Understanding the Comprehensive Home Care Rule Revisions

Presented by Rob Rodè and Lores Vlaminck

The presentation will begin at 10:00 a.m. You should be able to hear music playing. Please check your sound, if you cannot hear the music.

ROBERT RODÈ, JD

Provider advocate and consultant for Home Care, Hospice, Palliative Care, Assisted Living, Long Term Care, Senior Housing

Focuses on operations, survey and complaint compliance and appeals, provider and individual licensure, dispute resolution, client/family behaviors, employment, business transactions, CHOWs, accounts receivable and contracts

Named “50 for the Next 50” innovative health care leaders by LAMN

Over 20 years experience, licensed in MN and WI
LORES VLAMINCK,
MA, BSN, RN, CHPN

Consultant for Home Care, Hospice, Palliative Care, Assisted Living
Auditor and Mentor for regulatory compliance and policy development
Instructor for ELNEC, EPEC, HPNA curricula-ELNEC Geri Trainer of the Year-2010
Experienced home care/hospice founder and director-19 years
43 years of nursing experience

OBJECTIVES

• Articulate legislative process for upcoming rule making
• Learn about the recent home care statute revisions
• Identify what modifications your agency may need to make based on the latest changes
• Learn what MDH is currently citing for compliance issues
RULE MAKING PROCESS

• This is where some of the nitty-gritty questions can be answered.
• Commissioner of health began rulemaking late August 2019.
• Proposed rules published by December 31, 2019.
• Final rules published by December 21, 2020 – in time to be added to new AL licensure.

RECENT HOME CARE STATUTE REVISIONS

Data Collection Required for HCBS Providers

• Annual workforce data collection is required of home and community-based services providers

• A variety of data points are required, including:
  • Number of direct-care staff;
  • Wages of direct-care staff;
  • Hours worked by direct-care staff;
  • Overtime wages of direct-care staff;
  • Benefits paid and accrued by direct-care staff;
  • Direct-care staff retention rates;
  • Direct-care staff job vacancies;
  • Amount of travel time paid;
  • Program vacancy rates; and
  • Other related data requested by the commissioner.
RECENT HOME CARE STATUTE REVISIONS

Disability Waiver Rate System (DWRS)

- DWRS rates were cut by 7% on July 1, 2017, because the Centers for Medicare and Medicaid Services (CMS) rejected the way Minnesota structured rate increases.
- A portion of the cuts were restored with a DWRS competitive workforce factor.

Elderly Waiver (EW) Grant

- $500,000 in fiscal year 2021 were appropriated for incentive-based grants to elderly waiver customized living service providers for achieving outcomes that improve service, quality, and efficiency.
- Preference will be given to providers that serve at least 75% elderly waiver participants.
RECENT HOME CARE STATUTE REVISIONS

New Documentation and Billing Requirements

• HCBS providers including customized living and adult day services are required to document services.

• Effective August 1, 2019, there are new documentation requirements for services provided under the alternative care, elderly waiver, developmental disability, and community access for disability inclusion waivers and/or services licensed under 245A or 245D.

BEHAVIORAL HOME HEALTH SERVICES

• Establishes provider requirements and service delivery standards
• Establishes discharge criteria for individuals and requirements for behavioral health home services providers prior to discharge
• Identifies staff qualifications, training, and “practice transformation” requirements for behavioral health homes.
RECENT HOME CARE STATUTE REVISIONS

Fines

- Fine amounts increased for violations of home care licensure law
  - $500 for each Level 2 violation
  - $3,000 for each Level 3 incident
  - $5,000 for each Level 4 incident

- Immediate imposition of fines during a survey, complaint investigation, or follow up visit.

To protect consumers until the AL/HC licensure law goes into effect, the home care statutes provide that a client can receive compensation for maltreatment ranging from $1,000-5,000, paid by the home care agency to the commissioner, who then pays the client.

A new Maltreatment Compensation Fund is established for clients who were subjected to maltreatment

- The consumer has the choice to instead take civil action.
MODIFICATIONS TO YOUR AGENCY

Bill of Rights – which one?
- Home Care Bill of Rights
- Federal and State Combined Bill of Rights
- Home Care with Assisted Living Bill of Rights
- Amendment to the BOR effective 8/1/2019

RECENT ASSISTED LIVING STATUTE REVISIONS

Electronic Monitoring (effective January 1, 2020)
- Requires a facility to allow a resident to have electronic monitoring devices (this is not new)
- Provides protections for the resident’s privacy and facility operations
- Establishes procedures for install and roommate consent

Retaliation Prohibited (effective August 1, 2019)
- Retaliation statutes prohibiting a facility or agent of a facility from retaliating against a resident or employee were strengthened.
- Allows the commission to take enforcement action for retaliation with 30 days of complaint/related activity.
RECENT ASSISTED LIVING STATUTE REVISIONS

Assisted Living Licensure
• Framework
  • Begins August 1, 2021
  • Two levels of licensure: AL and AL with dementia care
• Fees
  • Begin in 2021
  • AL: $2,000 per building plus $75.00 per resident
  • AL with dementia care: $3,000 plus $100.00 per resident
• Dementia Care
  • An AL with a dementia care unit must be separately licensed
  • Additional requirements: demonstrate capacity to manage residents, staffing/training requirements, and provide specific services to each resident.

Assisted Living Licensure Cont.
• Business Operations
  • Handling resident finances and property: final statement of funds within 30 days of termination or death
  • Individualized abuse prevention plans
  • Specific employee records
  • Comprehensive TB infection control program
  • Emergency disaster plan and training
• License Applications & Controlling Individual Restrictions
  • Authorizes commissioner of health to deny licensure under certain circumstances
  • Establishes stays of revocation or non-renewals under certain conditions
RECENT ASSISTED LIVING STATUTE REVISIONS

Assisted Living Licensure Cont.

• Contract Requirements
  • Requires revisions to contracts of all current residents to account for new license and other required provisions

• Resident Assessment & Services
  • New residents must have an RN assessment prior to move-in or contract execution date (whichever is earlier)
  • Reassessment required within 2 weeks and a written service plan must be developed

• Surveys
  • Initial survey within 12 months of provisional license grant.
  • Surveys once every 2 years, with details on follow-up surveys
  • Specifies a reconsideration process and enforcement remedies

• New Procedures for Contract Terminations & Consumer Appeal Rights
  • Notice and discharge planning requirements for contract terminations
  • Appeals process with OAH for consumers wishing to contest a contract termination

• Other Minimum AL Requirements
  • Biannually reviewed plan to ensure sufficient staffing
  • Awake staff in all secured dementia care units
  • Offer 3 meals/day and snacks and social activities
  • A clinical nurse supervisor
  • Allocation of space for resident and family councils
RECENT ASSISTED LIVING STATUTE REVISIONS

Assisted Living Licensure Cont.

• New Qualifications for AL Directors
  • Initial requirements and ongoing training
  • Examination and continuing education monitored by Board of Executives for Long-Term Services and Supports

• “I’m okay” Checks
  • Unlicensed settings must disclose in a written contract whether they will offer “I’m okay” checks
  • If these checks are included, the contract must have details on the nature, extent, and frequency.

MDH’s Citations for HCALP Quarter 2 (COMPREHENSIVE ONLY LICENSED AGENCIES)
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<th>Description</th>
<th>Total Cited</th>
<th>% of Surveys with this Correction Order</th>
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<tr>
<td>Contents of Service Plan</td>
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<td>Employee Records</td>
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<td>TB Prevention and Control</td>
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<td>Required Annual Training</td>
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MDH’s Citations L and C
Past 12 months
(MEDICARE/STATE LICENSED AGENCIES)

MEDICARE AGENCY CITATIONS

1. 0536 - A review of all current medications cited 15 times
2. 0572 - Plan of care cited 11 times
3. 0574 - Plan of care must include the following cited 11 times
4. 0814 - Non-skilled direct observation every 60d cited 7 times
5. 0514 - RN performs assessment cited 7 times
SUMMARY

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