



To: Anne Peterson, Legal and Policy Advisor, MDH/HRD  
From: Doug Beardsley, VP Member Services, Care Providers of Minnesota  
Date: November 4, 2019

**Re: Assisted Living License (ALL) Rulemaking pertaining to Emergency Preparedness**

Thank you for the opportunity to address emergency preparedness requirements for licensing assisted living through the rulemaking process. Care Providers of Minnesota believes there is an opportunity to expand the scope and effectiveness of emergency preparedness through the licensure process, while not substantially increasing the cost for such compliance to the facility and consumers of assisted living services.

Current emergency preparedness requirements for registered Housing with Services (HWS) communities and licensed home care providers are identified below. The HWS requirements have been in effect since January 1, 2016. The home care requirements have been in place since 2015. The current requirements appear to have been effective in managing emergencies in HWS/AL settings, but we believe there is opportunity for improvement.

*Currently in place for HWS:*

**HWS Emergency Planning (144D.11)**

**144D.11 EMERGENCY PLANNING.**

(a) Each registered housing with services establishment must meet the following requirements:

(1) have a written emergency disaster plan that contains a plan for evacuation, addresses elements of sheltering in-place, identifies temporary relocation sites, and details staff assignments in the event of a disaster or an emergency;

(2) post an emergency disaster plan prominently;

(3) provide building emergency exit diagrams to all tenants upon signing a lease;

(4) post emergency exit diagrams on each floor; and

(5) have a written policy and procedure regarding missing tenants.

(b) Each registered housing with services establishment must provide emergency and disaster training to all staff during the initial staff orientation and annually thereafter and must make emergency and disaster training available to all tenants annually. Staff who have not received emergency and disaster training are allowed to work only when trained staff are also working on site.

(c) Each registered housing with services location must conduct and document a fire drill or other emergency drill at least every six months. To the extent possible, drills must be coordinated with local fire departments or other community emergency resources.

**History:** 2014 c 291 art 6 s 21; 2019 c 60 art 1 s 48

**NOTE:** This section is repealed by Laws 2019, chapter 60, article 1, section 48, effective August 1, 2021. Laws 2019, chapter 60, article 1, section 48.

*Currently in place for Home Care:*

**Disaster planning and emergency preparedness plan (144A.4791)**

Subd. 12. **Disaster planning and emergency preparedness plan.** The home care provider must have a written plan of action to facilitate the management of the client's care and services in response to a natural disaster, such as flood and storms, or other emergencies that may disrupt the home care provider's ability to provide care or services. The licensee must provide adequate orientation and training of staff on emergency preparedness.

Care Providers of Minnesota has conducted a review of the emergency preparedness requirements for assisted living providers in other states across the US, as well as sample emergency preparedness materials provided by MDH to advisory committee members in advance of the October 16, 2019 meeting. These materials included CMS Appendix Z (CMS estimated cost per facility in year one is \$4,383) and the long-term care preparedness base plan updated in October 2017 by the Southwest Healthcare Preparedness Coalition. While many of the requirements in CMS Appendix Z are excellent, they are expensive and go beyond the scope of what should be required in an assisted living facility. Likewise, the resources available in the long-term care preparedness base plan are well-developed and many elements are potentially applicable for an assisted living settings, but they were not designed for assisted living and go beyond the reasonable scope of assisted living facilities (e.g. fully developed incident command system). Nothing would prevent an assisted living facility from incorporating elements from either CMS Appendix Z or the base plan into their emergency plan as best practice, and many assisted living facilities located on campus settings with nursing homes will likely incorporate such requirements for consistency.

Care Providers of Minnesota has developed licensed assisted living emergency preparedness recommendations for consideration by the rulemaking advisory committee. In developing and reviewing recommendations, we considered the following questions:

1. Is the requirement scalable to the variety of assisted living communities in Minnesota? Will it work for a 4-unit residential care home assisted living and a high-rise 200-unit assisted living provider?
2. Can the requirement be effectively applied to new construction as well as legacy HWS buildings?
3. Cost/Benefit – will the requirement involve great cost with minimal safety benefits, or involve minimal cost with great potential safety benefits?
4. Will the requirement address a potential emergency that has high probability of occurrence in Minnesota?
5. Does the requirement address the health and safety needs of assisted living clients during an emergency?

Care Providers of Minnesota started with the current requirements, as they have been effective and based on survey records, compliance with the requirements has been high.

We then looked at numerous “add-ons” to the current requirements, applying the questions above to each proposal considered. Proposals were then reviewed and modified by a Care Providers of Minnesota assisted living rulemaking task force and reviewed by our Executive Committee. This process resulted in the following recommendations:

**Keep what is currently in place in the new Assisted Living Licensure:**

- 1) Surveys of assisted living physical plants:
  - a) Review and approval of new physical plant construction plans (architectural and engineering plans and specifications) (144G.45 Subd.6)
  - b) Survey of physical plant prior to a provisional license being issued (note – it is unclear if this is required)
  - c) Survey of physical plant within six-months of a change in ownership (144G.19 Subd.3)
  - d) Survey of physical plant within twelve months after issuance of a provisional license (144G.16 Subd.2)
  - e) Survey of physical plant at least every two years thereafter (144G.30 Subd.2).

2) 144G.41 Subd.1(11)(iii)

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

3) 144G.42 Subd. 10 Business Operation

Subd. 10. **Disaster planning and emergency preparedness plan.** (a) The facility must meet the following requirements:

(1) have a written emergency disaster plan that contains a plan for evacuation, addresses elements of sheltering in place, identifies temporary relocation sites, and details staff assignments in the event of a disaster or an emergency;

(2) post an emergency disaster plan prominently;

(3) provide building emergency exit diagrams to all residents;

(4) post emergency exit diagrams on each floor; and

(5) have a written policy and procedure regarding missing tenant residents.

(b) The facility must provide emergency and disaster training to all staff during the initial staff orientation and annually thereafter and must make emergency and disaster training annually available to all residents. Staff who have not received emergency and disaster training are allowed to work only when trained staff are also working on site.

(c) The facility must meet any additional requirements adopted in rule.

**History:** 2019 c 60 art 1 s 15,47

**NOTE:** This section, as added by Laws 2019, chapter 60, article 1, section 15, is effective August 1, 2021. Laws 2019, chapter 60, article 1, section 15, the effective date.

#### 4) 144G.45 Minimum Site, Physical Environment, and Fire Safety Requirements

##### **144G.45 MINIMUM SITE, PHYSICAL ENVIRONMENT, AND FIRE SAFETY REQUIREMENTS.**

Subdivision 1. **Requirements.** The following are required for all assisted living facilities:

- (1) public utilities must be available, and working or inspected and approved water and septic systems must be in place;
- (2) the location must be publicly accessible to fire department services and emergency medical services;
- (3) the location's topography must provide sufficient natural drainage and is not subject to flooding;
- (4) all-weather roads and walks must be provided within the lot lines to the primary entrance and the service entrance, including employees' and visitors' parking at the site; and
- (5) the location must include space for outdoor activities for residents.

Subd. 2. **Fire protection and physical environment.** (a) Each assisted living facility must have a comprehensive fire protection system that includes:

- (1) protection throughout by an approved supervised automatic sprinkler system according to building code requirements established in Minnesota Rules, part 1305.0903, or smoke detectors in each occupied room installed and maintained in accordance with the National Fire Protection Association (NFPA) Standard 72;
- (2) portable fire extinguishers installed and tested in accordance with the NFPA Standard 10; and
- (3) the physical environment, including walls, floors, ceiling, all furnishings, grounds, systems, and equipment that is kept in a continuous state of good repair and operation with regard to the health, safety, comfort, and well-being of the residents in accordance with a maintenance and repair program.

(b) Fire drills in assisted living facilities shall be conducted in accordance with the residential board and care requirements in the Life Safety Code, except that fire drills in secured dementia care units shall be conducted in accordance with section 144G.81, subdivision 2.

(c) Existing construction or elements, including assisted living facilities that were registered as housing with services establishments under chapter 144D prior to August 1, 2021, shall be permitted to be continued in use provided such use does not constitute a distinct hazard to life. Any existing elements that an authority having jurisdiction deems a distinct hazard to life must be corrected. The facility must document in the facility's records any actions taken to comply with a correction order, and must submit to the commissioner for review and approval prior to correction.

Subd. 3. **Local laws apply.** Assisted living facilities shall comply with all applicable state and local governing laws, regulations, standards, ordinances, and codes for fire safety, building, and zoning requirements.

Subd. 4. **Design requirements.** (a) All assisted living facilities with six or more residents must meet the provisions relevant to assisted living facilities in the most current edition of the Facility Guidelines Institute "Guidelines for Design and Construction of Residential Health, Care and Support Facilities" and of adopted rules. This minimum design standard must be met for all new licenses, new construction, modifications, renovations, alterations, changes of use, or additions. In addition to the guidelines, assisted living facilities shall provide the option of a bath in addition to a shower for all residents.

- 5) 144G.61 Subd. 2 (14) Competency Evaluations – Training and Evaluation of Unlicensed personnel.

Training and competency of unlicensed personnel must include the following:

(14) procedures to use in handling various emergency situations;

- 6) 144G.63 Subd. 2 (3) Orientation and Annual Training Requirements – Content of Requirement Orientation

(3) handling of emergencies and use of emergency services;

- 7) 144G.80 Subd. 2 (c) Additional Licensing Requirements for Assisted Living Facilities with Dementia Care

(c) The commissioner shall conduct an on-site inspection prior to the issuance of an assisted living facility with dementia care license to ensure compliance with the physical environment requirements.

8) 144G.81 Additional Requirements for Assisted Living Facilities with Secured Dementia Units

Subdivision 1. **Fire protection and physical environment.** An assisted living facility with dementia care that has a secured dementia care unit must meet the requirements of section 144G.45 and the following additional requirements:

(1) a hazard vulnerability assessment or safety risk must be performed on and around the property. The hazards indicated on the assessment must be assessed and mitigated to protect the residents from harm; and

(2) the facility shall be protected throughout by an approved supervised automatic sprinkler system by August 1, 2029.

Subd. 2. **Fire drills.** Fire drills in secured dementia care units in assisted living facilities with dementia care shall be conducted in accordance with the NFPA Standard 101, Life Safety Code, Healthcare (limited care) chapter.

Subd. 3. **Assisted living facilities with dementia care and secured dementia care unit; Life Safety Code.** (a) All assisted living facilities with dementia care and a secured dementia care unit must meet the applicable provisions of the most current edition of the NFPA Standard 101, Life Safety Code, Healthcare (limited care) chapter. The minimum design standards shall be met for all new licenses, new construction, modifications, renovations, alterations, changes of use, or additions.

(b) If the commissioner decides to update the Life Safety Code for purposes of this subdivision, the commissioner must notify the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over health care and public safety of the planned update by January 15 of the year in which the new Life Safety Code will become effective. Following notice from the commissioner, the new edition shall become effective for assisted living facilities with dementia care and a secured dementia care unit beginning August 1 of that year, unless provided otherwise in law. The commissioner shall, by publication in the State Register, specify a date by which these facilities must comply with the updated Life Safety Code. The date by which these facilities must comply shall not be sooner than six months after publication of the commissioner's notice in the State Register.

Subd. 4. **Awake staff requirement.** An assisted living facility with dementia care providing services in a secured dementia care unit must have an awake person who is physically present in the secured dementia care unit 24 hours per day, seven days per week, who is responsible for responding to the requests of residents for assistance with health and safety needs, and who meets the requirements of section 144G.41, subdivision 1, clause (12).

Subd. 5. **Variance or waiver.** A facility may request under section 144G.45, subdivision 7, that the commissioner grant a variance or waiver from the provisions of this section, except subdivision 4.

**History:** 2019 c 60 art 1 s 11,25,47

**NOTE:** This section, as added by Laws 2019, chapter 60, article 1, sections 11 and 25, is effective August 1, 2021. Laws 2019, chapter 60, article 1, sections 11 and 25, the effective dates.

9) 144G.82 Subd. 3 (a) (3) Additional Responsibilities of Administration for Assisted Living Facilities with Dementia Care.

Policies. (a) In addition to the policies and procedures required in all facilities, the assisted living facility with dementia care license must develop and implement policies and procedures that address the:

(3) wandering and egress prevention that provides detailed instructions to staff in the event a resident elopes;

In addition to the requirements already in statute, **Care Providers of Minnesota recommends the addition of the following five emergency preparedness requirements via the rulemaking process:**

1. Facilities who accept residents dependent on life support equipment requiring electricity, such as ventilators, must have an emergency generator and automatic transfer switches designed to operate life support equipment in the event of a power failure. Generators must be tested and maintained. This section does not apply to oxygen therapy, which must have alternative delivery methods in place if dependent on electricity via outlets.
2. Each facility shall have functioning battery or generator-powered lighting in corridors, stairwells, and required exits in the event of a power failure. Emergency lighting must be tested and maintained.
3. Each facility shall have life sustaining provisions and supplies for residents receiving assisted living services, or alternative arrangements available, sufficient to shelter in place for a minimum of two days without electricity, running water, or replacement staff.
4. Each facility shall have at least one executed Memorandum of Understanding with an alternative location(s) to transport residents to in situations where evacuation of the facility is deemed necessary. This does not preclude facilities from transferring residents to resident's family members or resident's representatives in an evacuation if such temporary relocation is acceptable to the family member or resident representative.
5. Each facility shall review their emergency preparedness plan at least annually and update as needed.

Care Providers of Minnesota would like to thank the Assisted Living Rulemaking Committee for considering our recommendations to the emergency preparedness requirements. We would be happy to provide additional information or respond to questions regarding our recommendations.