

LEGAL UPDATES

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Industry
Healthcare

Colorado Board of Health Amends Quality Management Plan and Confidentiality Regulations

Recently, the Colorado Board of Health adopted amendments to Colorado Department of Public Health and Environment (CDPHE) regulations regarding Quality Management Plans of licensed healthcare facilities that are mandated by state statute.

The amendments, among other things, include language that would relieve healthcare facilities from developing and filing a separate Quality Management Plan if they are required to have such plans under the Medicare/Medicaid requirements of participation or by other organizations whose accrediting is recognized for the purposes of deemed status. Essentially, for nursing homes that participate in Medicare/Medicaid, a quality assessment and assurance committee will qualify as a recognized plan if it has the elements required by the regulations and is verified during CDPHE's annual survey.

For assisted living residences licensed in Colorado (most which do not participate in Medicare/Medicaid), such plans must be separately developed, filed and approved by CDPHE no later than December 31, 2015. Unlike nursing homes, assisted living residences must rely on the confidentiality provided for in the state statute that mandates the filing of a Quality Management Plan for their self-evaluation activities. Accordingly, without the filing of such a plan, self-assessment and assurance records and related internal communications may not be protected from compelled disclosure in civil suits and administrative matters such as survey activities and related investigations.

The importance of having a quality management plan in place was demonstrated in a malpractice case recently decided by the Colorado Supreme Court. In the case of *Simpson v. Cedar Springs Hospital*, a nearly unanimous

court held that a licensed facility's Quality Management Plan is deemed approved if the facility holds a current license from CDPHE.

A central issue in *Simpson* was whether quality management (e.g. quality assurance) records and minutes of discussions by the facility's committee responsible for this function are confidential. In *Simpson*, the plaintiff claimed that disclosure of the records and minutes could be compelled if the plan had not been approved by CDPHE. The court held that it is not necessary for the facility to affirmatively prove that such plan has been approved if it is currently licensed by CDPHE.

Accordingly, per *Simpson*, these records and minutes remain confidential and their production cannot be compelled in civil litigation concerning malpractice claims if they were developed during the course of a facility's quality management or quality assurance process.

What This Means to You

This new regulation will require all Colorado licensed assisted living residences to formulate and file a Quality Management Plan with CDPHE by December 31, 2015. The newly adopted regulations list nine different elements for a program to be deemed approved as determined by CDPHE's license surveys. For more information or assistance concerning formulating a plan that contains the required elements of a Quality Management Plan and other aspects of this filing requirement, please contact Fred Miles at 303.749.7269, Carol Manteuffel at 303.749.7287 or Kevin Peters at 303.749.7266.