

**CHAPTER 60--H.F.No. 90**

*An act relating to health; establishing consumer protections for residents of assisted living establishments; prohibiting deceptive marketing and business practices; establishing provisions for independent senior living facilities; establishing an assisted living establishment license; changing the name for Board of Examiners for Nursing Home Administrators; imposing fees; establishing a health services executive license; making certain conforming changes; providing penalties; granting rulemaking authority; requiring reports; appropriating money; amending Minnesota Statutes 2018, sections 144.051, subdivisions 4, 5, 6; 144.057, subdivision 1; 144.122; 144A.04, subdivision 5; 144A.19, subdivision 1; 144A.20, subdivision 1, by adding subdivisions; 144A.21; 144A.23; 144A.24; 144A.251; 144A.2511; 144A.26; 144A.44, subdivision 1; 144A.471, subdivisions 7, 9; 144A.472, subdivision 7; 144A.474, subdivisions 9, 11, by adding a subdivision; 144A.475, subdivisions 3b, 5; 144A.476, subdivision 1; 144A.4799; 256.9741, subdivision 1; 256I.03, subdivision 15; 256I.04, subdivision 2a; 325F.72, subdivisions 1, 2; 626.5572, subdivision 6; proposing coding for new law in Minnesota Statutes, chapters 144; 144G; 256M; 325F; proposing coding for new law as Minnesota Statutes, chapter 144I; repealing Minnesota Statutes 2018, sections 144A.441; 144A.442; 144A.472, subdivision 4; 144D.01; 144D.015; 144D.02; 144D.025; 144D.03; 144D.04; 144D.045; 144D.05; 144D.06; 144D.065; 144D.066; 144D.07; 144D.08; 144D.09; 144D.10; 144D.11; 144G.01; 144G.02; 144G.03; 144G.04; 144G.05; 144G.06.*

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

**ARTICLE 1****ASSISTED LIVING LICENSURE**

Section 1. Minnesota Statutes 2018, section 144.122, is amended to read:

**144.122 LICENSE, PERMIT, AND SURVEY FEES.**

(a) The state commissioner of health, by rule, may prescribe procedures and fees for filing with the commissioner as prescribed by statute and for the issuance of original and renewal permits, licenses, registrations, and certifications issued under authority of the commissioner. The expiration dates of the various licenses, permits, registrations, and certifications as prescribed by the rules shall be plainly marked thereon. Fees may include application and examination fees and a penalty fee for renewal applications submitted after the expiration date of the previously issued permit, license, registration, and certification. The commissioner may also prescribe, by rule, reduced fees for permits, licenses, registrations, and certifications when the application therefor is submitted during the last three months of the permit, license, registration, or certification period. Fees proposed to be prescribed in the rules shall be first approved by the Department of Management and Budget. All fees proposed to be prescribed in rules shall be reasonable. The fees shall be in an amount so that the total fees collected by the commissioner will, where practical, approximate the cost to the commissioner in administering the program. All fees collected shall be deposited in the state treasury and credited to the state government special revenue fund unless otherwise specifically appropriated by law for specific purposes.

(b) The commissioner may charge a fee for voluntary certification of medical laboratories and environmental laboratories, and for environmental and medical laboratory services provided by the department, without complying with paragraph (a) or chapter 14. Fees charged for environment and medical laboratory services provided by the department must be approximately equal to the costs of providing the services.

(c) The commissioner may develop a schedule of fees for diagnostic evaluations conducted at clinics held by the services for children with disabilities program. All receipts generated by the program are annually appropriated to the commissioner for use in the maternal and child health program.

(d) The commissioner shall set license fees for hospitals and nursing homes that are not boarding care homes at the following levels:

Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and American Osteopathic Association (AOA) hospitals	\$7,655 plus \$16 per bed
Non-JCAHO and non-AOA hospitals	\$5,280 plus \$250 per bed
Nursing home	\$183 plus \$91 per bed until June 30, 2018. \$183 plus \$100 per bed between July 1, 2018, and June 30, 2020. \$183 plus \$105 per bed beginning July 1, 2020.

The commissioner shall set license fees for outpatient surgical centers, boarding care homes, ~~and~~ supervised living facilities, assisted living facilities, and assisted living facilities with dementia care at the following levels:

Outpatient surgical centers	\$3,712
Boarding care homes	\$183 plus \$91 per bed
Supervised living facilities	\$183 plus \$91 per bed.
<u>Assisted living facilities with dementia care</u>	<u>\$3,000 plus \$100 per resident.</u>
<u>Assisted living facilities</u>	<u>\$2,000 plus \$75 per resident.</u>

Fees collected under this paragraph are nonrefundable. The fees are nonrefundable even if received before July 1, 2017, for licenses or registrations being issued effective July 1, 2017, or later.

(e) Unless prohibited by federal law, the commissioner of health shall charge applicants the following fees to cover the cost of any initial certification surveys required to determine a provider's eligibility to participate in the Medicare or Medicaid program:

Prospective payment surveys for hospitals	\$	900
Swing bed surveys for nursing homes	\$	1,200
Psychiatric hospitals	\$	1,400
Rural health facilities	\$	1,100
Portable x-ray providers	\$	500

Home health agencies	\$	1,800
Outpatient therapy agencies	\$	800
End stage renal dialysis providers	\$	2,100
Independent therapists	\$	800
Comprehensive rehabilitation outpatient facilities	\$	1,200
Hospice providers	\$	1,700
Ambulatory surgical providers	\$	1,800
Hospitals	\$	4,200
Other provider categories or additional resurveys required to complete initial certification		Actual surveyor costs: average surveyor cost x number of hours for the survey process.

These fees shall be submitted at the time of the application for federal certification and shall not be refunded. All fees collected after the date that the imposition of fees is not prohibited by federal law shall be deposited in the state treasury and credited to the state government special revenue fund.

(f) Notwithstanding section 16A.1283, the commissioner may adjust the fees assessed on assisted living facilities and assisted living facilities with dementia care under paragraph (d), in a revenue-neutral manner in accordance with the requirements of this paragraph:

(1) a facility seeking to renew a license shall pay a renewal fee in an amount that is up to ten percent lower than the applicable fee in paragraph (d) if residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49 comprise more than 50 percent of the facility's capacity in the calendar year prior to the year in which the renewal application is submitted; and

(2) a facility seeking to renew a license shall pay a renewal fee in an amount that is up to ten percent higher than the applicable fee in paragraph (d) if residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49 comprise less than 50 percent of the facility's capacity during the calendar year prior to the year in which the renewal application is submitted.

The commissioner may annually adjust the percentages in clauses (1) and (2), to ensure this paragraph is implemented in a revenue-neutral manner. The commissioner shall develop a method for determining capacity thresholds in this paragraph in consultation with the commissioner of human services and must coordinate the administration of this paragraph with the commissioner of human services for purposes of verification.

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

## Sec. 2. **[144I.01] DEFINITIONS.**

Subdivision 1. **Applicability.** For the purposes of this chapter, the definitions in this section have the meanings given.

Subd. 2. **Adult.** "Adult" means a natural person who has attained the age of 18 years.

Subd. 3. **Advanced practice registered nurse.** "Advanced practice registered nurse" has the meaning given in section 148.171, subdivision 3.

Subd. 4. **Applicant.** "Applicant" means an individual, legal entity, or other organization that has applied for licensure under this chapter.

Subd. 5. **Assisted living contract.** "Assisted living contract" means the legal agreement between a resident and an assisted living facility for housing and, if applicable, assisted living services.

Subd. 6. **Assisted living director.** "Assisted living director" means a person who administers, manages, supervises, or is in general administrative charge of an assisted living facility, whether or not the individual has an ownership interest in the facility, and whether or not the person's functions or duties are shared with one or more individuals and who is licensed by the Board of Executives for Long Term Services and Supports pursuant to section 144A.20.

Subd. 7. **Assisted living facility.** "Assisted living facility" means a licensed facility that provides sleeping accommodations and assisted living services to one or more adults. Assisted living facility includes assisted living facility with dementia care, and does not include:

(1) emergency shelter, transitional housing, or any other residential units serving exclusively or primarily homeless individuals, as defined under section 116L.361;

(2) a nursing home licensed under chapter 144A;

(3) a hospital, certified boarding care, or supervised living facility licensed under sections 144.50 to 144.56;

(4) a lodging establishment licensed under chapter 157 and Minnesota Rules, parts 9520.0500 to 9520.0670, or under chapter 245D or 245G;

(5) services and residential settings licensed under chapter 245A, including adult foster care and services and settings governed under the standards in chapter 245D;

(6) a private home in which the residents are related by kinship, law, or affinity with the provider of services;

(7) a duly organized condominium, cooperative, and common interest community, or owners' association of the condominium, cooperative, and common interest community where at least 80 percent of the units that comprise the condominium, cooperative, or common interest community are occupied by individuals who are the owners, members, or shareholders of the units;

(8) a temporary family health care dwelling as defined in sections 394.307 and 462.3593;

(9) a setting offering services conducted by and for the adherents of any recognized church or religious denomination for its members exclusively through spiritual means or by prayer for healing;

(10) housing financed pursuant to sections 462A.37 and 462A.375, units financed with low-income housing tax credits pursuant to United States Code, title 26, section 42, and units financed by the Minnesota Housing Finance Agency that are intended to serve individuals with disabilities or individuals who are homeless, except for those developments that market or hold themselves out as assisted living facilities and provide assisted living services;

(11) rental housing developed under United States Code, title 42, section 1437, or United States Code, title 12, section 1701q;

(12) rental housing designated for occupancy by only elderly or elderly and disabled residents under United States Code, title 42, section 1437e, or rental housing for qualifying families under Code of Federal Regulations, title 24, section 983.56;

(13) rental housing funded under United States Code, title 42, chapter 89, or United States Code, title 42, section 8011; or

(14) an independent senior living facility governed by chapter 144K.

Subd. 8. **Assisted living facility with dementia care.** "Assisted living facility with dementia care" means a licensed assisted living facility that is advertised, marketed, or otherwise promoted as providing specialized care for individuals with Alzheimer's disease or other dementias. An assisted living facility with a secured dementia care unit must be licensed as an assisted living facility with dementia care.

Subd. 9. **Assisted living services.** "Assisted living services" includes one or more of the following:

(1) assisting with dressing, self-feeding, oral hygiene, hair care, grooming, toileting, and bathing;

(2) providing standby assistance;

(3) providing verbal or visual reminders to the resident to take regularly scheduled medication, which includes bringing the resident previously set up medication, medication in original containers, or liquid or food to accompany the medication;

(4) providing verbal or visual reminders to the resident to perform regularly scheduled treatments and exercises;

(5) preparing modified diets ordered by a licensed health professional;

(6) services of an advanced practice registered nurse, registered nurse, licensed practical nurse, physical therapist, respiratory therapist, occupational therapist, speech-language pathologist, dietitian or nutritionist, or social worker;

(7) tasks delegated to unlicensed personnel by a registered nurse or assigned by a licensed health professional within the person's scope of practice;

(8) medication management services;

(9) hands-on assistance with transfers and mobility;

(10) treatment and therapies;

(11) assisting residents with eating when the residents have complicated eating problems as identified in the resident record or through an assessment such as difficulty swallowing, recurrent lung aspirations, or requiring the use of a tube or parenteral or intravenous instruments to be fed;

(12) providing other complex or specialty health care services; and

(13) supportive services in addition to the provision of at least one of the services listed in clauses (1) to (12).

Subd. 10. **Authority having jurisdiction.** "Authority having jurisdiction" means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

Subd. 11. **Authorized agent.** "Authorized agent" means the person who is authorized to accept service of notices and orders on behalf of the licensee.

Subd. 12. **Change of ownership.** "Change of ownership" means a change in the licensee that is responsible for the management, control, and operation of a facility.

Subd. 13. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 14. **Controlled substance.** "Controlled substance" has the meaning given in section 152.01, subdivision 4.

Subd. 15. **Controlling individual.** (a) "Controlling individual" means an owner and the following individuals and entities, if applicable:

- (1) each officer of the organization, including the chief executive officer and chief financial officer;
- (2) each managerial official; and
- (3) any entity with at least a five percent mortgage, deed of trust, or other security interest in the facility.

(b) Controlling individual does not include:

(1) a bank, savings bank, trust company, savings association, credit union, industrial loan and thrift company, investment banking firm, or insurance company unless the entity operates a program directly or through a subsidiary;

(2) government and government-sponsored entities such as the U.S. Department of Housing and Urban Development, Ginnie Mae, Fannie Mae, Freddie Mac, and the Minnesota Housing Finance Agency which provide loans, financing, and insurance products for housing sites;

(3) an individual who is a state or federal official, a state or federal employee, or a member or employee of the governing body of a political subdivision of the state or federal government that operates one or more facilities, unless the individual is also an officer, owner, or managerial official of the facility, receives remuneration from the facility, or owns any of the beneficial interests not excluded in this subdivision;

(4) an individual who owns less than five percent of the outstanding common shares of a corporation:

- (i) whose securities are exempt under section 80A.45, clause (6); or
- (ii) whose transactions are exempt under section 80A.46, clause (2);

(5) an individual who is a member of an organization exempt from taxation under section 290.05, unless the individual is also an officer, owner, or managerial official of the license or owns any of the beneficial interests not excluded in this subdivision. This clause does not exclude from the definition of controlling individual an organization that is exempt from taxation; or

(6) an employee stock ownership plan trust, or a participant or board member of an employee stock ownership plan, unless the participant or board member is a controlling individual.

Subd. 16. **Dementia.** "Dementia" means the loss of cognitive function, including the ability to think, remember, problem solve, or reason, of sufficient severity to interfere with an individual's daily functioning.

Dementia is caused by different diseases and conditions, including but not limited to Alzheimer's disease, vascular dementia, neurodegenerative conditions, Creutzfeldt-Jakob disease, and Huntington's disease.

Subd. 17. **Dementia care services.** "Dementia care services" means ongoing care for behavioral and psychological symptoms of dementia, including planned group and individual programming and person-centered care practices provided according to section 144I.40 to support activities of daily living for people living with dementia.

Subd. 18. **Dementia-trained staff.** "Dementia-trained staff" means any employee who has completed the minimum training required under sections 144I.21 and 144I.39 and has demonstrated knowledge and the ability to support individuals with dementia.

Subd. 19. **Designated representative.** "Designated representative" means a person designated under section 144I.25.

Subd. 20. **Dietary supplement.** "Dietary supplement" means a product taken by mouth that contains a dietary ingredient intended to supplement the diet. Dietary ingredients may include vitamins, minerals, herbs or other botanicals, amino acids, and substances such as enzymes, organ tissue, glandulars, or metabolites.

Subd. 21. **Dietitian.** "Dietitian" means a person licensed as a dietitian under section 148.624.

Subd. 22. **Direct contact.** "Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to residents of a facility.

Subd. 23. **Direct ownership interest.** "Direct ownership interest" means an individual or organization with the possession of at least five percent equity in capital, stock, or profits of the licensee, or who is a member of a limited liability company of the licensee.

Subd. 24. **Facility.** "Facility" means an assisted living facility.

Subd. 25. **Hands-on assistance.** "Hands-on assistance" means physical help by another person without which the resident is not able to perform the activity.

Subd. 26. **"I'm okay" check services.** "'I'm okay" check services" means having, maintaining documenting a system to, by any means, check on the safety of a resident a minimum of once daily or more frequently according to the assisted living contract.

Subd. 27. **Indirect ownership interest.** "Indirect ownership interest" means an individual or legal entity with a direct ownership interest in an entity that has a direct or indirect ownership interest of at least five percent in an entity that is a licensee.

Subd. 28. **Legal representative.** "Legal 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 chapter 524;

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

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

(4) an attorney-in-fact acting in accordance with the powers granted to the attorney-in-fact by a written power of attorney under chapter 523.

Subd. 29. **Licensed health professional.** "Licensed health professional" means a person licensed in Minnesota to practice a profession described in section 214.01, subdivision 2.

Subd. 30. **Licensed practical nurse.** "Licensed practical nurse" has the meaning given in section 148.171, subdivision 8.

Subd. 31. **Licensed resident capacity.** "Licensed resident capacity" means the resident occupancy level requested by a licensee and approved by the commissioner.

Subd. 32. **Licensee.** "Licensee" means a person or legal entity to whom the commissioner issues a license for an assisted living facility and who is responsible for the management, control, and operation of a facility.

Subd. 33. **Maltreatment.** "Maltreatment" means conduct described in section 626.5572, subdivision 15.

Subd. 34. **Management agreement.** "Management agreement" means a written, executed agreement between a licensee and manager regarding the provision of certain services on behalf of the licensee.

Subd. 35. **Manager.** "Manager" means an individual or legal entity designated by the licensee through a management agreement to act on behalf of the licensee in the on-site management of the assisted living facility.

Subd. 36. **Managerial official.** "Managerial official" means an individual who has the decision-making authority related to the operation of the facility and the responsibility for the ongoing management or direction of the policies, services, or employees of the facility.

Subd. 37. **Medication.** "Medication" means a prescription or over-the-counter drug. For purposes of this chapter only, medication includes dietary supplements.

Subd. 38. **Medication administration.** "Medication administration" means performing a set of tasks that includes the following:

(1) checking the resident's medication record;

(2) preparing the medication as necessary;

(3) administering the medication to the resident;

(4) documenting the administration or reason for not administering the medication; and

(5) reporting to a registered nurse or appropriate licensed health professional any concerns about the medication, the resident, or the resident's refusal to take the medication.

Subd. 39. **Medication management.** "Medication management" means the provision of any of the following medication-related services to a resident:

(1) performing medication setup;

(2) administering medications;

(3) storing and securing medications;



(4) documenting medication activities;

(5) verifying and monitoring the effectiveness of systems to ensure safe handling and administration;

(6) coordinating refills;

(7) handling and implementing changes to prescriptions;

(8) communicating with the pharmacy about the resident's medications; and

(9) coordinating and communicating with the prescriber.

Subd. 40. **Medication reconciliation.** "Medication reconciliation" means the process of identifying the most accurate list of all medications the resident is taking, including the name, dosage, frequency, and route, by comparing the resident record to an external list of medications obtained from the resident, hospital, prescriber, or other provider.

Subd. 41. **Medication setup.** "Medication setup" means arranging medications by a nurse, pharmacy, or authorized prescriber for later administration by the resident or by facility staff.

Subd. 42. **New construction.** "New construction" means a new building, renovation, modification, reconstruction, physical changes altering the use of occupancy, or addition to a building.

Subd. 43. **Nurse.** "Nurse" means a person who is licensed under sections 148.171 to 148.285.

Subd. 44. **Nutritionist.** "Nutritionist" means a person licensed as a nutritionist under section 148.624.

Subd. 45. **Occupational therapist.** "Occupational therapist" means a person who is licensed under sections 148.6401 to 148.6449.

Subd. 46. **Ombudsman.** "Ombudsman" means the ombudsman for long-term care.

Subd. 47. **Over-the-counter drug.** "Over-the-counter drug" means a drug that is not required by federal law to bear the symbol "Rx only."

Subd. 48. **Owner.** "Owner" means an individual or legal entity that has a direct or indirect ownership interest of five percent or more in a licensee. For purposes of this chapter, "owner of a nonprofit corporation" means the president and treasurer of the board of directors or, for an entity owned by an employee stock ownership plan, means the president and treasurer of the entity. A government entity that is issued a license under this chapter shall be designated the owner.

Subd. 49. **Person-centered planning and service delivery.** "Person-centered planning and service delivery" means services as defined in section 245D.07, subdivision 1a, paragraph (b).

Subd. 50. **Pharmacist.** "Pharmacist" has the meaning given in section 151.01, subdivision 3.

Subd. 51. **Physical therapist.** "Physical therapist" means a person who is licensed under sections 148.65 to 148.78.

Subd. 52. **Physician.** "Physician" means a person who is licensed under chapter 147.

Subd. 53. **Prescriber.** "Prescriber" means a person who is authorized by section 148.235; 151.01, subdivision 23; or 151.37 to prescribe prescription drugs.

Subd. 54. **Prescription.** "Prescription" has the meaning given in section 151.01, subdivision 16a.

Subd. 55. **Provisional license.** "Provisional license" means the initial license the commissioner issues after approval of a complete written application and before the commissioner completes the provisional license survey and determines that the provisional licensee is in substantial compliance.

Subd. 56. **Regularly scheduled.** "Regularly scheduled" means ordered or planned to be completed at predetermined times or according to a predetermined routine.

Subd. 57. **Reminder.** "Reminder" means providing a verbal or visual reminder to a resident.

Subd. 58. **Repeat violation.** "Repeat violation" means the issuance of two or more correction orders within a 12-month period for a violation of the same provision of a statute or rule.

Subd. 59. **Resident.** "Resident" means a person living in an assisted living facility who has executed an assisted living contract.

Subd. 60. **Resident record.** "Resident record" means all records that document information about the services provided to the resident.

Subd. 61. **Respiratory therapist.** "Respiratory therapist" means a person who is licensed under chapter 147C.

Subd. 62. **Secured dementia care unit.** "Secured dementia care unit" means a designated area or setting designed for individuals with dementia that is locked or secured to prevent a resident from exiting, or to limit a resident's ability to exit, the secured area or setting. A secured dementia care unit is not solely an individual resident's living area.

Subd. 63. **Service plan.** "Service plan" means the written plan between the resident and the provisional licensee or licensee about the services that will be provided to the resident.

Subd. 64. **Social worker.** "Social worker" means a person who is licensed under chapter 148D or 148E.

Subd. 65. **Speech-language pathologist.** "Speech-language pathologist" has the meaning given in section 148.512, subdivision 17.

Subd. 66. **Standby assistance.** "Standby assistance" means the presence of another person within arm's reach to minimize the risk of injury while performing daily activities through physical intervention or cueing to assist a resident with an assistive task by providing cues, oversight, and minimal physical assistance.

Subd. 67. **Substantial compliance.** "Substantial compliance" means complying with the requirements in this chapter sufficiently to prevent unacceptable health or safety risks to residents.

Subd. 68. **Supportive services.** "Supportive services" means:

(1) assistance with laundry, shopping, and household chores;

(2) housekeeping services;

(3) provision or assistance with meals or food preparation;

(4) help with arranging for, or arranging transportation to, medical, social, recreational, personal, or social services appointments;

(5) provision of social or recreational services; or

(6) "I'm okay" check services.

Arranging for services does not include making referrals, or contacting a service provider in an emergency.

Subd. 69. **Survey.** "Survey" means an inspection of a licensee or applicant for licensure for compliance with this chapter and applicable rules.

Subd. 70. **Surveyor.** "Surveyor" means a staff person of the department who is authorized to conduct surveys of assisted living facilities.

Subd. 71. **Treatment or therapy.** "Treatment" or "therapy" means the provision of care, other than medications, ordered or prescribed by a licensed health professional and provided to a resident to cure, rehabilitate, or ease symptoms.

Subd. 72. **Unit of government.** "Unit of government" means a city, county, town, school district, other political subdivision of the state, or agency of the state or federal government, that includes any instrumentality of a unit of government.

Subd. 73. **Unlicensed personnel.** "Unlicensed personnel" means individuals not otherwise licensed or certified by a governmental health board or agency who provide services to a resident.

Subd. 74. **Verbal.** "Verbal" means oral and not in writing.

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

### Sec. 3. **[144I.02] ASSISTED LIVING FACILITY LICENSE.**

Subdivision 1. **License required.** Beginning August 1, 2021, no assisted living facility may operate in Minnesota unless it is licensed under this chapter. The licensee is legally responsible for the management, control, and operation of the facility, regardless of the existence of a management agreement or subcontract. Nothing in this chapter shall in any way affect the rights and remedies available under other law.

Subd. 2. **Licensure categories.** (a) The categories in this subdivision are established for assisted living facility licensure.

(b) The assisted living facility category is for assisted living facilities that only provide assisted living services.

(c) The assisted living facility with dementia care category is for assisted living facilities that provide assisted living services and dementia care services. An assisted living facility with dementia care may also provide dementia care services in a secured dementia care unit.

(d) An assisted living facility that has a secured dementia care unit must be licensed as an assisted living facility with dementia care.

Subd. 3. **Licensure under other law.** An assisted living facility licensed under this chapter is not required to also be licensed as a boarding establishment, food and beverage service establishment, hotel, motel, lodging establishment, resort, or restaurant under chapter 157.

Subd. 4. **Violations; penalty.** (a) Operating an assisted living facility without a license is a misdemeanor, and the commissioner may also impose a fine.

(b) A controlling individual of the facility in violation of this section is guilty of a misdemeanor. This paragraph shall not apply to any controlling individual who had no legal authority to affect or change decisions related to the operation of the facility.

(c) The sanctions in this section do not restrict other available sanctions in law.

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

Sec. 4. **[144I.03] PROVISIONAL LICENSE.**

Subdivision 1. **Provisional license.** Beginning August 1, 2021, for new assisted living facility license applicants, the commissioner shall issue a provisional license from one of the licensure categories specified in section 144I.02, subdivision 2. A provisional license is effective for up to one year from the initial effective date of the license, except that a provisional license may be extended according to subdivision 2, paragraphs (c) and (d).

Subd. 2. **Initial survey; licensure.** (a) During the provisional license period, the commissioner shall survey the provisional licensee after the commissioner is notified or has evidence that the provisional licensee is providing assisted living services to at least one resident.

(b) Within two days of beginning to provide assisted living services, the provisional licensee must provide notice to the commissioner that it is providing assisted living services by sending an e-mail to the e-mail address provided by the commissioner. If the provisional licensee does not provide services during the provisional license period, the provisional license shall expire at the end of the period and the applicant must reapply.

(c) If the provisional licensee notifies the commissioner that the licensee is providing assisted living services within 45 calendar days prior to expiration of the provisional license, the commissioner may extend the provisional license for up to 60 calendar days in order to allow the commissioner to complete the on-site survey required under this section and follow-up survey visits.

(d) If the provisional licensee is in substantial compliance with the survey, the commissioner shall issue a facility license. If the provisional licensee is not in substantial compliance with the initial survey, the commissioner shall either: (1) not issue the facility license and terminate the provisional license; or (2) extend the provisional license for a period not to exceed 90 calendar days and apply conditions necessary to bring the facility into substantial compliance. If the provisional licensee is not in substantial compliance with the survey within the time period of the extension or if the provisional licensee does not satisfy the license conditions, the commissioner may deny the license.

Subd. 3. **Reconsideration.** (a) If a provisional licensee whose assisted living facility license has been denied or extended with conditions disagrees with the conclusions of the commissioner, then the provisional licensee may request a reconsideration by the commissioner. The reconsideration request process must be conducted internally by the commissioner and chapter 14 does not apply.

(b) The provisional licensee requesting the reconsideration must make the request in writing and must list and describe the reasons why the provisional licensee disagrees with the decision to deny the facility license or the decision to extend the provisional license with conditions.

(c) The reconsideration request and supporting documentation must be received by the commissioner within 15 calendar days after the date the provisional licensee receives the denial or provisional license with conditions.

Subd. 4. **Continued operation.** A provisional licensee whose license is denied is permitted to continue operating during the period of time when:

(1) a reconsideration is in process;

(2) an extension of the provisional license and terms associated with it is in active negotiation between the commissioner and the licensee and the commissioner confirms the negotiation is active; or

(3) a transfer of residents to a new facility is underway and not all of the residents have relocated.

Subd. 5. **Requirements for notice and transfer.** A provisional licensee whose license is denied must comply with the requirements for notification and the coordinated move of residents in sections 144I.26 and 144I.263.

Subd. 6. **Fines.** The fee for failure to comply with the notification requirements in section 144I.26, subdivision 7, is \$1,000.

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

Sec. 5. **[144I.04] APPLICATION FOR LICENSURE.**

Subdivision 1. **License applications.** (a) Each application for an assisted living facility license, including provisional and renewal applications, must include information sufficient to show that the applicant meets the requirements of licensure, including:

(1) the business name and legal entity name of the licensee, and the street address and mailing address of the facility;

(2) the names, e-mail addresses, telephone numbers, and mailing addresses of all owners, controlling individuals, managerial officials, and the assisted living director;

(3) the name and e-mail address of the managing agent and manager, if applicable;

(4) the licensed resident capacity and the license category;

(5) the license fee in the amount specified in section 144.122;

(6) documentation of compliance with the background study requirements in section 144I.06 for the owner, controlling individuals, and managerial officials. Each application for a new license must include documentation for the applicant and for each individual with five percent or more direct or indirect ownership in the applicant;

(7) evidence of workers' compensation coverage as required by sections 176.181 and 176.182;

(8) documentation that the facility has liability coverage;

(9) a copy of the executed lease agreement between the landlord and the licensee, if applicable;

(10) a copy of the management agreement, if applicable;

(11) a copy of the operations transfer agreement or similar agreement, if applicable;

(12) an organizational chart that identifies all organizations and individuals with an ownership interest in the licensee of five percent or greater and that specifies their relationship with the licensee and with each other;

(13) whether the applicant, owner, controlling individual, managerial official, or assisted living director of the facility has ever been convicted of:

(i) a crime or found civilly liable for a federal or state felony level offense that was detrimental to the best interests of the facility and its resident within the last ten years preceding submission of the license application. Offenses include: felony crimes against persons and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions; financial crimes such as extortion, embezzlement, income tax evasion,, insurance fraud, and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions; any felonies involving malpractice that resulted in a conviction of criminal neglect or misconduct; and any felonies that would result in a mandatory exclusion under section 1128(a) of the Social Security Act;

(ii) any misdemeanor conviction, under federal or state law, related to: the delivery of an item or service under Medicaid or a state health care program, or the abuse or neglect of a patient in connection with the delivery of a health care item or service;

(iii) any misdemeanor conviction, under federal or state law, related to theft, fraud, embezzlement, breach of fiduciary duty, or other financial misconduct in connection with the delivery of a health care item or service;

(iv) any felony or misdemeanor conviction, under federal or state law, relating to the interference with or obstruction of any investigation into any criminal offense described in Code of Federal Regulations, title 42, section 1001.101 or 1001.201;

(v) any felony or misdemeanor conviction, under federal or state law, relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;

(vi) any felony or gross misdemeanor that relates to the operation of a nursing home or assisted living facility or directly affects resident safety or care during that period;

(vii) any revocation or suspension of a license to provide health care by any state licensing authority. This includes the surrender of such a license while a formal disciplinary proceeding was pending before a state licensing authority;

(viii) any revocation or suspension of accreditation; or

(ix) any suspension or exclusion from participation in, or any sanction imposed by, a federal or state health care program, or any debarment from participation in any federal executive branch procurement or non-procurement program;

(14) whether, in the preceding three years, the applicant or any owner, controlling individual, managerial official, or assisted living director of the facility has a record of defaulting in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings;

(15) the signature of the owner of the licensee, or an authorized agent of the licensee;

(16) identification of all states where the applicant or individual having a five percent or more ownership, currently or previously has been licensed as an owner or operator of a long-term care, community-based, or health care facility or agency where its license or federal certification has been denied, suspended, restricted, conditioned, refused, not renewed, or revoked under a private or state-controlled receivership, or where these same actions are pending under the laws of any state or federal authority;

(17) statistical information required by the commissioner; and

(18) any other information required by the commissioner.

Subd. 2. **Authorized agents.** (a) An application for an assisted living facility license or for renewal of a facility license must specify one or more owners, controlling individuals, or employees as authorized agents who can accept service on behalf of the licensee in proceedings under this chapter.

(b) Notwithstanding any law to the contrary, personal service on the authorized agent named in the application is deemed to be service on all of the controlling individuals or managerial officials of the facility, and it is not a defense to any action arising under this chapter that personal service was not made on each controlling individual or managerial official of the facility. The designation of one or more controlling individuals or managerial officials under this subdivision shall not affect the legal responsibility of any other controlling individual or managerial official under this chapter.

Subd. 3. **Fees.** (a) An initial applicant, renewal applicant, or applicant filing a change of ownership for assisted living facility licensure must submit the application fee required in section 144.122 to the commissioner along with a completed application.

(b) The penalty for late submission of the renewal application less than 30 days before the expiration date of the license or after expiration of the license is \$200. The penalty for operating a facility after expiration of the license and before a renewal license is issued, is \$250 each day after expiration of the license until the renewal license issuance date. The facility is still subject to the misdemeanor penalties for operating after license expiration.

(c) Fees collected under this section shall be deposited in the state treasury and credited to the state government special revenue fund. All fees are nonrefundable.

(d) Fines collected under this subdivision shall be deposited in a dedicated special revenue account. On an annual basis, the balance in the special revenue account shall be appropriated to the commissioner to implement the recommendations of the advisory council established in section 144A.4799.

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

#### Sec. 6. **[144L.05] TRANSFER OF LICENSE PROHIBITED.**

Subdivision 1. **Transfers prohibited.** An assisted living facility license may not be transferred to another party.

Subd. 2. **New license required.** (a) A prospective licensee must apply for a license prior to operating a currently licensed assisted living facility. The new license, if issued, shall not be a provisional license. The licensee must change whenever one of the following events occur:

(1) the form of the licensee's legal entity structure is converted or changed to a different type of legal entity structure;

(2) the licensee dissolves, consolidates, or merges with another legal organization and the licensee's legal organization does not survive;

(3) within the previous 24 months, 50 percent or more of the licensee is transferred, whether by a single transaction or multiple transactions, to:

(i) a different person; or

(ii) a person who had less than a five percent ownership interest in the facility at the time of the first transaction; or

(4) any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's responsibility for the facility.

(b) The prospective licensee must provide written notice to the department at least 60 calendar days prior to the anticipated date of the change of licensee.

Subd. 3. **Survey required.** For all new licensees after a change of ownership, the commissioner shall complete a survey within six months after the new license is issued.

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

#### Sec. 7. [144I.06] BACKGROUND STUDIES.

Subdivision 1. **Background studies required.** (a) Before the commissioner issues a provisional license, issues a license as a result of an approved change of ownership, or renews a license, a managerial official or a natural person who is an owner with direct ownership interest is required to undergo a background study under section 144.057. No person may be involved in the management, operation, or control of an assisted living facility if the person has been disqualified under chapter 245C. For the purposes of this section, managerial officials subject to the background study requirement are individuals who provide direct contact.

(b) The commissioner shall not issue a license if any controlling individual, including a managerial official, has been unsuccessful in having a background study disqualification set aside under section 144.057 and chapter 245C.

(c) Employees, contractors, and regularly-scheduled volunteers of the facility are subject to the background study required by section 144.057 and may be disqualified under chapter 245C. Nothing in this section shall be construed to prohibit the facility from requiring self-disclosure of criminal conviction information.

Subd. 2. **Reconsideration.** If an individual is disqualified under section 144.057 or chapter 245C, the individual may request reconsideration of the disqualification. If the individual requests reconsideration and the commissioner sets aside or rescinds the disqualification, the individual is eligible to be involved in the management, operation, or control of the facility. If an individual has a disqualification under section 245C.15, subdivision 1, and the disqualification is affirmed, the individual's disqualification is barred from a set aside, and the individual must not be involved in the management, operation, or control of the facility.

Subd. 3. **Data classification.** Data collected under this section shall be classified as private data on individuals under section 13.02, subdivision 12.

Subd. 4. **Termination in good faith.** Termination of an employee in good faith reliance on information or records obtained under this section regarding a confirmed conviction does not subject the assisted living facility to civil liability or liability for unemployment benefits.

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

#### Sec. 8. [144I.07] LICENSE RENEWAL.

A license that is not a provisional license may be renewed for a period of up to one year if the licensee:

(1) submits an application for renewal in the format provided by the commissioner at least 60 calendar days before expiration of the license;

(2) submits the renewal fee under section 144I.04, subdivision 3;



(3) submits the late fee under section 144I.04, subdivision 3, if the renewal application is received less than 30 days before the expiration date of the license or after the expiration of the license;

(4) provides information sufficient to show that the applicant meets the requirements of licensure, including items required under section 144I.04, subdivision 1; and

(5) provides any other information deemed necessary by the commissioner.

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

**Sec. 9. [144I.08] NOTIFICATION OF CHANGES IN INFORMATION.**

A provisional licensee or licensee shall notify the commissioner in writing prior to a change in the manager or authorized agent and within 60 calendar days after any change in the information required in section 144I.04, subdivision 1, paragraph (a), clause (1), (3), (4), (17), or (18).

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

**Sec. 10. [144I.09] CONSIDERATION OF APPLICATIONS.**

(a) Before issuing a provisional license or license or renewing a license, the commissioner shall consider an applicant's compliance history in providing care in a facility that provides care to children, the elderly, ill individuals, or individuals with disabilities.

(b) The applicant's compliance history shall include repeat violation, rule violations, and any license or certification involuntarily suspended or terminated during an enforcement process.

(c) The commissioner may deny, revoke, suspend, restrict, or refuse to renew the license or impose conditions if:

(1) the applicant fails to provide complete and accurate information on the application and the commissioner concludes that the missing or corrected information is needed to determine if a license shall be granted;

(2) the applicant, knowingly or with reason to know, made a false statement of a material fact in an application for the license or any data attached to the application or in any matter under investigation by the department;

(3) the applicant refused to allow agents of the commissioner to inspect its books, records, and files related to the license application, or any portion of the premises;

(4) the applicant willfully prevented, interfered with, or attempted to impede in any way: (i) the work of any authorized representative of the commissioner, the ombudsman for long-term care, or the ombudsman for mental health and developmental disabilities; or (ii) the duties of the commissioner, local law enforcement, city or county attorneys, adult protection, county case managers, or other local government personnel;

(5) the applicant has a history of noncompliance with federal or state regulations that were detrimental to the health, welfare, or safety of a resident or a client; or

(6) the applicant violates any requirement in this chapter.

(d) If a license is denied, the applicant has the reconsideration rights available under section 144I.03, subdivision 3.

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

Sec. 11. **[144I.10] MINIMUM ASSISTED LIVING FACILITY REQUIREMENTS.**

Subdivision 1. **Minimum requirements.** (a) All assisted living facilities shall:

(1) distribute to residents the assisted living bill of rights;

(2) provide services in a manner that complies with the Nurse Practice Act in sections 148.171 to 148.285;

(3) utilize a person-centered planning and service delivery process;

(4) have and maintain a system for delegation of health care activities to unlicensed personnel by a registered nurse, including supervision and evaluation of the delegated activities as required by the Nurse Practice Act in sections 148.171 to 148.285;

(5) provide a means for residents to request assistance for health and safety needs 24 hours per day, seven days per week;

(6) allow residents the ability to furnish and decorate the resident's unit within the terms of the assisted living contract;

(7) permit residents access to food at any time;

(8) allow residents to choose the resident's visitors and times of visits;

(9) allow the resident the right to choose a roommate if sharing a unit;

(10) notify the resident of the resident's right to have and use a lockable door to the resident's unit. The licensee shall provide the locks on the unit. Only a staff member with a specific need to enter the unit shall have keys, and advance notice must be given to the resident before entrance, when possible. An assisted living facility must not lock a resident in the resident's unit;

(11) develop and implement a staffing plan for determining its staffing level that:

(i) includes an evaluation, to be conducted at least twice a year, of the appropriateness of staffing levels in the facility;

(ii) ensures sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled needs of each resident as required by the residents' assessments and service plans on a 24-hour per day basis; and

(iii) ensures that the facility can respond promptly and effectively to individual resident emergencies and to emergency, life safety, and disaster situations affecting staff or residents in the facility;

(12) ensures that one or more persons are available 24 hours per day, seven days per week, who are responsible for responding to the requests of residents for assistance with health or safety needs. Such persons must be:

(i) awake;

(ii) located in the same building, in an attached building, or on a contiguous campus with the facility in order to respond within a reasonable amount of time;

(iii) capable of communicating with residents;

(iv) capable of providing or summoning the appropriate assistance;

(v) capable of following directions; and

(vi) for an assisted living facility with dementia care providing services in a secured dementia care unit, an awake person must be physically present in the secured dementia care unit; and

(13) offer to provide or make available at least the following services to residents:

(i) at least three nutritious meals daily with snacks available seven days per week, according to the recommended dietary allowances in the United States Department of Agriculture (USDA) guidelines, including seasonal fresh fruit and fresh vegetables. The following apply:

(A) menus must be prepared at least one week in advance, and made available to all residents. The facility must encourage residents' involvement in menu planning. Meal substitutions must be of similar nutritional value if a resident refuses a food that is served. Residents must be informed in advance of menu changes;

(B) food must be prepared and served according to the Minnesota Food Code, Minnesota Rules, chapter 4626; and

(C) the facility cannot require a resident to include and pay for meals in their contract;

(ii) weekly housekeeping;

(iii) weekly laundry service;

(iv) upon the request of the resident, provide direct or reasonable assistance with arranging for transportation to medical and social services appointments, shopping, and other recreation, and provide the name of or other identifying information about the persons responsible for providing this assistance;

(v) upon the request of the resident, provide reasonable assistance with accessing community resources and social services available in the community, and provide the name of or other identifying information about persons responsible for providing this assistance;

(vi) provide culturally sensitive programs; and

(vii) have a daily program of social and recreational activities that are based upon individual and group interests, physical, mental, and psychosocial needs, and that creates opportunities for active participation in the community at large.

(b) The resident's rights in section 144I.101, subdivisions 12, 13, and 18, may be restricted for an individual resident only if determined necessary for health and safety reasons identified by the facility through an initial assessment or reassessment under section 144I.16, subdivision 2, and documented in the written service plan under section 144I.16, subdivision 4. Any restrictions of those rights for people served under sections 256B.0915 and 256B.49 must be documented by the case manager in the resident's coordinated service and support plan (CSSP), as defined in sections 256B.0915, subdivision 6, and 256B.49, subdivision 15. Nothing in this section affects other laws applicable to or prohibiting restrictions on the resident's rights in section 144I.101, subdivisions 12, 13, and 18.

Subd. 2. **Policies and procedures.** Each assisted living facility must have policies and procedures in place to address the following and keep them current:

(1) requirements in section 626.557, reporting of maltreatment of vulnerable adults;

- (2) conducting and handling background studies on employees;
- (3) orientation, training, and competency evaluations of staff, and a process for evaluating staff performance;
- (4) handling complaints regarding staff or services provided by staff;
- (5) conducting initial evaluations of residents' needs and the providers' ability to provide those services;
- (6) conducting initial and ongoing resident evaluations and assessments of resident needs, including assessments by a registered nurse or appropriate licensed health professional, and how changes in a resident's condition are identified, managed, and communicated to staff and other health care providers as appropriate;
- (7) orientation to and implementation of the assisted living bill of rights;
- (8) infection control practices;
- (9) reminders for medications, treatments, or exercises, if provided;
- (10) conducting appropriate screenings, or documentation of prior screenings, to show that staff are free of tuberculosis, consistent with current United States Centers for Disease Control and Prevention standards;
- (11) ensuring that nurses and licensed health professionals have current and valid licenses to practice;
- (12) medication and treatment management;
- (13) delegation of tasks by registered nurses or licensed health professionals;
- (14) supervision of registered nurses and licensed health professionals; and
- (15) supervision of unlicensed personnel performing delegated tasks.

Subd. 3. **Infection control program.** All assisted living facilities must establish and maintain an infection control program.

Subd. 4. **Clinical nurse supervision.** All assisted living facilities must have a clinical nurse supervisor who is a registered nurse licensed in Minnesota.

Subd. 5. **Resident councils.** The facility must provide a resident council with space and privacy for meetings, where doing so is reasonably achievable. Staff, visitors, and other guests may attend a resident council meeting only at the council's invitation. The facility must designate a staff person who is approved by the resident council to be responsible for providing assistance and responding to written requests that result from meetings. The facility must consider the views of the resident council and must respond promptly to the grievances and recommendations of the council, but a facility is not required to implement as recommended every request of the council. The facility shall, with the approval of the resident council, take reasonably achievable steps to make residents aware of upcoming meetings in a timely manner.

Subd. 6. **Family councils.** The facility must provide a family council with space and privacy for meetings, where doing so is reasonably achievable. The facility must designate a staff person who is approved by the family council to be responsible for providing assistance and responding to written requests that result from meetings. The facility must consider the views of the family council and must respond promptly to the grievances and recommendations of the council, but a facility is not required to implement as recommended every request of the council. The facility shall, with the approval of the family council, take reasonably achievable steps to make residents and family members aware of upcoming meetings in a timely manner.

Subd. 7. **Resident grievances; reporting maltreatment.** All facilities must post in a conspicuous place information about the facilities' grievance procedure, and the name, telephone number, and e-mail contact information for the individuals who are responsible for handling resident grievances. The notice must also have the contact information for the state and applicable regional Office of Ombudsman for Long-Term Care and the Office of Ombudsman for Mental Health and Developmental Disabilities, and must have information for reporting suspected maltreatment to the Minnesota Adult Abuse Reporting Center.

Subd. 8. **Protecting resident rights.** All facilities shall ensure that every resident has access to consumer advocacy or legal services by:

(1) providing names and contact information, including telephone numbers and e-mail addresses of at least three organizations that provide advocacy or legal services to residents;

(2) providing the name and contact information for the Minnesota Office of Ombudsman for Long-Term Care and the Office of the Ombudsman for Mental Health and Developmental Disabilities, including both the state and regional contact information;

(3) assisting residents in obtaining information on whether Medicare or medical assistance under chapter 256B will pay for services;

(4) making reasonable accommodations for people who have communication disabilities and those who speak a language other than English; and

(5) providing all information and notices in plain language and in terms the residents can understand.

Subd. 9. **Payment for services under disability waivers.** For new assisted living facilities that did not operate as registered housing with services establishments prior to August 1, 2021, home and community-based services under section 256B.49 are not available when the new facility setting is adjoined to, or on the same property as, an institution as defined in Code of Federal Regulations, title 42, section 441.301(c).

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

## Sec. 12. [144L.101] ASSISTED LIVING BILL OF RIGHTS.

Subdivision 1. **Applicability.** This section applies to residents living in assisted living facilities.

Subd. 2. **Legislative intent.** The rights established under this section for the benefit of residents do not limit any other rights available under law. No facility may request or require that any resident waive any of these rights at any time for any reason, including as a condition of admission to the facility.

Subd. 3. **Information about rights.** Before receiving services, residents have the right to be informed by the facility of the rights granted under this section and the recourse residents have if rights are violated. The information must be in plain language and in terms residents can understand. The facility must make reasonable accommodations for residents who have communication disabilities and those who speak a language other than English.

Subd. 4. **Appropriate care and services.** (a) Residents have the right to care and assisted living services that are appropriate based on the resident's needs and according to an up-to-date service plan subject to accepted health care standards.

(b) Residents have the right to receive health care and other assisted living services with continuity from people who are properly trained and competent to perform their duties and in sufficient numbers to adequately provide the services agreed to in the assisted living contract and the service plan.

Subd. 5. **Refusal of care or services.** Residents have the right to refuse care or assisted living services and to be informed by the facility of the medical, health-related, or psychological consequences of refusing care or services.

Subd. 6. **Participation in care and service planning.** Residents have the right to actively participate in the planning, modification, and evaluation of their care and services. This right includes:

(1) the opportunity to discuss care, services, treatment, and alternatives with the appropriate caregivers;

(2) the right to include the resident's legal and designated representatives and persons of the resident's choosing; and

(3) the right to be told in advance of, and take an active part in decisions regarding, any recommended changes in the service plan.

Subd. 7. **Courteous treatment.** Residents have the right to be treated with courtesy and respect, and to have the resident's property treated with respect.

Subd. 8. **Freedom from maltreatment.** Residents have the right to be free from physical, sexual, and emotional abuse; neglect; financial exploitation; and all forms of maltreatment covered under the Vulnerable Adults Act.

Subd. 9. **Right to come and go freely.** Residents have the right to enter and leave the facility as they choose. This right may be restricted only as allowed by other law and consistent with a resident's service plan.

Subd. 10. **Individual autonomy.** Residents have the right to individual autonomy, initiative, and independence in making life choices, including establishing a daily schedule and choosing with whom to interact.

Subd. 11. **Right to control resources.** Residents have the right to control personal resources.

Subd. 12. **Visitors and social participation.** (a) Residents have the right to meet with or receive visits at any time by the resident's family, guardian, conservator, health care agent, attorney, advocate, or religious or social work counselor, or any person of the resident's choosing. This right may be restricted in certain circumstances if necessary for the resident's health and safety and if documented in the resident's service plan.

(b) Residents have the right to engage in community life and in activities of their choice. This includes the right to participate in commercial, religious, social, community, and political activities without interference and at their discretion if the activities do not infringe on the rights of other residents.

Subd. 13. **Personal and treatment privacy.** (a) Residents have the right to consideration of their privacy, individuality, and cultural identity as related to their social, religious, and psychological well-being. Staff must respect the privacy of a resident's space by knocking on the door and seeking consent before entering, except in an emergency or where clearly inadvisable or unless otherwise documented in the resident's service plan.

(b) Residents have the right to have and use a lockable door to the resident's unit. The facility shall provide locks on the resident's unit. Only a staff member with a specific need to enter the unit shall have keys. This right may be restricted in certain circumstances if necessary for a resident's health and safety and documented in the resident's service plan.

(c) Residents have the right to respect and privacy regarding the resident's service plan. Case discussion, consultation, examination, and treatment are confidential and must be conducted discreetly. Privacy must be respected during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance.

Subd. 14. **Communication privacy.** (a) Residents have the right to communicate privately with persons of their choice.

(b) If an assisted living facility is sending or receiving mail on behalf of residents, the assisted living facility must do so without interference.

(c) Residents must be provided access to a telephone to make and receive calls.

Subd. 15. **Confidentiality of records.** (a) Residents have the right to have personal, financial, health, and medical information kept private, to approve or refuse release of information to any outside party, and to be advised of the assisted living facility's policies and procedures regarding disclosure of the information. Residents must be notified when personal records are requested by any outside party.

(b) Residents have the right to access their own records.

Subd. 16. **Right to furnish and decorate.** Residents have the right to furnish and decorate the resident's unit within the terms of the assisted living contract.

Subd. 17. **Right to choose roommate.** Residents have the right to choose a roommate if sharing a unit.

Subd. 18. **Right to access food.** Residents have the right to access food at any time. This right may be restricted in certain circumstances if necessary for the resident's health and safety and if documented in the resident's service plan.

Subd. 19. **Access to technology.** Residents have the right to access Internet service at their expense.

Subd. 20. **Grievances and inquiries.** Residents have the right to make and receive a timely response to a complaint or inquiry, without limitation. Residents have the right to know and every facility must provide the name and contact information of the person representing the facility who is designated to handle and resolve complaints and inquiries.

Subd. 21. **Access to counsel and advocacy services.** Residents have the right to the immediate access by:

(1) the resident's legal counsel;

(2) any representative of the protection and advocacy system designated by the state under Code of Federal Regulations, title 45, section 1326.21; or

(3) any representative of the Office of Ombudsman for Long-Term Care.

Subd. 22. **Information about charges.** Before services are initiated, residents have the right to be notified:

(1) of all charges for housing and assisted living services;

(2) of any limits on housing and assisted living services available;

(3) if known, whether and what amount of payment may be expected from health insurance, public programs, or other sources; and

(4) what charges the resident may be responsible for paying.

**Subd. 23. Information about individuals providing services.** Before receiving services identified in the service plan, residents have the right to be told the type and disciplines of staff who will be providing the services, the frequency of visits proposed to be furnished, and other choices that are available for addressing the resident's needs.

**Subd. 24. Information about other providers and services.** Residents have the right to be informed by the assisted living facility, prior to executing an assisted living contract, that other public and private services may be available and that the resident has the right to purchase, contract for, or obtain services from a provider other than the assisted living facility.

**Subd. 25. Resident councils.** Residents have the right to organize and participate in resident councils as described in section 144I.10, subdivision 5.

**Subd. 26. Family councils.** Residents have the right to participate in family councils formed by families or residents as described in section 144I.10, subdivision 6.

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

### Sec. 13. **[144I.11] HOUSING AND SERVICES.**

**Subdivision 1. Responsibility for housing and services.** The facility is directly responsible to the resident for all housing and service-related matters provided, irrespective of a management contract. Housing and service-related matters include but are not limited to the handling of complaints, the provision of notices, and the initiation of any adverse action against the resident involving housing or services provided by the facility.

**Subd. 2. Uniform checklist disclosure of services.** (a) All assisted living facilities must provide to prospective residents:

(1) a disclosure of the categories of assisted living licenses available and the category of license held by the facility;

(2) a written checklist listing all services permitted under the facility's license, identifying all services the facility offers to provide under the assisted living facility contract, and identifying all services allowed under the license that the facility does not provide; and

(3) an oral explanation of the services offered under the contract.

(b) The requirements of paragraph (a) must be completed prior to the execution of the assisted living contract.

(c) The commissioner must, in consultation with all interested stakeholders, design the uniform checklist disclosure form for use as provided under paragraph (a).

**Subd. 3. Reservation of rights.** Nothing in this chapter:



(1) requires a resident to utilize any service provided by or through, or made available in, a facility;

(2) prevents a facility from requiring, as a condition of the contract, that the resident pay for a package of services even if the resident does not choose to use all or some of the services in the package. For residents who are eligible for home and community-based waiver services under sections 256B.0915 and 256B.49, payment for services will follow the policies of those programs;

(3) requires a facility to fundamentally alter the nature of the operations of the facility in order to accommodate a resident's request; or

(4) affects the duty of a facility to grant a resident's request for reasonable accommodations.

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

#### Sec. 14. [144L.12] TRANSFER OF RESIDENTS WITHIN FACILITY.

Subdivision 1. **Definition.** For the purposes of this section, "transfer" means a move of a resident within the facility to a different room or other private living unit.

Subd. 2. **Orderly transfer.** A facility must provide for the safe, orderly, coordinated, and appropriate transfer of residents within the facility.

Subd. 3. **Notice required.** (a) A facility must provide at least 30 calendar days' advance written notice to the resident and the resident's legal and designated representative of a facility-initiated transfer. The notice must include:

(1) the effective date of the proposed transfer;

(2) the proposed transfer location;

(3) a statement that the resident may refuse the proposed transfer, and may discuss any consequences of a refusal with staff of the facility;

(4) the name and contact information of a person employed by the facility with whom the resident may discuss the notice of transfer; and

(5) contact information for the Office of Ombudsman for Long-Term Care.

(b) Notwithstanding paragraph (a), a facility may conduct a facility-initiated transfer of a resident with less than 30 days' written notice if the transfer is necessary due to:

(1) conditions that render the resident's room or private living unit uninhabitable;

(2) the resident's urgent medical needs; or

(3) a risk to the health or safety of another resident of the facility.

Subd. 4. **Consent required.** The facility may not transfer a resident without first obtaining the resident's consent to the transfer unless:

(1) there are conditions that render the resident's room or private living unit uninhabitable; or

(2) there is a change in facility operations as described in subdivision 5.

Subd. 5. **Changes in facility operations.** (a) In situations where there is a curtailment, reduction, or capital improvement within a facility necessitating transfers, the facility must:

- (1) minimize the number of transfers it initiates to complete the project or change in operations;
- (2) consider individual resident needs and preferences;
- (3) provide reasonable accommodations for individual resident requests regarding the transfers; and

(4) in advance of any notice to any residents, legal representatives, or designated representatives, provide notice to the Office of Ombudsman for Long-Term Care and, when appropriate, the Office of Ombudsman for Mental Health and Developmental Disabilities of the curtailment, reduction, or capital improvement and the corresponding needed transfers.

Subd. 6. **Evaluation.** If a resident consents to a transfer, reasonable modifications must be made to the new room or private living unit that are necessary to accommodate the resident's disabilities. The facility must evaluate the resident's individual needs before deciding whether the room or unit to which the resident will be moved is appropriate to the resident's psychological, cognitive, and health care needs, including the accessibility of the bathroom.

Subd. 7. **Disclosure.** When entering into the assisted living contract, the facility must provide a conspicuous notice of the circumstance under which the facility may require a transfer, including any transfer that may be required if the resident will be receiving housing support under section 256I.06.

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

## Sec. 15. [144I.13] BUSINESS OPERATION.

Subdivision 1. **Display of license.** The original current license must be displayed at the main entrance of each assisted living facility. The facility must provide a copy of the license to any person who requests it.

Subd. 2. **Quality management.** The facility shall engage in quality management appropriate to the size of the facility and relevant to the type of services provided. The quality management activity means evaluating the quality of care by periodically reviewing resident services, complaints made, and other issues that have occurred and determining whether changes in services, staffing, or other procedures need to be made in order to ensure safe and competent services to residents. Documentation about quality management activity must be available for two years. Information about quality management must be available to the commissioner at the time of the survey, investigation, or renewal.

Subd. 3. **Facility restrictions.** (a) This subdivision does not apply to licensees that are Minnesota counties or other units of government.

(b) A facility or staff person may not:

(1) accept a power-of-attorney from residents for any purpose, and may not accept appointments as guardians or conservators of residents; or

(2) borrow a resident's funds or personal or real property, nor in any way convert a resident's property to the possession of the facility or staff person.

(c) A facility may not serve as a resident's legal, designated, or other representative.

(d) Nothing in this subdivision precludes a facility or staff person from accepting gifts of minimal value or precludes acceptance of donations or bequests made to a facility that are exempt from section 501(c)(3) of the Internal Revenue Code.

Subd. 4. **Handling residents' finances and property.** (a) A facility may assist residents with household budgeting, including paying bills and purchasing household goods, but may not otherwise manage a resident's property.

(b) Where funds are deposited with the facility by the resident, the licensee:

(1) retains fiduciary and custodial responsibility for the funds;

(2) is directly accountable to the resident for the funds; and

(3) must maintain records of and provide a resident with receipts for all transactions and purchases made with the resident's funds. When receipts are not available, the transaction or purchase must be documented.

(c) Subject to paragraph (d), if responsibilities for day-to-day management of the resident funds are delegated to the manager, the manager must:

(1) provide the licensee with a monthly accounting of the resident funds; and

(2) meet all legal requirements related to holding and accounting for resident funds.

(d) The facility must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds and provides proof of the bond or insurance.

Subd. 5. **Final accounting; return of money and property.** Within 30 days of the effective date of a facility-initiated or resident-initiated termination of housing or services or the death of the resident, the facility must:

(1) provide to the resident, resident's legal representative, and resident's designated representative a final statement of account;

(2) provide any refunds due;

(3) return any money, property, or valuables held in trust or custody by the facility; and

(4) as required under section 504B.178, refund the resident's security deposit unless it is applied to the first month's charges.

Subd. 6. **Compliance with requirements for reporting maltreatment of vulnerable adults; abuse prevention plan.** (a) The assisted living facility must comply with the requirements for the reporting of maltreatment of vulnerable adults in section 626.557. The facility must establish and implement a written procedure to ensure that all cases of suspected maltreatment are reported.

(b) The facility must develop and implement an individual abuse prevention plan for each vulnerable adult. The plan shall contain an individualized review or assessment of the person's susceptibility to abuse by another individual, including other vulnerable adults; the person's risk of abusing other vulnerable adults; and statements of the specific measures to be taken to minimize the risk of abuse to that person and other vulnerable adults. For purposes of the abuse prevention plan, abuse includes self-abuse.

**Subd. 7. Posting information for reporting suspected crime and maltreatment.** The facility shall support protection and safety through access to the state's systems for reporting suspected criminal activity and suspected vulnerable adult maltreatment by:

(1) posting the 911 emergency number in common areas and near telephones provided by the assisted living facility;

(2) posting information and the reporting number for the Minnesota Adult Abuse Reporting Center to report suspected maltreatment of a vulnerable adult under section 626.557; and

(3) providing reasonable accommodations with information and notices in plain language.

**Subd. 8. Employee records.** (a) The facility must maintain current records of each paid employee, each regularly scheduled volunteer providing services, and each individual contractor providing services. The records must include the following information:

(1) evidence of current professional licensure, registration, or certification if licensure, registration, or certification is required by this chapter or rules;

(2) records of orientation, required annual training and infection control training, and competency evaluations;

(3) current job description, including qualifications, responsibilities, and identification of staff persons providing supervision;

(4) documentation of annual performance reviews that identify areas of improvement needed and training needs;

(5) for individuals providing assisted living services, verification that required health screenings under subdivision 9, have taken place and the dates of those screenings; and

(6) documentation of the background study as required under section 144.057.

(b) Each employee record must be retained for at least three years after a paid employee, volunteer, or contractor ceases to be employed by, provide services at, or be under contract with the facility. If a facility ceases operation, employee records must be maintained for three years after facility operations cease.

**Subd. 9. Tuberculosis prevention and control.** The facility must establish and maintain a comprehensive tuberculosis infection control program according to the most current tuberculosis infection control guidelines issued by the United States Centers for Disease Control and Prevention (CDC), Division of Tuberculosis Elimination, as published in the CDC's Morbidity and Mortality Weekly Report (MMWR). The program must include a tuberculosis infection control plan that covers all paid and unpaid employees, contractors, students, and regularly scheduled volunteers. The commissioner shall provide technical assistance regarding implementation of the guidelines.

**Subd. 10. Disaster planning and emergency preparedness plan.** (a) The facility must meet the following requirements:

(1) have a written emergency disaster plan that contains a plan for evacuation, addresses elements of sheltering in place, identifies temporary relocation sites, and details staff assignments in the event of a disaster or an emergency;

(2) post an emergency disaster plan prominently;

(3) provide building emergency exit diagrams to all residents;

(4) post emergency exit diagrams on each floor; and

(5) have a written policy and procedure regarding missing tenant residents.

(b) The facility must provide emergency and disaster training to all staff during the initial staff orientation and annually thereafter and must make emergency and disaster training annually available to all residents. Staff who have not received emergency and disaster training are allowed to work only when trained staff are also working on site.

(c) The facility must meet any additional requirements adopted in rule.

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

#### Sec. 16. [144L.14] STAFFING AND SUPERVISORY REQUIREMENTS.

Subdivision 1. **Qualifications, training, and competency.** All staff persons providing assisted living services must be trained and competent in the provision of services consistent with current practice standards appropriate to the resident's needs, and promote and be trained to support the assisted living bill of rights.

Subd. 2. **Licensed health professionals and nurses.** (a) Licensed health professionals and nurses providing services as employees of a licensed facility must possess a current Minnesota license or registration to practice.

(b) Licensed health professionals and registered nurses must be competent in assessing resident needs, planning appropriate services to meet resident needs, implementing services, and supervising staff if assigned.

(c) Nothing in this section limits or expands the rights of nurses or licensed health professionals to provide services within the scope of their licenses or registrations, as provided by law.

Subd. 3. **Unlicensed personnel.** (a) Unlicensed personnel providing assisted living services must have:

(1) successfully completed a training and competency evaluation appropriate to the services provided by the facility and the topics listed in subdivision 10, paragraph (b); or

(2) demonstrated competency by satisfactorily completing a written or oral test on the tasks the unlicensed personnel will perform and on the topics listed in subdivision 10, paragraph (b); and successfully demonstrated competency of topics in subdivision 10, paragraph (b), clauses (5), (7), and (8), by a practical skills test.

Unlicensed personnel who only provide assisted living services listed in section 144I.01, subdivision 9, clauses (1) to (5), shall not perform delegated nursing or therapy tasks.

(b) Unlicensed personnel performing delegated nursing tasks in an assisted living facility must:

(1) have successfully completed training and demonstrated competency by successfully completing a written or oral test of the topics in subdivision 10, paragraphs (b) and (c), and a practical skills test on tasks listed in subdivision 10, paragraphs (b), clauses (5) and (7), and (c), clauses (3), (5), (6), and (7), and all the delegated tasks they will perform;

(2) satisfy the current requirements of Medicare for training or competency of home health aides or nursing assistants, as provided by Code of Federal Regulations, title 42, section 483 or 484.36; or

(3) have, before April 19, 1993, completed a training course for nursing assistants that was approved by the commissioner.

(c) Unlicensed personnel performing therapy or treatment tasks delegated or assigned by a licensed health professional must meet the requirements for delegated tasks in subdivision 7 and any other training or competency requirements within the licensed health professional's scope of practice relating to delegation or assignment of tasks to unlicensed personnel.

Subd. 4. **Availability of contact person to staff.** (a) Assisted living facilities must have a registered nurse available for consultation by staff performing delegated nursing tasks and must have an appropriate licensed health professional available if performing other delegated services such as therapies.

(b) The appropriate contact person must be readily available either in person, by telephone, or by other means to the staff at times when the staff is providing services.

Subd. 5. **Supervision of staff.** (a) Staff who only provide assisted living services specified in section 144I.01, subdivision 9, clauses (1) to (5), must be supervised periodically where the services are being provided to verify that the work is being performed competently and to identify problems and solutions to address issues relating to the staff's ability to provide the services. The supervision of the unlicensed personnel must be done by staff of the facility having the authority, skills, and ability to provide the supervision of unlicensed personnel and who can implement changes as needed, and train staff.

(b) Supervision includes direct observation of unlicensed personnel while the unlicensed personnel are providing the services and may also include indirect methods of gaining input such as gathering feedback from the resident. Supervisory review of staff must be provided at a frequency based on the staff person's competency and performance.

Subd. 6. **Supervision of staff providing delegated nursing or therapy tasks.** (a) Staff who perform delegated nursing or therapy tasks must be supervised by an appropriate licensed health professional or a registered nurse according to the assisted living facility's policy where the services are being provided to verify that the work is being performed competently and to identify problems and solutions related to the staff person's ability to perform the tasks. Supervision of staff performing medication or treatment administration shall be provided by a registered nurse or appropriate licensed health professional and must include observation of the staff administering the medication or treatment and the interaction with the resident.

(b) The direct supervision of staff performing delegated tasks must be provided within 30 calendar days after the date on which the individual begins working for the facility and first performs the delegated tasks for residents and thereafter as needed based on performance. This requirement also applies to staff who have not performed delegated tasks for one year or longer.

Subd. 7. **Delegation of assisted living services.** A registered nurse or licensed health professional may delegate tasks only to staff who are competent and possess the knowledge and skills consistent with the complexity of the tasks and according to the appropriate Minnesota practice act. The assisted living facility must establish and implement a system to communicate up-to-date information to the registered nurse or licensed health professional regarding the current available staff and their competency so the registered nurse or licensed health professional has sufficient information to determine the appropriateness of delegating tasks to meet individual resident needs and preferences.

Subd. 8. **Documentation.** A facility must retain documentation of supervision activities in the personnel records.

Subd. 9. **Temporary staff.** When a facility contracts with a temporary staffing agency, those individuals must meet the same requirements required by this section for personnel employed by the facility and shall be treated as if they are staff of the facility.

Subd. 10. **Instructor and competency evaluation requirements; training for unlicensed personnel.** (a) Instructors and competency evaluators must meet the following requirements:

(1) training and competency evaluations of unlicensed personnel who only provide assisted living services specified in section 144I.01, subdivision 9, clauses (1) to (5), must be conducted by individuals with work experience and training in providing these services; and

(2) training and competency evaluations of unlicensed personnel providing assisted living services must be conducted by a registered nurse, or another instructor may provide training in conjunction with the registered nurse.

(b) Training and competency evaluations for all unlicensed personnel must include the following:

(1) documentation requirements for all services provided;

(2) reports of changes in the resident's condition to the supervisor designated by the facility;

(3) basic infection control, including blood-borne pathogens;

(4) maintenance of a clean and safe environment;

(5) appropriate and safe techniques in personal hygiene and grooming, including:

(i) hair care and bathing;

(ii) care of teeth, gums, and oral prosthetic devices;

(iii) care and use of hearing aids; and

(iv) dressing and assisting with toileting;

(6) training on the prevention of falls;

(7) standby assistance techniques and how to perform them;

(8) medication, exercise, and treatment reminders;

(9) basic nutrition, meal preparation, food safety, and assistance with eating;

(10) preparation of modified diets as ordered by a licensed health professional;

(11) communication skills that include preserving the dignity of the resident and showing respect for the resident and the resident's preferences, cultural background, and family;

(12) awareness of confidentiality and privacy;

(13) understanding appropriate boundaries between staff and residents and the resident's family;

(14) procedures to use in handling various emergency situations; and

(15) awareness of commonly used health technology equipment and assistive devices.

(c) In addition to paragraph (b), training and competency evaluation for unlicensed personnel providing assisted living services must include:

- (1) observing, reporting, and documenting resident status;
- (2) basic knowledge of body functioning and changes in body functioning, injuries, or other observed changes that must be reported to appropriate personnel;
- (3) reading and recording temperature, pulse, and respirations of the resident;
- (4) recognizing physical, emotional, cognitive, and developmental needs of the resident;
- (5) safe transfer techniques and ambulation;
- (6) range of motioning and positioning; and
- (7) administering medications or treatments as required.

(d) When the registered nurse or licensed health professional delegates tasks, that person must ensure that prior to the delegation the unlicensed personnel is trained in the proper methods to perform the tasks or procedures for each resident and are able to demonstrate the ability to competently follow the procedures and perform the tasks. If an unlicensed personnel has not regularly performed the delegated assisted living task for a period of 24 consecutive months, the unlicensed personnel must demonstrate competency in the task to the registered nurse or appropriate licensed health professional. The registered nurse or licensed health professional must document instructions for the delegated tasks in the resident's record.

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

Sec. 17. **[144I.15] REQUIRED NOTICES.**

Subdivision 1. **Assisted living bill of rights; notification to resident.** (a) An assisted living facility must provide the resident a written notice of the rights under section 144I.101 before the initiation of services to that resident. The facility shall make all reasonable efforts to provide notice of the rights to the resident in a language the resident can understand.

(b) In addition to the text of the assisted living bill of rights in section 144I.101, the notice shall also contain the following statement describing how to file a complaint or report suspected abuse.

"If you want to report suspected abuse, neglect, or financial exploitation, you may contact the Minnesota Adult Abuse Reporting Center (MAARC). If you have a complaint about the facility or person providing your services, you may contact the Office of Health Facility Complaints, Minnesota Department of Health. You may also contact the Office of Ombudsman for Long-Term Care or the Office of Ombudsman for Mental Health and Developmental Disabilities."

(c) The statement must include contact information for the Minnesota Adult Abuse Reporting Center and the telephone number, website address, e-mail address, mailing address, and street address of the Office of Health Facility Complaints at the Minnesota Department of Health, the Office of Ombudsman for Long-Term Care, and the Office of Ombudsman for Mental Health and Developmental Disabilities. The statement must include the facility's name, address, e-mail, telephone number, and name or title of the person at the facility to whom problems or complaints may be directed. It must also include a statement that the facility will not retaliate because of a complaint.



(d) A facility must obtain written acknowledgment from the resident of the resident's receipt of the assisted living bill of rights or shall document why an acknowledgment cannot be obtained. Acknowledgment of receipt shall be retained in the resident's record.

Subd. 2. **Notices in plain language; language accommodations.** A facility must provide all notices in plain language that residents can understand and make reasonable accommodations for residents who have communication disabilities and those whose primary language is a language other than English.

Subd. 3. **Notice of dementia training.** An assisted living facility with dementia care shall make available in written or electronic form, to residents and families or other persons who request it, a description of the training program and related training it provides, including the categories of employees trained, the frequency of training, and the basic topics covered. A hard copy of this notice must be provided upon request.

Subd. 4. **Notice of available assistance.** A facility shall provide each resident with identifying and contact information about the persons who can assist with health care or supportive services being provided. A facility shall keep each resident informed of changes in the personnel referenced in this subdivision.

Subd. 5. **Notice to residents; change in ownership or management.** (a) A facility must provide written notice to the resident, legal representative, or designated representative of a change of ownership within seven calendar days after the facility receives a new license.

(b) A facility must provide prompt written notice to the resident, legal representative, or designated representative, of any change of legal name, telephone number, and physical mailing address, which may not be a public or private post office box, of:

- (1) the manager of the facility, if applicable; and
- (2) the authorized agent.

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

## Sec. 18. [144L.16] SERVICES.

Subdivision 1. **Acceptance of residents.** An assisted living facility may not accept a person as a resident unless the facility has staff, sufficient in qualifications, competency, and numbers, to adequately provide the services agreed to in the assisted living contract.

Subd. 2. **Initial reviews, assessments, and monitoring.** (a) Residents who are not receiving any services shall not be required to undergo an initial nursing assessment.

(b) An assisted living facility shall conduct a nursing assessment by a registered nurse of the physical and cognitive needs of the prospective resident and propose a temporary service plan prior to the date on which a prospective resident executes a contract with a facility or the date on which a prospective resident moves in, whichever is earlier. If necessitated by either the geographic distance between the prospective resident and the facility, or urgent or unexpected circumstances, the assessment may be conducted using telecommunication methods based on practice standards that meet the resident's needs and reflect person-centered planning and care delivery.

(c) Resident reassessment and monitoring must be conducted no more than 14 calendar days after initiation of services. Ongoing resident reassessment and monitoring must be conducted as needed based on changes in the needs of the resident and cannot exceed 90 calendar days from the last date of the assessment.

(d) For residents only receiving assisted living services specified in section 144I.01, subdivision 9, clauses (1) to (5), the facility shall complete an individualized initial review of the resident's needs and preferences. The initial review must be completed within 30 calendar days of the start of services. Resident monitoring and review must be conducted as needed based on changes in the needs of the resident and cannot exceed 90 calendar days from the date of the last review.

(e) A facility must inform the prospective resident of the availability of and contact information for long-term care consultation services under section 256B.0911, prior to the date on which a prospective resident executes a contract with a facility or the date on which a prospective resident moves in, whichever is earlier.

**Subd. 3. Temporary service plan.** When a facility initiates services and the individualized assessment required in subdivision 2 has not been completed, the facility must complete a temporary plan and agreement with the resident for services. A temporary service plan shall not be effective for more than 72 hours.

**Subd. 4. Service plan, implementation, and revisions to service plan.** (a) No later than 14 calendar days after the date that services are first provided, an assisted living facility shall finalize a current written service plan.

(b) The service plan and any revisions must include a signature or other authentication by the facility and by the resident documenting agreement on the services to be provided. The service plan must be revised, if needed, based on resident reassessment under subdivision 2. The facility must provide information to the resident about changes to the facility's fee for services and how to contact the Office of Ombudsman for Long-Term Care.

(c) The facility must implement and provide all services required by the current service plan.

(d) The service plan and the revised service plan must be entered into the resident record, including notice of a change in a resident's fees when applicable.

(e) Staff providing services must be informed of the current written service plan.

(f) The service plan must include:

(1) a description of the services to be provided, the fees for services, and the frequency of each service, according to the resident's current assessment and resident preferences;

(2) the identification of staff or categories of staff who will provide the services;

(3) the schedule and methods of monitoring assessments of the resident;

(4) the schedule and methods of monitoring staff providing services; and

(5) a contingency plan that includes:

(i) the action to be taken if the scheduled service cannot be provided;

(ii) information and a method to contact the facility;

(iii) the names and contact information of persons the resident wishes to have notified in an emergency or if there is a significant adverse change in the resident's condition, including identification of and information as to who has authority to sign for the resident in an emergency; and

(iv) the circumstances in which emergency medical services are not to be summoned consistent with chapters 145B and 145C, and declarations made by the resident under those chapters.

Subd. 5. **Referrals.** If a facility reasonably believes that a resident is in need of another medical or health service, including a licensed health professional, or social service provider, the facility shall:

- (1) determine the resident's preferences with respect to obtaining the service; and
- (2) inform the resident of the resources available, if known, to assist the resident in obtaining services.

Subd. 6. **Medical cannabis.** Assisted living facilities may exercise the authority and are subject to the protections in section 152.34.

Subd. 7. **Request for discontinuation of life-sustaining treatment.** (a) If a resident, family member, or other caregiver of the resident requests that an employee or other agent of the facility discontinue a life-sustaining treatment, the employee or agent receiving the request:

- (1) shall take no action to discontinue the treatment; and
- (2) shall promptly inform the supervisor or other agent of the facility of the resident's request.

(b) Upon being informed of a request for discontinuance of treatment, the facility shall promptly:

(1) inform the resident that the request will be made known to the physician or advanced practice registered nurse who ordered the resident's treatment;

(2) inform the physician or advanced practice registered nurse of the resident's request; and

(3) work with the resident and the resident's physician or advanced practice registered nurse to comply with chapter 145C.

(c) This section does not require the facility to discontinue treatment, except as may be required by law or court order.

(d) This section does not diminish the rights of residents to control their treatments, refuse services, or terminate their relationships with the facility.

(e) This section shall be construed in a manner consistent with chapter 145B or 145C, whichever applies, and declarations made by residents under those chapters.

Subd. 8. **Applicability of other law.** Assisted living facilities are subject to and must comply with chapter 504B.

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

## Sec. 19. [144L.17] MEDICATION MANAGEMENT.

Subdivision 1. **Medication management services.** (a) This section applies only to assisted living facilities that provide medication management services.

(b) An assisted living facility that provides medication management services must develop, implement, and maintain current written medication management policies and procedures. The policies and procedures must be developed under the supervision and direction of a registered nurse, licensed health professional, or pharmacist consistent with current practice standards and guidelines.

(c) The written policies and procedures must address requesting and receiving prescriptions for medications; preparing and giving medications; verifying that prescription drugs are administered as prescribed; documenting medication management activities; controlling and storing medications; monitoring and evaluating medication use; resolving medication errors; communicating with the prescriber, pharmacist, and resident and legal and designated representatives; disposing of unused medications; and educating residents and legal and designated representatives about medications. When controlled substances are being managed, the policies and procedures must also identify how the provider will ensure security and accountability for the overall management, control, and disposition of those substances in compliance with state and federal regulations and with subdivision 23.

Subd. 2. **Provision of medication management services.** (a) For each resident who requests medication management services, the facility shall, prior to providing medication management services, have a registered nurse, licensed health professional, or authorized prescriber under section 151.37 conduct an assessment to determine what medication management services will be provided and how the services will be provided. This assessment must be conducted face-to-face with the resident. The assessment must include an identification and review of all medications the resident is known to be taking. The review and identification must include indications for medications, side effects, contraindications, allergic or adverse reactions, and actions to address these issues.

(b) The assessment must identify interventions needed in management of medications to prevent diversion of medication by the resident or others who may have access to the medications and provide instructions to the resident and legal or designated representatives on interventions to manage the resident's medications and prevent diversion of medications. For purposes of this section, "diversion of medication" means misuse, theft, or illegal or improper disposition of medications.

Subd. 3. **Individualized medication monitoring and reassessment.** The assisted living facility must monitor and reassess the resident's medication management services as needed under subdivision 2 when the resident presents with symptoms or other issues that may be medication-related and, at a minimum, annually.

Subd. 4. **Resident refusal.** The assisted living facility must document in the resident's record any refusal for an assessment for medication management by the resident. The facility must discuss with the resident the possible consequences of the resident's refusal and document the discussion in the resident's record.

Subd. 5. **Individualized medication management plan.** (a) For each resident receiving medication management services, the assisted living facility must prepare and include in the service plan a written statement of the medication management services that will be provided to the resident. The facility must develop and maintain a current individualized medication management record for each resident based on the resident's assessment that must contain the following:

- (1) a statement describing the medication management services that will be provided;
- (2) a description of storage of medications based on the resident's needs and preferences, risk of diversion, and consistent with the manufacturer's directions;
- (3) documentation of specific resident instructions relating to the administration of medications;
- (4) identification of persons responsible for monitoring medication supplies and ensuring that medication refills are ordered on a timely basis;
- (5) identification of medication management tasks that may be delegated to unlicensed personnel;

(6) procedures for staff notifying a registered nurse or appropriate licensed health professional when a problem arises with medication management services; and

(7) any resident-specific requirements relating to documenting medication administration, verifications that all medications are administered as prescribed, and monitoring of medication use to prevent possible complications or adverse reactions.

(b) The medication management record must be current and updated when there are any changes.

(c) Medication reconciliation must be completed when a licensed nurse, licensed health professional, or authorized prescriber is providing medication management.

Subd. 6. **Administration of medication.** Medications may be administered by a nurse, physician, or other licensed health practitioner authorized to administer medications or by unlicensed personnel who have been delegated medication administration tasks by a registered nurse.

Subd. 7. **Delegation of medication administration.** When administration of medications is delegated to unlicensed personnel, the assisted living facility must ensure that the registered nurse has:

(1) instructed the unlicensed personnel in the proper methods to administer the medications, and the unlicensed personnel has demonstrated the ability to competently follow the procedures;

(2) specified, in writing, specific instructions for each resident and documented those instructions in the resident's records; and

(3) communicated with the unlicensed personnel about the individual needs of the resident.

Subd. 8. **Documentation of administration of medications.** Each medication administered by the assisted living facility staff must be documented in the resident's record. The documentation must include the signature and title of the person who administered the medication. The documentation must include the medication name, dosage, date and time administered, and method and route of administration. The staff must document the reason why medication administration was not completed as prescribed and document any follow-up procedures that were provided to meet the resident's needs when medication was not administered as prescribed and in compliance with the resident's medication management plan.

Subd. 9. **Documentation of medication setup.** Documentation of dates of medication setup, name of medication, quantity of dose, times to be administered, route of administration, and name of person completing medication setup must be done at the time of setup.

Subd. 10. **Medication management for residents who will be away from home.** (a) An assisted living facility that is providing medication management services to the resident must develop and implement policies and procedures for giving accurate and current medications to residents for planned or unplanned times away from home according to the resident's individualized medication management plan. The policies and procedures must state that:

(1) for planned time away, the medications must be obtained from the pharmacy or set up by the licensed nurse according to appropriate state and federal laws and nursing standards of practice;

(2) for unplanned time away, when the pharmacy is not able to provide the medications, a licensed nurse or unlicensed personnel shall provide medications in amounts and dosages needed for the length of the anticipated absence, not to exceed seven calendar days;

(3) the resident must be provided written information on medications, including any special instructions for administering or handling the medications, including controlled substances; and

(4) the medications must be placed in a medication container or containers appropriate to the provider's medication system and must be labeled with the resident's name and the dates and times that the medications are scheduled.

(b) For unplanned time away when the licensed nurse is not available, the registered nurse may delegate this task to unlicensed personnel if:

(1) the registered nurse has trained the unlicensed staff and determined the unlicensed staff is competent to follow the procedures for giving medications to residents; and

(2) the registered nurse has developed written procedures for the unlicensed personnel, including any special instructions or procedures regarding controlled substances that are prescribed for the resident. The procedures must address:

(i) the type of container or containers to be used for the medications appropriate to the provider's medication system;

(ii) how the container or containers must be labeled;

(iii) written information about the medications to be provided;

(iv) how the unlicensed staff must document in the resident's record that medications have been provided, including documenting the date the medications were provided and who received the medications, the person who provided the medications to the resident, the number of medications that were provided to the resident, and other required information;

(v) how the registered nurse shall be notified that medications have been provided and whether the registered nurse needs to be contacted before the medications are given to the resident or the designated representative;

(vi) a review by the registered nurse of the completion of this task to verify that this task was completed accurately by the unlicensed personnel; and

(vii) how the unlicensed personnel must document in the resident's record any unused medications that are returned to the facility, including the name of each medication and the doses of each returned medication.

Subd. 11. **Prescribed and nonprescribed medication.** The assisted living facility must determine whether the facility shall require a prescription for all medications the provider manages. The facility must inform the resident whether the facility requires a prescription for all over-the-counter and dietary supplements before the facility agrees to manage those medications.

Subd. 12. **Medications; over-the-counter drugs; dietary supplements not prescribed.** An assisted living facility providing medication management services for over-the-counter drugs or dietary supplements must retain those items in the original labeled container with directions for use prior to setting up for immediate or later administration. The facility must verify that the medications are up to date and stored as appropriate.

Subd. 13. **Prescriptions.** There must be a current written or electronically recorded prescription as defined in section 151.01, subdivision 16a, for all prescribed medications that the assisted living facility is managing for the resident.

Subd. 14. **Renewal of prescriptions.** Prescriptions must be renewed at least every 12 months or more frequently as indicated by the assessment in subdivision 2. Prescriptions for controlled substances must comply with chapter 152.

Subd. 15. **Verbal prescription orders.** Verbal prescription orders from an authorized prescriber must be received by a nurse or pharmacist. The order must be handled according to Minnesota Rules, part 6800.6200.

Subd. 16. **Written or electronic prescription.** When a written or electronic prescription is received, it must be communicated to the registered nurse in charge and recorded or placed in the resident's record.

Subd. 17. **Records confidential.** A prescription or order received verbally, in writing, or electronically must be kept confidential according to sections 144.291 to 144.298 and 144A.44.

Subd. 18. **Medications provided by resident or family members.** When the assisted living facility is aware of any medications or dietary supplements that are being used by the resident and are not included in the assessment for medication management services, the staff must advise the registered nurse and document that in the resident record.

Subd. 19. **Storage of medications.** An assisted living facility must store all prescription medications in securely locked and substantially constructed compartments according to the manufacturer's directions and permit only authorized personnel to have access.

Subd. 20. **Prescription drugs.** A prescription drug, prior to being set up for immediate or later administration, must be kept in the original container in which it was dispensed by the pharmacy bearing the original prescription label with legible information including the expiration or beyond-use date of a time-dated drug.

Subd. 21. **Prohibitions.** No prescription drug supply for one resident may be used or saved for use by anyone other than the resident.

Subd. 22. **Disposition of medications.** (a) Any current medications being managed by the assisted living facility must be provided to the resident when the resident's service plan ends or medication management services are no longer part of the service plan. Medications for a resident who is deceased or that have been discontinued or have expired may be provided for disposal.

(b) The facility shall dispose of any medications remaining with the facility that are discontinued or expired or upon the termination of the service contract or the resident's death according to state and federal regulations for disposition of medications and controlled substances.

(c) Upon disposition, the facility must document in the resident's record the disposition of the medication including the medication's name, strength, prescription number as applicable, quantity, to whom the medications were given, date of disposition, and names of staff and other individuals involved in the disposition.

Subd. 23. **Loss or spillage.** (a) Assisted living facilities providing medication management must develop and implement procedures for loss or spillage of all controlled substances defined in Minnesota Rules, part 6800.4220. These procedures must require that when a spillage of a controlled substance occurs, a notation must be made in the resident's record explaining the spillage and the actions taken. The notation must be signed by the person responsible for the spillage and include verification that any contaminated substance was disposed of according to state or federal regulations.

(b) The procedures must require that the facility providing medication management investigate any known loss or unaccounted for prescription drugs and take appropriate action required under state or federal regulations and document the investigation in required records.

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

Sec. 20. **[144L.18] TREATMENT AND THERAPY MANAGEMENT SERVICES.**

Subdivision 1. **Treatment and therapy management services.** This section applies only to assisted living facilities that provide treatment and therapy management services.

Subd. 2. **Policies and procedures.** (a) An assisted living facility that provides treatment and therapy management services must develop, implement, and maintain up-to-date written treatment or therapy management policies and procedures. The policies and procedures must be developed under the supervision and direction of a registered nurse or appropriate licensed health professional consistent with current practice standards and guidelines.

(b) The written policies and procedures must address requesting and receiving orders or prescriptions for treatments or therapies, providing the treatment or therapy, documenting treatment or therapy activities, educating and communicating with residents about treatments or therapies they are receiving, monitoring and evaluating the treatment or therapy, and communicating with the prescriber.

Subd. 3. **Individualized treatment or therapy management plan.** For each resident receiving management of ordered or prescribed treatments or therapy services, the assisted living facility must prepare and include in the service plan a written statement of the treatment or therapy services that will be provided to the resident. The facility must also develop and maintain a current individualized treatment and therapy management record for each resident which must contain at least the following:

(1) a statement of the type of services that will be provided;

(2) documentation of specific resident instructions relating to the treatments or therapy administration;

(3) identification of treatment or therapy tasks that will be delegated to unlicensed personnel;

(4) procedures for notifying a registered nurse or appropriate licensed health professional when a problem arises with treatments or therapy services; and

(5) any resident-specific requirements relating to documentation of treatment and therapy received, verification that all treatment and therapy was administered as prescribed, and monitoring of treatment or therapy to prevent possible complications or adverse reactions. The treatment or therapy management record must be current and updated when there are any changes.

Subd. 4. **Administration of treatments and therapy.** Ordered or prescribed treatments or therapies must be administered by a nurse, physician, or other licensed health professional authorized to perform the treatment or therapy, or may be delegated or assigned to unlicensed personnel by the licensed health professional according to the appropriate practice standards for delegation or assignment. When administration of a treatment or therapy is delegated or assigned to unlicensed personnel, the facility must ensure that the registered nurse or authorized licensed health professional has:

(1) instructed the unlicensed personnel in the proper methods with respect to each resident and the unlicensed personnel has demonstrated the ability to competently follow the procedures;



(2) specified, in writing, specific instructions for each resident and documented those instructions in the resident's record; and

(3) communicated with the unlicensed personnel about the individual needs of the resident.

**Subd. 5. Documentation of administration of treatments and therapies.** Each treatment or therapy administered by an assisted living facility must be in the resident record. The documentation must include the signature and title of the person who administered the treatment or therapy and must include the date and time of administration. When treatment or therapies are not administered as ordered or prescribed, the provider must document the reason why it was not administered and any follow-up procedures that were provided to meet the resident's needs.

**Subd. 6. Treatment and therapy orders.** There must be an up-to-date written or electronically recorded order from an authorized prescriber for all treatments and therapies. The order must contain the name of the resident, a description of the treatment or therapy to be provided, and the frequency, duration, and other information needed to administer the treatment or therapy. Treatment and therapy orders must be renewed at least every 12 months.

**Subd. 7. Right to outside service provider; other payors.** Under section 144I.101, a resident is free to retain therapy and treatment services from an off-site service provider. Assisted living facilities must make every effort to assist residents in obtaining information regarding whether the Medicare program, the medical assistance program under chapter 256B, or another public program will pay for any or all of the services.

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

## Sec. 21. **[144I.19] RESIDENT RECORD REQUIREMENTS.**

**Subdivision 1. Resident record.** (a) Assisted living facilities must maintain records for each resident for whom it is providing services. Entries in the resident records must be current, legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.

(b) Resident records, whether written or electronic, must be protected against loss, tampering, or unauthorized disclosure in compliance with chapter 13 and other applicable relevant federal and state laws. The facility shall establish and implement written procedures to control use, storage, and security of resident records and establish criteria for release of resident information.

(c) The facility may not disclose to any other person any personal, financial, or medical information about the resident, except:

(1) as may be required by law;

(2) to employees or contractors of the facility, another facility, other health care practitioner or provider, or inpatient facility needing information in order to provide services to the resident, but only the information that is necessary for the provision of services;

(3) to persons authorized in writing by the resident, including third-party payers; and

(4) to representatives of the commissioner authorized to survey or investigate facilities under this chapter or federal laws.

**Subd. 2. Access to records.** The facility must ensure that the appropriate records are readily available to employees and contractors authorized to access the records. Resident records must be maintained in a

manner that allows for timely access, printing, or transmission of the records. The records must be made readily available to the commissioner upon request.

Subd. 3. **Contents of resident record.** Contents of a resident record include the following for each resident:

- (1) identifying information, including the resident's name, date of birth, address, and telephone number;
- (2) the name, address, and telephone number of the resident's emergency contact, legal representatives, and designated representative;
- (3) names, addresses, and telephone numbers of the resident's health and medical service providers, if known;
- (4) health information, including medical history, allergies, and when the provider is managing medications, treatments or therapies that require documentation, and other relevant health records;
- (5) the resident's advance directives, if any;
- (6) copies of any health care directives, guardianships, powers of attorney, or conservatorships;
- (7) the facility's current and previous assessments and service plans;
- (8) all records of communications pertinent to the resident's services;
- (9) documentation of significant changes in the resident's status and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional;
- (10) documentation of incidents involving the resident and actions taken in response to the needs of the resident, including reporting to the appropriate supervisor or health care professional;
- (11) documentation that services have been provided as identified in the service plan;
- (12) documentation that the resident has received and reviewed the assisted living bill of rights;
- (13) documentation of complaints received and any resolution;
- (14) a discharge summary, including service termination notice and related documentation, when applicable; and
- (15) other documentation required under this chapter and relevant to the resident's services or status.

Subd. 4. **Transfer of resident records.** With the resident's knowledge and consent, if a resident 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 provider:

- (1) the resident's full name, date of birth, and insurance information;
- (2) the name, telephone number, and address of the resident's designated representatives and legal representatives, if any;
- (3) the resident's current documented diagnoses that are relevant to the services being provided;
- (4) the resident's known allergies that are relevant to the services being provided;

(5) the name and telephone number of the resident'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 resident 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. 5. **Record retention.** Following the resident's discharge or termination of services, an assisted living facility must retain a resident's record for at least five years or as otherwise required by state or federal regulations. Arrangements must be made for secure storage and retrieval of resident records if the facility ceases to operate.

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

## Sec. 22. [144L.20] ORIENTATION AND ANNUAL TRAINING REQUIREMENTS.

Subdivision 1. **Orientation of staff and supervisors.** All staff providing and supervising direct services must complete an orientation to assisted living facility licensing requirements and regulations before providing assisted living services to residents. The orientation may be incorporated into the training required under subdivision 6. The orientation need only be completed once for each staff person and is not transferable to another facility.

Subd. 2. **Content.** (a) The orientation must contain the following topics:

(1) an overview of this chapter;

(2) an introduction and review of the facility's policies and procedures related to the provision of assisted living services by the individual staff person;

(3) handling of emergencies and use of emergency services;

(4) compliance with and reporting of the maltreatment of vulnerable adults under section 626.557 to the Minnesota Adult Abuse Reporting Center (MAARC);

(5) the assisted living bill of rights and staff responsibilities related to ensuring the exercise and protection of those rights;

(6) the principles of person-centered planning and service delivery and how they apply to direct support services provided by the staff person;

(7) handling of residents' complaints, reporting of complaints, and where to report complaints, including information on the Office of Health Facility Complaints;

(8) consumer advocacy services of the Office of Ombudsman for Long-Term Care, Office of Ombudsman for Mental Health and Developmental Disabilities, Managed Care Ombudsman at the Department of Human Services, county-managed care advocates, or other relevant advocacy services; and

(9) a review of the types of assisted living services the employee will be providing and the facility's category of licensure.

(b) In addition to the topics in paragraph (a), orientation may also contain training on providing services to residents with hearing loss. Any training on hearing loss provided under this subdivision must be high quality and research based, may include online training, and must include training on one or more of the following topics:

(1) an explanation of age-related hearing loss and how it manifests itself, its prevalence, and the challenges it poses to communication;

(2) health impacts related to untreated age-related hearing loss, such as increased incidence of dementia, falls, hospitalizations, isolation, and depression; or

(3) information about strategies and technology that may enhance communication and involvement, including communication strategies, assistive listening devices, hearing aids, visual and tactile alerting devices, communication access in real time, and closed captions.

Subd. 3. **Verification and documentation of orientation and training.** The assisted living facility shall retain evidence in the employee record of each staff person having completed the orientation and training required by this section.

Subd. 4. **Orientation to resident.** Staff providing assisted living services must be oriented specifically to each individual resident and the services to be provided. This orientation may be provided in person, orally, in writing, or electronically.

Subd. 5. **Training required relating to dementia.** All direct care staff and supervisors providing direct services must demonstrate an understanding of the training specified in section 144I.21.

Subd. 6. **Required annual training.** (a) All staff that perform direct services must complete at least eight hours of annual training for each 12 months of employment. The training may be obtained from the facility or another source and must include topics relevant to the provision of assisted living services. The annual training must include:

(1) training on reporting of maltreatment of vulnerable adults under section 626.557;

(2) review of the assisted living bill of rights and staff responsibilities related to ensuring the exercise and protection of those rights;

(3) review of infection control techniques used in the home and implementation of infection control standards including a review of hand washing techniques; the need for and use of protective gloves, gowns, and masks; appropriate disposal of contaminated materials and equipment, such as dressings, needles, syringes, and razor blades; disinfecting reusable equipment; disinfecting environmental surfaces; and reporting communicable diseases;

(4) effective approaches to use to problem solve when working with a resident's challenging behaviors, and how to communicate with residents who have dementia, Alzheimer's disease, or related disorders;

(5) review of the facility's policies and procedures relating to the provision of assisted living services and how to implement those policies and procedures; and

(6) the principles of person-centered planning and service delivery and how they apply to direct support services provided by the staff person.

(b) In addition to the topics in paragraph (a), annual training may also contain training on providing services to residents with hearing loss. Any training on hearing loss provided under this subdivision must

be high quality and research based, may include online training, and must include training on one or more of the following topics:

(1) an explanation of age-related hearing loss and how it manifests itself, its prevalence, and challenges it poses to communication;

(2) the health impacts related to untreated age-related hearing loss, such as increased incidence of dementia, falls, hospitalizations, isolation, and depression; or

(3) information about strategies and technology that may enhance communication and involvement, including communication strategies, assistive listening devices, hearing aids, visual and tactile alerting devices, communication access in real time, and closed captions.

Subd. 7. **Implementation.** The assisted living facility must implement all orientation and training topics covered in this section.

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

Sec. 23. **[144I.21] TRAINING IN DEMENTIA CARE REQUIRED.**

(a) All assisted living facilities must meet the following training requirements:

(1) supervisors of direct-care staff must have at least eight hours of initial training on topics specified under paragraph (b) within 120 working hours of the employment start date, and must have at least two hours of training on topics related to dementia care for each 12 months of employment thereafter;

(2) direct-care employees must have completed at least eight hours of initial training on topics specified under paragraph (b) within 160 working hours of the employment start date. Until this initial training is complete, an employee must not provide direct care unless there is another employee on site who has completed the initial eight hours of training on topics related to dementia care and who can act as a resource and assist if issues arise. A trainer of the requirements under paragraph (b) or a supervisor meeting the requirements in clause (1) must be available for consultation with the new employee until the training requirement is complete. Direct-care employees must have at least two hours of training on topics related to dementia for each 12 months of employment thereafter;

(3) for assisted living facilities with dementia care, direct care employees must have completed at least eight hours of initial training on topics specified under paragraph (b) within 80 working hours of the employment start date. Until this initial training is complete, an employee must not provide direct care unless there is another employee on site who has completed the initial eight hours of training on topics related to dementia care and who can act as a resource and assist if issues arise. A trainer of the requirements under paragraph (b) or a supervisor meeting the requirements in clause (1) must be available for consultation with the new employee until the training requirement is complete. Direct-care employees must have at least two hours of training on topics related to dementia for each 12 months of employment thereafter;

(4) staff who do not provide direct care, including maintenance, housekeeping, and food service staff, must have at least four hours of initial training on topics specified under paragraph (b) within 160 working hours of the employment start date, and must have at least two hours of training on topics related to dementia care for each 12 months of employment thereafter; and

(5) new employees may satisfy the initial training requirements by producing written proof of previously completed required training within the past 18 months.

(b) Areas of required training include:

- (1) an explanation of Alzheimer's disease and other dementias;
- (2) assistance with activities of daily living;
- (3) problem solving with challenging behaviors;
- (4) communication skills; and
- (5) person-centered planning and service delivery.

(c) The facility shall provide to consumers in written or electronic form a description of the training program, the categories of employees trained, the frequency of training, and the basic topics covered.

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

Sec. 24. **[144I.22] CONTROLLING INDIVIDUAL RESTRICTIONS.**

Subdivision 1. **Restrictions.** (a) The commissioner has discretion to bar any controlling individual of a facility if the person was a controlling individual of any other nursing home or assisted living facility in the previous two-year period and:

(1) during that period of time the nursing home or assisted living facility incurred the following number of uncorrected or repeated violations:

(i) two or more repeated violations that created an imminent risk to direct resident care or safety; or

(ii) four or more uncorrected violations that created an imminent risk to direct resident care or safety;

or

(2) during that period of time, was convicted of a felony or gross misdemeanor that related to the operation of the nursing home or assisted living facility, or directly affected resident safety or care.

(b) When the commissioner bars a controlling individual under this subdivision, the controlling individual may appeal the commissioner's decision under chapter 14.

Subd. 2. **Exception.** Subdivision 1 does not apply to any controlling individual of the facility who had no legal authority to affect or change decisions related to the operation of the nursing home or assisted living facility that incurred the uncorrected violations.

Subd. 3. **Stay of adverse action required by controlling individual restrictions.** (a) In lieu of revoking, suspending, or refusing to renew the license of a facility where a controlling individual was disqualified by subdivision 1, paragraph (a), clause (1), the commissioner may issue an order staying the revocation, suspension, or nonrenewal of the facility's license. The order may but need not be contingent upon the facility's compliance with restrictions and conditions imposed on the license to ensure the proper operation of the facility and to protect the health, safety, comfort, treatment, and well-being of the residents in the facility. The decision to issue an order for a stay must be made within 90 calendar days of the commissioner's determination that a controlling individual of the facility is disqualified by subdivision 1, paragraph (a), clause (1), from operating a facility.

(b) In determining whether to issue a stay and to impose conditions and restrictions, the commissioner must consider the following factors:

(1) the ability of the controlling individual to operate other facilities in accordance with the licensure rules and laws;

(2) the conditions in the nursing home or assisted living facility that received the number and type of uncorrected or repeated violations described in subdivision 1, paragraph (a), clause (1); and

(3) the conditions and compliance history of each of the nursing homes and assisted living facilities owned or operated by the controlling individual.

(c) The commissioner's decision to exercise the authority under this subdivision in lieu of revoking, suspending, or refusing to renew the license of the facility is not subject to administrative or judicial review.

(d) The order for the stay of revocation, suspension, or nonrenewal of the facility license must include any conditions and restrictions on the license that the commissioner deems necessary based on the factors listed in paragraph (b).

(e) Prior to issuing an order for stay of revocation, suspension, or nonrenewal, the commissioner shall inform the licensee and the controlling individual in writing of any conditions and restrictions that will be imposed. The controlling individual shall, within ten working days, notify the commissioner in writing of a decision to accept or reject the conditions and restrictions. If any of the conditions or restrictions are rejected, the commissioner must either modify the conditions and restrictions or take action to suspend, revoke, or not renew the facility's license.

(f) Upon issuance of the order for a stay of revocation, suspension, or nonrenewal, the controlling individual shall be responsible for compliance with the conditions and restrictions. Any time after the conditions and restrictions have been in place for 180 days, the controlling individual may petition the commissioner for removal or modification of the conditions and restrictions. The commissioner must respond to the petition within 30 days of receipt of the written petition. If the commissioner denies the petition, the controlling individual may request a hearing under chapter 14. Any hearing shall be limited to a determination of whether the conditions and restrictions shall be modified or removed. At the hearing, the controlling individual bears the burden of proof.

(g) The failure of the controlling individual to comply with the conditions and restrictions contained in the order for stay shall result in the immediate removal of the stay and the commissioner shall take action to suspend, revoke, or not renew the license.

(h) The conditions and restrictions are effective for two years after the date they are imposed.

(i) Nothing in this subdivision shall be construed to limit in any way the commissioner's ability to impose other sanctions against a licensee under the standards in state or federal law whether or not a stay of revocation, suspension, or nonrenewal is issued.

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

**Sec. 25. [144I.24] MINIMUM SITE, PHYSICAL ENVIRONMENT, AND FIRE SAFETY REQUIREMENTS.**

**Subdivision 1. Requirements.** (a) The following are required for all assisted living facilities:

(1) public utilities must be available, and working or inspected and approved water and septic systems must be in place;

(2) the location must be publicly accessible to fire department services and emergency medical services;

(3) the location's topography must provide sufficient natural drainage and is not subject to flooding;

(4) all-weather roads and walks must be provided within the lot lines to the primary entrance and the service entrance, including employees' and visitors' parking at the site; and

(5) the location must include space for outdoor activities for residents.

(b) An assisted living facility with dementia care that has a secured dementia care unit must also meet the following requirements:

(1) a hazard vulnerability assessment or safety risk must be performed on and around the property. The hazards indicated on the assessment must be assessed and mitigated to protect the residents from harm; and

(2) the facility shall be protected throughout by an approved supervised automatic sprinkler system by August 1, 2029.

Subd. 2. **Fire protection and physical environment.** (a) Each assisted living facility must have a comprehensive fire protection system that includes:

(1) protection throughout by an approved supervised automatic sprinkler system according to building code requirements established in Minnesota Rules, part 1305.0903, or smoke detectors in each occupied room installed and maintained in accordance with the National Fire Protection Association (NFPA) Standard 72;

(2) portable fire extinguishers installed and tested in accordance with the NFPA Standard 10; and

(3) the physical environment, including walls, floors, ceiling, all furnishings, grounds, systems, and equipment that is kept in a continuous state of good repair and operation with regard to the health, safety, comfort, and well-being of the residents in accordance with a maintenance and repair program.

(b) Fire drills in assisted living facilities shall be conducted in accordance with the residential board and care requirements in the Life Safety Code, except that fire drills in secured dementia care units shall be conducted in accordance with the healthcare (limited care) chapter of the Life Safety Code.

(c) Existing construction or elements, including assisted living facilities that were registered as housing with services establishments under chapter 144D prior to August 1, 2021, shall be permitted to be continued in use provided such use does not constitute a distinct hazard to life. Any existing elements that an authority having jurisdiction deems a distinct hazard to life must be corrected. The facility must document in the facility's records any actions taken to comply with a correction order, and must submit to the commissioner for review and approval prior to correction.

Subd. 3. **Local laws apply.** Assisted living facilities shall comply with all applicable state and local governing laws, regulations, standards, ordinances, and codes for fire safety, building, and zoning requirements.

Subd. 4. **Design requirements.** (a) All assisted living facilities with six or more residents must meet the provisions relevant to assisted living facilities in the most current edition of the Facility Guidelines Institute "Guidelines for Design and Construction of Residential Health, Care and Support Facilities" and of adopted rules. This minimum design standard must be met for all new licenses, new construction, modifications, renovations, alterations, changes of use, or additions. In addition to the guidelines, assisted living facilities shall provide the option of a bath in addition to a shower for all residents.



(b) If the commissioner decides to update the edition of the guidelines specified in paragraph (a) for purposes of this subdivision, the commissioner must notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health care and public safety of the planned update by January 15 of the year in which the new edition will become effective. Following notice from the commissioner, the new edition shall become effective for assisted living facilities beginning August 1 of that year, unless provided otherwise in law. The commissioner shall, by publication in the State Register, specify a date by which facilities must comply with the updated edition. The date by which facilities must comply shall not be sooner than six months after publication of the commissioner's notice in the State Register.

Subd. 5. **Assisted living facilities; life safety code.** (a) All assisted living facilities with six or more residents must meet the applicable provisions of the most current edition of the NFPA Standard 101, Life Safety Code, Residential Board and Care Occupancies chapter. The minimum design standard shall be met for all new licenses, new construction, modifications, renovations, alterations, changes of use, or additions.

(b) If the commissioner decides to update the Life Safety Code for purposes of this subdivision, the commissioner must notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health care and public safety of the planned update by January 15 of the year in which the new Life Safety Code will become effective. Following notice from the commissioner, the new edition shall become effective for assisted living facilities beginning August 1 of that year, unless provided otherwise in law. The commissioner shall, by publication in the State Register, specify a date by which facilities must comply with the updated Life Safety Code. The date by which facilities must comply shall not be sooner than six months after publication of the commissioner's notice in the State Register.

Subd. 6. **Assisted living facilities with dementia care and secured dementia care unit; Life Safety Code.** (a) All assisted living facilities with dementia care and a secured dementia care unit must meet the applicable provisions of the most current edition of the NFPA Standard 101, Life Safety Code, Healthcare (limited care) chapter. The minimum design standards shall be met for all new licenses, new construction, modifications, renovations, alterations, changes of use, or additions.

(b) If the commissioner decides to update the Life Safety Code for purposes of this subdivision, the commissioner must notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health care and public safety of the planned update by January 15 of the year in which the new Life Safety Code will become effective. Following notice from the commissioner, the new edition shall become effective for assisted living facilities with dementia care and a secured dementia care unit beginning August 1 of that year, unless provided otherwise in law. The commissioner shall, by publication in the State Register, specify a date by which these facilities must comply with the updated Life Safety Code. The date by which these facilities must comply shall not be sooner than six months after publication of the commissioner's notice in the State Register.

Subd. 7. **New construction; plans.** (a) For all new licensure and construction beginning on or after August 1, 2021, the following must be provided to the commissioner:

(1) architectural and engineering plans and specifications for new construction must be prepared and signed by architects and engineers who are registered in Minnesota. Final working drawings and specifications for proposed construction must be submitted to the commissioner for review and approval;

(2) final architectural plans and specifications must include elevations and sections through the building showing types of construction, and must indicate dimensions and assignments of rooms and areas, room finishes, door types and hardware, elevations and details of nurses' work areas, utility rooms, toilet and

bathing areas, and large-scale layouts of dietary and laundry areas. Plans must show the location of fixed equipment and sections and details of elevators, chutes, and other conveying systems. Fire walls and smoke partitions must be indicated. The roof plan must show all mechanical installations. The site plan must indicate the proposed and existing buildings, topography, roadways, walks and utility service lines; and

(3) final mechanical and electrical plans and specifications must address the complete layout and type of all installations, systems, and equipment to be provided. Heating plans must include heating elements, piping, thermostatic controls, pumps, tanks, heat exchangers, boilers, breeching, and accessories. Ventilation plans must include room air quantities, ducts, fire and smoke dampers, exhaust fans, humidifiers, and air handling units. Plumbing plans must include the fixtures and equipment fixture schedule; water supply and circulating piping, pumps, tanks, riser diagrams, and building drains; the size, location, and elevation of water and sewer services; and the building fire protection systems. Electrical plans must include fixtures and equipment, receptacles, switches, power outlets, circuits, power and light panels, transformers, and service feeders. Plans must show location of nurse call signals, cable lines, fire alarm stations, and fire detectors and emergency lighting.

(b) Unless construction is begun within one year after approval of the final working drawing and specifications, the drawings must be resubmitted for review and approval.

(c) The commissioner must be notified within 30 days before completion of construction so that the commissioner can make arrangements for a final inspection by the commissioner.

(d) At least one set of complete life safety plans, including changes resulting from remodeling or alterations, must be kept on file in the facility.

Subd. 8. **Variances or waivers.** (a) A facility may request that the commissioner grant a variance or waiver from the provisions of this section. A request for a waiver must be submitted to the commissioner in writing. Each request must contain:

(1) the specific requirement for which the variance or waiver is requested;

(2) the reasons for the request;

(3) the alternative measures that will be taken if a variance or waiver is granted;

(4) the length of time for which the variance or waiver is requested; and

(5) other relevant information deemed necessary by the commissioner to properly evaluate the request for the waiver.

(b) The decision to grant or deny a variance or waiver must be based on the commissioner's evaluation of the following criteria:

(1) whether the waiver will adversely affect the health, treatment, comfort, safety, or well-being of a resident;

(2) whether the alternative measures to be taken, if any, are equivalent to or superior to those prescribed in this section; and

(3) whether compliance with the requirements would impose an undue burden on the facility.

(c) The commissioner must notify the facility in writing of the decision. If a variance or waiver is granted, the notification must specify the period of time for which the variance or waiver is effective and the alternative measures or conditions, if any, to be met by the facility.

(d) Alternative measures or conditions attached to a variance or waiver have the force and effect of this chapter and are subject to the issuance of correction orders and fines in accordance with sections 144I.30, subdivision 7, and 144I.31. The amount of fines for a violation of this subdivision is that specified for the specific requirement for which the variance or waiver was requested.

(e) A request for renewal of a variance or waiver must be submitted in writing at least 45 days before its expiration date. Renewal requests must contain the information specified in paragraph (b). A variance or waiver must be renewed by the commissioner if the facility continues to satisfy the criteria in paragraph (a) and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance or waiver was granted.

(f) The commissioner must deny, revoke, or refuse to renew a variance or waiver if it is determined that the criteria in paragraph (a) are not met. The facility must be notified in writing of the reasons for the decision and informed of the right to appeal the decision.

(g) A facility may contest the denial, revocation, or refusal to renew a variance or waiver by requesting a contested case hearing under chapter 14. The facility must submit, within 15 days of the receipt of the commissioner's decision, a written request for a hearing. The request for hearing must set forth in detail the reasons why the facility contends the decision of the commissioner should be reversed or modified. At the hearing, the facility has the burden of proving by a preponderance of the evidence that the facility satisfied the criteria specified in paragraph (b), except in a proceeding challenging the revocation of a variance or waiver.

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

#### Sec. 26. **[144I.25] ASSISTED LIVING CONTRACT REQUIREMENTS.**

Subdivision 1. **Contract required.** (a) An assisted living facility may not offer or provide housing or assisted living services to a resident unless it has executed a written contract with the resident.

(b) The contract must contain all the terms concerning the provision of:

(1) housing;

(2) assisted living services, whether provided directly by the facility or by management agreement or other agreement; and

(3) the resident's service plan, if applicable.

(c) A facility must:

(1) offer to prospective residents and provide to the Office of Ombudsman for Long-Term Care a complete unsigned copy of its contract; and

(2) give a complete copy of any signed contract and any addendums, and all supporting documents and attachments, to the resident promptly after a contract and any addendum has been signed.

(d) A contract under this section is a consumer contract under sections 325G.29 to 325G.37.

(e) Before or at the time of execution of the contract, the facility must offer the resident the opportunity to identify a designated representative according to subdivision 3.

(f) The resident must agree in writing to any additions or amendments to the contract. Upon agreement between the resident and the facility, a new contract or an addendum to the existing contract must be executed and signed.

**Subd. 2. Contents and contract; contact information.** (a) The contract must include in a conspicuous place and manner on the contract the legal name and the license number of the facility.

(b) The contract must include the name, telephone number, and physical mailing address, which may not be a public or private post office box, of:

(1) the facility and contracted service provider when applicable;

(2) the licensee of the facility;

(3) the managing agent of the facility, if applicable; and

(4) the authorized agent for the facility.

(c) The contract must include:

(1) a disclosure of the category of assisted living facility license held by the facility and, if the facility is not an assisted living facility with dementia care, a disclosure that it does not hold an assisted living facility with dementia care license;

(2) 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;

(3) a delineation of the cost and nature of any other services to be provided for an additional fee;

(4) a delineation and description of any additional fees the resident may be required to pay if the resident's condition changes during the term of the contract;

(5) a delineation of the grounds under which the resident may be discharged, evicted, or transferred or have services terminated;

(6) billing and payment procedures and requirements; and

(7) disclosure of the facility's ability to provide specialized diets.

(d) The contract must include a description of the facility's complaint resolution process available to residents, including the name and contact information of the person representing the facility who is designated to handle and resolve complaints.

(e) The contract must include a clear and conspicuous notice of:

(1) the right under section 144I.262 to appeal the termination of an assisted living contract;

(2) the facility's policy regarding transfer of residents within the facility, under what circumstances a transfer may occur, and the circumstances under which resident consent is required for a transfer;

(3) contact information for the Office of Ombudsman for Long-Term Care, the Ombudsman for Mental Health and Developmental Disabilities, and the Office of Health Facility Complaints;

(4) the resident's right to obtain services from an unaffiliated service provider;

(5) a description of the facility's policies related to medical assistance waivers under sections 256B.0915 and 256B.49 and the housing support program under chapter 256I, including:

(i) whether the facility is enrolled with the commissioner of human services to provide customized living services under medical assistance waivers;

(ii) whether the facility has an agreement to provide housing support under section 256I.04, subdivision 2, paragraph (b);

(iii) whether there is a limit on the number of people residing at the facility who can receive customized living services or participate in the housing support program at any point in time. If so, the limit must be provided;

(iv) whether the facility requires a resident to pay privately for a period of time prior to accepting payment under medical assistance waivers or the housing support program, and if so, the length of time that private payment is required;

(v) a statement that medical assistance waivers provide payment for services, but do not cover the cost of rent;

(vi) a statement that residents may be eligible for assistance with rent through the housing support program; and

(vii) a description of the rent requirements for people who are eligible for medical assistance waivers but who are not eligible for assistance through the housing support program;

(6) the contact information to obtain long-term care consulting services under section 256B.0911; and

(7) the toll-free phone number for the Minnesota Adult Abuse Reporting Center.

(f) The contract must include a description of the facility's complaint resolution process available to residents, including the name and contact information of the person representing the facility who is designated to handle and resolve complaints.

Subd. 3. **Designation of representative.** (a) Before or at the time of execution of an assisted living contract, an assisted living facility must offer the resident the opportunity to identify a designated representative in writing in the contract and must provide the following verbatim notice on a document separate from the contract:

**RIGHT TO DESIGNATE A REPRESENTATIVE FOR CERTAIN PURPOSES.**

You have the right to name anyone as your "Designated Representative." A Designated Representative can assist you, receive certain information and notices about you, including some information related to your health care, and advocate on your behalf. A Designated Representative does not take the place of your guardian, conservator, power of attorney ("attorney-in-fact"), or health care power of attorney ("health care agent"), if applicable.

(b) The contract must contain a page or space for the name and contact information of the designated representative and a box the resident must initial if the resident declines to name a designated representative. Notwithstanding subdivision 1, paragraph (f), the resident has the right at any time to add, remove, or change the name and contact information of the designated representative.

Subd. 4. **Filing.** The contract and related documents must be maintained by the facility in files from the date of execution until five years after the contract is terminated or expires. The contracts and all associated documents must be available for on-site inspection by the commissioner at any time. The documents shall be available for viewing or copies shall be made available to the resident and the legal or designated representative at any time.

Subd. 5. **Waivers of liability prohibited.** The contract must not include a waiver of facility liability for the health and safety or personal property of a resident. The contract must not include any provision that the facility knows or should know to be deceptive, unlawful, or unenforceable under state or federal law, nor include any provision that requires or implies a lesser standard of care or responsibility than is required by law.

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

Sec. 27. **[144I.26] ASSISTED LIVING CONTRACT TERMINATIONS.**

Subdivision 1. **Definition.** For purposes of sections 144I.26 to 144I.263, "termination" means:

- (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.

Subd. 2. **Prerequisite to termination of a contract.** (a) Before issuing a notice of termination of an assisted living contract, a facility must schedule and participate in a meeting with the resident and the resident's legal representative and designated representative. The purposes of the meeting are to:

- (1) explain in detail the reasons for the proposed termination; and
- (2) identify and offer reasonable accommodations or modifications, interventions, or alternatives to avoid the termination or enable the resident to remain in the facility, including but not limited to securing services from another provider of the resident's choosing that may allow the resident to avoid the termination. A facility is not required to offer accommodations, modifications, interventions, or alternatives that fundamentally alter the nature of the operation of the facility.

(b) The meeting must be scheduled to take place at least seven days before a notice of termination is issued. The facility must make reasonable efforts to ensure that the resident, legal representative, and designated representative are able to attend the meeting.

(c) The facility must notify the resident that the resident may invite family members, relevant health professionals, a representative of the Office of Ombudsman for Long-Term Care, or other persons of the resident's choosing to participate in the meeting. For residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49, the facility must notify the resident's case manager of the meeting.

(d) In the event of an emergency relocation under subdivision 9, where the facility intends to issue a notice of termination and an in-person meeting is impractical or impossible, the facility may attempt to schedule and participate in a meeting under this subdivision via telephone, video, or other means.

Subd. 3. **Termination for nonpayment.** (a) A facility may initiate a termination of housing because of nonpayment of rent or a termination of services because of nonpayment for services. Upon issuance of a notice of termination for nonpayment, the facility must inform the resident that public benefits may be

available and must provide contact information for the Senior LinkAge Line under section 256.975, subdivision 7.

(b) An interruption to a resident's public benefits that lasts for no more than 60 days does not constitute nonpayment.

Subd. 4. **Termination for violation of the assisted living contract.** A facility may initiate a termination of the assisted living contract if the resident violates a lawful provision of the contract and the resident does not cure the violation within a reasonable amount of time after the facility provides written notice of the ability to cure to the resident. 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 resident with written notice of the ability to cure for a violation that threatens the health or safety of the resident or another individual in the facility, or for a violation that constitutes illegal conduct.

Subd. 5. **Expedited termination.** (a) A facility may initiate an expedited termination of housing or services if:

(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.

(b) A facility may initiate an expedited termination of services 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.

Subd. 6. **Right to use provider of resident's choosing.** 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.

Subd. 7. **Notice of contract termination required.** (a) A facility terminating a contract must issue a written notice of termination according to this section. The facility must also send a copy of the termination notice to the Office of Ombudsman for Long-Term Care and, for residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49, to the resident's case manager, as soon as practicable after providing notice to the resident. A facility may terminate an assisted living contract only as permitted under subdivisions 3, 4, and 5.

(b) A facility terminating a contract under subdivision 3 or 4 must provide a written termination notice at least 30 days before the effective date of the termination to the resident, legal representative, and designated representative.

(c) A facility terminating a contract under subdivision 5 must provide a written termination notice at least 15 days before the effective date of the termination to the resident, legal representative, and designated representative.

(d) If a resident moves out of a facility or cancels services received from the facility, nothing in this section prohibits a facility from enforcing against the resident any notice periods with which the resident must comply under the assisted living contract.

Subd. 8. **Content of notice of termination.** The notice required under subdivision 7 must contain, at a minimum:

(1) the effective date of the termination of the assisted living contract;

(2) a detailed explanation of the basis for the termination, including the clinical or other supporting rationale;

(3) a detailed explanation of the conditions under which a new or amended contract may be executed;

(4) a statement that the resident has the right to appeal the termination by requesting a hearing, and information concerning the timeframe within which the request must be submitted and the contact information for the agency to which the request must be submitted;

(5) a statement that the facility must participate in a coordinated move to another provider or caregiver, as required under section 144I.263;

(6) the name and contact information of the person employed by the facility with whom the resident may discuss the notice of termination;

(7) information on how to contact the Office of Ombudsman for Long-Term Care to request an advocate to assist regarding the termination;

(8) information on how to contact the Senior LinkAge Line under section 256.975, subdivision 7, and an explanation that the Senior LinkAge Line may provide information about other available housing or service options; and

(9) if the termination is only for services, a statement that the resident may remain in the facility and may secure any necessary services from another provider of the resident's choosing.

Subd. 9. **Emergency relocation.** (a) 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. An emergency relocation is not a termination.

(b) In the event of an emergency relocation, the facility must provide a written notice that contains, at a minimum:

(1) the reason for the relocation;

(2) the name and contact information for the location to which the resident has been relocated and any new service provider;

(3) contact information for the Office of Ombudsman for Long-Term Care;

(4) 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



(5) a statement that, if the facility refuses to provide housing or services after a relocation, the resident has the right to appeal under section 144I.262. The facility must provide contact information for the agency to which the resident may submit an appeal.

(c) The notice required under paragraph (b) must be delivered as soon as practicable to:

(1) the resident, legal representative, and designated representative;

(2) for residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49, the resident's case manager; and

(3) the Office of Ombudsman for Long-Term Care if the resident has been relocated and has not returned to the facility within four days.

(d) Following an emergency relocation, a facility's refusal to provide housing or services constitutes a termination and triggers the termination process in this section.

Subd. 10. **Right to return.** 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.

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

#### Sec. 28. [144I.261] NONRENEWAL OF HOUSING.

(a) If a facility decides to not renew a resident's housing under a contract, the facility must either (1) provide the resident with 60 calendar days' notice of the nonrenewal and assistance with relocation planning, or (2) follow the termination procedure under section 144I.26.

(b) The notice must include the reason for the nonrenewal and contact information of the Office of Ombudsman for Long-Term Care.

(c) A facility must:

(1) provide notice of the nonrenewal to the Office of Ombudsman for Long-Term Care;

(2) for residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49, provide notice to the resident's case manager;

(3) ensure a coordinated move to a safe location, as defined in section 144I.263, subdivision 2, that is appropriate for the resident;

(4) ensure a coordinated move to an appropriate service provider identified by the facility, if services are still needed and desired by the resident;

(5) consult and cooperate with the resident, legal representative, designated representative, case manager for a resident who receives home and community-based waiver services under sections 256B.0915 and 256B.49, relevant health professionals, and any other persons of the resident's choosing to make arrangements to move the resident, including consideration of the resident's goals; and

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

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

or receive services from a service provider of the resident's choosing within the timeline prescribed in the nonrenewal notice.

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

Sec. 29. **[144I.262] APPEALS.**

**Subdivision 1. Right to appeal.** Residents have the right to appeal the termination of an assisted living contract.

**Subd. 2. Permissible grounds to appeal termination.** A resident may appeal a termination initiated under section 144I.26, subdivision 3, 4, or 5, on the ground 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 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;

(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 contract in violation of state or federal law.

**Subd. 3. Appeals process.** (a) The Office of Administrative Hearings must conduct an expedited hearing as soon as practicable under this section, 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. 4. 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 2, clause (4).

(b) The resident 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 2, clause (2) or (3).

**Subd. 5. Determination; appeal of determination.** (a) The resident's termination must be rescinded if the resident prevails in the appeal.

(b) The order may contain any conditions that may be placed 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.

Subd. 6. **Service provision while appeal pending.** A termination of housing or services shall not occur while an appeal is pending. 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.

Subd. 7. **Application of chapter 504B to appeals of terminations.** A resident may not bring an action under chapter 504B to challenge a termination that has occurred and been upheld under this section.

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

### Sec. 30. **[144I.263] COORDINATED MOVES.**

Subdivision 1. **Duties of facility.** (a) If a facility terminates an assisted living contract, reduces services to the extent that a resident needs to move, or conducts a planned closure under section 144I.27, the facility:

(1) must ensure, subject to paragraph (c), a coordinated move to a safe location that is appropriate for the resident and that is identified by the facility prior to any hearing under section 144I.262;

(2) must ensure a coordinated move of the resident to an appropriate service provider identified by the facility prior to any hearing under section 144I.262, provided services are still needed and desired by the resident; and

(3) must consult and cooperate with the resident, legal representative, designated representative, case manager for a resident who receives home and community-based waiver services under sections 256B.0915 and 256B.49, relevant health professionals, and any other persons of the resident's choosing to make arrangements to move the resident, including consideration of the resident's goals.

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

(c) A resident 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 resident's choosing or receive services from a service provider of the resident's choosing within the timeline prescribed in the termination notice.

(d) Sixty days before the facility plans to reduce or eliminate one or more services for a particular resident, the facility must provide written notice of the reduction that includes:

(1) a detailed explanation of the reasons for the reduction and the date of the reduction;

(2) the contact information for the Office of Ombudsman for Long-Term Care and the name and contact information of the person employed by the facility with whom the resident may discuss the reduction of services;

(3) a statement that if the services being reduced are still needed by the resident, the resident may remain in the facility and seek services from another provider; and

(4) a statement that if the reduction makes the resident need to move, the facility must participate in a coordinated move of the resident to another provider or caregiver, as required under this section.

(e) In the event of an unanticipated reduction in services caused by extraordinary circumstances, the facility must provide the notice required under paragraph (d) as soon as possible.

(f) If the facility, a resident, a legal representative, or a designated representative determines that a reduction in services will make a resident need to move to a new location, the facility must ensure a coordinated move in accordance with this section, and must provide notice to the Office of Ombudsman for Long-Term Care.

(g) Nothing in this section affects a resident's right to remain in the facility and seek services from another provider.

Subd. 2. **Safe location.** A safe location 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. A facility may not terminate a resident's housing or services if the resident will, as the result of the termination, become homeless, as that term is defined in section 116L.361, subdivision 5, or if an adequate and safe discharge location or adequate and needed service provider has not been identified. This subdivision does not preclude a resident from declining to move to the location the facility identifies.

Subd. 3. **Relocation plan required.** The facility must prepare a relocation plan to prepare for the move to the new location or service provider.

Subd. 4. **License restrictions.** Unless otherwise ordered by the commissioner, if a facility's license is restricted by the commissioner under section 144I.33 such that a resident must move or obtain a new service provider, the facility must comply with this section.

Subd. 5. **No waiver.** The rights established under this section for the benefit of residents do not limit any other rights available under other law. No facility may request or require that any resident waive the resident's rights at any time for any reason, including as a condition of admission to the facility.

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

#### Sec. 31. **[144I.264] ARBITRATION.**

(a) An assisted living facility must clearly and conspicuously disclose, in writing in an assisted living contract, any arbitration provision in the contract that precludes, limits, or delays the ability of a resident from taking a civil action.

(b) An arbitration requirement must not include a choice of law or choice of venue provision. Assisted living contracts must adhere to Minnesota law and any other applicable federal or local law.

**EFFECTIVE DATE.** This section is effective August 1, 2021, for contracts entered into on or after that date.

#### Sec. 32. **[144I.265] OFFICE OF OMBUDSMAN FOR LONG-TERM CARE.**

Subdivision 1. **Immunity from liability.** The Office of Ombudsman for Long-Term Care and representatives of the office are immune from liability for conduct described in section 256.9742, subdivision 2.

Subd. 2. **Data classification.** All forms and notices received by the Office of Ombudsman for Long-Term Care under this chapter are classified under section 256.9744.

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

Sec. 33. **[144I.27] PLANNED CLOSURES.**

**Subdivision 1. Closure plan required.** In the event that an assisted living facility elects to voluntarily close the facility, the facility must notify the commissioner and the Office of Ombudsman for Long-Term Care in writing by submitting a proposed closure plan.

**Subd. 2. Content of closure plan.** The facility's proposed closure plan must include:

(1) the procedures and actions the facility will implement to notify residents of the closure, including a copy of the written notice to be given to residents, designated representatives, legal representatives, and family and other resident contacts;

(2) the procedures and actions the facility will implement to ensure all residents receive appropriate termination planning in accordance with section 144I.263, and final accountings and returns under section 144I.13, subdivision 5;

(3) assessments of the needs and preferences of individual residents; and

(4) procedures and actions the facility will implement to maintain compliance with this chapter until all residents have relocated.

**Subd. 3. Commissioner's approval required prior to implementation.** (a) The plan shall be subject to the commissioner's approval and subdivision 6. The facility shall take no action to close the residence prior to the commissioner's approval of the plan. The commissioner shall approve or otherwise respond to the plan as soon as practicable.

(b) The commissioner may require the facility to work with a transitional team comprised of department staff, staff of the Office of Ombudsman for Long-Term Care, and other professionals the commissioner deems necessary to assist in the proper relocation of residents.

**Subd. 4. Termination planning and final accounting requirements.** Prior to termination, the facility must follow the termination planning requirements under section 144I.263, and final accounting and return requirements under section 144I.13, subdivision 5, for residents. The facility must implement the plan approved by the commissioner and ensure that arrangements for relocation and continued care that meet each resident's social, emotional, and health needs are effectuated prior to closure.

**Subd. 5. Notice to residents.** After the commissioner has approved the relocation plan and at least 60 calendar days before closing, except as provided under subdivision 6, the facility must notify residents, designated representatives, and legal representatives of the closure, the proposed date of closure, the contact information of the ombudsman for long-term care, and that the facility will follow the termination planning requirements under section 144I.263, and final accounting and return requirements under section 144I.13, subdivision 5. For residents who receive home and community-based waiver services under sections 256B.0915 and 256B.49, the facility must also provide this information to the resident's case manager.

**Subd. 6. Emergency closures.** (a) In the event the facility must close because the commissioner deems the facility can no longer remain open, the facility must meet all requirements in subdivisions 1 to 5, except for any requirements the commissioner finds would endanger the health and safety of residents. In the event the commissioner determines a closure must occur with less than 60 calendar days' notice, the facility shall provide notice to residents as soon as practicable or as directed by the commissioner.

(b) Upon request from the commissioner, the facility must provide the commissioner with any documentation related to the appropriateness of its relocation plan, or to any assertion that the facility lacks the funds to comply with subdivision 1 to 5, or that remaining open would otherwise endanger the health and safety of residents pursuant to paragraph (a).

Subd. 7. **Other rights.** Nothing in this section affects the rights and remedies available under chapter 504B.

Subd. 8. **Fine.** The commissioner may impose a fine for failure to follow the requirements of this section.

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

Sec. 34. **[144L.29] COMMISSIONER OVERSIGHT AND AUTHORITY.**

Subdivision 1. **Regulations.** The commissioner shall regulate assisted living facilities pursuant to this chapter. The regulations shall include the following:

(1) provisions to assure, to the extent possible, the health, safety, well-being, and appropriate treatment of residents while respecting individual autonomy and choice;

(2) requirements that facilities furnish the commissioner with specified information necessary to implement this chapter;

(3) standards of training of facility personnel;

(4) standards for the provision of assisted living services;

(5) standards for medication management;

(6) standards for supervision of assisted living services;

(7) standards for resident evaluation or assessment;

(8) standards for treatments and therapies;

(9) requirements for the involvement of a resident's health care provider, the documentation of the health care provider's orders, if required, and the resident's service plan;

(10) standards for the maintenance of accurate, current resident records;

(11) the establishment of levels of licenses based on services provided; and

(12) provisions to enforce these regulations and the assisted living bill of rights.

Subd. 2. **Regulatory functions.** (a) The commissioner shall:

(1) license, survey, and monitor without advance notice assisted living facilities in accordance with this chapter and rules;

(2) survey every provisional licensee within one year of the provisional license issuance date subject to the provisional licensee providing assisted living services to residents;

(3) survey assisted living facility licensees at least once every two years;

(4) investigate complaints of assisted living facilities;

(5) issue correction orders and assess civil penalties under sections 144I.30 and 144I.31;

(6) take action as authorized in section 144I.33; and

(7) take other action reasonably required to accomplish the purposes of this chapter.

(b) The commissioner shall review blueprints for all new facility construction and must approve the plans before construction may be commenced.

(c) The commissioner shall provide on-site review of the construction to ensure that all physical environment standards are met before the facility license is complete.

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

### Sec. 35. **[144I.30] SURVEYS AND INVESTIGATIONS.**

Subdivision 1. **Regulatory powers.** (a) The Department of Health is the exclusive state agency charged with the responsibility and duty of surveying and investigating all assisted living facilities required to be licensed under this chapter. The commissioner of health shall enforce all sections of this chapter and the rules adopted under this chapter.

(b) The commissioner, upon request to the facility, must be given access to relevant information, records, incident reports, and other documents in the possession of the facility if the commissioner considers them necessary for the discharge of responsibilities. For purposes of surveys and investigations and securing information to determine compliance with licensure laws and rules, the commissioner need not present a release, waiver, or consent to the individual. The identities of residents must be kept private as defined in section 13.02, subdivision 12.

Subd. 2. **Surveys.** The commissioner shall conduct a survey of each assisted living facility on a frequency of at least once every two years. The commissioner may conduct surveys more frequently than every two years based on the license category, the facility's compliance history, the number of residents served, or other factors as determined by the commissioner deemed necessary to ensure the health, safety, and welfare of residents and compliance with the law.

Subd. 3. **Follow-up surveys.** The commissioner may conduct follow-up surveys to determine if the facility has corrected deficient issues and systems identified during a survey or complaint investigation. Follow-up surveys may be conducted via phone, e-mail, fax, mail, or on-site reviews. Follow-up surveys, other than complaint investigations, shall be concluded with an exit conference and written information provided on the process for requesting a reconsideration of the survey results.

Subd. 4. **Scheduling surveys.** Surveys and investigations shall be conducted without advance notice to the facilities. Surveyors may contact the facility on the day of a survey to arrange for someone to be available at the survey site. The contact does not constitute advance notice. The surveyor must provide presurvey notification to the Office of Ombudsman for Long-Term Care.

Subd. 5. **Information provided by facility.** The assisted living facility shall provide accurate and truthful information to the department during a survey, investigation, or other licensing activities.

Subd. 6. **Providing resident records.** Upon request of a surveyor, assisted living facilities shall provide a list of current and past residents and their legal representatives and designated representatives that includes

addresses and telephone numbers and any other information requested about the services to residents within a reasonable period of time.

Subd. 7. **Correction orders.** (a) A correction order may be issued whenever the commissioner finds upon survey or during a complaint investigation that a facility, a managerial official, or an employee of the facility is not in compliance with this chapter. The correction order shall cite the specific statute and document areas of noncompliance and the time allowed for correction.

(b) The commissioner shall mail or e-mail copies of any correction order to the facility within 30 calendar days after the survey exit date. A copy of each correction order and copies of any documentation supplied to the commissioner shall be kept on file by the facility and public documents shall be made available for viewing by any person upon request. Copies may be kept electronically.

(c) By the correction order date, the facility must document in the facility's records any action taken to comply with the correction order. The commissioner may request a copy of this documentation and the facility's action to respond to the correction order in future surveys, upon a complaint investigation, and as otherwise needed.

Subd. 8. **Required follow-up surveys.** For assisted living facilities that have Level 3 or Level 4 violations under section 144I.31, the commissioner shall conduct a follow-up survey within 90 calendar days of the survey. When conducting a follow-up survey, the surveyor shall focus on whether the previous violations have been corrected and may also address any new violations that are observed while evaluating the corrections that have been made.

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

#### Sec. 36. **[144I.31] VIOLATIONS AND FINES.**

Subdivision 1. **Fine amounts.** (a) Fines and enforcement actions under this subdivision may be assessed based on the level and scope of the violations described in subdivision 2 as follows and may be imposed immediately with no opportunity to correct the violation prior to imposition:

(1) Level 1, no fines or enforcement;

(2) Level 2, a fine of \$500 per violation, in addition to any enforcement mechanism authorized in section 144I.33 for widespread violations;

(3) Level 3, a fine of \$3,000 per violation per incident, in addition to any enforcement mechanism authorized in section 144I.33;

(4) Level 4, a fine of \$5,000 per incident, in addition to any enforcement mechanism authorized in section 144I.33; and

(5) for maltreatment violations for which the licensee was determined to be responsible for the maltreatment under section 626.557, subdivision 9c, paragraph (c), a fine of \$1,000. A fine of \$5,000 may be imposed if the commissioner determines the licensee is responsible for maltreatment consisting of sexual assault, death, or abuse resulting in serious injury.

(b) When a fine is assessed against a facility for substantiated maltreatment, the commissioner shall not also impose an immediate fine under this chapter for the same circumstance.

Subd. 2. **Level and scope of violation.** Correction orders for violations are categorized by both level and scope:



(1) level of violation:

(i) Level 1 is a violation that has no potential to cause more than a minimal impact on the resident and does not affect health or safety;

(ii) Level 2 is a violation that did not harm a resident's health or safety but had the potential to have harmed a resident's health or safety, but was not likely to cause serious injury, impairment, or death;

(iii) Level 3 is a violation that harmed a resident's health or safety, not including serious injury, impairment, or death, or a violation that has the potential to lead to serious injury, impairment, or death; and

(iv) Level 4 is a violation that results in serious injury, impairment, or death; and

(2) scope of violation:

(i) isolated, when one or a limited number of residents are affected or one or a limited number of staff are involved or the situation has occurred only occasionally;

(ii) pattern, when more than a limited number of residents are affected, more than a limited number of staff are involved, or the situation has occurred repeatedly but is not found to be pervasive; and

(iii) widespread, when problems are pervasive or represent a systemic failure that has affected or has the potential to affect a large portion or all of the residents.

Subd. 3. **Notice of noncompliance.** If the commissioner finds that the applicant or a facility has not corrected violations by the date specified in the correction order or conditional license resulting from a survey or complaint investigation, the commissioner shall provide a notice of noncompliance with a correction order by e-mailing the notice of noncompliance to the facility. The noncompliance notice must list the violations not corrected.

Subd. 4. **Immediate fine; payment.** (a) For every Level 3 or Level 4 violation, the commissioner may issue an immediate fine. The licensee must still correct the violation in the time specified. The issuance of an immediate fine may occur in addition to any enforcement mechanism authorized under section 144I.33. The immediate fine may be appealed as allowed under this section.

(b) The licensee must pay the fines assessed on or before the payment date specified. If the licensee fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the licensee complies by paying the fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

(c) A licensee shall promptly notify the commissioner in writing when a violation specified in the order is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order, the commissioner may issue an additional fine. The commissioner shall notify the licensee by mail to the last known address in the licensing record that a second fine has been assessed. The licensee may appeal the second fine as provided under this subdivision.

(d) A facility that has been assessed a fine under this section has a right to a reconsideration or hearing under this section and chapter 14.

Subd. 5. **Payment of fines required.** When a fine has been assessed, the licensee may not avoid payment by closing, selling, or otherwise transferring the license to a third party. In such an event, the licensee shall be liable for payment of the fine.

Subd. 6. **Additional penalties.** In addition to any fine imposed under this section, the commissioner may assess a penalty amount based on costs related to an investigation that results in a final order assessing a fine or other enforcement action authorized by this chapter.

Subd. 7. **Deposit of fines.** Fines collected under this section shall be deposited in a dedicated special revenue account. On an annual basis, the balance in the special revenue account shall be appropriated to the commissioner for special projects to improve home care in Minnesota as recommended by the advisory council established in section 144A.4799.

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

Sec. 37. **[144I.32] RECONSIDERATION OF CORRECTION ORDERS AND FINES.**

Subdivision 1. **Reconsideration process required.** The commissioner shall make available to assisted living facilities a correction order reconsideration process. This process may be used to challenge the correction order issued, including the level and scope described in section 144I.31, and any fine assessed. When a licensee requests reconsideration of a correction order, the correction order is not stayed while it is under reconsideration. The commissioner shall post information on its website that the licensee requested reconsideration of the correction order and that the review is pending.

Subd. 2. **Reconsideration process.** An assisted living facility may request from the commissioner, in writing, a correction order reconsideration regarding any correction order issued to the facility. The written request for reconsideration must be received by the commissioner within 15 calendar days of the correction order receipt date. The correction order reconsideration shall not be reviewed by any surveyor, investigator, or supervisor that participated in writing or reviewing the correction order being disputed. The correction order reconsiderations may be conducted in person, by telephone, by another electronic form, or in writing, as determined by the commissioner. The commissioner shall respond in writing to the request from a facility for a correction order reconsideration within 60 days of the date the facility requests a reconsideration. The commissioner's response shall identify the commissioner's decision regarding each citation challenged by the facility.

Subd. 3. **Findings.** The findings of a correction order reconsideration process shall be one or more of the following:

(1) supported in full: the correction order is supported in full, with no deletion of findings to the citation;

(2) supported in substance: the correction order is supported, but one or more findings are deleted or modified without any change in the citation;

(3) correction order cited an incorrect licensing requirement: the correction order is amended by changing the correction order to the appropriate statute or rule;

(4) correction order was issued under an incorrect citation: the correction order is amended to be issued under the more appropriate correction order citation;

(5) the correction order is rescinded;

(6) fine is amended: it is determined that the fine assigned to the correction order was applied incorrectly;

or

(7) the level or scope of the citation is modified based on the reconsideration.

Subd. 4. **Updating the correction order website.** If the correction order findings are changed by the commissioner, the commissioner shall update the correction order website.

Subd. 5. **Provisional licensees.** This section does not apply to provisional licensees.

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

Sec. 38. **[144I.33] ENFORCEMENT.**

Subdivision 1. **Conditions.** (a) The commissioner may refuse to grant a provisional license, refuse to grant a license as a result of a change in ownership, refuse to renew a license, suspend or revoke a license, or impose a conditional license if the owner, controlling individual, or employee of an assisted living facility:

(1) is in violation of, or during the term of the license has violated, any of the requirements in this chapter or adopted rules;

(2) permits, aids, or abets the commission of any illegal act in the provision of assisted living services;

(3) performs any act detrimental to the health, safety, and welfare of a resident;

(4) obtains the license by fraud or misrepresentation;

(5) knowingly makes a false statement of a material fact in the application for a license or in any other record or report required by this chapter;

(6) denies representatives of the department access to any part of the facility's books, records, files, or employees;

(7) interferes with or impedes a representative of the department in contacting the facility's residents;

(8) interferes with or impedes ombudsman access according to section 256.9742, subdivision 4;

(9) interferes with or impedes a representative of the department in the enforcement of this chapter or fails to fully cooperate with an inspection, survey, or investigation by the department;

(10) destroys or makes unavailable any records or other evidence relating to the assisted living facility's compliance with this chapter;

(11) refuses to initiate a background study under section 144.057 or 245A.04;

(12) fails to timely pay any fines assessed by the commissioner;

(13) violates any local, city, or township ordinance relating to housing or assisted living services;

(14) has repeated incidents of personnel performing services beyond their competency level; or

(15) has operated beyond the scope of the assisted living facility's license category.

(b) A violation by a contractor providing the assisted living services of the facility is a violation by facility.

Subd. 2. **Terms to suspension or conditional license.** (a) A suspension or conditional license designation may include terms that must be completed or met before a suspension or conditional license designation is lifted. A conditional license designation may include restrictions or conditions that are imposed

on the assisted living facility. Terms for a suspension or conditional license may include one or more of the following and the scope of each will be determined by the commissioner:

(1) requiring a consultant to review, evaluate, and make recommended changes to the facility's practices and submit reports to the commissioner at the cost of the facility;

(2) requiring supervision of the facility or staff practices at the cost of the facility by an unrelated person who has sufficient knowledge and qualifications to oversee the practices and who will submit reports to the commissioner;

(3) requiring the facility or employees to obtain training at the cost of the facility;

(4) requiring the facility to submit reports to the commissioner;

(5) prohibiting the facility from admitting any new residents for a specified period of time; or

(6) any other action reasonably required to accomplish the purpose of this subdivision and subdivision 1.

(b) A facility subject to this subdivision may continue operating during the period of time residents are being transferred to another service provider.

Subd. 3. **Immediate temporary suspension.** (a) In addition to any other remedies provided by law, the commissioner may, without a prior contested case hearing, immediately temporarily suspend a license or prohibit delivery of housing or services by a facility for not more than 90 calendar days or issue a conditional license, if the commissioner determines that there are:

(1) Level 4 violations; or

(2) violations that pose an imminent risk of harm to the health or safety of residents.

(b) For purposes of this subdivision, "Level 4" has the meaning given in section 144I.31.

(c) A notice stating the reasons for the immediate temporary suspension or conditional license and informing the licensee of the right to an expedited hearing under subdivision 11 must be delivered by personal service to the address shown on the application or the last known address of the licensee. The licensee may appeal an order immediately temporarily suspending a license or issuing a conditional license. The appeal must be made in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within five calendar days after the licensee receives notice. If an appeal is made by personal service, it must be received by the commissioner within five calendar days after the licensee received the order.

(d) A licensee whose license is immediately temporarily suspended must comply with the requirements for notification and transfer of residents in subdivision 9. The requirements in subdivision 9 remain if an appeal is requested.

Subd. 4. **Mandatory revocation.** Notwithstanding the provisions of subdivision 7, paragraph (a), the commissioner must revoke a license if a controlling individual of the facility is convicted of a felony or gross misdemeanor that relates to operation of the facility or directly affects resident safety or care. The commissioner shall notify the facility and the Office of Ombudsman for Long-Term Care 30 calendar days in advance of the date of revocation.

Subd. 5. **Mandatory proceedings.** (a) The commissioner must initiate proceedings within 60 calendar days of notification to suspend or revoke a facility's license or must refuse to renew a facility's license if within the preceding two years the facility has incurred the following number of uncorrected or repeated violations:

(1) two or more uncorrected violations or one or more repeated violations that created an imminent risk to direct resident care or safety; or

(2) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule.

(b) Notwithstanding paragraph (a), the commissioner is not required to revoke, suspend, or refuse to renew a facility's license if the facility corrects the violation.

Subd. 6. **Notice to residents.** (a) Within five business days after proceedings are initiated by the commissioner to revoke or suspend a facility's license, or a decision by the commissioner not to renew a living facility's license, the controlling individual of the facility or a designee must provide to the commissioner and the ombudsman for long-term care the names of residents and the names and addresses of the residents' designated representatives and legal representatives, and family or other contacts listed in the assisted living contract.

(b) The controlling individual or designees of the facility must provide updated information each month until the proceeding is concluded. If the controlling individual or designee of the facility fails to provide the information within this time, the facility is subject to the issuance of:

(1) a correction order; and

(2) a penalty assessment by the commissioner in rule.

(c) Notwithstanding subdivisions 16 and 17, any correction order issued under this subdivision must require that the facility immediately comply with the request for information and that, as of the date of the issuance of the correction order, the facility shall forfeit to the state a \$500 fine the first day of noncompliance and an increase in the \$500 fine by \$100 increments for each day the noncompliance continues.

(d) Information provided under this subdivision may be used by the commissioner or the ombudsman for long-term care only for the purpose of providing affected consumers information about the status of the proceedings.

(e) Within ten business days after the commissioner initiates proceedings to revoke, suspend, or not renew a facility license, the commissioner must send a written notice of the action and the process involved to each resident of the facility, legal representatives and designated representatives, and at the commissioner's discretion, additional resident contacts.

(f) The commissioner shall provide the ombudsman for long-term care with monthly information on the department's actions and the status of the proceedings.

Subd. 7. **Notice to facility.** (a) Prior to any suspension, revocation, or refusal to renew a license, the facility shall be entitled to notice and a hearing as provided by sections 14.57 to 14.69. The hearing must commence within 60 calendar days after the proceedings are initiated. In addition to any other remedy provided by law, the commissioner may, without a prior contested case hearing, temporarily suspend a license or prohibit delivery of services by a provider for not more than 90 calendar days, or issue a conditional

license if the commissioner determines that there are Level 3 violations that do not pose an imminent risk of harm to the health or safety of the facility residents, provided:

(1) advance notice is given to the facility;

(2) after notice, the facility fails to correct the problem;

(3) the commissioner has reason to believe that other administrative remedies are not likely to be effective;  
and

(4) there is an opportunity for a contested case hearing within 30 calendar days unless there is an extension granted by an administrative law judge.

(b) If the commissioner determines there are Level 4 violations or violations that pose an imminent risk of harm to the health or safety of the facility residents, the commissioner may immediately temporarily suspend a license, prohibit delivery of services by a facility, or issue a conditional license without meeting the requirements of paragraph (a), clauses (1) to (4).

For the purposes of this subdivision, "Level 3" and "Level 4" have the meanings given in section 144I.31.

Subd. 8. **Request for hearing.** A request for hearing must be in writing and must:

(1) be mailed or delivered to the commissioner;

(2) contain a brief and plain statement describing every matter or issue contested; and

(3) contain a brief and plain statement of any new matter that the applicant or assisted living facility believes constitutes a defense or mitigating factor.

Subd. 9. **Plan required.** (a) The process of suspending, revoking, or refusing to renew a license must include a plan for transferring affected residents' cares to other providers by the facility. The commissioner shall monitor the transfer plan. Within three calendar days of being notified of the final revocation, refusal to renew, or suspension, the licensee shall provide the commissioner, the lead agencies as defined in section 256B.0911, county adult protection and case managers, and the ombudsman for long-term care with the following information:

(1) a list of all residents, including full names and all contact information on file;

(2) a list of the resident's legal representatives and designated representatives and family or other contacts listed in the assisted living contract, including full names and all contact information on file;

(3) the location or current residence of each resident;

(4) the payor sources for each resident, including payor source identification numbers; and

(5) for each resident, a copy of the resident's service plan and a list of the types of services being provided.

(b) The revocation, refusal to renew, or suspension notification requirement is satisfied by mailing the notice to the address in the license record. The licensee shall cooperate with the commissioner and the lead agencies, county adult protection and county managers, and the ombudsman for long-term care during the process of transferring care of residents to qualified providers. Within three calendar days of being notified of the final revocation, refusal to renew, or suspension action, the facility must notify and disclose to each of the residents, or the resident's legal and designated representatives or emergency contact persons, that the commissioner is taking action against the facility's license by providing a copy of the revocation, refusal to

renew, or suspension notice issued by the commissioner. If the facility does not comply with the disclosure requirements in this section, the commissioner shall notify the residents, legal and designated representatives, or emergency contact persons about the actions being taken. Lead agencies, county adult protection and county managers, and the Office of Ombudsman for Long-Term Care may also provide this information. The revocation, refusal to renew, or suspension notice is public data except for any private data contained therein.

(c) A facility subject to this subdivision may continue operating while residents are being transferred to other service providers.

Subd. 10. **Hearing.** Within 15 business days of receipt of the licensee's timely appeal of a sanction under this section, other than for a temporary suspension, the commissioner shall request assignment of an administrative law judge. The commissioner's request must include a proposed date, time, and place of hearing. A hearing must be conducted by an administrative law judge pursuant to Minnesota Rules, parts 1400.8505 to 1400.8612, within 90 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause or for purposes of discussing settlement. In no case shall one or more extensions be granted for a total of more than 90 calendar days unless there is a criminal action pending against the licensee. If, while a licensee continues to operate pending an appeal of an order for revocation, suspension, or refusal to renew a license, the commissioner identifies one or more new violations of law that meet the requirements of Level 3 or Level 4 violations as defined in section 144I.31, the commissioner shall act immediately to temporarily suspend the license.

Subd. 11. **Expedited hearing.** (a) Within five business days of receipt of the licensee's timely appeal of a temporary suspension or issuance of a conditional license, the commissioner shall request assignment of an administrative law judge. The request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge pursuant to Minnesota Rules, parts 1400.8505 to 1400.8612, within 30 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten business days before the hearing. Certified mail to the last known address is sufficient. The scope of the hearing shall be limited solely to the issue of whether the temporary suspension or issuance of a conditional license should remain in effect and whether there is sufficient evidence to conclude that the licensee's actions or failure to comply with applicable laws are Level 3 or Level 4 violations as defined in section 144I.31, or that there were violations that posed an imminent risk of harm to the resident's health and safety.

(b) The administrative law judge shall issue findings of fact, conclusions, and a recommendation within ten business days from the date of hearing. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten business days from the close of the record. When an appeal of a temporary immediate suspension or conditional license is withdrawn or dismissed, the commissioner shall issue a final order affirming the temporary immediate suspension or conditional license within ten calendar days of the commissioner's receipt of the withdrawal or dismissal. The licensee is prohibited from operation during the temporary suspension period.

(c) When the final order under paragraph (b) affirms an immediate suspension, and a final licensing sanction is issued under subdivisions 1 and 2 and the licensee appeals that sanction, the licensee is prohibited from operation pending a final commissioner's order after the contested case hearing conducted under chapter 14.

(d) A licensee whose license is temporarily suspended must comply with the requirements for notification and transfer of residents under subdivision 9. These requirements remain if an appeal is requested.

Subd. 12. **Time limits for appeals.** To appeal the assessment of civil penalties under section 144I.31, and an action against a license under this section, a licensee must request a hearing no later than 15 business days after the licensee receives notice of the action.

Subd. 13. **Owners and managerial officials; refusal to grant license.** (a) The owner and managerial officials of a facility whose Minnesota license has not been renewed or whose Minnesota license has been revoked because of noncompliance with applicable laws or rules shall not be eligible to apply for nor will be granted an assisted living facility license under this chapter or a home care provider license under chapter 144A, or be given status as an enrolled personal care assistance provider agency or personal care assistant by the Department of Human Services under section 256B.0659, for five years following the effective date of the nonrenewal or revocation. If the owner or managerial officials already have enrollment status, the Department of Human Services shall terminate that enrollment.

(b) The commissioner shall not issue a license to a facility for five years following the effective date of license nonrenewal or revocation if the owner or managerial official, including any individual who was an owner or managerial official of another licensed provider, had a Minnesota license that was not renewed or was revoked as described in paragraph (a).

(c) Notwithstanding subdivision 1, the commissioner shall not renew, or shall suspend or revoke, the license of a facility that includes any individual as an owner or managerial official who was an owner or managerial official of a facility whose Minnesota license was not renewed or was revoked as described in paragraph (a) for five years following the effective date of the nonrenewal or revocation.

(d) The commissioner shall notify the facility 30 calendar days in advance of the date of nonrenewal, suspension, or revocation of the license. Within ten business days after the receipt of the notification, the facility may request, in writing, that the commissioner stay the nonrenewal, revocation, or suspension of the license. The facility shall specify the reasons for requesting the stay; the steps that will be taken to attain or maintain compliance with the licensure laws and regulations; any limits on the authority or responsibility of the owners or managerial officials whose actions resulted in the notice of nonrenewal, revocation, or suspension; and any other information to establish that the continuing affiliation with these individuals will not jeopardize resident health, safety, or well-being. The commissioner shall determine whether the stay will be granted within 30 calendar days of receiving the facility's request. The commissioner may propose additional restrictions or limitations on the facility's license and require that granting the stay be contingent upon compliance with those provisions. The commissioner shall take into consideration the following factors when determining whether the stay should be granted:

(1) the threat that continued involvement of the owners and managerial officials with the facility poses to resident health, safety, and well-being;

(2) the compliance history of the facility; and

(3) the appropriateness of any limits suggested by the facility.

If the commissioner grants the stay, the order shall include any restrictions or limitation on the provider's license. The failure of the facility to comply with any restrictions or limitations shall result in the immediate removal of the stay and the commissioner shall take immediate action to suspend, revoke, or not renew the license.



Subd. 14. **Relicensing.** If a facility license is revoked, a new application for license may be considered by the commissioner when the conditions upon which the revocation was based have been corrected and satisfactory evidence of this fact has been furnished to the commissioner. A new license may be granted after an inspection has been made and the facility has complied with all provisions of this chapter and adopted rules.

Subd. 15. **Informal conference.** At any time, the commissioner and the applicant, licensee, manager if applicable, or facility may hold an informal conference to exchange information, clarify issues, or resolve issues.

Subd. 16. **Injunctive relief.** In addition to any other remedy provided by law, the commissioner may bring an action in district court to enjoin a person who is involved in the management, operation, or control of a facility or an employee of the facility from illegally engaging in activities regulated by this chapter. The commissioner may bring an action under this subdivision in the district court in Ramsey County or in the district in which the facility is located. The court may grant a temporary restraining order in the proceeding if continued activity by the person who is involved in the management, operation, or control of a facility, or by an employee of the facility, would create an imminent risk of harm to a resident.

Subd. 17. **Subpoena.** In matters pending before the commissioner under this chapter, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. If a person fails or refuses to comply with a subpoena or order of the commissioner to appear or testify regarding any matter about which the person may be lawfully questioned or to produce any papers, books, records, documents, or evidentiary materials in the matter to be heard, the commissioner may apply to the district court in any district, and the court shall order the person to comply with the commissioner's order or subpoena. The commissioner may administer oaths to witnesses or take their affirmation. Depositions may be taken in or outside the state in the manner provided by law for taking depositions in civil actions. A subpoena or other process or paper may be served on a named person anywhere in the state by an officer authorized to serve subpoenas in civil actions, with the same fees and mileage and in the same manner as prescribed by law for a process issued out of a district court. A person subpoenaed under this subdivision shall receive the same fees, mileage, and other costs that are paid in proceedings in district court.

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

#### Sec. 39. **[144L.34] INNOVATION VARIANCE.**

Subdivision 1. **Definition; granting variances.** (a) For purposes of this section, "innovation variance" means a specified alternative to a requirement of this chapter.

(b) An innovation variance may be granted to allow an assisted living facility to offer services of a type or in a manner that is innovative, will not impair the services provided, will not adversely affect the health, safety, or welfare of the residents, and is likely to improve the services provided. The innovative variance cannot change any of the resident's rights under the assisted living bill of rights.

Subd. 2. **Conditions.** The commissioner may impose conditions on granting an innovation variance that the commissioner considers necessary.

Subd. 3. **Duration and renewal.** The commissioner may limit the duration of any innovation variance and may renew a limited innovation variance.

Subd. 4. **Applications; innovation variance.** An application for innovation variance from the requirements of this chapter may be made at any time, must be made in writing to the commissioner, and must specify the following:

(1) the statute or rule from which the innovation variance is requested;

(2) the time period for which the innovation variance is requested;

(3) the specific alternative action that the licensee proposes;

(4) the reasons for the request; and

(5) justification that an innovation variance will not impair the services provided, will not adversely affect the health, safety, or welfare of residents, and is likely to improve the services provided.

The commissioner may require additional information from the facility before acting on the request.

Subd. 5. **Grants and denials.** The commissioner shall grant or deny each request for an innovation variance in writing within 45 days of receipt of a complete request. Notice of a denial shall contain the reasons for the denial. The terms of a requested innovation variance may be modified upon agreement between the commissioner and the facility.

Subd. 6. **Violation of innovation variances.** A failure to comply with the terms of an innovation variance shall be deemed to be a violation of this chapter.

Subd. 7. **Revocation or denial of renewal.** The commissioner shall revoke or deny renewal of an innovation variance if:

(1) it is determined that the innovation variance is adversely affecting the health, safety, or welfare of the residents;

(2) the facility has failed to comply with the terms of the innovation variance;

(3) the facility notifies the commissioner in writing that it wishes to relinquish the innovation variance and be subject to the statute previously varied; or

(4) the revocation or denial is required by a change in law.

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

Sec. 40. **[144L.35] RESIDENT QUALITY OF CARE AND OUTCOMES IMPROVEMENT TASK FORCE.**

Subdivision 1. **Establishment.** The commissioner shall establish a resident quality of care and outcomes improvement task force to examine and make recommendations, on an ongoing basis, on how to apply proven safety and quality improvement practices and infrastructure to settings and providers that provide long-term services and supports.

Subd. 2. **Membership.** The task force shall include representation from:

(1) nonprofit Minnesota-based organizations dedicated to patient safety or innovation in health care safety and quality;

(2) Department of Health staff with expertise in issues related to safety and adverse health events;

- (3) consumer organizations;
- (4) direct care providers or their representatives;
- (5) organizations representing long-term care providers and home care providers in Minnesota;
- (6) the ombudsman for long-term care or a designee;
- (7) national patient safety experts; and
- (8) other experts in the safety and quality improvement field.

The task force shall have at least one public member who either is or has been a resident in an assisted living setting and one public member who has or had a family member living in an assisted living setting. The membership shall be voluntary except that public members may be reimbursed under section 15.059, subdivision 3.

Subd. 3. **Recommendations.** The task force shall periodically provide recommendations to the commissioner and the legislature on changes needed to promote safety and quality improvement practices in long-term care settings and with long-term care providers. The task force shall meet no fewer than four times per year. The task force shall be established by July 1, 2020.

Sec. 41. **[144L.36] 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 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 by December 31, 2020.

Sec. 42. **[144I.50] RETALIATION PROHIBITED.**

Subdivision 1. **Retaliation prohibited.** A facility or agent of a facility may not retaliate against a resident or employee if the resident, employee, or any person acting on behalf of the resident:

(1) files a good faith complaint or grievance, makes a good faith inquiry, or asserts any right;

(2) indicates a good faith intention to file a complaint or grievance, make an inquiry, or assert any right;

(3) files, in good faith, or indicates an intention to file a maltreatment report, whether mandatory or voluntary, under section 626.557;

(4) seeks assistance from or reports a reasonable suspicion of a crime or systemic problems or concerns to the director or manager of the facility, the Office of Ombudsman for Long-Term Care, a regulatory or other government agency, or a legal or advocacy organization;

(5) advocates or seeks advocacy assistance for necessary or improved care or services or enforcement of rights under this section or other law;

(6) takes or indicates an intention to take civil action;

(7) participates or indicates an intention to participate in any investigation or administrative or judicial proceeding;

(8) contracts or indicates an intention to contract to receive services from a service provider of the resident's choice other than the facility; or

(9) places or indicates an intention to place a camera or electronic monitoring device in the resident's private space as provided under section 144.6502.

Subd. 2. **Retaliation against a resident.** For purposes of this section, to retaliate against a resident includes but is not limited to any of the following actions taken or threatened by a facility or an agent of the facility against a resident, or any person with a familial, personal, legal, or professional relationship with the resident:

(1) termination of a contract;

(2) any form of discrimination;

(3) restriction or prohibition of access:

(i) of the resident to the facility or visitors; or

(ii) of a family member or a person with a personal, legal, or professional relationship with the resident, to the resident, unless the restriction is the result of a court order;

(4) the imposition of involuntary seclusion or the withholding of food, care, or services;

(5) restriction of any of the rights granted to residents under state or federal law;

(6) restriction or reduction of access to or use of amenities, care, services, privileges, or living arrangements; or

(7) unauthorized removal, tampering with, or deprivation of technology, communication, or electronic monitoring devices.

**Subd. 3. Retaliation against an employee.** For purposes of this section, to retaliate against an employee means any of the following actions taken or threatened by the facility or an agent of the facility against an employee:

(1) unwarranted discharge or transfer;

(2) unwarranted demotion or refusal to promote;

(3) unwarranted reduction in compensation, benefits, or privileges;

(4) the unwarranted imposition of discipline, punishment, or a sanction or penalty; or

(5) any form of unwarranted discrimination.

**Subd. 4. Determination by commissioner.** A resident may request that the commissioner determine whether the facility retaliated against a resident. If a resident demonstrates to the commissioner that the facility took any action described in subdivision 2 within 30 days of an initial action described in subdivision 1, the facility must present evidence to the commissioner of the nonretaliatory reason relied on by the facility for the facility action. Based on the evidence provided by both parties, the commissioner shall determine if retaliation occurred.

**Subd. 5. Other laws.** Nothing in this section affects the rights available to a resident under section 626.557.

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

#### Sec. 43. **[144L.51] CONSUMER ADVOCACY AND LEGAL SERVICES.**

Upon execution of an assisted living contract, every facility must provide the resident with the names and contact information, including telephone numbers and e-mail addresses, of:

(1) nonprofit organizations that provide advocacy or legal services to residents including but not limited to the designated protection and advocacy organization in Minnesota that provides advice and representation to individuals with disabilities; and

(2) the Office of Ombudsman for Long-Term Care, including both the state and regional contact information.

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

**Sec. 44. [144I.52] APPLICABILITY OF OTHER LAWS.**Assisted living facilities:

- (1) are subject to and must comply with chapter 504B;
- (2) must comply with section 325F.72; and
- (3) are not required to obtain a lodging license under chapter 157 and related rules.

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

**Sec. 45. TRANSITION PERIOD.**

(a) The commissioner shall begin rulemaking on July 1, 2019.

(b) From July 1, 2020, to July 31, 2021, the commissioner shall prepare for the new assisted living facility and assisted living facility with dementia care licensure by hiring staff, developing forms, and communicating with stakeholders about the new facility licensing.

(c) Effective August 1, 2021, all existing housing with services establishments providing home care services under Minnesota Statutes, chapter 144A, must convert their registration to licensure under Minnesota Statutes, chapter 144I.

(d) Effective August 1, 2021, all new assisted living facilities and assisted living facilities with dementia care must be licensed by the commissioner.

**Sec. 46. PRIORITIZATION OF ENFORCEMENT ACTIVITIES.**

Within available appropriations to the commissioner of health for enforcement activities for fiscal years 2020 and 2021, the commissioner of health shall prioritize enforcement activities taken under Minnesota Statutes, section 144A.442.

**Sec. 47. REVISOR INSTRUCTION.**

The revisor of statutes, in consultation with Senate Counsel, Research, and Fiscal Analysis, House Research, and the commissioner of health, shall recodify Minnesota Statutes, chapter 144I, in Minnesota Statutes, chapter 144G, prior to publication of the 2019 Supplement of Minnesota Statutes, and shall reorganize provisions in that chapter for greater clarity and improved organization, without changing the meaning or effect of these provisions.

**Sec. 48. REPEALER.**

Minnesota Statutes 2018, sections 144D.01; 144D.015; 144D.02; 144D.025; 144D.03; 144D.04; 144D.045; 144D.05; 144D.06; 144D.065; 144D.066; 144D.07; 144D.08; 144D.09; 144D.10; 144D.11; 144G.01; 144G.02; 144G.03; 144G.04; 144G.05; and 144G.06, are repealed effective August 1, 2021.

**ARTICLE 2****DEMENTIA CARE SERVICES FOR ASSISTED LIVING FACILITIES WITH DEMENTIA CARE****Section 1. [144L37] ADDITIONAL REQUIREMENTS FOR ASSISTED LIVING FACILITIES WITH DEMENTIA CARE.**

Subdivision 1. **Applicability.** This section applies only to assisted living facilities with dementia care.

Subd. 2. **Demonstrated capacity.** (a) An applicant for licensure as an assisted living facility with dementia care must have the ability to provide services in a manner that is consistent with the requirements in this section. The commissioner shall consider the following criteria, including, but not limited to:

(1) the experience of the applicant in managing residents with dementia or previous long-term care experience; and

(2) the compliance history of the applicant in the operation of any care facility licensed, certified, or registered under federal or state law.

(b) If the applicant does not have experience in managing residents with dementia, the applicant must employ a consultant for at least the first six months of operation. The consultant must meet the requirements in paragraph (a), clause (1), and make recommendations on providing dementia care services consistent with the requirements of this chapter. The consultant must (1) have two years of work experience related to dementia, health care, gerontology, or a related field, and (2) have completed at least the minimum core training requirements in section 144I.21. The applicant must document an acceptable plan to address the consultant's identified concerns and must either implement the recommendations or document in the plan any consultant recommendations that the applicant chooses not to implement. The commissioner must review the applicant's plan upon request.

(c) The commissioner shall conduct an on-site inspection prior to the issuance of an assisted living facility with dementia care license to ensure compliance with the physical environment requirements.

(d) The label "Assisted Living Facility with Dementia Care" must be identified on the license.

Subd. 3. **Relinquishing license.** (a) The licensee must notify the commissioner and the Office of Ombudsman for Long-Term Care in writing at least 60 calendar days prior to the voluntary relinquishment of an assisted living facility with dementia care license. For voluntary relinquishment, the facility must at least:

(1) give all residents and their designated and legal representatives 60 calendar days' notice. The notice must include at a minimum:

(i) the proposed effective date of the relinquishment;

(ii) changes in staffing;

(iii) changes in services including the elimination or addition of services;

(iv) staff training that shall occur when the relinquishment becomes effective; and

(v) contact information for the Office of Ombudsman for Long-Term Care;

(2) submit a transitional plan to the commissioner demonstrating how the current residents shall be evaluated and assessed to reside in other housing settings that are not an assisted living facility with dementia care, that are physically unsecured, or that would require move-out or transfer to other settings;

(3) change service or care plans as appropriate to address any needs the residents may have with the transition;

(4) notify the commissioner when the relinquishment process has been completed; and

(5) revise advertising materials and disclosure information to remove any reference that the facility is an assisted living facility with dementia care.

(b) Nothing in this section alters obligations under section 144I.27.

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

## Sec. 2. [144I.38] RESPONSIBILITIES OF ADMINISTRATION FOR ASSISTED LIVING FACILITIES WITH DEMENTIA CARE.

Subdivision 1. **General.** The licensee of an assisted living facility with dementia care is responsible for the care and housing of the persons with dementia and the provision of person-centered care that promotes each resident's dignity, independence, and comfort. This includes the supervision, training, and overall conduct of the staff.

Subd. 2. **Additional requirements.** (a) The licensee must follow the assisted living license requirements and the criteria in this section.

(b) The assisted living director of an assisted living facility with dementia care must complete and document that at least ten hours of the required annual continuing educational requirements relate to the care of individuals with dementia. The training must include medical management of dementia, creating and maintaining supportive and therapeutic environments for residents with dementia, and transitioning and coordinating services for residents with dementia. Continuing education credits may include college courses, preceptor credits, self-directed activities, course instructor credits, corporate training, in-service training, professional association training, web-based training, correspondence courses, telecourses, seminars, and workshops.

Subd. 3. **Policies.** (a) In addition to the policies and procedures required in the licensing of all facilities, the assisted living facility with dementia care licensee must develop and implement policies and procedures that address the:

(1) philosophy of how services are provided based upon the assisted living facility licensee's values, mission, and promotion of person-centered care and how the philosophy shall be implemented;

(2) evaluation of behavioral symptoms and design of supports for intervention plans, including nonpharmacological practices that are person-centered and evidence-informed;

(3) wandering and egress prevention that provides detailed instructions to staff in the event a resident elopes;

(4) medication management, including an assessment of residents for the use and effects of medications, including psychotropic medications;

(5) staff training specific to dementia care;



- (6) description of life enrichment programs and how activities are implemented;
- (7) description of family support programs and efforts to keep the family engaged;
- (8) limiting the use of public address and intercom systems for emergencies and evacuation drills only;
- (9) transportation coordination and assistance to and from outside medical appointments; and
- (10) safekeeping of resident's possessions.

(b) The policies and procedures must be provided to residents and the resident's legal and designated representatives at the time of move-in.

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

### Sec. 3. **[144I.39] STAFFING AND STAFF TRAINING.**

Subdivision 1. **General.** (a) An assisted living facility with dementia care must provide residents with dementia-trained staff who have been instructed in the person-centered care approach. All direct care staff assigned to care for residents with dementia must be specially trained to work with residents with Alzheimer's disease and other dementias.

(b) Only staff trained as specified in subdivisions 2 and 3 shall be assigned to care for dementia residents.

(c) Staffing levels must be sufficient to meet the scheduled and unscheduled needs of residents. Staffing levels during nighttime hours shall be based on the sleep patterns and needs of residents.

(d) In an emergency situation when trained staff are not available to provide services, the facility may assign staff who have not completed the required training. The particular emergency situation must be documented and must address:

- (1) the nature of the emergency;
- (2) how long the emergency lasted; and
- (3) the names and positions of staff that provided coverage.

Subd. 2. **Staffing requirements.** (a) The licensee must ensure that staff who provide support to residents with dementia can demonstrate a basic understanding and ability to apply dementia training to the residents' emotional and unique health care needs using person-centered planning delivery. Direct care dementia-trained staff and other staff must be trained on the topics identified during the expedited rulemaking process. These requirements are in addition to the licensing requirements for training.

(b) Failure to comply with paragraph (a) or subdivision 1 shall result in a fine under section 144I.31.

Subd. 3. **Supervising staff training.** Persons providing or overseeing staff training must have experience and knowledge in the care of individuals with dementia, including:

- (1) two years of work experience related to Alzheimer's disease or other dementias, or in health care, gerontology, or another related field; and
- (2) completion of training equivalent to the requirements in this section and successfully passing a skills competency or knowledge test required by the commissioner.

Subd. 4. **Preservice and in-service training.** Preservice and in-service training may include various methods of instruction, such as classroom style, web-based training, video, or one-to-one training. The licensee must have a method for determining and documenting each staff person's knowledge and understanding of the training provided. All training must be documented.

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

**Sec. 4. [144I.40] SERVICES FOR RESIDENTS WITH DEMENTIA.**

(a) In addition to the minimum services required in section 144I.10, an assisted living facility with dementia care must also provide the following services:

(1) assistance with activities of daily living that address the needs of each resident with dementia due to cognitive or physical limitations. These services must meet or be in addition to the requirements in the licensing rules for the facility. Services must be provided in a person-centered manner that promotes resident choice, dignity, and sustains the resident's abilities;

(2) nonpharmacological practices that are person-centered and evidence-informed;

(3) services to prepare and educate persons living with dementia and their legal and designated representatives about transitions in care and ensuring complete, timely communication between, across, and within settings; and

(4) services that provide residents with choices for meaningful engagement with other facility residents and the broader community.

(b) Each resident must be evaluated for activities according to the licensing rules of the facility. In addition, the evaluation must address the following:

(1) past and current interests;

(2) current abilities and skills;

(3) emotional and social needs and patterns;

(4) physical abilities and limitations;

(5) adaptations necessary for the resident to participate; and

(6) identification of activities for behavioral interventions.

(c) An individualized activity plan must be developed for each resident based on their activity evaluation. The plan must reflect the resident's activity preferences and needs.

(d) A selection of daily structured and non-structured activities must be provided and included on the resident's activity service or care plan as appropriate. Daily activity options based on resident evaluation may include but are not limited to:

(1) occupation or chore related tasks;

(2) scheduled and planned events such as entertainment or outings;

(3) spontaneous activities for enjoyment or those that may help defuse a behavior;

(4) one-to-one activities that encourage positive relationships between residents and staff such as telling a life story, reminiscing, or playing music;

(5) spiritual, creative, and intellectual activities;

(6) sensory stimulation activities;

(7) physical activities that enhance or maintain a resident's ability to ambulate or move; and

(8) outdoor activities.

(e) Behavioral symptoms that negatively impact the resident and others in the assisted living facility with dementia care must be evaluated and included on the service or care plan. The staff must initiate and coordinate outside consultation or acute care when indicated.

(f) Support must be offered to family and other significant relationships on a regularly scheduled basis but not less than quarterly.

(g) Access to secured outdoor space and walkways that allow residents to enter and return without staff assistance must be provided.

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

### ARTICLE 3

## CONSUMER PROTECTIONS

### Section 1. [144.6502] ELECTRONIC MONITORING IN CERTAIN FACILITIES.

Subdivision 1. Definitions. (a) For the purposes of this section, the terms defined in this subdivision have the meanings given.

(b) "Commissioner" means the commissioner of health.

(c) "Department" means the Department of Health.

(d) "Electronic monitoring" means the placement and use of an electronic monitoring device by a resident in the resident's room or private living unit in accordance with this section.

(e) "Electronic monitoring device" means a camera or other device that captures, records, or broadcasts audio, video, or both, that is placed in a resident's room or private living unit and is used to monitor the resident or activities in the room or private living unit.

(f) "Facility" means a facility that is:

(1) licensed as a nursing home under chapter 144A;

(2) licensed as a boarding care home under sections 144.50 to 144.56;

(3) until August 1, 2021, a housing with services establishment registered under chapter 144D that is either subject to chapter 144G or has a disclosed special unit under section 325F.72; or

(4) on or after August 1, 2021, an assisted living facility.

(g) "Resident" means a person 18 years of age or older residing in a facility.

(h) "Resident 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;

(2) a health care agent as defined in section 145C.01, subdivision 2; or

(3) a person who is not an agent of a facility or of a home care provider designated in writing by the resident and maintained in the resident's records on file with the facility.

Subd. 2. **Electronic monitoring authorized.** (a) A resident or a resident representative may conduct electronic monitoring of the resident's room or private living unit through the use of electronic monitoring devices placed in the resident's room or private living unit as provided in this section.

(b) Nothing in this section precludes the use of electronic monitoring of health care allowed under other law.

(c) Electronic monitoring authorized under this section is not a covered service under home and community-based waivers under sections 256B.0913, 256B.0915, 256B.092, and 256B.49.

(d) This section does not apply to monitoring technology authorized as a home and community-based service under section 256B.0913, 256B.0915, 256B.092, or 256B.49.

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's medical professional determines 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).

Subd. 4. **Refusal of roommate to consent.** If a resident of a facility who is residing in a shared room or shared living unit, or the resident representative of such a resident when acting on behalf of the resident, wants to conduct electronic monitoring and another resident living in or moving into the same shared room or shared living unit refuses to consent to the use of an electronic monitoring device, the facility shall make a reasonable attempt to accommodate the resident who wants to conduct electronic monitoring. A facility has met the requirement to make a reasonable attempt to accommodate a resident or resident representative who wants to conduct electronic monitoring when, upon notification that a roommate has not consented to the use of an electronic monitoring device in the resident's room, the facility offers to move the resident to another shared room or shared living unit that is available at the time of the request. If a resident chooses to reside in a private room or private living unit in a facility in order to accommodate the use of an electronic monitoring device, the resident must pay either the private room rate in a nursing home setting, or the applicable rent in a housing with services establishment or assisted living facility. If a facility is unable to accommodate a resident due to lack of space, the facility must reevaluate the request every two weeks until the request is fulfilled. A facility is not required to provide a private room, a single-bed room, or a private living unit to a resident who is unable to pay.

Subd. 5. **Notice to facility; exceptions.** (a) Electronic monitoring may begin only after the resident or resident representative who intends to place an electronic monitoring device and any roommate or roommate's resident representative completes the notification and consent form and submits the form to the facility.

(b) Notwithstanding paragraph (a), the resident or resident representative who intends to place an electronic monitoring device may do so without submitting a notification and consent form to the facility for up to 14 days:

(1) if the resident or the resident representative reasonably fears retaliation against the resident by the facility, timely submits the completed notification and consent form to the Office of Ombudsman for Long-Term Care, and timely submits a Minnesota Adult Abuse Reporting Center report or police report, or both, upon evidence from the electronic monitoring device that suspected maltreatment has occurred;

(2) if there has not been a timely written response from the facility to a written communication from the resident or resident representative expressing a concern prompting the desire for placement of an electronic monitoring device and if the resident or a resident representative timely submits a completed notification and consent form to the Office of Ombudsman for Long-Term Care; or

(3) if the resident or resident representative has already submitted a Minnesota Adult Abuse Reporting Center report or police report regarding the resident's concerns prompting the desire for placement and if the resident or a resident representative timely submits a completed notification and consent form to the Office of Ombudsman for Long-Term Care.

(c) Upon receipt of any completed notification and consent form, the facility must place the original form in the resident's file or file the original form with the resident's housing with services contract. The facility must provide a copy to the resident and the resident's roommate, if applicable.

(d) If a resident is conducting electronic monitoring according to paragraph (b) and obtains a signed notification and consent form from a roommate, the resident or resident representative must submit the signed notification and consent form to the facility. In the event that a resident or roommate, or the resident representative or roommate's resident representative if the representative is consenting on behalf of the resident or roommate, chooses to alter the conditions under which consent to electronic monitoring is given or chooses to withdraw consent to electronic monitoring, the facility must make available the original notification and consent form so that it may be updated. Upon receipt of the updated form, the facility must place the updated form in the resident's file or file the original form with the resident's signed housing with services contract. The facility must provide a copy of the updated form to the resident and the resident's roommate, if applicable.

(e) If a new roommate, or the new roommate's resident representative when consenting on behalf of the new roommate, does not submit to the facility a completed notification and consent form and the resident conducting the electronic monitoring does not remove or disable the electronic monitoring device, the facility must remove the electronic monitoring device.

(f) If a roommate, or the roommate's resident representative when withdrawing consent on behalf of the roommate, submits an updated notification and consent form withdrawing consent and the resident conducting electronic monitoring does not remove or disable the electronic monitoring device, the facility must remove the electronic monitoring device.

Subd. 6. **Form requirements.** (a) The notification and consent form completed by the resident must include, at a minimum, the following information:

(1) the resident's signed consent to electronic monitoring or the signature of the resident representative, if applicable. If a person other than the resident signs the consent form, the form must document the following:

(i) the date the resident was asked if the resident wants electronic monitoring to be conducted;

(ii) who was present when the resident was asked;

(iii) an acknowledgment that the resident did not affirmatively object; and

(iv) the source of authority allowing the resident representative to sign the notification and consent form on the resident's behalf;

(2) the resident's roommate's signed consent or the signature of the roommate's resident representative, if applicable. If a roommate's resident representative signs the consent form, the form must document the following:

(i) the date the roommate was asked if the roommate wants electronic monitoring to be conducted;

(ii) who was present when the roommate was asked;

(iii) an acknowledgment that the roommate did not affirmatively object; and

(iv) the source of authority allowing the resident representative to sign the notification and consent form on the roommate's behalf;

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

(4) a list of standard conditions or restrictions that the resident or a roommate may elect to place on the use of the electronic monitoring device, including but not limited to:

(i) prohibiting audio recording;

(ii) prohibiting video recording;

(iii) prohibiting broadcasting of audio or video;

(iv) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device for the duration of an exam or procedure by a health care professional;

(v) turning off the electronic monitoring device or blocking the visual recording component of the electronic monitoring device while dressing or bathing is performed; and

(vi) turning off the electronic monitoring device for the duration of a visit with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor;

(5) any other condition or restriction elected by the resident or roommate on the use of an electronic monitoring device;

(6) a statement of the circumstances under which a recording may be disseminated under subdivision 10;

(7) a signature box for documenting that the resident or roommate has withdrawn consent; and

(8) an acknowledgment that the resident consents to the Office of Ombudsman for Long-Term Care and its representatives disclosing information about the form. Disclosure under this clause shall be limited to:

(i) the fact that the form was received from the resident or resident representative;

(ii) if signed by a resident representative, the name of the resident representative and the source of authority allowing the resident representative to sign the notification and consent form on the resident's behalf; and

(iii) the type of electronic monitoring device placed.

(b) Facilities must make the notification and consent form available to the residents and inform residents of their option to conduct electronic monitoring of their rooms or private living unit.

(c) Notification and consent forms received by the Office of Ombudsman for Long-Term Care are classified under section 256.9744.

(d) A facility that contacts the Office of Ombudsman for Long-Term Care regarding an electronic monitoring device presumably placed in accordance with subdivision 5, paragraph (a) or (b), must provide the office with the type, make, and model number of the electronic monitoring device discovered by the facility.

Subd. 7. **Costs and installation.** (a) A resident or resident representative choosing to conduct electronic monitoring must do so at the resident's own expense, including paying purchase, installation, maintenance, and removal costs.

(b) If a resident chooses to place an electronic monitoring device that uses Internet technology for visual or audio monitoring, the resident may be responsible for contracting with an Internet service provider.

(c) The facility shall make a reasonable attempt to accommodate the resident's installation needs, including allowing access to the facility's public-use Internet or Wi-Fi systems when available for other public uses. A facility has the burden of proving that a requested accommodation is not reasonable.

(d) All electronic monitoring device installations and supporting services must be UL-listed.

Subd. 8. **Notice to visitors.** (a) A facility must post a sign at each facility entrance accessible to visitors that states: "Electronic monitoring devices, including security cameras and audio devices, may be present to record persons and activities."

(b) The facility is responsible for installing and maintaining the signage required in this subdivision.

Subd. 9. **Obstruction of electronic monitoring devices.** (a) A person must not knowingly hamper, obstruct, tamper with, or destroy an electronic monitoring device placed in a resident's room or private living unit without the permission of the resident or resident representative. Checking the electronic monitoring device by facility staff for the make and model number does not constitute tampering under this subdivision.

(b) It is not a violation of paragraph (a) if a person turns off the electronic monitoring device or blocks the visual recording component of the electronic monitoring device at the direction of the resident or resident representative, or if consent has been withdrawn.

Subd. 10. **Dissemination of recordings.** (a) No person may access any video or audio recording created through authorized electronic monitoring without the written consent of the resident or resident representative.

(b) Except as required under other law, a recording or copy of a recording made as provided in this section may only be disseminated for the purpose of addressing health, safety, or welfare concerns of one or more residents.

(c) A person disseminating a recording or copy of a recording made as provided in this section in violation of paragraph (b) may be civilly or criminally liable.

Subd. 11. **Admissibility of evidence.** Subject to applicable rules of evidence and procedure, any video or audio recording created through electronic monitoring under this section may be admitted into evidence in a civil, criminal, or administrative proceeding.

Subd. 12. **Liability.** (a) For the purposes of state law, the mere presence of an electronic monitoring device in a resident's room or private living unit is not a violation of the resident's right to privacy under section 144.651 or 144A.44.

(b) For the purposes of state law, a facility or home care provider is not civilly or criminally liable for the mere disclosure by a resident or a resident representative of a recording.

Subd. 13. **Immunity from liability.** The Office of Ombudsman for Long-Term Care and representatives of the office are immune from liability for conduct described in section 256.9742, subdivision 2.

Subd. 14. **Resident protections.** (a) A facility must not:



(1) refuse to admit a potential resident or remove a resident because the facility disagrees with the decision of the potential resident, the resident, or a resident representative acting on behalf of the resident regarding electronic monitoring;

(2) retaliate or discriminate against any resident for consenting or refusing to consent to electronic monitoring, as provided in section 144.6512, 144G.07, or 144I.50; or

(3) prevent the placement or use of an electronic monitoring device by a resident who has provided the facility or the Office of Ombudsman for Long-Term Care with notice and consent as required under this section.

(b) Any contractual provision prohibiting, limiting, or otherwise modifying the rights and obligations in this section is contrary to public policy and is void and unenforceable.

Subd. 15. **Employee discipline.** (a) An employee of the facility or an employee of a contractor providing services at the facility, including an arranged home care provider as defined in section 144D.01, subdivision 2a, who is the subject of proposed disciplinary action based upon evidence obtained by electronic monitoring must be given access to that evidence for purposes of defending against the proposed action.

(b) An employee who obtains a recording or a copy of the recording must treat the recording or copy confidentially and must not further disseminate it to any other person except as required under law. Any copy of the recording must be returned to the facility or resident who provided the copy when it is no longer needed for purposes of defending against a proposed action.

Subd. 16. **Penalties.** (a) The commissioner may issue a correction order as provided under section 144A.10, 144A.45, 144A.474, or 144I.30, upon a finding that the facility has failed to comply with:

(1) subdivision 5, paragraphs (c) to (f);

(2) subdivision 6, paragraph (b);

(3) subdivision 7, paragraph (c); or

(4) subdivision 8, 9, 10, or 14.

(b) For each violation of this section, the commissioner may impose a fine of up to \$500 upon a finding of noncompliance with a correction order issued under this subdivision.

(c) The commissioner may exercise the commissioner's authority under section 144D.05 to compel a housing with services establishment to meet the requirements of this section.

**EFFECTIVE DATE.** This section is effective January 1, 2020, and applies to all agreements in effect, entered into, or renewed on or after that date.

## Sec. 2. **[144.6512] RETALIATION IN NURSING HOMES PROHIBITED.**

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "nursing home" means a facility licensed as a nursing home under chapter 144A; and

(2) "resident" means a person residing in a nursing home.

Subd. 2. **Retaliation prohibited.** A nursing home or agent of a nursing home may not retaliate against a resident or employee if the resident, employee, or any person acting on behalf of the resident:

- (1) files a good faith complaint or grievance, makes a good faith inquiry, or asserts any right;
- (2) indicates a good faith intention to file a complaint or grievance, make an inquiry, or assert any right;
- (3) files, in good faith, or indicates an intention to file a maltreatment report, whether mandatory or voluntary, under section 626.557;
- (4) seeks assistance from or reports a reasonable suspicion of a crime or systemic problems or concerns to the administrator or manager of the nursing home, the Office of Ombudsman for Long-Term Care, a regulatory or other government agency, or a legal or advocacy organization;
- (5) advocates or seeks advocacy assistance for necessary or improved care or services or enforcement of rights under this section or other law;
- (6) takes or indicates an intention to take civil action;
- (7) participates or indicates an intention to participate in any investigation or administrative or judicial proceeding;
- (8) contracts or indicates an intention to contract to receive services from a service provider of the resident's choice other than the nursing home; or
- (9) places or indicates an intention to place a camera or electronic monitoring device in the resident's private space as provided under section 144.6502.

**Subd. 3. Retaliation against a resident.** For purposes of this section, to retaliate against a resident includes but is not limited to any of the following actions taken or threatened by a nursing home or an agent of the nursing home against a resident, or any person with a familial, personal, legal, or professional relationship with the resident:

- (1) a discharge or transfer;
- (2) any form of discrimination;
- (3) restriction or prohibition of access:
  - (i) of the resident to the nursing home or visitors; or
  - (ii) of a family member or a person with a personal, legal, or professional relationship with the resident, to the resident, unless the restriction is the result of a court order;
- (4) the imposition of involuntary seclusion or the withholding of food, care, or services;
- (5) restriction of any of the rights granted to residents under state or federal law;
- (6) restriction or reduction of access to or use of amenities, care, services, privileges, or living arrangements; or
- (7) unauthorized removal, tampering with, or deprivation of technology, communication, or electronic monitoring devices.

**Subd. 4. Retaliation against an employee.** For purposes of this section, to retaliate against an employee means any of the following actions taken by the nursing home or an agent of the nursing home against an employee:

- (1) unwarranted discharge or transfer;
- (2) unwarranted demotion or refusal to promote;
- (3) unwarranted reduction in compensation, benefits, or privileges;
- (4) the unwarranted imposition of discipline, punishment, or a sanction or penalty; or
- (5) any form of unwarranted discrimination.

Subd. 5. **Determination by commissioner.** A resident may request that the commissioner determine whether the facility retaliated against a resident. If a resident demonstrates to the commissioner that the facility took any action described in subdivision 3 within 30 days of an initial action described in subdivision 2, the facility must present evidence to the commissioner of the nonretaliatory reason relied on by the facility for the facility action. Based on the evidence provided by both parties, the commissioner shall determine if retaliation occurred.

**EFFECTIVE DATE.** This section is effective August 1, 2019.

### Sec. 3. [144G.07] RETALIATION PROHIBITED.

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "facility" means a housing with services establishment registered under section 144D.02 and operating under title protection under this chapter; and

(2) "resident" means a resident of a facility.

Subd. 2. **Retaliation prohibited.** A facility or agent of a facility may not retaliate against a resident or employee if the resident, employee, or any person on behalf of the resident:

(1) files a good faith complaint or grievance, makes a good faith inquiry, or asserts any right;

(2) indicates a good faith intention to file a complaint or grievance, make an inquiry, or assert any right;

(3) files, in good faith, or indicates an intention to file a maltreatment report, whether mandatory or voluntary, under section 626.557;

(4) seeks assistance from or reports a reasonable suspicion of a crime or systemic problems or concerns to the administrator or manager of the facility, the Office of Ombudsman for Long-Term Care, a regulatory or other government agency, or a legal or advocacy organization;

(5) advocates or seeks advocacy assistance for necessary or improved care or services or enforcement of rights under this section or other law;

(6) takes or indicates an intention to take civil action;

(7) participates or indicates an intention to participate in any investigation or administrative or judicial proceeding;

(8) contracts or indicates an intention to contract to receive services from a service provider of the resident's choice other than the facility; or

(9) places or indicates an intention to place a camera or electronic monitoring device in the resident's private space as provided under section 144.6502.

**Subd. 3. Retaliation against a resident.** For purposes of this section, to retaliate against a resident includes but is not limited to any of the following actions taken or threatened by a facility or an agent of the facility against a resident, or any person with a familial, personal, legal, or professional relationship with the resident:

- (1) termination of a contract;
- (2) any form of discrimination;
- (3) restriction or prohibition of access:
  - (i) of the resident to the facility or visitors; or
  - (ii) of a family member or a person with a personal, legal, or professional relationship with the resident, to the resident, unless the restriction is the result of a court order;
- (4) the imposition of involuntary seclusion or the withholding of food, care, or services;
- (5) restriction of any of the rights granted to residents under state or federal law;
- (6) restriction or reduction of access to or use of amenities, care, services, privileges, or living arrangements;
- (7) an arbitrary increase in charges or fees;
- (8) unauthorized removal, tampering with, or deprivation of technology, communication, or electronic monitoring devices; or
- (9) any oral or written communication of false information about a person advocating on behalf of the resident.

**Subd. 4. Retaliation against an employee.** For purposes of this section, to retaliate against an employee means any of the following actions taken by the facility or an agent of the facility against an employee:

- (1) unwarranted discharge or transfer;
- (2) unwarranted demotion or refusal to promote;
- (3) unwarranted reduction in compensation, benefits, or privileges;
- (4) the unwarranted imposition of discipline, punishment, or a sanction or penalty; or
- (5) any form of unwarranted discrimination.

**Subd. 5. Determination by commissioner.** A resident may request that the commissioner determine whether the facility retaliated against a resident. If a resident demonstrates to the commissioner that the facility took any action described in subdivision 3 within 30 days of an initial action described in subdivision 2, the facility must present evidence to the commissioner of the nonretaliatory reason relied on by the facility for the facility action. Based on the evidence provided by both parties, the commissioner shall determine if retaliation occurred.

**EFFECTIVE DATE.** This section is effective August 1, 2019, and expires July 31, 2021.

Sec. 4. [325F.721] PROVISION OF "I'M OKAY" CHECK SERVICES.

Subdivision 1. Definitions. (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Covered setting" means an unlicensed setting providing sleeping accommodations to one or more adult residents, at least 80 percent of which are 55 years of age or older, and offering or providing, for a fee, supportive services. For the purposes of this section, covered setting does not mean:

(1) emergency shelter, transitional housing, or any other residential units serving exclusively or primarily homeless individuals, as defined under section 116L.361;

(2) a nursing home licensed under chapter 144A;

(3) a hospital, certified boarding care, or supervised living facility licensed under sections 144.50 to 144.56;

(4) a lodging establishment licensed under chapter 157 and Minnesota Rules, parts 9520.0500 to 9520.0670, or under chapter 245D or 245G;

(5) services and residential settings licensed under chapter 245A, including adult foster care and services and settings governed under the standards in chapter 245D;

(6) private homes in which the residents are related by kinship, law, or affinity with the providers of services;

(7) a duly organized condominium, cooperative, and common interest community, or owners' association of the condominium, cooperative, and common interest community where at least 80 percent of the units that comprise the condominium, cooperative, or common interest community are occupied by individuals who are the owners, members, or shareholders of the units;

(8) temporary family health care dwellings as defined in sections 394.307 and 462.3593;

(9) settings offering services conducted by and for the adherents of any recognized church or religious denomination for its members exclusively through spiritual means or by prayer for healing;

(10) housing financed pursuant to sections 462A.37 and 462A.375, units financed with low-income housing tax credits pursuant to United States Code, title 26, section 42, and units financed by the Minnesota Housing Finance Agency that are intended to serve individuals with disabilities or individuals who are homeless, except for those developments that market or hold themselves out as assisted living facilities and provide assisted living services;

(11) rental housing developed under United States Code, title 42, section 1437, or United States Code, title 12, section 1701q;

(12) rental housing designated for occupancy by only elderly or elderly and disabled residents under United States Code, title 42, section 1437e, or rental housing for qualifying families under Code of Federal Regulations, title 24, section 983.56;

(13) rental housing funded under United States Code, title 42, chapter 89, or United States Code, title 42, section 8011; or

(14) an assisted living facility licensed under chapter 144I.

(c) "I'm okay' check services" means providing a service to, by any means, check on the safety of a resident.

(d) "Resident" means a person entering into written contract for housing and services with a covered setting.

(e) "Supportive services" means:

(1) assistance with laundry, shopping, and household chores;

(2) housekeeping services;

(3) provision of meals or assistance with meals or food preparation;

(4) help with arranging, or arranging transportation to, medical, social, recreational, personal, or social services appointments; or

(5) provision of social or recreational services.

Arranging for services does not include making referrals or contacting a service provider in an emergency.

Subd. 2. **Disclosure of "I'm okay" check services.** (a) A covered setting must prominently disclose in a written contract whether or not the setting itself or through a provider with which the setting has a business agreement offers "I'm okay" check services.

(b) If the resident contracts for "I'm okay" check services, the written contract must detail the nature, extent, and frequency of the provision of these services.

(c) A covered setting must disclose to prospective residents that the facility is not licensed as an assisted living facility under chapter 144I and, notwithstanding any contract for "I'm okay" check services, is not permitted to provide assisted living services, as defined in section 144I.01, subdivision 9, either directly or through a provider under a business relationship or other affiliation with the covered setting.

**EFFECTIVE DATE.** This section is effective for contracts entered into on or after August 1, 2021.

## ARTICLE 4

### ASSISTED LIVING LICENSURE CONFORMING CHANGES; DIRECTOR LICENSURE

Section 1. Minnesota Statutes 2018, section 144.051, subdivision 4, is amended to read:

Subd. 4. **Data classification; public data.** For providers regulated pursuant to sections 144A.43 to 144A.482 and chapter 144I, the following data collected, created, or maintained by the commissioner are classified as public data as defined in section 13.02, subdivision 15:

(1) all application data on licensees, license numbers, and license status;

(2) licensing information about licenses previously held under this chapter;

(3) correction orders, including information about compliance with the order and whether the fine was paid;

(4) final enforcement actions pursuant to chapter 14;

(5) orders for hearing, findings of fact, and conclusions of law; and

(6) when the licensee and department agree to resolve the matter without a hearing, the agreement and specific reasons for the agreement are public data.

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

Sec. 2. Minnesota Statutes 2018, section 144.051, subdivision 5, is amended to read:

Subd. 5. **Data classification; confidential data.** For providers regulated pursuant to sections 144A.43 to 144A.482 and chapter 144I, the following data collected, created, or maintained by the Department of Health are classified as confidential data on individuals as defined in section 13.02, subdivision 3: active investigative data relating to the investigation of potential violations of law by a licensee including data from the survey process before the correction order is issued by the department.

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

Sec. 3. Minnesota Statutes 2018, section 144.051, subdivision 6, is amended to read:

Subd. 6. **Release of private or confidential data.** For providers regulated pursuant to sections 144A.43 to 144A.482 and chapter 144I, the department may release private or confidential data, except Social Security numbers, to the appropriate state, federal, or local agency and law enforcement office to enhance investigative or enforcement efforts or further a public health protective process. Types of offices include Adult Protective Services, Office of the Ombudsman for Long-Term Care and Office of the Ombudsman for Mental Health and Developmental Disabilities, the health licensing boards, Department of Human Services, county or city attorney's offices, police, and local or county public health offices.

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

Sec. 4. Minnesota Statutes 2018, section 144.057, subdivision 1, is amended to read:

Subdivision 1. **Background studies required.** The commissioner of health shall contract with the commissioner of human services to conduct background studies of:

(1) individuals providing services ~~which~~ that have direct contact, as defined under section 245C.02, subdivision 11, with patients and residents in hospitals, boarding care homes, outpatient surgical centers licensed under sections 144.50 to 144.58; nursing homes and home care agencies licensed under chapter 144A; ~~residential care homes licensed under chapter 144B~~; assisted living facilities and assisted living facilities with dementia care licensed under chapter 144I; and board and lodging establishments that are registered to provide supportive or health supervision services under section 157.17;

(2) individuals specified in section 245C.03, subdivision 1, who perform direct contact services in a nursing home or a home care agency licensed under chapter 144A; an assisted living facility or assisted living facility with dementia care licensed under chapter 144I; or a boarding care home licensed under sections 144.50 to 144.58. If the individual under study resides outside Minnesota, the study must include a check for substantiated findings of maltreatment of adults and children in the individual's state of residence when the information is made available by that state, and must include a check of the National Crime Information Center database;

(3) ~~beginning July 1, 1999~~, all other employees in assisted living facilities or assisted living facilities with dementia care licensed under chapter 144I, nursing homes licensed under chapter 144A, and boarding care homes licensed under sections 144.50 to 144.58. A disqualification of an individual in this section shall disqualify the individual from positions allowing direct contact or access to patients or residents receiving

services. "Access" means physical access to a client or the client's personal property without continuous, direct supervision as defined in section 245C.02, subdivision 8, when the employee's employment responsibilities do not include providing direct contact services;

(4) individuals employed by a supplemental nursing services agency, as defined under section 144A.70, who are providing services in health care facilities; and

(5) controlling persons of a supplemental nursing services agency, as defined under section 144A.70.

If a facility or program is licensed by the Department of Human Services and subject to the background study provisions of chapter 245C and is also licensed by the Department of Health, the Department of Human Services is solely responsible for the background studies of individuals in the jointly licensed programs.

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

Sec. 5. Minnesota Statutes 2018, section 144A.04, subdivision 5, is amended to read:

Subd. 5. **Administrators.** ~~(a)~~ Each nursing home must employ an administrator who must be licensed or permitted as a nursing home administrator by the Board of ~~Examiners for Nursing Home Administrators~~ Executives for Long Term Services and Supports. The nursing home may share the services of a licensed administrator. The administrator must maintain ~~a sufficient~~ an on-site presence in the facility to effectively manage the facility in compliance with applicable rules and regulations. The administrator must establish procedures and delegate authority for on-site operations in the administrator's absence, but is ultimately responsible for the management of the facility. Each nursing home must have posted at all times the name of the administrator and the name of the person in charge on the premises in the absence of the licensed administrator.

~~(b) Notwithstanding sections 144A.18 to 144A.27, a nursing home with a director of nursing serving as an unlicensed nursing home administrator as of March 1, 2001, may continue to have a director of nursing serve in that capacity, provided the director of nursing has passed the state law and rules examination administered by the Board of Examiners for Nursing Home Administrators and maintains evidence of completion of 20 hours of continuing education each year on topics pertinent to nursing home administration.~~

Sec. 6. Minnesota Statutes 2018, section 144A.19, subdivision 1, is amended to read:

Subdivision 1. **Creation; membership.** There is hereby created the Board of ~~Examiners for Nursing Home Administrators~~ Executives for Long Term Services and Supports which shall consist of the following members:

- (1) a designee of the commissioner of health who shall be a nonvoting member;
- (2) a designee of the commissioner of human services who shall be a nonvoting member; and
- (3) the following members appointed by the governor:

(i) ~~two members~~ one licensed nursing home administrator member actively engaged in the management, operation, or ownership of ~~proprietary~~ nursing homes;

(ii) one licensed nursing home administrator or health services executive member actively engaged in the management, operation, or ownership of proprietary nursing homes or assisted living facilities;



~~(ii) two members~~ (iii) one licensed nursing home administrator or health services executive member actively engaged in the management or operation of nonprofit nursing homes or assisted living facilities;

(iv) one licensed assisted living facility director member actively engaged in the management, operation, or ownership of assisted living facilities;

~~(iii)~~ (v) one member actively engaged in the practice of medicine;

~~(iv) one member~~ (vi) two members actively engaged in the practice of professional nursing, one practicing in nursing homes and one practicing in assisted living facilities; and

~~(v)~~ (vii) three public members as defined in section 214.02. Public members may not be current health-related license holders.

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

Sec. 7. Minnesota Statutes 2018, section 144A.20, subdivision 1, is amended to read:

Subdivision 1. **Criteria.** ~~The Board of Examiners~~ Executives may issue licenses to qualified persons as nursing home administrators or assisted living directors, and shall establish qualification criteria for nursing home administrators and assisted living directors. ~~No license shall be issued to a person as a nursing home administrator unless that person:~~

~~(1) is at least 21 years of age and otherwise suitably qualified;~~

~~(2) has satisfactorily met standards set by the Board of Examiners, which standards shall be designed to assure that nursing home administrators will be individuals who, by training or experience are qualified to serve as nursing home administrators; and~~

~~(3) has passed an examination approved by the board and designed to test for competence in the subject matters referred to in clause (2), or has been approved by the Board of Examiners through the development and application of other appropriate techniques.~~

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

Sec. 8. Minnesota Statutes 2018, section 144A.20, is amended by adding a subdivision to read:

Subd. 3. **Nursing home administrator qualifications.** The Board of Executives may issue licenses to qualified persons as a nursing home administrator and shall approve training and examinations. No license shall be issued to a person as a nursing home administrator unless that person:

(1) is at least 21 years of age and otherwise suitably qualified;

(2) has satisfactorily met standards set by the Board of Executives. The standards shall be designed to assure that nursing home administrators are individuals who, by training or experience, are qualified to serve as nursing home administrators; and

(3) has passed an examination approved by the board and designed to test for competence in the subject matters referred to in clause (2), or has been approved by the Board of Executives through the development and application of other appropriate techniques.

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

Sec. 9. Minnesota Statutes 2018, section 144A.20, is amended by adding a subdivision to read:

Subd. 4. **Assisted living director qualifications; ongoing training.** (a) The Board of Executives may issue licenses to qualified persons as an assisted living director and shall approve training and examinations. No license shall be issued to a person as an assisted living director unless that person:

(1) is eligible for licensure;

(2) has applied for licensure under this subdivision within six months of hire; and

(3) has satisfactorily met standards set by the board or is scheduled to complete the training in paragraph (b) within one year of hire. The standards shall be designed to assure that assisted living directors are individuals who, by training or experience, are qualified to serve as assisted living directors.

(b) In order to be qualified to serve as an assisted living director, an individual must:

(1) have completed an approved training course and passed an examination approved by the board that is designed to test for competence and that includes assisted living facility laws in Minnesota;

(2)(i) currently be licensed as a nursing home administrator or have been validated as a qualified health services executive by the National Association of Long-Term Care Administrator Boards; and

(ii) have core knowledge of assisted living facility laws; or

(3) apply for licensure by July 1, 2021, and satisfy one of the following:

(i) have a higher education degree in nursing, social services, or mental health, or another professional degree with training specific to management and regulatory compliance;

(ii) have at least three years of supervisory, management, or operational experience and higher education training applicable to an assisted living facility;

(iii) have completed at least 1,000 hours of an executive in training program provided by an assisted living director licensed under this subdivision; or

(iv) have managed a housing with services establishment operating under assisted living title protection for at least three years.

(c) An assisted living director must receive at least 30 hours of training every two years on topics relevant to the operation of an assisted living facility and the needs of its residents. An assisted living director must maintain records of the training required by this paragraph for at least the most recent three-year period and must provide these records to Department of Health surveyors upon request. Continuing education earned to maintain another professional license, such as a nursing home administrator license, nursing license, social worker license, mental health professional license, or real estate license, may be used to satisfy this requirement when the continuing education is relevant to the assisted living services offered and residents served at the assisted living facility.

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

Sec. 10. Minnesota Statutes 2018, section 144A.21, is amended to read:

**144A.21 ADMINISTRATOR LICENSES.**

Subdivision 1. **Transferability.** A nursing home administrator's license shall not be transferable. An assisted living director's license shall not be transferable.

Subd. 2. **Rules; renewal.** The Board of ~~Examiners~~ Executives by rule shall establish forms and procedures for the processing of license renewals. A nursing home administrator's license or an assisted living director's license may be renewed only in accordance with the standards adopted by the Board of ~~Examiners~~ Executives pursuant to section 144A.24.

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

Sec. 11. Minnesota Statutes 2018, section 144A.23, is amended to read:

**144A.23 JURISDICTION OF BOARD.**

Except as provided in section 144A.04, subdivision 5, the Board of ~~examiners~~ Executives shall have exclusive authority to determine the qualifications, skill and fitness required of any person to serve as an administrator of a nursing home or an assisted living director of an assisted living facility. The holder of a license shall be deemed fully qualified to serve as the administrator of a nursing home or director of an assisted living facility under chapter 144I.

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

Sec. 12. Minnesota Statutes 2018, section 144A.24, is amended to read:

**144A.24 DUTIES OF THE BOARD.**

The Board of ~~Examiners~~ Executives shall:

(1) develop and enforce standards for licensing of nursing home administrators and assisted living directors. ~~administrator licensing, which administrators and assisted living directors will be individuals of good character who, by training or experience, are suitably qualified to serve as nursing home administrators or assisted living directors;~~

(2) develop appropriate techniques, including examinations and investigations, for determining whether applicants and licensees meet the board's standards;

(3) issue licenses and permits to those individuals who are found to meet the board's standards;

(4) establish and implement procedures designed to assure that individuals licensed as nursing home administrators and assisted living directors will comply with the board's standards;

(5) receive and investigate complaints and take appropriate action consistent with chapter 214, to revoke or suspend the license or permit of a nursing home administrator or acting administrator or an assisted living director or acting director who fails to comply with sections 144A.18 to 144A.27 or the board's standards;

(6) conduct a continuing study and investigation of nursing homes and assisted living facilities, and the administrators of nursing homes and assisted living directors within the state, with a view to the improvement of the standards imposed for the licensing of administrators and directors and improvement of the procedures and methods used for enforcement of the board's standards; and

(7) approve or conduct courses of instruction or training designed to prepare individuals for licensing in accordance with the board's standards. ~~Courses designed to meet license renewal requirements shall be designed solely to improve professional skills and shall not include classroom attendance requirements exceeding 50 hours per year.~~ The board may approve courses conducted within or without this state.

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

Sec. 13. Minnesota Statutes 2018, section 144A.251, is amended to read:

**144A.251 MANDATORY PROCEEDINGS.**

In addition to its discretionary authority to initiate proceedings under section 144A.24 and chapter 214, the Board of ~~Examiners~~ Executives shall initiate proceedings to suspend or revoke a nursing home administrator or assisted living director license or shall refuse to renew a license if within the preceding two-year period the administrator or director was employed at a nursing home or assisted living facility which during the period of employment incurred the following number of uncorrected violations, which violations were in the jurisdiction and control of the administrator or director and for which a fine was assessed and allowed to be recovered:

(1) two or more uncorrected violations which created an imminent risk of harm to a nursing home or assisted living facility resident; or

(2) ten or more uncorrected violations of any nature.

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

Sec. 14. Minnesota Statutes 2018, section 144A.2511, is amended to read:

**144A.2511 COSTS; PENALTIES.**

If the Board of ~~Examiners~~ Executives has initiated proceedings under section 144A.24 or 144A.251 or chapter 214, and upon completion of the proceedings has found that a nursing home administrator or assisted living director has violated a provision or provisions of sections 144A.18 to 144A.27, it may impose a civil penalty not exceeding \$10,000 for each separate violation, with all violations related to a single event or incident considered as one violation. The amount of the civil penalty shall be fixed so as to deprive the nursing home administrator or assisted living director of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding. For purposes of this section, the cost of the investigation and proceeding may include, but is not limited to, fees paid for services provided by the Office of Administrative Hearings, legal and investigative services provided by the Office of the Attorney General, court reporters, witnesses, and reproduction of records.

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

Sec. 15. Minnesota Statutes 2018, section 144A.26, is amended to read:

**144A.26 RECIPROCITY WITH OTHER STATES AND EQUIVALENCY OF HEALTH SERVICES EXECUTIVE.**

Subdivision 1. Reciprocity. The Board of ~~Examiners~~ Executives may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other

jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant is otherwise qualified.

Subd. 2. **Health services executive license.** The Board of Executives may issue a health services executive license to any person who (1) has been validated by the National Association of Long Term Care Administrator Boards as a health services executive, and (2) has met the education and practice requirements for the minimum qualifications of a nursing home administrator, assisted living director, and home and community-based service provider. Licensure decisions made by the board under this subdivision are final.

**EFFECTIVE DATE.** This section is effective August 1, 2019.

Sec. 16. Minnesota Statutes 2018, section 144A.44, subdivision 1, is amended to read:

Subdivision 1. **Statement of rights.** (a) A ~~person~~ client who receives home care services in the community or in an assisted living facility licensed under chapter 144I has these rights:

(1) ~~the right to~~ receive written information, in plain language, about rights before receiving services, including what to do if rights are violated;

(2) ~~the right to~~ receive care and services according to a suitable and up-to-date plan, and subject to accepted health care, medical or nursing standards and person-centered care, to take an active part in developing, modifying, and evaluating the plan and services;

(3) ~~the right to~~ be told before receiving services the type and disciplines of staff who will be providing the services, the frequency of visits proposed to be furnished, other choices that are available for addressing home care needs, and the potential consequences of refusing these services;

(4) ~~the right to~~ be told in advance of any recommended changes by the provider in the service plan and to take an active part in any decisions about changes to the service plan;

(5) ~~the right to~~ refuse services or treatment;

(6) ~~the right to~~ know, before receiving services or during the initial visit, any limits to the services available from a home care provider;

(7) ~~the right to~~ be told before services are initiated what the provider charges for the services; to what extent payment may be expected from health insurance, public programs, or other sources, if known; and what charges the client may be responsible for paying;

(8) ~~the right to~~ know that there may be other services available in the community, including other home care services and providers, and to know where to find information about these services;

(9) ~~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, ~~or~~ other health programs, or public programs;

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

(11) ~~the right to~~ access the client's own records and written information from those records in accordance with sections 144.291 to 144.298;

(12) ~~the right to~~ be served by people who are properly trained and competent to perform their duties;

(13) ~~the right to~~ be treated with courtesy and respect, and to have the client's property treated with respect;

(14) ~~the right to~~ be free from physical and verbal abuse, neglect, financial exploitation, and all forms of maltreatment covered under the Vulnerable Adults Act and the Maltreatment of Minors Act;

(15) ~~the right to~~ reasonable, advance notice of changes in services or charges;

(16) ~~the right to~~ know the provider's reason for termination of services;

(17) ~~the right to~~ at least ten calendar days' advance notice of the termination of a service by a home care provider, except at least 30 calendar days' advance notice of the service termination shall be given by a home care provider for services provided to a client residing in an assisted living facility as defined in section 144I.01, subdivision 7. This clause does not apply in cases where:

(i) the client engages in conduct that significantly alters the terms of the service plan with the home care provider;

(ii) the client, person who lives with the client, or others create an abusive or unsafe work environment for the person providing home care services; or

(iii) an emergency or a significant change in the client's condition has resulted in service needs that exceed the current service plan and that cannot be safely met by the home care provider;

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

(19) ~~the right to~~ complain to staff and others of the client's choice about services that are provided, or fail to be provided, and the lack of courtesy or respect to the client or the client's property and the right to recommend changes in policies and services, free from retaliation including the threat of termination of services;

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

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

(22) ~~the right to~~ assert these rights personally, or have them asserted by the client's representative or by anyone on behalf of the client, without retaliation; and

(23) place an electronic monitoring device in the client's or resident's space in compliance with state requirements.

(b) When providers violate the rights in this section, they are subject to the fines and license actions in sections 144A.474, subdivision 11, and 144A.475.

(c) Providers must do all of the following:

(1) encourage and assist in the fullest possible exercise of these rights;

(2) provide the names and telephone numbers of individuals and organizations that provide advocacy and legal services for clients and residents seeking to assert their rights;

(3) make every effort to assist clients or residents in obtaining information regarding whether Medicare, medical assistance, other health programs, or public programs will pay for services;

(4) make reasonable accommodations for people who have communication disabilities, or those who speak a language other than English; and

(5) provide all information and notices in plain language and in terms the client or resident can understand.

(d) No provider may require or request a client or resident to waive any of the rights listed in this section at any time or for any reasons, including as a condition of initiating services or entering into an assisted living contract.

Sec. 17. Minnesota Statutes 2018, section 144A.471, subdivision 7, is amended to read:

Subd. 7. **Comprehensive home care license provider.** Home care services that may be provided with a comprehensive home care license include any of the basic home care services listed in subdivision 6, and one or more of the following:

(1) services of an advanced practice nurse, registered nurse, licensed practical nurse, physical therapist, respiratory therapist, occupational therapist, speech-language pathologist, dietitian or nutritionist, or social worker;

(2) tasks delegated to unlicensed personnel by a registered nurse or assigned by a licensed health professional within the person's scope of practice;

(3) medication management services;

(4) hands-on assistance with transfers and mobility;

(5) treatment and therapies;

(6) assisting clients with eating when the clients have complicating eating problems as identified in the client record or through an assessment such as difficulty swallowing, recurrent lung aspirations, or requiring the use of a tube or parenteral or intravenous instruments to be fed; or

~~(6)~~ (7) providing other complex or specialty health care services.

Sec. 18. Minnesota Statutes 2018, section 144A.471, subdivision 9, is amended to read:

Subd. 9. **Exclusions from home care licensure.** The following are excluded from home care licensure and are not required to provide the home care bill of rights:

(1) an individual or business entity providing only coordination of home care that includes one or more of the following:

(i) determination of whether a client needs home care services, or assisting a client in determining what services are needed;

(ii) referral of clients to a home care provider;

(iii) administration of payments for home care services; or

(iv) administration of a health care home established under section 256B.0751;

- (2) an individual who is not an employee of a licensed home care provider if the individual:
  - (i) only provides services as an independent contractor to one or more licensed home care providers;
  - (ii) provides no services under direct agreements or contracts with clients; and
  - (iii) is contractually bound to perform services in compliance with the contracting home care provider's policies and service plans;
- (3) a business that provides staff to home care providers, such as a temporary employment agency, if the business:
  - (i) only provides staff under contract to licensed or exempt providers;
  - (ii) provides no services under direct agreements with clients; and
  - (iii) is contractually bound to perform services under the contracting home care provider's direction and supervision;
- (4) any home care services conducted by and for the adherents of any recognized church or religious denomination for its members through spiritual means, or by prayer for healing;
- (5) an individual who only provides home care services to a relative;
- (6) an individual not connected with a home care provider that provides assistance with basic home care needs if the assistance is provided primarily as a contribution and not as a business;
- (7) an individual not connected with a home care provider that shares housing with and provides primarily housekeeping or homemaking services to an elderly or disabled person in return for free or reduced-cost housing;
- (8) an individual or provider providing home-delivered meal services;
- (9) an individual providing senior companion services and other older American volunteer programs (OAVP) established under the Domestic Volunteer Service Act of 1973, United States Code, title 42, chapter 66;
- ~~(10) an employee of a nursing home or home care provider licensed under this chapter or an employee of a boarding care home licensed under sections 144.50 to 144.56 when responding to occasional emergency calls from individuals residing in a residential setting that is attached to or located on property contiguous to the nursing home, boarding care home, or location where home care services are also provided;~~
- ~~(11) an employee of a nursing home or home care provider licensed under this chapter or an employee of a boarding care home licensed under sections 144.50 to 144.56 when providing occasional minor services free of charge to individuals residing in a residential setting that is attached to or located on property contiguous to the nursing home, boarding care home, or location where home care services are also provided;~~
- (12) a member of a professional corporation organized under chapter 319B that does not regularly offer or provide home care services as defined in section 144A.43, subdivision 3;
- (13) the following organizations established to provide medical or surgical services that do not regularly offer or provide home care services as defined in section 144A.43, subdivision 3: a business trust organized under sections 318.01 to 318.04, a nonprofit corporation organized under chapter 317A, a partnership organized under chapter 323, or any other entity determined by the commissioner;



(14) an individual or agency that provides medical supplies or durable medical equipment, except when the provision of supplies or equipment is accompanied by a home care service;

(15) a physician licensed under chapter 147;

(16) an individual who provides home care services to a person with a developmental disability who lives in a place of residence with a family, foster family, or primary caregiver;

(17) a business that only provides services that are primarily instructional and not medical services or health-related support services;

(18) an individual who performs basic home care services for no more than 14 hours each calendar week to no more than one client;

(19) an individual or business licensed as hospice as defined in sections 144A.75 to 144A.755 who is not providing home care services independent of hospice service;

(20) activities conducted by the commissioner of health or a community health board as defined in section 145A.02, subdivision 5, including communicable disease investigations or testing; or

(21) administering or monitoring a prescribed therapy necessary to control or prevent a communicable disease, or the monitoring of an individual's compliance with a health directive as defined in section 144.4172, subdivision 6.

**EFFECTIVE DATE.** The amendments to clauses (10) and (11) are effective July 1, 2021.

Sec. 19. Minnesota Statutes 2018, section 144A.472, subdivision 7, is amended to read:

Subd. 7. **Fees; application, change of ownership, and renewal, and failure to notify.** (a) An initial applicant seeking temporary home care licensure must submit the following application fee to the commissioner along with a completed application:

(1) for a basic home care provider, \$2,100; or

(2) for a comprehensive home care provider, \$4,200.

(b) A home care provider who is filing a change of ownership as required under subdivision 5 must submit the following application fee to the commissioner, along with the documentation required for the change of ownership:

(1) for a basic home care provider, \$2,100; or

(2) for a comprehensive home care provider, \$4,200.

(c) For the period ending June 30, 2018, a home care provider who is seeking to renew the provider's license shall pay a fee to the commissioner based on revenues derived from the provision of home care services during the calendar year prior to the year in which the application is submitted, according to the following schedule:

**License Renewal Fee**

<b>Provider Annual Revenue</b>	<b>Fee</b>
greater than \$1,500,000	\$6,625

greater than \$1,275,000 and no more than \$1,500,000	\$5,797
greater than \$1,100,000 and no more than \$1,275,000	\$4,969
greater than \$950,000 and no more than \$1,100,000	\$4,141
greater than \$850,000 and no more than \$950,000	\$3,727
greater than \$750,000 and no more than \$850,000	\$3,313
greater than \$650,000 and no more than \$750,000	\$2,898
greater than \$550,000 and no more than \$650,000	\$2,485
greater than \$450,000 and no more than \$550,000	\$2,070
greater than \$350,000 and no more than \$450,000	\$1,656
greater than \$250,000 and no more than \$350,000	\$1,242
greater than \$100,000 and no more than \$250,000	\$828
greater than \$50,000 and no more than \$100,000	\$500
greater than \$25,000 and no more than \$50,000	\$400
no more than \$25,000	\$200

(d) For the period between July 1, 2018, and June 30, 2020, a home care provider who is seeking to renew the provider's license shall pay a fee to the commissioner in an amount that is ten percent higher than the applicable fee in paragraph (c). A home care provider's fee shall be based on revenues derived from the provision of home care services during the calendar year prior to the year in which the application is submitted.

(e) Beginning July 1, 2020, a home care provider who is seeking to renew the provider's license shall pay a fee to the commissioner based on revenues derived from the provision of home care services during the calendar year prior to the year in which the application is submitted, according to the following schedule:

#### **License Renewal Fee**

<b>Provider Annual Revenue</b>	<b>Fee</b>
greater than \$1,500,000	\$7,651
greater than \$1,275,000 and no more than \$1,500,000	\$6,695
greater than \$1,100,000 and no more than \$1,275,000	\$5,739
greater than \$950,000 and no more than \$1,100,000	\$4,783
greater than \$850,000 and no more than \$950,000	\$4,304
greater than \$750,000 and no more than \$850,000	\$3,826
greater than \$650,000 and no more than \$750,000	\$3,347
greater than \$550,000 and no more than \$650,000	\$2,870

greater than \$450,000 and no more than \$550,000	\$2,391
greater than \$350,000 and no more than \$450,000	\$1,913
greater than \$250,000 and no more than \$350,000	\$1,434
greater than \$100,000 and no more than \$250,000	\$957
greater than \$50,000 and no more than \$100,000	\$577
greater than \$25,000 and no more than \$50,000	\$462
no more than \$25,000	\$231

(f) If requested, the home care provider shall provide the commissioner information to verify the provider's annual revenues or other information as needed, including copies of documents submitted to the Department of Revenue.

(g) At each annual renewal, a home care provider may elect to pay the highest renewal fee for its license category, and not provide annual revenue information to the commissioner.

(h) A temporary license or license applicant, or temporary licensee or licensee that knowingly provides the commissioner incorrect revenue amounts for the purpose of paying a lower license fee, shall be subject to a civil penalty in the amount of double the fee the provider should have paid.

(i) The fine for failure to comply with the notification requirements in section 144A.473, subdivision 2, paragraph (c), is \$1,000.

~~(j)~~ (j) Fees and penalties collected under this section shall be deposited in the state treasury and credited to the state government special revenue fund. All fees are nonrefundable. Fees collected under paragraphs (c), (d), and (e) are nonrefundable even if received before July 1, 2017, for temporary licenses or licenses being issued effective July 1, 2017, or later.

(k) Fines and civil penalties collected under this subdivision shall be deposited in a dedicated special revenue account. On an annual basis, the balance in the special revenue account shall be appropriated to the commissioner to implement the recommendations of the advisory council established in section 144A.4799.

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

Sec. 20. Minnesota Statutes 2018, section 144A.474, subdivision 9, is amended to read:

Subd. 9. **Follow-up surveys.** For providers that have Level 3 or Level 4 violations under subdivision 11, or any violations determined to be widespread, the department shall conduct a follow-up survey within 90 calendar days of the survey. When conducting a follow-up survey, the surveyor will focus on whether the previous violations have been corrected and may also address any new violations that are observed while evaluating the corrections that have been made. ~~If a new violation is identified on a follow-up survey, no fine will be imposed unless it is not corrected on the next follow-up survey.~~

Sec. 21. Minnesota Statutes 2018, section 144A.474, subdivision 11, is amended to read:

Subd. 11. **Fines.** (a) Fines and enforcement actions under this subdivision may be assessed based on the level and scope of the violations described in paragraph ~~(e)~~ (b) and imposed immediately with no opportunity to correct the violation first as follows:

(1) Level 1, no fines or enforcement;

(2) Level 2, ~~finer ranging from \$0 to a fine of \$500 per violation~~, in addition to any of the enforcement mechanisms authorized in section 144A.475 for widespread violations;

(3) Level 3, ~~finer ranging from \$500 to \$1,000~~ a fine of \$3,000 per incident, in addition to any of the enforcement mechanisms authorized in section 144A.475; ~~and~~

(4) Level 4, ~~finer ranging from \$1,000 to a fine of \$5,000 per incident~~, in addition to any of the enforcement mechanisms authorized in section 144A.475.;

(5) for maltreatment violations for which the licensee was determined to be responsible for the maltreatment under section 626.557, subdivision 9c, paragraph (c), a fine of \$1,000. A fine of \$5,000 may be imposed if the commissioner determines the licensee is responsible for maltreatment consisting of sexual assault, death, or abuse resulting in serious injury; and

(6) the fines in clauses (1) to (4) are increased and immediate fine imposition is authorized for both surveys and investigations conducted.

When a fine is assessed against a facility for substantiated maltreatment, the commissioner shall not also impose an immediate fine under this chapter for the same circumstance.

(b) Correction orders for violations are categorized by both level and scope and fines shall be assessed as follows:

(1) level of violation:

(i) Level 1 is a violation that has no potential to cause more than a minimal impact on the client and does not affect health or safety;

(ii) Level 2 is a violation that did not harm a client's health or safety but had the potential to have harmed a client's health or safety, but was not likely to cause serious injury, impairment, or death;

(iii) Level 3 is a violation that harmed a client's health or safety, not including serious injury, impairment, or death, or a violation that has the potential to lead to serious injury, impairment, or death; and

(iv) Level 4 is a violation that results in serious injury, impairment, or death;

(2) scope of violation:

(i) isolated, when one or a limited number of clients are affected or one or a limited number of staff are involved or the situation has occurred only occasionally;

(ii) pattern, when more than a limited number of clients are affected, more than a limited number of staff are involved, or the situation has occurred repeatedly but is not found to be pervasive; and

(iii) widespread, when problems are pervasive or represent a systemic failure that has affected or has the potential to affect a large portion or all of the clients.

(c) If the commissioner finds that the applicant or a home care provider ~~required to be licensed under sections 144A.43 to 144A.482~~ has not corrected violations by the date specified in the correction order or conditional license resulting from a survey or complaint investigation, the commissioner ~~may impose a fine.~~ A shall provide a notice of noncompliance with a correction order must be mailed by e-mail to the applicant's or provider's last known e-mail address. The noncompliance notice must list the violations not corrected.

(d) For every violation identified by the commissioner, the commissioner shall issue an immediate fine pursuant to paragraph (a), clause (6). The license holder must still correct the violation in the time specified. The issuance of an immediate fine can occur in addition to any enforcement mechanism authorized under section 144A.475. The immediate fine may be appealed as allowed under this subdivision.

~~(d)~~ (e) The license holder must pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the commissioner may issue a second fine or suspend the license until the license holder complies by paying the fine. A timely appeal shall stay payment of the fine until the commissioner issues a final order.

~~(e)~~ (f) A license holder shall promptly notify the commissioner in writing when a violation specified in the order is corrected. If upon reinspection the commissioner determines that a violation has not been corrected as indicated by the order, the commissioner may issue a second fine. The commissioner shall notify the license holder by mail to the last known address in the licensing record that a second fine has been assessed. The license holder may appeal the second fine as provided under this subdivision.

~~(f)~~ (g) A home care provider that has been assessed a fine under this subdivision has a right to a reconsideration or a hearing under this section and chapter 14.

~~(g)~~ (h) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the licensed program to a third party. In such an event, the license holder shall be liable for payment of the fine.

~~(h)~~ (i) In addition to any fine imposed under this section, the commissioner may assess a penalty amount based on costs related to an investigation that results in a final order assessing a fine or other enforcement action authorized by this chapter.

~~(i)~~ (j) Fines collected under this subdivision paragraph (a), clauses (1) to (4) shall be deposited in the state government a dedicated special revenue fund and credited to an account separate from the revenue collected under section 144A.472. Subject to an appropriation by the legislature, the revenue from the fines collected must be used by the commissioner for special projects to improve home care in Minnesota as recommended by account. On an annual basis, the balance in the special revenue account shall be appropriated to the commissioner to implement the recommendations of the advisory council established in section 144A.4799.

(k) Fines collected under paragraph (a), clause (5) shall be deposited in a dedicated special revenue account and appropriated to the commissioner to provide compensation according to subdivision 14 to clients subject to maltreatment. A client may choose to receive compensation from this fund, not to exceed \$5,000 for each substantiated finding of maltreatment, or take civil action. This paragraph expires July 31, 2021.

**EFFECTIVE DATE.** This section is effective July 1, 2019.

Sec. 22. Minnesota Statutes 2018, section 144A.474, is amended by adding a subdivision to read:

Subd. 14. **Maltreatment compensation fund.** (a) Once a finding of maltreatment for which the licensee is determined to be responsible is substantiated and any request for reconsideration, if applicable, is completed, the commissioner shall pay the fine assessed under subdivision 11, paragraph (a), clause (5), as compensation to the client who was subject to the maltreatment, if:

(1) the client chooses to receive a compensation payment of either \$1,000 or \$5,000 as determined by the fine assessed under subdivision 11, paragraph (a), clause (5), depending on the level of maltreatment; and

(2) the client accepts payment of compensation under this subdivision as payment in full and agrees to waive any civil claims, including claims under section 626.557, subdivision 20, arising from the specific maltreatment incident that resulted in the fine.

(b) The commissioner shall notify the client that the client may reject a compensation payment under this subdivision and instead pursue any civil claims.

(c) Except as provided in paragraph (a), nothing in this subdivision affects the rights available to clients under section 626.557 or prevents a client from filing a maltreatment report in the future.

(d) This subdivision expires July 31, 2021.

**EFFECTIVE DATE.** This section is effective July 1, 2019.

Sec. 23. Minnesota Statutes 2018, section 144A.475, subdivision 3b, is amended to read:

Subd. 3b. **Expedited hearing.** (a) Within five business days of receipt of the license holder's timely appeal of a temporary suspension or issuance of a conditional license, the commissioner shall request assignment of an administrative law judge. The request must include a proposed date, time, and place of a hearing. A hearing must be conducted by an administrative law judge pursuant to Minnesota Rules, parts 1400.8505 to 1400.8612, within 30 calendar days of the request for assignment, unless an extension is requested by either party and granted by the administrative law judge for good cause. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten business days before the hearing. Certified mail to the last known address is sufficient. The scope of the hearing shall be limited solely to the issue of whether the temporary suspension or issuance of a conditional license should remain in effect and whether there is sufficient evidence to conclude that the licensee's actions or failure to comply with applicable laws are level 3 or 4 violations as defined in section 144A.474, subdivision 11, paragraph (b), or that there were violations that posed an imminent risk of harm to the health and safety of persons in the provider's care.

(b) The administrative law judge shall issue findings of fact, conclusions, and a recommendation within ten business days from the date of hearing. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten business days from the close of the record. When an appeal of a temporary immediate suspension or conditional license is withdrawn or dismissed, the commissioner shall issue a final order affirming the temporary immediate suspension or conditional license within ten calendar days of the commissioner's receipt of the withdrawal or dismissal. The license holder is prohibited from operation during the temporary suspension period.

(c) When the final order under paragraph (b) affirms an immediate suspension, and a final licensing sanction is issued under subdivisions 1 and 2 and the licensee appeals that sanction, the licensee is prohibited from operation pending a final commissioner's order after the contested case hearing conducted under chapter 14.

(d) A licensee whose license is temporarily suspended must comply with the requirements for notification and transfer of clients in subdivision 5. These requirements remain if an appeal is requested.

Sec. 24. Minnesota Statutes 2018, section 144A.475, subdivision 5, is amended to read:

Subd. 5. **Plan required.** (a) The process of ~~suspending or~~ revoking, or refusing to renew a license must include a plan for transferring affected ~~clients~~ clients' care to other providers by the home care provider, which will be monitored by the commissioner. Within three ~~business~~ business calendar days of being notified of the ~~final~~ final revocation, refusal to renew, or suspension action, the home care provider shall provide the commissioner, the lead agencies as defined in section 256B.0911, county adult protection and case managers, and the ombudsman for long-term care with the following information:

- (1) a list of all clients, including full names and all contact information on file;
- (2) a list of each client's representative or emergency contact person, including full names and all contact information on file;
- (3) the location or current residence of each client;
- (4) the payor sources for each client, including payor source identification numbers; and
- (5) for each client, a copy of the client's service plan, and a list of the types of services being provided.

(b) The revocation, refusal to renew, or suspension notification requirement is satisfied by mailing the notice to the address in the license record. The home care provider shall cooperate with the commissioner and the lead agencies, county adult protection and county managers, and the ombudsman for long term care during the process of transferring care of clients to qualified providers. Within three ~~business~~ business calendar days of being notified of the final revocation, refusal to renew, or suspension action, the home care provider must notify and disclose to each of the home care provider's clients, or the client's representative or emergency contact persons, that the commissioner is taking action against the home care provider's license by providing a copy of the revocation, refusal to renew, or suspension notice issued by the commissioner. If the provider does not comply with the disclosure requirements in this section, the commissioner shall notify the clients, client representatives, or emergency contact persons, about the action being taken. Lead agencies, county adult protection and county managers, and the Office of Ombudsman for Long-Term Care may also provide this information. The revocation, refusal to renew, or suspension notice is public data except for any private data contained therein.

(c) A home care provider subject to this subdivision may continue operating during the period of time home care clients are being transferred to other providers.

Sec. 25. Minnesota Statutes 2018, section 144A.476, subdivision 1, is amended to read:

Subdivision 1. **Prior criminal convictions; owner and managerial officials.** (a) Before the commissioner issues a temporary license, issues a license as a result of an approved change in ownership, or renews a license, an owner or managerial official is required to complete a background study under section 144.057. No person may be involved in the management, operation, or control of a home care provider if the person has been disqualified under chapter 245C. If an individual is disqualified under section 144.057 or chapter 245C, the individual may request reconsideration of the disqualification. If the individual requests reconsideration and the commissioner sets aside or rescinds the disqualification, the individual is eligible to be involved in the management, operation, or control of the provider. If an individual has a disqualification under section 245C.15, subdivision 1, and the disqualification is affirmed, the individual's disqualification is barred from a set aside, and the individual must not be involved in the management, operation, or control of the provider.

(b) For purposes of this section, owners of a home care provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the home care provider. An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the home care provider.

(c) For the purposes of this section, managerial officials subject to the background check requirement are individuals who provide direct contact as defined in section 245C.02, subdivision 11, or individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the home care provider. Data collected under this subdivision shall be classified as private data on individuals under section 13.02, subdivision 12.

(d) The department shall not issue any license if the applicant or owner or managerial official has been unsuccessful in having a background study disqualification set aside under section 144.057 and chapter 245C; if the owner or managerial official, as an owner or managerial official of another home care provider, was substantially responsible for the other home care provider's failure to substantially comply with sections 144A.43 to 144A.482; or if an owner that has ceased doing business, either individually or as an owner of a home care provider, was issued a correction order for failing to assist clients in violation of this chapter.

Sec. 26. Minnesota Statutes 2018, section 144A.4799, is amended to read:

**144A.4799 DEPARTMENT OF HEALTH LICENSED HOME CARE PROVIDER ADVISORY COUNCIL.**

Subdivision 1. **Membership.** The commissioner of health shall appoint eight persons to a home care and assisted living program advisory council consisting of the following:

(1) three public members as defined in section 214.02 who shall be ~~either~~ persons who are currently receiving home care services ~~or~~, persons who have received home care services within five years of the application date, persons who have family members receiving home care services, or persons who have family members who have received home care services within five years of the application date;

(2) three Minnesota home care licensees representing basic and comprehensive levels of licensure who may be a managerial official, an administrator, a supervising registered nurse, or an unlicensed personnel performing home care tasks;

(3) one member representing the Minnesota Board of Nursing; ~~and~~

(4) one member representing the office of ombudsman for long-term care; ~~and~~

(5) beginning July 1, 2021, one member of a county health and human services or county adult protection office.

Subd. 2. **Organizations and meetings.** The advisory council shall be organized and administered under section 15.059 with per diems and costs paid within the limits of available appropriations. Meetings will be held quarterly and hosted by the department. Subcommittees may be developed as necessary by the commissioner. Advisory council meetings are subject to the Open Meeting Law under chapter 13D.

Subd. 3. **Duties.** (a) At the commissioner's request, the advisory council shall provide advice regarding regulations of Department of Health licensed home care providers in this chapter, including advice on the following:



- (1) community standards for home care practices;
- (2) enforcement of licensing standards and whether certain disciplinary actions are appropriate;
- (3) ways of distributing information to licensees and consumers of home care;
- (4) training standards;
- (5) identifying emerging issues and opportunities in the home care field, including;
- (6) identifying the use of technology in home and telehealth capabilities;

~~(6)~~ (7) allowable home care licensing modifications and exemptions, including a method for an integrated license with an existing license for rural licensed nursing homes to provide limited home care services in an adjacent independent living apartment building owned by the licensed nursing home; and

~~(7)~~ (8) recommendations for studies using the data in section 62U.04, subdivision 4, including but not limited to studies concerning costs related to dementia and chronic disease among an elderly population over 60 and additional long-term care costs, as described in section 62U.10, subdivision 6.

(b) The advisory council shall perform other duties as directed by the commissioner.

(c) The advisory council shall annually ~~review the balance of the account in the state government special revenue fund described in section 144A.474, subdivision 11, paragraph (i), and make annual recommendations by January 15 directly to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services regarding appropriations to the commissioner for the purposes in section 144A.474, subdivision 11, paragraph (i).~~ The recommendations shall address ways the commissioner may improve protection of the public under existing statutes and laws and include but are not limited to projects that create and administer training of licensees and their employees to improve residents lives, supporting ways that licensees can improve and enhance quality care, ways to provide technical assistance to licensees to improve compliance; information technology and data projects that analyze and communicate information about trends of violations or lead to ways of improving client care; communications strategies to licensees and the public; and other projects or pilots that benefit clients, families, and the public.

Sec. 27. Minnesota Statutes 2018, section 256.9741, subdivision 1, is amended to read:

Subdivision 1. **Long-term care facility.** "Long-term care facility" means a nursing home licensed under sections 144A.02 to 144A.10; a boarding care home licensed under sections 144.50 to 144.56; an assisted living facility or an assisted living facility with dementia care licensed under chapter 144I; or a licensed or registered residential setting that provides or arranges for the provision of home care services.

Sec. 28. Minnesota Statutes 2018, section 256I.03, subdivision 15, is amended to read:

Subd. 15. **Supportive housing.** "Supportive housing" means housing ~~with support services according to the continuum of care coordinated assessment system established under Code of Federal Regulations, title 24, section 578.3~~ that is not time-limited and provides or coordinates services necessary for a resident to maintain housing stability.

Sec. 29. Minnesota Statutes 2018, section 256I.04, subdivision 2a, is amended to read:

Subd. 2a. **License required; staffing qualifications.** (a) Except as provided in paragraph (b), an agency may not enter into an agreement with an establishment to provide housing support unless:

(1) the establishment is licensed by the Department of Health as a hotel and restaurant; a board and lodging establishment; a boarding care home before March 1, 1985; or a supervised living facility, and the service provider for residents of the facility is licensed under chapter 245A. However, an establishment licensed by the Department of Health to provide lodging need not also be licensed to provide board if meals are being supplied to residents under a contract with a food vendor who is licensed by the Department of Health;

(2) the residence is: (i) licensed by the commissioner of human services under Minnesota Rules, parts 9555.5050 to 9555.6265; (ii) certified by a county human services agency prior to July 1, 1992, using the standards under Minnesota Rules, parts 9555.5050 to 9555.6265; (iii) licensed by the commissioner under Minnesota Rules, parts 2960.0010 to 2960.0120, with a variance under section 245A.04, subdivision 9; or (iv) licensed under section 245D.02, subdivision 4a, as a community residential setting by the commissioner of human services; or

(3) the ~~establishment~~ facility is registered under chapter 144D or licensed under chapter 144I and provides three meals a day.

(b) The requirements under paragraph (a) do not apply to establishments exempt from state licensure because they are:

(1) located on Indian reservations and subject to tribal health and safety requirements; or

(2) ~~a supportive housing establishment that has an approved habitability inspection and an individual lease agreement and that serves people who have experienced long-term homelessness and were referred through a coordinated assessment in section 256I.03, subdivision 15~~ supportive housing establishments where an individual has an approved habitability inspection and an individual lease agreement.

(c) Supportive housing establishments that serve individuals who have experienced long-term homelessness and emergency shelters must participate in the homeless management information system and a coordinated assessment system as defined by the commissioner.

(d) Effective July 1, 2016, an agency shall not have an agreement with a provider of housing support unless all staff members who have direct contact with recipients:

(1) have skills and knowledge acquired through one or more of the following:

(i) a course of study in a health- or human services-related field leading to a bachelor of arts, bachelor of science, or associate's degree;

(ii) one year of experience with the target population served;

(iii) experience as a mental health certified peer specialist according to section 256B.0615; or

(iv) meeting the requirements for unlicensed personnel under sections 144A.43 to 144A.483;

(2) hold a current driver's license appropriate to the vehicle driven if transporting recipients;

(3) complete training on vulnerable adults mandated reporting and child maltreatment mandated reporting, where applicable; and

(4) complete housing support orientation training offered by the commissioner.

Sec. 30. **[256M.42] ADULT PROTECTION GRANT ALLOCATIONS.**

**Subdivision 1. Formula.** (a) The commissioner shall allocate state money appropriated under this section to each county board and tribal government approved by the commissioner to assume county agency duties for adult protective services or as a lead investigative agency under section 626.557 on an annual basis in an amount determined according to the following formula:

(1) 25 percent must be allocated on the basis of the number of reports of suspected vulnerable adult maltreatment under sections 626.557 and 626.5572, when the county or tribe is responsible as determined by the most recent data of the commissioner; and

(2) 75 percent must be allocated on the basis of the number of screened-in reports for adult protective services or vulnerable adult maltreatment investigations under sections 626.557 and 626.5572, when the county or tribe is responsible as determined by the most recent data of the commissioner.

(b) The commissioner is precluded from changing the formula under this subdivision or recommending a change to the legislature without public review and input.

**Subd. 2. Payment.** The commissioner shall make allocations for the state fiscal year starting July 1, 2019, and to each county board or tribal government on or before October 10, 2019. The commissioner shall make allocations under subdivision 1 to each county board or tribal government each year thereafter on or before July 10.

**Subd. 3. Prohibition on supplanting existing money.** Money received under this section must be used for staffing for protection of vulnerable adults or to expand adult protective services. Money must not be used to supplant current county or tribe expenditures for these purposes.

**EFFECTIVE DATE.** This section is effective July 1, 2019.

Sec. 31. Minnesota Statutes 2018, section 325F.72, subdivision 1, is amended to read:

~~Subdivision 1. **Persons to whom disclosure is required.** Housing with services establishments, as defined in sections 144D.01 to 144D.07, that secure, segregate, or provide a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or a related disorder or that advertise, market, or otherwise promote the establishment as providing specialized care for Alzheimer's disease or a related disorder are considered a "special care unit." All special care units~~ Only assisted living facilities with dementia care licenses under chapter 144I may advertise, market, or otherwise promote the facility as providing specialized care for dementia or related disorders. All assisted living facilities with dementia care licenses shall provide a written disclosure to the following:

(1) the commissioner of health, if requested;

(2) the Office of Ombudsman for Long-Term Care; and

(3) each person seeking placement within a residence, or the person's ~~authorized representative~~ legal and designated representatives, as those terms are defined in section 144I.01, before an agreement to provide the care is entered into.

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

Sec. 32. Minnesota Statutes 2018, section 325F.72, subdivision 2, is amended to read:

Subd. 2. **Content.** Written disclosure shall include, but is not limited to, the following:

(1) a statement of the overall philosophy and how it reflects the special needs of residents with Alzheimer's disease or other dementias;

(2) the criteria for determining who may reside in the ~~special care~~ secured dementia care unit as defined in section 144I.01, subdivision 62;

(3) the process used for assessment and establishment of the service plan ~~or agreement~~, including how the plan is responsive to changes in the resident's condition;

(4) staffing credentials, job descriptions, and staff duties and availability, including any training specific to dementia;

(5) physical environment as well as design and security features that specifically address the needs of residents with Alzheimer's disease or other dementias;

(6) frequency and type of programs and activities for residents of the ~~special care unit~~ assisted living facility with dementia care;

(7) involvement of families in resident care and availability of family support programs;

(8) fee schedules for additional services to the residents of the ~~special~~ secured dementia care unit; and

(9) a statement that residents will be given a written notice 30 calendar days prior to changes in the fee schedule.

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

Sec. 33. Minnesota Statutes 2018, section 626.5572, subdivision 6, is amended to read:

Subd. 6. **Facility.** (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a facility or service required to be licensed under chapter 245A; an assisted living facility required to be licensed under chapter 144I; a home care provider licensed or required to be licensed under sections 144A.43 to 144A.482; a hospice provider licensed under sections 144A.75 to 144A.755; or a person or organization that offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under sections 256B.0625, subdivision 19a, 256B.0651 to 256B.0654, 256B.0659, or 256B.85.

(b) For services identified in paragraph (a) that are provided in the vulnerable adult's own home or in another unlicensed location, the term "facility" refers to the provider, person, or organization that offers, provides, or arranges for personal care services, and does not refer to the vulnerable adult's home or other location at which services are rendered.

Sec. 34. **REVISOR INSTRUCTION.**

The revisor of statutes shall change the phrases "Board of Examiners for Nursing Home Administrators" to "Board of Executives for Long Term Services and Supports" and "Board of Examiners" to "Board of Executives" wherever the phrases appear in Minnesota Statutes and apply to the board established in Minnesota Statutes, section 144A.19.

**Sec. 35. REPEALER.**

(a) Minnesota Statutes 2018, section 144A.472, subdivision 4, is repealed July 1, 2019.

(b) Minnesota Statutes 2018, sections 144A.441; and 144A.442, are repealed August 1, 2021.

**ARTICLE 5****APPROPRIATIONS****Section 1. COMMISSIONER OF HUMAN SERVICES.**

(a) \$7,687,000 in fiscal year 2020 and \$6,860,000 in fiscal year 2021 are appropriated from the general fund to the commissioner of human services to implement administrative and regulatory activities relating to vulnerable adults and assisted living licensure.

(b) Of the amount in paragraph (a), \$1,456,000 in fiscal year 2020 and \$2,023,000 in fiscal year 2021 are for additional staff and support activities for the ombudsman for long-term care. The base for this appropriation is \$2,512,000 in fiscal year 2022 and \$2,512,000 in fiscal year 2023.

(c) Of the amount in paragraph (a), \$1,456,000 in fiscal year 2020 and \$635,000 in fiscal year 2021 are for administrative and information technology costs to implement 24/7 capacity for Minnesota Adult Abuse Reporting Center. The base for this appropriation is \$472,000 in fiscal year 2022 and \$472,000 in fiscal year 2023.

(d) Of the amount in paragraph (a), \$1,000,000 in fiscal year 2020 and \$1,500,000 in fiscal year 2021 are for grants for adult abuse maltreatment investigations and adult protective services to counties and tribes under Minnesota Statutes, section 256M.42. The base for this appropriation is \$2,050,000 in fiscal year 2022 and \$2,655,000 in fiscal year 2023.

(e) Of the amount in paragraph (a), \$2,682,000 in fiscal year 2020 and \$2,702,000 in fiscal year 2021 are for development and administration of a resident experience survey and family survey for all housing with services establishments and assisted living facilities. The base for this appropriation is \$2,593,000 in fiscal year 2022 and \$2,593,000 in fiscal year 2023. These appropriations are available in either year of the biennium.

(f) Of the amount in paragraph (a), \$1,093,000 in fiscal year 2020 is for improvements to the current operations of regulatory activities related to vulnerable adults. The base for this appropriation is \$218,000 in fiscal year 2022 and \$218,000 in fiscal year 2023.

**Sec. 2. COMMISSIONER OF HEALTH.**

Subdivision 1. **General fund appropriation.** (a) \$9,656,000 in fiscal year 2020 and \$9,416,000 in fiscal year 2021 are appropriated from the general fund to the commissioner of health to implement regulatory activities relating to vulnerable adults and assisted living licensure.

(b) Of the amount in paragraph (a), \$7,438,000 in fiscal year 2020 and \$4,302,000 in fiscal year 2021 are for improvements to the current regulatory activities, systems, analysis, reporting, and communications relating to regulation of vulnerable adults. The base for this appropriation is \$5,800,000 in fiscal year 2022 and \$5,369,000 in fiscal year 2023.

(c) Of the amount in paragraph (a), \$2,218,000 in fiscal year 2020 and \$5,114,000 in fiscal year 2021 are to establish assisted living licensure under Minnesota Statutes, section 144I.01. This is a onetime appropriation.

Subd. 2. **State government special revenue fund appropriation.** \$1,103,000 in fiscal year 2020 and \$1,103,000 in fiscal year 2021 are appropriated from the state government special revenue fund to improve the frequency of home care provider inspections and to implement assisted living licensure activities under Minnesota Statutes, section 144I.01. The base for this appropriation is \$8,131,000 in fiscal year 2022 and \$8,339,000 in fiscal year 2023.

Subd. 3. **Transfer.** The commissioner shall transfer fine revenue previously deposited to the state government special revenue fund under Minnesota Statutes, section 144A.474, subdivision 11, estimated to be \$632,000 to a dedicated special revenue account in the state treasury established for the purposes of implementing the recommendations of the Home Care Advisory Council under Minnesota Statutes, section 144A.4799.

Presented to the governor May 22, 2019

Signed by the governor May 22, 2019, 1:49 p.m.