

957 CMR: Center for Health Information and Analysis

957 CMR 7.00: NURSING FACILITY COST REPORTING REQUIREMENTS

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7.01: General Provisions

- (1) Scope and Purpose. The purpose of 957 CMR 7.00 is to set forth reporting requirements for Nursing Facilities related to costs and other health care data and information.
- (2) Applicability. 957 CMR 7.00 applies to Nursing Facilities, as defined in section 7.02.
- (3) Authority. This regulation is issued pursuant to M.G.L. c. 12C, including but not limited to, §§ 3, 5, 8, and 11.

7.02: Definitions

All defined terms in 957 CMR 7.00 are capitalized. Any other term used in this regulation but not defined herein shall have the meaning given to the term by M.G.L. c. 12C, other CHIA regulations, or Sub-Regulatory Guidance.

As used in 957 CMR 7.00, unless the context requires otherwise, the following words shall have the following meanings:

Adjudicatory Proceeding. A proceeding before an agency in which the legal rights, duties or privileges of specifically named persons or entities are required by constitutional right or by any provision of the General Laws to be determined after an opportunity for an agency hearing.

Affiliated Entity. A person or entity that is not a Nursing Facility that owns, Controls, is Controlled by, or is under common Control with a Nursing Facility; or that has a material financial relationship with a Nursing Facility that affects the Nursing Facility's delivery of health care services. Affiliated Entities include but are not limited to Significant Equity Investors, Realty Companies, and Management Companies. A person or entity will not be deemed to be an Affiliated Entity solely by reason of having a contract for non-management services (such as legal or accounting services) with a Nursing Facility.

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Audited Financial Statements. A complete set of financial statements of an entity, including the notes to the financial statements, which are subject to an independent audit in accordance with Generally Accepted Auditing Standards (GAAS). The independent auditor issues an opinion as to whether or not the accompanying financial statements are presented fairly in accordance with Generally Accepted Accounting Principles (GAAP).

CHIA or Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

Change of Ownership. A bona fide transfer, for reasonable consideration, of all the powers and indicia of ownership. A Change of Ownership may not occur between Related Parties. A Change of Ownership must be a sale of assets of the Nursing Facility rather than a method of financing. A change in the legal form of the Nursing Facility does not constitute a Change of Ownership unless the other criteria are met.

CMS. The federal Centers for Medicare & Medicaid Services.

CMS-2540 Report. A skilled nursing facility annual cost report that a Medicare-certified institutional provider is required by CMS to submit to a Medicare administrative contractor.

Control. The possession, direct or indirect, of the power to direct or cause the direction of the management, administrative functions, and policies of a Nursing Facility, whether through the ownership of voting securities or rights, control, either directly or indirectly, by contract (except a commercial contract for goods or non-management services) or otherwise; but no person shall be deemed to possess such control solely by reason of being an officer or director of a Nursing Facility. "Control" shall be deemed to exist if any person or entity directly or indirectly owns, controls, or holds with the power to vote ten percent or more of the voting securities of a Nursing Facility. This definition applies to all forms of the word, including "Controls," "Controlling," and "Controlled."

Department. The Massachusetts Department of Public Health.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Financial Review. An examination of the Nursing Facility's financial reporting made pursuant to 957 CMR 7.00, including cost reports, financial data, and supporting documentation, to evaluate the accuracy of the financial statements, reported costs, Affiliated Entity reporting, and any other information submitted to the Center.

Financial Statement. An audited, reviewed, or compiled record prepared and completed using generally accepted accounting principles (GAAP) that illustrates the business

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activities and the financial performance of a company, which shall include, among other things, a balance sheet and a statement of operations.

Health Care Real Estate Investment Trust (Health Care REIT). A real estate investment trust, as defined by 26 U.S.C section 856, whose assets consist of real property held in connection with the use or operations of a provider or provider organization, as defined in M.G.L. c. 12C.

Hospital-Based Nursing Facility. A separate Nursing Facility Unit or Units located in a hospital building licensed for both hospital and Nursing Facility services in which the Nursing Facility licensed beds are less than a majority of the facility's total licensed beds and the Nursing Facility patient days are less than a majority of the facility's total patient days. It does not include a free-standing Nursing Facility owned by a hospital.

Industrial Accident Resident. A person receiving Nursing Facility services for which an employer or an insurer is liable under the Workers' Compensation Act, M.G.L. c. 152.

Management Company. An entity that provides management or administrative services to a Nursing Facility for compensation.

Nursing Facility. A nursing or convalescent home; an infirmary maintained in a town; a charitable home for the aged, as defined in M.G.L. c. 111, § 71; or a Nursing Facility operating under a hospital license issued by the Department pursuant to M.G.L. c. 111, and certified by the Department for participation in MassHealth that provides care to Publicly-aided Residents or Industrial Accident Residents. Nursing Facility includes facilities that operate a licensed Residential Care Unit within the Nursing Facility.

Parent Organization. An entity that has a Controlling financial interest in one or more subsidiaries.

Presiding Officer. The individual(s) authorized by law or designated by the Center to conduct an Adjudicatory Proceeding.

Private Equity Firm. Any company that collects capital investments from individuals or entities and purchases, as a parent company or through another entity that the company completely or partially owns or controls, a direct or indirect ownership share of a Nursing Facility or Management Company; provided, however, that "private equity company" shall not include venture capital firms exclusively funding startups or other early-stage businesses.

Publicly-aided Resident. A person for whom care in a Nursing Facility is in whole or in part subsidized by the Commonwealth or a political subdivision of the Commonwealth.

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Publicly-aided Residents do not include residents whose care is in whole or in part subsidized by Medicare.

Realty Company. An entity, however organized, that receives rent or other compensation from a Nursing Facility in exchange for the use of real property, including but not limited to a Health Care REIT.

Related Party. An individual or organization associated or affiliated with, or that has control of, or is controlled by, the Nursing Facility; or is related to the Nursing Facility, or any director, stockholder, trustee, partner or administrator of the Nursing Facility by common ownership or control or in a manner specified in sections 267(b) and (c) of the Internal Revenue Code of 1954 as amended provided, however, that 10% is the operative factor as set out in sections 267(b)(2) and (3). Related individuals include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law.

Resident Protector Receiver. A receiver appointed pursuant to M.G.L. c. 111 § 72N.

Residential Care. The minimum basic care and services and protective supervision required by the Department in accordance with 105 CMR 150.000: Licensing of Long-term Care Facilities for residents who do not routinely require nursing or other medically-related services.

Residential Care Unit. A Unit within a Nursing Facility licensed by the Department to provide Residential Care.

Significant Equity Investor. Any private equity company with a financial interest in a Nursing Facility or management company; or an investor, group of investors or other entity with a direct or indirect possession of equity in the capital, stock or profits totaling more than 10 per cent of a Nursing Facility or management company; provided, however, that “significant equity investor” shall not include venture capital firms exclusively funding startups or other early-stage businesses as defined in M.G.L. c. 12C.

Sub-Regulatory Guidance. An Administrative Bulletin, notice, manual, guide, or other document, including the *Technical Instructions and User Guide*, *XML User Guide*, and *XML Data Dictionary*, that specifies deadlines, technical submission requirements, or contains methodological explanations and examples to facilitate understanding of and compliance with adopted regulations.

Unit. A Unit is an identifiable section of a Nursing Facility such as a wing, floor, or ward as defined by the Department in 105 CMR 150.000: Licensing of Long term Care Facilities.

7.03: Reporting Requirements

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(1) Required Cost Reports.

- (a) Nursing Facility Cost Report. Each Nursing Facility must complete and file annually with the Center a cost report (a “Nursing Facility Cost Report”). The Nursing Facility Cost Report must contain information detailing the complete financial condition of the Nursing Facility for a given calendar year, including but not limited to all applicable management, central office, operational, and real estate expenses as established by the Center through Sub-Regulatory Guidance.
 - 1. If a Nursing Facility closes on or before November 30, the Nursing Facility is not required to file a Nursing Facility Cost Report for the calendar year in which it closes.
 - 2. If a Nursing Facility closes after November 30, the Nursing Facility must file a Nursing Facility Cost Report for the calendar year of the closure for the period prior to the closure.
- (b) Realty Company Cost Report. Each Nursing Facility that does not own the real property of the Nursing Facility and pays rent to a Realty Company must annually file or cause to be filed with the Center a cost report describing the complete financial picture of each Realty Company to which the Nursing Facility pays rent (a “Realty Company Cost Report”). The Center shall establish through Sub-Regulatory Guidance the specific elements that must be included in a Realty Company Cost Report.
- (c) Management Company Cost Report. Each Nursing Facility must annually file or cause to be filed with the Center a separate cost report describing the complete financial picture of each entity for which the Nursing Facility reports management or central office expenses related to the care of Publicly-aided Residents (a “Management Company Cost Report”). If the Nursing Facility identifies such management or central office expenses, the Nursing Facility must certify that the expenses are reasonable and necessary for the care of Publicly-aided Residents in Massachusetts. The Center shall establish through Sub-Regulatory Guidance the specific elements that must be included in a Management Company Cost Report.
- (d) Financial Statements. Each Nursing Facility must file or cause to be filed a complete copy of the Financial Statements for each entity for which it files (or causes to be filed) a Cost Report with the Center pursuant to 957 CMR 7.00 for the fiscal period that most closely corresponds to the applicable Cost Report’s reporting period.
 - 1. If a Nursing Facility, Realty Company, Management Company, or the Parent Organization of any such entity obtains independent Audited Financial Statements, a complete copy of each entity’s Audited Financial Statements must be filed with the Center.
 - 2. If a Nursing Facility, Realty Company, Management Company, or the Parent Organization of any such entity does not obtain Audited

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Financial Statements, a complete copy of the each entity's unaudited Financial Statements must be filed with the Center.

- (e) CMS-2540 Report. Each Nursing Facility that is required by CMS to file a CMS-2540 report shall provide to the Center an electronic copy of the Nursing Facility's CMS-2540 report upon request by the Center.
- (2) Organization and Affiliated Entity Reporting. Each Nursing Facility shall annually report to CHIA the following organizational, management, and operational information, including information regarding a Nursing Facility's relationships with any Affiliated Entities.
 - (a) Nursing Facility Ownership.
 - 1. A complete organizational chart showing the ownership structure of the Nursing Facility, including all direct and indirect owners and their respective ownership percentages
 - (b) Nursing Facility Board.
 - 1. Names of each Nursing Facility board member, along with an indication of whether the Board member is, or has been, an employee or board member of, or investor in, an Affiliated Entity of the Nursing Facility.
 - (c) Affiliated Entity Information.
 - 1. Full legal name, address, Employer Identification Number (if applicable), and contact information for each Affiliated Entity.
 - 2. A description of the nature and duration of the Nursing Facility's relationship with each Affiliated Entity.
 - (d) Financial Arrangements.
 - 1. A summary detailing each financial arrangement between or among the Nursing Facility and each Affiliated Entity, including but not limited to credit, loans, debt, guarantees, profit-sharing, revenue-sharing, management fees, consulting fees, any real estate or sale-leaseback, or other financial transactions as defined in Sub-Regulatory Guidance.
 - 2. Disclosure of any cross-ownership, shared services, or related-party transactions between or among the Nursing Facility and each Affiliated Entity.
 - (e) Significant Equity Investor Information.
 - 1. Percent of ownership interest of each Significant Equity Investor in the Nursing Facility.
 - 2. Description of the nature of each Significant Equity Investor's ownership or Control of the Nursing Facility.
 - (f) Management Company Information.
 - 1. An indication of whether each Management Company is a subsidiary of the Nursing Facility's Parent Organization or is otherwise under common direct or indirect ownership or Control with the Nursing Facility and a description of the nature of such ownership or Control.

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2. An indication of whether each Management Company has an ownership interest in or Control of the Nursing Facility and a description of the nature of such ownership or Control.

(g) Real Estate Information.

1. An indication of whether each Realty Company is a subsidiary of the Nursing Facility's Parent Organization or is otherwise under common direct or indirect ownership or Control with the Nursing Facility and a description of the nature of such ownership or Control.
2. An indication of whether each Realty Company has an ownership interest in or Control of the Nursing Facility and a description of the nature of such ownership or Control.
3. A list of properties that the Nursing Facility rents or leases from a Realty Company.
4. The nature of each property rented or leased from a Realty Company in relation to Nursing Facility's overall operations.
5. An indication of whether the Realty Company qualifies as a Real Estate Investment Trust under 26 U.S.C section 856.
6. A description of the lease terms for each property the Nursing Facility rents or leases from a Realty Company, including rent amounts, lease duration, expenses the Nursing Facility is responsible for (such as property taxes, maintenance costs, utilities, etc.), and other significant lease terms that shift costs or liabilities from the Realty Company to the Nursing Facility.

- (h) Reporting to Other State Agencies. If a Nursing Facility separately files with another Massachusetts state agency any of the information it is required to file under 957 CMR 7.03(2), the Nursing Facility may fulfill its obligation to report such information under 957 CMR 7.03(2) by demonstrating such other filing in the manner specified by the Center in Sub-Regulatory Guidance.

(3) Filing Deadlines.

- (a) General. Unless directed otherwise by the Center through Sub-Regulatory Guidance, Nursing Facilities must file required cost reports for the calendar year within 60 days of the deployment by the Center of the annual Nursing Facility Cost Report. If the 60th day falls on a weekend or holiday, the reports are due by 5:00 P.M. on the following business day.
- (b) Hospital-Based Nursing Facilities. Each Hospital-Based Nursing Facility must file a Nursing Facility Cost Report no later than 90 days after the close of the hospital's fiscal year.
- (c) Appointment of a Resident Protector Receiver. If a Resident Protector Receiver is appointed pursuant to M.G.L. c. 111, § 72N, the Nursing Facility must file required Cost Reports for the current reporting period or portion thereof within 60 days of the receiver's appointment.

7.04: Data Submission Procedures

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(1) General. Nursing Facilities shall submit data and information to CHIA in accordance with the procedures, deadlines, and schedules provided in 957 CMR 7.00 or Sub-Regulatory Guidance from the Center. In the event a data submission deadline falls on a Saturday, Sunday, or Commonwealth holiday, the data shall be due on the business day immediately thereafter.

(2) Sub-Regulatory Guidance. CHIA will issue Sub-Regulatory Guidance to clarify its requirements, policies, and procedures under 957 CMR 7.00 and to set forth the required technical information, such as: data file format, record specifications, data elements, definitions, code tables and edit specifications for data and information submitted pursuant to 957 CMR 7.00.

CHIA may also issue Sub-Regulatory Guidance to specify or amend data and information required to be submitted; to specify or amend the procedures for submitting data and information; and to specify or amend the timeframes for submitting data and information.

(3) Amended Data Submissions. A Nursing Facility may amend data submissions, subject to the approval of CHIA, upon notice of the proposed amended data submissions, and the reasons for such changes. Amended data submissions shall be made in accordance with the procedures provided in Sub-Regulatory Guidance.

(4) Data Review, Verification, and Resubmission. If necessary, a Nursing Facility may be required to review, verify, or resubmit certain data and information previously submitted. CHIA will notify the Nursing Facility of when such data and information must be reviewed, verified, or resubmitted and will provide to applicable Nursing Facility such health care data and information, or summary reports of such data and information, for review, verification, or resubmission.

(5) Additional Documentation. The Center may request that a Nursing Facility submit additional documentation related to reported data and information through Sub-Regulatory Guidance or by written request.

(6) Accuracy. Each Nursing Facility (i) certifies that an authorized representative of the Nursing Facility submitted information and data to the Center, and (ii) attests that information and data submitted to the Center is true, correct, and complete.

(7) Mergers. Each Nursing Facility must submit data for newly merged facilities in accordance with Sub-Regulatory Guidance. The Nursing Facility must notify the Center in writing as to any organization ID change prior to a data submission.

(8) Extension Requests. The Center may grant a request for an extension of a filing due date established pursuant to 957 CMR 7.00 for a maximum of 30 calendar days. To request an extension, a Nursing Facility must:

- (a) submit the request itself, not through agent or other representative;

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- (b) demonstrate exceptional circumstances that prevent the Nursing Facility from meeting the deadline; and
- (c) file the extension request with the Center no later than 30 calendar days before the due date.

(9) Notification to Health Policy Commission and Department of Public Health. The Center is required by M.G.L. c. 12C § 11 to notify the Health Policy Commission and the Department of Public Health if a Nursing Facility has failed to timely report required data or information.

7.05: Financial Reviews

The Center may conduct a Financial Review of a Nursing Facility to ensure accuracy and consistency in reporting required under 957 CMR 7.00. During the course of a Financial Review, a Nursing Facility must submit additional data and documentation relating to its financial and operational reporting, as well as that of any Related Party or Affiliated Entity, as requested by the Center and as necessary for the Center to evaluate the accuracy of the Nursing Facility's reporting. The Center reserves the right to conduct a Financial Review even if it has accepted the reviewed Nursing Facility's reporting prior to the initiation of such a Financial Review.

Each Nursing Facility must maintain supporting documentation sufficient to demonstrate compliance with all provisions of 957 CMR 7.00.

7.06: Penalties

The Center will provide written notice to Nursing Facilities that fail to comply with the reporting deadlines established in 957 CMR 7.00.

(1) The Center will notify Nursing Facilities that failure to respond within two weeks of the written notice, without just cause, may result in penalties. In accordance with M.G.L. c. 12C, § 11, Nursing Facilities may be subject to a penalty of up to \$25,000 per week for each week that they fail to provide the required data and information.

(2) Any remedy available under 957 CMR 7.00 is in addition to other sanctions and penalties that may apply under the provisions of other statutes and regulations.

(3) A Nursing Facility that fails to comply with the requirements of 957 CMR 7.00 will be subject to all penalties and remedies allowed by law and the Center will take all necessary steps to enforce 957 CMR 7.06, including a petition to the Superior Court for an order enforcing the same.

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(4) Before assessing a penalty, the Center shall notify the Nursing Facility that has failed to comply with the requirements of 957 CMR 7.00 that it has the right to request a hearing in accordance with M.G.L. c. 30A, § 10.

(5) If a hearing is timely requested in writing, the Center, including through a Presiding Officer, will conduct the hearing in accordance with 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*. After the hearing, the Center shall render a written decision and may assess a civil penalty pursuant to 957 CMR 7.06(1).

(6) After the issuance of a final decision, except where any provision of law precludes judicial review, a Nursing Facility aggrieved by such final decision may seek judicial review thereof in accordance with M.G.L. c. 30A, § 14.

7.07: Severability

The provisions of 957 CMR 7.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 957 CMR #.00 or the application of such provisions.

REGULATORY AUTHORITY
957 CMR 7.00: M.G.L. c. 12C