



MINNESOTA

OFFICE OF OMBUDSMAN

FOR MENTAL HEALTH AND

DEVELOPMENTAL DISABILITIES

**Rules & Rights in Assisted Living
Service/Housing Terminations, Non-renewals, and Facility Closures**

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About OMHDD

- Independent state agency
- We serve Minnesotans with concerns or questions regarding services of an agency (MDE, MDH, DHS), facility, or program (licensed, registered, or certified) regarding:
 - mental health
 - developmental disabilities
 - chemical dependency
 - emotional disturbance
- Services are free, statewide, no eligibility requirements

Today's focus

- What are Assisted Living Facilities?
- What are the rules that these facilities have to follow?
- What protections and rights do people living in Assisted Living Facilities have when the provider wants to terminate services? (service terminations and non-renewals)
- What if the Assisted Living Facility closes?

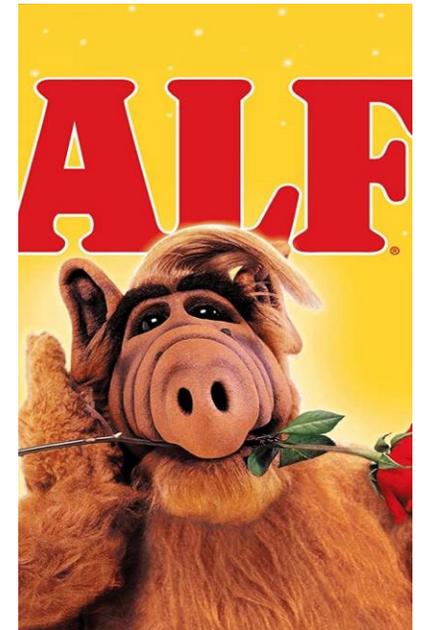
Assisted Living: The Old System

- Minnesota's Assisted Living Facilities (ALFs) used to be regulated as "housing with services"
- Very little oversight from the Minnesota Department of Health (MDH)
 - Home-care services provider needed to be registered
 - No real control over the housing provider
- So: regulatory gaps existed, not enough protections

New Assisted Living Statute and Rule

- Minnesota Statutes Chapter 144G: [Ch. 144G MN Statutes](#)
- Minnesota Rules Chapter 4659: [4659 - MN Rules Chapter](#)
- Effective August 1, 2021, Assisted Living Facilities (ALFs) must be licensed
- Big picture: Lots more requirements, protections

- An assisted living facility (ALF) is a licensed facility that provides sleeping accommodations and a wide variety of services and supports that may include personal care assistance, medication management, skilled nursing care, and other treatment and therapies.
 - Assisted living services can also include dementia care.
 - Assisted living services do not include other types of licensed or registered settings, such as most public housing, or adult foster care settings (licensed under chapter 245D).



This is a long list! Among other things, ALFs **must**:

- Give residents the ALF Bill of Rights
- Comply with the Nurse Practice Act
- Use a person-centered planning and service delivery process
- Provide a way for residents to request assistance for health and safety needs 24/7
- Allow residents to furnish and decorate their unit within the terms of the ALF contract...

- Allow residents to choose their visitors and times of visits
- Allow the resident the right to choose a roommate if sharing a unit
- Notify the resident of the rights to have and use a lockable door to the resident's unit
 - *The licensee will provide the lock
 - *Only staff with a specific need to enter the unit will have a key
 - *Advance notice to enter must be given when possible
 - *The ALF must NOT lock a resident in the resident's unit...

Develop and implement a **staffing plan** for determining a staffing level that:

- Includes an evaluation, to be conducted at least twice a year, of the appropriateness of staffing levels in the ALF
- Ensures sufficient staffing at all times to meet the scheduled AND reasonably foreseeable unscheduled needs of each resident as required by the residents' assessments and service plans on a 24 hour/day basis
- Ensures the ALF can respond promptly and effectively to individual resident emergencies and to emergency, life safety, and disaster situations affecting staff or residents...

All ALFs must:

- provide a resident council and a family council with space and privacy for meetings where possible
- post info about the **grievance procedure** and the contact info for who is responsible for handling resident grievances, including **contact info for OMHDD, OOLTC, and MAARC.**
- insure every resident has **access to consumer advocacy or legal services** by providing contact info for at least 3 advocacy organizations, plus state and regional contact info for OMHDD and OOLTC
- assist clients in obtaining Medicare or Medical Assistance
- make reasonable accommodations for people with communication disabilities and those who speak other languages, and providing all information and notices in plain language.

- ALFs may only provide housing and AL services through a *written contract* with the resident.
- The contract must detail the resident's housing, AL services, and service plan.

AL Contract Requirements (cont'd) 144G.50

The contract must include many details, including:

- The grounds for discharge, eviction, transfer, or service termination
- A description of the complaint resolution process
- A notice of the resident's right to appeal the termination of the AL contract
- The ALF's policy regarding transfer of residents within the facility
- Contact info for OMHDD, OOLTC, and OHFC
- The resident's right to obtain services from a different provider
- A description of the ALF's policies related to MA waivers and the housing support program.
- The contact info to obtain long-term care consulting services
- Contact info for MAARC
- And more....

AL Contract Terminations

144G.52 and 4659.0120

- “TERMINATION” means a facility-initiated termination of housing *or* facility-initiated termination or nonrenewal of all AL services
- Before any termination, the facility must take many specific steps to be sure that termination is necessary. These include:
 - Scheduling a *pre-termination meeting*
 - Sending out a notice of the pre-termination meeting
 - Holding the pre-termination meeting
 - Providing a written summary of the meeting to resident, residents representative, and the case manager, if present, within 24 hours of the meeting
 - Sending out a notice of termination (if the meeting does not resolve the problem)

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

- The pretermination meeting must be scheduled to take place at least 7 days before issuing a termination notice. The ALF must take reasonable steps to help all parties attend.
- The ALF must send a written notice of the pre-termination meeting at least 5 business days in advance and must also notify the case manager of residents who receive HCBS waiver services.
- This notice must also include:
 - a proposed time, date, and location of the meeting
 - a detailed explanation of the reason or reasons for the proposed termination
 - list of facility individuals who will attend the meeting
 - an explanation that resident may invite family members, reps, relevant health professionals, OOLTC, and other individuals of the residents choosing to participate in pretermination meeting
 - contact information for OOLTC, OMHDD, and statement that ombudsman offices provide advocacy services
 - name and contact information for someone at facility whom resident can contact about the meeting or to request an accommodation
 - notice that attendees may request reasonable accommodations for a communication disability or if they speak a language other than English
 - notice that if a resident's housing or services are terminated, they have the right to appeal under 4659.0210 and 144G.54

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

- At the pre-termination meeting, the ALF must:
 - Explain in detail the reason for the proposed termination
 - Identify and offer reasonable options to avoid the termination, including getting services from another provider of the resident's choice.
- Emergency relocations and other cases: where an in-person meeting is not possible, the ALF may attempt to schedule the meeting via phone or video or other means. The ALF may also skip the meeting and send the notice of termination in the resident refuses to attend the meeting.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Reasons for termination

- An ALF may initiate a termination of housing or services for nonpayment. If terminating for nonpayment, the ALF must inform the resident that public benefits might be available. (Note, an interruption in a resident's public benefits that lasts no more than 60 days does not constitute nonpayment)
- An ALF may initiate a contract termination if the resident violates a provision of the contract and does not cure (fix) the violation in a reasonable amount of time after the facility provides written notice to the resident of the need to cure. But note: A written notice to cure is not required for violations that threaten health and safety or constitute illegal conduct.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Reasons for termination (cont'd)

- An ALF may also initiate an **expedited** termination of housing or services if:
 - The resident has engaged in conduct that substantially interferes with the rights, health, or safety of other residents
 - The resident has engaged in conduct that substantially and intentionally interferes with the safety or physical health of facility staff or
 - The resident has committed an act listed in 504B.171 that substantially interferes with the rights, health, or safety of other residents.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Reasons for termination (cont'd)

- An ALF may initiate an expedited termination of *services* if:
 - The resident has engaged in conduct that substantially interferes with the resident's health or safety
 - The resident's assessed needs exceed the scope of services agreed upon in the AL contract and are not included in the services the facility disclosed in the uniform checklist or
 - Extraordinary circumstances exist, causing the facility to be unable to provide the resident with the services disclosed in the uniform checklist that are necessary to meet the resident's needs.

Expedited terminations (cont'd)

If the expedited termination is being sought because the resident's assessed needs exceed the scope of services agreed upon in the assisted living contract and are not included in the services the facility disclosed in the uniform checklist, facility must

- provide the assessment that forms the basis of the expedited termination to the resident with the notice of termination, *and*
- include the name and contact information of any medical professionals who performed the assessment

But Note: An ALF may *not* terminate the AL contract if the reason for termination can be solved by the resident choosing and obtaining services from another provider.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Notice of termination

- An ALF terminating a contract must issue a written notice and must also send a copy of the notice to the OOLTC and, for residents receiving HCBS waiver services, the CM.
- A **nonpayment or contract violation termination** notice must be given to the resident and any legal or designated representative **30 days** before the effective date of the termination.
- An **expedited termination** notice must be given **15 days** before the effective date of the termination.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Contract termination notices must contain:

- Effective date of the termination of the AL contract
- Explanation of the basis of the termination, including clinical or other rationale
- Explanation of the conditions under which a new or amended contract may be executed
- Statement about the right to appeal, information about the appeal time frame, and contact info for where to submit the appeal request
- Statement that the ALF must participate in a “coordinated move”
- ALF contact info for person to discuss the notice with
- Contact info for OOLTC, Senior Linkage Line
- For service terminations only: a statement that the resident can stay in the ALF and may secure services from another provider of the resident’s choosing

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Emergency relocation

- An ALF may remove a resident from the facility in an emergency if needed
 - due to a resident's urgent medical needs, or
 - an imminent risk the resident poses to the health or safety of another resident or staff.
 - **But note: An emergency relocation is not a termination.**
- In an emergency relocation, the ALF must provide a written notice stating:
 - The reason for the relocation
 - The name and contact info for the new location and any new service provider
 - Contact info for OOLTC
 - If known, the approximate date the resident is expected to return or if not known, a statement stating a date is not known
 - A statement (if the ALF refuses to provide housing or services after an emergency relocation) that the client has the right to appeal (144G.54) and the contact info for the agency where the appeal should be submitted. A refusal constitutes a termination and triggers the termination process.

AL Contract Terminations (cont'd) 144G.52 and 4659.0120

Emergency relocation (cont'd)

- If the ALF refuses to provide housing or services after an emergency relocation, the ALF must provide a statement that the client has the right to appeal (144G.54) and include the contact information for the agency where the appeal should be submitted. A refusal constitutes a termination and triggers the termination process.
- The emergency relocation notice must be delivered as soon as practicable to the resident, legal rep, designated rep, the CM if the resident receives HCBS waiver services. Notice must be provided to OOOLTC if the resident hasn't returned to the ALF within 4 days.
- If a resident is absent from an ALF for any reason, including an emergency relocation, the ALF shall not refuse to allow a resident to return if a termination of housing has not been effectuated.

- Termination of an AL contract can be appealed to the Office of Administrative Hearings.
- Grounds to appeal termination:
 - there is a factual dispute as to whether the facility had a permissible basis to initiate the termination
 - the termination would result in great harm or the potential for great harm to the resident as determined by the totality of the circumstances, except in circumstances where there is a greater risk of harm to other residents or staff at the facility
 - the resident has cured or demonstrated the ability to cure the reasons for the termination, or has identified a reasonable accommodation or modification, intervention, or alternative to the termination
 - the facility has terminated the contract in violation of state or federal law
- Termination of services or housing is not allowed while the appeal is pending. If additional services are needed during the appeal, the resident is responsible for contracting for those services through the facility or another service provider and for ensuring costs for those services are covered.

If facility terminates contract or the resident plans to move because the facility has initiated the pretermination or termination process, facility must

- must prepare a written resident relocation evaluation
- hold a planning conference, and
- develop a written resident relocation plan with resident, resident representatives, CCB/EW waiver case manager, if any, and others invited by resident.

Rule spells out details of what relocation plan must include; must incorporate elements of resident relocation evaluation

Nonrenewal of Housing

144G.53

- If an ALF decides to not renew a resident's housing, the ALF must either (1) issue a 60-day notice *and* assist with relocation planning, *or* (2) follow the termination procedures in 144G.52. If the ALF issues the notice, it must include the reason for nonrenewal and contact info for OLTC.
- The ALF must:
 - Provide the notice to OOLTC
 - Provide the notice to the case manager (CM) if the resident receives HCBS waiver services
 - Ensure a coordinated move to a safe and appropriate location
 - Ensure a coordinated move to an appropriate service provider if resident needs and wants services
 - Consult and cooperate with the resident, legal rep, designated rep, CM, relevant health professionals, and anyone else the resident chooses to make arrangements to move the resident, including consideration of the resident's goals
 - Develop a written plan to prepare for the move
- The resident can decline to move to the location selected by the ALF and can decline any offer of service provider or services. The resident may instead opt for a location and services of the resident's choosing within the timeline prescribed by the notice.

If facility does not renew contract and gives 60-day notice or if facility reduces services to the extent the resident has to move, facility must

- conduct resident relocation evaluation
- hold planning conference and develop resident relocation plan
- provide resident relocation information to receiving facility
- provide resident discharge summary

- If an ALF terminates an AL contract, reduces services to the extent the resident has to move, or conducts a planned closure the ALF must:
 - Ensure a coordinated move to a **safe location**
 - Ensure a coordinated move to an appropriate service provider – provided services are still needed and desired by the resident
 - Consult and cooperate with the resident, legal or designated representative, CM and others of resident's choosing to make arrangements to move the resident, including consideration of the resident's goals

Note: Moving the resident to another location within the same facility may satisfy the first two requirements and a resident can opt to find a different location and service provider.

Reducing/eliminating services?

- An ALF must give a 60-day notice before reducing/eliminating one or more services for a particular resident and the notice must include:
 - Detailed explanation for the reduction and date of reduction
 - Contact info for OOLTC and a person at the facility they can talk to about the reduction of services
 - A statement that the client can stay at the ALF and seek another service provider
 - A statement that if the reduction forces the resident to move, a coordinated move will commence, and the ALF will provide notice to OOLTC

COORDINATED MOVES

144G.55

- If the reduction of services is unanticipated due to extraordinary circumstances the usual 60-day notice must be given ASAP
- Key protection: The resident can opt to stay at the ALF and seek services from another provider
- The ALF must prepare a relocation plan to prepare for the move to the new location or new service provider
- A **safe location** is not a private home where the occupant can't/won't care for the resident, a homeless shelter, or a hotel/motel. ALF cannot terminate if it makes resident homeless or if an adequate and safe location and provider have not been identified

PLANNED CLOSURES

144G.57 and 4659.0130

- ALF must notify MDH Commissioner and OOLTC (and OMHDD per Rule) with a written proposed closure plan. The plan must include:
 - The procedures and actions the ALF will implement to notify residents, including a copy of the notice to be given to residents, designated reps, legal reps, family, and other resident contacts
 - The procedures and actions the ALF will implement to ensure appropriate termination planning, final accountings, and returns
 - Assessments of the needs and preferences of the resident; and
 - Procedures and actions the ALF will implement to maintain 144G compliance until every resident has relocated.

The closure plan must include

- reason for and proposed date of the closure
- proposed timetable for relocating residents, and how the facility will facilitate residents' relocations
- list of and information for each resident who will need to be relocated
- identification of at least two safe and appropriate housing providers and, for residents receiving services, appropriate service providers that are close to the facility and may be able to accept a resident
- the roles and responsibilities of the licensee, assisted living director, and any temporary managers or monitors during the closure process, and their contact information

PLANNED CLOSURES

144G.57 and 4659.0130

Facility's closure plan must include (cont'd)

- Policies and procedures for ongoing operations and management of the facility during the closure process that ensure
 - payment of all operating expenses
 - staffing and resources to continue providing services, medications, treatments, and supplies to meet each resident's needs, as ordered by the resident's physician or practitioner, until closure
 - residents' meals, medications, and treatments are not disrupted during the closure process
 - transportation of residents during discharge and transfer
 - residents' telephone, Internet services, and any electronic monitoring
 - residents' personal funds are accounted for, maintained, and reported to the resident and resident's representatives during the closure process
 - residents' belongings are labeled and kept safe, and residents are given contact information for retrieving missing items after the facility has closed

PLANNED CLOSURES

144G.57 and 4659.0130

Process

- The commissioner must approve the plan (within 45 days)
- The commissioner may require the ALF to work with a transition team comprised of MDH staff, OOOLTC, and other professionals deemed necessary by the commissioner to assist in proper relocation of residents
- After the commissioner has approved the plan, the AFL must serve a 60-day notice to residents, designated and legal representatives, and CMs if appropriate.
- ALF must comply with coordinated move requirements
- The commissioner may impose a fine for failure to follow planned closure requirements.

- The ALF must have a service plan for each resident that includes:
 - A description of the services provided, the cost, and the frequency of each service
 - Identification of staff or categories of staff that will provide the services
 - The schedule and methods of monitoring assessments of the resident
 - *A contingency plan* that:
 - The action to be taken if the scheduled service cannot be provided
 - Information on how to contact the facility
 - Resident emergency contact information
 - The circumstances under which emergency medical services are not to be summoned

- Direct care staffing plan required; provides an adequate number of qualified direct-care staff to meet the residents' needs 24/7.
- Staffing levels must be adequate to address
 - each resident's needs, as identified in the resident's service plan and assisted living contract
 - each resident's acuity level, as determined by the most recent assessment or individualized review
 - the ability of staff to timely meet the residents' scheduled and reasonably foreseeable unscheduled needs given the physical layout of the facility premises
 - whether the facility has a secured dementia care unit
 - staff experience, training, and competency

AL BILL OF RIGHTS

144G.91 and 144G.911

- Appropriate care and services
- Refusal of care or services
- Participation in care and service planning
- Courteous treatment
- Freedom from maltreatment
- Right to come and go freely
- Individual autonomy
- Right to control resources

AL BILL OF RIGHTS

144G.91 AND 144G.911

- Visitors and social participation
- Personal and treatment privacy
- Communication privacy
- Confidentiality of records
- Right to furnish and decorate
- Right to choose roommate
- Right to access food
- Access to technology

AL BILL OF RIGHTS

144G.91 AND 144G.911

- Grievances and inquiries
- Access to counsel and advocacy services
- Information about charges
- Information about individuals providing services
- Information about other providers and services
- Resident councils
- Family councils

AFL BILL OF RIGHTS

144G.91 AND 144G.911

- The three highlighted rights may be restricted ONLY if determined necessary for health and safety reasons identified by the AFL through an initial assessment or reassessment and documented in the written service plan.
- Any restriction of those rights for person served under EW and HCBS waiver services must be documented by the CM in the resident's CSSP.

Contact info

- Website: [Office of Ombudsman for Mental Health and Developmental Disabilities / Minnesota.gov \(mn.gov\)](https://www.ombudsman.mhdd.state.mn.us)
- Contact info:
 - General Questions - ombudsman.mhdd@state.mn.us
 - Regional Ombudsman - [Regional Listing](#) or [County Listing](#)
 - OMHDD phone numbers: 651-757-1800 or 1-800-657-3506

Thank you!