

Commonwealth of Massachusetts
 Department of Public Health
 Helping People Lead Healthy Lives in Healthy Communities

Long Term Care Facility Closure and Change of Ownership Process Draft Regulation Presentation

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Summary of Proposed Regulations

Today we will:

- Provide an introduction to Long Term Care Facility (LTCF) closure and change of ownership (transfers);
- Describe current law;
- Outline the proposed changes to LTCF regulations;
- Discuss changes to proposal based on public comments.

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Introduction

- Long term care facilities (LTCF), including nursing homes and rest homes, are part of Massachusetts' "continuum of care".
- DPH's priority is the quality and safety of residents at LTCFs. During a closure, DPH's objective is the safe and orderly transition of residents.
- Alongside a national trend towards consolidated ownership, the legislature included an amendment to the FY2015 General Appropriations Act that requires an opportunity for public input as part of the Department's review process for transfers and closures.
- This provides greater transparency of LTCF facility closures or the issuance of a new license, including one issued as a change of ownership (transfer).

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Legislation

Section 275 of Chapter 165 of the Acts of 2014 (FY15 GAA) issues the following mandate:

The Department of Public Health shall amend the licensure procedure and suitability requirements for long-term care facilities to implement a hearing process that would precede approval of and allow for public input on any application for a license, notice of intent for transfer of ownership or notice of intent to sell or close any skilled nursing facility whether for profit or nonprofit.

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Current State Regulations – Closure

Regulations (105 CMR 153.023) require the following:

- Submission of closure plan to the Department at least 60 days in advance
- Review of closure plan by the Department and partner agencies
- Facility notification to residents, families and staff:
 - After Department approval of plan
 - At least 45 days in advance of closure
- Following notification, closure proceeds with placement of residents
- Facility may not close until all residents have been relocated

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Current State Regulations – Transfer

Regulations (105 CMR 153.007; 105 CMR 153.022) require the following:

- Submission of notice of intent to acquire at least 90 days in advance;
- Application reviewed by the Department for completeness;
- Hearing conducted in Health Service Area V (HSA V) upon 50-person petition;
 - HSA V is a health care service area consisting of the southeast region of Massachusetts.
- Suitability, including financial capacity, criminal background, and compliance history, determined by the Department, prior to transfer; and
- Notification to the Department subsequent to transfer.

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Regulation Development – Process

- Following significant stakeholder contributions, the Department drafted these proposed regulatory amendments, which are required by Section 275, by:
 - Reviewing current regulations;
 - Researching notice and hearing processes in Massachusetts and other states; and
 - Reviewing and redrafting before arriving at the proposal outlined below.

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Regulation Development – Federal Considerations

Any amendments proposed by the Department to the state regulations must comply and be aligned with Medicare/Medicaid requirements, which establish federal guidelines on closure and transfer of certified facilities.

- CMS **closure** requirements include the following:
 - Development of closure plan
 - 60 days' notice of pending closure to:
 - Residents
 - State Agencies (DPH, MassHealth, Ombudsman)
 - CMS Regional Office
 - Excludes closure due to emergency (fire, flood, hurricane)
 - Facility may not close until all residents have been relocated
- CMS **transfer** requirements include the following:
 - Filing of an application through provider enrollment
 - No public notice/input requirements

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Proposed Regulations

The Department's Proposed Regulations Include:

Public Hearing on Every Closure

- Observation and analysis of stakeholder input demonstrates the need for a public hearing prior to every closure of a LTCF.
- The Department has evaluated existing regulations, identifying areas in the statute to ensure input and transparency

Opportunity for Input on Every Transfer

- There should be a new process for transfers to provide an opportunity for a hearing as well as written public input prior to a sale
- The regulations should define timeframes for the notice of intent to acquire.

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Closure Regulation

Current Requirements	Proposed Regulation
	Initial notice by facility to residents, families, staff and community at least 14 days prior to the public hearing
	Public hearing on proposed draft closure plan at least 90 days prior to the proposed closure date
Submission of closure plan to the Department at least 60 days in advance	Submission of draft closure plan to the Department following hearing; Department approval or comment within 14 days
	Finalization of closure plan by facility based on Department comments within 14 days
Department review of closure plan	Department review of closure plan
Department approval of closure plan	Department approval of closure plan
Notification by facility to residents, families and staff at least 45 days in advance of closure	Formal notification by facility to residents, families and staff at least 60 days prior to closure
Closure proceeds with placement of residents	Closure proceeds with placement of residents
Facility may not close until all residents have been relocated	Facility may not close until all residents have been relocated

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Transfer Regulation

Current Requirements	Proposed Regulation
Change of ownership defined as transfer of a majority interest (MGL 111:71)	Statutory definition retained
Submission of notice of intent to acquire at least 90 days in advance	Submission of notice of intent to acquire at least 90 days in advance
Application reviewed by the Department for completeness	Application reviewed by the Department for completeness
Hearing conducted in Health Service Area V (HSA V) upon petition <ul style="list-style-type: none"> • HSA V is a health care service area consisting of the southeast region of Massachusetts 	Opportunity for public input on proposed transfer <ul style="list-style-type: none"> • Written input allowed on all transfers • Hearing conducted upon petition • Statewide expansion of HSA V petition process
Suitability finding by the Department prior to transfer	Suitability finding by the Department prior to transfer
Notification to the Department after transfer	Notification to the Department after transfer

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Proposed Regulation – Technical Correction

The Department will use this regulatory amendment process as an opportunity to correct a conflict between statutory language and the current regulation:

- Sections 73A and B of Chapter 111 of the General Laws exempt from licensure, facilities operated by religious establishments, including the First Church of Christ Scientist and the Roman Catholic Church for members of religious orders.
- 105 CMR 153.025 establishes a process for licensure of only facilities operated by and for the First Church of Christ Scientist and the Roman Catholic Church.
- **Deletion of 105 CMR 153.025, in its entirety, bringing regulations in line with the Massachusetts General Laws.**

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Proposed Regulation – Public Comment

- The Department presented the proposed amendment to the PHC on August 12, 2015.
- The Department invited public comment and held a public hearing on September 4, 2015.
- Three individuals testified at the public hearing:
 - Mary E. McKenna, State Long Term Care Ombudsman;
 - Austin Hodge, Alzheimer’s Association; and
 - Wynn Gerhard, Greater Boston Legal Services, and the Coalition of Organizations to Reform Eldercare.

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Proposed Regulation – Public Comment

The Department received written testimony from the following organizations and individuals:

- State Senator Harriette L. Chandler
- State Senator Patricia D. Jehlen
- 1199 SEIU United Healthcare Workers East
- Massachusetts Senior Care Association
- Greater Boston Legal Services/Coalition of Organizations to Reform Eldercare
- Massachusetts Senior Care Association
- State Long Term Care Ombudsman Program

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Proposed Regulation – Public Comment

- The Department also considered the comments made by the PHC members during the August 12, 2015 meeting.
- Commenters expressed their support for the Department’s amendments, particularly the notice requirements and the changes ensuring that there is opportunity for individuals to publicly comment prior to facility closures or changes in ownership.
- Although comments were generally favorable regarding the Department’s proposed changes, commenters did request that the Department broaden who could request a public hearing and provide for additional notification rights.

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Proposed Regulation – Public Comment

To further strengthen these regulations, and after consideration of the comments received, the Department has made the following additional changes:

- Changed who could request a public hearing from “10 Massachusetts residents” to “10 adults.”
- Broadened the notice requirements to include both the State and Local Offices of the Long Term Care Ombudsman for closures and transfers of ownership.
- Removed confusing timeframe requirements.
- Replaced “patients” with “residents” in these amended sections.
- Added “staff or other interested parties” to the list of individuals who might wish to contact the facility representative with questions regarding a proposed closure.

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Summary

- The Department's priority is to the quality and safety of residents at long term care facilities and during a closure, the Department's objective is the safe and orderly transition of residents.
- By these proposed amendments, the Department, in collaboration with groups representing residents, facilities and staff, sought to develop a workable model to ensure engagement and communication during closures and transfers.
- Under these proposed amendments, the Department has authority to require a hearing and to require a LTCF to stay open until all of its residents have been safely transitioned to a new setting.
- The Department does not have authority over the sale of real estate and or to require a LTCF to stay open after each resident has been safely transitioned.

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Contact Information

- Thank you for the opportunity to present this amended regulation for promulgation today.
- For more information on nursing home closures and changes of ownership, please find the relevant statutory language and the full current regulation here:
<https://malegislature.gov/Budget/FinalBudget/2015>
<http://www.mass.gov/courts/docs/lawlib/104-105cmr/105cmr153.pdf>

Please direct any questions to:
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