

Subject Assisted living and home care rights; assisted living licensure

Authors Schultz

Analyst Elisabeth Klarqvist

Date February 16, 2019

Overview

This bill establishes rights and protections for residents of assisted living establishments and housing with services establishments and establishes a system to license assisted living establishments, effective July 1, 2020. It also makes changes to laws governing nursing homes, housing with services establishments, and home care providers.

Article 1: Assisted living and home care rights and consumer protections

This article creates a new chapter 144J. It establishes requirements for assisted living contracts, specifies responsibilities for housing and service-related matters, establishes notice requirements, creates an assisted living and home care bill of rights, authorizes electronic monitoring in certain facilities, prohibits retaliation, requires resident assessments, establishes requirements for terminations of housing or services, and allows private enforcement of rights.

Summary

Section	Description
1	<p>Definitions.</p> <p>Adds § 144J.01. Defines terms for this chapter: adult, agent, affiliated home care provider, assisted living contract, assisted living establishment, client, commissioner, designated representative, home care provider, home care service agreement or agreement, home care services, housing with services establishment, resident, and unaffiliated home care provider.</p>
2	<p>Assisted living contracts.</p> <p>Adds § 144J.02. Requires an assisted living establishment to execute contracts with residents, and establishes requirements for these contracts. (Under current law, these entities must comply with the contract requirements in §§ 144D.04 and 144D.045.)</p> <p>Subd. 1. Contract required. Requires assisted living establishments to execute written contracts with residents in order to provide housing, home care services,</p>

Section	Description
---------	-------------

or other services. Specifies who must sign the contract and information that must be included in the contract. Requires unsigned contracts to be provided to prospective residents and the ombudsman for long-term care, and requires signed contracts to be provided to residents or their designated representatives. Also requires assisted living establishments to give residents an opportunity to identify a designated representative, and requires the resident to agree in writing to additions or amendments to the contract.

Subd. 2. Contents of contract; contact information. Requires an assisted living contract to include specified information about the assisted living establishment and contact information and an address for the assisted living establishment, any affiliated home care provider, the owners, the managing agent, and an individual authorized to accept service of process for the assisted living establishment or an affiliated home care provider.

Subd. 3. Duration of contract. Requires an assisted living contract to include a description of the terms and conditions of the contract, information on the cost for and nature of services provided for an additional fee, information on additional fees the resident may have to pay if the resident's condition changes, grounds on which the resident may be discharged or have services terminated, and billing and payment procedures.

Subd. 4. Complaint procedures. Requires an assisted living contract to include a description of its complaint resolution process and contact information for the person designated by the assisted living establishment to handle and resolve complaints.

Subd. 5. Notice required. Lists notices that must be included in assisted living contracts.

Subd. 6. Contracts in permanent files. Requires executed assisted living contracts to be maintained in resident files for specified time periods, and requires these contracts to be available to the commissioner for on-site inspection at any time.

Subd. 7. Waiver of liability prohibited. Prohibits assisted living contracts from including:

- a waiver of assisted living establishment liability for resident health, safety, or personal property;
- deceptive, unlawful, or unenforceable provisions; or
- provisions that require or imply a lesser standard of care or responsibility than required by law.

Makes this section effective for assisted living contracts entered into on or after January 1, 2020.

Section	Description
3	<p data-bbox="354 275 805 302">Housing and service-related matters.</p> <p data-bbox="354 317 542 344">Adds § 144J.03.</p> <p data-bbox="453 386 1422 520">Subd. 1. Responsibility for housing and services. Specifies that the assisted living establishment is responsible to the resident for housing and service-related matters provided directly or through an affiliated home care provider. Specifies what service-related matters include.</p> <p data-bbox="453 562 1422 835">Subd. 2. Uniform checklist disclosure of services. Requires an assisted living establishment to provide the following to residents and prospective residents, their designated representatives, and anyone else the resident chooses: a written checklist of all services permitted under the assisted living establishment's license and all services the assisted living establishment offers; and an oral explanation of services offered under the contract. Requires the commissioner to design the uniform checklist disclosure form, in consultation with interested stakeholders.</p> <p data-bbox="453 877 1422 1150">Subd. 3. Reservation of rights. Provides that a resident is not required to use the assisted living establishment's services; that an assisted living establishment may require residents to pay for a package of services as part of a contract, even if the resident does not use some or all of the services; that an assisted living establishment does not have to fundamentally change the nature of the establishment's operations in order to accommodate a resident's request; and that an assisted living establishment has a duty to grant resident requests for reasonable accommodations.</p>
4	<p data-bbox="354 1209 1081 1236">Notice to residents of change in ownership or management.</p> <p data-bbox="354 1251 1422 1419">Adds § 144J.04. Requires assisted living establishments to provide prompt written notice to residents or designated representatives of changes in the name or contact information of owners or managers of the assisted living establishment, owners of the affiliated home care provider, and the individual authorized to accept service of process for the assisted living establishment or affiliated home care provider.</p>
5	<p data-bbox="354 1478 1049 1505">Notices in plain language and language accommodations.</p> <p data-bbox="354 1520 1422 1619">Adds § 144J.05. Requires assisted living establishments and affiliated home care providers to provide notices in plain language and make reasonable accommodations for residents with communication disabilities or who speak languages other than English.</p>
6	<p data-bbox="354 1677 797 1705">Assisted living and home care rights.</p> <p data-bbox="354 1719 1422 1814">Adds § 144J.06. Establishes rights for residents of assisted living establishments. (Under current law, rights for clients who receive home care services in any setting are governed by § 144A.44, and clients in assisted living settings also have the rights in § 144A.441.)</p>

Section	Description
	<p>Subd. 1. Definitions. Defines terms for this section: assisted living establishment, maltreatment, and resident.</p>
	<p>Subd. 2. Applicability. Makes the bill of rights apply to all home care providers, including home care providers exempt from licensure.</p>
	<p>Subd. 3. Legislative intent. States legislative intent for this section.</p>
	<p>Subd. 4. Right to information about rights. Before receiving services, provides that residents have the right to receive written information about rights in plain language and in terms residents can understand. Requires reasonable accommodations for residents with communication disabilities or who speak languages other than English. Lists what information must be provided. Also allows residents to request current policies, inspection findings, and further explanations of the rights.</p>
	<p>Subd. 5. Right to courteous treatment. Provides that residents have the right to be treated with courtesy and respect and to have their property treated with respect.</p>
	<p>Subd. 6. Right to appropriate care and services. Provides that residents have the right to care and services that are appropriate according to a current plan for care and services, and the right to receive medical and personal care and services with continuity from properly trained, competent people.</p>
	<p>Subd. 7. Right to information about individuals providing services. Provides that residents, before receiving services, have the right to be told about the type and discipline of staff who will provide the services, the frequency of proposed visits, and other choices to address the resident's needs.</p>
	<p>Subd. 8. Freedom from maltreatment. Provides that residents have the right to be free from maltreatment.</p>
	<p>Subd. 9. Right to participate in care and service planning; notice of changes. Provides that residents have the right to actively participate in planning, modifying, and evaluating their care and services.</p>
	<p>Subd. 10. Right to disclosure of contract services and rights to purchase outside services. Provides that before receiving care or services and during a stay in an assisted living establishment, residents have the right to be informed of care and services included in the assisted living contract or home care service agreement; other care and services available in the community at additional charge; and any limits to the services available from the assisted living establishment or unaffiliated home care provider. Also provides that residents have the right to advance notice of any changes in services, to purchase or rent goods or services not included in the assisted living contract or home care service agreement from a supplier of their choice, and to change home care providers. Requires home</p>

Section	Description
	<p>care providers to help residents obtain information about whether a public health care program will pay for services.</p>
	<p>Subd. 11. Right to information about charges. Provides that residents have the right to certain information about home care provider charges, payments from health insurance or a public health care program, and charges for which the resident may be responsible.</p>
	<p>Subd. 12. Right to information about health care treatment. Provides that residents have the right to complete, current information about their diagnosis, cognitive functioning level, treatment, alternatives, risks, and prognosis.</p>
	<p>Subd. 13. Right to refuse services or care. Provides that residents have the right to refuse services or care, and requires home care providers and assisted living establishments to document these refusals in the resident's record.</p>
	<p>Subd. 14. Right to personal, treatment, and communication privacy. Provides that residents have the listed rights to personal privacy and privacy in their communications and treatment.</p>
	<p>Subd. 15. Right to confidentiality of records. Provides that residents have the right to have personal, financial, and medical information kept private, to approve or refuse to approve releases of information, and to be informed of policies and procedures for disclosure of information.</p>
	<p>Subd. 16. Right to visitors and social participation. Provides that residents have the right to rights protection and advocacy services, to receive and meet with visitors, and to participate on commercial, religious, social, community, and political activities.</p>
	<p>Subd. 17. Right to designate representative. Provides that residents have the right to name a designated representative and to identify that representative in an assisted living establishment contract.</p>
	<p>Subd. 18. Right to form family and advisory councils. Provides that residents in assisted living establishments and their families have the right to establish and participate in family and advisory councils.</p>
	<p>Subd. 19. Right to complain. Provides that residents have the right to complain or ask about care and services, complain about a lack of courtesy or respect to the resident or the resident's property, know how to contact someone responsible for handling complaints, have the assisted living establishment or unaffiliated home care provider resolve or respond to the complaint, and recommend changes in policies and services.</p>

Section	Description
7	<p data-bbox="453 268 1344 369">Subd. 20. Right to assert rights. Provides that these rights may asserted by residents, designated representatives, or anyone else acting on behalf of a resident.</p> <p data-bbox="355 426 626 453">Electronic monitoring.</p> <p data-bbox="355 470 1167 497">Adds § 144J.07. Authorizes electronic monitoring in certain facilities.</p> <p data-bbox="453 537 1385 600">Subd. 1. Definitions. Defines terms: electronic monitoring device, facility, and resident representative.</p> <p data-bbox="453 640 1414 774">Subd. 2. Electronic monitoring authorized. Requires a facility to allow a resident or resident representative to conduct electronic monitoring in the resident's room or private living space. Provides that this section does not preclude electronic monitoring in health care as allowed under other law.</p> <p data-bbox="453 814 1425 1089">Subd. 3. Consent on behalf of resident. If a resident does not affirmatively object to electronic monitoring and if the resident cannot understand the nature and consequences of electronic monitoring, allows a resident representative to consent on behalf of the resident. Before consenting on behalf of a resident, lists information the resident representative must explain to the resident. Allows a resident to set conditions for the use of electronic monitoring, to request that electronic monitoring is turned off or blocked in certain circumstance, or to withdraw consent for electronic monitoring.</p> <p data-bbox="453 1129 1419 1407">Subd. 4. Roommate consent. Before implementing electronic monitoring, requires a resident or resident representative to obtain written consent from all roommates. Allows a resident representative to consent on behalf of a roommate, and specifies a procedure for a resident representative to consent. Requires a resident currently conducting electronic monitoring to obtain consent from a new roommate before continuing electronic monitoring. Requires a facility to remove the electronic monitoring device if the roommate does not consent and the resident continues to conduct electronic monitoring.</p> <p data-bbox="453 1446 1409 1759">Subd. 5. Reasonable accommodation. If a resident residing in a shared room wants to conduct electronic monitoring and a roommate refuses to consent, requires a facility to make reasonable attempts to accommodate the resident who wants to conduct electronic monitoring by offering to move the resident to another available shared room. Requires a resident to pay the private room rate if the resident chooses to reside in a private room in order to accommodate the use of an electronic monitoring device. If the facility cannot accommodate the resident due to lack of space, requires the facility to reevaluate the situation periodically until the request is fulfilled.</p> <p data-bbox="453 1799 1390 1896">Subd. 6. Notice of monitoring to the facility; exemptions to required notice. Before beginning electronic monitoring, requires a resident or resident representative to submit a notification and consent form to the facility, except</p>

Section	Description
	<p>the resident or resident representative is not required to submit the notification and consent form for up to 30 days if:</p> <ul style="list-style-type: none">▪ the resident or resident representative fears retaliation and submits a maltreatment report to the common entry point upon evidence from the electronic monitoring device of suspected maltreatment;▪ there has not been a timely written response from the facility to a written communication expressing a concern that prompts placement of an electronic monitoring device;▪ the resident or resident representative has already submitted a maltreatment report to the common entry point or police regarding the concerns that prompted placement of an electronic monitoring device. <p>Subd. 7. Notification and consent form requirements. Lists items that must be included in the notification and consent form. Requires copies of the completed form to be provided to the resident, resident representative, and facility, with certain exceptions. Requires the commissioner to prepare the notification and consent form and make it available on the department's website.</p> <p>Subd. 8. Costs and installation. Requires a resident choosing to conduct electronic monitoring to pay for purchasing and installing the electronic monitoring device. Provides that the resident may also be responsible for paying for Internet service, and requires a facility to make a reasonable attempt to accommodate the resident's installation needs.</p> <p>Subd. 9. Notice to visitors. Requires a facility to post a sign at each entrance accessible to visitors that electronic monitoring devices may be present.</p> <p>Subd. 10. Dissemination of data. Prohibits a person from accessing any data created through electronic monitoring without written consent from the resident or resident representative. Allows data created through electronic monitoring to be disseminated only to address health, safety, or welfare concerns of residents, and requires a facility employee subject to corrective or disciplinary action based on electronic monitoring evidence to be given access to that evidence to defend against the proposed action. Disseminating data from electronic monitoring in violation of this section may be grounds for civil or criminal liability.</p> <p>Subd. 11. Facility liability. Provides that a facility is not civilly or criminally liable for:</p> <ul style="list-style-type: none">▪ inadvertent or unintentional disclosure by a resident for purposes not authorized by this section; or▪ violating a resident's right to privacy based solely on the use of electronic monitoring. <p>Subd. 12. Obstruction of electronic monitoring. Prohibits a person from obstructing an electronic monitoring device without permission from the</p>

Section	Description
	<p>resident or resident representative, but allows the device to be turned off or blocked if the resident or resident representative so directs, or if consent has been withdrawn.</p> <p>Subd. 13. Residents rights and protections. Prohibits a facility from refusing to admit a resident or removing a resident if the facility disagrees with a decision regarding electronic monitoring; retaliating against a resident regarding electronic monitoring; or preventing the placement or use of electronic monitoring.</p> <p>Subd. 14. Penalties. Allows the commissioner to issue a correction order if the facility fails to comply with this section, and to impose a fine upon a finding of noncompliance with the correction order.</p>
8	<p>Use of restraints in assisted living establishments. Adds § 144J.08. Requires residents in assisted living establishments to be free from physical or chemical restraints.</p>
9	<p>Retaliation prohibited in assisted living establishments. Adds § 144J.09. Prohibits an assisted living establishment or an agent from retaliating against a resident or employee for one of the listed grounds. Specifies what constitutes retaliation against a resident and retaliation against an employee.</p>
10	<p>Deceptive marketing and business practices. Adds § 144J.10. Prohibits providers, which include assisted living establishments and affiliated home care providers, from engaging in the listed deceptive marketing and business practices.</p>
11	<p>No discrimination based on source of payment. Adds § 144J.11. Requires assisted living establishments and affiliated home care providers to provide for equal access to quality care and maintain uniform residency, transfer, service provision, and service termination policies, regardless of a resident's or potential resident's source of payment.</p>
12	<p>Assessment of residents. Adds § 144J.12. Requires an assisted living establishment to conduct an initial assessment before a prospective resident executes an assisted living contract or moves in. Also requires ongoing assessments to identify changes in a resident's condition and indicate needed changes in a resident's plan for care and services. Specifies who must conduct assessment activities, and gives a prospective resident the right to participate in the care and service planning process and include others as they wish. Requires the commissioner to adopt rules establishing assessment standards.</p>

Section	Description
13	<p data-bbox="354 275 1321 344">Assisted living establishments; involuntary discharges and service terminations. Adds § 144J.13.</p> <p data-bbox="453 386 1203 413">Subd. 1. Definition. Defines termination of housing or services.</p> <p data-bbox="453 455 1414 585">Subd. 2. Prerequisites to termination of housing or services. Before terminating housing or services, requires an assisted living establishment to explain the reasons for termination and work with the resident and others to identify and offer reasonable alternatives to avoid termination.</p> <p data-bbox="453 627 1425 974">Subd. 3. Permissible reasons to terminate housing or services. Prohibits an assisted living establishment from terminating housing or services, except if the assisted living establishment administrator determines the termination is necessary for one of the listed reasons or if the resident's needs exceed the scope of services for which the resident contracted or the scope of the assisted living establishment's license. Allows an establishment to initiate discharge, eviction, or termination proceedings for nonpayment, provided other criteria are met. When an affiliated home care provider voluntarily discontinues services to all residents, requires the provider to notify the commissioner, lead agencies, and ombudsman for long-term care.</p> <p data-bbox="453 1016 1406 1115">Subd. 4. Advance notice required. Requires at least 30 days' advance notice to the resident and the ombudsman for long-term care of a termination of housing or services, except in emergencies.</p> <p data-bbox="453 1157 1300 1184">Subd. 5. Content of notice. Lists what the advance notice must include.</p> <p data-bbox="453 1226 1403 1325">Subd. 6. Exception for emergencies. Specifies when an assisted living establishment may relocate a resident from the establishment with less than 30 days' notice.</p> <p data-bbox="453 1367 1425 1713">Subd. 7. Right to appeal termination of housing or services. Gives a resident or designated representative the right to appeal a termination of housing or services to the Office of Administrative Hearings (OAH). Requires OAH to conduct an expedited hearing as soon as practicable, and places the burden of proof of establishing that the termination is permissible on the assisted living establishment. Prohibits housing or services from being terminated during the appeal, and authorizes the commissioner of health to order that the termination is rescinded if the termination violates state or federal law. Allows the resident or designated representative to receive assistance from the ombudsman for long-term care or the protection and advocacy agency.</p> <p data-bbox="453 1755 1333 1806">Subd. 8. Discharge planning. Establishes discharge planning duties for the assisted living establishment.</p>

Section	Description
14	<p>Forced arbitration.</p> <p>Adds § 144J.14. Requires an assisted living establishment to affirmatively disclose to the resident any forced arbitration provision; and prohibits a forced arbitration provision from including a choice of law or choice of venue provision or from being unconscionable.</p>
15	<p>Private enforcement of rights.</p> <p>Adds § 144J.15. Allows a resident or designated representative to bring a civil action for violations of section 144J.06, subdivisions 9 (right to participate in care and service planning, notice of discharge); 16 (right to visitors and social participation); 19 (right to complain); and 20 (right to assert rights).</p> <p>Also allows a resident or resident representative to seek injunctive and other legal or equitable relief for violations of sections 144J.10 (deceptive marketing and business practices); 144J.11 (no discrimination based on source of payment); or 144J.14 (forced arbitration).</p>
16	<p>Applicability of other laws.</p> <p>Adds § 144J.16. Requires:</p> <ul style="list-style-type: none">▪ assisted living establishments to comply to chapter 504B (landlord/tenant laws); and▪ housing with services establishments with assisted living title protection, and licensed assisted living establishments after July 1, 2020, to comply with section 325F.72 (disclosure of special care status required). <p>Provides that assisted living establishments are not required to obtain a lodging license under chapter 157.</p>
17	<p>Remedy.</p> <p>Amends § 325F.72, subd. 4. Strikes language prohibiting a private right of action for a violation of the statute establishing disclosure requirements for housing with services establishments that provide special programs or special units for residents with Alzheimer's disease or a related disorder.</p>
18	<p>Repealer.</p> <p>Repeals §§ 144A.44 (home care bill of rights); 144A.441 (assisted living bill of rights addendum); 144A.442 (service termination requirements for assisted living clients); 144D.07 (requiring housing with services establishment residents to be free from physical or chemical restraints); 144G.03, subd. 6 (requirements to terminate a housing with services contract); 144D.04, subs. 2 and 3 (content of housing with services contract, contract in permanent files); and 144D.045 (information on arranged home care providers).</p>

Article 2: Nursing homes

This article makes changes to the health care bill of rights, which applies to patients and residents in hospitals, nursing homes, and other acute care and nonacute care facilities, and authorizes enforcement of the health care bill of rights by nursing home residents.

Section	Description
1	<p>Legislative intent.</p> <p>Amends § 144.651. Amends the legislative intent section of the health care bill of rights, by adding designated representatives to list of individuals who may seek to enforce rights on behalf of a patient or resident. Also adds a reference to section 144.6512, being added in this article.</p>
2	<p>Retaliation prohibited.</p> <p>Adds subd. 34 to § 144.651. Prohibits a facility from retaliating against a patient, resident, or employee for the listed conduct, and specifies what constitutes retaliation against a patient or resident and what constitutes retaliation against an employee.</p>
3	<p>Enforcement of health care bill of rights by nursing home residents.</p> <p>Adds § 144.6512. Allows a nursing home resident or a legal representative to bring a civil action for a violation of section 144.651, subdivisions 14 (freedom from maltreatment), 20 (grievances), 26 (right to associate), 30 (protection and advocacy services), and 34 (retaliation prohibited).</p>

Article 3: Housing with services establishments

Section	Description
1	<p>Affiliated home care provider.</p> <p>Amends § 144D.01, subd 2a. In the housing with services chapter, changes the term used and only allows a home care provider affiliated with a housing with services establishment to provide supportive services (currently a housing with services establishment may provide health-related and supportive services).</p>
2	<p>Client.</p> <p>Adds subd. 2b to § 144D.01. Defines client for the housing with services chapter.</p>
3	<p>Housing with services establishment or establishment.</p> <p>Amends § 144D.01, subd. 4. Amends the definition of housing with services establishment, in part to allow it to only offer supportive services.</p>

Section	Description
4	Resident. Adds subd. 4a to § 144D.01. Defines resident for the housing with services chapter.
5	Supportive services. Amends § 144D.01, subd. 5. Modifies the definition of supportive services.
6	Unaffiliated home care provider. Adds subd. 8 to § 144D.01. Defines unaffiliated home care provider for the housing with services chapter.
7	Definition for purposes of long-term care insurance. Amends § 144D.015. Strikes a reference to chapter 144G, which is being repealed, and specifies that a housing with services establishment that holds a home care license or contracts to provide home care services is an assisted living establishment for purposes of long-term care insurance.
8	Registration required. Amends § 144D.02. Provides that after July 1, 2020, a housing with services establishment may only provide supportive services, and prohibits a housing with services establishment from offering or providing services that require an assisted living establishment license.
9	Contract required. Amends § 144D.04, subd. 1. Requires housing with services contracts to satisfy the contract requirements in section 144J.02, rather than requirements in a subdivision being repealed, and strikes language that is no longer needed.
10	Authority of commissioner. Amends § 144D.05. In a section specifying the commissioner's authority related to housing with services establishments, provides that the commissioner has the authority provided in chapters 144 and 144I.
11	Other laws. Amends § 144D.06. Provides that a housing with services establishment is no longer required to comply with the disclosure requirements in section 325F.72 regarding programs or units for persons with Alzheimer's disease or a related disorder, because housing with services establishments can no longer provide these services or have these units.
12	Termination of housing or supportive services. Amends § 144D.09.

Section	Description
	<p>Subd. 1. Prerequisites to termination of housing or supportive services. Before involuntarily terminating a resident's housing or supportive services, requires a housing with services establishment to explain the reason for the termination and work with the resident and others on alternatives to avoid the termination.</p> <p>Subd. 2. Advance notice required. Requires a housing with services establishment to provide at least 30 days' advance notice to a resident of a termination of housing or supportive services, except in emergencies.</p> <p>Subd. 3. Content of notice. Lists what the notice must contain.</p> <p>Subd. 4. Exception for emergencies. Lists circumstances in which a housing with services establishment may provide less than 30 days' notice, and establishes additional duties for housing with services establishments relocating a resident with less than 30 days' notice.</p>
13	<p>Manager requirements.</p> <p>Amends § 144D.10. In a section establishing requirements for managers of housing with services establishments, strikes paragraphs no longer applicable to these establishments, and requires new managers to satisfy dementia training requirements adopted by the commissioner in rule.</p>
14	<p>Emergency planning.</p> <p>Amends § 144D.11. In a section on emergency training and emergency plans, changes a term used and requires provision of emergency exit diagrams when the resident signs a contract.</p>
15	<p>Repealer.</p> <p>Repeals § 144D.09 (termination of lease).</p>

Article 4: Assisted living licensure

This article establishes licensure requirements for assisted living establishments and adds licensure of assisted living establishment administrators to the jurisdiction of the Board of Examiners for Nursing Home Administrators. These requirements become effective July 1, 2020.

Section	Description
1	<p>Background studies required.</p> <p>Amends § 144.057, subd. 1. Requires the commissioner of health to contract with the commissioner of human services to conduct background studies on employees of assisted living establishments.</p>
2	<p>Assessments of care and services to nursing home and assisted living residents.</p> <p>Amends § 144.0721. Directs the commissioner of health to assess the appropriateness and quality of care and services provided to private paying residents of assisted living facilities certified to participate in the medical assistance program, and adds assisted living establishments to the entities with whom the commissioner may share assessment data.</p>
3	<p>License, permit, and survey fees.</p> <p>Amends § 144.122. Set license fees for assisted living establishments levels 1, 2, and 3 as blank amounts.</p>
4	<p>Administrator's licenses; penalty.</p> <p>Amends § 144A.18. Prohibits a person from acting as an assisted living establishment administrator unless licensed by the Board of Examiners for Nursing Home Administrators and Assisted Living Establishment Administrators.</p>
5	<p>Creation; membership.</p> <p>Amends § 144A.19. Adds to the board's membership, two members who manage, operate, or own an assisted living establishment and two members who manage, own, or operate a nonprofit assisted living establishment.</p>
6	<p>Criteria.</p> <p>Amends § 144A.20, subd. 1. Allows the board to license assisted living establishment administrators, and adds references to these administrators throughout the subdivision.</p>
7	<p>Administrator licenses.</p> <p>Amends § 144A.21. Prohibits transfer of an assisted living establishment administrator's license, and allows renewal according to rules adopted by the board.</p>
8	<p>Jurisdiction of board.</p> <p>Amends § 144A.23. Gives the board exclusive authority to determine qualifications for assisted living establishment administrators.</p>
9	<p>Duties of board.</p> <p>Amends § 144A.24. Expands the board's duties to include duties related to licensing assisted living establishment administrators.</p>

Section	Description
10	<p>Mandatory proceedings.</p> <p>Amends § 144A.251. Allows the board to suspend, revoke, or refuse to renew an assisted living establishment administrator's license for certain numbers and types of uncorrected violations at the assisted living establishment.</p>
11	<p>Costs; penalties.</p> <p>Amends § 144A.2511. Allows the board to impose civil penalties on assisted living establishment administrators for certain violations.</p>
12	<p>Reciprocity with other states.</p> <p>Amends § 144A.26. Allows the board to issue an assisted living establishment administrator's license without examination to a person with such a license from another jurisdiction.</p>
13	<p>Acting administrators.</p> <p>Amends § 144A.27. Allows the controlling persons of an assisted living establishment to designate an acting administrator if the existing administrator is removed from the position for an unexpected reason.</p>
14	<p>Definitions.</p> <p>Adds § 144I.01. Defines terms for the chapter licensing assisted living establishments: administrator, adult, affiliated home care provider, applicant, assisted living establishment, basic home care services, commissioner, comprehensive home care services, controlling persons, designated representative, home care service agreement or service agreement, home care services, ombudsman, plan for care and services, resident, and unaffiliated home care provider.</p>
15	<p>Licensure; penalty.</p> <p>Adds § 144I.02.</p> <p>Subd. 1. Licensing levels. Establishes three levels of licensure for assisted living establishments: level 1 offers basic home care services, level 2 offers comprehensive home care services, and level 3 offers special care or services for persons with Alzheimer's disease or other forms of dementia.</p> <p>Subd. 2. License required. Requires an entity to be licensed as an assisted living establishment in order to open, operate, or advertise itself as such. Requires an entity to be licensed as a level 3 establishment if it offers special care for persons with Alzheimer's disease or other dementias.</p> <p>Subd. 3. Contents of license. Lists what a license must include.</p>

Section	Description
16	<p>Subd. 4. Home care provider license required. Requires an establishment or affiliated home care provider to hold a home care provider license in order to offer or provide home care services.</p> <p>Subd. 5. Violations; penalty. Makes operating an assisted living establishment without a license a misdemeanor, punishable by a fine. Makes a person or entity that advertises an assisted living establishment before obtaining a license, guilty of a misdemeanor. A controlling person of an assisted living establishment that violates this section is guilty of a misdemeanor.</p> <p>License application. Adds § 1441.03.</p> <p>Subd. 1. Form; requirements. Lists information that must be included in an application for assisted living establishment licensure, and directs the commissioner to establish forms and procedures for processing applications.</p> <p>Subd. 2. Agents. Requires an application to specify controlling persons or employees as agents who are responsible for dealing with the commissioner and on whom personal service of notices and orders shall be made. Makes personal service on the designated person, personal service on all controlling persons or managerial employees.</p>
17	<p>License renewals. Adds § 1441.04. Makes a license remain in effect for one year from the date of issuance. Directs the commissioner to establish forms and procedures to process license renewals.</p>
18	<p>License suspension or revocation; hearing; relicensing. Adds § 1441.05.</p> <p>Subd. 1. Optional proceedings. Allows the commissioner to seek to suspend or revoke a license, or refuse to grant or renew a license, for the listed conduct.</p> <p>Subd. 2. Mandatory proceedings. Requires the commissioner to seek to suspend or revoke a license or refuse to renew a license, for the listed conduct, unless the establishment corrects a violation.</p> <p>Subd. 3. Notice to residents. Establishes a procedure for the commissioner to notify residents if the commissioner initiates proceedings to revoke or suspend an establishment's license or decides to not renew a license.</p> <p>Subd. 4. Hearing. Requires a contested case hearing to be held under chapter 14 before a license is suspended or revoked or before renewal is denied.</p>

Section	Description
	<p>Subd. 5. Mandatory revocation. Requires the commissioner to revoke a license if a controlling person is convicted of a felony or gross misdemeanor related to establishment operations or that affects resident safety or care.</p> <p>Subd. 6. Relicensing. Allows a new application for licensure to be considered after license revocation, if the conditions on which the revocation were based have been corrected and an inspection shows the establishment is in compliance with this chapter and chapter 144J.</p>
19	<p>Regulatory powers.</p> <p>Adds § 144I.06. Names the commissioner as the exclusive state agency with the duty of inspecting assisted living establishments required to be licensed and with enforcing rules. Gives the commissioner powers regarding assisted living establishments that the commissioner holds regarding nursing homes. Allows the commissioner to ask for access to information and records of the establishment, and exempts the commissioner from being required to present a release or consent in order to inspect information to ensure compliance with licensure laws and rules.</p>
20	<p>Fees and fines.</p> <p>Adds § 144I.07. Requires an application for licensure to be accompanied by a nonrefundable fee prescribed in rule. Directs the commissioner to adopt rules to establish a schedule of fines for violators of this chapter and related rules.</p>
21	<p>Injunctive relief; subpoenas.</p> <p>Adds § 144I.08.</p> <p>Subd. 1. Injunctive relief. Allows the commissioner to bring an action to enjoin a person involved in the operation of an establishment from illegal conduct regulated by this chapter or chapter 144J. Specifies when a court may grant a temporary restraining order.</p> <p>Subd. 2. Subpoenas. Gives the commissioner power to issue subpoenas and compel attendance of witnesses and the production of documents and evidentiary materials.</p>
22	<p>Transfer of interests.</p> <p>Adds § 144I.09.</p> <p>Subd. 1. Notice; expiration of license. Requires a controlling person to notify the commissioner if the person transfers a beneficial interest in an establishment, with 14 days after the transfer. If the transfer exceeds 10 percent, allows the commissioner to make the establishment license expire within 90 days. If the transfer exceeds 50 percent, requires the commissioner to make the establishment license expire within 90 days.</p>

Section	Description
23	<p>Subd. 2. Relicensure. Directs the commissioner to establish procedures for relicensure following expiration of a license under this section, and prohibits relicensure if there are uncorrected violations at the time of the transfer of interest. Allows the commissioner to temporarily waive the correction of one or more violations.</p> <p>Assisted living establishment administrators. Adds § 1441.10. Requires an assisted living establishment to employ an administrator licensed or permitted by the Board of Examiners for Nursing Home and Assisted Living Establishment Administrators. Allows an establishment to share the services of a licensed administrator. Specifies certain duties, requires a sufficient on-site physical presence to manage the establishment, and requires posting of the administrator's name and the name of the person in charge of the establishment when the administrator is not present.</p>
24	<p>Administrator or managerial employee restrictions. Adds § 1441.11.</p> <p>Subd. 1. Restrictions. Prohibits an establishment from employing an administrator or managerial employee who was previously employed as an administrator or managerial employee at an establishment or nursing home, if at that facility or establishment there were a certain number or type of uncorrected violations or if the person was convicted of a felony or gross misdemeanor related to facility or establishment operation or related to resident safety or care.</p> <p>Subd. 2. Exception. Specifies that subdivision 1 does not apply if the violations were outside the jurisdiction and control of the managerial employee or administrator.</p>
25	<p>Controlling person restrictions. Adds § 1441.12.</p> <p>Subd. 1. Restrictions. Prohibits an establishment from having as a controlling person any person who was a controlling person of a nursing home or another establishment, if at that facility or establishment there were a certain number or type of uncorrected violations or if the person was convicted of a felony or gross misdemeanor related to facility or establishment operation or related to resident safety or care.</p> <p>Subd. 2. Exception. Specifies that subdivision 1 does not apply if the violations were outside the jurisdiction and control of the controlling person.</p> <p>Subd. 3. Stay of adverse action required by controlling person restrictions. Instead of revoking, suspending, or refusing to renew a license where a controlling person was disqualified under subdivision 1, clause (1), allows the commissioner to stay the revocation, suspension, or refusal to renew, and allows</p>

Section	Description
26	<p data-bbox="453 275 1425 548">the order of stay to be contingent on the establishment's compliance with conditions imposed on the license. Lists factors the commissioner must consider when deciding whether to issue a stay and impose conditions on a license. Establishes notice requirements, and makes the controlling person responsible for compliance with the conditions listed in the stay. If the controlling person fails to comply with the conditions, the stay must be removed and the commissioner must take action to suspend, revoke, or not renew the license. Conditions are effective for two years.</p> <p data-bbox="355 604 764 632">Minimum services and standards.</p> <p data-bbox="355 646 537 674">Adds § 1441.13.</p> <p data-bbox="453 716 1425 919">Subd. 1. Generally. Requires an establishment to offer a package of housing, care and services that meet the needs of residents and for which residents contract. Allows an establishment to offer services other than the minimum services required, to offer any package of services to residents as long as the package includes the minimum services required, and offer services directly or through an affiliated home care provider.</p> <p data-bbox="453 961 1425 1129">Subd. 2. Housing and safety. Requires an establishment to maintain minimum health, sanitation, safety, and comfort standards adopted by the commissioner in rule regarding physical plant, equipment, maintenance, and operations. Allows the commissioner to temporarily waive compliance with these standards in certain circumstances.</p> <p data-bbox="453 1171 1425 1339">Subd. 3. Assessments. Requires the commissioner to establish assessment standards by rule to determine a person's physical, cognitive, social, and service needs. Lists how assessments must be used and elements that must be covered in an assessment. Requires the commissioner to develop a uniform assessment tool to be completed for all residents before move-in and periodically thereafter.</p> <p data-bbox="453 1381 1425 1549">Subd. 4. Minimum services. Lists basic services that must be offered by a level 1 licensee; and comprehensive services that must be offered by a level 2 licensee. Requires a Level 3 licensee to offer dementia care services that meet standards established by the commissioner in rule, and to meet the requirements for a level 2 licensee.</p> <p data-bbox="453 1591 1328 1654">Subd. 5. Staffing and training standards. Establishes staffing and training standards that establishments must satisfy.</p> <p data-bbox="453 1696 1425 1759">Subd. 6. Medications. Directs the commissioner to establish rules for medication administration, medication management, and medication storage.</p> <p data-bbox="453 1801 1425 1892">Subd. 7. Dementia care standards. Directs the commissioner to establish rules on service and training standards for the care of persons with cognitive impairments, and specifies what those standards must include.</p>

Section	Description
27	<p>Transfer of residents within establishment.</p> <p>Adds § 144I.14. Requires an establishment to transfer residents within the establishment in a safe, orderly, appropriate way. Requires 30 day's advance notice of the transfer to the resident and the designated representative. During a curtailment, reduction in size, building project, or change in operations within an establishment, requires the establishment to minimize transfers to those necessary to complete the project or change in operations, consider resident needs and preferences, and provide reasonable accommodations to residents. Requires that notice be provided to certain ombudsman's offices when certain conditions exist related to transfers.</p>
28	<p>Reimbursement under assisted living service packages.</p> <p>Adds § 144I.15. Specifies that the requirements for the elderly waiver program's assisted living payment rates shall continue to be in effect and providers who do not meet the requirements of this chapter may continue to receive elderly waiver payments as long as the provider continues to meet the standards for assisted living and assisted living plus in the federally approved elderly HCBS waiver program. Providers of assisted living for CADI and BI waivers shall continue to receive payments as long as the provider continues to meet the definitions and standards for assisted living and assisted living plus in the federally approved CADI and BI waiver plans.</p>
29	<p>State receivership.</p> <p>Adds § 144I.17.</p> <p>Subd. 1. Petition; notice. Allows the commissioner to petition district court for an establishment's controlling person to show cause why the commissioner should not be appointed receiver to operate the establishment. Specifies what the petition must include and specifies requirements for service.</p> <p>Subd. 2. Appointment of receiver; rental. If the court finds it necessary to protect the health, safety, or welfare of residents, the court shall appoint the commissioner as receiver of the establishment. Allows the commissioner to find a managing agent to operate the assisted living establishment and to establish a rental fee for the establishment. Directs the commissioner to maintain a list of qualified persons or organizations that could act as a managing agent for an establishment in receivership.</p> <p>Subd. 3. Emergency procedure. If an emergency exists requiring a receivership, direct the court to issue a temporary order to appoint a receiver within two days after receiving the petition.</p> <p>Subd. 4. Powers and duties of receiver. Directs the receiver to determine within 18 months whether to close the establishment or make other provisions to keep it open. Lists additional powers and duties regarding closure, correction of deficiencies, contracting, actions necessary to protect the establishment's</p>

Section	Description
	<p>tangible assets and property, collecting payments and applying them to costs, paying valid obligations, and manager employees.</p> <p>Subd. 5. Receiver's fee; liability; commissioner assistance. Allows the commissioner to hire a managing agent to operate an establishment during a receivership, and states that the managing agent is entitled to a reasonable fee. Makes the receiver and managing agent liable only in their official capacities for injuries to persons and property at the establishment, and not personally liable except for gross negligence and intentional acts.</p> <p>Subd. 6. Termination. Makes receivership terminate 18 months after the date on which it is ordered, or another time designated by the court, or if one of the listed events occurs.</p> <p>Subd. 7. Postreceivership period; establishment remaining open. If the establishment remains open after the receivership period, makes the new operator legally responsible only for actions after the receivership ended.</p>
30	<p>Placement of monitor. Adds § 1441.18.</p> <p>Subd. 1. Authority. Allows the commissioner to place a person to act as a monitor in the listed circumstances.</p> <p>Subd. 2. Duties of monitor. Lists duties of the monitor.</p> <p>Subd. 3. Selection of monitor. Allows the commissioner to use department employees as monitors or to contract with an individual to serve as a monitor. Requires the commissioner to publish a notice requesting proposals from people who want to serve as monitors and to keep a list of non-department employees who want to serve as monitors.</p> <p>Subd. 4. Payment of monitor. Requires the assisted living establishment to pay to the department, the cost of placing a monitor at the establishment, unless requiring payment by the establishment would create an undue hardship.</p>
31	<p>Expedited rulemaking. Adds § 1441.19. Directs the commissioner to adopt rules under this chapter using expedited rulemaking.</p>

Article 5: Miscellaneous

Section	Description
1	<p>Termination of service plan.</p> <p>Amends § 144A.4791, subd. 10. Requires an unaffiliated home care provider to provide at least 30 days' advance notice before terminating a client's service plan and specifies that a termination of services may not include termination of an assisted living establishment contract.</p>
2	<p>Persons to whom disclosure is required.</p> <p>Amends § 325F.72, subd. 1. Specifies that assisted living establishments, not housing with services establishments, must comply with the disclosure requirement if they provide a special program or unit for residents with Alzheimer's disease or a related disorder.</p>
3	<p>Repealer.</p> <p>Repeals §§ 144D.01, subd. 6 (definition of health-related services); 144D.025 (optional registration for certain housing with services establishments); 144D.065 (training in dementia care for housing with services managerial employees and staff); 144D.066 (enforcement of dementia care training requirements); 144G.01 (assisted living services definitions); 144G.02 (protecting the title assisted living); 144G.03, subds. 1, 2, 3, 4, and 5 (assisted living requirements); 144G.05 (reimbursement under assisted living service packages); and 144G.06 (uniform consumer information guide).</p>



**MN HOUSE
RESEARCH**

Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.

www.house.mn/hrd | 651-296-6753 | 600 State Office Building | St. Paul, MN 55155