



# Assisted Living Contract Termination Appeals

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# Assisted Living Contract Termination Appeals

# Resident Termination Appeals

- Facility-initiated
- Termination of housing OR
- Termination or nonrenewal of assisted living services



# Basis for Termination - Standard



- **Nonpayment**
- **Violation of contract**
  - Must allow cure within reasonable amount of time

# Basis for Termination - Expedited

## Expedited terminations

- Resident interference with rights, health, or safety of other residents
- Resident substantial and intentional interference with safety or physical health of staff
- Possession or sale of controlled substances, prostitution, possession of firearm, possession of stolen property on the premises
- Assessed needs exceed scope of services provided by facility
- Extraordinary circumstances cause facility to be unable to provide resident with services necessary to meet resident's needs

# Grounds for Resident Appeal

- **Factual dispute** over permissible basis to terminate
- Termination would result in **great harm** or potential for great harm to resident
- **Resident cured** or demonstrated ability to cure reason for termination, or identified modification, intervention, or alternative to termination
- Facility terminated contract in **violation of state or federal law**

# Appeal Processes/Timelines

- **Resident** - Appeal must be submitted within:
  - 30 days if termination is based on nonpayment or violation of AL contract
  - 15 days if termination is based on one of the expedited bases for termination
- **OAH** (Office of Administrative Hearings) - Conduct hearing as soon as practical, no later than 14 calendar days after request (unless parties agree otherwise)
  - Hearing held where resident lives unless impractical
  - Parties may, but are not required to be, represented by counsel
  - Abbreviated hearings to allow parties enough time to present facts about proposed termination

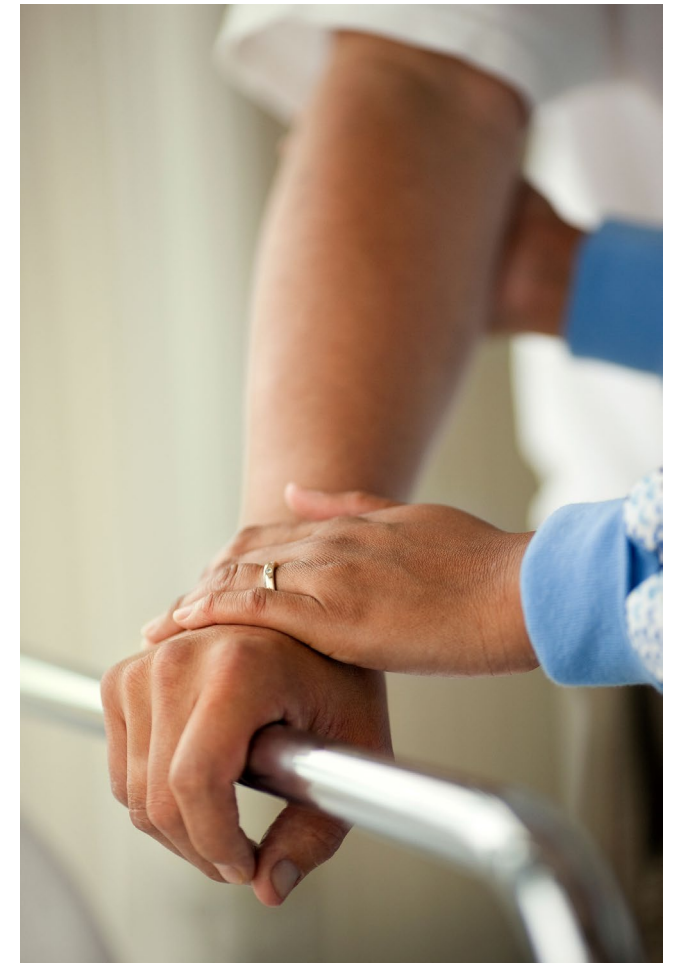
# Appeal Processes/Timelines Cont.

- **ALJ** (Administrative Law Judge) issues recommendation within 10 business days of hearing.
- **Parties** have 7 days to file additional arguments and/or exceptions to recommendation
- **MDH** must issue final decision within 14 days of judge's recommendation
- If MDH does not issue final order within 14 days, judge's recommendation is adopted as the final agency order
- Max of 68 days between notice and final order



## Preponderance of Evidence standard

- **Facility** has burden to demonstrate:
  - They have a permissible basis to pursue termination
  - They followed all legally required procedures
- **Resident** has burden to demonstrate:
  - Likelihood of great harm if termination proceeds
  - The reason for termination is cured or can be cured, or they have identified alternatives to termination



# While Appeal is Pending



- Facility may not discharge/terminate housing or services
- If additional services are required to meet health/safety needs of the resident, resident is responsible for contracting for the additional services from facility or another provider

# From January 2022 to present:

- 109 total appeals
- 97 identified outcomes
  - 59 dismissed prior to hearing
  - 18 withdrawn prior to being sent to OAH
  - 20 Final Determinations
    - 3 Terminations Granted/Appeal Denied
    - 17 Terminations Denied/Appeal Granted

## Average Time to Final Agency Decision:

- 2022 = 53 days
- 2023 = 43 days

# ALJ Decision Considerations

- Judges examine compliance with each required element of the termination process
  - Pretermination Notice
  - Pretermination Meeting
  - Meeting Summary
  - Termination Notice
  - Coordinated Move Efforts/Relocation Evaluation and Plan
- Also examine whether facility demonstrated a basis for termination, the risk of great harm to resident, and the resident's ability to cure or other alternatives to terminate.



# ALJ Decision Issues - Pretermination Notice

## Pretermination Notice

- Notice must be given at least **5 business days** ahead of the meeting
- Notice must be provided to the **resident representative(s)**
- Notice must provide a detailed explanation of **basis for termination**
- Notice must identify that it is setting a **pretermination meeting**
- Notice must inform resident that they could have **others participate** in the meeting

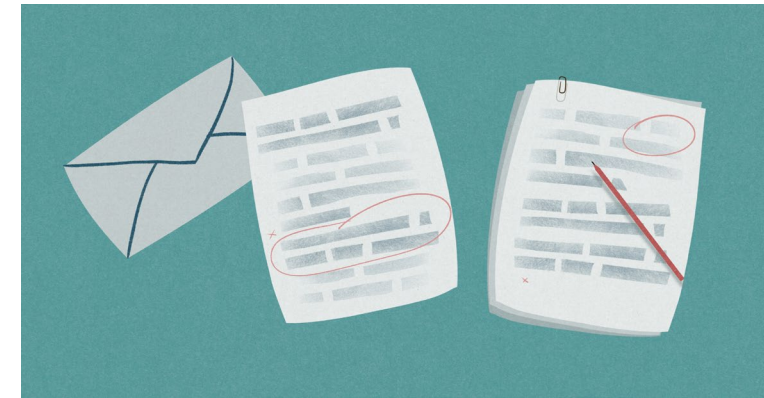
# Pretermination Meeting and Summary



- Facility must engage in reasonable efforts to ensure resident and representatives are able to attend
- Meeting must occur (in absence of reasonable efforts)
- Accommodations, modifications, interventions, or alternatives should be discussed during the meeting and summarized in post-meeting summary.
- Facility should identify justification if proposed opportunity to cure/reasonable alternative to termination is rejected.
- Summary must be provided to the resident, resident representative(s), and case manager the day after the meeting.

# Termination Notice

- ✓ Notice must provide a detailed explanation of **basis for termination**
- ✓ Notice cannot be issued sooner than **7 days** after pretermination meeting
- ✓ Notice should not be issued prior to allowing **alternatives** identified during the pretermination meeting **to take effect**
- ✓ Notice must be provided to necessary individuals
- ✓ Notice must state facility must engage in **coordinated move**
- ✓ Notice must provide information on **appeal rights**



# Coordinated Move/Relocation Planning



- Facility must identify alternative placement location(s) that are able to accept the resident prior to the hearing
- Facility should have completed a relocation evaluation prior to the hearing
- Merely listing other providers in the area is insufficient to meet the facility's obligation to identify a relocation destination
- Facility must coordinate with resident and representatives when establishing relocation plan
- If a facility has identified a location and offered it to the resident, the resident may refuse, but the *burden shifts* to the resident to find an appropriate location



# Evaluating Bases for Termination - Interference with rights, health, and safety

Interference with health and safety of self, other residents, staff:

- ✓ Yelling and general belligerency are *insufficient* to demonstrate a risk of harm
- ✓ Actual physical violence *is* sufficient to demonstrate basis for termination
- ✓ Facility should be able to demonstrate awareness of de-escalation techniques and sufficient training of staff
- ✓ Respondent in facility for behavior/mental health should not be terminated because they demonstrate behaviors in line with their disease/disorder.
- ✓ Should not be a one-time incident
- ✓ Facility should be able to demonstrate interventions attempted to address behaviors

# Evaluating Basis for Termination - Contract Violations

## Contract Violations

- Facility should submit the contract and identify the provisions the resident has violated during the hearing



# Evaluating Basis for Termination - Needs Exceed Scope

## Higher Level of Care than Provided by Facility

- Must be medical records identifying the level of care needed and evidence demonstrating why it is beyond facility's capabilities
- Care needs identified as provided by the facility UDALSA do not exceed the scope
- The higher level of care must not be a temporary need of the resident
- The higher level of care must be something the resident is unable to contract for through a third-party provider

# Resident Demonstrated Ability to Cure/Alternatives to Termination

- Termination for playing loud music cured by removing speakers capable of playing audio at unacceptable levels
- Termination for nonpayment demonstrated ability to cure based on monthly income
  - Condition of order that resident uses income to pay for rent
- Untidy apartment able to be cured by hiring cleaning service
- Resident behaviors may be able to be addressed by medication adjustments or other interventions.

Final agency decisions may be appealed to the Court of Appeals (14.63-14.69)



- [Assisted Living Resources & FAQs \(https://www.health.state.mn.us/facilities/regulation/assistedliving/faq\)](https://www.health.state.mn.us/facilities/regulation/assistedliving/faq)
  - Reconsiderations and Appeals
  - Terminations
  - UDALSA
- [Contract Termination Appeals \(PDF\) \(https://www.health.state.mn.us/facilities/regulation/assistedliving/docs/allcontractappeal.pdf\)](https://www.health.state.mn.us/facilities/regulation/assistedliving/docs/allcontractappeal.pdf)

## Terminations

*Termination* means a facility-initiated termination of housing provided to the resident under the contract; or a facility-initiated termination or nonrenewal of all assisted living services the resident receives from the facility under the contract.

Related Statutes and Rules: [144G.52](#), [4659.0120](#)

Is a pre-termination meeting still required when an expedited termination notice is given to a resident? ▼

What is the timeline for a termination of a contract? ▼

The resident is willing to move. Wouldn't that be considered a "resident-initiated termination"? ▼

What reasons allow a facility to initiate a termination and what are the corresponding timing of notices? ▼

What is the timeline for an appeal of a termination? ▼

Can an emergency relocation be considered a termination? ▼

What are the facility's obligations if a termination is appealed? ▼



Questions?

# Thank You!

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**How to Conduct  
an Internal Investigation  
+ Investigation Tips**  
**Friday, November 17th**  
**12:00 – 1:00**

