

H.F. 2604

Delete everything amendment (H2604DE1)

Subject Assisted living licensure delay and modifications

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Overview

Under current law, beginning August 1, 2021, assisted living facilities must be licensed by the Department of Health in order to operate in the state. This article delays licensure of assisted living facilities for one year, until August 1, 2022. It also makes several technical and clarifying changes to the assisted living and related statutes enacted in 2019; adds language necessary for the transition to assisted living facility licensure; establishes consumer protections for a one-year period for assisted living clients who live in certain housing with services establishments; modifies fees collected by the Board of Executives for Long Term Services and Supports; and appropriates money in fiscal year 2021 to the Board of Executives for Long Term Services and Supports.

Summary

Section	Description
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1	Definitions.
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	Amends § 144.6502, subd. 1. Amends definitions for a section authorizing electronic monitoring in certain facilities, to conform with the delay of assisted living facility licensure.
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2	Other laws.
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	Adds subd. 6 to § 144.6512. Amends a section prohibiting retaliation in nursing homes, to provide that this section does not affect the rights and remedies provided in the vulnerable adult maltreatment reporting section, in subdivisions 10 (duties of county social service agency); 17 (retaliation prohibited for reporting suspected maltreatment); and 20 (cause of action for financial exploitation, damages).
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Section	Description
3	<p>Assisted living director qualifications; ongoing training.</p> <p>Amends § 144A.20, subd. 4. Amends one path to licensure as an assisted living director by delaying by one year the date by which a person must apply for licensure as an assisted living director. This change is to conform with the delay in assisted living facility licensure.</p>
4	<p>Amounts.</p> <p>Amends § 144A.291, subd. 2. Modifies licensure fees collected by the Board of Executives for Long Term Services and Supports, to make the listed licensure fees apply to all applicants and licensees governed by the board and to eliminate the specific licensure fees for health services executives.</p>
5	<p>Fines.</p> <p>Amends § 144A.474, subd. 11. Delays the expiration date by one year of a paragraph specifying that fines for certain maltreatment violations must be used to compensate clients who were subject to maltreatment. This change is to conform with the delay in assisted living facility licensure.</p>
6	<p>Maltreatment compensation fund.</p> <p>Amends § 144A.474, subd. 14. Delays the expiration date by one year of a subdivision directing the commissioner of health to pay fines for certain maltreatment violations as compensation to clients who were subject to maltreatment. This change is to conform with the delay in assisted living facility licensure.</p>
7	<p>Membership.</p> <p>Amends § 144A.4799, subd. 1. Delays by one year the date on which the home care and assisted living program advisory council must include as a member, a representative of a county health and human services or county adult protection office. This change is to conform with the delay in assisted living facility licensure.</p>
8	<p>Other laws.</p> <p>Adds subd. 6 to § 144G.07. Amends a section prohibiting retaliation in housing with services establishments, to provide that this section does not affect the rights and remedies provided in the vulnerable adult maltreatment reporting section, in subdivisions 10 (duties of county social service agency); 17 (retaliation prohibited for reporting suspected maltreatment); and 20 (cause of action for financial exploitation, damages).</p>

Section	Description
9	<p>Assisted living facility.</p> <p>Amends § 144G.08, subd. 7. Amends the definition of assisted living facility to provide that an establishment that exclusively or primarily serves as a shelter for victims of domestic or other violence is not an assisted living facility.</p>
10	<p>Assisted living facility license.</p> <p>Adds subd. 7a to § 144G.08. Defines assisted living facility license for the sections governing assisted living facility licensure.</p>
11	<p>Assisted living services.</p> <p>Amends § 144G.08, subd. 9. Makes a technical change to the definition of assisted living services (specifying that it includes preparing specialized diets, rather than modified diets).</p>
12	<p>Direct ownership interest.</p> <p>Amends § 144G.08, subd. 23. Makes a technical change to the definition of direct ownership interest for the sections governing assisted living facility licensure.</p>
13	<p>Rulemaking authorized.</p> <p>Amends § 144G.09, subd. 3. Amends the commissioner's rulemaking authority for licensing assisted living facilities, to delay publication of the notice of adoption of rules from December 31, 2020 to December 31, 2021. This change is to conform with the delay in assisted living facility licensure.</p>
14	<p>License required.</p> <p>Amends § 144G.10, subd. 1. Replaces the existing subdivision with a new subdivision requiring assisted living facilities to be licensed in order to operate in Minnesota, beginning August 1, 2022 rather than August 1, 2021 as in current law. Requires an entity to be licensed under chapter 144G in order to manage, control, or operate an assisted living facility in the state; or to advertise, market, or promote a facility as providing assisted living services or specialized care for individuals with dementia. Provides that the licensee is responsible for the management, control, and operation of the facility. Requires the commissioner to issue a single license for each facility located at a separate address, except allows the commissioner to issue a single license for multiple buildings on a campus. If a building on a campus promotes itself as providing specialized care for individuals with dementia, requires the campus to apply for an assisted living facility with dementia care license or requires that building to be licensed as an assisted living facility with dementia care. The date change in this subdivision is to conform with the delay in assisted living facility licensure.</p>

Section	Description
15	<p>Definitions.</p> <p>Adds subd. 1a to § 144G.10. Defines the following terms for a section requiring an entity to be licensed to operate an assisted living facility: adjacent, campus, and campus' main building.</p>
16	<p>Provisional license.</p> <p>Amends § 144G.16, subd. 1. Delays the date on and after which the commissioner must issue provisional licenses for assisted living facility license applicants, from August 1, 2021 to August 1, 2022. This change is to conform with the delay in assisted living facility licensure.</p>
17	<p>Assisted living facility licensing implementation; provisional licenses; transition period for current providers.</p> <p>Adds § 144G.191.</p> <p>Subd. 1. Provisional licenses. Establishes dates on and after which applications for provisional licenses may be submitted; no initial housing with services establishment registration applications will be accepted; and no temporary comprehensive home care provider license applications will be accepted for providers that do not intend to provide home care services on or after August 1, 2022.</p> <p>Subd. 2. New construction; building permit. Allows prospective license applicants seeking a license for new construction who submit a complete building permit application on or before July 31, 2022, to meet construction requirements in effect when the application was submitted. Applicants who submit a complete building permit application after that date must meet the new construction requirements in section 144G.45. If building plan review applications are separated from building permit applications, allows a complete plan review application to be accepted instead of a building permit application.</p> <p>Subd. 3. New construction; plan review. Beginning March 1, 2022, allows prospective license applicants under new construction to submit plans and specifications to the commissioner for plan review of new construction requirements.</p> <p>Subd. 4. Current comprehensive home care providers; provision of assisted living services. Provides that comprehensive home care providers that do not intend to provide home care services on or after August 1, 2022, shall be issued a prorated license beginning September 1, 2021 and shall pay a prorated fee. The prorated license shall be effective from the renewal date of the provider's current license through July 31, 2022. Requires a home care provider operating under a prorated license to notify recipients of changes to their home care</p>

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services 60 days before expiration of the license, and specifies what the notice must include. Exempts certain home care providers from this notice requirement.

Subd. 5. Current housing with services establishment registration to an assisted living facility license; conversion to licensure. Requires current housing with services establishments intending to provide assisted living services on or after August 1, 2022, to apply for licensure under this chapter. An existing housing with services establishment that does not intend to convert its registration to an assisted living facility license must notify its residents at least 60 days before expiration of its registration or no later than May 31, 2022, and specifies what the notice must include. Exempts certain housing with services establishments from this notice requirement. By August 1, 2022, requires all housing with services establishments providing assisted living to have an assisted living facility license. Effective August 1, 2022, a housing with services establishment that has not converted to licensure cannot provide assisted living services.

Subd. 6. Conversion to assisted living licensure; renewal periods; prorated licenses. Provides that applicants converting from a housing with services establishment registration to an assisted living facility license must be provided a new renewal date, and directs the commissioner to assign a new randomly generated renewal date to evenly disperse license renewals throughout a calendar year. Provides for initial licensure periods for prorated licenses based on the month of renewal. Provides that an assisted living facility shall receive its first renewal for a full 12-month period about 90 days before expiration of the facility's prorated license. Current housing with services establishments that intend to obtain more than one license may ask for the same renewal date or different renewal dates for all licenses. Specifies how prorated fees will be calculated.

Subd. 7. Conversion to assisted living licensure; background studies. Requires background studies of individuals who: (1) have a direct ownership interest in or are a managerial official of a housing with services establishment converting to licensure; and (2) are on a license application of the housing with services establishment converting to licensure but are not listed on the existing registration. Establishes requirements governing licensure if a controlling individual does not have a background study disqualification set aside, if a disqualification is set aside or rescinded, and if a disqualification is affirmed. Classifies background study data as private data on individuals.

Subd. 8. Changes of ownership; current housing with services establishment registrations. If an applicant converting from housing with services establishment registration to licensure anticipates a change in ownership on or after August 1,

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	2022, requires the applicant to submit a change of ownership application with its license application and fees.
	Subd. 9. Expiration. Makes this section expire August 1, 2023.
18	<p>Payment for services under disability waivers.</p> <p>Amends § 144G.401. Provides that for new assisted living facilities that did not operate as housing with services establishments prior to August 1, 2022, (rather than August 1, 2021 as in current law) home and community-based services are not available when the new facility is adjoined to or on the same property as an institution. This change is to conform with the delay in assisted living facility licensure.</p>
19	<p>Tuberculosis prevention and control.</p> <p>Amends § 144G.42, subd. 9. Requires a facility to maintain written evidence of compliance with a requirement to have a comprehensive tuberculosis infection control program. Makes technical changes.</p>
20	<p>Communicable diseases.</p> <p>Adds subd. 9a to § 144G.42. Requires facilities to comply with current state requirements for prevention, control, and reporting of communicable diseases.</p>
21	<p>Fire protection and physical environment.</p> <p>Amends § 144G.45, subd. 2. Modifies fire protection and physical environment requirements for facilities, to require compliance with the state fire code and compliance with specific requirements for smoke alarms. Allows assisted living facilities that operated as housing with services establishments prior to August 1, 2022, (rather than 2021 as in current law) to continue in use; this change is to conform with the delay in assisted living facility licensure. Also makes technical changes.</p>
22	<p>Assisted living facilities; Life Safety Code.</p> <p>Amends § 144G.45, subd. 5. Requires assisted living facilities with six or more residents to comply with the 2018 edition of the NFPA Standard 101 Life Safety Code, Residential Board and Care Occupancies chapter (rather than the most recent version as in current law).</p>
23	<p>New construction; plans.</p> <p>Amends § 144G.45, subd. 6. Amends a subdivision governing plans for new licensure and construction, to specify that the subdivision applies to new licensure and construction beginning on or after August 1, 2022 (rather than August 1, 2021 as in</p>

Section	Description
	current law). This change is to conform with the delay in assisted living facility licensure.
24	<p>Other laws.</p> <p>Amends § 144G.92, subd. 5. Makes technical changes to make this subdivision conform with other subdivisions regarding rights and remedies available if a person is subject to retaliation.</p>
25	<p>Recommendations.</p> <p>Amends § 144G.9999, subd. 3. Delays the date by which the resident quality of care and outcomes improvement task force must be established, from July 1, 2020, to July 1, 2021. This change is to conform with the delay in assisted living facility licensure.</p>
26	<p>Transition period.</p> <p>Amends Laws 2019, ch. 60, art. 1, § 45. Delays dates for the commissioner to prepare for licensure, for existing housing with services establishments providing home care services to convert to licensure, and for assisted living facilities to be licensed, from dates in 2021 to dates in 2022; these changes are to conform with the delay in assisted living facility licensure. Also makes a technical change.</p>
27	<p>Prioritization of enforcement activities.</p> <p>Requires the commissioner to prioritize enforcement activities for terminations of service plans with assisted living clients within available appropriations in fiscal year 2022, in addition to fiscal years 2020 and 2021 as in current law. This change is to conform with the delay in assisted living facility licensure.</p>
28	<p>Repealer.</p> <p>Amends Laws 2019, ch. 60, art. 1, § 48. Delays the repeal of the listed sections from August 1, 2021 to August 1, 2022; this change is to conform with the delay in assisted living facility licensure.</p>
29	<p>Repealer.</p> <p>Amends Laws 2019, ch. 60, art. 4, § 35. Delays the repeal of the listed sections from August 1, 2021 to August 1, 2022; this change is to conform with the delay in assisted living facility licensure.</p>
30	<p>Commissioner of health.</p> <p>Amends Laws 2019, ch. 60, art. 5, § 2. Makes a fiscal year 2021 appropriation of \$5,114,000 from the general fund to the commissioner of health for assisted living licensure available until June 30, 2023. Modifies base funding for appropriations from the state government special revenue fund to the commissioner in fiscal years 2022, 2023, 2024, and 2025 to improve the frequency of home care provider inspections.</p>

Section	Description
	These changes are to conform with the delay in assisted living facility licensure. Also makes technical changes.
31	<p>Amendments to effective dates for certain sections in Laws 2019, chapter 60.</p> <p>Paragraph (a) delays effective dates for assisted living facility licensure sections from August 1, 2021, to August 1, 2022.</p> <p>Paragraph (b) delays effective dates for a section setting fees for licensure of assisted living facilities and for conforming changes from August 1, 2021, to August 1, 2022.</p> <p>Paragraph (c) delays the effective date for a section requiring notice of an arbitration provision in a contract from August 1, 2021, to August 1, 2022, for contracts entered into on or after that date.</p> <p>Paragraph (d) delays the expiration date for a section prohibiting retaliation in housing with services establishments from July 31, 2021, to July 31, 2022.</p> <p>Paragraph (e) delays the effective date for a section establishing disclosure requirements for I'm okay check services from August 1, 2021, to August 1, 2022, for contracts entered into on or after that date.</p> <p>Paragraph (f) delays the effective date for sections on licensure of assisted living directors, from July 1, 2020, to July 1, 2021.</p> <p>Paragraph (g) delays the effective date for a subdivision in which two exceptions to home care provider licensure are stricken, from July 1, 2021, to July 1, 2022.</p>
32	<p>Consumer protections for assisted living clients.</p> <p>Establishes consumer protections for clients residing in certain housing with services establishments and receiving services from arranged home care providers.</p> <p>Subd. 1. Definitions. Defines the following terms for this section: arranged home care provider, client, client representative, facility, home care provider, safe location, service plan, and services.</p> <p>Subd. 2. Prerequisite to termination or nonrenewal of lease, services, or service plan. Requires a facility to schedule and participate in a meeting with a client and the client representative before the facility issues a notice of termination of a lease or a notice of termination or nonrenewal of all services, or if an arranged home care provider issues a notice of termination or nonrenewal of a service plan. Lists purposes of the meeting and requires it to take place at least seven days before a notice of termination or nonrenewal is issued. Requires the facility to notify the client that the client may invite the listed persons or others to</p>

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attend the meeting, and requires the facility to notify the client's case manager of the meeting if the client receives home and community-based waiver services.

Subd. 3. Restrictions on lease terminations. Paragraph (a) prohibits a facility from terminating a lease except as provided in this subdivision.

Paragraph (b) allows a facility to initiate a termination of a lease upon 30 days' prior written notice only for:

- nonpayment of rent, provided the facility informs the client that public benefits may be available and provides contact information for the Senior LinkAge Line; or
- a violation of a lawful provision of the lease if the client does not cure the violation within a reasonable amount of time, after the facility provides written notice to the client of the ability to cure.

Paragraph (c) allows a facility to terminate a lease upon 15 days' prior written notice only if a client has engaged in conduct that substantially interferes with the rights, health, or safety of other clients; engaged in conduct that substantially and intentionally interferes with the safety or physical health of facility staff; or committed an act related to controlled substances, prostitution, firearms, or stolen property that substantially interferes with the rights, health, or safety of other clients.

Paragraph (d) states that nothing in this subdivision affects the rights and remedies available under chapter 504B, landlord/tenant law.

Subd. 4. Restrictions on terminations and nonrenewals of services and service plans. Paragraph (a) prohibits an arranged home care provider from terminating or failing to renew a service plan of a client in a facility except as provided in this subdivision.

Paragraph (b) allows an arranged home care provider to initiate a termination of services for nonpayment upon 30 days' prior written notice if the client does not cure the violation within a reasonable amount of time after the facility provides written notice of the ability to cure.

Paragraph (c) allows an arranged home care provider to terminate or fail to renew a service plan upon 15 days' prior written notice only if the client has engaged in conduct that substantially interferes with the client's health or safety; the client's assessed needs exceed the scope of services in the service plan and are not offered by the arranged home care provider; or extraordinary

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circumstances exist that cause the arranged home care provider to not be able to provide the client with the services in the service plan.

Paragraph (d) states that a violation of paragraph (b) that makes it necessary for a client to move out of the facility constitutes a constructive eviction and that a client alleging a violation of paragraph (b) may seek a temporary injunction against the termination. Specifies the circumstances under which the court may grant a temporary injunction, requires the termination to be stayed while the underlying dispute is adjudicated if a temporary injunction is granted, and authorizes the client to receive attorney fees and court costs if the client prevails in the underlying dispute. Provides that the client is responsible for contracting for additional services the client needs during the time between issuance of a temporary injunction and final adjudication of the underlying dispute.

Subd. 5. Restriction on lease nonrenewals. If a facility decides not to renew a client's lease, requires the facility to provide the client with 60 calendar days' notice, ensure a coordinated move, consult with the client and others to make arrangements to move the client, and prepare a written plan for the move.

Subd. 6. Right to return. Provides that if a client is absent from a facility for any reason and if a lease termination has not been effectuated, the facility shall not refuse to allow a client to return.

Subd. 7. Coordinated moves. Paragraph (a) requires a facility or arranged home care provider to arrange a coordinated move for a client if a facility terminates a lease or closes the facility; an arranged home care provider terminates or does not renew a service plan; or an arranged home care provider reduces or eliminates services to the extent that the client needs to move.

Paragraph (b) provides if one of these events occurs, the facility or arranged home care provider must ensure a coordinated move to a safe, appropriate location identified by the facility; ensure a coordinated move to an appropriate service provider identified by the facility, if the client still needs and wants services; and consult and cooperate with the client and others to make arrangements to move the client.

Paragraph (c) allows a facility to move the client to a different location within the same facility to satisfy certain requirements in paragraph (b).

Paragraph (d) allows a client to decline to move to the location the facility identifies or accept services from the provider the facility identifies, and instead move to a location or provider of the client's choice.

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Paragraph (e) states that sixty days before one or more services for a client are reduced or eliminated, a facility or arranged home care provider must notify the client of the reduction or elimination and, if the client will be forced to move, ensure a coordinated move.

Paragraph (f) requires a facility or arranged home care provider to prepare a relocation plan for a move to a new location or service provider.

Paragraph (g) requires a facility to provide the listed client information, with the client's knowledge and consent, if the client relocates to another facility or nursing home or if care is transferred to another service provider.

Subd. 8. No waiver. Prohibits a facility or arranged home care provider from requesting or requiring that a client waive the client's rights or requirements under this section.

This section is effective for contracts entered into on or after August 1, 2021, and expires July 31, 2022.

33	<p>Appropriation; Board of Executives for Long Term Services and Supports.</p> <p>Appropriates \$467,000 in fiscal year 2021 from the state government special revenue fund to the Board of Executives for Long Term Services and Supports for operations. Establishes a base for this appropriation for fiscal years 2022 and 2023.</p>
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