

Meeting Notes

Assisted Living Licensure Rulemaking Advisory Committee

Date: March 12, 2020

Time: 1:30 – 3:00 PM

Location: MN State Retirement System Building, Training room 106

Attendees

Advisory committee members: Doug Beardsley, Maureen O’Connell, Mary Jo George, Lisa Harrison for Roberta Opheim, Karen Peterson, Kris Sundberg, Kari Thurlow, Sean Burke, Tetyana Shippee, Beth McMullen, Wendy Hulsebus

Not Present: Ron Ellwood, Aisha Elmquist, Dr. Rajean Moone

Minnesota Department of Health: Katherine Chickey, Ian Lewenstein, Anne Peterson, Linda Prail, Patricia Winget, Josh Skaar, Lea Bittner-Eddy, Toni Malanaphy-Sorg, Marilyn Etbach

Updates

Rules writing progress

Katherine Chickey introduced Patricia Winget (attorney for rule making), who gave an update on rules writing progress.

- Rules currently being drafted and also working on the Statement of Need and Reasonableness (SONAR), which is rule development – when both are done, rules will be sent to the Revisor’s Office (mid-April goal), then it goes to the Governor’s office, and then we propose with a notice which will be published in the state register; There will then be a hearing, a comment period, and then the Administrative Law Judge (ALJ) will issue a report, which will finish the rules process. Final steps are to file with the Office of Administrative Hearings (OAH), who will file with the Secretary of State and then the Governor’s Office.
- During these actions Advisory Committee will continue to participate and can still submit comments which need to be in writing now; please be succinct in respect to timeframe. This is your time to use your power of persuasion.
- Topics already concluded will not be revisited. All will be posted on the website for reference.

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

- There will be a 30-day comment period after we post in the state register (that is when it shifts to formal comment period); there will be a hearing, you can testify and submit post-hearing comments, and then there is a rebuttal period, after which the record will close and the Administrative Law Judge (ALJ) will study it and determine if there are defects for us to address or if they are approved.
- Comments received to date are not part of the record; if you want comments on record, submit after the notice of hearing is published in the Register.

Staffing and training rules

Linda Prail and Ian Lewenstein led the discussion.

- Many requirements are already in statute, and will not be repeated in the rules.
- For Staffing, cross-reference the statute; adequate staff required, not specific staffing ratios
 - Subpart 3, the Board of Nursing Home Administrators is doing two rules now; we will track what they are doing in terms of training for the Assisted Living Director, and include that as it impacts our rule
 - Subpart 9 is not finished – if a facility needs more staffing, what is the enforcement mechanism that MDH has?
 - We are separating dementia care in terms of training, as it is in statute.
- Comments:
 - There is an issue of acuity of individual residents under item 3 under Subpart 1.A. , 144G.771 should also include subdivision 2, assessment process where the registered nurse (RN) is developing the assessment
 - Is there a definition of “temporary personnel” and issue of third party contractor employees; response was that is being developed
 - On page 4, Subpart 5.C., consider making 12 month period in line with 24 month survey period
 - Requirements to provide staffing work schedules - privacy considerations needed
 - Temporary staffing provisions as drafted must recognize the worker shortage
- Three categories for training: orientation, initial training, annual training
- Comments:
 - Cost concerns
 - The mentor requirement requires double staffing
 - The requirements must consider other forms of training, not just in-person, but include on-line, etc.
 - There is a for need person-centered training, appropriate for individuals
 - Need to consider setting base level hours and using competencies rather than hours

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- Need to address language barriers in competency training

Discharge planning procedures/appeal rules update

Anne Peterson led the discussion.

- Third rule topic in the list of 13 under Minnesota Statutes, section 144G.09, Subdivision 3(c); this working draft is to flesh out prerequisite steps before and after a facility sends a notice terminating Housing With Services; this fills in the gaps for Minnesota Statutes, section 144G.52
 - Subpart 3, in addition to statute, at the meeting with the resident, the facility must explain the basis for the termination, and identify what the accommodations and alternatives are to address the issues to be memorialized after the meeting and must comply with laws
 - Subpart 9-12, this is the same coordinated move process for planned closures and relinquishing a license, to keep consistent between other rule parts
- Comments:
 - Transfer of medical records is covered in Minnesota Statutes, section 144G.43
 - For Subpart 10 and the relocation plan, item 8, please explain how moving expenses be paid and by whom.
 - Is there a rule part on service appeals in rule topic number 9 [procedures and timelines for the commissioner regarding termination appeals between facilities and the Office of Administrative Hearings]? Response: This will be addressed in statute, not rule, during the 2021 legislative session as Minnesota Statutes, Chapter 144G, currently lacks an appeal timeline, a process for creating a reviewable record of the termination hearing, and the right to appeal the administrative law judge's decision.

Uniform checklist

Anne Petersen led the discussion.

- The actual checklist is not being created in the rule
- Requirements include a statement that the resident may obtain outside services from another provider at their own cost
- Requirements include a statement that services are subject to change in 60 days calendar notice
- Comments from members and the public
 - The UCIG too long, hence going away – keep this succinct
 - In Subpart 12, more rule language around notifying the consumers of the changes
 - Do not allow a facility to change the list of services resident by resident

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- The checklist should include leeway in the language for temporary service needs (i.e. resident returning from hospital)
As relates to residents signing off that they received and understood the checklist, will this be an annual requirement?
- What is the difference between Elderly Waiver and Customized Living tool and coverage?

Definitions subcommittee

Sean Burke gave the update that this subcommittee has not met.

- The intent of the subcommittee was to look at the definition of “Operating without a License,” “Assisted Living Facility” and “Resident.” [The last two are defined in statute.]
- Comments about definitions still invited
- Subcommittee does not have authority to change statutory language, this includes definitions

Remaining work timetable

- Addressed in opening

Public comments

- Incorporated above

Next meeting

Next meeting date March 26th has been cancelled due to Covid-19 restrictions.

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