



105 CMR 153.000:
Licensure Procedure and Suitability Requirements for
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 153.000, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*.
- These amendments are proposed as part of the regulatory review process, mandated by Executive Order 562.
- This regulation sets forth the licensure procedures and suitability requirements for long-term care facilities, including nursing homes and rest homes, and ensures that residents of long-term care facilities are provided with a high quality of care, through industry standardization, strong consumer protection, and health care safety.



As a reminder, the Department previously presented to the Public Health Council proposed revisions to 105 CMR 153.000, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*. Specific preliminary revisions included:

- Removing outdated or conflicting provisions and unnecessary language;
- Eliminating unnecessary administrative burdens and improving efficiencies;
- Consolidating provisions to provide consistency and clarity on orders freezing new admissions; and
- Aligning resident notification processes for greater clarity.



Public Comment Periods

Following the first presentation to the PHC, the Department held a public comment period, including a public hearing. Based on the public comments received, the Department made additional revisions to 105 CMR 153.000.

The Department held a second public comment period, including a public hearing on June 4, 2018, and made additional revisions to the regulation.

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



Highlights of Post-Comment Review

As a result of the comments received during the public comment periods, DPH recommends additional revisions to 105 CMR 153.000 to achieve the following:

- Provide facilities with a regulatory mechanism to improve the flexibility of their operation;
- Streamline the timeline and process for the transfer of ownership or voluntary closure of a long-term care facility;
- Enhance transparency in the public notice and comment process; and
- Update the list of violations that will be presumed to have an adverse impact upon residents.



Post-Comment Review: Operational Flexibility

The current regulation restricts long-term care facilities from using parts of the facility for: tenant occupancy or a second business; office space for medical personnel; lab services; or treating non-residents.

During the first comment period, long-term care facility industry representatives requested removal of these restrictions which commenters said act as a barrier to ensuring Massachusetts consumers have access to high quality care integrated into their community. They commented that allowing facilities to utilize excess capacity to offer ambulatory, outpatient services will enhance patient care and reduce healthcare costs.

Commenters also asked that language restricting access to a gift shop operated within a long-term care facility to only residents and their guests be removed to also encourage integration of the long-term care facility within the fabric of the community.



Post-Comment Review: Operational Flexibility

In response to these comments, the Department revised the regulation to allow long-term care facilities to convert licensed space for tenant occupancy or other business while maintaining resident safety and high quality of care, provided that:

- The facility and other business spaces are not intermingled, and are physically separated by walls that meet State Building Code fire ratings and, if a CMS-certified facility, federal Life Safety Code requirements;
- The facility is not used as a thoroughfare to access the other business and the other business does not present a hazard or annoyance to residents;
- Presence of another business does not impede the facility's ability to comply with state and federal requirements; and
- Prior to any unlicensed part of the LTCF premises being used for other business, the facility ensures the proposal is the product of sound community engagement and consultation.

Changes also allow gift and snack shops operated in a long-term care facility to be accessible to people other than residents.



Post-Comment Review: Operational Flexibility

The revised regulation allowing long-term care facilities to convert licensed space for tenant occupancy or other business was put forth as part of the second public comment period.

Overall, commenters were supportive of the proposed changes.

A commenter requested facilities currently operating community-based services under a waiver be allowed to continue operation. The Department has clarified that these facilities may continue to operate these services under the existing waiver, subject to compliance with all terms and conditions attached to the waiver and the provisions of 105 CMR 150.000 and 105 CMR 153.000.



Post-Comment Review: Public Notice

The regulation requires applicants to publish a notice of intent for any transfer of ownership or application for original license; currently, the notice must include the Department's physical address for the submission of any comments by members of the public.

In response to comments, the Department updated the regulation to require the public notice include both physical and electronic mailing addresses for the submission of comments to the Department.



Post-Comment Review: Transfer of Ownership

The current regulation requires an applicant to submit a notice of intent to the Department for the transfer of ownership of a long-term care facility, including posting notice in a local newspaper and allowing the public to request a hearing.

In response to comments, the Department has updated the regulation to streamline the timeline and transfer of ownership process by establishing clear deadlines for steps in the process, while improving transparency affording the public more time to comment on the proposed transfer.

Additionally, the Department has amended the regulation to require facilities publish notice on the facility website, if available, in addition to the required newspaper publication. The Department has also removed specific sizing requirements for the notice as formats differ among publications.



Post-Comment Review: Voluntary Closure

The current regulation establishes a process for the voluntary closure of a long-term care facility, including submitting a closure plan to the Department, residents, advocates and elected officials and holding a public hearing.

The Department has updated the regulation to streamline the timeline for the voluntary closure of a long-term care facility and provide clarity in the process by requiring the initial closure notice and draft closure plan be submitted together to the Department, as well as to residents, advocates and elected officials 120 days in advance of the closure; and

Consistent with current practice, facilities may close once all residents have been safely and properly transferred to other facilities, even if that date comes sooner than the closure date specified in the closure notice submitted to the Department.



Post-Comment Review: Scope of Violations

The current regulation sets forth the factors that the Department considers when determining full and adequate grounds for deeming an applicant or licensee neither suitable nor responsible to establish or maintain a long-term care facility.

The Department expanded the list of violations that will be presumed to have an adverse impact upon residents to include updated federal requirements including resident abuse, mistreatment or neglect, and misappropriation of resident property.



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 153, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*, please find the relevant statutory language (M.G.L. c. 111, § 3, 71 through 73B) and the full current regulation here:
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111>
<http://www.mass.gov/courts/docs/lawlib/104-105cmr/105cmr153.pdf>