



Protecting, Maintaining and Improving the Health of Minnesotans

## A GUIDE TO HOME CARE SERVICES

**PURPOSE:** Minnesota Rules 4668.0075, subpart 1 states:

"Every individual applicant for a license, and every person who provides direct care, supervision of direct care, or management of services for a licensee, shall complete orientation to home care requirements before providing home care services to clients."

Licensees may use this guide to satisfy Minnesota Rule 4668.0075, subpart 1 and Minnesota Rule 4668.0805 subpart 1.

This guide was prepared by the Minnesota Department of Health, Division of Compliance Monitoring, as a means to satisfy Minnesota Rule 4668.0075, and Minnesota Rule 4668.0805, "Orientation to Home Care Requirements" and is intended as an overview and not a replacement of the licensure rules or statutes. Not every rule and statute is restated or explained in this guide. Individuals should refer to Minnesota Home Care Licensure Statutes 144A.43-144A.47 and Minnesota Home Care Rules 4668 and 4669, the Vulnerable Adults Act Minnesota Statute 626.557 and 626.5572 and the Maltreatment of Minors Act, Minnesota Statute 626.556 for specific requirements.

The rules and statutes may be accessed through the web:

<http://www.leg.state.mn.us/leg/statutes.asp>

### **REGULATION OF HOME CARE PROVIDERS: STATE LICENSURE**

Under Minnesota Statutes 144A.43-144A.47, the Minnesota Legislature authorized the Minnesota Department of Health (herein after referred to as "Department") to license most providers of home care, including private businesses, nonprofit organizations, and governmental agencies. The license is for the business, not for the employees who work for the home care provider.

The purpose of the license is to ensure that those who provide services are qualified to do so in a manner that affords some protection of the health, safety, and well being of the consumers of those services. A license is permission from the state to carry on the business of home care services. It does not provide payment for services and does not guarantee success in business.

Licensure also provides a quality mechanism for monitoring and remedying problems that occur, in this rapidly expanding business, by routine inspections as well as complaint investigations by the Department.

If a survey or complaint investigation reveals a violation of a rule or law, the Department will issue a correction order, which is a notice of the violation and an order to correct the problem in a certain time. If not corrected, the Department will issue a fine according to a schedule of fines in the rules. In very serious situations, the Department may suspend, revoke, or refuse to renew the license.

State licensing rules have some similar requirements as Medicare Home Health Agency regulations, and additional requirements, such as criminal background studies for licensees, managers, and employees, screening for tuberculosis, and handling medication and treatment orders. Only those home care providers that receive Medicare or Medicaid reimbursement must comply with Medicare regulations. All providers, including many individuals, except for those individuals who are exempted by law or rule, will be required to meet state licensing rules and be licensed by the State.

## **CLASSES OF LICENSES**

**Class A**, or professional home care agency license. Provider may provide all home care services, at least one of which is nursing, physical therapy, speech therapy, occupational therapy, nutritional services, medical social services, home health aide tasks, or the provision of medical supplies and equipment when accompanied by the provision of a home care service. These may be provided in a place of residence, including a residential center, and housing with services establishment.

**Class B**, or paraprofessional agency license. Under this license, a provider may perform home care aide tasks and home management tasks in a place of residence.

**Class C**, or individual paraprofessional license. Under this license, a provider may perform home health aide, home care aide, and home management tasks in a place of residence.

**Class F Home Care Provider**. Under this license, a provider may provide home care services solely for residents of one or more registered housing with services establishments, as provided by Minnesota Statutes 144A.4605. For purposes of this section, the term Class F home care provider means a home care provider who provides nursing services, delegated nursing services, other services performed by unlicensed personnel, or central storage of medications solely for residents of one or more housing with services establishments.

Some Class F Home Care Providers and/or the Housing with Services establishments they serve may choose to call themselves or their services

“assisted living” and must then meet the requirements for the use of the term assisted living as defined in Minnesota Statute 144G.

## **SERVICES AVAILABLE THROUGH STATE REGULATED HOME CARE PROVIDERS**

State regulations cover a large variety of home care and home management services provided to clients whose illness, disability or physical condition creates a need for the services at their residences. The licensee may not accept a client unless the licensee has sufficient staff, in numbers and qualifications, to adequately provide the services agreed to in the service agreement/service plan. If the licensee discontinues a home care service, for any reason other than the client’s failure to pay for the service, and the client continues to need the home care service, the licensee shall provide to the client a list of home care providers that provide similar services in the client’s geographic area.

Services that may be provided in a client’s residence include: professional nursing, physical therapy, occupational therapy, speech therapy, medical social services, respiratory therapy, nutritional services, home health aide tasks, services performed by unlicensed personnel, the provision of medical supplies and equipment if accompanied by the provision of a home care service, and home management services. (Services under the definition of home health aide tasks include home care aide tasks and home management tasks. Home care aide tasks may be performed for clients who are not receiving delegated medical or nursing procedures or assigned therapy services.) Home management tasks include at least two of the following: housekeeping, meal preparation, and shopping.

Personnel employed by a licensee or providing services under a contract, must be licensed, registered, or certified as required by the state and/or must meet the training and evaluation requirements of these rules. Each applicant for a license, persons who provide direct care, supervise direct care, or manage services for a licensee must be oriented to home care requirements prior to providing home care services to clients. Home health aide tasks and services provided by unlicensed personnel must be supervised by a registered nurse or therapist according to a schedule that is determined by the provider and client, and minimally established in the rule.

## **SERVICE AGREEMENT/PLAN**

A licensee shall enter into a service agreement/plan with the client or the client’s responsible person. Any modifications to the service agreement/plan must be communicated to the client or the client’s responsible person.

The service agreement/plan must include the following items: A. a description of the services to be provided, and their frequency; B. identification of the persons or categories of persons who are to provide services; C. the schedule or frequency of sessions of supervision or monitoring required, if any; D. fees for services; E. a plan for contingency action that includes the following sub items:

- (1) the action to be taken by the licensee, client, or responsible persons, if scheduled services cannot be provided;
  - (2) the method for a client or responsible person to contact a representative of the licensee whenever staff are providing services;
  - (3) who to contact in case of an emergency or significant adverse change in the client's condition;
  - (4) the method for the licensee to contact a responsible person of the client, if any;
- and
- (5) circumstances in which emergency medical services are not to be summoned, consistent with MN Statutes 145B and 145C, and declarations made by the client under that act.

Class C licensees need not comply with items B and C and item E, subitems (2) and (5). Sub items (3) and (5) are not required for clients receiving only home management services.

The licensee must provide all services required by the client's service agreement/ plan. If unable, for any reason, to keep a scheduled appointment for a service that is not essential for medical or safety reasons, the licensee shall:

- (A) Follow the procedure established in the service agreement/ plan;
- (B) Provide a replacement person; or
- (C) Notify the client that the appointment will not be kept, and schedule a new appointment or arrange for a reasonable alternative.

If the service to be provided is essential for medical or safety reasons, it must be completed at the scheduled time. The licensee shall make arrangements to complete the service through a contract with another provider or through other reasonable means.

Every class A, B, or Class F Home Care Provider licensee that provides home health aide, home care aide tasks, or services by unlicensed personnel, must have a contact person available by telephone or other means whenever paraprofessionals are providing services.

## **HOME CARE BILL OF RIGHTS**

All home care providers, including those exempt from licensure, must comply with all parts of Minnesota Statutes, section 144A.44, the home care bill of rights. A written copy of the bill of rights shall be given to the client or the client's responsible person at the time a service agreement is agreed upon or at the initiation of services, whichever is earlier. Written documentation of receipt of the bill of rights must be maintained by the licensee.

The licensee may not request nor obtain from clients any waiver of any of the rights enumerated in the home care bill of rights.

## **CLIENT PROTECTION**

The home care rules have been developed with the goal that home care services are provided in a manner that protects the health, safety, and well-being of home care clients. Providers must comply with the requirements of these rules.

## **CRIMINAL DISQUALIFICATION\***

Before the commissioner issues an initial or renewal license, an owner or managerial official shall be required to complete a background study under Minnesota Statute section 144.057. No person may be involved in the management, operation, or control of a provider, if the person has been disqualified under the provisions of Minnesota Statutes chapter 245A. Individuals disqualified under these provisions can request a reconsideration, and if the disqualification is set aside are then eligible to be involved in the management, operation or control of the provider. Owners of a home care provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the home care provider. For the purposes of this section, managerial officials subject to the background check requirement are those individuals who provide direct "contact" as defined in section 245A.04 or those individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the home care provider. All employees, contractors, and volunteers of a home care provider are subject to the background study required by section 144.057. If appropriate, these individuals shall be disqualified under the provisions of chapter 245A and Minnesota Rules, parts 9543.3000 to 9543.3090. Individuals disqualified under these provisions can request reconsideration.

\*Some language in this section was paraphrased from Minnesota law. Licensees should refer to the Statutes for the complete language.

## **REQUEST BY CLIENT FOR DISCONTINUATION OF LIFE SUSTAINING TREATMENT**

Minnesota Rule 4668.0170 defines the action that must be taken by a licensee if a client, family member, or other caregiver requests that life sustaining treatment be discontinued. The licensee shall act promptly upon the client's request within the requirements of this rule.

## **CONFIDENTIALITY OF CLIENT INFORMATION**

The licensee shall not disclose any personal, financial, medical, or other information about a client except:

- A. as may be required by law;
- B. to staff or contractors only that information necessary to provide services to the client;

- C. to persons authorized by the client to receive the information; and
- D. representatives of the commissioner authorized to survey or investigate home care providers.

## **HANDLING OF CLIENTS' FINANCES AND PROPERTY**

A licensee may not act as power-of-attorney nor accept appointment as guardian or conservator of clients unless there is a clear organizational separation between the home care service and the program that accepts guardianship or conservatorship appointments or unless the licensee is a Minnesota county or other unit of government.

A licensee may assist clients with household budgeting, including paying bills and purchasing household goods but may not otherwise manage a client's property. Receipts or documentation of all transactions and purchases paid with the clients' funds must be recorded and maintained.

A licensee may not borrow or in any way convert a client's property to the licensee's possession except by payment at the fair market value of the property.

Gifts of a minimal value may be accepted by a licensee or its staff as well as donations and bequests that are exempt from income tax.

## **COMPLAINT PROCEDURE**

Every licensee with more than one direct care staff person must have a system for receiving, investigating, and resolving complaints from its clients. The system is required to provide written notice to each client that includes:

- A. the client's right to complain to the licensee about services;
- B. the name or title of the person or persons to contact with complaints;
- C. the method of submitting a complaint to the licensee;
- D. the right to complain to the Minnesota Department of Health, Office of Health Facility Complaints; and
- E. a statement that the provider will in no way retaliate because of a complaint.

The licensee is prohibited from taking any action in retaliation for a complaint made by the client.

## **REPORTING OF MALTREATMENT OF VULNERABLE ADULTS AND MINORS**

Minnesota law requires certain professionals and staff of licensed organizations to report maltreatment, (abuse, neglect, exploitation, unexplained injuries) of vulnerable adults and children to governmental authorities. Reporting is mandatory, and a person who fails to report is subject to criminal prosecution and civil liability.

## **WHO MUST REPORT**

All home care licensees and their employees must report suspected maltreatment. A report is required if there is reason to believe that abuse or neglect to a client has occurred. Staff of providers need not report directly to the authorities, but should follow their employers' procedures for reporting to a supervisor. If staff are unable or uncomfortable reporting to the licensee, they may report directly to the authorities. All home care providers are required by law to have a procedure for reporting.

## **WHAT TO REPORT\***

Information as defined in **Minnesota Statute 626.556 defines abuse of children, Minnesota Statute 626.5572 defines abuse of vulnerable adults.**

## **WHEN REPORTING IS NECESSARY**

A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated, or who has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained shall immediately (immediately is defined "as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.") orally report the information to the common entry point. Staff should report any abuse or neglect to the person identified by the employer's procedures. The common entry point may not require written reports. After a report is made, the agency may investigate. The law prohibits retaliation against anyone who makes a report in good faith.

The provider, upon learning of abuse or neglect, must investigate and report to the Common entry point. The Office of Health Facility Complaints is considered to be a Lead agency.

"Common entry point" means the entity designated by each county responsible for receiving reports under section 626.557.

"Lead Agency" is the primary administrative agency responsible for investigating reports made under section 626.557.

Serious criminal activity should be reported to law enforcement immediately, and then to the common entry point.

**The address and telephone number of OHFC is:**

**Office of Health Facility Complaints**

**P.O. Box 64970**

**St. Paul, MN 55164-0970**

**(651) 201-4201 (Metro area)**

**(800) 369-7994 (Toll-free statewide)**

**Inquiries or complaints about the Home Care Bill of Rights or home care services may also be directed to:**

**Office of Ombudsman for Long Term Care**

**(651) 431-2555**

**1-800-657-3591 (Toll-free statewide)**

**Fax: (651) 431-7452**

**Mailing Address**

**Home Care Ombudsman**

**Office of Ombudsman for Long Term Care**

**PO Box 64971**

**St. Paul, MN 55164-0971**

Home care consumers or members of the public should also report any violations of a client's rights or maltreatment to the Office of Health Facility Complaints (OHFC), Office of Ombudsman for Long Term Care, (at the address or phone number listed above) and/or the common entry point.

Pursuant to Minnesota Rule 4668.0140 and Minnesota Rule 4668.0815 a home care client's service agreement or a Class F Home Care Provider's service plan includes: "circumstances in which emergency medical services are not to be summoned, consistent with the Adult Health Care Decisions Act, Minnesota Statutes, chapter 145B, and declarations made by the client under that act."

Home health care personnel and clients should thoroughly know the provider's policy on emergencies. Many agencies require that the home health staff has been trained in first aid, adult CPR (cardiopulmonary resuscitation) and infant and child CPR; and clearing the airway of an infant, child and an adult.

## **EMERGENCY PROCEDURES/HOW TO USE 911**

**Examples of significant adverse changes in the client's condition which may necessitate emergency contact and notifying 911 include:**

1. has trouble breathing or has stopped breathing
2. has no pulse
3. is bleeding severely
4. is having: chest-neck-jaw-arm pain
5. is in a state of deteriorating unconsciousness or is unconscious
6. if a fracture is suspected
7. if the person has been badly burned
8. if unable to move one or more limbs
9. is having a seizure
10. is suffering from



- a. hypothermia-below normal body temperature
- b. hyperthermia-well above normal body temperature
- 11. has been poisoned
- 12. is having a diabetic emergency
- 13. has suffered a stroke
- 14. if there is any doubt as to seriousness of the situation

## **HOW TO USE 911**

- 1. dial or punch 911
- 2. then state:
  - a. this is an emergency
  - b. give the phone number you are calling from
  - c. give the address
  - d. describe the problem and how it happened, if known, otherwise just tell the facts and what has been observed
  - e. give your name
  - f. stay calm
  - g. reassure the client and family
  - h. follow direction of 911 dispatcher
  - i. hang up last!

**IF YOU DO NOT KNOW HOW TO GIVE CPR-TELL THE DISPATCHER AT ONCE.**