

October 1, 2024

John Westphal, Authorized Agent
Phyxius, Inc.
215 Park Ave S
Saint Cloud, Minnesota, 56301

License Number: 1071132 (245D – Home and Community-Based Services)

CORRECTION ORDER

Dear John Westphal:

On July 30 – August 1, 2024, a licensing review of Phyxius, Inc., located at 215 Park Ave South, Saint Cloud, Minnesota, was conducted to determine compliance with state and federal laws and rules governing the provision of home and community-based services to persons with disabilities and age 65 and older under Minnesota Statutes, Chapter 245D. As a result of this licensing review a Correction Order is being issued.

A. Reason for Correction Order

Pursuant to Minnesota Statutes, section 245A.06, if the Commissioner of the Department of Human Services (DHS) finds that the license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Commissioner may issue a Correction Order to the license holder.

The following violation(s) of state or federal laws and rules were determined as a result of the licensing review. Corrective action for each violation is required by Minnesota Statutes, section 245A.06 and is hereby ordered by the Commissioner of Human Services.

1. Citation: Minnesota Statutes, section 245A.65, subdivision 2, paragraph (a).

Violation: For one of five persons whose records were reviewed (P1), the license holder did not provide orientation to the program abuse prevention plan as required.

P1 began receiving community residential services from the program on October 24, 2022. The license holder failed to provide P1 and P1's legal representative with orientation to the license holder's program abuse prevention plan (PAPP) within 24 hours of admission into the program.

Corrective Action Ordered: Within 30 days of receipt of this order, you must:

- provide P1 and P1's legal representative with an orientation to the PAPP where P1 is residing and receiving services; and
- maintain documentation of this orientation in P1's record.

On an ongoing basis, you must maintain compliance as required in this subdivision.

2. Citation: Minnesota Statutes, section 245A.65, subdivision 2, paragraph (b).

Violation: For one person whose record was reviewed (P4), the license holder did not meet the requirements for abuse prevention plans as required.

P4's initial individual abuse prevention plan (IAPP) was dated June 16, 2022. The license holder failed to develop P4's IAPP as part of the initial individual program plan or service plan prior to or upon service initiation.

Corrective Action Ordered: On an ongoing basis, you must maintain compliance as required in this subdivision.

3. Citation: Minnesota Statutes, section 245D.05, subdivision 4.

Violation: For four persons whose records were reviewed (P1, P2, P4 and P5), the license holder did not meet the requirements for medication administration as required.

The license holder was assigned the responsibility for medication administration for P1, P2, P4 and P5.

- a. The license holder failed to conduct a medication administration record review for P1 at least every three months to ensure information maintained in the medication administration record was current, and to identify medication errors.
- b. The license holder failed to identify and document medication administration errors for P2, P4 and P5:
 - from February 2023 to May 2023, there were 4 identified errors on P2's medication administration records.
 - from March 2023 to December 2023, there were 45 identified errors on P4's medication administration records.
 - from January 2024 to June 2024, there were 99 identified errors on P5's medication administration records.
- c. The license holder failed to report the following to P2, P4 and P5's legal representative and to P2, P4 and P5's case managers:
 - any reports required under subdivision 2, paragraph (c), clause 4:

- if a dose of medication is not administered or treatment is not performed as prescribed, whether by error by the staff or the person or by refusal by the person; and
- the occurrence of possible adverse reactions to the medication or treatment;
- a person's refusal or failure to take or receive medication or treatment as prescribed.

Corrective Action Ordered: Within 30 days of receipt of this order, you must:

- review medications administration records for P1 from January 2024 through current to identify any medication errors, including documentation errors;
- notify P1's support team of any identified errors, and maintain documentation of the notifications in P1's record;
- notify P2, P4, P5's legal representative and case managers of the above-mentioned medication administration errors and maintain documentation of these notifications in P2, P4, and P5's record;
- provide re-training to staff who are assigned the responsibility of medication administration record reviews; and
- develop and implement a plan to correct any patterns of medication administration or documentation errors. You must maintain documentation of the plan in your program's records.

On an ongoing basis, you must maintain compliance as required in this subdivision.

4. Citation: Minnesota Statutes, section 245D.051, subdivision 1, paragraph (b).

Violation: For one person whose record was reviewed (P5), the license holder did not document conditions for psychotropic medication administration as required.

The license holder failed to develop, implement, and maintain a description of target symptoms that the psychotropic medication is to alleviate.

Corrective Action Ordered: Within 30 days of receipt of this order, you must document the information in P5's record. On an ongoing basis, you must maintain compliance as required in this subdivision.

5. Citation: Minnesota Statutes, section 245D.06, subdivision 4.

Violation: For one person whose record was reviewed (P1), the license holder did not meet the requirements for safe keeping of funds and property as required.

The license holder was assigned the responsibility of safe keeping P1's funds. The license holder failed to survey P1's legal representative and P1's case manager for

preferences on frequency of receiving a statement that itemized receipts and disbursements of funds.

Corrective Action Ordered: Within 30 days of receipt of this order, you must survey P1's legal representative and P1's case manager for their preferences on frequency of receiving a statement that itemizes receipts and disbursements of funds. You must document this information in P1's record.

On an ongoing basis, you must maintain compliance as required in this subdivision.

6. Citation: Minnesota Statutes, section 245D.071, subdivision 3, paragraph (b).

Violation: For one person whose record was reviewed (P1), the license holder did not complete assessments as required.

The license holder failed to ensure the assessments the license holder completed regarding P1's ability to self-manage medical and health needs to maintain or improve the following were accurate:

- allergies; and
- self-administration of medication or treatment orders, preventative screening, and medical and dental appointments.

The license holder identified that P1 did not have any allergies in the assessments the license holder completed for P1; however numerous other documents in P1's record identified allergies for P1.

Corrective Action Ordered: Within 30 days of receipt of this order, you must complete assessments for P1 in the above-mentioned areas. On an ongoing basis, you must maintain compliance throughout your program as required in this subdivision.

7. Citation: Minnesota Statutes, section 245D.071, subdivision 3, paragraph (c).

Violation: For one person whose record was reviewed (P1), the license holder failed to meet initial service planning requirements for an intensive service as required.

P1 began receiving community residential services from the license holder on October 24, 2022. The license holder failed to hold a meeting with P1's support team within 45 days of providing services to determine the following:

- the scope of the services to be provided to support the person's daily needs and activities;
- the person's desired outcomes and the supports necessary to accomplish the person's desired outcomes;

- the person's preferences for how services and supports are provided, including how the provider will support the person to have control of the person's schedule;
- whether the current service setting is the most integrated setting available and appropriate for the person;
- opportunities to develop and maintain essential and life-enriching skills, abilities, strengths, interests, and preferences;
- opportunities for community access, participation, and inclusion in preferred community activities;
- opportunities to develop and strengthen personal relationships with other persons of the person's choice in the community;
- opportunities to seek competitive employment and work at competitively paying jobs in the community;
- how services must be coordinated across other providers licensed under this chapter serving the person and members of the support team or expanded support team to ensure continuity of care and coordination of services for the person; and
- a discussion of how technology might be used to meet the person's desired outcomes. The support plan or support plan addendum must include a summary of this discussion:
 - the summary must include a statement regarding any decision that is made regarding the use of technology; and
 - a description of any further research that needs to be completed before a decision regarding the use of technology can be made.

Corrective Action Ordered: Within 30 days of receipt of this order, you must:

- meet with P1's support team to determine the above-mentioned information; and
- maintain documentation of this meeting and what was determined in P1's support plan addendum.

On an ongoing basis, you must maintain compliance as required in this subdivision.

8. Citation: Minnesota Statutes, section 245D.071, subdivision 4, paragraph (b).

Violation: For one person whose record was reviewed (P4), the license holder did not meet all requirements for outcome and support development as required.

The license holder failed to document how data would be collected for P4's service outcomes.

Corrective Action Ordered: Within 30 days of receipt of this order, you must update P4's service outcomes and supports with the above-mentioned information. On an ongoing basis, you must maintain compliance as required in this subdivision.

9. Citation: Minnesota Rules, part 9544.0030, subpart 1.

Violation: For one person whose record was reviewed (P3), the license holder did not evaluate positive support strategies as required.

The license holder failed to evaluate positive support strategies with P3 at least every six months in 2022 and 2023.

Corrective Action Ordered: On an ongoing basis, you must maintain compliance as required in this subdivision.

10. Citation: Minnesota Statutes, section 245D.09, subdivision 4.

Violation: For three of five staff persons whose records were reviewed (SP3-SP5), the license holder did not ensure completion of orientation training as required.

- a. For SP3-SP5 the license holder failed to provide and ensure completion of orientation within 60 calendar days of hire on strategies to minimize the risk of sexual violence, including concepts of healthy relationships, consent, and bodily autonomy of people with disabilities.
- b. For SP4 and SP5, the license holder failed to provide and ensure completion of orientation within 60 calendar days of hire in the following areas:
 - data privacy requirements according to sections 13.01 to 13.10 and 13.46, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), and staff responsibilities related to complying with data privacy practices; and
 - the service recipient rights and staff responsibilities related to ensuring the exercise and protection of those rights according to the requirements in section 245D.04.
- c. For SP4 the license holder failed to provide and ensure completion of orientation within 60 calendar days of hire on the principles of person-centered service planning and delivery as identified in section 245D.07, subdivision 1a, and how they apply to direct support service provided by the staff person.

Corrective Action Ordered: On an ongoing basis, you must maintain compliance as required in this subdivision.

11. Citation: Minnesota Statutes, section 245D.09, subdivision 5.

Violation: For three staff persons whose records were reviewed (SP3-SP5), the license holder did not provide annual training as required.

The license holder failed to provide SP3-SP5 with basic first aid training annually.

Corrective Action Ordered: Within 30 days of receipt of this order, you must provide SP3-SP5 with basic first aid training. On an ongoing basis, you must maintain compliance as required in this subdivision.

If you fail to correct the violations specified in the Correction Order within the prescribed time lines the Commissioner may issue an Order of Conditional License or may impose a fine and order other licensing sanctions pursuant to Minnesota Statutes, sections 245A.06 and 245A.07.

B. Right to Request Reconsideration

If you believe any of the citations are in error, you have the right to request that the Commissioner of Human Services reconsider the parts of the Correction Order that you believe to be in error. The request for reconsideration must be in writing and received by the Commissioner within 20 calendar days after receipt of this report. Your request for reconsideration must be sent to:

Commissioner, Department of Human Services
ATTN: Legal Unit
Licensing Division
PO Box 64953
St. Paul, MN 55164-0242

Please note that a request for reconsideration does not stay any provisions or requirements of the Correction Order. The Commissioner's disposition of a request for reconsideration is final and not subject to appeal under Minnesota Statutes, chapter 14.

If you have any questions regarding this Correction Order, please contact me as soon as possible.

Kate Spenger, Human Services Licenser
Licensing Division
Office of Inspector General
651-431-5757