2023 LEGISLATIVE REPORT

A LEADINGAGE MINNESOTA MEMBER RESOURCE AND YOUR GUIDE TO THE 2023 LEGISLATIVE SESSION

LeadingAge Minnesota
A MESSAGE FROM YOUR ASSOCIATION PRESIDENT

We are pleased to provide you with our 2023 Legislative Report. The report summarizes the 2023 session and looks ahead at core priorities for the future.

The core focus of our work at the Capitol this session was to pass legislation to help ensure access to care for seniors in the communities they call home. After months of tireless advocacy by seniors, their families, and their caregivers, we left the 2023 session with historic investments in aging services - approximately $1 billion for seniors and their caregivers.

After raising the alarm for several years, lawmakers have finally responded with strong support for the aging services sector, helping to ensure that older adults receive the right care at the right time, close to home.

By prioritizing the needs of Minnesota’s one million older adults, our state’s leaders are fostering a compassionate and supportive environment for all seniors to thrive. We are proud to live in a state that values older adults and the dedicated caregivers who serve them each and every day.

And we are proud to represent you at the Capitol. The collective action of the aging services community in the 2023 legislative session was awe-striking. When we were told no, we pushed harder! We made calls, we wrote letters, we had meetings, and we engaged our communities. And the result is a broad base of support and a better-than-ever understanding of why our issues are among the most important at the State Capitol.

This is the power of an association at work. Because we come together with others who share our values and passion for serving older adults, we can accomplish much more than we ever could on our own. By working together, we can establish a better future for all seniors, ensuring they receive the support and care they need to live their lives to the fullest.

We are grateful for the opportunity to represent you at the State Capitol and amplify the voices of seniors and their caregivers. We remain committed to supporting you in your service mission and the work you do each day. Thank you for being part of the LeadingAge Minnesota community.

KARI THURLOW
President and CEO
LeadingAge Minnesota
The 2023 Legislature convened on Jan. 3 under a trifecta of state government for the first time in ten years. Incumbent Tim Walz returned to the governor’s office, and Democrats took control of the House of Representatives and Senate.

Legislative leaders went into the session with unfinished work from 2022, having failed to pass a supplemental budget. Inaction had significant consequences for Minnesota, including on aging services, where access to senior care and a pervasive workforce crisis continued to deepen. Based on data collected in the fourth quarter of 2022, seniors had been denied access to assisted living or nursing home care 11,000 in just one month alone, and 20% of long-term care positions remained vacant across the state.

New Energy Led Aggressive Pace and Agenda
Due to redistricting and a record number of legislative retirements, one-third of the state’s legislators were newly elected. Several second-term legislators governed in person for the first time, having spent the last biennium in a hybrid legislature. We also entered the session with the most diverse legislature in Minnesota’s history: women hold more than half of the Senate majority, and 18% of those serving are people of color. This collective “new energy” around the Capitol brought abundant opportunity and an uphill climb to educate on issues affecting seniors.

Despite narrow majorities in the House (six votes) and Senate (one vote), the Legislature set an aggressive pace and sweeping agenda, prioritizing families, women, and children.

Priorities Reflected in Budget
Lawmakers were charged with passing the biennial budget with a $17.6 billion surplus. When the Legislature adjourned on May 22, lawmakers passed a $72 billion two-year state budget with significant investments in education, tax rebates, paid family leave, and long-term care.

Names to Know: Leaders in the Legislature

Sen. Kari Dziedzic
Senate Majority Leader
Senator Dziedzic (Minneapolis) was elected by her peers to lead the Senate DFL after 11 years of service in the Senate.

Sen. Mark Johnson
Senate Minority Leader
Senator Johnson (East Grand Forks) was elected to lead the Senate Republican Caucus for the first time.

Sen. John Hoffman
Chair, Senate Human Services
Sen. Hoffman (Champlin), a long-time advocate for aging services, took over the gavel from Sen. Jim Abeler.

Rep. Melissa Hortman
Speaker of the House
Speaker Hortman (Brooklyn Park) returned to her leadership position, leading the House DFL.

Rep. Lisa Demuth
House Minority Leader
Leader Demuth (Cold Springs) was newly elected by her peers to lead the House Republican Caucus.

Rep. Mohamud Noor
Chair, House Human Services
Rep. Noor (Minneapolis) has a professional background in human services and assumed the gavel for the first time.
2023 LEGISLATIVE PRIORITIES

In advance of the 2023 session, the LeadingAge Minnesota Board of Directors approved a legislative agenda designed to meet three key objectives:

Secure the Safety Net of Senior Care Services
- Invest in Medicaid Waivers used in home and community-based settings to support the cost of caring for Minnesota’s one million seniors.
- Reduce the financial and operational burden of a 21-month payment delay for nursing homes.

Our legislative proposals: SF 780/HF 733

Support Caregivers with Wages They Deserve
- Provide a $52/day rate increase for nursing homes to invest in caregiver wages.
- Fully implement the Elderly Waiver payment framework from 2019 to support caregiver wages in assisted living, adult day, and other HCBS settings.
- Expand the caring careers pipeline to ensure we can care for tomorrow’s seniors.

Our legislative proposals: SF 780/HF 733 and HF 613

Foster Innovation and Lower Barriers to Affordable Senior Care Services
- Secure a rate study and implementation plan for Program for All Inclusive Care for the Elderly (PACE)
- Make targeted updates to Minnesota’s assisted living statutes, like eliminating duplicative orientation training and onerous food code requirements, and permitting LPNs to practice to the top of their scope.

Our legislative proposals: SF 1640/HF 1596 and SF 1969/HF 2080

LOOKING AHEAD

LeadingAge Minnesota is thrilled that the 2023 Legislative session resulted in $1 billion for aging services over the next four years. This is a historic investment that builds a foundation of ongoing and one-time funding that will stabilize providers struggling with operational and financial challenges as a result of the COVID-19 pandemic and tight labor market.

Since the state’s budget is set every other year, 2024 will be an opportunity to focus on policies that do not have budget impact, including continued advocacy for reforming assisted living licensure statutes.

We will also prioritize issues management on behalf of our sector in 2024. In 2023, we monitored or influenced over 165 bills on top of our priority bills. With a record number of bills carrying over into the second year of the biennium, we must continue educating legislators about the impacts of their proposals on seniors and their caregivers.
YOU LIFTED YOUR VOICES
YOU LED CHANGE

Your Advocacy Matters
Approximately 2,500 advocates connected with lawmakers over 11,000 times throughout 2023. Aging services issues rose to the top of nearly everyone's agenda this session, and that's because you shared your story!

- 10,500 messages sent to lawmakers
- 240 phone calls made
- 20 site visits
- 89 key influencer connections
- 80 champions in the Champions Network

We all know advocacy doesn't end with the legislative session. We've got resources to help you be an effective advocate. If you're interested in learning more about how to engage your community in our advocacy efforts, visit leadingagemn.org/get-involved/take-action

Did Your Hear the News?
Minnesotans in every corner of the state spoke up and shared vital stories about the important of legislative action to ensure access to care for older adults. The Association and it's members were in the news on tv and the radio and in print and online more than 50 times in the first six months of 2023.

We also used digital and print advertising on traditional and social media to call attention to our issues and garnered nearly 15 million impressions.

These media strategies inform Minnesotans everywhere, garner support, and keep pressure on lawmakers to take action. To review some of the coverage this session, visit leadingagemn.org/news/press-room/
Legislative Report How-To Guide

The Legislative Report is a benefit of membership in LeadingAge Minnesota and was created with support from our sponsors: CliftonLarsonAllen LLP, Pathway Health, and Medline.

This report summarizes legislation passed during the 2023 legislative session that impacts LeadingAge Minnesota members. Our goal is to give you the background you need to understand why and how legislation was proposed and the information you need to understand the next steps for your organization.

Here are a few tips that will help you navigate this information:

- We have divided the report into sections to help you find the laws that apply to your settings. The categories include all providers, care centers, and home and community-based services such as assisted living, independent living, adult day, and home care.
- At the beginning of each section, contact information is listed for the staff contributors. If you have questions about specific legislation, please get in touch with staff for additional information.
- The topic of each issue area is identified at the top of each page. If legislation was passed, the topic is hyperlinked to the enacting legislation or session law, and the effective dates are noted.
- If the legislation was not passed, no effective date will be noted, and you can read more about why and how we will proceed in the entry.
- We have also noted the provider types impacted on every entry.
- Each entry contains background information, a summary of the outcome, an analysis of the impact, and what you can expect next from the Association, lawmakers, payors, and/or regulators.

Thank you for your engagement throughout the 2023 session. From developing policy priorities to enacting legislation, you played a critical role in leading changes essential for our sector and the seniors we serve.
PRIORITY LEGISLATION
supported by the Long-Term Care Imperative

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**Elderly Waiver Funding**

*Impacts Assisted Living, Adult Day, and Home and Community-Based Services*

**Effective Date: Jan 1, 2024**

LeadingAge Minnesota and its Long-Term Care Imperative partner have been advocating since 2017 that the state implement a new Elderly Waiver (EW) rate system based on wage costs that pay for the actual cost of providing those services. Initially adopted in 2017, the new EW rate system has been implemented as a phase-in, currently covering less than 20% of the payment rates. The Human Services budget bills passed by the House and Senate took a significant step forward in updating Elderly Waiver rates. The bill’s final version invests more than $400 million in state funds for rate increases for EW over the next four years.

**Outcome:** The EW rate increases are effective on Jan 1, 2024, for all EW services. The bill accomplishes full implementation of the new rate system because it ends the phase-in of blending new rates with the historical rates, with a few caveats. The wage data used to set rates is the “most recent before Jan. 1, 2019,” and the rates do not update again after Jan. 1, 2024. These changes reduced the rate increase relative to the Long-Term Care Imperative proposal for full implementation based on the most recent wage data with regular updates in the future. The legislation also updates the formulas for various services based on recommendations made in a 2019 study of EW rates commissioned by the Department of Human Services (DHS).

**Impact on you:** DHS estimates that the rate increase on average across all EW services will be 45% because of this legislation. The specific rate increases for services like adult day and customized living will vary, but they will be substantial. Rates will be implemented on a rolling basis in 2024, meaning that they will apply to all new EW clients and all current clients at the time of their reassessment. The legislation also requires that 80% of the “marginal increase in funding” received by the provider must go to new increases in employee wages and benefits. Providers must develop and post a plan to show how they meet that 80% requirement, but they do not need the plan approved by DHS.

**What’s next?** DHS will calculate and publish updated rates for all EW services before Jan 1, 2024. They will also develop guidance about preparing the distribution plan tied to the amount of funding that must go to wages and benefits, which is complicated by the rolling implementation. This effectively means providers will not experience the full impact of the updated rates until the end of 2024.
Elimination of the 27-Month Payment Delay

*Impacts Care Centers*

One of the top priorities for the session on nursing home funding was addressing the gap between the cost report year and current Medicaid rates. With inflation soaring in recent years, the payment rates do not account for increases in wages and other costs that have occurred since the time of the reported costs.

The Long-Term Care Imperative proposed to fix this problem but adding a “known costs change” factor to rates that would increase them by the rate of inflation since the time of the cost report. This proposal met significant headwinds due to its direct cost and the DHS projection that it would lead to higher future costs impacting VBR rates.

The compromise solution was the agreed upon nursing home funding package approved at the end of the session, which provides temporary relief against rising costs for nursing homes.
**Program for All-Inclusive Care for the Elderly**

*Impacts Care Centers, Assisted Living, Adult Day, and Home and Community-Based Services*

**Effective Date: July 1, 2023**

Within the Human Services Omnibus Bill, LeadingAge Minnesota and its Long-Term Care Imperative partner were successful in passing legislation requiring the Department of Human Services (DHS) to conduct an actuarial rate study and develop an implementation plan for Program for All-Inclusive Care for the Elderly (PACE). This innovative program is used in 30 other states and supports frail elders with comprehensive care in their community instead of a nursing home.

**Outcome:** DHS must complete the actuarial analysis of Medicaid costs, administration costs, and state savings and provide a report to the Human Services Committee by March 1, 2024. A second report, including a recommended financing mechanism and implementation plan, is due to the Legislature by Sept. 1, 2024. $270,000 was appropriated to DHS to complete this study and implementation plan.

**Impact on you:** There is no immediate impact on operations; however, this rate study is a critical step to secure full implementation of PACE in Minnesota, something we will need to secure in a future legislative session. By implementing PACE in Minnesota, participating providers can support seniors 50-64 who are nursing-home eligible to continue living in their community with adult day services at the center and care management of physical, social, and mental needs surrounding seniors.

**What’s next?** DHS will be working with stakeholders to undertake the actuarial analysis, including a comparison of Medicaid costs, administration costs, and state savings.
Nursing Home Funding

Impacts Care Centers

Effective Date: July 1, 2023

After the initial Human Services Omnibus Bill failed to include any of the Long-Term Care Imperative’s funding priorities for nursing homes, we continued to work with legislators to find a path to obtaining this crucial funding before the session adjourned. This effort culminated in last-minute approval of a funding package worth more than $350 million to nursing homes over the next four years.

Outcome: The nursing home funding package in this bill consists of three components:

- $36.5 million in state funds for a temporary rate add-on of $12.35 per resident day in effect from July 1, 2023, through Dec. 31, 2024
- $173 million to support lump sum payments to nursing homes on Aug. 1, 2023, and Aug. 1, 2024. The formula for these payments is a base of $225,000 per home plus an amount per active bed. These funds are primarily dedicated to addressing debt, including covering existing loan payments. There is language that would recover some of these payments if nursing home spending exceeds the forecast.
- $74.5 million for Workforce Incentive Grants, which can be distributed to employees as bonuses or to cover expenses like childcare and transportation. Providers must apply for funding; grants are limited to $3,000 per employee.

Impact on you: The rate increase and first lump sum payment will be received soon and will help address funding shortfalls over the last few years. The Workforce Incentive Grant program will require the development of an application and then a review of those submissions, so funding is not likely to be received by providers until early 2024.

What’s next? The Department of Human Services (DHS) is preparing to implement the rate increase and to calculate and distribute the first lump sum payment by the required dates this summer. DHS is likely to contract with an outside vendor for the Workforce Incentive Grant Program, with providers able to apply for funding after that process is complete and an application has been developed.
Assisted Living Regulatory Reform

Impacts Assisted Living

When the assisted living license became effective in 2021, stakeholders acknowledged that it would likely need adjustments as the law was implemented and operationalized. Several changes to the assisted living licensure requirements were proposed for this legislative session. The changes proposed included:

- Amendments to the application of the Minnesota Food Code for small residential providers, those serving ten or fewer residents - The proposed changes excluded some physical and equipment requirements for a residential kitchen, such as ceiling finishes, sink requirements, cabinet bases, and lighting fixtures. An allowance for sharing a Certified Food Protection Manager was also proposed.

- Elimination of the requirement for individual abuse prevention plans for residents not receiving assisted living services - This would have eliminated a requirement that many residents find intrusive and is challenging to complete when not conducting assessments not required for these residents. However, the requirement is also included in the Vulnerable Adult Act, so it was found to require more in-depth changes. Therefore, the change was not pursued further for this session.

- Physical plant design and Life Safety Code standard changes for new licenses – Proposed changes would allow licensure of existing buildings that may function well as assisted living or assisted living with dementia care facilities and increase affordability through conversion rather than new construction.

- Portability of orientation for assisted living facility staff under common management – This would allow ease of utilizing staff for care across these sites.

- Permitting focused assessments by LPNs for certain 90-day scheduled reviews

Outcome: Legislators indicated a need for stakeholder consensus for this session to change the assisted living statute, 144G. Stakeholders met several times and reached a tentative agreement on three items: amendments to the Food Code for small providers, portability of orientation, and LPNs being able to conduct certain focused assessments. Unfortunately, some concerns that a complete consensus was not reached, the language was not included in the final Human Services Omnibus Bill, and none of the changes were made.

What's next? While the lack of progress in this session is frustrating, negotiations that occurred are providing a good starting point for next year, and the process to develop our advocacy agenda for the next session is well underway.
**Next Generation Nurse Aide Program**

**Impacts all provider types**

*Effective Date: Program funding available until June 30, 2025*

The Next Generation Nursing Assistant Training Program (NGNA) or the “NextGen” initiative began in 2021 to fund recruiting and training students to become certified nursing assistants, coordinated by Minnesota State Colleges and Universities’ HealthForce Center of Excellence. The program uses a "free up-front" model for covering the student costs of training, testing, scrubs, and more.

This program now includes an additional one-time investment of $3 million over the 2024-2025 biennium.

LeadingAge Minnesota supports this program but continues to work towards our recommendations to improve the program, including:

- Develop a system to seamlessly connect newly trained nurse aides with local long-term care employers
- Improve data collection to ensure program and student success
- Adopt an “employment-first” model where students are first connected with an employer to have the opportunity to earn and learn while completing their training and testing

**Outcome:** This bill was passed via the Higher Education Finance Omnibus Bill. LeadingAge Minnesota and the Long-Term Care Imperative advocated for the program to have stronger connections to employment and improve data collection; however, the language was passed without additional program requirements.

**Impact on you:** Additional NextGen training classes will be scheduled soon. For updates on the program and employer resources to connect with NextGen students, please visit: https://www.leadingagemn.org/resources/resource-library/nextgeneration-nursing-assistant-training-program/

**What’s next?** LeadingAge Minnesota and the Long-Term Care Imperative will continue to partner with the Office of Higher Education, the Minnesota State HealthForce Center of Excellence, and legislative leaders on our recommendations to improve this critically needed program.
**Academic Credit for Working in Long-Term Care**

*Impacts all provider types*

*Effective Date: 2023-2024 academic school year*

LeadingAge Minnesota supported a proposal to allow high school students in grades 11 and 12 to earn elective credits if employed by a long-term care facility, licensed assisted living, home and community-based services provider, hospital or health system clinic, or a childcare center through employment with health care providers.

A student employed by an eligible employer must apply in the form or manner required by the school district or charter school. Students may earn up to two elective credits each year. A student may earn one elective credit for every 350 hours worked, including hours worked during the summer.

LeadingAge Minnesota and the Long-Term Care Imperative provided in-person and written testimony to support this legislation. Earn-and-learn models are effective workforce solutions that allow students to gain work experience and serve their community while earning a paycheck and school credit. This legislation creates viable pathways and incentives for younger generations to enter our workforce.

**Outcome:** The provision was passed within the K-12 Education Omnibus Bill and will be in effect for the 2023-2024 academic school year.

**Impact on you:** Providers can leverage this incentive program to recruit high school students and retain the ones currently working in your settings. Providers should meet with their local school districts to learn how students can apply to receive high school credit.

High school students working in your settings may ask your organization for employment verifications for the student to receive credit.

**What’s next?** Implementation begins this upcoming fall for the 2023-2024 academic school year.
Legislative outcomes impacting
ALL PROVIDER TYPES

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**Paid Family and Medical Leave**

*Impacts all provider types*

**Effective Date:**
- *State impact effective July 1, 2023*
- *Employer and employee impacts effective Jan. 1, 2026*

A new law creating a statewide paid family and medical leave program was passed this year, enabling Minnesota workers to take paid time off work for a serious health condition, caring for a family member, pregnancy, and bonding with a new child. While some elements will be effective in 2023, most of the law, including payroll taxes and employee benefits, will not go into effect until 2026.

**Outcome:** LeadingAge Minnesota worked this session to ensure that employers who rely on the state for reimbursement are compensated for providing employee benefits like paid leave. We also leveraged momentum for this legislation to underscore the need to increase workers’ base wages, not just provide time off at levels below a living wage. Finally, we joined the caring professionals community to balance the maximum time off for eligible employees with the expectations of providing quality care amidst a workforce shortage. Our advocacy helped provide grant funding and nursing home reimbursement in this law.

**Impact on employers:** Starting July 1, 2024, most employers must submit a wage detail report to the Department of Employment and Economic Development (DEED), which will outline quarterly wages received and hours worked for each employee. Employer compliance requirements related to misconduct, wage reports, and auditing will also be effective July 1, 2024.

Starting Nov. 1, 2025, employers will be subject to notice and disclosure requirements to employees; DEED will provide forms and language at a future date.

Beginning Jan. 1, 2026, employers will pay a premium equal to 0.7% of an employee’s taxable wages with no more than 50% of the premium charged through an employee wage deduction. Premiums will be paid through an account established at DEED.

Small businesses with fewer than 30 employees will pay premiums not to exceed $120,000.

In lieu of participating in the state program, employers may offer a private program if it meets the same eligibility, use, and payment standards outlined in the law.

**Financial impact on providers:** $20 million of one-time funding will be added to a Home and Community-Based Services Workforce Incentive Fund for senior care and disability care providers to help cover costs associated with this program.

- $3 million in grants will also be available for small businesses with less than $3 million in annual revenue to help cover workforce needs associated with an employee taking paid leave.
- Premium costs will be incorporated into the cost-based portion of VBR rates for care centers reimbursed under 256R (value-based reimbursement).

**Impact on employees:** Beginning Jan. 1, 2026, eligible employees will be able to receive up to 12 weeks of paid medical leave or family leave for a single qualifying event or up to 20 weeks of paid leave for more than one qualifying event in the same year. This leave can run concurrently with FLMA. Employees will receive 55-90% of wage replacement based on their income compared to the state’s average weekly wage. The benefit will also be prorated for sick leave, paid vacation, or other paid time off that is not considered a supplemental benefit payment (i.e., unemployment benefits).
Employees will have to meet eligibility requirements to access Paid Family and Medical Leave benefits, including:

- A minimum of 30 days of employment before taking leave;
- Experiencing a minimum seven-day qualifying event; and
- Successful application for benefits.

Additional forms, a complete list of qualifying events, a calculator to estimate wage benefits and other information will be produced by DEED at a later date.

Self-employed workers and independent contractors can opt in and purchase coverage under this program.

**What happens next?** This is an emerging issue, and LeadingAge Minnesota is working to secure additional member support, including continuing education, resources, and templates, as more sections of the law are scheduled to become effective. We will also continue to advocate for changes to this law that ensures a balance between employee benefits and operational burdens for senior care providers.
**Earned Sick and Safe Time**

*Impacts all provider types*

**Effective Date: Jan. 1, 2024**

Articles 12 and 13 of the Jobs and Labor Omnibus Bill contain a new law creating a statewide earned sick and safe time (ESST) requirement for employers. ESST is paid leave employers must provide employees to be used for illness, caring for a sick family member, or seeking assistance if the employee has experienced domestic abuse. The Minnesota of Labor and Industry (DLI) will ensure compliance with this law.

Notably, ESST is different from Paid Medical and Family Leave: ESST is designed to be intermittent time off, whereas Paid Family and Medical Leave requires a qualifying event, is intended to cover extended absences from work, and will be regulated by the Department of Employment and Economic Development (DEED).

**Outcome:** LeadingAge Minnesota worked this session to ensure that employers who rely on the state for reimbursement are compensated for providing employee benefits like ESST. We also leveraged momentum for this legislation to underscore the need to increase workers’ base wages, not just provide time off at levels below a living wage. Finally, we joined the caring professionals community to balance the maximum time off for eligible employees with the expectations of providing quality care amidst a workforce shortage.

**Impact on employers:** Earned Sick and Safe Time must be paid at the same hourly rate that an employee earns when working and cannot require, as a condition of an employee using ESST, that the employee seek or find a replacement worker to cover the relevant hours.

Employers will be required to:

- Permit employees to carry over 80 hours of ESST per year. If an employer provides 80 hours of paid leave at the beginning of the year (through PTO or sick leave), the accrual, carryover, and pay-out requirements do not apply.
- Disclose the total number of ESST hours accrued and available for use and the total number of ESST hours used on earning statements provided to employees each pay period.
- Provide notice by Jan. 1, 2024, informing employees about ESST and include a notice in an employee handbook if you have one. DEED will prepare uniform notices for employers in Minnesota’s five most common languages.

If employers operate within Bloomington, Duluth, Minneapolis, St. Paul, or another municipality with a local ESST ordinance, the most protective law that benefits employees preempts the other. Enforcement for this act includes compliance orders under DLI and civil penalties of up to $10,000 for each violation for each employee.

**Impact on employees:** Employees are eligible for ESST if they work at least 80 hours a year for a Minnesota employer and are not independent contractors. Employees must earn one hour of sick and safe time for every 30 hours worked and can earn a maximum of 48 hours per year unless their employer agrees to a higher amount.

Employees can take leave to care for themselves or their family members, including a child, legal ward, spouse or domestic partner, sibling, parent, grandchild, grandparent, or any other individual related by blood, and up to one individual annually designated by the employee.
**What happens next?** Employers should review ESST practices and policies currently in place to prepare for this new requirement. This is an emerging issue, and LeadingAge Minnesota is working to secure additional member support, including continuing education, resources, and templates, as this law becomes effective. We will also continue to advocate for changes to this law that ensures a balance between employee benefits and operational burdens for senior care providers.
Legalization of Cannabis

**Impacts all provider types**

**Effective Date: July 1, 2023**

With the governor’s signature, cannabis use, possession, and home cultivation by Minnesotans 21 and older will become legal in the state on July 1, with regulators expected to take 12-18 months to get a licensed commercial sales system launched. Legal retail sales cannot begin until at least March 1, 2025.

**Outcome:** As of July 1, adults 21 and older will be able to possess in public up to two ounces of cannabis, and they will be allowed to cultivate up to eight plants at home, four of which can be mature. People can possess up to two pounds of marijuana in their residence. The law also creates a new state agency, the Office of Cannabis Management, tasked with licensing cannabis and hemp businesses and overseeing a legal recreational market and the existing medical cannabis and hemp-derived markets. In addition to creating a system of licensed cannabis businesses, municipalities and counties can own and operate government dispensaries.

Local governments will not be allowed to prohibit cannabis businesses from operating in their areas. However, they can set “reasonable” regulations on the time of operation and location while limiting the number of cannabis business licenses based on population size. The law mandates the expungement of all misdemeanor marijuana offenses and creates a Cannabis Expungement Board to review felony offenses for expungement on a case-by-case basis. It also imposes new rules and requirements for hemp-based THC drinks and edibles, which exploded in popularity after they were legalized last year.

We have prepared answers to several frequently asked questions, including the following questions:

- **Will people be allowed to smoke cannabis anywhere?** No, the law limits where the consumption of cannabis is permitted. People over 21 will be allowed to use cannabis in a private residence or their yard; on private property that is not accessible to the public, if permitted by the owner; or on the premises of a business or event licensed for on-site consumption. Vaporizing or smoking cannabis in a multifamily housing building would be prohibited, however, except for registered medical cannabis patients. There are no changes to the Clean Indoor Air Act because this law was passed. Current facility and employer prohibitions under the act remain permissible.

- **Where will the consumption of cannabis products be explicitly prohibited?** Anywhere not expressly authorized by the law.

- **Will it be legal to grow cannabis?** Minnesotans 21 and older can grow up to eight cannabis plants per residence, with no more than four being mature and flowering simultaneously. Plants may be grown indoors or outdoors, but they must be kept in an enclosed, locked space that is not open to public view.

- **Does the law change Minnesota's medical cannabis program?** Few changes will be made until March 1, 2025, when the new Office of Cannabis Management's Division of Medical Cannabis begins overseeing the state's medical cannabis market. Until then, the existing patient registry, retail locations, licensed businesses, and qualifying conditions will remain the same. The Minnesota Department of Health (MDH) will continue overseeing the program. One change to the medical cannabis program takes effect July 1: the new law eliminates the $200 enrollment fee for new patients. Starting in 2025, more businesses will be allowed to enter the medical marijuana market. State law previously allowed only two operators to grow, process and sell limited types of products at a small number of dispensaries around the state. And medical
cannabis providers will be allowed to apply for a license to sell products to both recreational and medical customers (at one site per business per congressional district). Medical cannabis will not be subject to the 10% gross receipts tax.

**Impact on employers:** Employers may have policies prohibiting the above conduct and may choose to discipline employees to the extent employees use, possess, sell, transfer, or are impaired by cannabis while working. However, to do so, you must follow the new requirements in the law.

**Adverse personnel action:** An employer may discipline, discharge, or take other adverse personnel action against an employee for cannabis flower, cannabis product, lower-potency hemp edible, or hemp-derived consumer product use, possession, impairment, sale, or transfer while an employee is working, on the employer's premises, or operating the employer's vehicle, machinery, or equipment as follows:

- As provided in the employer's written work rules for cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products and cannabis testing, provided that the rules are in writing and in a written policy that contains the minimum information required by section 181.952; or
- As otherwise authorized or required under state or federal law or regulations, or if a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law or regulations.

**Workplace testing:** The definition of “drug” for the purpose of the Drug and Alcohol Testing in the Workplace Act (DATWA) no longer includes cannabis. It has its own separate testing provisions therein. Cannabis testing is now a separate “test.”

In safety-sensitive positions, the definition specifically includes cannabis as a drug. For such positions, cannabis is treated no differently than other drug or alcohol employment-related issues or processes when it would threaten the health or safety of any person.

Limitations on workplace testing, exceptions, and policy include the following:

- The employer cannot request or require a job applicant to undergo cannabis testing solely to determine the presence or absence of cannabis.
- Exceptions to testing and prohibition to act upon a job applicant’s positive test results exist for safety-sensitive positions and positions requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to vulnerable adults (among others).
- Reasonable suspicion testing for cannabis via cannabis testing is permitted when there is suspicion the employee has violated the employer’s written work rules prohibiting the use, possession, sale, or transfer of cannabis or other cannabis-related items while the employee is working or while the employee is on the employer’s premises or operating the employer’s vehicle, machinery, or requirement provided that the work rules are in writing and contained in the employer's written cannabis testing or drug and alcohol testing policy.

Employers are not required to permit or accommodate cannabis product use, possession, impairment, sale, or transfer while an employee is working or while an employee is on the employer’s premises or operating the employer’s vehicle, machinery, or equipment.

Collective bargaining impact: As with drug and alcohol testing previously, the new law does not limit collective bargaining concerning cannabis testing.

**Impact on landlord-tenant laws and rental agreements:** Landlords should pay attention to the new nuisance law that creates landlord liability for failing to enforce leases and policies they have about...
cannabis that prove injurious to another “person” (not necessarily a tenant or resident) or to whose personal enjoyment is lessened by such an unenforced policy nuisance.

A landlord cannot prohibit a tenant from legally possessing, and a tenant cannot waive the right to:

- Legally possess any cannabis products, lower-potency hemp edibles, or hemp-derived consumer products or
- Using any cannabinoid product or hemp-derived consumer product, other than consumption by combustion or vaporization of the product and inhalation of smoke, aerosol, or vapor from the product.

*Nuisance action:* Any use of adult-use cannabis flower which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of the property to interfere with the comfortable enjoyment of life or property is a nuisance.

If a landlord fails to enforce the terms of a lease, governing document, or policy related to the use of adult-use cannabis flower on the premises or property, a person who is injuriously affected or whose personal enjoyment is lessened by a nuisance under Subdivision 1 as a result of the failure to enforce the terms may bring an action against the landlord or association seeking injunctive relief and the greater of the person's actual damages or a civil penalty of $500.

**What’s next?** Employers’ policies must contain “the minimum information required” under Minnesota’s Drug and Alcohol Testing in the Workplace Act, as amended, including the new cannabis requirements, as cannabis testing is now its own testing practice. Employers may want to update their testing policies to address the new cannabis testing requirements. Employers may also wish to review and review policies, processes, and procedures for hiring, employee performance, human resources, and employee assistance programs (for substance abuse-related issues and employee protections) related to cannabis legalization.

Landlords will also want to review lease language, policies, and agreements addressing cannabis, home cultivation of cannabis, etc., for compliance with the new law.

This is a developing issue; LeadingAge Minnesota will continue to provide ongoing education, technical assistance, and member resources to support members as the effective dates of this law go into effect.
**Background Studies Modifications**

*Impacts all provider types*

**Effective Date:**
- July 1, 2023, with exception noted
- July 1, 2023, for fee changes
- Apr. 1, 2024, for disqualification changes
- July 1, 2024, for reconsideration changes

**General Information**

Background studies are a foundational aspect of providing services and protecting service recipients. As with any process or software-based system, changes are periodically needed to update, upgrade, or change the system to accommodate newer technologies, unexpected volumes of study requests, or to comply with federal data-sharing requirements. The past legislative session made numerous changes to the Department of Human Services (DHS) background study laws.

**Outcome:** Starting July 1, 2023, background study applicants will have access to but not be required to access NetStudy 2.0 (NS2) documents electronically. However, beginning on Nov. 1, 2024, study applicants must access NS2 electronically. Other changes that will take effect on July 1, 2023, include:

- Both study applicants and entities must update DHS when contact information changes.
- Only entities may initiate studies but are not permitted to initiate studies for health-related licensing board (HLB) studies. The HLB must initiate those.
- Employee and volunteer definition changes and removal of contractor background studies from NS2
- Study applicants must consent to and provide criminal conviction disclosures via initiating entity notices to the applicant.
- Personnel pool agency, temporary personnel agency, and professional agency staff must be affiliated by the entity within NS2.

**Impact on you:** All licensed programs and employer types must comply with these changes. Some of these changes simply reflect past practices in statute with minimal impact on current processes and procedures. Others will require review and possible revision or changes to employment and hiring processes and procedures.

**What’s next?** Current human resources hiring process and procedures should be revised to reflect these changes, especially around the new definitions of employee, volunteer, and removal of contractors from the background study process. Study applicant information and notices should be revised to reflect the requirement to disclose criminal convictions and future requirements to access NS2 electronically starting in November 2024. Lastly, confirming processes and procedures to avoid initiating a study for a person covered by an HLB and confirming those study results will be necessary for background study law compliance.

**Fees**
Background study fee amounts will change this summer because of session law changes. The legislature also passed language that permits the department to change fees resulting from fee increases charged by the state’s Bureau of Criminal Apprehension when processing studies without requesting such increases during future legislative sessions.

**Outcome:** Starting July 1, 2023, $40 or $42 fees will increase to $44, and $51 fees will increase to $53.

While not part of the legislative session results but connected to the study fee topic, fingerprinting and photo service submissions for DHS’ statewide contracted vendor, IDEMIA, will increase from $9.50 to $10.50 on July 1, 2023. As a reminder, the fingerprint and photo service fee is paid to the contracted vendor and is separate from the DHS background study application fee paid in NETStudy 2.0. This fee covers the electronic recording of fingerprint images, one photo of the study subject, and the secure transmission of those images to DHS.

**Impact on you:** There are two aspects to these changes to note. First, study fees for the near term are now known, so preparation and accounting for them should occur. Secondly, with the permission for DHS to change fees according to specific increases without legislative language change, it will be important to establish a process to routinely verify the current study fee and IDEMIA-contracted vendor fee.

**What’s next?** Employers should review and plan for these fee increases accordingly, in addition to establishing a process to routinely verify the current study fee and IDEMIA-contracted vendor fee.

### Disqualification-Related Processes and Procedures

Always a critical topic for background studies, disqualification-related processes and procedures changed this session. These changes result from the federal access requirements to comply with a study applicant's federal data privacy rights. These requirements legally prohibit the department from sharing specific data received from federal databases with anyone other than the subject of the study.

**Outcome:** Effective April 1, 2024, the reason for a study subject’s disqualification will no longer be shared with anyone other than the study subject. Study initiators will not be required to obtain a copy of the study subject’s disqualification notice. Other disqualification processes and procedures regarding continuous, direct supervision for direct contact remain unchanged for disqualification situations.

**Impact on you:** Programs, agencies, or facilities will no longer be required to obtain a copy of the disqualification notice from the study subject.

**What’s next?** Current employment hiring processes, procedures, and recordkeeping should be revised to reflect these changes.

### Disqualification Reconsideration Deadlines

Background study disqualifications reconsideration submission deadlines will also change the days a study subject has to request a reconsideration.

**Outcome:** Effective July 1, 2024, background study subjects receiving a disqualification notice will have 30 days to submit their request for reconsideration. This is an increase from the current amount of 15 days.

**Impact on you:** In today’s employment situation where days matter, this submission deadline extension from 15 to 30 days may delay hiring and employment decisions.
**What’s next?** Employers should review and revise employment processes and procedures to account for the potential that applicants may take additional time to request a reconsideration. Employers who initiate studies will be notified with NetStudy 2.0 and may wish to establish a process or procedure for routine checking of NetStudy 2.0 and contacting the study subject accordingly to minimize hiring or employment decisions.
**Covenants Not to Compete**

*Impacts all provider types*

*Effective Date: July 1, 2023*

Within the Labor and Jobs Omnibus Bill, lawmakers made changes to laws related to non-compete contracts.

**Outcome:** The law will now make non-compete agreements “void and unenforceable” “any covenant not to compete” between employers and employees that restricts employees from working for another employer for a specific period of time, in a specific geographic area, or in a capacity that is similar to the employee’s work for the employer. The law treats “independent contractors” of an employer as an employee.

**Impact on you:** These restrictions apply only to agreements signed on or after July 1, 2023, and will not apply retroactively. These restrictions also will not apply to other common types of provisions used by Minnesota employers to protect trade secrets, confidential information, and against soliciting customers or employees.

**What’s next?** Employers should review all policies, employee handbooks, and employee agreements for such covenants and revise them accordingly to comply with the new law.
Prohibition of Retaliation for Non-Attendance of Employer-Sponsored Meetings

Impacts all provider types

Effective Date: Aug. 1 and applies to causes of action accruing on or after that date

Employers will not be permitted to discharge, discipline, or otherwise penalize or threaten to take such adverse employment actions against an employee because the employee declines to attend an employer-sponsored meeting or refuses to listen to employer communications if the opinion of the employer to the employee is about religious or political matters.

Outcome: Employees who feel their employer violated this law may bring a civil action to enforce the rights and remedies provided under the new law within 90 days of the date of the alleged violation. The new law does not prohibit employer communications the employer must communicate by law. The law also permits employer-conducted meetings involving religious or political matters, provided the employee's receipt or listening of the information is wholly voluntary.

Impact on you: Employers should review and potentially revise their employer communications and meeting agenda or topics to comply with this law. This law does not prohibit religious or political matter communications but requires the employee's receipt of or listening to be wholly voluntary.

What's next? By Sept. 1, 2023, employers subject to this new law must post and keep posted an employee notice of employee rights under the new law where employee notices are customarily placed.
**Expanded Pregnancy Accommodations for Employees**

*Impacts all provider types*

*Effective date: July 1, 2023*

Within the Labor and Jobs Omnibus Bill, the state’s existing nursing and lactation law was expanded to give additional protections to employees.

**Outcome:** The new requirement will entitle employees to paid breaks to express breast milk beyond 12 months following the birth of a child, eliminating an employer’s ability to limit breaks if they “unduly disrupt” business operations.

Effective July 1, 2023, employees will have greater access to paid time to express milk for their child beyond the previous twelve-month limitation by permitting lactation break times to run concurrently with any break times provided to the employee.

Lastly, the new law also mandates that employers must make reasonable efforts to provide a “clean, private, and secure” room or other location for nursing and lactating employees to express milk.

**Impact on you:** The new law requires employers to inform employees of their rights during pregnancy “at the time of hire” and “when an employee makes an inquiry about or requests parental leave.” Additionally, employers must provide:

- An employee handbook to its employees must include in the handbook notice of employee rights and remedies under the new law.
- Notice in the primary language of their employees. The Department of Labor and Industry (DLI) will make available to employers the text to be included in the notice required by this law and the five most common languages spoken in the state.

Employers are no longer permitted to “discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against” such an employee for asserting rights or remedies established by the law. Pregnancy accommodations now statutorily defined as reasonable accommodations include longer restroom, food, and water breaks or more frequent breaks.

**What’s next?** Employers should review and revise impacted policies, procedures, handbooks, employee, supervisor, and human resources training, etc., that involve this issue. Lastly, employers may want to consider the nature of the space provided to comply with these changes.
Survivorship of Cause of Action in Negligence Claims

Impacts all provider types

Effective date: May 20, 2023, and applies to causes of action pending on or commenced on or after that date.

Before this legislation was passed, Minnesota tort law did not permit a negligence claim to be passed to heirs upon the injured person’s death. The ability for these claims to “survive” is handled differently in states, including requiring damage caps, limiting attorney fees, and requirements for high evidentiary standards.

Outcome: The Public Safety Omnibus Bill included a provision allowing negligence claims to ‘survive’ such that a cause of action must be initiated within three years of the date of death and within six years after the alleged act causing the decedent’s alleged injury. Additionally, damages are now permitted only for those suffered by the decedent resulting from the alleged injury and not those felt by any other person.

The new law also provides added protections for providers related to liability of claims arising from the COVID-19 pandemic, a protection that LeadingAge Minnesota sought during the past three years. Plaintiffs will be required to file legal actions against a health care provider alleging malpractice, error, mistake, or failure to cure regarding treatment, transmission, or vaccination related to COVID-19 must be filed within one year from the date of death of the former patient or resident.

This is a perennial issue that the Long-Term Care Imperative, hospitals, physicians, and other interested stakeholders have been fighting off for ten years. This session, LeadingAge Minnesota established a topical dedicated ad-hoc steering committee on this and related litigation-related concepts to receive expert member advice and guidance. Staff brought this ad-hoc steering committee comprised of select members, in-house counsel, and legal business partners together routinely to address session developments, guide advocacy efforts related to the issues, and drive member-needed solutions for this issue. As a result, we shifted these concepts from an “everything is permitted” to a time- and plaintiff-limited concept. LeadingAge Minnesota also leveraged the momentum for this legislation to provide additional liability protections related to COVID-19.

Impact on you: Long-term care provider litigation insurance coverage policy premiums will likely increase because of these changes.

What’s next? Providers should review their litigation insurance policy coverage, discuss, and determine if other non-insurance-related opportunities exist to reduce legal liabilities for such litigation through revised or improved employee training, supervision, etc.
Prospective Employer Inquiry into Past Pay Prohibited

**Impacts all provider types**

*Effective Date: Jan. 1, 2024; for employment covered by collective bargaining agreements, it is effective until the implementation date of the applicable collective bargaining agreement that is after Jan. 1, 2024*

Within the Public Safety Omnibus Bill, a new law prevents employers, including labor unions and employment agencies, from requesting a job applicant’s pay history.

**Outcome:** This provision does not prevent a job applicant from volunteering their past pay if the employer does not prompt them or require them to provide it. This provision does not prohibit an employer from providing a job applicant with wage and benefit information for a position or discussing pay expectations with an applicant.

**Impact on you:** While employers should not be surprised by this change, human resources and hiring practices education and training should occur to ensure compliance with the law.

**What's next?** Employers should review human resource policies and procedures regarding conduct education for human resources and hiring staff or decision-makers on this new prohibition and its potential hiring implication.
Worker Compensation Changes

Impacts all provider types

Effective Date: Aug. 1, 2023, with an exception for hospital outpatient fee schedule changes effective Oct. 1, 2023

While many of this session’s workers compensation changes regard private self-insured entities and bankruptcy situations, there were several notable changes that affect the workers compensation system as a whole.

Outcome: The legislature adopted changes within workers compensation for nonemergency surgery requests, surgical opinions requirements, medical record requests, and discontinuation of benefits procedural changes. The legislature also adopted changes to the permanent partial disability schedule by significantly increasing the amounts used for calculating payments.

Impact on you: Recent trends of decreasing claims for workers compensation do not reflect the true cost of individual events where costs related to such claims are rising, reflecting the creation of or increase in permitted compensation amounts, increased requirements for notice, and procedural compliance.

What’s next? Employers should contact and discuss these changes with their worker compensation carrier and/or third-party administrator. Employers may also desire to review employee training regarding the prevention of situations that create factors that contribute to worker compensation claims.
**Juneteenth as State Recognized Holiday**

*Impacts all provider types*

**Effective date: Feb. 4, 2023**

June 19 is the date slavery is generally understood to have been fully abolished in the United States, following the first public reading of the Emancipation Proclamation in Texas on June 19, 1865. This law recognizes Juneteenth on June 19. This aligns with a national law establishing Juneteenth as a federally recognized holiday, initially enacted in 2021.

**Outcome:** After the 2023 legislative session, this law became effective the day after enactment. Therefore, the state now recognizes Juneteenth each year on June 19.

**Impact on you:** In general, public business may not be conducted on a state holiday. Juneteenth has already been negotiated and recognized as a paid holiday within the collective bargaining and compensation plan process that applies primarily to state employees in the executive branch.

**What’s next?** Employers may wish to review current collective bargaining agreements regarding recognized or paid holidays for any potential impacts. An employer may also want to review payroll, accounting, and other pay-based concerns for compliance issues with the new law. Consider also how your organization will acknowledge the new state holiday.
Workplace Safety Grants

Impacts all provider types

Effective Date: July 1, 2023

LeadingAge Minnesota and the Long-Term Care Imperative joined the Healthcare Workers Safety Coalition before the start of this legislative session. This coalition was seeking $20 million in funds from the Health and Human Services budgets for workplace safety grants that would allow providers to increase safety measures in healthcare settings and establish or expand programs to train staff on de-escalation techniques and positive support services for staff.

Outcome: While the coalition did not get as much as it initially sought, $4 million in funding will be available to healthcare providers, including long-term care facilities. The range of available projects and total award amount granted was also narrowed during the final weeks of the session, but providers can apply for up to $50,000 in grants from the Minnesota Department of Health (MDH) and can use those funds to begin or expand programs that train staff on de-escalation techniques, as well as providing mental support for employees.

Impact on you: Members interested in applying for this grant should expect to see more information from MDH and LeadingAge Minnesota in the coming months.

What’s next? MDH will release information when funds become available and provide notice through both GovDelivery and the state register. LeadingAge Minnesota will monitor and alert our membership when MDH accepts fund applications.
Minnesota Employer Reasonable Accommodation Fund

Impacts all provider types

Effective Date: July 1, 2023

Expiration Date: June 30, 2025, or when money appropriated for its purpose expires, whichever is later

The Labor and Jobs Omnibus Bill includes a provision to establish a fund for expenses related to reasonable accommodations for people with disabilities.

Outcome: The Department of Labor and Industry (DLI) will establish a reasonable accommodation reimbursement grant program that reimburses eligible employers for the cost of expenses incurred in providing reasonable accommodations for individuals with a disability who are either applicants or employees of the eligible employer.

An eligible employer is one whose

- Principal business is in Minnesota;
- Employs not more than 500 employees; and
- Generates $5,000,000 or less in gross annual revenue.

The maximum total reimbursement per eligible employer in a fiscal year is $30,000, and submissions for:

- Onetime reasonable accommodation expenses must be no less than $250 and no more than $15,000 per individual with a disability; and
- Ongoing reasonable accommodation expenses have no minimum or maximum requirements.

Impact on you: Funds will be available for certain employers to support the employment of individuals with disabilities who require reasonable accommodation.

What’s next? Applications shall be processed on a first-received, first-processed basis within each fiscal year until funding is exhausted. Applications received after funding has been exhausted in a fiscal year are not eligible for reimbursement.
**Minnesota Secure Choice Retirement Program**

*Impacts all provider types*

**Effective date:** May 20, 2023, with covered employer responsibilities beginning no earlier than Jan. 1, 2025

**Outcome:** The Minnesota Secure Choice Retirement Program Act establishes a retirement savings program available to state residents employed by “covered employers.” Under the Secure Choice program, its board of directors will establish individual retirement accounts (IRAs) into which eligible employees will contribute a designated portion of their pay. The board is directed to establish default, minimum, and maximum contribution rates, and employees must be allowed to specify a different contribution rate or opt out entirely at least annually.

For covered employer purposes, employers that maintain a tax-qualified retirement plan of any kind (e.g., a 401(k) plan, a 403(b) plan, a traditional or cash balance pension plan, an eligible Code Section 457 plan, a simplified employee pension plan, a SIMPLE plan, or an automatic-enrollment payroll-deduction IRA) or that contribute to a Taft-Hartley multiemployer plan are excluded from participation in the Secure Choice program.

Employers that contract with employee leasing companies, professional employer organizations, or other similar organizations to obtain workers are also covered under the program unless the leasing company, professional employer organization, or other similar organization has a retirement savings plan that excludes it from the program.

**Impact on you:** Covered employers (i.e., employers with five or more covered employees that do not sponsor or contribute to retirement savings plans for their employees and did not in the immediately preceding twelve months) will be required to enroll covered employees in the program, withhold contributions from payroll, and remit the withheld contributions to the program.

**What’s next?** Employers are not immediately required to implement the law, as the program’s board of directors must first organize and establish administrative procedures. The effective date for covered employers will be the day after the board of directors opens the program for enrollment and no earlier than Jan. 1, 2025.
Cumulative Impact Analysis for Metro Area New Construction Projects

Impacts all provider types

Effective date: May 25, 2023

A provision included in the Environment and Natural Resources Omnibus Bill will require cumulative impact analysis for new construction projects in the Twin Cities metro area.

Outcome: The Minnesota Pollution Control Agency will require a cumulative impacts analysis to be undertaken by an applicant for a major air permit in a city of the first class or located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties; and when located within one mile of a census tract that is part of an environmental justice area.

The new law defines an “environmental justice area” as one or more census tracts in Minnesota in which, based on the most recent census data:

- 40 percent or more of the population is nonwhite;
- 35 percent or more of the households have an income at or below 200 percent of the federal poverty level; or
- 40 percent or more of the population over the age of five has limited English proficiency

An environmental justice area is also one located within Indian Country, as defined under United States Code, title 18, section 1151.

The new law defines an air permit to include those for new construction, facility expansion, or the reissuance of an existing permit.

Impact on you: When a cumulative impacts analysis is required, the applicant must hold public meetings, and the agency must consider both the analysis and comments when making its permit decision. Permits for facilities to be located in environmental justice areas with a cumulative adverse effect must be denied unless there is a compelling public interest or the agency enters a community benefit agreement.

What’s next? The timing of the change is dependent upon the agency’s rulemaking to establish rules governing the cumulative impacts analysis. The new law requires this rulemaking to be initiated within 36 months of the law’s effective date. However, current air quality permit holders and prospective air quality permit applicants may wish to identify their site location’s proximity to any census tracts defined as environmental justice areas to determine if they will be impacted by this new law’s requirements.
Energy Benchmarks

Impacts all provider types

Effective date: Jun. 1, 2025, for Class 1 Properties, and Jun. 1, 2026, for Class 2 Properties

A provision in the Environment and Natural Resources Omnibus Bill will require energy benchmarks for buildings of about 50,000 square feet in the metro area or cities of 50,000 people or more.

Outcome: The Department of Commerce will require owners of buildings of 50,000 square feet or more (located in the metropolitan area or cities of 50,000 or more outside of the metropolitan seven counties) to report their building’s energy use annually to the agency using a computer application developed by the federal Environmental Protection Agency. Covered properties do not include residential properties with fewer than five dwelling units or multitenant buildings served by a utility that cannot supply aggregated customer usage data.

Impact on you: Impacted property owners must annually report this information to the agency in an electronic application by obtaining the needed information from the utility company providing energy or reading their master meter. All data to be entered must be accurate and vetted through the application’s quality control processes before the application accepts the data entry. Upon the sale of a covered property, the owner must provide energy benchmarking information and transfer the online digital property records within the benchmarking system to the new owner.

What’s next? This new requirement impacts standalone and multitenant properties. While there are requirements in the new law for tenants to provide property owners with the necessary information to comply with this law’s requirements, the tenant has a 30-day window to provide the energy usage data. Impacted property owners may wish to review, revise, and notice tenants regarding this requirement if the property owner cannot gather the necessary energy usage data from a different source or directly from their utility provider.
Office of the Ombudsman for Long-Term Care

*Impacts all provider types*

*Effective Date: July 1, 2023*

**Outcome:** $875,000 per year has been allocated to the Office of the Ombudsman for Long-Term Care for additional staff and direct costs for the office.

**Impact on you:** Members could expect additional outreach and investigative bandwidth from the Ombudsman should they increase their staffing complement. During the session, the Ombudsman testified that they could not complete federally required compliance activities without this appropriation.
Certificates of Rent

Impacts all providers types

Effective Date: Tax years beginning after Dec. 31, 2023

Within the Omnibus Tax Bill, several adjustments were made to the process for determining rent credit certificates for residents of nursing homes, intermediate care facilities, long-term care facilities, or facilities accepting housing support payments.

Outcome: A taxpayer must not claim a credit if the taxpayer is a resident of a nursing home, intermediate care facility, long-term residential facility, or a facility that accepts housing support payments whose rent constituting property taxes is paid pursuant to the Supplemental Security Income program under title XVI of the Social Security Act, the Minnesota supplemental aid program under sections 256D.35 to 256D.54, the medical assistance program pursuant to title XIX of the Social Security Act, or the housing support program under chapter 256l. If only a portion of the rent constituting property taxes is paid by these programs, the resident is eligible for a credit, but the credit calculated must be multiplied by a fraction, the numerator of which is adjusted gross income, reduced by the total amount of income from the above sources other than vendor payments under the medical assistance program and the denominator of which is adjusted gross income, plus vendor payments under the medical assistance program, to determine the allowable credit.

Through a simple process, the commissioner may require the owner or managing agent to furnish to the commissioner on or before Jan. 31 a copy of each certificate of rent paid furnished to a renter for rent paid in the prior year. The commissioner shall prescribe the content, format, and manner of the form.

Impact on you: Note modifications to instructions before completion of Rent Credit Certificates and maintain copies of the completed forms.

What’s next? LeadingAge Minnesota will provide links to the revised Minnesota Department of Revenue guidance with our annual January article on completing Certificates of Rent Paid.
New Reporting, Transparency, and Investigation of Healthcare Entity Transactions

**Impacts all provider types**

**Effective date: May 27, 2023**

This new law aims to prohibit transactions by any healthcare entity that would “substantially lessen competition or tend to create a monopoly or monopsony.” To enforce this prohibition, the law institutes transaction notification requirements and grants the attorney general with broad power to review, enjoin, or unwind any applicable transaction in violation of the law’s requirements. Notably, certain transactions are excluded from the law, including, for example, those that only involve certain types of providers, such as nursing homes, assisted livings, and home care providers.

**Outcome:** Generally, the law requires notice and disclosures to the state Attorney General and the Minnesota Department of Health at least 60 days before the proposed closing date of any transaction where either:

- The healthcare entity involved in the transaction has an average revenue of at least $80,000,000 per year; or
- The transaction will result in an entity projected to have an average revenue of at least $80,000,000 per year once the entity is operating at full capacity.

The law also permits the attorney general to extend the notice and waiting period for the $80,000,000+ transactions for an additional 90 days. Additionally, the attorney general is permitted to bring an action in district court to compel compliance with the notice, waiting period, disclosure, and submission requirements, or to enjoin or unwind a transaction or seek other equitable relief necessary to protect the public interest if a health care entity or transaction violates the law or is contrary to the public interest.

Failure of the entities involved in a transaction to provide timely information to the attorney general or the commissioner of health is an independent and sufficient ground for a court to enjoin or unwind the transaction or provide other equitable relief. However, the attorney general must notify the entities of the deficiency and provide a reasonable opportunity to remedy it.

In that same law, effective Jan. 1, 2024, healthcare transactions similar to those of larger-scale ones will be required with data reporting at least 30 days before the proposed closing date of the transaction or within ten business days of the date the parties first reasonably anticipate entering into the transaction if the expected completion is within less than 30 days, where either:

- The healthcare entity involved in the transaction has average revenue between $10,000,000 and $80,000,000 per year; or
- The transaction will result in an entity projected to have average revenue between $10,000,000 and $80,000,000 per year once the entity is operating at full capacity.

This data reporting includes the disclosure of much of the same type of information as outlined above.

**Impact on you:** While certain types of nursing home, assisted living, and other long-term care provider types transactions are excluded from this new law, not everything is. For example, exempted entity transactions are those where licensee is not “organized or controlled by” a hospital, hospital system, captive professional entity, medical foundation, or health care provider group practice comprised of two or more health care providers organized into a partnership or other nonprofit or business relationship.
Understanding what type of sale and purchase transaction requirements you may have that require compliance with the law. Compliance with the new law may delay any closing date or be retroactively applied to “unwind” a transaction. Such items will be worth discussing before any planned transactions are impacted by the law. Advanced planning and preparation for such contingencies is a good idea.

What’s next? It is important to both understand the “exclusions” listing potential application to any future sale/purchase you are considering. Also, knowing your revenue and prospective revenue levels after any transaction will be important for evaluating compliance with this new law. The law makes it clear that in determining whether an action or series of actions constitutes a transaction subject to the new law, any actions or series of actions related to the completion of the transaction may be considered, regardless of whether they occurred before the law’s effective date.

The smaller transaction reporting requirements may apply to future mergers, acquisitions, and sales. Members should consult with a business attorney in evaluating compliance with this law.
**Opioid Prescribing Program Modifications**

*Impact all provider types*

*Effective Date: July 1, 2023*

The Human Services Finance Omnibus Bill included modifications to the state’s Opioid Prescribing Improvement Program.

**Outcome:** Prescribers treating patients on chronic, high doses of opioids must meet community standards of care, including performing regular assessments and addressing unwarranted risks of opioid prescribing, but are not required to show measurable changes in chronic pain prescribing thresholds within a certain period.

The commissioner shall dismiss a prescriber from participating in the opioid prescribing quality improvement program annually when the prescriber demonstrates that the prescriber’s practices are patient-centered and reflect community standards for safe and compassionate treatment of patients experiencing pain.

The Department of Human Services is directed to recommend criteria for sunsetting the opioid prescribing improvement program no later than Dec. 31, 2024.

**Impact on you:** No immediate impact on providers.

**What’s next?** LeadingAge Minnesota will continue to monitor this issue and engage members as appropriate.
New Americans Long-Term Care Workforce Grant Program

Impacts all provider types

Effective Date: July 1, 2023

Several appropriations to the Department of Human Services (DHS) within the Human Services Finance Omnibus Bill impact seniors and their professional caregivers, including funding to support new Americans working in long-term care.

Outcome: DHS will create a new grant program to award organizations supporting immigrants, refugees, and other individuals born abroad to obtain and maintain employment in long-term care. There are eligibility, reporting, and restricted uses of these grant funds. $28.3 million was appropriated for this program, and an impact evaluation is due to the legislature in 2027. An additional $7 million in FY 24 will be available for supporting legal and social services for new Americans.

Impact on you: For organizations that currently employ or seek to employ new Americans, you may consider applying for these grants or partnering with other organizations.

What’s next? DHS will publish additional information about grant opportunities and application requirements in the coming months. While the funding for this program is one-time, the appropriation is good until 2027. We will also continue to share details as they become available.
Metro County Air Permitting Requirements

Impacts all provider types

Effective Date: May 25, 2023

A provision included in the Environment and Natural Resources Omnibus Bill will change air permitting requirements in the Twin Cities metropolitan area.

Outcome: The Minnesota Pollution Control Agency (MPCA) will now require facilities located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties issued an air quality air permit by the agency to annually report the amount and type of its toxic emissions to the agency. The agency must determine the facility’s method to measure or estimate their air toxic emissions, amend current permits, and complete rulemaking to enforce the new law.

Impact on you: The agency’s rulemaking must require facilities issued air quality permits to bear the cost of this new requirement. Therefore, it is assumed the agency’s rulemaking will include an air quality permit fee increase of an amount yet to be decided upon. Additionally, within three years of issuing rules for emissions reporting, the agency’s commissioner must amend existing air quality permits as necessary to comply with the rules. Current air quality permit holders should expect communications and conversations with the agency regarding their permits.

What’s next? The timing of this change is dependent upon the agency’s rulemaking to establish rules governing the emissions reporting requirements. The new law requires this rulemaking to be initiated within 36 months of the law’s effective date. However, current air quality permit holders and prospective air quality permit applicants may wish to identify their site location’s proximity to any census tracts defined as environmental justice areas to determine if they will be impacted by this new law’s requirements. We are working with MPCA to identify members who may be subject to this new requirement.
Legislative outcomes impacting
ASSISTED LIVING, INDEPENDENT LIVING, ADULT DAY SETTINGS, HOME CARE AND OTHER HOME AND COMMUNITY-BASED SERVICES

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**Elderly Waiver Funding**

*Impacts assisted living and adult day providers*

*Effective Date: Jan. 1, 2024*

The Human Services Omnibus Bill passed by the House and Senate took a significant step forward in updating Elderly Waiver (EW) rates. The bill’s final version invests more than $400 million in state funds for rate increases for EW over the next four years.

**Outcome:** The EW rate increases are effective on Jan 1, 2024, for all EW services. The bill accomplishes full implementation of the new rate system because it ends the phase-in of blending new rates with the historical rates, with a few caveats. The wage data used to set rates is the “most recent before Jan. 1, 2019,” and the rates do not update again after Jan. 1, 2024. These changes reduced the rate increase relative to our proposal for full implementation based on the most recent wage data with regular updates in the future. The legislation also updates the formulas for various services based on recommendations made in a 2019 study of EW rates commissioned by the Department of Human Services (DHS).

**Impact on you:** DHS estimates that the rate increase on average across all EW services will be 45% because of this legislation. The specific rate increases for services like adult day and customized living will vary, but they will be substantial. Rates will be implemented on a rolling basis in 2024, meaning that they will apply to all new EW clients and all current clients at the time of their reassessment. The legislation also requires that 80% of the “marginal increase in funding” received by the provider must go to new increases in employee wages and benefits. Providers must develop and post a plan to show how they meet that 80% requirement, but they do not need the plan approved by DHS.

**What’s next?** DHS will calculate and publish updated rates for all EW services before Jan 1, 2024. They will also develop guidance about preparing the distribution plan tied to the amount of funding that must go to wages and benefits, which is complicated by the rolling implementation. This effectively means providers will not experience the full impact of the updated rates until the end of 2024.
**Disability Waiver Customized Living Rate Increase**

*Impacts assisted living*

**Effective Date: Jan. 1, 2024**

Legislation passed this session increases the phase-in of disability waiver customized living rates, so they now use 29.6% of new system components blended with 70.4% of the historic rates.

**Outcome:** New rate components based on “most recent data before Jan. 1, 2019” and increases effective on a rolling basis on Jan. 1, 2024. The Department of Human Services (DHS) estimates an average rate increase of 12% for these services due to this language.

**Impact on you:** Rates will be implemented on a rolling basis in 2024, meaning that they will apply to all new Disability Waiver Rate System (DWRS) clients and all current clients during their reassessment.

**What’s next?** DHS will calculate and publish updated rates before Jan 1, 2024. They will also be developing guidance about how to prepare the distribution plan tied to the amount of funding that must go to wages and benefits, which is complicated by the rolling implementation, meaning providers will not experience the full impact of the updated rates until the end of 2024.
**Disability Waiver Rate System (DWRS) Rate Adjustments**

**Impacts adult day**

**Effective Date: July 1, 2023**

Within the Human Services Omnibus Bill, the DWRS rate system was updated in multiple ways so providers see higher rates implemented more quickly than under the previous statutory language.

**Outcome:** The legislative change moves the 2024 rate adjustment from Nov. 1, 2024, to Jan. 1, 2024. This results in an increase 11 months sooner than the current law. Subsequent rate adjustments will occur on Jan. 1 of every even year rather than July 1 of every even year. This results in the increases being applied six months earlier every two years.

The data used to determine the Jan. 1, 2024 rate adjustment and all subsequent adjustments will be published in the spring, 21 months earlier. This results in the use of data that is one year more recent than current law. Additionally, factors with CPI adjustments will use CPI data that is 24 months old rather than 30 months old.

Effective January 1, 2024, the competitive workforce factor (CWF) will increase from 4.7 to 6.7 for all DWRS services.

**Impact on you:** Adult Day Providers who serve disability waiver clients will see these rate increases for services provided starting Jan 1, 2024.

**What’s next?** DHS will update the rate frameworks before Jan 1, 2024, so that providers can bill at the appropriate rate. LeadingAge Minnesota will share those updated rates when they are available.
**Required Wage and Benefit Spending by Disability Waiver Providers**

*Impacts assisted living, adult day, and other home and community-based services*

**Effective Date:** Jan 1, 2025

Within the Human Services Omnibus Bill, new language requires disability waiver providers to spend a percentage of their total waiver payments on wages and benefits.

**Outcome:** The new requirements are as follows:

- Assisted Living: 66%
- Adult Day: 45%

This language is tied to the total Medicaid payments received, not the increase received due to increases in this legislation.

**Impact on you:** This policy encumbrance is designed to facilitate increased wages and better workforce recruitment and retention.

**What's next?** LeadingAge Minnesota will share additional resources in partnership with DHS as this change takes effect.
**Home Care Rate Increase**

*Impacts home care*

*Effective Date: Jan. 1, 2024, or upon federal approval*

The Human Services Omnibus Bill increases Medicaid payment rates for home health agency services.

**Outcome:** Home health agency services Medicaid rates will increase by 14.99% from rates in effect on Dec. 31, 2023. Home care nursing rates are also increased by 25% under this section of the law.

**Impact on you:** Members who provide home health services under Medicaid to non-customized living clients will see this rate increase in 2024. This does not impact the home health services provided in customized living settings; those providers will get rate increases through the elderly waiver rate adjustments for 2024.

**What’s next?** The Department of Human Services will be providing additional information on rates in the coming months. It must seek Centers for Medicaid Services approval before these rates go into effect. LeadingAge Minnesota will also continue to share updated information as we learn details.
**Study on Co-occurring Behavioral Health Conditions**

*Impacts home and community-based services*

*Effective Date: July 1, 2023*

Within the Human Services Finance Omnibus Bill, the Department of Human Services (DHS) has been directed to consult with stakeholders and evaluate Home and Community-Based Services (HCBS) to identify barriers in crisis respite, respite, and other specialist services for people with co-occurring behavioral health conditions.

**Outcome:** There is growing acknowledgment that many patients and residents in Minnesota are falling into gaps between appropriate services in the continuum of health care. Hospitals continually report bottlenecks in their admission and discharge process, and long-term care providers regularly acknowledge an increase in the acuity of residents.

This study is another step in “decompression” work with DHS, which LeadingAge Minnesota has been involved with at a leadership level since 2022. During the session, we advocated with legislators and DHS to pursue durable solutions to this problem instead of band-aid fixes like short-term premium payments.

**Impact on you:** There is no immediate change to operations.

**What’s next?** LeadingAge Minnesota will continue to advocate for long-term care providers to pursue solutions that allow Minnesotans with behavioral health conditions to get the right care in the right settings.
Home and Community-Based Services Workforce Incentive Grants

Impacts assisted living, adult day, and other home and community-based services

Effective Date: July 1, 2023

Within the Human Services Omnibus Bill, $83.6 million in one-time funding was dedicated to a grant program for long-term care providers to provide incentive payments to employees, either bonuses or compensation for costs like transportation and childcare. The language exempts these bonuses from being considered income on state income taxes or public programs. Employers will have to apply for these funds on behalf of their employees through a competitive process.

Outcome: LeadingAge Minnesota advocated all session that employee bonuses do not have a meaningful impact on retention and that the sustainable solution was an ongoing investment for home and community-based services through funding our Medicaid waivers. With the implementation of Elderly Waiver rates provided in this omnibus bill, we welcomed additional one-time resources to support employees. This Home and Community-Based Services Workforce Incentive Fund will receive an additional $20 million in one-time funding to support provider implementation of Paid Family and Medical Leave.

Impact on you: The Department of Human Services (DHS) intends to issue a request for proposals (RFP) for a vendor to manage this grant program. As a result, applications and next steps will not be available until this fall.

What’s next? LeadingAge Minnesota will provide application details, including timing, resources for submitting a competitive application, and other grant requirements, as more information becomes available later this year.
**Elderly Waiver Rates Evaluation and Cost Report Requirements**

**Impacts assisted living, adult day, and other home and community-based services**

**Effective Date: Jan. 1, 2024 (evaluation) and Jan. 1, 2025 (cost reporting)**

The Department of Human Services (DHS) has previously commissioned a report on the new Elderly Waiver (EW) rate system, which led to some of the rate changes that were adopted along with the rate increase this year. They have also been seeking a cost reporting requirement for EW providers, similar to what has been required for disability waiver providers.

**Outcome:** This year’s human services budget includes funding for ongoing evaluation and data collection efforts:

- Every two years starting in January 2024, DHS must submit to the legislature an evaluation of the EW rate system, including the wage data and other factors used in setting rates.
- EW providers must report service costs, including wages, benefits, and other program administration costs.
- Every enrolled provider must report their costs at least once every five years.

**Impact on you:** Providers who serve EW clients will have to start reporting costs for the first time, although only every five years. That data, combined with the rate evaluation, raises the possibility that rates will be adjusted to reflect current costs regularly, depending on legislative action based on the evaluation.

**What’s next?** The first rate evaluation under this new language is due in January 2024, in time for the next legislative session, where rate adjustments could occur. With the cost reporting requirement not taking effect until 2025 and only one-fifth reporting each year, providers will have a bit of a reprieve before their first cost report must be completed.
Home and Community-Based Services and Assisted Living Survey Updates

Impacts assisted living, adult day, and other home and community-based services

Effective Date: Aug 1, 2023

The state has been developing a report card for home and community-based services (HCBS) and assisted living for several years. One component of that effort is consumer surveys of those consumers. This legislation makes some changes to what is required with those surveys.

Outcome: LeadingAge Minnesota worked to ensure that residents retain the right not to provide their information for these surveys and that providers are not penalized if a resident exercises that right.

There are two critical changes in this bill:

• HCBS provide aggregate information on the age, race, ethnicity, and gender identity of the clients they serve so that the state can track results by those various groups.

• Surveys of assisted living residents under 144G will now be required so the provider cannot refuse to participate, which has been allowed under current law. Individual residents retain the right not to participate.

Impact on you: In the next round of surveys conducted by the state or their contractor these new requirements will apply.

What’s next? Providers should be prepared to provide the required information and to participate in the Assisted Living surveys going forward.
**Home Care Surveys**

*Impacts home care*

*Effective Aug. 1, 2023*

Several adjustments were made to core home care survey requirements.

**Outcome:** A technical language change removing housing with services, instead requiring a brief tour of the establishment where services are provided. Exit conferences are no longer required to be on-site, but preliminary findings must be discussed within one business day after the completion of survey activities.

**Impact to you:** Follow-up surveys are no longer required for any violation that is determined to be widespread, but only for level 3 and 4 violations. Finally, the written request for a reconsideration of a survey finding was moved from within 15 calendar days to 15 business days of the correction order receipt date.

**What’s next?** Members utilizing a home care license are encouraged to review changes and share feedback with LeadingAge Minnesota to facilitate ongoing process improvements.
**Home Care Bill of Rights**

*Impacts home care*

*Effective Date: Aug. 1, 2023*

The Minnesota Home Care Bill of Rights Notice Requirements was modified related to a notice of termination of a service plan. If a home care provider terminates a service plan with a client, and the client continues to need home care services, the home care provider shall provide the client and the client's representative, if any, with a written notice of termination which includes the listed content.

**Outcome:** 144A.4791, Subdivision 10, an item was added with the following language:

- For clients age 18 or older, a statement that the client may contact the Office of Ombudsman for Long-Term Care to request an advocate to assist regarding the termination and contact information for the office, including the office’s central telephone number
- Item 7 in Subdivision 10 was also amended, removing “the housing with services contract with a housing with services establishment” removed and replaced with “any housing contract.”

**Impact on you:** If giving a notice of termination of home care services to a client who continues to need services be sure to incorporate the revised language.
LeadingAge Minnesota 2023 Legislative Report

245A Licensed Entities Changes

Impacts providers licensed by the Department of Human Services (DHS)

Effective Date: May 25 and July 1, 2023, and Jan. 1, 2024

General Information

The Department of Human Services – Human Services Licensing Act, commonly known as Chapter 245A licensing, is used to license or regulate DHS-authorized services or services paid for via state funding managed through DHS or for Medical Assistance purposes.

Outcome: There are four noteworthy changes to Chapter 245A licensure. These changes have different effective dates, which are noted. The changes include:

- Prospective persons interested in acquiring an active license holder’s operation and license must now follow the current “change of ownership” statutory process to acquire it. This became effective on May 25, 2023.

- Effective July 1, 2023, the definition of “owner” and “controlling individual” for the purposes of Chapter 245A licensure changed. A nonprofit “owner” is now the nonprofit corporation, while the “controlling individual” is both the president and treasurer of the nonprofit corporation’s board of director.

- Also effective on July 1, 2023, the process and procedures for Chapter 245A immediate license suspensions have changed alongside the ability of the impact license holder to continue operating while an immediate suspension exists.

- Beginning on Jan. 1, 2024, providers regulated by Chapter 245A will need to record the date of first “direct contact” by employees with licensed program recipients and make that record available to the commissioner when requested.

Impact on you: For current 245A licensees, these changes are important to understand, especially for the new recordkeeping of “first direct contact.” For individuals or entities thinking about selling, transferring, or acquiring a Chapter 245A license holder’s operations and license, the new background study requirements will be important to comply with to minimize delays associated with receiving the license.

What’s next? Current 245A licensure holders should review and revise employee training recordkeeping processes to comply with the new “first direct contact” documentation requirement.

Prohibitions Expanded

In that same omnibus bill and effective May 25, 2023, prohibitions were expanded for any provider, vendor, or individual enrolled, licensed, receiving funds under a grant contract, or registered in any program administered by the commissioner who is excluded from the program. This includes the licensing, enrollment, etc., of any associated entities or individuals.

Outcome: The duration of the prohibition may last until up to the longest applicable sanction or disqualifying period in effect or as permitted by state or federal law. Notice and appeal processes are detailed, along with circumstances that constitute a credible allegation of fraud for which an investigation is pending and during which payments may be withheld.
Impact to you: 245A license holders and applicants must, upon implementation of the provider licensing and reporting hub, use the hub in the manner prescribed by the commissioner.

What's next? License holders must enter and update information in the hub as requested. The hub may be used to send notices, to send denials, to file appeals, to issue correction orders, and to issue conditional licenses.
**Landlord-Tenant Law Changes**

*Impacts assisted living and housing*

**Effective Date:** Effective Jan. 1, 2024, and applies to leases signed on or after that date

Several changes to landlord-tenant law were made this session.

**Outcome:** Below, we have categorized and outlined the changes that will most likely impact LeadingAge Minnesota members.

**Changes to Lease Contract Terminations and Renewals:** An issue that has, for some, prevented a tenant from moving to a supportive setting due to financial obligations to a current lease was changed this session. A tenant or the authorized representative of the tenant may terminate the lease before the expiration of the lease if the tenant has or, if there is more than one tenant, all the tenants have been found by a medical professional to need to move into a medical care facility and:

- Require assistance with instrumental activities of daily living or personal activities of daily living due to medical reasons or a disability;
- Meet one of the nursing facility levels of care criteria; or
- Have a disability or functional impairment in three or more areas, so self-sufficiency is markedly reduced because of a mental illness.

When the conditions have been met, the tenant or the tenant's authorized representative may terminate the lease by providing at least two months' written notice to be effective on the last day of a calendar month. The notice must include the following:

- A copy of the medical professional's written documentation of the infirmity; and
- Documentation showing that the tenant has been accepted as a resident or has a pending application at a location where the medical professional has indicated that the tenant needs to move.

The termination of a lease under this section shall not relieve the eligible tenant from liability either for the payment of rent or other sums owed before or during the notice period or for the payment of amounts necessary to restore the premises to their condition at the commencement of the tenancy, ordinary wear, and tear excepted.

There is one exception to this law. When a tenant requires an accessible unit and the landlord can provide an accessible unit in the same complex where the tenant currently resides that is available within two months of the request, then the provisions of this section do not apply, and the tenant may not terminate the lease.

A landlord must now wait until six months from the expiration of the current lease before requiring a tenant to renew the lease if the lease is longer than ten months. Nothing prevents a landlord from waiting until closer to the expiration of a lease to ask a tenant to renew the lease. Any provision, whether oral or written, of any lease or other agreement where a tenant waives any provision is contrary to public policy and void.

**Changes to Tenant Eviction Processes:** Landlords may no longer issue 14-day notice to quit if a tenant refuses to pay rent due to a tenancy at will termination.
A residential landlord may not impose a penalty on a residential tenant or terminate the lease of a residential tenant for the conduct of the residential tenant, household member, or guest occurring off of the premises or curtilage of the premises unless:

- The conduct would constitute a crime of violence against another tenant, the tenant’s guest, the landlord, or the landlord’s employees, regardless of whether a charge was brought or a conviction obtained; or
- The conduct results in a conviction of a crime of violence against a person unrelated to the premises. Crime of violence has the meaning given in section 624.712, subdivision 473.18 5, except that it does not include offenses under chapter 152 which covers controlled substances issues.

If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is now entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances and to the same extent as specified in the lease for the landlord.

Changes to Lease Terms: Pet declawing and devocalization are prohibited for any pet allowed on the premises.

A landlord must disclose all nonoptional fees in the lease agreement. The sum total of rent and all nonoptional fees must be described as the Total Monthly Payment and listed on the lease’s first page. A unit advertised for a residential tenancy must disclose the nonoptional fees included with the total amount for rent in any advertisement or posting. In a lease agreement disclosure or unit advertisement, the landlord must disclose whether utilities are included or not in the rent. A landlord who violates this is liable to the residential tenant for treble damages, and the court may award the tenant reasonable attorney fees.

An addition was made to reasons that damages can be ascribed to a landlord, to include providing the tenant with notice for an initial inspection and move-out inspection as required by section 504B.182 and complete an initial inspection and move-out inspection when requested by the tenant. Requirements were added to the statute regarding initial inspections and move-out inspections.

Additional specificity was added to notice requirements before a landlord enters rented premises. Reasonable notice was clarified to state notice under the circumstances of not less than 24 hours before the intent to enter. If desired, a residential tenant may permit a landlord to enter the rented premises with less than 24 hours’ notice. The notice must specify a time or anticipated window of time of entry, and the landlord may only enter between 8 a.m. and 8 p.m. unless the landlord and tenant agree to an earlier or later time. Penalties for violating this notice requirement were increased.

A defendant in public housing subject to an eviction action under sections 504B.281 to 504B.371 alleging breach of the lease under section 504B.171 or 504B.285 who is financially unable to obtain counsel has the right to counsel appointed by the court. The complaint required by section 504B.321 shall include the notice on the first page of the complaint in bold 12-point type: "If financially unable to obtain counsel, the defendant has the right to a court-appointed attorney." At the initial hearing, the court shall ask the defendant if the defendant wants court-appointed counsel and explain what such counsel can accomplish for the defendant. Counsel appointed by the court must:

- Have a minimum of two years of experience handling public housing evictions;
- Have training in handling public evictions; or
- Be supervised by an attorney who meets the minimum qualifications above.
To supply or furnish heat at a minimum temperature of 68 degrees Fahrenheit from Oct. 1 through April 30, unless a utility company requires and instructs the heat to be reduced.

**Impact on you:** A process to offer initial inspections and move-out inspections should be in place. Within 14 days of a residential tenant occupying a unit, the landlord must notify the tenant of their option to request an initial inspection of the residential unit to identify existing deficiencies in the rental unit to avoid deductions for the security deposit of the tenant at a future date. If the tenant requests an inspection, the landlord and tenant shall schedule the inspection at a mutually acceptable date and time. In lieu of an initial inspection or move-out inspection when a tenant agrees, a landlord may provide written acknowledgment to the tenant of photos or videos of a rental unit and agree to the rental unit’s condition at the start or end of the tenancy.

Within a reasonable time after notification of either a landlord or residential tenant’s intention to terminate the tenancy or before the end of the lease term, the landlord shall notify the tenant in writing of the tenant’s option to request a move-out inspection and of the tenant’s right to be present at the inspection. At a reasonable time, but no earlier than five days before the termination or the end of the lease date or day the tenant plans to vacate the unit, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make a move-out inspection of the premises. The move-out inspection shall allow the tenant to remedy identified deficiencies consistent with the rights and obligations of the parties under the rental agreement to avoid deductions from the security deposit. If a tenant chooses not to request a move-out inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time.

Landlords must make sure to follow the new notice requirements if seeking an eviction.

**What’s next?** Members are encouraged to review and update their lease contracts renewed on or after Jan. 1, 2024, to reflect these policy changes. Adjust move-in and move-out practices to comply with the new requirements.
Definition of “State Licensed Facility” for Building Code to Include Assisted Living

Impacts assisted living

Effective date: Aug. 1, 2023

Within the Labor and Jobs Omnibus bill, the definition of “state-licensed facility” has been changed to incorporate assisted living settings.

Outcome: The Department of Labor and Industry (DLI) is responsible for ensuring buildings are safe and healthy for those occupying them. DLI achieves this goal through partnerships with local zoning entities and inspectors. However, there are no local state building inspectors in some regions of the state, and the law prohibited DLI from acting as that local state building code inspector in those areas. This change permits DLI to serve as the local state building code entity and inspector in those areas.

LeadingAge Minnesota worked with the DLI to produce the minimal impact of this language and for the consistent statewide application of the state building code change for assisted living licensure and operations.

Impact on you: If your assisted living facility is located or operated in an area of the state where there is no local building code inspector for state building code compliance purposes, DLI will now act as your official state building code inspector.

What’s next? Impacted providers should contact their state regional building official to request facility plan reviews and construction permits.
Electric Vehicle Charging Requirement

Impacts assisted living and housing

Effective date: Aug. 1, 2023

A Labor and Jobs Omnibus Bill provision now requires electric vehicle charging for certain dwellings.

Outcome: A statutory change to the state building code will now require dedicated electric vehicle spaces and charging stations for the new construction of structures with five or more dwelling units and for multifamily structures that provide on-site parking facilities. Residential structures with fewer than four dwelling units are exempt from this new law.

Impact on you: This change does not apply retroactively and only impacts future new construction and multifamily structures that provide on-site parking facilities.

What’s next? When considering constructing new facilities, work closely with your architects and engineers to comply with this new statutory change to the state building code.
Home and Community-Based Services (HCBS) Workforce Development Grant Modifications

**Impacts assisted living, adult day, and other home and community-based services**

**Effective Date: Aug 1, 2023**

A bill made two changes to the existing workforce development grant program created during the 2021 Legislature. This original program approved $5.6 million for workforce development grants to attract and retain employees to HCBS providers.

**Outcome:** These changes will:

- Exempts the grant from being considered income for childcare assistance, Medicaid, and other assistance programs
- Allows eligibility for grants up to 300% of the federal poverty line (previously 200%)

**Impact on you:** Employees who receive these grants will no longer have to be concerned about a benefits “cliff” tied to receiving a grant.

**What’s next?** These changes will be applied to grants going forward so that employees can accept them without losing other benefits, and the expansion to 300% of the federal poverty level allows more workers to be eligible for grants.
Senior Services Grant Programs

Impacts assisted living, adult day, and other home and community-based services

Effective Date: July 1, 2023

This year two new grant programs were added, the Community Services Development grants, which have been around for over twenty years. These grants are intended to fund additional service options to help older adults get services in their own homes and to improve the experience of aging.

Outcome: These grants are intended to fund additional service options to help older adults get services in their own homes and to improve the experience of aging. The two new grant programs are:

- Live Well at Home Grants ($4.6 million)
- Caregiver Respite Services Grants ($1.8 million)

Both programs are intended to fund projects for helping older adults stay at home as long as possible, focusing on funding caregiver respite so that informal caregivers can assist older adults for longer periods. The bill also extends the time frame on previously funded Age Friendly Community Grants to the end of 2027.

Impact on you: Providers who are interested in grant funds in these areas will have an opportunity to make an application as soon as later this year.

What’s next? Those interested should be looking for information from the Department of Human Services about how to apply for grant funds under these new programs and what criteria will be used to score applications in these initial efforts.
**Assisted Living Licensure Fines and Penalties Clarification**

**Impacts assisted living**

**Effective Date:** July 1, 2023

The Health Care Omnibus Bill codifies a few administrative fines or penalties that had previously existed through rulemaking only, including:

- Failing to notify the Minnesota Department of Health (MDH) regarding specific changes of information will now have a single issuance of a set fine amount of $1,000.
- Failure to follow planned closure requirements will also have a set, single issuance fine of $1000.

Fines collected for these purposes will be dedicated to only assisted living licensure improvement purposes instead of general MDH purposes.

**Outcome:** LeadingAge Minnesota staff worked closely with MDH and other stakeholders to reduce and constrain the initially proposed fee language from high dollar amounts and a daily accrual concept to its single, one-time fee approach, which eventually passed into law. We also worked to include language that would place all assisted living licensure fees, fines, and penalties into a specific purpose account to improve only assisted living licensure and its quality improvement.

**Impact on you:** While there was no change to the penalty amounts, the dedication of these funds for assisted living-only improvements is likely a positive development for the sector.

**What’s next?** Providers will want to ensure compliance with licensure requirements for notice or other requirements already part of assisted living licensure law.
**Sprinkler Inventory in Large Cities**

*Impacts assisted living and housing*

*Effective Date: June 20, 2024*

The Housing Omnibus Bill contains several provisions that will impact assisted living and senior housing settings, including a requirement for a sprinkler inventory in some areas of the state.

**Outcome:** A city of the first or second class shall provide to the state fire marshal a list by June 20, 2024, and an updated list by June 30, 2027, and June 30, 2032, of each residential building in the city that:

- Has at least one story used for human occupancy that is 75 feet or more above the lowest level of fire department vehicle access;
- Was not subject to a requirement to include a sprinkler system at the time the building as constructed; and
- Has not been retrofitted with a sprinkler system.

The state fire marshal shall submit the lists within 60 days of the due dates under paragraph (a) to the chairs and ranking minority members of the legislative committees with jurisdiction over the State Building Code, State Fire Code, and Minnesota Housing Finance Agency.

**Impact on you:** No immediate changes to your operations.

**What’s next?** Members can anticipate future policy interest in this topic from legislators. We will continue to monitor development.
Housing Finance Authority Funding

Impacts housing

Effective Date: Appropriations to the Minnesota Housing Finance Agency for years ending June 30, 2024, and 2025

Appropriations were made for several programs and purposes. In the first year, $792,098,000 was appropriated, and in the second year, an additional $273,298,000.

Outcome: Several programs that were funded may impact members who provide senior housing.

Workforce Housing Development: this appropriation is for the Greater Minnesota workforce housing development. If requested by the applicant and approved by the agency, funded properties may include a portion of income and rent-restricted units. Funded properties may include owner-occupied homes.

Rental Assistance for Mentally Ill: This appropriation is for the rental housing assistance program for persons with a mental illness or families with an adult member with a mental illness under Minnesota. Among comparable proposals, the agency shall prioritize those proposals that target, in part, eligible persons who desire to move to more integrated, community-based settings. Notwithstanding any law to the contrary, this appropriation may be used for risk mitigation funds, landlord incentives, or other costs necessary to decrease the risk of homelessness, as determined by the agency.

Rental Housing Rehabilitation: This appropriation is for rehabilitating eligible rental housing. In administering a rehabilitation program for rental housing, the agency may apply the processes and priorities adopted for the administration of the economic development and housing challenge program and may provide grants or forgivable loans if approved by the agency.

Stable Rental Housing Mediation: This appropriation is for a grant to Community Mediation Minnesota to administer a statewide housing mediation program to support renters and residential rental property owners. This is a one-time appropriation. Among other purposes, the appropriation may be used to increase mediation services for seniors and renters with disabilities and illnesses that face housing instability.

High-Rise Sprinkler System Grant Program: This appropriation is for the high-rise sprinkler system grant program for installing sprinkler systems.

Public Housing Rehabilitation:

- $10,000,000 is to finance the costs of rehabilitation to preserve public housing under Minnesota Statutes, section 462A.202, subdivision 3a. For purposes of this section, "public housing" means housing for low-income persons and households financed by the federal government and publicly owned or housing repositioned under the federal Rental Assistance Demonstration or similar program. The agency may prioritize proposals that maximize nonstate resources to finance the capital costs; requests that prioritize long-term affordability; and requests that prioritize health, safety, and energy improvements. This is a one-time appropriation.

- $5,000,000 is for a grant to the Minneapolis Public Housing Authority for the city of Minneapolis and its affiliated entities, including but not limited to its wholly controlled nonprofit corporation, Community Housing Resources, to rehabilitate, preserve, equip, and repair its deeply affordable family housing units. This is a one-time appropriation.

Stable Housing Organization Relief Program: The commissioner of the Minnesota Housing Finance Agency must establish and administer a grant program to support nonprofits that are experiencing significant detrimental financial impacts due to recent economic and social conditions.
**Impact on you:** You may be eligible for funding for one or more programs.

**What's next?** LeadingAge Minnesota will monitor and communicate when grant and funding application opportunities are announced.
Customized Living Licensing Moratorium and Small Provider Regulatory Relief

Impacts assisted living

Effective Dates:

- May 25, 2023, for moratorium exception changes
- July 1, 2023, for the study of the regulatory burden of small assisted living providers

Within Article 1 of the Human Services Finance Bill, two modifications were made to the foster care moratorium system that:

- Expands an existing moratorium exception for individuals receiving customized living to include individuals receiving customized living under the elderly waiver and extends the application deadline for this exception from June 30, 2023, to Dec. 31, 2023.
- Creates a new moratorium exception for customized living settings that were providing customized living services on June 30, 2021, and that are apply for a Chapter 245D Home and Community-Based Services license before Dec. 31, 2023, and specifies that the licensed capacity of the newly licensed community residential setting must be four.

The same article requires the Department of Human Services (DHS) to expedite the processing of certain adult foster care and community residential setting moratorium exception applications.

The bill also requires the Minnesota Department of Health (MDH) and DHS to consult with assisted living providers who provide customized living of 11 or fewer beds to identify regulatory obstacles and make recommendations for changes in a future legislative session.

Outcome: LeadingAge Minnesota worked with stakeholders and legislators to keep the challenges with assisted living licensure in the spotlight all session. We also worked to introduce our legislation (SF1969) and offered it as a vehicle for necessary conversations concerning changes for small providers as well. We are an active participant in the small provider stakeholder group that has already convened under the direction of MDH and will continue 144G reform development during the remainder of the year.

Impact on you: The timeliness of the moratorium exception process and the disproportionate burden on small, customized living providers with respect to 144G has been a recurring topic of concern for legislators in this session.

What’s next? In anticipation of 2024, lawmakers have instructed DHS and MDH to work with stakeholders to identify reforms to 144G that safeguard consumer choice and quality while relieving providers of significant operational and financial burdens.
Legislative outcomes impacting

CARE CENTERS

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**Nursing Home Funding**

*Impacts care centers*

*Effective Date: July 1, 2023*

After the initial Human Services Omnibus Bill failed to include any of the Long-Term Care Imperative’s funding priorities for nursing homes, we continued to work with legislators to find a path to obtaining this crucial funding before the session adjourned. This effort culminated in last-minute approval of a funding package worth more than $350 million to nursing homes over the next four years.

**Outcome:** The nursing home funding package in this bill consists of three components:

- **$36.5 million** in state funds for a temporary rate add-on of $12.35 per resident day in effect from July 1, 2023, through Dec. 31, 2024

- **$173 million** to support lump sum payments to nursing homes on Aug. 1, 2023, and Aug. 1, 2024. The formula for these payments is a base of $225,000 per home plus an amount per active bed. These funds are primarily dedicated to addressing debt, including covering existing loan payments. There is language that would recover some of these payments if nursing home spending exceeds the forecast.

- **$74.5 million** for Workforce Incentive Grants, which can be distributed to employees as bonuses or to cover expenses like childcare and transportation. Providers must apply for funding; grants are limited to $3,000 per employee.

**Impact for you:** The rate increase and first lump sum payment will be received soon and will help address funding shortfalls over the last few years. The Workforce Incentive Grant program will require the development of an application and then a review of those submissions, so funding is not likely to be received by providers until early 2024.

**What’s next?** The Department of Human Services (DHS) is preparing to implement the rate increase and to calculate and distribute the first lump sum payment by the required dates this summer. DHS is likely to contract with an outside vendor for the Workforce Incentive Grant Program, with providers able to apply for funding after that process is complete and an application has been developed.
Financially Distressed Nursing Facility Loan Program

Impact care centers

Effective Date: July 1, 2023

The Legislature, in developing its initial response to nursing home funding, focused on this new program to provide no-interest loans. Along with our partner in the Long-Term Care Imperative, we advocated that loans were insufficient to sustain nursing homes. In response, we secured the nursing home funding package described elsewhere in this document. Thankfully, however, the loan program was approved in addition to other funding and remains an option for those who can benefit from it.

Outcome: The bill creates the new Financial Distressed Nursing Home program and appropriates $93.2 million for no-interest loans that can be repaid over up to six years. A requirement was also added that no payments be required for at least 18 months.

Impact on you: This program looks like a good option for providers struggling to meet bond covenants or bank requirements, or who are struggling to make payments on current loans. The delayed repayment and lack of interest should make it a more affordable option in many cases.

What’s next? Nursing homes interested in seeking out one of these loans should watch for information about how to apply. Also important will be the restrictions DHS puts around what facilities are “financially distressed” because if they are overly strict on that, then some homes that can really benefit may still not be able to access one of these loans.
**Critical Access Nursing Facility Program**

*Impacts care centers*

*Effective Date: July 1, 2023*

The Critical Nursing Facility Program was operational for several years prior to the implementation of Value-Based Reimbursement (VBR) in 2016, which made the current version of the Critical Access Nursing Facility Program obsolete. Despite its obsolescence, a $1.5 million annual state appropriation has been going unused.

**Outcome:** The bill revises the Critical Access program into a form where the funds can be used, and it also adds an appropriation of $500,000 so that $2 million in state funds are available annually. The funding will be used to provide rate add-ons to providers chosen for critical access status based on the need to preservice services in isolated areas.

**Impact on you:** Nursing homes that may qualify for critical access status can apply later this year and, if chosen, will get a rate add-on for up to two years before they must be re-designated as essential access.

**What’s next?** Those interested should be looking for information from DHS about how to apply for Critical Access status, what criteria will be used to score applications, and how much of a rate increase is available.
**Nursing Home Workforce Standards Board**

*Impacts care centers*

**Effective Dates:** Administrative Rules must be adopted by Aug. 1, 2024, and be effective January 1, 2025

Article 3 of the Jobs and Labor Omnibus Bill creates a new regulatory board setting minimum compensation standards for nursing home workers. A nine-member regulatory board within the Minnesota Department of Labor (DLI) will adopt these new standards. Other duties of this board include developing and approving education curricula for worker training organizations, conducting market analyses of wages and working conditions, and impact analysis of proposed wage standards and their impact on future nursing home rates as reimbursed under 256R.

**Outcome:** This proposal was pursued nationwide, but Minnesota is one of the first states to enact it. LeadingAge Minnesota vigorously opposed this bill during the legislative process. Though we did not have the political votes to stop its passage, we successfully limited the duties and scope of the board, provided additional legislative transparency, and enacted a variance process for nursing home employers.

**Impact on you:** As early as Jan. 1, 2025, nursing homes must meet new minimum employment standards for direct care, non-direct care, and contracted employees. Additionally, care centers will be:

- Required to allow certified training organizations access to employees for training, education on rights, and sharing contact information of employees who have not opted out of disclosing their information.
- Subject to compliance activities, including providing notice and documentation to employees and submitting documentation to DLI every two years that it has completed employee training requirements.
- Subject to agency enforcement activity, including investigations by DLI and potential legal action for failure to meet standards enacted by the board.

The Board will be required to establish a variance process for nursing homes that cannot enact a standard without risk of closure or receivership.

**What’s next?** Appointments to the board will be made by Aug. 1, 2023. One-third of the appointees must be nursing home employers or their representatives. The duties of this newly created board are expansive and significant. We are collaborating with our Long-Term Care Imperative partner on executing a strategy that best supports nursing homes. We will also pursue legislative changes in future sessions based on political feasibility to further scope the duties of the board, limit the impact of regulatory burden, and/or repeal the law.
Healthcare Ergonomics

Impacts care centers

Effective date: Jan. 1, 2024

General Information

This first-in-the-nation occupational safety and health program establishes workplace safety standards to reduce the risk of workplace ergonomic injuries. While federal ergonomics programs are industry-specific and guidance only, the federal Occupational Safety and Health Administration (OSHA) enforces the concept under its general duty’s requirements for employers to prevent employee injury while working.

Outcome: The new law’s program requirements nursing homes of any size, in addition to several other sectors. The employer’s plan must minimize the risk of its employees developing or aggravating musculoskeletal disorders. The ergonomics program focuses on eliminating the risk and assess its effectiveness annually. The new law also requires employee training and employee involvement in the ergonomics program and recordkeeping of worker medical visits and ergonomic injuries. It gives MNOSHA enforcement authority. MNOSHA is required to provide employee and employer education and outreach, prepare training materials for employers, and may propose an ergonomics occupational safety and health standard via rulemaking in the future.

Impact on you: This law impacts all licensed nursing homes and requires new employee training and employer recordkeeping requirements.

What’s next? Nursing home administrators should review current workplace injury prevention and reporting training, policies, and recordkeeping procedures to comply with the law’s requirements while awaiting MNOHSA to make available its notice and education materials.

Ergonomics Grant Program

In this same bill, the Department of Labor and Industry (DLI) will implement a temporary grant program to provide $2 million of matching funding to employers subject to the new ergonomic program law who wish to implement changes. Nursing homes are eligible for these grants.

Outcome: The employer must have current workers’ compensation insurance and have had an on-site safety survey that recommended specific equipment or practices to reduce the risk of injury or illness to employee and to prevent musculoskeletal disorders. Individual employer grants are capped at a maximum of $10,000 per employer to implement the safety survey recommended ergonomics equipment or practices improvement. Other grant program restrictions apply. Grant funding is available until June 30, 2026, on a first-come, first-served basis until all grant funding is expended.

Impact on you: This grant program is voluntary and has several eligibility components to it. DLI will develop a grant application and evaluate applications. The exact timeline and process of applying for a grant are not clear yet, but the funds are available in the state fiscal year that starts July 1, 2023.

What’s next? Nursing home employers should review their workplace ergonomics situation and on-site safety surveys for potential grant eligibility considerations and apply using the department’s forthcoming grant application.
**Technical Changes to Nursing Home Change in Ownership**

*Impacts care centers*

*Effective July 1, 2023*

It was clarified in the statute that a change of ownership requiring a new license for a nursing home is required if, within the previous 24 months, 50% or more of the licensee’s ownership interest is transferred, whether by a single transaction or multiple transaction to either a different person or multiple different persons. The previous language did not include “multiple different persons.”

**Impact on you:** A nursing home may be required to seek a new license due to a broader definition of a change in ownership.
Child Costs in Nursing Home Scholarship Program

Impacts care centers

Effective Date: July 1, 2023

The state has had a scholarship program for nursing home employees for over 20 years. In the program, nursing homes are reimbursed for the actual costs of scholarships they provide, including direct educational costs (like tuition) and related costs such as childcare and transportation.

Outcome: The bill says that the Department of Human Services (DHS) needs to treat childcare costs as a “direct educational expense” for nursing facility scholarship recipients. Both direct educational expenses and childcare costs go into the scholarship rate under the current law if the provider offers a scholarship and if they choose to cover childcare costs as part of it.

Impact on you: It is unclear whether changing childcare costs to a direct educational expense will impact rates. DHS may interpret the language to mean that for nursing home scholarship recipients, childcare costs must be part of the scholarship.

What’s next? DHS will need to provide more guidance on how this changes the scholarship program and when they will implement that change since the effective date falls within the current cost report year.
**Nursing Home Rate Study**

*Impacts care centers*

**Effective Date: July 1, 2023**

During the legislative session, Leading Age Minnesota and our Long-Term Care Imperative partner were pushing the need for additional funding. The Department of Human Services (DHS) and some legislators pushed back, saying current rates were adequate to meet the need. One result of that debate was the legislature instructing DHS to hire an outside consultant to do a rate study.

**Outcome:** The bill says that the study should look at how Minnesota nursing home rates compare to other states and information on the margins of providers looking at all sources of revenue. While not mentioned in the study, we will also push to include consideration of the impact of the delay between rates and costs that is built into the rate system.

**Impact on you:** The legislation calls for recommendations based on the study to go to the legislature by Jan 1, 2025. As a result, this report may frame the discussion of any changes that will be considered during the next budget session in 2025.

**What’s next?** It is not clear when the study will get started, but it is clear that the final product needs to be done by Jan 1, 2025. It’s unclear what input opportunities will be available for providers, but we will work to include provider voices. The language about the study ways nursing homes must provide any information needed for the study about financial performance so that members may see some new requests.
**Veterans Administration Home Cost Calculation Modification**

**Impacts care centers**

**Effective Date: Aug. 1, 2023**

As part of the Department of Veterans Affairs 2023 policy and budget bill, the Legislature temporarily authorized the commissioner of veterans affairs to not perform an annual cost of care calculations for veterans homes in Montevideo, Preston, and Bemidji in fiscal years 2024 and 2025.

**Outcome:** The language directs the commissioner on how to calculate and requires the commissioner to utilize this required formula to set fiscal year 2024 and 2025 cost of care for veterans homes.

**Impact on you:** This language will temporarily impact veterans homes annual cost of care calculation procedures for fiscal years 2024 and 2025. The language expires on Jun. 30, 2025, and thereby returns the annual cost of care calculations for the fiscal year 2026 and beyond to their normal calculation procedures.

**What’s next?** Veterans home administrators should calculate their annual cost of care and provide all residents and their legal representatives with the required notice of changes in the cost of care to at least 30 days before any changes.
THANK YOU

We are honored to advocate for you, the seniors you serve, and their caregivers. Thank you for your engagement, your support, and for your contributions to the LeadingAge Minnesota community.

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