

**Testimony of
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Pennsylvania Health Care Association (PHCA)
with
G. Michael Leader, President & CEO
Country Meadows Retirement Communities
on
“Personal Care Homes & Assisted Living in Pennsylvania”
Before the joint
House Aging & Older Adult Services Committee
House Health & Human Services Committee
in
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Chairmen Mundy and Oliver, Chairmen Hennessey and Kenney, members of the Committee: I appreciate the opportunity to appear before you today to discuss the growing challenges facing long-term care in Pennsylvania, particularly as it relates to personal care homes and the various housing options that our older residents are beginning to seek as they age.

My name is Michael Leader, President and Chief Executive Officer of Country Meadows Retirement Communities. With me is Dr. Stuart Shapiro, president and chief executive officer of the Pennsylvania Health Care Association. PHCA is a statewide advocacy organization for the commonwealth’s elderly and disabled residents and their care providers. Our primary mission is to make sure that those who need long-term care receive quality services in the most appropriate setting as they age whether it is in their own home, in a personal care home, in a nursing home, or, hopefully, in a new category of housing and care called assisted living.

Our membership --- comprising for-profit, nonprofit and government providers --- offers services that range from integrated retirement communities and multi-level care campuses to freestanding nursing homes, assisted living/personal care homes, and ancillary care/home-care enterprises. Overall, PHCA, along with its sister agency, the Center for Assisted Living Management (CALM), represents more than 300 long-term care and senior service providers that care for almost 33,500 elderly and disabled individuals across the state.

At Country Meadows, a family owned and operated business, and a PHCA member, we employ 2000 professionals who care for almost 3000 residents living at 10 campuses in Allentown, Bethlehem, Harrisburg, Hershey, Lancaster, Mechanicsburg, Pittsburgh, Wyomissing and York. Country Meadows has facilities licensed as nursing homes as well as personal care homes. As a licensed personal care provider, our community settings offer seniors an opportunity to remain independent --- with the added benefit of nearby assistance whenever needed.

It is important to us that our residents maintain their privacy and dignity. At Country Meadows, we not only want to help seniors enjoy life to the fullest, we also want to reassure families that

their loved ones are receiving competent, compassionate care. Lifestyle is an individual choice, which is why we offer a variety of options to meet varying needs.

Independent living provides one meal per day, weekly housekeeping, transportation, social and activities programs, freedom from household maintenance and access to staff 24 hours a day. Assisted living offers assistance with daily routines, three meals per day and housekeeping. We have programs designed for short-term stays when rehabilitation or support services are required, and for permanent residency when chronic conditions exist. We also can address the special requirements of an Alzheimer's resident as well as the needs of a resident with only mild memory impairment to help them remain as active and independent as possible.

Few issues are as pressing as ensuring that our frail, elderly and disabled residents get quality care in the best setting. With our aging population, personal care homes have become a popular senior housing option. There are close to 1,600 licensed personal care homes serving approximately 51,000 residents in Pennsylvania. Likewise, the commonwealth currently has 730 nursing homes with 89,471 beds, and demand for nursing home services is growing.

These trends are sure to continue, based on the demographic realities confronting Pennsylvania. Our commonwealth ranks third nationally by percentage of population age 65 or older, behind Florida and West Virginia, and fourth in the number of residents age 85 or older --- a segment of the population that comprises the most intensive users of nursing home care.

Nearly 70 percent of Pennsylvanians turning 65 this year eventually will require some form of long-term care. Right now, 2 million of our 12 million residents are age 65 or older. By 2020, more than 25 percent of our population, or some 3 million Pennsylvanians, will fall into that demographic. That is a 50 percent increase in a little more than a decade.

Not only do these demographics pose significant care planning challenges for families, caregivers and state agencies whose charge it is to safeguard the elderly and others, but they also require us to find new ways to accommodate the burgeoning ranks of older Pennsylvanians and others in need of some level of assistance in daily life.

Recognizing the growing role of personal care homes in serving seniors, the state Department of Public Welfare in October 2005 rightly adopted tougher licensing standards and increased requirements for staff training, the administration of medication, fire safety, nutrition and other aspects of the profession. While these new rules require more work by residences to ensure compliance with the higher standards --- the rulebook has increased from 40 pages to over 160 pages--the changes were a positive step that PHCA endorsed.

Quality providers support enhanced enforcement efforts. We understand that everyone in the industry can be impacted negatively by a single bad provider, so DPW should be commended for working to make sure residents in personal care homes get safe, secure, consistently high quality care and services. We look forward to working with the administration to ensure the continued implementation of these new rules at our member residences.

With that, I want to turn it over to Dr. Shapiro, who will outline for you the work that PHCA is doing to keep our most vulnerable residents healthy and safe, and address what we believe needs to be done to strengthen the long-term care delivery system in Pennsylvania and keep pace with the changing face of our commonwealth's aging population.

Remarks of Stuart H. Shapiro follow:

Thank you. Let me begin by echoing Michael's appreciation for the invitation to testify today and by commending all of you for this very serious examination of the long-term care continuum. I should note that I had the opportunity to testify at two other House hearings at the end of March, so I am encouraged by the attention these issues are receiving.

With our population aging so rapidly and the baby boomer generation already beginning to seek long-term services, we have a lot of work to do and just a short time to do it. Pennsylvania already is experiencing changes across the entire long-term care continuum, with nursing homes at one end of the spectrum, in-home care at the other end and personal care homes/assisted living residences in the middle.

I want to focus first on personal care homes and assisted living before moving more broadly to activities that can improve the quality of care for seniors in a variety of settings.

As Michael noted, with new regulations in place, DPW has many of the additional tools it needs to enforce and prevent further abuses from happening in personal care homes that do not meet the highest standards. The department does, however, need more resources. Recent legislative hearings showed that because the department has just 32 inspectors statewide, nearly 75 percent of the 1,600 personal care homes in Pennsylvania have not been inspected within twelve months and technically are out of compliance.

That does not mean the personal care homes do not meet the enhanced standards for health and safety. In fact, most facilities are above reproach. But it does demonstrate the obvious need to get the inspection of personal care homes up to speed as soon as possible. Current plans call for the addition of 10 more inspectors, and I commend DPW Secretary Estelle Richman for her commitment to step up licensing and inspection efforts and to address the backlog as quickly as possible. Our Association strongly endorses Secretary Richman's budget request for additional regulatory personnel.

It is vital that the Department of Public Welfare address safety concerns and ensure residents receive proper treatment. But, as housing options increase in Pennsylvania's long-term care marketplace, it is also important for the state to clarify and better define the type and level of services one can expect in each care setting.

In Pennsylvania, there currently is no distinction between "personal care home" and "assisted living residence." Under current law, facilities offering long-term care services are either licensed as personal care homes or nursing homes. With a few exceptions, personal care homes are permitted to admit residents who require personal care services, but not health care services.

Nursing homes, conversely, serve the other end of the spectrum and provide care for the most vulnerable of our citizens.

Generally a personal care home is defined as a premise that provides food, shelter and personal assistance or supervision for at least four adults who are not relatives of the operator. A personal care home may not provide health care and services to individuals who require the services of a licensed nursing facility. Typically, facilities that advertise themselves as “assisted living residences” are currently licensed as personal care homes, and must adhere to the same licensure qualifications and standards regardless of whether they provide a higher or lower level of care to residents; however, nothing would prevent an unlicensed board home or independent living residence from advertising that they provide assisted living.

Thirty-seven states --- or more than three-fourths of the country --- specifically define “assisted living.” Neighboring states such as New York, New Jersey, Delaware and Maryland all have established assisted living licenses that allow providers to offer certain defined levels of health care within their facilities. It is time for Pennsylvania to do the same.

We believe that there should be three guiding principles for Assisted Living Legislation.

First, PHCA believes that the senior citizens of this Commonwealth should be provided ample opportunities to age in the most appropriate place for them at each stage of their life.

Second, our Association believes that the services offered by each provider type and in each location must be clearly defined to minimize confusion and frustration on the part of consumers and their families. Since Pennsylvania currently has licensure standards for personal care homes, personal care homes should remain under the current regulations and should continue to provide personal care services and supports.

Third, we believe that facilities that provide certain health-care services to nursing home-eligible residents should be held to a higher standard than the “typical” personal care home to ensure the safety and protection of consumers and employees dedicated to providing these services. These assisted-living residences should be permitted to provide, or arrange to have provided, certain healthcare services by licensed healthcare providers up to a specific level of care which should be defined in the enabling legislation.

For your reference, I am including in this testimony, PHCA’s summary of these principles as well as an outline of those healthcare services which we believe can be safely provided within an assisted living facility.

The need for a clear distinction between personal care and assisted living has been increasing. Residents in personal care homes are more frail and have more health-care needs than they did 10 to 15 years ago. While these additional health-care needs do not require the 24/7 services of health-care professionals that work in a nursing home, they do require more care and services than personal care homes and their staffs can offer, and, with this increased level of care, an increased level of regulatory oversight is needed.

The results of a recent AARP survey show that nearly 7 in 10 members think a bill defining minimum standards for assisted living residences should be a top or a high legislative priority.

Our association is working with the legislature and administration to create separate licensure categories for assisted living residences and personal care homes, with criteria for each defined in statute rather than in regulation. Various pieces of legislation already have been introduced in the General Assembly, and, I am told that the administration is also drafting its own assisted living licensure bill.

While PHCA is pleased to see licensure legislation moving forward, we are concerned with the administration's apparent interest in placing regulatory oversight for assisted living facilities with the Department of Health rather than the Department of Public Welfare. Although both of these agencies have a role in safeguarding older Pennsylvanians, their duties and expertise are as different as the settings on the long-term care continuum.

Personal care homes, unlike nursing homes, are intended for people who do not need constant medical attention --- typically for older people or those with various disabilities --- but who do need help with day-to-day living, including cooking, washing and personal hygiene. Unlike nursing homes, which the Department of Health licenses, personal-care homes do not provide 24-hour nursing care or direct medical services.

That is a stark contrast to the more medically needy in nursing homes and those in home- and community-based services who may need just minimal support with daily activities.

Although the typical nursing home resident tends to be female, 85 or older, and widowed, with some form of dementia, the number of post-acute hospital short-stay patients requiring intensive medical rehabilitation services is increasing. Despite the dramatic shift in the face of patients under their care, Pennsylvania's nursing homes, on average, are 91 percent occupied, compared to 88 percent nationally. The fact that nursing homes have responded so seamlessly to this shift speaks volumes of our trained professionals. Direct nursing care averages 3.9 hours per day in Pennsylvania, compared to 3.3 hours per day nationally.

Nursing homes provide around-the-clock care to residents with the highest acuity (or "sickness") levels in a clinical setting most appropriately managed by the professionals at the Department of Health. Nursing homes reflect a medical model and resemble hospitals, also overseen by the Department of Health, rather than a home-like environment in a social setting for residents, which is what personal care homes and assisted living facilities try to emulate. As a physician, I personally believe it would be a tragedy to "medicalize" personal care homes and assisted living facilities. That is the risk if these facilities were to be regulated by the Department of Health.

Just as PHCA advocates quality long-term care services in the most appropriate setting, so do we advocate quality regulation by the most appropriate agency. For assisted living facilities, it should be the Department of Public Welfare.

Effective, intelligent, and workable regulatory oversight is necessary for all health-care settings. But so too is it essential for government and providers alike to help ensure seniors not only

receive the best care quality available throughout a rapidly evolving, increasingly complex care continuum, but also that the information consumers need to make informed, intelligent choices is readily available to them.

Let me emphasize that PHCA's sole mission is the delivery of quality health-care services to our frail, elderly and disabled residents, regardless of setting, so they can age in the most appropriate place at each stage of life. We understand the difficult decisions that residents face with respect to long-term care, and we look forward to working with you and the administration to make sure we develop the policies that make those decisions easier for all Pennsylvanians.

Aside from assisted living licensure, however, there are three other issues that we believe are keys to improving the long-term care delivery system --- appropriate reimbursement, renewal of the provider assessment and expansion of long-term care insurance.

First, appropriate reimbursement: Although I commended Governor Edward G. Rendell for his ongoing commitment to protect the health of Pennsylvania seniors, the state's 2007-08 budget, which proposes virtually no increase in reimbursement for nursing homes, will make it harder for facilities to continue providing high-quality care, especially if the Bush administration makes massive cuts in Medicaid and Medicare. Better reimbursement is absolutely necessary.

The largest cost for all nursing homes is the wages earned by the dedicated staff of nurses and aides who care for patients. This cost category represents 70 percent of all nursing home expenditures. Wages increase about 5 percent per year, meaning the governor's proposed reimbursement falls short of helping facilities meet this very basic need for quality staff.

In addition, the reimbursement for capital projects under the Pennsylvania Medicaid program is not keeping pace with the realities of maintaining nursing homes that are getting older and need improvements. In fact, the capital reimbursement in Pennsylvania has been among the worst in the nation. The reality is that replacing nursing home beds costs about \$100,000 per bed. Medicaid reimbursement is \$26,000 per bed in Pennsylvania.

Governor Rendell also has carried out an ambitious plan to increase the number of older Pennsylvanians eligible to receive long-term care in their homes. PHCA supports the expanded use of home- and community-based services (HCBS). However, there is a mistaken notion that state resources can be saved by shifting significant numbers of nursing home residents toward home care. In fact, HCBS is a new and costly entitlement.

The acuity level (or "sickness") of most individuals being added to HCBS does not rise to a level of care that those in nursing homes need. What the Medicaid HCBS program in reality has done is expand long-term care eligibility and coverage to a broader population. Most of these individuals previously would have been cared for by family members, friends or the community. Now their care is paid for with Medicaid dollars. While we fully support HCBS, the dollars for it should not be taken from the very facilities tasked with caring for our most care dependent citizens—our nursing homes. You cannot rob Peter (nursing homes) to pay Paul (home-based care).

I extend that same caution to assisted living residences. Nursing homes care for high acuity individuals needing 24 hour care, and the State and Federal Governments have made a commitment to these individuals. Some may believe that there are significant numbers of individuals in nursing homes that could be cared for at less Medicaid expense in assisted living facilities. This simply is not true. If the issue of Medicaid reimbursement for assisted living residents is raised, it will require new dollars for a new group of residents.

I would also suggest that a standardized clinical assessment instrument, perhaps the MDS form currently used at all nursing homes, be used to assess all individuals admitted to assisted living facilities, home and community based services, as well as nursing homes. Without this, it is virtually impossible to compare costs and acuity of participants in the various components of the long term living continuum.

Let me now turn to the second issue, provider assessment: Created in 2003, this “provider assessment” has generated more than \$1 billion in federal matching funds to support the state’s long-term care facilities. In the current fiscal year alone, the state is projected to receive \$408 million in federal funds to help facilities maintain a high quality of care without having to pass on additional costs to residents.

Future funding remains uncertain, however. Without prompt legislative action, the provider assessment will sunset June 30, 2007, costing the state hundreds of millions of dollars in matching federal funds each year. Reauthorization is critical. If this funding is not available, Pennsylvania’s frail, elderly and disabled residents would suffer dramatically.

Finally, long-term care insurance: PHCA also strongly supports legislation that will encourage Pennsylvanians of all ages to purchase comprehensive long-term care insurance, which will relieve some of the pressures on government programs, enable families to plan and pay for their future health-care needs, and close the current cost-payment gaps that challenge facilities.

Long-term care insurance, along with other sources, currently pays for only about 2 percent of residents in Pennsylvania nursing homes and accounts for 2 percent of revenues. By contrast, private insurance accounts for about 40 percent of hospital revenues.

We believe long-term care insurance policies should include provisions that will cover care in all settings, including nursing homes, personal care homes, assisted living facilities and in the home, whichever is the most appropriate for care at each time point in the aging cycle. Delivering care in the most appropriate setting will help insure that our health care dollars are spent efficiently and economically.

Let me close by reminding you that PHCA currently is working with House and Senate members to schedule tours of local facilities to give you a firsthand look at the services we provide, as well as the challenges those that deliver services face every day. I invite each of you to take us up on this offer to see how the personal care homes as well as the nursing homes in your district operate and to meet the men and women running them in your community. We would be more than happy to make these arrangements for you.

Chairmen Mundy and Oliver, Chairmen Hennessey and Kenney, members of the Committee: We thank you for your time and attention, and we would be happy to answer any questions you have at this time. Thank you.

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PHCA/CALM Guiding Principles for Assisted Living Licensure April 2007

Global Principles

- PHCA believes that the senior citizens of this Commonwealth should be provided ample opportunities to age in the most appropriate place for them at each stage of their life.
- PHCA believes that the services offered by each provider type and in each location must be clearly defined to minimize confusion and frustration on the part of the consumers and their families.
- PHCA further believes that minimum standards for each provider type are absolutely essential and necessary to ensure the safety and protection of consumers and employees dedicated to providing services.

Specific Issues:

- **Distinction between ALR's and PCH's.** Since Pennsylvania already has licensure standards for Personal Care Homes (PCH's), Pennsylvania should develop a second level of care and services under the current PCH statute/regulations which shall be known as Assisted Living Residences (ALR). PCH's should remain under the current (newly promulgated) regulations and should continue to provide personal care services and supports. ALR's should be allowed to provide (or have provided by licensed providers) additional health care services (Defined below) up to the level outlined below. This level should be defined in statute rather than regulation.

The list of clinical criteria that delineates the conditions/criteria for which a person may not be admitted to or retained in an ALR is as follows:

- (1) Ventilator dependency.
- (2) Stage III and IV, or Multiple Stage II decubiti and vascular ulcers that are not in a healing stage.
- (3) Continuous Intravenous fluids
- (4) Reportable infectious diseases such as tuberculosis in a communicable state that requires isolation of the consumer or requires special precautions by the caretaker to prevent transmission of the disease unless the Department of Health directs that isolation be established within the assisted living residence.
- (5) Nasogastric tubes.
- (6) Gastric tubes, except when the consumer is capable of self-care of the tube.
- (7) Physical restraints.
- (8) Tracheostomy except when the individual is independently capable of self-care of the tracheostomy.

- (9) Individuals whose physician or the medical director of the facility certifies that admission or retention in an assisted living residence is not appropriate.
- (10) Individuals for whom a determination is made that their health care needs cannot be met by a provider of personal care or assisted living service or within a personal care or assisted living residence 55 PA Code pare 2600.228 (h) (3), including:
 - (i) Individuals requiring 24 hour skilled nursing care.
 - (ii) Individuals requiring sliding scale insulin administration unless the individuals are capable of self-administration or are administered by a licensed health care professional or other individual qualified to administer medication as set forth in this act.
 - (iii) Individuals requiring intermittent intravenous therapy unless administered by a licensed health care professional.
 - (iv) Individuals requiring insertions, sterile irrigation and replacement of catheter, except for routine maintenance of urinary catheter, unless the individuals are capable of self-administration or are administered by a licensed health care professional.
 - (v) Individuals requiring oxygen, unless the individuals are capable of self-administration or are administered by a licensed health care professional.
 - (vi) Individuals requiring inhalation therapy, unless the individuals are capable of self-administration or are administered such therapy by a licensed health care professional.

- **Departmental Oversight.** Assisted Living Residence (ALR) and Personal Care Home (PCH) Licensure should remain under the purview of the Department of Public Welfare. Additional regulations necessary for ALR's must be promulgated by DPW through the use of the full regulatory review and oversight process
- **DPW Approval.** A facility licensed as a PCH may request approval of DPW to become an ALR. A PCH must not provide health care services (with the exception of hospice care by a licensed hospice agency.) unless they have obtained this approval.
- **Transition between PCH and ALR.** Facilities approved as a PCH may admit and retain residents requiring personal care services but not health care services, with the exception of hospice care by a licensed hospice agency. Facilities approved as an ALR may admit and retain residents requiring personal care and/or health care services as provided under this act, and regulations shall allow transitions between personal care and assisted living to be as seamless as possible to the resident with respect to matters such as admission, discharge, and care planning.
- **Health Care Services.** Health care services provided in an ALR should be done by an entity licensed under Act 69 of 2006 (Formerly HB 247), licensure of home care agencies. Health Care Services mean the provision directly, or through contractors or

subcontractors, of any type of health care service except a service that is required by law to be provided by a licensed health care facility.

- **Source of Health Care Services.** ALR's may be the sole source of the provision of health care services so long as they follow the requirements under Act 69 of 2006, licensure of home care agencies. Additionally, ALR's may choose to allow other licensed home care agencies to provide these services through contractual arrangements.