

ELDER VOICE FAMILY ADVOCATES

Organizational Milestones

1

2017

Elder Voice becomes a non-profit; successfully calls for Legislative Audit of the MN Dept. of Health (MDH)

2

2018

Auditor issues scathing report; 24,000 abuse complaints; Gov. Dayton appoints Elder Voice to work group & supports legislative recommendations yet strong legislation fails to pass

3

2019

We achieve passage of the Elder Care Reform Legislation including assisted living licensure (to become effective August 1, 2021)

4

2020

MDH asks to delay assisted living licensure to 2022, neglect reports skyrocket; industry fights for blanket legal immunity; EVFA pushes added protections and opposes delay of licensure

5

2020

Elder Voice advocates for staff, resident, and inspector testing for COVID-19. Pushes for essential caregiver designation to enable visits

6

2021

Elder Voice will aggressively advocate for stronger protections, expose wrong-doing, educate the public and pursue reform solutions

elder voice

FAMILY ADVOCATES

PROTECT SENIORS WEBINAR
9/2/2020, 1:00 PM CST

INTRODUCTION

- **Suzanne M. Scheller, Counselor at Law**
- **Scheller Legal Solutions LLC**
 - Private Practice – Champlin, MN
 - Practice Areas - Elder abuse and neglect; financial exploitation; elder mediation; estate planning
- Professional affiliations
 - MSBA Elder Law Section
 - EVFA Legal Advisor
 - Adjunct faculty at Mitchell Hamline

COVID-19 Concerns from Families

Neglect of care or abuse

Restrictions in independent living environment

Lack of physical activity

Termination of Services

Lack of staff support (i.e. for cares or to facilitate communication)

Social isolation

Wide variety of interpretation of guidelines

COVID-19 Concerns

Visitation restrictions

PPE

Staffing

Testing

Infection Control

74% of deaths in long-term care facilities

- 1,340 of the state's 1,823 deaths

MDH Situation Room

<https://www.health.state.mn.us/diseases/coronavirus/situation.html#daily1>

Legislative Response – COVID-19 Protections

Chief Authors – Senator Scott Dibble & Representative Ginny Klevorn

1st Special Session – SF60/HF99

2nd Special Session – SF36/HF84

3rd Special Session – SF20

Discussions are ongoing, including as to language

Generally, COVID-19 protections are limited in duration (i.e. two years)

Overview of Content

Discussions on exact language ongoing

Electronic Monitoring

Provider Plan

MDH Priority on Maltreatment Investigations & Surveys

Cohorting

Prohibition on Service Terminations During Peacetime Emergency

Appeal and discharge process for Housing and Service Terminations

Input from Practitioners

PPE

Testing

Electronic Monitoring

Discontinue the requirement that a resident's representative attach a provider's opinion that the resident lacks understanding of camera placement

Allow for simple devices to be placed by staff

Retaliation

Clarify that new retaliation provisions for home care, nursing home, and new assisted living licensed entities do not affect other rights or remedies available under law

Specifically clarify that new retaliation provisions do not preclude existing retaliation provisions under Minn. Stat. 626.557, subd. 17

Provider COVID-19 Plans

Providers of boarding care homes, nursing homes, housing with services operating under assisted living title protection, and memory care units

In HWS, duty on the landlord to work with the arranged home care provider on the plans

Plans should be available to residents, visitors, staff, etc.

Plans should follow current guidance

Plans should include

- Baseline testing and other testing, adequate PPE
- Guidelines for reopening and visitation, including essential caregivers
- Balance the rights of clients with risks of COVID-19
- Address protocols for prevention as well as responses if positive tests, including separation
- Provide full disclosure of all policies affecting end of life treatment during COVID-19, including hospice
- Honor existing contracts with those in independent living in a campus model

Other Provider COVID-19 Provisions

Ensure adequate staffing levels to meet the needs of residents

Ensure accurate and full reporting of COVID-19 cases and deaths to MDH

Report to MDH on implementation of various guidance, notably visitation guidance and essential caregiver guidance

- In general, guidelines receive varied interpretations and implementation
- Place essential caregiver guidance in law in order to promote consistency (and possibly other guidance)

Enforcement by MDH for provider COVID-19 provisions

MDH COVID-19 Responses

MDH

- Consult with practitioners and a broader group of stakeholders; possibly a task force
- Inform public of protocols that shape guidelines
- Develop prioritization for regular surveys (not just infection control)
- Develop prioritization of maltreatment investigations

Separation and Transfer of COVID-19 Positive Client (Cohort)

Transfer

- Generally separate positive COVID-19 clients from non-COVID-19 clients
 - Develop protocol to separate staff and services as well
 - May be separate building
 - May be separate area within building
- Mitigate transfer trauma
- Notify agents and family members of any transfer
- Allow MA or other funding to flow to new location

Prevent Termination of Services and Discharges During COVID-19

In line with Executive Order 20-79, prevent evictions during COVID-19, with limited exceptions

Extend the concept to prevent termination of services in an assisted living or memory care setting

Extend the concept to prevent discharge and transfer of residents in boarding care homes, nursing homes, long term acute care hospitals, except in accordance with current guidelines (i.e. for cohorting purposes)

Provide Discharge and Termination Protections, Depending on Timeline

As of 8/1/2021, Assisted Living license is to take effect, including protections for clients being discharged from assisted living facilities. Such protections include:

- Limitation on reasons for discharge
- Appeal process with an ALJ for discharge (similar to nursing home)
- Coordination of transfer

If Assisted Living license is delayed, current bills add such protections earlier (exact date TBD)

Infection Control language and current HWS

Ensure infection control language, including for a pandemic, is mirrored in home care law and under assisted living licensure

Add infection control language within current HWS statutes and Assisted Living title protection, as needed, to ensure landlords are coordinating with arranged home care providers to develop comprehensive infection control plans, with the building and site management in mind

PPE and Testing

Provide a source of funding for providers, as needed, to ensure PPE for staff

Provide a source of testing, as needed, for staff, contractors, visitors, and residents

- Includes baseline and repeat testing (also known as serial testing)
- MDH and DHS have been working on funding sources and have identified funding sources from the federal and state sources until approximately the end of 2020
- Consider providers as a source of funding for testing, as able and researched

THANK YOU

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