State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 99

06/15/2020 Authored by Klevorn and Huot
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

A bill for an act

relating to health; modifying electronic monitoring requirements; modifying Board of Executives for Long-Term Service and Supports fees; establishing a private cause of action for retaliation in certain long-term care settings; modifying infection control requirements in certain long-term care settings; modifying hospice and assisted living bills of rights; establishing consumer protections for clients receiving assisted living services; prohibiting termination of assisted living services during a peacetime emergency; establishing procedures for transfer of clients receiving assisted living services during a peacetime emergency; requiring the commissioner of health to establish a state plan to control SARS-CoV-2 infections in certain unlicensed long-term care settings; establishing the Long-Term Care COVID-19 Task Force; requiring a report; appropriating money; amending Minnesota Statutes 2018, sections 144A.751, subdivision 1; 144G.03, by adding subdivisions; Minnesota Statutes 2019 Supplement, sections 144.6502, subdivision 3, by adding a subdivision; 144.6512, by adding a subdivision; 144A.291, subdivision 2; 144A.4798, subdivision 3; 144G.07, by adding a subdivision; 144G.09, subdivision 3; 144G.42, by adding subdivisions; 144G.91, by adding a subdivision; 144G.92, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2019 Supplement, section 144.6502, subdivision 3, is amended to read:

Subd. 3. **Consent to electronic monitoring.** (a) Except as otherwise provided in this subdivision, a resident must consent to electronic monitoring in the resident's room or private living unit in writing on a notification and consent form. If the resident has not affirmatively objected to electronic monitoring and the resident representative attests that the resident's medical professional ~~determines~~ determined that the resident currently lacks the ability to understand and appreciate the nature and consequences of electronic monitoring, the resident representative may consent on behalf of the resident. For purposes of this subdivision, a resident affirmatively objects when the resident orally, visually, or through the use of

auxiliary aids or services declines electronic monitoring. The resident's response must be documented on the notification and consent form.

(b) Prior to a resident representative consenting on behalf of a resident, the resident must be asked if the resident wants electronic monitoring to be conducted. The resident representative must explain to the resident:

(1) the type of electronic monitoring device to be used;

(2) the standard conditions that may be placed on the electronic monitoring device's use, including those listed in subdivision 6;

(3) with whom the recording may be shared under subdivision 10 or 11; and

(4) the resident's ability to decline all recording.

(c) A resident, or resident representative when consenting on behalf of the resident, may consent to electronic monitoring with any conditions of the resident's or resident representative's choosing, including the list of standard conditions provided in subdivision 6. A resident, or resident representative when consenting on behalf of the resident, may request that the electronic monitoring device be turned off or the visual or audio recording component of the electronic monitoring device be blocked at any time.

(d) Prior to implementing electronic monitoring, a resident, or resident representative when acting on behalf of the resident, must obtain the written consent on the notification and consent form of any other resident residing in the shared room or shared private living unit. A roommate's or roommate's resident representative's written consent must comply with the requirements of paragraphs (a) to (c). Consent by a roommate or a roommate's resident representative under this paragraph authorizes the resident's use of any recording obtained under this section, as provided under subdivision 10 or 11.

(e) Any resident conducting electronic monitoring must immediately remove or disable an electronic monitoring device prior to a new roommate moving into a shared room or shared private living unit, unless the resident obtains the roommate's or roommate's resident representative's written consent as provided under paragraph (d) prior to the roommate moving into the shared room or shared private living unit. Upon obtaining the new roommate's signed notification and consent form and submitting the form to the facility as required under subdivision 5, the resident may resume electronic monitoring.

(f) The resident or roommate, or the resident representative or roommate's resident representative if the representative is consenting on behalf of the resident or roommate, may

withdraw consent at any time and the withdrawal of consent must be documented on the original consent form as provided under subdivision 5, paragraph (d).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2019 Supplement, section 144.6502, is amended by adding a subdivision to read:

Subd. 7a. **Installation during isolation.** (a) Anytime visitation is restricted or a resident is isolated for any reason, including during a public health emergency, and the resident or resident representative chooses to conduct electronic monitoring, a facility must place and set up any device, provided the resident or resident representative delivers the approved device to the facility with clear instructions for setting up the device, the device does not require installation, the device requires only minimal set-up, and the resident or resident representative assumes all risk in the event the device malfunctions.

(b) If a facility places an electronic monitoring device under this subdivision, the requirements of this chapter, including requirements of subdivision 7, continue to apply.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2019 Supplement, section 144.6512, is amended by adding a subdivision to read:

Subd. 6. **Cause of action.** A cause of action for violations of this section may be brought and nothing in this section precludes a person from pursuing such an action. Any determination of retaliation by the commissioner under subdivision 5 may be used as evidence of retaliation in any cause of action under this subdivision.

EFFECTIVE DATE. This section is effective August 1, 2020.

Sec. 4. Minnesota Statutes 2019 Supplement, section 144A.291, subdivision 2, is amended to read:

Subd. 2. **Amounts.** (a) Fees may not exceed the following amounts but may be adjusted lower by board direction and are for the exclusive use of the board as required to sustain board operations. The maximum amounts of fees are:

(1) application for licensure, $200;

(2) for a prospective applicant for a review of education and experience advisory to the license application, $100, to be applied to the fee for application for licensure if the latter is submitted within one year of the request for review of education and experience;

(3) state examination, $125;

(4) initial license, $250 if issued between July 1 and December 31, $100 if issued between January 1 and June 30;

(5) acting ~~administrator~~ permit, $400;

(6) renewal license, $250;

(7) duplicate license, $50;

(8) reinstatement fee, $250;

~~(9) health services executive initial license, $200;~~

~~(10) health services executive renewal license, $200;~~

~~(11)~~ (9) reciprocity verification fee, $50;

~~(12)~~ (10) second shared ~~administrator~~ assignment, $250;

~~(13)~~ (11) continuing education fees:

(i) greater than six hours, $50; and

(ii) seven hours or more, $75;

~~(14)~~ (12) education review, $100;

~~(15)~~ (13) fee to a sponsor for review of individual continuing education seminars, institutes, workshops, or home study courses:

(i) for less than seven clock hours, $30; and

(ii) for seven or more clock hours, $50;

~~(16)~~ (14) fee to a licensee for review of continuing education seminars, institutes, workshops, or home study courses not previously approved for a sponsor and submitted with an application for license renewal:

(i) for less than seven clock hours total, $30; and

(ii) for seven or more clock hours total, $50;

~~(17)~~ (15) late renewal fee, $75;

~~(18)~~ (16) fee to a licensee for verification of licensure status and examination scores, $30;

~~(19)~~ (17) registration as a registered continuing education sponsor, $1,000; and

~~(20)~~ (18) mail labels, $75.

(b) The revenue generated from the fees must be deposited in an account in the state government special revenue fund.

EFFECTIVE DATE. This section is effective July 1, 2020.

Sec. 5. Minnesota Statutes 2019 Supplement, section 144A.4798, subdivision 3, is amended to read:

Subd. 3. **Infection control program.** A home care provider must establish and maintain an effective infection control program that complies with accepted health care, medical, and nursing standards for infection control, including during a disease pandemic.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2018, section 144A.751, subdivision 1, is amended to read:

Subdivision 1. **Statement of rights.** An individual who receives hospice care has the right to:

(1) receive written information about rights in advance of receiving hospice care or during the initial evaluation visit before the initiation of hospice care, including what to do if rights are violated;

(2) receive care and services according to a suitable hospice plan of care and subject to accepted hospice care standards and to take an active part in creating and changing the plan and evaluating care and services;

(3) be told in advance of receiving care about the services that will be provided, the disciplines that will furnish care, the frequency of visits proposed to be furnished, other choices that are available, and the consequence of these choices, including the consequences of refusing these services;

(4) be told in advance, whenever possible, of any change in the hospice plan of care and to take an active part in any change;

(5) refuse services or treatment;

(6) know, in advance, any limits to the services available from a provider, and the provider's grounds for a termination of services;

(7) know in advance of receiving care whether the hospice services may be covered by health insurance, medical assistance, Medicare, or other health programs in which the individual is enrolled;

(8) receive, upon request, a good faith estimate of the reimbursement the provider expects to receive from the health plan company in which the individual is enrolled. A good faith estimate must also be made available at the request of an individual who is not enrolled in a health plan company. This payment information does not constitute a legally binding estimate of the cost of services;

(9) know that there may be other services available in the community, including other end of life services and other hospice providers, and know where to go for information about these services;

(10) choose freely among available providers and change providers after services have begun, within the limits of health insurance, medical assistance, Medicare, or other health programs;

(11) have personal, financial, and medical information kept private and be advised of the provider's policies and procedures regarding disclosure of such information;

(12) be allowed access to records and written information from records according to sections 144.291 to 144.298;

(13) be served by people who are properly trained and competent to perform their duties;

(14) be treated with courtesy and respect and to have the patient's property treated with respect;

(15) voice grievances regarding treatment or care that is, or fails to be, furnished or regarding the lack of courtesy or respect to the patient or the patient's property;

(16) be free from physical and verbal abuse;

(17) reasonable, advance notice of changes in services or charges, including at least ten days' advance notice of the termination of a service by a provider, except in cases where:

(i) the recipient of services engages in conduct that alters the conditions of employment between the hospice provider and the individual providing hospice services, or creates an abusive or unsafe work environment for the individual providing hospice services;

(ii) an emergency for the informal caregiver or a significant change in the recipient's condition has resulted in service needs that exceed the current service provider agreement and that cannot be safely met by the hospice provider; or

(iii) the recipient is no longer certified as terminally ill;

(18) a coordinated transfer when there will be a change in the provider of services;

(19) know how to contact an individual associated with the provider who is responsible for handling problems and to have the provider investigate and attempt to resolve the grievance or complaint;

(20) know the name and address of the state or county agency to contact for additional information or assistance;

(21) assert these rights personally, or have them asserted by the hospice patient's family when the patient has been judged incompetent, without retaliation; ~~and~~

(22) have pain and symptoms managed to the patient's desired level of comfort~~.~~;

(23) revoke hospice election at any time; and

(24) receive curative treatment for any condition unrelated to the condition that prompted hospice election.

Sec. 7. Minnesota Statutes 2018, section 144G.03, is amended by adding a subdivision to read:

Subd. 7. **Communicable diseases.** A person or entity receiving assisted living title protection under this chapter must follow current state requirements for prevention, control, and reporting of communicable diseases as defined in Minnesota Rules, parts 4605.7040, 4605.7044, 4605.7050, 4605.7075, 4605.7080, and 4605.7090.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2018, section 144G.03, is amended by adding a subdivision to read:

Subd. 8. **SARS-CoV-2 infection control.** (a) A person or entity receiving assisted living title protection under this chapter must establish and maintain a comprehensive SARS-CoV-2 infection control program that complies with accepted health care, medical, and nursing standards for infection control according to the most current SARS-CoV-2 infection control guidelines issued by the United States Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, and the commissioner. This program must include a SARS-CoV-2 infection control plan that covers all paid and unpaid employees, contractors, students, volunteers, clients, and visitors. The commissioner shall provide technical assistance regarding implementation of the guidelines.

(b) A person or entity receiving assisted living title protection under this chapter must maintain written evidence of compliance with this subdivision.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 9. Minnesota Statutes 2018, section 144G.03, is amended by adding a subdivision to read:

Subd. 9. **COVID-19 response plan.** (a) A person or entity receiving assisted living title protection under this chapter must establish, implement, and maintain a COVID-19 response plan. The COVID-19 response plan must be consistent with the requirements of subdivision 8 and at a minimum must address the following:

(1) use of personal protective equipment by all paid and unpaid employees, contractors, students, volunteers, clients, and visitors;

(2) separation or isolation of clients infected with SARS-CoV-2 from clients who are not;

(3) balancing the rights of residents with controlling the spread of SARS-CoV-2 infections;

(4) client relocations, including steps to be taken to mitigate trauma for relocated clients receiving memory care;

(5) clearly informing clients of the home care provider's policies regarding the effect of hospice orders, provider orders for life-sustaining treatment, do not resuscitate orders, and do not intubate orders on any treatment of COVID-19 disease;

(6) mitigating the effects of separation or isolation of clients;

(7) compassionate care visitation;

(8) consideration of any campus model, multiple buildings on the same property, or any mix of independent senior living units in the same building as assisted living units;

(9) protocols for emergency medical responses involving clients with SARS-CoV-2 infections, including infection control procedures following the departure of ambulance service personnel or other first responders;

(10) notifying the commissioner when staffing levels are critically low; and

(11) taking into account dementia-related concerns.

(b) A person or entity receiving assisted living title protection under this chapter must provide the commissioner with a copy of a COVID-19 response plan meeting the requirements of this subdivision.

(c) A person or entity receiving assisted living title protection under this chapter must make its COVID-19 response plan available to staff, clients, and families of clients.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2019 Supplement, section 144G.07, is amended by adding a subdivision to read:

Subd. 6. **Cause of action.** A cause of action for violations of this section may be brought and nothing in this section precludes a person from pursuing such an action. Any determination of retaliation by the commissioner under subdivision 5 may be used as evidence of retaliation in any cause of action under this subdivision.

EFFECTIVE DATE. This section is effective August 1, 2020.

Sec. 11. Minnesota Statutes 2019 Supplement, section 144G.09, subdivision 3, is amended to read:

Subd. 3. **Rulemaking authorized.** (a) The commissioner shall adopt rules for all assisted living facilities that promote person-centered planning and service delivery and optimal quality of life, and that ensure resident rights are protected, resident choice is allowed, and public health and safety is ensured.

(b) On July 1, 2019, the commissioner shall begin rulemaking.

(c) The commissioner shall adopt rules that include but are not limited to the following:

(1) staffing ratios appropriate for each licensure category to best protect the health and safety of residents no matter their vulnerability;

(2) training prerequisites and ongoing training, including dementia care training and standards for demonstrating competency;

(3) procedures for discharge planning and ensuring resident appeal rights;

(4) initial assessments, continuing assessments, and a uniform assessment tool;

(5) emergency disaster and preparedness plans;

(6) uniform checklist disclosure of services;

(7) a definition of serious injury that results from maltreatment;

(8) conditions and fine amounts for planned closures;

(9) procedures and timelines for the commissioner regarding termination appeals between facilities and the Office of Administrative Hearings;

(10) establishing base fees and per-resident fees for each category of licensure;

(11) considering the establishment of a maximum amount for any one fee;

(12) procedures for relinquishing an assisted living facility with dementia care license and fine amounts for noncompliance; and

(13) procedures to efficiently transfer existing housing with services registrants and home care licensees to the new assisted living facility licensure structure.

(d) The commissioner shall publish the proposed rules by December 31, 2019, and shall publish ~~final rules~~ the notice of adoption by December 31, 2020.

EFFECTIVE DATE. This section is effective August 1, 2020.

Sec. 12. Minnesota Statutes 2019 Supplement, section 144G.42, is amended by adding a subdivision to read:

Subd. 9a. **Communicable diseases.** The facility must follow current state requirements for prevention, control, and reporting of communicable diseases as defined in Minnesota Rules, parts 4605.7040, 4605.7044, 4605.7050, 4605.7075, 4605.7080, and 4605.7090.

EFFECTIVE DATE. This section is effective August 1, 2021.

Sec. 13. Minnesota Statutes 2019 Supplement, section 144G.42, is amended by adding a subdivision to read:

Subd. 9b. **Infection control program.** The facility must establish and maintain an effective infection control program that complies with accepted health care, medical, and nursing standards for infection control, including during a disease pandemic.

EFFECTIVE DATE. This section is effective August 1, 2021.

Sec. 14. Minnesota Statutes 2019 Supplement, section 144G.91, is amended by adding a subdivision to read:

Subd. 5a. **Choice of provider.** Residents have the right to choose freely among available providers and to change providers after services have begun, within the limits of health insurance, long-term care insurance, medical assistance, other health programs, or public programs.

EFFECTIVE DATE. This section is effective August 1, 2021.

Sec. 15. Minnesota Statutes 2019 Supplement, section 144G.92, is amended by adding a subdivision to read:

Subd. 6. **Cause of action.** A cause of action for violations of this section may be brought and nothing in this section precludes a person from pursuing such an action. Any determination of retaliation by the commissioner under subdivision 4 may be used as evidence of retaliation in any cause of action under this subdivision.

EFFECTIVE DATE. This section is effective August 1, 2021.

Sec. 16. **CONSUMER PROTECTIONS FOR ASSISTED LIVING CLIENTS.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Arranged home care provider" has the meaning given in Minnesota Statutes, section 144D.01, subdivision 2a.

(c) "Client" has the meaning given in Minnesota Statutes, section 144G.01, subdivision 3.

(d) "Client representative" means one of the following in the order of priority listed, to the extent the person may reasonably be identified and located:

(1) a court-appointed guardian acting in accordance with the powers granted to the guardian under Minnesota Statutes, chapter 524;

(2) a conservator acting in accordance with the powers granted to the conservator under Minnesota Statutes, chapter 524;

(3) a health care agent acting in accordance with the powers granted to the health care agent under Minnesota Statutes, chapter 145C;

(4) an attorney-in-fact acting in accordance with the powers granted to the attorney-in-fact by a written power of attorney under Minnesota Statutes, chapter 523; or

(5) a person who:

(i) is not an agent of a facility or an agent of a home care provider; and

(ii) is designated by the client orally or in writing to act on the client's behalf.

(e) "Facility" means:

(1) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and operating under title protection under Minnesota Statutes, sections 144G.01 to 144G.07; or

(2) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and required to disclose special care status under Minnesota Statutes, section 325F.72.

(f) "Home care provider" has the meaning given in Minnesota Statutes, section 144A.43, subdivision 4.

(g) "Safe location" means a location that does not place a client's health or safety at risk. A safe location is not a private home where the occupant is unwilling or unable to care for the client, a homeless shelter, a hotel, or a motel.

(h) "Service plan" has the meaning given in Minnesota Statutes, section 144A.43, subdivision 27.

(i) "Services" means services provided to a client by a home care provider according to a service plan.

Subd. 2. **Prerequisite to termination or nonrenewal of lease, services, or service plan.** (a) A facility must schedule and participate in a meeting with the client and the client representative before:

(1) the facility issues a notice of termination of a lease;

(2) the facility issues a notice of termination or nonrenewal of all services; or

(3) an arranged home care provider issues a notice of termination or nonrenewal of a service plan.

(b) The purposes of the meeting required under paragraph (a) are to:

(1) explain in detail the reasons for the proposed termination or nonrenewal; and

(2) identify and offer reasonable accommodations or modifications, interventions, or alternatives to avoid the termination or nonrenewal and enable the client to remain in the facility, including but not limited to securing services from another home care provider of the client's choosing. A facility is not required to offer accommodations, modifications, interventions, or alternatives that fundamentally alter the nature of the operation of the facility.

(c) The meeting required under paragraph (a) must be scheduled to take place at least seven days before a notice of termination or nonrenewal is issued. The facility must make

reasonable efforts to ensure that the client and the client representative are able to attend the meeting.

(d) The facility must notify the client that the client may invite family members, relevant health professionals, a representative of the Office of Ombudsman for Long-Term Care, or other persons of the client's choosing to attend the meeting. For clients who receive home and community-based waiver services under Minnesota Statutes, section 256B.49, and Minnesota Statutes, chapter 256S, the facility must notify the client's case manager of the meeting.

Subd. 3. **Restrictions on lease terminations.** (a) A facility may not terminate a lease except as provided in this subdivision.

(b) Upon 30 days' prior written notice, a facility may initiate a termination of a lease only for:

(1) nonpayment of rent, provided the facility informs the client that public benefits may be available and provides contact information for the Senior LinkAge Line under Minnesota Statutes, section 256.975, subdivision 7. An interruption to a client's public benefits that lasts for no more than 60 days does not constitute nonpayment; or

(2) a violation of a lawful provision of the lease if the client does not cure the violation within a reasonable amount of time after the facility provides written notice to the client of the ability to cure. Written notice of the ability to cure may be provided in person or by first class mail. A facility is not required to provide a client with written notice of the ability to cure for a violation that threatens the health or safety of the client or another individual in the facility, or for a violation that constitutes illegal conduct.

(c) Upon 15 days' prior written notice, a facility may terminate a lease only if the client has:

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

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

(3) committed an act listed in Minnesota Statutes, section 504B.171, that substantially interferes with the rights, health, or safety of other clients.

(d) Nothing in this subdivision affects the rights and remedies available to facilities and clients under Minnesota Statutes, chapter 504B.

Subd. 4. **Restrictions on terminations and nonrenewals of services and service plans.** (a) An arranged home care provider may not terminate or fail to renew a service plan of a client in a facility except as provided in this subdivision.

(b) Upon 30 days' prior written notice, an arranged home care provider may initiate a termination of services for nonpayment if the client does not cure the violation within a reasonable amount of time after the facility provides written notice to the client of the ability to cure. An interruption to a client's public benefits that lasts for no more than 60 days does not constitute nonpayment.

(c) Upon 15 days' prior written notice, an arranged home care provider may terminate or fail to renew a service plan only if:

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

(2) the client's assessed needs exceed the scope of services agreed upon in the service plan and are not otherwise offered by the arranged home care provider; or

(3) extraordinary circumstances exist, causing the arranged home care provider to be unable to provide the client with the services agreed to in the service plan that are necessary to meet the client's needs.

Subd. 5. **Right to appeal.** Clients have the right to appeal the termination of a lease, services, or a service plan.

Subd. 6. **Permissible grounds to appeal termination.** A client may appeal a termination initiated under subdivision 3 or 4, on the grounds that:

(1) there is a factual dispute as to whether the facility had a permissible basis to initiate the termination;

(2) the termination would result in great harm or the potential for great harm to the client 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;

(3) 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

(4) the facility has terminated the lease, services, or service plan in violation of state or federal law.

Subd. 7. **Appeals process.** (a) The Office of Administrative Hearings must conduct an expedited hearing as soon as practicable, but in no event later than 14 calendar days after the office receives the request, unless the parties agree otherwise or the chief administrative law judge deems the timing to be unreasonable, given the complexity of the issues presented.

(b) The hearing must be held at the facility where the resident lives, unless holding the hearing at that location is impractical, the parties agree to hold the hearing at a different location, or the chief administrative law judge grants a party's request to appear at another location or by telephone or interactive video.

(c) The hearing is not a formal contested case proceeding, except when determined necessary by the chief administrative law judge.

(d) Parties may but are not required to be represented by counsel. The appearance of a party without counsel does not constitute the unauthorized practice of law.

(e) The hearing shall be limited to the amount of time necessary for the participants to expeditiously present the facts about the proposed termination. The administrative law judge shall issue a recommendation to the commissioner as soon as practicable, but in no event later than ten business days after the hearing.

Subd. 8. **Burden of proof for appeals of termination.** (a) The facility bears the burden of proof to establish by a preponderance of the evidence that the termination was permissible if the appeal is brought on the ground listed in subdivision 6, clause (4).

(b) The client bears the burden of proof to establish by a preponderance of the evidence that the termination was permissible if the appeal is brought on the grounds listed in subdivision 6, clause (2) or (3).

Subd. 9. **Determination; content of order.** (a) The client's termination must be rescinded if the client prevails in the appeal.

(b) The order may contain any conditions that may be placed on the client's continued residency or receipt of services, including but not limited to changes to the service plan or a required increase in services.

Subd. 10. **Service provision while appeal pending.** A termination of a lease, services, or a service plan shall not occur while an appeal is pending. If additional services are needed to meet the health or safety needs of the client while an appeal is pending, the client 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.

Subd. 11. **Application of Minnesota Statutes, chapter 504B, to appeals of terminations.** A client may not bring an action under Minnesota Statutes, chapter 504B, to challenge a termination of a lease that has occurred and been upheld under this section.

Subd. 12. **Restriction on lease nonrenewals.** If a facility decides to not renew a client's lease, the facility must:

(1) provide the client with 60 calendar days' notice of the nonrenewal;

(2) ensure a coordinated move as provided under subdivision 14;

(3) consult and cooperate with the client; the client representative; the case manager of a client who receives home and community-based waiver services under Minnesota Statutes, section 256B.49, and Minnesota Statutes, chapter 256S; relevant health professionals; and any other person of the client's choosing to make arrangements to move the client; and

(4) prepare a written plan to prepare for the move.

Subd. 13. **Right to return.** If a client is absent from a facility for any reason, the facility shall not refuse to allow a client to return if a lease termination has not been effectuated.

Subd. 14. **Coordinated moves.** (a) A facility or arranged home care provider, as applicable, must arrange a coordinated move for a client according to this subdivision if:

(1) a facility terminates a lease or closes the facility;

(2) an arranged home care provider terminates or does not renew a service plan; or

(3) an arranged home care provider reduces or eliminates services to the extent that the client needs to move.

(b) If an event listed in paragraph (a) occurs, the facility or arranged home care provider, as applicable, must:

(1) ensure a coordinated move to a safe location that is appropriate for the client and that is identified by the facility;

(2) ensure a coordinated move to an appropriate service provider identified by the facility, provided services are still needed and desired by the client; and

(3) consult and cooperate with the client; the client representative; the case manager for a client who receives home and community-based waiver services under Minnesota Statutes, section 256B.49, and Minnesota Statutes, chapter 256S; relevant health professionals; and any other person of the client's choosing to make arrangements to move the client.

(c) A facility may satisfy the requirements in paragraph (b), clauses (1) and (2), by moving the client to a different location within the same facility, if appropriate for the client.

(d) A client may decline to move to the location the facility identifies or to accept services from a service provider the facility identifies, and may choose instead to move to a location of the client's choosing or receive services from a service provider of the client's choosing.

(e) Sixty days before the facility or arranged home care provider reduces or eliminates one or more services for a particular client, the facility must provide written notice of the reduction or elimination. If the facility, arranged home care provider, client, or client representative determines that the reduction or elimination of services will force the client to move to a new location, the facility must ensure a coordinated move in accordance with this subdivision, and must provide notice to the Office of Ombudsman for Long-Term Care.

(f) The facility or arranged home care provider, as applicable, must prepare a relocation plan to prepare for the move to the new location or service provider.

(g) With the client's knowledge and consent, if the client is relocated to another facility or to a nursing home, or if care is transferred to another service provider, the facility must timely convey to the new facility, nursing home, or service provider:

(1) the client's full name, date of birth, and insurance information;

(2) the name, telephone number, and address of the client representative, if any;

(3) the client's current, documented diagnoses that are relevant to the services being provided;

(4) the client's known allergies that are relevant to the services being provided;

(5) the name and telephone number of the client's physician, if known, and the current physician orders that are relevant to the services being provided;

(6) all medication administration records that are relevant to the services being provided;

(7) the most recent client assessment, if relevant to the services being provided; and

(8) copies of health care directives, "do not resuscitate" orders, and any guardianship orders or powers of attorney.

Subd. 15. **No waiver.** No facility or arranged home care provider may request or require that a client waive the client's rights or requirements under this section at any time or for any reason, including as a condition of admission to the facility.

Subd. 16. **Expiration.** This section expires upon implementation of assisted living licensure under Minnesota Statutes, chapter 144G.

EFFECTIVE DATE. This section is effective August 1, 2020.

Sec. 17. **SUSPENDING SERVICE TERMINATIONS, TRANSFERS, AND DISCHARGES DURING THE COVID-19 PEACETIME EMERGENCY.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Arranged home care provider" has the meaning given in Minnesota Statutes, section 144D.01, subdivision 2a.

(c) "Client" has the meaning given in Minnesota Statutes, section 144G.01, subdivision 3.

(d) "Facility" means:

(1) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and operating under title protection under Minnesota Statutes, sections 144G.01 to 144G.07; or

(2) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and required to disclose special care status under Minnesota Statutes, section 325F.72.

(e) "Home care provider" has the meaning given in Minnesota Statutes, section 144A.43, subdivision 4.

(f) "Service plan" has the meaning given in Minnesota Statutes, section 144A.43, subdivision 27.

(g) "Services" means services provided to a client by a home care provider according to a service plan.

Subd. 2. **Suspension of home care service terminations.** For the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-01 is rescinded, an arranged home care provider providing home care services to a client residing in a facility must not terminate its client's services or service plan, unless one of the conditions specified in Minnesota Statutes, section 144G.52, subdivision 5, paragraph (b), clauses (1) to (3), are met. Nothing in this subdivision prohibits the transfer of a client under section 18.

Subd. 3. **Suspension of discharges and transfers.** For the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-01 is rescinded, nursing homes, boarding care homes, and long-term acute care hospitals must not discharge or transfer residents except for transfers in accordance with guidance issued by the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and the Minnesota Department of Health for the purposes of controlling SARS-CoV-2 infections, or unless the failure to discharge or transfer the resident would endanger the health or safety of the resident or other individuals in the facility.

Subd. 4. **Pending discharge and transfer appeals.** For the duration of the peacetime emergency declared in Executive Order 20-01 or until Executive Order 20-01 is rescinded, final decisions on appeals of transfers and appeals under section 15, subdivisions 5 to 11, and Minnesota Statutes, section 144A.135, are stayed.

Subd. 5. **Penalties.** A person who willfully violates subdivisions 1 and 2 of this section is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed $1,000, or by imprisonment for not more than 90 days.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 18. **TRANSFERS FOR COHORTING PURPOSES DURING THE COVID-19 PEACETIME EMERGENCY.**

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Client" has the meaning given in Minnesota Statutes, section 144G.01, subdivision 3.

(c) "Facility" means:

(1) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and operating under title protection under Minnesota Statutes, sections 144G.01 to 144G.07; or

(2) a housing with services establishment registered under Minnesota Statutes, section 144D.02, and required to disclose special care status under Minnesota Statutes, section 325F.72.

Subd. 2. **Transfers for cohorting purposes.** A facility may transfer a client to another facility for the following cohorting purposes:

(1) transferring clients with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific client and is a dedicated COVID-19 care site;

(2) in order to make the transferring facility a dedicated COVID-19 care site transferring residents without symptoms of a respiratory infection or confirmed not to have COVID-19 to another facility that agrees to accept each specific client, and is dedicated to caring for clients without COVID-19 and preventing them from acquiring COVID-19; or

(3) transferring clients without symptoms of a respiratory infection to another facility that agrees to accept each specific client and is dedicated to observing clients over 14 days for any signs or symptoms of a respiratory infection.

The transferring facility must receive confirmation that the receiving facility agrees to accept the client to be transferred. Confirmation may be in writing or oral. If verbal, the transferring facility must document who from the receiving facility communicated agreement and the date and time this person communicated agreement.

Subd. 3. **Notice required.** A transferring facility shall provide the transferred client and the legal or designated representatives of the transferred client, if any, with a written notice of transfer that includes the following information:

(1) the effective date of transfer;

(2) the reason permissible under subdivision 2 for the transfer;

(3) the name and contact information of a representative of the transferring facility with whom the client may discuss the transfer;

(4) the name and contact information of a representative of the receiving facility with whom the client may discuss the transfer;

(5) a statement that the transferring facility will participate in a coordinated move and transfer of the care of the client to the receiving facility, as required under section 15, subdivision 14, and under Minnesota Statutes, section 144A.44, subdivision 1, clause (18);

(6) a statement that a transfer for cohorting purposes does not constitute a termination of a lease, services, or a service plan; and

(7) a statement that a client has a right to return to the transferring facility as provided under subdivision 9.

Subd. 4. **Waived transfer requirements for cohorting purposes.** (a) The following requirements related to client rights are waived, or modified as indicated, only for purposes related to transfers to another facility under subdivision 2:

(1) the right to take an active part in developing, modifying, and evaluating the plan and services under Minnesota Statutes, section 144A.44, clause (2);

(2) rights under Minnesota Statutes, section 144A.44, clause (3);

(3) rights under Minnesota Statutes, section 144A.44, clause (4);

(4) rights under Minnesota Statutes, section 144A.44, clause (9);

(5) rights under Minnesota Statutes, section 144A.44, clause (15);

(6) timelines for completing assessments under Minnesota Statutes, section 144A.4791, subdivision 8. A receiving facility must complete client assessments following a transfer for cohorting purposes as soon as practicable; and

(7) timelines for completing service plans under Minnesota Statutes, section 144A.4791, subdivision 9. A receiving facility must complete client service plans following a transfer for cohorting purposes as soon as practicable and must review and use the care plan for a transferred client provided by the transferring facility, adjusting it as necessary to protect the health and safety of the client.

Subd. 5. **Mandatory transfer of medical assistance clients for cohorting purposes.** (a) The commissioner of health has the authority to transfer medical assistance clients to another facility for the purposes under subdivision 2.

(b) The commissioner of human services may not deny reimbursement to a facility receiving a client under this section for a private room or private living unit.

Subd. 6. **Coordinated transfer required.** Nothing in this section shall be construed as relieving a facility from its duty to provide a coordinated move and transfer of care as required under section 16, subdivision 14.

Subd. 7. **Transfers not considered terminations.** Nothing in this section shall be considered inconsistent with a facility's duties under sections 16 and 17. A transfer under this section is not a termination of a lease, services, or a service plan under section 16 or 17.

Subd. 8. **No right of appeal.** A client may not appeal a transfer under subdivision 2.

Subd. 9. **Right to return.** If a client is absent from a facility as a result of a transfer under subdivision 2, the facility must allow a client to return to the transferring facility, provided the client is determined not to be infectious according to current medical standards.

Subd. 10. **Appropriate transfers.** The commissioner of health shall monitor all transfers made under this section. The commissioner may audit transfers made under this section for compliance with the requirements of this section and may take enforcement actions, including issuing fines for violations. A violation of this section is at least a level 2 violation as defined in Minnesota Statutes, section 144A.474.

Subd. 11. **Expiration.** Subdivisions 1 to 9 expire 60 days after the peacetime emergency declared by the governor under Minnesota Statutes, section 12.31, subdivision 2, for an outbreak of COVID-19, is terminated or rescinded by proper authority.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 19. **LONG-TERM CARE COVID-19 TASK FORCE.**

Subdivision 1. **Membership.** (a) A Long-Term Care COVID-19 Task Force consists of the following members:

(1) two senators, including one senator appointed by the senate majority leader and one senator appointed by the senate minority leader, who shall each be ex officio nonvoting members;

(2) two members of the house of representatives, including one member appointed by the speaker of the house and one member appointed by the minority leader of the house of representatives, who shall each be ex officio nonvoting members;

(3) four family members of an assisted living client or of a nursing home resident, appointed by the governor;

(4) four assisted living clients or nursing home residents, appointed by the governor;

(5) one medical doctor board-certified in infectious disease, appointed by .....;

(6) two medical doctors board-certified in geriatric medicine, appointed by .....;

(7) one registered nurse or advanced practice registered nurse who provides care in a nursing home or assisted living services, appointed by .....;

(8) two licensed practical nurses who provide care in a nursing home or assisted living services, appointed by .....;

(9) one certified home health aide providing assisted living services or one certified nursing assistant providing care in a nursing home, appointed by .....;

(10) one medical director of a licensed nursing home, appointed by .....;

(11) one medical director of a licensed hospice provider, appointed by .....;

(12) one licensed nursing home administrator, appointed by .....;

(13) one licensed assisted living director, appointed by .....;

(14) one representative of a corporate owner of a licensed nursing home or of a housing with services establishment operating under Minnesota Statutes, chapter 144G, assisted living title protection, appointed by .....;

(15) one representative of an organization representing families of consumers of assisted living services, appointed by .....;

(16) one representative of an organization representing clients and residents living with dementia, appointed by .....;

(17) one housing attorney, appointed by .....;

(18) one attorney specializing in elder law or disability benefits law, appointed by .....;

(19) the commissioner of human services or a designee, who shall be an ex officio nonvoting member;

(20) the commissioner of health or a designee, who shall be an ex officio nonvoting member; and

(21) the ombudsman for long-term care or designee, who shall be an ex officio nonvoting member.

(b) Appointing authorities must make initial appointments to the Long-Term Care COVID-19 Task Force by July 1, 2020.

Subd. 2. **Duties.** The Long-Term Care COVID-19 Task Force is established to study various methods of balancing the rights of assisted living clients and nursing home residents with the risk of outbreaks of SARS-CoV-2 infections and COVID-19 disease, and to advise the commissioners of health and human services on the use of their temporary emergency authorities with respect to providing long-term care during the peacetime emergency related to COVID-19. The goal of the task force is to minimize the number of deaths in long-term care facilities resulting from COVID-19 disease. At a minimum, the task force must study:

(1) how to minimize isolating assisted living clients and nursing home residents who are neither suspected or confirmed to have active SARS-CoV-2 infections;

(2) how to separate assisted living clients and nursing home residents who are suspected or confirmed to have active SARS-CoV-2 infections from those clients and residents who are neither suspected or confirmed to have active SARS-CoV-2 infections;

(3) creating facilities dedicated to caring for assisted living clients and nursing home residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19;

(4) creating facilities dedicated to caring for assisted living clients and nursing home residents without symptoms of a respiratory infection or confirmed not to have COVID-19 to prevent them from acquiring COVID-19;

(5) creating facilities dedicated to caring for, isolating, and observing for up to 14 days assisted living clients and nursing home residents with known exposure to SARS-CoV-2; and

(6) best practices related to executing hospice orders, provider orders for life-sustaining treatment, do not resuscitate orders, and do not intubate orders when treating an assisted living or nursing home resident for COVID-19 disease.

Subd. 3. **Advisory opinions.** The task force may issue advisory opinions to the commissioners of health and human services regarding the commissioners' use of temporary emergency authorities granted under emergency executive orders and in law, as well as under any existing nonemergency authorities. The task force shall forward any advisory opinions it issues to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance.

Subd. 4. **Report.** By January 15, 2021, the task force must report to the chairs and ranking minority members of the legislative committees with jurisdiction over health policy and finance. The report must:

(1) summarize the activities of the task force; and

(2) make recommendations for legislative action.

Subd. 5. **First meeting; chair.** The commissioner or a designee must convene the first meeting of the Long-Term Care COVID-19 Task Force by July 1, 2020. At the first meeting, the task force shall elect a chair by a majority vote of those members present.

Subd. 6. **Meetings.** The meetings of the task force are subject to Minnesota Statutes, chapter 13D.

Subd. 7. **Administration.** The commissioner of health shall provide administrative services for the task force.

Subd. 8. **Compensation.** Public members are compensated as provided in Minnesota Statutes, section 15.059, subdivision 4.

Subd. 9. **Expiration.** This section expires the day after submission of the report required in subdivision 3 or on January 16, 2021, whichever is later.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 20. **DIRECTION TO THE COMMISSIONER OF HEALTH; ELECTRONIC MONITORING CONSENT FORM.**

The commissioner of health shall modify the Resident Representative Consent Form and the Roommate Representative Consent Form related to electronic monitoring under Minnesota Statutes, section 144.6502, by removing the instructions requiring a resident representative to obtain a written determination by the medical professional of the resident that the resident currently lacks the ability to understand and appreciate the nature and consequences of electronic monitoring. The commissioner shall not require a resident representative to submit a written determination with the consent forms.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 21. **DIRECTION TO THE COMMISSIONER OF HEALTH; CONTROLLING COVID-19 IN UNLICENSED LONG-TERM CARE SETTINGS.**

Subdivision 1. **State plan for combating COVID-19.** (a) The commissioner of health shall create a state plan for combating the spread of SARS-CoV-2 infections and COVID-19 disease in housing with services establishments registered under Minnesota Statutes, chapter 144D, and in independent senior living settings. The commissioner may consult with the Long-Term Care COVID-19 Task Force regarding modifications or amendments to the state plan.

(b) In the plan, the commissioner of health must give initial priority to combating infections and disease in housing with services establishments subject to the dementia care training requirements under Minnesota Statutes, section 144D.065.

(c) In the plan, the commissioner of health must provide to both registered housing with services establishments and independent senior living settings guidance on alleviating isolation of residents who are not suspected or known to have an active SARS-CoV-2 infection or COVID-19 disease, including recommendations on how to safely ease restrictions

on visitors entering the setting and on free movement of clients and residents within the setting and the community.

(d) In the plan, the commissioner of health must provide to covered settings, as defined in Minnesota Statutes, section 325F.721, subdivision 1, paragraph (b), guidelines for providing safe and effective contactless "I'm okay" check services, as defined in Minnesota Statutes, section 325F.721, subdivision 1, paragraph (c), or similar services.

Subd. 2. **Enforcement of disease prevention and infection control requirements during COVID-19 pandemic.** The commissioner of health shall develop protocols to ensure during the COVID-19 pandemic safe and timely surveys of housing with service establishments operating under Minnesota Statutes, chapter 144G, assisted living title protection and of arranged home care providers for compliance with disease prevention and infection control requirements under Minnesota Statutes, sections 144A.4798 and 144G.03, subdivisions 7 to 9.

Subd. 3. **Maltreatment investigations during COVID-19 pandemic.** The commissioner of health shall develop protocols to ensure during the COVID-19 pandemic safe and timely investigations of maltreatment complaints involving clients or residents of housing with service establishments operating under Minnesota Statutes, chapter 144G, assisted living title protection and of arranged home care providers.

Subd. 4. **Testing of all residents of certain senior living settings.** The commissioner of health shall develop and implement a plan to ensure during the COVID-19 pandemic safe and timely testing of all residents of independent senior living settings and all residents of housing with service establishments operating under Minnesota Statutes, chapter 144G, assisted living title protection.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 22. **APPROPRIATION; BOARD OF EXECUTIVES FOR LONG TERM SERVICES AND SUPPORTS.**

$467,000 in fiscal year 2021 is appropriated from the state government special revenue fund to the Board of Executives for Long Term Services and Supports for operations. The base for this appropriation is $722,000 in fiscal year 2022 and $742,000 in fiscal year 2023.

EFFECTIVE DATE. This section is effective July 1, 2020.