



Protecting, Maintaining and Improving the Health of Minnesotans

Office of Health Facility Complaints Investigative Report  
PUBLIC

Facility:

Viewcrest Health Center  
3111 Church Street  
Duluth, MN 55811  
Saint Louis County

Report #: H5414048

Date: April 24, 2014

Revised: October 31, 2014

Date of Visit: December 30 & 31 2013

Time of Visit: 8:30 a.m. – 5:00 p.m.

By: DeeAnn Hogenson, R.N., Special Investigator

Annette Winters, R.N., Special Investigator

Kris Lohrke, Assistant Director

- Type of Facility:
- Nursing Home
  - SLF
  - Hospital
  - HHA
  - ICF/IID
  - Other: \_\_\_\_\_
  - Home Care Provider/Assisted Living
  - Home Care

- Facility Self Report
- Complaint

Allegation(s): It is alleged that neglect occurred when staff (RN Nurse Managers) failed to complete accurate health assessments and interventions for multiple residents.

An unannounced visit was made at this facility and an investigation was conducted under:

- Federal Regulations for Hospital Conditions of Participation (42 CFR, Part 482)
- Federal Regulations for Long Term Care Facilities (42 CFR Part 483, subpart B)
- Federal Regulations for ICF/IID (42 CFR Part 483, subpart I)
- Federal Regulations for HHA (Home Health Agencies) (42 CFR, Part 484)
- Federal Regulations for CAH (Critical Access Hospital) (42 CFR, Part 485)
- Federal Regulations for EMTALA (42 CFR Part 489)
- State Licensing Rules for Boarding Care Homes (MN Rules Chapter 4655)
- State Licensing Rules for Nursing Homes (MN Rules Chapter 4658)
- State Licensing Rules for Supervised Living Facilities (MN Rules Chapter 4665)

- State Licensing Rules for Home Care (MN Rules Chapter 4668)
- State Statutes for Maltreatment of Minors (MN Statutes, section 626.556)
- State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557)
- State Statutes Chapters 144 and 144A

**Conclusion:****Minnesota Vulnerable Adults Act (MN 626.557)**

Under the Minnesota Vulnerable Adults Act (MN. 626.557):

Abuse             Neglect             Financial Exploitation was:

Substantiated     Not Substantiated     Inconclusive    based on the following information:

Based on a preponderance of the evidence the allegation of neglect is substantiated. The facility nursing staff failed to recognize signs of carbon dioxide (CO<sub>2</sub>) poisoning and respiratory acidosis in a resident that had chronic obstructive pulmonary disease (COPD) and retained CO<sub>2</sub>. The resident died of respiratory failure.

Interview and document review provided the following information:

The resident was admitted to the facility for short term rehab. When the resident was admitted used low flow oxygen at 1 -1.5 Lpm (liters per minute) delivered via nasal cannula. The medical record verified that only a low flow of oxygen was used because the resident retained CO<sub>2</sub>. The facility staff used an oximeter to check the resident's oxygen saturation levels however; the levels were not always accurate due to the resident's cold hands. Despite the inaccurate reading the nurses frequently turned up the resident's oxygen flow due to low oxygen saturation levels (the higher the oxygen flow the more carbon dioxide created and retained by the resident).

The resident continued to retain CO<sub>2</sub> and when it reached a critical level; an employee (a nurse) notified the resident's physician about the critical carbon dioxide level however; no other respiratory assessment was performed or relayed to the physician. The physician was not made aware that the resident's oxygen flow had been titrated up.

The staff continued to titrate the resident's oxygen flow up on multiple occasions despite having a critical CO<sub>2</sub> level. The resident had an episode of increased respiratory rate and confusion, became more restless, lethargic, and at one point was unresponsive.

The facility had faxed the resident's physician twice; the first fax requested specific medications and did not describe the resident's full respiratory status or that the resident recently had a critical CO<sub>2</sub> level. The physician returned the fax with orders for nebulizers, increase oxygen and report back to the physician if the resident did not respond well to the nebulizer treatments. The second fax sheet provided information to the physician that increasing the oxygen had made the resident worse; the resident was more lethargic, confused and had become unresponsive. The fax did not provide information to the physician regarding the resident's vital signs or response to nebulizer treatments; nor did it request the resident be seen by a physician due to being unresponsive. Both fax sheets requested specific orders from the physician based on inaccurate oxygen saturation levels. The facility did not request a test to get accurate blood levels or provide a full respiratory assessment to the physician.

The physician was interviewed and stated she was aware the resident had a tenuous respiratory status. The physician stated she recalled giving an order for nebulizer treatments but specifically wanted nursing to notify her if the resident did not show improvement. The physician verified the facility never notified her regarding the residents' response to the nebulizer treatments. The physician stated the facility faxes were specific in their requests and did not include the whole picture or a full assessment of what was happening with the resident and had she known she would have sent the resident to the emergency room. The physician stated she was surprised to hear the resident had passed away.

Multiple nurses were interviewed and three of the nurses were not made aware the resident had a critical CO2 level. Two of the nurses verified they had turned the resident's oxygen flow up to 3 Lpm or higher. All stated they had a difficult time obtaining an accurate oxygen saturation level on the resident but turned up the oxygen even though it may not have been an accurate reading. No other means of obtaining an accurate assessment of the resident's oxygenation was pursued.

One of resident's family members was contacted and stated the facility did not inform them that the resident had a critical CO2 level and stated the facility should have notified them. The family member stated that on multiple times the resident's oxygen flow would be at 4 and sometimes 5 Lpm and would have to be turned down. The family member stated the facility had been informed multiple times to turn the oxygen down.

**Mitigating Factors:**

The "mitigating factors" in Minnesota Statutes, section 626.557, subdivision 9c (c) were considered and it was determined that the  individual(s) and/or  facility is responsible for the

Abuse  Neglect  Financial Exploitation. This determination was based on the following:

The facility did not have an effective system for communicating critical blood values for residents.

The facility did not implement its policy for Acute Condition Changes.

The responsible party will be notified of their right to appeal the maltreatment finding. If the maltreatment is substantiated against an identified employee, this report will be submitted to the nurse aide registry for possible inclusion of the finding on the abuse registry and/or to the Minnesota Department of Human Services for possible disqualification in accordance with the provisions of the background study requirements under Minnesota 245C.

**Compliance:**

**Federal Regulations for Long Term Care Facilities (42 CFR, Part 483, subpart B) – Compliance Not Met**  
The requirements under the Federal Regulations for Long Term Care Facilities (42 CFR, Part 483, subpart B), were not met.

Deficiencies are issued on form 2567:  Yes  No If no, specify: \_\_\_\_\_

(The 2567 will be available on the MDH website.)

**An Informal Dispute Resolution (IDR) was completed on July 14, 2014 and the Federal deficiencies issued related to the complaint investigation were rescinded.**

**State Licensing Rules for Nursing Homes (MN Rules Chapter 4658) – Compliance Not Met**

The requirements under State Licensing Rules for Nursing Homes (MN Rules Chapter 4658) were not met.

State licensing orders were issued:  Yes  No If no, specify: \_\_\_\_\_

(State licensing orders will be available on the MDH website.)

**State licensing orders issued with the Federal deficiencies were rescinded.**

**State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557) – Compliance Not Met**

The requirements under State Statutes for Vulnerable Adults Act (MN Statutes, section 626.557) were not met.

State licensing orders were issued:  Yes  No If no, specify: \_\_\_\_\_

(State licensing orders will be available on the MDH website.)

**State Statutes Chapters 144 & 144A – Compliance Not Met**

The requirements under State Statutes for Chapters 144 & 144A were not met.

State licensing orders were issued:  Yes  No If no, specify: \_\_\_\_\_

(State licensing orders will be available on the MDH website.)

**State licensing orders issued with the Federal deficiencies were rescinded.**

**Facility Corrective Action:**

The facility took the following corrective action(s):

**Definitions:****Minnesota Statutes, section 626.5572, subdivision 17 - Neglect****"Neglect" means:**

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

**Minnesota Statutes, section 626.5572, subdivision 19 - Substantiated**

"Substantiated" means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.

**The Investigation included the following:****Document Review: The following records were reviewed during the investigation:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Medical Records                           | <input type="checkbox"/> Care Guide                              |
| <input type="checkbox"/> Medication Administration Records                    | <input checked="" type="checkbox"/> Treatment Sheets             |
| <input type="checkbox"/> Facility Incident Reports                            | <input checked="" type="checkbox"/> Physician Progress Notes     |
| <input type="checkbox"/> ADL (Activities of Daily Living) Flow Sheets         | <input checked="" type="checkbox"/> Laboratory and X-ray Reports |
| <input checked="" type="checkbox"/> Physician Orders                          | <input type="checkbox"/> Social Service Notes                    |
| <input checked="" type="checkbox"/> Nurses Notes                              | <input type="checkbox"/> Meal Intake Records                     |
| <input checked="" type="checkbox"/> Activities Reports                        | <input type="checkbox"/> Weight Records                          |
| <input checked="" type="checkbox"/> Therapy and/or Ancillary Services Records | <input checked="" type="checkbox"/> Assessments                  |

Skin Assessments

Care Plan Records

**Other pertinent medical records:**

Hospital Records     Ambulance/Paramedics     Medical Examiner Records     Death Certificate

Police Report

**Additional facility records:**

Resident/Family Council Minutes

Personnel Records/Background Check, etc.

Staff Time Sheets, Schedules, etc.

Facility In-service Records

Facility Internal Investigation Reports

Facility Policies and Procedures

Call Light Audits

Other, specify: \_\_\_\_\_

Number of additional resident(s) reviewed: 6

Were residents selected based on the allegation(s)?     Yes     No     N/A    Specify: \_\_\_\_\_

Were resident(s) identified in the allegation(s) present in the facility at the time of the investigation?

Yes     No     N/A    Specify: Only 2 residents in the allegation were available R2 was not

**Interviews: The following interviews were conducted during the investigation:**

Interview with complainant(s):     Yes     No     N/A    Specify: \_\_\_\_\_

If unable to contact complainant, attempts were made on:

Date/time: \_\_\_\_\_    Date/time: \_\_\_\_\_    Date/time: \_\_\_\_\_

Interview with family:     Yes     No     N/A    Specify: \_\_\_\_\_

Did you interview the resident(s) identified in allegation:     Yes     No     N/A    Specify: Expired

Did you interview additional residents:     Yes     No

Total number of resident interviews: 2

Interview with staff:     Yes     No     N/A    Specify: \_\_\_\_\_

Tennessee Warning given as required:     Yes     No

Total number of staff interviews: 8

Physician interviewed:  Yes  No

Nurse Practitioner interviewed:  Yes  No

Interview with Alleged Perpetrator(s):  Yes  No  N/A Specify: No AP identified

Attempts to contact: Date/time: \_\_\_\_\_ Date/time: \_\_\_\_\_ Date/time: \_\_\_\_\_

If unable to contact was subpoena issued:  Yes, date subpoena was issued \_\_\_\_\_  No

Were contacts made with any of the following:

Emergency personnel  Police Officers  Medical Examiner  Other: Specify \_\_\_\_\_

**Observations were conducted related to:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Wound Care                  | <input checked="" type="checkbox"/> Medication Pass | <input type="checkbox"/> Meals                    |
| <input type="checkbox"/> Personal Care               | <input type="checkbox"/> Dignity/Privacy Issues     | <input type="checkbox"/> Restorative Care         |
| <input checked="" type="checkbox"/> Nursing Services | <input checked="" type="checkbox"/> Safety Issues   | <input checked="" type="checkbox"/> Facility Tour |
| <input type="checkbox"/> Infection Control           | <input type="checkbox"/> Cleanliness                | <input type="checkbox"/> Injury                   |
| <input type="checkbox"/> Use of Equipment            | <input type="checkbox"/> Transfers                  | <input type="checkbox"/> Incontinence             |
| <input type="checkbox"/> Call Light                  | <input type="checkbox"/> Other: _____               |   |

Was any involved equipment inspected:  Yes  No  N/A

Was equipment being operated in safe manner:  Yes  No  N/A

Were photographs taken:  Yes  No Specify: \_\_\_\_\_

xc: Division of Compliance Monitoring - Licensing & Certification  
 Minnesota Board of Examiners for Nursing Home Administrators  
 Minnesota Board of Nursing  
 Duluth City Police Department-  
 Saint Louis County Attorney  
 Duluth City Attorney

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 10/30/2014  
FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>245414</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED  <b>C</b> <b>01/10/2014</b>
NAME OF PROVIDER OR SUPPLIER  <b>VIEWCREST HEALTH CENTER</b>			STREET ADDRESS, CITY, STATE, ZIP CODE <b>3111 CHURCH STREET DULUTH, MN 55811</b>		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
F 000	<b>INITIAL COMMENTS</b>  An abbreviated standard survey was conducted to investigate complaint #H5414048. The following deficiencies are issued:	F 000			

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.



Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  <b>00602</b>	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING _____	(X3) DATE SURVEY COMPLETED  <b>C</b> <b>01/10/2014</b>
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NAME OF PROVIDER OR SUPPLIER  <b>VIEWCREST HEALTH CENTER</b>	STREET ADDRESS, CITY, STATE, ZIP CODE <b>3111 CHURCH STREET DULUTH, MN 55811</b>
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(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
2 000	<p><b>Initial Comments</b></p> <p><b>*****ATTENTION*****</b></p> <p><b>NH LICENSING CORRECTION ORDER</b></p> <p>In accordance with Minnesota Statute, section 144A.10, this correction order has been issued pursuant to a survey. If, upon reinspection, it is found that the deficiency or deficiencies cited herein are not corrected, a fine for each violation not corrected shall be assessed in accordance with a schedule of fines promulgated by rule of the Minnesota Department of Health.</p> <p>Determination of whether a violation has been corrected requires compliance with all requirements of the rule provided at the tag number and MN Rule number indicated below. When a rule contains several items, failure to comply with any of the items will be considered lack of compliance. Lack of compliance upon re-inspection with any item of multi-part rule will result in the assessment of a fine even if the item that was violated during the initial inspection was corrected.</p> <p>You may request a hearing on any assessments that may result from non-compliance with these orders provided that a written request is made to the Department within 15 days of receipt of a notice of assessment for non-compliance.</p> <p><b>INITIAL COMMENTS:</b> A complaint investigation was conducted to investigate complaint #H5414048. The following correction orders are issued.</p> <p>When corrections are completed, please sign and date, make a copy of these orders and return the original to the Minnesota Department of Health,</p>	2 000	<p>Minnesota Department of Health is documenting the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota state statutes/rules for Nursing Homes.</p>	

Minnesota Department of Health  
LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Minnesota Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  00602	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING _____	(X3) DATE SURVEY COMPLETED  C 01/10/2014
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NAME OF PROVIDER OR SUPPLIER  VIEWCREST HEALTH CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 3111 CHURCH STREET DULUTH, MN 55811
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2 000	Continued From page 1  Division of Compliance Monitoring, Office of Health Facility Complaints; 85 East Seventh Place, Suite 220, St. Paul, Minnesota, 55164-0970.	2 000	<p>The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state statute/rule number and the corresponding text of the state statute/rule out of compliance is listed in the "Summary Statement of Deficiencies" column and replaces the "To Comply" portion of the correction order. This column also includes the findings which are in violation of the state statute after the statement, "This Rule is not met as evidenced by." Following the surveyors findings are the Suggested Method of Correction and the Time Period For Correction.</p> <p>PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN WHICH STATES, "PROVIDER'S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE.</p> <p>THERE IS NO REQUIREMENT TO SUBMIT A PLAN OF CORRECTION FOR VIOLATIONS OF MINNESOTA STATE STATUTES/RULES.</p>	