The Commonwealth of Massachusetts

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TO: Commissioner Monica Bharel, MD, MPH and Members of the Public Health Council

**FROM:** Margret Cooke, Deputy Commissioner

**DATE:** March 10, 2021

**RE:** Request for Approval of Proposed Amendments to 105 CMR 150.000, *Standards for Long-Term Care Facilities*

**I. Introduction**

The purpose of this memorandum is to request the Public Health Council (PHC) approve proposed amendments to 105 CMR 150.000, *Standards for Long-Term Care Facilities.*

At the October 2020 Public Health Council meeting, the Department proposed amendments to 105 CMR 150.000, *Standards for Long-Term Care Facilities*, to align with the Executive Office of Health and Human Services’ (EHS) implementation of the Nursing Facility Accountability and Supports Package 2.0. DPH proposed amendments to this regulation in order to strengthen staffing requirements and the direct care workforce, de-densify congregate rooms, and improve standards of care. The proposed changes are described in the October 2020 meeting to the Council, attached.

A public hearing was held on November 9, 2020 and the public comment period closed November 13, 2020. In general, commenters stated strong opposition to the proposed increases in square footage requirements and reducing the number of beds per resident room from 3 or 4 beds to no more than 2 beds.

As a result of the comments received, DPH proposed further revisions to the regulation which necessitated a second public comment period in February and March 2021. A public hearing was held on March 1, 2021 and the public comment period closed on March 1, 2021. A complete summary of the comments received during both comment periods is set forth in a separate document provided herewith.

As a result of the comments received during the first and second public comment periods, the Department recommends further amendments, summarized below.

**II. Proposed Amendments in Response to Public Comment**

* **De-Densification of Resident Bedrooms: 105 CMR 150.017 (Construction and Equipment) and 105 CMR 150.320 (Bedrooms – Nursing Care Units)** Commenters expressed concern with the proposed timeframe for compliance with the requirement to convert 3 and 4 bedded resident rooms to 2 bedded rooms given that many nursing homes will be required to go through the Determination of Need process, obtain financing, and secure necessary permits and contractors. One commenter also noted that doing construction while maintaining necessary COVID-19 infection control measures will result in a longer process for completion of the necessary work.

Due to the second public comment period, the Department has moved the effective date for the de-densification of resident bedrooms from January 2022 to April 2022. In response to the comments, the Department proposes revising the regulation to indicate that in order to be compliant with the regulation, nursing homes that are unable to fully comply with the de-densify requirements by April 30, 2022 must demonstrate to the Department through the submission of evidence of the licensee’s good faith efforts to come into compliance. The Department will issue guidance detailing what constitutes good faith efforts as well as the process for submission of evidence and the Department’s review and expectations for licensees to continue to demonstrate ongoing good faith efforts after April 30, 2022.

* **Square Footage Requirements: 105 CMR 150.017 (Construction and Equipment) and 105 CMR 150.320 (Bedrooms – Nursing Care Units) –** Commenters strongly objected to the proposed increased square footage requirements for resident bedrooms, arguing that the only way to come into compliance with the proposed changes would be to significantly reduce beds which would be financially unsustainable, resulting in resident transfers, breaches in loan agreements and facility closures.

In response to the comments received, the Department proposes returning to the current square footage requirements while still maximizing distance between resident beds in accordance with Department guidelines. Additionally, the Department proposes requiring the increased square footage requirements apply to new facilities and to any construction and/or renovation projects affecting resident bedrooms, as of April 30, 2022.

* **Hours of Care Per Resident Per Day (PPD): 105 CMR 150.007 (Nursing Services)** – The Department has moved the effective date for the requirement to provide a minimum number of hours of care per resident per day from February 1, 2021 to April 1, 2021 due to the timing of the second public comment period.

**III. Summary**

DPH staff requests the Council approve the proposed amendments to 105 CMR 150.000. If approved by the PHC, the Department will file the final amendment with the Secretary of the Commonwealth for promulgation.

The proposed amendments to 105 CMR 150.000 are attached to this memorandum.