



November 3, 2021

Lori Gutierrez
Deputy Director - Office of Policy
625 Forster Street, Room 814
Health and Welfare Building
Harrisburg, PA 17120
VIA EMAIL to: RA-DHLTCRegs@pa.gov

Re: Rulemaking 10-222 (Long-Term Care Facilities, Proposed Rulemaking 2)
28 PA Code Sections 201.23 and 207.4, Chapters 203, 204, and 205
Deadline: November 8, 2021

To Whom It May Concern:

We are pleased that the Department of Health is proposing to update the nursing home licensing regulations. The residents and loved ones we represent are long overdue for improvements in the quality of their care and their surroundings. COVID-19 had a tragically devastating impact on nursing home residents and staff. Moreover, it laid bare gross deficiencies and unconscionable racial disparities in the quality of nursing home care. There can be no doubt that the current regulations are insufficient to protect the lives of residents. Considerable changes are necessary and comprehensive reform is essential.

Comprehensive reform must include the following important priorities:

- **Systemic Changes to Direct Care Staffing** to increase direct care staffing hours and direct care staffing to resident ratios, as well as to adjust direct care staffing upwards from the minimum as needed to address individuals' assessed needs, overall resident acuity, and other facility-specific factors (such as physical layout features or operation of specialized units).
- **Improvements in Training Requirements** including minimum training hours for direct care and other staff with specific articulated training areas and demonstration of competency.
- **Infection Prevention and Control Requirements** that ensure each nursing home has full-time expert staff on hand to prevent and control infections.

- **Emergency and Pandemic Preparedness Planning Requirements** so that nursing homes must meaningfully plan for how to address emergencies and to prepare for pandemics or other outbreaks.
- **Application for Licensure and for Change of Ownership Procedures** that ensure that the application to operate or purchase a nursing home requires a thorough evaluation of the applicant’s experience, expertise, and financial capacity to provide high quality of care.
- **Residents’ Rights Improvements** to update regulations that are over 20 years old and don’t protect all residents from discrimination or ill treatment.

We understand that this proposed rulemaking is the second of five that will eventually be combined to make a final, comprehensive regulatory package. Because this approach makes it difficult to review the subsections without the context of the remaining sections, we urge the Department of Health to formally commit to accepting comments related to any of the five sections at any time throughout the entirety of the proposed rulemaking process.

Substantive Comments to Long-Term Care Facilities, Proposed Rulemaking 2:

These comments cover the Chapters and Sections included in Proposed Regulations Package #2.

- Chapter 201, 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*).
- Chapter 207, Section 207.4. Ice containers and storage.

1) Chapter 201, Section 201.23 Closure of Facility.

Add a Purpose Statement to 201.0. We have previously recommended and continue to recommend that the Department add a purpose statement to Chapter 201. We recommend adding language as 201.0 that articulates the purpose of the regulations as:

§ 201.0. Purpose

The purposes of regulating nursing facilities are as follows:

- (1) to enhance the health and welfare of Pennsylvania citizens by making the health care and long-term services and supports delivery system responsive and adequate to the needs of its citizens;
- (2) to assure that new health care services and facilities are efficiently and effectively used;

- (3) to ensure that health care services and facilities meet and will continue to meet high quality standards;
- (4) to respect the right that all citizens have to receive quality, humane, courteous, and dignified care;
- (5) to ensure nursing facility residents can maintain their individuality and make choices about how they want to live;
- (6) to foster responsible private operation and ownership of health care facilities; and
- (7) to encourage innovation and continuous development of improved methods of health care delivery to nursing home residents.

Revise 201.23 with considerable changes around facility closure. For too long, the closures of facilities have left residents extremely vulnerable. We believe that the Department must take a more proactive approach to ensuring that residents' needs are met during closures. For this reason, we recommend significant changes to the closure process to protect residents, strengthen requirements for facilities, and detail more specifically what is expected during the closure. Please see our recommended language, which is modeled after facility closure language from Massachusetts and California. With this language, we propose to add what the existing regulations lack, a person-centered process that includes notice, a resident-centered closure plan, opportunity for input, Department approval of the closure plan, and specifics concerning state monitoring and oversight.

We provide specific suggested language in the attached mark-up of the regulations in Annex A. In addition to this added language, we have the following comments on the Department's recommended changes:

- Do not shorten the timeframe in 201.23(a). We strongly object to shortening the timeframe for the facility to notify the Department of a closure of the facility from the current 90-day requirement to the federal minimum of 60 days' notice. The Department's justification is that the federal rules only require 60 days. The state has the authority (is not preempted from requiring 90 days) and the Department clearly chose 90 days in the current regulations for good reason. A safe and orderly transfer of all residents takes time and planning. We urge the Department not to take away what, in essence, is a consumer protection by reducing this time frame to 60 days. In fact, the CARIE ombudsman program's experience strongly supports that notice to residents should be increased to 90 days to be sufficient for them to plan for their transfers elsewhere.
- Do not delete but, instead, improve 201.23(b). We encourage the Department to keep and revise section 201.23(b) to require the facility to make contact with residents and their designated representatives in writing (as currently required) and also in the manner in which the resident and their representative prefer contact. This is not a new concept. The CHC-MCOs are required to capture and honor the preferred manner of communication. It is part of person-centered care.

- Do not delete 201.23(c). The Department proposes to delete this on the grounds that the facility is required to submit a plan for closure and orderly transfers. Submitting a plan is not the same thing as guaranteeing the resident the right to receive sufficient time for an orderly transfer, and by deleting the requirement that the facility must provide this time to the resident, the Department is eliminating that resident right. The requirement to have a plan is not the same as a requirement to comply with the plan. The deleted language is what gives the resident the right to require the facility to actually comply with the plan and/or to allow enough time for an orderly transfer.
- Do not delete 201.23(g). The Department proposes to delete (g) because the facility "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." A closure plan is not evidence of ability to pay for salaries and other expenses in accordance with the plan. We urge you not to remove this provision requiring the facility to demonstrate its ability to comply with the plan it has submitted.

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

We agree with this deletion as the federal regulations sufficiently cover this content and do not permit states to apply prior versions of the LSC.

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

We have concerns that some of these provisions are ambiguous and, consequently could prove difficult to enforce. We are also confused as to why some of the sections from Chapter 205 were not carried forward and copied into 204.

- Revise 204.1(a) to require facilities to comply with the most current FGI Guidelines (not wedding the regulations to the 2018 version). We are comfortable with the adoption of the FGI Guidelines. According to the FGI website: "Pennsylvania uses the FGI Guidelines to review plans for new construction or renovation for hospitals or ambulatory surgical facilities, including endoscopy facilities. The state began accepting voluntary use of the 2018 edition on May 1, 2018 and began mandating compliance with it for new projects beginning November 1, 2018." In fact, 42 states have adopted some edition of the FGI Guidelines. Six states have language that allows for application of the most recent edition. We recommend Pennsylvania follow those 6 states (Colorado, Idaho, Kansas, Maine, Mississippi, New York). Since the long-term care facilities regulations have not been updated in over 20 years, we worry about whether the regulations will in fact be revised each time the FGI Guidelines are updated.

- Revise 204.1(c). While we understand the intent is to only hold the facility to the standards that were in effect at the time the plans for an alteration, renovation or construction were approved, we are concerned that this phrasing suggests that a facility will be considered to be compliant even if it has let its building and facilities deteriorate to the point that they would not meet the standards once met. We suggest revising this language to more clearly reflect the Department's intent.
- Complete 204.2. Portions of 205.2 were not carried forward to 204.2. The Department should be sure that nothing was lost in its movement of content from one section to another.
- Make 204.2(d) more precise. We appreciate and support the goal of this subsection ensure that areas of a facility which have been vacant for a period of time are determined to be suitable for use or occupancy before being reopened. This subsection may need more detail to make it clearer, however. What does the Department mean by "any part"? And what exactly is meant by not being "occupied or used" during the year or more? Would using the space for storage constitute use? Would it apply to a room that had been left unoccupied for a year? We also believe that the regulations should be written so as not to impede facilities from responding rapidly to emergency situations such as the need to use space creatively to cohort during an outbreak of infectious disease. We believe it is in the public interest to ensure that facilities can rapidly respond to situations like a pandemic by allowing an exceptions process to this provision for emergent situations.
- Revise 204.2(e) for clarity and to protect residents from provider-motivated resident room moves. We have some concern about whether providers may be motivated to move residents around to ensure that no space goes "unused" for a year or more. We believe this can be mitigated by requiring the facility to provide written notice to the resident, DOH and the local LTCOP when any resident is being moved or admitted into a space that has not been occupied for a month. Lastly, we have added recommended language on water systems from: <https://www.health.pa.gov/topics/Documents/HAN/2021-579-6-28-ADV-Legionellosis.pdf>.
- Be more specific in 204.3(a). While we appreciate the goal of ensuring residents' wellbeing and recognize that it was carried over from existing 205.3, we urge you to clarify the language to make its specific intent clearer. Is this a reference to the safety of the geographic area where the facility is located (e.g., not locating a facility in a frequently flooded area)? It may also be helpful to specify the types of health and safety concerns being addressed here.
- Revise 204.3(c). We question whether the allowance in this subsection for administrators' family members to reside in a newly constructed facility remains appropriate. While this may have been the practice in facilities in the past, it appears

to be outdated.

- Clarify the scope of 204 to “Buildings and Grounds: General” so that inclusion of 204.3(d) and (e) makes sense in this subsection.
- Additionally, we suggest that “adequate protective measures” as used in 204.3(d) be defined or more fully described.
- Add to 204.5 language that was in 205.20. This section no longer contains the language that was in 205.20 (d) and (e) establishing minimum square footage requirements for resident rooms. Square footage is included elsewhere in the draft regulations, as relates to dining room space, but not here. This may be covered in the FGI, which we do not have access to review. Unless the FGI sets a requirement that is greater than what is contained in the current regulations, these provisions (which set a low but minimum bar) must be reinserted.
- Revise 204.5(d) to be more precise as to what is a safety hazard. We are concerned that without a definition of “safety hazard”, a facility will have too much leeway to deny the residents’ choices and preferences. At a minimum, the Department should add language that allows the resident (who has capacity) a certain level of risk/informed decision making and language that prevents the facility from using arbitrary or ambiguous reasons as a basis for denying the resident’s wishes.
- Revise 204.5(f) to require education to residents about right to locked drawer or cabinet. As a LTC Ombudsman Program, CARIE continues to receive many complaints regarding stolen items even with this regulation. Many residents are not aware of the right to have a locked drawer or cabinet. Additionally, we need language that requires the nursing facility to educate the consumer and/or representative during their first care plan meeting about their right to have this and the importance in letting staff know when they lose a key, the drawer is broken, or something is stolen.
- Add as 204.5(g) a prohibition on rooms housing more than two residents. We feel strongly that resident rooms should be single occupancy. Under no circumstances should a resident room house more than two residents and no waivers to this rule should be granted.
- Add as 204.5(h) the requirement to have and use doorbells on resident rooms. Facilities should be required to put a doorbell outside of each room. There is little dignity, respect, or privacy in staff just walking into resident rooms unannounced. If residents aren’t allowed to lock their door when they are in the room, then let’s put a visual reminder up that forces staff to treat

resident rooms like they should be treated- their own personal space and a requirement to ring the bell to accompany the visual reminder.

- Revise 204.11. The existing regulations have this requirement at 205.23 which was not carried over here and needs to be: "A resident bedroom shall have adjoining toilet facilities and shall be located conveniently near bathing facilities." As written, these regulations do not require an adjoining toilet. Also, the section with ratios of toilets to residents is missing. It is possible that these issues are covered in the FGI, which we could not access to review.
- Add to 204.18 to incorporate ventilation requirements. We add this language to be consistent with state COVID-19 Health Equity Task Force guidance at: https://www.minorityhealth.hhs.gov/Assets/PDF/COVID19HETF_Final%20Recommendations-093021_508_FINAL%203_.pdf See slide # 63
- Add as 204.19. We previously recommended and continue to recommend the addition of section titled "Configurations for Infection Control". Our proposed language is "(a) Consistent with their Department-approved Emergency, Pandemic, and Disaster Preparedness Plans, facilities may repurpose rooms as necessary for cohorting residents and staff and implementing infection controls during an outbreak of infection. (b) Residents may be moved from their bedroom to another bedroom as part of a cohorting effort related to infection control. Residents retain the right not to be moved unnecessarily and to be moved as few times as necessary to ensure the infection control goals of cohorting."
- Add as 204.20. We previously recommended and continue to recommend the addition of a section titled "Hand Sanitization Stations" that would say "Stations for hand cleaning and sanitizing shall be installed outside every bedroom and at least every 20 feet in hallways and common areas."

4) 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).

- Revise 205.6(b). Times have changed and it no longer seems appropriate for anyone but residents to reside in a long-term care facility. That said, we believe the Department could allow a process to grandfather anyone already living in the long-term care facility as of the effective date of the regulations. After the effective date of the regulations, no new individuals should be allowed to reside in a nursing home if they are not a resident. Anyone grandfathered must be held to satisfy background

check requirements similar to those applied to staff.

- Do not delete and add to 205.66(i). We strongly recommend that this section not be deleted, and that the Department add this language to this section: "HEPA air filtration systems must be installed or mobile HEPA air filtration devices must be employed in existing construction. HEPA air filtration systems and devices must be adequate and rated as appropriate for the size of the spaces in which they are used. Filters for HEPA air filtration systems and devices must be replaced in accordance with manufacturer specifications."
- Please add as 205.69. We had previously recommended that this be added and continue to recommend this additional language. "A facility shall have Wi-Fi, broadband, and internet technology as well as devices for the facility, staff, and residents to use in operating the facility and communicating with individuals outside of the facility." More and more, residents will need access to the internet in order to communicate with family and friends, access resources, keep up with current events, engage in activities and remain connected with the outside world. Access to the internet has become essential and is particularly needed to avoid the risk of isolation that institutional settings pose.

Other Comments:

Since the advocacy organizations in our coalition believe so strongly in the need for comprehensive reform, in November 2020 we drafted and submitted to the Department a complete mark-up of the existing regulations, reflecting the comprehensive changes we believe the Department must make. A link to these recommendations can be found here: <https://www.carie.org/wp-content/uploads/2021/01/Cover-Letter-and-NF-Facility-Regulation-Recommendations.pdf>. We are hopeful that the remaining sections of the proposed regulations and the entirety of the final regulations will reflect the overarching reform that is so desperately needed to improve the nursing home regulations for residents and their loved ones.

We have attached a marked-up version of Annex A, reflecting all of the changes we believe are necessary and identifying where we have specific concerns.

We are dedicated to improving the lives of nursing facility residents. We would appreciate the opportunity to meet with your staff in the weeks ahead to further discuss our recommended revisions to the regulations. You can reach us through Pamela Walz at pwalz@clsphila.org or Diane Menio at menio@carie.org.

Sincerely,

Diane A. Menio, Executive Director
Center for Advocacy for the Rights & Interests of the Elderly

Pamela Walz, Supervising Attorney
Community Legal Services

CC: Independent Regulatory Review Commission at irrhelp@irrc.state.pa.us

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.

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OWNERSHIP AND MANAGEMENT

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§ 201.0. Purpose

The purposes of regulating nursing facilities are as follows:

- (1) to enhance the health and welfare of Pennsylvania citizens by making the health care and long-term services and supports delivery system responsive and adequate to the needs of its citizens;
- (2) to assure that new health care services and facilities are efficiently and effectively used;
- (3) to ensure that health care services and facilities meet and will continue to meet high quality standards;
- (4) to respect the right that all citizens have to receive quality, humane, courteous, and dignified care;
- (5) to ensure nursing facility residents can maintain their individuality and make choices about how they want to live;
- (6) to foster responsible private operation and ownership of health care facilities; and
- (7) to encourage innovation and continuous development of improved methods of health care delivery to nursing home residents.

§ 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) For voluntary closures, the administrator or owner shall notify the appropriate Division of Nursing Care Facilities field office of the intent to close at least 90 days prior to closure.

Commented [KC1]: All comments by Alissa Halperin, consultant to Center for Advocacy for the Rights and Interests of the Elderly (CARIE), are made on behalf of CARIE and Community Legal Services (CLS).

Commented [AH2]: We have previously recommended and continue to recommend that the department add purpose statement to Chapter 201. This is the language we proposed in November 2020 and that we continue to recommend.

Commented [AH3]: For too long, the closures of facilities have left residents too vulnerable. For too long, the Department has not taken enough of a proactive approach to ensuring that residents needs are met during the closure. For this reason, we recommend considerable changes to the closure process that protect residents, beef up requirements for facilities, and detail more specifically what is expected during the closure. Please see our recommended language that is modelled off of facility closure language from Massachusetts and California.

Commented [AH4]: We object to the deletion of the 90 day notice requirement. The Department's justification is that the federal rules require 60 days. The state has the authority (is not preempted from requiring 90 days) and clearly chose to use it for good reason in previously requiring more than 60 days. Safe and orderly discharge of all residents takes time and planning. Why would the Department take away what, in essence, is a consumer protection? We urge the Department to reverse course and leave this provision as is. In fact, the CARIE ombudsman experience strongly supports that notice to residents should be increased to 90 days to be sufficient for them to plan for their transfers elsewhere.

~~(Reserved)~~. The administrator or owner shall provide the Department with a draft closure plan along with the notice of intent to close.

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

The notice of intent to close must include the following information:

1. The proposed date of closure;
2. Reasons leading to closure;
3. The facility representative whom residents or their legal representatives, family members, staff or other interested parties may contact with questions they may have regarding the proposed closure;
4. Notice that a resident and interested parties public information session will be held on the proposed closure at the facility at least 60 days prior to the proposed closure date; and how information regarding the date, time and place of the resident and interested parties public information session will be made available;
5. Notice that interested parties may file comments on the proposed closure and the draft closure plan with the Department up until the date of the resident and interested parties public information session; and
6. Other information as may be specified by the Department.

(c) The draft closure plan must include the following information:

- The steps that will be taken to assist residents or their legal representatives in preparing for closure of the facility, to include:
 - Psychological preparation or counseling of each resident as necessary, and plans for preventing transfer trauma;
 - Efforts to find appropriate alternate placements for all residents in a facility that are capable of meeting all of their needs and including the consideration of the resident's and family's choice of facility;
 - Consultation with each resident or the resident's legal representative and, with the resident's or the legal representative's consent, interested family members regarding placement options and the placement process being considered; and
 - Notification of the times during which family meetings will be held to provide information on the closure process and steps the facility will undertake to ensure the appropriate transfer or discharge of each resident.
- The steps that will be taken to assist facility staff in preparing for closure.

Commented [AH5]: We encourage the Department to keep and revise section 201.23(b) to require the facility to make contact with residents and their designated representatives in writing (as already written) and also in the manner in which the resident and their representative prefer contact. This is not a new concept. The CHC-MCOs are required to capture and honor the preferred manner of communication. It is part of person-centered care.

- The storage of medical records after closure of the facility.
- The plan for transfer of resident care plans and personal possessions.
- When the facility will stop admitting new residents, and the process for readmitting residents who are transferred to the hospital during the closure process.
- The staff available to assist with the transfer of residents.
- The staffing plan for providing services during the closure as well as the contingency plan for hiring additional or temporary staff in the event that employees quit before the final closing date.

(d) At least 90 days prior to the proposed date of closure, the licensee shall provide a copy of the notice of intent to close and draft closure plan to the following:

- i. Each resident of the facility and where applicable the resident's legal representative;
- ii. The designated family member of each resident;
- iii. The facility's resident council;
- iv. The facility's family council;
- v. Each staff member of the facility;
- vi. Every labor organization that represents the facility's workforce during the period of the transfer of ownership;
- vii. The Office of the State Long-term Care Ombudsman;
- viii. The Office of the Local Long-term Care Ombudsman;
- ix. The County Commissioners for the county where the facility is located; and
- x. The County or Municipal Health Department, if there is one.
- xi. A representative of the local officials of the city or town where the facility is located.
- xii. All Community HealthChoices Managed Care Organizations under contract with the Department of Human Services, Office of Long-Term Living.

(e) Upon receipt of the notice of intent to close a long-term care facility, the Department shall coordinate with the licensee for the scheduling of a resident and interested parties public information session on the proposed closure. The information session shall be held at least 60 days prior to the proposed closure date at a location accessible to residents, family members and facility staff.

(f) A licensee intending to close a long-term care facility shall provide notice of the date, time and location of the resident and interested parties public information session to be held on the proposed closure at least 14 days prior to the information session, using a notice approved by the Department.

1. A copy of the draft closure plan and notice of the resident and interested parties public information session shall be posted in the facility and notice of the date, time, and location of the resident and interested parties public information session shall be provided to each person or entity who received the initial notification of intent to close at least 14 days prior to the resident and interested parties public information session.

2. Should a licensee fail to distribute either the draft closure plan or notice of the resident and interested parties public information session in a timely manner, or in a format acceptable to the Department, the resident and interested parties public information session on the proposed closure plan will be rescheduled and the proposed closure date will be extended to allow for a resident and interested parties public information session at least 60 days prior to the proposed closure date.

(g) Until the Department has approved a licensee's closure plan, the facility shall not issue a notice of transfer or require any resident to transfer.

(h) Upon submission of the draft closure plan, the licensee shall be prohibited from accepting new residents and entering into new admission agreements for new residents.

(i) The Department shall complete a review of the draft closure plan and all comments on the proposed closure that have been submitted to the Department by the date of the resident and interested parties public information session, and notify the licensee in writing within 14 days of the information session either its approval or disapproval of the closure plan.

1. If the Department approves the plan, it shall become effective upon the date the Department grants its written approval of the plan.

2. If the Department disapproves a closure plan, the licensee shall resubmit an amended plan, which the Department shall promptly either approve or disapprove, within 10 working days of receipt by the Department of the amended plan. If the Department

fails to approve a closure plan, it shall inform the licensee, in writing, of the reasons for the disapproval of the plan.

(j) If the Department fails to take action within 20 working days of receipt of either the original or the amended closure plan, the closure plan shall be deemed approved.

(k) Upon receipt of the Department's approval of the closure plan and closure date, the licensee shall post in the facility, and provide to each person or entity who received the initial notification of intent to close, notification of the Department's approval of its closure plan and the approved closure date, and notice that the facility will close.

(l) All closures shall be completed in an orderly manner in accordance with the closure plan approved by the Department.

1. Upon notification of the Department's approval of its closure plan, the licensee shall provide updates to the Department on its closure activity on a weekly basis, or more frequently upon request.

2. Copies of all appropriate medical records, resident care plans, and resident possessions shall accompany each resident upon transfer or discharge. Resident possessions shall be transported with dignity and respect, in luggage or clean storage containers, not in trash bags.

3. Transfer planning should begin for residents when the closure plan is approved. Residents and their representatives must be provided with choices, including home and community based options, and must be the ones to make the choice in the setting to which they will transfer.

~~(e)~~ (m) Transfers shall take place in an orderly fashion. Sufficient time shall be given to the resident or the resident's responsible person to effect an orderly transfer. (Reserved).

No more than five residents per day may be transferred unless the facility has demonstrated to the Department that it has sufficient staff and resources for transferring a larger number of residents per day in an orderly fashion and has received approval from the Department.

~~(n)~~ (n) 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

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Commented [AH6]: The Department proposes to delete this on the grounds that the facility is required to submit a plan for closure and orderly transfers. Submitting a plan is not the same thing and guaranteeing the resident the right to receive sufficient time for an orderly transfer and by deleting the requirement that the facility must provide this time to the resident, the Department is eliminating that resident right. It may seem like splitting hairs but the requirement to have a plan is not the same as the requirement to comply with the plan. The deleted language is what gives the resident the right to require the facility to actually comply with the plan and/or to allow enough time for an orderly transfer.

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and safety.

~~(e)~~ (o) 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.

(p) The Secretary may waive or modify all timeframes in extraordinary circumstances where the Secretary has determined that such a waiver is necessary to protect the health and safety of the residents served by the facility or in the event of an involuntary closure. For involuntary closure, all requirements of this section will be followed, however, the Department may need to take direct responsibility or take on joint responsibility with the facility for activities including issuing the notice of intent to close, drafting the closure plan, holding the resident and interested parties public information session, modifying and implementing the closure plan, and safely transferring residents, their records, and their possessions.

~~(f)~~ (r) The Department ~~will is permitted to~~ monitor the closure and the -transfer of residents. The Department will designate a single point person to oversee the facility's implementation of the approved closure plan. This point person or their designee will be on site daily to monitor closure activities.

~~(e)(s)~~ 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)~~

(t) If a licensee fails to comply with the requirements of this section, or if the Secretary determines that it is necessary to protect the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the Department shall take any necessary action to minimize trauma for the residents, including caring for the residents through the use of a temporary manager when the Department determines the immediate relocation of the residents is not feasible based on transfer trauma or other considerations such as the unavailability of alternative placements. The Department shall contact any local agency that may have assessment, placement, protective, or advocacy responsibility for the residents, and shall work together with those agencies to locate alternative placement sites, contact relatives or other persons responsible for the care of these residents, provide onsite evaluation of the residents, and assist in the transfer of residents.

(u) The participation of the Department and local agencies in the relocation of residents from long-term care nursing facilities does not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse the Department and local agencies for the cost of providing the relocation services or the costs incurred in caring for the residents through the use of a temporary manager.

(v) Failure to comply with the notice provisions, failure to implement an appropriate relocation plan, or transfer of residents prior to the 30-day notice period, may result in the Department may appoint a temporary manager.

(w) Failure to ensure appropriate notice to and relocation of all residents may result in a finding of

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Commented [AH7]: The Department proposes to delete (g) because the facility "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." A closure plan is not evidence of ability to pay in accordance with the plan. Removing a rule that would require the facility to demonstrate its ability to comply with the plan they have submitted is a bad decision that put the Department in a worse position than does requiring the facility to prove it can continue to operate. We object to the removal of this language and are confused as to the Department would want to hamstring their own monitoring and oversight by deleting this.

abuse or neglect as defined under the Older Adult Protective Services Act or the Adult Protective Services Act.

- (x) If the licensee fails to provide the relocation services required in this section, the Department may seek injunctive relief and damages, including restitution to the Department of any costs incurred in caring for the residents through the use of a temporary manager.
- (y) A licensee who fails to comply with requirements of this section shall be liable for the imposition of civil penalties in the amount of one hundred dollars (\$100) per violation per day for each day that the licensee is in violation of this section, until such time that the violation has been corrected. The civil penalties shall be issued immediately following the written notice of violation. However, if the violation does not present an immediate or substantial threat to the health or safety of residents and the licensee corrects the violation within three (3) calendar days after receiving the notice of violation, the licensee shall not be liable for payment of any civil penalties pursuant to this subdivision related to the corrected violation.
- (z) A licensee who fails to comply with this section and abandons the facility and the residents in care resulting in an immediate and substantial threat to the health and safety of the abandoned residents, shall be deemed to have forfeited their license and in addition to forfeiture of the license, shall be excluded from licensure in facilities licensed by the Department without the right to petition for reinstatement.

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

Commented [AH8]: This Chapter has a lot of sloppy drafting. It is very imprecise, and we worry that the sloppy drafting will make many of these provisions meaningless or, worse, unenforceable.

Additionally, there are a number of topics in 205 that were not carried forward to this new section 204. Why not?

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 or the edition that is in effect at the time the facility proposes alterations, renovations and construction, whichever is the more recent 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 be required to submit written plans and architectural renderings that reflect the required compliance with this Chapter. For plans related to alteration or renovation, the licensee must provide their written plans, architectural renderings, and a plain-language description of their plans to the resident and family council and the local long-term care ombudsman program. The licensee or applicant shall have the opportunity to present and discuss with

Commented [AH9]: We are comfortable with the adoption of the FGI Guidelines. According to the FGI website: “Pennsylvania uses the FGI Guidelines to review plans for new construction or renovation for hospitals or ambulatory surgical facilities, including endoscopy facilities. The state began accepting voluntary use of the 2018 edition on May 1, 2018 and began mandating compliance with it for new projects beginning November 1, 2018.” In fact, 42 states have adopted some edition of the FGI Guidelines. 6 states have language that allows for application of the most recent edition. We want Pennsylvania to follow those 6 states (Colorado, Idaho, Kansas, Maine, Mississippi, New York). In light of the fact that the long-term care facilities regulations have not been updated in over 20 years, we do not feel confident that the Department can or will update the regulations every time the FGI Guidelines are updated, as the preamble suggests the Department would do.

Commented [AH10]: While we understand the intent is to not make the facility have to continuously comply with new updates and to only have to meet new requirements that might come along after meeting the 2018 FGI, the language is not precise enough for us. We are concerned that this phrasing suggests that a facility will be considered to be compliant even if it has let its building and facilities deteriorate to the point that they would not meet the standards once met. We do not want to see a facility determined to comply with the 2018 FGI then get a free pass for future environmental non-compliance because it once complied with the 2018 FGI and because this language would make it impossible for the Department to cite non-compliance. The language need revision to more clearly reflect what we believe is the Department’s intent.

Commented [AH11]: We are concerned that some of the provisions of existing section 205.2 were not carried forward. Was this accidental?

Commented [AH12]: Where is prospective licensee defined? We had proposed that the Department use and define the term applicant. The Department hasn’t defined either term in the definitions section of the regulations.

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 date of the Department's approval and shall be completed within 5 years of the date 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 begin to be used again by the long-term care nursing facility for any purpose except for the purposes permitted 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 facility's return to 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). Water systems must undergo thorough flushing and disinfecting as well as cleaning and maintaining other devices that use water (such as decorative fountains or cooling towers) to prevent residents from being exposed to bacteria causing illness or death. The long-term care nursing facility shall not begin to use or occupy the

space again unless approved by the Department.

§ 204.3. Buildings and Grounds; general.

(a) A building to be used for and by residents shall be located in areas conducive to the health

Commented [AH13]: This is terribly ambiguous. What does this mean "if differences occur"? If the Department decides that the plans and purposes do not comply with the regulations, including the federal regulations incorporated by reference and the FGI (also incorporated by reference)? We appreciate this may not be new language but, it is not clear and requires improvement in these revisions. This should all be spelled out more precisely. Also should answer: Does the licensee/applicant get a written decision with appeal rights?

Commented [AH14]: This is a big prohibition and it should be more precisely worded. What does the Department mean by "any part"? And what exactly is meant by not being "occupied or used" during a year or more? Is storing one item in the space using it? If the regulations do not define occupied or used, these two provisions (d) and (e) become functionally meaningless.

Also, with regard to prohibiting the facility to use the space again "for any purpose except as provided for in this section": We are concerned that in the pandemic, facilities had to be creative and use activity rooms for cohorting and the suchlike. We don't believe it is in the public interest to prevent the facility from rapidly responding to a pandemic and would want the Department to allow an exceptions process to any provision that limits the repurposing of a space. In defining what it means to use or occupy a space and clarifying this prohibition, the Department should articulate permissible instances, such as emergency situations, in which such spaces could be used.

Commented [AH15]: It is imperative that in their quest to not have portions of their space lie fallow, we prevent against the facility needlessly shuffling the residents around the space to make sure no space goes "unused" for a year or more. We believe this can be mitigated by requiring the facility to provide written notice to the resident, DOH and the local LTCOP when any resident is being moved or admitted into a space that has not been occupied for a month.

Commented [AH16]: So, the unused portion gets treated as new construction and needs to meet the new FGI requirements. What if this requires alteration to the whole facility to comply? Like re-wiring? There should be an ability for the Dept to approve new use in situations where no or minor work is needed.

Commented [KC17]: Lastly, we have added recommended language on water systems from: <https://www.health.pa.gov/topics/Documents/HAN/2021-579-6-28-ADV-Legionellosis.pdf>

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.

Commented [AH18]: While we recognize this language is carried over from existing 205.3, it is really ambiguous and we cannot envision how it can be enforced as a result of the vagueness of the phrasing. We do not understand the intent of "shall be located in areas" in the requirement that "A building to be used for and by residents shall be located in areas conducive to the health and safety of residents." Does this mean geographic areas? Nor do we fully understand what would make an area "conducive to health and safety". We strongly urge the Department to be more clear in this revision to the regulations. If we cannot understand what is meant, how can licensees or regulators? And, ambiguous language is not easily enforceable in a court of law.

Commented [AH19]: We have similar comments to (a) for (b). We are not clear on what kinds of purposes for use of a part of a building might interfere with or jeopardize health and safety the Department intends this provision to cover. We are concerned that this ambiguous language could be interpreted to mean that no part of the building could be used for cooking as there are residents that could be harmed by the knives or fire involved in cooking. While that may seem ridiculous, the imprecisely drafted provision could be interpreted that ridiculously. And, because of that, the Department's actual intent would be lost.

Commented [AH20]: Times have changed and it no longer feels appropriate for anyone but residents to reside in a long-term care facility that is being newly constructed. We specifically do not feel that it is appropriate for administrators' immediate family members to reside in the long-term care facility and urge the Department to revise this language to remove this allowance.

Commented [AH21]: Is this still about buildings? We proposed changing the title of this section to Buildings and Grounds: general to expand the scope to match the content. What are service areas in this sentence?

Commented [AH22]: Why would it only be a facility with site limitations that could provide balcony areas? Also, what are adequate protective enclosures? Is this defined somewhere?

Commented [AH23]: This section no longer contains what was in 205.20 (d) and (e) that established minimum square footage requirements for resident rooms. Square footage is included elsewhere in the draft regulations, as relates to dining room space, but was left out here. We cannot review the FGI to see whether minimum square footage requirements are contained therein and to determine whether the FGI requirements are satisfactory. Unless the FGI sets a requirement that is greater than what is contained in the current regulations, these provisions (which set a low but minimum bar) must be reinstated.

(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. Residents must be informed during the first care planning meeting about their right to have this locked drawer or cabinet and the importance of informing staff when they lose a key, when the drawer is broken, or when something gets stolen, along with instructions for notifying staff and what to expect staff to do in response to the resident notifying them.

(g) Single occupancy is the preference for new construction. Under no circumstances shall a resident room house more than two residents. Waivers of this requirement will not be granted.

~~(g)~~(h) Each resident room shall have a doorbell affixed outside the doorway for staff and administrators to use for permission to enter the resident room.

§ 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

Commented [AH24]: We are concerned that without a definition of "health or safety hazard", the facility will have too much leeway to deny the residents' choices and preferences. At a minimum, language that allows the resident (who has capacity) a certain level of risk/informed decision making and that prevents the facility from using ambiguous reasons as a basis for denying the resident's wishes.

Commented [AH25]: As LTC Ombudsman Program, CARIE gets a lot of complaints (still) regarding stolen items even with this regulation. Many residents aren't aware of the right to have a locked drawer or cabinet. Additionally, we need language that requires the NH to educate the consumer during their first care plan meeting about their right to have this and the importance in letting staff know when they lose a key, the drawer is broken or something gets stolen.

Commented [AH26]: We feel strongly that resident rooms should be single occupancy. Under no circumstances should a resident room house more than two residents and no waivers to this rule should be granted.

Commented [AH27]: Facilities should be required to put a doorbell outside of each room. There is little dignity, respect, or privacy in staff just walking into resident rooms unannounced. If residents aren't allowed to lock their door when they are in the room, then let's put a visual reminder up that forces staff to treat resident rooms like they should be treated- their own personal space and a requirement to ring the bell to accompany the visual reminder.

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. [Call bells as required under the FGI shall be maintained in good working order, checked regularly, and within residents' reach.](#)

§ 204.12. Linen.

Commented [AH28]: The existing regulations have this requirement at 205.23 which was not carried over here and needs to be: "A resident bedroom shall have adjoining toilet facilities and shall be located conveniently near bathing facilities." As written, these regulations do not require an adjoining toilet. Also, the section with ratios of toilets to residents is missing. Ratios, if included in the FGI, could not be reviewed to comment.

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. Facilities should ensure safe ventilation practices and regularly evaluate such practices.

Commented [KC29]: We add this language to be consistent with state guidance at: https://www.minorityhealth.hhs.gov/Assets/PDF/COVID19/HETF_Final%20Recommendations-093021_508_FINAL%203_.pdf See slide # 63

204.19 Configurations for Infection Control

(a) Consistent with their Department-approved Emergency, Pandemic, and Disaster Preparedness Plans, facilities may, for the duration of the emergency, pandemic, or disaster, repurpose rooms as necessary for cohorting residents and staff and implementing infection controls during an outbreak of infection.

Commented [AH30]: We previously proposed and continue to propose the addition of this section.

(b) Residents may, for the duration of the emergency, pandemic, or disaster, be moved from their bedroom to another bedroom as part of a cohorting effort related to infection control. Residents retain the right not to be moved unnecessarily and to be moved as few times as necessary to ensure the infection control goals of cohorting.

204.20 Hand Sanitization Stations.

Commented [AH31]: We previously proposed and continue to propose the addition of this section.

(a) Stations for hand cleaning and sanitizing shall be installed outside every bedroom and at least every 20 feet in hallways and common areas.

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 who were already in residence as of the effective date of this section if they satisfy the criminal background check and public health requirements imposed on employees. Immediate family members not residing in the facility as of this effective date will not be permitted.

Commented [AH32]: While this is not new language, we are not clear on what kinds of purposes for use of a part of a building might interfere with or jeopardize health and safety the Department intends this provision to cover. We are concerned that this ambiguous language could be interpreted to mean that no part of the building could be used for cooking as there are residents that could be harmed by the knives or fire involved in cooking. While that may seem ridiculous, the imprecisely drafted provision could be interpreted that ridiculously. And, because of that, the Department's actual intent would be lost.

Commented [AH33]: Times have changed and it no longer feels appropriate for anyone but residents to reside in a long-term care facility. That said, we believe the Department could allow a process to grandfather anyone already living in the long-term care facility as of the effective date of the regulations. After the effective date of the regulations, no new individuals should be allowed to reside in a nursing home if they are not a resident. Anyone grandfathered in must be held to satisfy background check requirements similar to those applied to staff.

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 existing construction [Special ventilation requirements for new construction.

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

Pressure	Minimum Air	Minimum		
Relationship to Adjacent	Changes of Outdoor Air	Total Air Changes	All Air Directly	Recirculated within

Commented [AH34]: We had previously recommended that this be added and continue to recommend this additional language.

Area Designation	Areas	Per Hour	Per Hour	to Outdoors	Room Units
Resident Room	Equal	2	2	Optional	Optional
Resident Area Corridor	Equal	Optional	2	Optional	Optional
Physical therapy	Negative	2	6	Optional	Optional
Occupational therapy	Negative	2	6	Optional	Optional
Soiled workroom or soiled holding	Negative	2	10	Yes	No
Clean workroom or clean holding	Positive	2	4	Optional	Optional
Toilet room	Negative	Optional	10	Yes	No
Bathroom	Negative	Optional	10	Yes	No
Janitor's closet	Negative	Optional	10	Yes	No
Sterilizer equipment room	Negative	Optional	10	Yes	No
Linen and trash chute rooms	Negative	Optional	10	Yes	No
Food preparation center	Equal	2	10	Yes	Yes
Warewashing room	Negative	Optional	10	Yes	Yes
Dietary day storage	Equal	Optional	2	Yes	No
Laundry, general	Equal	2	10	Yes	No
Soiled linen sorting and storage	Negative	Optional	10	Yes	No
Clean linen storage	Positive	Optional	2	Yes	No
Special Care Room/Isolation	Negative	2	6	Yes	No

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

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

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

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

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

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

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

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

HEPA air filtration systems must be installed or mobile HEPA air filtration devices must be employed in existing construction. HEPA air filtration systems and devices must be adequate and rated as appropriate for the size of the spaces in which they are used. Filters for HEPA air filtration systems and devices must be replaced in accordance with manufacturer specifications.

§ 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:

Area

Footcandles

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).

205.69 Electronics Requirements

A facility shall have wifi, broadband, and internet technology as well as devices for the facility, staff, and residents to use in operating the facility and communicating with individuals outside of the facility.

Commented [AH35]: We had previously recommended that this be added and continue to recommend this additional language.

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

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§ 207.4. [Ice containers and storage.

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