



Proposed Minnesota Legislation Would Introduce New Licensing Requirements for Assisted Living and Memory Care Communities

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Proposed legislation in Minnesota would dramatically reshape the state's licensing requirements for assisted living ("AL") and memory care ("MC") communities. Minnesota's current AL licensing requirements are unique in the U.S. and involve a partnership between housing and home care providers. Because of this, typically at least two sets of licenses/registrations for Minnesota ALs are required: (1) registration as a "housing with services establishment" ("HWSE") with assisted living designation and (2) licensing as a home care provider. The HWSE permit allows the site to be used as an AL and the home care provider services permit allows for the provision of care to residents.

Requirements related to the above-described permits are generally considered less stringent than those imposed in other states.¹ In a January 2018 report, a Minnesota consumer work group noted that "Minnesota is an outlier in comparison to other states when it comes to regulation of assisted living, [as] [a]ll other states require licensure or similar public oversight for these settings."² The new legislation (H.F. 3468) would revamp AL licensing and create an AL-specific license that would replace the current scheme, bringing Minnesota in line with the majority of states.³ The legislation would implement the following requirements/changes:

- The Minnesota Commissioner of Health (the "Commissioner") must propose more specific licensing standards by February 1, 2019. These standards will include requirements related to building design, physical environment, dietary services, support services, staffing guidelines, training, admissions criteria, retention criteria, discharge criteria, and resident rights.
- In order to operate an AL after January 1, 2020, the provider must obtain an AL license.
- After January 1, 2020, all AL administrators or executive directors must have a license from the Commissioner.
- The Commissioner must develop forms and procedures for the processing of assisted living license applications. The applications must request the following:
 - Names and addresses of all controlling persons and managerial employees;
 - Architectural and engineering plans of the facility; and
 - Confirmation of whether the applicant's license or authority to provide AL in any other state has ever been revoked or suspended.
- Core criteria must be established in all care and service settings for the provision of dementia care and criteria for the operation of a dementia care unit.

Minnesota's current AL requirements are contrasted with Virginia's, which are much more stringent. Virginia may be a model. Examples of Virginia's requirements include:

¹ See https://seniorhousingnews.com/2018/03/14/bill-to-license-assisted-living-memory-care-communities-introduced-in-minnesota/?_hsenc=p2ANqtz-LIOzWLYQIsJ5UvinAmC4NGd-mM4MR6Hu3Ca2GdpZheglInS9dXRn9KuG8clMI5T63B9yhRWfn-HBipkJ6mLtXmEOfWFA&_hsmi=61407066.

² The report is accessible at <https://www.leg.state.mn.us/docs/2018/other/180108.pdf>.

³ Text of the legislation can be found at http://www.revisor.mn.gov/bin/getbill.php?session=ls90&number=HF3468&session_number=0&session_year=2017&version=list.

- Requirements related to staff qualifications, liability insurance, electronic records, resident funds, work scheduling, statements of charges and payments, physical plant, and emergency preparedness (to name just a few).
- For proposed operators, a track record review process is required, which involves contacting regulatory authorities in all other states in which the provider operates and requesting that the authorities send written confirmation to Virginia authorities confirming positive compliance histories.
- Prior to licensing, Virginia authorities survey properties. Even after initial licensing, other operator events can trigger the same survey requirements.
- Background checks, reference letters, and other disclosures are required for owners of AL facilities.

If the proposed legislation passes and strict requirements go into effect, these changes will dramatically affect Minnesota providers. The proposed changes in Minnesota are consistent with moves in other states to more thoroughly regulate AL facilities. For example, following the hurricane last year in Florida, the state instituted emergency regulations requiring extensive temperature control elements that would have increased costs for providers dramatically.⁴ These AL changes may also be viewed in light of increased scrutiny regarding resident abuse and neglect and the aging U.S. population, so AL providers may be likely to see a continued focus on services in the future.

⁴ The Florida generator requirements have yet to be signed into law.

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