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# **Consumer Manual to Prevent and Address Terminations from Assisted Living Facilities in Minnesota**

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## **I. Introduction**

In 2019, Governor Tim Walz signed the Elder Care and Vulnerable Adult Protection Act. This landmark legislation provided for a new Assisted Living Licensure system in Minnesota. Until that time, Minnesota's assisted living facilities were regulated as housing with services entities, with limited oversight from the Minnesota Department of Health (MDH). While MDH had regulatory authority over the home-care services provider, they did not license the housing provider, which often led to confusion and regulatory gaps.

As of August 1, 2021, the new licensure system provides new protections and rights for residents in assisted living facilities. Among the most important of these new rights is freedom from arbitrary termination and discharge from the facility. To help preserve this right, the statute and rules that make up the new licensure system provides for a series of critical due process protections. Residents and their advocates who take advantage of these protections may be able to avoid unnecessary terminations and avoid the transfer trauma that can come with such a move.

This Assisted Living Termination Protection Manual has been developed by the Minnesota Elder Justice Center, with grant funding from the Minnesota Board on Aging. The intended audience for this manual is attorneys or experienced advocates who are assisting residents of assisted living facilities facing termination of housing or services from those facilities.

## **II. How to Use the Manual**

This manual is for attorneys (or experienced advocates) who intend to represent a resident facing a termination of housing or services from an Assisted Living facility. The Chapter 144G Assisted Living statute and Chapter 4659 of Minnesota Administrative Rules, referenced throughout this document, can be found at [www.revisor.mn.gov/statutes/cite/144G](http://www.revisor.mn.gov/statutes/cite/144G) and <https://www.revisor.mn.gov/rules/4659/>.

The companion to this manual, the version for residents representing themselves against a termination, is a shortened version of this manual designed for residents and advocates who are unfamiliar with the legal structures that govern the regulation of assisted living settings and the appeals process.

The manual follows the timeline of a termination, from before the time a provider issues the required pre-termination and termination notices, to the end of an appeal or the moment a resident has to move to a new residence. The sections to follow are:

- A. Pre-Termination Process**
- B. Termination Notice and the Reasons for Termination**
- C. The Appeals Process, Defenses, and Strategies**
- D. Coordinated Moves**
- E. Emergency Relocation and Right to Return**

Each section covers a variety of different scenarios, recommended advocacy tips, and the underlying statutes and Administrative Rules that regulate Assisted Living terminations and appeals.

This manual approaches the termination process from the perspective of the resident. The statute and rules are designed to provide due process protections so that a resident is not arbitrarily terminated and discharged. For case managers, family members, and other advocates of the resident unfamiliar with due-process legal principles, this manual is designed to show that at every stage of a facility-initiated termination, the law provides the resident important protections. This does not mean that by the end of the process a resident will be able to avoid having to move. But, even in cases where a resident ultimately moves from one facility to another location, the termination process must provide for certain steps and protections to be followed, making the transition smoother for the resident.

For advocates and residents looking for a simpler version of this material, consider using the condensed version of this manual that provides a summarized overview of the most important issues in Assisted Living resident terminations.

### **III. Pre-Termination Process**

#### **A. Before the Termination**

The statute and rules set up a pre-termination process that is designed, in part, to help resolve the underlying issues that have led the facility to consider issuing a termination notice. In many cases, the resident and resident's advocates should take full advantage of the timing and the meeting requirements of the pre-termination notice and meeting.

## **B. Pre-Termination Meeting**

The pre-termination meeting (and the written notice that precede the meeting) represents the first “stage” of an Assisted Living termination. *See* Minn. Stat. § 144G.52, subd. 2 and Minn. Rule 4659.0120 (laying out the requirements of the pre-termination meeting). It provides an opportunity for the resident to better understand why the facility wants to pursue a termination and a chance to potentially resolve underlying issues and avoid the termination. As described in detail in section IV of this manual, the facility can only issue a termination notice for six different reasons. The pre-termination notice must describe what reason the facility is claiming is the basis of the termination. Minn. Stat. § 144G.52, subd. 2(a)(1).

Residents and their advocates should take the pre-termination meeting as an opportunity to listen carefully to the reason for the proposed termination and the underlying concerns the representatives of the facility are raising. It should ultimately help the resident potentially prepare a defense to the termination or offer suggestions as to how to resolve the dispute without a termination.

Residents and advocates should pay careful attention and be very deliberate about how to approach the meeting. A resident is under no obligation to offer up information that the provider might later use against them. A resident is under no obligation to agree to anything they do not want to do during this meeting, including signing documents they may be asked to sign on the spot. Ultimately, the termination process has many other due process protections beyond the pre-termination meeting, and residents and their advocates should carefully strategize before this meeting to maximize all of these protections.

## **1. Pre-Termination Meeting: Timing**

Seven days before it issues a termination notice, the facility is required to set a meeting date, time, and place and make reasonable efforts to ensure that the resident and their legal and designated representative can attend. Minn. Stat. § 144G.52, subd. 2(b). The law allows for other attendees to attend as well. Minn. Stat. § 144G.52, subd. 2(c).

While the statute is not precise about what “reasonable effort” means, advocates should make sure that the time and place proposed by the facility will work for the key members of the resident’s network that need to be there.

If finding a time, place, or method of meeting proves difficult, the rules do allow the facility to eventually schedule the meeting and prevents the resident (or his or her advocates) from unnecessarily prolonging the pre-termination period. Minn. Rule 4659.0120 subpart 1. That does not mean, however, that a resident should agree to unreasonable meeting demands or be unnecessarily rushed into making any agreement the facility may propose at the meeting. Furthermore, if the facility makes any changes to the date, time, or location of the meeting, it must provide written notice of such changes. Minn. Rule 4659.0120 subpart 1(E).

The pre-termination process is designed to give residents and their advocates time to fully understand why the facility is preparing for a termination and begin to develop strategies or a response based on what the resident wants to do. All told, the resident will have nearly two weeks from the time he or she receives a written notice of the pre-termination meeting, to when he or she receives written notice of the actual termination. It is this second notice, the termination notice, that starts the clock on the resident’s appeal rights.

### ***Breakdown of Pre-Termination Timeline***

- 1) Resident Receives Written Notice of the Pre-Termination Meeting
- 2) Waiting Period - 5 Business Days
- 3) Pre-Termination Meeting Occurs
- 4) Resident Receives Written Summary of Meeting within 24 hours
- 5) Termination Notice Given to Resident Must be 7 Days After Pre-Termination Meeting or 24 Hours if an Emergency Relocation

### **2. Pre-Termination Meeting: Written Notice**

The first formal notice a provider must give a resident prior to a termination is the notice of a pre-termination meeting. Minn. Rule 4659.0120 Subpart 1 (A). Minn. Rules 4659.0120, subpart 1 (D), contains eight distinct requirements the written pre-termination notice must include. The notice will provide the resident with the first written documentation of the issues that are leading to the potential termination. Advocates will want to ensure that the written notice is complete in that it includes all the requirements in Minn. Rules 4659.0120, subpart 1 (D), especially a *detailed* explanation of the reason or reasons for the termination.

The rule further requires a separate written notice be given to a case manager at least five business days in advance if the resident receives home and community-based services under Minn. Stat. 256S; Minn. Stat. 256B.49; or Minn. Rules 4659.0120, subpart 1 (C). Generally, these residents are receiving a Medicaid waiver (often called an Elderly Waiver or a CADI waiver) that pays for their services in the facilities.

Every resident receiving a waiver has a case manager. The case manager may be employed by a county or by a private (usually non-profit) services company that contracts with the county. The case manager is the direct link between the resident and the payor of services, which under the MA program is ultimately the state Department of Human Services. This means the case manager helps approve payment of the services (called customized living services) that the resident receives in the assisted living setting.

### **3. Pre-Termination Meeting: Working with a Case Manager**

In advocating for the resident, it will be important to reach out to the case manager and get a copy of the written notice given to him or her. Case managers can frequently be strong advocates for residents, but this is not true in every situation. This is not to say that a case manager who does not appear to be advocating for the client is not doing their job. The case manager must ensure that a client is getting their needs met and may believe or have a difference of opinion whether the facility is the best place for the resident.

Case managers may not always be in the strongest position to advocate for the facility to change its policies or otherwise help the resident navigate the appeals process. They will be, however, an important part of the overall process and must be involved if the resident chooses to (or has to) move and use the waiver to pay for services elsewhere.

Try and ascertain their perspective on the issues at the facility, and if they are supportive of the resident's perspective, consider sharing the information in the resident notice. The case manager's termination notice is not required to have the same level of detail as the residents, and



the case manager may not know all the details about what the facility is claiming is wrong. *See* Minn. Stat. § 144G.52 subd. 7(a).

Taken together, both notices should provide a general picture of how the facility will be approaching the meeting. For example, look for any discrepancies in the written notices and try to determine what role each person from the facility will likely play at the meeting. The case manager may already have experience with personnel from the facility and may have insight as to the veracity of the details contained in the notices. The case manager will also be a key part of any move that the resident may need to eventually make. Even if the resident's ultimate goal is to stay at the facility indefinitely, the pre-termination period provides an important time for the case manager to begin helping look for possible alternative living arrangements.

#### **4. Pre-Termination Meeting: Attending the Meeting**

Before attending the pre-termination meeting, it is important to first identify (1) the resident's goals and (2) how the meeting can (and cannot) meet those goals. For instance, if the resident is adamant that they want to stay in the facility and the facility is claiming they are presenting some significant threats to health and safety, it will be a much different meeting than if the resident is wanting to move soon but needs more time and help in locating a new facility.

While each meeting will be different based on the facts of the case and the personalities involved, it may be helpful to consider that the goals may align with one of four broad categories. This is not an exhaustive list nor is every type of scenario covered, but these are some common situations that may help the advocate prepare for the tone and purpose of the meeting. Once the advocate has identified the general goals of the meeting, it makes sense to

identify who among the resident's support network would be good to help meet those goals. Note that it may be helpful to reach out to the facility representative listed in the notice before the meeting to introduce yourself and get a general sense of that individual's approach to the meeting.

## **5. Pre-Termination Meeting: Common Scenarios Requiring a Meeting**

### ***Misunderstanding or poor communication between resident/family/advocates and facility.***

As a loved one ages in assisted living, family and friends may notice their expectations about the care, amenities, or overall experience with the facility is not going as planned. Sometimes there may be miscommunication or misunderstanding or that communication has presented barriers or challenges. Sometimes families feel they are not getting appropriate responses to concerns they are raising. While the most appropriate place to discuss and work through communication difficulties would be a care conference, sometimes a facility may proceed directly to a pre-termination meeting before the resident or family believes they have had a chance to resolve communication issues.

While a pre-termination meeting should only be initiated if the facility has identified a statutory reason for the termination, many times the underlying cause is more about communication. If the facility has identified a reason for termination but the real underlying reason seems to be communication problems, the pre-termination meeting could serve to clarify roles and expectations and clarify miscommunications. That alone might be a good outcome from the meeting, especially if it prevents the facility from taking any further action towards termination. However, advocates should closely scrutinize the exact reason for the proposed termination and observe whether the issues being raised at the meeting are directly relevant to

the reason. If not, it may be the facility does not have a valid legal reason for initiating the termination, which would be solid grounds for an appeal.

***Relationships deteriorating and resident (or family) unhappy with the setting but not sure where else to go.***

It may be that the resident and his or her family and advocates are very clear that the resident cannot or does not want to live in the facility much longer. The relationship between the resident and the facility may be starting to deteriorate and the facility has indicated it may no longer be tenable. It is possible interventions to address concerns or grievances have been attempted and have not been satisfied to the resident or family's satisfaction.

Pay close attention to the reasons for the pre-termination notice and the specific issues the facility identifies that are related directly to the resident himself or herself. Be careful in these scenarios to identify whether the root of the issue is the resident, or a resident's family or friends or other advocates. Sometimes the resident may feel caught in-between the zealous advocacy (or perhaps other less well-intentioned behavior) of a loved one and the staff of the facility. It is important in these situations to speak separately to the resident and determine if they agree with their loved one's approach and how they would like the loved one to be involved moving forward. It may be helpful in such circumstances to have the particular individual or individuals not attend the per-termination meeting, if the resident desires and agrees to this.

At the meeting, the facility representatives may indicate that it would be best for all parties to just end the tenancy. It is critically important for the resident to understand that the *facility* is initiating a termination when the facility tells the resident they should all end the tenancy, and that the resident has the right to stay and appeal any termination of the contract. Be

very careful about having the resident sign anything that would suggest it is the resident, and not the facility, that is initiating the end of the contract; by holding this meeting, the *facility* is initiating a termination and the resident has the right to a termination notice and appeal. Remember, too, the resident is not obligated to agree to any type of agreement that extends beyond the provisions already outlined in the Assisted Living contract, and even if he or she ultimately wants to leave, the resident will have more time and options if they end the tenancy on their terms (either through exhausting an appeal, or moving out when they have found a suitable housing alternative).

***Care needs are increasing but an accommodation at the facility should be possible.***

A primary purpose of the pre-termination meeting is for both sides to find resolution to the underlying problem that the facility believes is providing it with the statutory grounds for termination. When care needs are increasing, it should be expected that the facility must *offer* “reasonable accommodations or modifications, interventions, or alternatives to avoid the termination or enable the resident to remain in the facility.” Minn. Stat. § 144G.52 subd. 2. Read as a whole, this subdivision makes it clear that a facility must participate in the meeting and that part of the meeting is designed for the facility to offer these reasonable alternatives that should be designed to *enable the resident to remain in the facility*. If the facility refuses to offer such alternatives, the advocate should consider taking the position that the facility has not participated in the meeting. This is an issue to raise at the appeal.

If the resident’s goal is to remain in the facility, then the facility is obligated to consider and offer accommodations that may make this possible. Accommodations should be made to help ensure the resident’s needs or preferences are met. This may be especially important for

residents with advancing dementia, who prefer to age in place but will require different approaches to care as their disease advances.

Consider inviting a caregiver who is an “expert” in the individual’s needs and can help describe to the facility how changes to the care schedule, routine, or activities can greatly change the resident’s experience for the better. Ask the facility what it has done to consider potential accommodations, as the facility has the duty to offer alternatives if they are available. *See* Minn. Stat. § 144G.52, subd. 2(a)(2). Come prepared to offer potential accommodations the resident has identified, such as bringing in supplemental caregivers in the form of family, friends or community members, outside agencies, changes in the service plan, physical plant adjustments, or other accommodations.

***There is no reasonable compromise or agreement in sight.***

These types of meetings should be easy to spot, as representatives from the facility may be saying or doing things that already indicate an adversarial position or that they have already come to a conclusion about the desired outcome. In this type of meeting, the facility will likely take the approach that there is really nothing they can do to accommodate or otherwise fix any underlying issues that they consider to be a statutory basis for termination, and this meeting is just a formality. As described above, a facility does need to offer accommodations or modifications that would enable the resident to remain in the facility, and it should be obvious whether they are making any sort of good faith effort in this regard. If not, the resident may not have much to gain from a prolonged pre-termination meeting under these circumstances as the facility may be looking to capture any admissions or comments that could be used against the resident in an appeal hearing.

## 6. Pre-Termination Meeting: Other Important Issues

Advocates should prepare for the pre-termination almost as a pre-hearing type of event. Issues that are raised in the meeting may resurface at a hearing and although the meeting should help foster a resolution to the underlying issues, it has the potential to put the resident at a disadvantage under certain circumstances. Advocates should take careful contemporaneous notes at the meeting and not allow factual assertions from the facility to be presented as agreed-upon facts if the resident or others disagree with the assessment.

Advocates should be alert for signs that a termination is being pursued in retaliation for complaints about quality of care, which could be retaliation prohibited by the assisted living law, or for reasons that constitute potential discrimination against the resident or their loved one.

Also *be careful* in these types of meetings if the facility proposes signing any type of new agreement that obligates the resident to certain commitments not already in the resident's contract. In some cases, a resident may choose to sign an agreement as a sort of reasonable accommodation or other plan to address legitimate issues that have arisen. In other cases, asking a resident to sign an agreement may essentially constitute asking a resident to agree to unique contractual terms applicable to this resident. Before entering into such an agreement – consider the following:

- Is there a legitimate reason for these additional terms?
- Does asking the resident to sign additional terms constitute retaliation for complaints raised by the resident?

- Does asking the resident to sign additional terms constitute requiring discriminatory terms and conditions applicable to this resident that violate fair housing laws?
- Will the resident actually be able to comply with the terms requested?
- If the resident is asked to sign additional paperwork, the resident may need time to consider what is being proposed and lawyers/advocates may request additional time to review the paperwork and discuss it.

Advocates should pay close attention to the written summary that the facility is supposed to provide 24 hours after the meeting. *See* Minnesota Rule 4659.0120 subpart 4. If the summary contains information that is a mischaracterization of what took place, be sure to respond in writing to the facility – citing your own contemporaneous notes and clearly articulating what issues you believe to be false or mischaracterized. This will help ensure the facilities written summary does not go unchallenged in an appeal.

Finally, as described above, the pre-termination meeting time frame may last for two weeks or more. This provides the resident, family, friends, and case manager time to begin looking for alternative living arrangements, and the resident may wish to begin this process right away. This does not mean the resident is conceding or waiving the resident's rights to appeal. It is simply good planning and may ultimately help provide an earlier resolution to the process.

## **7. Pre-Termination Meeting: Working with an Ombudsman**

As indicated directly by statute, a resident is allowed to have a representative from the Ombudsman's Office of Long-Term Care (OOLTC) attend the pre-termination meeting as an

advocate for the resident. The OOLTC is a federally mandated advocacy office that provides free advocacy services for residents in long-term care facilities. The particular advocate who is available to work with the resident, known as a regional ombudsman, is usually familiar with the facility and can be a real asset in helping meet the resident's goals. If a regional ombudsman is available to assist the resident, the regional ombudsman is obligated to work on behalf of and by direction from the resident. If the resident is able to provide direction, the regional ombudsman must take their direction directly from the resident and not from others such as family members, even if family members make the initial call to OOLTC requesting assistance. Regional ombudsmen's expertise representing clients in assisted living facilities and relationships in their region makes them a significant ally in the termination process because they can help the resident advocate ascertain the true goals of the meeting and advise on resident rights, especially if the process becomes adversarial.

### **C. Other Pre-Termination Situations**

#### **1. The Facility says the Resident Wants to Move and no Pre-Termination Meeting is Necessary.**

The facility may take the position that the resident wants to move, and therefore it is a "resident-initiated termination." Neither the statute or rules contemplate a resident-initiated "termination." A termination is defined as:

(1) a *facility-initiated* termination of housing provided to the resident under the contract; or

(2) a *facility-initiated* termination or nonrenewal of all assisted living services the resident receives from the facility under the contract.



Minn. Stat. § 144G.52, subd. 1 (emphasis added). If a resident has not given a formal notice that they are moving, and the facility initiates a conversation about the resident moving and requests them to move, this is a termination. Residents frequently express a desire to go home or leave a facility; the fact that a resident does this in a general way does not strip them of any of the protections against termination. It is very normal for residents facing a termination to feel ambivalent about being terminated because they do not ultimately want to stay in the facility anyway, but residents should be very careful about signing anything that might ultimately be used by the facility to argue that the resident initiated ending a contract. Particularly if a facility initiated a pre-termination meeting, it will be extremely difficult for the facility to argue that they did not initiate a termination if the resident is contesting this and has signed nothing to the contrary.

It is critical to understand that a resident *does not have* to move unless the facility follows the due process protections laid out in statute. That means there must be a legitimate reason for the termination, a pre-termination meeting held, and a chance for a full appeal to the Administrative Law Judge (ALJ), who handles the appeals process. Even if a resident may want to move eventually, they should be realistic about how long it will take to find a suitable new residence. Unless the resident has already made realistic and clear arrangements for moving (e.g., a family member is preparing to bring them home, they have signed a lease with a new residence, they have a move-in date with a new long-term care setting), the resident should not concede that a move is “resident initiated.”

Be aware that this issue may resurface through the timeline of the case, including in the pre-termination meeting and even at the appeal. Facilities may continually point to the resident’s

displeasure with the care and/or the setting and insist that the resident's desire to move should be reason enough for the termination to occur. The advocate must remember, however, that *the resident's desire to move is irrelevant* to the fundamental issue on appeal – which is simply whether the provider has a legitimate basis to terminate and discharge the resident.

## **2. Signs of Retaliation by the Facility**

Retaliation by facility representatives is strictly prohibited in Assisted Living facilities. Minn. Stat. § 144G.92. Specifically – if a resident or anyone on behalf of the resident is advocating in some manner (i.e., for better care), the facility cannot take certain actions against them. This includes discharging the resident in response to the request for improved care.

Generally, retaliation is not always easy to prove, though there may be signs. First – look closely at the reason for the in the pre-termination notice. If the reason is not lining up with facts, there may be other reasons for the action taken. Another consideration might be to inquire with the resident as to any recent grievances, complaints or concerns they may have lodged with the facility. Also, just because the facility is alleging a reason for the termination, does not mean there is also underlying retaliation occurring.

Retaliation is both a violation of resident rights and a defense to a termination. *See* Minn. Stat. §§ 144G.54, subd. 2(4), 144G.92. Coming out of the termination meeting it may be that the advocate (at the direction of the resident) wants to file a complaint of retaliation to the Minnesota Department of Health (MDH). That *does not* in and of itself stop a termination, nor mean the resident cannot be terminated and discharged. It *does* provide MDH an opportunity to evaluate the evidence and make a finding. The advocate may also raise a defense in front of the ALJ that

the termination is retaliatory and therefore against state law. *See* Minn. Stat. § 144G.54, subd. 2(4).

***Table 1 - Pre-Termination Advocacy Checklist***

<b>1. Get copies of both pre-termination notices (resident version and case manager version)</b>
<b>2. Contact resident’s case manager (if any)</b>
<b>3. Contact Ombudsman for Long Term Care, if interested in requesting office assistance/advocate</b>
<b>4. List of who is attending meeting on behalf of resident and the “role” for each person at the meeting</b>
<b>5. Contact facility representative listed in notice to help plan for the meeting</b>
<b>6. Review the post-meeting written summary provided by the facility and correct any mischaracterizations by writing a letter in response</b>
<b>7. Begin preparing for possible appeal and possible move to another setting</b>
<b>8. If the pre-termination meeting ends with the facility continuing to pursue a termination, ensure that the facility has given the proper notices and that the resident’s right to appeal and/or right to return is preserved</b>

## **IV. Termination Notice and Reasons for Termination**

Under the Assisted Living Licensure statute, a facility may initiate two types of terminations: regular or expedited. The facility may only initiate an involuntary termination for certain enumerated reasons. These reasons include: nonpayment of rent or services, a violation of the Assisted Living contract that the resident does not address, or conduct that jeopardizes the health or safety of other residents or staff.

### **A. Termination for Nonpayment of Rent or Services**

A facility is allowed to pursue a termination “because of nonpayment of rent or a termination of services because of nonpayment for services.” Minn. Stat. § 144G.52 subd. 3(a). Neither that statute nor the rule provides specific scenarios of nonpayment of rent or services. Advocates should consult the Assisted Living contract to confirm the terms of payment for both housing and services, including the dates by which each payment are due, the amount owed, potential late penalties, and any other potential terms (e.g., who pays, where payment is sent, etc.). Many times, it may be a pure clerical error or other mistake that will account for the nonpayment. Residents and advocates should ask the provider to confirm nonpayment status at the pre-termination meeting (see previous chapter). Advocates should also review the requirements for contracts, including disclosures related to billing and payment procedures, fees, and other aspects of the contract, to determine if required disclosures about billing matters were provided to the resident and if the amount owed is accurate. *See* Minn. Stat. § 144G.50, subd. 2.

## **1. Contact Any Possible Alternative Financial Decision Maker**

Advocates should pay particular attention as to why the rent or services are not being paid. The advocate should confirm who the bills have been going to, who are they addressed to, and the method of delivery to see if this is consistent with either the resident or the person whom the resident has identified to assist them with their finances.

In many circumstances, older adults with cognitive decline may have some type of appointed third party in charge of their financial affairs. An attorney in fact is a person designated by a Power of Attorney to execute financial affairs of the individual (as per the scope outlined in the Power Attorney document). A Representative Payee is a person appointed through the Social Security process and may be assisting a resident who is using public assistance by paying bills on their behalf. A Conservator is appointed by the Court and is legally obligated to take care of the financial affairs of the resident. Any advocate working with a resident should ascertain if the resident has any of these formal decision-making or bill-paying structures in place. Residents may also have “informal” decision makers in place – family or friends helping them with financial (and other) affairs.

Residents may also have a designated representative identified to the facility, which is a person they indicated could be a resource when they signed the Assisted Living contract. The statute specifically requires the Assisted Living contract to allow the resident to name a designated representative and they can do so at any time, although in most cases it would have been done just once upon admission during the signing of the contract. 144G.50 subd. 3.

## **2. Special Considerations for Residents using Public Benefits**

The statute provides an additional protection in case the reason for the nonpayment can be traced to a delay in a resident's public benefits. If there is an interruption in a resident's public benefits, no matter the reason for that interruption, the statute specially protects against termination for 60 days. 144G.52 subd. 3(b). Be sure to clarify the source of the delay of payment by contacting the resident's financial benefits coordinator at the county level in order to attempt to address it and ensure it does not last more than 60 days.

Residents on a Medicaid waiver will have a case manager, but they often will have a financial services worker at the county who determines whether they are financially qualified for benefits and can track the status of their benefits. Depending on the size of the county, this may be one person or a team of people. Contact the case manager to help get in touch with the financial services office in charge of benefits for the resident.

If a resident is being terminated because they are moving from private pay to public assistance, such as using the Elderly Waiver once they have spent down their assets, consider if the facility provided the necessary disclosures under Minnesota Statutes, 144G.50, subd. 2, related to its acceptance of medical waivers and Housing Support. If the facility did not provide accurate disclosures to the resident, there may be an argument that failure to accept the payment from a public source at this stage is a violation of consumer protection laws and/or that the termination is not compliant with state law.

## **B. Termination for Violation of the Assisted Living Contract**

Another potential reason for termination is if the *resident* violates the terms of the Assisted Living contract. Even if this is the case, the resident has the ability to cure most violations within two weeks of the violation.

Advocates must pay close attention to this potential allegation from providers. The statute is clear that the resident must be the person violating the contract, so if a resident's guest or family is causing the issue, the resident is not subject to a termination of the resident's housing or services unless it can somehow be shown that the resident also violated their contract due to the issue. It is important to get clarity around the allegation because the Assisted Living contract might contain a multitude of items that a resident could potentially violate. Rules such as visitor hours or wall decorations could potentially be a pretext to terminate the contract for an illegal reason if a provider alleges a resident has violated those provisions. If this happens, advocates should clarify exactly what the violation is and how the resident can cure the violation in a timely manner, and also analyze if other residents have been treated differently for similar violations or if there is another reason to suspect discrimination or retaliation. Also, the termination can only be successful if the resident violated a "lawful" provision of the contract, so a provision of the contract that is discriminatory, retaliatory, or violates another resident right including rights under Chapter 144G cannot be a basis for termination.

### **C. Expedited Termination for Housing or Services**

There are three ways in which a facility can issue and pursue an expedited termination for housing or services, which means they must only give a 15-day notice instead of the standard 30-day notice. These reasons include:

(1) the resident has engaged in conduct that substantially interferes with the rights, health, or safety of other residents;

(2) the resident has engaged in conduct that substantially and intentionally interferes with the safety or physical health of facility staff; or

(3) the resident has committed an act listed in section [504B.171](#) that substantially interferes with the rights, health, or safety of other residents. Minn. Stat. § 144G.52 subd. 5(a).

If a facility alleges any of these, it is important to note they must still engage in a pre-termination meeting as described in the previous chapter. When building a case to defend the resident, it is important to note that under all three reasons, the facility must allege that the offending conduct interferes with another person or other people, not the resident him or herself. Analyze whether or not the only person who was put at risk was the resident. For example unauthorized or illegal drug use, which is an act listed in 504B.171, in and of itself would need other facts showing the illegal drug use substantially interfered with the rights, health, or safety of other residents to actually meet the requirements of a reason for termination.

If the allegation does point to the conduct interfering with the rights, health, or safety of another or others, analyze whether or not it does so substantially. This could be the key issue



upon which an appeal is litigated. Under Minn. Stat. § 144G.54, subd. 4(a), the facility will have the burden to prove that the facts underlying the allegation are true, and therefore prove that the violations are substantial. This means they should be able to present testimony or other types of facts directly from other individuals who can believably and reliably assert that the resident has caused interference to their rights, health, and safety.

The statute also requires that any threat to the safety or physical health of staff that is the basis for termination be “intentional.” This means, for example, that residents with dementia who display aggressive behavior toward staff may lack this element of intentionality and therefore would likely not meet this standard. Advocates should consider gathering expert testimony from a physician regarding the intentionality and argue that the resident cannot be terminated on this basis.

Furthermore, advocates need to pay close attention if the reason for termination is danger to staff or to other residents. If the reasons for termination is alleged conduct that poses a danger to staff, the resident can only be terminated if it is conduct that substantially interferes with the staff member’s “safety or *physical* health.” Minn. Stat. § 144G.52, subd. 5(a)(1) (emphasis added). If the reason for termination is alleged conduct that poses a danger to other residents, the resident can be terminated if the conduct substantially interference with the “rights, health, or safety of other residents.” Minn. Stat. § 144G.52, subd. 5(a)(2).

Many of the considerations described in the next section regarding the alleged “inability to meet care needs” can also be used to defend against terminations based on alleged danger to others. For example, if a resident with dementia is accused of engaging in aggressive behavior,

advocates should consider if the facility is providing required services under its license that might help to alleviate this behavior.

#### **D. Expedited Termination of Services for Inability to Meet Care Needs**

In addition to interfering with the rights, health, and safety of others, a facility may also terminate a resident's services for issues related to the resident's care needs. Generally, a facility must provide the care and services agreed upon in the contract. In most assisted living arrangements, it is generally understood by both the resident and the facility that if care needs increase, the facility may have services available. This concept of "aging in place" may even be a key advertised feature of the facility.

There are times, however, where a facility will claim that a resident's care needs have changed to the point where the facility can no longer care for the resident, or other circumstances have occurred whereby the facility can no longer provide the necessary care. Specifically, a facility can pursue a termination of services under statute if:

(1) the resident has engaged in conduct that substantially interferes with the resident's health or safety;

(2) the resident's assessed needs exceed the scope of services agreed upon in the assisted living contract and are not included in the services the facility disclosed in the uniform checklist; or

(3) extraordinary circumstances exist, causing the facility to be unable to provide the resident with the services disclosed in the uniform checklist that are necessary to meet the resident's needs. Minn. Stat. § 144G.52, subd. 5(b).

Advocates should pay close attention to whether the reason for termination of services is because a resident is a threat to themselves. If that is the claim, the facility cannot pursue a termination of housing for this conduct. Furthermore, because any termination of services must be preceded by the pre-termination meeting, there should be a very close examination of what other services could be provided that would reduce the threat. The standard is “substantially interferes with the resident’s health or safety,” which should mean that the resolution could be a mitigation of the problem or issue rather than a wholesale stopping of the offending conduct.

If the facility is claiming termination due to the second clause, a facility must allege (and prove) two distinct elements: that the resident’s needs exceed the scope of services agreed to in the contract *and* that those services are not listed in the uniform checklist. As to the first element, advocates should ensure that the facility has evidence that the resident’s needs have *changed* to such an extent that the facility can no longer meet them as agreed to under the contract. Pay careful attention to the scope of services agreed to by the facility, because depending on the issue, the contract may allow for some flexibility on the scope, frequency, and number of services to account for a residents change in condition and help them age in place. If the contract is vague on the scope, frequency, or amount, advocates should push to ensure the resident is receiving the same array of services as others in the facility receiving the same services.

Advocates should also research the facility’s website and other promotional materials that may highlight or advertise that the facility will allow residents to age in place or make any other claims related to the facility’s ability to care for certain disabilities or needs. These materials can offer helpful context, especially if it’s a closely contested case. For example, if the facility

promises memory care services to help a resident age in place, it provides such services to many others, but says it simply does not have the staff available to account for episodes of wandering they allege are leading to the termination for a specific resident, advertising and other promises made may help show that the resident does in fact fall within the scope of services offered and promised by the facility. The resident must also look to the contract and the Uniform Disclosure of Services to see how other promises made, or services offered to other residents, compare to these documents. If the services sought by the resident are not outlined in the contract or the uniform disclosure, the resident may consider asking for a reasonable accommodation that the services be offered due to promises made and other factors that would make the request for these services a reasonable one.

The advocate should also ensure that the contract contains all requirements pursuant to Minn. Stat. § 144G.50. For example, the contract is required to include “a description of all the terms and conditions of the contract, including a description of and any limitations to the housing or assisted living services to be provided for the contracted amount.” Minn. Stat. § 144G.50, subd. 2(c)(2). Similarly, advocates may review the service plans associated with the contract for relevant information and to ensure they meet the requirements of Minn. Stat. § 144G.70, subd. 4. If the contract or service plan are missing these key elements, advocates should argue in the appeal that the facility cannot meet the burden to prove the resident’s needs exceed the scope of the facility’s services.

In addition to proving that the resident’s needs have changed to the point where they exceed the scope of services agreed upon, the facility must also provide that no other services that they disclose in the uniform notice can meet the new needs of the resident. Also, the rules

require that “[i]f the facility seeks a termination or expedited termination on the basis of Minnesota Statutes, section 144G.52, subdivision 5, paragraph (b), clause (2), the facility must provide the assessment that forms the basis of the expedited termination to the resident with the notice of termination and include the name and contact information of any medical professionals who performed the assessment.” Minn. Rule 4659.0120, subd. 11(B). If this assessment and contact information is not provided, this could also be raised as grounds for appeal. *See* Minn. Stat. § 144G.54, subd. 2(4).

When considering if a resident’s needs truly fall within the scope of services offered by the facility, advocates and residents may look to the staffing requirements, staffing schedules, and staffing plan of the facility to determine what their actual capacity to care for the resident. *See, e.g.*, Minn. Rule 4659.0180. Advocates may also consider the training requirements and other basic service requirements of the facility pursuant to its license and whether a failure to comply with any of these may be leading to the reason for termination. *See, e.g.*, Minn. Stat. §§ 144G.41, subd. 1, 144G.60-61, 144G.63-64, 144G.71-.72, 144G.91; Minn. Rule 4659.0190. Advocates might also review, if the facility has a dementia care license, the facility’s disclosure of special care status, as well as the requirements and policies specific to dementia care facilities under the law. Minn. Stat. §§ 325F.72, 144G.81-.84, 144G.09, subd. 3. For example, an advocate may consider: is the facility conducting appropriate assessments of the resident or providing activities for resident engagement, as required by statute? If not, would complying with these requirements resolve the underlying issue? The advocate may also review the resident record for items relevant to the appeal, if appropriate consent is received from the resident. *See* Minn. Stat. § 144G.43, subd. 3 (outlining items that should be found in resident records).

Finally, the statute provides that a “facility may not terminate the assisted living contract if the underlying reason for termination may be resolved by the resident obtaining services from another provider of the resident’s choosing and the resident obtains those services.” Minn. Stat. § 144G.52, subd. 6. Therefore, if a resident’s care truly does exceed the scope of services offered by the provider but they can obtain another provider for those services, a termination should not occur.

The third reason the facility can pursue an expedited termination is the “extraordinary circumstances” clause. If this is the listed reason, it is critical to determine whether the allegation is truly a 144G.52 subd. 5(b)(2) termination or a 144G.52 subd. 5(b)(3) termination. The standard under clause three requires extraordinary circumstances to exist. While no cases have yet transpired to help flesh out what constitutes “extraordinary circumstances,” mere staffing shortages should not be enough. Often phrased as a “staffing crisis”, the reality is that many industries struggle at times to hire enough workers to complete the work. Providers should not be able to call the current state of labor a “crisis” in order to terminate services under the extraordinary circumstances’ exception. The cause should be something totally unforeseen, unavoidable, and incapable of reasonable remedy or mitigation.

#### **E. Reasonable Accommodations and the Ability to Cure**

When reviewing any of the reasons for termination alleged by the facility, advocates should consider if a reasonable accommodation request under laws including the Fair Housing Act, Americans with Disabilities Act, and the Minnesota Human Rights Act would allow the resident to resolve the issue that is the basis for the expedited termination and allow the resident stay in the facility. *See* Minn. Stat. § 144G.40, subd. 3(4). If so, the best practice is to make the

request in writing and state that a reasonable accommodation is being sought. Make sure to describe the resident's disability, how the requested reasonable accommodation is necessary to use and enjoyment of the resident's home (e.g., it's necessary to avoid termination), how the accommodation will help overcome the effects of the disability (e.g., through stopping the problematic issue that is leading to the termination, such as a specific behavior or other issue), and why the accommodation is reasonable.

Even aside from requesting a reasonable accommodation, if the resident can show the ability to "cure the reason for the termination," the resident will be able to succeed on appeal of a termination. *See* Minn. Stat. § 144G.54, subd. 2(3).

#### **F. The Termination Notice**

After the facility meets requirements of the pre-termination meeting described in the previous chapter, they must issue a written notice if they choose to proceed with the termination. A copy of the notice must be given to the resident, legal representative, designated representative, the Office of Ombudsman for Long Term Care, and the resident's case manager if the resident receives a home and community-based waiver. Minn. Stat. 144G.52 subd. 7 (a)-(c).

The written notice must contain a variety of details including:

- The effective date of termination
- A detailed explanation of the reason for the termination – including supporting rationale
- Explanation of a how a new contract could be executed

- Details of appeal rights
- Notice that the facility must help with a move if one is required
- Contact information for a facility representative who can discuss the termination
- Contact information of resources to help the resident
- Clarification that the resident can remain in the housing if the termination is only for services. Minn. Stat. § 144G.52 subd. 8.

It is important to locate the notice as soon as possible and ensure that it complies with all of the statutory and rule requirements.

Pay particular attention to the explanation of how a new contract could be executed. The facility may skip this part of the notice, provide only the briefest of explanations, or simply state that a new contract is not possible. The statute is clear that the notice should explain “how a new contract could be executed” and advocates should ensure this is completed with enough detail that the resident knows exactly what he or she needs to do to avoid the termination.

If it does not meet this requirement, or any other requirement under this section of law, the advocate should consider reaching out to the facility to ask for further details. If the notice is substantially deficient, for example has no details about the reason for termination but simply parrots the statutory language, the advocate may consider arguing to the facility (and to the ALJ upon appeal) that the notice was never properly issued and the termination may not proceed. *See* Minn. Stat. § 144G.54, subd. 2(4) (a facility may not termination a contract in violation of state or federal law). As described below, however, advocates should be cautious and clear with



residents about making due-process arguments to the ALJ. While due-process violations (such as not providing the termination notice by hand delivery or first-class mail as required under Minnesota Rule 4659.0120 subpart 5A) should be grounds for dismissing the termination, advocates should be prepared to argue the case on the underlying facts as well in case the ALJ does not dismiss on due-process grounds.

**Table 2: Snapshot of Reasons for Termination - Timing and Notices**

<b>Reason</b>	<b>Termination from Housing or Services</b>	<b>Time of Notice</b>	<b>Notes/Other</b>
Nonpayment	Both	30 Days	An interruption to a resident's public benefits that lasts for more than 60 days does not constitute nonpayment.
Violation of AL Contract	Both	30 Days without a cure	Resident has right to cure the violation in most cases
Danger to Other Residents	Both	15 Days	<i>Substantially</i> interferes with the rights, health, or safety of other residents
Danger to Staff	Both	15 Days	<i>Substantially and intentionally</i> interferes with the <i>safety or physical health</i> of facility staff
Danger To Self	Services Only	15 Days	<i>Substantially</i> interferes with the resident's health or safety
Can no longer meet needs	Services Only	15 days	(1) exceed the scope of services agreed upon in the assisted living contract, <i>and</i> (2) are not included in the services the facility disclosed in the uniform checklist.  Must include assessment that forms basis of termination and contact information of medical professionals
Extraordinary Circumstances	Services Only	15 Days	[Blank]

## **V. The Appeals Process, Defenses and Strategies**

After receiving a proper termination notice, a resident (or their representative) has the right to appeal the termination and attempt to remain in the facility. The appeal is made to the Office of Administrative Hearings (OAH) and heard by an Administrative Law Judge (ALJ). The same office and judges hear nursing home appeals, which are similar in design. A snapshot of the Appeals Timeline is:

- Resident receives termination notice
- Resident has 15 days to appeal
- Resident has a right to hearing, held within 14 days of the OAH receiving the request to the appeal
- A decision is given from the ALJ to the Commissioner of Health no later than 10 days following the hearing

### **A. Reasons for Appeal**

There are four reasons that a resident may appeal a termination. Minn. Stat. § 144G.54 subd. 2.

The reasons are:

- There is a factual dispute as to whether the facility had the basis to issue the termination notice.
- The termination would result in great harm or the potential for great harm to the resident as determined by the totality of the circumstances, except in

circumstances where there is a greater risk of harm to other residents or staff at the facility;

- The resident has cured or demonstrated the ability to cure the reasons for the termination, or has identified a reasonable accommodation or modification, intervention, or alternative to the termination; or
- The facility has terminated the contract in violation of state or federal law.

Advocates for the resident should clearly identify which reasons they are appealing this termination and when possible, develop arguments for as many of the reasons that are applicable. When possible, the advocate should prioritize and emphasize reasons under Minn. Stat. § 144G.54 subd. 2 (1) and (4) because the burden of proof is on the facility in those circumstances. For appeals brought under Minn. Stat. § 144G.54 subd. 2 (2) and (3), the resident must meet the burden of proof.

## **B. Appeals Process and Location of Hearing**

In order to appeal the case, a resident (or someone on their behalf) must file an appeal with the OAH *no later than 15 days* after the receipt of the termination notice for an expedited appeal and *no later than 30 days* for a termination based on nonpayment of rent or services or a violation of the assisted living contract. Minn. Rule 4659.0210 Subd. 1. If a resident is unsure of whether they should appeal, it is always a good idea to send in the notice to preserve the right to an appeal. A resident can choose to withdraw the appeal at a later time if they decide against moving forward. One strategy an advocate should consider is waiting to file the notice of appeal towards the later end of the 15- or 30-day time limit, assuming that the resident is still receiving

services from the facility. This could help provide more time to plan for the hearing and consider alternative living options as a back-up in case the resident loses the appeal or otherwise settles the case.

The hearing must be scheduled no later than 14 calendar days after the OAH receives the request for an appeal. Minn. Stat. § 144G.54 subd. 3(a). The statute directs the OAH to hold the hearing as soon as practicable, so advocates and residents should expect a hearing date to be scheduled well in advance of the 14-day timeframe. The parties can agree, however, to set a different date, or the Chief ALJ can set a different date if the issues are complex enough. Advocates should consider filing a request for additional time and make the argument that such an extension is needed because of the complexity of the issues. This is particularly true if there are complex medical issues at the heart of the dispute.

The advocate should also consider where the most favorable place to hold the hearing might be as the statute states that “the hearing must be held at the resident’s facility unless it is deemed impractical, the parties agree to another location, or the ALJ grants a request for a different location or an appearance to be made by phone or interactive video.” Minn. Stat. § 144G.54 subd 3(b). While the resident’s condition may make it easier to have the hearing held at their facility, an ALJ may also be inclined to form certain impressions of the case by going to the facility. An advocate should consider if such impressions are harmful or helpful to the case.

Furthermore, the statute was passed before the 2020 pandemic and therefore did not necessarily contemplate the ease at which video hearings are now made in court settings all across Minnesota. Advocates should take advantage of the rules to ensure that all relevant

witnesses can provide testimony by live video if necessary and that the client is comfortable with the location of the hearing.

## **C. Rules of the Hearing**

### **1. General Rules and Rules of Evidence**

After submitting the appeal notice, the resident will receive notice from the OAH that will state which ALJ is assigned to the case and when the hearing is to be held. The ALJ has a lot of discretion to manage the hearing in the manner they see fit. An advocate should try to find someone with previous experience attending a hearing with the specific ALJ and ask some basic questions about their style, including how strict they are about the length of the hearing and whether they insert themselves into the proceeding by asking questions of the witnesses.

If an advocate cannot find this out, look at the OAH Administrative Law Archives at <https://mn.gov/oah/media/opinion-archive.jsp> and search for a few case decisions authored by the ALJ. If a Nursing Home discharge case is available, that would be the most instructive, though such decisions are relatively rare. An advocate may be able to glean how formal the ALJ is and what type of evidence was most compelling by reading through a few opinions. It is possible that a specific ALJ may have additional requests or instructions for how they run their hearings – for example how they receive and label exhibits. Advocates will want to be mindful of this and read thoroughly all communication from the OAH and ALJ.

The administrative hearing may feel formal to residents and advocates who are unfamiliar with the process, but it is different from a hearing in a state or federal district court. By law the

hearing is not a formal contested case proceeding, except when determined necessary by the Chief Administrative Law Judge. Minn. Stat. § 144G.54 subd 3(c). This means that generally the formal rules of evidence from district court are not strictly enforced. Advocates should be prepared to bring any and all evidence that may be helpful in proving the case, including testimony from helpful witnesses, even if such evidence might not be accepted in other judicial proceedings.

## **2. Representation by Counsel**

By statute the parties may, but are not required to, be represented by counsel. If a party is represented by someone who is not a licensed attorney, it does not constitute the unauthorized practice of law. This differs from state and federal courts and allows for a broader group of potential advocates. For advocates who are attorneys, it is important to know whether the facility will be represented by an attorney. Most ALJs are used to hearing cases where one or both parties are unrepresented, and therefore insert themselves into the proceedings more often by asking questions of witnesses and trying to develop the record. If both parties are represented, however, the ALJ may be more comfortable sitting in the more traditional role of factfinder while letting the attorneys develop the record by eliciting testimony and submitting evidence.

If you are a non-attorney advocate who is representing a resident and the facility is represented by an attorney, you may be given additional instruction on the proceedings on the date of the hearing. It is acceptable to ask the ALJ questions if you are unsure about a certain part of the process and typically there will be an opportunity for you to do so at the start of the hearing, and even during the course of the hearing.

### **3. Length of the Hearing**

Often, it can be difficult to know how much time an advocate will have to present their case. The statute states that “the hearing shall be limited to the amount of time necessary for the participants to expeditiously present the facts about the proposed termination.” Minn. Stat. § 144G.54 subd. 3(e). This means that the ALJ has great discretion in determining how long to set the hearing. Some will be more inclined to emphasize the “expeditious” nature of the proceeding and may even cut witnesses or the advocates’ presentation short. Others may be much more willing to let both sides present as much evidence as they have, granted that such evidence is not repetitive.

Advocates should be prepared to cut down questions of witnesses and any prepared opening and closing statements to the most essential parts in case the ALJ enforces a strict time limit. Advocates should be mindful not to duplicate evidence, for example, by presenting two witnesses who essentially say the same thing (e.g., a physician and a relative both talking about the detrimental health effects of a termination and forced move).

#### **D. Burden of Proof and Content of the Order**

As discussed above, the ALJ has great discretion in a hearing and may be willing to accept a final written memo or closing statement. Advocates should take the opportunity to provide such a document to help the ALJ in writing the final order.

In such a closing memo (or closing remarks if that is all that is allowed), the advocate should clearly lay out the burden of proof. If the resident brings an appeal under Minn. Stat. §



144G.55 subd. 2 clauses 1 or 4, the facility bears the burden of proof to establish by a *preponderance of the evidence* that the termination was permissible. Minn. Stat. § 144G.54 subd. 4(a). If the resident brings an appeal under clauses 2 or 3, the resident bears the burden to provide by a preponderance of the evidence that the termination was impermissible. Minn. Stat. § 144G.54 subd. 4(a). In cases brought under clauses 1 and 4, advocates should highlight the deficiencies in the facility’s case and argue such deficiencies show how the facility has not met its burden.

In making the decision, the ALJ may put certain conditions on the resident’s continued residency or receipt of services including but not limited to changes to the service plan or a required increase in services. *See* Minn. Stat. § 144G.54 subd. 5(b). Advocates should consider, in advance of the hearing, if the facility might rescind the termination notice voluntarily if the resident agrees to certain changes in the plan or an increase in services. If such an agreement cannot be worked out but the resident is amenable, it may be worth highlighting such options in the closing memo or remarks to give the ALJ a way to resolve the dispute in a matter that is reasonably fair to both sides.

#### **E. Service Provision While Appeal is Pending**

Residents often ask what happens while waiting for appeal, and facilities may state that they can’t provide services unless ordered by the ALJ - meaning the resident has to leave immediately. However, the statute is clear that “a termination of housing or services shall not occur while an appeal is pending.” Minn. Stat. § 144G.54 subd. 6. But “if additional services are needed to meet the health or safety needs of the resident while an appeal is pending, the resident is responsible for contracting for those additional services from the facility or another

provider and for ensuring the costs for those additional services are covered.” *Id.* If the resident needs additional services, “the facility must contact and inform the resident's representatives and case manager, if any, of the resident’s responsibility to contract and ensure payment for those services.” Minn. Rule 4659.0120, subd. 10. Advocates should talk with the resident as soon as possible about the implications of proceeding with a case, and whether the resident is comfortable proceeding without some services in place, or to absorbing the cost of those services.

#### **F. Application of Chapter 504B to Appeals of Terminations**

While most residential evictions take place in district court (often the housing court division of a district court) and are governed primarily by Minnesota Statute 504B, residents of Assisted Living Facilities must use the ALJ process laid out above to challenge the appeal. However, other protections of chapter 504B still apply. For example, an Emergency Tenant Remedy Action (ETRA), for example, is a useful tool when serious repairs are required to make the facility habitable and the landlord is refusing to make them. See Minn. Stat. § 504B.381. Additionally, residents may want to pursue a lock-out petition if the facility violates the emergency transfer statute or doesn’t allow a return. See Minnesota lock-out statutes at Minn. Stat. § 504B.375 and Minn. Stat. § 504B.231. Furthermore, other laws including the Federal Fair Housing Act and the Minnesota Human Rights Act protect against certain forms of discrimination such as on the basis of race, sex, and disability status. You may want to consider consulting additional resources at [www.lawhelpmn.org](http://www.lawhelpmn.org) or contacting an attorney who specializes in landlord/tenant law.

## VI. Coordinated Moves

There will be times when a resident will untimely be terminated by the facility even when they don't want to leave. In these circumstances, the Assisted Living licensing statute provides some additional protections for residents by laying out requirements the facility must follow to help with the moving process. Through the termination process, the facility must help coordinate and prepare the resident for the move. Known in the statutes as a coordinated move, the facility is responsible for these requirements if:

- it has issued a notice for termination of housing and services and the resident is moving or is planning to move;
- the resident has lost an appeal;
- the facility reduces a resident's services to the extent that resident has to move;
- the facility is non-renewing the lease;
- a facility's license is restricted by the commissioner such that the resident must move or obtain a new service provider; or
- the facility is closing or relinquishing its dementia care license. *See* Minn. Stat. § 144G.55 subd 1(a), subd. 4 and Minn. Rule 4659.0160, subd. 6 for a full set of the requirements.

Advocates should pay close attention to these requirements and ensure the facility is meeting their obligations, as it could help smooth the transition and ultimately lead to a better outcome.

## **A. Safe Location and New Service Provider**

The first requirement of a coordinated move is that the facility must identify a safe location for the resident. *See* Minn. Stat. § 144G.55 subd. 1 (a)(1). This location must be appropriate for the resident and identified *before* any hearing takes place. Advocates who are helping a resident appeal should make sure the facility has complied with this requirement and if not, raise the issue in the appeal hearing. A facility cannot terminate housing or services if the resident will become homeless or if a safe location and service provider has not been identified. *See* Minn. Stat. § 144G.55 subd. 2. This means that advocates should present evidence at the hearing if a facility is not meeting this obligation. Even if the facility has met its burden of proof for all other elements of the case, they still cannot terminate if this requirement is met. The advocate should argue that the ALJ *must* issue an order to this effect.

In developing arguments about a safe location, advocates should have evidence from the facility that the new location will be able to meet the resident's needs. A safe location, as defined in statute, is not a "private home where the occupant is unwilling or unable to care for the resident, a homeless shelter, a hotel, or a motel." Minn. Stat. § 144G.55 subd. 2

In addition to the location, the facility must have also identified an appropriate service provider prior to any hearing. Advocates should probe this issue of "appropriateness," especially if the reason for termination relates to a resident's mental health, cognitive/behavioral health, or complex health needs. At the very least, the current facility should have offered the resident a chance to communicate with the new facility to determine if it will be able to meet their needs. Consider having the resident's medical professional contact the new facility to determine appropriateness. Advocates should also consider contacting the new facility directly and ensure

that they are already serving and meeting the needs of individuals with similar needs as the resident. Just like in searching for any new facility, asking for referrals from current residents of the new facility is also a good idea.

## **B. Relocation Plan**

In addition to a safe location, a facility must “consult and cooperate” with the resident and others to make arrangements for the move consistent with the resident’s goals. Minn. Stat. § 144G.55 subd. 1 (a)(3). In addition, it must prepare a relocation plan to help the resident prepare for the move. Just like with the safe location requirement above, facilities cannot terminate without such a plan, and advocates should make all applicable arguments if such a plan is missing or incomplete.

## **VII. Emergency Relocation and Right to Return**

There are times a resident may need to be transferred from the facility to a hospital or a rehabilitation center (nursing home) to treat an acute condition. In these circumstances, a facility might claim that the resident cannot return because their condition has deteriorated to the point that they cannot meet their needs.

These situations may fall under the emergency relocation provision of 144G.52 subd. 9, which grants residents with very important protections, including the right to return to the facility. Minn. Stat. § 144G.52 subd. 10.

Under this provision, a facility “may remove a resident from the facility in an emergency if necessary due to a resident's urgent medical needs or an imminent risk the resident poses to the health or safety of another facility resident or facility staff member.” A resident and advocate must know *this type of emergency relocation is NOT a termination* and therefore the facility must give the resident a written notice that states:

- the reason for the relocation;
- the name and contact information for the location to which the resident has been relocated and any new service provider;
- contact information for the Office of Ombudsman for Long-Term Care;
- if known and applicable, the approximate date or range of dates within which the resident is expected to return to the facility, or a statement that a return date is not currently known; and
- a statement that, if the facility refuses to provide housing or services after a relocation, the resident has the right to appeal under section 144G.54. The facility must provide contact information for the agency to which the resident may submit an appeal. Minn. Stat. § 144G.52 subd. 9(b).

If the facility claims they can no longer meet the resident’s needs, they must follow the termination process as outlined in this manual and Minn. Stat. § 144G.52, etc. sec. If a facility is refusing to let the resident return and not following the procedures laid out in Minn. Stat. § 144G.52 (e.g. providing the pre-termination meeting, issuing a notice, etc.) the advocate should consider filing an appeal with the OAH and argue that the facility has terminated in violation of the law and that the resident should be immediately reinstated and let into the facility. The statute

is very explicit on this point clearly stating that “If a resident is absent from a facility for any reason, including an emergency relocation, the facility shall not refuse to allow a resident to return *if a termination of housing has not been effectuated.*” Minn. Stat. § 144G.52 subd. 10.