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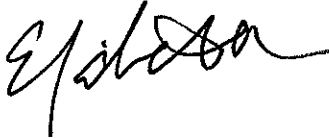
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Circular Letter 18-12-682

To: Long-Term Care Facilities

From: Elizabeth Chen, PhD, MBA, MPH  
Assistant Commissioner 

Date: December 11, 2018

Subject: Long-Term Care Facility Beds Out of Service - New Process

Historically, the Bureau of Health Care Safety and Quality (the "Bureau") has granted permission for both open and closed long-term care facilities to maintain beds out of service ("BOOS") upon request.

The Bureau continually reviews its practices to ensure that they are consistent with applicable law and regulations. In August 2018, the Bureau promulgated revisions to 105 CMR 153.000: *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*. As part of an ongoing effort to align operational practices with the revised regulation, the Bureau determined that the historical process regarding BOOS is not consistent with the intent or wording of the licensure statute or the "licensed bed capacity" section of the related regulation, 105 CMR 153.028. An overview of 105 CMR 153.028 and the operational process going forward follows.

Previously Closed Long-Term Care Facilities: Neither the licensure statutes nor the related regulations contemplate authority to operate beds absent a long-term care facility ("LTCF" or "facility") license. Therefore, all approvals for beds out of service for facilities that are closed will expire on December 31, 2018. Any renewal forms that have been submitted to the Bureau for calendar year 2019 will not be processed or approved.

Open Long-Term Care Facilities: Effective January 1, 2019, the following will apply to open long-term care facilities:

I. Temporary removal of beds from service

To enable the Department to accurately report a facility's current operating capacity, written notification from the licensee to the Department of temporary removal of beds from service is required in two situations:

- (i) for construction authorized by the Department; or
- (ii) to implement a plan of correction for cited significant physical plant deficiencies. (105 CMR 153.028(D))

The beds will be returned to service upon completion of the construction or the plan of correction and the operating capacity reported by the Department upon completion will revert to the original licensed bed capacity on the facility license.

## II. Permanent removal of beds from service

If a licensee permanently removes beds from service, the licensee must notify the Department in writing. (105 CMR 153.028(C)) The number of beds the licensee is licensed to operate at the facility will permanently decrease.

Discontinuance of operation of an entire unit of a facility for any period of time must be treated as a permanent reduction in beds, unless the Department has granted permission in advance. (105 CMR 153.028(F)) To request approval for an exception to the “permanent reduction” requirement, the licensee must notify the Department in writing in advance of closing the unit. In its request, the licensee must provide the following information to the Department:

- the number of beds affected;
- the purpose for the temporary continuation;
- the justification for the exceptional circumstance; and
- the time period for which the beds will be out of service.

If granted, approval for this exception to the permanent reduction in beds requirement will expire on the date specified in the approval.

Discontinuance of operation of an entire facility or building for any period of time must be treated as an abandonment of the license (that is, the license terminates on the date of closure), unless the Department has granted permission in advance. (105 CMR 153.028(G)) To request approval for temporary continuance of the facility license after closure of the facility, the licensee must notify the Department in writing in advance of closing the facility. In its request, the licensee must provide the following information to the Department:

- the purpose for the temporary continuation;
- the justification for the exceptional circumstance; and
- the time period for the temporary continuation.

If granted, approval under this exception to temporarily continue a license after closure will expire on the date specified in the approval.

Moratorium on New Long-Term Care Facility Beds: The Department will review the scope of the long-standing moratorium on new LTCF beds in light of this new process.

For additional information and questions, please contact [dph.bhcsq@massmail.state.ma.us](mailto:dph.bhcsq@massmail.state.ma.us).