



August 30, 2021

Lori Gutierrez, Deputy Director for the Office of Policy  
PA Department of Health  
625 Forster Street, Room 814 Health and Welfare Building Harrisburg, PA 17120  
Submitted via email to: RA-DHLTCRegs@pa.gov

Re: Rulemaking #10-221 (Long Term Nursing Care Facilities, Proposed Rulemaking 1)

Dear Ms. Gutierrez,

I am writing on behalf of the tens of thousands of SEIU Healthcare Pennsylvania members across the state who provide care to Pennsylvania's most vulnerable residents. Our members, including thousands of nursing home workers, have known for many years that Pennsylvania's long-term care system is broken; the Covid-19 pandemic has only shone a public spotlight on the severe problems that have plagued Pennsylvania's nursing homes for decades. We know that this system plays a vital role in caring for Pennsylvania's aging population, and we know that it is in desperate need of comprehensive reform. That's why we're delighted to see the Department of Health moving forward with a long-overdue thoroughgoing modernization of the state's long-term care facility regulations, which have not been updated since the late 1990s; getting these regulations right is a crucial step in reshaping this industry so that it can regain the trust of residents, families and caregivers.

#### **Staffing is Key to Quality Care**

The regulations which will be proposed in the coming months cover a wide variety of important topics, but it is our belief that the crisis in Pennsylvania's nursing homes is first and last a staffing crisis. Nursing staff--including registered nurses, licensed practical nurses, and certified nursing assistants--are at the heart of skilled nursing facility care; these frontline caregivers are the ones who protect residents every day and ensure that they can complete activities of daily living such as eating, bathing and toileting safely and with dignity. Study after study has shown that nursing staff levels are crucial to resident care<sup>1</sup>, and a CMS study has established 4.1 hours of nursing care per resident day (HPRD) as critical to resident safety.<sup>2</sup> Since that time, dozens of advocates--from consumer advocates like the National Consumer Voice for Quality Long-Term Care<sup>3</sup> to medical experts like the Coalition fo Geriatric Nursing Organizations<sup>4</sup>--have pushed for 4.1 staffing. In addition, as a result of the transition of healthier residents to home- and community-based services (HCBS), the nursing home resident population has shifted towards those with more acute need for care.

Yet nursing home staffing levels have remained grossly inadequate, driven in part by lack of appropriate regulation, in part by underfunding and in part by the increasing role of irresponsible operators including private equity firms in the nursing home industry.<sup>5</sup> We at SEIU Healthcare

<sup>1</sup> Harrington, Charlene et al. "[Appropriate Nurse Staffing Levels for U.S. Nursing Homes.](#)" *Health services insights* vol. 13 1178632920934785. 29 Jun. 2020, doi:10.1177/1178632920934785

<sup>2</sup> Centers for Medicare & Medicaid Services (CMS). *Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* Phase II Final Report. Baltimore, MD: CMS; 2001

<sup>3</sup> <https://theconsumervoice.org/betterstaffing>

<sup>4</sup> <https://www.nursingworld.org/practice-policy/nursing-excellence/official-position-statements/id/nursing-staffing-requirements-to-meet-the-demands-of-todays-long-term-care-consumer>

<sup>5</sup> Gupta, Atul et al. "[Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes.](#)" NBER Working Paper, February 2021.





Pennsylvania have heard for years from our members about dangerous effects of understaffing in our state's nursing homes; we know that even prior to the pandemic, it was common for a single CNA to be asked to care for as many as 20 or 30 nursing home residents on a shift, every one of whom required assistance to perform basic activities like eating, bathing and toileting. Under such conditions it is simply not possible for caregiving staff--no matter how dedicated--to ensure resident safety, much less resident dignity.

This kind of chronic understaffing represents an ongoing threat to resident safety, year in and year out--but it exploded into public view due to the deadly, tragic spread of Covid-19 in nursing homes last year. Studies have shown that understaffing<sup>6</sup> was crucial in allowing Covid-19 to spread and kill thousands of residents in our nursing homes.

With thousands of Pennsylvania's most vulnerable residents dead, it is a moral obligation for all of us to reform the state's long-term care system and ensure that this can never happen again. If anything positive can come out of this tragedy it will be a shared commitment on the part of state regulators, resident advocates, families, industry and frontline caregivers to create strong regulations to ensure dignity and safety in resident care.

#### **4.1 Hours of Resident Care per Day is the Key to Adequate Staffing**

That's why we applaud the Department of Health's proposal to achieve 4.1 HPRD in Pennsylvania's nursing homes. In significantly raising staffing levels, the Department is heeding the voices of resident advocates across the country and following the lead of states including New Jersey, New York and Massachusetts which have recently invested in raising staffing standards. SEIU Healthcare Pennsylvania urges the Department in the strongest possible terms to ensure that 4.1 HPRD is part of the final regulatory package.

Because the Department is rolling out its regulatory proposal in five distinct packages, four of which are still to come, many details remain to be discussed in its proposal on staffing. In fleshing out the new staffing regulations, we urge the department to do the following:

- 1) Ensure that facilities are required to meet the 4.1 HPRD requirement exclusively through *nursing care delivered by nursing staff, including CNAs, LPNs and RNs.*** Time spent on administrative work does not support resident care and should not be counted. Staff performing other roles in a nursing home are not focused on frontline resident care and should not be counted.
- 2) Break down 4.1 by job category and ensure that 4.1 staffing means 2.8 HPRD of CNA care, 0.55 HPRD of LPN care and 0.75 HPRD of RN care.** CNAs, LPNs and RNs each have distinct and important roles to play on the care team, and the Department should follow CMS recommendations and best practices in requiring minimums by job category. 2.8 HPRD of CNA care is especially important in ensuring that residents can complete activities of daily living safely and with dignity.
- 3) Apply the Center for Advocacy for the Rights and Interests of the Elderly (CARIE) ratios to ensure adequate staffing by shift:** It is important that staffing in skilled nursing facilities be adequate *every single day*, not merely on average over the course of a quarter. Too often we see facilities understaffed on weekends or on some shifts but not others, with detrimental effects on resident care. CARIE's [recommendations](#) (page 84) propose specific staffing ratios for each job category for each shift, and we recommend that the Department follow those recommendations.
- 4) Enforce staffing requirements to ensure adequate staffing every day, and link enforcement to CMS Payroll-Based Journal data:** Enforcement of staffing requirements

<sup>6</sup> Center for Medicare Advocacy, ["Staffing is Key to Determining Whether Covid-19 Affects Nursing Home Residents,"](#) February 2021





is an ongoing problem across the country, including in Pennsylvania.<sup>7</sup> Luckily, the federal government has responded to repeated efforts to evade regulations by requiring every SNF to report daily, comprehensive staffing numbers linked directly to facility payroll. The state can and should use this data to ensure that staffing requirements are met every day, not merely on average over the course of a quarter.

- 5) **Require facilities to post current staffing levels conspicuously on a daily basis.** The Department should follow best practices from other states in requiring that facilities post their daily staffing level by shift. This will allow caregivers, residents and their families to monitor staffing and ensure that facilities are meeting their obligations.
- 6) **Use 4.1 staffing as a floor, not a ceiling, and ensure that staffing is tailored to resident acuity.** We join resident advocates in noting that different facilities have different staffing needs, based on the needs of their residents. 4.1 should function as a floor on nursing staff and the department should reserve the right to require higher staffing in higher-acuity facilities.

#### 4.1 Staffing is Achievable and Economical

We anticipate that the Department will receive comments from some stakeholders arguing that 4.1 staffing is unachievable, since sufficient care workers are not available to meet this requirement, or that staffing does not make economic sense for Pennsylvania. We disagree with this assessment for a number of reasons.

On the question of whether 4.1 staffing is achievable, even opponents of the proposed regulation acknowledge that it would require recruiting just 7,000 new caregivers. (This estimate appears to be based on 2019 Medicaid cost report data, and may be an overestimate given current occupancy levels.) *The vast majority of these new caregivers would be CNAs*, since most facilities are already at or near the mandated staffing levels for RNs and LPNs. CNAs can be trained in just weeks, and the average wage of a CNA in Pennsylvania is just \$15.65, according to BLS data.<sup>8</sup> It is simply not credible that it would be impossible to attract a few thousand caregivers to the bedside in Pennsylvania, where over 400,000 residents are currently unemployed and seeking work.

The truth is that the challenge of staffing nursing homes in Pennsylvania is not one of *recruiting new workers* but of *retaining existing workers*: after all, this is an industry that faced a turnover rate of *128% per year* in 2017-18,<sup>9</sup> before the effects of Covid-19 set in. Far from facing a bottleneck in recruiting workers, the industry draws in thousands of workers a year; it's just that many soon leave the bedside. We've seen this within our own membership over the years, before and during the pandemic: too many caregivers, including both newer workers and those with decades of experience, leave for other industries. Nationally, hundreds of thousands have left in the past decade.<sup>10</sup>

To address this exodus we need to improve the quality of nursing home jobs--and that means increasing staffing. Caregivers leave the bedside for many reasons, including higher wages in sectors like retail--but the primary complaint we hear over and over again from our members is that facilities are so understaffed it's impossible for them to do their jobs. Nursing home staff aren't in the industry for the money: they want to provide personalized, dignified care to residents. When facilities are too

<sup>7</sup> TribLive, "[Former Mt. Lebanon nursing home administrator indicted on healthcare fraud charges.](#)" February 25, 2021.

<sup>8</sup> [https://www.bls.gov/oes/current/oes\\_pa.htm](https://www.bls.gov/oes/current/oes_pa.htm)

<sup>9</sup> Gandhi et al., "[High Nursing Staff Turnover In Nursing Homes Offers Important Quality Information.](#)" *Health Affairs* March 2021.

<sup>10</sup> <https://www.modernhealthcare.com/post-acute-care/nursing-home-employment-continues-free-fall-industry-prepares-worker-exodus>







understaffed to allow them to do this, they leave. Research shows that facilities with lower staffing have higher turnover.<sup>11</sup> Critics who argue that we must keep staffing low because we can't recruit caregivers have it exactly backward: To recruit more nursing staff and lower industry turnover, we need to make sure that staffing is adequate for caregivers to do their jobs.

Furthermore, higher staffing is economical and a good investment for Pennsylvania. We fully agree with the Department's analysis that achieving 4.1 staffing will require investment from the state in increased Medicaid rates--a wise investment in protecting the most vulnerable Pennsylvanians, and a necessary one as our population ages. But we would note that raising staffing requirements may offset the costs of nursing home care in several ways:

- 1) By reducing the significant costs of agency staffing.** Due to chronic understaffing and high turnover, many nursing homes rely on agency staffing to achieve legal minimum staffing levels--at exorbitant costs to the facility and, indirectly, the taxpayer. Staffing agencies frequently charge two to three times the cost of a full-time staff member, despite providing lower-quality care. A stronger, more stable workforce will reduce these costs.
- 2) By reducing the costs of turnover.** As discussed above, understaffing is a key driver of high turnover. In an industry where turnover averages 128% per year, the costs associated with turnover--from recruitment, to interviewing, to training and onboarding--are significant; some estimates<sup>12</sup> place the cost of turnover in direct care staff at upwards of \$3000 per new employee per year. Stabilizing the workforce by improving job quality can offer significant savings to facilities and the industry as a whole.
- 3) By improving resident health outcomes:** Higher staffing leads to improved resident care, and healthier nursing home residents--those who are saved from falls, bed sores, rehospitalization, and cognitive decline by receiving more adequate care--are less costly to the state Medicaid system.

Again, investment in safe staffing will require new resources from the state--but the Department should take a comprehensive view of the full economic impact of staffing, including some savings, when evaluating the move to 4.1.

In conclusion, the moral imperative to transform the nursing home industry and improve resident care has never been clearer. Reforming this industry means addressing the workforce and staffing crisis at its heart, and appropriate minimum staffing requirements are the foundation of this reform. We applaud the Department's decision to require 4.1 HPRD of direct resident care in every nursing home in Pennsylvania, and we urge the Department to further strengthen this requirement in subsequent regulatory packages and fully implement it for the sake of caregivers, resident families and the vulnerable Pennsylvanians who rely on nursing home care.

Sincerely,  
Matt Yarnell  
President, SEIU Healthcare Pennsylvania

<sup>11</sup> <https://www.mcknights.com/news/alarmed-nurse-turnover-rates-linked-to-quality-payment-woes-in-major-new-nursing-home-study/>

<sup>12</sup> [https://www.leadingage.org/sites/default/files/Cost\\_Frontline\\_Turnover.pdf](https://www.leadingage.org/sites/default/files/Cost_Frontline_Turnover.pdf)

