

# KROKIDAS & BLUESTEIN

## ATTORNEYS

### HEALTH LAW CLIENT ALERT

#### DEPARTMENT OF PUBLIC HEALTH FINALIZES AMENDMENTS TO LONG-TERM CARE FACILITY REGULATIONS

The Department of Public Health (DPH) promulgated final amendments (the “Amendments”) to 105 CMR 153.000, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities* (the “[Regulations](#)”) which became effective January 1, 2016. A helpful summary of the Amendments’ changes may be found in this [DPH presentation](#).

The Amendments’ primary effect is to require a public hearing process for the initial licensure application, voluntary closure, and transfer of ownership of all Massachusetts long-term care facilities (“Facilities”). Previously, the public hearing process was required only for transfers of ownership of Facilities in Southeastern Massachusetts (HSA-V).

The Amendments also include the following significant changes:

1. A Facility undergoing a voluntary closure or transfer of ownership must notify an expanded list of stakeholders about the pending transaction, including local legislative representatives and the state and local Long Term Care Ombudsman.
2. A public hearing for an initial licensure application or transfer of ownership may be requested by ten (10) adults, who do not necessarily need to be Massachusetts residents. The existing HSA-V process required fifty (50) Massachusetts residents to request a hearing. This means public hearings are more likely to occur in the future.
3. The definition of “transfer of ownership” was amended to: (1) include changes in a Facility’s or its parent organization’s ownership interest or structure, and (2) provide the DPH Commissioner with discretion to determine whether any change in ownership interest or structure of a Facility will be deemed a transfer of ownership.
4. Facilities must disclose additional information regarding their ownership and control interests in their license renewal applications.

The Amendments effectively increase the burden on Facilities wishing to undergo substantial corporate changes and impact the timing of related regulatory processes. Note, however, that DPH has confirmed to us that the relocation and opening of a new building for an existing licensed Facility without a transfer of ownership would not be subject to a public hearing process.

The Amendments are limited in subject matter because they were intended to address a specific statutory mandate in the 2015 Massachusetts budget act. DPH chose not to address other potential changes to the Regulations at this time. For example, DPH did not consider public comments requesting changes to the current restrictions on co-location of ambulatory health services. DPH has indicated that it will release sub-regulatory guidance in the future concerning the Amendments, and that any mistakes in the Regulations will be corrected as part of the upcoming regulatory reform process. We will continue to monitor developments impacting these important regulations.

If you have any questions about the Amendments and their potential impact, please contact Attorneys Jennifer Gallop ([jgallop@kb-law.com](mailto:jgallop@kb-law.com)), Robert Griffin ([rgriffin@kb-law.com](mailto:rgriffin@kb-law.com)), or Emily Kretchmer ([ekretchmer@kb-law.com](mailto:ekretchmer@kb-law.com)).