Assisted Living:  
A Community Conversation  
November 4, 2019

Thank you sponsors!

Thank you team!

- Lauren Bangerter, PhD  
  – Mayo Clinic College of Medicine and Science
- Rajean Moone, PhD, LNHA  
  – Minnesota Leadership Council on Aging  
  – UMN College of Continuing & Professional Studies
- Jane Pederson, MD  
  – Stratis Health
Thank you local partners!

- Arrowhead Area Agency on Aging
- Brown County
- Central MN Council on Aging
- Land of the Dancing Sky Area Agency on Aging
- Metropolitan Area Agency on Aging
- MN River Area Agency on Aging
- SE MN Area Agency on Aging

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- Marie Dotseth, MN Department of Health
- Amanda Vickstrom, MN Elder Justice Center
- Mary Jo George, AARP MN
- Genevieve Gaboriault, Ombudsman for LTC
- Kari Benson, MN Board on Aging/DHS
- Tetyana Shippee, UMN School of Public Health

SAVE THE DATE

MN Leadership Council on Aging Summit
Topics include: Age Friendly MN Equity & Diversity
December 11, 2019
UMN Continuing Education Conference Center

www.mnlcoa.org/summit
Overview

- Regulations Overview
- Consumer Protections Overview
- Ombudsman Overview
  - Local Conversation
- Assisted Living Report Card Overview
  - Local Conversation

New Regulatory Framework

Assisted Living in Minnesota: New Framework & Consumer Rights & Protections

Marie Dotseth, Assistant Commissioner
November 4, 2019
Current State of Assisted Living

Numbers Tell a Story

**Licensed Nursing Homes**

*Peaked in 1980s*
- 468 NFs
- 48,307 beds

*Today*
- 377 NFs (19% reduction)
- 28,968 (40% reduction)

**Assisted Living Establishments**

*1980*
- 0 AL Establishments

*Today*
- 1,857 HWS
- 78,358 estimated capacity
- 1,226 AL designation (55,192)
- 1,194 special care

3 Main Statutes

144D Housing with Services
144G Assisted Living
144A Home Care

Registration
Designation
License
Comparison

144D and 144G
• Annual registration
• No inspection
• No mandatory incident reporting
• No complaint investigation
• No physical plant requirements
• Protected by landlord tenant law

144A
• Annual license
• Temp license inspection & every 3 years
• Required incident reports
• Complaint investigation authority
• Client care and business related requirements
• Protected by 144A, VAA and child maltreatment

Stakeholder Engagement & the New Law

Background and Timeline

• Pre-2017: Some work to address OHFC issues
• Winter 2017: Star Tribune series and Gov. Consumer Taskforce
• 2018 Legislative Session: Various bills but session ends with veto of Omnibus Bill
• Fall/Winter 2018: Commissioner Malcolm convenes work groups

• 2019 Legislative Session: Stakeholders work to pass legislation with compromises from all sides
• 2019-2021: Transition period from current regulatory scheme to Assisted Living Licensure
• 2021 and beyond
Informal Work Groups Key to ALL Success

Fall 2018 Informal Working Groups – Built understanding and trust
Sample conclusions from the working groups:
• Assisted living service and housing regulation should be one license
• Consumers should retain the ability to grow and age in place where possible, including the ability to bring additional services into their place of residence
• Don’t require people who have dementia to live in dementia care settings but do require additional certification or licensure for special dementia care settings

Informal Work Groups Key to ALL Success, cont.

Sample conclusions from the working groups:
• Electronic monitoring devices should be permitted, resident rights protected and the process for placing devices clarified
• We should better educate consumers about their rights, better enforce those rights, and strengthen rights in key areas
• A report card is needed and should be pursued as part of a multi-pronged effort to encourage and reward quality
• Quality and patient safety information is transparent and easy to understand for residents, families, and providers and is fair/just and promotes accountability across all settings

Informal Work Groups Key to ALL Success, cont. 2
Key Highlights of Assisted Living Licensure Law

- Single license and assisted living contract
- Physical plant requirements & fire safety
- Enhanced bill of rights
- Licensing of Assisted Living Directors
- Facility responsibilities and requirements
- Surveys, investigations, and enforcement
- Consumer protections

Two Categories of Licensure: Assisted Living Facility License

I. Assisted Living Facility 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

Two Categories of Licensure: Assisted Living Facility with Dementia Care License

II. Assisted Living Facility with Dementia Care License
   - Can advertise, market, or promote as providing specialized care for residents with dementia
   - Must meet requirements of the ALF license and additional requirements:
     - License
     - Training
     - Programming
     - Staffing
**Minimum Physical Environment Requirements**

**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’

**Fire Protection Requirements**

**Assisted Living Facilities with Dementia Care and a secured dementia care unit (additional requirements):**
- Comply with the Health Care Occupancy chapter (limited care) of the National Fire Protection Association (NFPA), Standard 101, Life Safety Code
- Conduct hazard vulnerability analysis to identify risk and mitigation strategies on the property
- Facility shall be protected throughout by an approved supervised automatic sprinkler system by August 1, 2029

**Other Requirements**

- Competent staff and appropriate staffing levels
- Nutrition requirements
- Required services (Health services and supportive services)
- Disclosure of services provided
- Ongoing training
- Assisted Living Director
Key activities for FY20

- Rulemaking for Assisted Living Licensure
- Communications and engagement work
- Hiring, hiring and hiring
- Continuous improvement
- Planning for new IT systems
- Data and analytics

Rulemaking Progress Chart

Rulemaking Time Line & Advisory Committee

Rulemaking Timeline
144G.09, subd. 3:
- The Commissioner shall publish the proposed rules by December 31, 2019, and shall publish final rules by December 31, 2020.

Rules Advisory Committee
- Committee of stakeholders who will advise MDH on the rules.
- Committee represents a wide variety of viewpoints.
- Will work with MDH for a year until rules are published.
Rulemaking Topics

The Commissioner shall adopt rules that include, but are not limited to the following:

- Staffing levels for each license category
- Discharge planning
- Uniform checklist documentation of services
- Training prerequisites and ongoing training
- Initial and continuing assessments, and uniform assessment tools
- Definition of serious injury that results from maltreatment
- Procedures to transition HWS registration and home care licenses to assisted living licensure
- Uniform checklist disclosure of services
- Conditions and fine amounts for planned closures

Implementation overview

- July 1, 2019: Begin Rulemaking
- Immediate & increased HC & maltreatment fines
- Maltreatment compensation fund
- Prioritize enforcement in HC
- Hire staff to develop process & training

- August 1, 2019: Revisions to HC Bill of Rights
- Retaliation prohibited

- January 1, 2020: Electronic monitoring in HWS
- Rule published for comment (12-31-2019)

- July 1, 2020: Quality of care & Medicaid Improvement Task Force
- Rule published & final
- All HC providers must file abuse and neglect notifications

Vulnerable Adult Protection Dashboard

- 401
- Number of reports received for the week of 06/28/2019
- Weekly report totals
- Weekly reports by facility type
- Weekly reports by facility type
- July 2019 reports by allocation type
Thank you for protecting Minnesota's vulnerable adults
Consumer Protections in the 2019 Elder Care and Vulnerable Adult Act

ASSISTED LIVING CONVERSATION

NOV. 4, 2019

Winter 2017-2018

Why 2019 in Minnesota?

- Pre-2017: Some work to address Health Department investigations of abuse and neglect

- Winter 2017: MN Star Tribune series. Governor creates a Consumer Taskforce and Health Commissioner resigns

- 2018 Legislative Session: Various bills but session ends with veto of an Omnibus Bill
Why 2019 in Minnesota?

Fall/Winter 2018: New Health Commissioner convenes assisted living work groups

2019 Legislative Session: Stakeholders work to pass legislation with compromises from all sides

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

Key Parts of the Law

- New physical plant standards
- Licensed Assisted Living Director
- New Dementia Care requirements
- One Accountable Entity

Key Parts of the Law

- New prohibitions against retaliation
- Protections against unnecessary and unfair discharges/terminations – including the right to appeal
- Coordinated Moves if a resident is discharged
- Right to place a camera in one’s own room
- “I’m OK” Checks
- Maltreatment fund
Key Parts of the Law

Other Protections

- Funding for Long Term Care Ombudsman Office
- More regional ombudsmen
- More surveys of facilities by the MN Department of Health

AL Licensure – Basic Structure

- Leadership, Staffing, and Ownership Requirements
- Services and Programming Requirements
- Physical Plant and Safety Requirements

AL with Dementia Care

- Heightened physical plant standards and optional locked unit
- Enhanced programming with emphasis on dementia care best practices
- Enhanced training for staff about dementia specific care
Electronic Monitoring

- Resident or Resident Rep. can place a monitoring device in NH/AL.
- Resident Rep. is a guardian, healthcare agent, or person designated in the resident’s file.
- Resident or Resident Rep. must complete a consent form and provide notice to facility with some exceptions.
- Exceptions include: Fear of retaliation, previous reports already made, facility unresponsive to complaints.
- Facility must allow the device and cannot retaliate for its placement.

Protections Against Retaliation

**Step 1**
- The law identifies the types of advocacy actions that are protected from retaliation.
- The list includes many common examples residents attempt to assert their rights in long term care settings like threatening to file a complaint or actually making a complaint to the health department or the facility itself.
- Includes protections for others advocating on the resident’s behalf.

**Step 2**
- The law identifies the types of actions taken by a facility that may be considered retaliatory.
- These actions include, but are not limited to, common ways facilities have retaliated in the past such as restricting access of a resident’s visitors, reducing the resident’s access to care or services, or terminating an agreement between the resident and the facility.
Protections Against Retaliation

Step 3

• It creates a review process by which the health department may determine whether retaliation did or did not occur.

Discharge/Termination Protections

Pre-Termination
• A pre-termination meeting is required
• A permissible reason for termination required

Appeal Rights
• If challenging the reason for termination, resident can appeal to Office of Administrative Hearings

Coordinated Transfers
• Facility required to help with discharge process
• Cannot be discharged to unsafe location

Resident Protections Before 2021

• Some protections are established “now”
  • Anti-retaliation protections
  • Electronic Monitoring
  • Prioritization of Enforcements
  • MDH Issues Guidance on “Lock-outs”
  • Maltreatment Fund
Resources

- MDH Vulnerable Adult Dashboard: https://www.health.state.mn.us/facilities/regulation/dashboard.html
- Minnesota Adult Abuse Reporting Center: https://mn.gov/dhs/people-we-serve/adult-services/adult-protection/
- MDH Rulemaking Process: Forthcoming
- MN Ombudsman for Long Term Care: http://www.mnaging.org/Advocate/OLTC.aspx
- Our Office Information: https://elderjusticemn.org/our-services/victim-services/

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November 4, 2019

A program of the Minnesota Board on Aging

Mission

The Office of Ombudsman for Long-Term Care (OOLTC) works to enhance the quality of life and quality of services for long-term care consumers through advocacy, education and empowerment.

Client Advocacy

Who do we Serve?

- Nursing home residents
- Licensed Home care clients
- Housing with services tenants
- Assisted living and customized living consumers
- Adult foster home 55+ residents
- Boarding care home consumers
- Medicare beneficiaries with hospital access or discharge concerns
Assisted Living/HWS

Role: Client Advocacy

- Identify, investigate, and resolve resident complaints
- Advocate for systemic change
- Provide information and consultation to residents and their families
- Inform public agencies about the problems of clients
- Evaluate and report on regulations, laws, policies

How We Work

The Client
- Person-centered approach
- Engage in resolution based on client goals
- Obtain informed consent
- Investigate identity, resolution
- With client permission, collaborate with APS, case manager, provider
- Assure confidentiality to client
- Provide information about rights and options and referrals

55

56

57
Sharp Increase in Complaints

- Complaints in every category between 2015 and 2018
- 150% increase in complaints about abuse, neglect, or financial exploitation between 2015 and 2018

Common Complaints

- Dignity
  - Exercise of choice preferences
  - Response to complaints
- Autonomy
  - Choice
  - Privacy
- Provider
  - Inability to meet mental/behavioral health needs
- Payment issues
- Health care
  - Left at hospital (no due process)
  - Provider inability to meet mental/behavioral health needs
  - Slow response to requests for help
- Care
  - Not following care plan, doctors orders, or lack of assessment
  - Medication administration

Map of Minnesota with notes: October 2019 15 regional ombudsmen: 5 serve metro, 10 serve greater MN
New Legislation Improves Consumer Advocacy

17 Additional Staff for the Office of Ombudsman for Long-Term Care

– Improve the ratio of regional staff per active beds
– Add 1 Deputy Ombudsman and 9 regional ombudsmen
– 1 FTE Electronic Monitoring
– 6 additional staff to be hired by January 1, 2021:
  • This will include regional staff, intake specialist, policy support, data analysis, and volunteer coordination.

Assisted Living new laws include OOLTC

• Enhances Resident Rights including Resident Councils
• Notifications to the Office of Ombudsmen for Long-Term Care
  – 27 Notifications to the Ombudsman for Long-Term Care in the Act of the 27 – 5 are in current law.
• Greater stability for residents:
  – Resident, resident representative must be involved in discharge planning and can involve the Ombudsman
  – Resident right to file an appeal with Office of Administrative Hearings

Thank You

Main intake 651-431-2555 or
Toll Free 1-800-657-3591
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Overview

1. Review steps being taken to develop an Assisted Living Report Card for Minnesota
2. Review findings from the University of Minnesota’s national research on quality and quality measurement in assisted living
3. Solicit your feedback on the research findings
Assisted Living Report Card

• The vision for the report card is:
  • to provide information to assisted living residents, families, and the public about assisted living settings to help people make informed decisions
  • to encourage quality improvement efforts among assisted living providers

Assisted Living Report Card moving forward

• In state fiscal year 2020 we will:
  • Engage with stakeholders about quality research findings (July-November 2019)
  • Summarize stakeholder input in a report (January 2020)
  • Draft and pilot-test resident and family surveys (February-May 2020)

• In state fiscal year 2021 we will:
  • Finalize resident and family surveys (Summer 2020)
  • Implement the surveys across Minnesota (Fall 2020-Winter 2021)

DHS will move to implement resident and family surveys to:
• measure resident quality of life
• resident and family satisfaction

Feedback from stakeholders on the quality research findings will help us identify and prioritize quality measurement beyond the resident and family surveys.
Assisted Living Report Card moving forward

For project information visit the project webpage:
https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-
workgroups/aging/assisted-living-report-card/assisted-living-reports.jsp

At this site, you can sign-up for a stakeholder email list

Quality and quality measurement in assisted living

Tetyana Shippee, PhD
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Division of Health Policy and Management
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DHS research contract with the University of Minnesota (January to June 2019)

- Conduct a national review of peer-reviewed literature; a review of “grey literature”; and interviews with national experts
- Create a list of quality domains, subdomains, and existing assisted living quality measures
- Evaluate potential gaps in the research findings
- Engage a technical expert panel from academia, policy, and practice spheres to review the findings
- Prepare a public report of findings
  - The report is available online here:
    https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-
    workgroups/aging/assisted-living-report-card/assisted-living-reports.jsp
Methods

1) We first searched the traditionally published literature using bibliographic databases (e.g. Ovid Medline, CINAHL).

2) Grey literature search to supplement the published literature.
   - We conducted this search by reviewing the references listed in articles and reports and websites of highly relevant organizations and states.

3) We conducted key informant interviews and technical expert panels.
   - The interviews included national experts in quality measurement and assisted living, including academics, providers, and policy makers.

Results

10/14/2019

Research finding: Domains of quality in assisted living

- Safety
- Social Environment
- Physical Environment
- Resident / Family Satisfaction
- Staff
- Residency Health Outcomes
- Care Services
- Service Availability

Methods

We initially identified 833 references
- Title and abstract screening eliminated 719 references
- We screened the full text of 160 references
- We excluded 111 references because there were not based in the U.S., did not address assisted living quality, did not provide domains or indicators, or were published prior to 2005.

Total=49 peer-reviewed references, and an additional 45 references from grey literature sources.

We conducted 12 in-depth interviews and 2 technical expert panels.
Key findings

• Based on all data sources, quality of life and satisfaction emerged as essential measures of AL quality.

• However, as AL residents become increasingly more complex and have higher clinical care needs, staffing and resident health outcomes, along with other identified domains, are also of vital importance.

Online Stakeholder Survey

• We will gather your feedback in this session, but we encourage you to provide additional feedback through an online survey.

• Survey link:
  
z.umn.edu/assistedliving

Feedback on domains of quality in assisted living (discussion time)

1. Do these domains and subdomains reflect your experiences and observations of assisted living?

2. Are there surprises or gaps related to these domains and subdomains?