (2020) Nurse Staffing and Coronavirus Infections in California Nursing Homes.Policy Polit Nurs Pract 21: 174-186.

[6] Id.

[7] Figueroa JF, Wadhera RK, Papanicolas I, Riley K, Zheng J, et al. (2020)Association of nursing home ratings on health inspections, quality of care,and nurse staffing with COVID-19 cases. JAMA 324: 1103-1105.

increase in RN staffing per resident per day resulted in 26% fewer COVID-19 deaths and 22% fewer infections.[8]

COVID-19 laid bare the devastating consequences of inadequate staffing. Acting now to require higher staffing levels will go far to prevent a repeat of the catastrophic events of the COVID-19 pandemic.

The 4.1 hprd Minimum Standard

For 20 years, the gold standard for a minimum staffing standard has been 4.1 hprd, when the U.S. Department of Health and Human Services released a report[9] that included guidance regarding specific minimum staffing thresholds below which quality of care would be compromised. This report recommended a minimum daily standard of 4.1 hprd of total direct care nursing time. In addition to the HHS report, a report by the Institute of Medicine in 2001 also recommended the 4.1 hprd be adopted.[10] Two additional studies in 2004 and 2011 confirmed the necessity of a 4.1 hprd minimum.[11]

Importantly, as DOH states in its comment to the proposed regulation, the 4.1 hprd is a *minimum standard.* We strongly agree with the inclusion of the language contained in 42 C.F.R. § 484.35 requiring a "sufficient" number of staff to meet residents' complex needs. It comports with the federal regulations focus on person-centered care and reminds facilities that residents with more complex care needs may require care hours that exceed the 4.1 hprd standard.

Staffing ratios for each type of direct care staff on each shift must also be mandated.

To ensure that the 4.1 hprd has the desired positive effect, we strongly recommend that DOH mandate minimum staffing levels for each kind of nursing home direct care staff per each shift. Absent a mandate of certain hours per resident staff, nursing homes will be more likely to reach the 4.1 hprd by hiring more certified nursing assistants while forgoing necessary levels of licensed and registered nurses. Additionally, by requiring specific minimum ratios per each shift, DOH will assure that facilities do not front-load staff to meet the 4.1 hprd minimum.

HHS' 2001 report made specific recommendations regarding the ratios that should be maintained for direct care staff. The report recommended that the 4.1 hprd be composed of 2.8 hours from certified nursing assistants, 0.75 hours from registered nurses, and 0.55 hours from licensed practical/vocational nurses.

[8] Li Y, Temkin-Greener H, Shan G, Cai X (2020) COVID-19 infections and deaths among Connecticut nursing home residents: Facility correlates. J Am Geriatr Soc 68: 1899-1906.
[9] Abt Associates for U.S. Centers for Medicare and Medicaid Services, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes." December 2001.
[10] The Institute of Medicine Committee on Improving Quality in Long-Term Care, "Improving the Quality of Long-Term Care." 2001. http://www.iom.edu/~/media/Files/Report%20Files/2003/Improving-the-Quality-of-Long-Term-Care/LTC8pagerFINAL.pdf
[11] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/ citing Schnelle JF, Simmons SF, Harrington C, Cadogan M, Garcia E, BatesJensen B. Relationship of Nursing Home Staffing to Quality of Care, Health Serv Res. 2004, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361005/ and Abt Associates Inc. Nursing Home Staffing Study TEP Presentation. Prepared for the CMS Medicare Nursing Home Compare 5-Star TEP Panel. Durham, NC: Abt Associates Inc; 2011,

We support the ratios specified in CMS' 2001 staffing report:

Day shifts--With respect to a day shift, the nursing facility must have—

- at least 1 registered professional nurse for every 28 residents, with a minimum of 0.29 hours of care provided per resident during each such shift;
- at least 1 licensed practical nurse for every 40 residents, with a minimum of 0.20 hours of care provided per resident during each such shift; and
- at least 1 nurse aide for every 7 residents, with a minimum of 1.14 hours of care provided per resident during each such shift.

Evening shifts--With respect to an evening shift, the nursing facility must have—

- at least 1 registered professional nurse for every 30 residents, with a minimum of 0.26 hours of care provided per resident during each such shift;
- at least 1 licensed practical nurse for every 40 residents, with a minimum of 0.20 hours of care provided per resident during each such shift; and
- at least 1 nurse aide for every 7 residents, with a minimum of 1.14 hours of care provided per resident during each such shift.

Night shifts --With respect to a night shift, the nursing facility must have—

- at least 1 registered professional nurse for every 40 residents, with a minimum of 0.20 hours of care provided per resident during such shift;
- at least 1 licensed practical nurse for every 56 residents, with a minimum of 0.14 hours of care provided per resident during such shift; and
- at least 1 nurse aide for every 15 residents, with a minimum of 0.53 hours of care provided per resident during such shift.

By implementing these specific ratios, DOH will ensuring that residents receive necessary and adequate care throughout the day.

It is indisputable that by adopting a 4.1 hprd standard, many of the lives of Pennsylvania's most vulnerable residents will be saved, while resulting in an increase in positive health outcomes for all residents. We commend Pennsylvania for taking bold action to protect nursing home residents.

Sincerely,

Lori Smetanka

Lori Smetanka
Executive Director