

## MEMORANDUM

TO: Senate Majority Leader Paul Gazellka  
Senate Minority Leader Susan Kent  
Speaker of the House Melissa Hortman  
House Minority Leader Kurt Daudt  
Senator Michelle Benson  
Senator Karin Housley  
Senator Jim Abeler  
Rep. Tina Liebling  
Rep. Jennifer Schultz  
Hali Kolkind, Governor's office  
Chris Schmitter, Governor's office

FROM: The Long-Term Care Imperative

DATE: April 30, 2021

RE: **Implementation of Assisted Living Licensure Law**

The Long-Term Care Imperative was proud to support the passage of the assisted living licensure legislation in 2019. Since the passage of that legislation, the LTC Imperative has never wavered from our commitment to implementation of this new law. The 2019 Assisted Living Licensure law included an aggressive implementation timeline to complete the rulemaking process and to provide sufficient time for the state agencies to prepare guidance and training for their staff and affected providers. Efforts by state agencies and long-term care providers to address the COVID-19 pandemic has greatly impacted implementation efforts. Despite the extraordinary efforts of agency staff to finalize a successful licensure process, we have very strong concerns about the current status of the implementation of this law and the upcoming June 1, 2021 deadline.

While this law is scheduled to go into effect on August 1, 2021, we are only weeks away from the statutorily mandated June 1, 2021 application deadline for all existing providers to apply for licensure. The license application has been made available to providers today, however, there continue to be substantive and technical issues with the statute itself, making application complicated at best.

We request that the lawmakers complete the following prior to the end of the legislative session. Additional details for each request are included on the attached pages.

1. Quickly pass the language included in the omnibus health and human services bill referenced below during the regular legislative session in time to meet the June 1, 2021 deadline for licensure applications.
2. Work jointly with providers to develop language to address automatic enrollment for payment.
3. Work jointly with providers to address the implications of criminal background check delays for Licensed Assisted Living Directors, either through waiver or statutory language.

If the legislature is unable to accomplish these goals during the regular session, we request an extension of the June 1, 2021 and August 1, 2021 statutory dates until a time when the necessary technical changes can be made.

We understand the importance of completing two years of work on implementation of licensure of assisted living providers. The request made herein reflect those issues that are necessary to address prior to the deadline for license applications. Without the recommended changes, we believe that successful implementation will be difficult or impossible, with the impact felt by the senior most in need of our service.

Thank you for your attention to these issues. Please contact Kari Thurlow at [kthurlow@leadingagemn.org](mailto:kthurlow@leadingagemn.org) and Toby Pearson at [tpearson@careproviders.org](mailto:tpearson@careproviders.org) with any questions about these recommendations.

## Key Issues For A Successful Licensure Application Process

### 1. Urgent Items in the Health and Human Services Bills

- a. **Address Outdoor Space Issue for Assisted Living with Dementia Care Providers**— The necessary language is currently included in the House Health and Human Service Finance (HF 2128) bill at Article 3 Section 59, Services With Residents With Dementia. We support this technical change, and we believe that this is a change that is supported by all stakeholders. It is critical that this language be adopted as soon as possible so most secured memory care providers will meet the basic requirements of licensure by the application deadline of June 1, 2021.

Without this change, there will likely be significant service disruptions for an extremely vulnerable population. Providers will soon need to begin serving notice of termination of services and termination of leases in anticipation of not having the required licenses to provide the memory care services. We are concerned that because this provision is included in a budget bill, final negotiations will impede timely passage of this important provision. We are also concerned that other non-consensus policy proposals related to assisted living will impede the passage of this legislation. We urge lawmakers to pass this provision cleanly and as soon as possible.

- b. **Ensure that Elderly Waiver can pay for assisted living services** – To do this, the legislature must pass authorizing language to ensure that licensed assisted living providers are eligible to receive customized living payments. The providers who will qualify for exemption from assisted living licensure under Minn. Stat. 144G.087 (10) must be also be eligible for Customized Living payments. We understand that DHS has proposed to exclude these providers from payment, and while the House Health and Human Services Finance Bill (HF 2128) Article 14, section 36 & section 37 attempted to address concerns with the DHS proposal, the provisions need amendments to clarify intent and eligibility.

We recommend the following amendments to the House language sections and urge lawmakers to include this language in a conference report of the HHS Omnibus Budget bill. Failure to enact this language before August 1 could negatively impact access to customized living services for thousands of consumers.

- At page 577, line 19, delete “(11)” and insert “(10)”
  - At page 599, line 19 delete “or (ii) in an affordable housing setting under section 144G.08, subdivision 7,
  - clause (10), that is delivering authorized customized living services to a person in the setting
  - on or before June 30, 2022. A licensed home care provider is subject to section 256B.0651,
  - subdivision 14.”
  - At page 577, line 23, delete “(b) Settings under paragraph (a), clause (2), must comply with section 256S.2003.”
  - At page 577.25 delete section 37 in its entirety.
- c. The technical correction for **Housing with Services establishments** currently registered as they transition to assisted living facility licenses. The technical language is included in House Health and

Human Services Finance bill (HF 2128) **Article 3 Section 98 Housing with services establishment registration; conversion to an assisted living facility license.** We support this technical change and is important to ensure timely implementation of the 2019 assisted living licensure law.

2. **Address Provider Enrollment Concerns.** Currently, payment for customized living services under Medicaid waivers is dependent upon providers being enrolled into the system. The transition to the assisted living licensure system and subsequent processes for provider enrollment will take time to accomplish. This time may result in unnecessary and detrimental delays in payments to providers of services, adversely impacting individuals needing the services. Depending on the duration of the delays in payment, notices of service terminations may be required to be issued to the individuals being served.

To help prevent this, we propose a passive enrollment process whereby providers who submit applications for assisted licensure on or before June 1 are automatically enrolled as a Medicaid provider, unless specifically disqualified. We are happy to work with DHS on the language needed for this recommendation and we are hopeful that any authorizing legislation can be addressed in these end-of-session negotiations.

3. **Background Checks.** Licensing requirements for licensed assisted living directors (LALDs) include a criminal background check (CBC). This process requires LALD candidates to obtain fingerprints at law enforcement agencies or private vendors who provide fingerprints via FD258 cards. The potential volume of LALD candidates needing fingerprints will put a strain on a system that is already experiencing significant delays, with some vendors shut down altogether and others scheduling out months in advance. There needs to be sufficient time allowed for LALDs to obtain fingerprints and for the Criminal Background Check Program (CBCP) to process them in order to meet the requirements of Assisted Living licensure.

We appreciate ongoing partnership in addressing these issues and look forward to continued discussion. The Long-Term Care Imperative was proud to support the passage of the assisted living licensure legislation in 2019. Since the passage of that legislation, the LTC Imperative has never wavered from our commitment to smooth, timely implementation of this significant shift in the way Minnesota regulates assisted living settings, and we have spent countless hours with stakeholders and state agency staff at the Minnesota Department of Health (MDH) and the Department of Human Services (DHS) to craft rules, identify and address technical errors with the statute and discuss a myriad of implementation questions.

Our recommendations outlined here are intended to encourage a smoother transition into a license system for providers. In the end, any hiccups in implementation will impact seniors and their families the most – we believe this handful of modest but urgent changes can improve the chances for a successful implementation.