State Regulatory Action Impacts on County Government

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Objectives today are to:

Learn about Health Regulation Division’s (HRD) regulatory authority

Learn about two types of regulatory actions: nursing home receiverships and home care license restrictions

Learn HRD’s perspective during regulatory actions

Participate in discussion about ways HRD and county government can work better together
Challenges Affecting Our Relationships

During state regulatory actions:

- county and other stakeholders wonder “what took HRD so long to act?” and sometimes, wanted to provide its own input into the action HRD is taking;

- county and HRD do not understand each other’s roles and boundaries and how pending litigation impacts roles/boundaries;

- HRD may not know what offices within the county to contact and vice versa;

- data sharing laws vary and aren’t always clear;

- county wants technical support and clear direction from HRD;

- HRD misunderstands county’s existing workload and what county wants/needs;

- frustration makes it really hard to communicate effectively and meaningfully
HRD is part of the Minnesota Department of Health (MDH), a state agency created by the legislature, to implement and enforce specific laws.

The Governor appoints the Commissioner of Health.

HRD is one division in the Department. We work for the Commissioner of Health, the legislature, sometimes a federal agency, and most importantly, we work to protect the health and safety of Minnesotans.
HRD is **not** the same thing as Environmental Health (EH). EH is the other all-regulatory division in MDH and it does the following:

- Food, Pools and Lodging
- Drinking Water Protection
- Asbestos, Lead, Radon Compliance
- Sports Arenas
- Well management

HRD is **not** the same thing as Department of Human Services (DHS).

HRD is **not** the same thing as other divisions in MDH that counties regularly engage with.
Audiologists

Birth Centers, Board and Lodge with Special Services, Boarding Care Homes, Body Artists and Body Art Establishments

Clinical Laboratories, Comprehensive Outpatient Rehabilitation Facilities, Crematories

Doulas, Dialysis Facilities, Federally Qualified Health Centers, Funeral Establishments

Hearing Aid Dispensers, Home Care, Hospice, Hospitals, Housing with services, Mobile Health Evaluation/Screening providers, Morticians, Nursing Assistants, Nursing homes,

Outpatient Surgical Centers, Prescribed Pediatric Extended Care, Psychiatric Residential Treatment Facilities, Rural Health clinics,

Speech-language Pathologists, Spoken Language Interpreters, Supervised Living Facilities, Supplemental Nursing Services Agencies

Transplant programs, Trauma systems, and Unlicensed Complementary and Alternative providers.
Health Facilities Regulated by HRD
Minnesota State Legislature

State Laws (statutes and rules)
  practice acts
  data practices act

Federal Congress

Federal Laws and relationship with CMS (statutes and rules)
  delegated authority
  practice acts
  data use agreements (DUAs- federal)

US Constitution and Caselaw - Section 1983 action
HRD Regulatory Activities

State and Sometimes Federal Regulation on behalf of CMS

- Credentialing and Qualifications Reviews *establishing due process rights
- Surveys (inspections) – healthcare, infection control, environment, physical plant
- Audits (nursing homes for Medicaid billing)
- Investigations (state and federal laws)
- Correction Orders (state and federal laws)
- Enforcement Actions (state and federal laws)
- Provider Appeals and Reviews
- Provider and Consumer Information

Each regulatory program has its own mix of the above. NOT the same from program to program.
Government cannot take away *property* without due process (fifth and fourteenth amendments to the US Constitution)

Licenses or other credentials are *property* as defined in case law by the US Supreme Court, whereby, licensees must receive due process with all licensing actions, including fines.

Government regulatory agencies are subject to civil lawsuits for violating Due Process rights under federal law (“Section 1983 Action”)
Due Process Requirements

To take action against a license, the regulatory agency must:

- Give the licensee notice and an opportunity to be heard
- Must have *reasonable and articulated basis* for decisions
- Apply procedures and laws fairly and consistently among applicants/licensees
- Apply checks and balances before decisions are made
- Decisions must not be arbitrary or capricious
Division Director’s Office (DDO)
Licensing and Certification (L&C)
Engineering services (Eng)
Home Care and Assisted Living Program (HCALP)
Office of Health Facilities Complaints (OHFC)
Case Mix Review (CMR)
Health Occupations Program (HOP)
Mortuary Science (Mort Sci)
HRD – Organization

Future State

HRD is undergoing a division redesign

Future state will be organized by regulatory activities

A consultant is working with staff in workgroups on what that might look like

Goals are to improve efficiency, ability to respond to stakeholders, cross train staff, improve ways for staff to be engaged, and in general rethink how we do our work.

Stay tuned!
HRD Partners and Stakeholders

Department of Human Services (MAARC, Licensing (also an LIA), Nursing Homes, Medicaid/Waivers)

Other State Agencies like Health Licensing Boards, Commerce, Labor and Industry, Revenue

Centers for Medicaid and Medicare Services (CMS)

Ombudsman for Long Term Care; and Ombudsman for Mental Health and Developmental Disabilities

Consumer Advocacy Organizations

Provider Organizations

County and City Government (Public Health, Human Services, Police, Sheriffs, County Attorney, Adult Protection)

Attorney General’s Office, including Medicaid Fraud Control Unit, and Consumer Division
Regulatory Actions

Nursing Homes

  State Receiverships

Home Care Providers

  License Restrictions
Nursing Home (NH) Receiverships

Minnesota Statutes, sec. 144A.15

- Authorizes MDH to seek a receivership
- Is a healthcare and safety emergency/crisis
- Requires a district court order
- MDH hires a managing agent who operates NH day to day
- MDH works jointly with DHS-Nursing Home Rates Division
- MDH takes over the operation but does not become building owner
- MDH becomes a nursing home licensee
Statistics:

In past 10 years, have had three state receiverships affecting five nursing homes.

Four of the five nursing homes were in greater Minnesota

Three of the five nursing homes are open today
How do the circumstances first look:

A bad survey with numerous violations in all areas of their operation with an inability to correct the violations upon the follow-up survey

Information from Ombudsman about conditions onsite prompting a monitoring survey

A pattern of complaints to OHFC

Possible contacts to MDH/DHS from providers in community

Possible contacts from NH staff to MDH/DHS

Possible contact from NH owner about operator onsite and line of credit debts

Takes between one to two weeks from point of internal decision to obtaining a court order authorizing the receivership
Getting a Receivership in Place

Finding a managing agent who is ready, willing and able and then planning with the managing agent to go onsite and take it over

Simultaneously getting permission for an emergency contract from MN Management and Budget Agency

Simultaneously drafting petitions for court to prove that the state must take over a private business

If possible, trying to calm the facility by connecting with key non-corporate staff and finding out how many supplies they have on hand

Connecting in advance with partners such as ombudsman, county, adult protection, DHS

Once get a court order, it isn’t in effect until midnight. Planning continues for first day’s actions such as inventorying and assessing immediate needs, how to protect health and safety of residents, getting payroll up and running, bypassing IT systems if necessary, communications to residents, families, employees, and community.
Evaluation Period and Decision-Making

First, get facility back into compliance as quickly as possible to protect health and safety of residents.

Decide which bills will get paid or not.

Decide whether facility can stay open or should close.

If facility needs to close, need to comply with resident relocation law just like any licensee.

County government works with individual residents and managing agent.
Nursing Home Receiverships

Ending a state receivership

Cannot last longer than 18 months by statute

Closure or new licensee

Turn empty building back to owner

Licensed beds close forever if under receivership and nursing home closes
Known Impacts From Receivership:

- Media attention and need for consistent messages; who is doing what; contact names
- Data sharing questions between state and county
- Confusing roles and responsibilities before, during and after receivership
- Disruption in community and county. Worries about health and safety of residents. Trust issues, uncertain futures.
Known Impacts From Receivership: (continued…)

Medicaid rate increase in receiverships and effect on private pay residents and families.

Pressures on county to do assessments of all residents within short time to find new places

Pressures on county and city because nursing home jobs are lost

Vendors from community might not get paid.

Tax time and outgoing operator usually does not do tax paperwork and employees have to submit alternative documentation about their earnings.
Minn. Stat. sec. 144A.475 Enforcement.

For acts detrimental to health, safety and welfare of a client and other statutory violations, can take following actions: correction orders, fines, suspensions, revocation, conditional licenses.

Facts of each situation and a case by case analysis helps us select best outcomes for each scenario.

Ideally we get a stipulation and consent agreement
**Temporary License.** Minn. Stat. sec. 144A.473

In first year of practice will get a survey and need to be substantially in compliance with requirements. “Substantial compliance” means complying with the requirements sufficiently to prevent unacceptable health or safety risks to the home care client. If not in substantial compliance, the statute states we must not issue the basic or comprehensive license. Can have reconsideration process.

**Immediate Temporary Suspension + Revocation.** Minn. Stat. sec. 144A.475

For the very serious matters, we will take these actions together. Immediate Temporary Suspension is 90 days. When taken with a revocation, the statute allows the Immediate Temporary Suspension to extend beyond 90 days for the pendency of the revocation action when the Immediate Temporary Suspension is separately upheld. There has to be an expedited hearing on the Immediate Temporary Suspension. Get a contested case process.
Minn. Stat. sec. 144A.475, subd. 5 – Cares Transfer After Restriction

When regulatory action is taken that restricts license, this statute requires the provider planfully wind down and transfer cares.

This requires the outgoing provider to continue to provide care after a license restriction goes into effect. This is awkward.

The wind-down process means that we risk stalling and further bad care and uncooperative provider during transition.

There is no receivership authority for home care.
Known County Government Impacts From Home Care licensing restrictions:

MOSTLY THE SAME AS NURSING HOME RECEIVERSHIPS

- Media attention and need for consistent messages; who is doing what; contact names
- Data sharing questions between state and county
- Confusing roles and responsibilities before, during and after restriction
- Disruption in community and county. Worries about health and safety of residents. Trust issues, uncertain futures.
Known County Government Impacts From Home Care licensing restrictions:

Pressures on county to do assessments of all residents within short time for placement and find places

Pressures on county and city because jobs are lost

Vendors from community might not get paid.

Tax time and outgoing operator usually does not do tax paperwork and employees have to submit alternative documentation about their earnings. (Not seen yet, but expecting it)
Assisted Living, or Assisted Living with Dementia Care Licenses

**Highlights:** housing and healthcare services are licensed together; physical plant standards; requires person-centered planning; ensure that staff is available 24/7; provide three nutritious meals with snacks per day; must have clinical nurse supervisor; must have resident and family councils.

Additional requirements for dementia care licenses: must have experience providing services to residents with dementia or hire a consultant for at least 6 months; additional training about dementia;

Rulemaking Process has begun.
What can we do together to strengthen our relationships?

Audience Participation!

What ideas do you have for strengthening our relationship/partnership?

Topics to discuss? (list of topics)

Who attends meetings?

How can we participate? (remotely?)

How often?
Conclusion

Thank you for everything you do! We are in this together!

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