Introducing Assisted Living Licensure

Odyssey Conference
July 31, 2019
8:30 – 11:00 am

PROTECTING, MAINTAINING AND IMPROVING THE HEALTH OF ALL MINNESOTANS
Welcome and Introductions

- Bob Dehler, MDH
- Marie Dotseth, MDH
- Cheryl Hennen, OOLTC
- Lindsey Krueger, MDH

- Anne Peterson, MDH
- Dan Pollock, DHS
- Rachel Shands, DHS
- Nicole Stockert, MDH

DHS = Minnesota Department of Human Services
OOLTC = Office of Ombudsman for Long-Term Care
MDH = Minnesota Department of Health
Overview of today’s presentation

• Six Sections
  1. Current State of Assisted Living
  2. Setting the Stage for Assisted Living Licensure
  3. Improved Consumer Advocacy
  4. A Walk Through Minn. Stat. §144I
  5. Impact of Assisted Living Licensure on Home & Community-Based Participants
  6. What’s Next
Discussion reminders

• While we provide some definitions and key terms, today is a high-level overview with opportunities for discussion
• Always refer to statute for specific definitions and guidance
• We are here to help! We encourage questions and participation
• Contact info is available at the end of the presentation
Key Terms and Abbreviations

• **Assisted living facility (ALF)** - As defined in HF90, an ALF is a licensed facility that provides sleeping accommodations and assisted living services to one or more adults. An ALF may also provide dementia care.

• **Home care (HC) provider** – An individual, organization, association, corporation, unit of government or other entity that is regularly engaged in the delivery of at least one care service directly in a client’s home for a fee and has a valid, current license.

• **Registry** – A list with no regulatory authority

• **Vulnerable adult** – any person age 18 or over who receives licensed services
Participants will be able to:

• Discuss key components that separate current assisted living regulations from future assisted living licensing (ALL) regulations

• Describe how stakeholders did, and will continue to, shape assisted living licensure and what was most important to them

• Identify fundamental elements of assisted living licensure that will impact them or their organization

• Review the implementation plan for assisted living licensure with their peers
Current State of Assisted Living
Licensed Nursing Homes

Peaked in 1980s
• 468 NFs
• 48,307 beds

Today
• 377 NFs (19% reduction)
• 28,968 (40% reduction)

Assisted Living Establishments

1980
• 0 AL Establishments

Today
• 1,857 HWS
• 78,358 estimated capacity
• 1,226 AL designation (55,192)
• 1,194 special care
3 Main Statutes

- **144D Housing with Services**
- **144G Assisted Living**
- **144A Home Care**

**Registration**

**Designation**

**License**
<table>
<thead>
<tr>
<th>144D and 144G</th>
<th>144A</th>
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<tbody>
<tr>
<td>• Annual registration</td>
<td>• Annual license</td>
</tr>
<tr>
<td>• No inspection</td>
<td>• Temp license inspection &amp; every 3 years</td>
</tr>
<tr>
<td>• No mandatory incident reporting</td>
<td>• Required incident reports</td>
</tr>
<tr>
<td>• No complaint investigation</td>
<td>• Complaint investigation authority</td>
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<tr>
<td>• No physical plant requirements</td>
<td>• Client care and business related requirements</td>
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<tr>
<td>• Protected by landlord tenant law</td>
<td>• Protected by 144A, VAA and child maltreatment</td>
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Housing with Services and Home Care Relationship
144D Housing with Services Establishment

• **Provides sleeping accommodations**
  • One or more adults
  • At least 80% are 55+

• **For a fee, offers or provides**
  • One or more regularly scheduled health-related services or
  • Two or more regularly scheduled supportive services
Assisted living is a service or package of services described using term “assisted living” or the abbreviation “AL”

- Protected title
- Housing with Services (HWS) entity
- Follows 144G
At a minimum:

- Health-related services under home care license
- Assist with self-admin meds, med management, med administration
- Assist with at least 3 types activities of daily living (ADLs) (excludes mobility)
- Assessment by RN of physical and cognitive needs
- System to delegate health care tasks to unlicensed personnel by RN
Minimum requirements

- Staff access to Registered Nurse 24/7
- System to check on each client daily
- Method for clients to request assistance for health and safety 24/7
- Staff person available 24/7 to respond to requests for assistance who is:
  - Awake and in same building, attached building or contiguous campus
  - Able to:
    - communicate with clients
    - recognize need for assistance
    - provide or get assistance
    - follow directions
Challenges

• Who’s responsible?
• No authority over registration
• Memory care does not fit “home care” model
• Involuntary discharge and eviction
• Lack of transparency for fees/rates
Setting the Stage for Assisted Living Licensure
How We Got to Where We Are Today
• Increasing:
  • Number of self and consumer reports
  • Backlogs
  • Media attention
• Commissioner resigns
• Consumer Coalition Report to Governor Dayton
• Most reports and all media attention directed at AL
Where We’ve Been - 2018

- Intense legislative session but final bill not signed
- Office of Legislative Auditor Report
- Commissioner convenes informal work gro
  - Licensing approaches for AL
  - AL report card
  - Certification for dementia care
  - Consumer rights
  - Electronic monitoring in NFs and AIs
  - Prevention strategies to improve quality and safety
Informal Work Groups Key to ALL Success

Fall 2018 Informal Working Groups – Built understanding and trust

Sample conclusions from the working groups:

• Assisted living service and housing regulation should be **one license**

• Consumers should retain the ability to grow and **age in place** where possible, including the ability to **bring additional services into** their place of residence

• **Don’t require** people who have dementia to live in dementia care settings but **do require additional certification or licensure** for special dementia care settings
Sample conclusions from the working groups:

- **Electronic monitoring devices should be permitted**, resident rights protected and the process for placing devices clarified

- We should **better educate** consumers about their rights, **better enforce** those rights, and **strengthen rights** in key areas

- A **report card is needed** and should be pursued as part of a multi-pronged effort to **encourage and reward quality**

- Quality and patient safety **information is transparent and easy to understand** for residents, families, and providers and is **fair/just and promotes accountability** across all settings
Informal Work Groups Key to ALL Success, cont. 2

Signed,

Cheryl Hennen
State Ombudsman for Long-Term Care

Kristine Sundberg, President
Elder Voice Family Advocates

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Gayle Kvenvold
LeadingAge Minnesota

Ron Elwood, Supervising Attorney
Legal Services Advocacy Project

Patti Cullen, President/CEO
Care Providers of Minnesota

Will Phillips, AARP MN
State Director
Questions for DHS or MDH Assistant Commissioners
Improved Consumer Advocacy
New Legislation Improves Consumer Advocacy

Office of Ombudsman for Long-Term Care (OOLTC)

- 17 Additional Staff for the OOLTC
- Improve the ratio of regional staff per active “beds”
- Add 1 Deputy Ombudsman and 9 regional ombudsman
- 1 FTE for Electronic Monitoring
Increased staffing for the OOLTC

Out of the new FTEs, 6 staff to be hired by January 1, 2021 including:

- Regional staff
- Intake specialist
- Policy support
- Date analysis
- Volunteer coordination
New Provisions Involve the OOLTC: Protections

Interim Protections

• Electronic monitoring effective January 1, 2020
• Retaliation prohibited August 1, 2019
New Provisions Involve the OOLTC: Notifications

Notifications to the Office of Ombudsmen for Long-Term Care

• 27 required notices to the OOLTC
• 5 required notices to the OOLTC in current law
New Provisions Involve the OOLTC: Terminations

Terminations

• Prior to issuing a housing or service termination, must hold a meeting
• Resident/resident representative must be involved in discharge planning and can involve Ombudsman
• Resident right to file appeal with Office of Administrative Hearings
Questions for Ombudsman
Stretch Break!
A Walk Through Minn. Stat. §144I
Key Highlights of Assisted Living Licensure Law

• Single license and assisted living contract
• Physical plant requirements & fire safety
• Enhanced bill of rights
• Licensing of Assisted Living Directors
• Facility responsibilities and requirements
• Surveys, investigations, and enforcement
• Consumer protections
The Future: A Single, Integrated Assisted Living License

Today:
Assisted living facility (ALF):
• Comprehensive home care license
  +
• Housing with services registration

August 1, 2021:
Assisted living facility (ALF):
• Single, integrated license incorporating housing and assisted living services
• Single assisted living contract governing resident’s housing and assisted living services
Housing and Assisted Living Services

**Housing:**
- A resident is a tenant
- Contract terms governed by Chapter 504B and Chapter 144I

**Assisted Living Services:**
- Basic and comprehensive services (Chapter 144A) &
- Supportive services
I. Assisted Living Facility License

- Provides housing and AL services to residents
- May provide AL services to residents with dementia
  - Must meet resident’s assessed needs
  - Diagnosis does not dictate setting
- Prohibited from having a secured dementia care unit
II. Assisted Living Facility with Dementia Care License

• Can advertise, market, or promote as providing specialized care for residents with dementia
• Must meet requirements of the ALF license and additional requirements:
  • License
  • Training
  • Programming
II. Assisted Living Facility with Dementia Care License

Licensee:
• Demonstrate capacity to provide services to residents with dementia.

Training:
• Additional dementia-related training required.

Programming:
• Spontaneous activities for enjoyment or diffusing a behavior;
• One-to-one activities that encourage positive relationships between residents and staff.
A facility that has a secured dementia care unit **must have** an assisted living facility with dementia care license.

**Requirements:**

- **Staffing**: an awake person must be physically present in the unit at all times
- **Fire prevention and Life Safety Code**: More stringent requirements for fire safety
- Hazard vulnerability assessment
- Automatic sprinkler system throughout facility by 2029
Minimum Physical Environment Requirements

Starting August 1, 2021:

• A physical environment survey every 2 years
• Plan reviews and final construction inspections for a new license or new construction by MDH engineering
• Smoke detectors in each occupied room or automatic sprinkler system
• Portable fire extinguishers
• Fire drills
• Physical environment in good repair
• Existing buildings must always be maintained in a manner that does not ‘constitute a distinct hazard to life’
New License or Construction

New construction or remodel/additions to existing AL facilities:

• Comply with Assisted Living requirements of the Facility Guidelines Institute (FGI) “Guidelines for Design and Construction of Residential Health, Care and Support Facilities”

• Comply with the Residential Board and Care Occupancy chapter of the National Fire Protection Association (NFPA), Standard 101, Life Safety Code
Dementia Care Fire Protection Requirements

Assisted Living Facilities with Dementia Care (additional requirements):

• Comply with the Health Care Occupancy chapter (limited care) of the National Fire Protection Association (NFPA), Standard 101, Life Safety Code

• Conduct hazard vulnerability analysis to identify risk and mitigation strategies

• Fully sprinklered by August 1, 2029
Future Fire Protection and Construction Questions

• For specific statute questions contact: Bob Dehler, 651-201-3710 or Robert.Dehler@state.mn.us

• Email specific questions on how the statute will be enforced to:
  • health.healthcareengineers@state.mn.us

• MDH Engineering website where we will post all questions and answers that we receive (for consistency and clarity)
  • MDH Engineering
    https://www.health.state.mn.us/facilities/regulation/engineering/index.html
What are an Assisted Living Facility’s Responsibilities?

Facility is **directly responsible** for all housing and service-related matters

Facility must provide to resident:

- **Uniform checklist disclosure of services**
- Written checklist of all services permitted under license
- Identifies all services provided and **not** provided
Minimum Requirements – Highlights

Staffing

• Biannual evaluation of staffing levels
• Must meet the scheduled and reasonably foreseeable unscheduled needs of each resident at all times

Food

• Offer to provide or make available:
  • 3 nutritious daily meals, seven days a week, according to USDA guidelines
  • Food prepared and served according to Minnesota Food Code
Includes right to:

• Continuity of care from properly trained and competent people in sufficient numbers to provide services

• Have legal and designated representatives participate in care and service planning

• Resident/family councils

• Access to technology

• Immediate access to counsel and advocacy services
Assisted Living Director Licensure

- Board of Executives of Long Term Services and Supports (BELTSS)
  - Approves director’s qualifications and training

Qualifications for Assisted Living Director

- Licensed as a nursing home administrator or validated as a health services executive and pass exam
- July 1, 2021:
  - Higher-education degree; or
  - On-the-job experience working in assisted-living facilities
Surveys and Enforcement

**Surveys**
- ALFs surveyed every two years
- Provisional licenses surveyed within one year

**Enforcement**
- Increased fines for violations and new fines for maltreatment
- Follow-up surveys required for Level 3/Level 4 violations
- Enhanced regulatory enforcement
- Due process protections in place
Assisted Living Contract:

Facility may not offer/provide housing or AL services to a resident unless an AL contract has been executed

- Single contract that includes resident’s housing, AL services, and the resident’s service plan
- Temporary service plan available
Required Contents

- Disclosure of category of license
- Description of all terms, including costs, fees, grounds for eviction/termination of services
- Additional fees for added AL services
- Right to designate a representative for certain purposes
- Facility’s complaint resolution process
- Disclosure of facility’s ability to provide specialized diets
**Termination**: A facility-initiated termination of housing and/or assisted living services under the assisted living contract

**An Assisted Living Facility May Terminate For:**
1. Nonpayment of housing or assisted living services
2. Resident violations of lawful provision in assisted living contract
3. Expedited termination
Consumer Protections: 
#2 Assisted Living Contract Terminations

**Expedited Termination**

*Housing or Services:*
- Substantially interferes with the rights, health or safety of other residents or staff
- Unlawful activity under landlord/tenant law

*Services:*
- Substantially interferes with resident’s health or safety
- Assessed needs exceed scope of services agreed to and are not included in facility’s uniform checklist
- Extraordinary circumstances exist
Consumer Protections: #3 Assisted Living Contract Terminations

Before Issuing a Notice of Termination

• Facility must schedule and participate in meeting with resident and representatives
• Explain reason for termination, identify/offer reasonable accommodation to avoid termination
• Facility is not required to offer accommodations that fundamentally alter the nature of their operation

Written Notice of Termination

• 30 days for nonpayment or violating assisted living contract
• 15 days for expedited termination
Right to Return

• If a resident is absent from a facility for any reason, facility shall not refuse the resident to return

Right to Use Provider of Resident’s Choosing

• Facility may not terminate contract if resident obtains necessary services from another provider

Emergency Relocation

• A facility may remove a resident from the facility due to an emergency, but this is not a termination
Consumer Protections:
Appeal of Assisted Living Contract Terminations

Resident May Appeal a Facility-Initiated Termination for:

• Nonpayment of rent/assisted living services
• Violating a provision of the assisted living contract
• Expedited termination reasons

Grounds for Appeal:

• Factual dispute over the basis of the termination
• Termination results in potential for/or great harm to resident
• Resident cured/demonstrate ability to cure reason for termination
• Facility violated federal or state law in terminating the contract
Nonrenewal of Housing (i.e. decline to renew the lease)

- If a facility decides to not renew lease:
  - Must give 60 calendar days’ notice of nonrenewal and assist with relocation planning or
  - Follow assisted living contract termination procedure

Contents of Nonrenewal Notice

- Must include the reason for the nonrenewal and contact information of the Ombudsman for Long-Term Care
Facility Responsibilities

• Provide notice to the Ombudsman for Long-term Care and case manager

• Ensure a coordinated move to a safe location/appropriate service provider

• Consult and cooperate with resident, representatives, health professionals, and others

• Prepare a written plan to prepare for the move

• A resident may decline to move to location/accept services
Coordinated moves apply:

- Nonrenewal of housing
- Termination of an assisted living contract
- Reduction of assisted living services requiring resident to move
- Facility undergoes planned closure
Facility responsibilities

• Ensure a coordinate move to a safe location that is appropriate
• Consult and cooperate with resident and representatives
• 60-day written notice of reduction of services prior to reduction/elimination
• Facility must develop relocation plan to prepare for the move to new location
Questions for Health Regulation Division
Impact of Assisted Living Licensure on HCBS Participants
Customized Living (CL) Services

Customized living (CL) services available under:

- Elderly Waiver (EW)
- Community Access for Disability Inclusion (CADI) waiver
- Brain Injury (BI) waiver
Current Customized Living Provider Standard

Must be delivered:

• By a licensed comprehensive home care provider
• In a registered housing with services (HWS) establishment
  • Today, the majority of HWS settings where CL services are delivered also have an AL designation
Customized Living with Assisted Living Licensure

On August 1, 2021 CL providers must have AL license to receive payment for CL services delivered to people on home and community-based (HCBS) waivers.
Exceptions to Assisted Living Licensure

Exceptions

• Certain HUD-funded public housing settings are exempt from AL licensure
• These settings meet a critical need for affordable housing
• There is true separation between the housing and service provider
• Licensed comprehensive home care providers can continue to deliver CL services to waiver participants in those settings without an AL license
Next Steps

- DHS will update:
  - Waiver plans
  - Forms
  - Manuals
All assisted living facilities will:

- Utilize person-centered planning and service delivery process
- Allow residents to furnish and decorate units
- Permit residents to access food at any time
- Allow residents to choose visitors and times of visits
- Provide residents with the right to chose a roommate if sharing a unit
- Provide residents with the right to have and use a lockable door
• Includes a rights restriction process for some rights if necessary for health and safety reasons
• Residents must be notified of rights (Bill of Rights, 144I.101)
• Staff must be trained on their responsibilities related to ensuring the exercise and protection of resident rights (144I.20, Subd. 2)
Features Related to HCBS Waivers

• AL providers must include their policies regarding MA waivers and the housing support program in their contracts with residents (144I.25, Subd. 2)

• If a contract is terminated AL providers must notify at specific points in the process:
  • Case managers of waiver participants
  • Residents and
  • Resident representatives
  • 144I.26
Questions for Aging and Adult Services

Any Questions
Implementation overview
Key activities for FY20

- Rulemaking for Assisted Living Licensure
- Communications and engagement work
- Hiring, hiring and hiring
- Continuous improvement
- Planning for new IT systems
- Data and analytics
Thank you for attending and your interest in protecting Minnesota’s vulnerable adults

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