

Pennsylvania Department of Health  
Long Term Care Facility Regulations  
July 1, 2023 Effective Date  
Frequently Asked Questions

**28 Pa. Code 201.11 Types of ownership**

*The owner of a facility may be an individual, a partnership, an association, a corporation or combination thereof.*

Q: Will DOH include LLCs with “corporations”?

A: The term corporation covers all types of ownership entities.

**28 Pa. Code 201.12 Application for license**

*(a) An application for a license to operate a facility shall be made under section 807 of the act (35 P. S. § 448.807). The application form shall be obtained from the Division of Nursing Care Facilities, Bureau of Quality Assurance, Department of Health. (b) The following shall be submitted with the application for licensure: (1) The names and addresses of a person who has direct or indirect ownership interest of 5% or more in the facility as well as a written list of the names and addresses of the facility’s officers and members of the board of directors. (2) If the owner is a nonprofit corporation, a complete list of the names and addresses 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 the owner is a partnership, the names and addresses of partners. (4) The name, address and license number of the administrator.*

Q: In the event the applicant is an LLC, does DOH still require submission of the Operating Agreement and the Managers/Members (if applicable)?

A: An LLC is a hybrid corporation/partnership and includes elements of each. Until the Health Care Facilities Act is amended by the legislature, LLCs are considered analogous to corporations in the regulations.

**28 Pa. Code 201.14(j) Responsibility of licensee**

*(j) The facility shall conduct a facility-wide assessment that meets the requirements of 42 CFR 483.70(e) (relating to administration), as necessary, but at least quarterly. Interpretive Guidelines The facility-wide*

*assessment should be shared with the governing body, medical and nursing staff and other professional and supervisory staff as indicated quarterly.*

Q: Are the facility assessments required to go to the Board of Directors quarterly as well?

A: As indicated in the Interpretive Guidelines, the facility-wide assessment should be shared with the governing body, medical and nursing staff and other professional and supervisory staff as indicated quarterly.

### **28 Pa. Code 201.18(e)(3) Management**

*(e) In addition to the requirements under 49 Pa. Code § 39.91 (relating to the standards of professional practice and professional conduct for nursing home administrators), the administrator's responsibilities shall include the following: (3) 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.*

Q: If the governing body only meets quarterly, can simple reports dated monthly and presented quarterly suffice?

A: The governing body is required to meet monthly. Virtual meetings do count as a monthly meeting. The minutes/notes from meetings will be accepted as a monthly report.

Q: Is a report alone sufficient, or does a formal meeting need to take place on a monthly basis? Is a quarterly meeting with all of the above-mentioned parties sufficient if there are reports sent each month in between?

A: Meetings and reports must occur at least on a monthly basis.

### **28 Pa. Code 201.19(6) Personnel policies and procedures**

*Personnel records shall be kept current and available for each facility employee and contain all of the following information: (6) Documentation of the employee's orientation to the facility and the employee's assigned position prior to or within 1 week of the employee's start date.*

Q: Does this mean an orientation checklist has to be completed within one week?

A: The facility needs to provide documentation of the employee's orientation to the facility and the assigned position prior to or within a week of their start date.

### **28 Pa. Code 201.20 Staff development**

*(a) There shall be an ongoing coordinated educational program which is planned and conducted for the development and improvement of skills of the facility's personnel, including, at a minimum, annual in-*

service training on the topics outlined in 42 CFR 483.95 (relating to training requirements) in addition to the following topics:

(1) Accident prevention.

*Interpretive Guideline:*

*Personnel training on the topic of “accident prevention” should include the prevention of accidents to both residents and staff.*

(2) Restorative nursing techniques.

(3) Emergency preparedness in accordance with 42 CFR 483.73(d) (relating to emergency preparedness).

(4) Fire prevention and safety in accordance with 42 CFR 483.90 (relating to physical environment).

(5) Resident rights, including nondiscrimination and cultural competency.

(6) Training needs identified through a facility assessment.

(b) An employee shall receive appropriate orientation to the facility, its policies and to the position and duties. The orientation shall include training on the prevention, detection and reporting of resident abuse and dementia management and communication skills.

(c) [Reserved].

(d) Written records shall be maintained which indicate the content of and attendance at staff development programs.

Q: 28 Pa. Code 201.20 outlines the requirements for documents maintained in the employee files. Our orientation and training records are maintained in our staff development department. Should a copy of this information also be included in each employee file?

A: 28 Pa. Code 201.19 requires certain documentation in the employee's personnel record, one of which is “(7) Documentation of the employee's completion of required trainings under this chapter, including documentation of orientation and other trainings.”

### **28 Pa. Code 201.22 Prevention, control and surveillance of tuberculosis (TB).**

*Prevention, control and surveillance of tuberculosis (TB). (a) The facility shall 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.

*Interpretive Guidelines: The TB infection control plan includes residents and employees and the facility must follow the CDC guidelines and utilize an approved method of management, screening and surveillance. For existing facilities that currently have exceptions, the Department will review the existing exception during its annual licensure survey and will remove the exception from prior to July 1, 2023 as it will not be necessary after July 1, 2023 with the updated guidance above.*

CDC website: [TB Screening and Testing of Health Care Personnel | TB | CDC](#)

Q: We are seeking guidance about the stance with TB testing for new hires since the screening is now deferring to CDC guidance.

A: Per the CDC guidelines, All health care personnel should be screened for TB upon hire. TB screening includes: a baseline individual TB risk assessment; TB symptom evaluation; A TB test (blood test or skin test; and additional evaluation for TB as needed. There are 2 types of tests for TB infection - the skin test and the blood test (BAMT). If the Mantoux tuberculin skin test (TST) is used to test health care personnel upon hire, two-step testing should be used. Annual Screening, Testing, and education - per the CDC, annual TB testing of health care personnel is not recommended unless there is a known exposure or ongoing transmission. Facilities should consider using annual TB screening for certain groups at increased occupational risk for TB exposure or in certain settings. All health care personnel should receive TB education annually, which should include information on TB risk factors, signs/symptoms of TB and TB infection control policies and procedures.

Q: I have several facilities that have a waiver for Mantoux testing on employees. The waiver allows for the initial first step to be completed prior to employment, and the second to occur after employment. Will this waiver be ended on July 1, or may we have this be reviewed to be continued?

Will those facilities which have the IGRA waiver to use the blood test rather than the two step be affected? If not, can other facilities apply for the IGRA blood test waiver moving forward?

The Mantoux two-step process presents a delay in hiring, which could lead to staff choosing other employment, which could be detrimental with the staffing challenges we face.

A: The following is directly from the CDC Guidelines on Preventing the Transmission of TB in Healthcare Settings, Vol. 54 / RR-17 Recommendations and Reports.

#### Baseline Testing with BAMT

For the purposes of establishing a baseline, a single negative BAMT result is sufficient evidence that the health care worker (HCW) is probably not infected with *M. tuberculosis*. However, cautions regarding making medical care decisions for persons whose conditions are at increased risk for progressing to TB disease from *M. tuberculosis* infection have been presented.

If BAMT is used for baseline testing of HCWs, including those in settings that are low risk, one negative BAMT result is sufficient to demonstrate that the HCW is not infected with *M. tuberculosis*. Perform and document the baseline BAMT result preferably within 10 days of starting employment. HCWs with positive baseline results should be referred for a medical and diagnostic evaluation to exclude TB

disease and then treatment for LTBI should be considered in accordance with CDC guidelines. Persons with a positive BAMT result do not need to be tested again for surveillance. For HCWs who have indeterminate test results, providers should consult the responsible laboratorian for advice on interpreting the result and making additional decisions.

Page 81 of the FAQ section of the CDC Guidelines:

What procedure should be followed for a newly hired HCW who had a documented negative TST result 3 months ago at their previous job?

This person should receive one baseline TST upon hire (ideally before the HCW begins assigned duties). The negative TST result from the 3 months preceding new employment (or a documented negative TST result anytime within the previous 12 months) should be considered the first step of the baseline two-step TST. If the HCW does not have documentation of any TST result, the HCW should be tested with baseline two-step TST (one TST upon hire and one TST placed 1–3 weeks after the first TST result was read).

The baseline test for HCWs can be done as a single blood test (QuantiFERON or Spot), within 10 days of start or if the TST is used, it has to be 2-step and if the employee has record of one completed in the previous 12 months, that can be accepted as the first step.

Q: Does deferring to the CDC guidance regarding TB surveillance also apply to new hire process?

A: Yes, see above answer.

Q: With the new TB regulations will current waivers for TB testing still be honored?

A: Exceptions were granted when the state regulation did not provide the same options as the CDC guidelines. Once the updated regulation is effective, exceptions will no longer be necessary and will be removed from facility license upon the annual review of the licensure application.

### **28 Pa. Code 201.24 Admission policy.**

*(a) The resident is not required to name a resident representative if the resident is capable of managing the resident's own affairs.*

*(b) A facility may not obtain from or on behalf of residents a release from liabilities or duties imposed by law or this subpart except as part of formal settlement in litigation.*

*(c) A facility shall admit only residents whose nursing care and physical needs can be provided by the staff and facility.*

*(d) A resident with a disease in the communicable stage may not be admitted to the facility unless it is deemed advisable by the attending physician—medical director, if applicable—and administrator and unless the facility has the capability to care for the needs of the resident.*

*(e) The governing body of a facility shall establish written policies for the admissions process for residents, and through the administrator, shall be responsible for the development of and adherence to procedures implementing the policies. The policies and procedures shall include all of the following:*

(1) Introduction of residents to at least one member of the professional nursing staff for the unit where the 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.

(2) Orientation of the resident to the facility and location of essential services and key personnel, including the dining room, nurses' workstations and offices for the facility's social worker and grievance or complaint officer.

(3) A description of facility routines, including nursing shifts, mealtimes and posting of menus.

(4) Discussion and documentation of the resident's customary routines and preferences, to be included in the care plan developed for the resident under 42 CFR 483.21 (relating to comprehensive person-centered care planning).

(5) Assistance to the resident in creating a homelike environment and settling and securing personal possessions in the room to which the resident has been assigned.

*Interpretive Guidelines: Refer to 42 CFR 483.10 for information on homelike environment SOM - Appendix PP (cms.gov)*

(f) The coordination of introductions, orientation and discussions, under subsection (e), shall be the responsibility of the facility's social worker, or a delegee designated by the governing body. The activities included under subsection (e)(1) and (2) shall occur within 2 hours of a resident's admission. The activities included under subsection (e) (3) and (4) shall occur within 24 hours of a resident's admission. The activities included under subsection (e)(5) shall occur within 72 hours of a resident's admission.

Q: The new regs say within 72 hours, must assist resident in creating a homelike environment. What needs to be done to meet this?

A: Refer to 42 CFR 483.10 for guidance on a homelike environment.

## **28 Pa. Code 201.29 (c.3)(1) Resident rights**

*(c.3) 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. If a facility requires a security deposit, the written procedure or contract that is given to the resident, or resident representative, shall indicate how the deposit will be used and the terms for the return of the deposit. A security deposit is not permitted for a resident receiving medical assistance.*

Q: Do we have to give 60 days' notice of changes or 30 days?

28 Pa. Code 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...

42 CFR 483.10(g)(18)(ii) states: “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.

A: The Federal requirements provide for two separate notices related to charges under 42 CFR 483.10(g)(10). Under 42 CFR 483.10(g)(i), a facility is required to provide notice “as soon as is reasonably possible” when changes in coverage are made to items and services covered by Medicare or MA. Under 42 CFR 483.10(g)(ii), a facility is required to inform the resident at least 60 days prior to implementation of a change when changes are made to charges for other items and services that the facility offers. The 60-day notice period under 42 CFR 483.10(g)(ii), therefore only applies to charges for items and services not covered by Medicare or MA.

### **28 Pa. Code 201.29(a) Resident rights**

*(a) The governing body of the facility shall establish written policies regarding the rights and responsibilities of residents as provided for in 42 CFR 483.10 (relating to resident rights) and this section. Through the administrator, the governing body shall be responsible for development of and adherence to procedures implementing the policies. The written policies shall include a mechanism for the inclusion of residents, or a resident representative, in the development, implementation and review of the policies and procedures regarding the rights and responsibilities of residents.*

Q: How and what is the thought behind residents being involved in development of written policies on resident rights?

A: This is the residents' home and they need to be involved in policies and procedures affecting their lives.

### **28 Pa. Code 201.3 Definitions**

*Charge nurse—A person designated by the facility who is experienced in nursing service administration and supervision and in areas such as rehabilitative or geriatric nursing or who acquires the preparation through formal staff development programs and who is licensed by the Commonwealth as one of the following: (i) An RN. (ii) An RN licensed by another state as an RN and who has applied for endorsement from the State Board of Nursing and has received written notice that the application has been received by the State Board of Nursing. This subparagraph applies for 1 year, or until Commonwealth licensure is completed, whichever period is shorter. (iii) [Reserved]. (iv) An LPN designated by the facility as a charge nurse on the night tour of duty in a facility with a census of 59 or less in accordance with 28 Pa. Code 211.12 (relating to nursing services). Interpretive Guidelines The charge nurse must be an RN unless it is the night shift, the facility has a census of 59 or less, AND there is an RN within 30 minutes of the facility.*

Q: Is the new regulation requiring facilities to have an RN serve as a “charge nurse” the same as a nursing supervisor who are not providing direct care to the residents or could this RN on the “cart” be the charge nurse. Also, if we are under 59 residents do we need a RN to serve as a charge/supervisor on 7-3 and 3-11?

A: The charge nurse is defined in the regulations. The charge nurse must be an RN. Supervisor is not defined in the regulations and would be a facility specific job description. The charge nurse may be counted toward the PPD if they are providing direct care to residents. If they are performing administrative tasks, such as scheduling or employee performance evaluations, that would not be considered direct care. Per 28 Pa. Code 211.12, the facility must have 1 RN per 250 residents on all shifts, with the exception of a facility with a census of 59 or less, they may substitute an LPN on NIGHT SHIFT only, if an RN is on call within 30 minutes of the facility.

### **28 Pa. Code 204.4(a) 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.”*

Q: Do we need to get an approval from the Department for our central supply being located in the basement prior to 7/2023?

A: 28 Pa Code 205.7 applies to current facilities, so if you are using your basement as central supply, you do need an exception to 205.7. 28 Pa. Code 204.4 applies to new construction or alterations after 7/1/2023.

### **28 Pa. Code 211.12 Nursing services**

*211.12. Nursing services.*

*(a) [Reserved].*

*(b) There shall be a full-time director of nursing services who shall be a qualified licensed registered nurse.*

*(c) The director of nursing services shall have, in writing, administrative authority, responsibility and accountability for the functions and activities of the nursing services personnel and shall serve only one facility in this capacity.*

*(d) The director of nursing services shall be responsible for:*

*(1) Standards of accepted nursing practice.*

*(2) Nursing policy and procedure manuals.*

*(3) Methods for coordination of nursing services with other resident services.*

*(4) Recommendations for the number and levels of nursing services personnel to be employed.*



*(5) General supervision, guidance and assistance for a resident in implementing the resident's personal health program to assure that preventive measures, treatments, medications, diet and other health services prescribed are properly carried out and recorded.*

*(e) The facility shall designate a charge nurse who is responsible for overseeing total nursing activities within the facility on each tour of duty each day of the week.*

*(f) [Reserved].*

*(f.1) In addition to the director of nursing services, a facility shall provide all of the following:*

*(1) Nursing services personnel on each resident floor.*

*(2) Effective July 1, 2023, a minimum of 1 nurse aide per 12 residents during the day, 1 nurse aide per 12 residents during the evening, and 1 nurse aide per 20 residents overnight.*

*(3) Effective July 1, 2024, a minimum of 1 nurse aide per 10 residents during the day, 1 nurse aide per 11 residents during the evening, and 1 nurse aide per 15 residents overnight.*

*(4) Effective July 1, 2023, a minimum of 1 LPN per 25 residents during the day, 1 LPN per 30 residents during the evening, and 1 LPN per 40 residents overnight.*

*(5) Effective July 1, 2023, a minimum of 1 RN per 250 residents during all shifts.*

*(f.2) To meet the requirements of subsections (f.1)(2) through (5):*

*(1) A facility may substitute an LPN or RN for a nurse aide but may not substitute a nurse aide for an LPN or RN*

*(2) A facility may substitute an RN for an LPN.*

*(3)(i) A facility may not substitute an LPN for an RN except as provided under subparagraph (ii).*

*(ii) A facility with a census of 59 or under may substitute an LPN for an RN on the overnight shift only if an RN is on call and located within a 30-minute drive of the facility.*

*(g) [Reserved].*

*(h) [Reserved].*

*Interpretive Guidelines: When calculating staffing ratios for 12 hour shifts the evening shift can be calculated using ½ of the day shift and ½ of the night shift staff.*

*(i) A minimum number of general nursing care hours shall be provided for each 24-hour period as follows:*

*(1) Effective July 1, 2023, the total number of hours of general nursing care provided in each 24-hour period shall, when totaled for the entire facility, be a minimum of 2.87 hours of direct resident care for each resident.*

*(2) Effective July 1, 2024, the total number of hours of general nursing care provided in each 24-hour period shall, when totaled for the entire facility, be a minimum of 3.2 hours of direct resident care for each resident.*

*(i.1) Only direct resident care provided by nursing service personnel may be counted towards the total number of hours of general nursing care required under subsection (i).*

*Interpretive Guidelines: PPD is calculated by adding the total number of staff hours for the 24-hour period and dividing by the number of residents. There are some staff that might be considered nursing personnel, but do not count toward the total PPD. Examples of staff that do not count include orientees, light duty nursing staff, RNAC's, hospice staff, private caregivers, feeding assistants, student nurses, and unit clerks (even if they are nurse aides). Examples of personnel that can be counted include: •Light duty nursing staff if they are providing direct care such as nail care, feeding or 1:1. •Lunch times can be counted if "on duty" (physically present & able to personally provide nursing care when needed). Nursing staff that accompany residents on appointments should be counted. Managers who do not normally perform direct care but are needed because of call offs should keep a record of tasks performed for that given day and the amount of time spent performing those tasks as proof of the hours worked. Those recorded hours may be counted towards the minimum hours PPD for that day.*

Q: If we were to have call-offs for a certain shift and the ratio is not met but the daily 2.87 PPD is met are there going to be repercussions on this? And would this need to be reported?

A: The ratios, as well as the PPD, are regulations as of July 1, 2023; therefore both must be met to be in compliance with the regulations. It is not reportable unless it meets the requirements set forth at 28 Pa. Code 51.3(f).

Q: In 28 Pa. Code 211.12(f.1)

(1) Nursing services personnel on each resident floor

Could you define floor? Does this mean each household or each level of the nursing home such as you would need to take stairs to get to another level or floor? Or does the staffing consider the entire building for instance:

A: The regulation does not indicate specifically by floor, unit, etc., however, the facility is responsible for the care provided to all residents in their facility regardless of their level of care.

"On each resident floor" requires that there must be nursing personnel physically present on the resident floor when residents are on the floor. On an 11-7 shift, there must be nursing staff on each floor even though the residents are sleeping. If all residents from a floor are gathered in an activity area on another floor, it is not necessary to have nursing staff on the vacant floor at that time.

Q: If an orientee is providing direct care, can that time be counted in the facility's PPD?

A: Light duty may be counted only if they are providing direct care, such as nail care, feeding or 1:1. Orientees may not be counted toward the 2.87 PPD, as they must complete orientation to provide direct care. PBJ is calculated differently than the State PPD.

Q: Per regulations, the DON must work 35 hours per week. Please advise if the DON is also allowed to be the facility Infection preventionist.

A: Federal guidelines do not dictate who can/cannot be IP, However, the requirements for the IP outlined in 42 CFR 483.80 must be met. The DON must have 35 hours per week as documented DON duties.

Q: Are NAs who go on trips with residents as escorts counted in the PPD as direct care givers?

A: The time the caretaker was with the resident would count toward PPD. The facility is still responsible for the care for the residents in the facility. Considerations need to be taken into effect for PPD if you have aides out with residents.

Q: If a facility is currently meeting the staffing ratios for NA, LPN, and RN - and they have a new admission request that would require an additional LPN (for example) what options would the facility have to be able to take the new admission and not be out of compliance with the ratio requirement? Is there some leeway or discretion that can be considered so the facility can admit the resident - so they are not backed up in the hospital- and not be cited for not meeting the LPN ratio requirement?

A: The options to remain in compliance and take the new admission would be they would have to have the staff to meet the new number of residents. There is no leeway or discretion that can be considered.

Q: The staff to patient ratio portion of the guidelines is broken down into day, evening, and nights. What if a facility runs on 12-hour shifts and doesn't utilize an evening shift?

A: When calculating staffing ratios for 12-hour shifts the evening shift can be calculated using 1/2 of the day shift and 1/2 of the night shift staff.

Q: Will any other staff count to the new direct care hours?

A: Only nursing services personnel are counted and only those that are providing direct resident care. The Interpretive Guidelines provide examples.

Q: Can my RN supervisors be counted for 8 hours when completing nursing hours? Their entire shift is spent completing tasks for the residents, but several hours may be putting orders into electronic system, talking with physicians, reviewing abstracts of new admissions, etc.

A: When calculating the PPD, only direct resident care may count toward the PPD. If the tasks that the RN supervisor is performing are considered direct resident care, then they may be counted. Facilities should develop a method for defining and tracking direct resident care by supervisors, which may include adding the tasks to the position description.

## **28 Pa. Code 211.2 Medical Director**

*(c) In addition to the requirements of 42 CFR 483.70(h) (relating to administration), the medical director of a facility shall be licensed as a physician in this Commonwealth and shall complete at least four hours annually of continuing medical education (CME) pertinent to the field of medical direction or post-acute and long-term care medicine. The medical director may be designated for single or multiple facilities. There shall be a written agreement between the physician and the facility.*

### *Interpretive Guidelines*

*Acceptable proof of CME would be copies of the CME certificate or a registration/attendance confirmation form*

Q: Does the Medical Director continuing education (CE) regulation require that it be LTC Medical Director relevant training, or can it be any physician training?

A: At least four hours annually of continuing medical education pertinent to the field of medical direction or post-acute/long term care medicine.

For questions about the regulations, contact the Department of Health Bureau of Long-Term Care Programs at [RA-DHLTCregs@pa.gov](mailto:RA-DHLTCregs@pa.gov).