

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments approved on this regulation will appear on IRRC's website)</i></p>		<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED</b></p> <p>SEP 27 2022</p> <p>Independent Regulatory Review Commission</p> <p>IRRC Number:</p>
<p>(1) Agency Department of Health</p>		
<p>(2) Agency Number: 10 Identification Number: 222</p>		
<p>(3) PA Code Cite: 28 Pa. Code §§ 201.23 and 207.4; and Chapters 203, 204 and 205</p>		
<p>(4) Short Title:</p> <p>Long-term care nursing facilities: <i>Rulemaking 2 – General Operation and Physical Requirements</i></p> <p>This is the second of four final-form rulemaking packages, with respect to long-term care nursing facilities, to be promulgated by the Department.</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Ann Chronister, Director, Bureau of Long-Term Care Programs, 717-547-3131, RA-DHLTCRegs@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This is the second of four rulemaking packages that amend Subpart C (relating to long-term care facilities) of Part IV of Title 28 of the Pennsylvania Code. Subpart C consists of 6 different chapters: Chapters 201, 203, 205, 207, 209 and 211. This final-form rulemaking amends the general operation and physical requirement provisions under §§ 201.23 and 207.4, Chapters 203 and 205, and adds a new chapter designated as Chapter 204. Specifically, the Department amends § 201.23 (relating to closure of facility) and deletes Chapter 203 (relating to application of <i>Life Safety Code</i> for long-term care nursing facilities) to eliminate provisions that are outdated and duplicative of Federal requirements.</p> <p>The Department updates requirements for construction, alteration, or renovation of long-term care nursing facilities by adding Chapter 204, which applies to plans for construction, alteration, or renovation of long-term care nursing facilities approved for approval on or after July 1, 2023. The Department is maintaining the provisions in Chapter 205, with minor amendments, as the baseline standards for plans for construction, alteration, or renovation of long-term care nursing facilities approved for approval before July 1, 2023.</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 601 and 803 of the Healthcare Facilities Act (HCFA or act) (35 P.S. §§ 448.601 and 448.803) authorize the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provisions of the HCFA. Section 801.1 of the HCFA (35 P.S. § 448.801 a) seeks to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. The minimum standards are to assure safe, adequate and efficient facilities and services and to promote the health, safety and adequate care of patients or residents of those facilities. In section 102 of the HCFA, the General Assembly has found that a purpose of the HCFA is, among other things, to assure that citizens receive humane, courteous and dignified treatment. 35 P.S. § 448.102. Finally, Section 201(12) of the HCFA (35 P.S. § 448.201(12)) provides the Department with explicit authority to enforce its rules and regulations promulgated under the HCFA.

The Department also has the duty to protect the health of the people of this Commonwealth under section 2102(a) of the Administrative Code of 1929 (71 P.S. § 532(a)). The Department has general authority to promulgate regulations under section 2102(g) of the Administrative Code of 1929 (71 P.S. § 532(g)) for this purpose.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

These regulations are not mandated by any Federal or State law or court order or decision, or Federal regulation. With respect to State law, the Department is authorized under the HCFA to promulgate regulations that promote the health, safety and adequate care of patients and residents in health care facilities, which includes residents in long-term care nursing facilities. 35 P.S. §§ 448.604 and 448.803. In addition, the HCFA states that the Department shall take into consideration Federal certification standards, as appropriate, when developing rules and regulations for licensure of health care facilities. 35 P.S. § 448.806(b).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The percentage of adults aged 65 or older in Pennsylvania is increasing. In 2010, approximately 15% of Pennsylvanians were aged 65 or older. In 2017, this number increased to 17.8%. In 2020, just under 20 percent of the population in Pennsylvania was 65 years of age or older. For every 10 individuals under 25 years of age lost in Pennsylvania since 2010, the state gained 21 persons aged 65 or older. The Commonwealth also has a higher percentage of older adults when compared to other states. In 2017, this Commonwealth ranked fifth in the Nation in the number (2.2 million) of older adults and seventh in percentage (17.8%). The increase in older Pennsylvanians is expected to continue. It has been estimated that by 2030, there will be 38 older Pennsylvanians (65 years of age or older) for every 100-working age Pennsylvanians (15 years of age to 64 years of age). Penn State Harrisburg, Pennsylvania State Data Center. (July 2018). Population Characteristics and Change: 2010 to 2017 (Research Brief). Retrieved from <https://pasdc.hbg.psu.edu/data/research-briefs/pa-population-estimates>; Penn State Harrisburg,

Pennsylvania State Data Center. (July 2018). (June 2022). Trends in Pennsylvania's Population by Age. (Research Brief). Retrieved from [https://pasdc.hbg.psu.edu/sdc/pasdc\\_files/researchbriefs/June\\_2022.pdf](https://pasdc.hbg.psu.edu/sdc/pasdc_files/researchbriefs/June_2022.pdf).

As the number of older Pennsylvanians increases, the number of those needing long-term care nursing will also increase. It has been estimated that an individual turning 65 years of age today has an almost 70% chance of needing some type of long-term services or support during the remainder of their lifetime; 20% will need long-term care support for longer than 5 years. More people use long-term care services at home and for longer; however, approximately 35% utilize nursing facilities for this type of care. Administration for Community Living. (February 2020). How Much Care Will You Need? Retrieved from <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need>.

Further, the COVID-19 pandemic highlighted the vulnerability of older adults, with a larger percentage of deaths occurring in individuals 65 years of age and older. Centers for Disease Control and Prevention (CDC). Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC. Retrieved from <https://covid.cdc.gov/covid-data-tracker/#demographics>. See also, CDC. COVID-19 Weekly Cases and Deaths per 100,000 Population by Age, Race/Ethnicity and Sex, United States, March 1, 2020—June 25, 2022. Retrieved from <https://covid.cdc.gov/covid-data-tracker/#demographicsovertime>. Further, it is estimated that at least a quarter of COVID-19 deaths occurred in long-term care nursing facilities. The COVID Tracking Project. (March 2021). Long-Term-Care COVID Tracker. Retrieved from <https://covidtracking.com/nursing-homes-long-term-care-facilities>. In this Commonwealth alone, there have been approximately 11,000 confirmed deaths of residents in long-term care nursing facilities since January 2020. AARP. (June 16, 2022). AARP Nursing Home COVID-19 Dashboard Fact Sheets. Retrieved from <https://www.aarp.org/ppi/issues/caregiving/info-2020/nursing-home-covid-states.html>.

The Department's long-term care nursing facilities regulations have not been updated since 1999, with the last significant update occurring in 1997 after the 1996 amendment to the Health Care Facilities Act (the HCFA or act) (35 P.S. §§ 448.101—448.904b). Since that time, there have been substantial changes in the means of delivering care and providing a safe environment for residents in long-term care nursing facilities, with the pandemic further highlighting the need for change.

Approximately 72,000 individuals reside in the 682 long-term care nursing facilities currently licensed by the Department. These 72,000 individuals, and their family members, will benefit from this final-form regulation. Further, the current residents for the three private pay facilities will benefit with the updated standards from 1998. Since the Department's adoption of the 1998 regulations 23 years ago, there have been expanded requirements for emergency preparedness; quality assurance and infection control; abuse, neglect and exploitation protections; and admission and discharge protections to ensure the health and safety of residents. These three facilities had a reported, combined census of 79 residents for the Department's 2020-2021 annual report. Department of Health. (2021). Nursing Home Reports. Retrieved from: <https://www.health.pa.gov/topics/HealthStatistics/HealthFacilities/NursingHomeReports/Pages/nursing-home-reports.aspx>.

(11) Are there provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Yes, there are some provisions that are more stringent than federal standards, discussed below.

The Department amends and delete portions of § 201.23, relating to the closure of a facility, to conform with the Federal requirements at 42 CFR 483.70(l) and (m). The Department keeps existing requirements in § 201.23 that exceed the Federal requirements. The Department also on final-form, incorporates the requirements for a closure plan from Federal guidance and expands upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. These additional requirements are necessary to ensure the health, safety and welfare of residents during a facility closure.

The Department deletes Chapter 203 to eliminate duplication between State and Federal requirements. The NFPA 101, *Life Safety Code*, 2012 edition, is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR 483.73(g)(1)(vii) (relating to emergency preparedness).

The Department's adoption in Chapter 204 of the 2018 edition of the Facility Guideline Institute's (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities (Guidelines)* exceeds the Federal requirements for long-term care nursing facilities. The 2018 edition of the FGI *Guidelines* for long-term care nursing facilities focuses on person-centered living environments which improve the quality of life for residents in long-term care nursing facilities. The requirement to comply with the FGI *Guidelines* for all plans for construction, alteration, or renovation approved on or after July 1, 2023, will improve the quality of life and care of residents by ensuring that facilities are meeting modern standards. The Department also carries over certain existing requirements from Chapter 205 to Chapter 204, which are in addition to the FGI *Guidelines*. These provisions are necessary to ensure the health and safety of residents in long-term care nursing facilities.

The Department's amendments to Chapter 205 eliminate requirements relating to new construction, alteration, or renovation as these are now covered in Chapter 204. The unaltered provisions in Chapter 205 pertain to areas that are not covered by the Federal requirements for long-term care nursing facilities and are being kept as the baseline standards for plans for construction, alteration, or renovation of long-term care nursing facilities that were submitted for approval before July 1, 2023.

The Department's deletion of § 207.4 aligns with the Federal requirement at 42 CFR 483.60(i)(2) that a facility store, prepare, distribute, and serve food in accordance with professional standards for food service safety.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The amendments to § 201.23 and Chapter 203 will not affect Pennsylvania's ability to compete with other states. The amendments align these provisions with the Federal requirements for long-term care nursing facilities at 42 CFR Part 483, Subpart B. All long-term care nursing facilities that participate in the Federal Medicare and/or Medical Assistance (MA) programs are required to comply with the Federal requirements regardless of where they are located.

The Department reviewed the regulations of other states to determine which states have expressly adopted the Federal requirements as State licensing requirements. Of the states surrounding Pennsylvania, Delaware has expressly adopted the Federal requirements at 42 CFR Part 483, Subpart B (relating to

requirements for long-term care facilities). 16 Del. Admin. Code § 3201-1.2l. New York has not expressly adopted the Federal requirements but has a general provision in its regulations requiring that long-term care facilities comply with all pertinent Federal regulations. N.Y. Comp. Codes R. & Regs. tit. 10 § 415.1(4). Ohio, New Jersey, West Virginia and Virginia have not expressly adopted the Federal requirements.

The Department, in Chapter 204, adopts the 2018 edition of the FGI *Guidelines*. This adoption is in line with 42 other states that have adopted some edition of the *Guidelines* (this includes Wisconsin, which has adopted only the HVAC requirements). Facility Guidelines Institute. Adoption of the FGI *Guidelines*. Retrieved from <https://fgiguidelines.org/guidelines/state-adoption-fgi-guidelines/>. The adoption of the FGI *Guidelines* brings Pennsylvania in line with other states and will not negatively affect Pennsylvania's ability to compete.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final-form rulemaking will not affect the regulations of any other state agency. As provided above, the Department is currently updating the various regulatory chapters relating to long-term care facilities. This final-form rulemaking is the second of four rulemaking packages that amend the 6 chapters of Subpart C (relating to long-term care facilities) of 28 Pa. Code Part IV.

This final-form rulemaking amends the sections related to general operation and physical requirements. The other three nursing facility regulatory packages are as follows:

Rulemaking 1 – *General Applicability and Definitions*

Rulemaking 3 – *Applications for Ownership, Management and Changes of Ownership; Health and Safety*

Rulemaking 4 – *Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services*

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department's outreach has included various representatives from industry stakeholders and consumer advocacy groups, including small businesses and those groups representing them. As analyzed in further detail below, at least 91% of nursing facilities in the Commonwealth meet the definition of a small business due to \$30 million or less in annual receipts.

The Department began the process of updating the current long-term care nursing facilities regulations in late 2017. The Department sought review, assistance and advice from members of a long-term care work group (LTC Work Group) consisting of relevant stakeholders. The members of the LTC Work Group were drawn from a diverse background and included representatives from urban and rural long-term care facilities and various stakeholder organizations and consumer groups that work in the area of resident care and delivery of services. The LTC Work Group members consisted of representatives from the following

organizations: American Institute of Financial Gerontology; Baker Tilly Virchow Krause, LLP; Berks Heim and Rehabilitation; Fulton County Medical Center; Garden Spot Community; HCR ManorCare; Inglis House; Landis Communities; Leading Age; Legg Consulting Services; LIFE Pittsburgh; Luzerne County Community College; The Meadows at Blue Ridge; Mennonite Home, Lutheran Senior Life Passavant Community; PA Coalition of Affiliated Healthcare and Living Communities; Pennsylvania Home Care Association; University of Pittsburgh; and Valley View Nursing Home.

The members of the LTC Work Group met regularly during 2018 with the LTC Work Group's primary focus being the simplification and modernization of the existing long-term care regulations. After these discussions were complete, the Department reviewed the recommendations of the LTC Work Group and consulted with other potentially impacted agencies in 2019 and 2020. In 2020, 2021 and 2022, the Department continued its efforts to draft amendments to the long-term care nursing facility regulations while also handling the day-to-day challenges of protecting the residents of those facilities, who were being hit the hardest by the COVID-19 pandemic.

In 2019 and 2020, the Department consulted with the Department of Aging, Department of Human Services (DHS) and Department of Military and Veterans Affairs (DMVA), who also participated in the above LTC Work Group discussions. The Department presented the proposed regulations to the Health Policy Board on October 29, 2020

In addition to considering comments on the four proposed regulatory packages during and outside of the four public comment periods, the Department also met with stakeholders on three occasions following the receipt of public and IRRC comments to discuss their concerns and to gain additional insight into comments that were received.

The first of these meetings occurred on December 15, 2021. Representatives from AARP, Alzheimer's Association – Delaware Valley and Greater Pennsylvania Chapters, Center for Advocacy for the Rights & Interests of the Elderly (CARIE), Community Legal Services, LeadingAge, Pennsylvania Health Care Association (PHCA), Pennsylvania Coalition of Affiliated Healthcare & Living Communities (PACAH), and SEIU Healthcare Pennsylvania attended that meeting.

The second meeting, for proposed Rulemaking 3, occurred on June 8, 2022. Representatives from AARP, Alzheimer's Association, CARIE, Community Legal Services, LeadingAge, PHCA, Pennsylvania Health Law Project (PHLP), and SEIU attended that meeting. The Department explicitly stressed to stakeholders during this June 8, 2022, meeting that it would be considering comments on all proposed rulemakings, and that it would welcome any additional comments or feedback that stakeholders might have after the meeting regarding proposed amendments to the regulations. The Department also indicated in a press release on June 3, 2022, that it would be considering comments on all four proposed rulemakings before submitting final-form regulations.

The Department held a third stakeholder meeting in August 2022 after the public and IRRC comment periods ended for proposed Rulemaking 4. The Department presented the final-form regulations to the Health Policy Board on August 10, 2022, and met with stakeholders one last time on August 17, 2022, to present the final-form regulations for final discussion and feedback. At this meeting, the Department presented stakeholders with an overview of the amendments that were made from proposed to final-form in response to their comments, on all four rulemakings, and provided them with an opportunity to comment and provide feedback on the final-form regulations. Present at that meeting were representatives from the Alzheimer's Association, CARIE, Community Legal Services, County Commissioners Association (CCAP), Disability Rights, LeadingAge, PHCA, PHFC, and SEIU.

In addition to this public outreach, the Senate Health and Human Services and Aging and Youth Committees held a joint legislative hearing regarding proposed Rulemaking 1 on September 15, 2021.

The Department participated in the hearing and provided testimony and a commitment to continue working with stakeholders to address workforce challenges in the long-term care industry. The Department maintains this commitment and will continue to engage with stakeholders to provide guidance and technical assistance as the regulations are implemented and commits to continued engagement with stakeholders and other agencies to support ongoing workforce development in the long-term care industry.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

***Long-Term Care Nursing Facilities***

The final-form rulemaking will affect the 682 long-term care nursing facilities licensed by the Department since these facilities will have to comply with the rulemaking. These facilities provide health services to approximately 72,000 residents. This total includes 19 county-owned and operated facilities, 6 veterans' homes that are operated by the Department of Military and Veterans Affairs, 654 privately-owned facilities that participate in the Medicare or MA Programs, and 3 private-pay facilities that do not participate in either Medicare or MA.

The 19 county-owned long-term care nursing facilities licensed by the Department account for approximately 7.5% (6,524 beds) of licensed nursing facility beds across the Commonwealth. Allegheny County owns four of the nursing homes; the remaining homes are in the following 15 counties: Berks, Bradford, Bucks, Chester, Clinton, Crawford, Delaware, Erie, Indiana, Lehigh, Monroe, Northampton, Philadelphia, Warren and Westmoreland.

All 19 county-owned long-term care nursing facilities and 654 privately-owned facilities that participate in the Medicare or MA Programs.

The three private-pay facilities have a combined capacity of 102 licensed beds, with a reported, combined census reported of 79 residents for the Department's 2020-2021 annual report. Department of Health. (2021). Nursing Home Reports. Retrieved from:

<https://www.health.pa.gov/topics/HealthStatistics/HealthFacilities/NursingHomeReports/Pages/nursing-home-reports.aspx>.

There will be little to no effect on any of these facilities due to the deletion of subsections in § 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All the long-term care nursing facilities participate in Medicare or MA are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The requirements in 42 CFR 483.70(l) and (m) (relating to administration) are new for the three private-pay facilities because these requirements are not incorporated in existing § 201.2. These three facilities will only be affected under 42 CFR 483.70(l), which requires the facility to provide notice of a closure if they close. Under 42 CFR 483.70(m), these three facilities will be required to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure. This will be a new paperwork requirement for these three facilities.

The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan from guidance in *Appendix PP* and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional

information and be provided to additional individuals who have an interest in the closure of a facility. The 682 facilities licensed by the Department will only be affected by these amendments if they close.

The deletion of Chapter 203 will not affect the regulated community. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will affect long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204. The Department considers the cost for complying with the FGI *Guidelines* to be minimal, however, and no more than the cost of doing business. The FGI *Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only making cosmetic upgrades, e.g., paint, new flooring, or changing light fixtures. A facility completing new construction, alteration or renovation is already assuming the costs for those construction, alteration or renovation. Therefore, requiring compliance with the FGI *Guidelines* would be considered costs already planned for by the facility, and no different than costs for complying with other current physical environment standards, local municipality codes or the like. In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to the best and most modern standards versus existing facilities that have not built to these standards. The amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The 682 licensed facilities will not incur any cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, all but three of the 682 facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements. The three private-pay facilities will not incur a cost due to the elimination of this requirement that is duplicative of the Federal requirements, as they are already required under existing § 207.4 to ensure that ice is properly stored and handled.

#### ***Small Business Analysis***

Under section 3 of the Regulatory Review Act, 71 P.S. § 745.3, a small business is "defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation." Under 13 CFR 121.101 (relating to what are SBA size standards), the Small Business Administration's (SBA) "size standards determine whether a business entity is small." Size standards are developed under the North America Industry Classification System (NAICS). The Department applied the NAICS standards to determine how many long-term care nursing facilities, licensed by the Department, are small businesses. Based on these federal standards, the Department determined that a long-term care nursing facility is a small business if it has \$30 million or less in annual receipts.

Based on the analysis of the latest long-term care nursing facility cost reports from the Centers for Medicare & Medicaid Services (CMS), the Department determined that 623 facilities that participate in Medicare or MA have \$30 million or less in annual receipts. In making this determination, the Department applied current Federal Standards of Accounting to this data to determine each facility's annual receipts. The latest cost report data from CMS is 2018. Data.CMS.gov. Skilled Nursing Facility Cost Report. Retrieved from <https://data.cms.gov/provider-compliance/cost-report/skilled-nursing-facility-cost-report/data>. Although the data from CMS is from 2018, the Department expects a consistent number of facilities to meet the definition of a small business.

The Department also asked stakeholders during the meetings held in 2021 and 2022 for assistance in determining the impact to small businesses. The stakeholders were not able to provide the Department with specific information regarding how the Department's proposed regulations would impact small businesses. However, during the stakeholder meeting for Rulemakings 1 and 2, a stakeholder suggested that the Department search GuideStar, which provides financial information regarding nonprofit entities, to determine whether the three private-pay facilities are small businesses. The Department searched the GuideStar website at <https://www.guidestar.org/> for the three private-pay facilities that are licensed by the Department. Based on this data, one of the private-pay facilities, Friends Home in Kennett/Linden Hall, meets the definition of a small business under NAICS standards. Another private-pay facility, Foulkeways at Gwynedd does not meet the definition of a small business under NAICS standards because its gross receipts exceed \$30 million. Data for the third private-pay facility, Dallastown Nursing Center, is not available on GuideStar, but for the purposes of this analysis, the Department assumes that Dallastown, similar to other nursing facilities, is a small business.

In sum, at least 91% of nursing facilities meet the definition of a small business. Consistent with the HCFA and function of licensure, the purpose of these regulatory amendments is to ensure the health, safety, and welfare of all residents of long-term care nursing facilities in this Commonwealth by providing the minimum health and safety standards. Given that most nursing facilities are a small business and the need for surveying for the health and safety of residents, the Department did not establish differing criteria for nursing facilities that are small businesses compared to the minority of facilities that are not small businesses. Further, in determining the minimum health and safety requirements, the Department considered the myriad of received comments, feedback from meetings and stakeholder groups and attempted to balance the interests between consumers and the stakeholder industry. The Department's responsibility to ensure that residents receive safe, quality care applies to all residents of long-term care nursing facilities in this Commonwealth, and it is critical that all residents of long-term care nursing facilities receive the same level of high-quality care, regardless of whether the facility they reside in is a small business.

#### ***Residents of Long-Term Care Nursing Facilities***

The more than 72,000 individuals that reside in the 682 long-term care nursing facilities licensed by the Department will be affected by the amendments. Residents will be positively affected with the closure plan requirements in the event of a facility closure in § 201.23(c.1). Residents will also be positively affected by the expansion of the Federal notice requirements in State regulation to include additional information and to include additional individuals. The addition of new Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* for construction, alteration or renovation plans approved on or after July 1, 2023, will also positively affect residents by ensuring that facilities that complete new construction, alteration or renovation are meeting current construction standards. Residents are also benefiting from the health and safety requirements of an airborne infection isolation room and the maintaining of facility requirements for the health and safety of residents.

***Department***

The amendments will affect the Department. The Department's surveyors perform the function of surveying and inspecting long-term care nursing facilities for compliance with both Federal and State regulations. The elimination of subsections, in § 201.23, that are outdated and duplicative of the Federal requirements will streamline the survey process for long-term care nursing facilities. This, in turn, will create consistency and eliminate confusion in the application of the standards that apply to long-term care nursing facilities. The deletion of Chapter 203 will also benefit the Department's surveyors and long-term care nursing facilities by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined process. Separating new standards for construction, alteration or renovation from existing standards in Chapter 204 and Chapter 205, will also add clarity to the survey process by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation.

***Department of Human Services***

Although the provisions of this final-form rulemaking, which relate to incorporation of federal health and safety standards and the updating of definitions, will not have a cost impact to the Department of Human Services, a substantial increase in funding for nursing facilities, including new nursing facility funding and increased MA payments beginning January 2023, was enacted under Act 2022-54 and appropriated under the General Appropriations Act of 2022 (Act 2022-1A).

***Department of Military and Veterans Affairs***

This final-form rulemaking will not have a cost impact to Department of Military and Veterans Affairs since its facilities already participate in the Medicare and MA Programs.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All 682 licensed long-term care nursing facilities in the Commonwealth will be required to comply with this rulemaking. At least 91% of nursing facilities meet the definition of a small business. These facilities provide care to more than 72,000 residents.

As provided above, pursuant to section 3 of the Regulatory Review Act (71 P.S. § 745.3), the Department applied the NAICS standards to determine how many long-term care nursing facilities licensed by the Department are small businesses. Based on the latest cost report from CMS, the Department determined that 623 facilities that participate in the Medicare or MA Programs meet the definition of small business since they have \$30 million or less in annual receipts. The latest cost report data from CMS is available at <https://data.cms.gov/provider-compliance/cost-report/skilled-nursing-facility-cost-report/data>.

Based on GuideStar, which provides financial information regarding nonprofit entities, one of the private-pay facilities, Friends Home in Kennett/Linden Hall meets the definition of a small business under NAICS standards. Another private-pay facility, Foulkeways at Gwynedd does not meet the definition of a small business under NAICS standards because its gross receipts exceed \$30 million. Data for the third private-pay facility, Dallastown Nursing Center, is not available on GuideStar, but for the purposes of this analysis, the Department assumes that Dallastown, similar to other nursing facilities, is a small business. <https://www.guidestar.org/>

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

### **Financial and Economic Impact and Benefits**

#### *Long-Term Care Nursing Facilities*

This final-form rulemaking applies to all 682 licensed long-term care nursing facilities in the Commonwealth. At least 91% of nursing facilities meet the definition of a small business. These facilities provide health services to approximately 72,000 residents. This total includes 19 county-owned and operated facilities, 6 veterans' homes that are operated by DMVA, 654 privately-owned facilities that participate in Medicare or MA, and 3 private-pay facilities that do not participate in Medicare or MA.

There will be little to no financial impact to any of these facilities due to the deletion of subsections in § 201.23 that are duplicative of the Federal requirements. All but three of the 682 long-term care nursing facilities participate in Medicare or MA and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The requirements in 42 CFR 483.70(l) and (m) are new for the three private-pay facilities because these requirements are not incorporated in existing § 201.2. These three facilities will only be affected under 42 CFR 483.70(l), which requires the facility to provide notice of a closure if they close. Under 42 CFR 483.70(m), these three facilities will be required to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure. This will be a new paperwork requirement for these three facilities.

The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan from guidance and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. The 682 facilities licensed by the Department will only be affected by these amendments if they close.

The deletion of Chapter 203 will not financially impact the regulated community. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will affect long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204. As explained in further detail below, compliance with the FGI *Guidelines* to be minimal, however, and no more than the cost of doing business. The FGI *Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only making cosmetic upgrades, e.g., paint, new flooring, or changing light fixtures. A facility completing new construction, alteration or renovation is already assuming the costs for those construction, alteration or renovation. Therefore, requiring compliance with

the FGI *Guidelines* would be considered costs already planned for by the facility, and no different than costs for complying with other current physical environment standards, local municipality codes or the like. In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to the best and most modern standards versus existing facilities that have not built to these standards. The amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The 682 licensed facilities will not incur any cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, all but three of the 682 facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements. The three private-pay facilities will not incur a cost due to the elimination of this requirement that is duplicative of the Federal requirements, as they are already required under existing § 207.4 to ensure that ice is properly stored and handled.

#### *Department*

The amendments will impact the Department. The Department's surveyors perform the function of surveying and inspecting long-term care nursing facilities for compliance with both Federal and State regulations. The elimination of subsections, in § 201.23, that are outdated and duplicative of the Federal requirements will streamline the survey process for long-term care nursing facilities. This, in turn, will create consistency and eliminate confusion in the application of the standards that apply to long-term care nursing facilities. The deletion of Chapter 203 will also benefit the Department's surveyors and long-term care nursing facilities by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined process. Separating new standards for construction, alteration or renovation from existing standards in Chapter 204 and Chapter 205, will also add clarity to the survey process by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation.

#### *Department of Human Services*

Although the provisions of this final-form rulemaking will not have a cost impact to the Department of Human Services, a substantial increase in funding for nursing facilities, including new nursing facility funding and increased MA payments beginning January 2023, were enacted under Act 2022-54 and appropriated under the General Appropriations Act of 2022 (Act 2022-1A).

#### *Residents of Long-Term Care Nursing Facilities / Public*

The Department anticipates no financial or economic impact on the public.

### **Social Impact and Benefits**

#### *Residents of Long-Term Care Nursing Facilities*

The more than 72,000 individuals that reside in the 682 long-term care nursing facilities licensed by the Department will be affected by the amendments. Residents will be positively affected by the expansion of the Federal notice requirements in State regulation to include additional information and to include additional individuals. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* for construction, alteration or renovation plans approved on or after July 1, 2023, will also positively affect residents by ensuring that facilities that complete new construction, alteration or renovation are meeting updated standards.

The Department anticipates little to no social impact on the other entities identified in this question.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Residents of long-term care nursing facilities will benefit the most from this regulation. Specifically, residents will benefit, in the event of a facility closure, from the incorporation of the requirements for a closure plan from the guidance in *Appendix PP* from CMS' *State Operations Manual*. Residents will also benefit from the expansion of the Federal notice requirements in State regulation to include additional information and to include additional individuals. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the *FGI Guidelines* for construction, alteration or renovation plans approved on or after July 1, 2023, will benefit residents as well by ensuring that facilities that complete new construction, alteration or renovation are meeting modern standards. The need for higher standards, as it relates to facility closures and construction of facilities, vastly outweighs any cost that the regulated community will incur because of these regulations.

(19) Provide a specific estimate of the costs or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The amendments will apply to all 682 long-term care nursing facilities licensed by the Department. These facilities provide health services to approximately 72,000 residents. This total includes 19 county-owned and operated facilities, 6 veterans' homes that are operated by DMVA, 645 privately-owned facilities that participate in Medicare or MA, and 3 private-pay facilities that do not participate in Medicare or MA.

There will be little to no financial impact to any of these facilities due to the deletion of subsections in § 201.23 that are duplicative of the Federal requirements. All but three of the 682 long-term care nursing facilities participate in Medicare or MA and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The requirements in 42 CFR 483.70(l) and (m) are new for the three private-pay facilities because these requirements are not incorporated in existing § 201.2. These three facilities will only incur a cost under 42 CFR 483.70(l), which requires the facility to provide notice of a closure if they close. Under 42 CFR 483.70(m), these three facilities will be required to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure. As indicated below, this will be a new paperwork requirement for these three facilities.

The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan from guidance and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. The 682 facilities licensed by the Department will only be impacted by these amendments if they close.

The deletion of Chapter 203 will not result in an additional cost to the regulated community. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation.

The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will result in a minimal additional cost to those long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204.

Firstly, the FGI *Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only performing regular facility maintenance, such as making cosmetic upgrades, *e.g.*, paint, new flooring, or changing light fixtures. Secondly, the costs associated with compliance with the FGI *Guidelines* relate to patient care items. That is, the major cost factor to new construction of long-term care facilities and renovations and alterations to existing facilities is square footage; specifically square footage requirements for rooms and spaces that have specific materials and equipment to support such rooms and spaces. The addition of the 2018 FGI *Guidelines* for long-term care facilities, however, does not specifically add square footage to any new construction, renovation or alteration. Further, the Department maintains the existing square footage requirements under this final-form rulemaking. Instead, the FGI *Guidelines* provide the design team with requirements that promote a physical environment that is safe for residents, promotes home-like environments, and provides up-to-date and relevant requirements to today's challenges in facilities.

Specifically, facility ownership essentially determines the ultimate cost of any new construction, renovation or alteration project. Decisions to keep the facility "as-is" only incurs costs to maintain the facility; whereas business decisions to complete new construction, renovation or alteration projects will be decided by the scope approved by ownership. Further, facilities are required to comply with the requirements of the Uniform Construction Code (UCC), initially adopted by the Pennsylvania Department of Labor and Industry in April 2004 and updated to the 2018 edition, effective February 14, 2022. Likewise, facilities are already required to comply with the requirements of the 2012 Edition of the National Fire Protection Association's (NFPA) 101, *Life Safety Code* (LSC) for state licensure and federal certification purposes, effective July 5, 2016.

Existing requirements related to UCC and LSC compliance affect construction, renovation and alteration costs significantly, as these codes determine requirements such as, but not limited to:

1. Type of construction of the building;
2. Fire protection systems, such as sprinkler and fire alarm systems;
3. Hazardous area protection;
4. Heating, Ventilating and Air Conditioning (HVAC);
5. Normal and emergency electrical systems;
6. Means of egress requirements;
7. Smoke and fire compartments to support "defend in place" evacuation principles;
8. Medical gas requirements;
9. Plumbing requirements, etc.

However, these same types of costs are not reflected under 2018 FGI *Guidelines*. While the UCC and LSC require the corridor width in a new health care occupancy to be 8 feet wide, the FGI *Guidelines* will

add requirements that the flooring be non-slip and handrails provided for resident safety. Similarly, where sinks are required, the FGI *Guidelines* will provide requirements on the temperature of the water for proper handwashing hygiene and things such as the depth of the basin to limit the probability of splash and wet floors that may lead to falls. Where nurse call buttons are required, the FGI *Guidelines* will provide for considerations for residents that wish to move their bed within their room for resident preference. Further, where a dining room is already required, the FGI *Guidelines* will provide requirements on proper lighting, ensuring residents in wheelchairs are able to easily navigate the room, and requirements to promote smells from the food to permeate through the facility to encourage nutrition.

As stated previously, ownership business decisions will ultimately determine the overall cost of any new construction, renovation or alteration. Whether decisions are made to only renovate two rooms, renovate one or more wings, complete alterations to replace emergency generators or HVAC equipment (and to what extent), use interior finishes and fixtures that are either higher or lower priced, or build an entire replacement facility, they will be made by facility ownership.

New construction, renovations or alterations are already required to meet the UCC and LSC requirements. As important it is to ensure a facility has code compliant electrical receptacles per the UCC and LSC, it is just as important to ensure the FGI requirements for proper placement of the receptacles so residents may have proper access. This is similar to where UCC will provide requirements to ensure the number of toilets in the facility will function; whereas the FGI *Guidelines* provide requirements on proper location and staff assist to ensure residents have access and are provided a safe environment for fall protection. The examples are nearly endless, but the FGI *Guidelines* are paramount to supplementing existing codes that are written for all types of facilities (residential, commercial, industrial, etc.) to provide and promote safe environments for the unique and fragile population of the facilities.

In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to current, updated standards for maintained health and safety versus existing facilities that have not built to these standards. Further, the amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The 682 licensed facilities will not incur any cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, all but three of the 682 facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements. The three private-pay facilities will not incur a cost due to the elimination of this requirement that is duplicative of the Federal requirements, as they are already required under existing § 207.4 to ensure that ice is properly stored and handled.

(20) Provide a specific estimate of the costs or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are currently 19 county-owned long-term care nursing facilities which account for approximately 7.5 percent (6,524 beds) of long-term care nursing beds across the Commonwealth. Allegheny County owns four of the nursing homes; the remaining homes are in the following 15 counties: Berks, Bradford, Bucks, Chester, Clinton, Crawford, Delaware, Erie, Indiana, Lehigh, Monroe, Northampton, Philadelphia, Warren, and Westmoreland.

All county-owned long-term care nursing facilities participate in Medicare or MA and are already required to comply with the Federal requirements and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The addition of

subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan from guidance in *Appendix PP* and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. The county-owned facilities licensed by the Department will only be impacted by these amendments if they close.

The deletion of Chapter 203 will not result in an additional cost to the county-owned facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1 – *General Applicability and Definitions*. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. As provided in further detail above, the FGI *Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only making cosmetic upgrades, e.g., paint, new flooring, or changing light fixtures. A facility completing new construction, alteration or renovation is already assuming the costs for those construction, alteration or renovation. Therefore, requiring compliance with the FGI *Guidelines* would be considered costs already planned for by the facility, and no different than costs for complying with other current physical environment standards, local municipality codes or the like. In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to the best and most modern standards versus existing facilities that have not built to these standards. The amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The county-owned licensed facilities will not incur any additional cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, these facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements.

(21) Provide a specific estimate of the costs or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

#### *Department*

The amendments will not increase costs to the Department. The Department's surveyors perform the function of surveying and inspecting long-term care nursing facilities for compliance with both Federal and State regulations. The elimination of subsections, in § 201.23, that are outdated and duplicative of the Federal requirements will streamline the survey process for long-term care nursing facilities. This, in turn, will create consistency and eliminate confusion in the application of the standards that apply to long-term care nursing facilities. The deletion of Chapter 203 will also benefit the Department's surveyors and long-term care nursing facilities by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined process. Separating new standards for construction, alteration or

renovation from existing standards in Chapter 204 and Chapter 205, will also add clarity to the survey process by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation.

*Department of Human Services*

Although the provisions of this final-form rulemaking will not have a cost impact to the Department of Human Services, a substantial increase in funding for nursing facilities, including new nursing facility funding and increased MA payments beginning January 2023, was enacted under Act 2022-54 and appropriated under the General Appropriations Act of 2022 (Act 2022-1A).

*Department of Military and Veterans Affairs*

Of the 682 long-term care nursing facilities licensed by the Department, six are veterans' homes that are operated by DMVA. These facilities are already required to comply with the Federal requirements and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan from guidance in *Appendix PP* and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. The DMVA-operated facilities licensed by the Department will only be impacted by these amendments if they close.

The deletion of Chapter 203 will not result in an additional cost to the DMVA-operated facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

As provided previously, the Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The *FGI Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only making cosmetic upgrades, *e.g.*, paint, new flooring, or changing light fixtures. A facility completing new construction, alteration or renovation is already assuming the costs for those construction, alteration or renovation. Therefore, requiring compliance with the *FGI Guidelines* would be considered costs already planned for by the facility, and no different than costs for complying with other current physical environment standards, local municipality codes or the like. In addition, compliance with the *FGI Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to updated standards versus existing facilities that have not built to these standards. The amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The DMVA-operated licensed facilities will not incur any additional cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, these facilities are already required to comply with the Federal requirements.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Department’s adoption of 42 CFR 483.70(l) will result in a new paperwork requirement for the three private-pay facilities, by requiring that notice be provided to certain individuals in the event of a facility closure. The Department’s expansion of this requirement in § 201.23(c.3) and (c.4) will impose additional paperwork requirements on all facilities, including those that already are required to comply with 42 CFR 483.70(l). However, this requirement has a nominal impact and will only affect facilities if they close.

The Department’s adoption of 42 CFR 483.70(m) in § 201.23 will result in a new paperwork requirement for the three private-pay facilities that are licensed by the Department, by requiring these facilities to have in place policies and procedures to ensure that the administrator’s duties and responsibilities involve providing the appropriate notices in the event of a closure.

Licenses and prospective licensees are already required, under § 51.3(d) to submit architectural and blueprint plans to the Department for approval before performing any construction, alteration or renovation. The amendment to § 204.2 simply directs licensees and prospective licensees to the Department’s website for instructions on how to submit plans for construction, alteration or renovation.

The Department does not expect there to be any other legal, accounting or consulting related costs or any other reporting, recordkeeping or other paperwork associated with this rulemaking.

(22a) Are forms required for implementation of the regulation?

There are no forms required for implementation of this rulemaking.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

N/A

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year 2022-2023	FY +1 Year 2023-2024	FY +2 Year 2024-2025	FY +3 Year 2025-2026	FY +4 Year 2026-2027	FY +5 Year 2027- 2028

<b>SAVINGS:</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3 2019-2020</b>	<b>FY -2 2020-2021</b>	<b>FY -1 2021-2022</b>	<b>Current FY 2022-2023</b>
Quality Assurance	22,513,000.	23,093,000.	24,393,000.	25,349,000.
MA – Long-Term Care	470,244,000	208,841,000	121,346,000	165,981,000
MA – Community Health Choices	2,328,939,000	3,165,550,000	4,251,550,000	5,061,602,000
DMVA (actual expenditures)	80,108,213	80,386,733	77,671,425	82,903,586

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

This final-form rulemaking applies to all 682 licensed long-term care nursing facilities in the Commonwealth. At least 91% of nursing facilities meet the definition of a small business. These

facilities provide health services to approximately 72,000 residents. This total includes 19 county-owned and operated facilities, 6 veterans' homes that are operated by DMVA, 654 privately-owned facilities that participate in Medicare or MA, and 3 private-pay facilities that do not participate in either Medicare or MA.

Under section 3 of the Regulatory Review Act, 71 P.S. § 745.3, a small business is “defined in accordance with the size standards described by the United States Small Business Administration’s Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation.” Under 13 CFR 121.101 (relating to what are SBA size standards), the Small Business Administration’s (SBA) “size standards determine whether a business entity is small.” Size standards are developed under the North America Industry Classification System (NAICS). The Department applied the NAICS standards to determine how many long-term care nursing facilities, licensed by the Department, are small businesses. Based on these federal standards, the Department determined that a long-term care nursing facility is a small business if it has \$30 million or less in annual receipts.

Based on the analysis of the latest long-term care nursing facility cost reports from the Centers for Medicare & Medicaid Services (CMS), the Department determined that 623 facilities that participate in Medicare or MA have \$30 million or less in annual receipts. In making this determination, the Department applied current Federal Standards of Accounting to this data to determine each facility’s annual receipts. The latest cost report data from CMS is 2018. Data.CMS.gov. Skilled Nursing Facility Cost Report. Retrieved from <https://data.cms.gov/provider-compliance/cost-report/skilled-nursing-facility-cost-report/data>. Although the data from CMS is from 2018, the Department expects a consistent number of facilities to meet the definition of a small business.

The Department also asked stakeholders during the meetings held in 2021 and 2022 for assistance in determining the impact to small businesses. The stakeholders were not able to provide the Department with specific information regarding how the Department’s proposed regulations would impact small businesses. However, during the stakeholder meeting for Rulemakings 1 and 2, a stakeholder suggested that the Department search GuideStar, which provides financial information regarding nonprofit entities, to determine whether the three private-pay facilities are small businesses. The Department searched the GuideStar website at <https://www.guidestar.org/> for the three private-pay facilities that are licensed by the Department.

Based on this data, one of the private-pay facilities, Friends Home in Kennett/Linden Hall meets the definition of a small business under NAICS standards. Another private-pay facility, Foulkeways at Gwynedd does not meet the definition of a small business under NAICS standards because its gross receipts exceed \$30 million. Data for the third private-pay facility, Dallastown Nursing Center, is not available on GuideStar, but for the purposes of this analysis, the Department assumes that Dallastown, similar to other nursing facilities, is a small business.

As provided above, at least 91% of nursing facilities meet the definition of a small business. Consistent with the HCFA and function of licensure, the purpose of these regulatory amendments is to ensure the health, safety, and welfare of all residents of long-term care nursing facilities in this Commonwealth by providing the minimum health and safety standards. Given that most facilities are a small business and the need for surveying for the health and safety of residents, the Department did not establish differing criteria for nursing facilities that are small business compared to the minority of facilities that are not small businesses. Further, in determining the

minimum health and safety requirements, the department considered the myriad of received comments, feedback from meetings and stakeholder groups and attempted to balance the interests between consumers and the stakeholder industry. The Department's responsibility to ensure that residents receive safe, quality care applies to all residents of long-term care nursing facilities in this Commonwealth, and it is critical that all residents of long-term care nursing facilities receive the same level of high-quality care, regardless of whether the facility they reside in is a small business under NAICS standards.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

The Department's adoption of 42 CFR 483.70(l) will result in a new paperwork requirement for the three private-pay facilities, by requiring that notice be provided to certain individuals in the event of a facility closure. The Department's expansion of this requirement in § 201.23(c.3) and (c.4) will impose additional paperwork requirements on all facilities, including those that already are required to comply with 42 CFR 483.70(l). However, this requirement will only affect facilities if they close.

The Department's adoption of 42 CFR 483.70(m) in § 201.23 will result in a new paperwork requirement for the three private-pay facilities that are licensed by the Department, by requiring these facilities to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure.

Licensees and prospective licensees are already required, under § 51.3(d) to submit architectural and blueprint plans to the Department for approval before performing any construction, alteration or renovation. The amendment to § 204.2 simply directs licensees and prospective licensees to the Department's website for instructions on how to submit plans for construction, alteration or renovation.

- (c) A statement of probable effect on impacted small businesses.

*See Question 15.* Small businesses will be affected by these regulations in the same manner as other facilities that are not small businesses.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The Department did not identify any less intrusive or less costly alternative that would be consistent with public health, safety, and welfare. However, in response to public comments, the effective date of this entire rulemaking is now July 1, 2023, which will provide the regulated community time to prepare to comply with all of the new requirements.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been developed to meet the particular needs of any groups or persons. The regulations will apply to all long-term care nursing facilities in the Commonwealth.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered for this final-form rulemaking.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

(a) As provided above, the purpose of these amendments is to ensure the health, safety, and welfare of all residents of long-term care nursing facilities in this Commonwealth. Further, at least 91% of nursing facilities meet the definition of a small business with gross receipts under \$30 million. Given the need for minimum health and safety requirements, coupled with the overwhelming majority of facilities meeting the definition of a small business, the Department did not establish less stringent compliance or reporting requirements.

(b) This final-form rulemaking does not have any less stringent or alternative schedules or deadlines for small businesses, which as defined, include at least 91% of nursing facilities.

(c) This final-form rulemaking does not have any consolidated or alternative reporting requirements for small business, which as defined, include at least 91% of nursing facilities.

(d) This final-form rulemaking does not have alternative design or operational standards for small businesses, which as defined, include at least 91% of nursing facilities.

(e) This final-form rulemaking does not have specific exemptions for small businesses since, as defined, this includes as least 91% of nursing facilities.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Department relied on data obtained from the following sources:

Penn State Harrisburg, Pennsylvania State Data Center. (July 2018). *Population Characteristics and Change: 2010 to 2017 (Research Brief)*. <https://pasdc.hbg.psu.edu/data/research-briefs/pa-population-estimates> (report compiled based on US census data).

Penn State Harrisburg, Pennsylvania State Data Center. (June 2022). Population in Pennsylvania's Population by Age. (Research Brief). Retrieved from [https://pasdc.hbg.psu.edu/sdc/pasdc\\_files/researchbriefs/June\\_2022.pdf](https://pasdc.hbg.psu.edu/sdc/pasdc_files/researchbriefs/June_2022.pdf).

Administration for Community Living. (February 2020). How Much Care Will You Need? Retrieved from <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need>.

Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC. Retrieved from <https://covid.cdc.gov/covid-data-tracker/#demographics>.

The COVID Tracking Project. (March 2021). Long-Term-Care COVID Tracker. Retrieved from <https://covidtracking.com/nursing-homes-long-term-care-facilities>.

Kaiser Family Foundation. *Nursing Facilities, Staffing, Residents and Facility Deficiencies: 2009 through 2016*. (2018). <https://www.kff.org/medicaid/report/nursing-facilities-staffing-residents-and-facility-deficiencies-2009-through-2016> (last visited: November 25, 2020) (study of long-term care facilities conducted in 2018).

AARP Nursing Home COVID-19 Dashboard Fact Sheets. Retrieved from <https://www.aarp.org/ppi/issues/caregiving/info-2020/nursing-home-covid-states.html>.

The Adverse Effects of the COVID-19 Pandemic on Nursing Home Resident Well-Being." *Journal of the American Medical Directors Association*, 22(5), 948-954.e2. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7980137/>.

"Front-line Nursing Home Staff Experiences During the COVID-19 Pandemic." *Journal of the American Medical Directors Association*, 22(1), 199-203. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7685055/>.

Department of Health. (2021). *Nursing Home Reports*. Retrieved from: <https://www.health.pa.gov/topics/HealthStatistics/HealthFacilities/NursingHomeReports/Pages/nursing-home-reports.aspx>.

State Policies Related to Nursing Facility Staffing. Retrieved from: <https://www.macpac.gov/publication/state-policies-related-to-nursing-facility-staffing/>

Gross Receipt Information -GuideStar Website - <https://www.guidestar.org/>

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period:

30 days after notice or publication in the *Pennsylvania Bulletin*.

B. The date or dates on which any public meetings or hearings will be held:

- The proposed regulations were presented to the Health Policy Board on October 29, 2020.
- On September 15, 2021, a public hearing was held before the Senate Aging & Youth Committee and the Senate Health & Human Services Committee, during which advocates provided feedback on proposed rulemaking 1.
- The Department held meetings on December 15, 2021, June 8, 2022, and August 3, 2022. The Department invited stakeholders and commentators to these meetings to discuss their comments on the proposed regulations.
- The final-form regulations were presented to the Health Policy Board on August 10, 2022.
- The Department held a meeting on August 17, 2022. At this meeting, the Department presented stakeholders with an overview of the amendments that were made from proposed to final-form in response to their comments, on all four rulemakings, and provided them with an additional opportunity to comment and provide feedback on the final-form regulations.

C. The expected date of delivery of the final-form regulation: September 2022

D. The expected effective date of the final-form regulation: July 1, 2023.

E. The expected date by which compliance with the final-form regulation will be required:

July 1, 2023.

F. The expected date by which required permits, licenses or other approvals must be obtained:

Long-term care nursing facilities are already required to be licensed in the Commonwealth. These amendments will not alter that requirement and all statutory timeframes for licensure will remain in effect.

Architectural plans and blueprints approved before July 1, 2023, will not be impacted by the amendments. Architectural plans and blueprints submitted for approval on or after July 1, 2023, will need to comply with the requirements in Chapter 204.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department regularly reviews the validity and efficacy of its regulations and will continue to do so in the future and as needs arise. In addition, the Department will be providing technical assistance and outreach to the regulated community to assist with implementation of this final-form regulation.

CDL-1

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WITH THE LEGISLATIVE REFERENCE BUREAU**

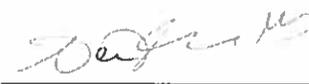
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Independent Regulatory  
Review Commission

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><b>Department of Health</b> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>10-222</u></p> <p>DATE OF ADOPTION _____</p> <p>BY: <u>Denise Johnson, M.D.</u></p> <p></p> <p>TITLE <u>Acting Secretary of Health</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: </p> <p>September 27, 2022 DATE OF APPROVAL</p> <p>Deputy General Counsel (<del>Chief Counsel, Independent Agency</del>) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF HEALTH**

**TITLE 28. HEALTH AND SAFETY**

**PART IV. HEALTH FACILITIES**

**SUBPART C. LONG-TERM CARE FACILITIES**

**28 PA. CODE §§ 201.23 and 207.4; and Chapters 203, 204 and 205**

**RULEMAKING 2 — GENERAL OPERATION AND PHYSICAL REQUIREMENTS**

The Department of Health (Department), after consultation with the Health Policy Board, amends 28 Pa. Code §§ 201.23 and 207.4, Chapters 203 and 205, and adds a new chapter designated as Chapter 204, in Subpart C (relating to long-term care facilities), to read as set forth in Annex A. This is the second of four final-form rulemakings for long-term care nursing facilities being promulgated by the Department.

The contents for the four final-form rulemaking packages are as follows:

*Rulemaking 1 – General Applicability and Definitions*

§ 201.1. Applicability.

§ 201.2. Requirements.

§ 201.3. Definitions.

*Rulemaking 2 – General Operation and Physical Requirements*

§ 201.23. Closure of facility.

Chapter 203. Application of Life Safety Code for Long-Term Care Nursing Facilities. (Reserved on final-form).

Chapter 204. Physical Environment and Equipment Standards for Construction, Alteration or Renovation of Long-Term Care Nursing Facilities After July 1, 2023.

Chapter 205. Physical Environment and Equipment Standards for Long-Term Care Nursing Facilities Construction, Alteration or Renovation Approved before July 1, 2023.

§ 207.4. Ice containers and storage. (Reserved on final-form).

*Rulemaking 3 – Applications for Ownership, Management and Changes of Ownership; Health and Safety*

§ 201.12. Application for license of a new facility or change in ownership.

§ 201.12a. Notice and opportunity to comment (New Section on final-form)

§ 201.12b. Evaluation of application for license of a new facility or change in ownership. (Section renumbered on final-form)

§ 201.13. Issuance of license for a new facility or change in ownership.

§ 201.13a. Regular license. (New Section on final-form)

§ 201.13b. Provisional license. (New Section on final-form)

§ 201.13c. License renewal. (Section renumbered on final-form)

§ 201.14. Responsibility of licensee.

§ 201.15. Restrictions on license.

§ 201.15a. Enforcement. (New Section on final-form)

§ 201.15b. Appeals. (New Section on final-form)

§ 201.17. Location.

§ 201.22. Prevention, control and surveillance of tuberculosis (TB).

§ 209.1. Fire department service. (Reserved on final-form).

§ 209.7. Disaster preparedness. (Reserved on final-form).

§ 209.8. Fire drills. (Reserved on final-form).

§ 211.1. Reportable diseases.

*Rulemaking 4 – Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services*

§ 201.18. Management.

§ 201.19. Personnel records.

§ 201.20. Staff development.

§ 201.21. Use of outside resources.

§ 201.24. Admission policy.

§ 201.25. Discharge policy. (Reserved on final-form).

§ 201.26. Resident representative.

§ 201.29. Resident rights.

§ 201.30. Access requirements. (Reserved on final-form).

§ 201.31. Transfer agreement.

§ 207.2. Administrator's responsibility. (Reserved on final-form).

§ 209.3. Smoking.

§ 211.2. Medical director.

§ 211.3. Verbal and telephone orders.

§ 211.4. Procedure in event of death.

§ 211.5. Medical records.

§ 211.6. Dietary services.

§ 211.7. Physician assistants and certified registered nurse practitioners.

§ 211.8. Use of restraints.

§ 211.9. Pharmacy services.

§ 211.10. Resident care policies.

§ 211.11. Resident care plan. (Reserved on final-form).

§ 211.12. Nursing services.

§ 211.15. Dental services.

§ 211.16. Social services.

§ 211.17. Pet therapy.

*Comments on Multiple Packages; Stakeholder Engagement*

The Department received comments during the public comment periods of all four proposed rulemaking packages expressing concern with the Department's decision to divide the long-term care nursing facility regulations into separate rulemakings. As provided above, the Department divided the regulatory packages as follows: Rulemaking 1 – *General Applicability and Definitions*; Rulemaking 2 – *General Operation and Physical Requirements*; Rulemaking 3 – *Applications for Ownership, Management and Changes of Ownership; Health and Safety*; and Rulemaking 4 – *Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services*.

Although the Department intended to provide succinct areas for review and comment, commentators expressed some difficulty in reviewing sections of the regulations without the context of the remaining regulatory chapters and concern that multiple regulatory packages may lead to a lack of clarity and confusion for the regulated community and the public. Commentators also requested that the Department consider comments on all four proposed rulemaking packages outside of the 30-day comment period for each proposed package, or that the Department withdraw or resubmit all four proposed rulemaking packages as one package with an additional 30-day comment period. The Department also received comments regarding concern related to recent engagement with stakeholders, given that the Long-term Care Work Group last formally met in 2018 and was disbanded during the start of the COVID-19 pandemic.

In commenting on proposed Rulemaking 1, the Independent Regulatory Review Commission (IRRC) acknowledged the Department's authority to promulgate regulations as it deems appropriate. However, IRRC requested the Department to consider the regulated community's comments and the requests regarding the separate rulemakings. IRRC specifically asked the Department to explain why its approach in dividing the amendments into multiple packages was reasonable. IRRC asked whether it was in the public interest or reasonable to expect the regulated community to hold multiple proposed regulations simultaneously in mind while reviewing a proposed regulation. IRRC also asked that the Department ensure that amendments be consistent across the packages, and that the interrelation and any impacts between the packages be clearly presented for the regulated community.

In commenting on this proposed rulemaking, Rulemaking 2, IRRC again echoed concerns that separate rulemakings have the potential consequence of inconsistencies and errors across the four packages. IRRC inquired whether having multiple regulatory packages is in the public interest, whether it protects the public health, safety, and welfare, and whether it is reasonable and lacks ambiguity. IRRC also asked the Department to: (1) identify in the final-form preamble any provisions which assume approval of Rulemaking 1 as final-form; (2) cross-reference these provisions to the relevant provisions in Rulemaking 1; and (3) explain the impact if Rulemaking 1 is not approved before or at the same time as rulemaking 2. IRRC recommended that the Department deliver each of the four individual packages as final-form regulations on the same day. In addition, IRRC, in its comment for proposed Rulemaking 3 and Rulemaking 4 expressed the same concerns as in the previous proposed rulemakings, but

additionally suggested that the Department consider issuing an Advance Notice of Final Rulemaking (ANFR) to assist in reaching consensus.

*Response*

At the outset, the Department recognized that the changes to the long-term care nursing facility regulations would be numerous and complex, whether presented in one giant package or in multiple packages. A large single package would have been unwieldy and would likely have been presented around the date that the fourth regulatory package was completed and submitted (May 11, 2022). A later publication date would have resulted in less opportunity for comments, less time for the commentators to study the material and deliberate, and less time for necessary and valuable stakeholder engagement. Further, the regulated community's input throughout this process informed the administration and legislature's investment in this year's budget. As such, the decision was made to continue with the changes in smaller, separate, more digestible package. As provided above, the Department initially decided to divide the proposed amendments to the six regulatory chapters under Subpart C (relating to long-term care facilities) into multiple packages to allow the public and interested parties a greater opportunity to thoroughly examine and digest the distinct proposed regulatory amendments over a longer period of time. In dividing these six chapters over four rulemakings, the public and interested parties would be permitted to provide more detailed comments and allow the Department to focus more closely on comments, provide a thoroughly considered response to questions and comments, and tailor the remaining proposed packages based on additional public and stakeholder input.

Further, in response to these public comments, the Department has considered all public comments and IRRC's comments across all four proposed rulemakings before drafting the four final-form rulemakings. In addition, based on comments received, the Department is submitting all four final-form rulemakings to IRRC, the legislative standing committees and the public commentators together on the same day. The drafting and submitting all four final-form rulemakings together at the end of the last public comment periods allows interested parties and the public to vet and comment on each package separately, as well as in relation to the other packages. Throughout this process, the Department has continued to accept and review comments and be available to meet with stakeholders. If a commentator believed that a proposed amendment in Rulemaking 4 did not align with a proposed amendment in Rulemaking 1, the commentator could submit a comment to that effect for consideration by the Department during the public comment period for the proposed Rulemaking 4.

The Department did, in fact, take into consideration comments received on proposed Rulemakings 1 and 2, when drafting proposed Rulemakings 3 and 4. This is as evidenced by the proposal to expressly include text from the Centers for Medicare & Medicaid (CMS), *State Operations Manual, Appendix PP* into the text of the regulation. *See e.g.*, Proposed Rulemaking 4, Proposed § 201.29(o) (relating to resident's rights). This inclusion of specific text was based on comments received by commentators and IRRC in proposed Rulemaking 1. The Department also consolidated the total number of proposed packages from five to four packages in response to both public and IRRC comments received in proposed Rulemaking 1. In addition to considering comments on the four proposed packages during and outside of the four public comment periods, the Department met with stakeholders on four occasions following the receipt of public comments to discuss their concerns and to gain additional insight into comments that were received. The first of these meetings, for proposed Rulemakings 1 and 2, occurred on

December 15, 2021. Representatives from AARP, Alzheimer's Association – Delaware Valley and Greater Pennsylvania Chapters, Center for Advocacy for the Rights & Interests of the Elderly (CARIE), Community Legal Services, LeadingAge, Pennsylvania Health Care Association (PHCA), Pennsylvania Coalition of Affiliated Healthcare & Living Communities (PACAH), and SEIU Healthcare Pennsylvania attended that meeting. The second meeting, for proposed Rulemaking 3 occurred on June 8, 2022. Representatives from AARP, Alzheimer's Association, CARIE, Community Legal Services, LeadingAge, PHCA, Pennsylvania Health Law Project (PHLP), and SEIU again attended that stakeholder meeting. The Department explicitly stressed to stakeholders during this June 8, 2022, meeting that it would be considering comments on all proposed rulemakings, and that it would welcome any additional comments or feedback that stakeholders might have after the meeting regarding proposed amendments to the various regulatory chapters. The Department also indicated in a press release on proposed Rulemaking 4, issued on June 3, 2022, that it would be considering comments on all four proposed rulemakings before submitting final-form regulations. The third meeting with stakeholders, for proposed Rulemaking 4, occurred on August 3, 2022. Present at that meeting were representatives from AARP, Alzheimer's Association, CARIE, PHCA, Pennsylvania Health Funders Collaborative (PHFC), and SEIU. The Department held the fourth meeting on August 17, 2022. At this meeting, the Department presented stakeholders with an overview of the changes that were made from proposed to final-form in response to their comments, on all four rulemakings, and provided them with an opportunity to comment and provide feedback on the final-form regulations. Present at that meeting were representatives from Alzheimer's Association, CARIE, Community Legal Services, County Commissioners Association (CCAP), Disability Rights, LeadingAge, PHCA, PHFC, and SEIU.

After consideration of all comments received on the four proposed packages, the Department firmly supports its decision in splitting the six long-term care nursing facility chapters into multiple packages. While the Department appreciates the comments and suggestion for one consolidated package, one is not needed at this stage due to the public, the regulated community, and advocates full and continued opportunity to offer input on all the long-term care nursing facilities' regulations, throughout the four separate public comment periods, the first of which occurred over a year ago, as well as during the stakeholder meetings that occurred from 2021 through August 2022. In addition, as mentioned previously, at the meeting on August 17, 2022, the Department provided stakeholders an overview of the changes that were adopted on all four rulemakings, to ensure that stakeholders fully understand all amendments. At that meeting, the Department also permitted stakeholders the opportunity to further comment on the final-form amendments and incorporated this feedback into the final-form regulations. Finally, as noted above, splitting the regulations into multiple, separate packages benefited the public, regulated community, and advocates because it allowed the Department to incorporate their feedback as it moved forward with the drafting of subsequent packages, which promoted the public interest, health, safety, and welfare by improving the overall quality of the proposed regulations.

The Department has, in each of the four final-form preambles, discussed and responded to all comments received on the contents of the four proposed rulemakings, regardless of when the comment was received. The Department has added cross-references, as appropriate, where comments received on one package relate to another package to further aid in the review of the four packages together in their entirety. For example, in proposed Rulemaking 1, the

Department received comments requesting that staff, other than nursing personnel, be considered when determining whether a facility has met the minimum number of direct resident care hours in § 211.12(i) (relating to nursing services). In response to this comment, the types of individuals required for the minimum number of direct resident care hours was intentionally addressed in proposed Rulemaking 4 and generated additional comments during that proposed rulemaking's public comment period. The Department has, therefore, indicated in § 211.12(i) of the preamble for final-form Rulemaking 1, that it received comments on this topic and provided a cross-reference to the more in-depth discussion of this topic in the preamble for final-form Rulemaking 4. Further, to provide additional clarity and readability, the Department moved the proposed language relating to direct resident care hours from proposed Rulemaking 1 to the final-form Rulemaking 4 - *Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services*. Finally, the Department has noted where one rulemaking assumes the approval of another rulemaking. Through this extended review and public comment process, the Department has been transparent in its proposals and has responded to these comments through each rulemaking.

#### *Background and Need for Amendments*

The percentage of adults 65 years of age or older in this Commonwealth is increasing. In 2010, approximately 15% of Pennsylvanians were aged 65 or older. In 2017, this number increased to 17.8%. In 2020, just under 20 percent of the population in Pennsylvania was 65 years of age or older. For every 10 individuals under 25 years of age lost in Pennsylvania since 2010, the state gained 21 persons aged 65 or older. This Commonwealth also has a higher percentage of older adults when compared to other states. In 2017, this Commonwealth ranked fifth in the Nation in the number (2.2 million) of older adults and seventh in percentage (17.8%). The increase in older Pennsylvanians is expected to continue. It has been estimated that by 2030, there will be 38 older Pennsylvanians (65 years of age or older) for every 100-working age Pennsylvanians (15 years of age to 64 years of age). Penn State Harrisburg, Pennsylvania State Data Center. (July 2018). Population Characteristics and Change: 2010 to 2017 (Research Brief). Retrieved from <https://pasdc.hbg.psu.edu/data/research-briefs/pa-population-estimates>; Penn State Harrisburg, Pennsylvania State Data Center. (July 2018). (June 2022). Trends in Pennsylvania's Population by Age. (Research Brief). Retrieved from [https://pasdc.hbg.psu.edu/sdc/pasdc\\_files/researchbriefs/June\\_2022.pdf](https://pasdc.hbg.psu.edu/sdc/pasdc_files/researchbriefs/June_2022.pdf).

As the number of older Pennsylvanians increases, the number of those needing long-term care nursing will also increase. It has been estimated that an individual turning 65 years of age today has an almost 70% chance of needing some type of long-term services or support during the remainder of their lifetime; 20% will need long-term care support for longer than 5 years. More people use long-term care services at home and for longer; however, approximately 35% utilize nursing facilities for this type of care. Administration for Community Living. (February 2020). How Much Care Will You Need? Retrieved from <https://acl.gov/ltc/basic-needs/how-much-care-will-you-need>. Approximately 72,000 individuals reside in the 682 long-term care nursing facilities currently licensed by the Department.

The COVID-19 pandemic highlighted the vulnerability of older adults, with a larger percentage of deaths occurring in individuals 65 years of age and older. Centers for Disease Control and Prevention (CDC). Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC. Retrieved from <https://covid.cdc.gov/covid-data-tracker/#demographics>. See

also, CDC. COVID-19 Weekly Cases and Deaths per 100,000 Population by Age, Race/Ethnicity and Sex, United States, March 1, 2020—June 25, 2022. Retrieved from <https://covid.cdc.gov/covid-data-tracker/#demographicsovertime>. Further, it is estimated that at least a quarter of COVID-19 deaths occurred in long-term care nursing facilities. The COVID Tracking Project. (March 2021). Long-Term-Care COVID Tracker. Retrieved from <https://covidtracking.com/nursing-homes-long-term-care-facilities>. In this Commonwealth alone, there have been approximately 11,443 confirmed deaths of residents in long-term care nursing facilities since January 2020. AARP. (September 15, 2022). AARP Nursing Home COVID-19 Dashboard Fact Sheets. Retrieved from <https://www.aarp.org/ppi/issues/caregiving/info-2020/nursing-home-covid-states.html>.

The repercussions of the pandemic have reached far beyond the direct, physical effects of contracting the COVID-19 virus. Lockdowns intended to protect vulnerable residents at the beginning of the pandemic led to social isolation and loneliness because residents were prevented from having in-person contact with their loved ones. This led to an increase in depression and anxiety, cognitive decline and in some cases, physical deterioration, among residents who were already fearful of contracting the virus. Levere, M., Rowan, P., & Wysocki, A. (2021). "The Adverse Effects of the COVID-19 Pandemic on Nursing Home Resident Well-Being." *Journal of the American Medical Directors Association*, 22(5), 948-954.e2. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7980137/>. Nursing service personnel, who were already stressed before the pandemic, incurred additional stress from, among other things, shortages in personal protective equipment (PPE), limited access to COVID-19 testing supplies, fear of contracting COVID-19 while at work and spreading it to others, concern for residents under their care, lack of public support and recognition, and an increase in workloads due to the additional protective measures needed to prevent spread of COVID-19 and other nursing service personnel leaving the workforce. White, E.M., Wetle, T.F., Reddy, A. & Baier, R.R. (2021). "Front-line Nursing Home Staff Experiences During the COVID-19 Pandemic." *Journal of the American Medical Directors Association*, 22(1), 199-203. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7685055/>.

The Department's long-term care nursing facilities regulations have not been updated since 1999, with the last significant update occurring in 1997 after the 1996 amendment to the Health Care Facilities Act (the HCFA or act) (35 P.S. §§ 448.101—448.904b). Since that time, there have been substantial changes in the means of delivering care and providing a safe environment for residents in long-term care nursing facilities, with the pandemic further highlighting the need for change. The Department has been attempting to complete this much needed reform since before the pandemic, in late 2017. At that time, the Department sought assistance and advice from members of a long-term care work group (LTC Work Group). The Department worked with the LTC Work Group regularly in 2018. The members of the LTC Work Group were drawn from a diverse background and included representatives from urban and rural long-term care facilities and various stakeholder organizations and consumer groups that work in the area of resident care and delivery of services. The LTC Work Group members consisted of representatives from the following organizations: American Institute of Financial Gerontology; Baker Tilly Virchow Krause, LLP; Berks Heim and Rehabilitation; Fulton County Medical Center; Garden Spot Community; HCR ManorCare; Inglis House; Landis Communities; Leading Age; Legg Consulting Services; LIFE Pittsburgh; Luzerne County Community College; The Meadows at Blue Ridge; Mennonite Home, Lutheran Senior Life Passavant Community; PA

Coalition of Affiliated Healthcare and Living Communities; Pennsylvania Home Care Association; University of Pittsburgh; and Valley View Nursing Home. The following State agencies participated: Department of Aging; the Department of Human Services (DHS); and the Department of Military and Veteran's Affairs (DMVA).

The members of the LTC Work Group met regularly during 2018 with the LTC Work Group's primary focus being the simplification and modernization of the existing long-term care regulations. After these discussions were complete, the Department reviewed the recommendations of the LTC Work Group and consulted with other potentially impacted agencies in 2019 and 2020. In 2020, 2021 and 2022, the Department continued its efforts to draft amendments to the long-term care nursing facility regulations while also handling the day-to-day challenges of protecting the residents of those facilities, who were being hit the hardest by the COVID-19 pandemic.

As discussed previously, in response to concerns raised by IRRC and commentators, the Department ramped up its communications with stakeholders by holding the first of four stakeholder meetings, beginning in December 2021, to address comments received on proposed for Rulemaking 1 and this rulemaking. The Department held a second meeting with stakeholders in June 2022 after the public comment and IRRC comment periods ended for proposed Rulemaking 3, and a third stakeholder meeting in August 2022 after the public and IRRC comment periods ended for proposed Rulemaking 4. The Department held a fourth stakeholder meeting on August 17, 2022, to provide an overview of changes from proposed to final-form and permitted stakeholders to provide additional feedback and comments on amendments during this meeting.

The discussions with stakeholders and the comments received on the four proposed rulemakings have made it abundantly clear that amendments to the current long-term care nursing facility regulations are desperately needed and must not be delayed any longer. Commentators expressed in comments to all four groups that they were pleased to see the Department updating these regulations. The comments in support of amending the regulations can generally be summarized as follows:

- Amendments are long overdue.
- Revisions to existing regulations are urgently needed.
- COVID-19 had a devastating impact on facilities and highlighted the need for revisions.
- Regulations need to be updated to provide additional protection to residents.

Unfortunately, while commentators agree for the most part that an update to the regulations is needed, they do not agree on the extent of the update needed. Some commentators strongly argued that the Department's proposed amendments do not go far enough in protecting residents, while other commentators strongly argued that the Department's proposed amendments go too far and result in a fiscal impact. The Department has considered all comments it received both in favor of and against the proposed amendments and has responded to those comments. In considering those comments and balancing the competing interest of the parties in this regulatory review process, the Department has made revisions from the proposed rulemakings to the final-form rulemakings. The Department has also provided explanations to comments received in the preambles for each of the four final rulemakings, as explained more fully above.

*Public Comments*

In response to proposed Rulemaking 2, the Department received comments from 20 public commentators and comments from IRRC. These comments are discussed in further detail below.

*Description of Amendments / Summary of Comments and Responses*

*Chapter 201. Applicability, Definitions, Ownership and General Operation of Long-Term Care Nursing Facilities*

*General Comment(s)*

A few commentators suggested that the Department create a new § 201.0 at the beginning of this Chapter to provide enumerated purposes for the Department's regulation of long-term care nursing facilities. Commentators suggested that the proposed purpose section include the following purposes: (1) to enhance the health and welfare of Pennsylvania citizens by making the health care and long-term services and supports delivery system responsive and adequate to the needs of its citizens; (2) to assure that new health care services and facilities are efficiently and effectively used; (3) to ensure that health care services and facilities meet and will continue to meet high quality standards; (4) to respect the right that all citizens have to receive quality, humane, courteous, and dignified care; (5) to ensure nursing facility residents can maintain their individuality and make choices about how they want to live; (6) to foster responsible private operation and ownership of health care facilities; and (7) to encourage innovation and continuous development of improved methods of health care delivery to nursing home residents.

The Department appreciates this comment and agrees with the provision of quality services and care in an effective and efficient manner; however, this proposed language is largely duplicative of the purpose statement set forth in statute under section 102 of the HCFA (35 P.S. § 448.102). Section 102 states in full:

The General Assembly finds that the health and welfare of Pennsylvania citizens will be enhanced by the orderly and economical distribution of health care resources to prevent needless duplication of services. Such distribution of resources will be furthered by governmental involvement to coordinate the health care system. Such a system will enhance the public health and welfare by making the delivery system responsive and adequate to the needs of its citizens and assuring that new health care services and facilities are efficiently and effectively used; that health care services and facilities continue to meet high quality standards; and, that all citizens receive humane, courteous, and dignified treatment. In developing such a coordinated health care system, it is the policy of the Commonwealth to foster responsible private operation and ownership of health care facilities, to encourage innovation and continuous development of improved methods of health care and to aid efficient and effective planning using local health systems agencies. It is the intent of the General Assembly that the Department of Health foster a sound health care system which provides for quality care at appropriate health care facilities throughout the Commonwealth.

The language suggested by commentators for proposed § 201.0 is lifted directly from the purpose statement in the act with minimal changes. The Department follows the *Pennsylvania*

*Code & Bulletin Style Manual* in drafting regulations. Under § 2.10 of the *Style Manual*, purpose statements should only be included in regulations when necessary. Since this language is duplicative, the Department declines to reproduce this language in regulation.

§ 201.23. *Closure of facility*

This section is amended from proposed to final-form. Although the Department retains the cross-reference at the beginning of this section to the closure requirements in 42 CFR 483.70(l) and (m) (relating to administration), the Department makes amendments to each subsection, as described below.

*Subsection (a)*

Subsection (a) remains deleted from proposed to final-form. The Department proposed to delete subsection (a) as duplicative of Federal requirements for a facility to provide a 60-day notice of closure to the Department, and existing § 51.3(c) (relating to notification), which requires notice at least 60 days prior to a facility ceasing to provide an existing health care service or reducing its bed complement. Commentators requested that the Department retain this subsection, instead of deleting it because it provides for greater protections than the Federal requirements by requiring that notice be provided to the Department at least 90 days prior to closure, rather than 60 days as required by 42 CFR 483.70(l)(1)(i). Commentators were generally concerned that the reduction in the number of days' notice would negatively affect residents who need more time, not less, to prepare in the event of a facility closure. IRRC asked if the reduction from 90 days to 60 days affects notice to residents. IRRC asked the Department to explain the reasonableness and feasibility of reducing the notice timeframe, and how doing so protects the health, safety, and welfare of residents, if the amendment from 90 days to 60 days affects residents.

Under existing § 201.23(a), facilities must provide notice to the Department at least 90 days prior to closure. However, there is no specific timeframe in which facilities must provide notice to residents. Instead, under existing requirements, notice to residents is required under existing § 201.23(b) and (c) within a "sufficient time" for an orderly transfer. After carefully considering public comments and IRRC's comments regarding the timing of and requirements for notice of a facility closure, the Department is also adding subsections (c.1), (c.2) and (c.3), on final-form, to provide a specific timeframe to further protect residents, while addressing the realities surrounding closure of facilities. Subsections (c.1), (c.2) and (c.3) address the timing and communication of a facility closure plan as explained more fully below.

*Subsection (b)*

Subsection (b) remains deleted from proposed to final-form. The Department proposed to delete subsection (b), which requires the licensee of a facility to notify the resident or resident's responsible person of the closure of a facility, because under 42 CFR 483.70(l)(1), the administrator of a facility is required to give notice to certain agencies and individuals, including residents and their legal representatives or other responsible parties. Commentators requested that the Department not delete subsection (b) but instead improve it by requiring that notice be provided to residents and resident representatives not only in writing, but also in the manner that the resident and resident representatives prefer contact. Commentators also requested that

language be added to require certain information to be included in the notice and that the notice be provided to certain individuals. In response to these comments, the Department adds subsections (c.3) and (c.4) to this final-form rulemaking, as explained more fully below.

*Subsection (c)*

Subsection (c) remains deleted from proposed to final-form. The Department proposed to delete this subsection, which requires a facility to give a resident or the resident's responsible person sufficient time to effectuate an orderly transfer. IRRC noted that the Department, in proposing to delete this section, relied on its proposed incorporation by reference of CMS' *State Operations Manual, Appendix PP*, in proposed Rulemaking 1, by indicating that it expected a facility's closure plan to include certain elements from *Appendix PP* that include addressing the orderly transfer of residents. IRRC asked the Department in comment to proposed Rulemaking 1 to delete the incorporation by reference of *Appendix PP*. IRRC asked in comment to this proposed rulemaking, "If *Appendix PP* is removed, how will that impact requirements for closure plans for facilities?" IRRC also requested that the Department clarify in final-form, the requirements for a facility closure plan.

In response to IRRC's comment on proposed Rulemaking 1, the Department has removed the incorporation of *Appendix PP* from the regulations. Further, in response to public comments, the Department has added provisions related to closure plan requirements because it provides greater protection to residents and greater clarity to the regulated community. . To avoid the impact of having no closure plan requirements, the Department has added subsections (c.1) through (c.3).

Commentators also expressed concern over the deletion of subsection (c) because requiring a plan is not the same as ensuring an orderly transfer. The Department agrees that an orderly transfer is distinct from notice of a closure. Under 42 CFR 483.15(c)(7), a facility must also "provide and document sufficient preparation and orientation to residents *to ensure a safe and orderly transfer or discharge from the facility*" (emphasis added). This is already required of all facilities, including the three private-pay facilities, under the partial incorporation of the Federal requirements under existing § 201.2.

*Subsection (c.1)*

As noted previously, subsection (c.1) is added from proposed to final-form, at the request of commentators and IRRC. Under subsection (c.1), a facility will be required to develop a closure plan that includes the following:

- (1) The identification of those who will be responsible for the daily operation and management of the facility during the closure process.
- (2) The roles and responsibilities, and contact information, for the facility owner and the administrator or any replacement or temporary manager during the closure process.
- (3) Assurance that no new residents will be admitted to the facility after the written notice of closure is provided under subsection (c.3).
- (4) A plan for identifying and assessing available facilities to which residents can be

transferred, taking into consideration each resident's individual best interests and resident's goals, preferences and needs regarding services, location and setting. This shall include:

- (i) Interviewing each resident and resident representative, if applicable, to determine each resident's goals, preferences and needs.
  - (ii) Offering the opportunity, to each resident and resident representative, if applicable, to obtain information regarding options within the community.
  - (iii) Providing residents and resident representatives, if applicable, with information or access to information regarding providers and services.
- (5) A plan for the communication and transfer of resident information, including medical records.
- (6) Provisions for the ongoing operations and management of the facility, its residents and staff during the closure process, that include the following:
- (i) Payment of salaries and expenses.
  - (ii) Continuation of appropriate staffing and resources to meet the needs of the residents, including provision of medications, services, supplies and treatment.
  - (iii) Ongoing accounting, maintenance and reporting of resident personal funds.
  - (iv) Labeling, safekeeping and appropriate transfer of each resident's personal belongings.

These requirements align with guidance in section F845 of *Appendix PP*, and will ensure that all facilities, including the three private-pay facilities, are held to the same standards for the contents of a closure plan.

*Subsection (c.2)*

Subsection (c.2) is added from proposed to final-form. After carefully reviewing and considering public comments, the Department agrees that a longer notice period to the Department is needed to review a facility's closure plan. However, since communication between facilities and the Department is now submitted through electronic means (instead of the lengthier process of regular mail), the Department has added a provision that requires notice to the Department 75 days prior to the proposed date of closure. This time period will allow the Department 15 days to review and approve a facility closure plan.

Specifically, under 42 CFR 483.70(1)(1), a facility is required to provide written notification to the Department, at least 60 days prior to the date of closure. However, under 42 CFR 483.70(1)(3), this written notice must include "the plan, *that has been approved by the State*, for the transfer and adequate relocation of the residents of the facility by a date that would be specified by the State prior to closure." (emphasis added). The plan for the transfer and relocation of residents is part of the closure plan, which will be required under new subsection (c.1)(4). The Department will need time to review and approve the closure plan before the

facility provides notice to the other individuals listed in 42 CFR 483.70(l)(1). The Department is therefore, adding subsection (c.2), on final-form, to require that a facility submit its' notice of closure and the closure plan, developed under subsection (c.1) at least 75 days prior to the proposed date of closure.

The Department selected 75 days based on several factors. Specifically, in practice, the Department does not need more than 15 days to review and approve a closure plan. Additionally, most facility closures that the Department has overseen recently are due to a lack of adequate cashflow. Requiring facilities to submit a closure plan and notice of closure 90 days in advance of its proposed closure date may serve only to exacerbate the facility's financial issues and ability to effectuate safe and timely relocation of residents while providing no additional benefit to either the Department, residents, interested parties, or the facilities.

*Subsection (c.3)*

Subsection (c.3) is added from proposed to final-form. As noted previously, commentators requested that the Department not delete subsection (b) but retain it and add additional individuals to the list of individuals under 42 CFR 483.70(l)(1) to whom notice must be provided. Commentators also requested that the Department add language to require that notice be in writing, and that notice be given in a language and manner that the resident or resident representative can understand. Under 42 CFR 483.70(l)(1), an administrator of a facility is required to provide written notice of the closure of the facility to the State Survey Agency (the Department), the State Long-Term Care Ombudsman, and residents of the facility and their legal representatives or other responsible parties.

After reviewing these various comments, the Department agrees with commentators, and in the interest of safeguarding residents' rights, adds a requirement that notice, as well as the transfer and relocation plan of residents, be provided to residents and their resident representatives in writing or in a language or manner they understand. The Department also adds to subsection (c.3) a requirement that the written notice of closure and the closure plan be provided to employees of the facility, the Office of the State Long-Term Care Ombudsman, and the Department of Human Services, which oversees the MA Managed Care Organizations. Adding these additional individuals and organizations to this requirement will ensure that all applicable agencies and personnel are advised of the closure, which will help ensure that resident relocation and transition occurs more seamlessly. The Department agrees with commentators that the notice of closure, which includes certain pertinent information as set forth below, should be distributed to these additional interested parties to ensure a cogent and concurrent response to a facility closure. The Department maintains the 60-day notice requirement to align with the Federal requirements. In response to commentators' concerns that 60 days is not enough, the Department notes that, if needed, the Department may extend the time that a facility remains open under subsection (e) for an additional 30 days to ensure a safe and orderly transfer of residents. These provisions work together to protect the health, safety, and welfare of residents.

Commentators requested that the Department also require that the notice of closure be provided to various other persons and entities, including designated family members of each resident, the facility's resident council, the facility's family council, labor organizations that represent the facility's workforce, county commissioners, the County or Municipal Health Department, if one exists, and a representative of the local officials of the city or town where the facility is located. After carefully considering these comments and balancing competing

interests between consumer advocates and facility stakeholders, the Department declines to explicitly name these additional parties in this final-form regulation. As provided under the final-form rulemaking, notice would be provided to residents, their resident representatives (which includes a family member designated by the resident), employees of the facility, the Office of the State Long-term Care Ombudsman and the Department of Human Services.

Further, designated family members would also be “other responsible parties” under 42 CFR § 483.70(l)(1), which provides facility closure requirements. Additionally, because the resident council of a facility is comprised of residents, it will necessarily receive notice of closure when the residents receive notice. Family councils do not exist at every facility, but family members may receive the notice if they are named as a resident representative. Since the Department has added a requirement that a facility’s employees receive notice of the closure, it would be incumbent upon the employees to inform their respective labor organizations of the facility closure should they choose to do so. The Department declines to include a requirement that notice be provided to county commissioners or representatives of the local officials of the city or town where the facility is located. These parties are not part of the closure or relocation process. Because county or municipal health departments do not possess regulatory oversight of facility closures, the Department likewise declines to require a facility to provide these entities with notice of closure.

*Subsection (c.4)*

Subsection (c.4) is added from proposed to final-form, based on public comment, to include additional basic elements for the notice of closure. Under subsection (c.4), the notice to the groups and individuals listed in 42 CFR 483.70(l)(1) and in subsection (c.2) must include the proposed date of closure, the contact information for the facility representative delegated by the facility to respond to questions about the closure, the contact information for the office of the State Long-Term Care Ombudsman, and the transfer and relocation plan. These items are added at the request of commentators and reflect the most salient and important information related to a facility closure.

Commentators also requested that the Department require that the notice of closure include other items, such as the reasons leading to closure, the provision of a public information session, the ability for interested parties to file comments with the Department, and a catch-all provision for other information that may be specified by the Department. In balancing the competing interests related to closure plans, the Department declines to add these additional provisions to the notice of closure. The importance of the notice of closure is to advise residents and other interested parties that the facility will close on a date certain, provide a facility contact in order to answer closure-related questions, and advise residents and interested parties of the facility’s plan to transfer and relocate residents. Any additional information is extraneous, an additional requirement, and detracts from the purpose of the notice of closure.

*Subsection (d)*

Subsection (d) is unchanged from proposed to final-form. Subsection (d) prohibits a long-term care nursing facility from requiring a resident to leave the facility less than 30 days after notice is given, unless the Department deems removal is necessary for the health and safety of residents. As explained, on proposed, the Department retains subsection (d), without amendment, because this requirement is not covered within the Federal requirements, and the

Department determined it was necessary to keep this provision to ensure the health and safety of residents during the closure of a facility. IRRC asked, “What is the benefit of having a 60-day notice requirement to residents if the facility can require a resident to leave on day 31?” . This subsection provides a protective window in which the resident may refuse a transfer facilitated by the facility and locate a facility on their own. After 30 days, the facility may initiate a transfer or discharge for residents who have not yet arranged to leave on their own. Further, the facility-initiated transfer or discharge would be subject to transfer and discharge requirements in 42 CFR 483.15(c)(4) and this subpart.

*Subsection (e)*

Subsection (e) is unchanged from proposed to final-form. Subsection (e) permits the Department to require that a facility remain open for an additional 30 days when an orderly transfer cannot be effectuated within 30 days. As explained on proposed, the Department retains subsection (e), without amendment, because this requirement is not covered within the Federal requirements, and the Department determined it was necessary to keep this provision to ensure the health and safety of residents during the closure of a facility.

*Subsection (f)*

Subsection (f) is unchanged from proposed to final-form. Subsection (f) permits the Department to monitor the transfer of residents. As explained on proposed, the Department retains subsection (f), without amendment, because this requirement is not covered within the Federal requirements, and the Department determined it was necessary to keep this provision to ensure the health and safety of residents during the closure of a facility. Commentators requested that the Department add a provision requiring the Department to appoint a single person to oversee implementation of the facility’s closure plan and be on-site at the facility daily. After careful consideration, the Department declines to add this provision. The Department added subsection (c.1), that requires identification of those responsible for daily operations and management during the closure process. Further, the contact information for the facility owner, the administrator, or any replacement or temporary manager during the closure process is also required. The purpose of this information is for the Department to maintain frequent communication with a facility that is closing, including status calls, the submission of daily reports, and monitoring surveys. In addition, the Department notes that often, representatives from the Office of the Local and State Ombudsman are involved in the closure process as well.

*Subsection (g)*

Subsection (g) is retained from proposed to final-form, with amendments, based on comments received in response to the Department’s proposed deletion of this section. The Department had proposed to delete subsection (g) because it referred to an “outdated” requirement that a licensee file proof of financial responsibility with the Department. Commentators, however, requested that the Department not delete this subsection because simply submitting a plan for closure that provides for continued payment of salaries and expenses is not evidence of a facility’s ability to pay for salaries and expenses. IRRC noted commentators’ concerns that a closure plan is not proof of financial responsibility, and their concerns that the deletion of subsection (g) would put residents and caregivers at risk. IRRC asked the Department to explain the need for eliminating this provision and to explain how

requiring a “plan” versus “proof” is reasonable and protects the public health, safety, and welfare of residents.

After further consideration, the Department agrees with commentators and these comments and on final-form, adds the requirement in subsection (g) back into the regulation. As discussed, in its closure plan, a facility must include a plan outlining the ability to pay salaries and expenses. The Department acknowledges that a plan is different than an affirmative showing of proof that a facility will be able to continue to meet its financial obligations while it is closing. As such, the Department retains the language in existing subsection (g), on final-form, with two amendments. The Department makes a grammatical amendment by replacing the word “insure” with the word “ensure.” The Department also amends subsection (g) on final-form to align with the notice of closure timeline set forth in subsection (c.3), by requiring proof of financial responsibility to ensure that the facility continue to operate in a satisfactory manner until closure of the facility, instead of 30 days, following the notice of intent to close.

*Other comments*

A commentator provided the Department with a detailed mark-up of § 201.23, with additional requirements that would expand § 201.23 into twenty-six subsections. Several other commentators wrote in support of this detailed mark-up. The Department thoroughly reviewed the mark-up language, comparing it to the existing regulation and the Federal requirements, and discussed the reasonableness of adding each one of these proposed subsections into regulation. Below is a general summary of this discussion with the Department’s decision points.

These commentators seek to have a facility, intending to close, hold a public information session in conjunction with the Department. This public information session would be held at least 60 days prior to the intended date of closure and would be subject to public notice requirements developed by the Department. In balancing the competing interest of advocates and industry stakeholders, the Department declines to include this additional requirement in its final-form rulemaking. Through the closure plan and notice of closure requirements added to this section on final-form, interested parties can obtain and review relevant information pertaining to the intended closure of the facility. Interested persons that are concerned with the closure or any perceived issues surrounding the closure may also contact the Department, the facility, the office of the State Long-term Care Ombudsman, or submit a complaint. Information on how to submit a complaint to the Department can be found on the Department’s website at: <https://www.health.pa.gov/topics/facilities/nursing%20homes/Pages/Nursing%20Homes.aspx>. Due to these public processes, there is limited benefit to requiring both the Department and the facility to jointly pursue an additional requirement for a public information session.

The commentators also request that the Department add a requirement to prevent a facility from transferring any residents unless and until the Department approves the facility’s closure plan. To provide additional clarity and in response to comments, the Department has added subsection (c.2) to require a facility to submit its closure plan to the Department for approval. In practice, the Department not only reviews and approves closure plans, but maintains frequent communication with facilities, including status calls, the submission of daily reports to monitor the transfer of residents, and monitoring surveys during a facility closure, to ensure that residents are transferred in a safe and efficient manner. As such, this provision is not needed. Additionally, the Department notes that adding this prohibition might prevent short-

term residents from being transferred or discharged while the Department is reviewing the closure plan. The Department, therefore, declines to add this language.

The commentators request that the Department add a requirement to prevent a facility from accepting new residents after submission of a closure plan. The Department agrees with this recommendation, and this is addressed under the new subsection (c.1)(3).

The commentators also suggest a procedure for the submission of closure plans to the Department, that would include a public comment period and a public information session prior to approval of the closure plan, and a procedure for the submission of an amended closure plan, in the event of disapproval. As explained previously, under the closure plan and notice of closure requirements added to this section on final-form, interested parties can obtain and review relevant information pertaining to the intended closure of the facility. Interested persons that are concerned with the closure or any perceived issues surrounding the closure may contact the Department, the facility, the office of the State Long-term Care Ombudsman, or submit a complaint. Information on how to submit a complaint to the Department can be found on the Department's website at:

<https://www.health.pa.gov/topics/facilities/nursing%20homes/Pages/Nursing%20Homes.aspx>.

As provided previously, given the additional procedures added to the final-form rulemaking there is limited benefit to requiring both the Department and the facility to jointly pursue a public information session. As a result, the Department declines to add any provision providing for public information sessions or public comment in relation to closure plans. The Department additionally reiterates that its concern in the event of a facility closure is that the residents are transferred safely and there is no decline in the quality of services provided to residents or decline in the health, safety, and welfare of the residents during the closure process. In practice, the Department reviews closure plans and where needed, requests that amendments be made to the plans prior to issuing its approval. If a closure plan continues to be deficient, even after amendment, the Department may, under section 814 of the act (35 P.S. § 448.814), institute a temporary manager and take other corrective actions to ensure that the residents are safely cared for until a safe transfer can be effectuated. Additional corrective actions available to the Department include requiring the facility to rectify the deficiency, having the facility submit a plan of corrective action, banning new admissions from the facility or revoking a facility's license. *Id.*

The commentators also request that the Department add a provision to state that a closure plan is deemed approved if the Department fails to act within 20 working days. As stated previously, the Department typically requires no more than a few days to review and approve or seek amendment of a closure plan. The Department declines to add this limitation to the final-form rulemaking, as it needs to explicitly ensure that all closure plans meet necessary regulations and requirements. Allowing a process through which a closure plan would be automatically approved would place residents at risk if the closure plan was inadequate to ensure their health and safety during the closure process.

The commentators also request that the Department add a requirement that the facility post an initial notice and provide a second notice of closure after the Department approves the closure plan. After carefully considering this comment and balancing the interests for notice and also the resources during the closure process, the Department declines to include this requirement in regulation. Under subsection (c.2), the facility must provide a notice of closure

and closure plan to the Department at least 75 days in advance of closure. Once the Department approves the closure plan and notice of closure, the notice may then be distributed to residents and other interested parties. Due to this process, there is not an additional benefit to providing another notice of closure separate from what is already provided for in subsections (c.2), (c.3) and (c.4).

The commentators request that the Department add a provision to require a facility to provide at least weekly updates to the Department on closure status in addition to other provisions. The Department declines to add this language. As mentioned previously, the Department maintains frequent communication with a facility that is closing, including status calls, the submission of daily reports to monitor the transfer of residents, and monitoring surveys during a facility closure. Further, section 813(a) of the act (35 P.S. § 448.813(a)) provides the Department with authority to enter and inspect facilities for the purpose of determining the adequacy of the care and treatment provided to residents. The act also defines “survey” as an announced or unannounced examination which may include an onsite visit, for the purpose of determining a facility’s compliance with licensure requirements. 35 P.S. § 448.802a. Therefore, the Department may conduct an announced or unannounced survey of a facility that is closing should the Department receive any indication that the facility is not following the closure plan.

The commentators also request that the Department add a provision that gives the Secretary of the Department the authority to waive or modify all closure timeframes in the event of an involuntary facility closure. The Department declines to add this provision, as the sanctions process available to the Department under § 51.41 (relating to violations, penalties) would cover the process suggested by commentators. The Department also refers commentators to § 201.15a (relating to enforcement), in final-form Rulemaking 3 – *Applications for Ownership, Management and Changes of Ownership; Health and Safety*, that outlines the enforcement actions that are available to the Department. That section applies to the entirety of this subpart, including § 201.23.

The commentators request that the Department include a provision that includes explicit penalties and sanctions for a facility’s failure to comply with the provisions of § 201.23. The Department appreciates the concern regarding compliance; however, this addition is unnecessary. As such, the Department declines to add this provision, and notes that the existing sanction provisions in § 51.41 apply if a facility fails to comply with § 201.23. The Department also refers commentators to § 201.15a, in final-form Rulemaking 3– *Applications for Ownership, Management and Changes of Ownership; Health and Safety*, that outlines the enforcement actions that are available to the Department. That section applies to the entirety of this subpart, including § 201.23.

The commentators request that the Department add a requirement that a facility is explicitly liable to the Department for funds expended by the Department to provide care and relocation services for residents and for funds expended to use a temporary manager. Section 817 of the Act (35 P.S. § 448.817(c)) provides that funds collected because of an assessment of a civil penalty, may be used to provide temporary management and to relocate residents, among other things, when all other sources of funding have been exhausted. The Act, however, does not give the Department the authority to require a facility to reimburse it for the expenditure of these funds. As such, the Department will not be adopting this recommendation.

The commentators request that the Department add language that a temporary manager may be appointed if a facility fails to comply with notice of closure provisions, fails to implement an appropriate relocation plan, or transfers residents prior to the 60-day notice period. As provided previously, there are existing enforcement provisions for provider violations. Under section 814 of the act, the Department is authorized to appoint temporary management to ensure the health and safety of residents. 35 P.S. § 448.814(b). This authority is also echoed in the final-form rulemakings, based on the review and consideration of additional public comments. The Department also refers commentators to § 201.15a, in final-form Rulemaking 3— *Applications for Ownership, Management and Changes of Ownership; Health and Safety*, that outlines the enforcement actions that are available to the Department. That section applies to the entirety of this subpart, including § 201.23. As such, the Department declines to adopt this recommendation.

The commentators request that the Department add a provision to indicate that failure to ensure appropriate notice to and relocation of all residents may result in a finding of abuse or neglect as defined under the Older Adult Protective Services Act (OAPSA) (35 P.S. 10225.101—10225.5102) or the Adult Protective Services Act (35 P.S. § 10210.101—10210.704). The Department declines to add this provision to regulation, as it is unnecessary. Those acts and accompanying regulations provide for the identification and reporting of abuse. As such, it is not needed for the Department to expand on those provisions within this final-form rulemaking. The Department further notes that it investigates complaints of abuse and neglect in facilities and would continue to do so during the closure process.

Finally, commentators requested the Department add a forfeiture provision in the event that a facility fails to comply and abandons the facility and residents, resulting in an immediate and substantial threat to the health and safety of residents. After careful consideration, the Department declines to add this provision. Regardless of the reason for closure, any facility that closes would be required to apply for an application for subsequent licensure and would be subject to the comprehensive requirements related to prior ownership, adjudicated or settled civil actions, financial reporting, ownership structure and a public comment process in final-form Rulemaking 3 – *Applications for Ownership, Management and Changes of Ownership; Health and Safety*, in § 201.12 (relating to application for license of a new facility or change in ownership).

#### *Chapter 203. Application of Life Safety Code for Long-Term Care Nursing Facilities*

Chapter 203 remains deleted from proposed to final-form. Commentators supported the deletion of this Chapter. Section 203.1 (relating to application of the *Life Safety Code*) is the only section within this Chapter. The Department proposed to delete § 203.1, and by extension, this Chapter, as part of its process to streamline Federal and State requirements for long-term care nursing facilities for clarity and consistency. The National Fire Protection Association (NFPA )101, *Life Safety Code*, 2012 edition, is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR 483.73(g)(1)(vii) (relating to emergency preparedness). Therefore, it is not necessary to have a separate provision within the State requirements regarding the applicability of the *Life Safety Code*. Deletion of this Chapter assumes approval of final-form Rulemaking 1 - *General Applicability and Definitions*, which expands the adoption of the Federal requirements in § 201.2.

#### *Chapter 204. Physical Environment and Equipment Standards for Construction, Alteration or Renovation of Long-Term Care Nursing Facilities*

The Department retains Chapter 204 from proposed to final-form, but with amendments, as explained more fully below. As explained on proposed, the Department has decided to separate regulatory provisions pertaining to construction, alteration or renovation of long-term care nursing facilities into two chapters to clarify what standards apply to new versus existing construction, alteration or renovation. The Department had proposed to make Chapter 204 applicable to plans for construction, alteration or renovation of long-term care nursing facilities approved on or after 6 months from the publication date of the final-form rulemaking. However, given the estimated timing of the final-form rulemaking, and to be consistent with the effective date established for other sections of the regulations, the Department has decided to make Chapter 204 applicable to plans for construction, alteration or renovation approved on or after July 1, 2023. Existing Chapter 205, as amended, will continue to be the baseline standard for all construction, alteration or renovation of long-term care nursing facilities performed based on plans that were approved by the Department before July 1, 2023, the effective date of Chapter 204.

A commentator expressed concern that there is no definition or threshold as to what classifies as “construction,” “alteration” or “renovation.” IRRC requested that the Department define these terms to provide clarity for the regulated community. The term “construction, alteration or renovation” is already used in § 51.3(d) (relating to notification) and is already understood by the regulated community. However, to be responsive to the concern raised by the commentator and IRRC, the Department has deleted the existing definition for “alteration” in § 201.3 (relating to definitions) and added a new definition for the term “construction, alteration or renovation” to § 201.3 in final-form Rulemaking 1 - *General Applicability and Definitions*. The Department chose to use the term “construction, alteration or renovation” to align with the use of this term in § 51.3(d). The term “construction, alteration or renovation” is defined as “the erection, building, remodeling, modernization, improvement, extension or expansion of a facility, or the conversion of a building or portion thereof to a facility.” For the purposes of the requirements in Chapters 204 and 205, there is no distinction between the terms “construction,” “alteration” or “renovation.” A facility will need to submit plans for any work that falls within the scope of this definition. In response to concerns from commentators that facilities could be restricted from making small changes to improve the physical environment for residents, the Department notes that it does not intend for the definition of “construction, alteration or renovation” to encompass work that consists of part-for-part replacement or regular facility maintenance. For clarity, the Department has added language to the definition of “construction, alteration or renovation” to reflect this intention.

The Department, on final-form, amends the title of Chapter 204 to replace the words “alterations, renovations or construction” with the words “construction, alteration or renovation” to align with the use of this term and definition in § 201.3 in final-form Rulemaking 1, as explained above. The Department has made amendments throughout Chapter 204, as well, for consistency in the use of this term, as indicated more specifically below.

Commentators and IRRC expressed concern regarding certain provisions of Chapter 205 that were not carried over into Chapter 204. The Department, on proposed, explained which sections and subsections of Chapter 205 were being carried over into Chapter 204 because they were not covered by the 2018 edition of the Facility Guidelines Institute's (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities (Guidelines)*. The Department explained that it was only copying provisions from Chapter 205 into Chapter 204

that go above and beyond the 2018 FGI *Guidelines*. IRRC asked the Department to clarify, in response to commentators' concerns, specifically which provisions are not copied from Chapter 205 into Chapter 204 because they are addressed in the 2018 *Guidelines*. In response to this comment, the Department has completed a crosswalk with citations to the specific sections in the 2018 FGI *Guidelines* for the provisions in Chapter 205 that are not being copied into the new Chapter 204. The Department has provided these citations in each section discussed below, as well as a summary at the end of the discussion of this Chapter. While performing this crosswalk, the Department identified additional provisions that were added to Chapter 204. These amendments are described below, as well.

§ 204.1. *Application of Guidelines for Design and Construction of Residential Health, Care and Support Facilities*

*Subsection (a)*

Subsection (a) is amended from proposed to final-form. The Department proposed in subsection (a) to adopt the 2018 Facility Guidelines Institute (FGI) *Guidelines* as the minimum standard for construction, alteration or renovation for plans approved on or after the effective date of Chapter 204. The Department, on final-form, amends subsection (a) to indicate that this subsection applies to plans for construction, alteration or renovation approved on or after July 1, 2023, as explained previously. The Department also amends subsection (a) on final-form to replace the words "alterations, renovations and construction" with the words "construction, alteration or renovation" for consistency in the use of this terminology.

Commentators, citing to concerns over the length of time it takes to update regulations, requested that the Department amend subsection (a) to allow for adoption of future versions of the FGI *Guidelines* and not specifically reference the 2018 version. IRRC further requested that the Department explain how requiring facilities to comply with the 2018 FGI *Guidelines* is not an improper delegation of authority given that this document is not subject to regulatory review requirements.

In response to these comments, the Department notes that it is explicitly incorporating only the 2018 edition of the FGI *Guidelines* – a specific edition of the *Guidelines* and is not allowing for the adoption of future editions in the regulations because doing so would constitute an improper delegation of authority. The Department may not delegate its authority to make rules and regulations by adopting a private organization's future recommendations. *See, e.g., Protz v. Workers' Compensation Appeal Board (Derry Area Sch. Dist.)*, 161 A.3d 827 (Pa. 2017) (holding that a provision in the Workers' Compensation Act, requiring a physician to apply the methodology set forth in the most recent version of the American Medical Association *Guides to the Evaluation of Permanent Impairment*, was an unconstitutional delegation of legislative authority). This non-delegation doctrine does not, however, prohibit the adoption of a particular set of standards which are already in existence at the time of the adoption. *Id.*; *Pennsylvania AFL-CIO v. Commonwealth*, 219 A.3d 306 (Pa. Cmwlth. 2019).

The Department's adoption of the 2018 edition of the FGI *Guidelines* does not constitute an impermissible delegation of authority because it is a specific edition, and the Department carefully reviewed the necessity for application of these standards to long-term care nursing facilities. The 2018 edition of the FGI *Guidelines* is a specific addition, with new editions of the *Guidelines* being published every four years. The Department, on proposed, indicated that the

2018 edition of the FGI *Guidelines* would be incorporated in regulation and provided the public with the opportunity to review and offer comment through the regulatory review process. As such, the adoption of the 2018 FGI *Guidelines* does not circumvent the regulatory review process. As indicated on proposed, the Department plans to review and update the regulations through the regulatory promulgation process, as necessary, to incorporate new editions of the FGI *Guidelines*. FGI recently updated the *Guidelines* in May 2022. The Department has not had an opportunity to yet review and consider all these updates, but will do so and update the regulations, at a future date, if necessary to incorporate these newer construction requirements.

*Subsection (b)*

Subsection (b) is amended from proposed to final-form. As explained on proposed, subsection (b) will require all facilities to comply with the standards set forth in Chapter 205 (relating to physical plant and equipment standards for long-term care nursing facilities) for construction, alteration or renovation approved prior to the effective date of Chapter 204. The Department, on final-form, amends subsection (a) to indicate that this subsection applies to plans for construction, alteration or renovation approved before July 1, 2023, which will be the effective date of Chapter 204, as explained previously. The Department also amends subsection (a) on final-form to replace the words “alterations, renovations and construction” with the words “construction, alteration or renovation” for consistency in the use of this terminology.

The Department recognizes that a broad, overall adoption of the FGI *Guidelines* to all long-term care nursing facilities, regardless of when plans were approved or when the construction, alteration or renovation occurred, will impose an undue burden on those facilities that are presently operating under the requirements set forth in Chapter 205. Subsection (b) allows these facilities to continue to operate under the requirements set forth in Chapter 205 until they wish to perform any new construction, alteration or renovation. Any construction, alteration or renovation plans approved on or after July 1, 2023, will fall under subsection (a) of the new Chapter 204. This is further clarified by subsection (c), as described below.

*Subsection (c)*

Subsection (c) is amended from proposed to final-form. Commentators indicated they understood the intent of this subsection but were concerned that the wording would permit facilities to allow buildings to deteriorate and fall out of compliance where they had once met the FGI *Guidelines* but did not maintain those standards. IRRC asked for clarification as to the circumstances under which a facility would be deemed to be compliant. The Department believes that the confusion expressed from commentators is due to the first sentence of this subsection. In response to those comments, the Department, therefore, deletes this sentence on final-form. As explained on proposed, under subsection (c), a long-term care nursing facility must meet the requirements that were in effect at the time of approval of the plans for construction, alteration or renovation. The Department intends to hold facilities to the standards that were in effect at the time the plans for construction, alteration or renovation were approved. A facility must remain in compliance with those standards until such time that they perform new construction, alteration or renovation. At that time, the facility will need to comply with the standards that are in effect at the time that their plans for construction, alteration or renovation are approved by the Department. To be clear, a facility will not be allowed to fall into disrepair. A facility will be cited if it is not in compliance with the standards that were in effect at the time that its plans for construction, alteration or renovation were approved. The Department also

amends subsection (c) on final-form to replace the words “alterations, renovations and construction” with the words “construction, alteration or renovation” for consistency in the use of this terminology.

*§ 204.2. Building plans*

The Department proposed to delete existing § 205.4 (relating to building plans) and copy several provisions from that section into this section. Section 205.4 is deleted because all plans for construction, alteration or renovation approved on or after July 1, 2023, the effective date of the regulation, will need to meet the requirements of § 204.2.

In response to commentators and IRRC, the Department provides the following explanation for why certain provisions of § 205.4 were not carried over into the new requirements in § 204.2. The Department did not copy the requirements of existing § 205.4(a) and (b) into § 204.2 because these requirements are duplicative of existing requirements in § 51.3(d). Section 51.3(d) applies to all healthcare facilities licensed by the Department, including long-term care nursing facilities. Section 51.3(d) (relating to notification) requires that a facility submit architectural plans and blueprints of proposed new construction, alteration or renovation to the Department for approval before beginning such new construction, alteration or renovation. Section 205.4(c) is copied to § 204.2(b), as noted below. Section 205.4(d) is replaced with new language in § 204.2(c), which clarifies construction to begin within 2 years of the Department’s approval of the plans submitted under § 51.3(d) and to be completed within 5 years.

The Department did not copy the requirements of existing § 205.4(e) into § 204.2 because these requirements do not accurately reflect modern practices concerning plan submissions. Under § 51.3(d), facilities are currently required to submit plans for construction or renovation that demonstrate compliance with the applicable regulations and codes for each individual project. The minimum elements that must be included in each plan will vary widely depending on what type of construction, alteration or renovation is being performed. It is the intent of the Department to not require facilities to include extraneous information when submitting construction plans for approval. Plans will differ based on a variety of factors such as, the portion of the facility undergoing construction (*e.g.*, resident rooms, corridors, workstations), the type of construction being performed (*e.g.*, upgrading electrical work, installing new plumbing, new buildings), and other ancillary factors that are all but impossible for the Department to account for in a rigid checklist of requirements for every plan. In practice, a universal set of standards applicable to each distinct plan that is submitted to the Department is unworkable, provides an additional requirement on regulated industry and does not achieve the Department’s goal to assure compliance with applicable regulations and codes. Information regarding the submission of plans can be found on the Department’s website at <https://www.health.pa.gov/topics/facilities/safety/Pages/Review.aspx>.

However, § 204.2 is amended from proposed to final-form. The Department adds new language to the beginning of this section in subsection (a) to indicate that the Department will post instructions for the submission of plans for construction, alteration or renovation on its public website. As a result of this addition, the remaining proposed subsections are renumbered accordingly and described more fully below.

*Subsection (a)*

Subsection (a) is amended from proposed to final-form. As noted above, the Department has added language, on final-form, to indicate that the Department will post instructions for the submission of plans for construction, alteration or renovation on its public website.

A commentator suggested that the Department add language to require a facility to provide written plans, architectural renderings, and a plain language description of alterations or renovations to the resident and family councils of the facility, as well as the Office of the Local Long-Term Care Ombudsman. After careful consideration, the Department declines to make this amendment. The primary goal of the Department's licensure regulations is to ensure that residents are safe, healthy and comfortable. The Department considers the sharing of construction, alteration or renovation plans to be a best practice, and declines to add a requirement for the sharing of items, such as architectural plans, which may be difficult for lay persons to understand. It is also the Department's experience that generally facilities that are conducting construction, alteration or renovation are proud of these upgrades to the facility and generally voluntarily promote and share such plans with the resident council.

*Subsection (b)*

The language that was proposed in subsection (a) is moved to subsection (b), on final-form, without amendment. The Department maintained the language from existing § 205.4(c), with the addition of a cross-reference to § 51.3(d) to clarify that this subsection applies to plans approved under that section. Subsection (b) reflects the current practice that a licensee or prospective licensee be allowed to present and discuss plans with the Department. If differences occur and cannot be resolved, the licensee or prospective licensee may seek an administrative hearing.

A commentator sought clarification as to what the term "prospective licensee" means and suggested that the Department use the term "applicant" instead and add a corresponding definition for that term. The commentator proposed that the term "applicant" be defined as, "the entity applying for licensure, whether initial licensure for a new facility or transfer of ownership licensure for an existing facility that would, if approved by the Department, be transferred to the new owner." Although the Department appreciates this comment, the Department declines to add the term "applicant" to regulation and instead retains the term "prospective licensee" since "licensee" is already a defined term. The Department also declines to add a definition for the additional term "prospective licensee." The term "licensee" is presently defined in § 201.3 as, "the individual, partnership, association or corporate entity including a public agency or religious or fraternal or philanthropic organization authorized to operate a licensed facility." The Department is not amending this definition on final-form. The term "prospective" is commonly understood and is defined as "relating to or effective in the future; likely to come about; likely to be or become" in Webster's dictionary. Merriam-Webster. *Prospective*. Retrieved from <https://www.merriam-webster.com/dictionary/prospective>. As the term "prospective" is generally understood by its ordinary dictionary meaning, it is unnecessary to include a separate definition for the term "prospective licensee." See also 1 Pa.C.S. § 1903 (relating to words and phrases).

A commentator asked what is meant by the phrase "if differences occur." In response to this question, the Department first notes that this is existing language used in the Department's current regulations. As applied, it means that the Department works with licensees and prospective licensees and attempts to resolve questions and disputes concerning plans for

construction, alteration or renovation without the need for an administrative hearing. However, if the Department and the facility are at an impasse and further discussions will not resolve the perceived issue with the plans for construction, alteration or renovation, the facility may seek an administrative hearing in accordance with 1 Pa. Code Part II, relating to the General Rules of Administrative Practice and Procedure.

A commentator also asked whether the Department provides licensees and prospective licensees with a written decision regarding plans for construction, alteration or renovation that includes a notice of appeal rights. Historically, the Department has never had a licensee or prospective licensee appeal a decision regarding plans for construction, alteration, or renovation because the Department generally works with licensees and prospective licensees to resolve any issues that may arise with plans. If there is a disagreement between the Department and a licensee or prospective licensee regarding plans for construction, alteration or renovation, the licensee or prospective licensee may, as indicated in the language of this subsection, seek an administrative hearing in accordance with 1 Pa. Code Part II, relating to the General Rules of Administrative Practice and Procedure.

*Subsection (c)*

The language that was proposed in subsection (b) is moved to subsection (c), on final-form, but with one amendment. The words “alterations, renovations or construction” are replaced with the words “construction, alteration or renovation” for consistency in the use of that terminology. The Department proposed in this subsection to require construction, alteration or renovation to begin within 2 years of the Department’s approval and to be completed within 5 years of the Department’s approval. A commentator suggested adding the words “date of the” before “Department’s approval.” Although the Department appreciates this comment, the Department declines to make this amendment on final-form due to consistency with the 2-year limitation language and readability. Further, the suggested language does not add anything substantive to the regulation.

As explained on proposed, building and construction codes are typically updated every three to four years. The Department has received and approved numerous plans that were never completed due to financial and other issues. The Department has also received and approved plans for renovation of an entire building that was never fully completed. Placing a 5-year time limit on the completion of construction, alteration or renovation will prevent a facility from having plans approved but then proceeding to build at a much later date when codes that were applicable at the time of the approval no longer apply. The 5-year time limit also reflects the Department’s current practice of contacting facilities after four and a half years to inform them that they have six months left to complete approved projects or resubmit plans under current codes.

*Subsections (d)*

The language that was proposed in subsection (c) is moved to subsection (d), on final-form, but with minor amendments. The words “alterations, renovations or construction” are replaced with the words “construction, alteration or renovation” for consistency in the use of that terminology. The Department also replaces the cross-reference to subsection (b) with a cross-reference to subsection (c) due to the language in subsection (b) being moved to subsection (c). The Department did not receive any comments on this subsection. As explained on proposed,

the addition of subsection (d) contemplates circumstances in which a facility may need to request an extension of time for completion of a project, such as an extremely large project involving multiple stories above and below ground.

*Subsection (e)*

The language that was proposed in subsections (d) and (e) is deleted on final-form. The Department, on final-form, adds language to subsection (e) to require a facility to obtain approval from the Department before using an area of the facility for resident care when that area has not been occupied or used by residents for one year or more.

The Department had proposed in subsection (d) to add language stating that any part of a facility that has not been occupied or used for 1 year or more may not be used by the facility for any purpose except as provided for in this section. The Department had proposed in subsection (e) to require a facility to submit architectural plans and blueprints related to occupancy or use if a facility intends to occupy or use a space that has been unoccupied or unused for 1 year or more.

Commentators and IRRC asked what is meant by the terms “any part” and “occupied or used” in proposed subsection (d). Commentators also asked if using a space for storage would constitute “use” and whether subsection (d) would apply to a room that has been left unoccupied for a year. Some commentators expressed concern that the requirement in proposed subsection (e) would be an additional barrier for facilities to overcome to return to full operation and provide access to residents in need of services. Specifically, commentators stated that facilities have already needed to limit admissions and available beds due to staffing issues and there is concern that the cost to update those unoccupied beds to newer requirements will result in the facilities simply delicensing those beds, reducing available capacity. A commentator also suggested that the Department should have the ability to approve a new use in situations where no additional work, or minor work, is needed to utilize the portion of the facility for the desired purpose, without the need for the facility to comply with the requirements of this subsection. IRRC asked the Department to clarify the language of both proposed subsections (d) and (e), and to explain how the final-form regulation is reasonable and feasible, and how it protects the public health, safety, and welfare.

After carefully considering the comments from public commentators and IRRC, the Department agrees and deletes the language that was proposed in subsections (d) and (e). The Department, however, adds language in subsection (e), on final-form, to balance resident health and safety by simply requiring a facility to obtain approval from the Department before using an area of the facility for resident care when that area has not been occupied or used by residents for one year or more. The intent of final-form subsection (e) is to prevent facilities from allowing portions of the facility to fall into disrepair if they are not used or occupied. As explained on proposed, the Department has encountered situations where facilities want to reopen a portion of the facility that has been closed for years. Building codes and construction codes change over time. Even if the facility intends to use that area for the same purpose, the area may no longer be suitable for that purpose if it has been unoccupied or unused for a year or more, or even safe for residents as the area may have been allowed to deteriorate. The Department adds the words “for resident care” after the words “area of the facility” and “by residents” after “occupied or used” to clarify what is meant by an “area of the facility” and “occupied or used.”

The Department deleted the language in proposed subsection (e) to automatically require architectural plans and blueprints any time a portion of the facility has gone unoccupied or unused for one year or more to address commentators' concerns regarding the need to update areas of a facility to comply with newer codes that may not need to be updated. The Department recognizes that there may be situations where an area has not been used or occupied but remains in good condition and safe for occupancy. The Department also notes, as it did at the beginning of this Chapter, in response to concerns regarding completion of minor work, that it does not intend for the definition of "construction, alteration or renovation" to encompass work that consists of part-for-part replacement or regular facility maintenance. Requiring a facility to obtain approval from the Department before using an area for resident care that has not been occupied or used by residents for one year or more will allow the Department to inspect the area that the facility intends to use for resident care to ensure that it has not fallen into disrepair and still meets the appropriate standards for the health, safety and welfare of residents.

IRRC and commentators raised concerns to proposed subsection (d) as to how facilities would be able to respond rapidly in emergency situations such as the COVID-19 pandemic where it became necessary to isolate people and spread them out to the maximum extent possible. In the event of a broad-based emergency, such as COVID-19, CMS can issue waivers allowing for flexibility with regards to Federal requirements. CMS did so during the COVID-19 pandemic by utilizing 1135 waivers pursuant to 42 U.S.C.A. § 1320b-5. Further, to the extent there is a disaster emergency, the Governor may also utilize emergency powers under the Emergency Management Services Code in coping with the disaster emergency, including the suspension of regulations and regulatory statutes, if needed. 35 Pa.C.S. 7301. Additionally, by virtue of the expansion of the incorporation of the Federal requirements in § 201.2 in final-form Rulemaking 1 - *General Applicability and Definitions*, all facilities, including private-pay facilities, will be required to implement an emergency preparedness program under 42 CFR 483.73 (relating to emergency preparedness) that addresses various emergency scenarios and requires facilities to draft plans, enact policies, and provide training to help facilities respond to various potential emergency situations as outlined by risk assessments. (This assumes approval of final-form Rulemaking 1.) The Department additionally adds new § 204.20 to this final-form rulemaking, described below, which will require facilities to provide at least one airborne infection isolation room to isolate residents to prevent the spread of communicable diseases. Finally, in the event of an emergency, a facility may also submit a request for an exception under the existing exceptions process in § 51.33 (relating to requests for exceptions) for the Department's consideration.

Commentators also asked the Department to add language requiring water systems to undergo thorough flushing and disinfecting to prevent residents from being exposed to bacteria that could result in illness or death. Due to the existing Federal requirement, the Department declines to make this amendment. Under 42 CFR 483.80(a)(1), a facility must establish an infection prevention and control program that includes "a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases." This would include the prevention of waterborne illnesses, such as Legionnaires' disease. All facilities that participate in Medicare or Medical Assistance (MA) are currently required to comply with 42 CFR 483.80(a)(1). Although private-pay facilities are currently required to have an infection prevention and control program, the additional requirements may be a new requirement for the three private-pay facilities under the expanded adoption of the Federal requirements in § 201.2,

in final-form Rulemaking 1— *General Applicability and Definitions*. This assumes approval of final-form rulemaking 1.

For proposed subsection (e), some commentators expressed concern that facilities might move residents around to avoid having a space go unoccupied or unused for a year. These commentators also asked that the Department add language requiring a facility to provide notice before moving a resident. After careful consideration, the Department declines to add this provision because a resident has the right to receive written notice, including the reason for the change, before the resident's room in the facility is changed under 42 CFR 483.10(e)(6). All facilities, including the three private-pay facilities, are currently required to comply with this notice requirement under existing § 201.2, which adopts the Federal requirements at 42 CFR Part 483, Subpart B, in part.

The Department also declines to add language requiring that notice be provided to a resident before moving the resident to another room due to existing Federal requirements. Under 42 CFR 483.10(e)(6), a facility is required to notify a resident in writing if the facility intends to change a resident's room and provide a reason for the move. The resident has the right to refuse the move to another room in the facility if the purpose of the move is solely for the convenience of staff. 42 CFR 483.10(e)(7). All facilities, including the three private-pay facilities are required currently to comply with these requirements, under existing § 201.2, which adopts the Federal requirements at 42 CFR Part 483, Subpart B, in part.

#### *Other comments*

One commentator requested that the Department add a new subsection to § 204.2 to allow a facility to request an exception to proposed subsections (d) and (e) for an area that has been unused or unoccupied for one year or more in the event of disease outbreak. The proposed exception request would be effective for no more than 30 days to allow the facility time to submit architectural plans and blueprints related to its occupancy or use to the Department as required under § 51.3(d) and receive approval from the Department to continue to operate. This amendment is unnecessary due to the Department's amendment to subsection (e), described above, to eliminate the requirement for submission of additional plans and blueprints for unoccupied space.

#### *§ 204.3. Buildings and grounds; general*

The title of this section is amended from proposed to final-form to add "and grounds" after the word "buildings" at the request of a commentator. This amendment more accurately reflects the contents of this section. Several provisions of Chapter 205 are carried over into this section, as described more fully below.

#### *Subsection (a)*

Subsection (a) is amended from proposed to final-form. The Department had proposed to copy § 205.1 (relating to location or site) into subsection (a) without amendment because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*. Commentators, however, expressed confusion over the use of the word "area" in this subsection, asking that the Department clarify whether this is a reference to the safety of the geographical area where the facility is located. A commentator also expressed confusion over the use of the words "conducive to health and safety." In response to these comments, the Department adds

the qualifiers “that is geographically and environmentally” before the word “conducive” to clarify that a facility shall be located in an area that is both geographically and environmentally conducive to the health and safety of residents. The Department would not, for example, want a facility to be built on top of a subway station, or in an area where residents might be exposed to environmental hazards. The Department notes, as well, that facilities must adhere to the *Life Safety Code*, which is incorporated by reference in 42 CFR 483.73(g)(1), and other applicable construction and zoning ordinances for construction, alteration and renovation projects, which also ensures compliance with subsection (a).

#### *Subsection (b)*

Subsection (b) is amended from proposed to final-form at the request of IRRC to replace the word “before” with the word “if.” The Department agrees and has added this language. As explained on proposed, the requirement in § 205.6(a) (relating to function of building) is copied into subsection (b), with one minor grammatical amendment, because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*.

A commentator expressed similar concerns with this subsection as with subsection (a). Under subsection (b), no part of a building may be used for a purpose that interferes with or jeopardizes the health and safety of residents. The commentator indicated that it was not clear what purposes would be covered by this provision and expressed concern that this language could be interpreted to mean that no part of the building could be used for cooking as there are residents that could be harmed by knives or fire involved in cooking. The Department’s number one priority is the health, safety, and welfare of residents. The Department applies a common-sense interpretation and ordinary dictionary definition to the words “interferes with or jeopardizes” in the context of a resident’s health and safety and would not cite a facility for having an area dedicated for cooking if that area meets the requirements of the act and this subpart. The Department notes that subsection (b) also requires special authorization if part of the building is to be used for a purpose other than health care. This language mirrors the language in existing § 205.6(a). Facilities have requested exceptions under that subsection, which have been granted by the Department. The Department would anticipate continuing to receive similar exception requests under this subsection.

#### *Subsection (c)*

Subsection (c) is unchanged from proposed to final-form. As explained on proposed, the requirement in § 205.6(b) is copied into subsection (c) because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*.

Commentators questioned whether the allowance in this subsection for administrators’ family members to reside in a newly constructed facility remains appropriate. These commentators indicate that although this was the practice in the past, it appears to now be outdated. Although the Department is unaware of this provision being currently utilized, the Department is concerned that the removal of the ability of the administrator’s family members to reside at the facility may make it difficult to obtain and retain administrators. Additionally, it may be important to allow administrator’s family members to reside in a care-focused portion of a facility, and removal of this language might prevent family members needing that care from residing in the facility. The Department, therefore, declines to remove this language from the regulation.

*Subsection (d)*

Subsection (d) is amended from proposed to final-form. The Department had proposed to copy § 205.2(a) into this subsection without amendment because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*.

A commentator asked what is meant by the term “service areas” in the first sentence of this subsection. The term “service areas” could include, for example, a loading dock, dumpster, or other outdoor maintenance area that is separate from outdoor areas that would be used by residents. A commentator also asked, with respect to the second sentence in this subsection, why only a facility with site limitations can provide balcony areas. Upon further consideration, the Department agrees and does not intend for this sentence to be limiting. Therefore, the Department has removed “with site limitations” from the second sentence to make it clear that any facility may provide rooftop or balcony areas so long as adequate protective enclosures are provided.

Commentators also requested that the term “adequate protective enclosures” in the second sentence be defined or more fully described. Facilities are generally responsible for providing a safe environment for residents and are further responsible for assessing what is necessary to create such an environment. Adequate protective enclosures could vary based on the acuity of the residents in the facility and could include, for example, railings or plexiglass or cinderblock walls. It is also not common in the Department’s experience for facilities to have rooftop or balcony areas for residents. It is much more common for outdoor areas to be on the ground level, due to safety concerns. The Department, therefore, declines to add a definition for this term.

*Subsection (e)*

Subsection (e) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.2(b) into this subsection because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*.

*§ 204.4. Basement*

Section 204.4 is amended from proposed to final-form. The Department had proposed to copy language from § 205.7 (relating to basement or cellar) with minor amendments, because that requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*. On final-form, the Department moves this language into subsection (a) and creates subsection (b). In subsection (b), the Department copies language from § 205.10(e) (relating to doors), which prohibits a door to a basement from being in a resident’s room but removes the outdated term “cellar.” When comparing the provisions of Chapter 205 to the FGI *Guidelines*, the Department discovered that this requirement is not covered by the 2018 FGI *Guidelines*. The Department does not believe that there would ever be a reason for a basement door to be in a resident’s room, but is adding it on final-form, out of an abundance of caution, to ensure the health and safety of residents.

The remaining provisions of § 205.10 were not carried over to Chapter 204 and continue to not be carried over on final-form. In response to commentators and IRRC, the Department provides the following explanation for why the remaining provisions of § 205.10 were not carried over into the new requirements in Chapter 204. Sections 205.10(a)—(d) are not carried

over to Chapter 204 because requirements for door openings can be found in section 2.4-2.2.4.2 of the 2018 FGI *Guidelines*. Additional requirements for doors are in the *Life Safety Code* at sections 7.2.1—7.2.1.4.5.2, 18.2.2.2—18.2.2.2.10.2, and 19.2.2.2—19.2.2.2.10.2. Section 205.10(f) is not carried over because the requirement for screens is covered by section 2.4-2.2.4.3 of the 2018 FGI *Guidelines*.

One commentator expressed concern that under the regulations, residents might be moved into basements under certain situations. The commentator stated that under no circumstances is it acceptable to utilize a space below grade as a bedroom. The Department agrees and points this commentator to § 204.5(b) (relating to resident rooms), which states that the basement of a facility may not be used for resident rooms.

*§ 204.5. Resident rooms*

*Subsection (a)*

Subsection (a) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.20(a) into subsection (a) to align with terminology used by CMS. This requirement is necessary in Chapter 204 because it goes above and beyond the requirements in the 2018 FGI *Guidelines*.

*Subsection (b)*

Subsection (b) is unchanged from proposed to final-form. As explained on proposed, this new provision was added at the request of the LTC Work Group to prohibit a facility from using a basement for resident rooms.

*Subsection (c)*

Subsection (c) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.20(b) and (c) into subsection (c) with no substantive amendments, because these requirements go above and beyond the 2018 FGI *Guidelines*.

*Subsection (d)*

Subsection (d) is unchanged from proposed to final-form. As explained on proposed, the Department is adding subsection (d), at the request of the LTC Work Group, to clarify that a resident shall have a choice in the placement of the resident's bed in the room. The Department added “unless the placement presents a safety hazard” to the LTC Work Group’s recommended language.

Commentators asked the Department to revise this subsection to be more specific as to what constitutes a safety hazard. These commentators were concerned that without a definition, facilities will have too much leeway to deny residents’ choices and preferences. Commentators also asked that the Department add language to allow a resident, who has the capacity, a certain level of risk or informed decision making, as well as language that would prevent a facility from using arbitrary or ambiguous reasons as a basis for denying the resident’s wishes. IRRC asked the Department to clarify this provision or explain the reasonableness of retaining this language in the final-form regulation. IRRC noted that this comment also applies to § 205.22 (relating to placement of beds).

In balancing the competing interests for resident autonomy and choice with also the need for health and safety requirements, the Department declines to amend this subsection. The addition of “unless the placement presents a safety hazard” is not only reasonable, but critical to ensure the safety of residents. As explained on proposed, the Department supports a resident’s ability to choose where a bed is placed in the room but can envision circumstances where a resident’s choice of bed placement could pose a health or safety hazard, such as placement near a radiator, heat source or blocking a doorway. In those circumstances, the health and safety of the resident needs to come first. Safety hazards must be determined through an evaluation of the resident’s needs and an assessment of the physical environment. A safety hazard for one resident may not necessarily be a safety hazard for another resident, based on the resident’s acuity, and a facility will need to determine this on a case-by-case basis. Additionally, if the Department receives a complaint regarding this subsection, the Department will ask the facility why the resident’s preference was not considered and will attempt to resolve the complaint in a manner that addresses the resident’s concerns and preferences while also ensuring safe placement of the bed.

*Subsection (e)*

Subsection (e) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.22 (relating to placement of beds) into subsection (e) with amendment. Specifically, the Department added on proposed, “unless the resident chooses to do so and the placement does not pose a safety hazard” to align with the language in subsection (d). The Department did not receive any comments specifically on this subsection but did receive comments regarding the addition of this language in subsection (d), addressed above.

*Subsection (f)*

Subsection (f) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.72 (relating to furniture) into this subsection, without amendment. Commentators requested that the Department require education to residents about the right to have a locked drawer or cabinet. Commentators request that this occur during the resident’s first care plan meeting, and that the resident be specifically informed of the right to have a locked drawer or cabinet, and the need to inform staff when the key is lost, the drawer is broken, or when something is stolen. The Department, in proposed Rulemaking 4, proposed to add requirements for admission policies and procedures in § 201.24(e)(5) (relating to admission policy), which would include assisting the resident, if needed, in creating a homelike environment and settling personal possessions in the room to which the resident has been assigned. In response to commentators’ concerns, on final-form, the Department amends § 201.24(e)(5), by removing the words “if needed” and adding the words “and securing” after the word “settling” to ensure that facilities have policies and procedures in place to assist residents in securing their personal possessions.

In response to commentators and IRRC, who asked the Department to clarify why certain provisions of Chapter 205 were not carried over to Chapter 204, §§ 205.20(d) and (f) are not carried over because 42 CFR 483.90(e)(1)(ii) provides minimum square footage requirements for resident rooms and requires that rooms “measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms.” All facilities, including the three private-pay facilities, are currently required to comply with this provision under existing § 201.2.

Additionally, sections 205.20(e) and (g) are not carried over to Chapter 204 because these requirements apply to facilities that were licensed before 1975. Facilities that perform new construction, alteration or renovation will be required to comply with newer requirements set forth in Chapter 204.

Commentators requested that the Department add an additional subsection to § 204.5 to prohibit facilities from housing more than 2 residents in a room, although they feel strongly that all rooms should be single occupancy. The Department declines to add this requirement to regulation due to existing Federal requirements. Under 42 CFR 483.90(e)(1)(i), bedrooms must accommodate no more than 2 residents for facilities that receive approval of construction after November 28, 2016. Facilities that participate in Medicare or MA are already required to comply with this requirement. With the expansion of the incorporation of the Federal requirements in final-form Rulemaking 1, – *General Applicability and Definitions*, the requirement in 42 CFR 483.90(e)(1)(i) could potentially impact the three private-pay facilities, if they perform new construction, alteration or renovation under this Chapter. This assumes approval of final-form Rulemaking 1, which expands the adoption of the Federal requirements in § 201.2.

#### § 204.6. Locks

Section 204.6 is unchanged from proposed to final-form. As explained on proposed, the Department copies language from existing § 205.14 (relating to locks) into this section, without amendment, because this requirement goes above and beyond the requirements in the 2018 FGI *Guidelines*. Commentators requested that the Department add a requirement that staff must knock prior to entering a resident's room and a requirement for a doorbell outside of each resident's room. These commentators noted that there is little dignity, respect or privacy in staff just walking into resident rooms unannounced. The Department declines to make this amendment. The Department considers knocking and requesting permission to enter to fall within a resident's preferences, subject to an emergency, which is covered by 42 CFR 483.10(e)(3) (relating to resident rights), which provides that a resident has the right to reside and receive services in the facility with reasonable accommodation of resident needs and preferences except when to do so would endanger the health or safety of the resident or other residents. All facilities that participate in Medicare or MA are currently required to comply with 42 CFR 483.10(e)(3). This will be a new requirement for the three private-pay facilities under the expanded adoption of the Federal requirements in § 201.2, in final-form Rulemaking 1 – *General Applicability and Definitions*. This assumes approval of final-form Rulemaking 1. There is no fiscal impact associated with this provision.

#### § 204.7. Laundry

Section 204.7 is unchanged from proposed to final-form. As explained on proposed, the Department copies language from existing § 205.26(e) into this section, with no amendment because this provision goes above and beyond what is required in the 2018 FGI *Guidelines*.

In response to commentators and IRRC, who requested that the Department clarify which provisions of Chapter 205 are not being carried over into Chapter 204, the Department is not carrying over § 205.26(a)–(d) because these requirements are covered by the 2018 FGI *Guidelines* at sections 3.1-4.6, 3.1-4.2.7, and 2.3-4.2.7, as adopted by the Department in § 204.1(a). Additionally, under 42 CFR 483.10(i)(3), a resident has a right to a safe, clean,

comfortable, and homelike environment, which includes the provision of clean bed and bath linens. All facilities, including the three private-pay facilities are currently required to comply with 42 CFR 483.10(i)(3) under existing § 201.2.

*§ 204.8. Utility room*

Section 204.8 is unchanged from proposed to final-form. As explained on proposed, the Department copies language from § 205.33(a) into this section, with two amendments. On proposed, the Department deleted the phrase “near the nurses’ station” in the first sentence and deletes the last sentence regarding nursing stations in its entirety. The Department eliminates the requirement that utility rooms be located near nursing stations for two reasons: (1) the long-term care nursing industry has begun to shift away from the use of the term “nurses’ station” in favor of terms such as “workstations” that focus more on person centered care; and (2) it is more appropriate to have utility rooms located near resident rooms or other locations where they are needed for easier access. The remaining language in § 205.33(a) is being copied into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

In response to commentators and IRRC, who requested the Department to clarify which provisions of Chapter 205 are not being carried over into Chapter 204, the Department is not carrying over § 205.33(b) and (c) because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.3-4.2.5 and 2.3-4.2.6, as adopted by the Department in § 204.1.

*§ 204.9. Bathing facilities*

*Subsection (a)*

Subsection (a) is unchanged from proposed to final-form. As explained on proposed, the Department copied § 205.36(a) into this subsection, with amendment. On proposed, the Department replaced the word “bedrooms” with the word “rooms” to align with terminology used by CMS. The Department copied this requirement into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (b)*

Subsection (b) is unchanged from proposed to final-form. The requirement in § 205.36(c) is copied into this subsection, without amendment. The Department copied this requirement into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (c)*

Subsection (c) is unchanged from proposed to final-form. The requirement in § 205.36(e) is copied into this subsection, without amendment. The Department copied this requirement into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (d)*

Subsection (d) is unchanged from proposed to final-form. As explained on proposed, the Department copied the requirement in § 205.36(h) into this subsection but removed outdated

language regarding accessibility and measurements required for the bath area. The Department copied this requirement into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

In response to commentators and IRRC, who requested the Department to clarify which provisions of Chapter 205 are not being carried over to Chapter 204, the Department is not carrying over § 205.36(b), (d), (f) and (g) because these requirements are covered by the 2018 FGI *Guidelines* at sections 3.1-4.2.3, 3.1-4.2.3.1, 2.5-2.3.3.2, and 3.1-4.2.3.2, as adopted by the Department in section 204.1. Additionally, the Department does not include subsection (b) from § 205.36 because although it is not difficult for a facility to provide one bathing fixture per fifteen beds, in reality, multiple bathing fixtures are not utilized simultaneously, and the space designated as bathing fixtures could be better utilized by the facility. Additionally, for subsection (d), facilities typically performing new construction, alteration or renovation will include provisions for bathing in a bathroom attached to the resident's room. Where not provided or possible for certain renovation projects, the FGI *Guidelines* require a ratio of one bathing fixture per twenty residents. Subsection (f) is not carried forward to Chapter 204 because it conflicts with section 608.2 of the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design, which requires transfer type shower compartments to be at least 36" by 36", standard roll-in type shower compartments to be at least 30" by 60" in size, and alternate roll-in type shower compartments to be 36" by 60". ADA.gov. 2010 ADA Standards for Accessible Design. Retrieved from <https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>. All facilities, including the three private-pay facilities, are required to comply with ADA standards. Subsection (g) is not carried forward because shower controls are covered under section 608.5 of the ADA Standards and section 2.5-2.3.3.2 of the FGI *Guidelines*.

#### § 204.10. Toilet facilities

The Department adds this section on final-form. As noted previously, commentators and IRRC requested that the Department clarify which provisions of Chapter 205 are not being carried over to Chapter 204. While reviewing Chapter 204 and the FGI *Guidelines*, the Department determined that there was no provision for toilet facilities for visitors of long-term care nursing facilities as set forth in existing § 205.38(f) (relating to toilet facilities). On final-form the Department corrects this oversight by copying the requirement from § 205.38(f) into this section, to require facilities to provide toilets and lavatories for visitors that are independent of the toilet facilities utilized by residents, with one amendment. The Department removes the words "male and female" because the prevailing general trend is that public restroom facilities do not need to be gender-specific. Due to this amendment, sections 204.10—204.18 are renumbered, as explained below.

In response to commentators and IRRC, who requested that Department clarify which provisions of Chapter 205 are not being carried over to Chapter 204, the Department is not carrying over § 205.38(a) and (e) because these requirements have been replaced by more up-to-date requirements at 42 CFR 483.90(f). With the expansion of the incorporation of the Federal requirements in final-form Rulemaking 1—*General Applicability and Definitions*, this requirement could potentially impact the three private-pay facilities, if they perform new construction, alteration or renovation under this Chapter. This assumes approval of final-form Rulemaking 1, which expands the adoption of the Federal requirements in § 201.2. The

Department does not carry § 205.38(b) and (c) forward to Chapter 204 because these requirements are covered by the 2018 FGI *Guidelines* at sections 3.1-2.2.2.6, as adopted by the Department in § 204.1. Section 205.38(d) is not carried forward to Chapter 204 because toilet training is part of a facility's rehab program in accordance with the 2018 FGI *Guidelines* at section 3.1-3.3.7.

*§ 204.11. Equipment for bathrooms*

This section is renumbered to § 204.11, on final-form, but otherwise, is not amended from proposed to final-form.

*Subsection (a)*

Subsection (a) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.37(a) into this subsection, but replaces the language referring to a specific weight limit for grab bars in tubs and showers with the phrase "to accommodate the residents' needs." The Department recognizes that there are a wide variety of reasons that a resident may be at risk for falling and has made this change in language to require long-term care nursing facilities to provide grab bars that will accommodate residents of any size and physical or mental condition. As noted, on proposed, the Department is retaining this requirement in Chapter 204 because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (b)*

Subsection (b) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.37(b) into this subsection, but replaces the term "nursing station" with "workstation" because the long-term care nursing industry has begun to shift away from the use of the term "nurses' station" in favor of terms such as "workstations" that focus more on person-centered care. As noted, on proposed, the Department is retaining this requirement in Chapter 204 because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (c)*

Subsection (c) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.37(c) into this subsection, with only grammatical amendments because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (d)*

Subsection (d) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.37(d) into this subsection, without amendment because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*Subsection (e)*

Subsection (e) is unchanged from proposed to final-form. As explained on proposed, the Department copies § 205.37(e) into this subsection, without amendment because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

*§ 204.12. Toilet room equipment*

This section is renumbered to § 204.12, on final-form, but otherwise, is not amended from proposed to final-form. As noted on proposed, the Department copied language from §

205.39(b) into this section, with two amendments. First, the Department removed the phrase “and an emergency call bell within reaching distance.” Under the 2018 FGI *Guidelines*, at section 3.1-6.5.2, an emergency call device shall be accessible from each toilet, bathtub and shower used by residents. Second, the Department replaced the language referring to a specific weight limit for handrails or assist bars with the phrase “of accommodating the residents’ needs.” The Department recognizes that there are a wide variety of reasons that a resident may be at risk for falling and has made this change in language to require long-term care nursing facilities to provide handrails or assist bars that will accommodate residents of any size and physical or mental condition. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*.

Commentators expressed concern that the Department did not carry the requirement from § 205.23 (relating to location of bedrooms) into this section. Section 205.23 requires a resident bedroom to have adjoining toilet facilities and to be conveniently located near bathing facilities. Commentators were also concerned that the Department failed to include a ratio for number of toilets to residents. The Department declines to amend this section due to existing Federal requirements. Under 42 CFR 483.90(f), resident rooms are required to be equipped with or located near toilet and bathing facilities, and for facilities that receive approval of construction after November 28, 2016, each resident room must have its own bathroom equipped with at least a commode and sink. Facilities that participate in Medicare or MA are already required to comply with this requirement. With the expansion of the incorporation of the Federal requirements in final-form Rulemaking 1 – *General Applicability and Definitions*, this requirement could potentially impact the three private-pay facilities, if they perform new construction, alteration or renovation under this Chapter. This assumes approval of final-form Rulemaking 1, which expands the adoption of the Federal requirements in § 201.2.

In response to commentators and IRRC, who requested the Department to clarify which provisions of Chapter 205 are not being carried over to Chapter 204, the Department is not carrying over § 205.39(a) because section 3.1-2.2.2.6 of the 2018 FGI *Guidelines* cover the requirements in § 205.39(a). Specifically, the 2018 FGI *Guidelines* provide that each resident shall have access to a toilet room without entering a general corridor. Additionally, toilet rooms must contain a toilet, a handwashing station, a mirror, and individual storage for each resident.

#### § 204.13. *Linen*

This section is renumbered to § 204.13, on final-form, but otherwise, is not amended from proposed to final-form. As explained on proposed, the Department copied language from § 205.74 (relating to linen) into this section without amendment, because this requirement goes above and beyond what is required in the 2018 FGI *Guidelines*.

#### § 204.14. *Supplies*

This section is renumbered to § 204.14, on final-form, but otherwise, is not amended from proposed to final-form. As explained on proposed, the Department copied language from § 205.75 (relating to supplies) into this section without amendment because this requirement goes above and beyond what is required in the 2018 FGI *Guidelines*.

#### § 204.15. *Windows*

This section is renumbered to § 204.15, on final-form, but otherwise, is not amended from proposed to final-form. As noted, on proposed, the Department copies existing language from § 205.19 (relating to windows and windowsills) into this section, with minor amendment. In addition to minor grammatical amendments, the Department replaced the word “bedrooms” with “rooms” in this section to align with terminology used by CMS. The Department copies this provision into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

§ 204.16. *Dining*

This section is renumbered to § 204.16, on final-form, but otherwise, is not amended from proposed to final-form. As noted, on proposed, the Department copied language from § 205.24(a) into this section, with one amendment. The Department deleted the last sentence indicating, “these areas shall be well lighted and well ventilated.” This language is not necessary because lighting requirements are covered within the FGI *Guidelines* at section 2.5-7. The remaining language in this provision, regarding space for dining areas, is copied into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*.

In response to commentators and IRRC, who requested that the Department clarify which provisions of Chapter 205 are not being carried over to Chapter 204, the Department is not carrying over § 205.24(b) because these requirements are covered by the 2018 FGI *Guidelines* at section 2.3-2.3.3.2, as adopted by the Department in § 204.1 of this rulemaking.

§ 204.17. *Lounge and recreation*

This section is renumbered to § 204.17, on final-form, but otherwise, is not amended from proposed to final-form. As noted, on proposed, the Department copies language from § 205.27 (relating to lounge and recreation) into this section, without amendment because this provision goes above and beyond what is required in the 2018 FGI *Guidelines*.

§ 204.18. *Storage*

This section is renumbered to § 204.18, on final-form, but otherwise, is not amended from proposed to final-form. As explained, on proposed, the Department copied language from § 205.31 (relating to storage) into this section, without amendment because this provision goes above and beyond what is required in the 2018 FGI *Guidelines*.

§ 204.19. *Plumbing, heating ventilation and air conditioning (HVAC) and electrical*

This section is renumbered to § 204.19, on final-form, but otherwise, is not amended from proposed to final-form. As explained on proposed, this catch-all section is new and replaces the requirements for new construction in §§ 205.61—205.68 (relating to mechanical and electrical requirements). Under this section, all building systems, such as plumbing, HVAC and electrical systems, must comply with all State and local codes. This language is similar to existing language in § 205.61(a) (relating to heating requirements for existing and new construction), but expanded to include all building systems, such as plumbing, HVAC, and electrical systems.

While this catch-all section is intended to replace the requirements for new construction in §§ 205.61—205.68, the Department is also not carrying forward these requirements because they are already covered by the Federal requirements, the *Life Safety Code* or the 2018 FGI

*Guidelines*. Section 205.61(b) is not carried over to Chapter 204 because it is encompassed by the Federal requirements at 42 CFR 483.25(d) which require a facility to ensure that residents are free from accident hazards and subject to adequate supervision to prevent accidents. All facilities, including the three private-pay facilities, are required to comply with 42 CFR 483.25(d) under existing § 201.2. The *Life Safety Code* contains additional provisions for HVAC in sections 9.2.1, 9.2.2, and Chapter 43. Section 205.62 (relating to special heating requirements for new construction) is not carried over to Chapter 204 because the requirements in that section are covered in the *Life Safety Code* at chapter 43. Section 205.63 (relating to plumbing and piping systems required for existing and new construction) is not carried over to Chapter 204 because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.5-2.2.3 and 2.5-1, as adopted by the Department in § 204.1.

Section 205.64 (relating to special plumbing and piping systems requirements for new construction) is not carried over to Chapter 204 because the requirements are covered by the 2018 FGI *Guidelines* at section 2.5-2, as adopted by the Department in § 204.1. These requirements are also covered by the Federal requirements at 42 CFR 483.90(b). All facilities that participate in Medicare or MA are currently required to comply with 42 CFR 483.90(d). The expansion of the adoption of the Federal requirements in § 201.2 in final-form Rulemaking 1 will make this a new requirement for the three private-pay facilities. This assumes approval of final-form Rulemaking 1. As with other building system requirements, the FGI *Guidelines* defers to local and State codes first but provides additional specific plumbing requirements for facilities. Section 205.66 is not carried over to Chapter 204 because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.5-3, 3.1-6.3, and 3.1-1, as adopted by the Department in § 204.1. These requirements are also covered by the Federal requirements at 42 CFR 483.90(i). All facilities, including the three private-pay facilities, are required to comply with 42 CFR 483.25(i) under existing § 201.2. The *Life Safety Code* contains additional requirements at sections 9.2.1 and 9.2.2.

Section 205.67 is not carried over to Chapter 204 because these requirements are covered by the 2018 FGI *Guidelines* at sections 3.1-6.7 and 3.1-6.5-2, as adopted by the Department in § 204.1. The *Life Safety Code* contains additional requirements at sections 18 and 19.2.9. NFPA 99, *Standards for Health Care Facilities Code*, incorporated by reference in 42 CFR 483.90(j)(1)(i), contains additional requirements at section 6.3.2.2.6.2. All facilities that participate in Medicare or MA are currently required to comply with 42 CFR 483.90(j)(1)(i). The expansion of the adoption of the Federal requirements in § 201.2 in final-form Rulemaking 1 will make this a new requirement for the three private-pay facilities. This assumes approval of final-form rulemaking 1. Finally, section 205.68 is not carried over to Chapter 204 because these requirements are covered by the 2018 FGI *Guidelines* at section 3.1-6.7, as adopted by the Department in § 204.1 of this rulemaking. Additionally, the requirements in § 205.68 are covered by the Federal requirements at 42 CFR 483.90(d). All facilities that participate in Medicare or MA are currently required to comply with 42 CFR 483.90(d). The expansion of the adoption of the Federal requirements in § 201.2 in final-form Rulemaking 1 will make this a new requirement for the three private-pay facilities. This assumes approval of final-form Rulemaking 1.

Commentators requested that the Department amend this section to require facilities to ensure safe ventilation practices and to regularly evaluate such practices. One commentator requested that the Department add COVID-19 ventilation requirements to this section. Other

commentators requested that the Department add requirements in this section and in § 205.66(i) to require HEPA filtration systems be installed in facilities. The Department declines to amend this section to incorporate any specific ventilation requirements. HEPA filtration systems may not necessarily be appropriate in all settings. For example, a wall unit that pulls in air from the outside would not be HEPA-compliant. If a facility wants to provide fresh airflow to a room, installing an appropriate unit may also be at odds with HEPA air filtration requirements. The 2018 FGI *Guidelines* provide HVAC requirements at section 2.5-3, and State and local codes may provide additional requirements for facilities. The Department also does not believe it is prudent to require a specific type of air-filtration system to be installed in facilities when there is alternative technology that may be better suited for individual facilities.

*§ 204.20. Airborne infection isolation room*

This section is added on final-form. This section is based on the infection control provisions in § 205.21 (relating to special care room) but is updated to align with the Department's adoption of the 2018 FGI *Guidelines*. Under this section, a facility will be required to have at least one airborne infection isolation room for isolating residents as necessary to prevent the spread of infections in accordance with the 2018 edition of the FGI *Guidelines for Design and Construction of Residential Health, Care and Support Facilities*. Based on a facility's assessment, a facility may have more than one airborne infection isolation room in accordance with the 2018 FGI *Guidelines*. The requirements for an airborne infection isolation room are at section 3.1-2.2.4.1 of the 2018 FGI *Guidelines*. The Department realized, while performing its crosswalk of Chapter 205 to the 2018 FGI *Guidelines*, that although the 2018 FGI *Guidelines* state what is required for an airborne isolation room, it does not actually require a facility to have one. Rather than copy that requirement from § 205.21 into this section, the Department adds the specific requirement to have at least one airborne infection isolation room to align with more current standards found in the 2018 FGI *Guidelines*.

*Other comments*

Commentators recommended that the Department add an additional section to permit a facility to repurpose rooms, permit cohorting or move residents as necessary to implement infection controls during an outbreak of infection. The Department declines to add this section. All facilities, including the three private-pay facilities, will be required to establish and maintain infection prevention and control programs under 42 CFR 483.80 and those programs should consider the best methods to minimize the spread of communicable disease. All facilities that participate in Medicare or MA are already required to comply with 42 CFR 483.80. The requirements under 42 CFR 483.80 will be new for the three private-pay facilities, if final-form Rulemaking 1 is approved. Additionally, all facilities, including the three private-pay facilities, will be required, based on the expansion of the incorporation of the Federal requirements in final-form Rulemaking 1 at § 201.2, to have disaster and emergency preparedness plans under 42 CFR 483.73, which addresses an all-hazards approach and encompass scenarios such as a pandemic or outbreak of communicable disease. This also assumes approval of final-form Rulemaking 1. The Department further notes that not all diseases are the same. Therefore, cohorting may not be a necessary part of an infection response in all cases. During the COVID-19 pandemic, the Department addressed the movement and cohorting of residents through its Pennsylvania Health Alert Network (PA HAN) communications and expects to utilize this health alert, advisor and update tool in the future as well.

Commentators also requested that the Department add a section requiring that stations for hand cleaning and sanitizing be installed outside every resident room and at least every twenty feet in hallways and common areas. The Department declines to add this section. The Department chooses to promote hand hygiene generally and not only as a means of infection control and prevention. Additionally, the *Life Safety Code* addresses the installation and location of hand sanitizer stations at sections 18.3.2.6 and 19.3.2.6. The *Life Safety Code* provides spacing specifications in terms of where hand sanitizer stations may be installed and other considerations for resident safety to ensure residents have safe access and to prevent accidental consumption or other accidents. There are also requirements related to the amount of hand sanitizer that can be stored in one place and how it must be stored, as hand sanitizer is flammable. Additionally, the *Life Safety Code* contains comprehensive fire safety requirements related to hand sanitizer dispensers. Finally, there are infection prevention and control standards related to hand hygiene for staff in the Federal requirements, and this should be covered in the facilities' infection prevention and control program under 42 CFR 483.80(a)(2)(vi). All facilities that participate in Medicare or MA are currently required to comply with 42 CFR 483.80(a)(2)(vi). This requirement will extend to the three private-pay facilities by virtue of the expansion of the adoption of the Federal requirements in § 201.2 in final-form Rulemaking 1. This assumes approval of final-form Rulemaking 1.

Finally, the Department provides the following list, in response to commentators and IRRC, who requested the Department to clarify which provisions of Chapter 205 are not being carried over to Chapter 204. This list is in addition to the sections and subsections that were previously identified throughout the preamble for Chapter 204. The Department does not carry over § 205.8 (relating to ceiling heights) because these requirements are covered by the 2018 FGI *Guidelines* at section 2.4-2.2.3, as adopted by the Department in § 204.1 in this final-form rulemaking. The *Life Safety Code* also contains requirements at section 7.1.5. The Department does not carry § 205.9(a) (relating to corridors) because this subsection is covered by the Federal requirements at 42 CFR 483.90(i)(3). The Department also does not carry over § 205.9205.21(b) because this requirement is covered by the *Life Safety Code*. Further, the Department does not carry over § 205.96(c) because this requirement is covered by the *Life Safety Code* at section 7.1.10. The Department does not carry over § 205.12 (relating to elevators) because this requirement is covered by the 2018 FGI *Guidelines* at section 3.1-6.9, as adopted by the Department in § 204.1 of this final-form rulemaking. The Department also does not carry over § 205.13 (relating to floors) because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.4-2.3.2, 2.4-2.3.2.1, 2.4-2.3.2.5, 2.4-2.3.2.6, and 2.4-2.3.2.7, as adopted by the Department in § 204.1 of this final-form rulemaking.

The Department does not carry over § 205.16 (relating to stairs) because these requirements are covered by the 2018 FGI *Guidelines* at section 7.1.10, as adopted by the Department in § 204.1. The Department does not carry over § 205.17 (relating to stairways) because these requirements are outdated and inapplicable to the functioning of a facility. The Department does not carry over § 205.23 (relating to location of bedrooms) because these requirements are covered by the Federal requirements at 42 CFR 483.90(f). Under 42 CFR 483.90(f), each resident room must be equipped with or located near toilet and bathing facilities. For facilities that receive approval of construction after November 28, 2016, each resident room must have its own bathroom equipped with at least a commode and a sink. This will be a new requirement for the three private-pay facilities based on the expansion of the adoption of the

Federal requirements in § 201.2 in final-form Rulemaking 1– *General Applicability and Definitions*. This assumes approval of final-form Rulemaking 1. The Department does not carry over § 205.25 (relating to kitchen) because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.3-4.5 and 3.1-4.5, as adopted by the Department in § 204.1.

The Department does not carry over § 205.28(a) and (c) (relating to nurses' station) because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.3-4.2.2, 3.1-4.2.1.1, 3.1-4.1.2, 3.1-4.2.2, and 3.1-6.5.2, as adopted by the Department in § 204.1. The Department does not carry over § 205.28(b) because there has been a shift from requiring centralized nursing stations to create a more homelike environment for residents instead of a more rigid, traditional institutional facility.

The Department does not carry over § 205.32 (relating to janitor closet) because these requirements are covered by the 2018 FGI *Guidelines* at sections 2.3-4.9 and 2.3-4.5.3.10, as adopted by the Department in § 204.1. The Department does not carry over § 205.40 (relating to lavatory facilities) because these requirements are covered by the Federal requirements at 42 CFR 483.90(f). These requirements are also covered by the 2018 FGI *Guidelines* at section 3.1-2.2.2.6, as adopted by the Department in § 204.1. The Department does not carry over § 205.71 (relating to bed and furnishings) because these requirements are also covered by the Federal requirements at 42 CFR 483.90(e).

*Chapter 205. Physical Environment and Equipment Standards for Long-Term Care Nursing Facilities Construction, Alteration or Renovation Approved Before July 1, 2023.*

The title of Chapter 205 is amended from proposed to final-form. The Department amends the title from proposed to final-form by adding July 1, 2023, as the date after which any construction, alteration, or renovation approved by the Department must comply with the provisions of Chapter 204. As explained on proposed, the Department has decided to separate regulatory provisions pertaining to construction, alteration or renovation of long-term care nursing facilities into two chapters to clarify the specific standards that apply to new versus existing construction, alteration or renovation. The Department had proposed to make Chapter 204 applicable to plans for construction, alteration or renovation of long-term care nursing facilities approved on or after 6 months from the publication date of the final-form rulemaking. However, given the estimated timing of the final-form rulemaking, and to be consistent with the effective date established for other sections of the regulations, the Department has decided to make Chapter 204 applicable to plans for construction, alteration or renovation approved on or after July 1, 2023. Existing Chapter 205, as amended, will continue to be the baseline standard for all construction, alteration or renovation of long-term care nursing facilities performed based on plans that were approved by the Department before July 1, 2023, the effective date of Chapter 204.

*Buildings and Grounds*

*§ 205.4. Building plans*

This section remains deleted from proposed to final-form. Section 205.4 is deleted because all plans for construction, alteration or renovation approved on or after July 1, 2023, will need to meet the requirements of § 204.2, as described previously.

*§ 205.6. Function of building*

This section is unchanged from proposed to final-form. As explained on proposed, the Department amends the term “employes” to “employees” in subsection (b) to reflect the current use and spelling of this term.

A commentator expressed concerns with subsection (a), which the Department did not propose to amend. Under subsection (a), no part of a building may be used for a purpose that interferes with or jeopardizes the health and safety of residents. The commentator indicated that it was not clear what purposes would be covered by this provision and expressed concern that this language could be interpreted to mean that no part of the building could be used for cooking as there are residents that could be harmed by knives or fire involved in cooking. As explained previously in § 204.3(b) to the same comment, the Department’s number one priority is the health, safety, and welfare of residents. The Department applies a common-sense interpretation and dictionary definition to the words “interferes with or jeopardizes” in the context of a resident’s health and safety and would not cite a facility for having an area dedicated for cooking if that area meets the requirements of the act and this subpart. The Department notes that subsection (a) also requires special authorization if part of the building is to be used for a purpose other than health care. Facilities have requested exceptions under this subsection, which have been granted by the Department. The Department would anticipate continuing to receive similar exception requests under this subsection.

Commentators suggested that the Department add a grandfather clause to subsection (b) for non-resident family members currently residing in a facility, as it is only appropriate for residents to reside at a facility. The Department declines to add such language. As explained, in § 204.3(c) to similar comments, the Department fears that removal of the ability of the administrator’s family members to reside at the facility may make it difficult to obtain and retain administrators. Additionally, it may be important to allow administrator’s family members to reside in a care-focused portion of a facility, and removal of this language might prevent family members needing that care from residing in the facility. The Department, therefore, declines to remove this language from the regulation.

*§ 205.7. Basement or cellar.*

This section is unchanged from proposed to final-form. As explained on proposed, the Department removes the words “and the like” as grammatically unnecessary and because they are duplicative of the words “such as.” The Department also replaces the word “areas” with the phrase “any part of the basement” for clarity.

*Minimum Physical Environment Standards*

This heading is unchanged from proposed to final-form. As explained on proposed, the Department replaces the word “plant” with the word “environment” in this heading to reflect current terminology used in the long-term care nursing environment.

*§ 205.21. Special care room*

This section is unchanged from proposed to final-form. As explained on proposed, the Department deletes language in this section that pertains to new construction. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in Chapter 204.

*§ 205.22. Placement of beds*

This section is unchanged from proposed to final-form. As explained on proposed, the Department replaces the phrase “adequate provisions are made for resident comfort and safety” with the phrase “the resident chooses to do so and such placement does not pose a safety hazard.” The Department is making this amendment, at the request of the LTC Work Group, to clarify that a resident has a choice in the placement of the resident’s bed in the room. However, the Department also adds language to clarify that the resident has this choice unless the placement of the bed presents a safety hazard.

Commentators asked the Department to revise this section to be more specific as to what constitutes a safety hazard. These commentators were concerned that without a definition, facilities will have too much leeway to deny residents’ choices and preferences. Commentators also asked that the Department add language to allow a resident, who has the capacity, a certain level of risk or informed decision making, as well as language that would prevent a facility from using arbitrary or ambiguous reasons as a basis for denying the resident’s wishes. IRRC also asked the Department to clarify this provision or explain the reasonableness of retaining this language in the final-form regulation.

As provided previously, in balancing the competing interests for resident autonomy and choice with also the need for health and safety requirements the Department declines to amend this section. As explained in response to the same comments to § 204.5(d), the addition of “unless the placement presents a safety hazard” is not only reasonable, but critical to ensure the safety of residents. As explained on proposed, the Department supports a resident’s ability to choose where a bed is placed in the room but can envision circumstances where a resident’s choice of bed placement could pose a health or safety hazard, such as placement near a radiator or heat source or blocking a doorway. In those circumstances, the health and safety of the resident needs to come first. Safety hazards must be determined through an evaluation of the resident’s needs and an assessment of the physical environment. A safety hazard for one resident may not necessarily be a safety hazard for another resident, based on the resident’s acuity, and a facility will need to determine this on a case-by-case basis. Additionally, if the Department receives a complaint regarding this subsection, the Department will ask the facility why the resident’s preference was not considered and will attempt to resolve the complaint in a manner that addresses the resident’s concerns and preferences while also ensuring safe placement of the bed.

#### *Mechanical and Electrical Requirements*

##### *§ 205.61. Heating requirements for existing construction*

This section is unchanged from proposed to final-form. As noted, on proposed, the Department removes the words “and new” from the title of this section. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in the new Chapter 204.

##### *§ 205.62. Special heating requirements for new construction*

This section remains deleted on final-form. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in the new Chapter 204.

##### *§ 205.63. Plumbing and piping systems required for existing construction*

This section is unchanged from proposed to final-form. As explained, on proposed, the Department removes the words “and new” from the title of this section. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in the new Chapter 204.

*§ 205.64. Special plumbing and piping systems requirements for new construction*

This section remains deleted on final-form. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in the new Chapter 204.

*§ 205.66. Special ventilation requirements for new construction*

This section remains deleted on final-form. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to conform to the requirements in the new Chapter 204. Commentators requested that the Department not delete this section and instead add a requirement to subsection (i) for HEPA filtration systems. The Department has determined neither to retain nor amend this section to incorporate any specific ventilation requirements. HEPA filtration systems may not necessarily be appropriate in all settings. For example, a wall unit that pulls in air from the outside would not be HEPA-compliant. If a facility wants to provide fresh airflow to a room, installing an appropriate unit may also be at odds with HEPA air filtration requirements. The 2018 FGI *Guidelines* provide HVAC requirements at section 2.5-3, and State and local codes may provide additional requirements for facilities. The Department does not believe it is prudent to require a specific type of air-filtration system to be installed in facilities when there is alternative technology that may be better suited for individual facilities and maintaining compliance with all HVAC requirements required by the 2018 FGI *Guidelines*.

*§ 205.67. Electric requirements for existing construction*

This section is unchanged from proposed to final-form. As explained on proposed, the Department removes the words “and new” from the title of this section. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in Chapter 204.

*§ 205.68. Special electrical requirements for new construction*

This section remains deleted on final-form. Plans for construction, alteration or renovation approved on or after July 1, 2023, will be required to comply with the requirements in the new Chapter 204.

*§ 205.101. Scope*

This section is amended from proposed to final-form. The Department replaces the words “alterations, renovations and construction” with the words “construction, alteration or renovation” for consistency in the use of these words elsewhere in the regulation. The Department also replaces the blank space and editor’s note with “July 1, 2023” to indicate, as noted previously, that Chapter 205 applies to construction, alteration or renovation approved before July 1, 2023.

*Other comments*

Commentators requested that the Department add a section to ensure that residents have access to Wi-Fi, broadband or internet technology, as well as devices to keep up with current events, engage in activities, and remain connected to the outside world. Commentators pointed out that the ability to send and receive email and participate in Zoom calls were critical for families and residents to stay in touch during the pandemic. The Department declines to add this requirement, as this is already covered under the Federal requirements. Under 42 CFR 483.10(g)(7)(ii), the facility must provide reasonable access to the internet, to the extent available to the facility, and under 42 CFR 483.10(g)(9), the resident must have reasonable access to electronic communications such as email and video communications and for internet research, if access is available to the facility, or at the resident's expense if any additional expense is incurred by the facility to provide such access to the resident. All facilities that participate in Medicare or MA are currently required to comply with these requirements. However, this will be a new requirement for private-pay facilities due to the expansion of the incorporation of the Federal requirements in § 201.2, in final-form Rulemaking 1 – *General Applicability and Definitions*. This assumes approval of final-form Rulemaking 1.

*Chapter 207. Housekeeping and Maintenance Standards for Long-Term Care Nursing Facilities*

*Housekeeping and Maintenance*

*§ 207.4. Ice containers and storage*

This section remains deleted on final-form. A commentator expressed concern that the Department referenced CMS' *State Operations Manual, Appendix PP*, as its rationale for deleting this section. IRRC asked the Department to retain this section or amend it to include the specific requirements from *Appendix PP* with which a facility must comply. Upon further review, however, the Department has determined that this section is not needed because of Federal requirements. Specifically, the Federal requirement at 42 CFR 483.60(i)(2) requires that a facility store, prepare, distribute, and serve food in accordance with professional standards for food service safety. This existing requirement sufficiently covers the prior requirement in § 207.4 for ice containers and storage without the need to retain or amend this provision. The deletion of § 207.4 assumes approval of final-form Rulemaking 1 – *General Applicability and Definitions*, as the requirement that food be stored, prepared, distributed “in accordance with professional standards for food service safety” in 42 CFR 483.60(i)(2) will be a new requirement for private-pay facilities due to the expansion of the incorporation of the Federal requirements in § 201.2. All other facilities participate in Medicare or MA and thus are already required to comply with the Federal requirements.

*Other comments*

A commentator expressed concern that there is no provision in the regulations permitting access for ordained clergy regardless of emergency public health declarations or other states of emergency. During the COVID-19 pandemic, the Department did not bar access to the practice of religion. Instead, the Department followed CMS guidance regarding general limitation related to facility access based on disease exposure at <https://www.cms.gov/files/document/gso-20-39-nh.pdf>. That guidance provided that clergy members should continue to be allowed access to facilities if they were not subject to a work exclusion due to an exposure to COVID-19 or show signs or symptoms of COVID-19 after being screened. As emergency situations are not a one-

size-fits-all proposition, the Department believes it would be detrimental to attempt to include, in regulation, an explicit list of persons authorized to have access to a facility during any state of emergency. The Department prefers instead to assess each state of emergency individually and will provide guidance to facilities, regarding facility access, in conjunction with CMS and other relevant authorities, such as the Centers for Disease Control and Prevention (CDC).

A commentator stated that they would like to see a requirement that anyone working in a long-term care nursing facility be vaccinated against flu, COVID-19, and any other contagious disease for which there is a vaccine. This requirement is already partially provided for in 42 CFR 483.80(i) (relating to infection control), which requires a facility to develop and implement policies and procedures to ensure that all staff are fully vaccinated for COVID-19. All facilities that participate in Medicare or MA are required to comply with this requirement. The three private-pay facilities will be required to comply with 42 CFR 483.80(i), by virtue of the Department's expansion of the incorporation of the Federal requirements in § 201.2, in final-form Rulemaking 1 – *General Applicability and Definitions*. This assumes approval of final-form Rulemaking 1. With respect to influenza and other contagious diseases, the Department strongly encourages staff to obtain available vaccines but does not require vaccination and declines to add this requirement to regulation.

Commentators expressed generally that there needs to be comprehensive reform in the areas of direct care staffing, training, infection prevention and control requirements, emergency and pandemic preparedness planning requirements, application for licensure and change in ownership procedures, and resident rights. A commentator suggested that the Department revise the regulations to require more disclosure and public notice to prevent irresponsible owners from acquiring facilities in this Commonwealth. Another commentator stated that staff of facilities should be paid more so that they do not leave. Requirements for applications for licensure of new facilities and for changes in ownership are addressed in final-form Rulemaking 3 – *Applications for Ownership, Management and Changes of Ownership; Health and Safety* at § 201.12. Infection prevention and control, and emergency preparedness, are also addressed in final-form Rulemaking 3. Direct care staffing is addressed in both final-form Rulemaking 1 – *General Applicability and Definitions* and Rulemaking 4 – *Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services* at § 211.12 (relating to nursing services). Training and resident rights are addressed in final-form Rulemaking 4 – *Qualifications, Training, Job Duties, Recordkeeping, Program Standards, and Resident Rights and Services* at §§ 201.20 (relating to staff development) and 201.29 (relating to resident rights), respectively.

### *Fiscal Impact and Paperwork Requirements*

#### *Fiscal Impact*

In response to the comments and concerns raised during the September 15, 2021 Senate Health and Human Services and Aging and Youth Committees joint legislative hearing, throughout the public comment process, and in other discussions, the Governor's Fiscal Year 22-23 budget proposal proposed a MA rate increase of \$190 million; \$91 million in state funding to be matched with \$99 million in federal funds for the first 6 months of calendar year 2023 and a proposed \$250 million one-time investment of American Rescue Plan Act (ARPA) funds in

long-term living programs, including direct one-time funding for all facilities to support their workforce and help them to hire more staff to meet the requirements of the forthcoming regulations. The funding was proposed to be provided to facilities in advance of the expected staffing increases to allow facilities to stabilize their existing workforce and recruit additional staff prior to the regulatory increases going into effect.

Following the Governor's budget proposal, industry stakeholders called for \$294 million in MA funding in the Commonwealth's FY 22-23 budget. The FY 22-23 Appropriations Act signed by Governor Wolf included bipartisan support for a historic increase in one-time and ongoing funding for facilities. As enacted, \$147 million in state funding was appropriated to support implementation of the Department's regulations. Specifically, this funding will be used to support a 17.5% Medicaid rate increase beginning January 1, 2023, which allows facilities time to ramp up staffing to meet the direct care staffing hours required on July 1, 2023. Assuming Federal approval, these state funds will be matched with an additional \$159 million in federal funds, totaling \$306 million in Medicaid funding for the first 6 months of calendar year 2023. All nursing facilities will also receive \$131 million in one-time ARPA funding during FY 22-23. A detailed fiscal impact for the regulated community, the commonwealth and local government is as follows:

*Regulated community*

The amendments will apply to all 682 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. This total includes nineteen county-owned and operated facilities, six veterans' homes that are operated by the Department of Military and Veterans Affairs (DMVA), 654 privately-owned facilities that participate in Medicare or MA, and three private-pay facilities that do not participate in Medicare or MA.

There will be little to no financial impact to any of these facilities due to the deletion of subsections in § 201.23 that are duplicative of the Federal requirements. All but three of the 682 long-term care nursing facilities participate in Medicare or MA and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) (relating to administration) for the closure of a facility. Although the specific requirements under 42 CFR 483.70(l) and (m) are new for the three private-pay facilities, the general requirement to provide notice of a facility closure is not new. Prior to the final-form rulemaking, the Department's existing regulations required notification to the Department and to residents and a resident's responsible person when a facility was closing. The additional requirements regarding identification of responsible individuals during the closure is anticipated to be a nominal cost. Further, these three facilities will only incur a cost under 42 CFR 483.70(l), which requires the facility to provide notice of a closure if they close. Under 42 CFR 483.70(m), these three facilities will be required to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure. This will be a new paperwork requirement for these three facilities.

The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan to require that notice include additional information and be provided to additional individuals who have an interest in the

closure of a facility. As noted previously, the 682 facilities licensed by the Department will only be impacted by these amendments if they close. Further, the fiscal impact regarding providing notice of the closure is anticipated to be minimal. Under the final-form Rulemaking, facilities will have to provide written notice of a proposed closure to residents, resident representatives, employees, the Office of the State Long-Term Care Ombudsman, and the Department of Human Services.

The deletion of Chapter 203 will not result in an additional cost to the regulated community. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form Rulemaking 1– *General Applicability and Definitions*. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department’s separation of new standards for construction, alteration or renovation from existing standards into two chapters, new Chapter 204 and existing Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will result in a minimal additional cost to those long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204.

Firstly, the FGI *Guidelines* will only apply to new construction, alteration or renovation. They will not apply to existing facilities that are not making any changes or facilities that are only performing regular facility maintenance, such as making cosmetic upgrades, e.g., paint, new flooring, or changing light fixtures. Secondly, the costs associated with compliance with the FGI *Guidelines* relate to patient care items. That is, the major cost factor to new construction of long-term care facilities and renovations and alterations to existing facilities is square footage; specifically square footage requirements for rooms and spaces that have specific materials and equipment to support such rooms and spaces. The addition of the 2018 FGI *Guidelines* for long-term care facilities, however, does not specifically add square footage to any new construction, renovation or alteration. Further, the Department maintains the existing square footage requirements under this final-form rulemaking. Instead, the FGI *Guidelines* provide the design team with requirements that promote a physical environment that is safe for residents, promotes home-like environments, and provides up-to-date and relevant requirements to today’s challenges in facilities.

Specifically, facility ownership essentially determines the ultimate cost of any new construction, renovation or alteration project. Decisions to keep the facility “as-is” only incurs costs to maintain the facility; whereas business decisions to complete new construction, renovation or alteration projects will be decided by the scope approved by ownership. Further, facilities are required to comply with the requirements of the Uniform Construction Code (UCC), initially adopted by the Pennsylvania Department of Labor and Industry in April 2004 and updated to the 2018 edition, effective February 14, 2022. Likewise, facilities are already

required to comply with the requirements of the 2012 Edition of the National Fire Protection Association's (NFPA) 101, *Life Safety Code* (LSC) for state licensure and federal certification purposes, effective July 5, 2016.

Existing requirements related to UCC and LSC compliance affect construction, renovation and alteration costs significantly, as these codes determine requirements such as, but not limited to:

1. Type of construction of the building;
2. Fire protection systems, such as sprinkler and fire alarm systems;
3. Hazardous area protection;
4. Heating, Ventilating and Air Conditioning (HVAC);
5. Normal and emergency electrical systems;
6. Means of egress requirements;
7. Smoke and fire compartments to support "defend in place" evacuation principles;
8. Medical gas requirements;
9. Plumbing requirements, etc.

However, these same types of costs are not reflected under 2018 FGI *Guidelines*. While the UCC and LSC require the corridor width in a new health care occupancy to be 8 feet wide, the FGI *Guidelines* will add requirements that the flooring be non-slip and handrails provided for resident safety. Similarly, where sinks are required, the FGI *Guidelines* will provide requirements on the temperature of the water for proper handwashing hygiene and things such as the depth of the basin to limit the probability of splash and wet floors that may lead to falls. Where nurse call buttons are required, the FGI *Guidelines* will provide for considerations for residents that wish to move their bed within their room for resident preference. Further, where a dining room is already required, the FGI *Guidelines* will provide requirements on proper lighting, ensuring residents in wheelchairs are able to easily navigate the room, and requirements to promote smells from the food to permeate through the facility to encourage nutrition.

As stated previously, ownership business decisions will ultimately determine the overall cost of any new construction, renovation or alteration. Whether decisions are made to only renovate two rooms, renovate one or more wings, complete alterations to replace emergency generators or HVAC equipment (and to what extent), use interior finishes and fixtures that are either higher or lower priced, or build an entire replacement facility, that will be made by facility ownership.

New construction, renovations or alterations are already required to meet the UCC and LSC requirements. As important it is to ensure a facility has code compliant electrical receptacles per the UCC and LSC, it is just as important to ensure the FGI requirements for proper placement of the receptacles so residents may have proper access. This is similar to where UCC will provide requirements to ensure the number of toilets in the facility will function; whereas the FGI *Guidelines* provide requirements on proper location and staff assist to ensure residents have access and are provided a safe environment for fall protection. The

examples are nearly endless, but the FGI *Guidelines* are paramount to supplementing existing codes that are written for all types of facilities (residential, commercial, industrial, etc.) to provide and promote safe environments for the unique and fragile population of the facilities.

In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any construction, alteration or renovation are built to current, updated standards for maintained health and safety versus existing facilities that have not built to these standards. Further, the amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The 682 licensed facilities will not incur any cost due to the deletion of § 207.4 (relating to ice containers and storage) to align with the Federal requirements. As noted, all but three of the 682 facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements. The three private-pay facilities will not incur a cost due to the elimination of this requirement that is duplicative of the Federal requirements, as they are already required under existing § 207.4 to ensure that ice is properly stored and handled.

*Commonwealth - Department*

The amendments will not increase costs to the Department. The Department's surveyors perform the function of surveying and inspecting long-term care nursing facilities for compliance with both Federal and State regulations. The elimination of subsections that are outdated and duplicative of the Federal requirements will streamline the survey process for long-term care nursing facilities and provide consistency and congruency to the stakeholder industry. This, in turn, will reduce confusion in the application of the standards that apply to long-term care nursing facilities. The deletion of Chapter 203 (relating to application of Life Safety Code for long term care nursing facilities) will also benefit the Department's surveyors and long-term care nursing facilities by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined process. Further, separating new standards for construction, alteration or renovation from existing standards in Chapter 205 to new standards under Chapter 204, will also add clarity to the survey process and industry stakeholders by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation.

*Commonwealth – Department of Military and Veterans Affairs (DMVA)*

Of the 682 long-term care nursing facilities licensed by the Department, six facilities are veterans' homes that are operated by DMVA. These facilities are already required to comply with the Federal requirements and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The addition of subsections (c.1)—(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan and expanding upon the already existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. Further, the DMVA-operated facilities licensed by the Department will only be impacted by providing this additional information under these amendments if they close. The Department anticipates that the cost associated with providing this additional information to be nominal.

The deletion of Chapter 203 will not result in an additional cost to the DMVA-operated facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, new Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will result in a cost to those long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204. As provided above, the Department considers the cost for complying with the FGI *Guidelines* to be minimal. In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities and their residents. Further, the amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The DMVA-operated licensed facilities will not incur any additional cost due to the deletion of § 207.4 (relating to ice containers and storage), to align with the Federal requirements. As noted, these facilities are already required to comply with the Federal requirements.

#### *Commonwealth – Department of Human Services*

Although the provisions of this final-form rulemaking, which relate to general operations and physical requirements, will not have a cost impact to the Department of Human Services, a substantial increase in funding for nursing facilities, including new nursing facility funding and increased MA payments beginning January 2023, was enacted under Act 2022-54 and appropriated under the General Appropriations Act of 2022 (Act 2022-1A).

#### *Local Government*

As mentioned previously, there are currently nineteen county-owned long-term care nursing facilities, licensed by the Department. These facilities account for approximately 7.5% (6,524 beds) of licensed nursing facility beds across the Commonwealth. Allegheny County owns four of the nursing homes; the remaining homes are in the following 15 counties: Berks, Bradford, Bucks, Chester, Clinton, Crawford, Delaware, Erie, Indiana, Lehigh, Monroe, Northampton, Philadelphia, Warren and Westmoreland.

All county-owned long-term care nursing facilities participate in Medicare or MA and thus, are already required to comply with the Federal requirements and thus, are already required to comply with existing Federal requirements in 42 CFR 483.70(l) and (m) for the closure of a facility. The addition of subsections (c.1)–(c.4) to § 201.23 on final-form adds clarity to the regulation by incorporating the requirements for a closure plan and expanding upon the already

existing notice requirement in 42 CFR 483.70(l) and (m) to require that notice include additional information and be provided to additional individuals who have an interest in the closure of a facility. The county-owned facilities licensed by the Department will only be impacted by these amendments if they close. Further, the Department anticipates that the cost associated with providing this additional information to be nominal.

The deletion of Chapter 203 will not result in an additional cost to the county-owned facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The deletion of this Chapter merely aligns this requirement with the expansion of the incorporation by reference of the Federal requirements Department in § 201.2 in final-form rulemaking 1. The *Life Safety Code* is incorporated by reference in the Federal requirements for long-term care nursing facilities at 42 CFR § 483.73(g)(1). The deletion of Chapter 203 to align with the Federal requirements will benefit the regulated community by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined survey process.

The Department's separation of new standards for construction, alteration or renovation from existing standards into two chapters, new Chapter 204 and Chapter 205, will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new construction, alteration or renovation versus older, existing construction, alteration or renovation. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will result in a cost to those long-term care nursing facilities that submit plans for construction, alteration or renovation after the effective date of Chapter 204. As detailed above, the Department considers the cost for complying with the FGI *Guidelines* to be minimal. In addition, compliance with the FGI *Guidelines* will benefit long-term care nursing facilities and their residents. Further, the amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only deleting language pertaining to new construction, alteration or renovation.

The county-owned licensed facilities will not incur any additional cost due to the deletion of § 207.4, to align with the Federal requirements. As noted, these facilities participate in Medicare or MA and thus, already required to comply with the Federal requirements.

#### *Residents of Long-Term Care Nursing Facilities*

The more than 72,000 individuals that reside in the 682 long-term care nursing facilities licensed by the Department will be affected by the amendments. Residents will be positively affected by the closure plan requirements in the event of a facility closure in § 201.23(c.1). Residents will also be positively affected by the expansion of the Federal notice requirements in State regulation to include additional information and to include additional individuals. The addition of new Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* for construction, alteration or renovation plans approved on or after July 1, 2023, will also positively affect residents by ensuring that facilities that complete new construction, alteration or renovation are meeting current construction standards. Residents are also benefiting from the health and safety requirements of an airborne infection isolation room and the maintaining of facility requirements for the health and safety of residents.

#### *Paperwork Requirements*

The Department's adoption of 42 CFR 483.70(l) (relating to administration) will result in a new paperwork requirement for the three private-pay facilities, by requiring that notice be provided to certain individuals in the event of a facility closure. The Department's expansion of this requirement in § 201.23(c.3) and (c.4) will impose additional paperwork requirements on all facilities, including those that already are required to comply with 42 CFR 483.70(l). However, this requirement will only affect facilities if they close. Under these provisions, a closing facility will have to provide notice of the closure to the Department, residents, resident representatives, employees, the State long-term care ombudsman program, and the Department of Human Services.

The Department's adoption of 42 CFR 483.70(m) in § 201.23 will result in a new paperwork requirement for the three private-pay facilities that are licensed by the Department, by requiring these facilities to have in place policies and procedures to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a closure.

Licensees and prospective licensees are already required, under § 51.3(d) (relating to notification) to submit architectural and blueprint plans to the Department for approval before performing any construction, alteration or renovation. The amendment to § 204.2 simply directs licensees and prospective licensees to the Department's website for instructions on how to submit plans for construction, alteration or renovation.

#### *Small Business Analysis*

A commentator asserted that the Department failed to give adequate attention to the financial and economic impact of the regulation on small businesses, and that simply stating that all minimum requirements apply to all facilities, regardless of whether they are a small business, is not an analysis. IRRC also asked if the Department has the ability, in conjunction with other State agencies, to access data to evaluate the potential impact on small businesses. IRRC asked that the Department calculate and address the impact of the final-form regulation on small businesses as required under the Regulatory Review Act (71 P.S. § 745.1—745.14).

Under section 3 of the Regulatory Review Act, 71 P.S. § 745.3, a small business is "defined in accordance with the size standards described by the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation." Under 13 CFR 121.101 (relating to what are SBA size standards), the Small Business Administration's (SBA) "size standards determine whether a business entity is small." Size standards are developed under the North America Industry Classification System (NAICS). The Department applied the NAICS standards to determine how many long-term care nursing facilities, licensed by the Department, are small businesses.

The Department conducted a search on the NAICS website to find the NAICS code for long-term care nursing facilities. The NAICS code for nursing care facilities (skilled nursing facilities) is 623110. The Department looked this code up in the table located at 13 CFR 121.201 (relating to what size standards has SBA identified by NAICS codes) and determined that a long-term care nursing facility is a small business if it has \$30 million or less in annual receipts. The Department then pulled the latest long-term care nursing facility cost report from CMS to

determine the impact to facilities that participate in Medicare or MA. The latest cost report data from CMS is 2018. Data.CMS.gov. Skilled Nursing Facility Cost Report. Retrieved from <https://data.cms.gov/provider-compliance/cost-report/skilled-nursing-facility-cost-report/data>. The Department applied current Federal Standards of Accounting to this data to determine each facility's annual receipts. Based on this analysis, the Department determined that 623 facilities that participate in Medicare or MA have \$30 million or less in annual receipts. Although the data from CMS is from 2018, the Department believes that currently, at least the same number of facilities, if not more, would meet the definition of a small business. This analysis aligns with the Department's previous assumption that most long-term nursing facilities licensed by the Department meet the definition of a small businesses.

The Department also asked stakeholders during the meetings held in 2021 and 2022 for assistance in determining the impact to small businesses. The stakeholders were not able to provide the Department with specific information regarding how the Department's proposed regulations would impact small businesses. However, during the stakeholder meeting for Rulemakings 1 and 2, a stakeholder suggested that the Department search GuideStar, which provides financial information regarding nonprofit entities, to determine whether the three private-pay facilities are small businesses. The Department searched the GuideStar website at <https://www.guidestar.org/> for the three private-pay facilities that are licensed by the Department. Based on this data, one of the private-pay facilities, Friends Home in Kennett/Linden Hall, meets the definition of a small business applying the NAICS standards. Another private-pay facility, Foulkeways at Gwynedd does not meet the definition of a small business based on its gross receipts. Data for the third private-pay facility, Dallastown Nursing Center, is not available on GuideStar, but for the purposes of this analysis, the Department assumes that Dallastown is a small business.

In sum, at least 91% of nursing facilities meet the definition of a small business. Consistent with the HCFA and function of licensure, the purpose of these regulatory amendments is to ensure the health, safety, and welfare of all residents of long-term care nursing facilities in this Commonwealth by providing the minimum health and safety standards. Given that most facilities are a small business and the need for surveying for the health and safety of residents, the Department did not establish differing criteria for nursing facilities that are small business compared to the minority of facilities that are not small businesses. Further, in determining the minimum health and safety requirements, the department considered the myriad of received comments, feedback from meetings and stakeholder groups and attempted to balance the interests between consumers and the stakeholder industry. The Department's responsibility to ensure that residents receive safe, quality care applies to all residents of long-term care nursing facilities in this Commonwealth, and it is critical that all residents of long-term care nursing facilities receive the same level of high-quality care, regardless of whether the facility they reside in is a small business.

#### *Statutory Authority*

Sections 601 and 803 of the HCFA (35 P.S. §§ 448.601 and 448.803) authorize the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provisions of the HCFA. Section 801.1 of the HCFA (35

P.S. § 448.801a) seeks to promote the public health and welfare through the establishment of regulations setting minimum standards for the operation of health care facilities. The minimum standards are to assure safe, adequate and efficient facilities and services and to promote the health, safety and adequate care of patients or residents of those facilities. In section 102 of the HCFA, the General Assembly has found that a purpose of the HCFA is, among other things, to assure that citizens receive humane, courteous and dignified treatment. 35 P.S. § 448.102. Finally, Section 201(12) of the HCFA (35 P.S. § 448.201(12)) provides the Department with explicit authority to enforce its rules and regulations promulgated under the HCFA.

The Department also has the duty to protect the health of the people of this Commonwealth under section 2102(a) of the Administrative Code of 1929 (71 P.S. § 532(a)). The Department has general authority to promulgate regulations under section 2102(g) of the Administrative Code of 1929 (71 P.S. § 532(g)).

#### *Effectiveness/Sunset Date*

This final-form rulemaking will become effective on July 1, 2023. A sunset date will not be imposed. The Department will monitor the regulations and update them as necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 27, 2021, the Department submitted notice of this proposed rulemaking, published at 51 Pa.B. 6401 (October 9, 2021), to IRRC and the Chairpersons of the Senate Health and Human Services Committee and the House Health Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, 71 P.S. § 745.5(c), IRRC, the Senate Health and Human Services Committee and the House Health Committee were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Senate Health and Human Services Committee, the House Health Committee, and the public.

Under section 5.1(e) of the Regulatory Review Act, 71 P.S. § 745.5a(e), on \_\_\_\_\_, 2022, the final-form rulemaking was deemed approved by the Senate Health and Human Services Committee and the House Health Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 2022 and approved the final-form rulemaking.

#### *Contact Person*

Additional information regarding this final-form rulemaking may be obtained by contacting Ann Chronister, Director, Bureau of Long-Term Care Programs, by phone at (717) 547-3131, by email at [RA-DHLTCRcgs@pa.gov](mailto:RA-DHLTCRcgs@pa.gov) or by mail at the following address: 625 Forster Street, Rm. 526, Health and Welfare Building, Harrisburg, PA 17120. Persons with a disability may submit questions in alternative format such as by audio tape, Braille, or by using V/TT (717) 783-6514 or the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact Ann Chronister at the previous address or telephone number so that necessary arrangements can be made.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1201).

(4) The adoption of the regulations is necessary and appropriate for the administration of the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b).

*Order*

(1) The regulations of the Department at Title 28 of the Pennsylvania Code at §§ 201.23 and 207.4 and Chapters 203—205 are amended as set forth in Annex A.

(2) The Department shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this final-form regulation to IRRC, the Senate Health and Human Services Committee and the House Health Committee as required by law.

(4) The Department shall certify this final-form regulation, as approved for legality and form, and shall deposit it with the Legislative Reference Bureau as required by law.

(5) This final-form regulation shall take effect on July 1, 2023.

**LIST OF COMMENTATORS WHO REQUESTED MORE INFORMATION ON DEPARTMENT OF HEALTH  
LONG-TERM CARE NURSING FACILITY REGULATION #s 10-221, 10-222, 10-223, 10-224<sup>1</sup>**

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Patricia Savage	998 Logan Boulevard Altoona, PA 16602
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<sup>1</sup> Due to the overlap in comments between regulatory packages, the Department has compiled the list of commentators who requested more information on the four final-form long-term care nursing facility regulations into one list and provided a copy of all four packages to these commentators.

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**Annex A**

**TITLE 28. HEALTH AND SAFETY**

**PART IV. HEALTH FACILITIES**

**Subpart C. LONG-TERM CARE FACILITIES**

**CHAPTER 201. APPLICABILITY, DEFINITIONS, OWNERSHIP AND  
GENERAL OPERATION OF LONG-TERM CARE NURSING FACILITIES**

**OWNERSHIP AND MANAGEMENT**

**§ 201.23. Closure of facility.**

**In addition to the requirements set forth in 42 CFR 483.70(l) and (m) (relating to administration), the following conditions apply to the closure of a long-term care nursing facility:**

(a) [The administrator or owner shall notify the appropriate Division of Nursing Care Facilities field office at least 90 days prior to closure] **(Reserved)**.

(b) [If the facility is to be closed, the licensee shall notify the resident or the resident's responsible person in writing] **(Reserved)**.

(c) [Sufficient time shall be given to the resident or the resident's responsible person to effect an orderly transfer] **(Reserved)**.

(c.1) THE FACILITY SHALL DEVELOP A CLOSURE PLAN THAT INCLUDES THE FOLLOWING:

(1) THE IDENTIFICATION OF THOSE WHO WILL BE RESPONSIBLE FOR THE DAILY OPERATION AND MANAGEMENT OF THE FACILITY DURING THE CLOSURE PROCESS.

(2) THE ROLES AND RESPONSIBILITIES, AND CONTACT INFORMATION, FOR THE FACILITY OWNER AND THE ADMINISTRATOR OR ANY REPLACEMENT OR TEMPORARY MANAGER DURING THE CLOSURE PROCESS.

(3) ASSURANCE THAT NO NEW RESIDENTS WILL BE ADMITTED TO THE FACILITY AFTER THE WRITTEN NOTICE OF CLOSURE IS PROVIDED UNDER SUBSECTION (C.3).

(4) A PLAN FOR IDENTIFYING AND ASSESSING AVAILABLE FACILITIES TO WHICH RESIDENTS CAN BE TRANSFERRED, TAKING INTO CONSIDERATION EACH RESIDENT'S INDIVIDUAL BEST INTERESTS AND RESIDENT'S GOALS,

PREFERENCES AND NEEDS REGARDING SERVICES, LOCATION AND SETTING. THIS SHALL INCLUDE:

- (i) INTERVIEWING EACH RESIDENT AND RESIDENT REPRESENTATIVE, IF APPLICABLE, TO DETERMINE EACH RESIDENT'S GOALS, PREFERENCES AND NEEDS.
- (ii) OFFERING THE OPPORTUNITY, TO EACH RESIDENT AND RESIDENT REPRESENTATIVE, IF APPLICABLE, TO OBTAIN INFORMATION REGARDING OPTIONS WITHIN THE COMMUNITY.
- (iii) PROVIDING RESIDENTS AND RESIDENT REPRESENTATIVES, IF APPLICABLE, WITH INFORMATION OR ACCESS TO INFORMATION REGARDING PROVIDERS AND SERVICES.

(5) A PLAN FOR THE COMMUNICATION AND TRANSFER OF RESIDENT INFORMATION, INCLUDING OF MEDICAL RECORDS.

(6) PROVISIONS FOR THE ONGOING OPERATIONS AND MANAGEMENT OF THE FACILITY, ITS RESIDENTS AND STAFF DURING THE CLOSURE PROCESS, THAT INCLUDE THE FOLLOWING:

- (i) PAYMENT OF SALARIES AND EXPENSES.
- (ii) CONTINUATION OF APPROPRIATE STAFFING AND RESOURCES TO MEET THE NEEDS OF THE RESIDENTS, INCLUDING PROVISION OF MEDICATIONS, SERVICES, SUPPLIES AND TREATMENT.
- (iii) ONGOING ACCOUNTING, MAINTENANCE AND REPORTING OF RESIDENT PERSONAL FUNDS.
- (iv) LABELING, SAFEKEEPING AND APPROPRIATE TRANSFER OF EACH RESIDENT'S PERSONAL BELONGINGS.

(c.2) THE FACILITY SHALL PROVIDE THE NOTICE OF CLOSURE AND THE CLOSURE PLAN DEVELOPED UNDER SUBSECTION (C.1) TO THE DEPARTMENT FOR APPROVAL AT LEAST 75 DAYS PRIOR TO THE PROPOSED DATE OF CLOSURE.

(c.3) AT LEAST 60 DAYS BEFORE THE PROPOSED DATE OF CLOSURE, THE FACILITY SHALL PROVIDE WRITTEN NOTICE OF THE PROPOSED CLOSURE TO THE FOLLOWING:

- (1) RESIDENTS AND THEIR RESIDENT REPRESENTATIVES, IF APPLICABLE, IN WRITING OR IN A LANGUAGE AND MANNER THEY UNDERSTAND.
- (2) EMPLOYEES OF THE FACILITY.
- (3) THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM.
- (4) THE PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES.

(c.4) THE WRITTEN NOTICE PROVIDED UNDER SUBSECTIONS (C.2) AND (C.3) SHALL CONTAIN THE FOLLOWING:

- (1) THE DATE OF THE PROPOSED CLOSURE.
- (2) CONTACT INFORMATION FOR THE FACILITY REPRESENTATIVE DELEGATED TO RESPOND TO QUESTIONS ABOUT THE CLOSURE.
- (3) CONTACT INFORMATION FOR THE OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM.
- (4) THE TRANSFER AND RELOCATION PLAN OF RESIDENTS.

(d) No resident in a facility may be required to leave the facility prior to 30 days following receipt of a written notice from the licensee of the intent to close the facility, except when the Department determines that removal of the resident at an earlier time is necessary for health and safety.

(e) If an orderly transfer of the residents cannot be safely effected within 30 days, the Department may require the facility to remain open an additional 30 days.

(f) The Department is permitted to monitor the transfer of residents.

(g) ~~{The licensee of a facility shall file proof of financial responsibility with the Department to insure ENSURE that the facility continues to operate in a satisfactory manner UNTIL CLOSURE OF THE FACILITY. for a period of 30 days following the notice of intent to close} (Reserved).~~

#### CHAPTER 203. [APPLICATION OF LIFE SAFETY CODE FOR LONG-TERM CARE NURSING FACILITIES] (Reserved).

##### § 203.1. [Application of the *Life Safety Code*] (Reserved).

[A facility shall meet the applicable edition of National Fire Protection Association 101 *Life Safety Code* which is currently adopted by the Department. A facility previously in compliance with prior editions of the *Life Safety Code* is deemed in compliance with subsequent *Life Safety Codes* except renovation or new construction shall meet the current edition adopted by the Department.]

#### CHAPTER 204. PHYSICAL ENVIRONMENT AND EQUIPMENT STANDARDS FOR ~~ALTERATIONS, RENOVATIONS OR CONSTRUCTION,~~ ALTERATION OR RENOVATION OF LONG-TERM CARE NURSING FACILITIES

##### § 204.1. Application of *Guidelines for Design and Construction of Residential Health, Care and Support Facilities*.

(a) In addition to the requirements set forth in this chapter, facility ~~alterations, renovations and construction,~~ ALTERATION OR RENOVATION approved on or after \_\_\_\_\_ ~~(Editor's Note: The blank refers to the date 6 months after this regulation is published as a final form~~

~~rulemaking~~) JULY 1, 2023 shall comply with the 2018 edition of the Facility Guidelines Institute *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*.

(b) Facility ~~alterations, renovations and construction~~, ALTERATION OR RENOVATION approved before \_\_\_\_\_ (~~Editor's Note: The blank refers to the date 6 months after this regulation is published as a final form rulemaking~~) JULY 1, 2023 shall comply with the standards set forth in Chapter 205 (relating to physical environment and equipment standards for existing long-term care nursing facilities).

(c) A facility ~~previously determined by the Department to be in compliance with this subpart will be deemed to be in compliance until the time that the facility completes alterations, renovations or construction~~. ~~Alterations, renovations or construction~~, CONSTRUCTION, ALTERATION OR RENOVATION shall meet the requirements in effect on the date that the facility's plans for ~~alterations, renovations or construction~~, ALTERATION OR RENOVATION are approved by the Department.

## § 204.2. Building plans.

(a) A LICENSEE OR PROSPECTIVE LICENSEE SHALL SUBMIT ITS PLANS FOR CONSTRUCTION, ALTERATION OR RENOVATION TO THE DEPARTMENT. THE DEPARTMENT WILL POST INSTRUCTIONS FOR SUBMISSIONS ON ITS PUBLIC WEBSITE.

(B) A licensee or prospective licensee shall have the opportunity to present and discuss with the Department its purposes and plans concerning the requested changes indicated on architectural plans submitted under § 51.3(d) (relating to notification). If differences occur and cannot be resolved, an administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

~~(b)~~ (C) ~~Alterations, renovations or construction~~, CONSTRUCTION, ALTERATION OR RENOVATION approved by the Department shall begin within 2 years of the Department's approval and shall be completed within 5 years of the Department's approval.

~~(e)~~ (D) A facility may seek an extension of the time periods under subsection ~~(b)~~ (C) for beginning or completing an approved ~~alteration, renovation or construction~~, ALTERATION OR RENOVATION by written request to the Department. The Department may approve an extension for good cause shown.

~~(d)~~ Any part of a facility that has not been occupied or used for 1 year or more may not be used by the facility for any purpose except as provided for in this section.

(e) If a facility intends to occupy or use a space that has been unoccupied or unused for 1 year or more, the occupancy or use shall be considered an alteration, renovation or construction and the facility shall submit architectural plans and blueprints related to its occupancy or use to the Department as required under § 51.3(d). The facility may not use or occupy the space unless approved by the Department. A FACILITY SHALL OBTAIN APPROVAL FROM THE DEPARTMENT BEFORE USING AN AREA OF THE FACILITY FOR RESIDENT CARE

WHEN THAT AREA HAS NOT BEEN OCCUPIED OR USED BY RESIDENTS FOR ONE YEAR OR MORE.

**§ 204.3. Buildings AND GROUNDS; general.**

(a) A building to be used for and by residents shall be located in an area THAT IS GEOGRAPHICALLY AND ENVIRONMENTALLY conducive to the health and safety of residents.

(b) No part of a building may be used for a purpose that interferes with or jeopardizes the health and safety of residents. Special authorization shall be given by the Department's Division of Nursing Care Facilities before IF a part of the building is to be used for a purpose other than health care.

(c) Only residents, employees, the licensee, the administrator or members of the administrator's immediate family may reside in the facility.

(d) Grounds shall be adequate to provide necessary service areas and outdoor areas for residents. A facility with site limitations may provide rooftop or balcony areas if adequate protective enclosures are provided.

(e) A delivery area, service yard or parking area shall be located so that traffic does not cross an area commonly used by residents.

**§ 204.4. Basement.**

(A) A basement may be used for storage, laundry, kitchen, heat, electric and water equipment. Approval from the Department's Division of Nursing Care Facilities shall be secured before any part of the basement may be used for other purposes, such as physical therapy, central supply and occupational therapy.

(B) A DOOR TO A BASEMENT MAY NOT BE LOCATED IN A RESIDENT ROOM.

**§ 204.5. Resident rooms.**

(a) A bed for a resident may be placed only in a room approved by the Department as a resident room.

(b) The basement of a facility may not be used for resident rooms.

(c) The maximum number of residents who may be accommodated in a facility shall be indicated on the facility license. The number of resident rooms and the number of beds in a room may not exceed the maximum number approved by the Department.

(d) A resident shall have a choice in the placement of the resident's bed in the room unless the placement presents a safety hazard.

(e) A bed may not be placed close to a radiator, heat vent, air conditioner, direct glare of natural light or draft unless the resident chooses to do so and the placement does not pose a safety hazard.

(f) A resident shall be provided with a drawer or cabinet in the resident's room that can be locked.

**§ 204.6. Locks.**

A door into a room used by a resident may not be locked from the outside when the resident is in the room.

**§ 204.7. Laundry.**

Equipment shall be made available and accessible for residents desiring to do their personal laundry.

**§ 204.8. Utility room.**

The facility shall make provisions in each nursing unit for utility rooms. The nursing unit shall have separate soiled and clean workrooms. The rooms may not be more than 120 feet from the most remote room served.

**§ 204.9. Bathing facilities.**

(a) A facility shall provide a general bathing area in each nursing unit to serve resident rooms that do not have adjoining bathrooms with a bathtub or shower.

(b) Unless bathing fixtures are located in a separate room, there shall be compartments to permit privacy. Cubicle curtains may provide this privacy.

(c) Each bathing room shall include a toilet and lavatory. If more than one tub or shower is in the bathing room, privacy shall be provided at each bathing facility and at the toilet.

(d) The facility shall have at least one bathtub in each centralized bath area on each floor.

**§ 204.10. TOILET FACILITIES.**

TOILETS AND LAVATORIES, OTHER THAN RESIDENT FACILITIES, SHALL BE PROVIDED FOR VISITORS IN A FACILITY.

**§ ~~204.10~~204.11. Equipment for bathrooms.**

(a) Grab bars shall be installed as necessary at each tub and shower for safety and convenience. Grab bars, accessories and anchorage shall have sufficient strength to accommodate the residents' needs.

(b) The general bathroom or shower room used by residents shall have one emergency signal bell located in close proximity to the tub or shower and which registers at the workstation. An emergency signal bell shall also be located at each toilet unless a signal bell can be reached by the resident from both the toilet and tub or shower.

(c) The facility shall make provisions to get residents in and out of bathtubs in a safe way to prevent injury to residents and personnel. The facility shall provide appropriate supervision and assistance to ensure the safety of all residents being bathed.

(d) A dressing area shall be provided immediately adjacent to the shower stall and bathtub. In the dressing area, there shall be provisions for keeping clothes dry while bathing.

(e) The facility shall ensure that water for baths and showers is at a safe and comfortable temperature before the resident is bathed.

**§ ~~204.11~~204.12. Toilet room equipment.**

Each toilet used by residents shall be provided with handrails or assist bars on each side capable of accommodating the residents' needs.

**§ ~~204.12~~204.13. Linen.**

The facility shall have available at all times a quantity of linens essential for proper care and comfort of residents.

**§ ~~204.13~~204.14. Supplies.**

Adequate supplies shall be available at all times to meet the residents' needs.

**§ ~~204.14~~204.15. Windows.**

(a) Each window opening in the exterior walls that are used for ventilation shall be effectively covered by screening.

(b) A room with windows opening onto light or air shafts, or onto an exposure where the distance between the building or an obstruction higher than the windowsill is less than 20 feet, may not be used for resident rooms.

**§ ~~204.15~~204.16. Dining.**

The dining area shall be a minimum of 15 square feet per bed for the first 100 beds and 13 1/2 square feet per bed for beds over 100. This space is required in addition to the space required for lounge and recreation rooms.

**§ ~~204.16~~204.17. Lounge and recreation rooms.**

A recreation or lounge room shall be a minimum of 15 square feet of floor space per bed provided for the first 100 beds and 13 1/2 square feet for all beds over 100. A facility shall provide recreation or lounge rooms for residents on each floor.

**§ ~~204.17~~204.18. Storage.**

General storage space shall be provided for storage of supplies, furniture, equipment, residents' possessions and the like. Space provided for this purpose shall be commensurate with the needs of the nursing facility but may not be less than 10 square feet per bed.

**§ 204.18204.19. Plumbing, heating ventilation and air conditioning and electrical.**

Building systems, such as plumbing, heating, ventilation, air conditioning and electrical must comply with all State and local codes.

**§ 204.20 AIRBORNE INFECTION ISOLATION ROOM.**

A FACILITY SHALL HAVE AT LEAST ONE AIRBORNE INFECTION ISOLATION ROOM FOR ISOLATING RESIDENTS AS NECESSARY TO PREVENT THE SPREAD OF AIRBORNE INFECTIONS. AN AIRBORNE INFECTION ISOLATION ROOM SHALL BE IN ACCORDANCE WITH THE 2018 EDITION OF THE FACILITY GUIDELINES INSTITUTE GUIDELINES FOR DESIGN AND CONSTRUCTION OF RESIDENTIAL HEALTH, CARE, AND SUPPORT FACILITIES.

**CHAPTER 205. PHYSICAL [PLANT] ENVIRONMENT AND EQUIPMENT STANDARDS FOR LONG-TERM CARE NURSING FACILITIES ~~ALTERATIONS, RENOVATIONS OR CONSTRUCTION~~, ALTERATION OR RENOVATION APPROVED BEFORE\_\_\_\_\_**

*(Editor's Note: The blank refers to the date 6 months after this regulation is published as a final form rulemaking.)* **JULY 1, 2023.**

**BUILDINGS AND GROUNDS**

**§ 205.4. [Building plans] (Reserved).**

**[(a) There may be no new construction of a facility without the Department's approval of final plans. There may be no alterations or additions to an existing building or conversion of a building or facility made prior to the Department's approval of final plans.**

**(b) Plans, including architectural, mechanical and electrical plans, shall include requested changes and shall be submitted to the Department for final approval before construction, alterations or remodeling begins.**

**(c) The licensee or prospective licensee shall have the opportunity to present and discuss purposes and plans concerning the requested changes indicated on the architectural plans with the Department. If differences occur and cannot be resolved, administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).**

**(d) Plans shall be resubmitted to the Department for approval if construction or alteration has not been started within 24 months from the date the plans received final approval.**

**(e) Plans submitted to the Department for approval shall include the following items:**

**(1) Wall sections and details, including stairs, location and fastening of handrails and grab bars.**

**(2) Mechanical and electrical drawings.**

(3) Schedules of room finishes, door type and size, plumbing fixtures, electrical fixtures and special equipment, such as sterilizers, kitchen equipment and the like.

(4) Site plan—1 inch equals 40 feet—indicating new and existing structures, roads, services, walls and north arrow.

(5) Floor plans using a minimum of 1/8 inch scale.

(6) One-fourth inch scale layout: main kitchen, nurse's station, utility room, physical therapy room, occupational therapy room and the like.

(7) One-fourth inch scale layout: typical bedroom, indicating window, door, radiator, air conditioner, electrical outlets, permanent fixtures, furniture placement or other pertinent information; typical bathroom; and a toilet room.

(8) Exterior elevation.

(9) Wall section, typical.

(10) Plans shall be on drawing sheets at least 15 by 24 inches and not exceed 32 by 42 inches in size including the borders.]

#### § 205.6. Function of building.

(a) No part of a building may be used for a purpose which interferes with or jeopardizes the health and safety of residents. Special authorization shall be given by the Department's Division of Nursing Care Facilities if a part of the building is to be used for a purpose other than health care.

(b) The only persons who may reside in the facility shall be residents, ~~[employees]~~ employees, the licensee, the administrator or members of the administrator's immediate family.

### MINIMUM PHYSICAL ~~[PLANT]~~ ENVIRONMENT STANDARDS

#### § 205.7. Basement or cellar.

Basements or cellars may be used for storage, laundry, kitchen, heat, electric and water equipment. Approval from the Department's Division of Nursing Care Facilities shall be secured before ~~[areas]~~ any area of the basement may be used for other purposes, such as physical therapy, central supply[,] and occupational therapy ~~[and the like]~~.

\* \* \*

#### § 205.21. Special care room.

(a) Provisions shall be made for isolating a resident as necessary in a single room which is ventilated to the outside [as set forth in § 205.66 (relating to special ventilation requirements for new construction)]. For new construction, there shall be an adjoining private bathroom which contains a toilet, lavatory and either a standard size tub or a shower].

(b) Provisions shall be available to identify this room with appropriate precautionary signs.

**§ 205.22. Placement of beds.**

A bed may not be placed in proximity to radiators, heat vents, air conditioners, direct glare of natural light or drafts unless **[adequate provisions are made for resident comfort and safety] the resident chooses to do so and the placement does not pose a safety hazard.**

\* \* \*

**MECHANICAL AND ELECTRICAL REQUIREMENTS**

§ 205.61. Heating requirements for existing **[and new]** construction.

(a) The heating system shall comply with local and State codes. If there is a conflict, the more stringent requirements shall apply.

(b) Exposed heating pipes, hot water pipes or radiators in rooms and areas used by residents or within reach of residents, shall be covered or protected to prevent injury or burns to residents. This includes hot water or steam piping above 125°F.

§ 205.62. **[Special heating requirements for new construction] (Reserved).**

**[(a) Boiler feed pumps, heat circulating pumps, condensate return pumps and fuel oil pumps shall be connected and installed so that the total load can be carried by the remaining pumps with one pump out of service.**

**(b) To prevent shutting down the entire system when repairs are required, supply and return mains and risers of cooling, heating and process steam systems shall be valved to isolate the various sections of the system. Each piece of equipment shall be valved at the supply and return.]**

§ 205.63. Plumbing and piping systems required for existing **[and new]** construction.

(a) Potable ice may not be manufactured or stored in the soiled utility room.

(b) Water distribution systems shall be designed and arranged to provide potable hot and cold water at hot and cold water outlets at all times. The system pressure shall be sufficient to operate fixture and equipment during maximum demand periods.

(c) Hot water outlets accessible to residents shall be controlled so that the water temperature of the outlets does not exceed 110°F.

§ 205.64. **[Special plumbing and piping systems requirements for new construction] (Reserved).**

**[(a) Plumbing systems shall be installed to meet the requirements of local plumbing codes and Chapter 14, Medical Care Facility Plumbing Equipment, of the *PHCC National Standard Plumbing Code*. Sections 14.22 and 14.23 of the *PHCC National Standard Plumbing Code* are not mandatory, but are recommended. If the codes listed in this subsection conflict, the most stringent requirement shall apply.**

(b) Approved backflow preventers or vacuum breakers shall be installed with plumbing fixtures or equipment where the potable water supply outlet may be submerged and which is not protected by a minimum air gap. This includes hose bibs, janitor sinks, bedpan-flushing attachments and other fixtures to which hoses or tubing can be attached.

(c) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(d) Shower bases and tubs shall provide nonskid surfaces for standing residents.]

§ 205.66. [Special ventilation requirements for new construction] (Reserved).

(a) Ventilation for new construction shall conform to the following:

<i>Area Designation</i>	<i>Pressure Relationship to Adjacent Areas</i>	<i>Minimum Air Changes of Outdoor Air Per Hour</i>	<i>Minimum Total Air Changes Per Hour</i>	<i>All Air Directly to Outdoors</i>	<i>Recirculated within Room Units</i>
Resident Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Physical therapy	Negative	2	6	Optional	Optional
Occupational therapy	Negative	2	6	Optional	Optional
Soiled workroom or soiled holding	Negative	2	10	Yes	No
Clean workroom or clean holding	Positive	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitor's closet	Negative	Optional	10	Yes	No
Sterilizer equipment room	Negative	Optional	10	Yes	No
Linen and trash chute rooms	Negative	Optional	10	Yes	No
Food preparation center	Equal	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Dietary day storage	Equal	Optional	2	Yes	No
Laundry, general	Equal	2	10	Yes	No
Soiled linen sorting and storage	Negative	Optional	10	Yes	No
Clean linen storage	Positive	Optional	2	Yes	No
Special Care Room/Isolation	Negative	2	6	Yes	No

**(b) Central air systems shall be provided with filters having a minimum efficiency of 25% based on ASHRAE Standard No. 52-68 and certified by an independent testing agency. Central air systems shall have a manometer installed across each filter bed.**

**(c) Air supply systems shall be operated mechanically. Air exhaust and return systems shall be operated mechanically, except for air not required to be exhausted directly outdoors as indicated in subsection (a). Where subsection (a) requirements for outdoor air is optional, this air may be supplied directly by transfer ducts or grilles to adjacent spaces without being filtered through a central system. Air may not be transferred to or from corridors, to or from adjacent spaces, except as permitted in the applicable edition of the National Fire Protection Association 101 *Life Safety Code* which is currently adopted by the Department.**

**(d) The dietary dry storage and kitchenware washing rooms may use direct air from the kitchen without being filtered through a central system.**

**(e) The ventilation rates indicated in subsection (a) are minimum mandatory rates for the area listed and may not be construed as precluding the use of higher rates. For areas not listed, such as dining rooms, lounge and recreation rooms, solaria, and the like, mechanical ventilation rates are optional, but where mechanical ventilation is provided, the supply air shall be obtained from the outdoors through individual room units or from central systems. The unlisted room areas, if ventilated, shall contain an equal pressure relationship.**

**(f) Where mechanical ventilation is not mandatory or provided, the areas may be ventilated by outside windows that can be easily opened and closed.**

**(g) Outdoor air intakes may be no less than 25 feet from waste air discharges, such as discharge from ventilation systems, combustion stacks, plumbing vents, vehicle exhaust and the like. The bottom of outdoor air intakes serving central systems and kitchens may not be less than 3 feet above the finished grade or roof level.**

**(h) Ventilation air openings which are located near floors shall be installed not less than 3 inches above the finished floor.**

**(i) Air quantities in cubic feet per minute shall be indicated on the drawings for room supply, return and exhaust ventilation openings.]**

§ 205.67. Electric requirements for existing [and new] construction.

(a) Artificial lighting shall be restricted to electric lighting.

(b) Spaces occupied by people, machinery and equipment within buildings shall have electric lighting which is operational at all times.

(c) Electric lights satisfactory for residents' activities shall be available.

(d) Electric lights in rooms used by residents shall be placed or shaded to prevent direct glare to the eyes of residents.

(e) Night lights shall be provided in bedrooms, stairways, corridors, bathrooms and toilet rooms used by residents.

(f) Arrangements to transfer lighting from overhead fixtures to night light fixtures in stairways and corridors shall be designed so that switches can only select between two sets of fixtures and cannot extinguish both sets at the same time.

(g) In addition to night lights, residents' bedrooms shall have general lighting. The light emitting surfaces of the night light may not be in direct view of a resident in a normal in-bed position.

(h) A reading light shall be provided for each resident.

(i) In each resident room there shall be grounding type receptacles as follows: one duplex receptacle on each side of the head of each bed except for parallel adjacent beds. Only one duplex receptacle is required between beds plus sufficient duplex receptacles to supply portable lights, television and motorized beds, if used, and one duplex receptacle on another wall.

(j) A nurse's calling station—signal originating device—with cable with push button housing attached or other system approved by the Department shall be provided at each resident bed location so that it is accessible to the resident. Two cables and buttons serving adjacent beds may be served by one station. An emergency calling station within reach of the resident shall be provided at each bathing fixture and toilet unless a single bell can be reached by the resident from both the bathing fixture and the toilet. Cable and push button housing requirement will apply to those facilities constructed after July 1, 1987.

(k) Calls shall register by a signal receiving and indicating device at the nurses' station, and shall activate a visible signal in the corridor at the resident's door. In multicorridor nursing units, additional visible signal indicators shall be installed at corridor intersections.

§ 205.68. [Special electrical requirements for new construction] (Reserved).

**(a) Electrical systems and equipment shall comply with the latest edition of the *National Electrical Code, NFPA 70*. If local or State codes are more stringent, the more stringent requirements apply.**

**(b) Materials comprising the electrical systems shall be listed as complying with applicable standards of the Underwriters' Laboratories, Inc., or other similarly established standards.**

**(c) Minimum lighting levels for long-term care nursing facilities shall conform with the following:**

<i>Area</i>	<i>Footcandles</i>
Corridors and interior ramps	20
Stairways other than exits	30
Exit stairways and landings	5 on floor
Doorways	10
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Chapel or quiet area	30
Physical therapy	20
Occupational therapy	30
Worktable, coarse work	100

Worktable, fine work	200
Recreation area	50
Dining area	30
Resident care unit (or room) general	10
Resident care room, reading	30
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Utility room, general	20
Utility room, work counter	50
Pharmacy area, general	30
Pharmacy, compounding and dispensing areas	100
Janitor's closet	15
Toilet and bathing facilities	30
Barber and beautician areas	50

(d) The applicable standards for lighting levels are those established by the current edition of the Illuminating Engineering Society of North America (IES) Lighting Handbook.]

## MISCELLANEOUS PROVISIONS

### § 205.101. Scope.

This chapter applies to facility alterations, renovations and construction, ALTERATION OR RENOVATION approved by the Department before \_\_\_\_\_. (*Editor's Note: The blank refers to the date 6 months after this regulation is published as a final form rulemaking.*) JULY 1, 2023.

## CHAPTER 207. HOUSEKEEPING AND MAINTENANCE STANDARDS FOR LONG-TERM CARE NURSING FACILITIES

### HOUSEKEEPING AND MAINTENANCE

#### § 207.4. [Ice containers and storage] (Reserved).

[Ice storage containers shall be kept clean, and ice shall be handled in a sanitary manner to prevent contamination.]



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE SECRETARY OF HEALTH

September 27, 2022

Mr. David Sumner  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17101

Re: Department of Health – Final Regulation No. 10-222  
Long-Term Care Nursing Facility Regulations  
28 Pa. Code §§ 201.23 and 207.4; and Chapters 203, 204 and 205  
*Rulemaking 2 – General Operation and Physical Requirements*

Dear Mr. Sumner:

Enclosed are final-form regulations for review by the Independent Regulatory Review Commission (IRRC) in accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.15). This is the second of four rulemaking packages that amend Subpart C (relating to long-term care facilities) of Part IV of Title 28 of the Pennsylvania Code. Subpart C consists of 6 different chapters: Chapters 201, 203, 205, 207, 209 and 211.

This final-form rulemaking amends the general operation and physical requirement provisions under §§ 201.23 and 207.4, Chapters 203 and 205, and adds a new chapter designated as Chapter 204. Specifically, the Department amends § 201.23 (relating to closure of facility) and deletes Chapter 203 (relating to application of *Life Safety Code* for long-term care nursing facilities) to eliminate provisions that are outdated and duplicative of Federal requirements. The Department updates requirements for construction, alteration, or renovation of long-term care nursing facilities by adding Chapter 204, which applies to plans for construction, alteration, or renovation of long-term care nursing facilities approved for approval on or after July 1, 2023. The Department is maintaining the provisions in Chapter 205, with minor amendments, as the baseline standards for plans for construction, alteration, or renovation of long-term care nursing facilities approved for approval before July 1, 2023.

The Regulatory Review Act provides that upon completion of the agency's review of comments following proposed rulemaking, the agency is to submit to IRRC and the Standing Committees of the General Assembly a copy of the agency's response to the comments received, the names and addresses of the commentators who have requested additional information relating to the final-form regulations, and the text of the final-form regulations which the agency intends to adopt. *See* 71 P.S. §§745.5a(a).

A list of the names and addresses of the commentators who requested a copy of the final-form regulations is enclosed. The Department previously forwarded these comments to the Commission.

The Act also provides that IRRC may have until its next scheduled meeting which occurs no less than 30 days after receipt of the final-form regulation to approve or disapprove the final-form regulation. 71 P.S. § 745.5a(e).

The Department will provide IRRC with any assistance it requires to facilitate a thorough review of the regulations. If you have any questions, please contact David Toth, Director of the Office of Legislative Affairs, at (717) 787-6436.

Sincerely,



Denise Johnson, MD  
Acting Secretary of Health

Enclosures

**From:** Bradbury, Joan  
**To:** Smith, Pamela (Health); Brooks, Senator Michele  
**Subject:** RE: Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Date:** Tuesday, September 27, 2022 9:49:41 AM

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Received, thank you Pam.

*Joan Bradbury*  
Executive Director  
Senate Health & Human Services Committee  
717-787-1475 (direct)

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Tuesday, September 27, 2022 8:15 AM  
**To:** Brooks, Senator Michele <mbrooks@pasen.gov>  
**Cc:** Bradbury, Joan <jbradbury@pasen.gov>  
**Subject:** Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Importance:** High

ⓘ CAUTION : External Email ⓘ

Good morning,

Attached are final-form long-term care nursing facility regulations – rulemaking 2 (10-222) from the Department of Health. This is the second of four long-term care nursing facility packages that are being delivered to you today.

Under the Regulatory Review Act, the Department is required to deliver a final-form regulatory package to the Standing Committees of the General Assembly and the Independent Regulatory Review Commission (IRRC) **on the same day**, with IRRC receiving the package last. Confirmation of receipt by the Standing Committees is required for delivery to IRRC.

Please respond as soon as possible to this email indicating that you have received the attached final-form regulatory package so that I can deliver the package to IRRC **today, September 27, 2022**.

Thanks,  
Pam

**Pamela G. Smith** | Assistant Counsel  
Pennsylvania Department of Health | Office of Legal Counsel  
625 Forster Street | Harrisburg, PA 17120 - 0701  
Phone: 717.783.2500 | Fax: 717.705.6042  
[www.health.state.pa.us](http://www.health.state.pa.us)

**From:** [Fricke, Erika L.](#)  
**To:** [Smith, Pamela \(Health\)](#); [Frankel, Dan](#)  
**Subject:** RE: Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Date:** Tuesday, September 27, 2022 10:46:08 AM

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Tuesday, September 27, 2022 8:16 AM  
**To:** Frankel, Dan <DFrankel@pahouse.net>  
**Cc:** Fricke, Erika L. <EFricke@pahouse.net>  
**Subject:** Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Importance:** High

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**From:** Freeman, Clarissa  
**To:** Smith, Pamela (Health)  
**Subject:** Re: Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Date:** Tuesday, September 27, 2022 9:26:46 AM

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Received.  
Thank you,  
Clarissa

SEP 27 2022

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Review Commission

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Tuesday, September 27, 2022 8:17:24 AM  
**To:** Haywood, Senator Art <art.haywood@pasenate.com>  
**Cc:** Freeman, Clarissa <clarissa.freeman@pasenate.com>  
**Subject:** Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)

■ EXTERNAL EMAIL ■

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**From:** Michael Siget  
**To:** [Smith, Pamela \(Health\)](#); [Kathy Rapp](#)  
**Subject:** RE: Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Date:** Tuesday, September 27, 2022 8:36:28 AM

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**From:** Smith, Pamela (Health) <pamesmith@pa.gov>  
**Sent:** Tuesday, September 27, 2022 8:18 AM  
**To:** Kathy Rapp <Klrapp@pahousegop.com>  
**Cc:** Michael Siget <Msiget@pahousegop.com>  
**Subject:** Final-Form Long-Term Care Nursing Facility Regulations - Rulemaking 2 (10-222)  
**Importance:** High

Independent Regulatory  
Review Commission

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