



TESTIMONY BEFORE THE HOUSE HEALTH COMMITTEE

*On House Bill 1570 Regarding the Health Care Facilities Act*

Presented By:

Michael Wolf

Executive Deputy Secretary

Pennsylvania Department of Health

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Good morning, Chairmen Baker and Myers and the members of the House Health Committee. My name is Michael Wolf and I am the Executive Deputy Secretary for the Department of Health, as well as Acting Deputy Secretary for Quality Assurance. I want to thank you for the opportunity to participate in today's hearing and discuss the Department's role in the licensure of health care facilities.

The Department takes seriously its mission to protect the health and safety of the citizens of this Commonwealth. Under the Health Care Facilities Act, the Department is given the responsibility to license health care facilities to ensure:

- That the health care provider is a responsible person;
- That the facility is adequately constructed, equipped, maintained and operated to provide health care services safely;
- That these services are adequate for the care, treatment and comfort of the patients in the facility; and
- That the facility is in compliance with the Department's regulations.

The Department takes pride in the past 30 years of surveying and regulating facilities under the current Act. As such, we look forward to working with you to update the licensure process. The Department's regulations for hospitals were adopted in the 1980s. Despite minor revisions to those regulations in the late 1990s, there has not been a recent effort to reflect changes in the delivery of health care services in these facilities, including changes in the practice of medicine and changes in technology, among other factors.

While the Department is certainly willing to engage in a dialogue with this Committee, and members of the regulated community, regarding possible changes to the manner of regulation of health care facilities, I would like to point out some concerns with House Bill 1570 as presently drafted.

The language used in the bill states that "facilities accredited by a national accrediting organization approved by the Centers for Medicare and Medicaid Services shall be deemed to meet licensure requirements and shall be issued a license by the Department." This raises

concerns that the General Assembly is directly delegating a governmental function to a non-governmental organization. I am sure that you are aware of recent decisions by our Courts that have found such direct delegation problematic. A review of some other states that have also adopted the deeming process indicates that the state legislature has often directed the state Department of Health to make a determination of those accreditation organizations whose standards would be acceptable as compliant with state licensure standards. There is also a concern that if there is a "one-time only" adoption of national accreditation organizations that the standards adopted on that date would be those which must be used going forward, regardless of any changes the organizations may make to those standards. A provision that the Department would make this determination on an annual basis could ensure that the accreditation standards applied to health care facilities would remain up to date.

The Department believes that the present legislation could result in conflicting standards being applied to health care facilities in the Commonwealth. Facilities that choose to be accredited would be following the standards adopted by the accreditation organization, while those facilities that choose the traditional licensure path would be required to comply with state licensure requirements. This could result in facilities being held to varying requirements which could prove detrimental to patient care and also confusing for individuals who wish to compare the quality of care provided at these facilities.

We believe that particular consideration needs to be given to the following areas:

- The role of the Department in performing validation surveys of the deemed facilities to ensure that they are complying with applicable standards and providing safe patient care.
- The ability of the Department to continue to receive and investigate specific complaints related to quality assurance and patient care at the facilities.
- The need for the Department to continue to survey to enforce other laws enacted by the General Assembly, such as the MCARE Act.
- An important issue that needs to be addressed involves the changes made to the definition of "health care facility." The revisions made in House Bill 1570 would remove

several health care facilities from the definition and thus from any licensure requirements. The facilities deleted include: long-term care facilities, home care agencies and registries, home health care agencies, hospices and birth centers.

While the bill amends Section 809 of the Act to provide that all accreditation facilities shall receive a license for the duration of the accreditation cycle and that all non-accredited facilities' licenses shall correspond to the time frames for accreditation facilities, this provision conflicts with existing Section 807 which sets specific time frames for licensure of health care facilities, including two years for hospitals, rather than the three-year timeframe generally used by accreditation organizations.

I am here to report to the members of this committee, and all affected parties involved therein, that the Corbett administration is committed to ensuring that our regulations get the proper attention needed and that the necessary changes are implemented. The Department will begin this process as soon as possible. Uniformity, consistency and predictability will be our goal.

The Department is assessing plans to implement an Informal Dispute Resolution (or IDR) process for all health care facilities. This process is currently available only to long-term care facilities. Under this process, a health care facility is offered an opportunity to dispute deficiencies cited by the Department's surveyors. The purpose of the IDR review is to allow a facility to present information which indicates that one or more deficiencies contained in the statement of deficiencies should not have been cited or contains incorrect or inaccurate information. The Department will not make a statement of deficiencies publicly available or post the statement of deficiencies on the Department's website during the pendency of the IDR review. Upon receipt of an IDR request, the Department can request additional information or clarification from the facility, if necessary, or initiate a telephone conference or in-person meeting with the facility's representatives. If the IDR review results in the elimination or revision of one or more deficiencies, the Department will prepare, and the facility will receive, a revised statement of deficiencies. The document will be made publicly available only after an acceptable plan of correction has been submitted by the facility. The IDR process will provide

facilities—and the Department—with the opportunity to ensure that the information provided to the public provides an accurate description of the existing conditions at a health care facility.

The Department is also reviewing the entire survey process and the mechanisms by which the results of the licensure surveys and investigations are communicated to the public. We intend to map out the survey process and revise it as appropriate to ensure that: 1) survey results are written clearly and concisely; 2) those results—including the statements of deficiencies and plans of correction—are provided to the public in a manner that will enable them to understand the specific deficiencies identified at the facility and the facility's response to those deficiencies.

In summary, the Department is committed to protecting the health and safety of patients and residents in Pennsylvania health care facilities and is actively involved in a review of the licensure and survey process to identify areas for improvement. We would also welcome an opportunity to work with this Committee as it proceeds in its review of House Bill 1570.

Thank you again for the opportunity to speak with you today. That concludes my testimony and I would be happy to take any questions.