

Meeting Notes

Assisted Living Licensure Rulemaking Advisory Committee Meeting

Date: October 16, 2019

Time: 9:00 – 11:00 AM

Location: Minnesota State Retirement Systems Building, 60 Empire Drive, St. Paul, MN

Attendees

Advisory council members: Doug Beardsley (Care Providers of Minnesota), Sean Burke (Minnesota Elder Justice Center), Aisha Elmquist (Office of Ombudsman for Long-Term Care), Ron Elwood (Mid Minnesota Legal Aid), Mary Jo George (AARP Minnesota), Beth McCollum (Alzheimer's Association), Rajean Moone (Minnesota Leadership Council on Aging), Roberta Opheim (Office of Ombudsman for Mental Health & Developmental Disabilities), Karen Peterson (Minnesota HomeCare Association), Tetyana Shippee (University of Minnesota School of Public Health), Kristine Sundberg (Elder Voice Family Advocates), Kari Thurlow (LeadingAge Minnesota)

Minnesota Department of Health: Michelle Larson, Anne Peterson, Linda Prail, Patricia Winget, Mary Absolon, Bob Dehler, Toni Malanaphy-Sorg, Marilyn Etzbach, Lea Bittner-Eddy

Updates

Members' hopes and anticipated challenges

Members stated their hopes and anticipated challenges for this project.

Announcements and housekeeping

Anne Peterson led this discussion.

- MDH developing a rulemaking webpage for this work - agenda, minutes, draft rules and email will be posted so public can send in comments

Committee purpose and desired outcomes

Anne Peterson led this discussion.

- Introductions, get to know and develop working relationship

M E E T I N G N O T E S :
A S S I S T E D L I V I N G L I C E N S U R E R U L E M A K I N G
A D V I S O R Y C O M M I T T E E

- Understand and contribute to rules process
- Stakeholder group: process is different than when we crafted the legislation - more regimented
- Identify all topics we will need for rule making
- Emergency Preparedness Rule - Interested in getting input; listen to ideas and reactions to the materials provided

Group norms and ground rules

Lea Bittner-Eddy led the discussion.

- Start and end on time
- Take breaks as needed
- Step outside the room for handling (non-related) urgent business
- Laptops and phones only for the purpose of what we are doing here
- Hear all voices – expect everyone’s input and collaboration
- Avoid Jargon/acronyms
- Contentious issues: first confirm your understanding before stating your opinion – facts first, then feelings
- Input process = You will get drafts of everything for your review
- Comments received to date will be on the website as public information

Rulemaking process

Patricia Winget led the discussion.

- Members provided with an informative binder with information on this process
- 1st thing is to publish “request for comments” – this launches the formal process, published August 12, 2019 in State Register
- 2nd phase is rule development, under authority of the legislature
- Statement of Need and Reasonableness (SONAR), justifying decisions for all to read; Administrative Law Judge (ALJ) will review to make sure statutory requirements and rational basis for this group’s work are met
- Notice of Intent to Adopt Rules after we receive permission to go forward with a complete draft, then 30-day comment period when people can give comments
 - If 25 hearing requests, then hearing must be held
 - If we adopt the rules, they get served on Governor who has 14 days to veto the rules, this does not usually happen – controversies reconciled here
- After all steps, Notice of Adoption to State Register; law is effective 5 days later

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- Overview of roles, step by step:
 - Drafting can be open-ended; this formal process takes about 3 months if no hearing and 5 months if there is a hearing
 - You are here to advise and the public is here to provide input and advise the department to make the rules; You do not have voting authority – power of persuasion is your tool
 - If at impasse, take to commissioner for resolution, not a usual course of action
 - Members are here to represent your stakeholders and interests; encourage you to maintain your communication with your constituents
 - Goal is to achieve consensus on as many issues as possible
 - Clarify deadlines: This is a comprehensive law, the Health Regulations Division (HRD) is working full steam to get draft rules up on website – hard and fast deadline is December 31, 2020

Organize priorities for rulemaking

Anne Peterson led this discussion.

- Additional rules to add to the list?
- What topics do you anticipate requiring the most time/resources to complete?
- What topics do you anticipate requiring the least time/resources to complete?
- What are the most critical topics?
- Which topic is causing heartburn?
- Discussion Points:
 - Rule is different than statute
 - Rule gives more details about how a statute is applied and enforced
 - Rules are the procedures to comply with statute
 - Clarify ambiguities that exist in the law
 - Rule is legal; rules have the force and effect of law, same as statute
- Binder review and discussion

New rules topics?

Lea Bittner-Eddy led this discussion.

- Clearly define what it means to “operate without a license”
- Define “culturally appropriate programming” in assisted living facilities for residents, families and providers
- Policies and Procedures requirements format – including enforcement actions

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- Define specific policy staff required to attend policy training
- Define Assisted Living Facility – does it relate to sleeping or services? (i.e public housing)
- Define assisted living resident – does it mean the individual who is contracting for both services and housing, or just anyone living in a licensed setting? This has an impact on fees and other aspects of the law
- Item 13 from Minnesota Statutes, section 144G.09, procedures for transitioning – also an issue for those in limbo, will be operating as the first new licensees (specs for new construction), and physical plant reviews, how will those apply – clarify for those individuals

Member small group discussion

Members led this discussion.

- Commonalities among groups:
 - Most Critical topics
 - Staffing
 - uniform assessment tools
 - Potentially easier = Definition of serious injury

Emergency preparedness and disaster rules

Anne Peterson led this discussion.

- Shared documents of four states to look at for a spectrum of existing rules
- Copy of Center for Medicare and Medicaid Services (CMS) Appendix Z, Federal requirements
- Long-Term Care (LTC) Toolkit from Office of Emergency Planning, 2016
 - Core requirements:
 - Who is the facility talking to in the community?
 - Contracts with other facilities or businesses in the area?
 - Who is checking those contracts and plans?
 - What can the department do to enforce?
 - Cost is emergency generators and backup power
 - Middle ground between not requiring anything and in having a threshold for certain areas or counties
 - Will send this all out in writing
 - Aging infrastructure, for instance elevator issues, is a huge consideration during a disaster

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Public comments

- Regarding emergency preparation, please consider that there are no staffing standards currently for Assisted Living (AL), and we are going off of CMS outpatient staffing based on acuity; consider staffing during emergencies.
- There is emergency disaster preparedness referenced in Home Care law as well
- Rural dementia care providers find it challenging to provide dementia care services in a small home setting to patients.
- Emergency preparedness will have to include references to buildings that may need to convert
- From sticky notes:
 - Issue of gun right in one's own assisted living apartment
 - Need to balance vulnerability with the rights of the residents
 - Costs considerations
 - "Facility" takes away from the homelike atmosphere consider "community site"

Next meeting

Next meeting date November 14th to review progress

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