

105 CMR 151.000: GENERAL STANDARDS OF CONSTRUCTION FOR LONG TERM CARE FACILITIES IN MASSACHUSETTS

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151.001: Purpose

The purpose of 105 CMR 151.000 is to provide physical plant facilities which will assure the health, comfort, safety and well being of all patients, residents and staff in Long-Term Care facilities.

151.002: Authority

105 CMR 151.000 is adopted under the authority of M.G.L. c. 111, §§ 3 and 72.

151.003: Citation

105 CMR 151.000 will be known, and may be cited, as 105 CMR 151.000: *General Standards of Construction for Long-Term-Care Facilities in Massachusetts.*

151.010: Scope

(A) 105 CMR 151.000 applies primarily to the construction of new longterm care facilities and addition to existing long-term-care facilities. It is also the intent of the Department that all alterations to facilities licensed as of September 29, 1972, conform to 105 CMR 151.000 where possible.

(B) In the case of the various levels of care permitted in a single facility, 105 CMR 151.000 sets forth specific requirements for each level of care. 105 CMR 151.300 through 151.390 shall apply only to Level I, II, and III facilities, and 105 CMR 151.400 through 151.480 shall apply only to level IV facilities.

(C) HB/LTCFs shall meet the provisions of 105 CMR 151.000 applicable to Skilled Nursing Facilities except as otherwise provided herein.

151.020: Definitions

Department shall mean the Department of Public Health of the Commonwealth of Massachusetts.

Long-term-care facility shall mean any institution whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of providing three or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons; or retirement home care for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest homes, infirmaries maintained in towns and charitable homes for the aged. Facility, as used in 105 CMR 151.000, mean a long-term-care facility or unit thereof, and units within acute hospitals converted under the provisions of St. 1988 c. 23, § 32..

(1) Institution shall mean an establishment housed in a single building or in two or more adjacent buildings.

(2) Convalescent or Nursing Homes, Rest Home, Infirmary Maintained in a Town, and Charitable Home For the Aged shall have the same meanings as those terms defined in M.G.L. c. 111, § 71.

(3) Long-Term-Care shall mean care of significant duration as distinguished from acute short-term-care provided in a general hospital. There shall be four levels of long-term-care facilities under 105 CMR 151.000 (see 105 CMR 151.022 through 151.025).

(4) Hospital Based Long Term Care Facility (HB/LTCF) shall mean a separately licensed unit housed on the premises of an acute hospital converted under the provisions of St. 1988 c. 23.

Identifiable Unit shall mean a section of a facility such as a wing, floor or ward and shall include adjacent rooms where acceptable to the Department. For all new construction, additions, conversions or alterations, an identifiable unit shall mean not more than 41 beds for units that provide Level I or II care, and not more than 60 beds for units that provide Level III or IV care.

Intensive Nursing and Rehabilitative Care Facility (Level I) shall mean a facility or units thereof that meet all of the requirements for skilled nursing facilities (Level II) and, in addition are certified to participate as an Extended Care Facility under Title XVIII of the Social Security Act of 1965, (P. L. 89-97) and meet all the requirements and provide care for patients as prescribed therein.

Multiple Level Facility shall mean a facility that provides two, three or four levels of care in one or more identifiable units for each level of care.

Resident Care Facility (Level IV) shall mean a facility or units thereof that provide protective supervision in addition to the minimum basic care and services required for residents who do not routinely require nursing or other medically related services.

Single Level Facility shall mean a facility that provides only one level of care in one or more identifiable units.

Skilled Nursing Care Facility (Level II) shall mean a facility or units thereof that provide continuous skilled nursing care and meaningful availability of restorative services and other therapeutic services in addition to the minimum, basic care and services required for patients who show potential for improvement or restoration to a stabilized condition or who have a deteriorating condition requiring skilled care.

Supportive Nursing Care Facility (Level III) shall mean a facility or units thereof that provide routine nursing services and periodic availability of skilled nursing, restorative and other therapeutic services, as indicated, in addition to the minimum, basic care and services required for patients whose condition is stabilized to the point that they need only supportive nursing care, supervision and observation.

151.100: State-Local Ordinances

Facilities shall comply with all state laws and local ordinances applicable to construction, alteration and structural changes. In the absence of any ordinance or code, 105 CMR 151.000 shall apply.

151.110: Type of Construction

Facilities shall be of Type I or II construction as set forth under M.G.L. c. 111, as amended, and as set forth under the current standards of the Massachusetts Department of Public Safety. 105 CMR 151.110 shall not apply to any facility seeking to upgrade in whole or in part from level IV or Level III to a higher level of care if all units, components or additions of said facility were originally constructed as a long term care facility. 105 CMR 151.110 shall not apply to any unit or units which a hospital seeks to convert to a Hospital Based Long Term Care Facility as defined herein, provided that the unit or units planned for conversion were operating as licensed inpatient unit(s) at any time on or after April 1, 1988.

151.120: Determination of Need Approvals

New construction, conversions, alterations, additions or other structural changes or acquisition of special equipment (not ordinarily provided in long-term-care facilities) in a proposed or existing facility shall not be made until a determination of need has been made by the Department and approval of the final plans and specifications for construction or acquisition of such equipment have been issued by the Department of Public Health and the Department of Public Safety.

151.130: Conversions

Conversions of structures not designed, built and licensed as hospitals, convalescent or nursing homes, rest homes, infirmaries maintained in towns, or charitable homes for the aged, to facilities of Level I, II, III or IV care, shall be allowed only with the specific approval of the Department, and only where such conversions will result in compliance with the 105 CMR 150.000, and the construction standards set forth herein.

151.140: Innovative Planning and Cost Reduction

All long-term care facilities, including the various levels of care within such facilities, shall contain the designated elements described herein and shall be built in accordance with the construction requirements outlined. Elements that are available through proper affiliations with an adjacent or adjoining health care facility shall not be duplicated without prior approval of the Department. These general standards are not intended, in any way, to restrict design initiative or construction techniques toward innovative planning and cost reduction engineering.

151.150: Special Requirements: Hospital Based Long Term Care Facilities (HB/LTCF)

(A) The space that constitutes the premises of the licensed long term care facility and the premises of the licensed hospital shall not be intermingled space. The space that constitutes the hospital shall be contiguous space and the space that constitutes the long term care facility shall also be contiguous space.

(B) The long term care facility shall be physically separated from the hospital by means of partitions, doors or other barrier.

(C) The long term care facility shall not be used as thoroughfare to other parts of the hospital building.

151.200: Location

Each facility shall be located on a site subject to the approval of the Department. Sites shall be away from nuisances such as large commercial or industrial developments or similar developments that produce high levels of noise or air pollution; and shall afford a safe, sanitary and pleasant environment for patients.

151.210: Roads and Walks

Roads and walks shall be provided separately within the lot lines to the main entrance, ambulance entrance, kitchen entrance and the delivery and receiving areas.

151.220: Parking

(A) Parking shall be provided in accordance with the provisions of local zoning and building ordinances, but in no case shall the ratio of offstreet parking be less than one parking space for each four beds. Exception to this requirement may be granted only with the approval of the Department.

(B) For HB/LTCF,

(1) if access to an LTCF is through the main hospital entrance, that portion of existing hospital parking nearest the entrance shall be reserved for LTCF visitors.

(2) if access is provided by a separate entrance, existing parking nearest the entrance shall be designated for the visitors.

151.230: Provisions for Handicapped

(A) Gradients of Walks. Public walks shall be not less than four feet wide and shall have a gradient of not greater than 8%.

(B) Walks -- Continuous Surface. Walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level. Wherever walks cross other walks, driveways or parking lots, they shall blend to a common level.

(C) Handicapped Parking.

(1) At least two parking spaces shall be provided and identified for use by the physically handicapped. These spaces shall be in close proximity to the building entrance.

(2) Such parking spaces, if diagonal or headon, shall be not less than 12 feet wide to allow proper access in or out of vehicles.

(3) Walks and ramps from parking areas, garages, *etc.* shall conform to 105 CMR 151.230(A) and (B).

(4) Access from parking areas through a primary building entrance shall be a continuous level or ramped surface without steps or abrupt changes in level.

151.240: Outdoor Recreation

Outdoor recreational area for patients of at least 25 square feet per bed shall be provided for 100% of total authorized beds and shall exclude parking areas. Exceptions to this requirement may be granted only with the approval of the Department.

151.300: Maximum Number of Beds -- Nursing Care Units

(A) Level I and II nursing units shall consist of not more than 41 beds.

(B) Level III nursing units shall consist of not more than 60 beds.

(C) A nursing unit shall not encompass beds on more than one floor.

(D) An HB/LTCF shall consist of at least 20 but not more than 41 beds.

151.310: Required Supporting Elements -- Nursing Care Units

A unit shall have, centrally located within its area, a special care room, a nurse's station, a nurse's toilet, a walk-in medicine room, a clean utility room, a soiled utility room, a linen storage closet, a drinking fountain, a janitor's closet and a room for the storage of supplies and equipment.

151.320: Patient Bedrooms -- Nursing Care Units

(A) Floor Area.

(1) The floor area of patient bedrooms, excluding closet, vestibule and toilet room areas shall not be less than 125 square feet for single occupancy rooms and 90 square feet per bed for multiple occupancy rooms.

(2) For HB/LTCFs, the floor area of patient bedrooms, excluding closet, vestibule and toilet room areas shall not be less than 100 square feet for single occupancy rooms and 80 square feet per bed for multiple occupancy rooms.

(B) No patient bedroom shall contain more than four beds. Multi-bed rooms shall be designed to permit no more than three beds side by side parallel to the window wall.

(C) The ceiling height in areas used by patients shall be a minimum of eight feet.

(D) Rooms shall be shaped and sized so that each bed can be placed at least three feet from any lateral wall. Beds shall be spaced at least three feet from any other bed and an unobstructed passageway of at least four feet shall be maintained at the foot of each bed. Variations in bed placement and dimensions shall be permitted only with the approval of the Department.

(E) Patient bedrooms shall have a floor level at least six inches above the grade level adjacent to the building.

(F) All patient bedrooms shall be along exterior walls with window access to the exterior.

(G) All patient bedrooms shall open directly to a main corridor and shall be permanently and clearly identified by number on or beside each entrance door.

(H) Each room with more than one bed shall have cubicle curtains or equivalent built-in devices for privacy for each patient.

(I) Each patient bedroom shall contain closet space of not less than two feet by two feet per patient with at least five feet clear hanging space for the storage of personal belongings. In addition, either a built-in or free-standing multiple-drawer bureau not less than two feet wide with a minimum of one drawer per patient shall be provided.

(J) Each patient bedroom shall be sized and dimensioned to accommodate hospital-type beds of not less than 76 inches long and 36 inches wide, a hospital-type bedside cabinet and an easy chair or comfortable straight-back arm chair.

(K) A nursing unit shall not encompass beds on more than one floor.

151.330: Special Care Room -- Nursing Care Unit

(A) In each unit, one single bedroom shall be provided for occupancy by a patient requiring isolation or intensive care. This room shall be located in close proximity to the nurse's station and shall not have direct access with any other patient room. The room shall be included in the quota and may be generally used until such time as it is used for isolation or intensive care.

(B) The special care room shall be provided with a separate toilet, lavatory and bathing fixture.

151.340: Nurses Station

- (A) A nurse's station shall be conveniently located within each nursing unit and shall be located not more than 100 feet from the entrance to any patient room.
- (B) Each nurse's station shall have a minimum area of 81 square feet with no dimension less than six feet, except that smaller dimensions may be approved for an HB/LTCF.
- (C) Each nurse's station shall contain top and base cabinets.
- (D) Each nurse's station shall be provided with a desk or counter and chart racks. The maximum height of counter shall not exceed 42 inches.
- (E) A nurse's toilet room shall be located convenient to the nurse's station.

151.350: Medicine Room -- Nursing Care Units

- (A) A separate, locked medicine room at least 30 square feet with no dimension less than five feet shall be provided directly off or immediately adjacent to each nurse's station, except that smaller dimensions may be approved for an HB/LTCF.
- (B) Each medicine room shall contain a top and base cabinet. The base cabinet shall be equipped with a counter top and a sink with hot and cold running water.
- (C) A separate locked compartment shall be provided for the storage of narcotics and other dangerous drugs.
- (D) Each medicine room shall contain a refrigerator for medication which requires refrigeration.

151.360: Activity Area -- Nursing Care Units

One day room solarium, sitting room or equivalent area shall be provided in each unit. Each such room or area shall have a minimum area of nine square feet for each bed authorized in the corresponding nursing unit.

151.370: Patient Bathrooms and Washrooms

- (A) Bathing Facilities: Tubs and Showers.
 - (1) Levels I and II: three bathtubs or showers shall be provided for each unit. One tub shall be a free-standing type and shall be accessible from two sides and one end with a minimum three feet clearance. The tub shall be equipped with an acceptable type bath lift.
 - (2) Level III: Bathing facilities shall be provided in a ratio of not less than one per 15 patients (one of which shall be a free-standing type tub). The free-standing tub shall be accessible from two sides and one end with a minimum three foot clearance. The tub shall be equipped with an acceptable type bath lift, except that smaller dimensions may be approved for an HB/LTCF, so long as such facilities can accommodate wheelchair patients.
- (B) Shower Construction. Shower floors shall be flush and shall be without curbs. The floor shall be sloped to the center of the shower stall. Mixing valves and controls shall be mounted outside the shower stall. Shower enclosure shall be not less than four feet by four feet. All common toilet facilities shall be separated by solid wall partitions or dividers.

151.370: continued

(C) Toilets and Handwashing Facilities.

- (1) All patient bedrooms shall be provided with at least one water closet and one lavatory. Each water closet and lavatory may be positioned between adjacent rooms. They shall be directly accessible from each room.
- (2) One water closet and one lavatory shall be provided for patients of each sex on each unit and shall be located in areas central to all patients. Such areas to be sized to accommodate wheelchair patients. Minimum dimension to be four feet by five feet.
- (3) One fixed or portable training toilet per nursing unit shall be provided for the training of incontinent patients.
- (4) All common toilet facilities shall be separated by solid wall partitions or dividers.
- (5) In HB/LTCFs, if each patient room does not have direct access to toilet and handwashing facilities, such facilities shall be provided conveniently located to the patient rooms at ratios of one toilet fixture to every four patients.

(D) Grab Bars Required for Tubs, Showers, and Toilets. All tubs, showers and toilet enclosures shall be equipped with grab bars. Grab bars, accessories and anchorage shall have sufficient strength to sustain a dead weight of 250 pounds for five minutes.

(E) Hot Water Supply: Maximum Temperature. Hot water supplied to fixtures accessible to patients shall be controlled to provide a maximum temperature of 110°F.

151.380: Storage Areas -- Nursing Care Units

(A) Linen Closet. A linen storage closet shall be provided in each unit for the storage of daily linen needs. Each such closet shall be at least 20 square feet and shall contain non-combustible shelving to a maximum height of six feet.

(B) Janitor Closets.

- (1) One janitor's closet shall be provided for each unit. In no event shall there be less than one janitor's closet per floor.
- (2) Each janitor's closet shall contain a service sink equipped with hot and cold running water.
- (3) Each janitor's closet shall be not less than five feet by five feet and shall have adequate shelving for the storage of cleaning supplies and housekeeping equipment.

(C) General Storage.

- (1) In each unit, a storage closet of at least 50 square feet shall be provided for the storage of supplies and equipment. The clear area shall be large enough to permit easy storage of wheel chairs, lockers, patient's lifts and other types of mechanical equipment.
- (2) Where oxygen storage is provided it shall be in accordance with the National Fire Protection Association Code.

(D) Smaller dimensions may be approved for HB/LTCFs.

151.390: Utility Rooms -- Nursing Care Units

(A) Separate Clean and Soiled Rooms Required. Each unit shall contain separate clean and soiled utility rooms which shall not be interconnected but shall have separate entrances off the corridor.

(B) Clean Utility Room. The clean utility room shall be provided with an instrument sterilizer and contain wall hung and base cabinets. The base cabinet shall be equipped with a counter top and sink with hot and cold running water and a gooseneck spout. The minimum area shall be 70 square feet with no dimension less than six feet.

151.390: continued

(C) Soiled Utility Room. The soiled utility room shall contain a service sink with gooseneck faucet and hot and cold running water; either a clinical service sink or a bedpan washer and sanitizer; and a work counter at least 24 inches wide and 36 inches high by four feet long. Handwashing facilities shall be provided. The minimum area shall be 70 square feet with no dimension less than six feet.

(D) Smaller dimensions maybe approved for HB/LTCFs.

151.400: Maximum Number of Beds -- Resident Care Units

151.410: Required Supporting Elements -- Resident Care Units

A units shall have, centrally located within its area, an attendant's station, a special care room, an attendant's toilet, a medicine closet, a linen storage closet, a drinking fountain, a janitor's closet and a room for the storage of supplies and equipment.

151.420: Patient Bedrooms -- Resident Care Units

(A) The floor area of patient bedrooms, excluding closet, vestibule and toilet room areas shall be not less than 125 square feet for single occupancy rooms and 90 square feet per bed for multiple occupancy rooms.

(B) No patient bedroom shall contain more than four beds. Multi bedrooms shall be designed to permit no more than three beds side by side parallel to the window wall.

(C) The ceiling height in areas used by patients shall be a minimum of eight feet.

(D) Rooms shall be shaped and sized so that each bed can be placed at least three feet from any lateral wall. Beds shall be spaced at least three feet from any other bed and an unobstructed passageway of at least four feet shall be maintained at the foot of each bed. Variations in bed placement and dimensions shall be permitted only with the approval of the Department.

(E) Patient bedrooms shall have a floor level of at least six inches above the grade level adjacent to the building.

(F) All patient bedrooms shall be along exterior walls with window access to the exterior.

(G) All patient bedrooms shall open directly to a main corridor and shall be permanently and clearly identified by a number on or beside each entrance.

(H) Each room with more than one bed shall have cubicle curtains or equivalent built-in devices for privacy for each patient.

(I) Each patient bedroom shall contain closet space of not less than two feet by two feet per patient with at least five feet clear hanging space for the storage of personal belongings. In addition, either a built-in or free-standing multiple-drawer bureau not less than two feet wide, with a minimum of one drawer per patient, shall be provided.

(J) Each patient bedroom shall be sized and dimensioned to accommodate household size or hospital-type bed, a bedside cabinet and an easy chair or comfortable straight-back arm chair.

(K) Units shall not encompass beds on more than one floor.

151.430: Special Care Room -- Resident Care Units

- (A) In each unit, one single bedroom shall be available for occupancy by a patient requiring isolation. This room shall be located in close proximity to the attendant's station and shall not have direct access with any other patient room. The room shall be included in the quota and may be generally used until such time as it is used for isolation.
- (B) This room shall be provided with a separate toilet, lavatory and bathing fixture.

151.440: Attendant's Station

- (A) An attendant's station shall be conveniently located within each nursing unit and shall be located not more than 100 feet from the entrance to any patient room.
- (B) Each attendant's station shall have a minimum area of 81 square feet with no dimension less than six feet.
- (C) Each attendant's station shall contain top and base cabinets.
- (D) Each attendant's station shall be provided with a desk or counter and chart racks. The maximum height of counter shall not exceed 42 inches.
- (E) An attendant's toilet room shall be provided convenient to the attendant's station.

151.450: Medicine Closet -- Resident Care Units

- (A) A medicine closet is required within Level IV directly off or immediately adjacent to the attendant's station.
- (B) A separate locked compartment shall be provided for the storage of narcotics and other dangerous drugs.
- (C) Each medicine closet shall contain a refrigerator for medication which requires refrigeration.
- (D) Each medicine closet shall contain a top and base cabinet. The base cabinet shall be equipped with a counter top and a sink with hot and cold running water.

151.460: Activity Areas -- Resident Care Units

One day room, solarium, sitting room or equivalent space shall be provided in each unit. Each such room or area shall have a minimum area of nine square feet for each bed authorized in the corresponding nursing unit.

151.470: Patient Bathrooms and Washrooms -- Resident Care Units

- (A) Bathing Facilities. Level IV bathing facilities shall be provided in a ratio of not less than one per 15 patients. A free-standing tub is not required within a Level IV Resident unit.
- (B) Shower Construction. Shower floors shall be flush and shall be without curbs. The floor shall be sloped to the center of the shower stall. Mixing valves and controls shall be mounted outside the shower stall. Shower enclosure shall be not less than four feet by four feet.
- (C) Toilet and Handwashing Facilities.
 - (1) All patient bedrooms shall be provided with at least one water closet and one lavatory. Each water closet and lavatory may be positioned between adjacent rooms. They shall be directly accessible from each room.
 - (2) One water closet and one lavatory shall be provided for patients of each sex in each unit and shall be located in areas central to all patients. Such areas to be sized to accommodate wheel chair patients. Minimum dimension to be four feet by five feet.

151.470: continued

(3) One fixed or portable training toilet per nursing unit shall be provided for the training of incontinent patients. The facilities provided under 105 CMR 151.470(C)(2) may serve this purpose.

(4) All common toilet facilities shall be separated by solid wall partitions or dividers.

(D) Grab Bar Required for Tubs, Showers, and Toilets. All tub, shower and toilet enclosures shall be equipped with grab bars. Grab bars, accessories and anchorage shall have sufficient strength to sustain a dead weight of 250 pounds for five minutes.

(E) Hot Water Supply; Maximum Temperature. Hot water supplied to fixtures accessible to patients shall be controlled to provide a maximum temperature of 110°F.

151.480: Storage Areas -- Resident Care Units

(A) Linen Closet. A linen closet shall be provided in each unit for the storage of daily linen needs. Each such closet shall be at least 20 square feet and shall contain non-combustible shelving to a maximum height of six feet.

(B) Janitor's Closet.

(1) One janitor's closet shall be provided for each unit. In no event shall there be less than one janitor's closet per floor.

(2) Each janitor's closet shall contain a service sink equipped with hot and cold running water.

(3) Each janitor's closet shall be not less than five feet by five feet and shall have adequate shelving for the storage of cleaning supplies and housekeeping equipment.

(C) General Storage. In each unit, a storage closet of at least 50 square feet shall be provided for the storage of supplies and equipment.

151.500: Storage Areas

(A) General Storage. A general storage room or rooms shall be provided in each facility with a total area of at least ten square feet per bed for 100% of the total beds authorized.

(B) Linen Storage.

(1) A central linen room shall be provided within each facility with a clear area of at least six feet by nine feet. Shelving of at least 18 inches in depths shall be provided.

(2) A central soiled linen room shall be provided within each facility with a clear area of at least six feet by nine feet and shall be equipped with handwashing facilities.

(3) Laundry chutes, when provided, shall terminate in the soiled linen room. Sufficient space shall be provided to accommodate a laundry hamper.

(C) Central Food Storage. A room with a minimum of 150 square feet shall be provided for the storage of non-perishable foods. Shelves shall be non-combustible and not more than 18 inches deep and 72 inches high and two inches from the wall. Food supplies shall not be stored on the floor. In the case of HB/LTCFs, if the hospital and the long term care facility share dietary services a separate storage area is not required.

151.510: General and Special Activity Areas

(A) General Activity Room.

(1) A general activities room shall be provided for the use of all patients. The area of this room shall be at least eight square feet per bed for 100% of the total beds authorized.

(2) A storage closet shall be provided adjacent to the general activities room for equipment utilized in recreational, diversional and religious activities.

151.510: continued

(B) Beauty Parlor and Barber Shop. A room may be provided for the beauty parlor and barber shop only with written approval of the Department. If provided, such a room shall have a minimum floor area of not less than 120 square feet. Each such room shall contain cabinet and counter space and a shampoo basin sink with a mixing faucet and attached spray.

(C) Snack Shop. Facilities may provide a snack shop commensurate with the size of the facility only with written approval of the Department.

(D) Gift Shop. Facilities may provide a gift shop commensurate with the size of the facility only with written approval of the Department.

151.520: Examination and Treatment Room

(A) A treatment room shall be available in each facility providing Levels I, II or III care. This room may also be used by physicians as an examination room. Use for any other purpose shall be approved in writing by the Department.

(B) The treatment room shall have a minimum area of 125 square feet with no dimension less than ten feet.

(C) The treatment room shall include handwashing facilities with hot and cold running water and be sized and dimensioned to accommodate a treatment table, instrument table, instrument sterilizer and locked storage cabinet.

151.530: Office Space

(A) Administrative Offices.

(a) Appropriate space and equipment shall be provided for administrative activities and for the storage of medical records.

(b) Separate offices of not less than 80 square feet each shall be provided for the use of the Administrator and the Director of Nurses. An office for the Director of Nurses is not required within a free-standing Level IV facility.

(B) Consultant Offices.

(1) Consideration shall be given to provide separate rooms in Level I & II facilities for the use of full-time consultants, such as a medical director, dietitian, social worker and others.

(2) Consultant's offices, if provided, shall be not less than 100 square feet each.

(3) A room shall be provided for a dietary consultant; it shall be located convenient to the kitchen area.

(4) Handwashing sinks and other equipment shall be provided in consultant's rooms as appropriate.

151.540: Restorative Service Units

(A) General.

(1) The following rehabilitative service units shall ordinarily be permitted only in facilities that provide Levels I or II Care.

(2) Generally, the following areas shall be sized and arranged to the extent consistent with the program of treatment within the particular facility; however, in each case, the following are the minimums that must be provided for the types of therapy programmed.

(3) Physical environment for the restorative service programs also providing services to outpatients shall include:

(a) direct handicapped accessible entrance from the outside or direct access from the main lobby;

(b) parking convenient to the entrance to the restorative program area;

(c) patient and staff toilet rooms conveniently located near the restorative service program areas; these toilet rooms must be separate from those serving nursing units;

(d) adequate waiting and reception areas;

(e) record storage;

(f) office space; and

(g) equipment as defined in 105 CMR 150.017(B)(6): *Restorative Service Units*.

151.540: continued

(B) Physical Therapy Room.

- (1) If a physical therapy room is provided, it shall have a minimum floor area of 200 square feet with a minimum dimension of not less than ten feet.
- (2) Within such a room there shall be provided a closet for the storage of supplies and equipment and a handwashing sink with hot and cold running water.
- (3) Additional space may be required to accommodate the outpatient restorative services. The physical therapy room shall include provisions for patient privacy. Dressing facilities and lockers shall be provided for outpatient use.

NON-TEXT PAGE

151.540: continued

(C) Workshop Room.

(1) If a workshop room for occupational therapy and patient activities is provided, it shall have a minimum floor area of 300 square feet with a minimum dimension of not less than ten feet.

(2) Within such room there shall be provided a closet for the storage of supplies and equipment and a service sink with hot and cold running water and a plaster trap.

151.550: Staff and Public Toilets and Washrooms

(A) Toilets including washing facilities, shall be provided for visitors and staff separate from those facilities used by patients.

(B) Visitor's toilets shall be conveniently located and accessible to the normal visitors entrance and lobby. A separate toilet room shall be provided for each sex with a water closet and lavatory.

(C) Staff toilets shall be located in close proximity to the kitchens and employees' locker rooms. Kitchen toilets shall not open directly into food preparation areas.

(D) Visitors and staff toilets shall have toilet paper holders, paper towel dispensers, soap dispensers and mirrors.

(E) At least one public toilet room for each sex shall be sized and appointed to accommodate the handicapped. Minimum dimension to be four feet by five feet.

151.560: Central Kitchen

(A) The kitchen floor area shall be not less than five square feet per bed for 100% of the total authorized beds, exclusive of food storage areas, dishwashing area, janitor's closet, refrigeration space, delivery and receiving areas, and administration space.

(B) A handwashing sink with hot and cold running water shall be provided together with disposable towels and towel dispenser and a soap dispenser.

(C) A double-compartment sink with hot and cold running water and an attached 30 inch drain board and backsplash for the preparation and cleaning of fresh vegetables shall be provided.

(D) A triple-compartment sink with hot and cold running water and an attached 30 inch drain board on each side, with backsplash, shall be provided for the washing of pots and pans.

(E) The kitchen floor shall have a floor drain equipped with a grease trap and a backup flow check valve.

(F) A separate dishwashing area containing a commercial dishwasher with attached dirty and clean work counters shall be provided. Access of food carts containing soiled dishware shall not be through the food preparation area. The dishwasher shall be equipped with a grease trap. A separate entrance to the dishwashing area shall be provided.

(G) Dumbwaiters, when provided, shall open into nourishment kitchens or dining rooms and shall be used exclusively for food transportation.

(H) The rear of all equipment not flush and sealed to the wall shall be at least eight inches from the wall. Not less than eight inches of clear space shall be provided between separately installed units. If units are to be joined, a filler strip must be used. The minimum aisle width shall be 42 inches; except when mobile equipment is used, where minimum aisle width shall be 60 inches.

151.560: continued

- (I) The kitchen shall be located to avoid through traffic. Traffic through the food service department shall be limited to authorized personnel. Food receiving shall be in a separate area with space for scales and counters.
- (J) A separate and defined area shall be provided for food cart washing and can washing.
- (K) An office for the use of the dietitian and food service manager shall be provided as set for under 105 CMR 151.530(B)(3).
- (L) Enclosed cabinets shall be provided for the storage of dishes, silverware and other eating utensils.
- (M) A separate janitor's closet shall be provided specifically for the kitchen use.
- (N) In the case of HB/LTCFs, if the hospital and the long term care facility share dietary services, a separate central kitchen is not required.

151.570: Central Dining

- (A) A minimum of ten square feet per bed for 100% of total authorized beds shall be provided for patient dining areas.
- (B) A separate dining room shall be provided for staff and employees.

151.580: Nourishment Kitchen

- (A) A nourishment kitchen room or alcove shall be conveniently located on each floor.
- (B) The nourishment kitchen shall contain a refrigerator, surface cooking unit, a toaster, a sink with hot and cold running water, and storage cabinets.
- (C) In the case of HB/LTCFs, a nourishment kitchen shall be provided on each unit.

151.590: Central Laundry

- (A) When total laundry service is to be performed on the premises, sufficient space and equipment for such service shall be provided.
- (B) When total laundry service is not to be performed on the premises, a laundry room of not less than 70 square feet shall be provided. Each such room shall contain a washer, a dryer, a double-compartment tub and shelving for the storage of soaps, bleaches and other laundry supplies.
- (C) In the case of HB/LTCFs, if the hospital and the long term care facility share laundry services, a separate central laundry is not required.

151.600: Corridors

- (A) Corridors
 - (1) Corridors in areas used primarily by patients shall not be less than eight feet wide. All other corridors shall be not less than five feet wide.
 - (2) Existing corridors in an HB/LTCF may be retained as long as they are at least four feet wide.
- (B) Handrails shall be provided on both sides of corridors. Handrails shall be firmly anchored and shall not project more than 3½ inches into the required minimum width of the corridor and shall be no less than 30 inches above the finished floor. They shall have curved returns.

151.600: continued

(C) A facility shall not permit the installation of any fixed appurtenance which may become an obstacle to traffic or reduce the required minimum width of corridor, ramp or stair.

151.610: Ramps

(A) Width of interior ramps in areas used by patients shall conform to width under 105 CMR 151.600(A). Outside ramps shall be not less than four feet in width.

(B) Ramp surfaces shall be constructed and maintained in such a manner as to prevent slipping thereon.

(C) Street or ground floors having exits to the exterior above grade shall have at least one ramp leading to grade to accommodate wheelchair and litter patients.

(D) Handrails shall be provided on both sides of all ramps. Specification as to height, anchorage and curved returns as listed in 105 CMR 151.600(B) shall apply.

(E) Ramps shall have a gradient of not greater than 8%.

151.620: Stairs and Stairways

(A) Surfaces of treads and landings shall be constructed and maintained so as to prevent slipping.

(B) Handrails shall be provided on both sides of all indoor and outdoor stairways. Specifications as to height, width and anchorage as listed in 105 CMR 151.600(B) shall apply. They shall have curved returns.

(C) Steps in stairways shall not have abrupt (square) nosing, and risers shall be tapered back approximately 1½ inches at bottom of each riser. Risers where possible should not exceed seven inches.

151.630: Doors and Doorways

(A) All doors used by patients shall be swing-type at least 44 inches wide except toilet room doors which shall be at least 32 inches wide and, if in-swinging, have pivots and manually operated emergency release.

(B) No locks or hooks shall be installed on doors used by patients.

(C) All outside doors and doorways shall be made draft-free by the installation of weather stripping or caulking material.

(D) Kitchen doors shall be a minimum of 42 inches wide.

151.640: Windows

(A) The total glass area of windows in each patient room shall be not less than 10% of the entire floor area of such room.

(B) In order to furnish natural fresh air, the windows in each patient bedroom shall be operable so that the area of the opening will be at least 4% of the floor area in the room. Exceptions to this standard will be considered in cases of fully air conditioned facilities or areas.

(C) Windows with sills less than 30 inches from the finished floor shall be provided with readily removable window guards or special safety beams for the protection of patients.

151.640: continued

(D) Openable windows shall be provided with screens constructed from not less than 16 mesh wire screening.

(E) All outside windows shall be made draft-free by the installation of either weather stripping or caulking material.

151.650: Carpeting

(A) Installation. Carpet or carpet assemblies, where installed, shall be wall-to-wall and may be provided in all areas except those normally considered to be "wet areas", such as laundries, bathrooms, utility rooms, kitchens.

(B) Fire Safety Standards. Carpet or carpet assemblies, where installed, shall meet all standards as set forth under the *Department of Public Safety -- Board of Standards Building Code -- Form Std-10 (latest edition)** and the local fire authorities.

151.660: Room Surface Finishes

(A) Interior finished surfaces shall conform to local and state codes and to these regulations.

(B) Interior wall surfaces of all areas assigned for patient housing, care, and recreation, exclusive of shower enclosures, kitchen, food preparation areas, dishwashing areas, bathrooms, toilets, utility rooms, and nourishment kitchens, shall be finished with a smooth, non-absorbent, washable surface. Walls of kitchens, food preparation areas, bathrooms, toilets utility rooms, nourishment kitchen and dishwashing areas shall be finished to a height of at least 72 inches from the finished floor with an impervious material.

(C) Floors shall be covered with tile or its equivalent, except that floors of bathrooms, toilets, showers, food preparation areas, utility rooms and nourishment kitchens shall be covered with an impervious material.

(D) Cove bases shall be provided for all floors where tile covering is directed; cove bases shall not project more than a standard cove base beyond the surface of the finished floor or wall.

(E) All trim shall be simple in profile to prevent pockets where dust might accumulate and to afford surfaces which are easily kept clean.

151.700: Heating and Air Conditioning Systems

(A) Every facility shall be equipped with a heating system which is sufficient to maintain a minimum temperature of 75°F throughout the facility at all times at winter design temperatures.

(B) Heating fixtures and all exposed pipes shall be shielded for the safety of patients.

(C) Each heating fixture shall be equipped with hand controls unless an individual automatic room control is provided, except where baseboard radiation is utilized.

(D) Every facility whose architectural plans are approved after the promulgation of 105 CMR 151.700(D) for new construction or major renovations such as the installation of a heating air conditioning and ventilation system or complete interior reconstruction shall be equipped with a cooling system which is capable of maintaining a maximum temperature of 75°F throughout the resident areas affected by the new construction or renovation at all times at summer design temperatures. Temperatures must be maintained at a level which ensures the comfort and health of residents of the facility.

151.710: Ventilation Systems

(A) Positive mechanical exhaust ventilation shall be provided, regardless of natural ventilation, and must be capable of assuring the minimum number of air changes per hour for the following areas as required under the provisions of the M.G.L. c. 111, § 72C, as amended:

* See State Building Code regulation, 780 CMR.

151.710: continued

- (1) Kitchens, dishwashing areas and diet kitchens shall have at least ten air changes per hour.
- (2) Bathrooms, toilets and showers shall have at least ten air changes per hour.
- (3) Rooms for soiled linen shall have at least ten air changes per hour.
- (4) Utility rooms, janitor's closets, laundry rooms and nurse's stations shall have at least ten air changes per hour.

(B) All storage rooms, including food storage rooms, oxygen storage rooms, boiler rooms and rooms in which mechanical equipment is stored, shall have separate and independent venting systems providing not less than ten air changes per hour.

(C) Ducts for ventilating bathrooms, toilets, rooms for soiled linen, laundry rooms and garbage storage rooms shall not be interconnected with other duct systems, but shall lead to the outside independently.

(D) All ducts penetrating floors or fire rated walls shall be fire dampered at the point of penetration.

(E) Corridors and exit halls shall not be used as plenums for the supply or return air to heating or air conditioning systems.

(F) Exhaust air intakes or hoods shall be located at cooking, dishwashing and high steam of fume-producing areas.

(G) In an AIDSSNF, rooms to be used for the administration of aerosolized pentamidine shall be negatively pressured and utilize an appropriate exhaust system for this purpose.

151.720: Water Supply

(A) The volume and pressure of the water supply shall be sufficient to supply water to all fixtures with a minimum pressure of 15 pounds per square inch at the farthest point of usage during maximum demand periods.

(B) Domestic hot water heating equipment shall have adequate capacity to supply the following:

	<u>Patient area</u>	<u>Food Preparation Center</u>	<u>Laundry</u>
Gal/hr/bed	6½	4	4½
Temp. °F	110	180	180

(C) Water shall be obtained from an approved municipal water system or, in areas where wells are the source of supply, they shall be designed and constructed with the approval of the Department.

151.730: Sewerage

All sewage shall be discharged into a municipal sewerage system where such is available; otherwise, the sewage shall be collected, treated and disposed of by means of an independent sewerage system designed and constructed with the approval of the Department.

151.740: Elevators

(A) Each facility with patients housed on other than the street floor shall provide at least one elevator of hospital type.

(B) Each facility with a capacity of more than 82 beds above the street floor shall provide no less than two elevators, one of which shall be of hospital type.

151.740: continued

(C) Each facility of one-story construction, in which ancillary patient services are located in the basement or below grade, shall provide a hospital type elevator to accommodate patient transportation to those areas.

(D) The interior cab dimension shall be not less than 5' 0" x 7' 6" and the door opening not less than 44 inches.

151.750: Refrigeration

(A) Mechanical refrigeration, capable of storing perishable and frozen foods shall be provided. At least 1½ cubic feet of refrigerated storage space and ½ cubic foot of freezer space shall be provided for each authorized bed.

(B) The maximum temperature for the storage of all perishable foods shall be 45°F. Freezers and frozen food compartments of refrigerators shall be maintained at or below -10°F.

(C) Thermometers shall be attached to the inside of all refrigerators, freezers, frozen food compartments and refrigerated rooms. Thermometers in refrigerated rooms shall be readable from the outside of these rooms.

151.800: Lighting

(A) Electric lighting shall be provided throughout the facility in accordance with the provisions of the M.G.L. c. 111, § 72C, as amended, and the recommended levels of the Illuminating Engineering Society. All electrical installations shall be in accordance with 527 CMR 12.00: *The Commonwealth of Massachusetts, Department of Public Safety, Board of Fire Prevention Regulations, Massachusetts Electrical Code.*

(B) Adequate lighting fixtures shall be installed in each patient room to provide uniform distribution of light.

(C) Outside walks, parking lots and entrances shall be adequately lighted.

151.810: Night Lights

(A) Night lights shall be provided in corridors, stairways, bathrooms, toilets, nurse's stations, attendant's station and patient bedrooms.

(B) Night lights in patient rooms shall be appropriately located and not less than 12 inches above the finished floor. Fixtures shall be recessed into the wall and shall have slotted covers to produce a subdued light.

(C) Night lights in patients' toilets shall be not less than 15 watts. Fixtures shall be mounted not less than 12 inches from the finished floor.

(D) All night lights shall be controlled either by a switch at the entrance to the patient bedroom or from the nurse's station.

151.820: Reading Lamps

A reading lamp shall be provided for each patient. If wall-mounted bed lamps are provided they shall be not less than 64 inches from the finished floor and be mounted directly over each bed.

151.830: Emergency Electrical Systems

(A) An emergency source of electricity shall be connected to circuits designated in 105 CMR 151.830(C), 151.830(D), and 151.830(E) for lighting and power to provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment or safety of the occupants.

151.830: continued

(B) The emergency source of electricity shall consist of a generating set, including the prime mover and generator. It shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. The set shall be of sufficient kilowatt capacity to supply all lighting and power demands of the emergency system. The power factor rating of the generator shall be not less than 80%.

(C) Emergency electrical connections shall be provided to circuits for lighting of stairways, corridors, exit ways and exterior approaches thereto, exit and direction signs, nurse's stations, attendant's stations, medicine preparation areas, kitchen, dining and recreation areas, generator set location and boiler room.

(D) Emergency electrical connections shall be provided for protection of vital equipment and materials and for operation of equipment essential to health and safety of the occupants, including but not limited to nurse's call, alarm system, fire pump (if installed), sewerage or sump lift pumps (if installed), one duplex receptacle per bed, corridor duplex receptacles, one elevator, equipment for maintaining telephone service, paging or speaker systems, refrigerators, freezers, and equipment such as burners and pumps necessary for operation of one or more boilers and their controls required for heating.

(E) Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of patient rooms unless the nursing home is supplied by at least two utility service feeders, each supplied by separate generating sources.

(F) An automatic transfer switch shall be installed to transfer to emergency power within ten seconds.

151.840: Electrical Outlets

(A) Patient rooms shall have not less than one duplex receptacle per bed and in addition, one receptacle on a wall other than the bed headwall. Duplex receptacles shall be installed so as to meet the needs in any given area.

(B) Outlets for portable tray carts shall be provided.

151.850: Call Systems

(A) A nurse's and attendant's calling station shall be installed at each patient bedside, in each patient's toilet, bath and shower room, and in the following additional areas: patient dining room, treatment room, workshop and physical therapy rooms, special care room, activity rooms, television rooms, and sitting rooms, consultation rooms and beauty parlor and barber shop.

(B) The nurse's call in the toilet, bath and shower rooms shall be an emergency call.

(C) All calls shall register at the nurse's or attendant's station and actuate a visible signal in the corridor by the room where the call originates.

(D) In rooms containing two or more calling stations, indicating lights shall be provided at each calling station.

(E) Nurse's call systems which provide two-way communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operative.

(F) In an HB/LTCF, the call system shall not be routinely connected to the hospital call and paging system.

151.860: Telephone Systems

(A) At least one telephone shall be provided on each floor and within the kitchen. These telephones shall be free of locks and available 24 hours daily for use in any emergency.

(B) In addition, at least one public telephone shall be provided for patient use within each facility and positioned to accommodate use by wheelchair patients, with accessibility to the dial set.

REGULATORY AUTHORITY

105 CMR 151.000: M.G.L. c. 111, §§ 3, 71, 72.

105 CMR 153.000: LICENSURE PROCEDURE AND SUITABILITY REQUIREMENTS FOR
LONG-TERM CARE FACILITIES

Section

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153.001: Purpose and Scope

(A) The purpose of 105 CMR 153.000 is to set forth the licensure procedures and suitability requirements for long-term care facilities.

(B) 105 CMR 153.000 applies to the licensure of all persons who seek to or who currently own and operate long-term care facilities in the Commonwealth of Massachusetts.

153.002: Authority

105 CMR 153.000 is adopted under the authority of M.G.L. c. 111, §§ 3, 71, 72 and 73.

153.003: Citation

105 CMR 153.000 will be known, and may be cited as, Licensure Procedures and Suitability Requirements for Long-Term Care Facilities in Massachusetts, 105 CMR 153.000.

153.004: Definitions

Applicant. Any person who applies to the Department for a license to operate a long-term care facility. In the case of an applicant which is not a natural person, the term "applicant" shall also mean any shareholder owning 5% or more; any officer and any director of any corporate applicant; any limited partner owning 5% or more and any general partner of any partnership applicant; any trustees or any trust applicant; any sole proprietor of any applicant which is a sole proprietorship; any mortgagee in possession; and any executor or administrator of any applicant which is an estate. Applicant also means a person filing a Notice of Intent Form.

Commissioner. The Commissioner of Public Health.

Department. The Department of Public Health.

Felony. A crime which is deemed a felony either in the state in which the crime was committed, in Massachusetts or by the federal government.

Jeopardy. A situation or condition which the Commissioner or his/her designee has determined presents an imminent threat to the health or safety of residents.

License. Any license issued by the Department, including a renewal or a provisional license, or subsequent to a transfer of ownership and a determination by the Department that the prospective licensee is responsible and suitable for licensure, or, upon the failure of the Department to notify said prospective licensee in writing of its decision within 90 days or one additional period to be agreed upon by the parties not to exceed 30 days, the filing of an application for a license. This application shall have the effect of a license until the Department takes final action on the application pursuant to M.G.L. c. 111, § 71 and 105 CMR 153.000.

Licensee. Any person holding a license to operate a long-term care facility. In the case of a licensee which is not a natural person, the term "licensee" shall also mean any shareholder owning five percent or more, any officer and any director of any corporate licensee; any limited partner owning 5% or more and any general partner of a partnership licensee; any trustee of any trust licensee; any sole proprietor of any licensee which is a sole proprietorship; any mortgagee in possession and any executor or administrator of any licensee which is an estate.

Long-term care facility. This term shall have the meaning set forth in 105 CMR 150.001(A).

Notice of Intent Form. A form supplied by the Department through which an applicant notifies the Department of its intent to acquire a long-term care facility and/or to apply for a license to operate a long-term care facility.

Person. Any natural person, corporation, society, association, partnership or other entity.

Provisional license. A license issued for not more than 365 days to a facility that:

- (1) is found on inspection to be in substantial compliance and which has demonstrated improvement and evidences potential for achieving full compliance within said period;
- (2) was the subject of a decertification proceeding which was resolved by reconsideration or settlement agreement.

Resident. Any patient, resident or client of a long-term care facility licensed by the Department.

Transfer of Ownership. A transfer of a majority interest in the ownership of a long-term care facility. In the case of a corporation, transfer of a majority of the stock thereof. In the case of a partnership, transfer of a majority of the partnership interest. In the case of a trust, change of the trustee, or majority of trustees. A transfer of ownership shall also be deemed to have occurred where foreclosure proceedings have been instituted by a mortgagee in possession.

153.005: Requirement of a License

No person shall establish or maintain a long-term care facility without first having obtained a license from the Department or submitted an application for a license in accordance with 105 CMR 153.006, 153.009(B)(2), and 153.022(D).

153.006: Application for a License

(A) Applications for licensure shall be made on forms prescribed by, and available from, the Department. The term "application" as used herein shall include original and renewal applications. Every application shall be notarized and signed under the pain and penalty of perjury either by each applicant as defined in 105 CMR 153.004, or by an applicant(s) who certifies that all other applicants have received copies of the application.

(B) In support of an application for an original or renewal license, each applicant shall submit:

- (1) Any information concerning ownership or control required to be disclosed under 42 CFR §§ 420.206 and 455.104 as they now read and as they may be amended; and
- (2) Any information required by the Commissioner or his/her designee as part of the application package, including such additional information concerning ownership and control as the Commissioner or his/her designee may require.

(C) Applications for renewal licenses must be filed on or before the expiration date of the previous license.

(D) An application for an original license may not be filed until an applicant has been deemed suitable by the Department.

153.007: Other Licensing Requirements

(A) As a prerequisite for a license:

- (1) Skilled nursing and intermediate care (Level II and III) facilities must obtain a certificate of inspection of the egresses, the means of preventing the spread of fire, and the apparatus for extinguishing fire, issued by the Department.
- (2) Resident care (Level IV) facilities must obtain a certificate of inspection of the egresses, the means of preventing the spread of fire, and the apparatus for extinguishing fire, issued by an inspector of the division of inspection of the Department of Public Safety.
- (3) All long-term care facilities must obtain a certificate of inspection, issued by the head of the local fire department, certifying compliance with local ordinances.

(B) No original license shall be issued for a skilled nursing or intermediate care (Level II or III) facility unless the facility obtains a certificate of inspection issued by the Department that each building to be occupied by patients of such facility meets the construction standards of the state building code, and is of at least type 1-B fireproof construction; provided however that this provision shall not apply in the instance of a change of ownership of a facility whose license had not been revoked as of the time of such change of ownership.

(C) Level IV facilities must apply for licensure designation as a Community Support Facility (CSF) if at the time of the effective date of 105 CMR 153.000, at least 50% of the residents in the facility are Community Support Residents as defined in 105 CMR 150.001. Only those Level IV facilities which have at least 50% Community Support Residents at the time of the effective date of these regulations shall be eligible for licensure as a CSF. The application for a license as a CSF shall have the effect of a license until such time as the Department takes action on the application.

(D) Resident care facilities and multi-level facilities with Level IV units with Community Support Residents having fewer than 50% of their total residents as Community Support Residents as defined herein prior to the effective date of this CSF licensure designation, shall be permitted to retain such residents, provided that these facilities meet staff and service requirements for CSFs adjusted to the facilities' number of Community Support Residents and their needs as set forth in 105 CMR 153.000.

153.007: continued

(E) No facility shall admit any additional Community Support Residents after July 1, 1987 with the exception of those facilities receiving licensure as a CSF under 105 CMR 153.007(C) except in the following circumstances:

- (1) facilities granted a waiver pursuant to 105 CMR 153.031(B); and
- (2) facilities seeking to readmit a resident who may need CSF services for stabilization following a period of hospitalization for an acute episode of mental illness.

(F) Staffing requirements for an AIDSSNF outlined in 105 CMR 153.000 apply to 20 bed units. Staffing proposals for units either under or over this size will be reviewed on a case by case basis.

153.008: Ownership Interest of Applicant or Licensee

An applicant or licensee must be the owner of the premises on which the facility is operated, or at least have such rights of ownership as the Commissioner or his/her designee finds necessary for the operation of a long-term care facility.

153.009: Acceptance of Application

- (A) The Department shall not accept an application for an original or renewal license unless:
- (1) The application includes all information required by the Department;
 - (2) The application, all required attachments and statements, and a Notice of Intent Form, if applicable, submitted by the applicant meet the requirements of 105 CMR 153.000;
 - (3) The applicant has paid all required fees.
- (B) In the case of a transfer of ownership of a long term care facility:
- (1) an application for licensure shall not be accepted until the applicant has been deemed suitable subsequent to the submission of a Notice of Intent Form, and
 - (2) the application of a new owner for a license shall not have the effect of a license unless the new owner has met the requirements for suitability review as outlined in M.G.L. c. 111, § 71, as well as the requirements of 105 CMR 153.009(A)(1) through (3).

153.010: Evaluation of Application

The Department shall not approve an application for an original or renewal license unless:

- (A) The Commissioner or his/her designee has conducted an inspection or other investigation of the facility and has determined that the applicant complies with 105 CMR 150.000; and
- (B) The Commissioner or his/her designee has conducted an investigation of the applicant and determined that the applicant is suitable and responsible to establish or maintain a long-term care facility.

153.011: Updating of Information

All information required by 105 CMR 153.000 or otherwise required by the Commissioner or his/her designee shall be kept current by each licensee. Any document which amends, supplements, updates or otherwise alters any document required to be filed shall be filed with the Department within 30 days of the execution thereof. Any changes in or additions to the content of the information contained in any document required to be filed shall be reported to the Department within 30 days of such change or addition.

153.012: Suitability and Responsibility of Applicant or Licensee

- (A) Each of the following, in and of itself, constitutes full and adequate ground for deeming an applicant or licensee neither suitable nor responsible to establish or maintain a long-term care facility:

153.012: continued

(1) The applicant or licensee has failed to demonstrate legal capacity, as demonstrated by such documents as articles of incorporation, to provide the services for which a license is sought; or

(2) The applicant or licensee has acted in a manner resulting in jeopardy to the health, safety or welfare of residents of any health institution or facility; or

(3) The applicant or licensee has prevented or attempted to impede the work of any duly authorized representative of the Department or the lawful enforcement of any provision of M.G.L. c. 111 or regulations promulgated thereunder; or

(4) The applicant plans to assume or has assumed ownership of a long-term care facility in an effort to circumvent the effect and purpose of 105 CMR 153.000. (*See 105 CMR 153.022: Transfer of Ownership*).

(5) The applicant or licensee does not have sufficient financial resources to provide services required by state and federal regulations and/or the financial management of one or more facilities for which an applicant or licensee was licensed as defined in 105 CMR 153.004 has resulted in the filing of a petition for bankruptcy related to the financial solvency of the facility or has otherwise resulted in a lack of sufficient financial resources to provide services required by state and federal regulations.

(6) A facility operated by the applicant or licensee or a facility in which the applicant or licensee owns a 50% or greater interest or acts as a corporate officer or member of the board of directors has been the subject of proceedings which resulted in the suspension, denial or revocation of the license or renewal license of the facility or has been the subject of proceedings which resulted in the denial, cancellation or revocation of the medicaid certification of the facility.

(7) The applicant or licensee has maintained a substandard level of care, as measured by compliance with applicable licensing regulations in Massachusetts or elsewhere, with applicable federal and state certification regulations under the Medical Assistance Program or Medicare Program in Massachusetts or elsewhere, and other pertinent evidence, in any institution for which the applicant or licensee has been a licensee in Massachusetts or elsewhere.

(a) The serious violation of applicable regulations shall constitute the failure to maintain a substantially consistent and adequate level of care.

(b) For purposes of 105 CMR 153.012(A), the following factors will be considered in determining whether a violation of applicable regulations is "serious".

1. The extent of any violation, including but not limited to:

- i. the number of patients affected;
- ii. the length of time the violation persists;
- iii. the frequency of the violation.

2. The actual or potential impact of any violation on residents of the facility. Violation of regulations in the following areas will be presumed to have an adverse impact upon residents:

- i. residents rights;
- ii. adequate nursing services;
- iii. 24-hour nursing services;
- iv. total nursing needs met;
- v. receipt of proper medication and diet;
- vi. resident comfort;
- vii. resident cleanliness and grooming;
- viii. resident safety;
- ix. proper use of restraints;
- x. proper sanitation;
- xi. adequate linen supply.

(B) Factors which have a significant bearing on the suitability and responsibility of an applicant or licensee include, but are not limited to:

(1) The applicant or licensee has failed to demonstrate that s/he has competence and experience in operating a long-term care facility.

(2) The applicant or licensee has failed to report patient abuse, mistreatment or neglect to the Department as required under M.G.L. c. 111, § 72(G).

153.012: continued

- (3) The applicant or licensee has been convicted of, pleaded guilty to, or has, in a judicial proceeding, admitted facts sufficient for a finding that s/he is guilty of, any felony.
- (4) The Attorney General has filed an action in any court concerning conditions in any health care facility for which the applicant or licensee was licensed as defined in 105 CMR 153.004, if that lawsuit resulted in an order or judgment against the applicant or licensee granting damages or any form of equitable relief, including an injunction.
- (5) A facility owned or operated by the applicant or licensee has been the subject of proceedings which were ultimately resolved by settlement agreement but which were initiated to suspend, deny or revoke the license or renewal license or to deny, cancel or revoke the medicaid certification of the facility.
- (6) The applicant or licensee has obtained or attempted to obtain a license by fraud or misrepresentation or by submitting false information.
- (7) The applicant or licensee has employed in a management or supervisory position a person whom a hearing officer has determined pursuant to 105 CMR 153.018 to be unsuitable or not responsible to establish or maintain a long term care facility.
- (8) The applicant's or licensee's license or certificate of registration as a nursing home administrator has been suspended, revoked or denied.
- (9) A facility owned or operated by the applicant or licensee has been the subject of proceedings which resulted in the suspension, denial or revocation of the license or renewal license of the facility or has been the subject of proceedings which resulted in the denial, cancellation or revocation of the medicaid certification of the facility.

153.013: Grounds for Suspension of License to Operate a Long-Term Care Facility

The Commissioner may summarily suspend a license pending further proceedings for revocation of or refusal to renew a license whenever the Commissioner finds that there is a jeopardy situation at a long-term care facility.

153.014: Grounds for Denial or Revocation of or Refusal to Renew a License to Operate a Long-Term Care Facility

- (A) Each of the following, in and of itself, shall constitute full and adequate ground on which to deny, revoke, or refuse to renew a license to operate a long-term care facility.
- (1) The applicant or licensee is not suitable or responsible to operate a long-term care facility; or
 - (2) The applicant or licensee has failed to remedy or correct a cited violation by the date specified in a written notice from the Department under M.G.L. c. 111, § 72E, or by the date specified in the plan of correction accepted or modified by the Department, unless the applicant or licensee demonstrates to the satisfaction of the Department that such failure was not due to any neglect of duty and occurred despite her/his good faith attempt to make correction by the specified time; or
 - (3) There are deficiencies in the long-term care facility which jeopardize the health or safety of clients; or
 - (4) There are deficiencies in the long-term care facility which seriously limit the capacity of the facility to provide adequate care; or
 - (5) The long-term care facility has been found in violation of the same or a similar regulation twice or more within a 12 month period; or
 - (6) The facility has been denied a certificate of inspection by the Department of Public Health, Department of Public Safety or the head of the local fire department pursuant to M.G.L. c. 111, § 71; or
 - (7) The applicant or licensee has failed to obtain explicit permission of the Public Health Council prior to acquiring a facility if required pursuant to 105 CMR 153.023(D).

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- (8) The applicant or licensee has been convicted of, pleaded guilty or nolo contendere to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of:
- (a) abuse, mistreatment or neglect of any resident of a long-term care facility;
 - (b) rape, felonious assault or any other felony against a person; or
 - (c) a felony involving the misuse of funds in connection with the medicaid or medicare program, including but not limited to, those offenses set forth in M.G.L. c. 118E, § 21A through D and the misuse of patient funds, unless said applicant or licensee has been determined suitable for licensure pursuant to a formal settlement agreement or the application of previous regulatory provisions.
- (9) The applicant or licensee is operating a resident care facility without CSF licensure in which the Department has determined that either 50% or more of the facility's residents are Community Support Residents, or that the facility has admitted Community Support Residents after July 1, 1987, except as provided in 105 CMR 153.007(E).

153.015: Grounds for Limiting Admissions

- (A) If the Commissioner or his/her designee determines that a long-term care facility does not substantially comply with applicable licensure regulations, and further determines that the facility's deficiencies do not immediately jeopardize the health and safety of the facility's clients, the Commissioner or his/her designee, in lieu of revoking or refusing renewal of the facility's license, may provide that the facility shall not admit any residents after a date specified by the Commissioner or his/her designee.
- (B) The Commissioner or his/her designee shall not make such a decision until the licensee, or the applicant who signed the licensure application, has been notified that the facility does not substantially meet the provisions of applicable licensure regulations and that a decision to limit admissions is contemplated, and the licensee or applicant has had a reasonable opportunity to correct the deficiencies.
- (C) A decision that a facility shall not admit any residents after a date specified by the Commissioner or his/her designee shall be rescinded when the Commissioner or his/her designee finds that the facility is in substantial compliance with the provisions of applicable licensure regulations.

153.016: Limiting Admissions Pending Appeal

- (A) Pending any hearing following initiation of a medicaid decertification action or any hearing initiated under 105 CMR 153.000, the Commissioner or his/her designee may order the applicant or licensee to limit or cease all further admissions to the facility. Such order shall not be subject to the requirements set forth at 105 CMR 153.015.
- (B) Whenever an order to limit or cease all further admissions to the facility is made, the hearing shall be conducted pursuant to the procedures set forth at 105 CMR 153.018(D).

153.017: Resident Notification

- (A) Whenever the Department initiates an action to deny or revoke a license pursuant to 105 CMR 153.000, the Department shall transmit an initial notice to each resident which:
- (1) describes the enforcement action taken;
 - (2) explains the basis for the action;
 - (3) suggests the general timetable for the enforcement process and possible relocation; and
 - (4) confirms that a second notice will be transmitted if resident relocation is imminent.
- (B) Whenever it appears likely that a license denial or revocation action commenced pursuant to 105 CMR 153.000 will result in the imminent relocation of residents, the Department shall transmit a second notice to inform each resident of:
- (1) the status of the enforcement action;
 - (2) the timetable and procedures for the relocation process; and
 - (3) the Department representative to contact with respect to the relocation process.

153.017: continued

(C) Whenever the Department initiates an action to summarily suspend a license, the Department shall afford residents notification of relocation if, and to the extent that, circumstances allow.

(D) In those cases where a resident is not competent to understand the notices, the facility shall immediately forward the notice to the next of kin or individual responsible for said resident.

153.018: Hearings: Procedure

(A) Suspension of a License.

(1) Upon written request, the licensee shall be afforded an opportunity to be heard concerning the suspension of a license by the Commissioner or his/her designee.

(2) Such a hearing shall be initiated pursuant to 801 CMR 1.00 *et seq.* no later than 21 calendar days after the effective date of the suspension.

(3) In cases of suspension of a license, the hearing officer shall determine whether the Department has proved by a preponderance of the evidence that there existed immediately prior to or at the time of the suspension a jeopardy situation.

(B) Revocation of or Refusal to Renew License.

(1) A license may be revoked or refused renewal only after a hearing as required by M.G.L. c. 111, § 71.

(2) If the Commissioner or his/her designee determines that a licensee is not suitable or responsible or that a license should be revoked or refused renewal pursuant to 105 CMR 153.000, the Commissioner shall initiate a hearing pursuant to 801 CMR 1.00 *et seq.*

(3) In cases of revocation of or refusal to renew a license, the hearing officer shall determine whether the Department has proved by a preponderance of the evidence that the licensee is not suitable or responsible and/or that the license should be revoked or refused renewal, based on relevant facts as they existed at or prior to the time the Commissioner or his/her designee initiated the hearing procedure.

(C) License Denial.

(1) Upon receipt of notice that an application for licensure hereunder has been denied, an applicant may appeal to a hearing officer pursuant to 801 CMR 1.00 *et seq.*

(2) In cases of denial of an original license, the hearing officer shall determine whether the applicant has proved by preponderance of the evidence that s/he is suitable and responsible for licensure under M.G.L. c. 111, § 71 and 105 CMR 153.000.

(D) Limiting Admissions.

(1) An appeal may be requested by filing in writing a Notice of Claim for an Adjudicatory Proceeding pursuant to 801 CMR 1.00 *et seq.* within 14 calendar days of receipt of notice of the decision to limit admissions.

(2) Within 30 calendar days of receipt of a Notice a Claim for Adjudicatory Proceeding the Commissioner or his/her designee shall schedule an adjudicatory hearing for a date as early as is practicable.

(3) Admissions shall remain limited pending the hearing officer's decision on the appeal which shall be made within 21 calendar days of the close of the hearing.

(4) If the hearing officer finds that the Department has provided by preponderance of the evidence that the subject facility was not in substantial compliance with applicable licensure regulations at the time the determination was made, the hearing officer shall uphold the decision of the Commissioner or his/her designee to limit admissions.

(E) Denial, Revocation or Refusal to Renew Based on Lack of Certificate of Inspection. If the Department is notified that the Department of Public Safety or the head of the local fire department has denied any applicant or licensee a certificate of inspection pursuant to M.G.L. c. 111, § 71, and that an appeal, if requested, has been duly denied by the Department of Public Safety, the Commissioner or his/her designee may:

153.018: continued

- (1) inform the applicant or licensee that the Department has been notified that a certificate of inspection has been denied;
- (2) offer the applicant or licensee an opportunity to submit a current certificate of inspection within two weeks, or within such other time period as the Commissioner or his/her designee shall designate;
- (3) deny, revoke or refuse to renew the license of the applicant or licensee without further hearing unless the applicant or licensee submits a current certificate of inspection within the time allowed.

(F) Denial, Revocation or Refusal to Renew Based on Criminal Record.

- (1) If the Department determines that the applicant or licensee has been convicted of, pleaded guilty or nolo contendere to, or has, in a judicial proceeding, admitted facts sufficient to find that s/he guilty of:
 - (a) abuse, mistreatment or neglect of any resident of a long-term care facility;
 - (b) rape, felonious assault or any other felony against a person; or
 - (c) a felony involving the misuse of funds in connection with the medicaid or medicare program, including but not limited to, those offenses set forth in M.G.L. c. 118E, § 21A through D and the misuse of patient funds, the Commissioner or his/her designee shall notify, in writing, said applicant or licensee that his/her application or license will be denied, revoked or refused renewal unless said applicant or licensee has been determined suitable for licensure pursuant to a formal settlement agreement or the application of previous regulatory provisions.
- (2) Said notice shall include the factual basis for the Department's determination.
- (3) The Commissioner or his/her designee shall afford the applicant or licensee 21 days from receipt of the written notification to submit court records to show that the conviction, plea or admission was not entered or made or has subsequently been vacated or reversed upon appeal.
- (4) The Commissioner or his/her designee shall deny, revoke or refuse to renew the license of the applicant or licensee without further hearing unless the applicant or licensee submits the documentation required in 105 CMR 153.018(F)(3).

153.019: Hearings: Scope of Review

- (A) **Determination of Suitability and Responsibility:** Any hearing officer conducting a hearing hereunder shall determine the suitability or responsibility of any applicant or licensee on request, whether or not the applicant or licensee is licensed at the time the determination is made.
- (B) If a hearing officer finds:
 - (1) that the applicant or licensee is unsuitable or not responsible under any single provision of 105 CMR 153.012(A); or
 - (2) that the applicant or licensee is unsuitable or not responsible under any combination of factors listed in 105 CMR 153.012(B); then the hearing officer shall uphold the decision of the Commissioner or his/her designee that the licensee is not suitable or responsible.
- (C) If the hearing officer finds any single ground for denial of, revocation of or refusal to renew a license pursuant to 105 CMR 153.014, the hearing officer shall uphold the decision of the Commissioner or his/her designee to deny, revoke or refuse to renew the license.

153.020: Effect of Determination of Unsuitability and Effect of Refusal to Renew a License, Revocation of a License, and License Denial

Whenever an applicant or licensee has been determined after hearing to be unsuitable or not responsible to establish or maintain any long-term care facility licensed by the Department, or whenever the license of any applicant or licensee has been revoked or denied or renewal has been refused, the applicant or licensee shall not establish or maintain any long-term care facility subject to licensure by the Department for a period of ten years. An applicant or licensee may establish or maintain a long-term care facility thereafter only if s/he demonstrates that her/his circumstances have significantly changed such that s/he has become suitable and responsible to establish or maintain a long-term care facility.

153.021: Non-Transferability of License

- (A) Every long-term care facility's license must be displayed in a conspicuous place in the facility.
- (B) Each license shall be valid only in the possession of the person to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary.
- (C) No license shall be valid for any building premises other than those for which the license was originally issued.
- (D) The license shall be returned by registered mail to the Department immediately upon:
 - (1) receipt of a renewal license;
 - (2) revocation of or refusal to renew the license;
 - (3) change of location;
 - (4) transfer of ownership;
 - (5) change of name;
 - (6) closure or other termination of the licensee's existence or authority to operate;
 - (7) change in quota or classification.

153.022: Transfer of Ownership

(A) At least 90 calendar days in advance of any transfer of ownership, any applicant who intends to acquire a long-term care facility shall submit a Notice of Intent Form to the Department on a form supplied by the Department. The Department shall notify each applicant in writing of the date on which the form is deemed complete. Within 90 days of such date, the Department shall complete its suitability review for licensure. With the consent of the applicant, the Department may extend the 90 day suitability determination period for a maximum of 30 days. In the event that the Department fails to notify the applicant in writing of its decision regarding suitability within the prescribed time period, the applicant shall be deemed responsible and suitable.

(B) Health Systems Area (HSA) V. All applicants whose potential long-term care facility acquisition is located in HSA V must meet the following requirements:

- (1) Public Notice. Upon receipt of written notice by the Department that a Notice of Intent Form is deemed substantially complete, an applicant for determination of suitability whose potential long-term care facility acquisition is located in HSA V shall cause notice of its intent to acquire to be published. Publication must be made within 21 days of the date upon which the notice of intent is deemed substantially complete. The public notice shall accurately describe the proposed acquisition and meet the following requirements:

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- (a) The notice must contain the following information: name and address of the health care facility being acquired; name and address of the seller; name and address of the buyer; potential changes, if any, in the services of the health care facility; and the potential changes, if any, in the bed capacity of the facility. In addition, the written notice must contain the following statements: A public hearing may be requested upon petition by any group of 50 residents of HSA V. Such petition shall include the name, address and signature of each resident. Written comments concerning the applicant's ability to provide quality long-term care services and petitions for a public hearing may be addressed to the Department of Public Health, Suitability Review Office, 10 West Street, 5th Floor, Boston, MA 02111 for a period of 14 days following this publication.
- (b) If the notice as published does not contain all of the information listed in 105 CMR 153.022(B)(1)(a), the Department may require republication of the notice within a reasonable period of time.
- (c) The notice shall be at least two inches high by three columns wide or at least three inches high by two columns wide; shall appear in the Legal Notice section; and shall be captioned as appropriate, such as "Public Announcement Concerning (name of health care facility)". An identical notice shall also be published at least once in some other section of the same newspaper.
- (d) Such notice shall be published in whichever of the following daily newspapers publishes in the city or town of, or nearest to, the location of the facility: *Attleboro Sun*, *Brockton Enterprise*, *Fall River Herald News*, *Hyannis Cape Cod Times*, *New Bedford Standard Times*, or *Taunton Gazette*.
- (e) No final determination of suitability shall be made unless the applicant has submitted, on a form prepared by the Department, a statement signed under the pains and penalties of perjury that the applicant has caused notice of the acquisition to be published in accordance with 105 CMR 153.000 and that a true copy of such notice is attached to the signed statement.
- (2) Hearings.
- (a) Any 50 residents of HSA V may form a resident group with a designated representative. The resident group's representative may request a hearing through submission of a petition to the Department's Suitability Review Office within 14 days of the date that the public notice appeared in the newspaper. The petition shall include the name, address and signature of each resident group member. The representative will receive all correspondence regarding the hearing.
- (b) The Department shall notify in writing both the applicant and the current owner or current licensee of any hearing that is scheduled under 104 CMR 153.022. The current owner or licensee shall immediately cause a notice of the hearing posted in the facility that is subject of the Notice of Intent. The posted notice shall include the date, time, location and purpose of the hearing and shall be placed in locations that are easily visible to residents, employees, and visitors. The text of the posted notice shall be written in 14 point or larger type. At minimum, the notice shall be placed in the dining room, in the activity room, a main entrance, and near the public telephone. A copy of the text of the notice shall be readily available upon request by any resident, employee or visitor. The current owner or licensee shall immediately inform, in writing, the resident council and family council in the facility, if there is a resident council or family council, of the date, time, location, and purpose of any hearing regarding the transfer of ownership.
- (c) A hearing will be held by a Departmental representative within three weeks of receipt of a petition for hearing.
- (d) The Department shall take any written comments and comments presented at the hearing into consideration in its determination of the suitability and responsibility of the potential new owner.

153.022: continued

(3) At the time a Notice of Intent Form is deemed complete, a letter drafted by the Department shall be sent by either the current owner or current licensee of a facility which is the subject of a Notice of Intent, to residents, family members and legal guardians notifying them of the potential transfer of ownership. The current owner or licensee shall submit a signed statement to the Department that such a letter was sent before a final determination of suitability is rendered for the prospective owner or licensee. Failure to comply with the requirements of 105 CMR 153.022(B) shall delay a finding of suitability. The provision in 105 CMR 153.022(A) regarding the Department's failure to notify the applicant in writing of its suitability decision shall not apply if the owner or licensee has not submitted the above-mentioned signed statement.

(C) Any person applying for a license as a result of any transfer of ownership shall file an application for licensure within 48 hours of the transfer unless an extension of the 48 hour period is granted by the Commissioner or his/her designee.

(D) A license application filed as a result of a transfer of ownership, if timely filed, shall have the effect of a license from the date of transfer or until such time as the Department takes action on the application. If not timely filed, such an application shall not have such effect.

(E) In the case of a transfer of ownership, the existing classification shall not be upgraded or downgraded without written approval by the Department. Except as provided below, the existing bed quota shall not be exceeded without Determination of Need approval. If the facility has not exercised the one time 12 bed increase, the Commissioner or designee may, upon review and approval of a notice of intent and architectural plans, grant an increase in quota of up to 12 beds.

(F) Any notice of hearing, order or decision which the Department or the Commissioner or his/her designee issues for a facility prior to a transfer of ownership shall be effective against the former owner prior to such transfer and, where appropriate, the new owner, following such transfer unless said notice, order or decision is modified or dismissed by the Department or by the Commissioner or his/her designee.

(G) A transfer of ownership shall not be recognized and the new owner shall not be considered suitable for licensure when the transfer is proposed or made to circumvent the effect and purpose of 105 CMR 153.000. The Department shall consider the following factors in determining whether a transfer has been proposed or made to circumvent the regulations:

- (1) The transferor's record of compliance with Department licensure laws and regulations;
- (2) the transferor's current licensure status;
- (3) the transferor's familial, business and/or financial relation to the transferee;
- (4) the terms of the transfer;
- (5) the consequences of the transfer.

(H) The Department shall be notified immediately in writing of any proposed change in name or location of a facility. A license shall not be transferred from one person or entity to another or from one location to another.

153.023: Voluntary Closure

(A) The holder of a license shall submit to the Department a Notice of Intent to close or to sell the long term care facility for other business use at least 60 days in advance of the proposed sale or closure. Such notice shall be subject to the Department's approval and shall include a plan for appropriate notice to and relocation of long term care facility patients. Such notice shall be in addition to notification requirements established pursuant to Department of Public Welfare regulations (106 CMR) and Massachusetts General Laws regarding withdrawal from participation in the Medical Assistance Program. the notification-relocation plan shall include but not be limited to the following:

153.023: continued

- (1) consideration of the best means to notify each patient (*e.g.* personal notice from facility staff; written notice; or notice through next of kin) at least 45 days in advance of the patient's relocation;
- (2) psychological preparation or counseling of each patient as necessary;
- (3) efforts to find appropriate alternate placements for each patient within a 25 miles radius distance of the facility and/or the patient's family and friends. Before a facility can place a patient beyond the required distance limit, a facility must demonstrate to the Department that it has made a good faith effort to adhere to this requirement and that appropriate placement cannot be made within the 25 mile radius; and
- (4) consultation with each patient and next of kin or the patient's sponsor regarding placement options and the placement process being considered.

(B) Transfers shall take place in an orderly fashion. No more than five patients per day shall be transferred unless the facility has demonstrated to the Department that it has sufficient staff and resources for transferring a larger number of patients per day in an orderly fashion and has received approval from the Department.

(C) Copies of all appropriate medical records shall accompany all patients upon discharge.

(D) Failure to comply with the notice provisions or to implement an appropriate relocation plan, or if transfer of patients is begun prior to the 60 day notice period as specified above, may result in a finding that an emergency exists as defined in M.G.L. c. 111, § 72M and the Department may seek the appointment of a receiver. Furthermore, failure to assure appropriate notice to and relocation of all patients may result in a finding of abuse, mistreatment or neglect as defined in M.G.L. c. 111, § 72F and 105 CMR 155.000 *et seq.*

153.024: Penalties

(A) Operation of a long term care facility without a license constitutes a violation of law punishable for a first offense by a fine of not more than \$500 and for a subsequent offense by a fine of not more than \$1,000 or imprisonment for not more than two years (*see* M.G.L. c. 111, § 73).

(B) Violation of any provision of M.G.L. c. 111, §§ 71 through 73, by a person licensed thereunder, is punishable for a first offense by a fine of not more than \$500 and for a subsequent offense by a fine of not more than \$1,000 or by imprisonment for not more than two years (*see* M.G.L. c. 111, § 73).

(C) Whoever violates any rule or regulation of the Department promulgated pursuant to M.G.L. c. 111, §§ 71, 72 or 72C shall be punished by such fine, not to exceed \$50.00, as the Department may establish. If any person violates any such rule or regulation by allowing a condition to exist that may be corrected or remedied, the Department shall order him or her in writing, to correct or remedy such conditions; and if such person fails or refuses to comply with such order, each day during which such failure or refusal to comply continues shall constitute a separate offense (*see* M.G.L. c. 111, § 73).

(D) Licensees who have been convicted of, pleaded guilty or nolo contendere to, or have, in a judicial proceeding, admitted facts sufficient to find that s/he is guilty of:

- (1) abuse, mistreatment or neglect of any resident of a long-term care facility;
- (2) rape, felonious assault or any other felony against a person; or
- (3) a felony involving the misuse of funds in connection with the medicaid or medicare program, including but not limited to, those offenses set forth in M.G.L. c. 118E, § 21A through D and the misuse of patient funds,

but, who have been determined suitable for continued licensure pursuant to formal settlement agreements or previous regulations, are prohibited from acquiring any additional facilities or increasing the bed quota of any existing facilities for five years from the date of the conviction, guilty plea or admission, except with the explicit permission of the Public Health Council.

153.025: Facilities Operated by the First Church of Christ Scientist or by the Roman Catholic Church

(A) Under M.G.L. c. 111, § 73A, any facility which is operated and listed and certified by the First Church of Christ Scientist in Boston, Massachusetts shall be subject to licensure and inspection only under laws, rules and regulations pertaining to sanitation, fire, safety, and building and construction codes. These facilities shall be licensed and are required to have certificates of inspection issued by the Department of Public Safety and the local fire department. No guests, residents or personnel shall be subjected to any medical supervision, regulation or control in connection with the operation of any such facility. The regular license fee is required.

(B) Under M.G.L. c. 111, § 73B, any facility which is operated for only those duly ordained priests, or for the members of the religious orders of the Roman Catholic Church in their own locations, buildings, residences or headquarters to provide care, shelter, treatment and medical assistance for any of the said duly ordained priests or members of the said religious orders, shall be subject to licensure and inspection only under laws, rules and regulations pertaining to sanitation, fire, safety and building construction codes. These facilities shall be licensed and shall be required to have certificates issued by the Department of Public Safety and the local fire department. No personnel while working at such facilities shall be subjected to any requirements of medical supervision, regulation or control in connection with the operation of any such facility. The regular license fee is required.

153.026: Name of Facility

(A) Every facility shall be designated by a distinctive name which shall appear on the facility's application and license. To avoid public confusion or misrepresentation, this name shall not be changed without the prior approval of the Commissioner or his/her designee. Such name shall appear on all listings, advertisements and stationery.

(B) The name of a facility shall not contain the words:

- (1) "Rehabilitation" or "rehabilitative" unless the facility provides skilled nursing and rehabilitative care and the Commissioner or his/her designee has authorized in writing the use of such words in its name.
- (2) "Nursing" or "convalescent" unless the facility provides primarily skilled nursing care or intermediate nursing care (Level II or III).

(C) The name of a facility shall not tend in any way to mislead the public as to the type or extent of care provided by the facility.

153.027: Classification

(A) Under the authority of M.G.L. c. 111, § 71, the Department has classified long-term care facilities according to the level or levels of care that each such institution is qualified under applicable rules and regulations to provide. There are three such levels of care: skilled nursing care (Level II), intermediate nursing care (Level III), and resident care (Level IV).

(B) Classification shall be as determined by the Commissioner or his/her designee and shall be established on the basis of the levels of care that a facility is qualified to provide. A facility shall not be classified to provide more than one level of care unless such facility provides one or more identifiable units for each level of care. As used herein classification is not a form of a license within the meaning of M.G.L. c. 30A, § 13.

(C) Written approval for change in classification must be obtained from the Commissioner or his/her designee.

- (1) In the case of a downgrading, the facility must file a notice of intent and submit architectural plans if construction and renovation is associated with the reclassification.
- (2) In case of an upgrading, the facility must secure a determination of need when required by applicable Determination of Need regulations (105 CMR 100.000 *et seq.*). If no determination of need is required, the facility must submit a notice of intent and architectural plans.

153.028: Licensed Bed Capacity (Quota)

(A) Licensed bed capacity (quota) shall be determined by the Department and shall be the number of beds which the licensee is authorized to operate pursuant to a license issued by the Department. As used herein, licensed bed capacity (quota) is not a form of a license within the meaning of M.G.L. c. 30, § 13.

(B) Increases in licensed bed capacity shall be subject to the provisions of law governing determination of need. The Commissioner or her designees may, upon review and approval of notice of intent and architectural plans, grant an increase in quota of up to 12 beds.

(C) The licensees shall submit written notification of any permanent reduction in licensed bed quota to the Commissioner or his/her designee.

(D) In cases where temporary removal of beds from service is necessary for construction authorized by determination of need, or for implementation of a plan of correction for cited significant physical plant deficiencies; or when permanent removal is necessary for a phased closure of an entire facility:

(1) The licensee shall notify the Department in writing of the removal of beds from service, the reason for the removal and the length of time the beds are anticipated to be out-of-service.

(2) On receipt of this notification the Department will establish an "operating bed capacity" which shall be the number certified to the Rate Setting Commission for determination of occupancy rates.

(E) In all other cases where beds are temporarily removed from service, the number of beds established as the facility's licensed bed capacity shall be the number of beds which a licensee is authorized to operate pursuant to a license issued under 105 CMR 153.027(A).

(F) Discontinuance of operation of an entire unit of a facility for any period shall be treated as a permanent reduction in licensed bed capacity except where the Commissioner or his designee has granted permission in advance. Such permission shall be given only in exceptional circumstances and for no longer than required.

(G) Discontinuance of operation of an entire facility or building for any period shall be treated as an abandonment of the license therefor, except where the Commissioner has granted permission in advance. Such permission shall be given only in exceptional circumstances and for no longer than required.

153.029: Posting of License, Certificate of Inspection, and Related Documents

Every facility shall maintain a board suitable for posting notices and other written materials in an area of the premises accessible to residents, employees and visitors. Such notices and materials as may be required by the Commissioner or his/her designee shall be conspicuously posted thereon and include, but are not limited to, the following:

(1) A framed, current license, or if the facility is operated under an application, the most recent license and a copy of such application.

(2) The most recent certificate of inspection of the egresses, the means of preventing the spread of fire, and the apparatus for extinguishing fire, issued by the Department (for Level II and III facilities) or by the Department of Public Safety (for Level IV facilities).

(3) Any orders to show cause, notices, orders, decision or other documents issued by agents of the Department that pertain to the facility.

153.030: Restrictions

(A) No facility in which part of the premises is utilized for tenant occupancy or for business shall be approved for licensure except as provided in 105 CMR 150.012(1).

(B) Office space for physicians, dentists, podiatrists, physiotherapists or paramedical persons is not permitted in any facility.

153.030: continued

- (C) Facilities shall not provide laboratory services and shall not store or use x-ray equipment.
- (D) Nursing services or medical treatment will not be administered to persons other than clients without the written approval of the Commissioner or his/her designee.

153.031: Special Projects and Waivers

- (A) Proposals for special projects for innovative delivery of services related to long-term care facilities will be considered. However, no such plan shall be implemented without prior written approval of the Department. Such plans shall be implemented only on an experimental basis and subject to renewal of approval by the Department at such time periods as the Department shall fix.
- (B) The Commissioner or his designee may waive the applicability to a particular facility of one or more of the requirements imposed by 105 CMR 153.000, 105 CMR 150.000: *Licensing of Long-Term Care Facilities* and 105 CMR 151.000: *General Standards of Construction: Long-Term Care Facilities* upon finding that:
 - (1) the facility's non-compliance does not affect the health or safety of its residents and does not limit the facility's capacity to give adequate care; and
 - (2) the facility has instituted compensating features or has undertaken a special project under 105 CMR 153.030(A) acceptable to the Department; and
 - (3) the facility provides to the Commissioner or his designee written documentation supporting its request for a waiver.

153.032: Right of Entry

Any duly designated officer or employee of the Department shall have the right to enter and inspect at any time without prior notice the entire premises of any facility for which an application has been received or for which a license has been issued. Any application shall constitute permission for such entry and inspection. The form on which such application is made shall contain a statement which advises any person seeking a license of such effect of an application.

REGULATORY AUTHORITY

105 CMR 153.000: M.G.L. c. 111, §§ 3, 71, 72, 73.

105 CMR 156.000: THE TRAINING OF NURSES' AIDES IN LONG-TERM CARE FACILITIES

Section

Preamble

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- 156.320: Minimum Curriculum Standards
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Evaluation

- 156.400: Administration of Evaluation
- 156.410: Documentation of Completed Training/Evaluation

105 CMR 156.000 sets forth standards for the training of nurses' aides who assist nurses in providing nursing care in level II/III long-term care facilities. Training of individuals employed as responsible persons in level IV facilities is specified by Department guidelines pursuant to 105 CMR 150.006(G) and 105 CMR 150.008(C)(2).

The following are available in Department of Public Health guidelines: curriculum specifications; evaluation form to be used by all instructors; course application form and blank document of completion.

156.001: Purpose

The purpose of 105 CMR 156.000 is to provide standards for the training of nurses' aides in long-term care facilities.

156.002: Authority

105 CMR 156.000 is adopted under authority of St. 1986, c. 567.

156.003: Citation

105 CMR 156.000 shall be known and may be cited as 105 CMR 156.000: *The Training of Nurses' Aides in Long-Term Care Facilities*.

156.010: Scope and Applicability

105 CMR 156.000 applies to all licensed level II and III long-term care facilities and those level IV units which employ nurses' aides as defined below.

156.020: Definitions

The following terms as used in 105 CMR 156.000 shall be interpreted as follows unless the context or subject matter clearly requires a different interpretation:

Contact Hour shall mean 50 consecutive clock minutes of instruction in accordance with 244 CMR 5.04(1) of the regulations governing the Board of Registration in Nursing.

Document of Completion shall mean the form prescribed by and available from the Department which indicates that an individual has successfully completed a nurses' aide training course or equivalency evaluation.

Equivalency Evaluation shall mean the procedure used to evaluate individuals specified in 105 CMR 156.130 to determine if they have mastered the skills taught in the minimum standard curriculum through experience or courses other than the minimum standard curriculum prescribed in 105 CMR 156.320. The evaluation form is prescribed by and available in guidelines from the Department.

Evaluation shall mean the procedure used to evaluate an individual to determine if he or she has mastered the skills taught in the minimum standard curriculum. The evaluation form is prescribed by and available in guidelines from the Department.

Instructor shall mean an individual qualified pursuant to Qualifications of the Instructor 105 CMR 156.210 and responsible for providing the nurses' aides training.

Long-Term Care Facility shall mean any institution whether conducted for charity or profit which is advertised, announced or maintained for the express or implied purpose of providing four or more individuals admitted thereto with long-term resident, nursing, convalescent or rehabilitative care; supervision and care incident to old age for ambulatory persons; or retirement home care for elderly persons. Long-term care facility shall include convalescent or nursing homes, rest homes, and charitable homes for the aged. "Facility" as used herein, shall mean a long-term care facility or unit thereof.

Minimum Standard Curriculum shall mean the minimum requirements for a nurses' aides training course as prescribed by and available in guidelines from the Department.

Module shall mean a single section of the minimum standard curriculum.

Nurses' aide shall mean any individual who provides nursing care under the supervision of a nurse in a long-term care facility. This definition includes permanent, temporary, full-time and part-time personnel employed by a facility. This definition also includes temporary agency personnel employed by a facility. This definition excludes individuals employed as responsible persons in level IV rest homes as defined in 105 CMR 150.001: Responsible Person, registered nurses, licensed practical nurses and volunteers. Training for responsible persons in Level IV facilities is prescribed in guidelines pursuant to 105 CMR 105.006(G) and 105 CMR 150.008(C)(2).

Nursing care shall mean therapeutic or convalescent care provided by nurses or individuals assisting nurses in level II and III long-term care facilities. Level IV facilities are licensed to provide care incident to old age and supervision of residents.

Training shall mean clinical and/or classroom instruction to deliver the minimum standard curriculum.

Training provider shall mean the organization or individual providing the facilities for and maintaining the records of a nurses' aides training course using a curriculum approved by the Department.

156.100: Responsibilities of the Facility

(A) Any facility which hires a nurses' aide, except as described in 105 CMR 156.100(D), shall provide, or arrange to provide, training for said nurses' aide in accordance with 105 CMR 156.000 except as provided for in 105 CMR 156.130. Such training shall be completed within 90 days of commencement of employment, as provided for in 105 CMR 156.140(C).

(B) The facility shall be responsible for documenting that all nurses' aides employed by the facility are in conformity with the training requirements as set forth in 105 CMR 156.000.

(C) The documentation shall include but is not limited to:

(1) For each nurses' aide:

(a) Document of Completion; or

(b) Evidence of enrollment in a training course, or participation in the evaluation process in accordance with timeframes set forth in 105 CMR 156.120, 105 CMR 156.130, and 105 CMR 156.140; and

(2) If the licensee/facility served as a training provider, the documentation specified in 105 CMR 156.200: *Responsibilities of Training Providers*.

(D) The facility shall ensure that all nurses' aides employed through temporary help agencies have successfully completed a nurses' aide training course in accordance with 105 CMR 156.120, are enrolled in a nurses' aides training course with planned completion in accordance with 105 CMR 156.120, or are currently being evaluated with planned completion in accordance with 105 CMR 156.130.

(1) The facility shall have a written agreement with the temporary help agency that the agency will provide only nurses' aides trained in conformity with 105 CMR 156.100(D).

(2) For nurses' aides employed through temporary help agencies, the facility shall verify, prior to employment by the facility, that such nurses' aides have been trained in conformity with 105 CMR 156.000 as specified in 105 CMR 156.100(D).

(E) The facility shall not continue to employ any nurses' aides who has not:

(1) Successfully completed both of the following:

(a) Training in accordance with these regulations, 105 CMR 156.120 within 90 days of commencement of employment as provided for in 105 CMR 156.140(C); and

(b) Evaluation as specified in 105 CMR 156.400 and a Document of Completion received within 180 days of commencement of employment as provided for in 105 CMR 156.140(C); or

(2) Successfully completed the equivalency evaluation in accordance with the timeframes set forth in 105 CMR 156.130 and 156.140(C).

(F) The facility shall ensure that nurses' aides perform only those tasks for which they have been trained and for which they have successfully demonstrated their ability to correctly perform these tasks. Such demonstrations shall be documented on the evaluation form as specified in 105 CMR 156.400.

156.110: Staffing Ratios

Nurses' aides participating in orientation and in classroom/clinical instruction as pursuant to 105 CMR 156.000 may not be counted in the staffing ratios for ancillary personnel as prescribed in 105 CMR 150.007. Nurses' aides who have been trained to perform some of the tasks required in the minimum standard curriculum and have successfully demonstrated their ability to perform these tasks may be counted in staffing ratios when they perform these tasks. Such demonstrations shall be documented on the evaluation form as specified in 105 CMR 156.400.

156.120: Nurses' Aides Required to Take Training Course

(A) All nurses' aides employed by a long-term care facility must be trained in accordance with 105 CMR 156.000 except as provided for in 105 CMR 156.130.

156.120: continued

(B) A nurses' aide who has completed training and received a Document of Completion in accordance with 105 CMR 156.000: *The Nurses' Aides Training*, but who has not been employed as a nurses' aide by a long-term care facility or temporary help agency for long-term care facilities for two or more consecutive years subsequent to such completion, shall be considered a new employee and is required to repeat training as specified in 105 CMR 156.120.

(C) Each nurses' aide must complete training within 90 days of the commencement of employment, as provided for in 105 CMR 156.140(C).

(D) Each nurses' aide must successfully complete evaluation as specified in 105 CMR 156.400 within 180 days of the commencement of employment, as provided for in 105 CMR 156.140(C).

156.130: Nurses' Aides Who May Substitute Equivalency Evaluation for Training Course

The following individuals are eligible for equivalency evaluation in lieu of completion of a training course to satisfy the requirements of 105 CMR 156.000. If such individuals choose not to take the equivalency evaluation in lieu of the training course, they shall be considered new employees subject to the requirements set forth in 105 CMR 156.120.

- (A) Individuals who have completed training equivalent to the minimum standard curriculum.
- (1) Such individuals shall have completed one of the following within the two years preceding the commencement of employment to be eligible for the equivalency evaluation:
 - (a) Documented successful completion of long-term care nurses' aides training programs regulated by other states;
 - (b) Documented successful completion of a clinical course in an approved school of nursing, in accordance with 244 CMR 6.00, which included hands-on care skills as specified in the minimum standard curriculum.
 - (2) Such nurses' aides shall successfully complete an equivalency evaluation in accordance with 105 CMR 156.400 as follows:
 - (a) Nurses' aides, described in 105 CMR 156.130(A)(1), whose employment in a Massachusetts long-term care facility commenced prior to the date of promulgation of these regulations shall successfully complete an equivalency evaluation on or before June 30, 1989;
 - (b) Nurses' aides, described in 105 CMR 156.130(A)(1), who are hired on or after the date of promulgation and prior to January 1, 1989 shall successfully complete equivalency evaluation on or before March 31, 1989;
 - (c) Nurses' aides, described in 105 CMR 156.130(A)(1), hired on or after January 1, 1989 shall successfully complete evaluation within 90 days subsequent to the commencement of employment.
- (B) Nurses' aides whose employment by a licensed long-term care facility or temporary help agency commenced prior to the promulgation of 105 CMR 156.000.
- (1) Such nurses' aides shall meet the following eligibility requirements:
 - (a) Have completed a nurses' aide training course within the preceding two years; or
 - (b) Have been employed as a nurses' aide by a long-term care facility or by a temporary help agency and assigned to long-term care facilities one year out of the past three years on a full-time basis or at least 100 days in the year prior to promulgation with no interruption in employment greater than ten weeks.
 - (2) Such nurses' aides shall successfully complete an equivalency evaluation in accordance with 105 CMR 156.400 on or before June 30, 1989.

156.130: continued

(C) The Commissioner or his or her designee may waive the qualifications for individuals permitted to take the equivalency evaluation in lieu of the training course imposed by 105 CMR 156.130(A) and (B) upon finding that:

- (1) The individual has had the following experience:
 - (a) Employment as a nurses' aide for one year out of the past three years on a full-time basis or at least 100 in the year prior to proposed evaluation with no interruption in employment greater than ten weeks; and
 - (b) Provision of direct care services to the elderly including but not limited to bathing, grooming, and feeding during the employment period specified above in 105 CMR 156.130(C)(1)(a); and
 - (c) Provision of such direct care services in an institutional setting including a chronic or acute care hospital.
- (2) The proposed waiver does not jeopardize the health or safety of the facility's residents and does not limit the facility's capacity to give adequate care.
- (3) The facility provides to the Commissioner or his or her designee written documentation supporting its request for a waiver.
- (4) Such nurses' aides shall successfully complete an equivalency evaluation in accordance with 105 CMR 156.400 as follows:
 - (a) Nurses' aides, for whom a waiver has been obtained pursuant to 105 CMR 156.130(C), whose employment in a long-term care facility commenced prior to January 1, 1989 shall successfully complete equivalency evaluation on or before March 31, 1989;
 - (b) Nurses' aides, for whom a waiver has been obtained pursuant to 105 CMR 156.130(C) and who are hired on or after January 1, 1989 shall successfully complete evaluation within 90 days subsequent to the commencement of employment.

(D) A facility shall not continue to employ an individual as a nurses' aide who does not successfully complete an evaluation as pursuant to the provisions of 105 CMR 156.130.

156.140: Implementation Schedule

- (A) Upon promulgation of these regulations, 105 CMR 156.000, training providers may:
 - (1) submit training courses for approval according to procedures set forth in 105 CMR 156.330;
 - (2) begin training courses upon notification of course approval by the Department.
- (B) For courses which began prior to date of promulgation, but which will be completed subsequent to promulgation of 105 CMR 156.000, training providers shall:
 - (1) modify courses as necessary to include the minimum standard curriculum as specified in 105 CMR 156.330;
 - (2) submit such courses for approval according to procedures set forth in 105 CMR 156.330;
 - (3) include evaluation as specified in 105 CMR 156.400 in such training courses.
- (C) While training may begin upon promulgation of 105 CMR 156.000 as specified in 105 CMR 156.140(A), all nurses' aides, who do not qualify for equivalency evaluation under 105 CMR 156.130, and who are hired on or after January 1, 1989 shall complete training within 90 days subsequent to the commencement of employment and shall successfully complete evaluation within 180 days subsequent to the commencement of employment, as specified in 105 CMR 156.310. Nurses' aides hired on or after the date of promulgation and prior to January 1, 1989 shall complete training on or before March 31, 1989 and shall successfully complete evaluation on or before June 30, 1989.

156.200: Responsibilities of Training Providers

- (A) Nurses' aides training providers shall:
 - (1) employ, or have written arrangements with, an instructor who meets the qualifications as specified in 105 CMR 156.210: *Qualifications of the Instructor*;

156.200: continued

- (2) provide, or have written arrangements to provide, facilities for classroom and clinical instruction in a level II or III long-term care facility; and
- (3) offer a curriculum that has been approved by the Department.

(B) Level IV facilities shall not serve as training providers.

(C) Examples of training providers include but are not limited to: vocational high schools, community colleges, long-term care facilities, and temporary help agencies.

(D) The training provider shall submit a curriculum proposal for approval by the Department as specified in 105 CMR 156.330: *Curriculum Approval Mechanism*.

(E) The following documentation for each course offered shall be maintained by the training provider and available for inspection by the Department:

- (1) curriculum outline and record of dates on which courses were taught;
- (2) notification of approval by the Department;
- (3) daily attendance roster;
- (4) name and resume of instructors showing that each one meets the requirements as specified in 105 CMR 156.210: *Qualifications of Instructor*;
- (5) copies of all Documents of Completion issued by that training provider and
- (6) copies of all evaluation forms completed by that training provider.

156.210: Qualifications of the Instructor

(A) Instructors for nurses' aides training courses shall meet these qualifications:

- (1) Be a registered nurse with current licensure; and
- (2) (a) 1. Have at least one year's experience in lesson planning, lesson delivery, student evaluation and remediation in a health care setting with this experience gained in such positions as inservice coordinator, staff educator, or other health personnel instructor; or
 - 2. Have attended the equivalent of twenty-four contact hours in programs which meet continuing education standards currently set forth in regulations governing the Board of Registration in Nursing 244 CMR 5.00 and which provide instruction in curriculum development, use of teaching strategies for adult learners and student evaluation; or
- (b) Meet all of the following qualifications:
 - 1. Have a written agreement for consultation with a registered nurse who has the qualifications set forth in 105 CMR 156.210(A)(1) and (2)(a);
 - 2. Obtain such consultation prior to each course, midway through the course and at the end of the course prior to final evaluation. This consultation shall include lesson plans, teaching strategies, resource materials, evaluation procedures, and remediation methods;
 - 3. Document the dates and recommendation of the consultations; and
 - 4. Attend program(s) which meets continuing education standards set forth in the regulations governing the Board of Registration in Nursing 244 CMR 5.00 consisting of not less than 24 contact hours of adult education within the first year as instructor.
- (3) The Commissioner or his or her designee may waive the qualifications of the instructor imposed by 105 CMR 156.210(A)(1) and (2) upon finding that:
 - (a) The proposed instructor has obtained sufficient experience in the care of long-term care residents and teaching adults how to provide such health care to ensure that he or she may train nurses' aides to perform the objectives outlined in the minimum standard curriculum described in 105 CMR 156.320, and
 - (b) The training provider provides to the Commissioner or his or her designee written documentation supporting its request for a waiver.

(B) Other health care professionals such as dietitians, social workers, physical therapists, occupational therapists, and others may teach lessons or modules of a nurses' aides training course.

156.220: Responsibilities of the Instructor

- (A) The instructor shall prepare the curriculum that he or she will teach as specified in 105 CMR 156.320: *Minimum Curriculum Standards* and as prescribed in curriculum specifications as prescribed by and available in guidelines from the Department and shall participate in the planning of each lesson, even if he or she does not teach that specific lesson.
- (B) The instructor shall evaluate each student to determine whether he or she has satisfactorily completed each module of nurses' aides training and shall offer remediation for each student as needed.
- (C) The instructor shall sign and issue a Document of Completion for each student upon satisfactory completion of the evaluation which is a part of a nurses' aides training course as specified in 105 CMR 156.410: *Completed Training/Experience*.
- (D) The instructor who serves as an evaluator for equivalency evaluation in accordance with the provisions of 105 CMR 156.400: *Administration of Evaluation* shall sign and issue a Document of Completion for each nurses' aide who successfully completes such an evaluation.
- (E) The instructor shall assure that there is a minimum of one instructor for every 25 students in a classroom and a minimum of one instructor for every ten students in practice/clinical sessions.

156.300: Orientation Program

- (A) An orientation program shall be given to all nurses' aides within the first 40 hours of employment. The orientation program shall include the following:
- (1) tour of the facility;
 - (2) description of organizational structure of the facility;
 - (3) explanation of nurses' aides job description;
 - (4) statement of philosophy of care of the facility;
 - (5) description of resident rights and responsibilities;
 - (6) description of resident population at the facility;
 - (7) description of daily routine of residents at the facility;
 - (8) discussion of the legal and ethical considerations in the care of residents;
 - (9) explanation and practice regarding the communications system including telephone and resident call-light systems;
 - (10) explanation and practice regarding emergencies including:
 - (a) response to resident emergencies;
 - (b) fire;
 - (c) other disasters.
- (B) Such orientation shall occur at each new facility in which the nurses' aide is employed.
- (C) Nurses' aides employed through temporary agencies shall undergo an orientation which includes a minimum of the topics named in 156.300(A)(1), (6), (7), (9) and (10).

156.310: Timing of Nurses' Aides Training

- (A) Training conducted on site of employment at long-term care facility. Each nurses' aide shall begin training after orientation and shall complete such training within 90 days of the start of employment and shall also successfully complete evaluation within 180 days of the start of employment as provided for in 105 CMR 156.140(C). During the training period, nurses' aides may perform tasks for which they have been trained and for which they have successfully demonstrated their ability to correctly perform these tasks. Such demonstrations shall be documented on the evaluation form as specified in 105 CMR 156.400.

156.310: continued

(B) Training conducted at temporary help agencies. Each nurses' aide shall complete training within 90 days of the start of employment with a temporary help agency as provided for in 105 CMR 156.140(C). Each such nurses' aide shall also successfully complete evaluation within one hundred eighty days of the start of employment with a temporary help agency as provided for in 105 CMR 156.140(C). The facility shall provide orientation to each nurses' aide employed through a temporary help agency.

(C) Training conducted at educational facilities. Each nurses' aide who has been trained at an educational institution outside of the facility shall complete such training prior to employment or within 90 days of the start of employment by a long-term care facility as provided for in 105 CMR 156.140(C). Each such nurses' aide shall also successfully complete evaluation within 180 days of the start of employment as provided for in 105 CMR 156.140(C).

156.320: Minimum Curriculum Standards

(A) Each nurses' aides training course shall be a minimum of 60 hours and shall include all modules of the minimum standard curriculum as prescribed in the curriculum specifications prescribed by and available in guidelines from the Department.

(B) Nurses' aides training courses which begin on or after October 1, 1989 shall be a minimum of 75 hours and shall include all modules of the minimum standard curriculum for 75 hours prescribed by and available in guidelines from the Department. Nurses' aides who have successfully completed an evaluation as specified in 105 CMR 156.400 prior to October 1, 1989 shall be deemed to have met the federal requirements for nurses' aides training specified above.

(C) Curriculum organization and teaching strategies are at the discretion of the instructor.

(D) Facilities that require nurses' aides to perform tasks not included in the minimum standard curriculum shall ensure that nurses' aides are trained to perform these tasks and have successfully demonstrated their ability to perform these tasks. Training for these tasks, including training for tasks related to special resident populations, shall be in addition to the minimum standard curriculum.

(E) Facilities with special resident populations shall use the minimum standard curriculum for nurses' aide training but may adapt content and clinical applications to the facility's specific resident population. However, such adaptations shall continue to require that nurses' aides master all objectives in the minimum standard curriculum. For example, all nurses' aides must learn how to give bed baths and transfer residents from beds to wheelchairs. However, these skills may be taught with attention to geriatric or pediatric considerations as the resident population dictates.

156.330: Curriculum Approval Mechanism

(A) The training provider shall submit a proposed curriculum to the Department of Public Health, Division of Health Care Quality.

(1) The curriculum shall be submitted eight weeks prior to the start of the first course and every two years thereafter.

(2) If the curriculum is modified, it must be resubmitted to the Department for approval prior to start of the course.

(B) The training provider shall submit the curriculum proposal on the curriculum application form prescribed by and available from the Department.

156.330: continued

(C) The Department will review the curriculum proposal to determine whether or not it is in compliance with 105 CMR 156.000 and the curriculum specifications prescribed by and available in guidelines from the Department.

(1) If the curriculum proposal is approved, the Department will issue an approval number and notify the training provider. A copy of the approval will be kept on file at the Department.

(2) If the curriculum proposal is not approved, the Department will return the curriculum to the training provider noting the reason that the course was not approved. The training provider may not begin a nurses' aides training course until the associated curriculum has been approved by the Department.

156.400: Administration of Evaluation

(A) All nurses' aides shall undergo evaluation either in conjunction with the training specified in 105 CMR 156.320 or as an evaluation of equivalent training pursuant to 105 CMR 156.130.

(B) All nurses' aides shall successfully demonstrate all skills on the evaluation form specified in guidelines prescribed by and available from the Department. Such evaluation shall be conducted in conformance with the timeframes set forth in 105 CMR 156.120, 105 CMR 156.130, and 105 CMR 156.140.

(C) Any individual who meets the qualifications specified in Qualifications of the Instructor 105 CMR 156.210 may administer an evaluation as prescribed by and available in guidelines from the Department.

(1) Remedial instruction shall be available from the instructor through a course approved by the Department or shall be available through an approved course specified by the instructor. The course number shall be entered on all Documents of Completion issued as documentation of successful evaluation.

(2) Additional registered nurses may assist the instructor in evaluating nurses' aides provided that an individual who meets instructor qualifications is available on site.

(D) Instructors shall use the evaluation form as prescribed by and available in guidelines from the Department.

(1) Instructors shall give nurses' aides the opportunity to read the evaluation, ask questions, and receive remedial instruction prior to administration of the evaluation.

(2) The instructor who observes and evaluates each skill demonstration must sign his or her name in the spaces indicated.

(3) Instructors shall give nurses' aides the option of responding to the verbal section of the evaluation either orally or in writing.

(a) When the verbal section of the evaluation is administered orally, the instructor shall simplify the language, if necessary, to assist comprehension by the nurses' aide.

(b) The instructor who evaluates the responses to the verbal section must sign his or her name in the spaces indicated.

(4) Successful completion of the evaluation shall mean that the nurses' aide is able to correctly demonstrate all clinical skills and answer all questions listed in the evaluation form prescribed by and available in guidelines from the Department. The demonstrations and answers shall be judged complete and correct by the instructor. Remediation and reevaluation shall be provided by the instructor within the timeframes set forth in 105 CMR 156.120, 105 CMR 156.130, and 105 CMR 156.140.

(5) Upon successful completion of the evaluation, the instructor shall sign and issue to the nurses' aide:

(a) A signed copy of the evaluation form as prescribed by and available in guidelines from the Department, and;

(b) A signed Document of Completion prescribed by and available from the Department.

156.410: Documentation of Completed Training/Experience

(A) Upon successful completion of evaluation in accordance with 105 CMR 156.400: *Evaluation of Training/Experience*, each nurses' aide shall receive a Documentation of Completion, (prescribed by and available from the Department) which has been completed, signed and issued by the instructor.

(B) As proof of meeting the training requirements set forth in 105 CMR 156.000: *The Nurses' Aides Training*, a nurses' aide shall show the Document of Completion to any facility administrator upon request.

(C) A nurses' aide who has successfully completed evaluation as specified in 105 CMR 156.400 and received a Document of Completion in accordance with 105 CMR 156.410(A) shall not be required to repeat nurses' aide training unless employment has been interrupted for two or more years as described in 105 CMR 156.120(D).

REGULATORY AUTHORITY

105 CMR 156.000: St. 1986, c. 567.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 157.000: THE REGISTRATION AND OPERATION OF TEMPORARY NURSING SERVICE AGENCIES

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- 157.700: Department Review and Investigation

157.001: Purpose

The purpose of 105 CMR 157.000 is to provide standards for the registration and operation of temporary nursing service agencies to enable the Rate Setting Commission to establish reasonable rates of payment for services provided by registered temporary nursing service agencies.

157.002: Authority

105 CMR 157.000 is adopted under authority of M.G.L. c. 111, § 72Y

157.003: Citation

105 CMR 157.000 shall be known and may be cited as 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies*.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

157.010: Scope and Applicability

105 CMR 157.000 applies to all temporary nursing service agencies required to be registered pursuant to M.G.L. c. 111, § 72Y.

157.020: Definitions

The following terms as used in 105 CMR 157.000 shall be interpreted as follows unless the context or subject matter clearly requires a different interpretation:

Administrator shall mean a person qualified by training, education or experience to operate a temporary nursing service agency.

Commissioner shall mean the Commissioner of Public Health or his or her designee.

Department shall mean the Department of Public Health.

Health Care Facility shall mean a hospital, institution for the care of unwed mothers or clinic, as defined in M.G.L. c. 111, § 52; a long-term facility which is an infirmary maintained in a town; a convalescent or nursing home, a rest home or a charitable home for the aged, as defined in M.G.L. c. 111D, § 71; a clinical laboratory subject to licensing under M.G.L. c. 111D; a public medical institution, which is any medical institution, and, after December 1, 1972, any institution, for the mentally ill or retarded, supported in whole or in part by public funds, staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing, approval or certification for participation in programs administered under Titles XVIII and XIX of the Federal Social Security Act, by the Department of Public Health; and any part of such facilities; provided, however, that "health care facility" shall not include a facility operated by a religious group relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

Medical Personnel shall mean nurses, nursing assistants, nurses' aides, and orderlies.

Nurse shall mean a licensed practical nurse or a registered nurse as defined by the Board of Registration in Nursing (M.G.L. c. 112, §§ 74 through 81C).

Nursing Assistant, Nurses' Aide, and Orderly shall mean any individual who provides nursing care under the supervision of a nurse.

Temporary Nursing Service Agency (TNSA) also referred to as "Nursing Pool" in M.G.L. c. 111, § 72Y, shall mean any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for medical personnel. "Temporary Nursing Service Agency" shall not include a medical personnel staff arrangement set up by a health care facility solely for its own use where the only costs are the salaries paid to such medical personnel; or an individual who only engages in providing his or her own services on a temporary basis to health care facilities.

Transfer of Ownership shall mean a transfer of a majority interest in the ownership of a temporary nursing service agency.

157.100: Registration Required

Any person who operates a temporary nursing service agency shall register the agency with the Commissioner. Each separate location of the business of a temporary nursing service agency shall have a separate registration.

157.110: Application for Initial Registration

(A) Any person operating a temporary nursing service agency on September 23, 1988, shall submit an application on a form prescribed by the Commissioner, by October 12, 1988, for registration of such pool at each of its separate locations.

157.110: continued

(B) Any person initiating operation of a temporary nursing service agency or separate location thereof after September 23, 1988 shall submit an application prior to the commencement of operations.

(C) Every application shall be notarized and signed under the pains and penalties of perjury by the applicant or applicants and shall include any information required by the Commissioner as part of the application package.

157.120: Application for Renewal Registration or Change of Location

(A) Application for renewal registration shall be filed at least 30 days before the expiration of the previous registration.

(B) An application for a change of existing location shall be filed within two business days of the change and shall be treated as a renewal application.

157.130: Transfer of Ownership

In the case of a transfer of ownership, the new owner shall file an application for initial registration within two business days of the transfer.

(A) The fee for a transfer of ownership shall be \$250.00 for a single location plus \$100.00 for each additional separate location.

(B) The fee for a change of location shall be \$100.00 for each location.

157.140: Registration Fee

A registration fee shall accompany each application for initial or renewal registration. The fee shall be \$750.00 for a single location, plus \$300.00 for each additional separate location operated by the temporary nursing service agency.

157.150: Evaluation of Application

The Commissioner shall not approve an application for initial or renewal registration unless the application is substantially complete and indicates compliance with 105 CMR 157.000.

157.160: Registration

Upon approval of the application, the Commissioner shall register the temporary nursing service agency at each location for a period of two years subject to renewal. The registration shall not be transferable. The registrant shall assure compliance with 105 CMR 157.000. An application filed in accordance with the provisions of 105 CMR 157.110(A), 157.120 or 157.130 shall have the effect of a registration until the application is acted upon by the Commissioner.

157.170: Denial, Revocation and Refusal to Renew Registration

(A) A registration may be denied, revoked or refused renewal for cause which includes, but need not be limited to, any of the following:

- (1) Failure to submit the required registration fee.
- (2) Violation of any state statute pertaining to regulation of temporary nursing service agencies.
- (3) Failure to comply with Rate Setting Commission's reporting requirements.
- (4) Having outstanding fines owing to the Rate Setting Commission, or otherwise violating 114.3 CMR 45.00.
- (5) Violation of any applicable provision of 105 CMR 157.000.

157.170: continued

(B) Whenever the Commissioner denies an application for initial registration or determines that a registration should be revoked or refused renewal, the Commissioner shall provide written notice thereof to the applicant or registrant.

(C) Within 21 days after receipt of notice that an application for initial registration has been denied or a determination that a registration should be revoked or refused renewal, the applicant or registrant may appeal such action by filing a Notice of Claim for an Adjudicatory Proceeding pursuant to 801 CMR 1.00 *et seq.*

(D) The decision of a hearing officer in any adjudicatory proceeding conducted under this section shall be reviewed by the Commissioner and his or her decision upon this review shall constitute final agency action.

(E) Notwithstanding anything herein to the contrary, no registration may be revoked or refused renewal until there has been final agency action pursuant to 105 CMR 157.170(D), except where the Commissioner makes an initial determination requiring immediate agency action during any pending appeal and has so notified the registrant in writing pursuant to 105 CMR 157.170(B).

157.200: Administrator

(A) The temporary nursing service agency, at each separate location thereof, shall have an administrator qualified by training, experience or education to operate the temporary nursing service agency.

(B) The administrator shall have the following responsibilities:

- (1) contracting the services of the agency to health care facilities;
- (2) verifying that persons assigned through the agency meet the requirements of 105 CMR 157.300;
- (3) assigning staff in conformance with 105 CMR 157.400;
- (4) evaluating the performance of personnel in conformance with 105 CMR 157.500; and
- (5) reporting as required under 105 CMR 157.600.

157.210: Hours of Operation

The temporary nursing service agency shall maintain hours of operation at each of its locations sufficient to meet the obligations under the written agreements with health care facilities.

157.220: Written Agreements

(A) Temporary nursing service agencies shall provide the services of medical personnel to health care facilities only under the terms of a written agreement with the facility.

(B) Written agreements shall include the following at a minimum:

- (1) types and qualifications of medical personnel available for assignment through the temporary nursing service agency;
- (2) any requirement for minimum advance notice in order to assure prompt arrival of assigned personnel;
- (3) fees established by the Rate Setting Commission pursuant to M.G.L. c. 111, § 72Y;
- (4) procedures for investigation and resolution of complaints about the performance of personnel assigned through the agency including interviews with personnel;
- (5) procedures for notice from health care facilities of failure of personnel to report to assignments and for back-up staff in such instances; and
- (6) procedures for notice of actual or suspected abuse, theft, tampering or other diversion of controlled substances by temporary nursing service personnel. Such procedures shall include:

157.220: continued

- (a) The administrator of the health care facility, or his/her designee, shall immediately notify by telephone the Department of Public Health, Division of Food and Drugs, of the suspected drug abuse, theft, tampering or other diversion upon discovery.
- (b) A "Report of Theft of Controlled Substances" (DEA 106 Form), if applicable, or a written report of the suspected incident(s) shall be submitted by the administrator or his/her designee of the health care facility to the Division of Food and Drugs within seven days. Whenever a TNSA employee had access to the drugs, the administrator of the health care facility shall also send a copy of the report to the TNSA for filing in the personnel record of the TNSA employee, unless the facility administrator has reason to believe the TNSA employee was not involved in the incident;
- (7) a program for monitoring the quality of agency performance which may include questionnaires or other survey of health care facilities with which the nursing pool has written agreements;
- (8) the requirements of written agreements as stated in 114.3 CMR 45.00, Rate Setting Commission regulations on Temporary Nursing Services.

157.300: Current Registration, License or Certification

The temporary nursing service agency shall establish policies and procedures to verify that all medical personnel maintain current licenses, registrations or certifications as applicable.

157.310: Pre-Employment Physical and Testing for Communicable Disease

The temporary nursing service agency shall establish policies and procedures to verify that all assigned personnel have undergone pre-employment physicals and testing for communicable diseases required by the health care facility prior to assignment.

157.320: Personnel Records

The temporary nursing service agency shall maintain a record for each of the medical personnel it assigns to health care facilities. Such record shall include:

- (1) evidence of current registrations, professional licensure or certification as applicable;
- (2) evidence that the individual has completed pre-employment physical and testing for communicable disease as applicable;
- (3) evidence of a background or reference check;
- (4) copies of reports required under 105 CMR 157.220(B)(6)(b) and 157.600; and
- (5) copies of annual performance reviews required under 105 CMR 157.500.

157.400: Assignment Procedures

The temporary nursing service agency shall maintain written procedures for meeting health facility requests for staff, including usual minimum notice time before personnel can be assigned and procedures for back-up staff if an assignment is not fulfilled.

157.500: Personnel Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance of medical personnel it assigns to a health care facility, including at a minimum:

- (A) review and response to any facility complaints about agency staff;
- (B) a record of agency staff reliability in fulfilling assignments; and

157.500: continued

(C) policies that establish a process to conduct on-site assessments of employees placed in long-term care facilities. These reviews should be conducted periodically and on each shift for which the agency provides staff. Procedures used to evaluate temporary nursing personnel shall be consistent with Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) evaluation requirements.

157.510: Agency Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance under the terms of written agreements developed with facilities to which the agency assigns medical personnel. This review shall include at a minimum:

- (1) reports on complaints from contracting health care facilities and their resolution; and
- (2) record of response to requests for assignment of medical personnel to health care facilities.

157.600: Reporting Requirements

(A) Suspected Abuse, Theft, Tampering or Other Diversion of Controlled Substances.

- (1) Whenever an employee has two or more copies of form DEA 106 or another written report filed in accordance with 105 CMR 157.220(B)(6)(b) in his/her personnel file, the TNSA administrator shall file a copy of each report with the Department's Division of Food and Drugs.
- (2) Whenever the TNSA administrator has knowledge of an incident of suspected abuse, theft, tampering or other diversion of controlled substances and has reason to believe that no written report has been filed with the Department, he/she shall report the incident immediately by telephone to the Department's Division of Food and Drugs and in writing within seven days.

(B) Poor Nursing Practice. The temporary nursing service agency shall be required to refer nurses who demonstrate poor nursing practice to the Board of Registration in Nursing. Poor nursing practice shall include factors listed as grounds for complaints in the Board's regulations (244 CMR 7.07).

157.700: Department Review and Investigation

(A) All records shall be complete, accurate, current, and available on the premises of the temporary agency for inspection and maintained in a form and manner approved by the Department.

(B) The Department or its agents may visit the temporary nursing service agency to inspect the agency's records during the course of normal business hours.

(C) Records of the temporary nursing service agency are to be made available upon request by the Department or its agents.

REGULATORY AUTHORITY

105 CMR 157.000: M.G.L. c. 111, § 724.