

**Informational Briefing:
Proposed Adult Day Health Program Regulations
105 CMR 154.000 for the Implementation of New DPH Regulations
to License All Adult Day Health Programs in Massachusetts**

**Madeleine Biondolillo, MD
Interim Associate Commissioner
Director, Bureau of Health Care Safety and Quality**

**Paul DiNatale, MA, MSW
Assistant Director, Division of Health Care Quality**

**Heather A. Engman, JD, MPH
Office of General Counsel**

September 11, 2013

Slide 1

Adult Day Health Programs

- Statute
- Background: Adult Day Health Services
- Regulation Development Process and Stakeholders Feedback
- Description of Proposed Regulations: 105 CMR 154.000
- Next Steps: Outreach Plan
- Questions

Statutory Authority for Development of the Regulations

105 CMR 154.000 will be adopted under the authority of M.G.L. c. 111, § 3 and St. 2011, c. 87 as amended by St. 2012, c. 239, § 21.

Background

Description of Adult Day Health

Description of Adult Day Health Services

- **Adult Day Health Program is:**
 - based on a community nursing model
 - offers health care services to elders and adults with disabilities, and
 - is an alternative to institutional care.
- **Benefits of ADH Services may include:**
 - respite, support and education to family members, and caregivers
 - prevent hospitalization, and
 - avoid or delay nursing facility placement.



Three Types of Programs

1. **Social Adult Day Care:** provides social activities, meals, and limited health services.
2. **Medical or Health Day Care:** more intensive health care, therapeutic activities, and service coordination for individuals with more significant medical needs.
3. **Specialized Adult Day:** specific care for individuals with Alzheimer's, multiple sclerosis, acquired brain injuries, or mental illness.



Regulation Development Process
Summary of Stakeholder Input
and Sources Referenced



EOHHS Regulation Development Process

- **October 2011 to December 2011 - Executive Office of Health and Human Services (“EOHHS”) Multi-stakeholder Working Group:**
 - **Participants: Elder Affairs, MassHealth, legislative leadership, MADSA and ADHP and allied health providers.**
 - **Public Hearing held to obtain input**

Summary of key input received via EOHHS Work Group esp. from MADSA

- Develop **licensure regulations to improve Quality**
- Develop **provider suitability standards**
- Defer the proposal for a **Determination of Need** process
- **Include current Mass Health Regulations** for physical plant
- A **phasing in period** to allow conformance to the new standards
- Eligibility standards for **only two levels of care**, basic and complex
- Regulations to reflect **skilled community nursing model**
- **Include assessment and treatment goals** for participants with chronic health conditions
- Have standards for **dementia-specific programs** to include habilitation services and interventions
- Maintain the current **program model to reflect the blend** of health care, service coordination, restorative services combined with support with activities of daily living and therapeutic activities.



DPH Regulation Development Process

- January - June, 2012 – DPH/Mass Health draft regulations
- September 13, 2012 – DPH stakeholder hearing
- October, 2012 – July, 2013 – Feedback & Revisions
- September 11, 2013 – Public Health Council

Stakeholders who provided Feedback:

Mass Adult Day Health Services Association

Adult Day Health Providers

PACE Programs

Elder Affairs

EOHHS

MassLeading Age

Mass Home Health Association

Mass Alzheimer's Association

DPH Public Hearing Stakeholder feedback to first Draft of Regulations

- Staffing:
 - Modify program aide and staffing ratios for basic (1:6)/complex (1:4) levels of care
 - Make staffing ratios less rigid and allow for fluidity in staff mix
 - Modify requirement that the social worker be licensed
 - Provide options to qualifications of activity director
 - Maintain volunteer counted as part of staffing ratio
 - Reduce RN required hours on-site from full-time
 - Allow RN to serve as program director simultaneously
 - Don't require a qualified cook/permit program aides to do cooking



DPH Public Hearing Stakeholder feedback to first Draft of Regulations

Other Areas:

- Remove requirement for or allow a Board of Directors to substitute for community advisory council
- Remove/reduce Social Work and Activity documentation requirements
- Require 12 hours training in Alzheimer's/Dementia
- Keep Mass health Specialized Alzheimer's program requirements
- One year to come into compliance
- Allow for satellite programs

Description of Proposed Regulations

105 CMR 154.000



DPH Regulation Overview

1. New Application, Suitability, Incident/Abuse Reporting, Enforcement, and Waiver Requirements
2. Enhanced program administration requirements,
3. Revised personnel requirements to include e.g., minimum competency requirements for program aides,
4. Increased staff training requirement
5. Community input via community advisory council requirement,
6. New Resident Rights requirements
7. Initial and on-going assessments and care plan requirement
8. Improved medication management requirement
9. New infection control requirements
10. Improved physical plant standards
11. Improved Quality Assessment and Performance Improvement Process

154.004: Definition

Adult Day Health Program means any entity, however organized, whether conducted for profit or not for profit that:

- (A) Is community-based and non-residential;
- (B) Provides nursing care, supervision, and health related support services in a structured group setting to persons age 18 years or older who have physical, cognitive, or behavioral health impairments; and
- (C) Supports families and other caregivers thereby enabling the participant to live in the community.

154.005-154.029: Licensure, Suitability, and Enforcement

- Application requirements
- *Suitability* determination of the applicant
- Waiver request Process
- *Posting* of Participant Rights
- *Program capacity* determined by square footage of program
- *Each Program location* requires a license
- Renewal of *license every two years*
- Initial and On-going inspections with a Statement of Deficiency and Plan of Correction Process
- *Enforcement actions* possible include denial and suspension of license and limiting enrollment when necessary.

154.030: Administration

- Responsibilities of the licensee and Program Director
 - Open at least Monday – Friday and is a non-residential program
 - Personnel requirements to include background checks and CORI
- Development of a Community Advisory Council
 - with advisory functions to meet at least three times per year
 - Board of Directors may satisfy this requirement
- Program Director hours based on the program capacity
- Training of all personnel to include skills for special populations and participants with Alzheimer’s disease
- TB testing and Vaccination of personnel against the influenza virus.

154.031: Administrative Records, Reporting Requirements, Policies and Procedures

- Define what records to be maintained by program such as incident reports, personnel records, grievance file
- Reporting to the Department of serious incidents and accidents;
- Establish written policies and procedures to include for example:
 - Medication management;
 - Service Coordination;
 - Dietary services;
 - Nursing services;
 - Therapeutic Activities,
 - Medical Emergencies,
 - Participant Rights and Grievances,
 - Elopements,
 - Disaster plans, including evacuation and relocation,
 - Etc.



154.032: Adult Day Health Minimum Staff

- **Direct care staffing requirements: Ratio of 1 staff person to 6 participants**
- **Additional personnel referenced: registered dietitian, qualified cook, (and volunteers).**
- **Registered Nurse: at least one is required to be on site during all hours of operation;**
- **Over-all nursing staff: shall be at a rate of **19.8 minutes** of nursing care per patient per eight hour period (**i.e., a ratio of 1:24**)**
- **Program aide staffing requirement: requires **at least one program aide for every 12 participants attending** the program**
- **Sufficient qualified staff: available at all times to provide necessary supervision and assistance for each participant.**

154.033: Staff Qualifications and Responsibilities:

This section establishes the minimum requirements for:

- staff education,
- Staff responsibilities and qualifications, and
- Supervision, documentation, and provision of care.

154.034: Enrollment, Emergency Transports, and Discharges:

This section requires ADHP:

- enroll only participants for whom the ADHP can provide services;
- ensure coordination with the primary care provider;
- Written enrollment agreement with participant/representative
- discharge requirements prevent participants from being unfairly discharged

154.035: Primary Care Provider Services:

This section ensures each participant:

- has a primary care provider,
- an order for ADH services,
- a pre-enrollment physical examination

154.036: Diagnostic Services: This section requires primary care orders for diagnostic services and permit ADHPs to provide urine tests, glucose testing, and PT/INR tests in accordance with CLIA waived requirements.

154.037: Assessment and Care Planning:

- Comprehensive assessment with defined functional areas
 - completed upon admission and reviewed at least every six months or upon a significant change; and,
- Comprehensive Care plans
 - completed upon admission and reviewed at least every six months and updated routinely.



154.038: Quality of Care and Services

This section details the nature of the care and services provided:

- Sufficient Nursing care to meet participant needs,
- Service coordination,
- Therapeutic activities,
- Dietary services
- Medication management services and
- Arrange for rehabilitation services as required
- Interpreter services provided as needed

- **154.039: Medication Management Services:** This section ensures each program develops and implements written policies and procedures governing medications including the receipt, storage, and administration of all drugs and biologicals.
- **154.040: Participant Health Records:** This section establishes the content of the participant health record and minimum guidance in the use of electronic health records.
- **154.041: Participants Rights:** This section ensures *participants' rights for example to:*
 - file a grievance and have prompt resolution
 - be free from reprisal,
 - right to refuse,
 - be communicated in a language one understands;
 - be free from discrimination, aversive therapy, and restraints,
 - be fully informed of services and charges, and informed consent.



154.042: Participant Comfort, Safety, accommodations, and Equipment: requires a comfortable and safe environment, necessary equipment and furniture, participant areas are clean, free from unpleasant odors, sights, noises, and in good repair.

154.043: Environmental Health and Housekeeping: requires proper management of waste and sufficient housekeeping and maintenance services to maintain the premises orderly and clean fashion.

154.044: Infection Control: requires infection control practices to prevent the development and transmission of disease and infection.



154.045: Physical Plant Requirements

This section ensures minimum physical plant requirements such as:

- Adequate space to provide services: 50 sq.ft. per participant
- Compliance with the local boards of health
- Compliance with fire, safety, and state building codes
- *Rest or private area*
- *Protected outdoor area*
- *Natural light access*
- Adequate *toilet rooms* for participants and staff
- *Shower area* for participants
- *Hand wash stations*
- *Nursing office (80 sq ft)*
- *Medication storage area*
- Separate activity space if also serve an Alzheimer's population
- *Oxygen storage* requirements if used, and
- *various architectural details* to ensure the comfort and safety of participants (e.g., ceiling height, floor surfaces, *heat and air conditioner and temps*; call system in toilets/showers; grab bars).



154.046: Quality Assurance and Program Improvement

This section requires that the program develop, implement, and maintain an effective, data-driven program that reviews, analyzes, and uses quality data to improve participant outcomes.



Next Steps

Outreach Plan

- October of 2013: DPH Public Hearing
- November: Return to PHC for final promulgation

Post Promulgation of Regulations

- January, 2014: Provider Information Meeting
- March 1, 2014: Submission of Applications for licensure
- Spring 2014: Inspection of facilities begin
 - (estimate 24 months to inspect 145+ programs)

(Note: All dates are subject to change according to the date of regulation promulgation.)

Challenges and Considerations

- ADHPs may have to adjust their staffing and physical plant
- ADHPs may seek an additional funding increase since the recent increase
- Waiver provisions due to financial hardship or other reasons where compensating considerations are implemented not affecting health and safety.
- Phase-in period: for existing programs of one year
- Provisional licensure will be deemed sufficient for MassHealth reimbursement for 24 months
- Regulations requested by the industry will improve the quality and consistency of care across the Commonwealth.
- Anticipated that this improved care will prevent the utilization of more expensive care, such as emergency room services, hospitalization, and long-term nursing home care.

Questions