

Unpacking The New Department Of Health Regulations

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First Major DOH Regulatory Update Since 1999: Staggered Implementation Schedule

Effective Date	Regulatory Provisions	Citation to New Regulations
February 1, 2023	Change of ownership (CHOW) or new facility (SNF)—Must provide NOTICE to residents, staff and LTC Ombudsman	201.12a(a) and (c)(1)-(3)
July 1, 2023	2.87 minimum nurse staffing hours per patient day (PPD) and ratios	211.12(i)(1)
July 1, 2023	All regulations except those relating to CHOWs/licensure of new SNFs; license renewal requirements for audited annual financial statements	
October 31, 2023	CHOW/new SNF requirements; licensure renewal process	201.12, 201.12b, 201.13c(b) and (c), 201.12a(c)(4) and (d)
July 1, 2024	3.2 minimum nurse staffing PPD	211.12(f.1)(3) and (i)(2)

Preliminary Considerations

- PA Department of Health (DOH) incorporates by reference all the federal requirements of participation (ROPs) at 42 CFR Part 483, Subpart B as state licensure requirements for all SNFs *except*
 - Requirements regarding transmission of data and minimum data set (MDS) reporting to Centers for Medicare & Medicaid Services (CMS) do not apply to SNFS that do not participate in Medicare or Medicaid (“private pay only”)
 - Successful advocacy convinced DOH not to incorporate by reference surveyor guidance from the State Operations Manual (SOM)

CMP Inflation: 2016 to 2022

Scope/Severity	Per Day		Per Instance	
IJ: J/K/L Category 3 with IJ	2016	\$3,050 -- \$10,000	2016	\$1,050 -- \$10,000
	2022	\$6,888 -- \$22,584	2022	\$2,259 -- \$22,584
Category 3 without IJ	2016	\$3,050 -- \$10,000	2016	\$1,050 -- \$10,000
	2022	\$6,888 -- \$22,584	2022	\$2,259 -- \$22,584
Category 2: F/G/H/I	2016	\$50 -- \$3,000	2016	\$1,000 -- \$10,000
	2022	\$113 -- \$6,774	2022	\$2,259 -- \$22,584

Grounds to waive disapproval of nurse aide training program increases to \$11,292

<https://www.cms.gov/files/document/ltc-hha-clia-specific-cmp-adjustments-2022.pdf>

New NHA Requirements 201.18

- Nursing Home Administrator (NHA) must be licensed and registered in PA and work full-time
- Update job responsibilities to include:
 - Ensuring that a sanitary, orderly and comfortable environment is provided for residents through satisfactory housekeeping in the facility and maintenance of the building and grounds
 - Maintaining an ongoing relationship with the governing body, medical and nursing staff and other professional and supervisory staff through meetings and reports, *occurring as often as necessary, but at least on a monthly basis*

Quarterly Facility Assessments 201.14(j)

- Must be completed quarterly and more frequently as necessary and must meet the requirements of 483.70(e) [F838]
- Should be shared with governing body, medical and nursing staff and other professional and supervisory staff as indicated quarterly
- Must be facility-based and used to “determine what resources are necessary to care for ... residents competently during both day-to-day operations and emergencies”

Who Should Be Involved In Reviewing?

- NHA
- Representative from governing body
- Medical Director
- DON
- Environmental operations manager, and other department heads (for example, dietary manager, director of rehabilitation services, or other individuals including direct care staff should be involved as needed)
- Consider: Resident/Family Council, residents, resident representatives or families

F865 QAPI Program And Oversight

- Verify that governing body has oversight of the QAPI program
 - Individuals such as facility owner(s), Chief Executive Officer(s), or other individuals who are legally responsible to establish and implement policies regarding the facility's management and operations

F868 QAPI Committee

- Must include
 - Director of Nursing
 - Medical Director/designee
 - At least three other members of the facility's staff, at least one of who must be the administrator, owner, a board member or other individual in a leadership role
 - Infection Preventionist ("IP")
 - IP, or at least one of the individuals if there is more than one IP, must be a member of the quality assessment and assurance committee and report to the committee on the IPCP on a regular basis
 - "Regular basis": reporting should occur at the same frequency as the QAA committee meetings
- Must meet at least quarterly
- Must report to governing body

Interdisciplinary Team (IDT) 201.3/483.21

- Attending physician
- Registered nurse with responsibility for the resident
- Nurse aide with responsibility for the resident
- Member of food and nutrition services staff
- Resident and resident's representative(s)
 - Must document in medical record if participation of the resident and their resident representative is determined not practicable for the development of resident's care plan
- Other appropriate staff or professionals in disciplines as determined by resident's needs or as requested by resident

QAPI/Facility Assessment/ Compliance & Ethics Program

- Each informs the other to some extent
- Consider reviewing facility assessment at quarterly QAPI meetings
 - Standing agenda items
 - Annual agenda items

New Licensee Responsibilities 201.14

- Comply with all applicable Federal and State laws, rules, regulations and orders issued by the DOH and other Federal, State or local agencies
- Report serious incidents involving residents to DOH Field Office within 24 hours
- Keep most recent health inspection reports on file and upon request, make most recent report available to interested persons
- Return any personal property remaining at the facility within 30 days after discharge or death

Create Checklist For Personnel Records 201.19

(1) Employee's job description, educational background and employment history

(2) Employee performance evaluations, including documentation of any monitoring, performance, or disciplinary action

(3) Documentation of credentials, including, at a minimum, current certification, registration or licensure, if applicable

(4) A determination by a health care practitioner that the employee, as of the employee's start date, is free from the communicable diseases or conditions

(5) Records relating to a medical exam, if required, or attestation that the employee is able to perform the employee's job duties

(6) Documentation of employee's orientation to the SNF facility and the employee's assigned position prior to or within 1 week of employee's start date

(7) Documentation of employee's completion of required trainings, including documentation of orientation and other trainings.

(8) A copy of the final report received from the Pennsylvania State Police and the Federal Bureau of Investigation, as applicable, in accordance with the Older Adults Protective Services Act, the Adult Protective Services Act and applicable regulations

(9) In the event of a conviction prior to or following employment, documentation that the facility determined the employee's suitability for initial or continued employment in the position to which the employee is assigned. "Suitability for employment" shall include a review of the offense; the length of time since the individual's conviction; the length of time since incarceration, if any; evidence of rehabilitation; work history; and the employee's job duties

(10) The employee's completed employment application

New Staff Training Requirements 201.20

- Ongoing coordinated educational program planned and conducted for the development and improvement of skills of SNF's personnel, including, at a minimum, annual in-service training on the topics outlined in 42 CFR 483.95 in addition to the following topics:
 - Accident prevention
 - Restorative nursing techniques
 - Emergency preparedness
 - Fire and safety
 - Resident Rights, including nondiscrimination and cultural competency
 - Training needs identified through a facility assessment
- Employee orientation must include
 - Orientation to SNF
 - Orientation to SNF's policies
 - Orientation to employee's position and duties.
- Orientation training must include training on:
 - Prevention, detection and reporting of resident abuse
 - Dementia management
 - Communication skills

New Tuberculosis (TB) Requirements 201.22

(a) Must have a written TB infection control plan with established protocols which address risk assessment and management, screening and surveillance methods, identification, evaluation, and treatment of residents and employees who have a possible TB infection or active TB

(b) Recommendations of the Centers for Disease Control and Prevention (CDC), United States Department of Health and Human Services (HHS) shall be followed in screening, testing and surveillance for TB and in treating and managing persons with confirmed or suspected TB

New Closure Plan Requirements 201.23

- Identify who will be responsible for daily operation and management of SNF during the closure process
- Identify roles and responsibilities, and contact information, for SNF owner and NHA or any replacement or temporary manager during the closure process
- Assure no new residents will be admitted after written notice of closure is provided
- Provide plan for identifying and assessing potential transfer SNFs, including:
 - Interviewing each resident/resident representative, if applicable, to determine each resident's goals, preferences and needs
 - Offering the opportunity to each resident/resident representative to obtain information regarding options within the community
 - Providing residents/resident representatives with information or access to information regarding providers and services
- Identify communication and transfer plan for resident information, including medical records
- Explain ongoing operations and management of SNF, residents and staff during the closure process, including:
 - Payment of salaries and expenses
 - Continuation of appropriate staffing and resources to meet resident needs, including provision of medications, services, supplies and treatment
 - Ongoing accounting, maintenance and reporting of resident personal funds
 - Labeling, safekeeping and appropriate transfer of each resident's personal belongings
- Within 30 days of providing notice of closure, must make provisions for the safekeeping and confidentiality of medical records and give DOH a plan for the storage and retrieval of same [211.5(e)]

Closure Plan Requirements

Notice Requirements

- 75 days advance notice of closure with the closure plan to DOH for approval
- 60 days advance written notice of the proposed closure to the following:
 - Residents and their resident representatives, if applicable, in writing or in a language and manner they understand
 - Employees of the facility
 - Office of the State Long-term Care Ombudsman program
 - Pennsylvania Department of Human Services

Resident Protections

- No resident may be required to leave prior to 30 days following receipt of a written notice of the intent to close, except if DOH determines that removal of the resident at an earlier time is necessary for health and safety
- If orderly transfer of the residents cannot occur safely within 30 days, DOH may require SNF to remain open an additional 30 days
- DOH may monitor the transfer of residents
- Licensee of a facility must file proof of financial responsibility with DOH to ensure that the SNF continues to operate in a satisfactory manner until closure of the facility

Update Admissions Agreements 201.24

- Replace “responsible person” with “Resident Representative”
 - An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications
 - A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social or other personal information of the resident; manage financial matters; or receive notifications
 - Legal representative, as used in section 712 of the Older Americans Act
 - Court-appointed guardian or conservator of a resident
 - 483.5

Revise Admission Policies And Procedures 201.24

- *Governing body* must establish written policies for admissions process, and *through the NHA*, shall be responsible for the development of and adherence to procedures implementing the policies. Policies and procedures must include all the following, with social worker responsible to:
 - Introduce residents to at least one member of the professional nursing staff for unit where resident will be living and to direct care staff who have been assigned to care for the resident. Prior to introductions, the professional nursing and direct care staff shall review the orders of the physician or other health care practitioner for the resident's immediate care **within 2 hours**
 - Orient resident to the SNF and location of essential services and key personnel, including the dining room, nurses' workstations and offices for the social worker and grievance or complaint officer **within 2 hours**
 - Describe SNF routines (including nursing shifts, mealtimes, posting of menus) **within 24 hours**
 - Discuss and document resident's customary routines and preferences to be included in the comprehensive care plan **within 24 hours**
 - Assist resident in creating a homelike environment and settling and securing personal possessions in the room to which the resident has been assigned **within 72 hours**

Resident Rights Expanded 201.29

- Must include resident or a resident representative in the development, implementation and review of policies and procedures regarding resident rights and responsibilities
- Must obtain and file resident's written acknowledgement they received personal notification of resident's rights in medical record
- Experimental research (redefined to include development, testing and use of a clinical treatment, such as an investigational drug or therapy that has not yet been approved by US Food and Drug Administration or medical community as effective and conforming to medical practice) must be submitted and approved by DOH

Revise Resident Rights' Notices

- A resident has the right to care without discrimination based upon race, color, familial status, religious creed, ancestry, age, sex, gender, sexual orientation, gender identity or expression, national origin, ability to pay, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the resident or because the resident is a handler or trainer of support or guide animals
- DOH template available at <https://www.health.pa.gov/topics/Documents/Facilities%20and%20Licensing/Exhibit%20A%20-%20Resident%20Rights%20Template.pdf>

How Much Notice Of Changes Is Required?

483.10(g)(18)(ii)

- (ii) Where changes are made to charges for other items and services that the facility offers, the facility must inform the resident in writing **at least 60 days prior** to implementation of the change

201.29 (c.3)(1)

- In addition to the resident rights set forth in 42 CFR 483.10, residents have a right to the following:
 - (1) If changes in charges occur during the resident's stay, the resident, or resident representative, shall be advised verbally and in writing reasonably in advance of the change. "Reasonably in advance" shall be interpreted to be **30 days prior** to the change unless circumstances dictate otherwise

Physical Plant



Life Safety Code And Related Building Issues

- Existing Chapter 203 is “Reserved”
- Chapter 204 new Life Safety requirements after July 1, 2023
- Chapter 205 “Physical Environment and Equipment Standards” applies to facility construction, alteration or renovation approved by DOH before July 1, 2023
 - Very few changes from existing regulations
- Chapter 207 “Housekeeping & Maintenance” is “Reserved”
- Chapter 209 “Fire Protection & Safety”
 - Smoking policies must protect rights of smoking and nonsmoking residents

Physical Environment And Equipment Standards

Chapter 204 (Post-July 1, 2023)

- Construction, alteration or renovation (CAR) approved on or after July 1, 2023 shall comply with the 2018 edition of the Facility Guidelines Institute (FGI) Guidelines for Design and Construction of Residential, Health, Care, and Support Facilities
- CAR shall meet the requirements in effect on date DOH approves SNF's plans for CAR
- Must get DOH approval before using an area for resident care when that area has not been occupied or used by residents for one year or more
- Residents can choose where they want their bed unless the placement presents a safety hazard
 - Bed may not be placed close to a radiator, heat vent, air conditioner, direct glare of natural light or draft unless resident chooses and placement does not pose a safety hazard
- At least one airborne infection isolation room for isolating residents as necessary to prevent the spread of airborne infections

More Flexibility For Location 201.17

- Allows SNF to be located in a building with other providers and to share services
 - Other provider is licensed, as applicable
 - Provider operates or provides other health-related services, such as personal care, home health or hospice services
 - Shared services may include services such as laundry, pharmacy and meal preparations
 - SNF shall be operated as a unit distinct from other health-related services

PROGRAM STANDARDS



New Requirements Chapter 211

- Must report bed bug infestations 211.1
- Written postmortem policies shall be available to all personnel 211.4
- Menus must be planned and posted in the facility or distributed to residents at least 2 weeks in advance 211.6

Update Medical Director Contract: New Duties 211.2

Must complete 4 hours annually of continuing medical education (CME) pertinent to the field of medical direction or post-acute and long-term care medicine

NEW RESPONSIBILITIES

- Ensuring the appropriateness and quality of medical care and medically related care
- Assisting in the development of educational programs for facility staff and other professionals
- Working with the facility's clinical team to provide surveillance and develop policies to prevent the potential infection of residents in accordance with the infection control requirement under 42 CFR 483.80 (relating to infection control)
- Cooperating with facility staff to establish policies for assuring that the rights of individuals are respected
- Supporting and promoting person-directed care such as the formation of advance directives, end-of-life care, and provisions that enhance resident decision making, including choice regarding medical care options
- Identifying performance expectations and facilitating feedback to physicians and other health care practitioners regarding their performance and practices
- Discussing and intervening, as appropriate, with a health care practitioner regarding medical care that is inconsistent with current standards of care
- Assisting in developing systems to monitor the performance of health care practitioners, including mechanisms for communicating and resolving issues related to medical care and ensuring that other licensed practitioners who may perform physician-delegated tasks act within their scope of practice

Verbal And Telephone Orders 211.3

- Verbal and telephone orders for care and treatment must be dated and countersigned with the original signature of the physician, or physician's delegee within 72 hours of receipt of the order
- Verbal and telephone orders for medications must be dated and countersigned by the prescribing physician, or physician's delegee within 48 hours
- An initial written order as well as a countersignature may be sent by a fax or secure electronic transmission which includes the practitioner's signature
- Must have a policy on fax or secure electronic transmissions



Changes To Medical Records 211.5

- Removes reference to making records available to Dept. of Aging Ombudsman Program
 - Release allowed for public health activities, reporting of abuse, neglect, or domestic violence, health oversight activities, judicial and administrative proceedings, law enforcement purposes, organ donation purposes, research purposes, or to coroners, medical examiners, funeral directors, and to avert a serious threat to health or safety (§483.70(i)(2)(iv); F842)
- Clarifies that written consent is not necessary for release of medical record for treatment purposes
- 7-year retention removed
 - Retain for 5 years for an adult, 3 years after resident reaches legal age for a minor (§483.70(i)(4); F842)
 - ... but consider other retention requirements that may be imposed by payers

Restraints 211.8

- Must have an order and use least restrictive method for least amount of time to safely and adequately respond to individual resident needs in accordance with resident's comprehensive assessment and comprehensive care plan
 - When a recurring restraint is ordered, document the need for the restraint and the *personnel responsible* for performing the intervention *on each shift*
 - Document type of restraint and *each time* a restraint is used or removed
 - In determining the least restrictive method for the least amount of time, the following minimums apply
 - ▶ Physical restraints shall be removed at least 10 minutes out of every 2 hours during normal waking hours to allow resident an opportunity to move and exercise
 - ▶ During normal waking hours, resident's position shall be changed at least every 2 hours

Pharmacy Services 211.9

- Must have orders from attending physician or physician's delegee for prescription and non-prescription medications
- Written policies and procedures for disposition of medications must address:
 - Timely and safe identification and removal of medications for disposition
 - Identification of storage methods for medications awaiting final disposition
 - Control and accountability of medications awaiting final disposition consistent with standards of practice
 - Documentation of actual disposition of medications to include the name of the individual disposing of the medication, the name of the resident, the name of the medication, the strength of the medication, the prescription number if applicable, the quantity of medication and the date of disposition
 - A method of disposition to prevent diversion or accidental exposure consistent with applicable Federal and State requirements, local ordinances and standards of practice

Emergency Medication Kits 211.9(I)

- Must have written policies and procedures for the use, content, storage, *security*, refill of and *inventory tracking* for the kits
- Quantity and categories of medications and equipment in the kits must be based on the immediate needs of the facility
- Criteria for the contents of the emergency medication kit shall be reviewed not less than annually
- Kits shall be under the control of a practitioner authorized to dispense or prescribe medications
- No longer required to have a breakaway lock

Resident Care Policies 211.10

- Policies must reflect awareness of and provision for meeting resident's total medical, *nursing*, *mental* and psychosocial needs
- Review annually and update
- Refer to federal requirements

211.12 Nursing Services

- Full-time RN as DON (referencing 483.35(b)(2))
 - Cannot be DON anywhere else
- Must have charge nurse who is responsible for overseeing total nursing activities on each tour of duty each day of the week
- Must have nursing service personnel on each resident floor

LPN Charge Nurses?

- New limitation – An LPN can only be designated as a charge nurse on the night tour of duty in a SNF with a census of 59 or less in accordance with 211.12 (which requires an RN who is on call and within 30 minutes driving distance)
 - *Note DOH more restrictive than ROP/SOM which defines "Charge Nurse" as a "licensed nurse" with specific responsibilities designated by the facility that may include staff supervision, emergency coordinator, physician liaison, as well as direct resident care*
- REVIEW current positions: Cannot use LPNs as charge nurses unless you meet shift, census and distance requirements

What Is Full-Time?

- F727: “Full-time” is working 40 or more hours a week
- 201.3: Full-time – A minimum of a 35-hour work week
- NHA, DON, qualified social worker

Nurse Staffing And PPDs

Eff. Date	Day Shift	Evening Shift	Overnight	All Shifts
7/1/2023	1 aide/12 residents 1 LPN/25 residents Charge Nurse	1 aide/12 residents 1 LPN/30 residents Charge Nurse	1 aide/20 residents 1 LPN/40 residents Charge Nurse Note: may substitute an LPN for an RN only if census is <59 and RN is on-call and within 30-minute drive	1 RN/250 residents Note: may substitute an LPN or RN for an aide, or an RN for an LPN
7/1/2023	2.87 PPD direct resident care over 24-hour period			
7/1/2024	1 aide/10 residents	1 aide/11 residents	1 aide/15 residents	
7/1/2024	3.2 PPD direct resident care over 24-hour period			

Social Services 211.16

- Must employ a full-time qualified social worker except
 - SNFs with 26-59 beds may employ a part-time qualified social worker if facility assessment indicates that a full-time qualified social worker is not needed
 - SNF with 25 beds or less may either employ a part-time qualified social worker or share the services of a qualified social worker with another facility

Pet Therapy 211.17

- Written policies and procedures to ensure
 - Animals are up to date on vaccinations, are in good health and do not pose a risk to the health and safety of residents
 - Animals and places where they reside or visit are kept clean and sanitary
 - Infection prevention and control measures, such as hand hygiene, are followed by residents and personnel when handling animals

Elopement And Other Definitional Issues



Elopement

Old DOH Definition	New DOH Definition	F689 Guidance
<p>When a resident <i>leaves the facility without</i> the facility staff being <i>aware</i> that the resident has done so</p>	<p>When a resident leaves the premises or a safe area <i>without authorization</i></p>	<p>A situation in which a resident leaves the premises or a safe area <i>without the facility's knowledge and supervision</i>, if necessary, would be considered an elopement</p>

Review Your Policies To Make Sure You Have The Current Definitions

Abuse (as defined in 42 CFR 483.5)

- Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

Sexual Abuse

- Non-consensual contact of any type with a resident, including sexual harassment, sexual coercion or sexual assault.

Mental Abuse

- Includes humiliation, harassment, threats of punishment or deprivation.

Review Your Policies To Make Sure You Have The Current Definitions

Involuntary Seclusion

- Separation of a resident from other residents or from the resident's room or confinement with or without roommates against the resident's will, or the will of the resident's representative, excluding emergency or short term monitored separation from other residents for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs

Neglect (as defined in 42 CFR 483.5)

- Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

Review Your Policies To Make Sure You Have The Current Definitions

Exploitation (as defined in 42 CFR 483.5)

- Exploitation means taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion

Intimidation (as defined in Section 3 of the Older Adults Protective Services Act - 35 P.S. § 10225.103)

- An act or omission by any person or entity toward another person which is intended to, or with knowledge that the act or omission will, obstruct, impede, impair, prevent or interfere with the administration of this act or any law intended to protect older adults from mistreatment

Understand The Difference

Serious Bodily Injury

Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ

Serious Physical Injury

An injury that:

- causes a person severe pain; or
- significantly impairs a person's physical functioning, either temporarily or permanently

Review Restraint Policy

- Physical restraint includes any manual method, physical or mechanical device, equipment or material that is attached or adjacent to the resident's body, *cannot be removed easily by the resident*, and restricts the resident's freedom of movement or normal access to the resident's body
- Chemical restraint includes any medication that is used for discipline or convenience and not required to treat medical symptoms

Licensure And Enforcement



Levels Of Compliance

- Full compliance – means total compliance
- Substantial compliance means that:
 - (1) Any cited deficiencies are, individually and in combined effect, of a minor nature such that neither the deficiencies nor efforts toward their correction will interfere with or adversely affect normal facility operations or adversely affect any resident's health or safety
 - (2) SNF has implemented a plan of correction approved by DOH

Regular License 201.13a

- Must be in full compliance with 35 PS 448.808
 - The health care provider is a responsible person
 - The place to be used as a health care facility is adequately constructed, equipped, maintained and operated to safely and efficiently render the services offered
 - The health care facility provides safe and efficient services which are adequate for the care, treatment and comfort of the patients or residents of such facility
 - There is **FULL OR** substantial compliance with the rules and regulations adopted by DOH pursuant to this Act

DOH Enforcement Actions 201.15a

- Requiring a plan of correction
- Issuance of a provisional license
- License revocation
- Appointment of a temporary manager
- Limitation or suspension of admissions to the facility
- Assessment of fines or civil monetary penalties

Appeals 201.15b

- Appeal a final order or determination to Health Policy Board within 30 days
 - Appeal does not stay the enforcement action
- Appeal is not an informal dispute resolution (IDR)

Action Steps

- Develop a work plan
- Review and revise job descriptions
- Review and revise medical director's contract
- Review and revise admissions agreement and processes
- Review and revise policies and procedures
- Review staffing

Don't Ignore The CHOW Regulations



- DOH has disguised new license renewal requirements in the CHOW regulations
- CMS is cracking down on providers that do not update 855 information timely or accurately
- DHS revalidations are hitting roadblocks
- Who is completing your information?

Medicare Requires SNFs To Report

- A change of ownership or control, including changes in authorized official(s) or delegated official(s) within 30 days
- All other changes to enrollment must be reported within 90 days
- *See* 42 CFR §424.516(e)

DOH CHOW Regulations § 201.12(b)(1)

(1) The names, addresses, e-mail addresses and phone numbers of any person who meets any of the following:

- (i) Has or will have a $\geq 5\%$ direct or indirect ownership interest in the facility
- (ii) Holds or will hold the license or ownership interest in the land on which the facility is located or the building in which the facility is located
- (iii) Owns or will own a whole or part interest in any mortgage, deed, trust, note or other long-term liability secured in whole or in part by the equipment used in the facility, the land on which the facility is located or the building in which the facility is located

DOH CHOW Regulations § 201.12(b)(2)(3)

(2) If a person identified in paragraph (1) is a nonprofit corporation, a complete list of the names, addresses, e-mail addresses and phone numbers of the officers and directors of the corporation and an exact copy of its charter and articles of incorporation on file with Department of State as well as amendments or changes

(3) If a person identified in paragraph (1) is a partnership, the names, addresses, e-mail addresses and phone numbers of partners

DOH CHOW Regulations § 201.12(b)(4)(5)(6)

(4) Administrator's (NHA) address, e-mail address, phone number and license number

(5) Names, addresses, e-mail addresses and phone numbers of any persons who have or will have an interest in management of facility

(6) Names, addresses, e-mail addresses and phone numbers of the facility's officers and members of the board of directors

DOH CHOW Regulations § 201.12(b)(7)

(7) Names, addresses, e-mail addresses and phone numbers of the following:

- (i) A parent company
- (ii) A shareholder
- (iii) A related party of the persons identified in paragraphs (1) through (6)

PA Related Parties § 201.12(c)(1)-(8)

Person that provides a service, facility or supply to a facility or that is under common ownership or control, as defined in 42 CFR 413.17(b) (relating to cost to related organizations), including:

(1) A home office	(5) A provider of supplies and equipment
(2) A management organization	(6) A financial advisor or consultant
(3) An owner of real estate	(7) A banking or financial entity
(4) An entity that provides staffing, therapy, pharmaceutical, marketing, administrative management, consulting, insurance or similar services	(8) A parent company, holding company, or sister organization

DOH CHOW Regulations § 201.12(b)(8)

- (8) An annual financial report which must include:
 - (i) Audited financial statements prepared in accordance with generally accepted accounting principles (GAAP)
 - ▶ Must provide consolidated financial statements if required by GAAP
 - (ii) A visual representation of current ownership structure, including parent companies, shareholders, and any related parties of persons identified in § 201.12 (b)(1) through (6)
 - (iii) A supplemental schedule of annual gross revenues, prepared in accordance with GAAP, broken out by payor type

DOH CHOW Regulations § 201.12(b)(9)(10)

(9) A list of every licensed long-term care nursing facility in any state, the District of Columbia or territory, in which the prospective licensee *has or has had* a $\geq 5\%$ direct or indirect interest in the ownership, management or real property

(10) The prospective licensee's licensing and regulatory history in all jurisdictions where the prospective licensee has or has had a $\geq 5\%$ direct or indirect ownership interest in a facility

DOH CHOW Regulations § 201.12(b)(11)(12)

(11) A detailed summary of adjudicated or settled civil actions or criminal actions filed against the prospective licensee

(12) A list of any persons in § 201.12(b)(1) who have experienced financial distress that resulted in a bankruptcy, receivership, assignment, debt consolidation or restructuring, mortgage foreclosure, corporate integrity agreement, or sale or closure of a long-term care nursing facility, the land it sits on or the building in which it is located

DOH CHOW Regulations § 201.12(b)(13)(14)

- (13) Identification of whether an immediate family member relationship exists between a prospective licensee, a person under § 201.12(b)(1) and a person under § 201.12(b)(7)

- (14) Any additional information the Department may require

Who Is An Immediate Family Member? § 201.12(d)

- Spouse
- Biological parent
- Biological child
- Sibling
- Adopted child
- Adoptive parent
- Stepparent
- Stepchild
- Stepsibling
- Father-in-law
- Mother-in-law
- Sister-in-law
- Brother-in-law
- Son-in-law
- Daughter-in-law
- Grandparent
- Grandchild

Additional CHOW Submissions § 201.12(e)

- (1) A proposed staffing and hiring plan, including management and oversight staff, the structure of facility's governing body and its participants
- (2) A proposed training plan for staff
- (3) A proposed emergency preparedness plan
- (4) Proposed standard admissions agreements
- (5) A detailed budget for 3 years of operations, prepared in accordance with GAAP, and evidence of access to sufficient capital needed to operate the facility in accordance with the budget and the facility assessment

CHOW Notice Requirements In Effect Now

- Must provide NOTICE to residents and their representatives, staff and LTC Ombudsman at same time DOH application is submitted
 - Name and address of SNF
 - Name and address of prospective licensee
 - Contact information for the State Long Term Care ombudsman
 - §§ 201.12a(a), (b), and (c)(1)-(3)

10-Day Public Comment Period For CHOWs Starts 10/31

- Notice must also include statement that an application for licensure has been submitted to DOH and more information regarding the application, including the ability to comment, may be found on DOH's website
- DOH will post notice of the receipt of an application for license of a new facility or CHOW on its website
- Copy of the completed application form will also be posted
- 10-day public comment period starts when the DOH posting is made
- §§ 201.12a(c)(4) and (d)

New Filing Requirements 201.12/201.18

- Must be submitted with CHOW and with licensure renewal
- Audited financial statements prepared in accordance with generally accepted accounting principles (GAAP)
 - If GAAP requires consolidated financial statements, then consolidated statements must be provided
- A visual representation of the current ownership structure, which shall include parent companies, shareholders, and any related parties of the persons identified in paragraphs (1) through (6)
- A supplemental schedule of annual gross revenues, prepared in accordance with GAAP broken out by payor type

New License Renewal Requirements

1

Governing body must report changes to any info in § 201.18(b)(1)-(6) within 30 days per § 201.18(c)

2

Submit an updated annual financial report that meets requirements of § 201.12(b)(8) (relating to application for license of a new SNF or CHOW)

3

File an application to renew license and the updated financial report at least 21 days before the expiration of the current license, unless otherwise directed by DOH

Governing Body Must Report Changes Within 30 Days

201.18(c) (Starting When Not Clear)

(1) The names, addresses, e-mail addresses and phone numbers of any person who meets any of the following:

- (i) Has or will have a direct or indirect ownership ≥ 5 percent interest in the **facility**
- (ii) Holds or will hold the license or ownership interest in the **land** on which the facility is located or the **building** in which the facility is located
- (iii) Owns or will own a **whole or part interest** in any mortgage, deed, trust, note or other long-term liability **secured in whole or in part** by the equipment used in the facility, the land on which the facility is located or the building in which the facility is located

(2) If a person identified in ¶ (1) is a nonprofit corporation, a complete list of the names, addresses, e-mail addresses and phone numbers of the officers and directors of the corporation and an exact copy of its charter and articles of incorporation which are on file with the Department of State as well as amendments or changes

(3) If a person identified in ¶ (1) is a partnership, the names, addresses, e-mail addresses and phone numbers of partners

(4) Name, address, e-mail address, phone number and license number of the administrator (NHA)

(5) Names, addresses, e-mail addresses and phone numbers of any persons who have or will have an interest in the management of the facility

(6) Names, addresses, e-mail addresses and phone numbers of the facility's officers and members of the board of directors

DOH Review Of CHOW Application

- Upon completion of its evaluation, DOH will approve or deny the application and post notice of decision on its website
 - Note: unclear what DOH is going to do with relicensure info
- DOH will consider the following:
 - Prospective licensee's past performance related to owning or operating a facility in PA or other jurisdictions
 - Prospective licensee's demonstrated financial and organizational capacity and capability to successfully perform the requirements of operating a facility
 - Prospective licensee's demonstrated history and experience with regulatory compliance, including evidence of consistent performance in delivering quality care
 - Comments submitted under § 201.12a(d)

Ownership Definitional Issues

- Licensee: The individual, partnership, association or corporate entity including a public agency or religious or fraternal or philanthropic organization authorized to operate a licensed facility 201.3
- Person: A natural person, corporation (including associations, joint stock companies and insurance companies), partnership, trust, estate, association, the Commonwealth, and any local governmental unit, authority and agency thereof 201.3
- Owner may be an individual, a partnership, an association, a corporation or combination thereof 201.11
- A person may not operate or assume ownership without a license 201.12(a.1)

Questions?

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