

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>SEP 27 2021</p> <p>Independent Regulatory Review Commission</p> <p>IRRC Number: 3316</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: Long-term care nursing facilities</p> <p>Please note that this is the second of five proposed 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>Primary Contact: Lori Gutierrez, Deputy Director, Office of Policy, 717-317-5426, RA-DHLTCRegs@pa.gov</p> <p>Secondary Contact: Ann Chronister, Director, Bureau of Facility Licensure and Certification, 717-547-3131, RA-DHLTCRegs@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation</p> <p><input 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 proposed regulation is the second of five rulemaking packages, with respect to long-term care nursing facilities, that the Department intends to promulgate.</p> <p>The Department proposes to amend section 201.23 (relating to closure of facility) and delete 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 for long-term care nursing facilities) to eliminate provisions that are outdated and duplicative of Federal requirements pertaining to long-term care nursing facilities.</p> <p>The Department also proposes to update requirements for alterations, renovations, or construction of long-term care nursing facilities by adding Chapter 204. Chapter 204 will be new and will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved six months after the date the final regulation is published. The Department proposes to keep the provisions in Chapter 205, with minor amendments proposed in this rulemaking, as the baseline standards for alterations, renovations or construction of long-term care nursing facilities approved prior to the effective date of Chapter 204.</p>		

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

Sections 601 and 803 of the Health Care 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. § 448.801a) 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)).

(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.

The proposed 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 act 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 act 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%. Pennsylvania also has a higher percentage of older adults when compared to other states. In 2017, Pennsylvania 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 (aged 65 or older) for every 100-working age Pennsylvanians (15 to 64 years of age). Penn State Harrisburg, Pennsylvania State Data Center. *Population Characteristics and Change: 2010 to 2017 (Research Brief)*. <https://pasdc.hbg.psu.edu/data/research-briefs/pa-population-estimates> (last visited: November 30, 2020). As the number of older Pennsylvanians increases, the number of those needing long-term nursing care will also increase. It has been estimated that an individual turning 65 today has an almost 70% chance of needing some type of long-term nursing care during the remainder of their lifetime. U.S. Department of Health and Human Services. *How Much Care Will You*

Need? <https://longtermcare.acl.gov/the-basics/how-much-care-will-you-need.html> (last visited: December 4, 2020).

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 act. 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. This proposed rulemaking is necessary to improve the quality of care delivered to residents, increase resident safety and minimize procedural burdens on health care practitioners who provide care to residents in long-term care nursing facilities.

The Department's surveyors, as well as the 689 long-term care nursing facilities licensed by the Department, will benefit from the consistency and efficiency created by the elimination of provisions in section 201.23 (relating to closure of facility), that are outdated and duplicative of Federal requirements. The proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations and construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*) will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to new alterations, renovations or construction versus older, existing alterations, renovations and construction.

The more than 72,000 residents of the 689 licensed long-term care nursing facilities will also benefit from the proposed regulations. Residents in long-term care nursing facilities will benefit from the adoption of the Federal requirements in the event of a closure of a long-term care nursing facility. The Department's proposal to require compliance with the 2018 edition of the Facility Guidelines Institute's *Guidelines for Design and Construction of Residential Health, Care and Support Facilities* (FGI *Guidelines*) for plans for alterations, renovations, or construction approved after the effective date of Chapter 204 (six months after the publication of the final-form rulemaking) will also improve the quality of life and care of residents in long-term care nursing facilities by ensuring that facilities are meeting the best and most modern standards.

(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.

The Department proposes to amend and delete portions of section 201.23 (relating to closure of facility) to conform with the Federal requirements at 42 CFR 483.70(l) and (m). The Department proposes to keep existing requirements in section 201.23 that exceed the Federal requirements. These provisions prohibit a long-term care nursing facility from requiring a resident to leave the facility less than 30 days after the notice of closure has been given, require a long-term care nursing facility to remain open for an additional 30 days when an orderly transfer cannot be effectuated within 30 days, and permit the Department to monitor the transfer of residents to another long-term care nursing facility. These

provisions are necessary to ensure the health and safety of residents during the closure of a long-term care nursing facility.

The Department proposes to delete Chapter 203 (relating to application of *Life Safety Code* for long-term care nursing facilities) to eliminate duplication between State and Federal requirements. 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 Department's proposed adoption in Chapter 204 of the 2018 edition of the Facility Guideline Institute's (FGI's) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities* goes above and beyond the Federal requirements for long-term care nursing facilities. The FGI *Guidelines* have long been recognized in the health care industry as the gold standard for the planning, designing and construction of health care facilities. The 2018 edition is the most recent edition of the FGI *Guidelines* for long-term care nursing facilities and focuses more on person-centered living environments which improve the quality of life for residents in long-term care nursing facilities. The Department's proposal to require compliance with the FGI *Guidelines* for all plans for alterations, renovations or construction approved after the effective date of Chapter 204 (six months after the publication of this final-form rulemaking) will improve the quality of life and care of residents by ensuring that facilities are meeting the best and most modern standards. The Department also proposes in Chapter 204 to add existing requirements from Chapter 205 that go above and beyond the FGI *Guidelines*. These provisions are necessary to ensure the health and safety of residents in long-term care nursing facilities.

The Department's proposed amendments to Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*) eliminate requirements relating to new alterations, renovations, or construction to conform with the Department's proposals 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 alterations, renovations or construction of long-term care nursing facilities that were approved before the date that Chapter 204 becomes effective.

The Department's proposed deletion of section 207.4 (relating to ice containers and storage) is also in line with the Federal requirements. Ice storage and the handling of ice are addressed in the Federal requirements at 42 CFR § 483.60(i)(2) and at F812 in *Appendix PP – Guidance to Surveyors for Long-Term Care Facilities* from the Centers for Medicare & Medicaid Services (CMS) *State Operations Manual*.

(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 proposed amendments to section 201.23 (relating to facility closure), section 207.4 (relating to ice containers and storage) and Chapter 203 (relating to application of *Life Safety Code* for long-term care nursing facilities) will not affect Pennsylvania's ability to compete with other states. The proposed amendments align these provisions with the Federal requirements for long-term care nursing facilities at 42 CFR Part 483, Subpart B (relating to requirements for long-term care facilities). All long-term care nursing facilities that participate in Medicare or Medicaid are required to comply with the Federal

requirements regardless of where they are located. The Department is not aware of the number of long-term care nursing facilities in other states that do or do not participate in Medicare or Medicaid. The Department reviewed the regulations of other states to determine which states have adopted the Federal requirements as State licensing requirements. Of the states surrounding Pennsylvania, Delaware has expressly adopted the Federal requirements. 16 Del. Admin. Code § 3201-1.21. 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 adopted the Federal requirements.

The Department also proposes to adopt the 2018 edition of the FGI *Guidelines* in this rulemaking. This adoption in Pennsylvania is in line with 42 other states which have already adopted some edition of the *Guidelines* (this includes Wisconsin, which has adopted only the HVAC requirements). Facility Guidelines Institute. Adoption of the FGI *Guidelines*. <https://fgiguidelines.org/guidelines/state-adoption-fgi-guidelines/> (last visited: April 15, 2021). The adoption of the FGI *Guidelines* will thus not have any impact on Pennsylvania’s ability to compete with other states.

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

The proposed regulations will not affect the regulations of any other state agency. The Department is currently revising other parts of the regulations relating to long-term care nursing facilities (28 Pa. Code Ch. 28, Subpart C). These proposed regulations will complement those revisions.

(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 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.

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.

(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 proposed amendments will apply to all 689 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. The Department anticipates little to no effect on these facilities as a result of the proposed elimination of subsections in section 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All but three of the 689 long-term care nursing facilities participate in either Medicare or Medicaid and thus, are required to comply with existing Federal requirements. The three long-term care nursing facilities that do not participate in Medicare or Medicaid will only be affected by the Department's proposed amendment to section 201.23 (relating to closure of facility) in the event of a closure and to the extent that the Federal requirements for closure at 42 CFR § 483.70(l) and (m) differ from existing section 201.23. These differences are minimal. The three facilities that do not participate in Medicare or Medicaid may be affected by the Department's proposal to delete section 207.4 (relating to ice containers and storage) to align with Federal requirements, if they do not already meet the minimum standards within the Federal requirements.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will have no effect on the regulated community. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will only affect those long-term care nursing facilities that receive approval for alterations, renovations and construction after the effective date of Chapter 204. The Department considers the cost for complying with the FGI *Guidelines* to be minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 alterations, renovations, and construction are built to the best and most modern standards versus existing facilities that have not built to these standards. The proposed amendments to Chapter 205 will not affect long-term care nursing facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

The Department applied the North America Industry Classification System (NAICS) standards to the long-term care nursing facilities identified above. Under the NAICS, a long-term care facility is a small business if it has \$35.5 million or less in total income annually. The Commonwealth's Department of Labor and Industry (L&I) defines a small business by the number of employees rather than total annual income. The Department does not maintain data on long-term care nursing facility annual income, or the number of individuals employed by long-term care nursing facilities. Therefore, the Department is not able to determine the number of long-term care nursing facilities that fall into the small business category.

If any of the Commonwealth's 689 licensed long-term care nursing facilities are considered to be a small business, they will still be required to meet the requirements of the Department's long-term care nursing facilities regulations, as will any long-term care nursing facility that is not considered a small business. The Department's responsibility to the quality of care to residents in long-term care nursing facilities applies to all of those residents and is not altered by the fact that a long-term care nursing facility may be considered a small business.

Residents of Long-Term Care Nursing Facilities

More than 72,000 individuals reside in the 689 long-term care nursing facilities licensed by the Department. Individuals who reside in these facilities will benefit from the adoption of the Federal requirements in section 201.23 (relating to closure) in the event of a facility closure.

The Department's proposal to require compliance with the FGI *Guidelines* and Chapter 204 for plans for alterations, renovations, or construction approved six months after the publication date of the final-form regulation will positively affect the quality of life and care of residents residing in long-term care nursing facilities by ensuring that facilities who complete new alterations, renovations or construction are meeting the best, most modern standards.

Department

The Department licenses long-term care nursing facilities, and thus, will be affected by the proposed regulations. 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 proposed elimination of subsections, in section 201.23 (relating to closure of facility), 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 proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (Editor's note: The blank refers to the date 6

months after this regulation is published as a final-form rulemaking.), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to newer alterations, renovations or construction versus older, existing alterations, renovations and construction.

(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 689 licensed long-term care nursing facilities in the Commonwealth will be required to comply with this proposed rulemaking. These facilities provide care to more than 72,000 residents. The Department does not maintain data on long-term care nursing facility annual income, or the number of individuals employed by long-term care nursing facilities. Therefore, the Department is unable to identify which long-term care nursing facilities may be small businesses. The proposed regulations will apply to all long-term care nursing facilities irrespective of whether they are considered a small business. The Department's responsibility to the health and welfare of all residents in long-term care nursing facilities is not altered by the fact that a long-term care nursing facility may be a small business.

(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

The proposed amendments will apply to all 689 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. The Department anticipates little to no financial and economic impact on these facilities as a result of the proposed elimination of subsections in section 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All but three of the 689 long-term care nursing facilities participate in either Medicare or Medicaid and thus, are required to comply with existing Federal requirements. The three long-term care nursing facilities that do not participate in Medicare or Medicaid will only be impacted by the Department's proposed amendment to section 201.23 (relating to closure of facility) in the event of a closure and to the extent that the Federal requirements for closure at 42 CFR § 483.70(l) and (m) differ from existing section 201.23. These differences are minimal. The three facilities that do not participate in Medicare or Medicaid may be impacted by the Department's proposal to delete section 207.4 (relating to ice containers and storage) to align with Federal requirements, if they do not meet the minimum standards within the Federal requirements. However, any impact to the three facilities that do not participate in Medicare or Medicaid is outweighed by the need for consistency in the application of standards to all long-term care nursing facilities, regardless of whether the facilities participate in Medicare or Medicaid.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will have no financial or economic impact on long-term care nursing facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will only result in a cost to those long-term care nursing facilities that receive approval for alterations, renovations and construction six months after the publication date of this final-form rulemaking, when Chapter 204 goes into effect. The Department considers the cost for complying with the FGI *Guidelines* to be minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 alterations, renovations, and construction are built to the best and most modern standards versus existing facilities that have not built to these standards. The proposed amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

Small businesses

The Department applied the North America Industry Classification System (NAICS) standards to the long-term care nursing facilities identified above. Under the NAICS, a long-term care facility is a small business if it has \$35.5 million or less in total income annually. The Commonwealth's Department of Labor and Industry (L&I) defines a small business by the number of employees rather than total annual income. The Department does not maintain data on long-term care nursing facility annual income, or the number of individuals employed by long-term care nursing facilities. Therefore, the Department is not able to determine the number of long-term care nursing facilities that fall into the small business category.

If any of the Commonwealth's 689 licensed long-term care nursing facilities are considered to be a small business, they will still be required to meet the requirements of the Department's long-term care nursing facilities regulations, as will any long-term care nursing facility that is not considered a small business. The Department's responsibility to the quality of care to residents in long-term care nursing facilities applies to all of those residents and is not altered by the fact that a long-term care nursing facility may be considered a small business.

Department

The Department licenses long-term care nursing facilities. The proposed amendments will not increase costs to the Commonwealth or 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 proposed elimination of subsections, in section 201.23 (relating to closure of facility),

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 proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before

_____) (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to newer alterations, renovations or construction versus older, existing alterations, renovations and construction.

Public

The Department anticipates no financial or economic impact on the public as a result of the proposed regulations.

Social Impact and Benefits

Public

More than 72,000 individuals reside in the 689 long-term care nursing facilities licensed by the Department. Individuals who reside in these facilities will benefit from the adoption of the Federal requirements in section 201.23 (relating to closure) in the event of a facility closure.

The Department's proposal to require compliance with the FGI *Guidelines* and Chapter 204 for plans for alterations, renovations, or construction approved after the effective date of the Chapter 204 will improve the quality of life and care of residents in long-term care nursing facilities by ensuring that facilities are meeting the best and most modern standards for facilities.

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.

Long-Term Care Nursing Facilities

The proposed amendments will apply to all 689 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. The Department anticipates little to no financial impact on these facilities as a result of the proposed elimination of subsections in section 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All but three of the 689 long-term care nursing facilities participate in either Medicare or Medicaid and thus, are required to comply with existing Federal requirements. The three long-term care nursing facilities that do not participate in Medicare or Medicaid will only be impacted by the Department's proposed amendment to section 201.23 (relating to closure of facility) in the event of a closure and to the extent that the Federal requirements for closure at 42 CFR § 483.70(l) and (m) differ from existing section 201.23. These differences are minimal. The three facilities that do not participate in Medicare or Medicaid may be impacted by the Department's proposal to delete section 207.4 (relating to ice containers and storage) to align with Federal requirements, if they do not already meet the minimum standards within the Federal requirements. However, any impact on the three facilities that do

not participate in Medicare or Medicaid is outweighed by the need for consistency in the application of standards to all long-term care nursing facilities, regardless of whether the facilities participate in Medicare or Medicaid.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will not increase costs. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 proposed deletion 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.

The Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will only result in a cost to those long-term care nursing facilities that receive approval for plans for alterations, renovations and construction after the effective date of Chapter 204. The Department considers the cost for complying with the FGI *Guidelines* to be minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 alterations, renovations, and construction are built to the best and most modern standards versus existing facilities that have not built to these standards. The proposed amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

Small businesses

The Department applied the North America Industry Classification System (NAICS) standards to the long-term care nursing facilities identified above. Under the NAICS, a long-term care facility is a small business if it has \$35.5 million or less in total income annually. The Commonwealth's Department of Labor and Industry (L&I) defines a small business by the number of employees rather than total annual income. The Department does not maintain data on long-term care nursing facility annual income, or the number of individuals employed by long-term care nursing facilities. Therefore, the Department is not able to determine the number of long-term care nursing facilities that fall into the small business category.

If any of the Commonwealth's 689 licensed long-term care nursing facilities are considered to be a small business, they will still be required to meet the requirements of the Department's long-term care nursing facilities regulations, as will any long-term care nursing facility that is not considered a small business. The Department's responsibility to the quality of care to residents in long-term care nursing facilities applies to all of those residents and is not altered by the fact that a long-term care nursing facility may be considered a small business.

Department

The Department licenses long-term care nursing facilities. The proposed amendments will not increase costs to the Commonwealth or 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 proposed elimination of subsections, in section 201.23 (relating to closure of facility), 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 proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before

_____) (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to newer alterations, renovations or construction versus older, existing alterations, renovations and construction.

Public

The Department anticipates no financial or economic impact on the public as a result of the proposed regulations. More than 72,000 individuals reside in the 689 long-term care nursing facilities licensed by the Department. Individuals who reside in these facilities will benefit from the adoption of the Federal requirements in section 201.23 (relating to closure) in the event of a facility closure.

The Department's proposal to require compliance with the FGI *Guidelines* and Chapter 204 for plans for alterations, renovations, or construction approved six months after the publication date of the regulations will improve the quality of life and care of residents in long-term care nursing facilities by ensuring that facilities are meeting the best and most modern standards for facilities.

(19) Provide a specific estimate of the costs and/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 proposed amendments will apply to all 689 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. The Department anticipates little to no financial impact on these facilities as a result of the proposed elimination of subsections in section 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All but three of the 689 long-term care nursing facilities participate in either Medicare or

Medicaid and thus, are required to comply with existing Federal requirements. The three long-term care nursing facilities that do not participate in Medicare or Medicaid will only be impacted by the Department's proposed amendment to section 201.23 (relating to closure of facility) in the event of a closure and to the extent that the Federal requirements for closure at 42 CFR § 483.70(l) and (m) differ from existing section 201.23. These differences are minimal. The three facilities that do not participate in Medicare or Medicaid may be impacted by the Department's proposal to delete section 207.4 (relating to ice containers and storage) to align with Federal requirements. However, any impact is outweighed by the need for consistency in the application of standards to all long-term care nursing facilities, regardless of whether the facilities participate in Medicare or Medicaid.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will not increase costs. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 proposed deletion 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.

The Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will also add clarity to the survey process for long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will only result in a cost to those long-term care nursing facilities that choose to submit plans for alterations, renovations and construction for approval six months after the publication date of these regulations. The Department considers the cost for complying with the FGI *Guidelines* to be minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 alterations, renovations, and construction are built to the best and most modern standards versus existing facilities that have not built to these standards. The proposed amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

(20) Provide a specific estimate of the costs and/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 20 county-owned long-term care nursing facilities which account for approximately 8 percent (8,706 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 of the county-owned long-term care nursing facilities participate in either Medicare or Medicaid. Because these facilities are already required to comply with Federal requirements, they will not incur a cost as a result of the Department's proposed amendments to section 201.23 (relating to closure) or section 207.4 (relating to ice containers and storage), to align with the Federal requirements.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will also not increase costs for the county-owned facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 proposed deletion 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.

The Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will add clarity to the survey process for both the Department and long-term care nursing facilities. The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the *FGI Guidelines* will only affect those county facilities that choose to submit plans for alterations, renovations, and construction for approval six months after the publication date of these regulations. The Department considers the cost for complying with the *FGI Guidelines* to be minimal and no more than the cost of doing business. The *FGI Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 physical environment standards, local municipality codes or the like. Compliance with the *FGI Guidelines* will benefit long-term care nursing facilities by ensuring that any alterations, renovations, and construction are built to the best and most modern standards. The proposed amendments to Chapter 205 will not increase costs to the county-owned facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

(21) Provide a specific estimate of the costs and/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 Department licenses long-term care nursing facilities. The proposed amendments will not increase costs to the Commonwealth or 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 proposed elimination of subsections, in section 201.23 (relating to closure of facility), 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 proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____) (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to newer alterations, renovations or construction versus older, existing alterations, renovations and construction.

(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 expansion of its adoption of the Federal requirements will require a long-term care nursing facility to submit a closure plan. The Department expects a closure plan, at a minimum, to meet the requirements set forth by CMS under section F845 in *Appendix PP – Guidance to Surveyors for Long-Term Care Facilities of the State Operations Manual*. All but three of long-term care nursing facilities licensed by the Department participate in Medicare or Medicaid and thus, are already required, by Federal regulations, to provide a closure plan in the event of a closure. This requirement will also only affect long-term care nursing facilities in the event of a closure.

Persons who wish to operate or are operating a long-term care nursing facility are already required, under section 51.3(d) to submit architectural and blueprint plans to the Department for approval before performing any alterations, renovations, or construction. While the Department is proposing to remove outdated language regarding the contents of architectural plans and blueprints, this will not impose any additional burden on the regulated community because the regulated community has already been complying with requirements that are posted on the Department's website.

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 proposed 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	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
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
COSTS:						
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						
REVENUE LOSSES:						
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.

Program	FY -3 2017-2018	FY -2 2018-2019	FY -1 2019-2020	Current FY 2020-2021
Quality Assurance	22,440,000	23,009,000	22,513,000	23,093,000

(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.

See answers to Questions 15, 16 and 17. The Department is unable to identify which long-term care nursing facilities may be small businesses. The proposed regulations will apply to all long-term care nursing facilities irrespective of whether they are considered a small business. The Department's responsibility to the health and welfare of all residents in long-term care nursing facilities is not altered by the fact that a long-term care nursing facility may be a small business.

(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 does not expect there to be any additional reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation.

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

See answers to Questions 15, 16 and 17. The Department is unable to identify which long-term care nursing facilities may be small businesses. The proposed regulations will apply to all long-term care nursing facilities irrespective of whether they are considered a small business. The Department's responsibility to the health and welfare of all residents in long-term care nursing facilities is not altered by the fact that a long-term care nursing facility may be a small business.

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

See answer to Question 26. The Department did not identify any less costly alternative that would be consistent with public health and safety.

(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 proposed 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 proposed 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) Less stringent compliance or reporting requirements were not considered.
- b) Less stringent schedules or deadlines for compliance or reporting were not considered.
- c) Consolidation or simplification of compliance or reporting requirements were not considered.
- d) The establishment of performance standards for small businesses were not considered.
- e) The exemption of small business from all or any part of the proposed regulations were not considered.

The proposed regulations will apply to all long-term care nursing facilities regardless of whether those facilities are considered a small business. The Department's responsibility to the health and welfare of all long-term care nursing residents is not altered by the fact that a long-term care nursing facility may be a small business.

(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.

Data is not the basis for this regulation.

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

- A. The length of the public comment period:

30 days after 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. Notice of that meeting was published in the *Pennsylvania Bulletin* on December 21, 2019.

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

D. The expected effective date of the final-form regulation:

Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. The Department intends to set the same effective date for all five rulemaking packages.

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

Upon publication of the final rulemaking in the *Pennsylvania Bulletin*. Proposed Chapter 204, which will be new, as well as the amendments to Chapter 205, will apply to plans for alterations, renovations or construction of long-term care nursing facilities that are approved six months after publication of the final rulemaking in the *Pennsylvania Bulletin*.

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 proposed amendments will not alter that requirement and all statutory timeframes for licensure will remain in effect.

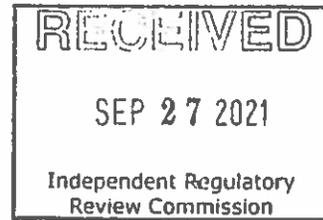
Architectural plans and blueprints approved before the effective date of the final rulemaking will not be impacted by the proposed amendments. Architectural plans and blueprints submitted for approval six months after the publication date of the final rulemaking will need to conform with Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities).

(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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>Amy M. Elliott <small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, its Chief Deputy Attorney General, email=amy@attop.state.pa.us, c=US Reason: I am approving this document.</small></p> <p>BY: <u>Amy M. Elliott</u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>9/13/21</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable <input type="checkbox"/> Copy not approved. Objections attached</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>DEPARTMENT OF HEALTH</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO <u>10-222</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Alison V. Beam</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: <u>Marisa H. Z. Zehr</u></p> <p><u>June 28, 2021</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (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 PROPOSED 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; Chapters 203, 204 and 205

LONG-TERM CARE NURSING FACILITIES

The Department of Health (Department), after consultation with the Health Policy Board, proposes to amend sections 201.23 and 207.4, as well as Chapters 203 and 205, and to add a new chapter designated as Chapter 204, in Title 28, Part IV (relating to health facilities), Subpart C (relating to long-term care facilities) of the Pennsylvania Code, to read as set forth in Annex A.

Due to the projected length of the complete revisions to the Department's regulations and given that few if any changes have been made to the existing regulations over the last 24 years, the Department tentatively intends to promulgate proposed amendments to Title 28, Part IV (relating to health facilities), Subpart C (relating to long-term care facilities) in five separate parts. The Department believes that promulgating the changes in this way will allow the public a greater opportunity to thoroughly examine the proposed amendments and provide detailed comments to the proposed changes. It will also allow the Department to focus more closely on those comments and provide a more considered and cogent response to questions and comments. This proposed rulemaking is the second set of amendments to be proposed.

The Department tentatively proposes to promulgate the amendments to Subpart C in the following sequence. The actual contents of each proposed rulemaking packet are subject to change as the Department develops each packet.

Proposed Rulemaking 1

Section 201.1. Applicability.

Section 201.2. Requirements.

Section 201.3. Definitions.

Section 211.12(i). Nursing Services.

Proposed Rulemaking 2

Section 201.23. Closure of facility.

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

Chapter 204. Physical Environment and Equipment Standards for Alterations, Renovations or Construction of Long-Term Care Nursing Facilities.

Chapter 205. Physical Environment and Equipment Standards for Long-Term Care Nursing Facilities Alterations, Renovations or Construction Approved Before _____ (*Editor's note:*

The blank refers to the date 6 months after this regulation is published as a final-form rulemaking).

Section 207.4. Ice containers and storage.

Proposed Rulemaking 3

Section 201.11. Types of ownership.

Section 201.12. Application for license.

Section 201.13. Issuance of license.

Section 201.15. Restrictions on license.

Section 201.17. Location.

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

Section 209.1. Fire department service.

Section 209.7. Disaster preparedness.

Section 209.8. Fire drills.

Section 211.1. Reportable diseases.

Proposed Rulemaking 4

Section 201.14. Responsibility of licensee.

Section 201.18. Management.

Section 201.19. Personnel policies and procedures.

Section 201.20. Staff development.

Section 201.27. Advertisement of special services.

Section 201.30. Access requirements.

Section 201.31. Transfer agreement.

Section 207.2. Administrator's responsibility.

Section 211.2. Physician services.

Section 211.4. Procedure in event of death.

Section 211.5. Clinical records.

Section 211.6. Dietary services.

Section 211.7. Physician assistants and certified registered nurse practitioners.

Section 211.9. Pharmacy services.

Section 211.12. Nursing services.

Section 211.15. Dental services.

Section 211.16. Social services.

Proposed Rulemaking 5

Section 201.21. Use of outside resources.

Section 201.24. Admission policy.

Section 201.25. Discharge policy.

Section 201.26. Power of attorney.

Section 201.29. Resident's rights.

Section 209.3. Smoking.

Section 211.3. Oral and telephone orders.

Section 211.8. Use of restraints.

Section 211.10. Resident care policies.

Section 211.11. Resident care plan.

Section 211.17. Pet therapy.

I. Background and Need for Amendments

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%. Pennsylvania also has a higher percentage of older adults when compared to other states. In 2017, Pennsylvania 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 (aged 65 or older) for every 100-working age Pennsylvanians (15 to 64 years of age). Penn State Harrisburg, Pennsylvania State Data Center. *Population Characteristics and Change: 2010 to 2017 (Research Brief)*. <https://pasdc.hbg.psu.edu/data/research-briefs/pa-population-estimates> (last visited: November 25, 2020). 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 today has an almost 70% chance of needing some type of long-term nursing care during the remainder of their lifetime. U.S. Department of Health and Human Services. *How Much Care Will You Need?* <https://longtermcare.acl.gov/the-basics/how-much-care-will-you-need.html> (last visited: December 4, 2020). Currently, there are more than 72,000 Pennsylvanians residing in 689 long-term care nursing facilities licensed by the Department.

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 (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. This proposed rulemaking is necessary to improve the quality of care delivered to residents, increase resident safety and minimize procedural burdens on health care practitioners who provide care to residents in long-term care nursing facilities.

The Department began the process of updating the current long-term care 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 nursing 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. Upon completion of the LTC Work Group's discussions, the Department conducted an internal review of the recommended changes. While the Department accepted most of the language and substantive changes proposed by the LTC Work Group and attempted to incorporate them in this proposed rulemaking, the Department is proposing additional changes to language and additional substantive changes, as well.

During 2019 and 2020, the Department conferred with other agencies, that will be potentially affected by the proposed regulatory changes, to seek their input on provisions within their substantive expertise. These agencies included the Department of Aging, DHS and DMVA. The Department received recommendations from these agencies regarding the draft proposed regulations and made additional changes to the proposed regulations to enhance resident safety and quality of care.

This is the second rulemaking developed as a result of the above discussions. In the first rulemaking, the Department proposed to expand the adoption of the Federal requirements to include all of the requirements set forth at 42 CFR Part 483, Subpart B (relating to requirements for long-term care facilities). The purpose of that amendment was to create consistency in the application of State and Federal requirements to long-term care nursing facilities in the Commonwealth. This proposed rulemaking furthers the Department's goal of creating consistency and eliminating duplication between Federal and State requirements by amending section 201.23 (relating to closure of facility) and deleting section 207.4 (relating to ice containers and storage) and Chapter 203 (relating to application of *Life Safety Code* for long-term care nursing facilities). The Department also proposes to update requirements for alterations, renovations, or construction of long-term care nursing facilities by adding Chapter 204. Chapter 204 will be new and will apply to plans for alterations, renovations or construction

of long-term care nursing facilities submitted approved six months after this regulation is published as a final-form rulemaking. The Department proposes to keep the provisions in Chapter 205, with minor amendments, as the baseline standards for plans for alterations, renovations or construction of long-term care nursing facilities approved before Chapter 204 goes into effect.

II. Description of Proposed Amendments

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

Section 201.23. Closure of facility.

As the State Survey Agency for the Centers of Medicare & Medicaid Services (CMS), the Department is responsible for conducting surveys and inspections of long-term care nursing facilities for compliance with the participation requirements for Medicare and Medicaid,¹ located at 42 CFR Part 483, Subpart B (relating to requirements for long-term care facilities). With the anticipated promulgation of the changes to section 201.2 (relating to requirements) proposed in its first rulemaking, the Department expects all long-term care nursing facilities in the Commonwealth to comply with the Federal participation requirements, including the requirements in 42 CFR § 483.70(l)(relating to facility closure-administrator) and 42 CFR § 483.70(m)(relating to facility closure). With these requirements in mind, the Department proposes the following changes to section 201.23 (relating to closure of facility).

The Department proposes to delete existing subsections (a) through (c), and subsection (g), to eliminate duplication and to avoid unnecessary confusion and potential conflict between the Department's regulations and the Federal requirements for long-term care nursing facilities.

¹ In Pennsylvania, Medicaid is also referred to or known as Medical Assistance.

The Department proposes to add the following language to clarify that it is using the Federal requirements as the baseline standard for the closure of a long-term care nursing facility, in addition to the requirements in current subsections (d), (e) and (f):

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

The Department is proposing to keep the language in current subsections (d), (e) and (f), without changes, because these existing provisions are not covered within the Federal requirements and the Department has determined it is necessary to keep these provisions to ensure the health and safety of residents during the closure of a long-term care nursing facility. These changes are explained more fully below.

Subsection (a).

The Department proposes to delete existing subsection (a). Existing subsection (a) required an administrator or owner of a long-term care nursing facility to provide the Department with at least 90 days' notice prior to the closure of a facility. However, pursuant to 42 CFR 483.70(l)(1), an administrator of a long-term care nursing facility shall provide written notice to the State Survey Agency, in this case the Department, 60 days prior to the date of the closure or in the case of a facility where the Secretary or a State terminates the facility's participation in Medicare or Medicaid, no later than the date the Secretary determines appropriate. The Department's existing general regulations for health care facilities, which encompass long-term care nursing facilities, require a facility to provide at least 60 days' notice "prior to the effective date it intends to cease providing an existing health care service or reduce its licensed bed complement." 28 Pa. Code § 51.3(c). The Department views the reduction in a facility's licensed bed complement to zero as the equivalent of closing a facility, which would require a

facility to provide at least 60 days' notice under this provision. Thus, the elimination of subsection (a) and the adoption of 42 CFR § 483.70(l)(1) comports with not only the Federal requirements but also existing State regulations.

Subsection (b).

The Department proposes to delete existing subsection (b). Existing subsection (b) required the licensee of a long-term care nursing facility to notify the resident or the resident's responsible person of the closure of the facility. Pursuant to the Federal requirements, an administrator of a long-term care nursing facility is required to provide written notice of the closure of the facility to the State Survey Agency, the State long-term care ombudsman, and residents of the facility and their legal representatives or other responsible parties. 42 CFR § 483.70(l)(1).

Subsection (c).

The Department proposes to delete existing subsection (c). Existing subsection (c) required a long-term care nursing facility to give a resident or the resident's responsible person sufficient time to effectuate an orderly transfer. Pursuant to 42 CFR § 483.70(l)(3), the administrator of a long-term care nursing facility is required to submit for the Department's review and approval a plan for the closure of the long-term care nursing facility. The Department expects a closure plan, at a minimum, to meet the requirements set forth by CMS in *Appendix PP – Guidance to Surveyors for Long-Term Care Facilities of the State Operations Manual*. Under section F845 of *Appendix PP*, the closure plan must contain steps for a safe and orderly facility closure, which includes the transfer, discharge or relocation of all residents in the long-term care nursing facility. The closure plan must also identify the individuals responsible for ensuring that the steps in the plan are successfully carried out.

Section F845 of *Appendix PP* further provides that the closure plan must be based on policies and procedures that are developed pursuant to 42 CFR § 483.70(m). Under 42 CFR § 483.70(m), a long-term care nursing facility is required to have policies and procedures in place to ensure that the administrator's duties and responsibilities involve providing the appropriate notices in the event of a facility closure. According to section F845 of *Appendix PP*, a long-term care nursing facility's closure policies and procedures must also contain the following:

(1) The administrator's duties and responsibilities for submitting a closure plan and providing timely written notice of closure.

(2) The identification of those who will be responsible for the daily operation and management of the facility during the closure process.

(3) The roles and responsibilities, and contact information, for the facility owner and the administrator or any replacement or temporary manager during the closure process.

(4) Assurance that no new residents will be admitted to the facility after the written notice of closure.

(5) A plan for identifying and assessing available facilities to which residents can be transferred, taking into consideration each resident's individual needs, choices and best interests; this includes:

a. Interviewing each resident and resident representative, if applicable, to determine each resident's goals, preferences and needs.

b. Offering the opportunity, to each resident, to obtain information regarding options within the community.

c. Providing residents with information or access to information regarding quality of providers and services.

d. Making every reasonable effort to accommodate each resident's goals, preferences and needs regarding services, location and setting.

(6) A plan for the communication and transfer of resident information, including medical records.

(7) Provisions for the ongoing operations and management of the facility, its residents and staff during the closure process, which include the following:

- a. Payment of salaries and expenses.
- b. Continuation of appropriate staffing and resources to meet the needs of the residents, including provision of medications, services, supplies and treatment.
- c. Ongoing accounting, maintenance and reporting of resident personal funds.
- d. Labeling, safekeeping and appropriate transfer of each resident's personal belongings.

Subsections (d), (e) and (f).

The Department proposes to keep the language in current subsections (d), (e) and (f) without changes. Existing 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 health and safety. Existing 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. Existing subsection (f) permits the Department to monitor the transfer of residents. These existing provisions are not covered within the Federal requirements and the Department has determined it is necessary to keep these provisions to ensure the health and safety of residents during the closure of a long-term care nursing facility.

Subsection (g).

Finally, the Department proposes to delete subsection (g). This subsection refers to an outdated requirement that a licensee file proof of financial responsibility with the Department. As outlined above, a long-term care nursing facility is expected to develop a closure plan in accordance with policies and procedures developed by the facility under the Federal requirements and the *State Operations Manual*. The closure plan must include, among other things, a plan for continuing payment of salaries and other expenses incurred by the facility during the closure process.

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

Section 203.1 (relating to application of the *Life Safety Code*) is the only section within this Chapter. The Department proposes to delete section 203.1 (relating to application of the *Life Safety Code*) and by extension, this Chapter, from the regulations, as part of its process to streamline Federal and State requirements for long-term care nursing facilities. 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). Because the Department is adopting the requirements in 42 CFR Part 483, Subpart B (relating to requirements for long-term care facilities) as requirements for all long-term care nursing facilities operating in the Commonwealth, it is no longer necessary to have a separate provision within the State requirements regarding the applicability of the *Life Safety Code*.

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

The Department has decided to separate regulatory provisions pertaining to alterations, renovations, and construction of long-term care nursing facilities into two Chapters to clarify exactly what standards apply to new versus existing alterations, renovations, or construction.

Proposed Chapter 204, which will be new, will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved six months after the publication date of the final-form regulation. The remaining Chapters will become effective upon publication in the *Pennsylvania Bulletin* as a final regulation. Existing Chapter 205, which will be amended as described further below, will continue to be the baseline standard for all alterations, renovations or construction of long-term care nursing facilities performed based on plans that were approved by the Department before the effective date of Chapter 204.

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

Subsection (a).

The Department proposes in subsection (a) to adopt the 2018 edition of the Facility Guidelines Institute's (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities* as the minimum standard for alterations, renovations or construction for plans approved after Chapter 204 becomes effective. The FGI *Guidelines for Design and Construction* have long been recognized in the health care industry as the gold standard for the planning, designing and construction of health care facilities. The FGI *Guidelines* originated as *General Standards* and were later known as *Minimum Requirements* in Federal regulations that were promulgated by the Department of Health and Human Services. The *Guidelines* were removed from Federal regulations in 1984 as a result of the expiration of certain Federal grant and loan programs. At that time, the title was changed to *Guidelines for Construction and Equipment of Hospital and Medical Facilities* to represent its non-regulatory status. Facility Guidelines Institute. *History of the Guidelines*. <https://fgiguideines.org/about-fgi/history-of-the-guidelines/> (last visited: March 3, 2021).

In 2014, a separate version, *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*, was published to provide minimum recommendations for construction and renovations of long-term care nursing facilities, hospice facilities, assisted living facilities, independent living settings, adult day care facilities, wellness centers and outpatient rehabilitation centers. The Department is proposing, in section 204.1, to adopt the 2018 edition of the *Guidelines* for long-term care nursing facilities. The 2018 edition is the most recent edition of the *Guidelines* for long-term care nursing facilities and focuses more on person-centered living environments which improve the quality of life for residents in long-term care nursing facilities. New editions of the FGI Guidelines are published approximately every four years. The Department plans to review new editions and update the regulations, as necessary, to incorporate new editions as they are published.

The Department also proposes to add language in this section to indicate that long-term care nursing facilities shall comply with the requirements of Chapter 204 for all alterations, renovations, or construction approved by the Department after Chapter 204 goes into effect, in addition to the requirements in the 2018 edition of the FGI *Guidelines*. The Department reviewed the existing requirements in Chapter 205 and determined that certain requirements that go above and beyond the FGI *Guidelines* are necessary in order to ensure the health and safety of residents in long-term care nursing facilities. Adding these requirements will also ensure fairness by requiring that any new alterations, renovations, or construction meet the same minimum standards that are already required for alterations, renovations, and construction that are approved under Chapter 205.

Subsection (b).

Proposed subsection (b) will require all facilities to comply with the standards set forth in Chapter 205 (relating to physical environment and equipment standards) for alterations, renovations, or construction approved prior to the effective date of Chapter 204 (six months after the date of publication of this final-form rulemaking). 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 alterations, renovations or construction occurred, would impose an undue burden on those facilities that are presently operating under the requirements set forth in Chapter 205. Proposed subsection (b) will allow these facilities to continue to operate under the requirements set forth in Chapter 205 until they wish to perform any new alterations, renovations, or construction. Any alterations, renovations or construction plans approved after the effective date of Chapter 204 will fall under subsection (a). This is further clarified by proposed subsection (c), as described below.

Subsection (c).

The Department proposes to add subsection (c) for additional clarity. Under proposed subsection (c), a long-term care nursing facility, that has been previously determined to be in compliance with this subpart, will continue to be deemed in compliance until such time that the facility completes alterations, renovations or construction. Such alterations, renovations, or construction must meet the requirements that were in effect at the time of approval of the alterations, renovations or construction. It is possible that a facility may have different areas that are altered, renovated, or constructed under different standards, particularly moving forward as the Department updates the regulations to adopt newer editions of the *FGI Guidelines*. The language in this subsection clarifies the Department's intent to only hold a facility to the standards that were in effect at the time the alteration, renovation, or construction was approved.

When a facility decides to alter or renovate that area, or perform new construction, then the standards that are in effect at the time the alteration, renovation, or construction was approved would apply until such time that the facility decides to again perform alterations, renovations, or construction. At that time, whatever standards are in effect will apply to the approval of the new alteration, renovation, or construction.

Section 204.2. Building plans.

The Department proposes to delete existing section 205.4 (relating to building plans) and copy several provisions from that section into this section. Specifically, the Department proposes to copy language from existing subsection (c) into proposed subsection (a), with the addition of a cross-reference to section 51.3(d)(relating to notification) to clarify that this subsection applies to plans approved under that section. Proposed subsection (a) reflects the Department's policy and 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.

Proposed subsections (b) through (e) are new. The Department proposes in subsection (b) to require that any alterations, renovations, or construction start within two years of approval and be completed within five years of approval. Proposed subsection (c) would permit a long-term care nursing facility to request an extension of these time periods, which may be approved by the Department for good cause shown.

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 renovations of an entire building that were never fully completed. Placing a 5-year time limit on the

completion of alterations, renovations or construction 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. The addition of subsection (c) 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.

The Department proposes in subsection (d) to prohibit a long-term care nursing facility from using any part of the facility that has not been occupied or used for one year or more for any purpose except as provided for in this section. The Department proposes in subsection (e) to require a long-term care nursing facility to submit architectural plans and blueprints pursuant to section 51.3(d) if it intends to occupy or use a space that has not been occupied or used for one year or more. Approval by the Department will be required in order for a long-term care nursing facility to use that space. The Department has encountered situations where facilities that have closed a portion of the facility want to reopen those areas years later, stating that the areas will be used for the same purpose. However, as noted above, building and construction codes change over time. An area that was previously considered suitable for a particular purpose may no longer be suitable for that purpose after the area was closed. For example, an area that was previously used for resident rooms may no longer meet the health, safety and comfort needs of residents after it has been vacant for a period of time.

The Department has chosen not to copy language from existing subsections 205.4(a), (b) and (d) into this section. Subsections 205.4(a) and (b) are currently covered under the

requirements set forth in section 51.3(d). The Department has chosen not to repeat these requirements in section 204.2 in the interest of streamlining and avoiding duplication and confusion between the regulations. Subsection 205.4(d) is not being copied into section 204.2 because it is outdated. Requirements for the submission of building plans can be found on the Department's website at: <https://www.health.pa.gov/topics/facilities/safety/Pages/Review.aspx>

Section 204.3. Buildings; general.

The Department proposes to copy several provisions from Chapter 205 into this section. First, the Department proposes to copy the language from existing section 205.1 (relating to location or site) into subsection (a) without changes. The Department proposes to copy the language from existing section 205.6 (relating to function of building) into subsections (b) and (c), with only minor changes. The Department proposes in subsection (b) to replace the word "which" with "that" for grammatical reasons. The Department proposes in subsection (c) to replace the word "employees" with "employees" to reflect the current usage and spelling of that term. The Department proposes to copy the language from existing section 205.2 (relating to grounds) into subsections (d) and (e), with only one change. The Department proposes to replace "parking area" with "parking areas" for grammatical reasons. These various provisions go above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that these provisions are necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.4. Basement.

The Department proposes to copy language from section 205.7 (relating to basement or cellar), with minor changes. The Department proposes to remove outdated references to "cellar"

and “cellars.” The Department proposes to also remove the words “and the like” as grammatically unnecessary and because they are duplicative of the words “such as.” The Department also proposes to replace “areas” with the phrase “any part of the basement” to add clarity. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision is necessary to safeguard the health, safety, and comfort of residents by ensuring that basements of long-term care nursing facilities are only used for the purposes delineated in this section or otherwise approved by the Department. Carrying this provision over from Chapter 205 also ensures that the same guidelines are applied to all long-term care nursing facilities, regardless of when alterations, renovations or construction occurred.

Section 204.5. Resident rooms.

The Department proposes, in this section, to copy language from existing section 205.20 (relating to resident bedrooms) with some additions and changes. The Department proposes to change references from “bedrooms” to “rooms” in this section to align with terminology used by CMS. The Department proposes to copy the requirement from subsection (a) of section 205.20 into subsection (a) of section 204.5, with the aforementioned change in terminology. The Department proposes to add new language in subsection (b), indicating that the basement of a facility may not be used for resident rooms. Although section 204.4 (relating to basement) delineates appropriate uses for basements, the Department is adding this new language in subsection (b), at the request of the LTC Work Group for additional clarity. The Department proposes to copy and combine the language from existing subsections 205.20(b) and (c) into subsection (c), with no substantive changes.

The Department proposes to add new language in 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 is adding language to indicate that a resident has this choice unless the placement of the bed presents a safety hazard. The Department is copying language from section 205.22 (relating to placement of beds) into subsection (e). The Department is adding language regarding a resident's choice to this subsection as well, so long as the placement of the bed does not pose a safety hazard. The Department supports a resident's ability to choose where a bed is placed in the room. However, the Department 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. In those circumstances, the health and safety of the resident needs to come first. Finally, in subsection (f), the Department proposes to copy language from existing section 205.72 (relating to furniture) without changes, to require a long-term care nursing facility to provide a resident with a drawer or cabinet in the resident's room that can be locked.

The Department is including these provisions in Chapter 204 because they go above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that these provisions, pertaining to resident rooms, are necessary to safeguard the comfort of residents in long-term care nursing facilities by: (1) ensuring that beds are placed only in rooms approved by the Department; (2) limiting the number of residents and beds per room to prevent overcrowding; (3) providing a resident with some choice in where a bed is placed within a room; and (4) providing a cabinet or drawer that a resident may lock to protect personal belongings.

Section 204.6. Locks.

The Department proposes to copy language from existing section 205.14 (relating to locks) into this section, without changes. Pursuant to this provision, doors to rooms used by

residents may not be locked from the outside when a resident is in the room. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision is necessary to safeguard the health, safety, and comfort of residents by ensuring that residents cannot be locked into rooms in a facility. Carrying this provision over from Chapter 205 also ensures that the same guidelines are applied to all long-term care nursing facilities, regardless of when alterations, renovations or construction occurred.

Section 204.7. Laundry.

The Department proposes to copy language from existing section 205.26(e) into this section, with no changes. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision is necessary to ensure the comfort of residents by requiring a long-term care nursing facility to have equipment available for residents who wish to do their own laundry. Carrying this provision over from section 205.26(e) also ensures that the same guidelines are applied to all long-term care nursing facilities, regardless of when alterations, renovations or construction occurred.

Section 204.8. Utility room.

The Department proposes to copy language from section 205.33(a) into this section, with two changes. The Department proposes to delete the phrase “near the nurses’ station” in the first sentence and to delete the last sentence regarding nursing stations. The Department is proposing to eliminate 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 section 205.33(a), is being

copied into this section because it goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined this language is necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.9. Bathing facilities.

The Department proposes to copy certain provisions from section 205.36 (relating to bathing facilities) into this section. Specifically, the Department proposes to copy subsections (a), (c), (e) and (h) into this section with minor changes. In subsection (a), the Department proposes to change the word “bedrooms” to “rooms” in this section to align with terminology used by CMS. In subsection (d), which is copied from 205.36(h), the Department proposes not to copy outdated language regarding accessibility and measurements required for the bath area. Basic tubs have been phased out for the use of spa-like tubs in the long-term care nursing environment. These spa-like tubs tend to have access on two sides rather than three sides as provided for in the existing language in section 205.36(h). These tubs have been designed specifically for use in the long-term care nursing environment, however, and contain features that are more accessible and desirable for the safety and comfort needs of long-term care nursing residents. Copying over the outdated language regarding accessibility and measurements from section 205.36(h) would prevent long-term care nursing facilities that are performing alterations, renovations and construction from providing residents with the benefits of these newer tubs. The language that is being copied over from section 205.36 goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this language is necessary to ensure the health, safety, and comfort of residents and to ensure that the same

guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.10. Equipment for bathrooms.

The Department proposes to copy section 205.37 (relating to equipment for bathrooms), in its entirety, with two changes. The Department proposes in subsection (a) to replace 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. The Department also proposes to change the term “nursing station” to “workstation.” 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. The provisions in section 205.37 go above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that these provisions are necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.11. Toilet room equipment.

The Department proposes to copy language from section 205.39(b) into this section, with two changes. First, the Department proposes to remove the phrase “and an emergency call bell within reaching distance.” Under the 2018 FGI *Guidelines*, an emergency call device shall be accessible from each toilet, bathtub and shower used by residents. Second, the Department proposes to replace 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*. The Department has determined that this provision is necessary to ensure the safety of residents, by requiring handrails or bars on each side of toilets, and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.12. Linen.

The Department proposes to copy language from section 205.74 (relating to linen) into this section without changes. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision, which requires a facility to have available at all times a quantity of linens essential for proper care and comfort of residents, is necessary to ensure the health, safety, and comfort of residents. Carrying this provision over from section 205.74 also ensures that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.13. Supplies.

The Department proposes to copy language from existing section 205.75 (relating to supplies) into this section without changes. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision, requiring that adequate supplies be available at all times to meet residents’ needs, is necessary to ensure the health, safety and comfort of residents and to ensure that the same guidelines are

applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.14. Windows.

The Department proposes to copy existing language from section 205.19 (relating to windows and windowsills) into this section, with one minor change. The Department proposes to change the word “bedrooms” to “rooms” in this section to align with terminology used by CMS. These provisions go above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that these provisions, relating to screens on windows and restricting the use of certain rooms with windows as resident rooms are necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.15. Dining.

The Department proposes to copy language from section 205.24(a) into this section, with one change. The Department proposes to delete 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*. The remaining language in this provision, regarding space for dining areas, goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this language is necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.16. Lounge and recreation.

The Department proposes to copy language from section 205.27 (relating to lounge and recreation) into this section, without changes. This provision, relating to minimum space required for lounge and recreation areas, goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision is necessary to ensure the health, safety, and comfort of residents and to ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.17. Storage.

The Department proposes to copy language from section 205.31 (relating to storage) into this section, without changes. This provision goes above and beyond what is required in the 2018 FGI *Guidelines*. The Department has determined that this provision is necessary to ensure the health, safety, and comfort of residents by ensuring that adequate storage space is provided for the storage of supplies, furniture, equipment, resident possessions and the like. Copying this language over from section 205.31 will also ensure that the same guidelines are applied to all long-term care nursing facilities, regardless of when the alterations, renovations or construction occurred.

Section 204.18. Plumbing, heating ventilation and air conditioning (HVAC) and electrical.

This proposed catch-all section is new and replaces the requirements for new construction in sections 205.61—205.68 (relating to heating requirements for existing and new construction; special heating requirements for new construction; plumbing and piping systems required for existing and new construction; special plumbing and piping systems requirements for new construction; special ventilation requirements for new construction; electric requirements for existing and new construction; and special electrical requirements for new construction). This

section, which is added for safety purposes, will require all building systems such as plumbing, HVAC and electrical systems to comply with all State and local codes.

Chapter 205. Physical Environment and Equipment Standards for Long-Term Care Nursing Facilities Alterations, Renovations or Construction Approved Before _____

(Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.)

The Department has decided to keep Chapter 205 insofar as it applies to alterations, renovations, or construction approved before six months after the effective date of the final rulemaking. The Department proposes minimum changes to this Chapter as described below.

Buildings and Grounds

Section 205.4. Building plans.

The Department proposes to delete this section. This section pertains to new construction, which will be covered in proposed Chapter 204, as described above.

Section 205.7. Basement or cellar.

The Department proposes minor changes to this section. The Department proposes to remove the words "and the like" as grammatically unnecessary and because they are duplicative of the words "such as." The Department also proposes to replace the word "areas" with the phrase "any part of the basement" for clarity.

Section 205.6. Function of building.

The Department proposes to change the term "employees" to "employees" to reflect the current use and spelling of this term. The Department proposes no other changes to this section.

Minimum Physical Environment Standards

The Department proposes to replace the word “plant” with the word “environment” in this heading to reflect current terminology used in the long-term care nursing environment.

Section 205.21. Special care room.

The Department proposes to delete language in this section that pertains to new construction. Plans for alterations, renovations, or construction approved six months after the effective date of the final rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other changes to this section.

Section 205.22. Placement of beds.

The Department proposes to replace 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 proposing this change, 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 is also proposing to add language to clarify that the resident has this choice unless the placement of the bed presents a safety hazard. The Department supports a resident’s ability to choose where a bed is placed in the room. However, the Department 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. In those circumstances, the health and safety of the resident needs to come first.

Mechanical and Electrical Requirements

Section 205.61. Heating requirements for existing construction.

The Department proposes to remove the words “and new” from the title of this section. Plans for alterations, renovations, or construction approved six months after the publication date

of the final rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other changes to this section.

Section 205.62. Special heating requirements for new construction.

The Department proposes to delete this section. Plans for alterations, renovations, or construction approved six months after the publication date of the final rulemaking will be required to conform to the requirements in Chapter 204.

Section 205.63. Plumbing and piping systems required for existing construction.

The Department proposes to remove the words “and new” from the title of this section. Plans for alterations, renovations, or construction approved six months after the publication date of the final rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other changes to this section.

Section 205.64. Special plumbing and piping systems requirements for new construction.

The Department proposes to delete this section. Plans for alterations, renovations, or construction approved six months after the publication date of the final rulemaking will be required to conform to the requirements in Chapter 204.

Section 205.66. Special ventilation requirements for new construction.

The Department proposes to delete this section. Plans for alterations, renovations, or construction approved six months after the publication date of the final rulemaking will be required to conform to the requirements in Chapter 204.

Section 205.67. Electric requirements for existing construction.

The Department proposes to remove the words “and new” from the title of this section. Plans for alterations, renovations, or construction approved six months after the publication date

of the final rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other changes to this section.

Section 205.68. Special electrical requirements for new construction.

The Department proposes to delete this section. Plans for alterations, renovations, or construction approved six months after the publication date of the final rulemaking will be required to conform to the requirements in Chapter 204.

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

Housekeeping and Maintenance

Section 207.4. Ice containers and storage.

The Department proposes to delete this section. Ice storage and the handling of ice are addressed in the Federal requirements at 42 CFR § 483.60(i)(2) and at F812 in *Appendix PP – Guidance to Surveyors for Long-Term Care Facilities* from the Centers for Medicare & Medicaid Services (CMS) *State Operations Manual*. The Department proposed to adopt the Federal requirements and *Appendix PP* in section 201.2 (relating to requirements) in its first proposed rulemaking. Pursuant to 42 CFR § 483.60(i)(2), a facility must store, prepare, distribute, and serve food in accordance with professional standards for food service safety. The Department expects, in accordance with this provision and *Appendix PP*, a long-term care nursing facility to engage in appropriate ice and water handling practices to prevent contamination and waterborne illness. Ice must be made from potable water. Ice that is used to cool food items is not to be used for consumption. Staff, residents, and others must follow appropriate infection control practices, such as handwashing, when dispensing ice. Ice machines and other equipment must be kept clean and sanitary to prevent contamination of the ice. Ice

machines must be drained, cleaned, and sanitized as needed, and in accordance with manufacturer's instructions. Ice chests or coolers used for storage and transportation of ice must be cleaned regularly to avoid contamination of ice.

III. Fiscal Impact and Paperwork Requirements

Fiscal Impact

A. Commonwealth

The proposed amendments will not increase costs to the Commonwealth or 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 proposed elimination of subsections, in section 201.23 (relating to closure of facility), 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 proposed 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. Separating new standards for alterations, renovations and construction from existing standards in Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will also add clarity

to the survey process by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction.

B. Local government

There are currently 20 county-owned long-term care nursing facilities which account for approximately 8 percent (8,706 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 of the county-owned long-term care nursing facilities participate in either Medicare or Medicaid. Because these facilities are already required to comply with Federal requirements, they will not incur a cost as a result of the Department's proposed amendments to section 201.23 (relating to closure) or section 207.4 (relating to ice containers and storage), to align with the Federal requirements.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will also not increase costs for the county-owned facilities. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 proposed deletion 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.

The Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction.

The addition of Chapter 204 and the requirement that long-term care nursing facilities comply with the FGI *Guidelines* will affect those county facilities that receive approval for plans for alterations, renovations, and construction after the effective date of Chapter 204. The Department considers the cost for complying with the FGI *Guidelines* to be minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction approved after the effective date of Chapter 204. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 physical environment standards, local municipality codes or the like. Compliance with the FGI *Guidelines* will benefit long-term care nursing facilities by ensuring that any

alterations, renovations, and construction are built to the best and most modern standards. The proposed amendments to Chapter 205 will not increase costs to the county-owned facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

C. Regulated community

The proposed amendments will apply to all 689 long-term care nursing facilities licensed by the Department. These facilities provide health services to more than 72,000 residents. The Department anticipates little to no financial impact on these facilities as a result of the proposed elimination of subsections in section 201.23 (relating to closure of facility) that are duplicative of the Federal requirements. All but three of the 689 long-term care nursing facilities participate in either Medicare or Medicaid and thus, are required to comply with existing Federal requirements. The three long-term care nursing facilities that do not participate in Medicare or Medicaid will only be impacted by the Department's proposed amendment to section 201.23 (relating to closure of facility) in the event of a closure and to the extent that the Federal requirements for closure at 42 CFR § 483.70(l) and (m) differ from existing section 201.23. These differences are minimal. The three facilities that do not participate in Medicare or Medicaid may be impacted by the Department's proposal to delete section 207.4 (relating to ice containers and storage) to align with Federal requirements, if they do not already meet the minimum standards within the Federal requirements. However, any impact to the three facilities that do not participate in Medicare or Medicaid is outweighed by the need for consistency in the application of standards to all long-term care nursing facilities, regardless of whether the facilities participate in Medicare or Medicaid.

The proposed deletion of Chapter 203 (relating to the application of *Life Safety Code* for long-term care nursing facilities) will not increase costs. All long-term care nursing facilities are required to comply with Chapter 203 and the *Life Safety Code* currently. The proposed deletion of this Chapter merely aligns this requirement with the adoption of the Federal requirements previously proposed by the Department in section 201.2 (relating to requirements). 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 proposed deletion 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.

The Department's proposal to separate new standards for alterations, renovations and construction from existing standards into two chapters, Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities) and Chapter 205 (relating to physical environment and equipment standards for long-term care nursing facilities alterations, renovations or construction approved before _____ (*Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*)), will also add clarity to the survey process for both the Department and long-term care nursing facilities by making it clear which standards apply to plans for new alterations, renovations or construction versus older, existing alterations, renovations and construction.

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 receive approval of plans for alterations, renovations and construction after the effective date of Chapter 204. The Department considers the cost for complying with the FGI *Guidelines* to be

minimal and no more than the cost of doing business. The FGI *Guidelines* will only apply to new alterations, renovations, or construction. 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 alterations, renovations or construction is already assuming the costs for those alterations, renovations, or construction. 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 alterations, renovations, and construction are built to the best and most modern standards versus existing facilities that have not built to these standards. The proposed amendments to Chapter 205 will not increase costs to long-term care nursing facilities, as the Department is only proposing to delete language pertaining to new alterations, renovations or construction.

D. General public

The proposed amendments will not increase costs to the general public. The Department's proposal to require compliance with the FGI *Guidelines* and Chapter 204 for plans for alterations, renovations, or construction approved six months or more after the publication date of this regulation will improve the quality of life and care of residents in long-term care nursing facilities by ensuring that facilities are meeting the best and most modern standards.

Paperwork Requirements

The Department's expansion of its adoption of the Federal requirements will require a long-term care nursing facility to submit a closure plan. The Department expects a closure plan, at a minimum, to meet the requirements set forth by CMS under section F845 in *Appendix PP* –

Guidance to Surveyors for Long-Term Care Facilities of the State Operations Manual. All but three of long-term care nursing facilities licensed by the Department participate in Medicare or Medicaid and thus, are already required, by Federal regulations, to provide a closure plan in the event of a closure. This requirement will also only affect long-term care nursing facilities in the event of a closure.

Persons who wish to operate or are operating a long-term care nursing facility are already required, under section 51.3(d) to submit architectural and blueprint plans to the Department for approval before performing any alterations, renovations, or construction. While the Department is proposing to remove outdated language regarding the contents of architectural plans and blueprints, this will not impose any additional burden on the regulated community because the regulated community has already been complying with requirements that are posted on the Department's website.

IV. 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)).

V. Effectiveness/Sunset Date

Proposed Chapter 204, which will be new, as well as the amendments to Chapter 205, will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved six months after publication of the final rulemaking in the *Pennsylvania Bulletin*. The remainder of the regulations will become effective upon their publication in the *Pennsylvania Bulletin* as a final-form rulemaking. A sunset date will not be imposed. The Department will monitor the regulations and update them as necessary.

VI. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 27, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Health and Human Services Committee and the House Health Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies

detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

VII. Contact Person

Interested persons are invited to submit comments, suggestions or objections to the proposed regulations within 30 days after publication of this notice in the *Pennsylvania Bulletin*. The Department prefers that comments, suggestions or objections be submitted via email at: RA-DHLTCRegs@pa.gov. Persons without access to email may submit comments, suggestions or objections to Lori Gutierrez, Deputy Director, Office of Policy, (717) 317-5426, at the following address: 625 Forster Street, Rm. 814, 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 ATT&T Relay Service at (800) 654-5984[TT]. Persons who require an alternative format of this document may contact Lori Gutierrez at the above email, address, or telephone number so that necessary arrangements can be made. Comments should be identified as pertaining to proposed rulemaking 10-222 (Long-Term Care Nursing Facilities, Proposed Rulemaking 2).

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

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§ 201.23. Closure of facility.

In addition to the requirements set forth in 42 CFR § 483.70(l)(relating to facility closure-administrator) and 42 CFR § 483.70(m)(relating to facility closure), 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).

(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 that the facility continues to operate in a satisfactory manner 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*.

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.] (Reserved).

* * * * *

CHAPTER 204. PHYSICAL ENVIRONMENT AND EQUIPMENT STANDARDS FOR ALTERATIONS, RENOVATIONS OR CONSTRUCTION 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, long-term care nursing facility alterations, renovations and construction approved after _____ (Editor's note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking) shall

comply with the 2018 edition of the Facility Guidelines Institute *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*.

(b) Alterations, renovations and construction approved before _____ (Editor's note:

The blank refers to the date 6 months after this regulation is published as a final-form rulemaking) 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 such time that the facility completes alterations, renovations or construction. Alterations, renovations or construction shall meet the requirements in effect on the date that the facility's plans for alterations, renovations, or construction are approved by the Department.

§ 204.2. Building plans.

(a) The licensee or prospective licensee shall have the opportunity to present and discuss with the Department 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, administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(b) Any alterations, renovations or construction 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.

(c) A long-term care nursing facility may seek an extension of the time periods under subsection (b) for beginning or completing an approved alteration, renovation or construction by written request to the Department. The Department may approve an extension for good cause shown.

(d) Any part of a long-term care nursing facility that has not been occupied or used for 1 year or more shall not be used by the long-term care nursing facility for any purpose except as provided for in this section.

(e) If a long-term care nursing 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 long-term care nursing facility shall submit architectural plans and blueprints related to its occupancy or use to the Department as required under § 51.3(d)(relating to notification). The long-term care nursing facility shall not use or occupy the space unless approved by the Department.

§ 204.3. Buildings; general.

(a) A building to be used for and by residents shall be located in areas 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 if a part of the building is to be used for a purpose other than health care.

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

(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) Delivery areas, service yards or parking areas shall be located so that traffic does not cross areas commonly used by residents.

§ 204.4. Basement.

Basements 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.

§ 204.5. Resident rooms.

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

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

(c) The maximum number of residents who may be accommodated in the 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 such placement presents a safety hazard.

(e) A bed may not be placed close to radiators, heat vents, air conditioners, direct glare of natural light or drafts unless the resident chooses to do so and such 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.

Doors into rooms used by residents 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.

Provisions shall be made in each nursing unit for utility rooms. The area 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) The facility shall provide a general bathing area in each nursing unit to serve residents' rooms which 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. 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 be provided with one emergency signal bell located in close proximity to the tub or shower and which registers at the workstation. This is in addition to the emergency signal bell located at each toilet unless a signal bell can be reached by the resident from both the toilet and tub or shower.

(c) Provisions shall be made available 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. Toilet room equipment.

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

§ 204.12. Linen.

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

§ 204.13. Supplies.

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

§ 204.14. Windows.

(a) Window openings in the exterior walls that are used for ventilation shall be effectively covered by screening.

(b) Rooms 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. Dining.

There shall be a minimum dining area 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. Lounge and recreation rooms.

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

§ 204.17. 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.

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

Building systems, such as plumbing, HVAC and electrical must comply with all State and local codes.

**CHAPTER 205. PHYSICAL [PLANT] ENVIRONMENT AND EQUIPMENT
STANDARDS FOR LONG-TERM CARE NURSING FACILITIES ALTERATIONS,
RENOVATIONS OR CONSTRUCTION APPROVED BEFORE _____ (Editor's**

note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.)

BUILDINGS AND GROUNDS

* * * * *

§ 205.4. [Building plans.

(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.] **(Reserved)**.

* * * * *

§ 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 such 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.

(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.]

(Reserved).

§ 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.

(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.] **(Reserved).**

* * * * *

§ 205.66. [Special ventilation requirements for new construction.

(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 dry 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, solarium, 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.] **(Reserved)**.

§ 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.]

(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

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

* * * * *

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

* * * * *

§ 207.4. [Ice containers and storage.

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



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE SECRETARY OF HEALTH

September 27, 2021

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

Re: Department of Health – Proposed Regulation No. 10-222
Long-Term Care Nursing Facility Regulations
28 Pa. Code §§ 201.23 and 207.4; Chapters 203, 204 and 205

Dear Mr. Sumner:

Enclosed are proposed regulations for review by the Independent Regulatory Review Commission (Commission) in accordance with the Regulatory Review Act (71 P.S. §§ 745.1-745.15).

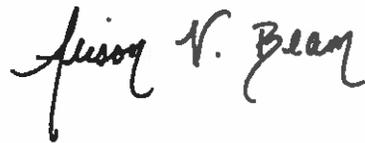
The Department, in this proposed rulemaking, proposes to amend section 201.23 (relating to closure of facility) and delete Chapter 203 (relating to application of *Life Safety Code* for long-term care nursing facilities) to eliminate provisions that are outdated and duplicative of Federal requirements pertaining to long-term care nursing facilities. The Department also proposes to update requirements for alterations, renovations, or construction of long-term care nursing facilities by adding Chapter 204. Chapter 204 will be new and will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved six months after the date the final regulation is published. The Department proposes to keep the provisions in Chapter 205, with minor amendments proposed in this rulemaking, as the baseline standards for alterations, renovations or construction of long-term care nursing facilities approved prior to the effective date of Chapter 204.

Section 5(g) of the Regulatory Review Act, 71 P.S. § 745.5(g), provides that the Commission may, within 30 days after the close of the public comment period, convey to the proposing agency and the Standing Committees any comments, recommendations and objections to the proposed regulations. The Department expects the proposed regulations to be published on October 9, 2021. A 30-day public comment period is provided.

As required by Section 5(c) of the Regulatory Review Act, 71 P.S. § 745.5(c), the Department will provide to the Commission a copy of any comment received pertaining to the proposed regulations, within 5 business days of receipt. The Department will also provide the Commission with any assistance it requires to facilitate a thorough review of the proposed regulations.

If you have any questions, please contact David Toth, Director of the Office of Legislative Affairs, at (717) 787-6436.

Sincerely,

A handwritten signature in black ink that reads "Alison V. Beam". The signature is written in a cursive style with a large initial 'A' and a long, sweeping underline.

Alison V. Beam, JD
Acting Secretary of Health

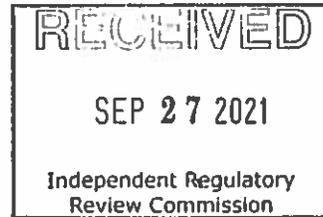
Enclosures

From: [Bradbury, Joan](#)
To: [Smith, Pamela \(Health\)](#); [Brooks, Senator Michele](#)
Subject: RE: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 3:43:38 PM

Received. Thank you,

Joan Bradbury

Executive Director
Senate Health & Human Services Committee
Office of Senator Michele Brooks
168 Main Capitol Building
717-787-1475 (direct)



From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 8:14 AM
To: Brooks, Senator Michele <mbrooks@pasen.gov>
Cc: Bradbury, Joan <jbradbury@pasen.gov>
Subject: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Importance: High

Ⓞ CAUTION : External Email Ⓞ

Good morning,

Attached is a proposed regulatory package from the Department of Health for long-term care nursing facilities.

The Regulatory Review Act requires delivery of the proposed regulatory package to the Standing Committees of the General Assembly, the Legislative Reference Bureau (LRB) and the Independent Regulatory Review Commission (IRRC) **on the same day**, with IRRC receiving the package last. Confirmation of receipt by the Standing Committees and LRB is required for delivery to IRRC.

Please respond as soon as possible to this email indicating that you have received the attached proposed regulatory package so that I can deliver the package to IRRC **today, September 27, 2021**.

Thanks,
Pam

Pamela G. Smith | Assistant Counsel
Pennsylvania Department of Health | Office of Legal Counsel
625 Forster Street, Room 825 | Harrisburg, PA 17120
Phone: 717.783.2500 | Fax: 717.705.6042

www.health.state.pa.us

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From: Freeman, Clarissa
To: Smith, Pamela (Health); Haywood, Senator Art
Subject: RE: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 8:16:37 AM

Good morning Pam,

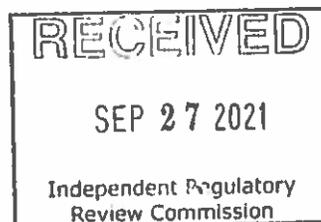
This is to confirm that the regulations have been received by Senator Haywood's office.

Thank you,

Clarissa L Freeman, Esq.

Health and Human Services Committee
Senate of Pennsylvania
Office of Senator Art Haywood

10 East Wing, Main Capitol Building
Harrisburg, Pennsylvania 17120-3004
717-787-1427 (P)
717-772-0572 (F)



7106 Germantown Avenue
Philadelphia, Pennsylvania 19119-1837
215-242-8171 (P)
215-242-6118 (F)

1168 Easton Road
Abington, PA 19001
215-517-1434 (P)
215-517-1439 (F)

Our Abington, Philadelphia, and Harrisburg Offices are open Monday through Friday from 9a- 4:45p. Please call us at 215-242-8171 for assistance or visit our [Self-Service](#) page. You can reach our team online Tuesday - Thursday from 10:00am – 12:00pm & 2:00pm - 4:00pm via our **Live Chat tool** (real time text communications via computer or mobile phone with a District Representative) at www.senatorhaywood.com



From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 8:10 AM
To: Haywood, Senator Art <art.haywood@pasenate.com>
Cc: Freeman, Clarissa <clarissa.freeman@pasenate.com>
Subject: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Importance: High

■ EXTERNAL EMAIL ■

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Pennsylvania Department of Health | Office of Legal Counsel
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Phone: 717.783.2500 | Fax: 717.705.6042
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please notify the sender immediately and delete the information without saving any copies.

From: [Lori Clark](#)
To: [Smith, Pamela \(Health\)](#)
Cc: [Maureen Berezna](#)
Subject: RE: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 9:28:08 AM
Attachments: [image001.png](#)

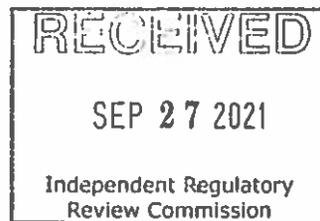
Hi Pam,

We have received the regulation.

Thank you.

Lori A. Clark

Administrative Assistant II to
State Representative Kathy L. Rapp
65th Legislative District
Majority Chair, Health Committee
Room 150, Main Capitol Building
(717) 787-1367
lclark@pahousegop.com



From: Maureen Berezna <Mberezna@pahousegop.com>
Sent: Monday, September 27, 2021 9:13 AM
To: Lori Clark <Lclark@pahousegop.com>
Subject: FW: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Importance: High

Lori,

If you are around today, Can you please respond letting them know they can deliver the regulation to Kathy's office today?

From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 8:12 AM
To: Kathy Rapp <Klrapp@pahousegop.com>
Cc: Maureen Berezna <Mberezna@pahousegop.com>

Subject: Proposed Long-Term Care Nursing Facilities Regulations # 10-222

Importance: High

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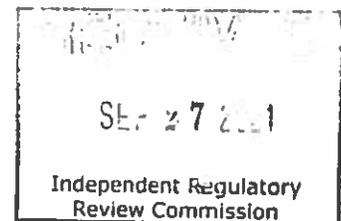
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From: Fricke, Erika L.
To: Smith, Pamela (Health); Frankel, Dan
Subject: Re: Proposed Long-Term Care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 8:54:04 AM

Received!

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From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 8:12:53 AM
To: Frankel, Dan <DFrankel@pahouse.net>
Cc: Fricke, Erika L. <EFricke@pahouse.net>
Subject: Proposed Long-Term Care Nursing Facilities Regulations # 10-222



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Thanks,
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From: Bulletin
To: Smith, Pamela (Health)
Subject: [External] Re: Proposed Long-Term care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 11:03:33 AM

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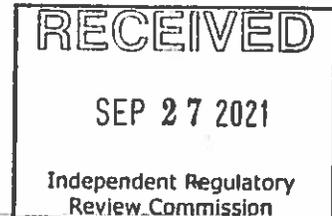
Hello Pam!

Thank you for sending us your Proposed rulemaking. As previously discussed, we will publish this in our October 9th Bulletin.

Please let me know if you have any questions or concerns!

Have a wonderful week!

Leah



From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 9:37 AM
To: Bulletin <bulletin@palrb.us>
Subject: Proposed Long-Term care Nursing Facilities Regulations # 10-222

Good morning,

Attached is a proposed regulatory package from the Department of Health for long-term care nursing facilities. The entire package is attached as a .pdf with Word versions of the Annex and Preamble.

The Regulatory Review Act requires delivery of the proposed regulatory package to the Standing Committees of the General Assembly, the Legislative Reference Bureau (LRB) and the Independent Regulatory Review Commission (IRRC) **on the same day**, with IRRC receiving the package last. Confirmation of receipt by the Standing Committees and LRB is required for delivery to IRRC.

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Pam

Pamela G. Smith | Assistant Counsel
Pennsylvania Department of Health | Office of Legal Counsel
625 Forster Street, Room 825 | Harrisburg, PA 17120
Phone: 717.783.2500 | Fax: 717.705.6042
www.health.state.pa.us

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From: Bulletin
To: Smith, Pamela (Health)
Subject: [External] RE: Proposed Long-Term care Nursing Facilities Regulations # 10-222
Date: Monday, September 27, 2021 9:41:29 AM

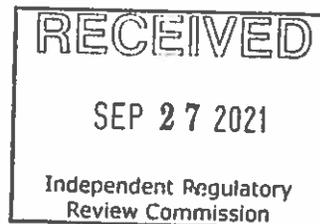
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Good morning Pamela:

Thank you for sending Proposed Rulemaking #10-222. Someone from our office will contact you regarding publication in the Pennsylvania Bulletin.

Thank you and have a nice day.

Ernest L. Engvall | Legal Assistant
cengvall@palrb.us | 717.783.1531
Legislative Reference Bureau
Code and Bulletin Office



From: Smith, Pamela (Health) <pamesmith@pa.gov>
Sent: Monday, September 27, 2021 9:37 AM
To: Bulletin <bulletin@palrb.us>
Subject: Proposed Long-Term care Nursing Facilities Regulations # 10-222
Importance: High

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