

Minnesota Department of Human Services

Customized Living Exempt Settings Initial Research Report

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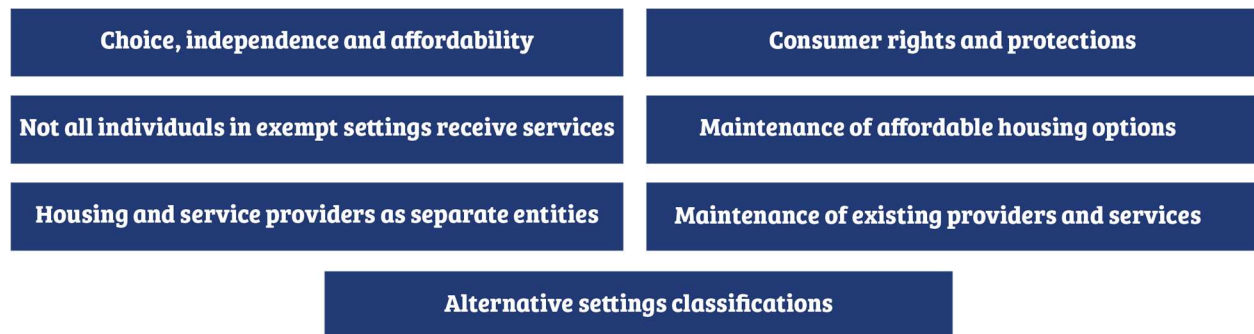
1 EXECUTIVE SUMMARY

The Minnesota Department of Human Services (DHS) has contracted with Public Consulting Group LLC (PCG) to evaluate the regulatory environment of specific affordable housing settings identified by DHS, as well as consult with stakeholders to provide recommendations regarding appropriate regulatory oversight and payment policies for customized living services delivered in these settings. This report contains PCG's findings from our initial policy research into the regulatory and financing issues affecting certain affordable housing settings, along with feedback from our first round of stakeholder focus groups and interviews.

PCG hosted an Initial Stakeholder Forum followed by ten smaller, follow-up group interviews for interested stakeholders. Participating stakeholders included advocacy organizations, provider associations, the Minnesota Housing and Finance Authority (MHFA), the Minnesota Department of Human Services (MDH), the United States Department of Housing and Urban Development (HUD), and customized living services exempt providers (interviews only).

PCG repeatedly heard the themes identified in **Figure 1** in both the initial stakeholder forum and follow-up interviews. We discuss these themes more in-depth in the sections that follow.

FIGURE 1: THEMES FROM STAKEHOLDER FEEDBACK











Concurrent to stakeholder outreach, PCG conducted federal and state policy research into the regulatory and financing issues affecting the exempt affordable housing settings. We reviewed Medicaid HCBS provider standards (including the Keys Amendment and HCBS settings regulation) and HUD and MHFA policies and programs in order to identify opportunities and challenges.

Multiple state and federal programs, overseen by several different agencies, impact the rules and regulations that comprise assisted living (AL) licensure in Minnesota. Medicaid policy guides the ways that services can be designed and delivered to the Medicaid-eligible population, while HUD, the Internal Revenue Service (IRS) and MHFA policies also impact the types of services that can be delivered in various settings. In some cases, these programs have different, or even diverging, goals, making it challenging for housing and service providers and those seeking services to navigate the system, despite the focus on providing choice and protecting the rights of individuals.

Highlights of our research can be found in **Figure 2**.

FIGURE 2: RESEARCH HIGHLIGHTS

	States have broad authority in defining the HCBS they choose to offer and in determining the qualifications and standards for the individuals and entities who deliver them.
	Though Medicaid funds cannot be used to cover room and board expenses in HCBS settings, Medicaid agencies still have an obligation to assure that HCBS are delivered in a safe and effective manner and retain the characteristics of typical home and community-based living.
	Many funding streams for affordable housing, including a number of MHFA programs, explicitly bar housing developed with these funds from being used for “health-related” activities.
	The definition of “health-related” varies by program but in some cases assisted living is specifically included in this definition.
	Where services are envisioned as part of a housing program, it is often required that service provision and property management be handled by separate entities.
	Past interpretations of IRS code indicate that a licensed assisted living facility would likely be considered to be a “health care facility.”
	Many MHFA funding mechanisms rely on IRS tax credits, which are not approved for use to develop health care facilities.
	Some HUD-funded assisted living settings have been AL licensed, but no additional funding is available from HUD to pay licensure fees.

We also compared relevant consumer rights and protections (**Table 1**) established by the Minnesota Statutes 2021 Chapter 144G Assisted Living law with the consumer rights and protections in other relevant state and federal laws and regulations to identify both areas of overlap (rights and protections appear to be the same or similar) and gaps (rights and protections were not found). Table 1 presents a summary of these findings. [Section 6.3 Appendix 3 – Explanation of Gaps for Rights and Protections in Exempt Settings](#), subsections 6.3.1 to 6.3.3 of this report include detailed crosswalks and evidence to support this summary.

TABLE 1: COMPARISON OF CHAPTER 144G ASSISTED LIVING LAW WITH EXEMPT SETTINGS

144G Chapter	Addressed in Exempt Settings	Partially Addressed in Exempt Settings (not as Comprehensively as in 144G)	Not Addressed in Exempt Settings
Operations and Physical Plant Requirements (Ch. 144G.40 – 41, 45)	<p>Minimum Assisted Living Facility Requirements (41) subdivisions:</p> <ul style="list-style-type: none"> • Infection control program • Resident grievances; reporting maltreatment • Protecting resident rights. 	<p>Minimum Assisted Living Facility Requirements (41) subdivisions:</p> <ul style="list-style-type: none"> • Minimum requirements • Policies and procedures • Resident councils • Family councils 	<p>All subdivisions under Housing and Services (40).</p> <p>All subdivisions under Minimum Site, Physical Environment, and Fire Safety Requirements (45).</p> <p>Clinical nurse supervision under Minimum Assisted Living Facility Requirements (41).</p>
Contracts, Terminations and Relocations (Ch. 144G.50 – 57):	<p>A small number of subdivisions under 144G.50-57:</p> <ul style="list-style-type: none"> • Contract required • Contract filing • Contract termination for nonpayment • Contract violation • Right to appeal • Rights cannot be waived • Closure plan required 	<p>Three subdivisions under 144G.50-57:</p> <ul style="list-style-type: none"> • Notice of contract termination required • Content of notice of termination • Duties of facilities 	<p>Most of 144G.50-57:</p> <ul style="list-style-type: none"> • AL Contract • Arbitration • AL Contract Terminations • Nonrenewal of Housing • Appeals of Contract Terminations • Coordinated Moves • Transfer of Residents within Facility • Planned Closures
Resident Rights and Protections (Ch. 144G.90 – 9999):	<p>All subdivisions under Required Notices (90).</p> <p>All subdivisions under Restrictions under HCBS Waivers (911).</p> <p>All subdivisions under Consumer Advocacy and Legal Services (93).</p> <p>Most subdivisions under Assisted Living Bill of Rights (91).</p>	<p>Assisted Living Bill of Rights (91) subdivisions:</p> <ul style="list-style-type: none"> • Participation in care and service planning • Visitors and social participation • Personal and treatment privacy • Resident councils • Family councils 	<p>Assisted Living Bill of Rights (91) subdivisions:</p> <ul style="list-style-type: none"> • Individual autonomy • Access to technology • Right to come and go freely • Individual autonomy • Right to control resources • Communication privacy • Access to technology <p>All subdivisions under OOLTC (95) and Resident Quality of Care and Outcomes Improvement Task Force (9999).</p>

Lastly, we conducted an environmental scan of other states' approaches to oversight of similar HCBS delivered to comparable target populations in publicly financed housing. A literature review of credible resources helped us to narrow our scope to states with innovative strategies for integrating housing and HCBS supports, including Massachusetts, Vermont, and Louisiana. Notable findings include:

- Massachusetts' approach to regulating HCBS providers is shaped by the strength of the connection between the services themselves and the individual's housing supports.
- Vermont's HCBS provider standards create a clear distinction between traditional congregate care settings and those congregate settings more closely aligned with typical community living.
- Louisiana requires separation of the housing and HCBS provider networks and does not permit housing developers or agencies to also be service providers.

Our Initial Research Report findings and subsequent PCG-DHS discussions will inform PCG's approach to the remainder of this engagement. Follow-up activities may include – but not be limited to – additional research and holding virtual stakeholder / state agency leadership forums to discuss areas of congruency, gaps, inconsistencies, and unique Minnesota characteristics, with the goal of formulating solutions, compromises, and recommendations. PCG will provide our final deliverable outlining proposed recommendations to DHS for review and feedback prior to finalization.

2 INTRODUCTION

2.1 ACRONYMS AND GLOSSARY

The following terms are used throughout this document. The full meaning of each of these commonly used acronyms is provided here for ease of reference to readers.

Acronym	Description
AFCH	Adult Family Care Home
AL	Assisted Living
ALCP	Assisted Living Conversion Program
ALF	Assisted Living Facility
BI	Brain Injury
BIPOC	Black, indigenous, and people of color
CADI	Community Access for Disability Inclusion
CL	Customized Living
CMS	Centers for Medicaid & Medicare Services
CSPECH	Community Support Program for People Experiencing Homelessness
DHS	Department of Human Services
ERC	Enhanced Residential Care
EW	Elderly Waiver
FHA	HUD Federal Housing Administration
HCBS	Medicaid Home and Community-Based Services
HHS	United States Department of Health and Human Services
HUD	Housing and Urban Development
IRS	Internal Revenue Service
ISCH	Individual support and community habilitation
LA	Louisiana
LIHTC	IRS Low Income Housing Tax Credit
MA	Massachusetts
MARC	Minnesota Adult Abuse Reporting Center
MDH	Minnesota Department of Health
MHFA	Minnesota Housing Finance Agency
MIHC	Monitored in-home caregiving
MPHA	Minneapolis Public Housing Authority
OOLTC	Office of Ombudsman for Long-Term Care
PCG	Public Consulting Group LLC

SEH	Service Enriched Housing
SME	Subject matter expert
SSI	Social Security Income
US	United States of America

2.2 PURPOSE AND BACKGROUND

PCG has been contracted by DHS to evaluate the regulatory environment of specific affordable housing settings and consulting with stakeholders to provide recommendations regarding appropriate regulatory oversight and payment policies for customized living services delivered in these settings. During the course of this engagement, PCG will conduct policy research into regulatory and financing issues affecting certain affordable housing settings, facilitate a stakeholder engagement process to identify and document stakeholder concerns and priorities, and gather feedback on proposed recommendations.

On August 1, 2021, the Minnesota assisted living licensure law (Minnesota Statutes, chapter 144G) took effect. This law established regulatory standards for the provision of housing and services in assisted living (AL) facilities and assisted living facilities with dementia care to help ensure the health, safety, well-being and appropriate treatment of residents. However, certain settings do not require a license, as defined in 144G.08, Subd. 7.

As a result of this law, DHS updated the provider standards to deliver customized living (CL) services available under Medicaid HCBS (EW, CADI, and BI) waivers. Since August 1, 2021, providers must be licensed as either 1.) an assisted living facility under 144G or 2.) a comprehensive home care provider under 144A (and be delivering services in an affordable housing setting, as defined under 144G.08, Subd.7, (10) to (13)) in order to deliver customized living services.

As the law was being developed, DHS and stakeholders identified some affordable housing settings where CL services were being delivered but who were unable to become licensed AL facilities due to housing regulations and financing. DHS included these facilities in the list of settings not required to have an AL facility license in order to preserve models that provide services to people in affordable housing and allows comprehensive home care providers to deliver CL in those settings.

During the 2021 legislative session, advocates expressed concerns about losing the consumer protections in the affordable housing settings identified above. These settings had previously been required to register as housing with service establishments under 144D. This housing with services law was scheduled to end on July 31, 2021, with no new state regulation to fill this gap. As a result, the legislature passed new requirements for these settings under 325F, Consumer Protections (located in the 2021 1st Special Session, Chapter 7, Article 13, Section 65).

3 METHODOLOGY

The methodology section describes the different approaches PCG used to collect data for review of customized living exempt settings.

3.1 PRIMARY TASKS

DHS-defined primary tasks for this contract include:

- **Identify stakeholders.** PCG in collaboration with DHS identified interested stakeholders, including organizations that have been involved in discussions regarding regulatory changes for these settings: advocacy organizations, providers and provider associations, MHFA, MDH and HUD.

- **Develop and implement a stakeholder engagement process.** The stakeholder engagement process includes:
 - Gathering input from stakeholders regarding their primary concerns on this topic.
 - Facilitating outreach to individual stakeholder groups to gather more detailed information, as warranted.
 - Sharing findings, research, and gathering feedback.
- **Schedule and facilitate meetings.** Due to the ongoing COVID-19 pandemic, all meetings for this scope of work are held virtually. PCG collaborates with DHS to identify meeting days and participants.
- **Communicate with stakeholders.** PCG is responsible for drafting and distributing communication with stakeholders, as a group and at the individual level.
- **Draft Initial Research Report.** PCG will develop an Initial Research Report identifying stakeholder concerns and priorities, analysis of feedback, research on Minnesota regulations and policy, and research from other states.
- **Draft Final Report.** PCG will create a final summary of outcomes and activities to present and share with DHS. This will be a culmination of the research, initial review, feedback gathered throughout the process, and final outcomes, including any recommendations.

3.2 STAKEHOLDER ENGAGEMENT

From the outset of this project, it was clear that stakeholder engagement was a key priority for this scope of work. PCG facilitated stakeholder engagement to identify and document stakeholder concerns and priorities. PCG employed systematic methods to contact, schedule, interview and document engagement with key individuals throughout the scope of work.

3.2.1 Stakeholder Engagement Plan

PCG in collaboration with DHS developed a Stakeholder Engagement Plan that outlines the approach to communicating and interacting with stakeholders, including timelines, methods to identify stakeholder availability, documenting planned meetings, facilitator guides and contact information. This is a living document that is updated throughout the project as needed.

3.2.2 Stakeholder Forums

PCG in collaboration with DHS identified interested stakeholders to engage and participate in an Initial Stakeholder Forum. Interested stakeholders included organizations that have been involved in discussions regarding regulatory changes for customized living exempt settings including advocacy organizations, provider associations, MHFA, MDH, and HUD. Prior to conducting the stakeholder forum, PCG developed forum materials to include the initial communication to stakeholders, a PowerPoint presentation providing an overview of the scope of work, and guiding questions that were reviewed and approved by DHS.

Due to the COVID-19 pandemic, PCG conducted all stakeholder engagement virtually. PCG contacted all stakeholders to notify them of the upcoming forum, its purpose/goals/timelines, expectations for stakeholder participation and involvement, and length, and invited them to provide their availability via Doodle poll. PCG scheduled the forum for the day/time that worked best for the majority of individuals. PCG sent an invite link via e-mail to all invited stakeholders. Stakeholders initially invited to the forum were encouraged to extend the invitation to other stakeholders as appropriate. DHS and PCG welcomed all interested parties to attend the initial forum. A total of 32 individuals attended the forum, which was held via the Zoom platform and lasted 1.5 hours. Those who attended the initial forum were added to ongoing stakeholder communications and engagement efforts.

Feedback received from the forum was documented and analyzed to identify stakeholder concerns and priorities. The virtual stakeholder forum was recorded to be used for DHS and PCG internal use only. A list

of organizations that participated in the forum, as well as those that were invited but were unable to attend, can be found in [Appendix 1: Initial Stakeholder Forum Participants](#).

3.2.3 Stakeholder Interviews

After completion of the Stakeholder Forum, PCG collaborated with DHS to identify stakeholders for individual and group interviews. PCG conducted follow-up interviews with 36 individuals to gain a more in-depth understanding of concerns and priorities raised during the forum and to gather additional information. Individuals who were invited to and/or attended the initial forum – including those who participated, those who were unable to participate but expressed interest, and those who were identified after the initial forum – received an invitation to participate. Additionally, customized living services exempt providers were invited to attend.

PCG developed a set of guiding questions categorized into the following groups for interview: Providers/Provider Associations, Advocates, MHFA, HUD and MDH. Questions were submitted to DHS for review and approval. PCG distributed electronic communication to identified stakeholders to determine their interest in participating in an individual/group interview. PCG scheduled interviews for the day/time that worked best for interested stakeholders. For those individuals who expressed an interest in participation but were unable to participate due to scheduling conflicts, PCG provided the questions electronically to allow individuals the opportunity to respond.

PCG began each interview by notifying individuals that the sessions were being recorded and would be used for DHS and PCG internal use only. In addition to the guiding questions, PCG asked ad hoc questions, based on responses received from participants. Feedback received from all interviews was documented and analyzed to identify stakeholders' concerns and priorities. After analyzing information received from stakeholder interviews, PCG also engaged stakeholders via email for follow-up questions. A list of organizations who participated in interviews can be found in [Appendix 2: Follow-Up Stakeholder Interviews](#).

3.3 DATA COLLECTION AND RESEARCH

To gain a better understanding of Minnesota's CL services and exempt settings, PCG submitted an information request to solicit relevant documentation. Upon receipt, PCG analyzed information including:

- List of exempt settings currently enrolled with DHS to deliver customized living services
- Summary background document developed by DHS
- Prior internal analysis conducted by DHS
- Public comments for March 2021 Waiver amendments
- Contact information for identified stakeholders

PCG team members systematically analyzed background information to understand the current operating conditions and identify questions for stakeholder engagement.

Through stakeholder engagement, stakeholders provided PCG with additional documents that were reviewed and analyzed, including:

- Permanent Supportive Housing Evidence-Based Practice Stakeholder Group and Housing Supports for Adults With Serious Mental Illness Grantee Learning Community
- Touchstone Mental Health Exempt Setting Presentation
- Clare Housing Exempt Setting Presentation
- HUD Section 811 Sample Lease
- Touchstone Mental Health Sample Exempt Settings Lease
- MHFA Housing Infrastructure Bonds Guide
- DHS Provider Manual

- Legal Requirements in Senior Housing with Services
- Tenant File Resident Handbook

Feedback received during the stakeholder engagement comprised of comparing rights established in 144G Assisted Living to:

- Chapter 325F.722 Consumer Protections for Exempt Settings
- Chapter 144A.43-47 Home Care Program and 144A.471-483 Home Care Licensing
- Chapter 245D.04 Home and Community-Based Service Standards Service Recipient Rights
- Chapter 504B Landlord and Tenant Law
- HUD Lease Agreement
- MHFA Lease Agreement

PCG created a matrix comparing rights in the suggested documents, except for the MHFA Lease Agreement, to identify gaps in rights for exempt settings.

3.4 LIMITATIONS

PCG has noted the following limitations with this scope of work:

- The issue is complex, with intersection of many conflicting federal, state, and local laws, statutes, regulations, rules, policies and procedures, and licensing.
- There are many stakeholders with competing priorities and varying levels of understanding of – and appreciation for – other stakeholders' concerns.
- There is a lack of similar low income, public housing combined with services models in other states.
- PCG has listed the source materials used in our Minnesota policy analysis with the acknowledgment that as this engagement progresses, we may discover, or be made aware of, other relevant materials that should be reviewed and included in our analysis.
- The environmental scan of other state policies was limited to three states that have been recognized as having an innovative approach to integrating housing and HCBS. There may be other states with policies more closely related to those of Minnesota that were not included in this analysis.

4 INITIAL RESEARCH FINDINGS AND ANALYSIS

4.1 SUMMARY OF STAKEHOLDER FEEDBACK

PCG repeatedly heard the following themes in both the initial stakeholder forum and the ten follow-up interviews:

- **Choice, independence and affordability.** It is important to recognize and honor the need to preserve choice, independence, and affordability of options for Minnesotans.
- **Consumer rights and protections.** There are concerns about equity, particularly for underrepresented groups. Individuals living and receiving services in exempt settings should be afforded the same robust consumer rights and protections as those who reside in AL facilities. There is a need to determine if current regulations covering exempt settings are sufficient to address concerns and if not, identify gaps and the best way to address them.
- **Individuals who do not receive services.** Not all individuals living in exempt settings require services. Is there a way to provide the same rights and protections to these individuals without taking away the rights (and privacy) of those not receiving services?

- **Maintenance of affordable housing options.** It is important to keep affordable housing options available. Stakeholders expressed concern that individuals would not be able to maintain their existing housing arrangement if they were not able to access CL services in their current setting.
- **Housing and service providers as separate entities.** There are many types of exempt settings and frequently, housing and service providers are separate entities. Some exempt housing providers may be able to obtain an AL license, but many will not for financial and other reasons.
- **Maintenance of existing providers and services.** If forced to convert to an AL license, some providers will stop providing services. This may result in a shortage of providers, remove residents' ability to choose their own provider, conflict with the HUD requirement for multiple providers, and subject residents not requiring services to additional regulations.
- **Alternative settings classifications.** HUD is open to alternative settings classifications, as long as residents continue to be protected. HUD does not provide oversight or protections, nor do they allow Section 8 funding to be used for health-related services. One building that received funding via HUD's Assisted Living Conversion Program is licensed as AL, so it is complicated but not impossible.

4.1.1 Themes and Concerns Raised During Initial Stakeholder Forum

PCG posed **six questions for discussion** to stakeholders participating in the initial stakeholder forum held on December 13, 2021. The majority of stakeholders consisted of representatives from provider associations and advocacy organizations, along with representatives from MDH, MHFA, and HUD.

What is your reaction to DHS' stated project goal of promoting models that pair affordable housing and services for people on Home and Community-Based Services (HCBS) waivers, while ensuring appropriate regulations and consumer protections?

- Provider associations stressed that these regulations only affect a subset of beneficiaries and their needs, highlighted the importance of keeping affordable housing available for those who do not need a "laundry list" of services, and noted that not all individuals living in the exempt settings require services.
- Advocacy organizations raised concerns about equity, specifically, whether individuals living and receiving services in exempt settings are afforded the same robust consumer protections as those who reside in AL facilities who are covered under 144G. They cautioned against setting up a false choice between affordability and cost vs. provision and protection of consumer rights and pointed out the need to define what are "appropriate" regulations and consumer protections.
- Both providers and advocates agreed on the importance of honoring and recognizing the need to preserve choice, independence, and affordability of options for Minnesotans.

What should PCG's priorities be for researching and gaining a shared understanding of the "exempt settings" issue? Stakeholder priorities are listed in **Figure 3**.

FIGURE 3: STAKEHOLDER PRIORITIES

Stakeholder Priorities

- Define populations, settings, and review settings requirements (including state and federal financing).
 - Evaluate whether 325F.722 meets the need for robust consumer rights and protections.
 - Understand housing requirements and financing.
 - Consider whether individuals would find housing and services if these CL payments didn't exist.
 - Evaluate the impact of exempt settings on different underrepresented groups.
 - Compare the rights, consumer protections, and regulations granted under 144G with those of exempt settings to identify and advise ways to close gaps without impacting access to housing.
 - Understand exempt providers' reasons for not pursuing AL licensure.
-

Regarding the “exempt settings” issue, what questions would you like to see answered as a result of this process?

- Providers suggested PCG evaluate whether current regulations covering exempt settings (e.g. home care, HUD, building codes, 325F.722) are sufficient to address concerns, and if not, determine the best way to address these gaps other than AL licensure. They also pointed out that affordable housing that uses tax credit dollars cannot become a licensed AL setting.
- Advocates noted that 325F.722 was intended to be a placeholder to temporarily retain the existing (but minimal) protections under 144D. They suggested that residents of exempt settings should have access to the robust level of rights and protections afforded by 144G, encouraged PCG to consider how 325F.722 could be improved, and asked PCG to consider what 144G protections, if any, are not applicable to residents of currently exempt settings.

What issues do you think DHS and other stakeholders need to understand? What are other ways we could gather additional information on these issues?

- Providers, federal and state representatives mentioned understanding HUD programs and the public housing perspective, as well as understanding evidence-based practices of Permanent Supportive Housing and the conflict with AL licensed settings. Providers also wondered if adding AL licensure to exempt settings would be prohibitive in cases where providers only deliver services to a handful of individuals.
- Advocates suggested soliciting feedback from residents regarding their experience receiving services and reviewing complaints filed with the Minnesota Adult Abuse Reporting Center (MARC) or MDH to see if dementia care concerns have been raised under the home care law. They also suggested PCG speak with Minneapolis Public Housing Authority (MPHA) about Thomas T. Feeney Manor, the first AL public housing option in the country (provides both housing and services under two separate contracts).

What is your perspective on the current structure? What is working well with the current structure? What is not working/could be improved with the current structure?

- Providers again pointed out that not all individuals living in HUD housing require services. They asked if there is a way to provide rights to individuals receiving services without taking away the rights (and privacy) of those not receiving services. They also shared positive feedback from residents in exempt settings who have felt no changes in housing or services as a result of the change in legislation.

- Advocates noted that the structure has not changed much related to dementia care services in the exempt settings but reiterated the need to compare the consumer protections between the AL licensure law and the laws governing the exempt settings to identify the gaps.



Are there other stakeholders who should be involved with this effort who are not present here today? Stakeholders suggested the Minneapolis Public Housing Authority, National Alliance on Mental Illness, and individuals receiving services.



4.1.2 Themes and Concerns Raised During Stakeholder Interviews

PCG scheduled one hour stakeholder interviews as a follow-up to the initial stakeholder forum. The purpose of these one hour interviews grouped by entity type (including providers and provider associations, advocacy organizations, HUD, MDH and MHFA) was to gather more detailed information than what was collected at the initial stakeholder forum. All interested stakeholders were invited to participate, regardless of whether or not they were able to attend the initial forum. Stakeholders were encouraged to send PCG any additional relevant information or materials at the end of each interview.

Table 2 provides a summary of the highlights from the interviews. Our intent was to capture feedback as accurately as possible, as it was conveyed to us by stakeholders. As such, we have not evaluated in this section of our report whether this feedback is an accurate reflection of relevant statutes, rules and regulations, policies, etc.

TABLE 2: STAKEHOLDER INTERVIEW HIGHLIGHTS

Program	Highlights of Interview
 <p>Provider and Provider Associations</p>	<ul style="list-style-type: none"> • AL physical plant and other licensing requirements would be difficult to meet – congregate dining (meals / kitchen / nutrition), fire codes, call lights, activity requirements, etc. • Financial implications – exempt settings would have to fund an AL license for both the building (based on the number of units, not part of HUD budget) and every resident of the building (fee for each resident, including those not receiving services). • Exempt settings are not configured to provide 24/7 staffing. AL licensure rule states setting must transition individuals back from a hospital setting at all hours would be problematic. • Housing and providers are often separate entities. Investors will not support merging the two. • AL licensure would <ul style="list-style-type: none"> ◦ Would remove residents’ ability to choose their own provider, and conflict with HUD requirement for multiple providers. ◦ Would subject residents who do not require services to additional regulations and requirements. • If forced to convert to AL license, some providers will stop providing services. This could create a shortage of providers across the state. • IRS tax credit regulations specifically state that states cannot use funds for AL settings or those that require 24-hour care. Many of the programs that MHFA uses to fund development are themselves funded in part by tax credits, meaning that MHFA-funded settings are in many cases bound by these same restrictions. Additionally, guidance for many MHFA programs specifically prohibits the use of these settings for assisted living.
 <p>Advocacy Organizations</p>	<ul style="list-style-type: none"> • Consumer protections throughout the AL license (144G) are more robust than protections in 325F, particularly 144G.50-.57 and .90-.95 and the protections governing transfers between facilities. <ul style="list-style-type: none"> ◦ Concern that HUD facilities are exempt from protections, resulting in inequality between vulnerable populations, inequity and discrimination for those residing in public housing. ◦ 144G addresses the lack of coordination between housing and service providers. • Consumer protections are different for what is essentially the same service. • There are gaps in physical plant protections. • There are many types of exempt settings. It should not be assumed that all of them cannot get an AL license, although some exempt settings appear to have AL level of care. <ul style="list-style-type: none"> ◦ Can some exempt settings obtain AL license without jeopardizing low income tax credits? ◦ Design a structure that provides rights and protections for settings that cannot obtain an AL license. • Need comprehensive list of exempt settings explaining why they are exempt, or information on whether they are complying with 325F.722.

 <p>Minnesota Department of Health (MDH)</p>	<ul style="list-style-type: none">• Services provided under comprehensive home care and AL license are the same, but problem is who can regulate what.• Some of these exempt settings serve similar populations but do not have to follow the same rules (such as physical plant), so it seems they are lowering the bar.• There is a waiver concept that would provide money for settings to make updates to come into compliance, but this is not guaranteed unless legislature requires certain things.<ul style="list-style-type: none">◦ Setting would have to come into regulation for all national billing codes. This could be a problem for smaller providers.• There are staffing requirement differences between comprehensive home care and AL license, and additional requirements for settings that offer memory care.• DHS only pays for Medicaid services and is not allowed to pay for the rest of the building to implement prohibitions or protections.
 <p>Minnesota Housing Finance Agency (MHFA)</p>	<ul style="list-style-type: none">• Consumer protections for services are linked to the funding source. MHFA relies on this.• Individuals do contact MHFA (asset management, compliance, and supportive housing teams) for some issues. MHFA then works with the appropriate entity to resolve the issue.<ul style="list-style-type: none">◦ Compliance and asset management teams perform regular inspections.◦ MHFA is actively exploring ways to solicit tenant feedback.◦ Review tenant selection and screening criteria.• IRS tax credit regulations specifically state that states cannot use funds for AL settings or those that require 24-hour care.<ul style="list-style-type: none">◦ MHFA is bound by these same restrictions when funding developments.◦ Some state programs are paired with tax credits regularly (MHFA shared Housing Infrastructure Bonds Guide).◦ Tax credits are the largest source of financing.

4.2 POLICY ANALYSIS

In this section PCG presents our initial federal and state policy research into the regulatory and financing issues affecting the exempt affordable housing settings.









For federal policy we reviewed Medicaid HCBS provider standards, including the Keys Amendment and HCBS settings regulation, and HUD and MHFA policies and programs in order to identify opportunities and challenges.

For the state policy review PCG compared relevant consumer rights and protections established by the Minnesota Statutes 2021 Chapter 144G Assisted Living law with the consumer rights and protections in other relevant state and federal laws and regulations to identify both areas of overlap (rights and protections appear to be the same or similar) and gaps (rights and protections were not found).

4.2.1 State and Federal Policy

Multiple state and federal programs, overseen by several different agencies, impact the rules and regulations that comprise AL licensure in Minnesota. Medicaid policy guides the ways that services can be designed and delivered to this population, while HUD, IRS, and MHFA policies also impact the types of services that can be delivered in various settings. In some cases, these programs have different, or even diverging, goals. This makes it challenging to navigate this system for housing and service providers and those seeking services, despite the overall focus on providing choice and protecting the rights of individuals. Some highlights of our research can be found in **Figure 4** below.

FIGURE 4: STATE & FEDERAL POLICY RESEARCH HIGHLIGHTS

	States have broad authority in defining the HCBS they choose to offer and in determining the qualifications and standards for the individuals and entities who deliver them.
	Though Medicaid funds cannot be used to cover room and board expenses in HCBS settings, Medicaid agencies still have an obligation to assure that HCBS are delivered in a safe and effective manner and retain the characteristics of typical home and community-based living.
	Many funding streams for affordable housing, including a number of MHFA programs, explicitly bar housing developed with these funds from being used for “health-related” activities.
	The definition of “health-related” varies by program but in some cases assisted living is specifically included in this definition.
	Where services are envisioned as part of a housing program, it is often required that service provision and property management be handled by separate entities.
	Past interpretations of IRS code indicate that a licensed assisted living facility would likely be considered to be a “health care facility.”
	Many MHFA funding mechanisms rely on IRS tax credits, which are not approved for use to develop health care facilities.
	Some HUD-funded assisted living settings have been AL licensed, but no additional funding is available from HUD to pay licensure fees.

4.2.1.1 Medicaid HCBS Provider Standards

As HCBS waivers authorized under Section 1915(c) of the Social Security Act, the Brain Injury (BI), Community Access for Disability Inclusion (CADI), and Elderly Waiver (EW) programs must meet the federal standards for HCBS program administration in order to qualify for federal matching funds. The US Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) has not established minimum qualifications for HCBS providers, and the states are therefore granted considerable latitude in determining those qualifications necessary to ensure safe and effective service delivery. CMS program approval criteria do stipulate that provider qualifications must:

- Be reasonable and commensurate with the nature of each service;
- Not serve as an unjustified obstacle to the continuous, open enrollment of providers; and
- Not pose as an unnecessary limitation of participant choice.

States must therefore establish provider qualifications which strike the appropriate balance between those standards which will assure the absolute health and safety of participants with those standards that will attract and maintain a sufficient network of providers and maximize participant choice.

In its application to operate an HCBS waiver program, the state must verify HCBS providers meet all applicable state licensure and certification requirements and must specify any additional standards providers must meet. Those additional standards may include education, training, or experience requirements for agency staff and/or individual caregivers; limitations on/environmental conditions of the settings in which services are rendered; accreditation by a recognized body; or any other qualifications

deemed necessary to demonstrate the provider's ability to meet the needs of the program's target population.

Once the program specifications have been approved by CMS, only those providers determined by the state to have met all applicable qualifications are able to enroll and receive reimbursement for the provision of HCBS.

Keys Amendment

Section 1616(e) of the Social Security Act, also known as the Keys Amendment, requires that states establish, maintain, and enforce standards for any category of institutions, foster homes, or group living arrangements in which a significant number of Supplemental Security Income (SSI) recipients are likely to reside. For HCBS provider settings subject to the Keys Amendment, CMS required states confirm that its standards for those settings address topics such as admissions, physical environment, sanitation, safety, and resident rights. For HCBS delivered in congregate settings serving four or more individuals who were unrelated to the proprietor, the states were also required to describe the steps taken to ensure those settings retained a home and community-based character.

The application process for an HCBS waiver program no longer requires states demonstrate compliance with the Keys Amendment's provisions as the home and community-based settings regulations discussed below have established a more rigorous standard. However, the states must certify compliance annually by submitting evidence of enforcement standards to the Social Security Administration.

Home and Community-Based Settings Regulation

State agencies across the country have embraced HCBS as a viable, cost-effective alternative to institutional care. In the federal fiscal year 2013, HCBS expenditures surpassed institutional care expenditures and accounted for a majority of nationwide Medicaid long-term care spending for the first time in the program's history. However, as states expanded options for HCBS, some of the settings in which those services were rendered took on qualities and characteristics of the institutions they were intended to replace.

In 2014, CMS published a notice of final rulemaking containing several provisions to ensure individuals receiving HCBS are afforded the same opportunities to access the benefits of community living as individuals who do not receive HCBS. The rule established new criteria for Medicaid reimbursement, including provisions that the setting must:

- Be integrated in and support full access to the greater community;
- Be selected by the individual from among setting options;
- Ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
- Optimize autonomy and independence in making life choices; and
- Facilitate choice regarding services and who provides them.

When HCBS are delivered in residential settings that are owned or controlled by the service provider, the CMS rule imposed additional protections to assure those settings retained the qualities of typical home and community-based living. Additional requirements for these settings include:

- The individual has a lease or other legally enforceable agreement providing similar protections;
- The individual has privacy in their unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- The individual controls his/her own schedule including access to food at any time;
- The individual can have visitors at any time; and
- The setting is physically accessible.

4.2.1.2 HUD Policy

An interview with HUD staff from the Minneapolis field office provided background information on the Department's interest in state licensure for assisted living, as well as the Assisted Living Conversion Program (ALCP), which provided funding to convert HUD-assisted rental housing units into state-licensed assisted living units; a list of properties receiving these grants is included in [Appendix 4](#). Key takeaways from that interview, as well as a subsequent review of policy and program information, are summarized in this section to provide some additional background on the most common HUD funding mechanisms for developments that may be considered exempt settings.

HUD relies on states to license, regulate, and provide oversight with respect to the provision of health and support services in properties that receive or have received HUD funding.

HUD has certain funding programs designed for assisted living, namely Section 232 insured mortgages, and ALCP grants. Assisted living facilities funded under these programs must meet HUD's definition of "assisted living facility" which includes a requirement for state or municipal licensure and regulation.

HUD also has a wide array of programs that provide financing, rent subsidies, or other funding for rental housing. Some of these programs are designed for or may allow for provision of support services for households with elderly persons or persons with disabilities. However, unless these rental housing properties are combined with another HUD program that requires ALF licensing, HUD generally does not require a specific facility-based license and relies on property owners to comply with (and ensure service provider compliance with) any state and local requirements for the supportive services, meals, or other amenities or care offered to residents.

HUD's oversight and monitoring varies by program, but generally focuses on housing requirements, not services. HUD expects rental housing properties to adhere to all program-specific requirements, including those relating to occupancy, rent, leasing, and operations. These requirements are not the same across all HUD rental housing programs. In order to ensure compliance as rental housing, it is generally expected that provision of housing and services are kept separate. This is especially true in projects that receive rental assistance under Section 8 or Section 202, because the rent assistance generally cannot be used to pay for the supportive services and related costs.

These restrictions would also make it challenging for some of these properties to fund requirements needed to meet AL licensure, such as increased staffing, or even the annual licensing fees, since existing HUD administrative funds cannot be used for this purpose.

HUD settings present a number of opportunities and challenges with respect to AL licensure.

Opportunities

- **HUD supports state regulation and licensure of healthcare and supportive services and facilities.** In our discussions with HUD staff, they were interested in making sure that residents of properties that received HUD funding received any needed protections. Many of the rental housing programs that allow or permit supportive services also prohibit or limit certain on-site health-related uses. Some of these programs have other features or requirements that are incompatible or less compatible with Minnesota's new assisted living license. However, for most programs designed to include supportive services, there is no blanket prohibition against a project being licensed as assisted living (or an equivalent) if required by the state, especially if needed for Medicaid waivers or other provision of state services, as long as the project is still able to adhere to HUD's requirements. The issue for many of these supportive service rental housing properties is not that HUD prohibits a license but whether the licensing requirements are compatible with operation as rental housing under HUD requirements.

- **Some HUD rent-assisted projects have been licensed.** Based on feedback from DHS, there are at least three HUD buildings that have received ALCP grants and have been licensed for AL in Minnesota, though they also receive HUD rent assistance.
- **Licensure is a HUD requirement for assisted living facilities funded with ALCP grants or Section 232 mortgages.** The next phase of research for this project will involve looking at specific properties that receive this funding and their status as an ALF or whether they are operating to provide customized living services under the exemption. Initial findings can be found in the Appendix 4 of this document; additional information will be incorporated into a future report. HUD staff indicated that the vast majority of these projects are operating under the MN ALF license and that they have discussed an alternative funding designation for the very small number of subsidized properties that received ALCP grants to convert rental units to ALF units prior to 2021 MN license changes, and who are now concerned that they cannot meet ALF license requirements.
- **Funding for Service Coordinators.** HUD does have a program that provides limited funding for a social service staff person, called a Service Coordinator, in certain rent-assisted HUD Multifamily Housing projects that are designated primarily for occupancy by the elderly. Service Coordinators assist elderly individuals and persons with disabilities, living in the HUD-assisted project and in the surrounding area, to obtain needed supportive services from community agencies. Service coordinators do not provide health services but serve as an important link between service providers and the rental housing owners.

Challenges

- **No use of HUD rental assistance to pay licensure fees.** HUD rental assistance in most Multifamily programs cannot be used to pay for AL licensure, which means rent-assisted properties required to obtain an ALF license would need to identify other sources for these fees that cost a property several thousand dollars or more per year.
- **Some of HUD's rental housing programs are designed for or expressly require a separate property owner and service provider, especially if services include healthcare.** Per HUD staff, it is generally the case that the owner of the property is not the same as the provider of services, and certain funding streams have restrictions around use for health-related costs. In addition, some program guidance explicitly bars expenditures for medical personnel, such as the Section 202 program guidance, which states that "[n]o staff provisions may be made for doctors, nurses, or other medical personnel."¹
- **Staffing requirements would be hard to meet.** In buildings with a limited number of residents receiving services, owners would struggle to provide enough staff to meet AL licensure requirements.
- **HUD has a large number of programs for rental housing, with varying requirements or features that impact the operation of rental housing and supportive services.** Some of these programs prohibit project-based supportive services, while others allow or are designed for supportive services. And certain programs appear to be included under 144G exemptions 11-13, meaning a project funded under these programs may be exempt from the MN ALF license if deemed "rental housing" under state law. There are a wide variety of projects that may be exempt, and no single set of HUD operating requirements that apply to all exempt projects.

¹ <https://www.hud.gov/sites/documents/45713c1HSGH.PDF>, page 1-14.

Relevant HUD programs

The language in clauses 11-13 of the AL licensure regulations does not completely align with specific HUD programs. Per discussions with HUD staff, the exemption language appears to cover Public Housing "designated housing units" in rental housing projects, certain types of Section 8 rental housing, Section 202 rental housing, Section 811 rental housing, and the legacy congregate housing services program. This section provides a high-level overview of the description and purpose of some of the programs that commonly provide funding for exempt settings.

- **Section 811 Supportive Housing for Persons with Disabilities** – The Section 811 program was developed to allow persons with disabilities to live with dignity and independence within their communities by expanding the supply of housing that provides supportive services. These services are intended to address the needs of the residents. The program falls under the jurisdiction of HUD's Federal Housing Administration (FHA) Office of Multifamily Housing Programs. Currently, the Section 811 program has two components:
 - Capital Advances – HUD provides interest-free capital advances to nonprofit sponsors that are used to finance the development of rental housing with the availability of supportive services for persons with disabilities. These advances can be used for construction, rehabilitation, or acquisition, and do not have to be repaid if the housing remains available to very low-income persons with disabilities for at least 40 years. These projects have corresponding Project Rental Assistance Contracts (PRAC) providing rental subsidy.
 - Project Rental Assistance – Introduced in the last 10 years, this component requires state housing agencies to partner with state health and human services and Medicaid agencies to apply for rental assistance to support deeply affordable supportive housing for populations in need. These funds are not to be used for construction, but rather to provide rental assistance for tenants in units developed using funds from another source, such as the IRS Low Income Housing Tax Credit program (LIHTC).
- **Section 202 Housing for the Elderly** – The Section 202 program provides capital advances or direct loans to help finance the construction, rehabilitation, or acquisition of housing for very low-income elderly. In most cases it also provides rent subsidies that help keep the rents for these properties affordable for a very low-income population. As with Section 811, capital advances need not be repaid if the project serves very low-income elderly persons for 40 years. Public entities are not eligible to participate in this program; private non-profit organizations that meet program guidelines are eligible to apply.

Several other programs used to provide funding for facilities that may provide assisted living services are authorized under different statutes that are NOT included in the exempt language of the Assisted Living licensure regulations, including the following.

- **Section 232 Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted Living Facilities** – The Section 232 program provides insurance for mortgage loans that are used to construct, substantially rehabilitate, purchase, or refinance these facilities. This program is authorized under 12 USC 1715w, which is not covered in the exemption language in clauses 11-13. Facilities funded under this program are required to meet HUD's statutory definition of assisted living, have a state-regulated assisted living license, report any state notices that put that licensure at risk, and hold the license in the name of a HUD-approved "borrower" or "operator."
- **Assisted Living Conversion Program (ALCP)** – The ALCP provides funding to convert some or all of the units of an eligible development into an Assisted Living Facility (ALF) or Service Enriched Housing (SEH). This may include the unit configuration, common and services space and any necessary remodeling, consistent with HUD or the State's statutes or regulations (whichever is more

stringent). An eligible property receiving ALCP grant funds must meet HUD's statutory definition of "assisted living" and must be licensed and regulated by the State (or if there is no State law providing such licensing and regulation, by the municipality or other subdivision in which the facility is located). Service-Enriched Housing is housing that accommodates the provision of services to elderly residents who need assistance with activities of daily living in order to live independently. HUD does not require a license for SEH designated projects but defers to the states to determine appropriate oversight and licensure. Currently there are no SEH designated properties in Minnesota. All eligible projects must be owned by a private, non-profit entity and be designated primarily for elderly residents. This program, like many of the other referenced here, falls under the jurisdiction of HUD's Office of Multifamily Housing Programs. Per discussions with HUD staff, 10 developments in Minnesota have received ALCP grants; three of these properties appear in the MN Department of Health's Assisted Living licensure database as having been issued an Assisted Living license.

4.2.1.3 MHFA Policy

Minnesota Housing, the state's housing finance agency (also known as MHFA), funds many different kinds of programs to help achieve its mission to "collaborate with individuals, communities and partners to create, preserve and finance housing that is affordable." The programs most relevant to this project include tax credits and deferred loans that are used to encourage and fund the development of rental housing. Many of these programs leverage the IRS's Low Income Housing Tax Credit (LIHTC) program to help finance development and construction. Previous interpretations of IRS code published by the agency in response to questions from developers and housing finance agencies indicate that a licensed assisted living facility would likely be considered to be a "health care facility" as opposed to a "residential rental property," and therefore not eligible to receive tax credits. This interpretation means that any project that seeks to access MHFA funding through a program that utilizes tax credits may not include an AL component.

MHFA staff shared many examples of program guidance that bars the use of programs funded with program funds as AL and would preclude them from AL licensure. The extent and nature of this guidance, combined with the IRS restrictions on tax credits, has led the agency to conclude that it cannot fund licensed AL facilities. **Table 3** includes specific references to program guidance.

TABLE 3: MHFA PROGRAM GUIDANCE

Program	Related Guidance
Deferred Loan Capital Program (including HTF and ELHIF)	<p>Section 1.02 Use and Level of Funding Eligible Uses of Funds.</p> <ul style="list-style-type: none"> The proposed rental housing must consist of living accommodations for individuals and families. Ineligible housing developments include nursing homes, board and care facilities, and supervised living facilities licensed by the Department of Health or a delegated local department of health, or properties where all residents require an individual 24-hour plan for supervision, medical or health care.
Housing Infrastructure Bonds	<p>Section 2.02 - Assisted living facilities are not eligible for funding with the proceeds of HIBs</p>
MN Housing Tax Credit Qualified Allocation Plan	<p>Chapter 3, Section Q. - Any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, trailer park or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for HTCs under section 42.</p>
Rental Rehabilitation Deferred Loan	<p>Section 3.03 – Ineligible Properties:</p> <ul style="list-style-type: none"> Developments requiring licensing by the state (e.g., nursing homes, assisted living facilities).
HOME Investment Partnerships and National Housing Trust Fund	<p>Section 2.1 – Eligible Projects:</p> <ul style="list-style-type: none"> A property must provide permanent housing (e.g., no emergency shelters or other facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, dormitories [including farmworker dormitories])

This guidance, combined with the reliance on LIHTC-supported funding streams, has led to MHFA rejecting proposed developments that include an AL component, and present a significant barrier to AL licensure for MHFA funded developments under current regulations.

4.2.2 Minnesota Policy

PCG compared relevant consumer rights and protections established by the Minnesota Statutes 2021 Chapter 144G Assisted Living law with the consumer rights and protections in other relevant state and federal laws and regulations to identify both areas of overlap (rights and protections appear to be the same or similar) and gaps (rights and protections were not found). We have summarized our high-level findings below in **Table 4**. More detailed crosswalks and analysis are found in the sections that follow.

TABLE 4: COMPARISON OF CHAPTER 144G ASSISTED LIVING LAW WITH EXEMPT SETTINGS

144G Chapter	Addressed in Exempt Settings	Partially Addressed in Exempt Settings (not as Comprehensively as in 144G)	Not Addressed in Exempt Settings
Operations and Physical Plant Requirements (Ch. 144G.40 – 41, 45)	<p>Minimum Assisted Living Facility Requirements (41) subdivisions:</p> <ul style="list-style-type: none"> • Infection control program • Resident grievances; reporting maltreatment • Protecting resident rights. 	<p>Minimum Assisted Living Facility Requirements (41) subdivisions:</p> <ul style="list-style-type: none"> • Minimum requirements • Policies and procedures • Resident councils • Family councils 	<p>All subdivisions under Housing and Services (40).</p> <p>All subdivisions under Minimum Site, Physical Environment, and Fire Safety Requirements (45).</p> <p>Clinical nurse supervision under Minimum Assisted Living Facility Requirements (41).</p>
Contracts, Terminations and Relocations (Ch. 144G.50 – 57):	<p>A small number of subdivisions under 144G.50-57:</p> <ul style="list-style-type: none"> • Contract required • Contract filing • Contract termination for nonpayment • Contract violation • Right to appeal • Rights cannot be waived • Closure plan required 	<p>Three subdivisions under 144G.50-57:</p> <ul style="list-style-type: none"> • Notice of contract termination required • Content of notice of termination • Duties of facilities 	<p>Most of 144G.50-57:</p> <ul style="list-style-type: none"> • AL Contract • Arbitration • AL Contract Terminations • Nonrenewal of Housing • Appeals of Contract Terminations • Coordinated Moves • Transfer of Residents within Facility • Planned Closures
Resident Rights and Protections (Ch. 144G.90 – 9999):	<p>All subdivisions under Required Notices (90).</p> <p>All subdivisions under Restrictions under HCBS Waivers (911).</p> <p>All subdivisions under Consumer Advocacy and Legal Services (93).</p> <p>Most subdivisions under Assisted Living Bill of Rights (91).</p>	<p>Assisted Living Bill of Rights (91) subdivisions:</p> <ul style="list-style-type: none"> • Participation in care and service planning • Visitors and social participation • Personal and treatment privacy • Resident councils • Family councils 	<p>Assisted Living Bill of Rights (91) subdivisions:</p> <ul style="list-style-type: none"> • Individual autonomy • Access to technology • Right to come and go freely • Individual autonomy • Right to control resources • Communication privacy • Access to technology <p>All subdivisions under OOLTC (95) and Resident Quality of Care and Outcomes Improvement Task Force (9999).</p>

4.2.2.1 Policy Research Background and Approach

The Minnesota AL licensure law Chapter 144G Assisted Living established regulatory standards for the provision of housing and services in AL facilities to ensure the health, safety, well-being and appropriate treatment of residents. However, some settings were exempted from requiring a license and are defined in 144G.08, Subd. 7. To deliver CL services, these exempt settings must be licensed as a comprehensive home care provider under Chapter 144A and be delivering services in an affordable housing setting as

defined under 144G.08, Subd.7, (10) to (13). Previously, exempt settings had been required to register as housing with service establishments under Chapter 144D, but this law ended on July 31, 2021 and was replaced with new requirements under 325F.722.

During the initial stakeholder forum and in follow-up interviews, PCG and consumer advocates discussed the ways in which the rights and protections afforded by the AL license under 144G are more robust than the rights and protections afforded by Chapter 325F.722 Consumer Protections for Exempt Settings. PCG also heard providers and provider organizations say that they are bound by their comprehensive home care provider license under Chapter 144A and consumer protections of 325F.722, and other Minnesota statutes, such as Chapter 245D.04 Service Recipient Rights and Chapter 504B Landlord and Tenant to name a few.

Following these discussions, PCG initiated a comparison of what we determined to be relevant consumer rights and protections established in Minnesota Statutes 2021 Chapter 144G Assisted Living with the consumer rights and protections in other pertinent laws and regulations (outlined below) to identify areas where the laws appear to overlap (agreement), where the laws appear to be similar (rights and protections *do* exist, but may not be an exact match or as comprehensive as 144G), and where we could not locate similar consumer rights and protections for the exempt settings in the materials we reviewed (gaps). Because the Service Recipient Rights detailed in Minnesota Statutes 245D.04 were specifically mentioned by stakeholders, PCG considered including this statute in our comparison. However, upon further review, research, and discussion with DHS, we jointly concluded that the HCBS licensure standards in Chapter 245D do not apply to the customized living services delivered in exempt settings.

PCG's approach to identifying overlap or gaps consisted of the following:

- Individually analyzed relevant rights and protections covered in Chapter 144G and compared them to other pertinent exempt settings laws and regulations listed in **Table 5** to identify overlap or gaps in coverage.
- If PCG felt that the right / protection identified in 144G was addressed by one or more of the other pertinent exempt settings laws and regulations, we flagged the 144G right / protection as addressed.
- If PCG felt that the right / protection identified in 144G was only *partially* addressed by one or more of the other pertinent exempt settings laws and regulations, we flagged the 144G right / protection as partially addressed.
- If PCG felt that the right / protection identified in 144G was not addressed by one or more of the other pertinent exempt settings laws and regulations, we flagged the 144G right / protection as a gap (not addressed).

Table 5 describes the source materials PCG used in our analysis with the acknowledgment that there may be other relevant materials we should review and include in our matrix.

TABLE 5: SOURCE MATERIALS FOR ANALYSIS

<p>Chapter 144G Assisted Living</p> <ul style="list-style-type: none"> • 40-41, 45 Operations and Physical Plant Requirements • 50-57 Contracts, Terminations and Relocations • 90-9999 Residents Rights and Protections
<p>Chapter 325F.722 Consumer Protections For Exempt Settings</p>
<p>Chapter 144A Nursing Home and Home Care</p> <ul style="list-style-type: none"> • 43-47 Home Care Program • 471-483 Home Care Licensing
<p>Chapter 144.295 Disclosure of Health Records for External Research</p>
<p>Chapter 626.557 Reporting of Maltreatment of Vulnerable Adults</p>
<p>HUD Documents</p> <ul style="list-style-type: none"> • Section 811 Model Lease • Section 811 Supportive Housing for Persons with Disabilities • Section 202 Supportive Housing for the Elderly • Section 232 Mortgage Insurance for Nursing Homes, Intermediate Care, Board & Care and Assisted Living Facilities • Section 236 Program • Assisted Living Conversion Program (ALCP) • Residents Rights Guidance • HUD Handbook 4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs

To make our comparison more user-friendly, we created tables organized around the three major, relevant Chapter 144G categories: **Operations and Physical Plant Requirements; Contracts, Terminations and Relocations; and Residents Rights and Protections** (first column). Three additional columns denote where the laws appear to overlap (agreement), where the laws are similar, and where the laws appear to not be addressed in exempt settings (gaps).

4.2.2.2 Operations and Physical Plant Requirements (Chapter 144G.40-41, 45)

Chapter 144G.40 addresses responsibility for housing and services while 144G.41 addresses the minimum AL facility requirements, including infection control, clinical nurse supervision, resident and family councils, resident grievances and reporting maltreatment, and protecting residents' rights. 144G.45 speaks to the minimum site, physical environment, and fire safety requirements. **Table 6** denotes what rights and protections are addressed, addressed but not as comprehensive for exempt settings or not addressed in exempt settings for Operations and Physical Plant Requirements.

The requirements of Chapter 144G.41 Subdivisions 3, 7 and 8 are addressed in the exempt settings by rights and protections outlined in 144A and 325F. Rights and protections addressed include infection control

program, resident grievances and reporting maltreatment, and protecting resident rights. 144G.41 subdivisions 1, 2, 5 and 6 (minimum requirements of assisted living facilities, policies and procedures, resident councils, family councils) are addressed but not as comprehensive for exempt settings. Refer to [Appendix 3](#) for an explanation of the gaps in coverage for exempt settings. 144.41 Subdivision 4 (clinical nurse supervision), 144.40 and all subdivisions of 144G.45 do not appear to be addressed at all.

TABLE 6: RIGHTS & PROTECTIONS FOR EXEMPT SETTINGS - 144G OPERATIONS & PHYSICAL PLANT REQUIREMENTS

Chapter 144G Assisted Living Operations and Physical Plant Requirements			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
144G.40 Housing and Services	Subd. 1	Responsibility for housing and services.			Not addressed
144G.41 Minimum Assisted Living Facility Requirements	Subd. 1	Minimum Requirements.		144A.4791 Subd. 1 144A.4795 Subd. 4 325F.722 Subd. 2	
	Subd. 2	Policies and Procedures.		144A.476 Subd. 1 144A.4791 Subd. 1, 8, 11 144A.4792 Subd. 2 144A.4795 Subd. 1, 2, 4, 7 144A.4798 Subd. 1, 3 626.557 Subd. 4a Rights as resident of a HUD-assisted Multifamily Housing Property ²	
	Subd. 3	Infection control program.	144A.4798 Subd. 1, 2		
	Subd. 4	Clinical nurse supervision.			Not addressed
	Subd. 5	Resident Councils		Rights as resident of a HUD-assisted Multifamily Housing Property ²	
	Subd. 6	Family Councils.		Rights as resident of a HUD-assisted Multifamily Housing Property ²	
	Subd. 7	Resident grievances; reporting maltreatment.	144A.4791 Subd. 1		
	Subd. 8	Protecting resident rights.	144A.4791 Subd. 1		
144G.45 Minimum Site, Physical Environment, and Fire	Subd. 1	Requirements.			Not addressed
	Subd. 2	Fire protection and physical environment.			Not addressed
	Subd. 4	Design requirements.			Not addressed

² Note: "Rights as resident of a HUD-assisted Multifamily Housing Property" do not apply to all exempt settings.

Chapter 144G Assisted Living Operations and Physical Plant Requirements			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
Safety Requirements	Subd. 5	Assisted living facilities; Life Safety Code.			Not addressed

Please refer to section [6.3.1 in Appendix 3](#) for a more detailed analysis of the operations and physical plant requirements that are addressed in the exempt settings, although not addressed as comprehensively as in licensed AL settings covered by Chapter 144G.

4.2.2.3 Contracts, Terminations and Relocations (Chapter 144G.50-57)

Chapter 144G.50-57 addresses the assisted living contract, arbitration, contract terminations and appeals, nonrenewal of housing, coordinated moves and transfer of residents within a facility, and facility closure plans. **Table 7** depicts where rights and protections are addressed, addressed but not as comprehensive for exempt settings or not addressed in exempt settings for Contracts, Terminations and Relocations.

Few rights and protections in 144G.50-57 are addressed in exempt settings. Rights and protections addressed include contract requirements and how to file it, termination for nonpayment, termination for contract violation, rights cannot be waived, and closure plan required. These rights and protections are addressed in 144A and 504B. Rights and protections for 144G.52 Subdivisions 7 and 8 and 144G.55 are addressed in 144A, 504B, and HUD Lease Agreement but are not as comprehensive as 144G. Refer to **Table 7** for a description of the rights and protections not addressed in exempt settings. Most of the rights and protections in 144G.50-57 are not addressed.

TABLE 7: RIGHTS & PROTECTIONS FOR EXEMPT SETTINGS - CHAPTER 144G CONTRACTS, TERMINATIONS, & RELOCATIONS

Chapter 144G Assisted Living Contracts, Terminations and Relocations			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
144G.50 Assisted Living Contract	Subd. 1	Contract required.	504B.111		
	Subd. 2	Contract information.			Not addressed
	Subd. 3	Designation of representative.			Not addressed
	Subd. 4	Filing.	504B.115		
	Subd. 5	Waivers of liability prohibited.			Not addressed
144G.51 Arbitration					Not addressed
144G.52 Assisted Living Contract Terminations	Subd. 1	Definition.			Not addressed
	Subd. 2	Prerequisite to termination of a contract.			Not addressed
	Subd. 3	Termination for nonpayment.	504B.291		
	Subd. 4	Termination for violation of the assisted living contract.	504B.285		
	Subd. 5	Expedited termination.			Not addressed
	Subd. 6	Right to use provider of			Not addressed

Chapter 144G Assisted Living Contracts, Terminations and Relocations			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
		resident's choosing.			
	Subd. 7	Notice of contract termination required		144A.44 Subd. 1	
	Subd. 8	Content of notice of termination.		144A.44 Subd. 1	
	Subd. 9	Emergency relocation.			Not addressed
	Subd. 10	Right to return.			Not addressed
144G.53 Nonrenewal of Housing					
144G.54 Appeals of Contract Terminations	Subd. 1	Right to appeal.			Not addressed
	Subd. 2	Permissible grounds to appeal termination.			Not addressed
	Subd. 3	Appeals process.			Not addressed
	Subd. 4	Burden of proof for appeals of termination.			Not addressed
	Subd. 5	Determination; content of order.			Not addressed
	Subd. 6	Service provision while appeal pending.			Not addressed
	Subd. 7	Application of chapter 504B to appeals of terminations.			Not addressed
144G.55 Coordinated Moves	Subd. 1	Duties of facility.		144A.44 Subd. 1	
	Subd. 2	Safe location.			Not addressed
	Subd. 3	Relocation plan required.			Not addressed
	Subd. 4	License restrictions.			Not addressed
	Subd. 5	No waiver.	144A.44 Subd. 1		
144G.56 Transfer of Residents within Facility	Subd. 1	Definition.			Not addressed
	Subd. 2	Orderly transfer.			Not addressed
	Subd. 3	Notice required.			Not addressed
	Subd. 4	Consent required.			Not addressed
	Subd. 5	Changes in facility operations.			Not addressed
	Subd. 6	Evaluation.			Not addressed
	Subd. 7	Disclosure.			Not addressed
144G.57 Planned Closures	Subd. 1	Closure plan required.	504B.255		
	Subd. 2	Content of closure plan.			Not addressed
	Subd. 3	Commissioner's approval required prior to implementation.			Not addressed

Chapter 144G Assisted Living Contracts, Terminations and Relocations			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
	Subd. 4	Termination planning and final accounting requirements.			Not addressed
	Subd. 5	Notice to residents.			Not addressed
	Subd. 6	Emergency closures.			Not addressed
	Subd. 7	Other rights.			Not addressed
	Subd. 8	Fine.			Not addressed

Please refer to section [6.3.2 in Appendix 3](#) for a more detailed analysis of the contracts, terminations and relocations that are addressed in the exempt settings, although not addressed as comprehensively as in licensed AL settings covered by Chapter 144G.

4.2.2.4 Residents Rights and Protections (Chapter 144G.90-9999)

Chapter 144G.90-9999 covers residents rights and protections, including required notices, the assisted living bill of rights, restrictions under HCBS waivers, prohibited retaliation, consumer advocacy and legal services, Office of Ombudsman for Long-Term Care (OOLTC), and resident quality of care and outcomes improvement task force. **Table 8** shows for Residents Rights and Protections where rights and protections are addressed, addressed but not as comprehensive for exempt settings, or not addressed in exempt settings.

Most of the rights and protections in 144G.90, 91, 911, and 93 are addressed in the exempt settings by rights and protections outlined in 144A and 325F, with the exception of 144G.91 Subdivision 10 (individual autonomy) and Subdivision 11 (access to technology), which do not appear to be addressed. 144G.91 Subdivision 25 and 26 are addressed but not as comprehensive for exempt settings. Refer to [Appendix 3](#) to review an explanation of the gaps in coverage. In addition, all subdivisions of 144G.95 Office of Ombudsman for Long-Term Care and 144G.9999 Resident Quality of Care and Outcomes Improvement Task Force do not appear to be addressed at all.

TABLE 8: RIGHTS & PROTECTIONS FOR EXEMPT SETTINGS - CHAPTER 144G RESIDENTS RIGHTS & PROTECTIONS

Chapter 144G Assisted Living Residents Rights and Protections			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
144G.90 Required Notices	Subd. 1	Assisted living bill of rights; notification to resident.	144A.44 Subd. 1 144A.4791 Subd. 11		
	Subd. 2	Notices in plain language; language accommodations.	144A.44 Subd. 1		
	Subd. 3	Notice of dementia training.	325F.722, Subd. 5		
	Subd. 4	Notice of available assistance.	144A.44 Subd. 1		
	Subd. 5	Notice to residents;	504B.181 Subd. 1		

Chapter 144G Assisted Living Residents Rights and Protections			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
		change in ownership or management.			
144G.91 Assisted Living Bill of Rights	Subd. 1	Applicability	144A.4791 Subd. 14		
	Subd. 2	Legislative intent.	144A.44 Subd. 1		
	Subd. 3	Information about rights.	144A.44 Subd. 1		
	Subd. 4	Appropriate care and services.	144A.44 Subd. 1		
	Subd. 5	Refusal of care or services.	144A.44 Subd. 1		
	Subd. 6	Participation in care and service planning.		144A.44 Subd. 1	
	Subd. 7	Courteous treatment.	144A.44 Subd. 1		
	Subd. 8	Freedom from maltreatment.	144A.44 Subd. 1		
	Subd. 9	Right to come and go freely.			Not addressed
	Subd. 10	Individual autonomy.			Not addressed
	Subd. 11	Right to control resources.			Not addressed
	Subd. 12	Visitors and social participation.		325F.722 Subd. 2	
	Subd. 13	Personal and treatment privacy.		325F.722 Subd. 2 504B.211	
	Subd. 14	Communication privacy.			Not addressed
	Subd. 15	Confidentiality of records.	144A.44 Subd. 1 144.295 Subd.1		
	Subd. 16	Right to furnish and decorate.	325F.722 Subd. 2		
	Subd. 17	Right to choose roommate.	325F.722 Subd. 2		
	Subd. 18	Right to access food.	325F.722 Subd. 2		
	Subd. 19	Access to technology.			Not addressed
	Subd. 20	Grievances and inquiries.	144A.44 Subd. 1 504B.395 Subd. 1		
	Subd. 21	Access to counsel and advocacy services.	144A.44 Subd. 1		
	Subd. 22	Information about charges.	144A.44 Subd. 1		
	Subd. 23	Information about individuals providing services.	144A.44 Subd. 1		
	Subd. 24	Information about other providers and services.	144A.44 Subd. 1		

Chapter 144G Assisted Living Residents Rights and Protections			Addressed in Exempt Settings	Addressed but not as Comprehensive for Exempt Settings	Not Addressed in Exempt Settings
	Subd. 25	Resident councils.		Rights as resident of a HUD-assisted Multifamily Housing Property ³	
	Subd. 26	Family councils.		Rights as resident of a HUD-assisted Multifamily Housing Property ³	
144G.911 Restrictions Under Home and Community-Based Waivers			325F.722, Subd. 2		
144G.93 Consumer Advocacy and Legal Services			144A.4791 Subd. 1		
144G.95 Office of Ombudsman for Long-Term Care	Subd. 1	Immunity from liability.			Not addressed
	Subd. 2	Data classification.			Not addressed
144G.9999 Resident Quality of Care and Outcomes Improvement Task Force	Subd. 1	Establishment.			Not addressed
	Subd. 2	Membership.			Not addressed
	Subd. 3	Recommendations.			Not addressed

Please refer to section [6.3.3 in Appendix 3](#) for a more detailed analysis of the resident rights and protections that are addressed in the exempt settings, although not addressed as comprehensively as in licensed AL settings covered by Chapter 144G.

4.2.3 Other State Approaches

PCG conducted a brief environmental scan of other states' approaches to the oversight of similar HCBS when delivered to comparable target populations in publicly financed housing. Though HCBS are not classified as mandatory services, all states have opted to provide HCBS through their Medicaid programs. States offer HCBS using a variety of Medicaid State Plan and waiver authorities. In fact, 47 states offered HCBS through 267 separate §1915(c) waiver programs as of the 2018 Federal Fiscal Year. Considering the incredible volume of program materials available throughout the country, we began with a literature review of credible resources to narrow the scope of our scan to those states that have been recognized for their innovative approaches to HCBS and housing supports integration. PCG searched materials produced by CMS, the HHS Assistant Secretary for Planning and Evaluation, the Medicaid and Children's Health

³ Note: "Rights as resident of a HUD-assisted Multifamily Housing Property" do not apply to all exempt settings.

Insurance Program Payment and Access Commission, the National Academy of State Health Policy, and others. From that initial review, Louisiana, Massachusetts, and Vermont were selected.

For each of the three states, PCG reviewed program approval correspondence between the state and CMS, state agency websites, provider licensure/certification requirements, and other program materials to obtain information on provider qualification standards. The state profiles below summarize the findings of our environmental scan.



Louisiana

In the aftermath of Hurricanes Katrina and Rita, the State of Louisiana established its Permanent Supportive Housing program with the dual goal of reducing and preventing both homelessness and the unnecessary institutionalization of people with disabilities. Participants of the program must have very low income and a substantial, long-term disability of any type. The State Medicaid Agency provides the funding and manages reimbursement for the tenancy support service providers while the Louisiana Housing Authority recruits housing providers and administers the rental subsidies. §1915(c) waivers and §1915(i) State Plan HCBS authorities are used to cover the tenancy support services such as assistance with housing applications, housing searches, move-in supports, and assistance with maintaining successful tenancy.

Louisiana's Community Choices Waiver (LA.866.R02.00) serves a comparable population to Minnesota's CADI and EW programs. PCG reviewed the Community Choices Waiver application and supporting state policies in search of service definitions and provider qualifications similar to those of the customized living service when delivered in exempt settings. The monitored in-home caregiving (MIHC) benefit offers the most direct comparison; however, MIHC requires the designation of a principal caregiver who resides in the home with the participant. MIHC providers must be licensed by the Louisiana Department of Health under a general HCBS provider type which includes an additional module specific to MIHC services. The Louisiana Department of Health is also responsible for oversight of MIHC providers and verifying ongoing compliance with the licensure standards.

Licensure standards for MIHC providers include requirements for the experience, training, responsibilities, and duties of the staff who provide care to the individual. Additionally, the licensure rules include standards for the settings in which MIHC services may be rendered, such as:

- The setting must be a private residence and may not be licensed as an institution or other healthcare facility.
- The setting must be accessible to the needs of the individual receiving services.
- The setting must meet environmental and maintenance requirements with functional plumbing, heating and cooling, pest control, and appropriate furnishings.

While these basic setting standards are addressed by the licensure process, **Louisiana requires separation of the housing and HCBS provider networks and does not permit housing developers or agencies to also be service providers.** The state believes this distinction is crucial in maintaining a person-centered and housing-first approach, ensures the individual's right to choice of provider, and also respects the separate expertise of the housing and service providers.

Massachusetts

The Commonwealth of Massachusetts uses a collaborative interagency approach to coordinating housing and long-term supports through its Community Support Program for People Experiencing Homelessness (CSPECH). This model builds on a previously approved 1115 waiver program to include Medicaid reimbursement for supportive housing services and builds



a partnership between the Medicaid agency, the network of behavioral health managed care organizations, and the housing service providers. While CSPECH was initially designed to support a target population of individuals with mental illness and substance use disorders, the Commonwealth's goal was to improve health outcomes and reduce healthcare costs in that population through the coordination of housing and community-based supports, and the program has since been expanded to other populations of individuals experiencing chronic homelessness.

To address individuals' other long-term support needs, such as assistance with activities of daily living, Massachusetts offers HCBS through its assortment of §1915(c) waivers. PCG reviewed the applications for the following waivers which serve comparable populations to those served by the BI, CADI, and EW programs:

- Acquired Brain Injury Non-Residential Habilitation (MA.40702.R02.00)
- Acquired Brain Injury with Residential Habilitation (MA.40701.R02.01)
- Frail Elder (MA.0059.R07.00)
- Money Follows the Person Residential Supports (MA.1028.R01.00)
- Traumatic Brain Injury (MA.0359.R04.06)

These waiver programs offer a variety of supports with a similar scope to that of the customized living service. Services such as assisted living, residential habilitation, and shared living must be delivered in a setting licensed by the Commonwealth. However, the service with the scope and character most similar to Minnesota's customized living services delivered in exempt settings, the individual support and community habilitation (ISCH) service, is not limited to licensed settings. Instead, the waivers state generally that ISCH may be provided in the participant's home or community. These ISCH providers are subject to additional standards related to availability/responsiveness, education/training/supervision of staff, and the maintenance of policies and procedures, etc. The entity with responsibility for oversight of ISCH provider compliance with these standards varies by waiver but is delegated either to the waiver's operating authority or to a contracted Administrative Services Organization.

None of the waiver service definitions or provider qualifications for any of the similar services limit the delivery of the service to public housing settings, and the waivers do not distinguish between public or private housing units. It is noted that the participants of the Frail Elder waiver may receive services in a congregate housing setting, such as a low-income senior housing complex. However, the waiver stipulates that it does not reimburse for the congregate housing services.

Massachusetts' approach to regulating HCBS providers is shaped by the strength of the connection between the services themselves and the individual's housing supports. The more rigorous licensure standards for those services delivered in traditional congregate care environments recognize the asymmetry of power when housing and services are more closely integrated, while the provider standards for services delivered in private residences (whether they are publicly or privately financed) are more focused on the quality and safety of care.



Vermont

The State of Vermont's Support and Services at Home (SASH) program originated in 2008 from a single housing provider's concern for its residents who were not able to receive adequate supports to remain safely in their homes. The provider developed the SASH model of connecting residents with community-based services and providing on-site, wellness nursing services. The SASH model was expanded statewide in 2011. A single contracted organization serves as the SASH program administrator responsible for training and model fidelity oversight to the six designated regional housing organizations.

Services coordinated by the regional organizations are delivered by the organizations themselves or through other community partners such as home health agencies, area agencies on aging, and designated mental health agencies.

Vermont uses an 1115 waiver program to offer an alternative model of healthcare coverage for most of its Medicaid members and services. The program, known as the “Global Commitment to Health,” uses an unconventional approach to defining coverage populations, delivery systems, and reimbursement mechanisms. The Choices for Care program is operated as a specialty service within the Global Commitment to Health waiver program and offers comparable access to either HCBS or nursing facility care. As such, the Choices for Care program serves as the best comparison to the BI, CADI, and EW programs. PCG reviewed the Program Operations Manual for the Community Choices for Care program in order to identify the services and provider qualifications most relevant to Minnesota’s customized living services delivered in exempt settings.

The Choices for Care program offers two categories of round-the-clock residential care in community-based settings – Enhanced Residential Care (ERC) or Adult Family Care Home (AFCH). The AFCH service is the adult foster care, or “shared living,” model of service delivery. ERC services may be delivered in a variety of settings including those licensed as residential care homes, assisted living residences, and homes for the terminally ill. All ERC and AFCH providers must be licensed by the Vermont Department of Disabilities, Aging and Independent Living.

Vermont’s HCBS provider standards create a clear distinction between traditional congregate care settings and those congregate settings more closely aligned with typical community living. Based on their general characteristics, the AFCH and ERC services delivered in assisted living residences or homes for the terminally ill do not serve as ideal comparisons to customized living services delivered in exempt settings. The scope and characteristics of the ERC services delivered in licensed residential care homes initially appeared to offer a valid counterpoint for comparison. However, the licensure regulations are comprehensive, demonstrate characteristics of larger congregate living, and therefore do not appear relevant to the exempt settings where customized living services may be rendered. Without a comparable round-the-clock model of service delivery, the remaining Choices for Care services with a similar scope are delivered through a traditional agency-based home care model. Services delivered under the traditional agency-based home care model are overseen through home care agency licensure. The housing supports and environmental standards of the individual’s publicly financed housing unit are overseen by the housing authority or other appropriate agency.

5 NEXT STEPS

The Initial Research Report, DHS’ feedback, and subsequent PCG-DHS discussions will all inform PCG’s approach to the remainder of this engagement. We anticipate performing the following (or similar) activities discussed below.

PCG will hold a virtual forum for all stakeholders who were invited to participate in the initial forum and interviews to share our Initial Research Report findings and collect feedback. Our presentation will include areas of congruency, potential gaps, and things that are unique to Minnesota’s system. We will also use this opportunity to begin exploring the feasibility of potential solutions, compromises, and recommendations.

PCG will also conduct a virtual visioning session with state agency leadership to discuss our findings and explore potential solutions. This discussion will inform the final recommendations put forth by PCG.

Following the virtual forum and visioning session, PCG and DHS will determine what additional research and stakeholder activities are necessary, if any. Stakeholder activities may include conducting a short survey or soliciting additional feedback using a different mechanism, such as additional stakeholder interviews.

Lastly, PCG will bring stakeholders back together for one last virtual forum so we can clearly explain the proposed recommendations. PCG and DHS will evaluate whether it makes sense to provide stakeholders

with one last opportunity to provide electronic feedback (using Microsoft Forms or another feedback mechanism) prior to finalizing recommendations.

6 APPENDICES

6.1 APPENDIX 1: INITIAL STAKEHOLDER FORUM PARTICIPANTS

Names in **bold** indicate attendance at the forum. Names not bolded were invited but did not attend.

Minnesota DHS Project Team Members
HCBS Manager
Director of Legislative and External Affairs
Human Services Manager
Program Administrator/HCBS Programs and Policy
Housing Support Policy and Training Professional
Federal, State and County Agency Representatives
Minnesota Department of Health
Regional Operations Executive Manager
Agency Policy Specialist, Health Regulation Division
Minnesota Housing Finance Agency (MHFA)
Assistant Commissioner
Legislative Director
Policy Attorney
US Department of Housing and Urban Development (HUD)
Director, Asset Management Division (Minneapolis Satellite Office)
Chief Counsel of Minneapolis
Other Agency Representatives
Hennepin County Customized Living
Homeless and Housing Program Specialist – St. Louis County
Social Services Supervisor – Kadiyohi County
Advocacy Organizations
Office of the Ombudsman for Long-Term Care
Minnesota Elder Justice Center
O’Connell Consulting, LLC
Legal Services Advocacy Project

Alzheimer's Association of Minnesota and North Dakota
AARP Minnesota
Elder Voice Family Advocates
Provider Associations
Care Providers of Minnesota
LeadingAge Minnesota
Additional Initial Forum Attendees
Touchstone
Clare Housing

6.2 APPENDIX 2: FOLLOW-UP STAKEHOLDER INTERVIEWS

Date	Time	Interview Type	# of Interested Participants	# of Attendees
1/4/22	11am-12pm ET (10-11am CT)	Provider	4	2
1/5/22	10-11am ET (9-10am CT)	Provider Association	6	5
1/5/22	11am-12pm ET (10-11am CT)	Provider	4	3
1/5/22	1-2pm ET (12-1pm CT)	Provider	5	4 (in person) 1 (via email)
1/6/22	10am-11am ET (9-10am CT)	Provider	3	3
1/6/22	11am-12pm ET (10-11pm CT)	Provider	2	2
1/6/22	1-2pm ET (12-1pm CT)	HUD	3	4
1/6/22	2-3pm ET (1-2pm CT)	Advocacy Organization	9	8
1/7/22	10-11am ET (9-10am CT)	MDH	2	2
1/7/22	2-3 pm ET (1-2 pm CT)	MHFA	2	2

6.3 APPENDIX 3 – EXPLANATION OF GAPS FOR RIGHTS AND PROTECTIONS IN EXEMPT SETTINGS

PCG compared relevant consumer rights and protections established by the Minnesota Statutes 2021 Chapter 144G Assisted Living law with the consumer rights and protections in other relevant state and federal laws and regulations to identify areas where the laws appear to overlap (agreement), where the laws appear to be similar (rights and protections *do* exist, but may not be an exact match or as comprehensive as 144G), and where we could not locate similar consumer rights and protections for the exempt settings in the materials we reviewed (gaps). Described below are explanations of the gaps that exist for the laws that are similar but may not be an exact match or as comprehensive as 144G. The gaps are organized around the three major, relevant Chapter 144G headings: Operations and Physical Plant Requirements; Contracts, Terminations and Relocations; and Residents Rights and Protections.

6.3.1 Operations and Physical Plant Requirements

The statutes listed below were analyzed further to identify gaps, as the rights and protections were addressed in exempt settings but were not found to be as comprehensive as those rights and protections in settings licensed as AL.

- 144G.41 Subdivision 1 Minimum requirements of assisted living facilities
- 144G.41 Subdivision 2 Policies and procedures
- 144G.41 Subdivision 5 Resident councils
- 144G.41 Subdivision 6 Family councils
- 144G.41 Subdivision 1 includes several components. Table 9 includes each component and provides a description of coverage and an explanation of any gaps that may exist.

TABLE 9: DIFFERENCES IN REQUIREMENTS BETWEEN 144G AND EXEMPT SETTINGS FOR 144G.41 SUBDIVISION 1.

144G.41 Subdivision 1 Minimum Requirements	Addressed in exempt settings	Differences in Requirements Between 144G and Exempt Settings
1) Distribute to residents the assisted living bill of rights	Addressed under 144A.4791 Subdivision 1 .	N/A
2) Provide services in a manner that complies with the Nurse Practice Act in sections 148.171 to 148.285	Not addressed for exempt settings.	N/A
3) Utilize a person-centered planning and service delivery process	Not addressed for exempt settings.	N/A
4) Have and maintain a system for delegation of health care activities to unlicensed personnel by a registered nurse, including supervision and evaluation of the delegated activities as required by the Nurse Practice Act in sections 148.171 to 148.285;	Addressed but not as comprehensive for exempt settings. 144A.4795 Subdivision 4 requires home care providers to maintain a delegation system of health care activities for unlicensed personnel.	144A.4795 necessitates home care providers to have a delegation system for activities for unlicensed personnel but 144G has additional requirements that include keeping track of supervision and evaluation of the unlicensed personnel.
5) Provide a means for residents to request assistance for health and	Not addressed for exempt settings.	N/A

144G.41 Subdivision 1 Minimum Requirements	Addressed in exempt settings	Differences in Requirements Between 144G and Exempt Settings
safety needs 24 hours per day, seven days per week		
6) Allow residents the ability to furnish and decorate the resident's unit within the terms of the assisted living contract	Addressed in 325F.722 Subdivision 2.	N/A
7) Permit residents access to food at any time;	Addressed in 325F.722 Subdivision 2.	N/A
8) Allow residents to choose the resident's visitors and times of visits;	Addressed in 325F.722 Subdivision 2.	N/A
9) Allow the resident the right to choose a roommate if sharing a unit	Addressed in 325F.722 Subdivision 2.	N/A
10) Notify the resident of the resident's right to have and use a lockable door to the resident's unit. The licensee shall provide the locks on the unit. Only a staff member with a specific need to enter the unit shall have keys, and advance notice must be given to the resident before entrance, when possible. An assisted living facility must not lock a resident in the resident's unit	Not addressed for exempt settings.	N/A
11) Develop and implement a staffing plan for determining its staffing level that: (i) includes an evaluation, to be conducted at least twice a year, of the appropriateness of staffing levels in the facility; (ii) ensures sufficient staffing at all times to meet the scheduled and reasonably foreseeable unscheduled needs of each resident as required by the residents' assessments and service plans on a 24-hour per day basis; and (iii) ensures that the facility can respond promptly and effectively to individual resident emergencies and to emergency, life safety, and disaster situations affecting staff or residents in the facility	Not addressed for exempt settings.	N/A
12) Ensure that one or more persons are available 24 hours per	Not addressed for exempt settings.	N/A

144G.41 Subdivision 1 Minimum Requirements	Addressed in exempt settings	Differences in Requirements Between 144G and Exempt Settings
<p>day, seven days per week, who are responsible for responding to the requests of residents for assistance with health or safety needs. Such persons must be:</p> <ul style="list-style-type: none"> (i) awake (ii) located in the same building, in an attached building, or on a contiguous campus with the facility in order to respond within a reasonable amount of time (iii) capable of communicating with residents (iv) capable of providing or summoning the appropriate assistance (v) capable of following directions 		
<p>13) Offer to provide or make available at least the following services to residents:</p> <ul style="list-style-type: none"> (i) at least three nutritious meals daily with snacks available seven days per week, according to the recommended dietary allowances in the United States Department of Agriculture guidelines, including seasonal fresh fruit and fresh vegetables. The following apply: <ul style="list-style-type: none"> (A) menus must be prepared at least one week in advance and made available to all residents. The facility must encourage residents' involvement in menu planning. Meal substitutions must be of similar nutritional value if a resident refuses a food that is served. Residents must be informed in advance of menu changes (B) food must be prepared and served according to the Minnesota Food Code, Minnesota Rules, chapter 4626; and (C) the facility cannot require a resident to include and pay for meals in their contract 	Not addressed for exempt settings.	N/A

144G.41 Subdivision 1 Minimum Requirements	Addressed in exempt settings	Differences in Requirements Between 144G and Exempt Settings
<p>(ii) weekly housekeeping</p> <p>(iii) weekly laundry service</p> <p>(iv) upon the request of the resident, provide direct or reasonable assistance with arranging for transportation to medical and social services appointments, shopping, and other recreation, and provide the name of or other identifying information about the persons responsible for providing this assistance</p> <p>(v) upon the request of the resident, provide reasonable assistance with accessing community resources and social services available in the community, and provide the name of or other identifying information about persons responsible for providing this assistance</p> <p>(vi) provide culturally sensitive programs; and</p> <p>(vii) have a daily program of social and recreational activities that are based upon individual and group interests, physical, mental, and psychosocial needs, and that creates opportunities for active participation in the community at large</p>		
<p>14) provide staff access to an on-call registered nurse 24 hours per day, seven days per week.</p>	<p>Not addressed for exempt settings.</p>	<p>N/A</p>

144G.41 Subdivision 2 includes several components. Table 10 includes each component and provides a description of coverage and an explanation of any gaps that may exist.

TABLE 10: DIFFERENCES IN REQUIREMENTS BETWEEN 144G AND EXEMPT SETTINGS FOR 144G.41 SUBDIVISION 2.

144G.41 Subdivision 2 Policies and Procedures	Addressed in Exempt Settings	Differences in Requirements Between 144G and Exempt Settings
1) Requirements for reporting maltreatment of vulnerable adults	Addressed in 626.557 Subdivision 4a.	N/A
2) Conducting and handling background studies on employees	Addressed but not as comprehensive for exempt settings. 144A.476 Subdivision 1 states that an owner or managerial office of a home care agency needs to complete a background study.	144A.476 states that a home care agency only needs to conduct a background study, but it does not state that a policy and procedure needs to be developed to conduct the background study. 144G provides additional protection by requiring an assisted living facility to create a policy or procedure for completing a background study.
3) Orientation, training, and competency evaluations of staff, and a process for evaluating staff performance	Addressed but not as comprehensive for exempt settings. 144A.4795 Subdivision 1 states that all staff providing home care services must be trained and competent and informed of the home care bill of rights. 144A.4795 Subdivision 7 provides information on who can train and evaluate unlicensed personnel and the components that should be included in the training and evaluation.	144A.4795 provides information on how staff should be trained and evaluated, but it does not require a policy or procedure be developed to train and evaluate staff. 144G provides additional protection by requiring an assisted living facility to create a policy or procedure for training and evaluating staff.
4) Handling of complaints regarding staff or services provided by staff	Addressed in 144A.4791 Subdivision 11.	N/A
5) Conducting initial evaluations of residents' needs and the providers' ability to provide those services	Not addressed for exempt settings.	N/A
6) Conducting initial and ongoing resident evaluations and assessments of resident needs, including assessments by a registered nurse or appropriate licensed health professional, and how changes in a resident's condition are identified, managed, and communicated to staff and other health care providers as appropriate	Addressed but not as comprehensive for exempt settings. 144A.4791 Subdivision 8 describes the process for when the initial assessment should occur and by whom, when reassessment should occur and monitoring of the individual.	144A.4791 provides information on the individual should be assessed and monitored, but it does not require a policy or procedure be developed to assess or monitor. 144G provides additional protection by requiring an assisted living facility to create a policy or procedure for assessing and monitoring the individual.
7) Orientation to and implementation of the assisted living bill of rights;	Addressed but not as comprehensive for exempt settings.	144A.4791 requires the home care provider to provide an individual or their representative with a written notice of their rights, but it does not

144G.41 Subdivision 2 Policies and Procedures	Addressed in Exempt Settings	Differences in Requirements Between 144G and Exempt Settings
	144A.4791 Subdivision 1 states that the home care provider shall provide the individual or their representative with a written notice of the rights.	require a policy or procedure be developed for providing the notice of the rights. 144G provides additional protection by requiring an assisted living facility to create a policy or procedure for implementing the assisted living bill of rights.
8) Infection control practices	Addressed in 144A.4798 Subdivision 3 .	N/A
9) Reminders for medications, treatments and exercises, if provided	Not addressed for exempt settings.	N/A
10) Conducting appropriate screenings or documentation to show staff are free of tuberculosis	Addressed in 144A.4798 Subdivision 1 .	N/A
11) Ensuring that nurses and licensed health professionals have current and valid licenses to practice;	Addressed but not as comprehensive for exempt settings. 144A.4795 Subdivision 2 states that licensed staff must possess a current Minnesota license.	144A.4795 requires licensed health professionals and nurses to be licensed, but it does not require a policy or procedure be developed to ensure they are licensed. 144G provides additional protection by requiring an assisted living facility to create a policy or procedure for ensuring licensed health professional and nurses are licensed.
12) Medication and treatment management	Addressed in 144A.4792 Subdivision 1 .	N/A
13) Delegation of tasks by registered nurses/licensed health professionals	Addressed in 144A.4795 Subdivision 4 .	N/A
14) Supervision of registered nurses/licensed health professionals	Not addressed for exempt settings	N/A
15) Supervision of unlicensed personnel performing tasks	Not addressed for exempt settings.	N/A

Table 11 provides an explanation of any gaps that may exist for 144G.41 Subdivisions 5 and 6.

TABLE 11: DIFFERENCES IN REQUIREMENTS BETWEEN 144G AND EXEMPT SETTINGS FOR 144G.41 SUBDIVISIONS 5 AND 6.

Minnesota Statute Chapter 144G Operations and Physical Plant Requirements	Summary of Exempt Settings Statutes That Cover but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
144G.41 Minimum Assisted Living Facility Requirements Subdivision 5 Resident Councils states the assisted living facility must provide a space and privacy for the resident council. The facility must designate one staff member who is responsible for providing assistance and responding to written requests from the resident council meetings. The facility must make other residents aware of upcoming council meetings.	HUD-assisted Multifamily Housing Property's states that residents have a right to organize without obstruction, harassment or retaliation from property owners or managers.	HUD-assisted Multifamily Housing Property right only applies to settings that are a HUD-assisted Multifamily Housing Property. The right allows residents to organize meetings but 144G provides additional coverage by providing a space for meetings, assigning a staff member to respond to requests and informing all residents of upcoming meetings.
144G.41 Minimum Assisted Living Facility Requirements Subdivision 6 Family Councils states the assisted living facility must provide a space and privacy for the family council. The facility must designate one staff member who is responsible for providing assistance and responding to written requests from the family council meetings. The facility must make other residents aware of upcoming council meetings.	HUD-assisted Multifamily Housing Property's states that residents have a right to organize without obstruction, harassment or retaliation from property owners or managers.	HUD-assisted Multifamily Housing Property right only applies to settings that are a HUD-assisted Multifamily Housing Property. The right allows residents to organize meetings but 144G provides additional coverage by providing a space for meetings, assigning a staff member to respond to requests and informing all residents of upcoming meetings.

6.3.2 Contracts, Terminations and Relocations

The statutes listed below were analyzed further to identify gaps, as the rights and protections were addressed in exempt settings but were not found to be as comprehensive as those rights and protections in settings licensed as AL.

- 144G.52 Subdivision 7 Notice of contract termination required
- 144G.52 Subdivision 8 Content of notice of termination
- 144G.55 Subdivision 1 Duties of Facility

Refer to Table 12 for an explanation of the gaps.

TABLE 12: DIFFERENCES IN REQUIREMENTS BETWEEN 144G AND EXEMPT SETTINGS FOR 144G CONTRACTS, TERMINATIONS AND RELOCATIONS.

Minnesota Statute Chapter 144G Contracts, Terminations and Relocations	Summary of Exempt Settings Statutes That Address but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
144G.52 Subdivision 7 states that the assisted living facility must provide written notice to the	144A.44 Subdivision 1 states that a home care agency must provide 10	144.44A says that individuals must receive notice 10 days before termination, while 144G provides

Minnesota Statute Chapter 144G Contracts, Terminations and Relocations	Summary of Exempt Settings Statutes That Address but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
<p>individual of termination and a copy must be sent to the Office of Ombudsman Long-Term Care and, for residents that receive HCBS, to their case manager. A facility must give a written termination notice at least 30 days before the effective date of the termination if there is a termination related to nonpayment or violation of the assisted living contract. A facility must give a written termination notice at least 15 days before the effective date of the termination if the individual has engaged in conduct that interferes with the safety of physical health of the staff or other residents.</p>	<p>days' notice of termination of services.</p> <p>Chapter 504B.147 Subdivision 3 states that landlord's cannot give a notice shorter than what is permitted for termination or rent increase in the lease provided to the tenant.</p> <p>HUD Section 811 Model Lease states that a termination notice must be given no later than 30 days.</p>	<p>extra protection, saying that notice needs to be provided 30 days before termination. The assisted living licensure law requires that requires that notice be given at least 30 days in advance, 20 more days than the Home Care License.</p> <p>The HUD section 811 Model Lease does indicate termination of housing needs to be given at least 30 days in advance, but this applies to housing needs only and for settings that receive HUD section 811 funding.</p>
<p>144G.52 Subdivision 8 states that a termination notice must contain the following:</p> <ol style="list-style-type: none"> 1) the effective date of the termination 2) an explanation of the basis for the termination, 3) an explanation of the conditions under which a new or amended contract may be executed 4) a statement that the resident has the right to appeal, information concerning the time frame to submit an appeal and the contact information for the agency to which the request must be submitted 5) a statement that the facility must participate in a coordinated move to another provider or caregiver 6) the name and contact information of the person employed by the facility with whom the resident may discuss the notice of termination 7) information on how to contact the Office of Ombudsman for Long-Term Care to request an advocate to assist regarding the termination; 8) information on how to contact the Senior LinkAge Line under section 256.975, subdivision 7, and an explanation that the Senior LinkAge 	<p>144A.44 Subdivision 1 states that the resident must know the provider's reason for termination of services.</p> <p>144A.4791 Subdivision 10 states that if a home care provider terminates a service plan with an individual, the home care provider must provide a written notice of termination which includes the following information:</p> <ol style="list-style-type: none"> 1) the effective date of termination 2) the reason for termination 3) a list of known licensed home care providers in the client's immediate geographic area 4) a statement that the home care provider will participate in a coordinated transfer of care of the client to another home care provider, health care provider, or caregiver, as required by the home care bill of rights, section 144A.44, subdivision 1, clause (17) 5) the name and contact information of a person employed by the home care provider with whom the client may discuss the notice of termination; and 6) if applicable, a statement that the notice of termination of home care 	<p>144A.44 provides similar requirements for termination notices but 144G provides additional coverage by ensuring that a termination notice also includes:</p> <ul style="list-style-type: none"> • How to appeal the termination and timeframe for appealing • Information on how to contact the Ombudsman office • Information on how to contact SeniorLinkage

Minnesota Statute Chapter 144G Contracts, Terminations and Relocations	Summary of Exempt Settings Statutes That Address but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
<p>Line may provide information about other available housing or service options</p> <p>9) if the termination is only for services, a statement that the resident may remain in the facility and may secure any necessary services from another provider of the resident's choosing.</p>	<p>services does not constitute notice of termination of the housing with services contract with a housing with services establishment.</p>	
<p>144G.55 Subdivision 1 states that if a facility terminates an assisted living contract, reduces services to the extent that a resident needs to move, or conducts a planned closure under section 144G.57, the facility must identify an appropriate service provider and ensure a coordinated move to a safe location. The facility must consult and cooperate with the resident, legal representative, designated representative, case manager for a resident who receives home and community-based waiver services under chapter 256S and section 256B.49, relevant health professionals, and any other persons of the resident's choosing to make arrangements to move the resident.</p> <p>Sixty days before the facility plans to reduce or eliminate one or more services for a particular resident, the facility must provide written notice of the reduction that includes the similar requirements as a termination notice.</p>	<p>144A.44 Subdivision 1 requires a coordinated transfer when there will be a change in the provider of services.</p>	<p>144A.44 requires that home care providers coordinate the transfer of service providers if there is a termination in services. 144G includes additional requirements beyond coordinating a transfer, such as, assisted living facilities need to identify an appropriate service provider that can meet the needs and is desired by the individual. 144G also requires that if there is a reduction or elimination of services, the assisted living facility must provide written notice to the individual 60 days in advance.</p>

6.3.3 Residents Rights and Protections

The statutes listed below were analyzed further to identify gaps, as the rights and protections were addressed in exempt settings but were not found to be as comprehensive as those rights and protections in settings licensed as AL.

- 144G.91 Subdivision 6 Participation in Care and Service Planning
- 144G.91 Subdivision 12 Visitors and Social Participation
- 144G.91 Subdivision 13 Personal and Treatment Privacy
- 144G.91 Subdivision 25 Resident Councils
- 144G.91 Subdivision 26 Family Councils

Refer to Table 13 for an explanation of the gaps.

TABLE 13: DIFFERENCES IN REQUIREMENTS BETWEEN 144G AND EXEMPT SETTINGS FOR 144G RESIDENTS RIGHTS AND PROTECTIONS

Minnesota Statute Chapter 144G Residents Rights and Protections	Summary of Exempt Settings Statutes That Address but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
<p>144G.91 Subdivision 6 requires that residents have an active participation in the planning, modification, and evaluation of their care and services. This right includes:</p> <ol style="list-style-type: none"> 1) The opportunity to discuss care, services, treatment, and alternatives with caregivers 2) The right to include resident's legal and designated representatives and anyone of their choosing 3) The right to be told in advance of and take part in decisions regarding any recommended changes in the service plan 	<p><u>144A.44 Subdivision 1</u> states that individuals be informed in advance of any recommended changes by the provider in the service plan and take part in any decisions about the changes in service plan.</p>	<p>144A.44 requires providers to include the individual when modifying the service plan but 144G provides additional coverage by requiring the individual to participate in the planning and evaluation of the service plan. In addition, 144G also includes the right to include the individual's legal and designated representative and anyone of their choosing in the development, modification and evaluation of the service plan.</p>
<p>144G.91 Subdivision 12 states that residents have the right to meet with or receive visits at any time and the right to engage in community life and activities of their choice.</p>	<p><u>325F.722 Subdivision 2</u> states that the resident has a right to choose resident's visitors and times of visits.</p>	<p>325F.722 allows the individual to choose their visitors and time of visit but 144G provides additional coverage by stating that individuals have a right to participate in the community and choose their activities.</p>
<p>144G.91 Subdivision 13 includes the following:</p> <ol style="list-style-type: none"> a) Residents have a right to consideration of privacy, individuality, and cultural identity. Staff must knock on the door and seek consent before entering except in an emergency. b) Residents have a right to have and use a lockable door. c) Residents have the right to respect and privacy regarding the service plan. Case discussion, consultation, examination, and treatment are confidential and must be conducted discreetly. 	<p><u>325F.722 Subdivision 2</u> states that residents have a right to have and use a lockable door.</p> <p><u>504B.211</u> states that individuals have a right to privacy from their landlord. Landlords may only enter for a reasonable purpose (listed in the statute) and after a notice of entry is provided to the individual.</p>	<p>325F.722 and 504B.211 provide privacy to the individual by requiring the individual to have and use a lock and requiring the landlord to provide a notice of entry before entering the unit but 144G provides additional coverage by requiring privacy for case discussions, consultation, examination, and treatment.</p>
<p>144G.91 Subdivision 25 states the assisted living facility must provide a space and privacy for the resident council. The facility must designate one staff member who is</p>	<p>HUD-assisted Multifamily Housing Property's states that residents have a right to organize without obstruction, harassment or</p>	<p>HUD-assisted Multifamily Housing Property right only applies to settings that are a HUD-assisted Multifamily Housing Property. The right allows residents to organize</p>

Minnesota Statute Chapter 144G Residents Rights and Protections	Summary of Exempt Settings Statutes That Address but are not as Comprehensive	Differences in Requirements Between 144G and Exempt Settings
responsible for providing assistance and responding to written requests from the resident council meetings. The facility must make other residents aware of upcoming council meetings.	retaliation from property owners or managers.	meetings but 144G provides additional coverage by providing a space for meetings, assigning a staff member to respond to requests and informing all residents of upcoming meetings.
144G.91 Subdivision 26 states the assisted living facility must provide a space and privacy for the family council. The facility must designate one staff member who is responsible for providing assistance and responding to written requests from the family council meetings. The facility must make other residents aware of upcoming council meetings.	HUD-assisted Multifamily Housing Property's has a right that residents have a right to organize without obstruction, harassment or retaliation from property owners or managers. This right is only applicable to HUD-assisted Multifamily Housing Property's, a subgroup of exempt settings.	HUD-assisted Multifamily Housing Property right only applies to settings that are a HUD-assisted Multifamily Housing Property. The right allows residents to organize meetings but 144G provides additional coverage by providing a space for meetings, assigning a staff member to respond to requests and informing all residents of upcoming meetings.

6.4 APPENDIX 4: PROPERTIES RECEIVING ASSISTED LIVING CONVERSION PROGRAM (ALCP) GRANTS

PCG compiled a list of properties that received Assisted Living Conversion Program grants between 2000 and 2012, per HUD's website and validated it with staff from HUD's Minneapolis office. This list was cross-referenced against the Minnesota Department of Health's Health Care Provider Directory to determine which properties are currently licensed assisted living facilities (as of February 9, 2022).

City	Grant Recipient Name	Property Address	AL License
Albany	Mercy Manor Inc.	334 Golf View Drive	Yes
Bloomington	Gideon Pond Housing	Newton Manor 10000 Newton Ave South	Yes
Detroit Lakes	Lamplighter Manor	1425 Madison Ave	No
Duluth	St. Francis of Assisi Inc	Lakeland Shores Apt, 4500 Cambridge St	No
Litchfield	Gloria Dei Manor	218 North Holcombe Ave	No
New Hope	New Hope V.O.A. Elderly Housing Inc	North Park Plaza 8201 45th Ave North	No
Rochester	Rochester VOA Elderly Housing	1800 High Pointe Ln NW	No
Saint Louis Park	Menorah Plaza Memory Care	4925 Minnetonka Boulevard	No
Saint Paul	Seabury	[address not provided on HUD website]	No
Sauk Rapids	Good Shepherd Apts	1211 4th Ave North	Yes

Sources: https://www.hud.gov/program_offices/housing/mfh/alcp/alcp/home (ALCP properties); <https://mdhprovidercontent.web.health.state.mn.us/showprovideroutput.cfm> (current AL licensure information)