The Commonwealth of Massachusetts

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Department of Public Health

Bureau of Health Care Safety and Quality

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**MEMORANDUM**

To: Long-Term Care Facilities

From: Elizabeth Kelley

 Director, Bureau of Health Care Safety and Quality

Date: December 20, 2019; Reissued with clarifications on November 6, 2020

Subject: Enforcement of Requirements regarding Notice to the Bureau of the Permanent Removal of LTCF Beds from Service and the related Permanent Reduction in Number of Beds on the LTCF License

The purpose of this memorandum is to provide information regarding the Bureau of Health Care Safety and Quality’s (the “Bureau”) process for enforcing the state long-term care facility (“LTCF”) licensure requirements regarding notice of permanent removal of LTCF beds from service and the related permanent reduction on the LTCF license of the number of beds the licensee is authorized to operate at the facility. This memorandum also provides a reminder about the LTCF license renewal process. This memorandum is not a rule or regulation. The Bureau may revise, change, update, or rescind this memorandum at any time.

1. Regulatory Requirements for Licensee to Notify Bureau of Permanent Removal of Beds from Service

As stated in the December 11, 2018 Circular Letter 18-12-682 (the “Circular Letter”), to align operational processes with the intent and wording of 105 CMR 153.028, effective January 1, 2019, a LTCF licensee must submit to the Bureau written notification of **any** permanent reduction in the number of beds in operation at its facility as required by 105 CMR 153.028(C). As was also stated in the Circular Letter and in 105 CMR 153.028(F), discontinuance of the operation of an entire unit of a LTCF for **any** period of time **must** be treated as a permanent reduction in the number of beds the licensee is authorized to operate at the facility.

2. Notice Requirement and Consequences of Failure to Notify

**A.** **Notice Requirement** – As stated above and in the applicable regulation, whenever a LTCF licensee permanently takes beds in service at its facility out of service, which includes discontinuing operations of an entire unit for any period of time, the LTCF licensure regulation requires that the licensee notify the Bureau in writing (the “required notice”).

**B.** **Consequences of Failure to Notify** – Effective January 20, 2020, if during a survey a surveyor finds that the number of beds in service is less than the number of beds on the licensee’s LTCF license, the surveyor may inquire as to the reason for the discrepancy. If the beds are permanently, rather than temporarily, out of service and the licensee has not submitted the required notice to the Bureau, the licensee will be cited for violating 105 CMR 153.028(C) and fined $50 for the violation. In addition, if the beds are permanently out of service, the Bureau will re-issue the LTFC license with the reduced bed quota, even if the standard survey takes place after the issuance of a renewal LTCF license.

3. Reporting the Permanent Reduction

In addition to reflecting the permanent reduction in beds on the licensee’s LTCF license, the facility’s revised operating capacity will be reported to MassHealth and the Center for Health Information Analysis (“CHIA”).

4. Effective date

The changes outlined in section 2.B went into effect on January 20, 2020, which was thirty calendar days after the date this memorandum was first issued.

5. Reminder regarding LTCF License Renewal Process

As a reminder, effective January 1, 2019, an application for a renewal license no longer includes a form to request approval to treat beds as temporarily rather than permanently out of service.  Any such approval previously received by a licensee expires at the end of the licensure term during which the approval was received or on the date indicated on the approval form. If facility operations are transferred to a new operator/licensee prior to the expiration of the current operator/licensee’s facility license, any such approval received by the current operator expires at the close of business on the day prior to the effective date of the new operator/licensee’s license; approvals under the old process are not transferrable to a new operator/licensee. As stated in the “Frequently Asked Questions” document posted on April 1, 2019, any request to renew a previous approval will not be processed.  In most cases, upon expiration of an approval issued prior to January 1, 2019 to treat beds at a facility as temporarily rather than permanently out of service, the permanent reduction requirement will be applied and those beds will be taken off the facility license when the license is renewed.

6. Contents of Required Notice and Determining Whether Beds are Permanently out of Service

If you have questions about what the required notice about a permanent reduction must include or whether beds at a LTCF are permanently out of service, please see the responses to frequently asked questions (FAQs) about beds out of service at open LTCFs posted by the Bureau here -- <https://www.mass.gov/info-details/frequently-asked-questions-about-beds-out-of-service-at-open-long-term-care-facilities>.

Questions

Please contact DPH.BHCSQ@MassMail.State.MA.US if you have any questions about the information in this memorandum.