

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 2412

(SENATE AUTHORS: HOFFMAN)

DATE
03/02/2023

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Introduction and first reading
Referred to Health and Human Services

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to health; updating assisted living licensure; amending Minnesota Statutes
1.3 2022, sections 144G.10, by adding a subdivision; 144G.12, subdivision 4; 144G.16,
1.4 by adding subdivisions; 144G.17; 144G.19, subdivision 2; 144G.20, subdivisions
1.5 8, 17; 144G.32, subdivision 2; 144G.41, subdivision 1, by adding a subdivision;
1.6 144G.45, subdivision 6, by adding a subdivision; 144G.82, subdivision 2; 144G.90,
1.7 by adding a subdivision; Laws 2022, chapter 98, article 1, section 39.

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

1.9 Section 1. Minnesota Statutes 2022, section 144G.10, is amended by adding a subdivision
1.10 to read:

1.11 Subd. 5. Protected title; restriction on use. No person or entity may use the phrase
1.12 "assisted living," whether alone or in combination with other words and whether orally or
1.13 in writing, to advertise, market, or otherwise describe, offer, or promote itself, or any housing,
1.14 service, service package, or program that it provides within this state, unless the person or
1.15 entity is a licensed assisted living facility that meets the requirements of this chapter. A
1.16 person or entity entitled to use the phrase "assisted living" shall use the phrase only in the
1.17 context of its participation that meets the requirements of this chapter.

1.18 Sec. 2. Minnesota Statutes 2022, section 144G.12, subdivision 4, is amended to read:

1.19 Subd. 4. **Fines and penalties.** (a) The penalty for late submission of the renewal
1.20 application less than 30 days before the expiration date of the license or after expiration of
1.21 the license is \$200. The penalty for operating a facility after expiration of the license and
1.22 before a renewal license is issued is \$250 each day after expiration of the license until the
1.23 renewal license ~~issuance~~ application submission date. The facility is still subject to the
1.24 misdemeanor penalties for operating after license expiration.

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

2.5 Sec. 3. Minnesota Statutes 2022, section 144G.16, is amended by adding a subdivision to
2.6 read:

2.7 Subd. 8. **Notice to residents.** (a) Within five business days after proceedings are initiated
2.8 by the commissioner to deny a facility's provisional license, the controlling individual of
2.9 the facility or a designee must provide to the commissioner and the ombudsman for long-term
2.10 care the names of residents and the names and addresses of the residents' designated
2.11 representatives and legal representatives, and family or other contacts listed in the assisted
2.12 living contract.

2.13 (b) The controlling individual or designees of the facility must provide updated
2.14 information each month until the proceeding is concluded. If the controlling individual or
2.15 designee of the facility fails to provide the information within this time, the facility is subject
2.16 to the issuance of:

2.17 (1) a correction order; and

2.18 (2) a penalty assessment by the commissioner in rule.

2.19 (c) Any correction order issued under this subdivision must require that the facility
2.20 immediately comply with the request for information and that, as of the date of the issuance
2.21 of the correction order, the facility shall forfeit to the state a \$500 fine the first day of
2.22 noncompliance and an increase in the \$500 fine by \$100 increments for each day the
2.23 noncompliance continues.

2.24 (d) Information provided under this subdivision may be used by the commissioner or
2.25 the ombudsman for long-term care only for the purpose of providing affected consumers
2.26 information about the status of the proceedings.

2.27 (e) Within ten business days after the commissioner initiates proceedings to deny a
2.28 provisional facility license, the commissioner must send a written notice of the action and
2.29 the process involved to each resident of the facility, legal representatives and designated
2.30 representatives, and, at the commissioner's discretion, additional resident contacts.

2.31 (f) The commissioner shall provide the ombudsman for long-term care with monthly
2.32 information on the department's actions and the status of the proceedings.

3.1 Sec. 4. Minnesota Statutes 2022, section 144G.16, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 9. **Plan required.** (a) The process of denying a provisional license must include
3.4 a plan for transferring affected residents' care to other providers by the facility. The
3.5 commissioner shall monitor the transfer plan. Within three calendar days of being notified
3.6 of the final denial of provisional license action, the licensee shall provide the commissioner,
3.7 the lead agencies as defined in section 256B.0911, county adult protection and case managers,
3.8 and the ombudsman for long-term care with the following information:

3.9 (1) a list of all residents, including full names and all contact information on file;

3.10 (2) a list of the resident's legal representatives and designated representatives and family
3.11 or other contacts listed in the assisted living contract, including full names and all contact
3.12 information on file;

3.13 (3) the location or current residence of each resident;

3.14 (4) the payor sources for each resident, including payor source identification numbers;
3.15 and

3.16 (5) for each resident, a copy of the resident's service plan and a list of the types of services
3.17 being provided.

3.18 (b) The denial of a provisional license notification requirement is satisfied by mailing
3.19 the notice to the address in the license record. The licensee shall cooperate with the
3.20 commissioner and the lead agencies, county adult protection and case managers, and the
3.21 ombudsman for long-term care during the process of transferring care of residents to qualified
3.22 providers. Within three calendar days of being notified of the final denial of provisional
3.23 license action, the facility must notify and disclose to each of the residents, or the resident's
3.24 legal and designated representatives or emergency contact persons, that the commissioner
3.25 is taking action against the facility's license by providing a copy of the denial of provisional
3.26 license notice issued by the commissioner. If the facility does not comply with the disclosure
3.27 requirements in this section, the commissioner shall notify the residents, legal and designated
3.28 representatives, or emergency contact persons about the actions being taken. Lead agencies,
3.29 county adult protection and case managers, and the Office of Ombudsman for Long-Term
3.30 Care may also provide this information. The denial of a provisional license notice is public
3.31 data except for any private data contained therein.

3.32 (c) A facility subject to this subdivision may continue operating while residents are being
3.33 transferred to other service providers.

4.1 Sec. 5. Minnesota Statutes 2022, section 144G.17, is amended to read:

4.2 **144G.17 LICENSE RENEWAL.**

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

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

4.7 (2) submits the renewal fee under section 144G.12, subdivision 3;

4.8 (3) submits the late fee under section 144G.12, subdivision 4, if the renewal application
4.9 is received less than ~~30~~ 60 days before the expiration date of the license or after the expiration
4.10 of the license;

4.11 (4) provides information sufficient to show that the applicant meets the requirements of
4.12 licensure, including items required under section 144G.12, subdivision 1;

4.13 (5) provides information sufficient to show the licensee provided assisted living services
4.14 to at least one resident during the immediately preceding license year and at the assisted
4.15 living facility listed on the license; and

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

4.17 Sec. 6. Minnesota Statutes 2022, section 144G.19, subdivision 2, is amended to read:

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

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

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

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

4.28 (i) a different person or multiple persons; or

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

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

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

5.5 Sec. 7. Minnesota Statutes 2022, section 144G.20, subdivision 8, is amended to read:

5.6 Subd. 8. **Controlling individual restrictions.** (a) The commissioner has discretion to
5.7 bar any controlling individual of a facility if the person was a controlling individual of any
5.8 other nursing home, home care provider licensed under chapter 144A, or given status as an
5.9 enrolled personal care assistance provider agency or personal care assistant by the Department
5.10 of Human Services under section 256B.0659, or assisted living facility in the previous
5.11 two-year period and:

5.12 (1) during that period of time the nursing home, home care provider licensed under
5.13 chapter 144A, or given status as an enrolled personal care assistance provider agency or
5.14 personal care assistant by the Department of Human Services under section 256B.0659, or
5.15 assisted living facility incurred the following number of uncorrected or repeated violations:

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

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

5.20 (2) during that period of time, was convicted of a felony or gross misdemeanor that
5.21 related to the operation of the nursing home, home care provider licensed under chapter
5.22 144A, or given status as an enrolled personal care assistance provider agency or personal
5.23 care assistant by the Department of Human Services under section 256B.0659, or assisted
5.24 living facility, or directly affected resident safety or care; or

5.25 (3) during that period of time, had a provisional license denied.

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

5.28 Sec. 8. Minnesota Statutes 2022, section 144G.20, subdivision 17, is amended to read:

5.29 Subd. 17. **Expedited hearing.** (a) Within five business days of receipt of the licensee's
5.30 timely appeal of a temporary suspension or issuance of a conditional license, the
5.31 commissioner shall request assignment of an administrative law judge. The request must

6.1 include a proposed date, time, and place of a hearing. A hearing must be conducted by an
6.2 administrative law judge pursuant to Minnesota Rules, parts 1400.8505 to 1400.8612, within
6.3 30 calendar days of the request for assignment, unless an extension is requested by either
6.4 party and granted by the administrative law judge for good cause. The commissioner shall
6.5 issue a notice of hearing by certified mail or personal service at least ten business days
6.6 before the hearing. Certified mail to the last known address is sufficient. The scope of the
6.7 hearing shall be limited solely to the issue of whether the temporary suspension or issuance
6.8 of a conditional license should remain in effect and whether there is sufficient evidence to
6.9 conclude that the licensee's actions or failure to comply with applicable laws are Level 3
6.10 or Level 4 violations as defined in section 144G.31, or that there were violations that posed
6.11 an imminent risk of harm to the resident's health and safety.

6.12 (b) The administrative law judge shall issue findings of fact, conclusions, and a
6.13 recommendation within ten business days from the date of hearing. The parties shall have
6.14 ten calendar days to submit exceptions to the administrative law judge's report. The record
6.15 shall close at the end of the ten-day period for submission of exceptions. The commissioner's
6.16 final order shall be issued within ten business days from the close of the record. When an
6.17 appeal of a temporary immediate suspension or conditional license is withdrawn or dismissed,
6.18 the commissioner shall issue a final order affirming the temporary immediate suspension
6.19 or conditional license within ten calendar days of the commissioner's receipt of the
6.20 withdrawal or dismissal. The licensee is prohibited from operation during the temporary
6.21 suspension period.

6.22 (c) When the final order under paragraph (b) affirms an immediate suspension, and a
6.23 final licensing sanction is issued under subdivisions 1 and 2 and the licensee appeals that
6.24 sanction, the licensee is prohibited from operation pending a final commissioner's order
6.25 after the contested case hearing conducted under chapter 14.

6.26 (d) A licensee whose license is temporarily suspended must comply with the requirements
6.27 for notification and transfer of residents under subdivision 15. These requirements remain
6.28 if an appeal is requested.

6.29 Sec. 9. Minnesota Statutes 2022, section 144G.32, subdivision 2, is amended to read:

6.30 Subd. 2. **Reconsideration process.** An assisted living facility may request from the
6.31 commissioner, in writing, a correction order reconsideration regarding any correction order
6.32 issued to the facility. The written request for reconsideration must be received by the
6.33 commissioner within 15 ~~calendar~~ calendar business days of the correction order receipt date. The
6.34 correction order reconsideration shall not be reviewed by any surveyor, investigator, or

7.1 supervisor that participated in writing or reviewing the correction order being disputed. The
7.2 correction order reconsiderations may be conducted in person, by telephone, by another
7.3 electronic form, or in writing, as determined by the commissioner. The commissioner shall
7.4 respond in writing to the request from a facility for a correction order reconsideration within
7.5 60 days of the date the facility requests a reconsideration. The commissioner's response
7.6 shall identify the commissioner's decision regarding each citation challenged by the facility.

7.7 Sec. 10. Minnesota Statutes 2022, section 144G.41, subdivision 1, is amended to read:

7.8 Subdivision 1. **Minimum requirements.** All assisted living facilities shall:

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

7.10 (2) provide services in a manner that complies with the Nurse Practice Act in sections
7.11 148.171 to 148.285;

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

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

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

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

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

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

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

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

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

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

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

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

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

8.10 (i) awake;

8.11 (ii) located in the same building, in an attached building, or ~~on a contiguous campus~~
8.12 with the facility within the licensed assisted living facility campus in order to respond within
8.13 a reasonable amount of time;

8.14 (iii) capable of communicating with residents;

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

8.16 (v) capable of following directions;

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

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

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

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

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

8.29 (ii) weekly housekeeping;

8.30 (iii) weekly laundry service;

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

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

9.8 (vi) provide culturally sensitive programs; and

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

9.12 (14) provide staff access to an on-call registered nurse 24 hours per day, seven days per
9.13 week.

9.14 Sec. 11. Minnesota Statutes 2022, section 144G.41, is amended by adding a subdivision
9.15 to read:

9.16 Subd. 9. Variance or waiver. An innovation waiver under section 144G.33 cannot be
9.17 granted for variance or waiver from the requirements of section 144G.41, subdivision 1,
9.18 clause (12).

9.19 Sec. 12. Minnesota Statutes 2022, section 144G.45, subdivision 6, is amended to read:

9.20 Subd. 6. **New construction; plans.** (a) For all new licensure ~~and~~ or construction
9.21 beginning on or after August 1, 2021, the following must be provided to the commissioner:

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

9.26 (2) final architectural plans and specifications must include elevations and sections
9.27 through the building showing types of construction, and must indicate dimensions and
9.28 assignments of rooms and areas, room finishes, door types and hardware, elevations and
9.29 details of nurses' work areas, utility rooms, toilet and bathing areas, and large-scale layouts
9.30 of dietary and laundry areas. Plans must show the location of fixed equipment and sections
9.31 and details of elevators, chutes, and other conveying systems. Fire walls and smoke partitions
9.32 must be indicated. The roof plan must show all mechanical installations. The site plan must

10.1 indicate the proposed and existing buildings, topography, roadways, walks and utility service
10.2 lines; and

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

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

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

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

10.20 Sec. 13. Minnesota Statutes 2022, section 144G.45, is amended by adding a subdivision
10.21 to read:

10.22 Subd. 8. Posting survey and investigation results. (a) All facilities must post in a
10.23 conspicuous and readily accessible place in the facility the results of all survey and
10.24 investigation results, including any correction order or orders, required or authorized by
10.25 this section or section 626.557 regarding the facility.

10.26 (b) Facilities shall post a minimum of five years of survey and investigation results,
10.27 including correction order or orders, regarding the facility and make the information available
10.28 to residents and families or other persons who request it.

10.29 (c) No survey or investigation results, including any correction order or orders, need to
10.30 be posted until all appeals, if the facility requested any, have been completed.

10.31 (d) All correction orders issued to a facility and operated by the state or political
10.32 subdivision of the state shall be circulated and posted at the first public meeting of the
10.33 governing body after the order is issued.

11.1 (e) Confidential information protected by section 13.05 or 13.46 shall not be made
 11.2 available or posted as provided in this subdivision unless it may be made available or posted
 11.3 in a manner authorized by chapter 13.

11.4 Sec. 14. Minnesota Statutes 2022, section 144G.82, subdivision 2, is amended to read:

11.5 Subd. 2. **Additional requirements.** (a) The licensee must follow the assisted living
 11.6 license requirements and the criteria in this section.

11.7 (b) The assisted living director of an assisted living facility with dementia care must
 11.8 complete and document that at least ten hours of the required ~~annual~~ continuing educational
 11.9 requirements required by section 144A.20, subdivision 4, paragraph (c), relate to the care
 11.10 of individuals with dementia. The training must include medical management of dementia,
 11.11 creating and maintaining supportive and therapeutic environments for residents with
 11.12 dementia, and transitioning and coordinating services for residents with dementia. Continuing
 11.13 education credits may include college courses, preceptor credits, self-directed activities,
 11.14 course instructor credits, corporate training, in-service training, professional association
 11.15 training, web-based training, correspondence courses, telecourses, seminars, and workshops.

11.16 Sec. 15. Minnesota Statutes 2022, section 144G.90, is amended by adding a subdivision
 11.17 to read:

11.18 Subd. 7. **Notice to residents; change in uniform checklist disclosure of services.** A
 11.19 facility must provide written notice to the resident, legal representative, or designated
 11.20 representative of a change of information contained within its uniform checklist disclosure
 11.21 of services within seven calendar days after the facility changes its uniform checklist
 11.22 disclosure of services.

11.23 Sec. 16. Laws 2022, chapter 98, article 1, section 39, the effective date, is amended to
 11.24 read:

11.25 **EFFECTIVE DATE.** This section is effective retroactively from August 1, 2022 2021,
 11.26 and applies to assisted living contracts executed on or after ~~that date~~ August 1, 2021.

11.27 Sec. 17. **REVISOR INSTRUCTION.**

11.28 The revisor of statutes shall substitute the term "employee" with the term "staff" in the
 11.29 following sections and make any grammatical changes needed:

11.30 144G.08, subdivision 18; 144G.13, subdivision 1, paragraph (c); 144G.20, subdivision
 11.31 1; 144G.20, subdivision 21; 144G.30, subdivision 5; 144G.42, subdivision 8; 144G.45,

- 12.1 subdivision 2; 144G.60, subdivision 1, paragraph (c); 144G.63, subdivision 2, paragraph
- 12.2 (a), clause (9); 144G.64, paragraph (a), clauses (2) and (3); 144G.70, subdivision 7; 144G.92,
- 12.3 subdivisions 1 and 3.