

Testimony Presented by:

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House Aging and Older Adult Services Committee

Public Hearing on COVID-19 Regulatory Suspensions

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Good afternoon Chairman Day, Chairman Samuelson and members of the House Aging and Older Adult Services Committee. My name is Jamie Buchenauer and I serve as the Deputy Secretary for the Department of Human Services' (Department) Office of Long-Term Living (OLTL). With me is Jeanne Parisi, the Director of the Bureau of Human Services Licensing (BHSL). We are pleased to report on the COVID-19 Regulatory Suspensions for facilities licensed by the OLTL's Bureau of Human Services Licensing as well as temporary bed requests for nursing facilities.

The OLTL is responsible for programs providing long-term care and support of older Pennsylvanians and individuals with physical disabilities. The OLTL has oversight over the Medicaid (Medical Assistance) funding to administer the Community Health Choices Managed Care program, the LIFE (Living Independently for the Elderly) program, the OBRA home and community services waiver program and the payments for nursing facility services still in a fee-for-service arrangement. The OLTL also manages the Medical Assistance enrollment and bed requests for nursing facilities and the state funded Act 150 program, which provides long-term care services to those who are not financially eligible for Medical Assistance.

As of August of 2019, the OLTL has oversight of the Bureau of Human Services Licensing, which is responsible for the overall management and coordination of Personal Care Home and Assisted Living Residences licensing. This includes the planning, direction, design, development, and administration of licensing statutes, licensing regulations and policy, licensing enforcement policy, licensing training, licensing research, and licensing data systems for more than 1,100 facilities serving more than 45,000 older Pennsylvanians, as well as adults with mental illness, developmental disabilities, physical disabilities, behavioral, and/or cognitive disorders.

While the OLTL reimburses nursing facilities and manages their enrollment and participation in the Medical Assistance program, the Office of Long-Term Living does not license or oversee nursing facilities.

REGULATORY SUSPENSIONS

NURSING FACILITIES

The OLTL manages the Bed Review request process for the Department to ensure there are an adequate number of Medical Assistance beds statewide for the number of Medical Assistance eligible individuals who need and chose care in nursing facilities. The OLTL reviews requests from nursing facilities to increase, decrease or transfer Medical Assistance beds. State regulations outline a process for nursing facilities to follow and criteria nursing facilities must meet for the OLTL to approve new bed requests.

Early in the COVID-19 public health emergency, the OLTL recognized the need for increased flexibility to grant nursing facilities emergency Medical Assistance beds in certain areas of the Commonwealth. The impact of COVID-19 patients moving from hospitals to nursing facilities to recover was unknown at the time, as was the potential need to relocate residents from one nursing facility to another.

On June 4, 2020, the OLTL issued guidance regarding the suspension of regulations relating to Participation Review of Bed Requests, to approve temporary bed increases in response to a potential increased need for nursing facility beds during the COVID-19 public health emergency. Nursing facilities enrolled in the Medical Assistance program wishing to apply for temporary bed increases could send their request along with any supporting documentation to OLTL's Participation Review unit. The OLTL evaluated the request for the beds based on the anticipated need for increased nursing facility capacity or specialty care in specific regions of the state. The temporary increases were issued for six-month periods with the potential for six-month extensions. Nursing facilities wishing to request permanent bed increases needed to continue through the Bed Review Process outlined in state regulation.

PERSONAL CARE HOMES and ASSISTED LIVING RESIDENCES

On March 29, 2020, due to the COVID-19 Public Health Emergency, the Department also announced the temporary suspension of certain regulations for Personal Care Homes (PCHs) and Assisted Living Residences (ALRs). The OLTL also issued guidance regarding the suspension of these specific licensing regulations for PCHs and ALRs. The document attached to this testimony provides the list of regulations suspended for personal care homes (55 Pa Code Chapter 2600) and Assisted Living Residences (55 Pa Code Chapter 2800). Most

regulations were suspended on a limited basis, but requirements for training and fire drills were fully suspended.

On August 6, 2021, the Department notified PCHs and ALRs that the suspension of regulatory provisions under the state disaster emergency declaration will expire on September 30, 2021, per Act 21 of 2021. All of the regulations suspended per the March 29, 2020 announcement will be reinstated as of September 30, 2021. Any transition required to be in full compliance, for example 90 days to complete staff training, is required to be completed by September 30, 2021.

Suspension of these regulations helped facilities prepare for and address potential and actual COVID-19 outbreaks occurring in the facility. For example, allowing administrators to work less than the required 20 hours per week in a PCH if they needed to support another of their facilities temporarily provided necessary staffing flexibility for facilities. The BHSL was aware of administrators covering multiple facilities due to staff contracting the virus. Another example was allowing facilities to provide meals in the resident's room using plastic utensils and paper plates to support infection control. While ongoing training is important, providing direct care services to residents has been of utmost importance and temporarily suspending training requirements has allowed facilities to meet the immediate needs of residents throughout the pandemic.

VISITATION

On March 13, 2020, the OLTL issued regulatory suspensions to apply the Interim Guidance on Visitation during COVID-19, issued by the Department of Health for nursing facilities, to PCHs and ALRs. The guidance stated that, if a facility was located in a county where there are known cases of COVID-19, the Department recommended a no visitor policy, except in end-of-life situations. The guidance also stated that the Department would support a no visitor policy if the facility believed this was in the best interest of the residents.

Governor Wolf issued the statewide mitigation efforts beginning on March 17, 2020. The Mitigation Efforts required PCHs and ALRs to restrict visitation. The restrictions were set to end when Governor Wolf ended the Disaster Proclamation.

In follow up to the March 29, 2020 communication, on May 5, 2020, communication was sent to PCHs and ALRs clarifying that all medically necessary personnel, hospice workers, licensing staff and protective service workers were to be allowed on site at the facility. Health care personnel were permitted to enter the facility.

On June 26, 2020, the Department issued guidance on COVID-19 for PCHs, ALRs and Private Intermediate Care Facilities. The guidance set forth conditions under which a facility could safely allow visitation. For example, when visitation was first reinstated, providers were requested to submit a reopening plan explaining how they intended to approach the steps in the reopening process and include information on their policies on the facility website. This guidance has continued to evolve as revisions to the policy were made on July 31, 2020, September 18, 2020, October 26, 2020, November 25, 2020, January 28, 2021, April 5, 2021 and June 23, 2021. Updates to the guidance were due to updated federal and state guidance being issued by the Centers for Disease Control and Prevention and the Pennsylvania Department of Health. The updates included the availability of compassionate care visitation in which a facility resident may have a designated compassionate care visitor, regardless of the facility circumstance, if the need for one is designated on the resident care plan.

The June 23, 2021 revision identified visitation should occur whenever possible and outlined specific circumstances during an outbreak when visitation might be restricted for a short period of time. Effective September 30, 2021, the BHSL will enforce the regulation requiring visitation be allowed seven days per week, 12 hours per day.

ANNUAL INSPECTIONS

On March 29, 2020, the OLTL suspended annual renewal inspections based on the Center for Medicare and Medicaid Service's guidance to nursing facilities to halt all annual renewal inspections. Serious complaint and incident inspections continued to take place on site during the COVID-19 public health emergency.

Annual renewal inspections resumed for PCHs and ALRs in October of 2020. The Department issued guidance for licensing inspectors so they could mitigate, when possible, the risk of spreading COVID-19 while resuming licensing inspections to ensure the health and safety of the facility's residents. The BHSL licensing staff have been going on site to conduct

annual renewal inspections since October 2020, taking the proper precautions, including wearing personal protective equipment and not entering facilities experiencing a COVID-19 outbreak.

OTHER GUIDANCE

Other regulatory suspensions and guidance on COVID-19 for PCHs, ALRs and Private Intermediate Care Facilities provided information to facilities on testing for residents and staff, outings for medical appointments and non-medical reasons, dining and communal activities, cohorting, mandatory reporting, infection control and personal protective equipment and support resources.

Please note, the September 30 expiration date only affects state regulations suspended under the state disaster emergency declaration. The OLTL also has programs that were granted federal flexibilities by the Centers for Medicare and Medicaid Services. The Community Health Choices Managed Care program as well as OBRA wavier program flexibilities, known as Appendix K, provided under the federal public health emergency will remain in place as long as the federal public health emergency remains in effect or until the Department decides to end the flexibilities. On July 19, 2021, the U.S. Department of Health and Human Services (HHS) extended the federal public health emergency to October 17, 2021 (90 days). The HHS Secretary indicated that states will be provided 60-days' notice before terminating the federal declaration.

We are happy to take any questions the members of the committee may have for us.