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Navigating the AL Survey Challenge

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Legal Framework for AL Surveys

Assisted Living and Shared Housing Act

§ 5. Legislative purpose. . . .

It is the public policy of this State that assisted living is an important part of the continuum of long term care. In support of the goal of aging in place within the parameters established by this Act, assisted living and shared housing establishments shall be operated as residential environments with supportive services designed to meet the individual resident's changing needs and preferences.

. . . Assisted living, which promotes resident choice, autonomy, and decision making, should be based on a contract model designed to result in a negotiated agreement between the resident or the resident's representative and the provider, clearly identifying the services to be provided.

. . . Regulation of assisted living establishments and shared housing establishments must be sufficiently flexible to allow residents to age in place within the parameters of this Act. The administration of this Act and services provided must therefore ensure that the residents have the rights and responsibilities to direct the scope of services they receive and to make individual choices based on their needs and preferences.

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Legal Framework for AL Surveys

Annual on-site review

§ 30. Licensing.

(a) . . . The Department shall conduct an **annual on-site review** for each establishment covered by this Act, which shall include, but not be limited to, **compliance with this Act and rules adopted hereunder, focus on solving resident issues and concerns, and the quality improvement process implemented by the establishment to address resident issues.** The quality improvement process implemented by the establishment must benchmark performance, be customer centered, be data driven, and focus on resident satisfaction.

Section 295.1070

b) The **purpose of the annual on-site review** shall be to ensure establishments' compliance with this Part and **to assist the licensee in meeting the requirements of this Part and providing quality services to the consumer.** The visit shall focus on solving resident issues and concerns, and the quality improvement process implemented by the establishment to address resident issues. **The on-site review shall be conducted in a collaborative manner, with the Department and the establishment focused on meeting the needs of the residents.**

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Legal Framework for AL Surveys

Complaint investigation

Section 295.1090

- b) The Department shall conduct an **onsite investigation of all complaints** alleging abuse or neglect within seven days after the receipt of the complaint, except that complaints of abuse or neglect that indicate that a resident's life or safety is in imminent danger shall be investigated within 24 hours after receipt of the complaint.
- c) The Department may address those complaints that do not require an on-site review through record review and/or telephone interviews.
- d) At the initiation of a complaint investigation, the Department shall inform the establishment that a complaint has been filed and of the specific nature of the complaint so that the identity of the complainant or resident involved is not disclosed.

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Experiencing an AL Survey

Being survey ready

- Last year's annual survey findings
- Records compilation and familiarity - service plans, employee records, incidents/accidents/medical services
- Staff readiness and coaching
- Physical plant condition, maintenance, documentation

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Experiencing an AL Survey

Surveyor's entrance and first actions

- Surveyor's point of contact
- Initial response to unannounced on-site inspection - who is involved, where, when?
- Accompany and/or monitor surveyor's inspection

Records sharing and review

- Access to resident and facility records, reviewing, copying
- Responses to requests "at your fingertips"
- Supply full context of records, communications, medical orders, negotiated risk agreements, etc.

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Experiencing an AL Survey

Surveyor's observations and staff interviews

- **STAFF'S BEST PRACTICES FOR SURVEYOR INTERVIEWS**
 - Purpose of interviews is to tell surveyor what YOU know based on your own **observation**, **training** and **experience**
 - NOT what *other people* might know
 - NOT what *you heard* someone might know
 - NOT what the *rumor mill* is spreading
- Make sure staff confine interview answers to:
 - Your personal knowledge
 - What you saw
 - What you said
 - What you did
 - What your experience is
 - If someone else saw it, said it, did it or is responsible for it - direct the investigator to talk to that other person!

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Experiencing an AL Survey

Surveyor's observations and staff interviews

- STAFF'S BEST PRACTICES FOR SURVEYOR INTERVIEWS
 - Common pitfalls
 - **Gossip:** "I wasn't there, but I heard . . ."
 - **Guessing:** "I don't usually work with that resident, but I think . . ."
 - **Assumptions:** "That DSP is always like that, so I bet . . ."
 - **Panicking:** "I am sure I wrote it down that way. . . ."
 - How to Avoid the Common pitfalls
 - **Gossip:** "I wasn't there, you would have to ask . . ."
 - **Guessing:** "I don't usually work with that resident, so I cannot say for sure . . ."
 - **Assumptions:** "I can tell you about my usual practice, but I don't remember that specific day."
 - **Panicking:** "I would need to check my note to see what I wrote."
- * These responses are not evasive but instead are thoughtful, accurate responses to a question

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Experiencing an AL Survey

Surveyor's observations and staff interviews

- STAFF'S BEST PRACTICES FOR SURVEYOR INTERVIEWS
- What about the **intimidating surveyor**?
 - Stay calm
 - Reassure your staff
 - Talk to your staff before the survey/interview
 - Prepare for the interview by reviewing documentation to avoid misstatements
 - Follow up with staff to address their concerns before the next day's survey or the exit

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Response to AL Survey Findings

Exit conference

Section 295.1070

e) When the Department identifies a technical infraction during an on-site inspection, **the Department representative shall engage the establishment staff in a consultative conference. If the establishment resolves the technical infraction prior to the end of the on-site inspection, no violation shall be deemed to exist and no violation shall be reported. The Department may recommend methods of addressing the technical infraction.**

f) Prior to concluding the on-site inspection, **the Department representative shall meet with the manager regarding any identified technical infraction. The Department shall allow the establishment an opportunity to discuss the technical infraction and to present any evidence that indicates that the technical infraction did not exist or evidence related to the level of the violation.**

* Is this happening? Is “technical infraction” the loophole???

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Response to AL Survey Findings

Statement of Findings and Violations

Section 295.1070

g) The Department shall provide the establishment with a **written statement of findings and violations** no later than 20 days after conclusion of the on-site review.

Statement of Correction

Section 295.1070

h) The establishment shall file a **statement of correction** within 15 days after receipt of the statement of findings and violations. The statement of correction may be in letter form and shall describe the action taken by the establishment to address the violation. The establishment may also submit a statement of dispute regarding any of the alleged violations within 15 days. The Department shall review all statements of dispute submitted prior to making its final determination that a violation exists or of the level of the violation. If the Department does not make a change to the statement of violations based upon the statement of dispute, it shall provide a brief justification of its determination in writing.

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Response to AL Survey Findings

Statement of Dispute

Section 295.1070

h) The establishment may also submit a **statement of dispute** regarding any of the alleged violations within 15 days. The Department shall review all statements of dispute submitted **prior to making its final determination that a violation exists or of the level of the violation.** If the Department does not make a change to the statement of violations based upon the statement of dispute, it shall provide a brief justification of its determination in writing.

* Does this close the “technical infraction” loophole???

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Response to AL Survey Findings

Violations

Section 295.1040

Technical Infractions

a) A technical infraction is a situation in which the establishment's failure to meet a requirement of this Part **does not result in harm and does not have a significant negative impact on the delivery of services to residents.** A technical infraction may include a **Type 3 violation that is identified and corrected during the on-site survey review process.**

b) The establishment shall be required to correct a technical infraction. If the establishment has taken steps to correct the technical infraction, no fine, violation, or sanction shall be imposed.

c) Repeat of the same technical infraction during subsequent on-site surveys may result in a Type 3 violation.

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Response to AL Survey Findings

Violations

Section 295.1050

Violation - a situation in which the requirements of this Part are not met due to the conduct of the establishment or its staff, either by an improper action or the failure to take an action. A violation may only be based upon the licensee's improper conduct or the conduct of the licensee's staff.

Type 3 violation - an act or omission by the establishment or its staff, except by accidental means, that **causes a significant negative impact on the delivery of services to the residents of the establishment**. The establishment shall be required to participate in a consultative review with the Department unless the establishment has taken corrective action within a time frame agreed upon between the Department and the establishment.

Type 2 violation - an act or omission by the establishment or its staff that **causes harm to a resident**.

Type 1 violation - an act or omission by the establishment or its staff that **causes severe harm or the death of a resident**.

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Response to AL Survey Findings

Remedies and Sanctions

Section 295.1060a)

1) **Consultative conference** - possible for all violations. This may be part of the on-site review, via teleconference, or other means of communication. Failure to meet the requirements after the consultative conference may result in a higher sanction if the establishment does not come into compliance. A consultative conference is a remedy, not a sanction.

2) **Statement of correction** - shall be required for all levels of violation, either offered by the establishment or imposed by the Department.

3) **Administrative warning** - may be imposed for any Type 3 violation.

4) **Mandatory training** - may be required of establishment staff for any violation.

5) **Imposed order of correction** - may be imposed for violations and repeat violations after the establishment fails to submit or carry out its own statement of correction or the establishment's plan fails to address the issue. The Department may impose an immediate order of correction for a Type 1 violation.

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Response to AL Survey Findings

Remedies and Sanctions

Section 295.1060a)

6) Fines

A) The Department may impose a fine of up to **\$500** for an **initial Type 2** violation.

B) The Department may impose a fine of up to **\$1000** on any provider that has **repeat Type 2** violations at a subsequent on-site inspection.

C) The Department may impose a fine of up to **\$2000** for **Type 1** violations.

D) The Department shall impose a fine of up to **\$10,000** on any provider that has a **repeat Type 1 violation** or when the Director determines that a **serious and immediate threat exists**.

7) **Revocation of license** - may occur when **other remedies have been progressively applied and the establishment has not achieved compliance**. The decision to revoke a license may only be made by the Director of the Department.

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Response to AL Survey Findings

Remedies and Sanctions

Section 295.1060

Resident Needs Exceed Authorized Services

e) Any establishment **caring for a resident whose care needs exceed those authorized under the Act** shall be fined **\$500** for the first violation and **\$1,000** for each subsequent violation.

The establishment shall **not be found in violation** if a **sudden change in a resident's condition**, making the resident ineligible for residency, has **occurred within the last 72 hours**, the establishment is **actively attempting to find placement** for the resident in an alternative care setting, and the establishment has **initiated involuntary termination of residency proceedings**.

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Response to AL Survey Findings

Appeal

Section 295.1070

i) The **notice of findings** shall include the reason for the determination and a statement of the **right to appeal the determination** pursuant to the Department's Rules of Practice and Procedure in Administrative Hearings.

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Best Practice for Compliance

Issues/Topics frequently investigated

Issues/Topics frequently cited as violations

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Questions?

