Written Testimony of

The Pennsylvania Health Care Association

Delivered by
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For A

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Good afternoon and thank you, Chairman Brooks, Chairman Haywood, Chairman Baker, Chairman Schwank, Chairman Bartolotta and Chairman Williams for the opportunity to come before your committees to testify on the proposed Consolidation of the Departments of Health, Human Services, Aging and Drug and Alcohol Programs.

I am Zach Shamberg, and I am the Director of Advocacy and Legislative Affairs for the Pennsylvania Health Care Association, better known as PHCA.

Today, I will discuss the proposed consolidation of the four Departments. PHCA supported the proposed consolidation when it was announced because it has great potential to help break down the duplication in requirements and disparate goals that often hamper the long-term care sector.

PHCA advocates for compassionate, quality long-term care for Pennsylvania's elderly and disabled residents. Our members are comprised of for-profit, non-profit and government long-term care providers who provide around-the-clock care. That includes skilled nursing facilities, or nursing homes, personal care homes and assisted living residences, retirement communities and other multi-level care campuses. Their top priority is to provide quality health care and quality of life for those entrusted to their care.

There are more than 700 skilled nursing facilities in Pennsylvania, and more than 1,200 assisted living residences and personal care homes. There are more than 88,000 nursing home residents and 66,000 assisted living and personal care residents. And the long-term care sector employs more than 83,000 people throughout the state.

Pennsylvania has 2.2 million residents age 65 and older. By 2030, Pennsylvania's 60 and older population is expected to be almost 30% of the total population—approximately 4 million people. The number of Pennsylvanians age 85 or older is expected to exceed 400,000 residents in 2030—that's a segment of the population that is the most intensive users of nursing home and other long-term care services. Those figures are important, because with the total number of senior citizens on the rise, nursing facilities across Pennsylvania are struggling to survive right now.

The proposed Consolidation could assist in meeting some of our sector's greatest challenges. Keep in mind that these four agencies, especially Health, Aging and Human Services, each have a hand in almost every facet of the delivery of long-term care.

These Departments administer the state's $20-plus billion Medicaid program, providing funding for nursing facility resident care; they distribute aid to programs for the disabled; they manage services for older Pennsylvanians through the lottery fund; and they license and survey not only skilled nursing facilities, but assisted living residences and personal care homes as well.

In a perfect world, this proposal will allow the state's regulatory agencies and the Medicaid program to work in unison to develop policies that will positively impact nursing home residents

and direct care workers. The Consolidation affords the Commonwealth with an opportunity to create efficiencies that will ensure that more resources are provided at a resident's bedside, where they are needed the most. It will also create a new state agency with the tools and expertise to focus on the continued delivery of quality care for Pennsylvania's seniors and individuals with disabilities.

Most importantly, it will force a broader discussion on the gaps between provider reimbursement and the true costs of care when new policies or requirements are considered.

By far the biggest challenge facing Pennsylvania's nursing homes and the residents for whom they serve is the current funding shortfall in the Medicaid program. Based on current Medicaid reimbursement levels, nursing homes are paid roughly $25.43 per day **less** than the actual cost of providing care. That's a funding shortfall of $9,300 annually, on average, for every Medicaid resident in a facility. And the average Medicaid population in today's facilities is about 65%. So as the Commonwealth works to ensure high quality, person-centered care for a rapidly aging population, a sustainable solution for the Medicaid funding shortfall will be essential. A Consolidation, perhaps, would create a scenario in which the Departments work together to find ways to properly fund the Medicaid program for long-term care.

On the Wolf Administration's new Unification website, one of the reasons offered for integrating the four departments is "Reducing red tape for providers and non-profits subject to regulation".

The sheer amount of burdensome regulation has put a stranglehold on the industry. The amount of regulations nursing homes are forced to comply with on a daily basis does nothing to ensure higher quality care. Rather, it takes precious time **away** from resident care, and puts more emphasis on reporting, paperwork and phone calls to various agencies.

For example: Clepper Manor, a 54-bed nursing facility, is in Chairman Brooks' district. Clepper Manor is owned by The Nugent Group, a PHCA member. Shane Nugent, the Vice President, sits on the Pennsylvania Long Term Care Council, and is also on PHCA's Board of Directors. Shane and his staff recently shared their frustrations with me on reporting requirements, and they are hopeful that a consolidation of departments will expedite some of the processes they go through to file a reported incident, such as resident on resident abuse. I've printed Clepper Manor's 12-page policy on reporting an alleged incident of abuse. I'd like to go through some of the steps, located on page 8 of the policy, which is in compliance with the current requirements.

Why should the same incident be reported to three, four or five Departments? Incident reporting is an essential step in assuring quality, but shouldn't one phone call or one email to one Department be sufficient? Shouldn't there be one form that can be shared or accessed by everyone?

If just one of those reporting requirements is missed, the facility will be cited for a deficiency. That regulatory citation takes scarce staff time and resource away from resident care, all because

a facility failed to report information that a state agency already had for the fourth or fifth time. It's not just inefficient—it's wrong. And, it has an impact on the facility in ways that go beyond the citation, counting against the facility's Five-Star Rating, with the potential to have an impact on referrals to the facility and the facility's reputation.

The surveys administered by the Department of Health must change as well. There is increased public scrutiny surrounding our industry. The public should have the same expectations of providers as providers have of themselves—that they provide residents with quality care and the best possible outcomes.

With a continued focus on enhancing treatment services and improving overall experience, Pennsylvania nursing facilities are continually improving clinical outcomes, with reductions of urinary tract infections, pressure ulcers in long stay residents, the use of antipsychotic medication and reduced rehospitalization rates due to increased efforts to keep residents from returning to the hospital after discharge.

This progress is being made despite a rising influx of seniors entering nursing facilities at a more advanced age and with more complex health needs. According to the National Survey of Residential Care Facilities, 50% of senior living residents have three or more chronic conditions, while 42% have Alzheimer's or other forms of dementia.

In response to the increased attention to quality care, the Department of Health surveys are yielding more frequent citations. We want to build a strong partnership between the Department of Health and providers, as residents are best served when both groups work together and enforcement is firmly focused on fixing specific issues. The current environment in which we're operating now doesn't result in enhanced resident care.

More stringent penalties do not alone improve care. Nor does a 'gotcha' model of enforcement, where citations are issued to send a message to the facility. It is important to note that when any sanction or penalty is considered, the most important goal is to identify the practice in question, and take steps to correct the practice. Ironically, the 'sanction into compliance' mentality actually puts off the quality assurance process in many facilities. The Department's first goal in any citation or sanction situation should be to ensure that sanctions do not jeopardize the facility's ability to improve resident care, comfort and safety. Taking financial resources away from the bedside does not improve resident care-it jeopardizes it.

There is an opportunity under the consolidated agency to work with providers to fix problems when they occur, rather than working to catch more providers with violations as a compliance strategy.

As I noted at the top of my testimony, PHCA has been supportive of the consolidation. However, in the newly-proposed consolidation organizational chart, personal care homes and assisted

living residences will be licensed and regulated under the Office of Health Care Quality and Licensure, by the same bureau that oversees skilled nursing facilities.

One of the keys to the successful regulation of Pennsylvania's personal care homes and assisted living residences over the past decade has been their use of a regulatory framework and philosophy that holds providers accountable while avoiding the clinical nursing facility survey model.

Regulations are vastly different, as skilled nursing facilities provide a much higher level of care. Using the nursing facility regulatory framework and philosophy for licensed personal care homes and assisted living residences would not enhance the quality of care provided at all—which is already exemplary in most facilities. Rather, it would result in additional costs for providers and a less constructive regulatory environment, with the residents of these facilities paying the price in added costs of care.

But that doesn't mean that communication between agencies shouldn't take place. Last year, House Bill 264, the Care Facility Carbon Monoxide Alarm Standards Act, was signed into law by the Governor, and recently went into effect for long-term care facilities. The bill mandates carbon monoxide alarms be installed in care settings near fossil fuel burning devices. This is an example of how a law can be interpreted in different ways by different agencies in state government.

The Department of Health, Division of Safety Inspection, has the responsibility of surveying health care facilities, including nursing homes, to determine compliance with the Life Safety Code. The Bureau of Human Services Licensing, or BHSL, handles the survey process for assisted living residences and personal care homes. Both DOH and BHSL are interpreting the new Carbon Monoxide law, and measuring compliance, differently. So if one of our members has skilled nursing and personal care under the same roof, which is relatively common, they will be held to two sets of standards by two different departments. Under a consolidated agency, we would expect a uniform and consistent approach to measuring compliance.

Currently, nursing homes are reimbursed by the Department of Human Services, and regulated mainly by the Department of Health. In regulating facilities, the Department of Health does not take into account the cost of the regulations it imposes. And the Department of Human Services reimburses, in part, for regulatory costs that have nothing to do with quality health care. With one Department and one communication stream, this could be subject to change.

PHCA and our members are hopeful that a consolidated agency would force interaction among Departments, begin to address the Medicaid shortfall of $25.43 per day, lessen the burden of regulation and reporting, and create a positive working relationship between the Department of Health's surveyors and nursing homes. At the end of the day, the facilities PHCA represents have one goal in mind: to provide high quality care to the frail elderly who built this country, served this country and who deserve to be cared for with respect and dignity.

Consolidation is one approach to fixing these problems. But that doesn't mean we should wait for the consolidation. These problems can and should be addressed NOW through leadership and communication. Agencies can coordinate; they don't have to wait to be consolidated.

Thank you again for the opportunity to testify. I look forward to working with you on the Consolidation and other issues affecting long-term care, and I'm happy to take questions once our panel is finished.