

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Division of Health Care Facility Licensure and
Certification
99 Chauncy Street, Boston, MA 02111

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Circular Letter: DHCQ 15-3-629

TO: Adult Day Health Program Administrators and Applicants for Licensure
FROM: Sherman Lohnes, Director 
DATE: March 18, 2015
RE: Adult Day Health Licensure Guidelines

On January 2, 2015, the Massachusetts Department of Public Health's (the Department) licensure regulations at 105 CMR 158.000 became effective for Adult Day Health Programs ("Programs") operating or seeking to operate in Massachusetts. These regulations require all Programs existing and in operation prior to January 2, 2015 ("Existing Programs"), to file a licensure application with the Department by May 1, 2015, and all other Programs ("New Programs") to obtain a license before beginning operation.

The Department will begin accepting applications for the licensure of Programs on April 1, 2015. Application forms will be made available on the Department's website on or about March 20, 2015. A complete application from an Existing Program, filed in a timely manner in accordance with these guidelines, shall, in accordance with 105 CMR 158.005(C), have the effect of a provisional license until the Department takes action on the application.

Staff from the Department will participate in licensure workshops in Worcester on Tuesday, March 24, 2015, and in Boston on Friday, March 27, 2015. Additional information regarding these workshops is being sent by email to existing Programs, or may be obtained by calling the Department at 617-753-8000.

Application for Initial Licensure:

Application forms will be made available on the Department's website on or about March 20, 2015 at:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/healthcare-quality/health-care-facilities/licensure-and-medicaremedicaid-certification.html>

Existing Programs must submit completed application packets by the May 1, 2015, deadline to:

DHCFLC Licensure Processing Unit
Department of Public Health
99 Chauncy Street, 11th Floor
Boston, MA 02111

The initial licensure application packet will consist of an application checklist and three forms with supporting documentation, as applicable:

- **Application Checklist:** Each Program must complete and submit an Application Checklist in conjunction with its application for licensure. The Application Checklist will assist Programs in self-checking their application for completeness, and aid the Department in its review of an application.
- **Initial Licensure Form:** Programs must complete this form in its entirety and provide the Department with a copy of a local occupancy permit and proof of a local fire inspection for their Program site; and CORI release forms as required. Programs whose answers to the screening questions in the Initial Licensure Form trigger the requirement to submit an Additional Disclosure Form must submit that form as part of their application. Note that a fee for licensure has not been established pursuant to M.G.L. c.7, §3B as of the date of this Circular Letter. The Department will provide Programs with information on the amount of the licensure fee, and the payment process for the licensure fee when that information becomes available.
- **Program Capacity Form:** Programs must complete and submit a Program Capacity Form in order for the Department to establish the maximum Program capacity for the site at any one time. The Department recognizes that the number of participants enrolled overall may be greater than the capacity authorized for the Program site. Programs must submit a floor plan of the Program site with the Program Capacity Form.
- **Clinical Information and Attestation Form:** Existing Programs must complete and submit the Pre-Survey Form, on which they will attest to being either in compliance at the time of submission, or submitting a plan to achieve full compliance or seek waivers by January 2, 2016. Existing Programs seeking waivers are strongly advised to submit their waiver requests as soon as possible, in order to allow the Department sufficient time for review; and the Existing Program sufficient time to comply with any conditions that may be attached to approval of the waiver, or corrective action if the waiver is denied. New Programs must either be in compliance or request waivers prior to beginning operation. All Programs must submit a certificate of approval from their local board of health for their kitchen with their application if meals are prepared on site.

Registration with the Department for Reporting, Notifications and Registry Checks:

In addition to a licensure application, all Programs must register with the Department in order to meet the licensure requirements for reporting of serious incidents and accidents occurring on the premises of a Program (105 CMR 158.031(C)); maintaining a reliable means of receiving information from the Department in the case of an emergency (105 CMR 158.031(E)(2)); and conducting a Nurse Aide Registry check prior to hiring staff or approving volunteers (105 CMR 158.030(H)(5)).

Programs must also be registered with the Department of Criminal Justice Information Services in order to conduct criminal background checks prior to hiring staff or approving volunteers (105 CMR 158.030(H)(5)).

New Programs once licensed, and Existing Programs upon the filing of a complete application for licensure, will be required to make reports to the Department under 105 CMR 158.031(C) for the following events occurring on the premises covered by the Program's license:

- **Immediately by phone to the Department to 617-753-8150, followed by electronic submission using the Health Care Facility Reporting System (HCFRS):**
 - Death that is unanticipated, not related to the natural course of the participant's illness or underlying condition, or that is the result of an error or other incident;
 - Full or partial evacuation of the facility for any reason;
 - Fire;
 - Suicide of a Participant;
 - Serious criminal acts; or,
 - Pending or actual strike action by its employees, and contingency plans for operation of the Program.
- **Immediately using HCFRS:**
 - Illness as described in 105 CMR 158.031(C)(1)(g); or,
 - Suspected instances of participant abuse, neglect, mistreatment or misappropriation of a participant's personal property.
- **Within seven days using HCFRS:** Any other serious incident or accident occurring on the Program's premises that seriously affects the health or safety of a participant, or causes serious physical injury to a participant.

The Department has defined "accident" to include but not be limited to falls, burns, electrocutions, and other misadventures that occur on the premises of the Program; and "serious incident" to include any incident that results in serious injury, including, but not limited to, poisonings occurring on the premises of the Program, equipment malfunction or user error, medication errors, and other incidents resulting in serious injury not anticipated in the normal course of events.

For the purposes of reporting, “seriously affects the health and safety” and “causes serious physical injury” are defined as requiring care at a higher level than first aid, including, but not limited to, a laceration requiring sutures to close, a fall with fracture, or other injury that requires intervention off the premises.

Programs should begin the registration process required to fulfill the above requirements in accordance with the following timelines:

- **Health Care Facility Reporting System (HCFRS):** The Department maintains a web based system for licensed providers to report incidents and accidents. Use of HCFRS for reporting accidents and incidents is required as a condition of licensure. Programs must complete the following steps in order to register as users of HCFRS:

STEP 1: Each Program must complete and submit four forms to the Department with its application for licensure:

Form A. Virtual Gateway Services Agreement.

Form B. Virtual Gateway Access Administrator Designation Form
(each Program must designate a minimum of two Access Administrators).

Form C. DPH HCFRS Facility/Program Agreement.

Form D. DPH HCFRS Authorized User Agreement (one for each individual user).

STEP 2: Each Program must complete and submit a User Request Form (“URF”) to the “Virtual Gateway” by email. The Program’s Access Administrator will receive the URF, an Excel spreadsheet, from the Department by email once the Virtual Gateway approves their Services Agreement. This generally takes seven to ten days.

STEP 3: Each individual Program user must log on to the Virtual Gateway website within seven days of receiving their user name and temporary password by email from the Virtual Gateway.

- **Adult Day Health Listserv:** The Department has established an Adult Day Health Listserv for the purpose of distributing information to licensed Programs and others regarding adult day health licensure requirements and information regarding emergencies. Participation in this listserv is required. Note that only the Department may send messages via this listserv. Members are not able to send messages back to the Department, or to other listserv members via the listserv.

Two representatives from any Program which has not already registered with the Department’s Adult Day Health Listserv should immediately:

STEP 1: Create an email with only “ADH Listserv” typed into the subject line (in others words, no text in the body of the email itself); and,

STEP 2: Send the email from the email account at which the user will receive notifications to:

Subscribe-dph_adulthoodhealth@listserv.state.ma.us

Once submitted, Listserv automatically enters the user's email addresses onto a distribution list, and sends a confirmation of enrollment.

- **Nurse Aide Registry:** The Department has established a Nurse Aide Registry database which contains information on individuals certified to work as a nurse aide in nursing homes, as well as findings of abuse, neglect and misappropriation. Programs are required to check the Nurse Aide Registry prior to hiring staff or approving volunteers. Programs should consider how to incorporate the use of information from the Nurse Aide Registry into their policies and procedures on preventing, detecting and responding to abuse, mistreatment, neglect and misappropriation required under 105 CMR 158.031(F)(1)(o).

In order to run a Nurse Aide Registry check on an individual, the Program must first register with the Department to set up an account. To set up a Nurse Aide Registry account, Programs must call (617) 753-8143, and speak with a member of the Nurse Aide Registry staff.

- **Criminal Offender Records Information (CORI) Checks:** Information regarding the CORI process is available at: <http://www.mass.gov/eopss/crime-prev-personal-sfty/bkgd-check/cori/> Programs must register with the Department of Criminal Justice Information Services directly to access CORI information, if they have not done so already.

Inspections, Complaint Investigations, Statements of Deficiency and Plan of Correction:

The Department or its agents may, in accordance with 105 CMR 158.011, visit and inspect a Program or applicant at any time without prior notice in order to determine the Program's or applicant's compliance with state law and 105 CMR 158.000. In the event an inspection or complaint investigation results in a finding of non-compliance, the Department will notify the Program in writing. The Department's findings will be documented in a "Statement of Deficiency".

A Program cited for non-compliance must respond with a written "Plan of Correction" within ten business days of receipt of the Statement of Deficiency. The Program's Plan of Correction must be returned to the Department in accordance with the instructions that will be provided in the cover letter to the Statement of Deficiency, and include the following:

- What corrective actions will be taken in regard to those participants found to have been affected by the deficient practices cited;

- How the Program will identify other participants having the potential to be affected by the same deficient practices, and what corrective actions will be taken;
- What measures will be put in place, or what systemic changes will be made to ensure that the deficient practices do not re-occur; and,
- How the corrective actions will be monitored to ensure the deficient practices will not re-occur (that is, what quality assurance program will be put into place).
- The Program's timetable for implementing its Plan of Correction, which must be consistent with any deadline for corrective action established by the Department.

Changes of Information and Requests for Approval of Changes of Capacity, Location, Ownership and Voluntary Closure:

Licensees must report any changes in information, or additions to the content of the information contained in any document required to be filed to the Department within thirty days of such change or addition (105 CMR 158.014). In addition, Programs must obtain prior approval from the Department prior to any change in capacity, location or ownership, or closure.

- **Change of Capacity (105 CMR 158.026):** A Program seeking to increase or decrease capacity must obtain approval from the Department in advance. The Program must submit an updated Program Capacity Form and floor plan to the Department's Licensure Unit at least thirty days in advance of the proposed change in capacity to allow for sufficient time for review by the Department. When the change in capacity is due to a reduction in the square footage of the participant area, the notice must include the reason for, and estimated length of time of the reduction.
- **Change of Location (105 CMR 158.022(B)):** A Program that is planning to move to a new location must obtain approval from the Department in advance. The Program must notify the Department in writing at least ninety days in advance of the proposed change in location; and submit an updated Program Capacity Form with a floor plan, and an updated Clinical Information Form, as well as supporting documentation to include a local certificate of occupancy and local fire inspection certificate; and a local board of health kitchen certificate if meals are to be prepared on site, to the Department's Licensure Unit for approval prior to the change of location.
- **Change of Name (105 CMR 158.025):** A Program must obtain approval from the Department prior to changing its name. A Program must make its request for approval to the Department in writing by means of a letter which indicates the current name and license number of the Program; the proposed name for the Program; and a statement that the proposed name change is not the result of a transfer of ownership as defined at 105 CMR 158.004.
- **Transfer (Change) of Ownership (105 CMR 158.023):** An applicant seeking licensure of a Program as a result of a transfer of ownership must file a Notice of

Intent to Acquire together with supporting documentation with the Department at least ninety days in advance of the proposed transfer of ownership. An updated Program Capacity Form with a floor plan and an updated Clinical Information Form with supporting must be submitted to the Department's Licensure Unit for approval at least forty-five days prior to the transfer of ownership. The transfer of ownership cannot occur until the applicant has been found suitable by the Department. The applicant must submit proof of transfer within forty-eight hours of the transfer of ownership.

- **Voluntary Closure (105 CMR 158.024(A)-(D)):** A Program that intends to cease operation must file a closure plan with the Department at least seventy days prior to the proposed date of closure. The closure cannot begin until the Program's closure plan is approved by the Department. The Program must notify all participants of the pending closure at least sixty days prior to the approved closure date, and comply with the closure plan approved by the Department.
- **Temporary Closure (105 CMR 158.024(E)):** A Program that intends to cease operation on a temporary basis must request approval from the Department at least thirty days prior to the temporary closure. If the temporary closure is due to an emergency, the Program must seek approval within seventy-two hours of closure. The Program's request for approval to close on a temporary basis must specify the reason for closure; what steps will or have been taken to notify participants; and when the Program anticipates that it will re-open. The Department will not approve requests for closure for an indefinite or protracted period of time. Failure to obtain approval from the Department together with the closure of a Program for more than seven days shall constitute abandonment of the Program's license.

Additional Information and Further Guidance:

The Department will provide additional guidelines on clinical and operational matters in an additional circular letter in the next few weeks, and on flu vaccination in the fall of 2015. Programs which have registered as users of the Adult Day Health Listserv will receive these letters via Listserv, and copies of the letters will be posted on the Department's website. In order to contain costs, the Department does not mail hard copies of its circular letters to providers.

Any Program that requires assistance with the initial licensure application process should contact the Department at 617-753-8000 and ask to speak to a member of the Licensure Processing Unit. Questions regarding clinical or programmatic matters should be directed to Division's Assistant Director of Survey Operations at 617-753-8222 or the Regional Supervisor for Adult Day Health at 617-753-8224.

Updated information regarding licensure, and blank application forms for licensure will be available in mid-March 2015 on-line at:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/healthcare-quality/health-care-facilities/licensure-and-medicaremedicaid-certification.html>