BUREAU OF HEALTHCARE
SAFETY & QUALITY

FINAL DRAFT REGULATIONS
RELATED TO LICENSING OF ADULT DAY HEALTH PROGRAMS

Lauren B. Nelson, Esq.
Director of Policy and Quality

PUBLIC HEALTH COUNCIL

DECEMBER 10, 2014

Introduction

To promote the use of Adult Day Health Services and comply with a legislative mandate relative to the licensing of such programs,

The Bureau of Health Care Safety and Quality

Presents final regulations

for the licensing and operation of all

Adult Day Health Programs (ADHPs)

in the Commonwealth.

Commonwealth of Massachusetts
Department of Public Health

Agenda

Background

- Adult Day Health Legislative Mandate
- Regulatory Development
- Proposed Regulations

Public Hearing & Public Comments

- Summary
- Response

Next Steps

- Implementation
- Conclusion

Questions

Background

Background:
Adult Day Health

Adult Day Health (ADH) is an alternative to institutional care, offering health care services during the day to elders and adults with disabilities, based on a community nursing model.

- Benefits of ADH Services:
  - respite, support and education to family members, and caregivers;
  - prevention of hospitalization; and
  - delay or avoidance of residential nursing facility placement.
- Licensing of the ADHP focused on medical and health day care:
  - more intensive health care services and monitoring;
  - therapeutic activities;
  - service coordination for individuals with more significant medical needs.

Background:
Adult Day Health

Currently, ADHPs do not need to be licensed to provide services; they are only required to be certified by MassHealth in order to be reimbursed.

The MassHealth regulations, 130 CMR 404.000, outline four broad requirements for ADHPs:

1. An individual or organization must enter into a provider contract with MassHealth;
2. an ADHP must operate within the Commonwealth and meet all building, fire, and local health requirements;
3. an ADHP must agree to periodic inspections; and
4. an ADHP must agree to abide by all relevant MassHealth rules and regulations.

Background:
Adult Day Health

- As of September, 2011, there were 145 ADHPs certified by MassHealth.

- In FY' 2011, Massachusetts ADHPs provided services to 11,500 individuals, 8,081 of whom were MassHealth enrollees, and collected $57,401,708 in MassHealth reimbursement.

- The Department estimates that there are an additional 50 ADHPs operating in Massachusetts that do not receive MassHealth reimbursements, so they are not subject to the MassHealth regulation. These ADHPs would be subject to the Department's regulations once promulgated.

- Additionally, the Department anticipates growth in this field.

Background:
Legislative Mandate

August 3, 2011 - Governor Patrick signed an Act Relative to the Adult Day Health Program, chapter 87 of the acts of 2011, which established a working group to study and make recommendations on the present structure of adult day services.

August 7, 2012 - Section 21 of chapter 239 of the acts of 2012, is signed with the FY'13 state budget, amending Chapter 87 to require the Department of Public Health, in consultation with the Executive Office of Health and Human Services, to adopt regulations for the statewide licensure of adult day health programs.

Background:
Regulatory Development

October, 2011 to **November 2012**– In consultation with the Executive Office of Health and Human Services, legislative leadership, Department staff, MADSA, and providers, the Bureau participated in a number of working groups to develop the draft regulations. Members of these working groups included:

- EOHHS Elder Affairs, and Office of Long Term Services and Support;
- MassHealth;
- Legislative leadership;
- MADSA;
- ADHP and allied health providers;
- Public input

Background:
Regulatory Development

- At the September, 2013 PHC, we brought proposed regulations to the Council for consideration.
- The proposed regulations fulfilled the statutory mandates in chapter 87 of the acts of 2011, as amended by section 21 of chapter 239 of the acts of 2012.
- At the public hearing on October 28, 2013, three individuals testified on the proposed regulations.
- When the public comment period closed on November 1, 2013, we had received 32 pieces of written testimony.

Background:
Proposed Regulations

Proposed regulations include, but are not limited to, licensing provisions for the following features of an ADHP operation, whether administrative or clinical:

- Application for a License
- Program Administration/Records/Reporting
- Staffing Requirements
- Assessment and Care Planning
- Participant Rights
- Physical Plant Requirements

Public Hearing & Public Comments

Public Comments:
Summary

Stakeholders were concerned that the proposed regulations may increase costs and impose programmatic and physical plant burdens for existing programs. Some frequently referenced topic areas included:

- Assessment Upon Admission
- Personnel Certification and Training
- Nurse Staffing
- Documentation
- Discharge
- Participant and Family Advisory Council
- Physical Plant

Public Comments:
Response

Assessment Upon Admission

In response to public comments, the Department:

- Declined stakeholders' request to allow ADHPs to use the ASAPs' MDS-HC screening assessments in lieu of conducting their own comprehensive assessment on which to base the participant's care plan.
- The ASAPs' MDS-HCs are completed to determine eligibility for MassHealth and are not intended to substitute for an individualized comprehensive assessment, completed by the nursing staff responsible for developing a participant's plan for day-to-day care.
- While other assessment instruments are useful, an accurate assessment must be conducted in real-time, in light of the fact that a participant's unique care needs may change rapidly.

Public Comments:
Response

Personnel Certification and Training

In response to public comments, the Department:

- Rejected stakeholders' request to eliminate the standard requirement that personnel have a physical examination every other year.
- Accepted stakeholders' request that not all personnel need to be certified in CPR and basic first aid. The regulations require that only licensed nurses and program aides must be certified in CPR and basic first aid.
- Incorporated this Council's request that ADHPs ensure personnel are knowledgeable about types of medical and behavioral conditions and participants cultural diversity, including race, ethnicity, gender identification, and sexual orientation.

Public Comments:
Response

Nurse Staffing

In response to public comments, the Department:

- Modified the regulations to require a licensed nurse to be on-site during all hours of operation with a Registered Nurse in an ADHP with 35 or fewer participants to be on-site 6 hours of an 8 hour program day, allowing smaller ADHPs to hire a 30 hour/week RN who could also serve as the Program Director for 10 hours/week to support a full-time 40 hour/week position.
- Changed the required licensed nursing rate to a ratio of 1 to 24, with an additional half-time nurse added for each additional 1-12 participants.
- This results in a *de minimus* increase of licensed nursing services over the MassHealth regulations.

Public Comments:
Response

Documentation

In response to public comments, the Department:

- Modified Activity and Social Work documentation from every 45-days to every 90-days, provided documentation is updated as necessary to reflect participant's clinical/therapeutic needs.

- Removed requirement that the PCP must document the participant's short-term goals and estimated duration of enrollment from the order of admission.

Public Comments:
Response

Discharge

In response to public comments, the Department:

- Eliminated the requirement that an ADHP maintain the emergency contact information of persons covering for the participant's PCP, as it is maintained at PCP's office.
- Reduced the required discharge notification from 45 to 30 days.
- Eliminated the requirement that an ADHP must obtain an order from the PCP to initiate a participant's discharge.
  - Changed to reflect that the ADHP must instead notify the participant's PCP about the discharge.

Public Comments:
Response

Participant and Family Advisory Council

In response to public comments, the Department:

- Re-framed the originally proposed Community Advisory Council to be a Participant and Family Advisory Council which may include community representation, and shall to the extent possible, reflects the cultural diversity of the community being served.

- Clarified the Council's design, composition, and role.

- Removed the requirement of routine involvement with specific participant grievances and replaced with advice on quality of life matters, unless the participant's family members seek the Council's advice.

Public Comments:
Response

Physical Plant

In response to public comments, the Department:

- Removed references to specific waiver provisions and replaced with a general provision allowing an ADHP to apply for a waiver of any physical plant standard based on unique needs and available compensatory features.
- Retained requirements that were mirrored on existing MassHealth regulations, were derived from the Facilities Guidelines Institute, or are required (and thus, cannot be waived) by state and federal laws, including state building codes and the Americans with Disabilities Act.

Next Steps

Implementation

- Upon promulgation, The Bureau intends to hold educational meetings for ADHPs across the state on the new regulations.
- Existing ADHPs will be required to submit an application for licensure by May 1, 2015. An application for an original license shall have the effect of a license until the Department takes action on the application.
- In Summer 2015, the Bureau will begin inspecting programs that have submitted applications.
- The comprehensive inspection process for all programs in the Commonwealth is estimated to take approximately 24 months.
- ADHPs will have one year from the effective date (target 1/2/15) to either file waivers or come into compliance.

Conclusion

Although the proposed regulations may impose new challenges for ADHPs, they will also improve the quality and consistency of care across the Commonwealth, which will result in better health status for participants, and may contribute to cost containment by preventing the utilization of more expensive care, such as emergency room services, hospitalization, and long-term nursing home care.

Questions?