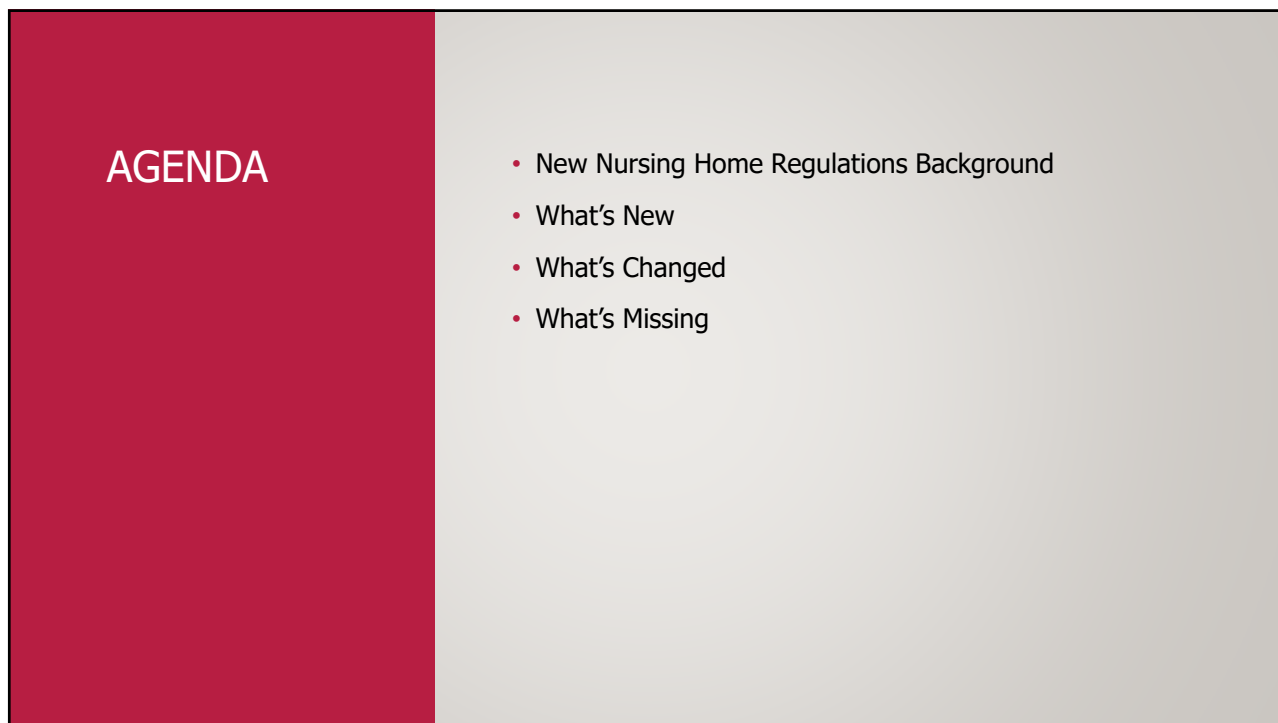




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New Nursing Home Regulations – Why Now

- Pennsylvania Department of Health (DOH) says:
 - Amendments are long overdue.
 - Revisions to existing regulations are urgently needed.
 - COVID-19 had a devastating impact on facilities and highlighted the need for revisions.
 - Regulations need to be updated to provide additional protections to residents.

3

New Nursing Home Regulations – Background

- Federal Nursing Home Regulations – 42 CFR 483, Part B
 - To be reimbursed by Medicare and Medicaid, nursing homes must meet federal requirements (called the [conditions of participation](#))
- Federal Guidance Documents – State Operating Manual Chapter 7 and Appendices P and PP
- State Nursing Home Regulations – 28 PA Code 201 et seq.
 - To operate a nursing home, the nursing home must meet state licensure requirements

4

New Nursing Home Regulations – Background

- Pennsylvania Department of Health (DOH) proposed new regulations in four separate issuances across 2021 and 2022
 - Package 1 – 28 PA Code 201.1, 201.2, 201.3, and 211.12(i)
 - Package 2 – 28 PA Code 201.23, 203, 204, 205, and 207.4
 - Package 3 – 28 PA Code 201.12-17, 201.22, 209.1, 209.7, 209.8, and 211.1
 - Package 4 – 28 PA Code 201.18-21, 201.27-.31, 207.2, 209.3, and 211.2-.17
- Reflects largescale revision to a large portion of the regulations but, many sections of the existing regulations remain unchanged.

5

New Nursing Home Regulations – Background

- Final Form of all four packages were submitted to the Independent Regulatory Review Committee pursuant to state law on September 27, 2022
- The Standing Committees Deemed Approval on October 27, 2022.
- At the IRRC Hearing on October 28, 2022, the Commissioners voted to approve the regulations.
- New regs can now be found at:
<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/028/subpartIVCtoc.html&d=reduce>

6

New Nursing Home Regulations – Effective Date

- Final regulations took effect on July 1, 2023, with some exceptions.
- Sections 201.12a(a), (b), and (c)(1) through (3), which require prospective licensees to provide written notice to certain individuals, took take effect on February 1, 2023.
- Sections 201.12, 201.12b, 201.13c(b) and (c), and 201.12a(c)(4) and (d) shall take effect on October 31, 2023.
- Section 211.12(f.1)(3) and (i)(2) shall take effect on July 1, 2024.
- The Department believes these dates “will allow the regulated community a reasonable amount of time to adequately plan and initiate the staffing and budget changes necessary to achieve compliance”.

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WHAT'S NEW

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HIGH-LEVEL OVERVIEW OF WHAT'S NEW

- Definitions
- Ensuring Accountability
- Creating Transparency
- Enhancing Application Process and Review of Applicants' Qualifications (*Including Change of Ownership Applications*)
- Closure Planning
- Enhancing Licensure Renewal
- Other Additions

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DEFINITIONS

- The New Regulations add definitions for:
 - Related Parties and Immediate Family
 - Full Compliance and Substantial Compliance
 - Transfer and Discharge
 - Involuntary Seclusion

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ENSURING ACCOUNTABILITY

- Requires reporting annually that includes
 - Audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP). If GAAP requires consolidated financial statements, then consolidated statements shall 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. The supplemental schedule shall be broken out by payor type.
- Identification of whether an immediate family member relationship exists between a prospective licensee, a person who is a board member, shareholder, or related party.

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CREATING TRANSPARENCY

- Disclosures on application of names, addresses, and contact information for anyone with direct or indirect ownership interest of 5% or more in the facility, the property, or any interest secured by the facility of property
- Disclosure on application of names, addresses, and contact information of the members of the board of directors, the parent organization, shareholders, and related parties
- Public posting of application with comment period
- Required written notice of closure

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- Application form that must be completed initially and then annually by the nursing home for licensure renewal with fee that must be paid annually
- Required disclosure on application:
 - A list of every licensed NF in any state, DC, or territory in which the prospective licensee has or has had a direct or indirect interest of 5% of more in the ownership, management, or real property.
 - Their licensing and regulatory history in all jurisdictions in which they have or have had a direct or indirect ownership interest of 5% of more in a facility.

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- Required disclosure on application (continued):
 - A detailed summary of adjudicated or settled civil or criminal actions filed against the prospective licensee.
 - A list of any persons, identified in paragraph (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.

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- In addition to the information required under subsection (b), a prospective licensee of a facility shall provide the following:
 - A proposed staffing and hiring plan, which shall include the management and oversight staff, the structure of the facility's governing body and its participants.
 - A proposed training plan for staff.
 - A proposed emergency preparedness plan that meets the requirements of 42 CFR 483.73(a) (relating to emergency preparedness).
 - Proposed standard admissions agreements.
 - 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 conducted under 42 CFR 483.70(e) (relating to administration).

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- A prospective licensee of a new facility shall concurrently provide written notice to the office of the state long-term care ombudsman when they submits their application to the Department.
- The department will post notice of the receipt of an application for license of a new facility or change in ownership and a copy of the completed application form submitted under § 201.12 on the department's website and provide a 10-day public comment period.

*Any public comments received will be reviewed by the Department as it evaluates whether to grant a license.

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- Change of owner/New owner is also a prospective licensee, must apply for license and go through the entire new process with all disclosures
- Change of owner/New owner must not only provide notice to LTC Ombudsman but also must concurrently provide notice to:
 - residents of the facility being purchased or acquired, and their resident representatives.
 - employees of the facility being purchased or acquired.

*Any public comments received will be reviewed by the Department as it evaluates whether to grant a license.

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ENHANCING APPLICATION PROCESS AND REVIEW OF APPLICANTS' QUALIFICATIONS

- In evaluating whether to approve or deny an application for a license for new facility or change of ownership, the department will consider the prospective licensee's:
 - Past performance related to owning or operating a facility in this commonwealth or other jurisdictions.
 - Demonstrated financial and organizational capacity and capability to successfully perform the requirements of operating a facility based on the information provided under § 201.12.
 - Demonstrated history and experience with regulatory compliance, including evidence of consistent performance in delivering quality care.
 - Public comments received

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CLOSURE PLANNING (201.23)

- Outlines requirements for what must be included in a written facility closure plan
- That it must be submitted to the Department and when
- That written notice of closure must be provided to
 - Residents and resident representatives
 - Employees
 - LTC Ombudsman
 - DHS
- And, what must be in the written notice

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LICENSURE RENEWAL

- Requires
 - Application
 - updated financial reporting
 - Submission of application fee
 - Full or Substantial Compliance for Full License on Renewal

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OTHER ADDITIONS

- Quarterly Facility Assessment
- Admission policy section requires orientation of residents to facility within 2 hours of admission, with introduction to staff, explanation of location of essential services such as dining room, description of facility routines, discussion of resident's preferences/routines, and assistance in settling into room.

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WHAT'S CHANGED

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HIGH-LEVEL OVERVIEW OF CHANGES

- Defaulting to Federal Regulations
- Deferring to External Entities
- Increasing and Improving Staffing Requirements
- Clarifying Enforcement Tools
- Other Changes

23

DEFAULTING TO FEDERAL REGULATIONS

- DOH expressly incorporates by reference 42 CFR Part 483, Subpart B of the Federal requirements for nursing home licensure requirements
- Revised regulations remove some existing provisions of the current regulations on the basis that the Federal regulations adequately address the topic

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DEFERRING TO EXTERNAL ENTITIES

- Chapter 203 – Application of Life Safety Code for LTC Nursing Facilities is deleted because the National Fire Protection Association (NFPA) 101, Life Safety Code, 2012 edition is incorporated by reference in the federal regulations at 42 CFR 483.73(g)(1)(vii)
- The Department proposed in subsection (a) to adopt the 2018 Facility Guidelines Institute (FGI) *Guidelines* as the minimum standard for construction, alteration or renovation for plans approved on or after the effective date of Chapter 204.

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INCREASING AND IMPROVING STAFFING REQUIREMENTS

- Increases minimum of direct care (“nursing services) hours per resident per day from 2.7 currently to 2.87 in July 2023 and then to 3.2 hours per day starting in July 2024.
- Requires a full-time social worker in all facilities (previously was only facilities with more than 120 residents).

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INCREASING AND IMPROVING STAFFING REQUIREMENTS

- Establishes staffing ratios as follows:
 - 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.
 - 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.
 - 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.
 - Effective July 1, 2023, a minimum of 1 RN per 250 residents during all shifts.

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SIDEBAR ON STAFFING

- Other staffing reforms expected at both the state and federal levels
 - CMS Study
 - NASEM Report
 - Act 54 of 2022 – Budget Bill contains “Direct Care Spending Ratio” requirement

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CLARIFYING ENFORCEMENT TOOLS

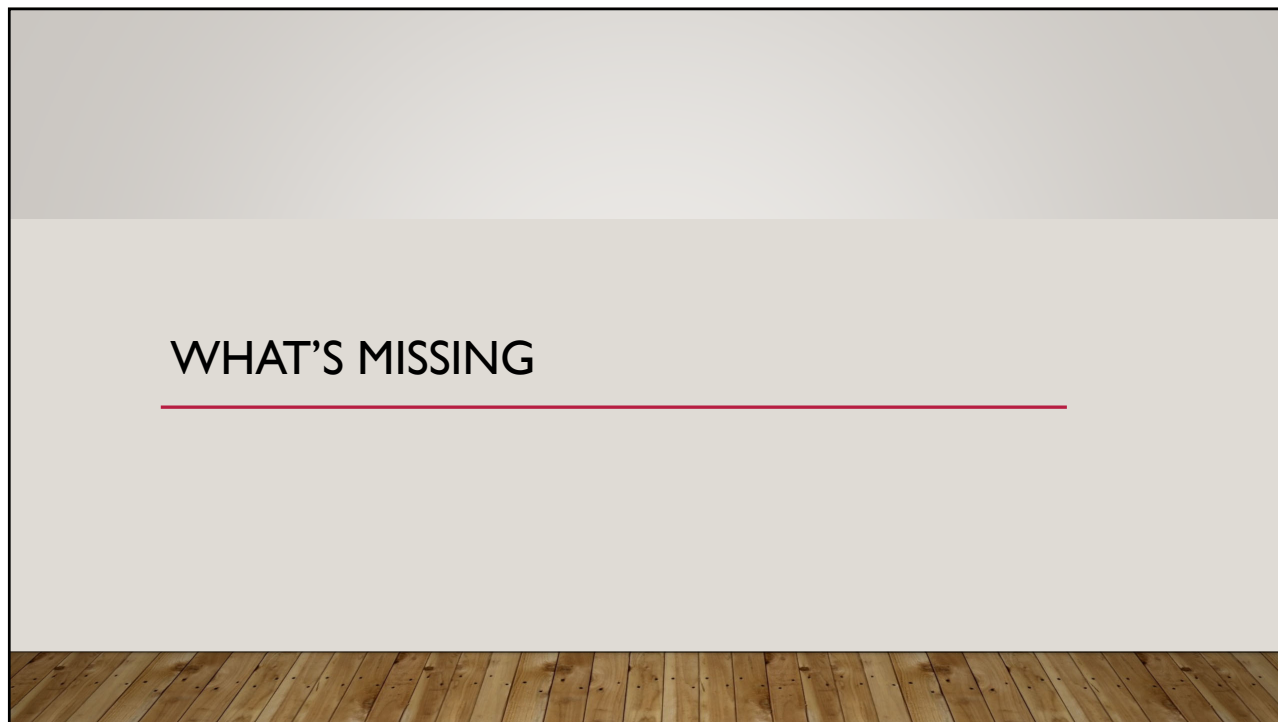
- The enforcement tools are articulated in statute but have not previously been delineated in the regulations
- Final regulations outline:
 - When a Provisional License will be granted
 - When a Full License will be granted
 - All the enforcement tools in the Department's toolbelt (201.15a)

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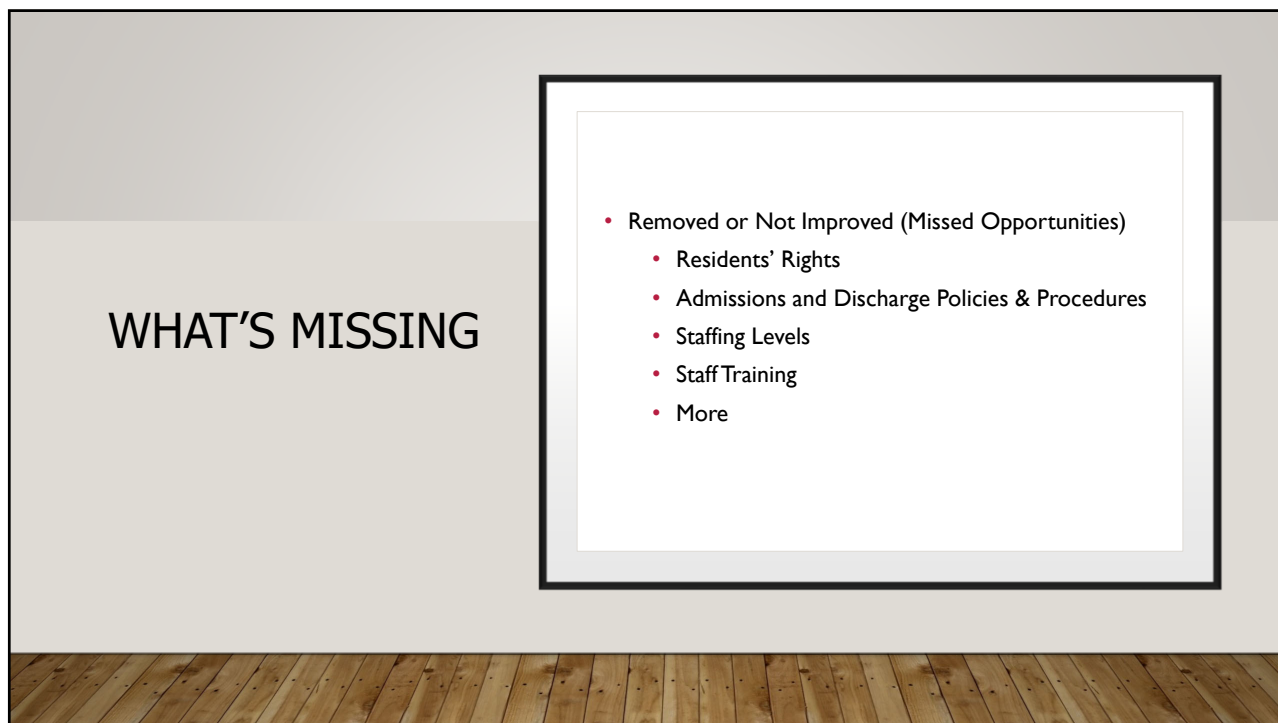
OTHER CHANGES

- Ownership and Management
- Employee Records
- Resident Records

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