

Minnesota

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Licensure Term Comprehensive Home Care provider in a Registered Housing with Services establishment

Opening Statement Minnesota does not currently license assisted living as a distinct category. In 2019, the Minnesota legislature passed a bill that will license two levels of assisted living, assisted living facilities and assisted living facilities with dementia care, effective August 1, 2021. Until the new provisions go into effect, assisted living continues to be a definition requiring a Housing with Services registration and a comprehensive home care license. Alternatively, a provider that has a Housing with Services registration may contract with a separate, arranged home care agency that has a comprehensive home care license. Housing with Services establishments can also have a basic home care license to provide non-medical services, however, this license would not meet the definition of assisted living. Both licensure and registration renewals occur annually.

In 1995, the legislature separated housing from services, requiring an establishment to provide health-related services through a licensed home care agency. Minnesota then created a registration category called Housing with Services that applies to establishments that provide sleeping accommodations to adult residents and one or more health-related services or two or more supportive services. In 2006, the legislature passed a bill that provides title protection for the use of the phrase "assisted living."

Legislative and Regulatory Update In 2019, the Minnesota legislature passed HF90, which is comprehensive legislation for licensing assisted living. There will become two new licensed settings: (1) assisted living facilities and (2) assisted living facilities with dementia care. A high-level introduction of the legislation is included below. The legislation directs the Department of Health to adopt regulations governing

assisted living facilities, beginning July 1, 2019, and requires the proposed regulations to be published by December 31, 2019 with final regulations by December 31, 2020. The rules must promote person-centered planning, person-centered service delivery, and optimal quality of life; the rules must also protect resident rights, allow for resident choice, and ensure public health and safety.

While the majority of the statute does not go into effect until August 1, 2021, providers must begin complying with new electronic monitoring provisions effective January 1, 2020 and retaliation prohibitions effective August 1, 2019.

A list of services that are included in the definition of assisted living is also set forth and includes, but is not limited to: assisting with dressing, self-feeding, oral hygiene, hair care, grooming, toileting, and bathing; medication management services; providing standby assistance; 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; and supportive services in addition to the provision of at least one of the services listed in the legislation. It also establishes requirements and procedures for licensure and licensure renewal; provides for denial, suspension, and revocation of licenses, injunctive relief, and fines and correction orders; requires surveys and inspections; establishes licensure fees; prohibits transfers of licenses; requires background studies; establishes requirements for facility business operations; requires resident evaluations and assessments; provides for staff supervision, support, and training, including dementia care training; establishes medication management and treatment and therapy management requirements; provides for recordkeeping and notices, information, and complaints; establishes physical plant requirements; permits innovation variances; establishes an advisory group; and authorizes rulemaking to implement.

Article 2 establishes specific requirements for assisted living facilities with dementia care, including: staffing requirements; staff training; additional continuing education requirements for directors; access to secure outdoor space; and individualized activity plans.

Article 3 establishes consumer protections, including: authorizing electronic monitoring in nursing homes, boarding care homes, housing with services establishments, and assisted living facilities; prohibiting retaliation against residents and employees of nursing

homes and housing with services establishments; and establishing disclosure requirements for facilities that provide "I'm okay" check services, which is defined as a service to, by any means, check on the safety of a resident.

Article 4 makes statutory changes to conform with the establishment of licensure for assisted living facilities, and establishes requirements for licensure of assisted living directors by the Board of Executives for Long Term Services and Supports. The legislation renames the Board of Examiners for Nursing Home Administrators as the Board of Executives for Long Term Services and Supports. It sets forth the minimum qualifications for licensure as an assisted living director.

The following summaries include the current Minnesota requirements for Housing with Services establishments, followed by information about the new requirements that will go into effect in 2021.

Definition

Use of the phrase "assisted living" is restricted to registered Housing with Services establishments that meet specific requirements which include, but are not limited to: providing 24/7 staff access to an on-call registered nurse (RN); a system to check on each assisted living client daily; a means for assisted living clients to request assistance; staff to respond to health or safety needs 24 hours a day, seven days a week; two meals per day; weekly housekeeping and laundry; health services including assistance with self-administered medication or medication administration; assistance with at least three activities of daily living (ADLs); and health-related services from a Minnesota-licensed home care agency.

Assisted living means a service or package of services advertised, marketed, or otherwise described, offered, or promoted using the phrase "assisted living" either alone or in combination with other words, whether orally or in writing.

Housing with Services establishments provide sleeping accommodations to one or more adult residents. These facilities offer or provide, for a fee, one or more regularly scheduled health-related services or two or more regularly scheduled supportive services.

Supportive services means help with personal laundry, handling or assisting with personal funds of residents, or arranging for medical

services, health-related services, social services, or transportation to medical or social services appointments. Arranging for services does not include making referrals, assisting a resident in contacting a service provider of the resident's choice, or contacting a service provider in an emergency.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Disclosure Items

The state specifies information that must be included in a Housing with Services contract and provided to the resident. In addition, a separate Uniform Consumer Information Guide, which includes information about services offered by the provider, service costs, and other relevant provider-specific information, must be made available to all current and prospective clients in the required format. See "Unit and Staffing Requirements for Serving Persons with Dementia" section below for additional disclosure requirements specific to dementia care.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). The legislation also provides that as of that date, each facility must provide a uniform checklist disclosure of services.

See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Facility Scope of Care

Home care services that must be made available by a Housing with Services establishment using the phrase assisted living and are provided by a provider with a comprehensive home care license and includes, at a minimum, the following health-related services: assistance with self-administration of medication, medication management, or medication administration; and assistance with at least three of the following seven ADLs: bathing, dressing, grooming, eating, transferring, continence care, and toileting. A person or entity offering assisted living may define the scope of available services. Home care providers are required to provide a "Statement of Home Care Services" that outlines what services they will and will not provide under their license.

Effective August 1, 2021, an assisted living facility, which will be a licensed, defined term pursuant to HF90 (2019), must provide services as set forth in the legislation and in the upcoming conforming regulations. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Third Party Scope of Care

The establishment must have an arrangement with a comprehensive home care licensed provider or use its own licensed home care agency. Requirements do not specify whether establishments may contract with other types of providers. Tenants of a registered Housing with Services establishment have the right to bring in their own home care services.

Effective August 1, 2021, an assisted living facility, which will be a licensed, defined term pursuant to HF90 (2019), must allow for outside services as set forth in the legislation and in the upcoming conforming regulations. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Admission and Retention Policy

A person or entity offering assisted living may determine which services it will provide and may offer assisted living to all or only some of the residents of a Housing with Services establishment. Housing with Services establishments and home care providers are not required to offer or continue to provide services under a service agreement or service plan to prospective or current residents if they determine that they cannot meet their needs.

The federal Fair Housing Act, Americans with Disabilities Act, Minnesota Landlord-Tenant Law, and the Minnesota Human Rights Act apply to persons applying to lease a unit in a registered Housing with Services establishment.

Health care services may be terminated without impacting the resident's housing status. Thirty day notice, with certain exceptions, must be given to terminate health care services and assistance must be offered in finding another health care provider. Housing may be separately terminated if the conditions of the lease are violated.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). Conforming regulatory updates are forthcoming and will address admission and retention criteria. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Resident Assessment

Assessments by an RN must be offered prior to move in or upon executing a contract. Initial assessments must be conducted by an RN within five days after initiation of home care services. Client monitoring and reassessment must be conducted in the client's home within 14 days after initiation of home care services. Ongoing monitoring assessments must occur every 90 days or as needed based on the needs of the client and may be conducted by RNs and licensed practical nurses on an alternating basis. Initial assessments

for medication management must be conducted by an RN face-to-face with the client prior to the implementation of medication management services.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). The legislation mandates that the Department of Health begin regulation promulgation addressing initial assessments, continuing assessments, and a uniform assessment tool for facilities upon the effective date of the legislation. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Medication Management

For comprehensive home care providers, medications may be administered either 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 an RN and successfully completed relevant medication management competency testing. At a minimum, an establishment representing itself as assisted living must offer to provide or arrange for assistance with self-administration of medications or administration of medications. Home care licensure statutes and rules must be followed. Initial assessments for medication management must be conducted by a RN face-to-face with the client prior to the implementation of medication management services.

Effective August 1, 2021, an assisted living facility, which will be a licensed, defined term pursuant to HF90 (2019), must provide medication management services as defined in the legislation. These are not new requirements, but were previously incorporated by reference and will now be included directly in the assisted living licensure requirements. This includes: performing medication setup; administering medications; storing and securing medications; documenting medication activities; verifying and monitoring the effectiveness of systems to ensure safe handling and administration; coordinating refills; handling and implementing changes to prescriptions; communicating with the pharmacy about the resident's medications; and coordinating and communicating with the prescriber. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Square Feet Requirements

Establishments must comply with state and local building codes. The state does not specify minimum square foot requirements for private rooms.

Effective August 1, 2021, an assisted living facility will be a licensed,

defined term pursuant to HF90 (2019). Conforming regulatory updates are forthcoming and revised square foot requirements may be applicable at that time. See “Legislative and Regulatory Update” section, above, for additional detail on HF90.

Residents Allowed Per Room

Units may be shared by resident choice. The state does not specify the maximum number of residents allowed per bedroom.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). Conforming regulatory updates are forthcoming and revised requirements may be applicable at that time. See “Legislative and Regulatory Update” section, above, for additional detail on HF90.

Bathroom Requirements

The state does not specify whether establishments must provide private bathrooms to each resident or provide bathrooms for specific resident ratios.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). Conforming regulatory updates are forthcoming and revised requirements may be applicable at that time. See “Legislative and Regulatory Update” section, above, for additional detail on HF90.

Life Safety

In Minnesota, assisted living is provided in a registered Housing with Services establishment. A Housing with Services establishment must comply with the state building code and the Minnesota Uniform Fire Code and applicable local building codes and requirements for the type of structure utilized for the housing component of assisted living. The Minnesota State Fire Code is comprised of the International Fire Code plus Minnesota amendments. In Minnesota, a Housing with Services establishment is registered with the Minnesota Department of Health. This registration has no requirements regarding the physical plant of the establishment. Requirements in the NFPA Life Safety Code do not apply to Minnesota’s Housing with Services establishments.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). The legislation sets forth NFPA Life Safety Code requirements for specific facilities after the effective date of the legislation. Conforming regulatory updates are forthcoming. See “Legislative and Regulatory Update” section, above, for additional detail on HF90.

**Unit and Staffing
Requirements for
Serving Persons
with Dementia**

Housing with Services establishments 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 individuals with Alzheimer's disease or a related disorder are considered "special care units." All special care units must provide a written disclosure to the following:

- (1) The commissioner of health, if requested;
- (2) The Office of Ombudsman for Older Minnesotans; and
- (3) Each person seeking placement within a residence or the person's authorized representative, before an agreement to provide care is entered into.

Written disclosure must 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 unit;
- (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;
- (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 care unit; and

(9) A statement that residents will be given written notice 30 days prior to changes in the fee schedule.

Supervisors and direct care staff must be trained in dementia care. Areas of required training include:

- 1) An explanation of Alzheimer's disease and related disorders;
- 2) Assistance with ADLs;
- 3) Problem solving with challenging behaviors; and
- 4) Communication skills.

The licensee must provide to consumers a written or electronic description of the training program, the categories of employees trained, the frequency of training, and the basic topics covered.

Effective August 1, 2021, an assisted living facility with dementia care will be a licensed, defined term pursuant to HF90 (2019). The legislation sets forth specific requirements for an assisted living with dementia care. Conforming regulatory updates are forthcoming and will address additional requirements. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Staffing Requirements

In order to use the term assisted living, Housing with Services establishments are required to have a person available 24 hours a day, seven days a week, who is responsible for responding to the requests of assisted living clients for assistance with health or safety needs, unless they meet the criteria for exemption for awake-staff described in MN Statute 144G.03 Subdivision 3. In addition, the licensed home care agency providing the health care services must provide all services agreed to in the client's signed service plan. There are no mandated staffing ratios.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). Conforming regulatory updates are forthcoming and revised requirements may be applicable at that time. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Administrator Education/Training

The manager must obtain at least 30 hours of continuing education every two years of employment. For supervisors of direct care staff at special care units, continuing education must include at least eight hours of documented training on the topics of: (1) an

explanation of Alzheimer's disease and related disorders; (2) assistance with ADLs; (3) problem solving with challenging behaviors; and (4) communication skills, within 120 working hours of employment start date, and two hours of training on these topics for each 12 months of employment thereafter.

Additionally, for all other supervisors who provide assisted living services, this continuing education must include at least four hours of documented training on the topics identified above within 160 working hours of hire, and two hours of training on these topics for each 12 months of employment thereafter.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). The legislation creates the Board of Executives for Long Term Services and Supports and sets forth requirements for assisted living director licensure upon the effective date of the legislation.

The statute sets forth the minimum qualifications for licensure as an assisted living director, which require that an applicant:

- Complete an approved training course and pass an examination;
- Be currently licensed as a nursing home administrator or validated as a health services executive and have core knowledge of assisted living facility laws; or
- Apply for licensure by July 1, 2021, and satisfy one of the listed education, training, or experience requirements.

Assisted living directors will be required to complete at least 30 hours of training every two years on operating an assisted living facility and the needs of residents and to maintain records of training for at least the most recent three years and make those records available to Department of Health surveyors upon request.

Conforming regulatory updates are forthcoming and will address additional requirements. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

Staff Education/Training

All persons who have contact with clients must complete an orientation to home care, which includes an overview of the home care statutes and rules as well as handling emergencies, reporting maltreatment, the home care bill of rights, handling client complaints, and the services of the ombudsman for older Minnesotans. Unlicensed personnel who perform delegated nursing services must successfully complete the core training described in MN Rule 4668 and pass relevant competency evaluations for

delegated services.

Unlicensed personnel must complete at least eight hours of in-service training in topics relevant to the provision of home care services during each 12 months of employment. Included in the required eight hours of annual training must be education related to: (1) infection control, (2) Minnesota Vulnerable Adult Act and required reporting responsibilities, (3) Home Care Bill of Rights, and (4) a review of the home care provider's policies and procedures.

There are additional training requirements for Housing with Services establishments registered to have a special program or special care unit for residents with Alzheimer's disease or other dementias. Direct-care employees must complete at least eight hours of documented training on specified topics within 160 working hours of employment start date. Staff who do not provide direct care must have at least four hours of initial training within at least 160 working hours of the employment start date and at least two hours of training for each 12 months thereafter.

Effective August 1, 2021, an assisted living facility will be a licensed, defined term pursuant to HF90 (2019). The legislation sets forth staffing requirements. Conforming regulatory updates are forthcoming and will address additional requirements. See "Legislative and Regulatory Update" section, above, for additional detail on HF90.

**Entity Approving
CE Program**

None specified.

**Medicaid Policy and
Reimbursement**

Three 1915(c) Medicaid home and community-based waivers (elderly, brain injury, and community access for disability inclusion) pay for customized living services in Housing with Services establishments.

Citations

Minnesota Statutes. Chapter 144A: Home Care
<https://www.revisor.mn.gov/statutes/?id=144A>

Minnesota Statutes. Chapter 144D: Housing with Services
Establishment
<https://www.revisor.mn.gov/statutes/?id=144D>

Minnesota Statutes. Chapter 144G: Assisted Living Services
<https://www.revisor.mn.gov/statutes/?id=144G>

Minnesota Statutes. Chapter 325F.72: Disclosure of Special Care
Status. <https://www.revisor.mn.gov/statutes/?id=325F.72>

Minnesota Session Laws - 2019, Regular Session. Chapter 60--H.F.
No. 90.
<https://www.revisor.mn.gov/laws/2019/0/Session+Law/Chapter/60/>

Minnesota Department of Human Services Community-Based
Services
Manual [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DY
NAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&d
DocName=id_000402](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DY_NAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&DocName=id_000402)

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