



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Care Safety and Quality
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Circular Letter: DHCQ 13-7-592

TO: Long Term Care Facility Administrator, Medical Director, and Director of Nurses
And Mass Health Day Habilitation Program Directors

FROM: Madeleine Biondolillo, MD, Director, Bureau of Health Care Safety and Quality
Ken Smith, Director, Office of Long Term Care Services and Supports
Paul DiNatale, MA., MSW, Assistant Director, Health Care Quality
Randy Webster, Assistant Commissioner, Department of Developmental Services

DATE: July 17, 2013

RE: Department of Public Health, MassHealth, and Department of Developmental
Services Active Treatment Licensure Survey Process

On May 22, 2013, the federal district court issued the final order and dismissed the Rolland Class Action Law Suit after 15 years of litigation. Much cooperative work occurred these past many years which led to positive outcomes for thousands of residents in nursing facilities with an intellectual disability or a developmental disability.

The Department of Public Health (DPH), the Department of Developmental Services (DDS), and MassHealth recognize that providers involved with the care to these persons (LTCFs, Day Habilitation programs, and the DDS service coordinators and case managers) remain committed to ensure the provision of Specialized Services at the Active Treatment level of care. However, our work is not over. Under federal and state law, we must continue to provide quality care and services to meet the needs of these residents in nursing facilities. While there is no longer a Rolland Court Monitor, responsibility for assuring that the delivery of care and services to the residents meets the active treatment standard now rests with the Commonwealth of Massachusetts.

Towards that end, DPH, DDS, and MassHealth have developed a joint inspection process for monitoring the on-going care and services provided to individuals with an intellectual disability or other developmental disability residing in nursing facilities and/or attending day habilitation programs. This inspection process will review compliance with the active treatment standards under the state licensing and regulatory authority found at 105 CMR 150.000 for Long Term Care Facilities and 130 CMR 419.000 for Day Habilitation programs. The DPH licensure

regulations, as amended for nursing homes require the assessment and development of a nursing care plan that is coordinated with the Rolland integrated service plan (“RISP”), and the provision of specialized services that meets active treatment. The MassHealth regulations require day habilitation programs to provide such services and to ensure that the day habilitation service plan complements and reinforces the RISP. To achieve active treatment, the combination of services provided by the nursing facility, the day habilitation provider and the case management provided by DDS or its agent must be delivered in a quality, consistent and coordinated manner across all settings, and by all staff throughout all hours of every day.

Presently there are some 50 individuals with an intellectual or developmental disability in approximately 48 nursing facilities and over 90 individuals in three pediatric facilities. They will be reviewed for active treatment under this joint inspection process. Their reviews will be conducted by DDS and/or DPH surveyors who have been trained in the application of this inspection process both by the Rolland Court Monitor and the Centers for Medicare/Medicaid Region One Office nursing home and active treatment specialist. The surveyors will use a survey evaluation tool and protocol that have been designed and field tested to evaluate the provision of active treatment.

There are several active treatment standards at 42 CFR 483 subpart I that are core requirements and will be evaluated in a similar manner as the Federal Conditions of Participation in the survey of SNF/NFs at 42 CFR 483 subpart B. The applicable DPH and MassHealth state licensure regulations corresponding to the active treatment standards are listed in the active treatment worksheet. (A copy of the active treatment worksheet and survey protocol is attached for your reference. These may also be used by your program as part of your on-going quality assurance and performance improvement activities in your efforts to deliver these services in a quality manner to applicable residents.) These regulations require at a minimum:

- training of personnel,
- comprehensive assessment,
- comprehensive care planning that includes:
 - individualized task segmented objectives for care, skill development and maintenance, and,
 - timetable for achieving such objectives,
- provision of this skilled and restorative care by knowledgeable, trained, personnel,
- on-going documentation, and,
- re-evaluation of the person’s progress in achieving the measureable objectives.

The joint inspection process is scheduled to commence in August 2013. These joint inspections are expected to take place at the time of the nursing facility’s routine recertification survey. The DPH surveyors will conduct a routine comprehensive review of the care provided to the resident in accordance with 42 CFR 483 subpart B conditions of participation as detailed in the federal state operations manual interpretative guidelines. The review of the program and services for compliance with the active treatment standards will be conducted by DPH surveyors for individuals in the pediatric facilities, and by DDS surveyors for individuals in the non-pediatric nursing facilities. There will be occasions when it is not possible for the active treatment review to take place during the recertification survey. In those situations, a separate licensure inspection focused on active treatment and compliance with the corresponding DPH and Mass Health

regulations will be conducted. In addition, the surveyors will review the services rendered by the DDS case manager who develops the RISP and will also be reviewed for compliance with the DDS standards and policies. The survey protocols that will be used in this process include: an entrance conference, complete record review, observations of care of the resident rendered by both the nursing home staff and day habilitation staff, interviews of resident, family, staff and service coordinator/case manager, and an exit conference. If deficient practices are identified, a separate program statement of deficiencies will be issued to the nursing home, day habilitation program and/or DDS Service Coordination unit. A separate plan of correction will be required from each provider receiving a program specific deficiency letter and a follow-up inspection will occur to ensure compliance. Continued non-compliance can result in enforcement penalties issued to the nursing facility by DPH or the day habilitation program by MassHealth.

On July 17, 2013 the state agency staff conducted an information session for those providers that currently support nursing facility residents with an intellectual or developmental disability. At the session, the licensure active treatment survey tools and protocols were presented and discussed

If you have any questions regarding the implementation of this process, please contact:

Paul DiNatale at 617-753-8222 for Certified Skilled Nursing and Nursing Facilities; or
Mary Grant at 617-222-7460 for Day Habilitation Programs

Attachments:

Active Treatment survey worksheet
Active Treatment survey protocols