Public Hearing of the House Aging & Older Adult Services Committee on COVID-19 suspended regulations as it relates to the treatment and residency of older adults in PA.

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Regulations Recommended as Permanently Suspended - 4

Agency	Statute/Regulation	Statute/Regulation's Purpose	Suspension Benefit/Explanation	Make Permanent?	Rationale for Agency Recommendation	Action Necessary to Implement Agency Recommendation: Regulatory or Legislative/Statutory Action	Estimated Time Needed to Reinstate Suspended Regulation (e.g. N/A, immediately, 30, 60, 90 days, etc.)	Is suspension required post 9/30?	Alternative Methods	Overlap with Proposed Regulatory Rollout	Justification for/against Temporary Retention after 9/30
DOH - QA	28 Pa Code 601.21(b)	Requires that home health services (skilled nursing and at least one other therapeutic service) is provided in the place of residence used as a patient's home.	Waiver of requiring place of residence requirement to allow for services to be provided via telehealth	Y	Would allow as per changes being put in place by CMS but needs to define what services would be allowed by telehealth --- must be 2 way audio and visual. Need to determine if these changes are permanent or time-limited with PERT Act.	Regulatory (May need corresponding regulatory/legislative action from DOS)	At least 90 days, regulatory changes will take longer than 90 days to implement.	Yes	Exception Process: 28 Pa. Code 51.33	None	Suspension of the requirement that home health care services be provided in the residence of a patient has allowed facilities to utilize telehealth options. By utilizing these options, the contact between patients and facility employees has been limited, including the limiting of required supervisory visits, thus minimizing the potential for transmission of COVID-19.
DOH - QA	1 - 28 Pa Code 601.31(a)	Home health services are provided in the patient's place of residence.	Waiver of requiring place of residence requirement to allow for services to be provided via telehealth	Y	Would allow as per changes being put in place by CMS but needs to define what services would be allowed by telehealth- must be 2 way audio and visual. Need to determine if these changes are permanent or time-limited with PERT Act.	Regulatory (May need corresponding regulatory/legislative action from DOS)	At least 90 days, regulatory changes will take longer than 90 days to implement.	Yes	Exception Process: 28 Pa. Code 51.33	None	Suspension of the requirement that home health care services be provided in the residence of a patient has allowed facilities to utilize telehealth options. By utilizing these options, the contact between patients and facility employees has been limited, including the limiting of required supervisory visits, thus minimizing the potential for transmission of COVID-19.
DOH - QA	2 - 28 Pa Code 601.31(a)	Home health services may only be ordered for a patient by an attending physician.	Waiver of requirement to allow for certified registered nurse practitioners or physician assistants may order home health services for a patient.	Y	Is allowed under scope of practice and has been changed in Medicare requirements – meets definition of health care practitioner	Regulatory (May need corresponding regulatory/legislative action from DOS)	At least 90 days, regulatory changes will take longer than 90 days to implement.	Yes	Exception Process: 28 Pa. Code 51.33	None	Suspension is consistent with current federal regulations, which allows certain practitioners (including physician assistants and nurse practitioners) to order home health services. See 42 C.F.R. §§ 484.2, 484.60(a)(1), 484.60(b)(1). Prior to the Disaster Declaration being ended, a number of home health care agencies already have filed for and been granted exceptions to continue to allow CRNPs and PAs to order home health services.
DOH - QA	28 Pa Code 611.51(d)	Requires face to face interviews for direct care worker applicants	Waives face to face requirement to allow for interviews to be done telephonically or virtually	Y	Most businesses conduct interviews virtually; not telephonic - unable to verify applicant during a telephonic interviews	Regulatory	At least 90 days, regulatory changes will take longer than 90 days to implement.	Yes	Exception Process: 28 Pa. Code 51.33	None	Home Care agencies have utilized video/virtual interviews for hiring direct care workers thus removing unnecessary contact between applicants and facility staff and minimizing the potential for transmission of COVID-19.

Regulations Recommend to Temporarily Continue Past 9/30 – 4

Agency	Statute/RegulationO18+C14:O19I21C14:O17C14:O19	Statute/Regulation's Purpose	Suspension Benefit/Explanation	Agency Recommendation: Make suspension permanent or DO NOT make suspension permanent?	Rationale for Agency Recommendation	Is suspension required post 9/30?	Alternative Methods	Justification for/against Temporary Retention after 9/30
DOH-BFLC	35 P.S. § 448.812	Limits length of provisional license to 6 months	Waiving this section allows the Department to extend a provisional license beyond 6 months if a survey cannot be completed to determine whether the facility has returned to substantial compliance.	N	Public Health and Safety: Public health and safety risks increases as time a facility is under a provisional license is extended without a survey as DOH is unable to determine whether the facility has returned to compliance with applicable laws and regulations.	Yes		The Department would like for this suspension to continue on as temporary basis because as the COVID pandemic continues to be an issue that taxes the resources of the Department, the need to utilize this suspension continues. Specifically, the Department has had issues with keeping up with licensure and recertification surveys during the pandemic because the Department has continued to prioritized Quality of Care Complaint surveys and infection control complaint surveys, and infection control compliance surveys. Accordingly, the Department would note that it has been in all NCFs to conduct some form of a survey during the pandemic. Because of this prioritization during the pandemic the Department has had, and continues to have an issue with keeping up with the annual licensure and recertification surveys.
DOH - QA	28 Pa Code 601.35(c)	Requires supervisory visits be made to patient's residence every two weeks.	Waiver of requiring place of residence requirement to allow for visits to be provided via telehealth	N	Remains in effect for Medicare. Onsite visits required for observation of care provided and evaluation of services and goals.	Yes	Exception Process: 28 Pa. Code 51.33	Suspension of the requirement that home health care services be provided in the residence of a patient has allowed facilities to utilize telehealth options. By utilizing these options, the contact between patients and facility employees has been limited, including the limiting of required supervisory visits, thus minimizing the potential for transmission of COVID-19. The Department would recommend temporarily extending this to minimize COVID transmission during the potential fall/winter surge. However, the Department still would not recommend permanent suspension. While some telehealth opportunities are appropriate, these supervisory in-person visits allow the supervising provider to ensure quality care is being delivered and discuss adjustments as needed with the nurse aide/direct care workers. Further, CMS is considering changes to federal regulations around telehealth for home healht/care but stated on June 28, 2021 that "We believe the current 14-day on-site supervisory visit requirement when a patient is receiving skilled services is an important component to assessing the quality of care and services provided by the HHA aide, and to ensure that aide services are meeting the patient's needs." In short, on-site supervisory visits should continue to be the stanard of care unless an agency requests a case by case exception.
DOH - QA	28 Pa Code 611.5	Regulation provides definitions including "direct consumer contact" which requires face to face interaction with consumer in consumer's place of residence or other independent living environment	Waiver of requiring place of residence requirement to allow for services to be provided via telehealth	N	This definition applies to other regulations ie. TB screening, criminal background checks etc.	Yes	Exception Process: 28 Pa. Code 51.33	Suspension is consistent with current federal regulations, which allows certain practitioners (including physician assistants and nurse practitioners) to order home health services. See 42 C.F.R. §§ 484.2, 484.60(a)(1), 484.60(b)(1). Prior to the Disaster Declaration ending, a number of home health care agencies already filed for and have been granted exceptions to continue to allow CRNPs and PAs to order home health services. However, this regulation applies to ALL definitions of home care regulations, inlcuding things like TB testing, criminal background checks and more that cannot be done virtually nor should be removed permanently. The Department is supportive of finding ways for telehealth services specifically for consumer care to continue temporarily during the pandemic by keeping this suspension in place and even after the pandemic, but this broad definitional suspension of the entire 611.5 must remain in place permanently.
DOH - QA	28 Pa Code 601.31(d)	Regulation provides, in part, that drugs and devices may only be dispensed by licensed pharmacists and licensed physicians to patients in their care.	Allows home health care agency staff (that are allowed to administer the COVID 19 vaccine) to dispense i.e. transport the vaccine. This shall allow homebound home health patients to receive the vaccine. All other drugs and devices are still restricted to being dispensed by licensed pharmacists and physicians in connection to home	N	Suspension is specific to COVID-19 pandemic and current vaccination efforts to allow for homebound patients to receive the vaccine without additional risks to their health during the pandemic.	Yes	Exception Process: 28 Pa. Code 51.33	The Department would like for this to continue through the COVID-19 response. This will be specifically imporant to support home health agencies deliever COVID vaccinations and boosters/additional doses to homebound and in-home patients.