



## Legislative Scorecard Summary

### Pennsylvania House Bill 1442

Legislation allowing waivers to some of the physical site requirements, rules, and regulations for personal care homes and assisted living residences

August 2019

The Southwestern Pennsylvania Partnership for Aging developed a scorecard implementing the Principles of an Ideal Long-Term Living System for Pennsylvania's Older Adults. This scorecard is used to understand and analyze the potential impact of legislation. A bill, PA House Bill 1442, a law to allow waivers to some of the physical site requirements, rules, and regulations for personal care homes and assisted living residences, is under consideration in the House and Senate in Pennsylvania's General Assembly and was considered on a fast track from committee to the floors of both chambers. However, it has not moved out of the House Aging and Older Adult Services Committee yet. Members of SWPPA's Policy Committee reviewed the legislation and, using the scorecard, addressed how each principle is reflected in the bill. They then presented it to the Board of Directors, who agreed to its distribution to the membership.

**Recent brief history:** In 2007, Act 56 created Assisted Living (AL) Residences as an alternative for consumers in Pennsylvania. At the time of passage, legislators anticipated that there would be over 300 Assisted Living Residences in the state by the end of 2015. The regulations were posted in PA bulletin in July 2010 with an effective date of January 2011. Licensing of communities began in late 2012. As of April 2019, there are only 49 AL residences.

In February 2016, The House Aging & Older Adults Committee held a hearing on the ACT 56-related barriers to Personal Care Homes (PCH) transitioning to AL. This resulted in a stakeholder workgroup and several regulations being changed. The Department of Human Services chose not to consider changing the physical site barriers at that time. Following Act 56's regulatory physical site requirements continues to be a significant barrier to (PCH) converting to the assisted living level of care. This legislation hopes to increase the availability of AL as an option for Pennsylvanians and to reduce barriers for PCHs to convert to AL. Additionally, payment barriers have also been identified. Therefore, this amendment proposes allowing Medicaid (Medical Assistance in Pennsylvania) coverage for assisted living.

**Conclusion of This Analysis:** This is an important piece of legislation that has the potential to improve care options, reduce nursing home use, and increase consumer choice to age in place. It is a positive step in addressing two of significant barriers to growth in AL in Pennsylvania. It will

intersect with several other aspects of the aging care network and may have unintended consequences. SWPPA's policy committee urges passage of the bill and consideration of the following during the hearing process to improve it.

- Revisit the issue of PCH / AL residences being able to limit consumer choice for supplemental providers. SWPPA members recognize there is a balancing act between the consumer's choice of provider and the oversight responsibility of the residence. However, the bill does not prevent highly restrictive lists that force people into using supplemental providers who are part of a particular network.
- For the physical site regulations, we urge greater clarity around these waivers as the nebulous nature of how long they are in effect and the ease or difficulty of processing them will determine if this revision of the law increases the likelihood of PCHs becoming ALs.
- The law does not clarify if physical site waivers are only possible for existing PCHs. Are they available for new construction as well? That could be clarified.
- There is some mention of Community Health Choices having access to AL in the bill. What about the Living Independently for the Elderly (LIFE) programs? They can currently contract directly with PCH / AL without their being covered by Medicaid. Will this law impact that? That could use greater review for unintended consequences and clarity.
- Has there been discussion of the impact of certain federal rules? For example, beginning in March 2022, AL/PCH providers receiving Medicaid funds will be required to meet the compliance standards of the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) rule published in March 2014. This rule is particularly focused upon residential facilities and does not distinguish between serving individuals with disabilities or serving aged individuals experiencing dementia. How will this impact this legislation and existing PCH/AL laws in Pennsylvania? Anticipating such a change should be part of altering PCH/AL laws.

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## Comments and Scoring by Principle

### Scoring Summary

Principle	Score
1. Person Centered	Score High (3.75)
2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence	Score Medium-High (3.5)
3. Focused on Quality of Life and Quality of Care	Score High (3.75)
4. Simple to Understand and Access	Score Medium (3)
5. Coordinated with Seamless Transitions through a Comprehensive Array of Services	Score High (4)
6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services	Score (n/a)
7. Vested in a Viable and Competent Direct Care Workforce	Score Medium-Low (2)
8. Focused on Continued Learning and Quality Improvement	Score Low (1)
9. Financially Feasible and Encourage Public/Private Participation	Score Medium-High (3.5)

**Total Score of 22.25 out of a total possible 28 or 79%**

#### **Principle 1. Person Centered—Score HIGH (3.75)**

**Areas of alignment:** The legislation directs the PA Department of Human Services to submit documents to CMS to allow Medicaid coverage for care in assisted living (AL). Currently that is only available for nursing facilities in PA. Additionally, the legislations shrinks the list of medical care/procedures which are not permitted in AL/PCH (from 10 to 4). This will enable people to have greater choice to return to their PCH/AL after acute care stays and to age in place as their health care needs increase. There is the informed consent process in Act 56 reflected in the section 2800 regulations, so that is not in this bill.

**Areas of Concern:** The bill adds that “appropriate policies and procedures” need to be in place to assure health and safety when waivers are granted. This is vague. How regulations are written and enforced will determine how effective this is at keeping care person-centered. The Act already includes language that allows AL / PCH to limit the supplemental providers that a consumer can use in the facility. On its face, this seems antichoice, and therefore, not person centered. However, facilities have competing duties to assure that supplemental providers in their spaces are operating in manner that produces healthy and safe outcomes. We would recommend assuring some level of choice for

consumers. People with high levels of care live in the community. The exclusionary medical need seems odd if people are able to live with those needs elsewhere outside skilled nursing facilities. Current PCH and AL operators report difficulty getting DHS to accept negotiated agreements created through the informed consent process. If waivers are pursued at the request of residents through the informed consent process, there is ongoing concern that these will not be accepted by DHS.

### **Principle 2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence—Score MEDIUM-High (3.5)**

**Areas of Alignment:** The Act already included language about both consumer choice and risk as well as promoting aging in place. None of the proposed changes appear to reduce consumer choice, and the bill retains its emphasis on aging in place. In fact, the elimination of care tasks from the “prohibited” list increases the ability for consumers to age in place. As mentioned for person-centered care, existing policy contains an informed consent process that includes balancing the individual risks a resident may wish to take against the health and safety needs of other residents and staff. That is no readdressed here.

**Areas of Concern:** Implementation of a meaningful informed consent process is necessary to assure that people are apprising risk and that the “appropriate” [bill’s language] measures are taken to heighten safety. Such a process should involve a conversation and not be simply a line that a person signs in a fully of admission paperwork. Regulations will need to clarify this. As stated in the discussion of principle one on person centered care, current PCH and AL sites struggle to get DHS to accept such negotiated agreements about care.

### **Principle 3. Focused on Quality of Life and Quality of Care—Score MEDIUM-HIGH (3.5)**

**Areas of Alignment:** The parts of the bill about who can reside in AL / PCH based on medical need promote choice and, therefore quality of life. The bill attempts to balance consumer preference with the facility and staffing needs at the AL / PCH level. It talks about facilities being able to request waivers to policies on a case-by-case basis. This may allow AL to serve more people in the way they desire. The bill also would allow for Medicaid to cover services in AL, providing a fuller range of options which leads to the best Quality of Life and most appropriate Quality of Care. Allowing for the presence and coverage of supplemental care in AL will contribute people getting the right level of care in the most appropriate care setting.

**Areas of Concern:** As stated for principle one, the Act permit facilities to limit supplemental providers. These limits in choice have the potential to negatively impact quality of life.

#### **Principle 4. Simple to Understand and Access—Score MEDIUM-High (3)**

**Areas of Alignment:** The language of the bills is generally clear, and the ideas are easy to follow. The simplification comes in part from the elimination of several clauses related to specific health care needs. If passed, the regulations may become more complex. The ease or difficulty of accessing Medicaid for AL remains to be seen. Currently, some people report finding it a challenge to access Medicaid services.

**Areas of Concern:** The writing of regulations and implementation of them could make this very easy to access or quite difficult. Our expectation is that it will remain about as easy / difficult as it already is for Community Health Choices and nursing facility care.

#### **Principle 5. Coordinated with Seamless Transitions through a Comprehensive Array of Services—Score HIGH (4)**

**Areas of Alignment:** Nothing in this bill directly addresses transition through services. It may prevent some service transitions if people are permitted to return to AL / PCH using supplemental services without first having to stay in a skilled nursing facility due to the shorter list of prohibited care services. It appears that Community Health choices could coordinate services in AL that allow individuals to “age in place” and result in more minimal interruption for individuals as their functional needs change.

**Areas of Concern:** It is difficult to determine the degree of flexibility that the bill will allow in decreasing transitions of care. For example, the language regarding the provision of skilled nursing care is not entirely clear as it is currently written.

#### **Principle 6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services—Score (n/a)**

**Areas of Alignment:** Not included in the current bill.

**Areas of Concern:** As there is no real focus on prevention or connection to home and community-based services, this bill may have missed an opportunity on the part of the State to make it easier for CHC to use AL as an option to manage care.

### **Principle 7. Vested in a Viable and Competent Direct Care Workforce—Score (n/a)**

**Areas of Alignment:** This Act makes mention of staff and providers in the part that already exists primarily to assure they can meet the medical needs of residents. The bill does not propose to change that. None of it is about developing or retaining the workforce. It reinforces that a person should receive the appropriate level of care in the most appropriate setting from *qualified and competent professionals*.

**Areas of Concern:** This bill does not directly address workforce issues at all. Like all aspects of long-term care, PCH and AL face direct care workforce issues. Provision of quality care is difficult without enough well-trained staff members.

### **Principle 8. Focused on Continued Learning and Quality Improvement—Score LOW (1)**

**Areas of Agreement:** The rationale suggests that some evaluation was done indicating that the 2007 Act did not accomplish its goals, nor have the 2016 regulatory modifications.

**Areas of Concern:** In the twelve years since passage and in the three years since its regulations were last changed, it seems it seems that Pennsylvania has not come close to increasing the number of ALs significantly. Moreover, the bill contains little to indication of how it will measure if the outcomes for residents are better by allowing people to remain in AL / PCH with Medicaid funding and with a wider array of medical needs. This is a gap.

### **Principle 9. Financially Feasible and Encourage Public/Private Participation—Score MEDIUM (3.5)**

**Areas of Agreement:** This legislation has the potential for cost savings for both the state and individual consumers and families. By allowing people to remain in PCH / AL with additional health care needs, some people will be able to avoid moving to more expensive nursing facilities. The state may save by paying a daily rate which is less than it pays nursing facilities. As this model reflects a private pay reimbursement structure, the bill, as currently written, does not make mention of an intention to restrict or create requirements around fee schedules. This is helpful for the PCH / AL business model. Such limitations could make AL less financially feasible.

**Areas of Concern:** There is little to assure that people still have choices about setting and are not forced to remain in AL / PCH if they deem a need for a higher level of care. Some level of protections should be afforded residents through the appeal process for LOC determinations. Because there are already many people who meet PA Medicaid eligibility living in AL, allowing Medicaid funding may result I the state's Medicaid program initially having greater outlay of funding before the cost savings occurs due to delayed nursing home use.