



Assisted Living License | Customized Living

MDH: Assisted Living License

DHS: Customized Living Policy

DHS: BI/CADI Specific Policy





Assisted Living – What is it?

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MDH Agenda



- Assisted Living History
- What Assisted Living Encompasses
- Assisted Living “Configurations”
- Resident Rights
- Mental Health in Assisted Livings



Assisted Living History

Background – Assisted Living Establishments

1980s

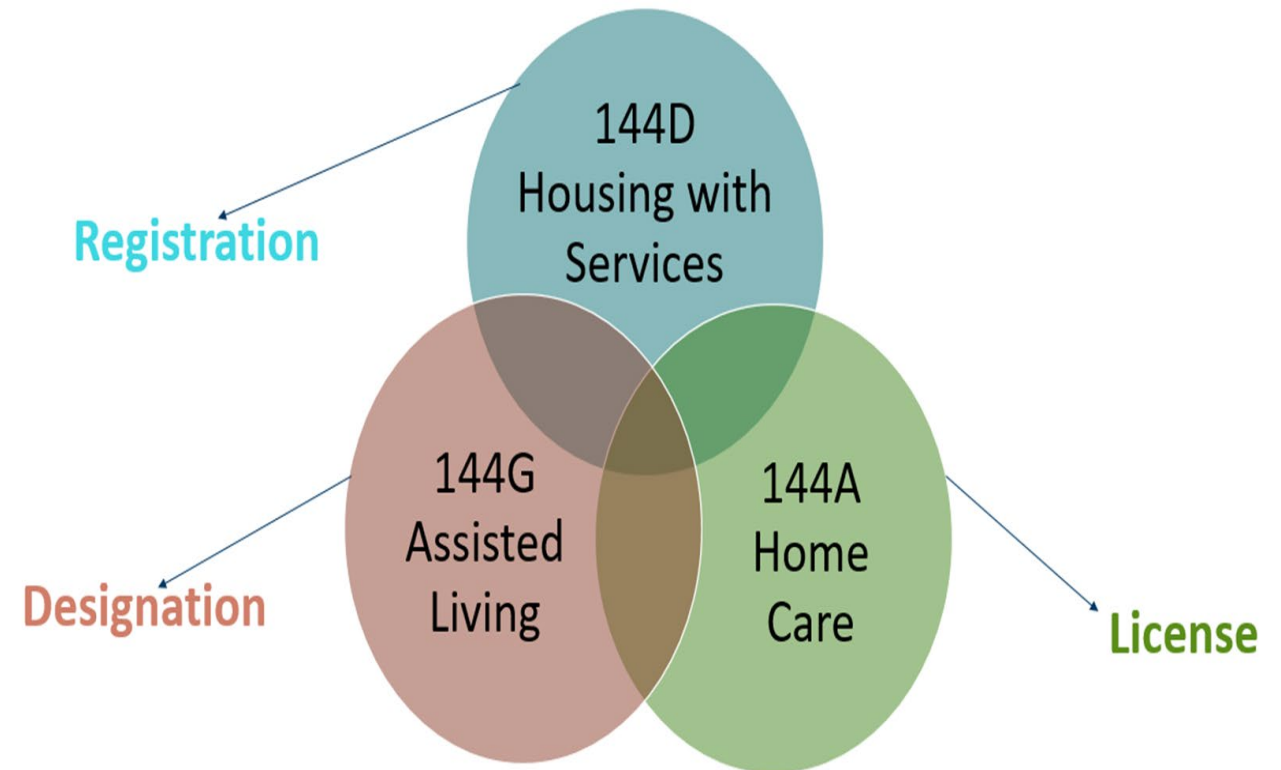
- 0 Assisted Living Establishments

2014

- 58% of residents in assisted living were over age 85 and 39% had dementia

Early 2021

- 2,480 Housing With Services
- 1,663 Home Care Providers
- Approx. 60,000 clients



The New Licensure

May 2019 - Passage of Assisted Living Licensure Law (144G)

- Established Assisted Living Licensure and removed Housing with Services Registration
- Effective date August 1, 2021

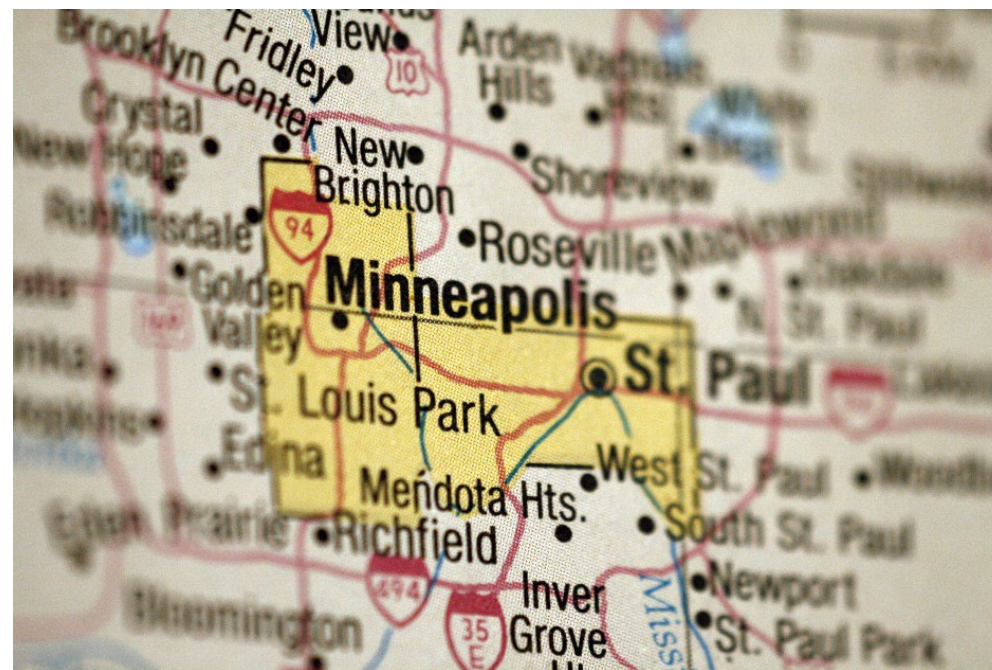




What Assisted Living Encompasses

Assisted Living in Minnesota Today

- There are currently 2218 assisted living facilities in Minnesota.
- Over 1300 of these facilities have a licensed capacity of ten or fewer residents
- Over 1100 have a licensed capacity of five or fewer.



Changes for Customized Living Service Providers

Minnesota Statutes, chapter 144G changed the license requirement for Customized Living Services providers effective August 1, 2021. Due to the new law, Housing with Services registration was no longer valid to provide customized living services as of August 1, 2021.

Providers of the Home and Community-Based Services (HCBS) waiver service for customized living needed to obtain an assisted living facility license, or be delivering services in an exempt setting, to continue delivering customized living services on and after the effective date. This applied to the following waiver programs:

- Elderly Waiver (EW)
- Brain Injury (BI)
- Community Access for Disability Inclusion (CADI)



Single license for housing and services under one assisted living contract.

Key Highlights of Assisted Living Licensure

Physical environment requirements and fire safety.

Enhanced Bill of Rights and consumer protections.

Licensing of Assisted Living Directors.

Facility responsibilities and minimum requirements.

Two Categories of Licensure

Assisted Living License

- Provides housing and AL services to residents.
- May provide AL services to residents with dementia.
- Must meet resident's assessed needs.
- Diagnosis does not dictate setting.
- Prohibited from having a secured dementia care unit.

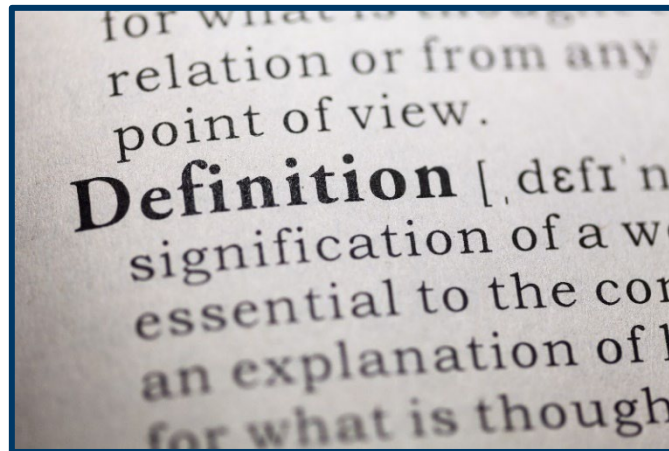
Assisted Living License w/Dementia Care

- Can advertise, market, or promote as providing specialized care for residents with dementia.
- Must meet requirements of AL Facility license **and** additional requirements:
 - License
 - Training
 - Programming
- May have a secure dementia care unit.

RESIDENT

(144G.08 Subd. 59)

A person living in an assisted living facility who has executed an assisted living contract.



ASSISTED LIVING CONTRACT

(144G.08 Subd. 5)

The legal agreement between a resident and an assisted living facility for housing and, if applicable, assisted living services.

Minimum Requirements - Staffing

144G.41 Subd. 1 (11)(12)

- Biannual evaluation of staffing levels.
- Must always meet the scheduled and reasonably foreseeable unscheduled needs of each resident.
- One or more persons are awake and available 24/7.

144G.81 Subd. 4 An assisted living facility with **dementia care** providing services in a secured dementia care unit must have an **awake** person who is **physically present** in the secured dementia care unit 24 hours per day, seven days per week, who is responsible for responding to the requests of residents for assistance with health and safety needs and:

- capable of communicating with residents
- capable of providing or summoning the appropriate assistance
- capable of following directions

Physical Environment - Highlights

Starting August 1, 2021:

- A physical environment survey every two years.
- Plan reviews and final construction inspections for a new license or new construction, by MDH.
- Smoke detectors in each occupied room or automatic sprinkler system.
- Portable fire extinguishers and fire drills.
- Physical environment in good repair.
- Existing buildings must always be maintained in a manner that does not “constitute a distinct hazard to life”.



Assisted Living Director - Highlights

Licensed Assisted Living Director (LALD)

- Board of Executives of Long-Term Services and Supports (BELTSS).
 - Approves director's qualifications and training.
 - MDH will check licenses upon ALL application review.
- LALD = Person who administers, manages, supervises, or is in general administrative charge of an assisted living facility.





Survey and Enforcement Highlights

Surveys

- Assisted Living Facilities surveyed every two years.
- Provisional (new) licenses surveyed within one year.

Enforcement

- Increased fines for violations.
- Fine for substantiated maltreatment finding.
- Follow-up surveys required for Level 3/Level 4 violations.



Assisted Living Facility “Configurations”

144G.08 Subd. 4a **Assisted living facility campus.** "Assisted living facility campus" or "campus" means:

- (1) a single building having two or more addresses, located on the same property with a single property identification number;
- (2) two or more buildings, each with a separate address, located on the same property with a single property identification number; or
- (3) two or more buildings at different addresses, located on properties with different property identification numbers, that share a portion of a legal property boundary.



144G.41 MINIMUM ASSISTED LIVING FACILITY REQUIREMENTS

Subd. (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;

(12) ensure that one or more persons are available 24 hours per 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:

(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; and

(v) capable of following directions;

Duplex / Townhomes

[144G.10 Subd. 1](#) (c) Upon approving an application for an assisted living facility license, the commissioner shall issue a single license for each **building** that is operated by the licensee as an assisted living facility and is located at a separate address, except as provided under paragraph (d) or (e).

(d) Upon approving an application for an assisted living facility license, the commissioner may issue a single license for two or more buildings on a campus that are operated by the same licensee as an assisted living facility. An assisted living facility license for a campus must identify the address and licensed resident capacity of each building located on the campus in which assisted living services are provided.

(e) Upon approving an application for an assisted living facility license, the commissioner may:





Resident Rights & Protections

144G.90 REQUIRED NOTICES.

Subdivision 1. **Assisted living bill of rights; notification to resident.**

(a) An assisted living facility must provide the resident a written notice of the rights under section 144G.91 before the initiation of services to that resident.

The facility shall make all reasonable efforts to provide notice of the rights to the resident in a language the resident can understand.



144G.91 ASSISTED LIVING BILL OF RIGHTS

Subdivision 1. Applicability.

Subd. 2. Legislative intent.

Subd. 3. Information about rights.

Subd. 4. Appropriate care and services.

Subd. 5. Refusal of care or services.

Subd. 6. Participation in care and service planning.

Subd. 7. Courteous treatment.

Subd. 8. Freedom from maltreatment.

Subd. 9. Right to come and go freely.

Subd. 10. Individual autonomy.

Subd. 11. Right to control resources.

Subd. 12. Visitors and social participation.

Bill of Rights continued

Subd. 13. Personal and treatment privacy.

Subd. 14. Communication privacy.

Subd. 15. Confidentiality of records.

Subd. 16. Right to furnish and decorate.

Subd. 17. Right to choose roommate.

Subd. 18. Right to access food.

Subd. 19. Access to technology.

Subd. 20. Grievances and inquiries.

Subd. 21. Access to counsel and advocacy services.

Subd. 22. Information about charges.

Subd. 23. Information about individuals providing services.

Subd. 24. Information about other providers and services.

Subd. 25. Resident councils.

Subd. 26. Family councils.

144G.911 RESTRICTIONS UNDER HOME AND COMMUNITY-BASED WAIVERS.

The resident's rights in section 144G.91, subdivisions **12**, **13**, and **18**, may be restricted for an individual resident only if determined necessary for health and safety reasons identified by the facility through an initial assessment or reassessment under section 144G.70, subdivision 2, and documented in the written service plan under section 144G.70, subdivision 4. Any restrictions of those rights for people served under chapter 256S and section 256B.49 must be documented by the case manager in the resident's support plan, as defined in sections 256B.49, subdivision 15, and 256S.10. Nothing in this section affects other laws applicable to or prohibiting restrictions on the resident's rights in section 144G.91, subdivisions 12, 13, and 18.

- Subd. 12. **Visitors and social participation.**
- Subd. 13. **Personal and treatment privacy.**
- Subd. 18. **Right to access food.**





144G.08 Subd. 62 Secured dementia care unit.

"Secured dementia care unit" means a designated area or setting designed for individuals **with dementia** that is locked or secured to prevent a resident from exiting, or to limit a resident's ability to exit, the secured area or setting. A secured dementia care unit is not solely an individual resident's living area.

- Does **NOT** pertain to individuals with persistent mental illness who required secured living space.



Mental Health in Assisted Living

Mental Health Residents

- The 2023 National Survey on Drug Use and Health estimated over 22% of adult Americans experienced a mental illness in the preceding year, with over 5% of adults experiencing a serious mental illness.
- Anecdotal evidence indicates small assisted living facilities currently fill a significant role in providing care in residential settings for individuals with diverse mental health diagnoses.
- Effective July 1, 2025: [144G.63 Subd. 4 Training required relating to dementia, mental illness, and de-escalation](#). All direct care staff and supervisors providing direct services must demonstrate an understanding of the training specified in section 144G.64.



Admission Assessments

Care for mental health starts with the admission assessment.

- An assisted living facility may not accept a resident unless the facility has staff “sufficient in qualifications, competency, and numbers, to adequately provide the services agreed to.”
- This includes training and staffing to handle the specific mental health needs of the resident.
- The admission assessment should also consider the legal status of the resident.

All Nursing Assessments

Mental health should remain part of the nursing assessment and interventions.

- The Uniform Assessment Tool requirements include mental health symptoms.
- Behavioral interventions should be part of the nursing process, coordinated with other professionals and disciplines as appropriate.



Person Centered Planning and Care

The definition in the assisted living statutes for person-centered planning and service delivery includes:

- “Services must be provided in a manner that supports the person's preferences, daily needs, and activities.”
- “Identifies and supports what is important to the person.”
- “The least restrictive supports or interventions necessary.”

- Behavioral interventions must be person-centered and must respect resident rights.
 - This means all interventions should be individualized, not generic.
 - The solution cannot restrict a resident right which assisted living facilities are not allowed to restrict.
 - The interventions need to be updated as the situation changes.

Substance Use History

- An assisted living facility is required to have staffing which:
 - Can meet the reasonably foreseeable unscheduled needs of each resident.
 - Ensures the facility can respond effectively to individual resident emergencies.
- A resident with known mental health needs or an active substance use disorder **has** reasonably foreseeable needs related to those issues.



Things an ALF Cannot Do

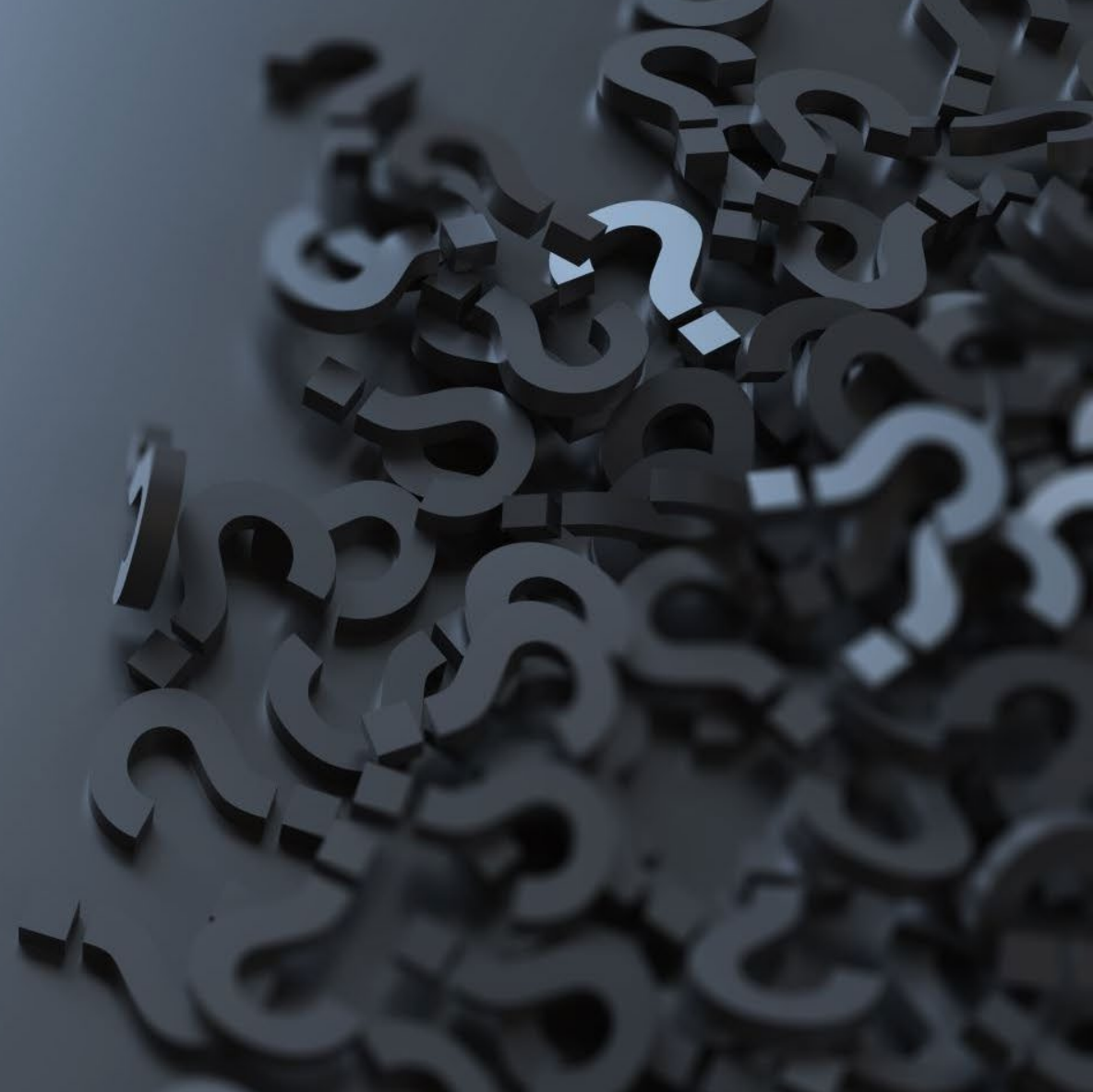
An assisted living facility should not:

- Have blanket bans on alcohol or cannabis.
- Restrict the right of cognitively intact residents to come and go.
- Use secured units to handle drug seeking behaviors.
- Use secured units to handle mental health decompensation.
- Rely on law enforcement or emergency medical services to address known behavioral health needs.



144G.52 Subd. 2 Prerequisite to termination of a contract

- Before issuing a notice of termination of an assisted living contract, a facility must schedule and participate in a meeting with the resident and the resident's legal representative and designated representative.
- The meeting must be scheduled to take place at least seven days before a notice of termination is issued.
- The facility must notify the resident that the resident may invite family members, relevant health professionals, a representative of the OOLTC, a representative of the OMHDD, or other persons of the resident's choosing to participate in the meeting. For residents who receive home and community-based waiver services under chapter 256S and section 256B.49, the facility must notify the resident's case manager of the meeting.



Any Questions?

Thank You!

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Customized Living Services Policies

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- Customized Living: What is it?
- CL: Covered/Not Covered Supports
- Assessment/Rates/Authorization
- HCBS Settings Rule
- BI/CADI Specific Requirements





Customized Living – What is it?

CL: What is it?

Customized living is the term DHS uses to describe assisted living services delivered through the Medicaid HCBS waiver program available in Minnesota's BI, CADI and EW Home and Community-Based Services (HCBS) waiver programs.

Individualized package of regularly scheduled, health-related and supportive services provided to a person aged 18 or older who resides in a qualified setting.

Can be delivered by units or via 24hr-CL. (Certain requirements for 24hr-CL)

CL: Where is it delivered?

Customized living is delivered in settings that meet the following:

- Licensed as an assisted living facility by MDH (MN Statute 144G) or have a comprehensive home care provider license and deliver services in an affordable housing setting as defined under Minn. Stat. §256S.20, subd. 1 or subsequent provisions.
- Enrolled with DHS to deliver CL services.
- Compliant with the HCBS Settings Rule.
- Meet all provider qualifications.
- Follow setting limitations for BI and CADI, when applicable

Note: This is not a complete list.

For a list of all requirements for a setting to deliver CL, please visit the [CBSM – Customized Living](#) page.





Covered/Not Covered Supports

CL: What supports are included?

Activities of daily living

Home management tasks

Assistance with mental health

Non-medical transportation

Health-related assistance

Socialization related to a goal

Customized living component service definitions and guide for computing time for rate-setting tools

Categories NOT covered by CL

Not covered

- Room and board
- Socialization that is related to recreation/diversion
- Medical transportation
- Time direct care staff are not providing services directly to the person.

Not covered under 24hr CL

- PERS or other MT
 - BI/CADI only
- PERS: use inside the CL setting for EW only
 - Can authorize PERS for outside the CL but must be by a different provider.

Services that cannot be authorize with CL

Customized living cannot be authorized with:

- Any other residential service delivered in a provider-controlled setting
- Chore services
- CDCS
- Environmental accessibility adaptations (EW only)
- Homemaker services
- Individual community living supports (EW specific)
- Individualized home supports* (BI/CADI specific)
 - without training
 - with family training

*Individualized home supports with training is allowed with a different provider.



Assessment/Rates/Authorization

Service limitations - total

Certain support areas have a maximum amount of support time overall:

The total amount of support hours in a day cannot exceed 24 hours

Combined, the total number of supports hours for the following support areas cannot exceed 24hrs/day:

- Home management
- Socialization
- ADL assistance
- Health-related assistance
- Mental health management

Additional limitations that apply to specific case mixes can be found on the [“Customized living component services definitions and guide for computing time for rate-setting tools”](#) page in the CBSM.

MnCHOICES Assessment

A person must have a MnCHOICES assessment completed prior to service authorization.

Assessments are required on an annual basis.

For reassessments, the provider can send information at least 30 days prior to give input to the assessor to consider.

Upon completion of the assessment, the case manager must send the provider a completed, thorough support plan to ensure the provider is aware of the specific supports required by the person.

The provider must review the support plan to ensure they have the knowledge and skills to adequately support the person's needs.

Authorizing services

The case manager is responsible for authorizing services.

Authorized services must be directly related to the results of the assessment.

The case manager can only authorize supports for areas of need identified in the assessment, with the following exceptions:

1. Congregate food preparation that is set on a per-meal basis.
2. Mileage for non-medical transportation that is based on a per-mile basis.
 - For EW, it must be linked to assessed need.
3. Summoning devices that have a monthly rate.

DWRS is used for BI/CADI. EWRS is used for EW:

BI/CADI: Customized Living Rates Worksheet | EW: EWRS (in MnCHOICES Support Plan

Providers can share input on support needs but cannot:

- Refuse to take a person based on their case mix/24hr CL eligibility alone.
- Require a minimum amount of support time for a person to be admitted to the facility.
- Have a standard amount of time needed to complete a task; it is individually based.

The final determination of the tasks for which the person requires assistance and the time to complete each task is determined by the case manager.

Service support reminders

When authorizing services, keep in mind this additional information:

- The case manager is responsible to ensure there is no service duplication between services or component units approved.
- Most support hours occur when the person is awake and involved. In rare cases, a person may require support during asleep hours.
- If two staff are required to assist with a task that takes 15 minutes, 30 mins (2 staff x 15min) should be entered.
- A provider cannot bill the person for covered services.
- A provider cannot bill the waiver for services beyond what the person needs.
 - Ex: A provider cannot “max out” a person’s budget. (EW)

Payment in full

All providers enrolled with MHCP must accept payment in full.

Providers cannot charge the person additional money to complete tasks included with the covered services.

- Provider cannot charge the person for additional units of service in a covered area that is included in their current rate plan. Ex: If a person is authorized for 1hr/wk. of homemaking services but the provider delivers 2hrs, they cannot bill for the difference.
 - The authorized units reflect the “average” amount of time it will take for the staff person to assist with the area of need.
 - The time taken may vary day-to-day, but it should typically remain with the average.
 - If there is a significant on-going change in how long a task takes, the provider should work with the case manager for any adjustments.

Prior to authorizing

Always double-check the location address.

Location of service must match the location identified in MMIS

Exception: the only exception to this is when a setting is part of a campus location. In this situation, only the address of the main location will appear in MMIS.

Example:

A person is moving into 125 Main St. operated by ABC Help.

The setting is part of a campus license with the following addresses:

- 123 Main St. (main location)
- 125 Main St.
- 127 Main St.

In MMIS, 123 Main St. would be selected as the service delivery location, as that address covers all three locations.



HCBS Settings Rule

The HCBS Settings Rule is a federal regulation that ensures individuals receiving HCBS services have full access to community life by requiring that services are delivered in settings fully integrated within the community, respecting individual choice, and prioritizing autonomy and independence in decision-making.

People must have the choice of where to live. This includes informing them of non-disability specific options and non-residential service providers and be documented in their plan.

HCBS Settings Rule

A person's plan must include information about their wants and needs, related to community integration.

A person's plan should include their choice regarding services and supports and who provides them.

A person's plan should include information related to a person's desire and opportunities for employment, including volunteer options.

People can have visitors of their choosing at any time. A provider cannot have “visiting hours”.

A person also has the right to choose their own roommate. This choice must be documented in the person’s plan.

People have the freedom and support to control their own schedules and activities, and they have access to food at any time.

HCBS Settings Rule (2)

A person can choose services from a separate provider; they are not required to receive their services from the CL provider.

A person cannot be required to receive services to live in the setting. A person can end their CL services and remain living in the setting, according to their lease agreement.

A HCBS Rights Modification Support Plan Attachment must be developed by the case manager if a rights modification is required, based on a person’s specific needs and present in the person’s record at the facility.



Remember...

**You are working in their home.
They are not living at your work.**



BI/CADI Specific Requirements

BI and CADI CL setting limitations

The BI and CADI waiver customized living services have four setting limitations.

Institution

Collocation

Size

Age

Settings developed and operational on or after May 1, 2001

Institution limitation:

CL for CADI and BI cannot be delivered in settings that located on the grounds of, or adjacent to, institutions.

Exception:

The setting completed/is completing the HCBS Settings Rule heightened-scrutiny process, required by The Center for Medicare and Medicaid Services (CMS).

Settings developed and operational on or after May 1, 2001

Collocated limitation:

CL for CADI and BI cannot be delivered in settings that are collocated, or next to one another, when operated by the same provider.

Exceptions:

The setting completed the HCBS Settings Rule provider attestation in 2017-2018.

The setting was operational prior to January 1, 2023, and will be required to complete the site-specific review process.

Size limitation

Settings developed and operational between May 1, 2001 – Jan 10, 2021

Size limitation:

For people younger than 55, the setting can serve up to four people who are unrelated to the principal care provider.

Note: If a provider chooses to serve people **younger than age 55**, in a setting with more than four units, they must follow instructions in the exception to the limitation section, as explained in [Scenario 1 on the CL CSBM page](#).

Prior to a person under 55 being admitted to the setting, the case manager must submit and receive approval of the [Customized Living Size Limitation Exception Request form](#).

Size limitation: Scenario 1

Scenario 1:

DHS may approve an exception to the size limit if the following requirements are met:

- The person is being discharged from or at imminent risk of being placed in a hospital, ICF/DD or nursing facility.
- The person has no other options for living in their home community, other than a setting that does not meet the current size limit requirements.
- The CL setting has more than four units and less than 25% of the units are occupied by people who receive any services under the BI, CAC, CADI and DD waivers.

Example: If CL setting has 8 units, they could serve **TWO** people on BI, CAC, CADI or DD ($8 \times .25 = 2$).

Additional limitations that apply to specific case mixes can be found on the [Customized living component services definitions and guide for computing time for rate-setting tools](#) page in the CBSM.

Age limitation

Settings developed and operational after Jan 11, 2021.

Age limitation:

CL services are limited to people aged 55 or older on the CADI and BI waiver.

Notes:

- There are no exceptions to this limitation.
- If services are authorized, a claims edit will prevent the provider from billing.
- A change in ownership (CHOW) **does not** affect the enrollment credential of the setting.
- A change in location/address change **does** affect the enrollment credential of the setting, unless the setting meets the license portability allowance.

CL moratorium

Settings developed and operational on or after July 1, 2021.

CL moratorium:

DHS cannot enroll any new CL settings, serving four or fewer people in a single-family home for delivery of CL on CADI or BI.

Notes:

The lead agency is financially responsible for HCBS service payments when all the following are true.

- the person receiving CL is on the CADI or BI waiver
- the CL setting serves four or fewer people
- the setting was developed and operational on or after July 1, 2021.

CL enrollment date	CL enrollment credential* (On PLIC screen in MMIS)	Limitations
Prior to May 1, 2001	AL, DE, CE	No limitations
May 1, 2001 – Jan 10, 2021	AL, DE, CE	Location Size
After Jan 11, 2021	L7, L8, L9	Location Age
After July 1, 2021, and licensed for 4 or fewer beds	L7, L8, L9	Location Age CL moratorium

MMIS exceptions

However, there are some MMIS exceptions...

If a setting has a CL enrollment credential of AL, DE or CE and a CL enrollment date after Jan 11, 2021, it means it either:

- Went through a change of ownership which does not affect CL credential type
- Provider submitted documentation showing were operational and met all CL enrollment requirements prior to Jan 11, 2021.
- Use the upcoming license portability option.

If a setting has a CL enrollment credential of L7, L8 or L9 and a CL enrollment date before Jan 11, 2021, it means it went through a change of location/address.

- The setting will have a new credential type but will keep the original enrollment date.

CL public list (TOOL ONLY)

A list is available in the CBSM which lists all CL settings and the limitations that apply to each individual setting.

NAME	ADDRESS	CITY	STATE	Campus	Bed capacity	Collocated	Location limitation (institution)	Location limitation (collocated)	Size	Age	CL moratorium
ABC Homes	1234 Main St	Mpls	MN	Yes	12	Yes	Yes	No	Yes	No	No

General setting information

Indicates limitations that apply to the setting

For the limitation items, “**yes**” means the setting is subject to the limitation based on the setting’s CL enrollment date. However, it may have no operational effect.

Ex: 1234 Main St. is subject to the institution limitation, but it has no effect because the setting is not located next to an institution.

CL or 24-hour CL resources

- [CBSM – Customized living \(including 24-hour customized living\)](#)
- [CBSM – Resource: Customized living component service definitions and guide for computing time for rate-setting tools](#)
- [RMS Manual – Customized living and 24-hour customized living fields](#)
- [RMS Manual – Quick reference guide on rate calculations for customized living/24-hour customized living for disability waivers](#)
- [Rate Management Worksheet – Customized Living Services and 24-Hour Customized Living Services, DHS-6790G](#)
- [Lead Agency Provider Tool for DWRS Exceptions \(Customized Living\), DHS-5820E](#)

There must be state and federal authority for each HCBS waiver program.

Compliance with state and federal regulations include:

- Code of Federal Regulations: 42 CFR 440.180
- DD Waiver: MN Statute 256B.092
- CAC, CADI, BI Waivers: MN Statute 256B.49
- EW: MN Statute 256S
- HCBS Settings Rule: 42 CFR §441.301(c)(4) / 441.710(a)(1) / 441.530(a)(1)
- Olmstead Plan

- Contact MDH via: health.assistedliving@state.mn.us
- Contact DSD via: [DSD Contact Form](#)
- Contact AASD via: dhs.aasd.hcbs@state.mn.us



Questions?

Thank You!!!

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