

## Big Changes Coming for Pa.s LTC Facilities

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After more than 20 years, the Pennsylvania Department of Health is revising its regulations for the state's long term care (LTC) nursing facilities. The department last revised its regulations in 1999.

The department states that the [primary purpose for its regulatory changes](#) is to create consistency between federal and state requirements for LTC facilities by adopting, in most cases, the more recent federal standards. For example, the DOH proposes to replace its definitional standards for resident "abuse" with the federal standards applicable to all facilities that participate in the Medicare and Medicaid programs.

Presently, there are only a few LTC facilities licensed by the state that do not participate in Medicare or Medicaid. The majority of facilities already are required to meet the federal standards. The DOH believes that requiring all facilities to comply with the federal requirements, without exception, will make the survey process more efficient and will eliminate confusion in the application of federal and state standards.

In addition, the proposed regulations will increase nursing staff ratios, although not federally required. The state proposes to increase the resident direct-care hours from 2.7 to 4.1. Because the department is concerned that facilities might attempt to meet this staffing requirement by frontloading the required hours during one part of the day, it is requiring that this standard be met across all shifts over a 24-hour period. According to the DOH, the increase in direct-care hours will be the minimum requirement and will not excuse a facility from providing adequate staff - with the appropriate competencies and skill sets - to care for residents throughout the day.

Some have questioned how this new standard can be enforced, and would prefer a more concrete standard. There also are questions about the need for nursing staff during evening hours when resident activity is low. However, the department has expressed that it does not want this new staffing ratio to be merely a technical requirement, but rather a qualitative standard intended to improve the daily lives of residents.

At the same time, the department recognizes that an increase in staffing will increase costs. The DOH estimates the increase in LTC staffing for Medicaid facilities alone will increase direct-care hours by nearly 16 million per year, and increase annual costs by approximately \$385 million. While some increase in costs can be offset by federal matching funds, the remaining costs must be absorbed by the state's Medicaid program or by the facilities themselves. Indeed, the DOH has stated that there is insufficient data "to determine who will bear the burden of the remaining costs."

The department also states that it cannot assess the potential impact of increased staffing on those LTC facilities that do not participate in Medicaid. While many of these facilities still accept Medicare, the Medicare program generally does not cover direct-care services (meaning assistance with activities of daily living) unless these services are "medically" necessary. Still, the DOH noted that most Medicare facilities already meet the 4.1 hour requirement.

Regardless, the department believes strongly, and has so stated, that the increase in quality of life and safety for

Pennsylvania residents that will come with the new regulations outweighs any additional costs to the facilities. This is not welcome news at a time when many facilities are struggling to keep staff during COVID-19, even if they could absorb the extra costs.

Implementation of the new regulations is scheduled for 2022, and it remains to be seen whether the department will delay implementation until after the COVID crisis abates. Nevertheless, while the implementation date remains uncertain, LTC facilities should begin preparing now for the anticipated changes, and the potential costs and challenges of increasing staff in the years ahead.

If you have any questions about these proposed regulations, please [contact me](#) or any member of the [Barley Snyder Senior Living Industry Group](#).

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