February 8, 2022

VIA E-MAIL (REGSONA@health.ny.gov)

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237

Re: Personal Caregiving Visitors in Licensed Nursing Homes and Adult Care Facilities – I.D. No. HLT-50-21-0004-EP

Dear Ms. Ceroalo:

New Yorkers for Constitutional Freedoms (NYCF) is New York’s statewide evangelical Christian advocacy organization. Please accept this correspondence as a public comment on the above-referenced proposed regulation.

We have two concerns about the proposed regulation. First, the regulation would allow facilities to temporarily suspend or limit personal caregiving visitation in situations where such a suspension or limitation is not warranted. Second, one portion of the regulation is unclear.

The proposed 10 NYCRR 415.3[b] and the proposed 18 NYCRR 485.18[c][1][ii] relate to situations in which facilities are permitted to temporarily suspend or limit personal caregiving visitation. The proposed regulations would allow temporary suspensions and limitations in three circumstances: Serious risk of transmission of a communicable disease, temporary staffing shortage, and acute emergency situation at the facility. We respectfully urge the Department to revise the proposed regulation to allow the temporary suspension of personal caregiving visitation only in acute emergency situations, and to allow facilities to place temporary limitations upon personal caregiving visitation only in acute emergency situations or in situations where there is serious risk of transmission of communicable disease. Temporary staffing shortages should not be a basis for facilities to suspend or limit personal caregiving visitation.
The COVID-19 pandemic has created serious challenges for nursing homes and adult care facilities. From a policymaking and regulatory perspective, there are two obvious pitfalls to avoid regarding personal caregiving visitors. On the one hand, adopting an overly permissive approach regarding visitors can place the lives and health of vulnerable persons in jeopardy. (The grievous loss of life in New York’s nursing homes during the early portion of the COVID-19 pandemic is a sobering reminder of the toll that communicable diseases can take in nursing homes.) On the other hand, adopting an overly strict approach regarding visitors can also place the lives and health of vulnerable persons in jeopardy. Without caregiving visitors, residents can become isolated; as a result, their mental and physical health can deteriorate. Furthermore, if caregiving visitors are denied access to nursing home residents, they cannot monitor those residents to be sure that they are receiving appropriate care. The Department must take great pains to avoid each of these scenarios.

The proposed language allowing facilities to suspend or limit caregiving visitation due to temporary staffing shortages is both troubling and counterintuitive. If a facility is short-staffed, the residents of that facility may need personal caregiving visits even more than they would in normal circumstances. Furthermore, if a facility’s lack of staffing has left the needs of a resident unmet, the absence of caregiving visitors could allow the problem to go unaddressed.

The proposed regulations also fail to include a maximum time during which personal caregiving visitation may be limited or suspended in emergency circumstances. To ensure that such limitation or suspension lasts no longer than necessary, NYCF submits that a 30-day time limit would be appropriate.

The proposed 10 NYCRR 415.3[3][a] should be removed or clarified. At present, the section provides that if a facility “has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors,” and if the basis for this belief is appropriately documented, a facility may require a professional to provide a written statement indicating that the personal caregiving visits are beneficial. The proposed language does not state what will happen if such a document is not provided. NYCF recommends that this section be removed in its entirety. Alternatively, language should be added confirming that a facility may not suspend or limit personal caregiving visits in the absence of a written statement from a professional; if a facility were to make such a decision, it would substitute its judgment for that of the resident (or of the resident’s designated representative) as to the resident’s caregiving needs.

Thank you for your consideration.

In His Service,

Jason J. McGuire
Executive Director