



PA House of Representatives

Republican Policy Committee

128, Main Capitol Building
Harrisburg, PA 17120
(717) 260-6144

Rep. Joshua D. Kail
Chairman

PA House Republican Policy Committee Hearing

“Impacts and Solutions: Charting a Path Through Common Sense State Regulatory Reform”

February 21, 2023, at 9:30 a.m.

Room G-50, Irvis

Harrisburg, PA

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|------------|---|
| 9:30 a.m. | Welcome and Pledge of Allegiance |
| 9:40 a.m. | David Burton
<i>Senior Fellow in Economic Policy, The Heritage Foundation</i> |
| 9:50 a.m. | Robert McCafferty
<i>Operator, North Country Brewing</i> |
| 10:00 a.m. | Jelden Arcilla, MBA, RNC, NEA-BC
<i>Field Vice President at LifePoint Health® & Chief Nursing Officer,
Conemaugh Memorial Medical Center
On behalf of The Hospital and Healthsystem Association of
Pennsylvania</i> |
| 10:10 a.m. | Questions on Impacts and Reforms Panel |
| 10:45 a.m. | Closing Comments and Conclusion |



Testifier Biographies

PA House of Representatives Policy Committee Hearing
*"Impacts and Solutions: Charting a Path Through
Common Sense State Regulatory Reform"*



David Burton

Senior Fellow in Economic Policy, The Heritage Foundation

David R. Burton focuses on securities law, capital markets, entrepreneurship, financial privacy, tax matters, and regulatory and administrative law issues as The Heritage Foundation's senior research fellow in economic policy. In 2022, he was awarded Heritage's Drs. W. Glenn and Rita Ricardo Campbell Award, which goes to the employee who makes "an outstanding contribution to the analysis and promotion of a free society."

Burton was general counsel at the National Small Business Association for two years before joining Heritage's Roe Institute for Economic Policy Studies in 2013. He previously was chief financial officer and general counsel of the start-up Alliance for Retirement Prosperity, a conservative alternative to AARP.

For 15 years, Burton was a partner in the Argus Group, a Virginia-based law, public policy and government relations firm. His career in financial and tax matters also includes the posts of vice president for finance and general counsel of New England Machinery, a multinational manufacturer of packaging equipment and testing instruments, and manager of the U.S. Chamber of Commerce's Tax Policy Center.

Burton received a juris doctor degree from the University Of Maryland School Of Law. He also holds a Bachelor of Arts degree in Economics from the University of Chicago.

Born at the Patuxent River Naval Air Station in St. Mary's County, Md., Burton grew up in Baltimore. He and his wife, Nancy, currently reside in Mason Neck, Va.

Bob McCafferty

Operator, North Country Brewing

On behalf of Pennsylvania Restaurant & Lodging Assoc.

McCafferty worked in bars and restaurants to get himself through college and enjoyed it. So in 1998, he and his wife, Jodi, bought an old funeral home on Main Street in Slippery Rock with plans to open a restaurant. At the time, the town was still dry.

They lived there during the renovations — at one point their bedroom was where the bar is now. The couple replaced the foundation — some of the old stones now frame the outdoor fireplace. They removed the tin ceiling and used it to make the backsplash behind the bar and on the walls.

In 2001, Slippery Rock voted to allow alcohol sales. North Country Brewing opened in February 2005. A few years later, the McCaffertys bought a farm and created their own farm-to-table practice, including raising Scottish Highland cattle.

They opened a cannery in 2012, and then bought the Harmony Inn in 2013.

Bob McCafferty loves being part of the Butler County community — participating in events and serving on local boards. He has always tried to be good to his employees, making sure they have health care and are paid good wages.



Jelden Arcilla, MBA, RNC, NEA-BC
Field Vice President at LifePoint Health® & Chief Nursing
Officer, Conemaugh Memorial Medical Center
On behalf of The Hospital and Healthsystem Association of
Pennsylvania

Jelden Arcilla, MBA, RNC, NEA-BC, is Field Vice President at LifePoint Health® and Chief Nursing Officer at Conemaugh Health System, Duke LifePoint Healthcare. He has over 30 years of clinical and operational experience in a continuum of healthcare settings, from rural/critical access hospitals to large tertiary hospitals and health systems.

Throughout his career, Jelden has led various expansions, operationalized new service lines, and integrated facilities while delivering exceptional patient care. He joined Conemaugh after serving as Vice President of Operations and Chief Nursing Officer for HonorHealth in Phoenix, a Level 1 Trauma Center and teaching hospital. He also served as a combat infantry medic in the United States Army.

Jelden received his Master of Business Administration from Western Governor's University and his Bachelor of Science in Nursing from Loma Linda University. He is working towards completion of his Doctorate of Nursing Practice from Aspen University. Jelden is Nurse Executive Advanced-Board Certified (NEA-BC) and Public Health & Professional in Patient Safety Certified (PHN & CPPS).

He is passionate about his community and is involved with the Healthcare Council Western Pennsylvania – CNO Council, Hospital Association of Pennsylvania – Racial Equity Steering Committee and Nurse Ambassador Advisory, Johnstown Association Regional Industries/Regional Authority – Vision 2025, Greater Johnstown School District – Community Advisory, and American Corporate Partner – Veterans Professional Mentor.





Pennsylvania House Republican Policy Committee

Testimony re: Pennsylvania's Regulatory Process

February 21, 2023

Thank you for the invitation to submit written testimony regarding Pennsylvania's regulatory process, Chairman Kail, and members of the House Republican Policy Committee. We appreciate this opportunity to provide thoughts regarding the process and the impact regulations, in general, have on Pennsylvania restaurant owners, hotel operators, and the broader hospitality and tourism industries.

There are more than 26,000 restaurants, 1,500 hotels, and 100 travel and tourism partners that we represent. PRLA is proud to say that we represent the entirety of Pennsylvania's tourism and hospitality industries. At the hearing, the committee will also hear from PRLA member and PRLA's Government Affairs Committee Chair, Robert McCafferty. Mr. McCafferty is the Operator of North Country Brewing in Slippery Rock, PA.

Mr. McCafferty represents so many from the business community who, among other reasons, join an Association like PRLA to help stay updated on legislative and regulatory changes. So many operators join Associations for that exact reason, to remain current on the latest industry trends and up-to-date policies that impact their businesses. In other words, they care significantly about following the rules.

From an Association perspective, it can be challenging to keep thousands of operators updated on the latest policy impacting the constantly changing dimensions of their businesses. Using regular recurring meetings and webinars, email newsletters, social media, and various other tools, we provide owners and operators with the latest information on regulatory and legislative changes that may affect their businesses. Pennsylvania's regulatory process can be challenging to navigate for some of the most experienced lawyers and even the most veteran legislative affairs professionals. Likewise, the process is arduous to follow and engage for the everyday Pennsylvanian and the typical business owner who may be only loosely familiar with the rules, standard procedures, and nuances.

While the committee at this hearing is not considering any particular piece of legislation, PRLA would like to offer thoughts in three categories –

- On the regulatory process
- Recent regulatory changes and their impact
- Thoughts on identifying various "regulated sectors."

On the regulatory process:

The task can be daunting and challenging for even those that track, read, and assess proposed regulatory changes professionally. Pennsylvania's Independent Regulatory Review Commission (IRRC) process can be dizzying and likely fill a semester-long political science course. And if you don't regularly read the Pennsylvania Bulletin, one could miss an opportunity to engage in something that significantly impacts your daily operations. In other words, keeping up with the Commonwealth's regulatory process

is demanding. Even when small and technical changes are considered in the General Assembly, it can sometimes be difficult to track, but at least there's commonly more runway for deliberation.

While our association understands the desire to update current standards when necessary, regulatory changes will typically impact our members in significant enough ways that we feel a majority of substantial changes ought to be reserved for the legislature. Due to the current structure of the regulatory process, it's possible for the state to adopt significantly impactful policy changes without thoroughly engaging those in the regulated community. Pennsylvania is a complex state. Businesses located in suburban or city areas are considerably different from those in more rural locations. Therefore, we're confident that the legislature is best suited to consider general policy changes and the most appropriate body to handle those substantive changes.

Going through the legislative process allows for broader and more reliable input from stakeholders across the state. Pennsylvanians have relationships with their state and local legislators, and they look at their State Representatives and Senators to help navigate potential changes to policy.

Many people do not read regulatory proposals. Like noted earlier, it is a nuanced process and challenging to traverse. This is especially true in the business community, as businesses face staffing shortages, rising costs of raw materials, and supply-chain issues. By prioritizing the legislative process, the state solicits genuine public feedback, which more reliably leads to the input needed to shape considerations.

All of that said, it's important to note that, as an Association, we have had very engaging and productive dialogue with the IRRRC commission in many circumstances. Our members engaged in the process have had similar consistent and productive conversations, despite only sometimes agreeing with the changes. Ultimately, we've found the balance judicious and appreciate those that serve. Our contention today is levied towards the process, not those working hard to serve the Commonwealth.

Recent regulatory changes and their impact:

The latest example of significant regulatory change on the business community came in the last legislative session, when there were changes regarding proposed rulemaking concerning amendments to 34 Pa. Code, Chapter 231 regarding Tipped Employees and Regular Rate.

As an Association, we engaged hundreds in the regulated community to solicit feedback. Despite our best efforts, we still regularly hear from operators that are just now learning of the changes nearly a year after implementation. Disappointed that they did not have the time or capacity to engage. Many of the updates adopted, especially around the tipped wage, were and are industry standards and already best practices. Despite that opinion, along the way, nuances and subtleties have surfaced, suggesting that more time would have led to more productive and practical changes.

In this case, in many cases, it's common for the state regulations to vary from the federal rules leaving just enough space for confusion. With the changes to the tipped wage, the state regulations mirror federal regulations related to the 80/20 rule. Federal regulations, however, have something the industry refers to as the "30-minute threshold." An employer who typically takes the tip credit cannot take the tip credit for time spent on work that's not part of the tipped occupation for a continuous period of 30 minutes. The state does not have such a provision. Leaving operators questioning which version to follow.

Senator Lisa Baker introduced Senate Bill 543 during the last legislative session (2021/22), which sought to create consistency between federal and state wage and hour regulations. That legislation addressed a longstanding issue we continue to hear from members about – Pennsylvania has not kept pace with federal changes, which frequently causes employers to struggle with the gap between state and federal law. In the co-sponsorship memo for that legislation, Senator Baker noted, "the lack of guidance in Pennsylvania has put businesses at a competitive disadvantage."

In other words, there's a compliance gap.

It is not simple or easy to navigate regulatory or technical changes to the law. Moreover, it's very challenging for small-business owners who spend much time in their business. Therefore, PRLA believes the process needs to encourage transparency, maximize public engagement, and expand time for assessment and review.

Thoughts on identifying various "regulated sectors:"

Determining "regulated sectors" in various regulatory considerations can seem arbitrary. For example, in the travel and tourism industry, we've seen the hotel community treated differently, typically more rigidly than alternative accommodations and your standard short-term rental. Hotels, bed and breakfasts, and campgrounds adhere to strict regulations that aren't always applied across the entirety of the lodging industry. Hotels, for instance, have rigid standards on the number of sprinklers, smoke detectors, emergency exits, etc. Hotels and Beds and Breakfasts, proudly, want to and are obligated to keep their guests as safe as possible. Alternative accommodations, however, play by different rules.

We've started conversations with the lodging industry and the General Assembly on this subject, however, we don't bring this up today to make any legislative suggestions. We do want to note the inconsistency in how very comparable operations can sometimes be regulated. Our members tell us constantly that they're not afraid of competition but want to see a level playing field.

This is one example of many illustrating the type of impact regulations can have on a business. Not only can certain regulations make it tougher to operate, but they can sometimes put a business at a competitive disadvantage. The overall sense from both chambers in the General Assembly and the Administration is a shared interest to clear the obstacles for small businesses and businesses, in general, to operate in the Commonwealth. We're excited to be part of that conversation and happy to help however we can.

We're very grateful to the Republican Policy Committee for taking on this conversation. It is not an easy one, but it's hopeful to see the General Assembly prioritizing this conversation at the start of the new legislative session.

PRLA looks forward to continued dialogue and stands ready to assist in any way we can. Thank you all for allowing us the opportunity to submit written comments.

Joe Massaro
President & CEO
Pennsylvania Restaurant & Lodging Association (PRLA)

Statement of
The Hospital and Healthsystem Association of Pennsylvania

for the
Republican Policy Committee
Pennsylvanian House of Representatives

presented by
Mr. Jelden Arcilla, MBA, RNC, NEA-BC
Chief Nursing Officer, Conemaugh Memorial Medical Center

Harrisburg, Pennsylvania
February 21, 2023

Health care is among the most regulated industries in the nation. While government oversight is appropriate to ensure that patients receive safe, high-quality care, the reality is that layers of regulatory requirements and processes too often take providers away from the bedside, stifle innovation, add unnecessary administrative burdens, and strain facilities' finances.

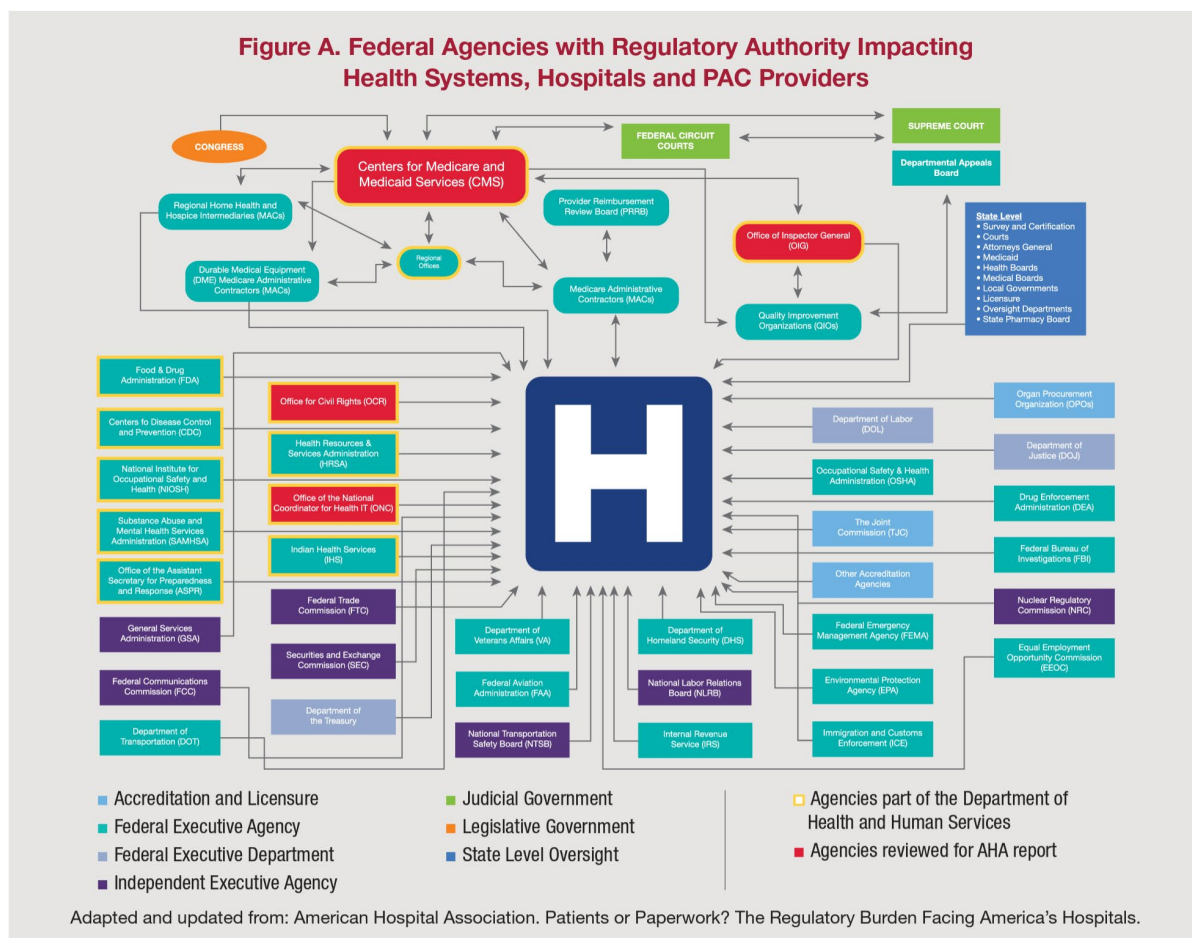
Hospitals and health systems are diagnosing and treating Pennsylvanians in an extremely dynamic environment. Patients are choosing to seek care at different times and in different ways; workforce shortages are at crisis levels; clinical breakthroughs happen every day; technology is evolving at ever-faster rates; health information and data is transforming how we deliver care; and health care business models are constantly shifting in an effort ensure facility viability and access to care.

Regulations should absolutely work to ensure patient and provider safety, but they should not deny the reasonable flexibility that health care providers need to be able to meet the real-time needs of the communities they serve.

Federal Regulatory Landscape

While this hearing is rightfully focused on Pennsylvania, it is impossible to consider our state regularity landscape without first understanding the extremely complex federal requirements with which it intersects.

The true scope and impact of federal regulatory requirements on hospitals is difficult to quantify due to the sheer number of federal agencies with regulatory authority and the increasingly complex nature of health systems. Five years ago, the American Hospital Association (AHA) partnered with Manatt Health to examine the federal regulatory landscape for health systems, hospitals, and post-acute care providers. According to their report—at the federal level alone—there are more than 43 agencies, offices, and departments to which hospitals are accountable, not including Congress, the Supreme Court, and federal district courts.



The analysis focused on federal law and regulations across nine domains from just four federal agencies: the Centers for Medicare & Medicaid Services (CMS), the Office of Civil Rights, the Office of the Inspector General, and the Office of the National Coordinator for Health IT. The report attempted to quantify the impact and cost of a portion of these agencies and the regulations under their purview.

As of March 2017, the four agencies highlighted in the report accounted for more than 600 discrete regulatory requirements on health systems, hospitals, and post-acute care providers. While that is a startling number from just four oversight entities, the estimate only included requirements that generated one or more administrating activities, i.e., creating or revising policies and workflows or documenting and monitoring compliance. The report further indicates that many of these regulatory requirements do not lead to improvements in patient care.

Health care regulations change at an incredible pace and require a team of highly trained staff to monitor and operationalize new and modified requirements. There is a constant need to re-write or revise policies, develop programs, and train staff to respond to evolving regulatory requirements and sub-regulatory guidance. Data suggests that an average-size hospital dedicates 59 employees to regulatory compliance and that more than a quarter of these are doctors and nurses. It is unacceptable that administrative activities to support compliance pull providers away from the bedside at a time when health care workforce shortages are at critical levels. And, it is worth noting that this estimate reflects only time spent on compliance-related administrative activities and does not include clinical components of state regulations or accreditation requirements.

The cost of administrative activities related to regulatory compliance for health systems is exorbitant. The AHA report estimates that hospitals and post-acute providers collectively spend nearly \$39 billion a year on the administrative activities related to regulatory compliance, which translates to \$7.6 million annually for average-sized community hospitals (roughly 150 beds); \$9 million for average-sized hospitals with post-acute care beds; and almost \$19 million for hospitals with more than 400 beds. Based on these estimates, the federal regulatory burden equates to an average cost of \$1,200 per patient admitted, or \$47,000 per hospital bed, per year.

This regulatory burden is not exclusive to hospitals. The Medical Group Management Association conducts an annual survey assessing the impact of the regulatory landscape on medical practices. In 2022, almost 90 percent of respondents said that the overall regulatory burden over the last 12 months had increased. As part of the same survey, 97 percent of providers indicated that a reduction in regulatory burden would allow them to reallocate resources toward patient care.

State Regulatory Landscape

The state regulatory landscape is only slightly less complicated than the national landscape and adds several layers of complexity to hospital compliance efforts. Some of the entities to which

hospitals and health systems are accountable in Pennsylvania include the departments of Health, Human Services, State, Drug and Alcohol Programs, Aging, Education, Insurance, and Environmental Protection, as well as PEMA, the Patient Safety Authority and Pennsylvania Health Care Cost Containment Council, for example. Hospitals also meet requirements of or may be scrutinized by state-contracted managed care organizations, county authorities, the Attorney General, the General Assembly, and the courts.

It is important to note that a number of these entities struggle with their own workforce, business process modernization, information technology, funding, and oversight challenges, even as they are consistently asked to ‘do more with less’ and keep pace with rapidly evolving industries. It would be beneficial to streamline their efforts to focus on tasks that are truly meaningful to increase access to and assure the quality of care in Pennsylvania.

From professional licensing to construction permitting, the scope of regulation that touches Pennsylvania’s hospitals is immense. For the purposes of today’s hearing, we will narrow our observations to select regulations that are implemented by the Department of Health.

Research from the Mercatus Center at George Mason University estimated that, in 2017, “Ambulatory Health Care Services” were the fourth-most regulated industry in Pennsylvania, with more than 5,500 “industry-relevant restrictions” in place at the time. They note that Title 28 of PA Code (health and safety), which includes hospital licensure regulations, contains more than 7,900 requirements.

In addition to the sheer volume of requirements, Pennsylvania’s hospitals and health systems face unique challenges because the commonwealth’s hospital licensure regulations are so old. Much of our current regulatory structure remains in place from the 1980’s—so, for example, our regulations do not even contemplate the internet, much less telehealth, electronic health records, or modern employee operations and care team structures.

In addition to being out-of-touch, outdated regulations require the state to issue a high volume of sub-regulatory guidance and result in a number of ways that the interpretation for what is considered acceptable compliance can vary across the state, from region to region or audit to audit, for example.

The Department of Health currently provides such sub-regulatory guidance to hospitals via electronic message board posts that are removed within six months and are not archived on the department’s website. Once guidance is removed, the state typically does not provide other ways to access it so that hospital regulatory and compliance teams can refer back during internal policy reviews.

Beyond the antiquated regulatory language and transitory message board posts, there are few resources available to assist hospitals with assuring that they are developing and implementing policies and procedures that the department will deem compliant. At the federal level, CMS has alleviated similar issues by sharing the interpretive guidance used by its surveyors. Such a measure should be encouraged at the state level as well.

State Regulations Not in Sync with Federal Requirements

Again, the hospital community affirms its belief that government oversight is appropriate to assure our shared commitment to providing patients with safe, high-quality care. Many regulations, however, impose administrative burden with little or no positive effect on patient safety. Both the regulated organization and the government entities charged with inspecting, validating, and assuring compliance incur burdens.

In Pennsylvania, health systems must create, maintain, and assure compliance of separate governing documents and bylaws for each individual hospital. Likewise, health systems must appoint medical staff, seek credentials, and grant privileges, for example, on a task-by-task and facility-by-facility basis. (28 PA Code Chapter 103 and 107).

In some cases, each provider must complete the entire onboarding process—two written references, verification of orientation and competencies, etc.—for each facility in which they may eventually practice. This makes it difficult, for example, to allow nurses to move easily between facilities and affects some specific clinical areas more than others, i.e., imaging, radiology, cardiology, sleep labs, etc. Federal requirements permit a unified and integrated approach across all facilities in a health system, which cuts red tape to allow well-qualified practitioners to treat patients when and where they are needed most.

Once in practice, the federal and state timelines for verifying and updating a provider's training and qualifications are also misaligned. Federal review is required at three-year intervals, while the state mandates a two-year timeframe. Aligning the state with the federal requirements in this instance would immediately reduce the administrative burden of this activity by almost 30 percent.

State regulatory requirements around physical space and procedure rooms do not align with federal requirements. 'Class three' rooms, for example, are used for procedures like breast biopsies. Pennsylvania's requirement is that these rooms be 600 square feet, while CMS sets a threshold of 400 square feet. The result is that existing spaces between 400 and 600 square

feet, which could otherwise be used for these procedures under federal regulations, cannot be used to care for patients in Pennsylvania.

Another vivid illustration is that Pennsylvania’s hospital regulations actually still require that “Library services shall be made available in the hospital to the medical and hospital staff. There shall be books, periodicals, and other materials appropriate to meet their needs.” (28 PA Code Chapter 145) In the age of the internet, this is an absurd requirement and, thankfully, the Department of Health recognizes it as such and waives it. It nonetheless requires hospitals to waste time and energy to ensure proper documentation so as to not run afoul of state requirements and the state must grant an exception. There is no similar requirement from CMS or The Joint Commission, the most widely recognized private accrediting organization in the nation.

These are just a few examples, there are several more regulations that could be modified to better align with federal and accrediting organization requirements.

Processes for Adding Equipment or Services

The Health Care Facilities Act, 35 P.S. § 448.808(a)(1)-(4), authorizes the Pennsylvania Department of Health to license health care facilities, provided that all safety requirements are met and the facility is in substantial compliance with all rules and regulations.

Under 28 PA Code 51.3 (a)(h)(1), hospitals are required to provide at least a 60-day notice before the state will process requests to use new equipment or to offer new services. The regulation can be applied so broadly that the process may be required for what could be perceived as procedural changes rather for meaningful changes with implications for patient safety. For example, if a hospital is deploying new equipment but the only change from existing equipment is a model number, should this process apply—particularly if there is no change to the way the equipment is operated or the training for staff prior to using the equipment remains the same? Should non-care-related physical modifications—such as moving televisions in patient rooms—require on-site state inspections before patients can be cared for in those spaces?

Prior to 2020, such a notice would typically trigger an on-site occupancy survey by the Department of Health to confirm that the details of the notification were factual. As hospitals and health systems grew, their requests far outpaced the department’s resources available for on-site approvals. In many cases—i.e., installation of a new model of equipment already used by staff in the facility—an on-site survey was not immediately necessary to assure patient safety.

In June 2020, the department created a process to streamline such approvals. Sixty days prior to using new equipment or offering a new service, hospitals can now submit an attestation that they are in compliance with the state's regulations. In itself, the submission does necessarily negate the necessity of on-site activity; however, if a facility does not hear back from the department within 60 days, it can assume that the service or equipment has been approved.

The Department of Health monitors these changes by evaluating 20 percent of the attestations submitted by each facility the next time a regulator is on site. If a certain number of the attestations are out of compliance, the surveyor will review 100 percent of submissions from the previous 12 months.

The hospital community greatly appreciates the creative thinking and flexibility demonstrated by the department when it introduced the attestation process. The regulated community, however, would appreciate additional, predictable, structured opportunities to work with state regulators to help craft and improve real-world solutions—such as this—to comply with state requirements.

Exceptions

Another current mechanism to try to allow for regulatory flexibility in Pennsylvania is an exceptions process managed by the Pennsylvania Department of Health (defined by 28 PA Code §51.31–51.34) through which hospitals can apply to be exempt from specific regulations under certain conditions. The policy authorizes the department to grant exceptions when hospitals and ambulatory surgical facilities face unreasonable hardship in attempting to come into compliance. Such exceptions can also be granted if a regulation impedes a facility's ability to provide higher quality care, to operate more efficiently, or to develop an innovative program.

In the same spirit and with some acknowledgement of the outdated nature of Pennsylvania's regulations, the department offers a structured—formally referred to as 'expedited'—exceptions process for a select set of regulations. If hospitals comply with minimum requirements, expedited exceptions are granted with the expectation that the health, safety, or welfare of patients will not be compromised.

Again, the hospital community appreciates the state's willingness to consider extenuating circumstances for barriers to full compliance by granting exceptions that do not compromise patient safety. However, the sheer fact of and volume at which these processes are used underscores the need for Pennsylvania's regulations to be revised at the most fundamental level.

We look forward to working with you, your colleagues in the Senate, the governor, state regulators, and other stakeholders to streamline Pennsylvania's health care regulatory structure to align more closely with patient-care goals and allow for our sector to more fully realize its potential as leading national innovators in the health care field.

AHA Report <https://www.aha.org/sites/default/files/regulatory-overload-report.pdf>

Medical Group Management Association Annual Regulatory Burden Report, October 2022:
<https://www.mgma.com/getmedia/4bfd2489-6099-49e5-837f-f787d6d0a30f/2022-MGMA-Regulatory-Burden-Report-FINAL.pdf.aspx?ext=.pdf>

A snapshot of Pennsylvania Regulation in 2017 <https://www.quantgov.org/pa-snapshot>