Meeting Notes
Consensus Issues for Improvement to MN Home Care Statutes
July 24, 2017
Care Providers of Minnesota, Leading Age Minnesota, and the Minnesota HomeCare Association

In attendance: Doug Beardsley, Sarah Blonigan, Bobbie Guidry, Kim Holien, Michelle Klegon. Kathy Messerli, Rob Rode, Alice Sanders, Jill Schewe, Melanie Swenson, and Lores Vlaminck

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Consensus Issues (not in order of importance):

**Service Plan**

**Specific recommendation**: Eliminate the requirement to include “identification of and information as to who has authority to sign for the client in an emergency” in the service plan (found at §141A.4791 Subd. 9 (f)(5)(iii)).

**Specific recommendation**: Eliminate the requirement to include “the frequency of sessions of supervision of staff any type of personnel who will supervise staff” (found at §141A.4791 Subd. 9 (f)(4)).

**General concern**: The language found at §141A.4791 Subd. 9 (f)(5)(iv)) is unclear and has resulted in many correction orders. It is unclear how this requirement to identify the circumstances when emergency medical services are not to be summoned consistent with any communicated advance directives applies to the service plan, advance directives, POLST orders, etc. Improved language may result in improved compliance and decreased correction orders.

**Request for discontinuation of life-sustaining treatment** §141A.4791 Subd. 13. Issues with current language:

1. No definition of “life sustaining treatment” so has no inherent meaning.
2. All requests by a client for discontinuation of anything ordered should be referred to the ordering prescriber, so this section can be used for all such requests.
3. Reference to “family member” and “other caregiver” is inconsistent with new definition of “client representative”; other unclear words like “supervisor” and “other agent”
4. Overly limiting and misleading use of the word “physician”
5. Unnecessary references to health care directive/living will statutes that only cause confusion
6. Other unnecessary provisions if this section is used to just set up a requirement that the home care agency keep the ordering medical professional informed of client requests about any ordered treatment or medication

Suggested language (may need to craft so this does not apply to routine refusal of a medication or treatment):

Subd. 13. Request for ~~discontinuation of~~ changes in ~~life-sustaining~~ treatment or medication.

~~(a)~~ If a client or a~~, family member, or other caregiver of the~~ client representative requests that ~~an employee or other agent of~~ the home care provider modify, not follow, discontinue, or otherwise disregard an order for a ~~life-sustaining~~ treatment or medication, the employee or agent of the home care provider receiving the request

 ~~(1) shall take no action to discontinue the treatment; and~~

~~(b)~~(a) ~~(2)~~ shall promptly inform ~~the~~ a designated individual within ~~supervisor or other agent of~~ the home care provider of the ~~client's~~ request.

(b) Upon being informed of a request ~~for termination of treatment~~, the home care provider shall promptly:

(1) inform the client or client representative that the request will be made known to the prescriber ~~physician~~ who ordered the ~~client's~~ treatment or medication; and

(2) inform the ~~physician~~ ordering prescriber of the ~~client's~~ request.~~; and~~

~~(3) work with the client and the client's physician to comply with the provisions of the Health Care Directive Act in chapter 145C.~~

~~(c) This section does not require the home care provider to discontinue treatment, except as may be required by law or court order.~~

~~(d)~~ (c) This section does not diminish the rights of clients to ~~control their treatments~~ make health care decisions, refuse home care services, or terminate their relationships with the home care provider.

~~(e) This section shall be construed in a manner consistent with chapter 145B or 145C, whichever applies, and declarations made by clients under those chapter.~~

**Medication Management**

**Specific recommendation**: §141A.4791 Subd. 10(1) should be modified to indicate that LPNs are permitted to set-up medications for clients with planned time away (or replace the title “registered nurse” with “nurse” or “licensed nurse”).

**General concern**: Much of the language is very HWS/Facility-based. Can the language be improved to better align with medication management provided by home care in the community/private homes?

**General idea:** Possibly establish a workgroup to review the medication management section.

**Home Care Bill of Rights Document(s)**

**Specific recommendation**: Providers remain frustrated with the two versions of home care bill of rights (based on if the client is or is not residing in an Assisted Living HWS setting). Suggest merging into one document with one timeframe for notice, or at least just merging into one document that covers both living situation scenarios. We understand there will still be a Federal version for those receiving Medicare covered services.

**Infection Control**

**Specific recommendation**: Create a new section in the home care statutes to address various infection control requirements. The section would include requirements currently found at: §141A.45 Subd. 6, and §141A.4798 Subd. 1-2, as well as a new requirement: “Infection control policies, procedures, and practices shall be consistent with accepted home care standards of practice.” This will better reflect infection control problems that are currently issued in surveys under the home care bill of rights (§141A.44 Subd. 1(2)) and highlight the importance of infection control in the requirements.

**Survey Efficiency**

**Specific recommendation**: §141A.474 Subd. 9 currently states: “Follow-up surveys. For providers that have Level 3 or Level 4 violations under subdivision 11, or any violations determined to be widespread, the department shall conduct a follow-up survey within 90 calendar days of the survey. When conducting a follow-up survey, the surveyor will focus on whether the previous violations have been corrected and may also address any new violations that are observed while evaluating the corrections that have been made. If a new violation is identified on a follow-up survey, no fine will be imposed unless it is not corrected on the next follow-up survey.”

We would recommend §141A.474 Subd. 9 be amended to read: “Follow-up surveys. For providers that have Level 3 or Level 4 violations under subdivision 11~~, or any violations determined to be widespread~~, the department shall conduct an onsite follow-up survey within 90 calendar days of the survey. When conducting a follow-up survey, the surveyor will focus on whether the previous violations have been corrected and may also address any new violations that are observed while evaluating the corrections that have been made. If a new violation is identified on a follow-up survey, no fine will be imposed unless it is not corrected on the next follow-up survey. Follow-up surveys for Level 1 or Level 2 violations shall be conducted off-site using plans of correction submitted by providers. Submitted plans of correction shall include the following required elements(1) address how corrective action will be accomplished for those home care clients found to have been affected by the deficient practice, (2) address how the provider will identify other home care clients having the potential to be affected by the same deficient practice, (3) address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur, (4) indicate how the provider plans to monitor its performance to make sure that solutions are sustained. The provider must develop a plan for ensuring that correction is achieved and sustained. This plan must be implemented, and the corrective action evaluated for its effectiveness, and (5) include dates when corrective action will be completed. The corrective action completion dates must be acceptable to the State.

**Specific recommendation**: If MDH is unable to complete surveys in the required 3-year cycle timeframe, then §141A.474 Subd. 2(b) (Core Survey) needs to be amended to permit the Core Survey process to be utilized for any licensed home care provider that has experienced a survey under the Comprehensive statues with no widespread violations beyond Level I, not only those that have been surveyed in the prior 3 years with no widespread violations beyond Level I.

**Therapy and Treatment Plans**

**Specific recommendation**: Amend §141A.4793 Subd. 6 as follows: “Orders ~~or prescriptions~~. There must be an up-to-date written or electronically recorded order from an authorized prescriber ~~or prescription~~ for all treatments and therapies. The order must contain the name of the client, a description of the treatment or therapy to be provided, and the frequency and other information needed to administer the treatment or therapy. Orders must be renewed at least every 12 months or more frequently as indicated by the assessment.”

Similarly, remove the references to “prescribed” or “prescriptions” (replace with “order” or” orders” when necessary) in §141A.4793 Subd. 2(b), §141A.4793 Subd. 3, §141A.4793 Subd. 3(5), §141A.4793 Subd. 4, §141A.4793 Subd. 5.

**CHOWs**

**Specific recommendation**: Delete §141A.472 Subd. 5 as follows:

~~Transfers prohibited; changes in ownership. Any home care license issued by the commissioner may not be transferred to another party. Before acquiring ownership of a home care provider business, a prospective applicant must apply for a new temporary license. A change of ownership is a transfer of operational control to a different business entity and includes:~~

~~(1) transfer of the business to a different or new corporation;~~

~~(2) in the case of a partnership, the dissolution or termination of the partnership under chapter 323A, with the business continuing by a successor partnership or other entity;~~

~~(3) relinquishment of control of the provider to another party, including to a contract management firm that is not under the control of the owner of the business' assets;~~

~~(4) transfer of the business by a sole proprietor to another party or entity; or~~

~~(5) in the case of a privately held corporation, the change in ownership or control of 50 percent or more of the outstanding voting stock.~~

This has not been the practice of MDH’s HCALP. When a CHOW is processed, the new owner essentially “takes over” the license status (temporary or full licensed) of the home care license being purchased.

**Specific recommendation**: Clarify what orientation, training, competency testing, employee, and employee health records are transferrable to a new owner under an approved CHOW – meaning they are not required to be repeated by the new licensee.

**Training and Orientation**

**Specific recommendation**: Clarify in statute that required elements of a CNA training program do not need to be repeated by the licensed home care provider for CNAs hired as home care ULPs who are currently on the MN CNA registry. This is consistent with expectations for licensed nurses working for a licensed home care provider.

**Specific recommendation**: Delete §144A.4795 Subd. 3(b)(3) as follows:

~~(3) have, before April 19, 1993, completed a training course for nursing assistants that was approved by the commissioner.~~

**Specific recommendation**: Amend §144A.4796 Subd. 2(2) as follows:

(2) introduction and review of ~~all the~~ provider's policies and procedures related to the provision of home care services;

**General concern**: Improved clarity regarding general training, general competency testing, and training/testing to meet the individualized needs of each client would be beneficial.

**Supervision**

**Specific recommendation**: Amend §144A.4797 Subd.3(b) as follows:

(b) The direct supervision of staff performing delegated tasks must be provided within 30 days after ~~the~~ each individual’s ~~begins working~~ first date of service to clients for the home care provider and thereafter as needed based on performance. This requirement also applies to staff who have not performed delegated tasks for one year or longer.

**Temporary License Issues**

**Specific recommendations**: Providers have many concerns regarding the current initial survey process for temporary licenses. We fully support the concept of temporary licenses and initial surveys. However, concerns identified regarding the current process include:

1. No opportunity to correct when substantial compliance is not determined
2. No opportunity for follow-up surveys when substantial compliance is not determined
3. Inability for MDH to extend a temporary license
4. Inability for MDH to apply conditions on a temporary license when substantial compliance is not determined
5. Inability for a temporary license to use the reconsideration process in an effective manner when substantial compliance is not determined
6. Adequate protections for home care clients to have services provided by a home care license-holder in situations where substantial compliance is not determined
7. Overall lack of due process options available for the provider when substantial compliance is not determined
8. It appears the substantial compliance definition has been applied when no health or safety risks to home care clients have been identified

We propose the provider organizations work with MDH to make improvements to this important process. Some suggestions include:

* Amend definition of *follow-up surveys* in MN Stat. §144A.474, Subd. 2(d) to include corrections to deficient issues and systems identified in an initial full survey. This will give temporary licensees an opportunity to correct.
	+ In an effort to avoid unlimited follow-up surveys, a cap on the number of follow-ups could be identified.
	+ If MDH is not amenable to always allowing a follow-up survey of a temporary licensee, standards could be developed to determine when temporary licensees qualify for a follow-up survey.
	+ Follow-up surveys for initial surveys could adhere to a quicker follow-up survey timeline.
* Add language to MN Stat. §144A.474, Subd. 1 to specifically allow MDH to impose conditions on a temporary licensee. Currently, MDH treats temporary licenses as being different from a comprehensive licensee. As a result, it says it has no authority to put conditions on a temporary license. Conditions that may be deemed appropriate for a temporary license holder could include any of the options identified in MN Stat. §144A.475, Subd. 2.
* Add language to MN Stat. §144A.473 allowing MDH discretion to extend a temporary license in the event an initial full survey does not result in the provider receiving a comprehensive license. This is probably best placed in Subd. 3.
* Add language to MN Stat. §144A.474, Subd. 3 clarifying that a temporary licensee whose comprehensive license is denied is permitted to continue operating as a home care agency during the period of time when (1) a reconsideration request is pending, (2) an extension of the temporary license is being negotiated, (3) the placement of conditions on the temporary (or comprehensive) license is being negotiated or (4) a transfer of home care clients from the temporary licensee to a new home care provider is pending. This will avoid situations in which payors deny payment because they do not believe the temporary licensee has authority to operate. Currently, MDH is issuing letters indicating the temporary licensee is authorized. However, including this in statute would negate the need for such letters.
* Update the definition of *substantial compliance* as indicated below. Keep the definition objective and measurable.
* Include language in MN Stat. §144A.475, Subd. 6 that specifically states the subdivision does not apply to temporary licensees who are denied a comprehensive license. This subdivision prohibits owners and managerial officials whose license has been revoked or not renewed from obtaining a new home care license for a period of five years following the revocation or nonrenewal. Such language would be consistent with MDH’s current interpretation.
	+ We may also want to exempt providers who are given a conditional license immediately following an initial full survey (which is what MDH has done a couple of times). However, if we include language allowing MDH to place conditions on and extend a temporary license, this may not be necessary.
* In the event a temporary licensee must transfer its home care clients to a new provider, the temporary licensee is required to provide certain information to MDH, the Ombudsman and lead agencies as part of an overall transfer plan (see MN Stat. §144A.475, Subd. 5). This should be clarified to indicate that only the lead agency in the county in which the home care clients are receiving services should receive this information. If the temporary licensee is delivering services in multiple counties, the lead agency for each county shall receive information only related to those home care clients receiving services in that specific county. To the extent a temporary licensee is providing services in only one county but is serving an individual whose lead agency is not the county in which services are being delivered, that lead agency shall only receive information regarding that specific home care client, not all home care clients served by the temporary licensee.
	+ A tangential issue regarding the transfer plan is the licensee’s communication to home care clients. MN Stat. §144A.475, Subd. 5 requires a licensee to notify clients and their representatives of MDH’s action within three business days of a final determination. However, MDH (and sometimes the Ombudsman) wants to see the notice to clients before it is issued. This does not appear to always have occurred within the statutory timeframe. As a result, if notice needs to be approved by MDH, the time period for providing the same should be extended.
* For initial full surveys, there should be at least two surveyors on site (neither being a trainee).

**Definitions**

**Specific recommendations**: the following terms/actions used by MDH HCALP need to be defined or amended in the statutes:

**Immediate Correction Order**: (need definition, use, and implications to be provided by MDH)

**Substantial Compliance**: §144A.43 Subd.31 "Substantial compliance" means complying with the requirements in this chapter resulting in no correction orders issued at a Level 3 or Level 4 finding ~~sufficiently to prevent unacceptable health or safety risks to the home care client~~.

**Miscellaneous**

**Specific recommendations**:

Remove references to license fee phase-in process.

Include home care providers licensed under §144A.471 in the definition of “health care facility” in §243.166 Subd.4(b)(1). This is the notice/disclosure of status as a registered predatory offender.