

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

Acceptance of Rulemaking Petition for Study

On September 21, 2021, the Environmental Quality Board accepted a rulemaking petition for study under 25 Pa. Code Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). The petition, submitted by Delaware Riverkeeper Network and Angelica Creek Watershed Association, requests the amendment of 25 Pa. Code § 93.9f (relating to Drainage List F) to redesignate Angelica Creek in Berks County from Cold Water Fishes, Migratory Fishes to Exceptional Value Waters.

Under 25 Pa. Code § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), the Department of Environmental Protection (Department) is required to publish a notice of intent to assess candidate waters. The Department's assessment notice for this rulemaking petition will appear in a future issue of the *Pennsylvania Bulletin*.

The previously-referenced petition is available to the public by contacting the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 and is accessible on the Department's web site at www.dep.pa.gov (select "Public Participation," "Environmental Quality Board," then "2021 Meetings," then "Meeting Agendas/Minutes/Handouts; September 21, 2021: In-Person/WebEx Meeting").

PATRICK McDONNELL,
Chairperson

[Pa.B. Doc. No. 21-1689. Filed for public inspection October 8, 2021, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 160]

State Food Purchase Program Regulations

The Department of Agriculture (Department) proposes to amend Chapter 160 (relating to State Food Purchase Program) to read as set forth in Annex A.

Statutory Authority

This proposed rulemaking is authorized under the general authority in section 3(a) of the State Food Purchase Program Act (act) (62 P.S. § 4043(a)) and the specific regulatory authority set forth in section 9 of the act (62 P.S. § 4049).

Purpose of the Regulation

This proposed rulemaking will increase the income threshold cap for the State Food Purchase Program (Program) from the current 150% of the poverty level established by the United States Department of Agriculture (USDA) to 185%. This proposed rulemaking will amend the heading of Part VII from "Bureau of Government Donated Food" to "Bureau of Food Assistance" to align the name change of the Bureau.

Explanation

On October 7, 2020, the Emergency Food Assistance Advisory Committee recommended that the income

threshold for the Program be increased from the current 150% to 185% of the poverty level established by the USDA. Specifically, § 160.5(b) (relating to eligibility of persons to participate) presently provides that "persons shall be eligible to be Program participants if their incomes do not exceed 150% of the poverty levels established by the USDA." Presently, 66 out of 67 Pennsylvania counties do not have procedures and guidelines for determining the eligibility level for Program participants. Those counties, therefore, rely upon the Department's existing regulations. (Montgomery County has established its own poverty income level at 185%.) These regulations were adopted on October 28, 1994, and have been effective since October 29, 1994. The Department believes for the following reasons, it is appropriate to amend this regulation.

Increasing the threshold to 185% would allow the charitable feeding network to feed more food insecure Pennsylvanians who make just above the current income limit and would bring the Program in line with the eligibility limits set for several other food assistance programs, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (7 CFR 246.7(d)(1) (relating to certification of participants)), reduced-price school breakfasts and school lunches provided through the National School Lunch and Breakfast Programs (7 CFR 245(3) (relating to determining eligibility for free and reduced price meals and free milk in schools)), the WIC Farmers' Market Nutrition Program (7 CFR 248.6(a) (relating to recipient eligibility) and the Senior Farmers' Market Nutrition Program and (7 CFR 249.6(a)(3) (relating to participant eligibility)) within this Commonwealth.

Increasing the income eligibility threshold for the Program would allow the Department to administratively raise this Commonwealth's income eligibility threshold for The Emergency Food Assistance Program (TEFAP). Under the USDA's regulations in 7 CFR 251.5(b) (relating to eligibility determinations), state agencies must set income-based standards for TEFAP eligibility and determine the methods by which households may demonstrate eligibility under these standards. Currently, the income limit for TEFAP in this Commonwealth is kept commensurate with the Program and increasing it to 185% would bring this Commonwealth in line with the TEFAP income limit of 20 other states, including Delaware, the District of Columbia, New Jersey and West Virginia. Currently, only 17 states (including Pennsylvania) have an income threshold set at or below 150%.

According to 2019 food insecurity data provided by Feeding America, 10.6% of all residents in this Commonwealth—1,353,730 people—did not always know where their next meal was coming from. That number included 383,500—or 14.6%—of all children in this Commonwealth. In 2020, as a result of the novel coronavirus (COVID-19) pandemic, these numbers grew substantially. According to a series of data analysis reports compiled by Feeding America looking at the impact of coronavirus on food insecurity, the number of Pennsylvanians facing food insecurity is projected to have grown to 13.8% in 2020, an increase of 30%. Even more startling, they project that the percentage of children in our State facing food insecurity rose to 20.4%, an increase of 40% in just 1 year. (See, 2019 and 2020 data looking at impact of coronavirus on food insecurity at <https://feedingamericaaction.org/resources/state-by-state-resource-the-impact-of-coronavirus-on-food-insecurity/>).

With a growing number of food insecure Pennsylvanians, and a decreasing supply of food that is not tied to an income test, there are fewer and fewer food resources currently available to those who are food insecure but make just too much to qualify. Increasing the income threshold to 185% of the poverty level for the Program—and by administrative extension to TEFAP—will allow food banks to more easily and efficiently serve the increasing numbers of people who are seeking out their services. Lastly, this proposed rulemaking will bring us more in line with the income eligibility thresholds of several other Federal food assistance programs and with many of our neighboring states in the Mid-Atlantic Region.

This proposed rulemaking seeks to formally amend the name “Bureau of Government Donated Food” as presently set forth in the heading of Part VII and in § 160.13 (relating to filing the grant agreement) to the “Bureau of Food Assistance.” On May 15, 2019, the Executive Board, by Resolution No. OR-19-007, approved the change to the Bureau’s name as requested by the Secretary of Agriculture under sections 212 and 709(b) of The Administrative Code of 1929 (71 P.S. §§ 72 and 249(b)).

In summary, the Department is satisfied there is a need for this proposed rulemaking and that it is otherwise consistent with Executive Order 1996-1, Regulatory Review and Promulgation.

Fiscal Impact

Commonwealth. The Department does not expect that this proposed rulemaking will have a fiscal impact on the Department or other Commonwealth agencies.

Political subdivisions. This proposed rulemaking will have no appreciable fiscal impact on political subdivisions of this Commonwealth.

Private sector. This proposed rulemaking will not have a fiscal impact on the private sector other than for those who elect to participate in the Program as previously set forth.

General public. This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will have no impact on the paperwork handled by the Department.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 29, 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 House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request and is available on the Department’s web site at www.agriculture.pa.gov.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin*. Public comments should be addressed to Caryn Long Earl, Director, Bureau of Food Assistance, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

Contact Person

The contact person for technical questions about this proposed rulemaking is Assistant Counsel, Jorge M. Augusto, (717) 787-8744, jaugusto@pa.gov.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-195. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VII. BUREAU OF [GOVERNMENT DONATED FOOD] FOOD ASSISTANCE

CHAPTER 160. STATE FOOD PURCHASE PROGRAM

§ 160.5. Eligibility of persons to participate.

(a) *Primary determinant.* If the county government, lead agency or emergency food provider administering the Program within a particular county has established procedures and guidelines for determining whether persons are eligible to participate in the Program, these procedures and guidelines shall be the sole determinant of eligibility.

(b) *Department guidelines.* In counties where the county government, lead agency or emergency food provider administering the Program does not have procedures and guidelines for determining the eligibility of persons to be Program participants, persons shall be eligible to be Program participants if their incomes do not exceed [150%] 185% of the poverty levels established by the USDA.

§ 160.13. Filing the grant agreement.

(a) *Place and time.* The grant agreement shall be completed by the county government, the lead agency or the appropriate emergency food provider and returned to the Department of Agriculture, Bureau of [**Government Donated Food**] **Food Assistance**, 2301 North Cameron Street, Room 401, Harrisburg, PA 17110-9408 by June 1 immediately preceding the start of the fiscal year, or 30 days prior to the commencement of the grant agreement if the grant agreement is to commence on a date other than the start of the fiscal year.

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[Pa.B. Doc. No. 21-1690. Filed for public inspection October 8, 2021, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CHS. 201, 203—205 AND 207]

Long-Term Care Nursing Facilities

The Department of Health (Department), after consultation with the Health Policy Board, proposes to amend §§ 201.23 and 207.4, Chapters 203 and 205, and add a new chapter designated as Chapter 204, in Subpart C (relating to long-term care facilities) 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 Subpart C 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 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

- § 201.1. Applicability.
- § 201.2. Requirements.
- § 201.3. Definitions.
- § 211.12(i). Nursing Services.

Proposed Rulemaking 2

- § 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.*)

- § 207.4. Ice containers and storage.

Proposed Rulemaking 3

- § 201.11. Types of ownership.
- § 201.12. Application for license.
- § 201.13. Issuance of license.
- § 201.15. Restrictions on license.
- § 201.17. Location.
- § 201.22. Prevention, control and surveillance of tuberculosis (TB).
- § 209.1. Fire department service.
- § 209.7. Disaster preparedness.
- § 209.8. Fire drills.

- § 211.1. Reportable diseases.

Proposed Rulemaking 4

- § 201.14. Responsibility of licensee.
- § 201.18. Management.
- § 201.19. Personnel policies and procedures.
- § 201.20. Staff development.
- § 201.27. Advertisement of special services.
- § 201.30. Access requirements.
- § 201.31. Transfer agreement.
- § 207.2. Administrator's responsibility.
- § 211.2. Physician services.
- § 211.4. Procedure in event of death.
- § 211.5. Clinical records.
- § 211.6. Dietary services.
- § 211.7. Physician assistants and certified registered nurse practitioners.
- § 211.9. Pharmacy services.
- § 211.12. Nursing services.
- § 211.15. Dental services.
- § 211.16. Social services.

Proposed Rulemaking 5

- § 201.21. Use of outside resources.
- § 201.24. Admission policy.
- § 201.25. Discharge policy.
- § 201.26. Power of attorney.
- § 201.29. Resident's rights.
- § 209.3. Smoking.
- § 211.3. Oral and telephone orders.
- § 211.8. Use of restraints.
- § 211.10. Resident care policies.
- § 211.11. Resident care plan.
- § 211.17. Pet therapy.

Background and Need for Amendments

The percentage of adults 65 years of age or older in Pennsylvania is increasing. In 2010, approximately 15% of Pennsylvanians were 65 years of age or older. In 2017, this number increased to 17.8%. This Commonwealth has a higher percentage of older adults when compared to other states. In 2017, this Commonwealth ranked fifth in the Nation in the number (2.2 million) of older adults and seventh in percentage (17.8%). The increase in older Pennsylvanians is expected to continue. It has been estimated that by 2030, there will be 38 older Pennsylvanians (65 years of age or older) for every 100-working age Pennsylvanians (15 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 years of age today has an almost 70% chance of needing some type of long-term nursing care during the remainder of their lifetime. United States Department of Health and Human Services. *How Much Care Will You Need?* at <https://acl.gov/ltc/basic-needs/how-much-care-will>

you-need (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 proposed rulemaking developed as a result of the previous discussions. In the first proposed 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 this Commonwealth. This proposed rulemaking furthers the Department's goal of creating consistency and eliminating duplication between Federal and State requirements by amending § 201.23 (relating to closure of facility) and deleting § 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 proposes to update requirements for alterations, renovations or construction of long-term care nursing facilities by adding Chapter 204 (relating to physical environment and equipment standards for alterations, renovations or construction of long-term care nursing facilities). Chapter 204 will be new and will apply to plans for alterations, renovations or construction of long-term care nursing facilities submitted approved 6 months after these regulations are published as a final-form rulemaking. The Department proposes to keep the provisions in Chapter 205 (relating to physical plant and equipment standards for long-term care nursing facilities), 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.

Description of Proposed Amendments

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

§ 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. With the anticipated promulgation of the amendments to § 201.2 (relating to requirements) proposed in its first rulemaking, published at 51 Pa.B. 4074 (July 31, 2021), the Department expects all long-term care nursing facilities in this Commonwealth to comply with the Federal participation requirements, including the requirements in 42 CFR 483.70(l) and (m) (relating to administration). With these requirements in mind, the Department proposes the following changes to § 201.23 (relating to closure of facility).

The Department proposes to delete existing subsections (a)—(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. 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) and (m) (relating to administration), 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

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

long-term care nursing facility. These changes are explained more fully as follows.

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, under 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." See § 51.3(c) (relating to notification). 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 deletion 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. Under 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) requires a long-term care nursing facility to give a resident or the resident's responsible person sufficient time to effectuate an orderly transfer. Under 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 of 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 under 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:

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

(ii) Offering the opportunity, to each resident, to obtain information regarding options within the community.

(iii) Providing residents with information or access to information regarding quality of providers and services.

(iv) 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:

(i) Payment of salaries and expenses.

(ii) Continuation of appropriate staffing and resources to meet the needs of the residents, including provision of medications, services, supplies and treatment.

(iii) Ongoing accounting, maintenance and reporting of resident personal funds.

(iv) Labeling, safekeeping and appropriate transfer of each resident's personal belongings.

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

The Department proposes to keep the language in current subsections (d), (e) and (f) without amendment. 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 previously, 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 § 203.1 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) (relating to emergency preparedness). Because the Department is adopting the requirements in 42 CFR Part 483, Subpart B as requirements for all long-term care nursing facilities operating in this 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 will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved 6 months after the publication date of the final-form rulemaking. The remaining chapters will become effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking. Existing Chapter 205, which is proposed to be amended as described as follows, 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.

§ 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 (Guidelines)* 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 for Design and Construction* originated as *General Standards* and were later known as *Minimum Requirements* in Federal regulations that were promulgated by the Department and DHS. The *Guidelines for Design and Construction* 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* at <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 § 204.1 (relating to application of *Guidelines for Design and Construction of Residential Health, Care and Support Facilities*), 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 4 years. The Department plans to review new editions and update the regulations, as necessary, to incorporate new editions as they are published.

The Department 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 to ensure the health and safety of residents in long-term care nursing facilities. Adding these requirements will 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 plant and equipment standards for long-term care nursing facilities) for alterations, renovations or construction approved prior to the effective date of Chapter 204 (6 months after the date of publication of the 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 as follows.

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 the time that the facility completes alterations, renovations or construc-

tion. These 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 the 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.

§ 204.2. *Building plans*

The Department proposes to delete existing § 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 § 51.3(d) 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 2 years of approval and be completed within 5 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 3 to 4 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 4 1/2 years to inform them that they have 6 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 1 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 under § 51.3(d) if it intends to occupy or use a space that has not been occupied or used for 1 year or more. Approval by the Department will

be required 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 previously noted, 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 § 205.4(a), (b) and (d) into this section. Section 205.4(a) and (b) are currently covered under the requirements set forth in § 51.3(d). The Department has chosen not to repeat these requirements in § 204.2 (relating to building plans) in the interest of streamlining and avoiding duplication and confusion between the regulations. Section 205.4(d) is not being copied into § 204.2 because it is outdated. Requirements for the submission of building plans can be found on the Department's web site at <https://www.health.pa.gov/topics/facilities/safety/Pages/Review.aspx>.

§ 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 § 205.1 (relating to location or site) into subsection (a) without amendment. The Department proposes to copy the language from existing § 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 "employee" to reflect the current usage and spelling of that term. The Department proposes to copy the language from existing § 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.

§ 204.4. *Basement*

The Department proposes to copy language from § 205.7 (relating to basement or cellar), with minor changes. The Department proposes to delete outdated references to "cellar" and "cellars." The Department proposes to delete 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.

§ 204.5. *Resident rooms*

The Department proposes, in this section, to copy language from existing § 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 § 205.20 into subsection (a) of § 204.5 (relating to resident rooms), 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 § 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 § 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 § 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 § 205.72 (relating to furniture) without amendment, 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.

§ 204.6. *Locks*

The Department proposes to copy language from existing § 205.14 (relating to locks) into this section, without amendment. Under 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.

§ 204.7. *Laundry*

The Department proposes to copy language from existing § 205.26(e) (relating to laundry) into this section, with no amendment. 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 § 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.

§ 204.8. *Utility room*

The Department proposes to copy language from § 205.33(a) (relating to utility room) into this section, with two amendments. 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 § 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.

§ 204.9. *Bathing facilities*

The Department proposes to copy certain provisions from § 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 § 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 § 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 § 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.

§ 204.10. *Equipment for bathrooms*

The Department proposes to copy § 205.37 (relating to equipment for bathrooms), in its entirety, with two amendments. 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 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 § 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.

§ 204.11. *Toilet room equipment*

The Department proposes to copy language from § 205.39(b) (relating to toilet room equipment) into this section, with two amendments. 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.

§ 204.12. *Linen*

The Department proposes to copy language from § 205.74 (relating to linen) into this section without amendment. 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 § 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.

§ 204.13. *Supplies*

The Department proposes to copy language from existing § 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 ad-

equated 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.

§ 204.14. *Windows*

The Department proposes to copy existing language from § 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.

§ 204.15. *Dining*

The Department proposes to copy language from § 205.24(a) (relating to dining room) into this section, with one amendment. 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.

§ 204.16. *Lounge and recreation*

The Department proposes to copy language from § 205.27 (relating to lounge and recreation rooms) into this section, without amendment. 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.

§ 204.17. *Storage*

The Department proposes to copy language from § 205.31 (relating to storage) into this section, without amendment. 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 § 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.

§ 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 §§ 205.61—205.68 (relating to mechanical and electrical requirements). 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 6 months after the effective date of the final-form rulemaking. The Department proposes minimum changes to this Chapter as described as follows.

Buildings and Grounds

§ 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 previously described.

§ 205.7. *Basement or cellar*

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

§ 205.6. *Function of building*

The Department proposes to amend the term "employes" 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.

§ 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 6 months after the effective date of the final-form rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other amendments to this 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 the 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 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

§ 205.61. *Heating requirements for existing construction*

The Department proposes to delete the words "and new" from the title of this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other amendments to this section.

§ 205.62. *Special heating requirements for new construction*

The Department proposes to delete this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204.

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

The Department proposes to delete the words "and new" from the title of this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other amendments to this 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 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204.

§ 205.66. *Special ventilation requirements for new construction*

The Department proposes to delete this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204.

§ 205.67. *Electric requirements for existing construction*

The Department proposes to delete the words "and new" from the title of this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form rulemaking will be required to conform to the requirements in Chapter 204. The Department proposes no other amendments to this section.

§ 205.68. *Special electrical requirements for new construction*

The Department proposes to delete this section. Plans for alterations, renovations or construction approved 6 months after the publication date of the final-form 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

§ 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) (relating to food and nutrition services) and at F812 in *Appendix*

PP—Guidance to Surveyors for Long-Term Care Facilities from CMS State Operations Manual. The Department proposed to adopt the Federal requirements and *Appendix PP* in § 201.2 in the first proposed rulemaking. Under 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.

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 § 201.23, that are outdated and duplicative of the Federal requirements will streamline the survey process for long-term care nursing facilities. This, in turn, will create consistency and eliminate confusion in the application of the standards that apply to long-term care nursing facilities. The proposed deletion of Chapter 203 will also benefit the Department's surveyors and long-term care nursing facilities by eliminating duplication between State and Federal regulations to ensure a smooth and streamlined process. Separating new standards for alterations, renovations and construction from existing standards in Chapters 204 and 205, 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% (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 § 201.23 or § 207.4, to align with the Federal requirements.

The proposed deletion of Chapter 203 will also not increase costs for the county-owned facilities. 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 § 201.2. 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 and Chapter 205 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, for example, 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 § 201.23 that are duplicative of the Federal requirements. All but 3 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 § 201.23 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 § 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 § 207.4 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 will not increase costs. 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 § 201.2. 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 and Chapter 205 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 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, for example, 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 6 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 § 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 delete 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 web site.

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 (35 P.S. § 448.102), 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. 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.

Effectiveness / Sunset Date

Proposed Chapter 204, as well as the amendments to Chapter 205, will apply to plans for alterations, renovations or construction of long-term care nursing facilities approved 6 months after publication of the final-form 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.

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 House Health Committee and the Senate Health and Human Services 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

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 by e-mail to RA-DHLTCRegs@pa.gov. Persons without access to e-mail may submit comments, suggestions or objections to Lori Gutierrez, Deputy Director, Office of Policy, 625 Forster Street, Room 814, Health and Welfare Building, Harrisburg, PA 17120, (717) 317-5426. Persons with a disability may submit questions in alternative format such as by audio tape, Braille, or by using V/TT (717) 783-6514 or the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact Lori Gutierrez at the previously listed e-mail, 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).

ALISON BEAM,
Acting Secretary

Fiscal Note: 10-222. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART IV. HEALTH FACILITIES

Subpart C. LONG-TERM CARE FACILITIES

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

OWNERSHIP AND MANAGEMENT

§ 201.23. Closure of facility.

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

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

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

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

(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] (Reserved).

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

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

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, facility alterations, renovations and construction approved on or after _____ (*Editor's Note: The blank refers to the date 6 months after this regulation is published as a final-form rulemaking.*) shall comply with the 2018 edition of the Facility Guidelines Institute *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*.

(b) Facility alterations, renovations and construction 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 the 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) A licensee or prospective licensee shall have the opportunity to present and discuss with the Department its purposes and plans concerning the requested changes indicated on architectural plans submitted under

§ 51.3(d) (relating to notification). If differences occur and cannot be resolved, an administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(b) 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 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 facility that has not been occupied or used for 1 year or more may not be used by the facility for any purpose except as provided for in this section.

(e) If a facility intends to occupy or use a space that has been unoccupied or unused for 1 year or more, the occupancy or use shall be considered an alteration, renovation or construction and the facility shall submit architectural plans and blueprints related to its occupancy or use to the Department as required under § 51.3(d). The facility may not use or occupy the space unless approved by the Department.

§ 204.3. Buildings; general.

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

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

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

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

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

§ 204.4. Basement.

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

§ 204.5. Resident rooms.

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

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

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

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

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

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

§ 204.6. Locks.

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

§ 204.7. Laundry.

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

§ 204.8. Utility room.

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

§ 204.9. Bathing facilities.

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

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

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

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

§ 204.10. Equipment for bathrooms.

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

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

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

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

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

§ 204.11. Toilet room equipment.

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

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

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

§ 204.15. Dining.

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

§ 204.16. Lounge and recreation rooms.

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

§ 204.17. 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 and electrical.

Building systems, such as plumbing, heating, ventilation, air conditioning 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] (Reserved).

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

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

(c) The licensee or prospective licensee shall have the opportunity to present and discuss purposes and plans concerning the requested changes

indicated on the architectural plans with the Department. If differences occur and cannot be resolved, administrative hearing may be sought under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

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

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

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

(2) Mechanical and electrical drawings.

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

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

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

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

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

(8) Exterior elevation.

(9) Wall section, typical.

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

§ 205.6. Function of building.

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

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

MINIMUM PHYSICAL [PLANT] ENVIRONMENT STANDARDS

§ 205.7. Basement or cellar.

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

§ 205.21. Special care room.

(a) Provisions shall be made for isolating a resident as necessary in a single room which is ventilated to the outside [as set forth in § 205.66 (relating to special

ventilation requirements for new construction). For new construction, there shall be an adjoining private bathroom which contains a toilet, lavatory and either a standard size tub or a shower]

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

§ 205.22. Placement of beds.

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

MECHANICAL AND ELECTRICAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air Per Hour	Minimum Total Air Changes Per Hour	All Air Directly to Outdoors	Recirculated within 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

<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>
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, 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.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<i>Area</i>	<i>Footcandles</i>
Corridors and interior ramps	20
Stairways other than exits	30
Exit stairways and landings	5 on floor
Doorways	10
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Chapel or quiet area	30
Physical therapy	20
Occupational therapy	30
Worktable, coarse work	100
Worktable, fine work	200
Recreation area	50
Dining area	30
Resident care unit (or room) general	10
Resident care room, reading	30

<i>Area</i>	<i>Footcandles</i>
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Utility room, general	20
Utility room, work counter	50
Pharmacy area, general	30
Pharmacy, compounding and dispensing areas	100
Janitor's closet	15
Toilet and bathing facilities	30
Barber and beautician areas	50

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

MISCELLANEOUS PROVISIONS

§ 205.101. **Scope.**

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

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

HOUSEKEEPING AND MAINTENANCE

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

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

[Pa.B. Doc. No. 21-1691. Filed for public inspection October 8, 2021, 9:00 a.m.]