

# Eldercare and Vulnerable Adult Protection Act of 2019

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# Background

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Nationally – assisted living has been changing for many years

Growing number of settings and a growing acuity in those settings

In Minnesota, there has been an increase in maltreatment reports in all settings over the past decade, including assisted living. **Maltreatment reports are:**

- \* made through the MAARC system
- \* investigated by Minnesota Health Department (OHFC) when maltreatment is alleged against a facility
- \* increasing in number since 2010
- \* complaints of abuse, neglect, or financial exploitation that can be substantiated, unsubstantiated, false

# Background and Timeline in Minnesota

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**Pre-2017:** Legislature appropriate some funding and to address OHFC issues and assigns Legislative auditor to study OHFC

**Winter 2017:** Star Tribune Series, MDH Commissioner Resigns, Creation of Gov. Consumer Taskforce, Commissioner Jan Malcom Appointed to MDH

**2018 Legislative Session:** Various bills but session ends with veto of Omnibus bill

**Fall/Winter 2019:** MDH convenes work groups

**2019 Legislative Session:** Stakeholders work to pass legislation with compromises from all sides to pass 2019 Eldercare and Vulnerable Adult Act

**2019-2021:** Transition period from current regulatory scheme to Assisted Living Licensure

**Aug. 2021:** AL Licensure in effect

# Key Features of Assisted Living Licensing

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Single license and assisted living contract

Physical plant requirements & fire safety

Enhanced resident bill of rights for home care,  
care centers and assisted living

Licensing of Assisted Living Directors

Facility responsibilities and requirements

Surveys, investigations, and enforcement

Consumer protections

# Background: Overview of Substantial Changes

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## OLD SYSTEM

Housing with services registration and licensed home care

No clear licensing standards for dementia care

Regulatory confusion about what entity is responsible

Transparency issues around fees and rates

Consumer protection lacking in discharge, retaliation, and other areas

## NEW SYSTEM

Assisted Living licensee with one licensee

Two levels of assisted living – AL and AL with dementia care

Regulatory clarity and new powers for MDH to hold providers accountable in AL settings

More consumer protections in AL (and other long term care) settings

# The Future: A Single, Integrated Assisted Living License

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## Today:

Assisted living facility (ALF):

Comprehensive home care license

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Housing with services registration

## August 1, 2021:

Assisted living facility (ALF):

Single, integrated license incorporating housing and assisted living services

Single assisted living contract governing resident's housing and assisted living services

# Two Categories of Licensure: Assisted Living Facility License

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## AL LICENSE

Provides housing and AL services to residents

May provide AL services to residents with dementia

Must meet resident's assessed needs

Diagnosis does not dictate setting

Prohibited from having a secured dementia care unit

## AL LICENSE WITH DEMENTIA CARE

Can advertise, market, or promote as providing specialized care for residents with dementia

Must meet requirements of the ALF license **and** additional requirements:

License: Demonstrate capacity to provide services to residents with dementia.

Training: Additional dementia-related training required.

Programming: Spontaneous activities for enjoyment or diffusing a behavior; One-to-one activities that encourage positive relationships between residents and staff.

# Minimum Physical Environment Requirements

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**Starting August 1, 2021 :**

A physical environment survey every 2 years

Plan reviews and final construction inspections for a new license or new construction by MDH engineering

Smoke detectors in each occupied room **or** automatic sprinkler system

Portable fire extinguishers

Fire drills

Physical environment in good repair

Existing buildings must always be maintained in a manner that does not 'constitute a distinct hazard to life'

# Other AL Requirements Include

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**Competent staff and appropriate staffing levels**

**Nutrition requirements**

**Required services (Health services and supportive services)**

**Disclosure of services provided**

**Ongoing training**

**Assisted living director**

# MDH regulatory oversight: Surveys and enforcement

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- **Surveys**
  - ALFs surveyed every two years
  - Provisional licenses surveyed within one year
- **Enforcement**
  - Increased fines for violations and new fines for maltreatment
  - Follow-up surveys required for Level 3/Level 4 violations
  - Enhanced regulatory enforcement
  - Due process protections in place

# Overview of Enhanced Resident Protections

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Updated and enhanced AL Bill of Rights

Protections against retaliation from facility for advocating for better care/treatment (effective August of 2019)

Right of resident or resident representative to place a camera in his/her own room (effective Jan. 1, 2020)

Stronger protections against discharge from AL facilities and new requirements on AL facilities to assist with finding new placements

More funding for Ombudsman of Long Term Care program (number of regional ombudsman will eventually double over next several years)

# New Protections Currently in Effect

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## ANTI-RETALIATION

Certain advocacy actions taken by residents or their representatives (like filing a complaint) are protected

AL facility prohibited from taking action in retaliation for protected resident actions

MDH empowered to issue fines for retaliatory activity unless facility can show a non-retaliatory purpose (incentivizes clear communication and documentation of facility to resident)

## RIGHT TO ELECTRONIC MONITORING

Current law unclear whether a facility can remove a camera from a resident room or ban use of cameras in contracts

New law clarifies that residents or their representatives can place a camera in their own room if consent is properly obtained/documents

Facility must be notified of camera placement but limited exceptions are allowed

# Termination Protections and Discharge Planning Requirements

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**Starting in 2021 – residents in AL will have discharge protections similar to residents in Nursing Homes. That means:**

- **Facility can only initiate discharge for limited reasons and protections against “lock-outs”**
- **Required pre-termination meetings**
- **Resident can appeal discharge to administrative law judge if they disagree with reasoning of discharge**
- **Some protections against non-lease renewals**

# Termination Protections and Discharge Planning Requirements

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**If housing and services are terminated, protections in place to help with transition to a new setting:**

- **Facility must help coordinate move to a new location (discharge planning)**
- **These protections prevent discharges to unsafe places (i.e. homeless shelter or previous residence with no services in place)**
- **These protections are also in place in case of a facility closure – the Commissioner is empowered to begin a clear “closure plan” that involves ombudsman and other state actors in a orderly transition process during the closure period**

# Rulemaking

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**MDH undergoes rule making process and related policy/organizational work to full implement the changes by 2021.**

**Statute lists 13 topics that must be covered in rulemaking – MDH may choose to cover other topics as well.**

**MDH has created a rulemaking advisory committee to provide guidance to the department**

**Timeline: Rules published for comment expected spring 2020. MDH must be finished with the process by Dec. 31, 2020.**

**Separate Rulemaking process underway for Assisted Living Directors.**

# Assisted Living Licensure (ALL) Rulemaking

health.state.mn.us/facilities/regulation/homecare/assistedliving/index.html

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## Related Info

## Assisted Living Rulemaking

[Subscribe to Assisted Living Rulemaking Updates](#)

### Assisted Living Rules Advisory Committee October 16 Meeting

The Minnesota Department of Health is holding the first public meeting of the Assisted Living Rules Advisory Committee on October 16, 2019, from 9-11 a.m. at the Minnesota State Retirement System Building, located at 60 Empire Drive, St. Paul, MN 55103, Training Room 106.

The role of the advisory committee is to advise the department on the development of assisted living rules. The department looks to the advisory committee for its expertise in assisted living regulation. The advisory committee will meet monthly and all meetings are open to the public. For more information, please contact Anne Peterson, 651-201-3701 or [anne.peterson@state.mn.us](mailto:anne.peterson@state.mn.us).

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## Spotlight

Home Care Provider Change of Information Form (PDF)

Notice from Temporary Licensee of Providing Home Care Services (PDF)

Home Care Revenue Worksheet (PDF)

License Closure Form (PDF)

## Email

### Updates

Sign up for home care updates

2. SIGN UP FOR UPDATES

# Rulemaking Topics

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The statute lists 13 topics that rulemaking must address

Staffing Levels

Staffing Training/Competencies

Procedures for Appeal Rights

Assessments

Emergency Disaster Planning

Uniform Checklist of Disclosures

Definition of Serious Injury

Fines for Planned Closures

Role of MDH in Discharge Appeals

Base Fees/Per Resident Fees\*

Consider a Maximum Fee\*

Relinquishing Dementia Care  
License

Transition from HWS to AL Licensing

# Questions

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