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

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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 applicants, owners, licensees and potential licensees for the licensure of long-term care facilities licensed under M.G.L. c. 111, § 71 in Massachusetts.

153.004: Definitions

Application. Original and renewal applications submitted to the Department by an applicant.

Commissioner. The Commissioner of Public Health or their designee.

Correct by Date. The date by which a licensee shall remedy or correct any violation discovered after an inspection by the Department pursuant to M.G.L. c. 111, § 72E.

Department. The Massachusetts Department of Public Health.

Facility. A long-term care facility or unit thereof and units within acute hospitals converted under provisions of St. 1988 c. 23, § 32.

Guardian. A person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment.

Health Care Agent. A person identified by a document delegating the authority to make health care decisions to an agent, executed in accordance with the requirements of M.G.L. c. 201D.

Incapacitated Person. An individual for whom a guardian has been appointed in accordance with the requirements of M.G.L. c. 190B.

Jeopardy. A situation or condition that the Commissioner has determined presents an imminent threat to the health or safety of residents.

Level I, II, III, and IV Facilities. Have the meaning of Levels of Long-term Care Facilities or Units as defined in 105 CMR 150.001: *Definitions*.

License. An initial or renewal license or license issued subsequent to a transfer of facility operations that is issued by the Department and which permits the licensee to establish or maintain and operate a long-term care facility. The application for a license 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 establish or maintain and operate a long-term care facility.

Long-term Care Facility. A charitable home for the aged, convalescent or nursing home, skilled nursing facility, intermediate care facility for persons with an intellectual disability or rest home.

Long-term Care Ombudsman. The program established pursuant to M.G.L. c. 19A, § 28.

Long-term Care Services. Services including

(a) long-term resident, nursing, convalescent or rehabilitative care;
(b) supervision and care incident to old age for ambulatory persons; or
(c) retirement home care for older adults.

Management Company. A person engaged by a licensee to manage the operations facility for compensation.

Notice of Intent to Acquire Form. A form prescribed by the Department through which an applicant or potential transferee 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.

153.004: continued

Owner. Any person with an ownership interest of not less than 5 %, or with a controlling interest in an applicant, licensee, potential transferee or the real property on which a long-term care facility is located.

Person. An individual, trust, partnership, association, corporation, or other form of business association.

Potential Transferee. A person who submits to the Department a notice of intent to acquire the facility and has an agreement in place with the current licensee to acquire facility operations.

Private Equity Company. Any company that collects capital investments from individuals or entities and purchases, as a parent company or through another entity that the company completely or partially owns or controls, a direct or indirect ownership share of a provider, provider organization or management services organization; provided, however, that Private Equity Company shall not include venture capital firms exclusively funding startups or other early-stage businesses.

Provisional or Probationary License. A license issued for not more than one year to an applicant or facility when public necessity and convenience require, or to prevent undue hardship.

Resident. Any individual receiving care in a facility, the resident's guardian or the resident's healthcare agent, if the resident has an activated healthcare proxy.

Temporary Manager. The temporary appointment by a licensee of a substitute facility manager with authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

Transfer of Facility Operations. A transfer of the operations of a long-term care facility from a licensee to a potential transferee. A transfer of facility operations shall be deemed to have occurred where foreclosure proceedings have been instituted by a mortgagee in possession. Transfer of Facility Operations also means any change in the ownership interest or structure of the licensee or the licensee's organization or parent organization(s) that the Commissioner determines to effect a change in control of the operation of the facility. Transfer of facility operations shall also be deemed to have occurred in the following instances: Transfers of the majority of a corporation's stock transfers of the majority of a partnership's interest, and changes of a trust's trustee or majority of trustees.

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 or in accordance with 153.009(B)(2), and 153.033(D) in the event of a transfer of facility operations.

153.006: Application for a License

(A) Applications for licensure shall be made on forms prescribed by the Department. Every application shall be signed either by each applicant 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 any information required by the Commissioner as part of the application package.

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

153.006: continued

(D) An application for an original license shall not be approved until an applicant has been deemed suitable by the Department, or in the case of a transfer of facility operations, the potential transferee has been deemed suitable by the Department or the suitability review period has expired.

(E) An application for a license renewal shall include a sworn statement of the names and addresses of any person with an ownership or control interest in the facility or in the real property occupied and used as the facility. For the purposes of 105 CMR 153.006(E), "person with an ownership or control interest" shall mean a person who:

(1) has a direct or indirect ownership interest of 5% or more in the facility or the organization that holds the license;

(2) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the facility or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5% of the total property and assets of the facility or organization that holds the license;

(3) is an officer or director of a corporate licensee; or

(4) is a partner of a licensee organized as a partnership.

153.007: Other Licensing Requirements

(A) As a prerequisite for a license:

(1) Level I, 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) 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 Office of Public Safety and Inspections.

(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 Level I, II, or III facility unless the applicant submits a certificate of inspection that each building to be occupied by residents of such facility meets the construction standards of 780 CMR: the *Massachusetts 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 least 50% of the residents in the facility are Community Support Residents as defined in 105 CMR 150.001: *Definitions*. Only those Level IV facilities which have at least 50% Community Support Residents 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 in 105 CMR 153.000 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.

(E) No facility shall admit any additional Community Support Residents 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 153.041(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.

153.007: continued

(F) Opportunity for Public Comment.

(1) Public Notice. The applicant must publish notice of its intent to establish a long-term care facility. The public notice, which must be submitted to the Department for approval prior to publication, shall accurately describe the proposed facility and meet the following requirements:

(a) Publication must be within 21 days following the date on which the applicant received written notice from the Department that its application was substantially complete.

(b) The notice must contain the name and address of the proposed long-term care facility; name and address of the proposed licensee, if different; and name and address of the owner or owners. In addition, the written notice must contain the following statements: "A public hearing may be requested upon petition by any group of ten adults. Such petition shall include the name, address and signature of each adult. Written comments concerning the proposed facility and petitions for a public hearing may be addressed to the offices of the Department of Public Health, Division of Health Care Facility Licensure and Certification for a period of 14 days following this publication." The notice shall include both physical and electronic mail addresses provided by the Department for the submission of comments.

(c) If the notice as published does not contain all of the information listed in 105 CMR 153.007(F)(1)(b), the Department may require republication of the notice within a reasonable time.

(d) The notice shall appear in the Legal Notice section and shall be captioned as appropriate, such as “Public Announcement Concerning (name of healthcare facility).” An identical notice shall also be published at least once in some other section of the same newspaper.

(e) Such notice shall appear in a daily newspaper published in the city or town of, or nearest to, the location of the facility and be prominently displayed on the facility’s website, if available.

(f) Within three days of publication of the notice required by 105 CMR 153.007(F)(1), the applicant shall provide a letter, approved in advance by the Department, to the following:

1. The Office of the State Long-term Care Ombudsman;
2. The Office of the Local Long-term Care Ombudsman;
3. The members of the General Court who represent the city or town in which the facility will be located; and
4. A representative of the local officials of the city or town in which the facility will be located.

(g) The applicant must provide a copy of the notices to the Department within seven days of publication of the notice and of provision to those parties listed at 105 CMR 153.007(F)(1)(f).

(2) Hearings.

(a) Any ten adults may form a group with a designated representative. The group's representative may request a hearing through submission of a petition to the Department 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 group member. The representative will receive all correspondence regarding the hearing.

(b) The Department shall notify the applicant in writing that a hearing is scheduled under 105 CMR 153.007.

(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.

(3) No hearing shall be required pursuant to 105 CMR 153.007 for a licensure application that is the result of a transfer of facility operations for which a hearing was conducted pursuant to 105 CMR 153.033 or for an application for a license renewal.

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 occupancy as the Commissioner 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 applicant or potential transferee completes all required portions of the application available on the Department's website;
(2) The application, all required attachments and statements, and a Notice of Intent to Acquire form, if applicable, submitted by the applicant or potential transferee meet the requirements of 105 CMR 153.000;
(3) The applicant or potential transferee has paid all required fees; and
(4) The applicant or potential transferee submits any additional information reasonably requested by the Department in its review of the application.

(B) In the case of a transfer of facility operations of a long-term care facility:
(1) an application for licensure shall not be accepted until the potential transferee has been deemed suitable subsequent to the submission of a Notice of Intent to Acquire Form; and
(2) the application of a new owner or potential transferee for a license shall not have the effect of a license unless the new owner or potential transferee 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

(A) The Department shall not approve an application for an original or renewal license unless:
(1) The Commissioner or their designee has conducted an inspection or other investigation of the facility and has determined that the applicant is in substantial compliance with 105 CMR 150.000: *Standards for Long-term Care Facilities*; and
(2) The Commissioner or their 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.

(B) The Department may issue a provisional or probationary license for a period not to exceed one year when public necessity and convenience require, or to prevent undue hardship, to an applicant or licensee which has been the subject of a proceeding for license revocation or termination of Medicare or Medicaid certification that was resolved by reconsideration or a settlement agreement, if the Commissioner or their designee has determined, based upon inspection or investigation:
(1) the applicant or licensee is currently in substantial compliance; and
(2) the applicant or licensee has demonstrated the potential for maintaining substantial compliance throughout the period of the provisional or probationary license.

153.011: Suitability and Responsibility of Management Companies

(A) Prior to entering into a contract with a management company, an applicant, potential transferee or licensee shall notify and receive a determination from the Department that the management company is suitable and responsible to manage a long-term care facility in accordance with the suitability and responsibility requirements in 105 CMR 153.013.
(B) In its notification to the Department, the applicant, potential transferee or licensee shall provide the proposed management company's name, contact information and any other information on the proposed management company as may be reasonably requested by the Department or required by Department guidelines.

153.011: continued

(C) Upon a determination by the Department that the proposed management company is responsible and suitable to manage a facility, the applicant, potential transferee or licensee may engage said management company to manage a long-term care facility. Any engagement of a management company to manage the facility shall be memorialized in a written contract and comply with all applicable laws, regulations, and rules. The fully executed contract shall be provided to the Department within two days of execution. Any change or amendment to any term of the written contract or documentation related to the suitability of the management company shall be filed with the Department within 30 days of execution of the amendment. Any change to the written contract shall comply with all applicable laws, regulations, and rules.

(D) If the Department determines that a management company is not responsible and suitable, the Department's determination shall take effect on the date of the Department's notice to the applicant, potential transferee, or licensee.

153.012: Monitoring Current Information with the Department

Each applicant, potential transferee and licensee shall update and keep current all information required by 105 CMR 153.000 or otherwise required by the Commissioner. Any changes in or additions to the content of the information contained in any document required to be submitted to the Department shall be updated and submitted to the Department within 30 days of such change or addition. Notwithstanding the preceding sentence, all changes to the financial status of the applicant, potential transferee, or licensee, including its respective owners, must be reported to the Department within two days of such a change. Changes to financial status include but are not limited to: filing for bankruptcy, default under a lending agreement or lease, appointment of a receiver, or recording of any lien.

153.013: Suitability and Responsibility of Applicant, Potential Transferee or Licensee

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

(1) Failure to demonstrate legal capacity, as demonstrated by such documents as articles of incorporation, to provide the services for which a license is sought.

(2) Acting in a manner resulting in jeopardy to the health, safety or welfare of residents of any health institution or facility, including but not limited to, long-term care facilities, hospitals, clinics, and ambulatory surgery centers.

(3) Preventing or attempting 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.

(4) Planning to assume or assuming ownership of a long-term care facility in an effort to circumvent the effect and purpose of 105 CMR 153.000.

(5) Failing to maintain sufficient financial resources to provide services required by state and federal regulations or the financial management of one or more facilities for which an applicant, potential transferee or licensee, including their owners and management companies, was licensed has resulted in the filing of a petition for bankruptcy related to the financial solvency of the facility, the recording of liens or unpaid fees or taxes in Massachusetts or in other states or has otherwise resulted in a lack of sufficient financial resources to provide services required by state and federal regulations.

(6) An applicant, potential transferee or licensee, including their owners and management companies, owns a 50% or greater interest or acts as a corporate officer or member of the board of directors of a facility that has been the subject of proceedings that resulted in the suspension, denial or revocation of the license or renewal license of the facility or the Medicaid certification of the facility has been cancelled or revoked.

153.013: continued

(7) Maintaining a substandard level of care, as measured by compliance with applicable licensing regulations in Massachusetts or elsewhere, with applicable federal conditions of participation in Medicare and Medicaid and other pertinent evidence, in any health institution or facility, including but not limited to, long-term care facilities, hospitals, clinics, and ambulatory surgery centers, for which the applicant, potential transferee, or licensee, including their owners and management companies, has been a licensee in Massachusetts or elsewhere.

(a) The serious violation of applicable regulations shall constitute the maintenance of a substandard level of care.

(b) For purposes of 105 CMR 153.013(A)(7), 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 residents affected;
   ii. the length of time the violation persists; and
   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. nursing services;
   iii. resident comfort;
   iv. resident cleanliness and grooming;
   v. resident safety;
   vi. use of restraints;
   vii. sanitation;
   viii. linen supply;
   ix. resident abuse, mistreatment or neglect;
   x. misappropriation of resident property; or
   xi. medication and diet.

(8) Noncompliance with any applicable state or federal laws and regulations.

(B) Factors that have a significant bearing on the suitability and responsibility of an applicant, potential transferee, or licensee, including their owners and management companies, include, but are not limited to:

(1) Failure to demonstrate competence and experience in operating a long-term care facility.

(2) Failure to report patient or resident abuse, mistreatment or neglect to the Department as required under M.G.L. c. 111, § 72(G).

(3) Conviction of, a guilty plea to, or an admission in a judicial proceeding to facts sufficient to warrant a finding of guilty of, any felony.

(4) The Attorney General filed an action in any court concerning conditions in any healthcare facility, including but not limited to, long-term care facilities, hospitals, clinics, and ambulatory surgery centers, for which the applicant or potential transferee or licensee, including their owners and management companies, was licensed, and such action resulted in an order or judgment granting damages or any form of equitable relief, including an injunction against the applicant, potential transferee or licensee, including their owners and management companies.

(5) A facility owned or operated by the applicant, potential transferee or licensee, including their owners and management companies, has been the subject of proceedings initiated to suspend, deny or revoke the license or renewal license or to deny, cancel or revoke the Medicaid certification of the facility where those proceedings have been resolved by settlement agreement.

(6) Obtaining or attempting to obtain a license by fraud or misrepresentation or by submitting false information.

(7) Employing in a management or supervisory position a person whom a hearing officer has determined, pursuant to 105 CMR 153.029, to be unsuitable or not responsible to establish or maintain a long-term care facility.

(8) Suspension, revocation or denial of a license or certificate of registration as a nursing home administrator.

153.013: continued

(9) A facility owned or operated by the applicant or licensee has been the subject of proceedings that resulted in the suspension, denial or revocation of the license or renewal license of the facility or has been the subject of proceedings that resulted in the denial, cancellation or revocation of the Medicaid certification of the facility.

(10) Subject of litigation related to the operation of a long-term care facility, including but not limited to, quality of care, safety of residents or staff, employment and labor issues, fraud, unfair or deceptive business practices and landlord-tenant issues.

(11) The history of the applicant or potential transferee or licensee, including their owners and management companies, and if applicable, the involvement of private equity firms, to provide quality long-term care as measured by applicable federal and state quality measures.

153.014: Grounds for Limitation, Restriction, Suspension or Revocation of Licenses to Operate a Long-term Care Facility

(A) The Department may limit, restrict, suspend, revoke or refuse to renew a license in accordance with MGL c. 111, §§ 71 through 73 and 105 CMR 153.000 for cause. Grounds for cause include:

(1) Substantial or sustained failure or inability to provide adequate care to residents;

(2) Substantial or sustained failure to maintain compliance with applicable statutes, rules and regulations, including a violation of the same or similar requirement twice or more within a 12-month period;

(3) The lack of financial capacity to maintain and operate a facility, including but not limited to: recorded liens, unpaid fees or taxes in the Commonwealth or in other states, any default under a lending agreement or under a lease, the appointment of a receiver, or filing for bankruptcy;

(4) Lack of suitability to operate a facility pursuant to section 105 CMR 153.013;

(5) Failure to remedy cited violations by the date specified in a plan of correction accepted or modified by the Department pursuant to M.G.L. c. 111, § 72E, unless the Licensee demonstrates

(a) that such failure is not the result of any neglect of duty; and

(b) the Licensee made good faith attempts to meet the timeline for compliance;

(6) A finding by the Department of immediate and serious threat to the public health, safety, or welfare;

(7) Denial of certificate of inspection by the Department's Office of Public Safety and Inspections or the fire department pursuant to M.G.L. 111, § 71;

(8) Failure to comply with the transfer of operations or closure requirements pursuant to 105 CMR 153.000;

(9) The applicant, potential transferee or licensee has been convicted of, pleaded guilty or *nolo contendere* to, or has, in a judicial proceeding, admitted facts sufficient to warrant a finding of 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 or the misuse of resident funds, unless said applicant, potential transferee or licensee has been determined suitable for licensure pursuant to a formal settlement agreement or the application of previous regulatory provisions.

(B) The Department may temporarily limit, restrict, suspend or revoke a license without hearing if the grounds for cause are pursuant to 105 CMR 153.014(A)(1), (2), or (3) if the Department allows for a hearing on the temporary action within a reasonable timeframe.

(C) Revocation, suspension, or refusal to renew a license may be appealed in accordance with 105 CMR 153.029.

153.015: Limitation on New Admissions

(A) If the Commissioner determines that a long-term care facility does not substantially comply with M.G.L. c. 111, §§ 70E and 71 through 72L½, 105 CMR 150.000: *Standards for Long-term Care Facilities*, 105 CMR 153.000, or 105 CMR 155.000: *Patient and Resident Abuse Prevention, Reporting, Investigation, Penalties and Registry*; or for a long-term care facility that participates in the Medicare or Medicaid program(s), the federal conditions of participation at 42 CFR 483, the Commissioner may issue an order that the long-term care facility shall limit or not admit any new residents after a date specified by the Commissioner.

(B) Noncompliance Resulting in the Determination of Jeopardy. The Commissioner may determine a long-term care facility's noncompliance with applicable laws and regulations including, but not limited to, 105 CMR 150.000: *Standards for Long-term Care Facilities* and 153.000 results in jeopardy. If the Commissioner determines that jeopardy exists in a long-term care facility, the Commissioner shall issue an order that the long-term care facility limit or not admit any new residents as of the date of the order until the facility comes into substantial compliance pursuant to 105 CMR 153.015(F). Any such order will set forth the facts on which the Commissioner based the determination that a situation or condition occurring at the long-term care facility presents an imminent threat to health or safety of residents.

(C) Noncompliance Absent the Determination of Jeopardy. The Commissioner, absent a determination of jeopardy, shall not order the licensee to limit or not admit new residents until the licensee has been notified that the long-term care facility does not substantially comply with applicable state statutes or regulations or with the applicable federal conditions of participation and that a decision to limit or cease new admissions is contemplated, and the licensee has had a reasonable opportunity to correct the cited deficiencies. If the Commissioner orders a limitation that the long-term care facility limit or not admit any new residents, such order shall remain in effect until the facility comes into substantial compliance pursuant to 105 CMR 153.015(F).

(D) Noncompliance on the Occurrence of Outbreak or Cluster Resulting in a Determination of Jeopardy. In the occurrence of an "outbreak or cluster" as defined under 105 CMR 300.020: *Definitions*, if the Commissioner determines that jeopardy exists in a long-term care facility, the Commissioner may issue an order that the long-term care facility limit or not admit any new residents as of the date of the order until the facility comes into substantial compliance pursuant to 105 CMR 153.015(F). Any such order will set forth the facts on which the Commissioner based the determination that such outbreak or cluster rises to the level of jeopardy occurring at the long-term care facility.

(E) Whenever an order to limit or not admit any new residents to the long-term care facility is made, the licensee may appeal the order pursuant to the procedures set forth at 105 CMR 153.029(G).

(F) An order that a long-term care facility shall limit or not admit any new residents pursuant to 105 CMR 153.015(B) or (C) shall be rescinded as soon as practicable after the Commissioner determines that the long-term care facility is in substantial compliance with the applicable state statutes or regulations, or with the applicable federal conditions of participation, including, where applicable that the situation or condition on which the determination of jeopardy was based no longer exists or no longer presents an imminent threat to the health or safety of residents at the long-term care facility. An order that a long-term care facility shall limit or not admit any new residents pursuant to 105 CMR 153.015(D) shall be rescinded as soon as practicable after the Commissioner determines that the outbreak or cluster on which the determination of jeopardy was based no longer exists or no longer presents an imminent threat to the health or safety of residents at the long-term care facility.

153.016: Engagement of a Temporary Manager

(A) If the Department determines that a long-term care facility failed to maintain substantial or sustained comliance with M.G.L. c. 111, §§ 70E and 71 through 72L½, 105 CMR 150.000: *Standards for Long-term Care Facilities*, 105 CMR 153.000, or 105 CMR 155.000: *Patient and Resident Abuse Prevention, Reporting, Investigation, Penalties and Registry*, or for a long-term care facility that participates in the Medicare or Medicaid program(s), the federal conditions of participation at 42 CFR 483, the Department may require the licensee to engage, at the licensee's own expense, a temporary manager to assist the licensee with bringing the facility into substantial compliance and with sustaining such compliance.

(B) The temporary manager shall be subject to the Department's approval.

(C) The engagement of a temporary manager shall be for a period of not less than three months.

(D) The agreement shall be in writing between the temporary manager and the licensee and the management company, if applicable. A copy of the written agreement shall be provided by the licensee to the Department within five days of execution.

153.017: Resident Notification

(A) Whenever the Department initiates an action to deny, suspend, or revoke a license pursuant to 105 CMR 153.000, the Department shall require the current owner or licensee to immediately provide notice in writing to each resident or the resident's legal representative that:

(1) an action to deny, suspend, or revoke the facility's license has been initiated;
(2) explains the basis for the action;
(3) suggests the general timetable for the enforcement process and possible relocation of residents; 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 require the current owner or licensee to immediately provide notice in writing to each resident or the resident's legal representative of:

(1) the status of the enforcement action;
(2) the timetable and procedures for the relocation process; and
(3) the facility representative to contact with respect to the relocation process.

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

(E) In those cases where a resident is not competent to understand the notices, the facility shall immediately notify the resident's legal representative.

153.018: Inspection

(A) Pursuant to M.G.L. c. 111, § 72, the Department may visit and inspect a long-term care facility at any time. The Department's authority to inspect includes all aspects of the facility and the facility's administration, including, but not limited to:

(1) All records pertaining to the provision of services including, but not limited to: employee records, policies and procedures, reports, incident and accident reports, patient care reports, transfer agreements, and information relating to complaints regarding provision of services;
(2) All areas of the premises used by the facility; and
(3) All medication and equipment used by the facility.

(B) The Department shall record, in writing, every violation of the applicable rules and regulations pursuant to M.G.L. c. 111, § 72.

153.018: continued

(C) Inspections shall be unannounced and made at such intervals as determined by the Department.

153.019: Complaints

(A) The Department shall review every complaint received including, but not limited to, reports received about practices or acts which may violate M.G.L. c. 111, §§ 71 through 73, or any provision of 105 CMR 150.000: *Standards for Long-term Care Facilities*, 153.000, or 155.000: *Patient and Resident Abuse Prevention, Reporting, Investigation, Penalties and Registry*.

(B) If the Department finds that an investigation is required, because the alleged act or practice may be in violation of M.G.L. c. 111, §§ 71 through 73, any provision of 105 CMR 150.000, or 153.000, or 155.000, or any guidelines or order of the Department pursuant thereto, the Department shall investigate. If a finding is made that the act or practice does constitute such a violation, the Department shall apply whichever enforcement procedure(s), as provided in 105 CMR 153.018 through 153.031, is appropriate to remedy the situation and the Department shall notify the complainant of its action in the matter.

(C) Investigation of complaints may lead to enforcement actions, including a notice of violation or deficiency, a correction order, as set forth in 105 CMR 153.022; an assessment, as provided in 105 CMR 153.034, or a denial, summary or temporary suspension, revocation or refusal to renew a license, certification, designation or other form of approval, or a modification of a license by the Department.

153.020: Deficiencies

(A) A deficiency means noncompliance with M.G.L. c. 111, §§ 71 through 73, any provision of 105 CMR 150.000, 153.000, or 155.000 for any facility or licensee certified, licensed, designated or otherwise approved by the Department pursuant to M.G.L. c. 111, § 71. The Department may find that a deficiency exists upon inspection or other information, such as information that may come through the complaint procedure, as set forth in 105 CMR 153.019.

(B) Pursuant to M.G.L. c. 111, § 72E, a deficiency may result in the following:
(1) a notice of violation or deficiency;
(2) a plan of correction as set forth in 105 CMR 153.022;
(3) a denial, summary or temporary suspension, revocation or refusal to renew a license, certification, certificate of inspection, designation or other form of approval.

153.021: Notice of Violation or Deficiency

(A) The Department may order any person certified, licensed, designated or otherwise approved by the Department pursuant to M.G.L. c. 111, § 71, to correct a deficiency by issuing a notice of violation or deficiency. Pursuant to M.G.L. c. 111, § 72E, each notice of violation or deficiency shall contain the following:
(1) A description of the deficiency or deficiencies;
(2) The period within which the deficiency must be corrected in accordance with 105 CMR 153.022(C); and
(3) The provisions of the law and regulations relied on in citing the deficiency.

(B) In the case of a deficiency that jeopardizes the health or safety of patients or the public or seriously limits the capacity of a licensee to provide adequate care or where the violation is the second or subsequent such violation occurring during a period of 12 months, the Department or its agent may summarily suspend a facility's license, designation or other form of approval effective immediately, provided that the person affected shall be promptly and subsequently afforded an opportunity for a hearing pursuant to M.G.L. c. 111, § 72E;

153.022: Plan of Correction

(A) Pursuant to M.G.L. c. 111, § 72E, the Department may require a facility licensed, designated or otherwise approved by the Department pursuant to M.G.L. c. 111, § 71 to submit a written plan of correction for each existing deficiency.

(B) In the plan of correction, the facility shall specify the manner in which the correction shall be made and the date by which the deficiency shall be corrected.

(C) The Department shall specify a reasonable time, not more than ten calendar days after the written notice of deficiency and request by the Department for the submission of a plan of correction. The licensee shall correct all deficiencies within 30 days unless the licensee requests an extension that may be approved by the Department. The licensee shall remedy or correct each violation cited therein. The licensee may be required to submit a plan of correction immediately at the completion of the inspection if deficiencies are found upon inspection which threaten health and safety.

(D) The Department may modify any nonconforming plan upon notice in writing to the licensee.

(E) The Department shall attempt to approve or deny the plan of correction within ten calendar days of receipt of the plan. Failure to respond to a submitted plan of correction shall not be deemed to be an acceptance of the plan of correction.

(F) Pursuant to M.G.L. c. 111, § 72E, failure to remedy or correct a cited violation by the date specified in the notice of violation in accordance with 105 CMR 153.021 or corrected a cited deficiency as specified in the plan of correction as accepted or modified by the Department are grounds for enforcement action, including suspension or revocation of a license, designation or other form of approval and civil fines as may be imposed upon the licensee after complaint brought by the Department pursuant to the authority under M.G.L. c. 111, §§ 71 and 73 unless the licensee demonstrates to the satisfaction of the Department or court that such failure was not due to any neglect of duty and occurred despite good faith attempts to correct the deficiency by the specified time.

153.023: Temporary Limitations, Restrictions, Suspensions or Revocations of Licenses to Operate a Long-term Care Facility without Hearing

Pursuant to M.G.L. c. 111, § 72E and 105 CMR 153.014(B), the Department may temporarily limit, restrict, suspend, or revoke a license, designation or other form of approval for cause as described at 105 CMR 153.014(A)(I) through (3), prior to a hearing, pending further adjudicatory proceedings in accordance with 105 CMR 153.023 and 105 CMR 153.029, if:

(A) The temporary limitation, restriction, suspension, or revocation is due to immediate and serious threat to public health, safety, or welfare; and

(B) The Department allows for further enforcement proceedings or adjudicatory hearings in a reasonable timeframe and in accordance with 105 CMR 153.023 and 105 CMR 153.029.

153.024: Suspensions

(A) Suspensions. Suspension of a license may include suspending the license at any point during the pending license revocation action or suspending the license to permit the licensee a period, not less than 60 days, to terminate operations, limit admissions, and discharge or transfer all residents, as applicable.

(B) The Department shall promptly issue a written order to limit, restrict, or suspend a license, including the reasons for the suspension and notifying the licensee of the right to an adjudicatory hearing.

153.024: continued

(C) Provided that the licensee submitted a written request for such proceedings within seven days after notification of suspension, the Department shall afford an opportunity for adjudicatory proceedings no later than 21 days thereafter pursuant to 105 CMR 153.029, 801 CMR 1.00: *Standard Adjudicatory Rules or Practice and Procedure*, and M.G.L. c. 30A.

(D) After hearing or waiver thereof, the Department may modify a license, certification, certificate of inspection, designation or other form of approval, or suspend, revoke or refuse to renew a license, certification, certificate of inspection, designation or other form of approval.

(E) Upon receipt of notice of the Department's final decision, the affected person must immediately return for the term of the suspension any license, certification, certificate of inspection, designation or other form of approval previously issued.

153.025: Revocation or Refusal to Renew

(A) If the Department initiates action to revoke or refuse to renew a license, the licensee shall be notified in writing of the reasons for the Department's action and of their right to an adjudicatory proceeding pursuant to 150 CMR 153.029. In no case shall the revocation of such a license take effect in less than 30 days after written notification by the Department.

(B) Written request for a hearing must be submitted within 14 calendar days of receipt of notification of Department action.

(C) After hearing or waiver thereof, the Department may modify a license, or revoke or refuse to renew a license.

(D) Upon receipt of notice of the Department's final decision, the licensee must immediately return to the Department any license previously issued.

153.026: Denial

(A) If a license is denied on the basis of disputed facts, then the denied applicant may request in writing an adjudicatory hearing within 14 calendar days of the notice of denial, provided that the applicant submits written evidence which the applicant would offer at a hearing sufficient to support the applicant's factual allegations.

(B) If a license is denied by the Department on the basis of facts over which there is no material dispute, then the applicant shall be notified in writing of the reasons for the denial. Any applicant aggrieved by a denial on the basis of undisputed facts is not entitled to an adjudicatory hearing but may seek judicial review under M.G.L. c. 30A, § 14.

153.027: Denial, Revocation or Refusal to Renew Based on Lack of Certificate of Inspection.

(A) Pursuant to 105 CMR 153.007(A), the Department shall not approve the issuance of a license without an approved certificate of inspection.

(B) If the Department is notified that the Office of Public Safety and Inspections or the head of the local fire department has denied any applicant, potential transferee or licensee, including its respective owners, a certificate of inspection, and that an appeal, if requested, has been duly denied by the Office of Public Safety and Inspections, the Commissioner may:

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

153.028: Denial, Revocation or Refusal to Renew Based on Criminal Record:

(A) Pursuant to 105 CMR 153.013, the Department shall determine suitability of the applicants, potential transferees or licensees, including its respective owners, who have been convicted of, pleaded guilty or *nolo contendere* to, or have, in a judicial proceeding, admitted facts sufficient to warrant a finding of 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, the misuse of patient or resident funds.

(B) The Commissioner shall notify, in writing, said applicant, potential transferee or licensee that their application or license will be denied, revoked or refused renewal unless said applicant, potential transferee or licensee has been determined suitable for licensure pursuant to a formal settlement agreement or the application of previous regulatory provisions. Said notice shall include the factual basis for the Department's determination.

(C) The Commissioner shall afford the applicant, potential transferee or licensee, including its respective owners, 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.

(D) The Commissioner shall deny, revoke or refuse to renew the license of the applicant, potential transferee or licensee without further hearing unless the applicant or licensee submits the documentation required in 105 CMR 153.029.

153.029: Adjudicatory Proceedings and Scope of Review

(A) All adjudicatory proceedings will be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Standard Rules of Practice and Procedure.*

(B) The Commissioner shall designate a presiding officer to conduct a hearing and render a tentative decision containing findings of fact and rulings of law. If the presiding officer finds any single ground for denial, revocation, suspension, or refusal to renew any license, certification, certificate of inspection, designation or other form of approval, the [residing officer shall render a decision affirming the action initiated by the Department.

(C) Determination of Suitability and Responsibility: Any presiding officer conducting a hearing following a suspension, revocation or refusal to renew, denial, or limitation on new admission pursuant to sections 105 CMR 153.029(D) through (G) shall determine the suitability or responsibility of any applicant, potential transferee, or licensee, including its respective owners, whether or not the applicant, potential transferee, or licensee, including its respective owners, is licensed at the time the determination is made. The presiding officer shall uphold the decision of the Commissioner that the licensee is not suitable or responsible if a presiding officer finds:

(1) that the applicant, potential transferee, or licensee, including its respective owners, is unsuitable or not responsible under any single provision of 105 CMR 153.013(A); or

(2) that the applicant, potential transferee, or licensee, including its respective owners, is unsuitable or not responsible under any combination of factors listed in 105 CMR 153.013(B).

(D) Suspensions. In cases of suspension of a license, the presiding 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.

153.029: continued

(E) Revocation, or Refusal to Renew. In cases of revocation of or refusal to renew a license pursuant to 105 CMR 153.029, the presiding officer shall determine whether the Department has proven by a preponderance of the evidence that the licensee, including its respective owners, is not suitable or responsible 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 initiated the hearing procedure. The presiding officer shall uphold the decision of the Commissioner to deny, revoke or refuse to renew the license if the hearing officer finds any single ground for revocation of or refusal to renew a license pursuant to 105 CMR 153.014.

(F) Denials. In cases of denial of an original license, the presiding officer shall determine whether the applicant or potential transferee has proven by preponderance of the evidence that they are suitable and responsible for licensure under M.G.L. c. 111, § 71 and 105 CMR 153.000.

(G) Limitation on New Admissions

(1) An appeal of the Commissioner's order pursuant to 105 CMR 153.015 to limit or not admit any new residents at a long-term care facility may be requested by filing in writing a Notice of Claim for an Adjudicatory Proceeding pursuant to 801 CMR 1.01: *Standard Adjudicatory Rules of Practice and Procedure* within 14 calendar days of receipt of the order.

(2) An order to limit or not admit new residents shall remain in effect pending the hearing officer's decision on the appeal.

(3) If the presiding officer finds the Department has proven by a preponderance of the evidence at the time the determination was made

(a) that the subject long-term care facility was not in substantial compliance with the state statutes or regulations set forth in 105 CMR 153.015(A) or the federal conditions of participation at 42 CFR 483, or

(b) jeopardy existed at the subject long-term care facility, then the presiding officer shall uphold the determination made by the Commissioner.

153.030: Nonexclusivity of Enforcement Procedures

The enforcement procedures contained in 105 CMR 153.000 are not mutually exclusive. With the exception of penalties for deficiencies, as provided in 105 CMR 153.035, which shall be preceded by a plan of correction, pursuant to 105 CMR 153.022, any enforcement procedures may be invoked simultaneously if the situation so requires.

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

Whenever an applicant, potential transferee, or licensee, including its respective owners, 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, potential transferee or licensee, including its respective owners, shall not establish or maintain any long-term care facility subject to licensure by the Department for a period of ten years. An applicant, potential transferee or licensee, including its respective owners, may establish or maintain a long-term care facility thereafter only if they demonstrate that have significantly changed such that they have become suitable and responsible to establish or maintain a long-term care facility.

153.032: 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, either voluntarily or involuntary.

153.032: continued

(C) No license shall be valid for any building or premises other than those for which the license was originally issued.

153.033: Transfer of Facility Operations

(A) At least 90 calendar days in advance of a proposed transfer of facility operations, any potential transferee who intends to acquire a long-term care facility shall submit a Notice of Intent to Acquire form to the Department. The Department shall notify each potential transferee 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 potential transferee, 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 potential transferee in writing of its decision regarding suitability within the prescribed time period, the potential transferee shall be deemed responsible and suitable. Concurrently with the submission of the Notice of Intent to Acquire to the Department, the potential transferee shall provide notice to the current staff of the facility and to any labor organization that represents the facility's staff of the potential transferee's plans to retain or not retain the facility staff and to recognize and bargain with any labor organizations currently representing the facility staff.

(B) Opportunity for Public Input. All potential transferees must meet the following requirements:

(1) Public Notice. Within seven days of submitting the Notice of Intent to Acquire form to the Department, the potential transferee shall also publish notice in the daily newspaper(s) within the city or town of, or nearest to, the location of the facility and prominently display this notice on the website for the long-term care facility being acquired, if available. This public notice shall accurately describe the proposed acquisition and meet the following requirements:

(a) The notice must contain the name and address of the healthcare facility being acquired; name and address of the seller; name and address of the buyer; potential changes, if any, in the services of the healthcare 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 ten adults. Such petition shall include the name, address and signature of each adult and designate one member as the representative of the group. 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 offices of the Department of Public Health, Division of Health Care Facility Licensure and Certification." Such notice shall state that a request for hearing may be made for a period of 14 days following publication in the newspaper. The notice shall include both physical and electronic mail addresses provided by the Department for the submission of comments.

(b) If the notice as published does not contain all of the information listed in 105 CMR 153.033(B)(1)(a), the Department may require republication of the notice within a reasonable period of time.

(c) The newspaper notice shall appear in the Legal Notice section; and shall be captioned as appropriate, such as "Public Announcement Concerning (name of healthcare facility)." An identical notice shall also be published at least once in some other section of the same newspaper.

(d) No final determination of suitability shall be made unless the applicant has submitted a true copy of such notice.

(2) Within seven days of the Notice of Intent to Acquire form being submitted to the Department, the current owner or current licensee of a facility that is the subject of a Notice of Intent to Acquire shall provide a copy of the notice required by 105 CMR 153.033(B)(1) to the following:

(a) Each resident of the facility and, where applicable, the resident's legal representative;
(b) The designated family member of each resident;
(c) The facility's resident council;
(d) The facility's family council;

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(e) Each staff member of the facility;
(f) Every labor organization that represents the facility's workforce during the period of the transfer of facility operations;
(g) The Office of the State Long term Care Ombudsman;
(h) The Office of the Local Long term Care Ombudsman;
(i) The members of the General Court who represent the city or town where the facility is located; and
(j) A representative of the local officials of the city or town where the facility is located.

The current owner or licensee shall submit a signed statement to the Department that such notice was provided in accordance with 105 CMR 153.033(B)(2) before a final determination of suitability is rendered for the prospective owner or licensee. Failure to comply with the requirements of 105 CMR 153.033(B) shall delay a finding of suitability. The provision in 105 CMR 153.033(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.

(3) Hearings.
(a) Upon receipt of a petition for a hearing, the Department will hold a hearing no later than 45 days before the proposed date for the transfer of facility operations.
(b) The Department shall notify in writing the potential transferee, the current owner and current licensee, and the petitioner group's representative of any hearing that is scheduled under 105 CMR 153.033. The current owner or licensee shall immediately post a notice of the hearing in the facility that is subject of the Notice of Intent to Acquire. 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. At minimum, the notice shall be placed in the dining room, in the activity room, and main entrance. A copy of the text of the notice shall be readily available upon request by any resident, a resident's legal representative, 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 facility operations.
(c) 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 transferee.
(d) If a single transfer of facility operations involves multiple facilities, the Commissioner may in their discretion schedule one or more consolidated hearings regarding the transfer of facility operations.

(C) Any person applying for a license as a result of any transfer of facility operations shall file proof that such transfer has occurred within two business days of the transfer unless an extension of the two business day period is granted by the Commissioner.

(D) A license application filed as a result of a transfer of facility operations, 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, provided the potential transferee has been deemed suitable and responsible by the Department. If not timely filed, such an application shall not have such effect.

(E) In the case of a transfer of facility operations, the existing classification shall not be upgraded or downgraded without written approval by the Department. Except as provided in 105 CMR 153.038(B), the existing number of currently licensed beds shall not be exceeded without Determination of Need approval.

(F) Any notice of hearing, order or decision that the Department or the Commissioner issues for a facility prior to a transfer of facility operations 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.

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(G) A transfer of facility operations 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 105 CMR 153.000.

(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 or financial relation to the transferee;
(4) the terms of the transfer; and
(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 without Department approval in accordance with 105 CMR 153.000.

(I) The Commissioner may waive the time frame for notification or a hearing where the Commissioner has determined that such a waiver is necessary to protect the health and safety of the facility's residents.

(J) The Commissioner may, in their discretion, determine that a proposed transaction does not rise to the level of a transfer of facility operations.

153.034: Voluntary Closure

(A) At least 120 days in advance of a proposed closure of a long-term care facility, the licensee shall notify the Department of its intent to close and, at the same time, submit a draft closure plan.

(1) The notice must include the following information:
(a) The proposed date of closure;
(b) Reasons leading to closure;
(c) The facility representative whom residents or their legal representatives, family members, staff or other interested parties may contact with questions they may have regarding the proposed closure;
(d) Notice that a public hearing will be held on the proposed closure at least 90 days prior to the proposed closure date, and how information regarding the date, time and place of the hearing will be made available;
(e) Notice that interested parties may file comments on the proposed closure and the draft closure plan with the Department up until the date of the public hearing; and
(f) Other information as may be specified by the Department.

(2) The draft closure plan must include the following information:
(a) The steps that will be taken to assist residents or their legal representatives in preparing for closure of the facility, to include:
1. Psychological preparation or counseling of each resident as necessary;
2. Efforts to find appropriate alternate placements for all residents in a facility that are capable of meeting all of their needs and including the consideration of the resident's and family's choice of facility;
3. Consultation with each resident or the resident's legal representative and, with the resident's or the legal representative's consent, interested family members regarding placement options and the placement process being considered; and
4. Notification of the times during which family meetings will be held to provide information on the closure process and steps the facility will undertake to ensure the appropriate transfer or discharge of each resident.
(b) The steps that will be taken to assist facility staff in preparing for closure.
(c) The storage of medical records after closure of the facility.
(d) When the facility will stop admitting new residents, and the process for readmitting residents who are transferred to the hospital during the closure process.

(3) A copy of the notice of intent to close and draft closure plan shall also be provided to the following:

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(a) Each resident of the facility and where applicable the resident's legal representative;
(b) The designated family member of each resident;
(c) The facility's resident council;
(d) The facility's family council;
(e) Each staff member of the facility;
(f) Every labor organization that represents the facility's workforce;
(g) The Office of the State Long term Care Ombudsman;
(h) The Office of the Local Long term Care Ombudsman;
(i) The members of the General Court who represent the city or town where the facility is located; and
(j) A representative of the local officials of the city or town where the facility is located.

(B) Upon receipt of the notice of intent to close a long-term care facility, the Department shall coordinate with the licensee for the scheduling of a public hearing on the proposed closure. The hearing shall be held at least 90 days prior to the proposed closure date as directed by the Department virtually, at a location accessible to residents, family members and facility staff, or a combination of the two.

(C) A licensee intending to close a long-term care facility shall provide notice of the date, time and location of the public hearing to be held on the proposed closure at least 14 days prior to the public hearing. The notice of public hearing must be prepared in a format acceptable to the Department.

(1) A copy of the draft closure plan and notice of public hearing shall be posted in the facility and notice of the date, time, and location of the public hearing shall be provided to each person or entity who received the initial notification of intent to close at least 14 days prior to the public hearing.

(2) Should a licensee fail to distribute either the draft closure plan or notice of hearing in a timely manner or in a format acceptable to the Department, the public hearing on the proposed closure plan will be rescheduled and the proposed closure date will be extended to allow for a public hearing at least 90 days prior to the proposed closure date.

(D) The Department shall complete a review of the draft closure plan and all comments on the proposed closure that have been submitted to the Department by the date of the public hearing, and notify the licensee in writing within 14 days of the public hearing either its approval of the closure plan and an approved closure date, or comments on the closure plan. If the Department comments on the proposed closure plan, the licensee shall respond in writing to the Department comments within 14 days.

(E) Upon receipt of the Department's approval of the closure plan and closure date, the licensee shall post in the facility, and provide to each person or entity who received the initial notification of intent to close, notification of the Department's approval of its closure plan and the approved closure date, and notice that the facility will close.

(F) All closures shall be completed in an orderly manner in accordance with the closure plan approved by the Department.

(1) Upon notification of the Department's approval of its closure plan, the licensee shall provide updates to the Department on its closure activity on a weekly basis, or more frequently upon request.

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

(3) Copies of all appropriate medical records shall accompany each resident upon transfer or discharge.

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(G) Failure to comply with the notice provisions, failure to implement an appropriate relocation plan, or transfer of residents prior to the 60-day notice period as specified in 105 CMR 153.034, may result in a finding that an emergency as defined in M.G.L. c. 111, § 72M exists and the Department may seek the appointment of a receiver. Failure to ensure appropriate notice to and relocation of all residents may result in a finding of abuse, mistreatment or neglect as defined in M.G.L. c. 111, § 72F and 105 CMR 155.000*: Patient and Resident Abuse Prevention, Reporting, Investigation, Penalties, and Registry*.

(H) The Commissioner may waive the 120-day time frame for initial notification of closure or the 90-day time frame for a hearing only in extraordinary circumstances where the Commissioner has determined that such a waiver is necessary to protect the health and safety of the residents served by the facility.

153.035: Penalties

(A) Pursuant to M.G.L. c. 111, § 73, 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 $1,000 and for a subsequent offense by a fine of not more than $2,000 or imprisonment for not more than two years.

(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 $1,000 and for a subsequent offense by a fine of not more than $2,000 or by imprisonment for not more than two years.

(C) Pursuant to M.G.L. c. 111, §§ 71, 72, 72C, and 73, the Department may impose fines for noncompliance where a deficiency continues to exist beyond the date prescribed for correction in the correction order, as set forth in 105 CMR 153.022. Such fines for noncompliance against any person ordered to correct deficiencies shall not exceed $500.00 for each violation of an applicable rule or regulation. Each day of noncompliance constitutes a separate offense.

(D) A licensee is prohibited from acquiring any additional facilities or increasing the bed quota of any existing facilities for ten years from the date of the conviction, guilty plea or admission, except with the explicit permission of the Public Health Council, if the licensee has been convicted of, pleaded guilty or *nolo contendere* to, or have, in a judicial proceeding, admitted facts sufficient to warrant a finding of 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, or the misuse of resident funds, even if the licensee has been determined suitable for continued licensure pursuant to formal settlement

153.036: 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. Such name shall appear on all listings, advertisements, stationery and website.

(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 has authorized in writing the use of such words in its name.
(2) "Nursing" or "convalescent" unless the facility is licensed as a Level I, II, or III facility.

(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.

153.037: Classification

(A) The Department will license long-term care facilities according to the level of care provided: Level I, II, III, and IV.

(B) 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 in 105 CMR 153.037, 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.
(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 105 CMR 100.000: *Determination of Need*. If no determination of need is required, the facility must submit a notice of intent and architectural plans if construction and renovation is associated with the reclassification.

153.038: Licensed Bed Capacity

(A) Licensed bed capacity shall be the number of beds that the licensee is authorized to operate. As used 105 CMR 153.038, licensed bed capacity is not a form of a license within the meaning of M.G.L. c. 30, § 13.

(B) The licensee must comply with any relevant provisions of 105 CMR 100.000: *Determination of Need* prior to seeking any increase in licensed bed capacity. The Commissioner may, upon review and approval of notice of intent to acquire and architectural plans, grant a one time increase in quota of up to 12 beds.

(C) The licensee shall submit written notification of any permanent reduction in the number of licensed beds to the Commissioner.

(D) In cases where temporary removal of beds from service is necessary for construction authorized by the Department, 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, 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. On receipt of such a notification, the Department will provide the revised "operating bed capacity" to the Office of Medicaid and the Center for Health Information and Analysis.

(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 that a licensee is authorized to operate.

(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 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.

153.039: 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 shall be conspicuously posted thereon and include, but are not limited to, the following:

153.039: continued

(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 I, II, and III facilities or by the Office of Public Safety and Inspections 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.

153.040: Restrictions

(A) A long-term care facility shall not use any part of the licensed premises for tenant occupancy or for other business. Unlicensed space within the long-term care facility premises may be used for tenant occupancy or other business if the following requirements are met:
(1) The space that constitutes the premises of the licensed long-term care facility and the premises of the tenant occupancy or business shall not be intermingled space. The space that constitutes the facility shall be contiguous.
(2) The long-term care facility shall be separate and distinct from that portion of the premises used for tenant occupancy or other business and shall be physically separated from any unlicensed space within the long-term care facility by means of doors, walls, or other barrier. A fire rated wall which meets the fire protection rating required by 780 CMR: the *Massachusetts State Building Code* shall be provided between the tenant occupancy and the long-term care facility. In addition, all certified facilities must have a fire rated wall in compliance with the National Fire Protection Association *(NFPA) 101 Life Safety Code*.
(3) The long-term care facility shall not be used as a thoroughfare for access to the area in which the tenant occupancy or other business is located.
(4) The portion of the premises used for tenant occupancy or other business shall not constitute a hazard or nuisance to residents of the long-term care facility.
(5) The presence of an area used for tenant occupancy or other business cannot impede the licensed long-term care facility's ability to comply with the provisions of 105 CMR 150.000: *Standards for Long-term Care Facilities* and any applicable federal requirements, including:
(a) Fire safety requirements, which shall include, for certified facilities, compliance with the National Fire Protection Association *(NFPA) 101 Life Safety Code*;
(b) Staffing requirements;
(c) Resident egress and elopement control;
(d) Resident access to outdoor recreation area; and
(e) Parking requirements.
(6) Prior to any unlicensed part of the premises being used for tenant occupancy or other business, the long-term care facility must ensure the proposal is the product of sound community engagement and consultation regarding the proposed tenant occupancy or other business with the following groups:
(a) The facility's resident council;
(b) The facility's family council;
(c) Staff at the facility;
(d) The Office of the State Long term Care Ombudsman; and
(e) The Office of the Local Long term Care Ombudsman.

(B) A facility may not provide any services to persons other than residents, except as provided in 105 CMR 153.040(B).
(1) A facility may provide rehabilitation services to persons other than residents as provided in 105 CMR 150.010: *Rehabilitation Services: Physical Therapy, Occupational Therapy, Speech, Hearing and Language Therapy (and Therapeutic Recreation in a SNCFC*) and 105 CMR 150.540: *Rehabilitation Service Areas*.
(2) Notwithstanding any restrictions in 105 CMR 150.012(H): *Special Activities and Services*, a facility may provide special activities and services described therein to persons other than residents provided that:
(a) Use of such services does not require persons other than residents to pass through resident care areas to access the services.
(b) If articles made by the residents are sold in the gift shop, the money shall be given or credited to those residents.

153.040: continued

(c) Any snack shop acting as a food establishment, as that term is defined in 105 CMR 590.000: *State Sanitary Code Chapter X - Minimum Sanitation Standards for Food Establishments*, must so act in accordance with any and all applicable requirements of 105 CMR 590.000.

A facility that previously received, and can produce a copy of, a waiver from the Department under 105 CMR 153.041 allowing the facility to use unlicensed space on the premises for tenant occupancy, other business, or to provide certain services to persons other than residents may continue to rely on such waiver even if such use or service does not meet the requirements in 105 CMR 153.040(A) or (B); provided, however, any such waiver remains subject to the terms or conditions included in the waiver and such a waiver may be revoked due to noncompliance with its terms or conditions or the provisions of 105 CMR 150.000: *Standards for Long-term Care Facilities* or 105 CMR 153.000.

153.041: Special Projects and Waivers

(A) Special Projects. The Department will consider proposals for special projects for the innovative delivery of long-term care services. No such proposal shall be implemented without prior written approval of the Department. The Department may impose conditions on special projects as necessary.

(B) Waivers. The Commissioner may waive the applicability to a particular facility of one or more of the requirements imposed by 105 CMR 153.000, or 105 CMR 150.000: *Standards for Long-term Care Facilities* upon finding that:

(1) compliance would cause undue hardship to the facility;

(2) 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;

(3) the facility has instituted compensating features or has undertaken a special project under 105 CMR 153.041(A) acceptable to the Department; and

(4) the facility provides to the Commissioner written documentation supporting its request for a waiver.

153.042: 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.

153.100: Severability

The provisions of 105 CMR 153.000 are severable. If any provision in 105 CMR 153.000 is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be so affected.

REGULATORY AUTHORITY

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