



# The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health  
Bureau of Environmental Health  
Community Sanitation Program

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## MEMORANDUM

To: All local Boards of Health and Health Departments

From: Paul Halfmann, Assistant Director 

Date: September 5, 2013

Re: Submetering of Electricity and Gas

The Department of Public Health's Community Sanitation Program (DPH/CSP) has recently become aware that some boards of health may be granting variances pursuant to 105 CMR 410.840 to the metering of electricity and gas requirements specified in 105 CMR 410.354. Specifically, some boards may be granting variances to allow landlords to install computerized energy monitoring systems that enable them to bill tenants in each unit for electricity and gas costs based on proportional usage by each unit. DPH/CSP is providing notice to boards of health that such variances are not permitted under state law.

### Background:

105 CMR 410.354(A) states that owners are required to provide (and pay for) electricity and gas costs unless each unit is metered through a meter which serves only the dwelling unit and other areas under the exclusive control of the occupant and there is a written letting agreement specifying that occupants are responsible for these costs. The Department has issued previous opinions to clarify that any meters installed to measure usage for a particular unit must be installed and read by a regulated utility company.

### Prohibition on Submetering:

Section 335 of Chapter 164 of the Acts of 1997 (the Electricity Restructuring Act) permits operation in rental housing of an energy monitoring system installed prior to July 1, 1997, whereby the cost of heat or air conditioning is allocated or charged by the owner to the tenant based upon measurements made by a computerized monitoring system and pursuant to a rental agreement. This Act only permits such systems installed in rental housing prior to July 1, 1997, and any such systems installed after that date are prohibited by statute.

In addition, the Department of Public Utilities (DPU) has ruled that the resale of electricity and gas (i.e., submetering) is not permitted in Massachusetts. Their reason for this rule is that tenants should be direct customers of the gas or electric utility and thus receive all the consumer protections enforced by DPU.

In light of these restrictions, boards of health should not grant variances to 105 CMR 410.354 relating to submetering of electricity or gas. Any variance granted by a board of health for submetering of electricity or gas is invalid and the Department recommends that boards of health notify property owners of dwellings where a variance has been granted.

For questions relating to this advisory, please contact me at 508.792.7880, ext. 2338.