Testimony

Senate Republican Policy Committee

Informational Meeting

Regulatory Issues in Pennsylvania

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Introduction

On behalf of the Pennsylvania Homecare Association (PHA), thank you, Chairman Laughlin and members of the Committee for your interest in regulatory issues and challenges in Pennsylvania. My name is Teri Henning, and I am the Associate Vice President of Government Affairs at Aveanna Healthcare. Aveanna provides in-home nursing and therapy services to children and adults with medically complex conditions, non-medical, personal assistance services to individuals with disabilities and older Pennsylvanians, as well as home health and hospice care across Pennsylvania. We employ 26,000 nurses and caregivers who provide services to more than 55,000 patients across the country, including more than 3,000 patients and consumers in Pennsylvania. Prior to joining Aveanna in May of this year, I was CEO of the Pennsylvania Homecare Association for nearly four years.

PHA and its members communicate frequently with the Department of Human Services (DHS), the Department of Health (DOH), and the Department of Aging. We appreciate our partnership with these agencies and their staff, and as recently as last week, participated in a productive meeting to discuss some of the issues I will share today. PHA and its members, including Aveanna, look forward to our continued work with department staff, the administration, legislators, and all stakeholders to improve the regulatory process and strengthen access to quality health care in Pennsylvania. It is in that spirit that I share my testimony today, on behalf of the Association and its members.

Regulatory Issues in Pennsylvania

The regulatory process in Pennsylvania is challenging, to say the least. It can take years for regulations to be developed or updated, and there are many opportunities for the process to fail or be delayed along the way.

As a result, the home care community in recent years has pursued legislative action – in lieu of regulatory change - on multiple issues. This is not preferred, obviously, because it leaves regulations in place that conflict with Pennsylvania statutes. Examples include:

- **Non-Physician Practitioners (NPPs) ordering and recertifying home health**. In 2020, the federal CARES Act permanently extended the ability for Non-Physician Practitioners, such as Certified Registered Nurse Practitioners (CRNPs) and Physician Assistants (PAs) to order home health. Pennsylvania's regulations limited this authority to physicians, and PHA

advocated for legislative action to make state rules consistent with federal law. See Act 30 of 2022 (allowing CRNPs and PAs to order home health in Pennsylvania).

- **Timeframe for signatures on home health orders - 7 to 30 days**. Pennsylvania regulations have long-required physician signatures on home health orders within seven (7) days of a verbal order, which is much more restrictive than federal standards. For ten years, PHA advocated for changes to state regulations to conform them with federal rules. Last year, PHA pursued legislative action to allow 30 days for these signatures, which was likewise adopted in Act 30 of 2022.
- **Virtual interviews for Direct Care Workers (DCWs)**. Pennsylvania's home care law and regulations require "face-to-face" interviews for Direct Care Workers. During the COVID-19 public health emergency (PHE), DOH allowed these interviews to be conducted virtually, over Zoom or a similar platform. Because the practice was so successful, and in recognition of the severe DCW shortage, PHA and its members asked for the practice to continue post-PHE. HB 155, which passed the House unanimously in April, is currently in the Senate Health & Human Services Committee. Today, providers can request exceptions from DOH, although that process can be delayed, and results in different rules for providers who have not obtained exceptions.

Additional regulatory issues remain as well. I share a few examples below, and PHA would welcome the opportunity to provide additional information or engage in further discussion on these or other regulatory challenges in Pennsylvania.

Background Checks

While PHA and its members strongly support appropriate background checks, there are a number of issues with the background check process in Pennsylvania, including unnecessary duplication, cost, and inconsistent interpretation.

DOH/Department of Aging Interpretations

- The Older Adult Protective Services Act (OAPSA) applies to home-based care providers. It requires a state background check for all employees, and a federal/FBI background check, including fingerprints, for any caregiver who cannot establish continuous residence in Pennsylvania for the two years prior to hire.
- Unfortunately, a significant number of DCWs are not able to provide the documentation necessary to establish the two-year residency requirement. As a result, DOH, the licensing

authority for home-based care, requires a federal/FBI background check for these caregivers.

- If a provider doesn't have the necessary documentation in a caregiver file at the time of a DOH survey (either proof of residence, or a federal/FBI background check), they will be cited with a deficiency by DOH.
- The Department of Aging, however, has informed providers that caregivers who say they have lived in Pennsylvania for two consecutive years, but cannot provide the necessary documentation, cannot obtain a Department. of Aging federal background check because they would be "falsely responding" to the first line of the background check application, which states as follows:
    - *"I hereby acknowledge that I have NOT been a resident of the Commonwealth of Pennsylvania for the past two consecutive years."*
- The Department of Aging has said that providers have two options in these circumstances: 1) obtain a state background check only; or 2) do not hire the caregiver.
- This puts providers in an impossible spot. They cannot risk DOH deficiencies, which put their agency licenses at risk, but certainly do not want to encourage any false attestation.
- Not hiring these DCWs is also not a good solution. Direct care workforce shortages are well-documented, and providers must be able to hire qualified DCWs. Turnover remains high, and studies project that Pennsylvania will need more than **37,000** additional DCWs to provide personal assistance services (PAS) by 2026.
- PHA respectfully suggests that there must be a solution that allows providers to hire these much-needed, qualified DCWs, without having to choose between DOH requirements or Department of Aging rules.

Cost/Duplication of Background Checks

- Background check costs are also high, subject to increases, and include unnecessary, duplicate charges.
- Today, state background checks cost $22, federal/FBI checks cost $25, and Child Abuse Clearances cost $13. As a result, providers pay $60 per applicant, some of whom do not take the position, and others who do not stay long-term.
- Current background check rules also require providers to obtain multiple federal/FBI background checks for the same applicant.

  - For example, a DCW in Pennsylvania who has not been a Pennsylvania resident for two continuous years and is also providing care in a home where a child resides, must obtain a federal/FBI background check for the Department of Aging, ***and*** another one for DHS, at a cost of $50 for the same person, prior to hire.
- Agencies should not have to obtain and bear the expense for two identical federal background checks for the same applicant.

Electronic Visit Verification

Electronic Visit Verification (EVV) is a requirement under Section 12006(a) of the federal Cures Act, signed into law in 2016, that added section 1903(l) to the Social Security Act. It requires states to mandate EVV use for Medicaid-funded personal care services (PCS) and home health care services (HHCS) for in-home visits by providers.

Although required by law to be "minimally burdensome" to providers, PHA members report significant costs and challenges relating to EVV implementation in Pennsylvania, including hundreds of thousands of dollars in additional expense, system issues and delays caused by technology updates, and confusion about specific Managed Care Organization (MCO) requirements and expectations.

- There are six MCOs in Pennsylvania's Physical HealthChoices Medicaid program and three in the Community HealthChoices Medicaid program.
- DHS oversees both programs, including managing the MCOs' administration of them, however each MCO has different rules, processes, and procedures that providers must follow, or risk recoupment of payments made for services provided to consumers. As shared in other communications with the Department and the MCOs, PHA believes that the programs would benefit from DHS taking a more active role in establishing/confirming EVV policies and practices on issues such as manual edits, overnight/awake caregivers, specificity of task listing per shift, and authorization timeframes. PHA and its members believe that providers, participants, DHS and the MCOs would all benefit from clearer, consistent expectations.

Multistate Nursing Licensure Compact

Pennsylvania Act 68 of 2021 authorized Pennsylvania to enter into the interstate Nurse Licensure Compact (Compact). The Compact is an agreement among more than 40 states and territories to recognize each other's licensed nurses, reducing the burden of obtaining licensure through individual

states and making it easier for nurses to work across state lines. Licensed nurses holding a multistate license (MSL) through the Compact can practice in other Compact member states and territories without obtaining additional licenses.

- Compact implementation is still ongoing in Pennsylvania. PA-licensed nurses are not yet able to obtain an MLS until Pennsylvania can certify that it has performed an FBI criminal background check on Pennsylvania applicants – a process that requires the state to gain FBI-approved access to its criminal history database for that purpose. The Administration has identified this as a top priority.
- As of September 1, out-of-state MSL nurses are able to practice in Pennsylvania, however, DOH has identified a number of regulatory provisions that are barriers to health care providers seeking to hire and use eligible MSL nurses. DOH has identified an exception process for each facility type, including home health and hospice, however for some provider types, MSL nurses cannot be hired under current regulatory interpretation. See:
    - Home Care Agency/Registry Guidance: "MSL Compact Structured Exception Request Is Not Available for Home Care Agencies/Registries."
    - Hospice Guidance: "MSL Compact Structured Exception Request Is Not Available for Hospices" (due to federal regulation interpretation). PHA has requested DOH to confirm this interpretation with CMS.

Department Guidance

Finally, PHA and its members have shared additional challenges with respect to regulatory interpretation and implementation.

TB Testing

Home care providers are required to obtain TB screening for all caregivers, prior to the provision of care. Although DOH follows Centers for Disease Control (CDC) guidance, this remains an area of great confusion among many providers, and providers continue to request clear, written guidance from the Department.

- A DOH FAQ document relied upon by providers for years was removed from the DOH website in 2022, but has not been replaced with updated written guidance.
- PHA members have shared that they would appreciate and benefit from updated, written DOH guidance on TB testing and requirements.

DOH Message Board

The Department of Health Message Board is an important tool for providers to keep up to date with and understand the most current DOH guidance. Unfortunately, and as DOH acknowledges, the platform is outdated. There is no archive for older messages, and it is often difficult to tell which guidance documents remain in effect. Older messages fall off the message board, and there is no ability to retrieve or verify them.

Regulatory Exception Process

DOH has established a regulatory exception process for providers to request an exemption from certain specific regulatory requirements. One example of an acceptable request relates to DCW virtual interviewing, as referenced above.

- The current process for exception requests requires a written request for each location on a DOH-specified form, publication in the Pennsylvania Bulletin for a 10-day public comment, DOH review of any comments, and, if approved, DOH issuance of a written determination.
- This is another process where it would be helpful for providers to better understand what exceptions are possible, as well as documentation of the process and timeframe in which exceptions are requested and received or denied.
- Providers with multiple locations are also currently required to submit a separate request for each location. The process would be streamlined for both providers and DOH if these providers could submit an exception request for all locations.

Survey Consistency

Home-based care providers are surveyed by DOH, as well as other authorities. Survey consistency is another issue that can create challenges for providers and the regulated community. As mentioned above, PHA members recently participated in a productive meeting with the administration on this issue. It is important that training and measuring consistent application of guidance and expectations remain a priority. Providers look forward to collaborating with DOH on training programs and survey-related initiatives.

Conclusion

Thank you for your time and interest in this very important issue. We look forward to working with legislators, the Administration, and all other health care stakeholders to support and improve the regulatory process and strengthen access to quality health care for all Pennsylvanians.