



105 CMR 150.000

Licensing of Long-Term Care Facilities

Final Regulatory Amendment Presentation

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Background

- The purpose of this presentation is to request final promulgation by the Public Health Council of the proposed revisions to 105 CMR 150.000, *Licensing of Long-Term Care Facilities*.
- These amendments are proposed as part of the regulatory review process, mandated by Executive Order 562.
- This regulation sets forth standards governing long-term care facilities, including nursing homes and rest homes, and ensures a high quality of care, industry standardization, and strong consumer protection for residents in long-term care facilities.



Highlights of Preliminary Review

As a reminder, on November 9, 2016, the Department presented to the Public Health Council proposed revisions to 105 CMR 150.000, *Licensing of Long-Term Care Facilities*, to update terminology for consistency with other long-term care regulations and eliminate outdated or unnecessary requirements. Specific preliminary revisions included:

- Aligning nursing care hourly requirements with federal CMS requirements;
- Updating medication storage, administration and tracking provisions to be consistent with current practice;
- Updating record requirements to reflect current practice; and
- Incorporating long-term care facility construction standards from the proposed rescinded long-term care facility construction regulation, 105 CMR 151.000.



Public Comment Periods

Following the presentation to the PHC on November 9, 2016, the Department held a public comment period, including a public hearing on December 19, 2016. Based on the public comments received, the Department made additional revisions to 105 CMR 150.000.

The Department held a second public comment period, including a public hearing on December 20, 2017, and made further revisions to the regulation.

This presentation will outline the revisions made in response to comments received.



Highlights of Post-Comment Review

As a result of the comments received during the public comment periods, DPH recommends further revisions to 105 CMR 150.000, which will achieve the following:

- Clarify definitions and existing requirements;
- Maintain the exemption for long-term care facilities constructed before March 19, 1968 (also referred to as the “historical exemption or grandfathering provision”) from certain requirements pertaining to physical space, equipment and future construction;
- Update and modernize requirements to reflect current practice and evolving needs and acuity of residents;
- Allow for flexibility based upon facility size and function or population size and acuity level; and
- Clarify nurse staffing requirements.



Post-Comment Review: Resident Representation

- The current regulation requires long-term care facilities to provide notices to residents as well as the resident's next of kin, family, or sponsor.
- In response to comments, the Department updated the terms "next of kin, family or sponsor" throughout the regulation to one of the following specific terms, when applicable, to designate the appropriate legal authority to act in a certain situation:
 - Guardian;
 - Emergency contact; or
 - Legal representative.
- Additionally, to ensure that a resident is included in the development of the care plan, the Department included the resident or the resident's guardian in the development of the care plan.



Post-Comment Review: Historical Exemption

- The current regulation grandfathers pre-1968 facilities by establishing separate construction standards and equipment requirements.
- In response to comments, the Department has maintained this section, with the exception of applying the following five requirements to all facilities to ensure resident safety:
 - **Room Numbers:** Requires each resident room to be numbered at the entrance.
 - **External Controls for Shower Stalls:** Requires mixing valves and controls to be mounted outside the shower stall for Level I, II and III facilities.
 - **Hot Water Supply:** Includes temperature range of 110 to 120 degrees.
 - **Stairways:** Requires handrails on both sides of indoor and outdoor stairways.
 - **Call Systems:** Eliminates allowance for use of hand bells as a call system in nursing homes.



Post-Comment Review: Maximum Beds per Room

- The current regulation allows pre-1968 facilities to have up to 4 beds per resident room.
- In response to comments, the Department amended the regulation to more closely align the state regulation with federal requirements, which allow for existing CMS-certified facilities to retain 4 bed rooms, unless new construction or reconstruction is undertaken.
- In the event of new construction or reconstruction in a Level I, II, or III facility, the affected bedroom may contain no more than 2 beds.



Post-Comment Review: Flexibility

- The current regulation includes overly prescriptive requirements and provides little flexibility for facility size and function or population size and acuity level.
- In response to comments received, the Department revised the regulation to provide flexibility for staffing, construction and placement by:
 - Eliminating specific physical space and size requirements, while preserving resident needs and safety, including:
 - Specific linen storage closet dimensions;
 - The size, type of furniture and maximum feet of nurse's and attendant's stations from resident rooms; and
 - Kitchen floor area ratio per bed.
 - Replacing prescriptive ratios for ancillary social services personnel with sufficient social workers to meet the needs of the residents.



Post-Comment Review: Modernization

- The current regulation includes outdated requirements that do not reflect current practice or the evolving needs and acuity of residents.
- In response to comments, the Department amended the regulation to reflect current practice, including:
 - Replacing outdated terms, such as “nurse’s station” with “staff workstation”;
 - Replacing outdated equipment requirements for autoclaves and equipment sterilizers, and for a bedpan washer and sanitizer with other acceptable methods of sterilizing, disinfecting or disposing of equipment supplies and waste; and
 - Updating requirements to reflect the use of electronic health records by eliminating requirements to maintain a resident’s clinical record in an individual folder.



Post-Comment Review: Nursing Services

- The 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.
- Upon preliminary review, the specified minimums were removed and instead facilities are required to ensure nursing staff is available to meet resident nursing care needs, based on resident acuity and census.
- In response to comments, the Department further revised the regulation for clarity and to be consistent with the federal approach, which does not mandate specific required nursing hours.
 - The Department clarified that facilities are required to maintain staffing levels that take into account acuity, resident assessments, care plans, census and other relevant factors as determined by the facility.



Conclusion/Next Steps

- Staff requests the Public Health Council approve the proposed regulations for promulgation.
- Following Public Health Council approval, the Department will file the amended regulation with the Secretary of the Commonwealth for final enactment.



- 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>