

Resident Rights Fact Sheet - Assisted Living Licensure Transition

In May 2019, Governor Walz signed into law the Elder Care and Vulnerable Adult Protection Act of 2019. This law requires current assisted living providers who want to continue to operate after August 1, 2021 to obtain a new assisted living facility license. The assisted living licensure requirements are found in Minnesota Chapter 144G. This fact sheet explains the new assisted living license and how the transition to the new licensing system will impact you.

Settings that are transitioning to the assisted living license are called housing with services establishments. Currently, a housing with services establishment and an arranged home care provider separately provide housing and services to an assisted living resident. The new assisted living licensure law combines a resident's housing and assisted living services under one license. As of August 1, 2021, a housing with services establishment and an arranged home care provider can no longer separately provide housing and services to an assisted living resident. The laws authorizing housing with service establishments are going away on August 1, 2021 and being replaced with the new assisted living licensure law.

The new assisted living license establishes strong consumer protections for assisted living residents including:

- requiring facilities to have a meeting with residents before issuing a notice of termination of housing and services, and to talk with the resident to identify if there may be reasonable accommodations to avoid the termination;
- prohibiting retaliation by a facility for an assisted living resident or family member who asserts their rights under the law;
- allowing a resident to appeal a termination of services;
- requiring facilities to coordinate a resident's relocation to a safe location and appropriate service provider;
- requiring a clinical nurse supervisor on staff; and
- requiring facilities to have sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled needs of each resident 24 hours a day.

Types of Assisted Living Licenses: Assisted Living Facility License and Assisted Living Facility with Dementia Care License

On August 1, 2021, a housing with services establishment must be licensed as either an assisted living facility or an assisted living facility with dementia care.

Residents with or without dementia can live in a licensed assisted living facility as long as the facility can meet the resident's assessed needs.

Assisted living facilities with dementia care license are the only facilities which may have a secured dementia care unit. Facilities with the assisted living facility with dementia care license must provide specialized dementia care services for its residents. These services include:

- providing care and housing to residents in a person-centered manner that promotes each resident's dignity, independence, and comfort;
- assistance with activities of daily living that address the needs of each resident with dementia due to cognitive or physical limitations;
- non-pharmacological practices that are person-centered and evidence-informed; and
- daily structured and non-structured activities that include entertainment or outings, spiritual, creative and intellectual activities, and outdoor activities.

Direct-care staff who work in assisted living facilities with dementia care have specialized training in dealing with residents with dementia.

How do these new license types affect me?

- If you have dementia, you can reside in a facility that has an assisted living facility license. You are not automatically required to reside in a facility that has an assisted living facility with dementia care license.
- Under these new license types, there may be limitations to the care that a facility can provide. This will depend on the type of license the provider chooses to obtain as well as any changes to operations of services or services with the new license. You have the right to advance notice of any changes to services, charges, and limitations of the services provided.

What happens during this transition period to the new Assisted Living License?

Housing

Some housing with services establishments (also known as housing provider) will choose not to transition to the new assisted living license. Under the law, your provider must inform you no later than **May 31, 2021** of its decision **not** to transition to the new assisted living license.

If your housing provider does not transition over to the new assisted living license, it must notify residents in writing and address the following:

- the provider's intent to close at least 60 days before the housing provider's registration expires or no later than May 31, 2021, whichever is earlier;
- the date when the housing with services provider will no longer provide housing with services;
- the name, date, e-mail address, and phone number of a person connected to the housing with services establishment whom you can contact to discuss the notice;
- the contact information to the Office of Ombudsman for Long-Term Care and Office of Ombudsman for Mental Health and Developmental Disabilities.

If you receive home and community-based services, your housing with services establishment must provide written notice of its intent to close to your case manager.

Services

Some home care providers (also known as service provider) will stop providing home care services after August 1, 2021. Under the law, your provider must inform you in writing no later than **May 31, 2021** of its decision **not** to provide home care services. The notice must include:

- the provider's intent to close at least 60 days before the home care license expires or no later than May 31, 2021, whichever is earlier;
- the date when the home care provider will no longer provide home care services;
- the name, date, e-mail address, and phone number of a person connected to the home care provider whom you can contact to discuss the notice;
- the contact information to the Office of Ombudsman for Long-Term Care and Office of Ombudsman for Mental Health and Developmental Disabilities.

If you receive home and community-based services, your home care provider must provide written notice of its intent to close to your case manager.

My housing provider or service provider is closing. What are my rights?

If your housing provider is closing, you may have to move. For residents who receive home care services, you continue to have the following rights during this relocation process:

- the right to be served by people who are properly trained and competent to perform their duties;
- the right to be treated with courtesy and respect, and to have your property treated with respect;
- the right to assert your rights personally, or have them asserted by your representative or by anyone on behalf of you without retaliation; and
- the right to place an electronic monitoring device in your room in compliance with state requirements.

If you receive home care or assisted living services in a housing with services setting and they are closing, you have the right to:

- At least 60 calendar days' advance notice of the termination of services by a home care provider, and
- A coordinated transfer when there will be a change in the provider of services.
- Assistance from your assigned county or contracted case manager to coordinate new services if you receive Long Term Care Medicaid waived services

You also have rights as a tenant during the relocation process. As you relocate to a new setting, your housing provider must follow landlord/tenant law in Minnesota Statute Chapter 504B. Your housing provider cannot:

- forcibly remove/evict you from your apartment;
- retaliate against you for your good faith effort to enforce your rights as a tenant; or
- physically lock you out from your assisted living or otherwise prevent you from living there without a court order.

For more information about your rights under landlord/tenant law, see:

<https://www.ag.state.mn.us/brochures/publandlordtenants.pdf>

Covid-19 Eviction moratorium: In July, 2020, Governor Walz signed an executive order (EO 20-79) prohibiting landlords from evicting tenants during the Covid-19 outbreak. What this means is that your housing provider *cannot* evict you from your residence for non-payment of rent. Please note that Governor Walz may change this executive order at any time. For more information about the current eviction moratorium, visit:

https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20%28002%29_tcm1055-440501.pdf

If you are evicted or at the end of your service contract and have questions, please contact any of the following:

- Office of Ombudsman for Long-Term Care at 651-431-2555, Toll-free at 800-657-3591;
- Minnesota Elder Justice Center at 651-440-9300; or
- Mid-Minnesota Legal Aid at 612-332-1441.

Receiving home care services from an outside service provider

You always have the right to elect to receive home care services from an outside service provider at your home or as a resident of an assisted living facility.

My housing provider is transitioning to the new Assisted Living License. How does this affect me?

Those living in Assisted Living settings after August 1st, 2021 will have many additional rights and protections.

There should be no disruption in your housing or services while your provider transitions over to the new assisted living license. Here is a link to your rights under the new assisted living licensure law:

https://www.health.state.mn.us/facilities/regulation/billofrights/docs/albor_eng.pdf

Some of your rights as an assisted living resident under the new assisted living licensure law include:

- The right to be treated with courtesy and respect;
- The right to care and assisted living services that are appropriate based on the resident's needs and care plans;
- The right to make and receive a timely response to a complaint or inquiry, without limitation;
- The right to advanced notice if the services provided to you are being reduced, limited, or changed; and
- The right to advanced notice if the cost you will pay for services will change

Payment of services

An assisted living facility may accept reimbursement through private pay, public assistance, or both. If a facility is electing to stop accepting a certain payer type, they would need to provide you with reasonable advance notice of any changes.

I live in Subsidized Housing – Does the new Assisted Living License affect me?

Many of the public housing run by the U.S. Department of Housing and Urban Development (HUD) and low-income tax credit housing do not have to get the new assisted living facility license.

There are exceptions. Section 232 HUD facilities must obtain the new assisted living facility license. Additionally, low-income tax credit facilities that market themselves or operate like an assisted living facility must get an assisted living license.

Contact your housing manager and ask them if the facility will be applying for the new assisted living license.

If you have questions about your rights, please contact the following:

MINNESOTA DEPARTMENT OF HEALTH
ASSISTED LIVING LICENSURE
HEALTH REGULATION DIVISION
PO Box 3879 St. Paul, MN 55101
www.health.state.mn.us
health.assistedliving@state.mn.us
651-201-4200 or 844-926-1061

OFFICE OF OMBUDSMAN FOR LONG-TERM CARE
PO Box 64971 St. Paul, MN 55164-0971
1-800-657-3591 or 651-431-2555
Email: MBA.OOLTC@state.mn.us
Web: mn.gov/board-on-aging/direct-services/ombudsman/

OFFICE OF OMBUDSMAN FOR MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
121 7th Place East, Suite 420
Metro Square Building
St. Paul, MN 55101-2117
1-800-657-3506 or 651-757-1800
Email: Ombudsman.mhdd@state.mn.us
Web: mn.gov/omhdd/

This document is subject to changes pending the 2021 legislative session and potential amendments to Assisted Living Licensure Rules

For accessible formats of this publication or assistance with additional equal access to human services, contact the Office of Ombudsman for Long Term Care or the Office of Ombudsman for Mental Health and Developmental Disabilities.