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**MEMORANDUM**

To: Long-Term Care Facilities

From: Elizabeth Kelley, MBA, MPH,  
Director, Bureau of Health Care Safety and Quality

Date: December 20, 2019

Subject: Enforcement of Requirements regarding Notice to the Bureau of the Permanent Removal of LTCF Beds from Service and the related Permanent Reduction in Number of Beds on the LTCF License

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The purpose of this memorandum is to provide information regarding the Bureau of Health Care Safety and Quality's (the "Bureau") process for enforcing the state long-term care facility ("LTCF") licensure requirements regarding notice of permanent removal of LTCF beds from service and the related permanent reduction on the LTCF license of the number of beds the licensee is authorized to operate at the facility. This memorandum also provides a reminder about the LTCF license renewal process. This memorandum is not a rule or regulation. The Bureau may revise, change, update, or rescind this memorandum at any time.

1. Regulatory Requirements for Licensee to Notify Bureau of Permanent Removal of Beds from Service

Under 105 CMR 153.028(C), a LTCF licensee must submit to the Bureau written notification of **any** permanent reduction in the number of beds in operation at its facility. Under 105 CMR 153.028(F), discontinuance of the operation of an entire unit of a LTCF for **any** period of time **must** be treated as a permanent reduction in the number of beds the licensee is authorized to operate at the facility.

## 2. Notice Requirement and Consequences of Failure to Notify

Whenever a LTCF licensee permanently takes beds in service at its facility out of service, which includes taking an entire unit out of service for any period of time, the LTCF licensure regulation requires that the licensee notify the Bureau in writing (the “required notice”).

If during a survey, the surveyor finds that the number of beds in service is less than the number of beds on the licensee’s LTCF license, the surveyor may inquire as to the reason for the discrepancy. If the beds are permanently, rather than temporarily, out of service and the licensee has not submitted the required notice to the Bureau, the licensee will be cited for violating 105 CMR 153.028(C) and fined \$50 for the violation. In addition, the Bureau will re-issue the LTFC license with the reduced bed count, even if the standard survey takes place after the issuance of a renewal LTCF license.

## 3. Reporting the Permanent Reduction

In addition to the reflecting the permanent reduction in beds on the licensee’s LTCF license, the facility’s revised operating capacity will be reported to MassHealth and the Center for Health Information Analysis (“CHIA”).

## 4. Effective date

The changes outlined above go into effect on January 20, 2020, which is thirty calendar days after the date of this letter.

## 5. Reminder regarding LTCF License Renewal Process

As a reminder, effective January 1, 2019, an application for a renewal license no longer includes a form to request approval to treat beds as temporarily rather than permanently out of service. Any such approval previously received by a licensee expires at the end of the licensure term during which the approval was received; any request to renew a previous approval will not be processed. Beds approved as out of service prior to January 1, 2019 will be taken off the facility license when the license is renewed.

## 6. Contents of Required Notice and Determining Whether Beds are Permanently Out of Service

If you have questions about what the required notice about a permanent reduction must include or when beds at a LTCF are permanently out of service, please see the responses to frequently asked questions (FAQs) about beds out of service at open LTCFs posted by the Bureau here -- <https://www.mass.gov/info-details/frequently-asked-questions-about-beds-out-of-service-at-open-long-term-care-facilities>.

### Questions

Please contact [DPH.BHCSQ@MassMail.State.MA.US](mailto:DPH.BHCSQ@MassMail.State.MA.US) if you have any questions about the information in this memorandum.