



Proposed Amendments to 105 CMR 150.000: *Licensing of Long-Term Care Facilities*

Sherman Lohnes, JD

**Director of the Division of Health Care Facility Licensure and Certification
Bureau of Health Care Safety and Quality**

Lauren B. Nelson, Esq.

**Director of Policy and Quality Improvement
Bureau of Health Care Safety and Quality**

Public Health Council

November 9, 2016



Background

- This regulation, 105 CMR 150.000, *Licensing of Long-Term Care Facilities*, sets forth standards governing long-term care facilities, including nursing homes and rest homes.
- The regulation ensures a high quality of care, industry standardization, and strong consumer protection for residents in long-term care facilities.
- These amendments are proposed as part of the regulatory review process, mandated by Executive Order 562, which requires all state agencies to undertake a review of each and every regulation under its jurisdiction currently published in the Code of Massachusetts Regulations.



Proposed Amendment

The proposed amendments will achieve the following:

- Eliminate outdated or unnecessary requirements;
- Make terminology consistent with other long-term care regulations;
- Align nursing care hourly requirements with federal CMS requirements;
- Update medication storage, administration and tracking provisions to be consistent with current practice;
- Update record requirements to reflect current practice; and
- Incorporate long-term care facility construction standards from the proposed rescinded long-term care facility construction regulation, 105 CMR 151.000.



Proposed Amendment: Title and Terminology

- Current title, *Licensing of Long-Term Care Facilities*, is changed to *Standards for Long-Term Care Facilities* to eliminate confusion with 105 CMR 153.000, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*.
- Terminology is updated to make the regulation consistent with long-term care and other health care facility and professional regulations, including:
 - Replacing the term “patient” with “resident”; and
 - Defining “primary care provider” to include nurse practitioners and physician assistants.



Proposed Amendment: Employment Qualifications

Current Regulation:

- Prohibits the employment of substance “abusers” in long term care facilities.

Proposed Amendment:

- Prohibits the hiring or employment of an individual who cannot perform job duties or whose employment would pose a threat to the health, safety or welfare of residents;

Rationale:

- Reduces stigma associated with substance use while protecting residents from unqualified staff.
- Recognizes individual care needs.



Proposed Amendment: Dietary Services

Current Regulation:

- Allows hiring of unlicensed dietary staff.
- Establishes strict, detailed, universal dietary standards.

Proposed Amendment:

- Bases dietary requirements on individual resident care plans through expert assessment by dietitians.

Rationale:

- Provides for consideration of individualized dietary plans.
- Recognizes individual care needs.



Proposed Amendment: Automated External Defibrillators (AED)

Current Regulation:

- Requires integration of the use of automated external defibrillators (AED) as appropriate in emergency medical situations .

Proposed Amendment:

- Requires the development of policies and procedures for AED use consistent with current clinical practice; and
- Requires facilities to meet the emergency needs of residents, including the maintenance of an emergency medication kit.

Rationale:

- Ensures AED use in facilities remains consistent with current standards and best practices; and
- Ensures comprehensive policies and procedures are in place to better protect and meet the needs of residents in all emergency situations.



Proposed Amendment: Physician and Medical Services

Current Regulation:

- Requires facilities have policies and procedures regarding physician and medical services.

Proposed Amendment:

- Requires the facility medical director to implement policies and procedures for medical services and to coordinate care within the facility.

Rationale:

- Ensuring the coordination of care between facilities and medical directors;
- Aligns policies and procedures for facility medical directors with federal requirements.



Proposed Amendment: Skilled Nursing Care Facilities for Children

Current Regulation:

- Provides separate, detailed requirements relating to Skilled Nursing Care Facilities for Children (SNCFC).

Proposed Amendment:

- Removes provisions applicable to SNCFCs that are duplicative of requirements that exist for all long term care facilities; and
- Retains only those provisions that apply based on the particular needs of this population.
 - For example, 105 CMR 150.019 is retained to encourage and facilitate young residents' participation in an educational program, approved by the Department of Elementary and Secondary Education.

Rationale:

- Streamlines regulations relating to SNCFCs and provides clarity and consistency throughout the document while continuing to recognize the unique needs of this population.



Proposed Amendment Highlights: Admissions

Current Regulation:

- Requires Level II and Level III facilities to perform additional medical clearance prior to admitting a resident with a behavioral health diagnosis to the facility.

Proposed Amendment:

- Removes this unnecessary and duplicative requirement.

Rationale:

- Residents with no behavioral health diagnosis are not subject to such additional examination requirements prior to admission.
- All residents, including those with a behavioral health diagnosis, receive assessment, care planning and treatment.



Proposed Amendment Highlights: Nursing Services

Current Regulation:

- Sets forth the specific required nursing care hours for each level of care.
 - Level I facilities must provide a total of 2.6 hours of nursing care per resident.
 - Level II facilities must provide a total of 2.0 hours of nursing care per resident.
 - Level III facilities must provide a total of 1.4 hours of nursing care per resident.

Proposed Amendment:

- Revises nursing care requirements to be based on acuity and census rather than hourly minimums.

Rationale:

- Provides flexibility while recognizing that currently reported nursing care hours exceed these outdated requirements.
- Aligns nursing care hours with CMS requirements to meet resident needs.



Proposed Amendment Highlights: Activities Programs

Current Regulation:

- Requires facilities to provide an organized program of activities to meet the need of its residents.

Proposed Amendment:

- Specifies that activities must be available for residents with disabilities or for whom English is not their primary spoken language.

Rationale:

- Recognizes the diversity of residents in facilities;
- Aligns regulations with newly revised federal requirements for resident centered care.



Proposed Amendment Highlights: Pharmaceutical Services and Medications

Current Regulation:

- Provides detailed, outdated requirements for medication storage, administration and tracking.

Proposed Amendment:

The proposed amendment updates the provisions relative to medication storage, administration and tracking to be consistent with current practice, including:

- Removing the requirement that written orders be kept in the Doctor's Order book because DPH does not otherwise require order books;
- Eliminating the outdated requirement that medications be administered using a printed card for reference and on a medication tray; and
- Removing the outdated requirement that all facilities maintain a bound Pharmacy Record Book.

Rationale:

- Provides flexibility to facilities by expanding options for having a readily accessible method to document and track medication.



Proposed Amendment Highlights: Clinical Records

Current Regulation:

- Includes outdated provisions on facility maintenance of certain records, including:
 - Maintaining hard-bound record books; and
 - Requiring all facilities to employ a medical records librarian or a trained employee responsible for ensuring records are properly maintained.

Proposed Amendment:

- Provides facilities with the flexibility to develop, through an interdisciplinary team, and adopt, written policies to ensure complete and accurate clinical records are maintained;
- Requires processes to ensure the availability of records to residents and legally authorized representative and providers;
- Requires training to ensure competency.

Rationale:

- Updates and simplifies records requirements to be consistent with current practice.



Proposed Amendment Highlights: Resident Comfort and Safety

Current Regulation:

- Includes outdated facility equipment requirements, including provisions relative to the use of restraints.

Proposed Amendment:

- Removes provisions specifically allowing restraints to be used on a resident upon physician orders.

Rationale:

- Requires care planning in accordance with CMS regulations and state abuse laws;
- Reflects the current federal care plan requirements to assess the resident, determine possible alternatives to restraints, and use the least restrictive means possible to meet the safety and care needs of the resident.



Proposed Amendment Highlights: Construction Standards

Current Regulation:

- Includes outdated construction standards for long-term care facilities.

Proposed Amendment:

- Incorporates the construction standards for long-term care facilities that are now included in 105 CMR 151.000, which DPH recommends for rescission.
- The incorporated provisions are updated to reflect current construction standards and compliance with Architectural Access Board regulations.

Rationale:

- Long-term care facilities are currently required to comply with 3 separate regulations for their governance (105 CMR 150.000, 105 CMR 151.000 and 105 CMR 153.000), creating duplicative and confusing regulations.
- Eliminates duplication by incorporating all construction standards into this regulation which provides standards for long-term care facilities.



Proposed Amendment Highlights: Construction Standards

Current Regulation:

- Requires facilities constructed prior to 1968 to only meet the standards in effect at time of construction.

Proposed Amendment:

- Eliminates the “grandfathering” provision and requires facilities to meet more current standards.

Rationale:

- Recognizes that changes in the acuity of residents and resident-centered care in homelike, rather than institutional environments, has rendered obsolete pre-1968 standards, which exist in few, if any, currently operating facilities.



Next Steps

- The Department intends to conduct a public hearing to solicit comments on the proposed amendment.
- Following the public comment period, the Department will return to the Public Health Council to report on testimony and any recommended changes to this amendment, and seek final promulgation.



- Thank you for the opportunity to present this information today.
- For more information on 105 CMR 150.000, *Licensing of Long-Term Care Facilities*, please find the relevant statutory language (M.G.L. c. 111, § 3, 71 and 72) and the full current regulation here:

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111>

<http://www.mass.gov/courts/docs/lawlib/104-105cmr/105cmr150.pdf>