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Re: In the Matter of the Proposed Amendments to and Additions of Rules Governing Licensure of Assisted Living Directors, *Minnesota Rules*, chapter 6400; OAH Docket No. 21-9028-36708; Revisor's ID Number 4622

Via e-mail: sonars@lrl.leg.mn

Dear Librarian:

The Minnesota Board of Executives for Long Term Services and Supports intends to adopt rules governing the licensure of assisted living directors. The Board plans to publish a Dual Notice in the November 30, 2020, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Dual Notice.

If you have questions, please contact me at 651.201.2731

Yours very truly,

/s/ Randy Snyder

Randy Snyder
Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Executives for Long Term
Services and Supports (formerly Minnesota
Board of Examiners for Nursing Home
Administrators)

In the Matter of Proposed Revisions of
Minnesota Rules 6400; Revisor ID No. 4622
OAH Docket No. 21-9028-36708

STATEMENT OF NEED AND
REASONABLENESS

October 2020

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Board's Public Notices website: mn.gov/boards/nursing-home
- 2) View older rule records at: [Minnesota Rule Statutes](https://www.revisor.mn.gov/rules/status/)
<https://www.revisor.mn.gov/rules/status/>
- 3) Board contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Randy Snyder, Executive Director, Minnesota Board of Executives for Long Term Services and Supports, 2829 University Avenue SE, Suite 404, Minneapolis, MN 55414; telephone 651-201-2731; email randy.snyder@state.mn.us.
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
- 5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

Acronyms

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
MDH	Minnesota Department of Health
Minn. R. pt	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
NAB	National Association of Long-Term Care Administrator Boards
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

INTRODUCTION

The Minnesota Board of Executives for Long Term Services and Supports (formerly Minnesota Board of Examiners for Nursing Home Administrators) (“Board”) licenses and regulates nursing home administrators in the State of Minnesota. On May 22, 2019, Governor Walz signed into law Minnesota House File 90 (“H.F. 90”), which requires the Board to license and regulate the practice of assisted living directors in Minnesota. House File 90 was codified, in part, in Minnesota Statutes section §144A.20, subd. 1, 4 (2020). The practice of nursing home administration and the practice of assisted living directorship are comparable and complementary, yet different, professions. Because of the similarities, the Board is the appropriate agency to license and regulate the practice of assisted living directors. Many administrative efficiencies can be realized in both the licensing and regulatory processes across the two professions.

The Board is creating new rules and amending current rules to provide a framework for licensing and regulating the practice of assisted living directors in Minnesota. In order to realize administrative efficiencies and in recognition of the comparisons across the two professions, the Board based the rules framework for licensing and regulating the practice of assisted living directors on the currently-existing rules for licensing and regulating the practice of nursing home administrators in Minnesota. See Minn. R. 6400.5000-.6900. The Board deviated from the licensed nursing home administrator (“LNHA”) regulatory framework when appropriate to recognize the differences in education, training, licensing, and practice of licensed assisted living directors (“LALDs”).

The proposed rule changes fall into the following three categories: (1) technical amendments to existing definition and scope rules; (2) new rules modeled entirely on existing LNHA rules; and (3) new rules deviating from existing LNHA rules.

In order to adopt these proposed rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt rules; 2) the rules are necessary and reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This statement documents how the Board has met these requirements.

STATEMENT OF GENERAL NEED AND BACKGROUND

Minnesota Statute section 144A.20, subdivisions 1 and 4 include the following provisions, which charge the Board with licensing and regulating the practice of assisted living directors:

Minn. Stat. sec. 144A.20, subdivision 1. Criteria. The Board of ~~Examiners~~ Executives may issue licenses to qualified persons as nursing home administrators or assisted living directors, and shall establish qualification criteria for nursing home administrators and assisted living directors....

Subd. 4. Assisted living director qualifications; ongoing training. (a) The Board of

Executives may issue licensed to qualified persons as an assisted living director and shall approve training and examinations. No license shall be issued to a person as an assisted living director unless that person: (1) is eligible for licensure; (2) has applied for licensure under this subdivision within six months of hire; and (3) has satisfactorily met standards set by the board or is scheduled to complete the training in paragraph (b) within one year of hire. The standards shall be designed to assure that the assisted living directors are individuals who, by training or experience, are qualified to serve as assisted living directors.

(b) In order to be qualified to serve as an assisted living director, an individual must: (1) have completed an approved training course and passed an examination approved by the board that is designed to test for competence and that includes assisted living facility laws in Minnesota; (2)(i) currently be licensed as a nursing home administrator or have been validated as a qualified health services executive by the National Association of Long-Term Care Administrator Boards; and (ii) have core knowledge of assisted living facility laws; or (3) apply for licensure by July 1, 2021, and satisfy one of the following: (i) have a higher education degree in nursing, social services, or mental health, or another professional degree with training specific to management and regulatory compliance; (ii) have at least three years of supervisory, management, or operational experience and higher education training applicable to an assisted living facility; (iii) have completed at least 1,000 hours of an executive in training program provided by an assisted living director licensed under this subdivision; or (iv) have managed a housing with services establishment operating under assisted living title protection for at least three years.

(c) An assisted living director must receive at least 30 hours of training every two years on topics relevant to the operation of an assisted living facility and the needs of its residents. An assisted living director must maintain records of the training required by this paragraph for at least the most recent three-year period and must provide these records to Department of Health surveyors upon request. Continuing education earned to maintain another professional license, or real estate license, may be used to satisfy this requirement when the continuing education is relevant to the assisted living services offered and residents served at the assisted living facility.

EFFECTIVE DATE. This section is effective July 1, 2020.

H.F. 90 also included changes to Minn. Stat. sec. 144A.04, .19, .21, .23, .24, .251, and .2511., incorporating LALDs into the Board's statutory framework.

Because of the statutory changes and as noted above, the Board is proposing to adopt new rules and to amend existing rules to model the licensing and regulation of LALDs on the currently-existing model for LNHAs, while at the same time deviating from the model when appropriate to recognize the different education, training, and practice for LALDs.

Also as noted above, the proposed amendments fall into the following three categories: (1) technical amendments to existing definitions; (2) new rules modeled on LNHA rules; and (3) new rules deviating from LNHA rules.

SCOPE OF THE PROPOSED AMENDMENTS

The following existing rules of Minnesota Chapter 6400 are affected by the proposed changes:

Minn. R. 6400.5000 Scope
Minn. R. 6400.5100 Definitions

The following rules are proposed new rules to be added to Minnesota Chapter 6400:

Minn. R. 6400.6950 Applicability
Minn. R. 6400.7000 Use of Title
Minn. R. 6400.7005 Licensure Requirements
Minn. R. 6400.7010 Applying for Licensure
Minn. R. 6400.7015 Core Course Requirements
Minn. R. 6400.7020 Minnesota Course Requirements
Minn. R. 6400.7025 Evidence of Course Completion
Minn. R. 6400.7030 Assisted Living Director in Residence; Field Experience
Minn. R. 6400.7040 Course Provider Review
Minn. R. 6400.7045 Endorsement
Minn. R. 6400.7050 Licensee Responsibilities
Minn. R. 6400.7055 Displaying Licenses
Minn. R. 6400.7060 Duplicate Licenses
Minn. R. 6400.7065 Renewing Licenses
Minn. R. 6400.7070 License Reinstatement
Minn. R. 6400.7075 Verification of Minnesota License
Minn. R. 6400.7080 Assisted Living Director in Residence Permits
Minn. R. 6400.7085 Shared Director
Minn. R. 6400.7090 Continuing Education Requirements
Minn. R. 6400.7091 Number of CE Credits for Activities
Minn. R. 6400.7092 Sponsoring Continuing Education
Minn. R. 6400.7095 Standards of Practice; Enforcement

PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

In July 2019, the Board authorized the creation of a Rule Development Team that included public and licensed board members, representatives from long-term care trade associations, a representative from an elder justice organization, the Minnesota Ombudsman for Long-Term Care, and a representative from the Minnesota Department of Health. The Rules Development Team was tasked with developing rules governing the licensure of assisted living directors, the practice of assisted living directorship, continuing education, and standards of practice enforcement. The Rules Development

Team met thirteen times from August 2019 through June 2020 in properly-noticed meetings. Members of the public were invited to attend and participate. Minutes from the Rules Development Team meetings and minutes from Board meetings where rules were discussed were posted on Board's website.¹

The Board also authorized the creation of an Educational Team, comprised of members of the entities that will educate and train assisted living directors, which met in November 2019 in a properly-noticed meeting and provided the Rules Development Team with guidance about educational course requirements for assisted living directors.

The Board adopted the Rules Development Team's proposed amendments at its meeting in December 2019.

In spring 2020, the Board's executive director met with Elder Voice representatives and hosted a WebEx with educational institutions. Both groups had access to the proposed rules for review.

STATUTORY AUTHORITY

Minnesota Statutes section 144A.20, .21, .23, .24, and 214.06 authorize the Board to adopt rules necessary to administer and enforce sections 144A.04 through 144A.28. Minnesota Statutes section 214.12, subdivision 1, authorizes all health-licensing boards to promulgate by rule continuing education requirements. Moreover, as noted above, Minnesota Statutes section 144A.20, subdivisions 1 and 4, passed during the 2019 legislative session, authorized the Board to license and regulate LALDs.

Please see the specific statutory authority argument set forth in the rule-by-rule analysis for Minn. R. 6400.7085 Shared Director.

NECESSITY AND REASONABLENESS OF AMENDMENTS

General Analysis

As noted above, the proposed rules fall into three categories, (1) technical amendments to the existing definition and scope rules and the addition of an applicability rule; (2) new rules modeled entirely or almost entirely on existing LNHA rules; and (3) new rules deviating from LNHA rules. These rules amendments are necessary because they fulfill the statutory duties of the Board set forth in Minn. Stat. § 144A.20, subds. 1, 4, and they provide the regulatory and administrative framework for licensing and regulating the practice of LALDs.

When considering the reasonableness of the proposed rules, it should be noted that the rules were developed by the Board-appointed Rules Development Team, comprised of public and licensed board members, representatives from long-term care trade associations, a representative from an elder justice organization, the Minnesota

¹ The Board posts on its website all Board meeting minutes.

Ombudsman, and a representative from the Minnesota Department of Health. The goal of the Rules Development Team was to craft rules that satisfied the Board's duty to protect the public and other statutory obligations but that were also reasonable when compared to comparable professions, such as the LNHAs and when considering how the existing housing with services model currently operates. The Board's executive director and two Board members, Katie Davis and Steven Chies, also met with national leaders on best practices for LALD coursework during the most recent NAB annual meeting.

As with education, examination and training requirements for LNHAs, the Board also relies on NAB to provide a framework for education, examination and training requirements for LALDs. NAB is the "national authority on licensing executives in long term care dedicated to delivering quality."² NAB is comprised of members from all 50 states' and the District of Columbia's boards and agencies that license long-term care administrators.³ NAB membership also includes "allied professional and trade associations, academic institutions, continuing education sponsors, and individual professionals who support NAB's mission."⁴ The Board has relied on NAB to guide testing, education, and continuing education requirements for LNHAs since 1978. See, e.g., Minn. R. 6400.6000 (D); 6400.6570, subp. 1(A); 6400.6750, C(5); 6400.6800, subp. 4(D); 6400.6850(C).

The technical amendments to the definitions rule are necessary and reasonable because they incorporate legislative changes, specify the scope of the Board's rules, and provide clarity and definition to terms commonly-used in licensing and regulating LALDs.

The new rules modeled on existing LNHA rules are (1) necessary to provide a framework for licensing and regulating LALDs, as provided for in Minn. Stat. § 144A.20, subds. 1, 4, and (2) reasonable because they are modeled on the currently-existing framework for licensing and regulating LNHAs.

The new rules deviating from existing LNHA rules are (1) necessary to provide a framework for licensing and regulating LALDs, as provided for in Minn. Stat. § 144A.20, subds. 1, 4, and (2) reasonable because, although modeled on the currently-existing framework for licensing and regulating LNHAs, they deviate from these rules to take into account different education, training, and practice of LALDs in Minnesota.

Rule-by-Rule Analysis

² See <https://www.nabweb.org>. Moreover, most state boards that regulate health care providers belong to a national organization that provides information and guidance regarding national trends in education, licensing, and regulation of the particular health care professions. See, e.g., <https://www.fsmb.org> (Federation of State Medical Boards); <https://www.ncsbn.org/index.htm> (National Council of State Boards of Nursing); <https://nabp.pharmacy/boards-of-pharmacy/> (National Association of Boards of Pharmacy).

³ Id.

⁴ https://www.nabweb.org/filebin/pdf/BST_183_Overview.pdf

Scope, Definitions, and Applicability

The Board is proposing to add a subpart to Minn. R. 6400.5000 Scope to specify that the Board's rules apply to applicants, prospective applicants, assisted living directors, and assisted living directors in residence. This is reasonable and necessary to provide notice that the Board will oversee the practice of assisted living directors in Minnesota, in much the same manner as it oversees the practice of licensed nursing home administrators.

The Board is proposing to add subparts to Minn. R. 6400.5100 Definitions for the following terms: assistant director, assisted living contract, assisted living director or director, assisted living director in training or ALDIT, assisted living facility, assisted living facility with dementia care, assisted living services, controlling individual, delegation of authority policy, higher education, long-term care administrator, manager, managerial official, mentor, ombudsman, professional degree, professional practice analysis, and resident. These additions are necessary because they define terms used in the proposed new rules and statutes, thereby providing clarity to the public, licensees, and other stakeholders on the rules in general.

The following terms are reasonable because the proposed definition refers directly to the statutory definition from statute: assisted living contract, assisted living director or director, assisted living facility, assisted living facility with dementia care, assisted living services, controlling individual, manager, managerial official, and ombudsman.

The following terms are reasonable because their proposed definition comes from the substantive proposed new rules and/or comparable language in other state statutes, as follows:

- "Assistant director" is reasonable and necessary because it is adapted from the currently-existing definition for "assistant administrator" to reflect the language and practice of assisted living.
- "Assisted living director in residence or ALDIR" is reasonable and necessary because it is adapted from the proposed new definition for "assistant director" and the proposed rule that allows for a permit process and on-the-job training for an individual who serves as an ALDIR (See proposed Minn. R. 6400.6770.)
- "Delegation of authority policy" is reasonable and necessary because it is a commonly-used phrase in the long-term care industry and a required component of assisted living facility policies.
- "Higher education" is included in Minn. Stat. §144A.20, subd. 4, but not expressly defined in Minnesota Statutes. The Board's proposed definition is reasonable and necessary because it is based on the scope of the Minnesota Office of Higher Education and on generally-accepted definitions of "higher education" and provides clarity on the statutorily-used term.
- "Long-term care administrator" is a commonly-used industry term that encompasses the entire spectrum of long-term care providers. It is reasonable and necessary to define this term because it is used in the rules and in the industry and will provide clarity to the general public.
- "Mentor" is reasonable and necessary because it defines the individual who will oversee the ALDIR field experience set forth in proposed Minn. R. 6400.7080.

- “Professional degree” is included in Minn. Stat. §144A.20, subd. 4, but not defined in Minnesota Statutes. The Board’s proposed definition is reasonable and necessary because it is based on a generally accepted definition of “professional degree” and provides clarity for the phrase.
- “Professional practice analysis” is reasonable and necessary because it is a term used in Minn. R. 6400.7030 governing the field experience and is a commonly-used industry term.
- “Resident” is reasonable and necessary because the term is used throughout the LALD rules and is a commonly-used industry term. The definition as written was proposed by the Revisor’s Office to provide clarity as to the distinction between a resident of an assisted living facility and a resident of a nursing home facility. It is reasonable and necessary to provide this clarity.

The Board is also proposing to amend the following definitions:

- “CE credit” will now include the phrase “continuing education credit,” which is necessary to define the abbreviation “CE” and reasonable because it is the exact words that form the abbreviation.
- “Domains of practice” will now more broadly refer to “long-term care administrators” instead of just licensed nursing home administrators. This is necessary and reasonable to encompass the new licensure category of LALDs.
- “License” will now more broadly refer to both an LALD and LNHA license. This is necessary and reasonable to encompass the new licensure category of LALDs.
- “Licensee” will now more broadly refer to both an LALD and an LNHA. This is necessary and reasonable to encompass the new licensure category of LALDs.
- “Permit” will now also include a reference to the rule permitting ALD permitting. This is necessary and reasonable to encompass the new licensure category of LALDs.

Finally, on recommendation of the Revisor’s Office, the Board is proposing the Applicability rule, which provides clarity for the public, licensees, and potential licensees as to which provisions of Minnesota Chapter 6400 apply to LALDs and which apply to LNHAs. The Board agreed with the Revisor’s Office that this rule is reasonable and necessary to provide that clarity. It should also be noted that health services executives will be licensed by the Board and have authority to practice as either LNHAs and/or LALDs in Minnesota and, therefore, will be subject to both subsets of Minnesota Chapter 6400.⁵

Rules Modeling Existing LNHA Rules

The Board is proposing to add the following rules, which are directly modeled on the rules

⁵ The legislature authorized the Board to license health services executives (“HSE”) as part of House File No. 90, and that authority is now codified in Minn. Stat. sec. 144A.26, subd. 2 (2020). The Board has rule amendments pending in OAH 5-9028-36680 to fully incorporate HSEs into the Board’s licensing and regulatory rule framework.

governing LNHAs:

- **Minn. R. 6400.7000 Use of Title**
- **Minn. R. 6400.7010 Applying For Licensure**
- **Minn. R. 6400.7055 Displaying Licenses**
- **Minn. R. 6400.7065 Renewing Licenses**
- **Minn. R. 6400.7070 Licensee Reinstatement**
- **Minn. R. 6400.7075 Verification of Minnesota License**
- **Minn. R. 6400.7091 Number of CE Credits for Activities**

These rules are necessary because they fulfill the statutory duties of the Board set forth in Minn. Stat. §144A.20, and they provide the regulatory and administrative framework for licensing and regulating the practice of LALDs.

The language is reasonable because it is based on existing language for LNHAs, which is a comparable health care profession that is administered and regulated by the Board. These rules will allow the Board to incorporate the licensing and regulation of LALDs into the Board's existing processes and procedures.

Rules Deviating from Existing LNHA Rules

The Board is proposing to add the following rules, which are modeled on but have some deviations from, existing rules governing LNHAs:

- **Minn. R. 6400.7005 Licensure Requirements**

This rule is necessary because it fulfill the statutory duties of the Board set forth in Minn. Stat. §§144A.20 and .24 and provides the training and examinations required for licensing LALDs.

This rule is reasonable because the Rules Development Team and the Board used the framework set forth in statute and provided more explanation and guidance about the training, education, and experience required to become licensed as an LALD. The licensing criteria were developed by reviewing other state's criteria for LALD licensure, soliciting input from current housing with services providers, and soliciting input from elder care advocates. The goal was to create licensing criteria that ensured an educated, well-trained profession without creating unnecessary or prohibitive barriers to entry.

The reasonableness of each subpart of the rule is as follows:

- ⇒ Subpart 1 (A-E) – These subparts are based on the current application requirements for LNHAs. They are basic criteria required of most health licensees when applying for initial licensure.
- ⇒ Subpart 1(F) – This subpart is based on the language of Minn. Stat. §144A.20, and .24 that specifies that LALD applicants must have the training and knowledge to be qualified to serve as LALDs. The criteria are based on national standards for pre-application education and work experience. The Board found that these criteria

appropriately balanced education and work history to promote public protection.⁶ If an LALD applicant has less education, he or she would need more work experience to be a qualified applicant. If an applicant has more education, he or she would have a reduced work experience requirement. Many states require applicants to satisfy these training and education criteria in order to become licensed in their state. As a result, by adopting these standards, the Board is providing for increased portability of licensure for LALDs.

- ⇒ Subpart 1(G) – This subpart requires that an applicant have read the LALD rules and those governing assisted living facilities, once promulgated. The Board found this to be a reasonable requirement on its face.
- ⇒ Subpart 1(H)(1) - This subpart is based on the language of Minn. Stat. §§144A.20 and .24 that specifies that LALD applicants must have the training and knowledge needed to be qualified to serve as LALDs. This will be the primary track to licensure for candidates starting out as LALDs in the long-term care field. The training includes the core course education requirement, the Minnesota based education requirement, and the field experience. The scope and duration of the field experience will be determined by the education and work experience identified as part of the application process in subpart 1(F) above. (See proposed Minn. R. 6400.7030 *infra*.) The exam requirements include a core-based exam and a Minnesota based exam. This subpart is reasonable because it is based in the statutory language requiring that the Board approve training courses and examinations that “test for competence” and include “assisted living facility laws in Minnesota.”
- ⇒ Subpart 1(H)(2) – This subpart provides for licensure by endorsement for (1) LNHAs currently licensed in Minnesota, (2) LNHAs currently licensed in other states, and (3) assisted living directors currently licensed in other states. Please see Minn. R. 6400.7045 Endorsement for a discussion of the reasonableness of the specific criteria for each of these categories.
- ⇒ Subpart 1(H)(3) – This subpart incorporates the “grandparenting” track to licensure set forth in Minn. Stat. §144A.20, subd. 4. All applicants must apply by a certain deadline, July 1, 2021, to be eligible for this path to licensure. The language of this proposed subpart provides clarity to the “training specific to management and regulatory compliance” requirements in Minn. Stat. §144A.20, subd. 4 by specifying that this means training reasonably related to the five domains of practice for LALDs identified by the National Association of Boards of Examiners for Long-Term Care Administrators (“NAB”). (<https://www.nabweb.org/nationalaittoolkit>). These nationally-identified domains of practice are the most reasonable guide to use to clarify “management and regulatory compliance” for LALDs. Moreover, the Board also added a provision that asks the applicant to attest that he or she has read the laws and rules governing assisted living facilities, which the Board finds to be reasonable on its face.

⁶ As a comparison, LNHAs are required to complete a practicum, taken for academic credit, and have a bachelor’s degree prior to application. See Minn. R. 6400.6550, .6570, and .6600.

⇒ Subpart 2 – This provision requires all those who obtain licensure through the grandparenting track to complete, within the first year of licensure, at least seven hours of continuing education in topics related to assisted living facility. This is reasonable to ensure that those licensees who obtain licensure through the grandparent track, which is an accelerated process, have the necessary knowledge and education as they move forward in their practice as LALDs. This serves the Board’s public protection mission. Moreover, it is reasonable because it does not create additional continuing education requirements, but rather directs the scope and topic of continuing education requirements. (See proposed Minn. R. 6400.7090 *infra*.)

○ **Minn. R. 6400.7015 Core Course Requirements**

This rule is necessary to provide a standardized level of basic educational requirements for LALD applicants and for institutions and entities that will educate LALDs. It ensures that all LALD applicants will have knowledge and training in topics specified in the core course requirements, thereby promoting protection of the public.

This rule is reasonable because it is based on the domains of practice for LALDs identified by NAB. The departures from the LNHA general course requirement rules are reasonable because there are different domains of practice identified for LNHAs and LALDs, as identified in the NAB Administrator-in-Training Program Manual. See <https://www.nabweb.org/nationalaittoolkit>.

The rule requirement that the core course of study for a minimum of 80 hours is also reasonable because it balances both the Board’s public protection mission and the industry-standard duration for core course of study. This hour minimum was developed after much debate and discussion among the Board’s Rules Development Team. The Board appointed an Education Team to review data from other state licensing boards, to review the NAB Administrator-in-Training Manual and to make recommendations as to the length of courses needed to cover the domains. The Rules Development Team reviewed the recommendation of the Education Team and the data from other state licensing boards as to the hour requirements for core courses of study. Based on the recommendations of the Education Team, the Rules Development Team, and the underlying data, the Board found that an 80-hour minimum was reasonable.⁸

○ **Minn. R. 6400.7020 Minnesota Course Requirements**

This rule is necessary to provide a standardized level of Minnesota-based education for LALD applicants and for institutions and entities that will educate LALDs. It ensures that all LALD applicants will have knowledge and training of Minnesota-based practices, standards, rules, and laws, thereby promoting protection of the public. During the legislative hearings on H.F. 90, many consumer advocates, including family members,

⁸ The best-practice states average total length of course study hours was 120 hours, which is the Board’s proposal when combining the core and Minnesota course requirements. States range from no education minimum to bachelor’s degree requirements. Training courses range from 40 to 320 hours.

residents, the American Association of Retired Persons, the Minnesota Office of the Ombudsman, and the Alzheimer's Association, talked about the importance of Minnesota standards of practice in education and training. The RDT and Board took this advocacy into consideration when drafting the Minnesota course requirements rule.

The topics were developed by the Education Team, reviewed and approved by the Rules Development Team, and adopted by the Board. Industry stakeholders had representatives on the Education Team and the Rules Development Team.

The rule requirement that the Minnesota course of study for a minimum of 40 hours is also reasonable because it balances the Board's public protection mission and the industry-standard duration for courses of study.⁹ This hour minimum was developed after much debate and discussion among the Board's Rules Development Team. The Board appointed an Education Team to review data from other licensing boards, to review the NAB Administrator-in-Training Manual and to make recommendations as to the length of courses needed to cover the domains. The Rules Development Team reviewed the recommendation of the Education Team and the data from other state licensing boards as to the hour requirements for core courses of study. Based on the recommendations of the Education Team, the Rules Development Team, and the underlying data, the Board found that a 40-hour minimum was reasonable.

- **Minn. R. 6400.7025 Evidence of Course Completion**

This rule is necessary to fulfill the Board's statutory duty to determine and enforce licensing criteria for LALDs. This rule is reasonable because it is based almost entirely on the LNHA evidence of course completion rule. LNHAs comprise a comparable profession that is regulated by the Board. This rule allows the Board to verify course completion while also achieving administrative efficiencies by having the same process for both LALD and LNHA continuing education sponsorship.

The only deviation from the LNHA rule is that, to demonstrate satisfactory completion of the courses, an applicant must supply documentation or an attestation from the program director. The LNHA rule, Minn. R. 6400.6570, requires transcripts because LNHAs receive a bachelor's degree. It is reasonable to require applicants for LALD licensure to supply documentation or attestation from a course program director because this is reflective of the manner in which LALDs are and will be educated.

- **Minn. R. 6400.7030 Assisted Living Director in Residence; Field Experience**

This rule is necessary to fulfill the Board's statutory duty set forth in Minn. Stat. §§144A.20 and .24 to ensure that applicants have completed approved training sufficient to qualify for licensure. The rule is reasonable because it is based on the principles that underscore the practicum experience for LNHAs and balances concerns from long-term care providers, advocates for those who use long-term care services, and Board members charged with the duty to protect the public. The field experience focus and duration will be determined by the assisted living director in residence ("ALDIR") and his or her mentor

⁹ See note 3.

after the applicant completes a board-approved self-assessment. The duration of the field experience is recommended to be 480 hours, but there is flexibility for it to last as little as 320 hours and as many as 1000 hours, depending on the experience, knowledge, skillset, and performance of the ALDIR. The goal of the field experience is to create on-the-job training that does not require an ALDIR to duplicate previous experience while at the same time ensuring that the ALDIR is adequately trained to direct a facility independently when he or she becomes an LALD. The Board and its Rules Development Team found that it was reasonable to require six components of the field experience, set out in subpart 4, to standardize the training for all ALDIRs and to ensure that all ALDIRs have a level of knowledge and training in these areas, which are necessary to safely practicing as an ALDIR.

- **Minn. R. 6400.7040 Course Provider Review**

This rule is necessary to fulfill the Board's statutory duty set forth in Minn. Stat. §§144A.20 and .24 to ensure that applicants have completed an approved training course. This rule is reasonable because it is based on the framework for approving academic programs for LNHAs while recognizing that the education for LALDs will take a different, non-bachelor's degree, format. The similarities between the two frameworks will allow the Board to realize administrative efficiencies. Also, the course programs for LALDs may be provided by a number of different entities, including long-term care associations and long-term care facilities, so the Board set forth a detailed submission and approval process in the proposed rule. Subparts 1 through 3 set forth the program approval process, the information required when requesting review, and the review and approval process, including notice requirements when the Board find deficiencies in proposed course provider submissions. Subparts 4 and 5 are substantially similar to the annual review and five-year review for academic programs for LNHAs. The LALD course provider approval process is reasonable and necessary to assure LALD candidates that approved courses will adequately prepare them for licensure.

- **Minn. R. 6400.7045 Endorsement**

This rule is necessary to fulfill the Board's statutory duty to license those who "qualify" as assisted living directors in Minnesota. Minn. Stat. §§144A.20 and .24. This rule is reasonable because it is based on a currently-existing licensure by endorsement rule governing LNHAs, a comparable profession regulated by the Board. The Board will realize administrative efficiencies by having a companion process for LALD licensure by endorsement.

The LALD licensure by endorsement rule addresses licensure for the following categories of individuals with the category-specific criteria disclosed:

- ⇒ assisted living directors who hold licenses from other jurisdictions will need to successfully complete the Minnesota core course and pass the Minnesota examination;
- ⇒ licensed nursing home administrators will need to complete the Minnesota core course, unless they graduated from a Minnesota-approved educational institution, and pass the Minnesota examination; and
- ⇒ all applicants will be required to be in good standing in their other licensure

jurisdictions.

The endorsement pathways to licensure are reasonable because they ensure applicants have Minnesota-based knowledge and training about directing assisted living facilities and are in good standing with their other licenses, thereby promoting public protection, while also not creating unreasonable barriers to licensure in Minnesota.

- **Minn. R. 6400.7050 Licensee Responsibilities**

This rule is necessary to fulfill the Board's statutory obligation to protect the public by regulating the practice of LALDs. This rule is also necessary because it provides licensees with notice of the Board's expectations about licensee responsibilities.

Subparts A through E of this rule are reasonable because they are modeled on the licensee responsibilities for LNHA's, a comparable profession regulated by the Board. They set forth a licensee's obligations to comply with Minnesota law, keep contact and disciplinary information current with the Board, and cooperate with Board requests for information.

Subparts F through G of this rule are reasonable because they incorporate specific standards of practice for housing with services institutions, the precursor of assisted living facilities. See Minn. Stat. §144D.01, subd. 4 (defining "housing with services") (repeal effective August 1, 2021); 144A.01-.11 (setting forth regulatory framework for housing with services facilities). They represent minimum standards of acceptable and prevailing practice in the industry. They are also reasonable because they provide licensees with notice of these specific professional obligations to protect the public and, in particular, residents of assisted living facilities.

- **Minn. R. 6400.7060 Duplicate Licenses**

This rule is necessary to fulfill the Board's statutory duty to regulate the practice of LALDs and thereby protect the public. This rule is reasonable because it is modeled on the duplicate licenses provision governing LNHA's, a comparable profession regulated by the Board. The Board will realize administrative efficiencies by having a similar duplicate license process for LALDs.

The proposed rule includes one sentence not included in the LNHA rule, which notes that LALDs may apply for a duplicate license to display at each facility where the licensee serves as LALD. All individuals serving as a share director under Minn. R. 6400.7085 will need to obtain a duplicate license for each facility at which he or she serves as director. This provision is reasonable because it will notify all those who enter the facility who is responsible for the facility, thereby promoting public protection.

- **Minn. R. 6400.7080 Assisted Living Director in Residence Permits**

This rule is necessary to fulfill the Board's statutory duty to license qualified LALDs and regulate the practice of LALDs and thereby protect the public. The licensing qualifications and ongoing training provision of Minn. Stat. §§144A.20 created a framework whereby an applicant for licensure as an assisted living director may be working as an assisted living

director while still in the process of completing training. The legislature provided a one-year deadline for completion of training after the applicant begins working as an assisted living director. Minn. Stat. §144A.20, subd. 4(a)(3). This rule is necessary so the Board has knowledge of and regulatory authority over all individuals who are serving as assisted living directors in Minnesota. Additionally, an individual holding a permit to practice, even if he or she is not yet licensed, would be eligible for participation in the Health Professionals Services Program, a monitoring program established under Minn. Stat. §§ 214.31 to .37 for health care professionals with an illness that may impact their ability to practice safely.¹¹

This rule is reasonable because it is modeled on the acting administrator permit rule governing LNHAs, a comparable profession currently regulated by the Board. The Board will achieve administrative efficiencies by incorporating the assisted living director in residence permit process into the already-existing permitting process for acting administrators. Moreover, the Board is satisfying its duty to protect the public from unlicensed practitioners while also creating few barriers to obtain a permit, requiring that an individual have a high school degree or equivalent, have experience managing an assisted living or related facility or be enrolled in a course program within six months of hire, be in good standing with all health care licenses ever held, completed the statutorily-required background check, and have a mentor.

The Board finds subpart 3 reasonable because it provides notice to the assisted living director in residence that he or she will be expected to meet the responsibilities of LALDs when directing a facility. These standards are necessary to protect the public.

- **Minn. R. 6400.7085 Shared Director**

This rule is needed to address an anticipated LALD shortage in Minnesota and to protect the public from unregulated and unidentified “shared director” situations. The rule is reasonable because it promotes public protection while not creating unnecessary barriers to the employee pool for LALDs.

Under the current housing with services (“HWS”) model, an HWS operator often oversees multiple HWS facilities. See generally Minn. Stat. §§144D.01 to .11. Many of these facilities have smaller occupancy rates and serve residents in out-state Minnesota. If facilities were not able to share directors, the Board anticipates that there would be a significant shortage of assisted living services in Minnesota.

In crafting the LALD Shared Director rule, the Rules Development Team and the Board found it important that directors apply to Board for approval, and thereby provide notice to the Board, of the shared relationship and that the application be signed by a legal representative of the licensed facilities. The requirement that the Board be notified and approve any shared director relationship protects the public by ensuring Board oversight over these relationships.

¹¹ See <https://mn.gov/boards/hpsp/> for Minnesota Health Professionals Services Program mission statement.

The Board created two tracks for approval of the shared director relationship. Both tracks will solicit all information set forth in D as criteria for approval of the shared director arrangement.

The first track creates an administrative approval process for shared relationships where the director has sufficient education and experience, would oversee five or fewer facilities, the facilities are within a 60 mile radius, the facilities have common management, and the facilities' licensees and the license or permit of the proposed director are all in good standing. When these criteria are met, the Board would delegate approval to Board staff. No full Board review would be required, but the Board would receive a quarterly report identifying shared director arrangements. The Board finds these circumstances to allow for greater access to assisted living services while at the same time satisfying the Board's duty to protect the public.

The second track is for applications that do not meet the criteria for administrative approval. Those applicants will all need to be approved by the Board using the criteria the Board sets forth in subpart D. The Board will provide written notice and a remediation plan to all applicants who are not approved by the Board, as set forth in subpart G.

Regardless of the approval track, all shared facilities will be required to establish additional policies and procedures and to have additional postings at facilities, as set forth in subpart F that are necessary and reasonable to promote public protection under the shared director model.

Minn. Stat. § 144A.04, subd. 5 (2020) provides that nursing homes may share the services of a licensed administrator. Like its HWS precursor, Minn. Stat. §§144A.20 and .24 neither expressly allow for nor expressly forbid the sharing of an LALD among facilities. The Board has "exclusive authority to determine the qualifications, skill and fitness required of any person to serve as ... an assisted living director of an assisted living facility." Minn. Stat. § 144A.23 (2020). Moreover, the Board also has the authority to "establish and implement procedures designed to assure that individuals licensed as ... assisted living directors will comply with the board's standards." Minn. Stat. § 144A.24 (2020).

Moreover, the Board also notes that the Minnesota Department of Health has sought amendments to House File 90, the legislation that produced Minn. Stat. §§144A.20, to address situations where assisted living facilities are located on a "campus" and are managed by one LALD.

Also, as noted above, without the shared director rule, there is no express prohibition on a shared director arrangement and no other express requirement that the Board be notified that such arrangement exists. There would be no limitations on these arrangements, which would likely pose a risk to the public.

As a result, the Board is asking the OAH to affirm the Board's position that it has authority

to promulgate this shared director rule under the statutory authority set forth above. The current industry practices, the broad statutory authority granted to the Board to regulate the practice of assisted living directorship in Minnesota, and the MDH proposed amendments all envision an industry that would allow for shared directors. The Board has proposed a rule that would provide needed access to assisted living facilities, while also setting up an application process and operating requirements that promote public protection. This rule is reasonable and necessary.

- **Minn. R. 6400.7090 Continuing Education Requirements**

This rule is necessary to fulfill the Board’s statutory duty to regulate the practice of LALDs and, specifically, its role under Minn. Stat. § 214.12 (2020) (titled “continuing education”) to “promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees” and the requirement in Minn. Stat. §§144A.20 that LALDs have at least 30 hours of training every two years on assisted living facility topics.

The LALD proposed rule is reasonable because it is almost entirely based on the LNHA continuing education rule. LNHAs comprise a comparable profession that is regulated by the Board. This rule allows the Board to monitor satisfaction of continuing education requirements while also achieving administrative efficiencies by having the same process for both LALDs and LNHAs.

The LALD proposed rule contains one provision additional to the LNHA rule. The additional provision is in subpart 5 and it allows for continuing education to maintain other professional licenses to be used to satisfy the Board’s continuing education requirements, when approved by the Board and when it is reasonably related to the domains of practice for LALDs. This proposed rule is based on Minn. Stat. §§144A.20, which expressly provides for this “other licensure” continuing education when it is “relevant” to assisted living services. The Board defines “relevant” consistently throughout the LALD rules as “related to the domains of practice” so it is reasonable to have this clarification in the proposed rule.

- **Minn. R. 6400.7092 Sponsoring Continuing Education**

This rule is necessary to fulfill the Board’s statutory duty to regulate the practice of LALDs and, specifically, its role under Minn. Stat. § 214.12 (2020) (titled “continuing education”) to “promulgate by rule requirements for renewal of licenses designed to promote the continuing professional competence of licensees” and the requirement in Minn. Stat. §§144A.20 that LALDs have at least 30 hours of training every two years on assisted living facility topics.

The LALD proposed rule is reasonable because it is almost entirely based on the LNHA sponsoring continuing education rule. LNHAs are a comparable profession regulated by the Board. This rule allows the Board to regulate the sponsoring of continuing education while also achieving administrative efficiencies by having the same process for both LALD and LNHA continuing education sponsorship.

The LALD proposed rule has one addition to the LNHA sponsoring continuing education rule. Minn. R. 6400.7092, subp. 6 provides that Minnesota-approved course program providers are exempt from an annual fee if they use the board's online continuing education reporting system.¹² This provision is reasonable because it provides continuing education providers with an incentive to use the board's online system, which in turn creates administrative cost savings and supports efficiencies in the continuing education system.

- **Minn. R. 6400.7095 Standards of Practice; Enforcement**

This rule is necessary to fulfill the Board's statutory duty to regulate the practice of LALDs in Minnesota, promoting public protection by enforcing standards of practice. Minn. Stat. §§144A.20, .24. All health licensing boards have standards of practice, sometimes labeled "discipline," statutes or rules that allow the health licensing boards to take action on the license of health care workers who fail to maintain standards of practice. See generally Minn. Stat. §214.01, subd. 2 (defining "health-related licensing board" and including citation of each boards' practice act). These provisions are important for public protection but also for licensees to have notice of conduct that may cause the Board to take action on their license.

The LALD proposed rule is reasonable because it is almost entirely based on the LNHA grounds for discipline rule. LNHA's comprise a comparable profession that is regulated by the Board. Moreover, as noted above, the health licensing boards have similar disciplinary provisions for all health licensees and the LALD rule models those provisions.

The LALD proposed rules include one addition to the LNHA grounds for discipline rule. Minn. R. 6400.7905, subpt. 1(Y) allows the Board to take action on the license of a LALD who fails to meet the requirements of Minn. R. 6400.7030 when mentoring an assisted living director in residence during the field experience.¹³ This provision is reasonable and necessary to fulfilling the Board's public protection mission. The Board protects both the assisted living director in residence and the public in general if it has the ability to take action on the license of a mentor who does fulfill mentoring duties for an assisted living director in residence. The mentor serves a key function in the training of LALDs, overseeing on-the-job training for licensure candidates. Moreover, other professions that have licensees oversee the practice of another regulated person allow the licensing board of the overseeing licensee to take action for failure to adequately supervise. See, e.g., Minn. Stat. §§ 147.091, subd. 1(h)(1)-(3) (allowing board of medical practice to take action on the license of a physician who fails to provide proper supervision of a physician assistant, licensed or unlicensed health care provider, or a physician under any agreement with the board); 148.261, subd. 1(5) (2018) (allowing board of nursing to take

¹² Please be advised that the Board has also proposed this same addition to the rules governing LNHA's and health services executives in Minnesota. That rule is pending as part of OAH 5-9028-36680.

¹³ Please be advised that the Board has also proposed this same addition to the rules governing LNHA's and health services executives in Minnesota. That rule is pending as part of OAH 5-9028-36680.

action on the license of a nurse who fails “to supervise or ... to monitor adequately the performance of acts by any person working at the nurse’s direction”).

REGULATORY ANALYSIS

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons affected by this rule are applicants and future licensees and permittees, residents of assisted living facilities, owners and managers of assisted living facilities, and the public.

The applicants and future licensees and permittees will bear the cost of these rules in the form of initial license fees, renewal fees, and continuing education costs. These are reasonable costs that are born by all licensed health care providers in Minnesota. Applicants and future licensees and permittees may also bear the cost of the Minnesota and/or core course educational requirements if they do not meet the criteria for waiver of these requirements. Educational costs are costs that are born by all licensed health care providers in Minnesota.

Owners and managers may bear the cost of additional expenses to ensure compliance with these rules, although these costs are likely minimal.

The residents of assisted living facilities and the public will benefit from these rules. The legislature has determined that it is in the public interest to license assisted living directors. The Board’s role is to protect the public by ensuring that those who are licensed are qualified to serve as LALDs and by ensuring ongoing competence through regulatory activity and continuing education.

The Board also finds that LALDs will benefit from these rules by having a professional industry comparable to the other regulated health care professions in Minnesota. The industry will also benefit by having the Board ensure that minimum standards of acceptable and prevailing practice are satisfied by the LALD profession.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The best estimates from the Minnesota Department of Health indicate that anywhere from 1,500 to 4,500 individuals may apply for licensure as LALDs. As of June 30, 2018, the date of the Board’s most recent biennial report, the Board was regulating 928 licensees, with an average of 80 new licensees per year for the 2016 through 2018 timeframe. The LALD licensure will increase the number of individuals the Board regulates by a minimum of two times and a maximum of nearly six times.

Despite this dramatic increase in licensing and regulatory workload, the Board received no appropriation in House File 90. In contrast, the Minnesota Department of Health, which will license and regulate assisted living facilities, received appropriations totalling over \$7

million to establish licensure of assisted living facilities. If the Board does not receive an appropriation, the Board will not be able to license and regulate LALDs in Minnesota.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The Board has determined that there is no less costly or less intrusive method of achieving the purpose of the rules, i.e., to satisfy the Board's statutory obligation to license LALDs and regulate the practice of LALDs in Minnesota. As noted above, the rules are based on the existing framework for licensing LNHAs and regulating the practice of LNHAs in Minnesota, with LNHAs being a comparable profession. The Board will achieve many administrative efficiencies by incorporating the licensing and regulation of LALDs into the existing administrative framework.

Moreover, the Board solicited the input of industry leaders in determining the least costly and least intrusive methods of creating pathways to licensure that also satisfy the Board's duty to promote public protection by ensuring an educated, trained and qualified LALD workforce. The Board provided a number of pathways to licensure that can be adapted to meet an individual licensee's experience, training and education.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

For the majority of the rules, alternatives were not seriously considered because the Board was able to achieve sufficient efficiencies by incorporating the licensure of LALDs and regulation of the practice of LALDs into the existing framework for regulation of LNHAs, a comparable profession currently regulated by the Board.

The Board considered alternative methods for the following rules:

- Minn. R. 6400.7005, subp. 1(F) Licensure Requirements – The Rules Development Team and the Board considered requiring a high school degree only, remaining silent on the education minimums, and including a minimum age requirement. The Board and the Rules Development Team ultimately approved the language in (F) because it was based on a national standard, it would increase a licensee's ability to become licensed in other states, and it better promoted public protection by considering the totality of circumstances of an applicant's training and experience. The Board and Rules Development Team rejected a minimum age requirement because it found that to be somewhat arbitrary and found the proposed structure better able to promote public protection.
- Minn. R. 6400.7015 and 6400.7020 – Core and Minnesota Course Requirements – The Board, the Rules Development Team, and the Education Team reviewed other state standards and the NAB domains of practice and relied on the expertise of the members of the Board, the Rules Development Team and the Education Team to determine the appropriate courses. The groups brainstormed about the appropriate course content and systematically identified the topics that were necessary to ensure adequate education as part of LALD licensure. Moreover, those groups discussed extensively the hour requirements for both the Minnesota

and the core course requirements. Again, the groups reviewed other state's practices, discussed industry standards for current on-the-job education duration, and analyzed the course topics to determine the 80 hour minimum for core courses and 40 hour minimum for Minnesota courses. The groups considered many options, from no hour requirements to nearly twice the current hour requirements, and the groups considered using "not to exceed" language instead of setting "minimum" requirements. Ultimately, the groups unanimously recommended that the minimum hour requirements to promote public protection and provide flexibility to course providers and applicants.

- Minn. R. 6400.7030 Assisted Living Director in Residence; Field Experience – The Rules Development Team and the Board discussed and considered several different hours requirements for the ALDIR field experience. Ultimately, the Board rejected a rigid hour requirement for the approach set forth in the rule whereby the duration is determined by the ALDIR and the mentor based on the ALDIR's pre-field experience self-assessment that will identify deficits in education, training and experience. The Board provided a more flexible hours range of with 320 to 1000 hours, with 480 hours recommended.
- Minn. R. 6400.7085 Shared Director – The Rules Development Team and the Board discussed extensively the shared director model and considered several different alternatives including providing specific geography, resident number, facility number, and staffing requirements in the rules and providing a process by which the full Board would need to individually consider every request to serve as a shared director. The Board rejected these two proposals as too rigid and overly burdensome to the Board, without actually enhancing public protection, when considering the current housing with services industry. The Board opted instead for a more flexible model that provides for an administrative approval for shared director relationships that pose a low-risk because of the criteria set forth in (C) and a Board-petition and review process for shared director relationships that do not, on their face, meet the low-risk criteria. The Board petition and review process provides for greater Board oversight on the shared director relationships that appear, on their face, to potentially be a more challenging environment for a shared LALD.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

Licensees will bear the cost of initial licensing fees, renewal fees, and continuing education. Applicants and future licensees will bear those costs and the cost of training and education. The initial licensing fee is proposed to be \$200.00 and the renewal fee is proposed to be \$125.00. Continuing education approval varies from \$45.00 to \$60.00 per continuing education session length, and licensees are required to complete 30 hours of continuing education every two years.

The Board will bear the costs to license LALDs and regulate the practice of assisted living directorship. The Board anticipates those annual costs to be \$451,443 with the largest

expense being three new staff members at \$340,443 annually, MNIT expense at \$25,000, Attorney General legal support at \$20,000 and other associated board expense.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

This provision is not applicable because the Board does not have the option of not adopting the proposed rules. The Board is statutorily-obligated, via Minn. Stat. §144A.20 and. 24, to promulgate the rules in order to license and regulate LALDs in Minnesota.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

The Board identified no differences between the proposed rules and existing federal regulations.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

The Board's licensing and regulatory obligations for LALDs were set forth in Minn. Stat. §144A.20, as noted above. In addition to providing for licensure and regulation of LALDs, The legislature also provided a comprehensive statutory framework for licensing and regulating assisted living facilities in Minnesota. The Board is charged with licensing and regulating the persons who will serve as LALDs in Minnesota; the Minnesota Department of Health is charged with licensing and regulating the assisted living facilities themselves. Under the framework set out by the legislature, LALDs will be responsible for ensuring that assisted living facilities comply with Minnesota statutes and rules governing those facilities. As a result, LALDs will be responsible not only for their individual licensure but also for helping to maintain the license of the facility itself.

The Board has found no cumulative effect with currently-existing federal regulations.

ADDITIONAL NOTICE PLAN

By Order dated February 18, 2020, Administrative Law Judge Kimberly Middendorf approved the Board's Additional Notice Plan. The Additional Notice Plan includes the following:

- In July 2019, the Board authorized the creation of a Rule Development Team that included public and licensed board members, representatives from long-term care trade associations, a representative from an elder justice organization, the Minnesota Ombudsman, and a representative from the Minnesota Department of Health. The Rules Development Team was tasked with developing rules governing the licensure of assisted living directors, the practice of assisted living directorship, continuing education, and standards of practice enforcement. The Rules Development Team met eleven times from August 2019 through December

2019 in properly-noticed meetings. Members of the public were invited to attend and participate. Minutes from the Rules Development Team meetings were posted on Board's website.

- The Board also authorized the creation of an Educational Team, comprised of members of the entities that will educate and train assisted living directors, which met in November 2019 in a properly-noticed meeting and provided the Rules Development Team with guidance about educational requirements for assisted living directors.
- The Board held an academic summit with all current Minnesota academic programs on March 18, 2020. Held during the comment period, the WebEx outlined the proposed statutes and rules and answered current questions. Participants were asked to comment on the OAH website or directly to the board. There were no significant barriers initially presented.
- The Board posted the Revisor's Draft RD4622 on its website. When the OAH's comments page was live during the Request for Comments stage, the Board provided a direct link on its website to that comment page. The Board will follow the same process with the Dual Notice and all other hearing documents.
- The Board provided notice of the proposed rule change postings on the website either verbally, via its newsletter, and/or via email to all stakeholders including the two trade associations, all licensees, and educational entities.
- When the Board published its Request for Comments, the Board sent out an email blast to all persons on the email list, to the two trade associations, and to the educational entities notifying them that the Request for Comments and the Revisor's Draft is on the Board's webpage. The Board sent a reminder on April 30, 2020 with the renewal of license notice to the LNHA community.
- When the Board continues the rulemaking process through the OAH, the Board will post all filings on its website, including specifically the Dual Notice and this Statement of Need and Reasonableness.
- Also, upon information and belief, the Minnesota Department of Health has an email contact list for persons or entities registered as housing with services providers. These providers will be required, under the newly-passed legislation, to obtain a license as an assisted living facility and/or assisted living director. The Board will provide notice of the website postings to the Minnesota Department of Health and ask that it send out an email blast to all individuals on the contact list.

The Additional Notice Plan satisfied the requirements for a valid plan because (1) applicants for licensure as assisted living directors and permitees will have notice of the proposed rule changes via the website; (2) all academic institutions have notice of the proposed rule changes via the website postings, participation on the Education Team, and/or conversations with Board staff; (3) the trade associations have notice of the proposed rule changes via the website postings, participation on the Rule Development Team, and through conversations with Board staff; (4) the Minnesota Ombudsman has notice of the proposed rule changes because of participation on the Rules Development Team; and (5) all other stakeholders, including members of the public, institutions that employ and will employ licensed assisted living directors, elder care advocates, and

individuals who receive services from assisted living directors, have notice of the proposed rule changes via the website postings.

PERFORMANCE-BASED RULES

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Board's regulatory objectives while allowing maximum flexibility to regulated parties and to the Board in meeting those objectives.

The Board's objective is to satisfy the statutory requirement to license LALDs and to promote public protection by regulating the practice of assisted living directorship in Minnesota. The Board modeled the licensing and regulatory framework on the currently-existing framework for LNHA's, a comparable profession currently regulated by the Board. The Board has found that the currently-existing framework for LNHA's is not overly prescriptive or inflexible. Moreover, as discussed in the rule-by-rule analysis, the Board departed from the LNHA framework, with guidance from the assisted living industry and elder care advocates, when necessary to provide more flexibility in training and education pathways to licensure for qualified applicants for assisted living director licensure. The Board also departed from the LNHA framework to more closely model the industry standards for currently-existing housing with services providers, a precursor to assisted living facilities in Minnesota. The Board reviewed technology in establishing new licensing requirements for applicants and licensing through online and web based operational procedures with the expectation that ongoing annual expenses will be more efficient.

CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). By letter dated October 12, 2020, the Board provided MMB with the draft rules, the draft SONAR, and the Governor's proposed rule and SONAR form.

The Board worked with the Executive Budget Officer in developing fees and appropriations, which were submitted to the legislature and the Governor's office. The Board works with the SMART unit as the back-office support and independent review of the financial impact of any modification to current operations.

IMPACT ON LOCAL GOVERNMENT ORDINANCES AND RULES

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Board has determined that the proposed amendments will not have any effect on local ordinances or regulations.

COSTS OF COMPLYING FOR SMALL BUSINESS OR CITY

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes

effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.” The Board has been unable to identify any small business or city that would have a cost increase of \$25,000 or more as a result of complying with these rules.

AUTHORS, WITNESSES, AND SONAR EXHIBITS

- 1) Randy Snyder, LNHA, Executive Director, Minnesota Board of Examiners for Long-Term Services and Supports
- 2) Michael Tripple, J.D., Chair – Rules Development Team, Minnesota Board of Examiners for Long-Term Services and Supports
- 3) Jennifer Pfeffer, LNHA, Chair, Minnesota Board of Examiners for Long-Term Services and Supports
- 4) Representative from the Minnesota Department of Health¹⁵
- 5) Katie Davis, Member, Minnesota Board of Examiners for Long-Term Services and Supports
- 6) Stephen Chies, Member, Minnesota Board of Examiners for Long-Term Services and Supports

Witnesses and other staff

In the event that a hearing is necessary, the Board anticipates having the above testify in support of the need for and reasonableness of the rules.

SONAR Exhibits

None

CONCLUSION

In this SONAR, the Board has established the need for and the reasonableness of each of the proposed amendments and additions to Minnesota Rules, chapters 6400. The Board has provided the necessary notice and documented in this SONAR its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

/s/ Randy Snyder

Randy Snyder, Executive Director
Minnesota Board of Executives for Long Term
Services and Supports

October 23, 2020
Date

¹⁵ Mary Absolon was the Board’s representative from the Minnesota Department of Health. Ms. Absolon retired recently, and MDH has not yet identified her replacement.