

RHODE ISLAND DEPARTMENT OF HEALTH
LICENSING OF NURSING FACILITIES HEARING
JANUARY 24, 2022

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1 MS. GAREAU: Good afternoon, we're going to
2 get started here. Welcome. We are here today to
3 conduct a public hearing concerning the rules and
4 regulations for Licensing of Nursing Facilities (216-
5 RICR-40-10-1). This hearing is being conducted under
6 the provisions of R.I.G.L. §23-17 and §42-35. Today
7 is Monday, January 24, 2022, and the time is 4:00
8 p.m.

9 My name is Lauren Gareau, Rules Coordinator for
10 the Rhode Island Department of Health, also known as
11 RIDOH. I will be the hearing officer for today's
12 proceeding.

13 Before we start and to prevent any interruptions
14 of the proceedings, at this time I'd like to ask
15 those of you with cell phones, pagers, and watch
16 alarms to please turn them off or set them to vibrate
17 or silent. Thank you.

18 Everyone entering a state facility, regardless
19 of vaccination status, is required to wear a face
20 covering. However, you may remove your face covering
21 when it is your turn to speak.

22 Please note that there are two exits located at
23 the rear of this auditorium. Emergency exits are

1 located on this level of the building in the far left
2 and near right corners of the floor. In the event of
3 an emergency or fire alarm, please proceed quickly
4 and calmly and follow the exit signs to the nearest
5 emergency exit. The seating capacity of the room
6 will be enforced, and therefore the number of persons
7 participating in the hearing may be limited at any
8 given time in order to comply with the safety and
9 fire codes.

10 The purpose of the hearing today is to afford
11 interested parties an opportunity to comment on the
12 proposed regulations, allow as many people as
13 possible to be heard, and to ensure an accurate
14 record of all comments is obtained. This hearing is
15 intended for your participation only, and it is not
16 intended to provide a forum for discussing debating,
17 arguing, or otherwise having a dialog on the
18 regulations before us with RIDOH personnel as part of
19 this public hearing.

20 If you would like to speak, the procedure we
21 will use as follows:

22 1. Please register to speak at the rear of the
23 room.

1 2. Speakers will be taken in order of
2 registration.

3 3. Up to five minutes will be allowed for your
4 presentation unless the lack of speakers allows for
5 additional time. If you are reading off of a
6 prepared document, such as a paper copy or electronic
7 version of your testimony, we politely request that
8 you speak clearly and at an unhurried pace so that
9 the recorder, which is located here, can
10 appropriately capture your testimony in its entirety.

11 4. I will indicate when you have one minute of
12 time remaining, if you are unable to complete your
13 testimony in the time allotted, you may have an
14 opportunity to speak if any time is remaining after
15 the other speakers who have signed up complete their
16 testimony.

17 5. When you are called, come to the podium,
18 identify yourself by name and affiliation, if any.
19 Please spell your name and give the full name of your
20 organization if you use an acronym. Make your
21 presentation and make sure to conclude within the
22 allotted time limit of five minutes. If you have a
23 written copy of your statement, we would appreciate

1 it if you can provide it for the record. If you read
2 from an electronic version of your testimony, we
3 would appreciate it if you could provide a hard copy
4 or e-mail us your testimony.

5 In accordance with the requirements of the
6 Administrative Procedure Act, additional written
7 comments on these proposed amendments will be
8 accepted by Friday, February 4, 2022.

9 After the conclusion of the public comment
10 period, RIDOH has four options under state law. The
11 first option is to file the regulations as posted
12 with the Secretary of State. The second option is to
13 file with minor technical changes, such as correcting
14 spelling, punctuation, etcetera. The third option is
15 to make non-technical changes in what you see before
16 you today which will be addressed in RIDOH's Concise
17 Explanatory Statement and filed with the final
18 regulations and could also necessitate a new public
19 hearing and associated public notice posting. And
20 the fourth option is to not file the proposed
21 regulations, in which case the current regulations
22 would remain in effect. Unless otherwise specified
23 by law, regulation, or the at the discretion of

1 RIDOH, once filed, the regulations will become
2 effective twenty (20) days after filing and have the
3 force of law upon that date.

4 Are there any questions on how the public
5 hearing will be conducted today?

6 At this time, we will introduce the following
7 exhibits, which will be part of the record. The
8 first exhibit is the notice of proposed rule-making
9 posted on the Rhode Island Secretary of State's
10 website on January 5, 2022. The second exhibit is a
11 copy of the proposed regulations with revisions
12 indicated, posted to the Rhode Island Secretary of
13 State's website on January 5, 2022. The third
14 exhibit is a copy of existing regulations for
15 Licensing of Nursing Facilities (216-RICR-40-10-1),
16 last filed with the Secretary of State in March 2018.
17 The fourth exhibit is a copy of the benefit-cost
18 analysis, filed with the Secretary of State on
19 January 5, 2022. The fifth exhibit is the concise
20 statement of proposed non-technical amendments to the
21 regulations, filed with the Secretary of State on
22 January 5, 2022. The sixth exhibit is a copy of
23 Rhode Island General Laws §23-17-10, 23-17.5-32, and

1 23-17.5-33, the enabling statute for these
2 regulations. And the final exhibit is a copy of the
3 e-mail dated December 20, 2021, from the Office of
4 Regulatory Reform confirming that RIDOH was
5 authorized to move forward with promulgation of these
6 regulations.

7 Tonight, we are seeking comments from the public
8 on the proposed Licensing of Nursing Facilities
9 regulations with the indicated revisions that can be
10 found on the Rhode Island Secretary of State's
11 website. At this time, I would like to call upon the
12 first speaker, James Nyberg.

13 MAN: Lauren, I do have one question. Is this
14 available by Zoom to other people or it's not?

15 MS. GAREAU: No.

16 MAN: No? Do you know why?

17 MS. GAREAU: This room does not have
18 capabilities to be both via Zoom and in person.

19 MR. NYBERG: Can you hear me? My name is Jim
20 Nyberg with Leading Age Rhode Island. On behalf of
21 the members of Leading Age Rhode Island, thank you
22 for this opportunity to express our thoughts on the
23 proposed regulations for licensing of nursing

1 facilities. We understand that these regulations are
2 mandated by statute and RIDOH limited discretion in
3 the implementation process, especially involving the
4 minimum staffing statute. But it is important to
5 reiterate at the outset that the industry is facing
6 an extreme workforce crisis due to multiple factors,
7 and these regulations to implement the statute will
8 have a profound negative impact on providers and
9 should be delayed. Compliance will be difficult if
10 not impossible for many. The penalties are severe
11 and unfair, and consumers may not be able to access
12 the care they need in the setting that they need.

13 As we know, nursing homes have been facing a
14 workforce crisis that has been exacerbated by the
15 pandemic. At the state level, we already have over
16 1,900 open positions. The recent Omicron variant has
17 created even more chaos as positivity rates reached
18 new highs, thereby forcing staff out. This will
19 obviously have an impact on the staffing data for
20 2022. We also already know from industry data and
21 RIDOH data that many homes are not able to comply
22 with the mandate. RIDHO estimates that the fines
23 will exceed eight million dollars in just the first

1 quarter. That basically amounts to a funding cut of
2 33 million dollars per year. There is no way
3 facilities will survive with these funding
4 reductions, so closures will inevitably happen. This
5 will affect residents and their families as they need
6 to relocate. It will affect access to care as fewer
7 homes can care for people and lead to a downward
8 spiral for the entire industry.

9 The staffing ratio bill also included a 0.5
10 percent rate addon intended to help facilities
11 recruit workers. But this funding, which totals
12 about 1.6 million dollars has not been approved by
13 CMS. So, nursing homes have not even received this
14 allocation yet.

15 All that said, while we believe that a delay of
16 a year in the enforcement of these regulations is
17 necessary, we do have some specific comments focused
18 on certain aspects of these regulations as they are
19 drafted. The first is Section 1.15.6 regarding
20 Essential Care During a Declared State of Emergency.
21 Subsection D(2) of this states that essential
22 caregivers shall not be required to be vaccinated as
23 a condition of being an essential caregiver. This

1 does not make sense to us given the vaccine mandate
2 for all healthcare professionals and anyone who may
3 have direct patient contact in a nursing home. These
4 essential caregivers are inside the building and
5 providing hands-on assistance to their loved one, so
6 they should be vaccinated. So therefore, we strongly
7 urge RIDOH to delete this language and insert
8 language that essential caregivers shall be required
9 to be vaccinated as a condition of being an essential
10 caregiver.

11 On a sperate note, again, we would like to see
12 language added focused on immunity for providers
13 should there be an accident or incident when an
14 essential caregiver is providing services to a
15 resident. A facility should not be held liable
16 legally or issued a deficiency should something
17 happen that is out of its control. For example, if
18 an essential caregiver does not comply with a care
19 plan, or a resident falls while under the care of an
20 essential caregiver, etcetera.

21 Regarding Section 1.16.6, Nursing Services and
22 Minimum Staffing, we just want to raise an issue in
23 terms of the staff that count towards the minimum

1 staffing ration. And these relate to the regulations
2 and the nursing home minimum staffing levels
3 enforcement policy and procedures. Specifically, the
4 hours that are coded as medication aids should be
5 counted as certified nursing assistants to comply
6 with the CNA hours per resident per day. It's not
7 clear that the formula in the enforcement policy and
8 procedures does so. It only references the code for
9 certified nursing assistant hours. The code for
10 medication aids should also be included in the
11 calculation to reduce confusion, particularly because
12 these individuals are also nursing assistants who
13 receive additional training involving medications,
14 but they do perform CNA tasks as well. So, given
15 that our facilities already struggle to meet this
16 staffing mandate, we just want to clarify that
17 medication aids should be included in the certified
18 nursing assistant staffing ratio. Thank you.

19 MS. GAREAU: Thank you. Charlie Galligan.

20 MR. GALLIGAN: Hi, everybody. My name is
21 Charlie Galligan. I'm just the son of a, my mom and
22 my dad who are residents at the Grace Barker Nursing
23 Home in Warren, but I've been battling for the

1 Essential Caregiver Bill for a couple of years now.
2 And through the course of that I've become a fairly
3 reluctant advocate on this cause. But I have, you
4 know, I was pushing for the state bill and I've
5 become a member of a national advocacy group called
6 The Essential Caregiver Movement. We're pushing for
7 a federal bill, too.

8 So, Jim, I appreciate your comments. I didn't
9 prepare any remarks. I've done this all before. I
10 did see the notes. I also do just want to put on
11 record that I was, I know we spoke about this, but I
12 want to put on record that I wasn't notified of this
13 hearing despite my having signed up three different
14 ways. I think a sign-in sheet, e-mail, and face to
15 face. So, I would like to be notified of future
16 hearings.

17 So, addressing the Essential Caregiver Bill, 1-
18 15-6, D1 states that facilities should have 15 days
19 from the date of a declaration of disaster to enact
20 the safety protocols for us essential caregivers.
21 And I just think now that we no longer are battling
22 the element of surprise, I would like to see that
23 eliminated. Because there's, you know, we can all,

1 most facilities, you know, value the essential
2 caregivers, and already have systems in place. So, I
3 don't see why we should be waiting 15 days.

4 Also, in regards to Jim's comment on the
5 vaccination request, or excuse me, the vaccination
6 requirement for essential care givers. I agree with
7 him where it says in D, there's two D(2)s it looks
8 like. The second D(2) it says, 'essential caregivers
9 shall not be required'. I appreciate the common
10 sense of requiring essential caregivers to be
11 vaccinated, but we would look for in the goodwill of
12 us scrapping that or being willing to scrap that an
13 even immunity, a legal immunity. I'll tell you that
14 I am not here to advocate for any essential caregiver
15 that would come into a facility to try to take care
16 of their own mom, or dad, or nanna, or whomever, and
17 then turn around and try to sue a facility. Those
18 are not the people that we represent. That's nobody
19 I know in this cause and I'm certainly not going to
20 facilitate those people trying to sue the industry.

21 So, if the industry as a whole is willing to
22 work with us on some of these waiting periods, the 15
23 days that I mentioned earlier, and another one I'll

1 mention in a second, we could be, we're prepared to,
2 you know, just compromise, just common sense, which
3 we should have all be working for, with for the past
4 couple of years.

5 The other one, one of the waiting periods, the
6 other waiting period I'm referencing is that D(5),
7 'facility that enters a lockdown phase can establish
8 safety measures for residents and essential
9 caregivers. The lockdown shall not exceed a period
10 of 30 days.' That's fine, but we object to this
11 sentence at the end of D(5). 'During the lockdown
12 phase, essential caregivers are not permitted to
13 enter.' Again, there's no real legitimate reason for
14 that to be included. I don't know why that's still
15 included in January of 2022. So, if you guys can
16 work with us on that, we'll try and be fair.

17 But the other stuff that you objected to - - I
18 do have a concern, this might be the last one, or the
19 last one I'll talk about today. E administration
20 number seven, it reads, 'The nursing facility must
21 have a policy or procedures in place to replace an
22 essential caregiver due to necessary circumstances,
23 including but not limited to, illness or death of the

1 essential caregiver.' So, for us and any objective
2 observer, that necessary circumstance is just too all
3 encompassing. And while I'm lucky enough to have
4 moved both my parents to the Grace Barker Nursing
5 Home in Warren, and we've got great ownership there,
6 and they're supportive of our efforts to be essential
7 caregivers for the, my friends who are left behind in
8 other facilities with less than scrupulous owners,
9 administrators who are happy to have - - I'm sorry to
10 say, but some are happy to have families out of
11 there. This is just, it makes it too easy for some
12 facilities to just kick them out due to 'necessary
13 circumstances,' that's just way too vague. And I'd
14 ask that that either get removed or clarified.

15 So, you know, I've stated many times, my
16 observations over the past couple of years of just
17 the inhumanity of letting these nursing home
18 residents just die alone in there during this period,
19 and some are, it's still happening. And also, you
20 know, I'm getting a crash course in all of this. I
21 never pretended to be an expert, but when, you
22 know - -

23 MS. GAREAU: One minute.

1 MR. GALLIGAN: That's great, thanks. But when
2 we talk about short staffing, I mean, all the
3 essential caregivers, the people like me that I know
4 that, sadly it's a small percentage of family
5 members, of residents who have a family member coming
6 in. But I can tell you, we largely go in there, do
7 our job, and we're taking, you can ask the nurses and
8 CNAs, we're taking a burden off their plate. I know
9 when I'm in there, they don't have to worry about
10 both of my parents for however many hours I'm in
11 there. And so, we, you know, we're eager to, we're
12 good people. Like, going to bat for your broken down
13 parents, like, you've got to be a good person to do
14 this. So, you know, we can help with the short
15 staffing, and we do help with the short staffing.
16 And I think the CNAs and nurses all tell you that.
17 So, that's all I've got. Thanks.

18 MS. GAREAU: Deb Burton.

19 MS. BURTON: Hello everyone. Deb Burton,
20 Executive Director RI Elder Info. I have some
21 technical things that I was hoping might be
22 addressed. I'm going to go by page number to make
23 this as succinct as possible.

1 In the 'Definitions' 1.3, of 'abuse' I would
2 like that to also include dissemination of
3 inappropriate photos that a person would not want
4 out, such as residents who may have been incontinent
5 blasted out across the internet, individuals who are
6 unclothed, etcetera. I'd like that specifically
7 included in the 'abuse.'

8 On page 38 - - give me one second. Of course, I
9 left my glasses on my desk. The handling of
10 residents' funds. Is that something that we can
11 indicate in these regulations, and perhaps I don't
12 understand this well enough, that those funds will
13 follow the resident in a very timely manner should
14 they be transferred to another facility? In Section
15 1.15(A), the Reporting of Resident Abuse or Neglect,
16 etcetera, that information is also sent to the Long-
17 Term Care Ombudsman. I'm not sure if that is
18 something that should be amended to indicate that the
19 resident has approved that HIPPA release to the Long-
20 Term Care Ombudsman.

21 Then going to page 43. Sorry, I clicked wrong.
22 Give me one moment. I don't know why this is not
23 jumping to page 43. Forty-three, enter. Forty-three

1 Section B, when a resident is being transferred to
2 another facility that they are to be given
3 information regarding other facilities. The current
4 regulation indicates that that information would be
5 obtained by mail from the Rhode Island Department of
6 Health. Let's make it easier for the facilities and
7 let them be able to download that from the RIDOH
8 licensed facility information on the RIDOH website.

9 Page 45 Section J, I'd like to see the Long-Term
10 Care Ombudsman included.

11 Page 46(N)(1), same thing, include the Long-Term
12 Care Ombudsman. Also page 46, Number 2(A), I'd like
13 to see 'or legal representative including a
14 healthcare power of attorney'. Section 2(B), also
15 page 46, if the resident chooses to have their
16 information shared.

17 And page 47, hold on, Section P. Section P,
18 'all information is considered private and
19 confidential,' that goes back to the Rhode Island
20 reportables.

21 Page 50, W-3. 'For those individuals who have a
22 communications barrier, unless the communications
23 barrier is one of speaking of another language.' I

1 would like to see this information for section three
2 include that there is regular and consistent attempts
3 to get a medical interpreter that is class
4 appropriate and have that not be specified to
5 facilities that are requiring Medicare and Medicaid.
6 This will provide culturally and appropriate care for
7 individuals who are non-English or have limited
8 English proficiencies and not provided two standards
9 of care, one whether or not you are in a Medicare or
10 Medicaid facility and one whether or not you are in a
11 private facility. Family members are not necessarily
12 the first choice for those class culturally and
13 linguistically appropriate translation services. So,
14 I'd like to see that as something that is offered on
15 a regular basis.

16 Also, in regards to residents' rights,
17 residents' rights are provided upon admission. That
18 includes information on how to contact the Long-Term
19 Care Ombudsman and all of the residents' regular
20 rights. I'd like that to be shared on an annual
21 basis at minimum with residents so that they can have
22 a refresher on what their rights are and their right
23 to receive services.

1 Page 51 regarding family counsels. So, 1.15.6
2 Family Counsels (B), it says the Rhode Island
3 Department of Health does not, I believe, have the
4 authority to define exactly what the family council
5 can and cannot address. Also, regarding family
6 councils, I believe under the federal regulations,
7 facilities are required to listen to the views and
8 act upon the grievances. The wording here says that
9 they can be considered. But I believe that the
10 regulation, the federal regulation is that they need
11 to act upon. And in support of the facilities there
12 is a section where the answer in that action can be
13 that there are no resources available. So, if the
14 family council is asking for something that's not
15 possible, facilities do still have a recourse in
16 that.

17 In, let's see, page 52, 1.15.7(A). The funds
18 that are being held while an estate is being opened,
19 I'd like to see that being held in an interest
20 bearing account.

21 Page 75, 1.17.6 regarding dental care. I would
22 like to see dental care as something that is afforded
23 to residents on an annual basis at minimum.

1 Page 77 regarding specialized services, I see
2 nothing in the regulations regarding psychological
3 services, mental health, substance use disorder
4 services. If that something can be included in
5 relation to that.

6 Let's see. Page 82, Section I, can we have a
7 deadline of perhaps 30, 60, or 90 days?

8 And in page 86, 1.19.6 regarding individuals'
9 access. I would like to see the internet included in
10 addition to a phone or cell phone. Some sort of
11 minimum internet access.

12 In addition to these changes, I would also like
13 to say we support what Jim Nyberg is saying regarding
14 requiring visitors and care providers, family care
15 providers, unlicensed care providers to also be
16 vaccinated, and that the facilities should not be
17 held for those individuals who may cause or fail to
18 prevent harm that may come to a resident. We don't
19 want to see those facilities incur negative events
20 when visitors are doing things that they should not.

21 And that concludes.

22 MS. GAREAU: Thank you. Is there anybody else
23 who would like to speak? Per the Office of Health

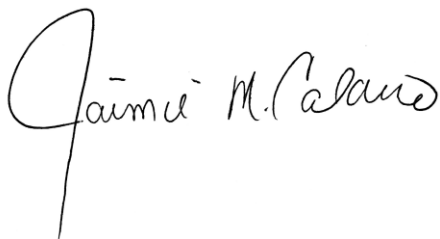
1 Regulations policy, we need to at least wait an
2 additional 10 to 15 minutes for those who may be
3 running late before we close the hearing.

4 (HEARING PAUSED)

5 MR. GALLIGAN: Thank you all for your attendance
6 and for the information you've offered. This hearing
7 is now closed. The time is 4:41 p.m.
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C E R T I F I C A T I O N

I hereby certify that the transcription of the enclosed audio file(s) was done accurately and to the best of my ability.

A handwritten signature in black ink that reads "Jaimie M. Calouro". The signature is written in a cursive style with a large initial 'J'.

Jaimie Calouro

Date: March 22, 2022