The Long Term Care Imperative, along with attorneys Barb Blumer (Barb Blumer Law, P.A.) and Michelle Klegon (Voigt, Klegon & Rode, LLC), has developed the following guidance for housing-with-services establishments to assist them in meeting the requirements of the Housing-with-Services Contract Act, MN Statutes 144D, including the 2010 amendments. This guidance includes a template for you to use when reviewing and updating your HWS residency agreements, especially when “delineating” certain charges as required by the updated law. This guidance is provided because the law, as it exists today, contains no clear definitions of the terms “base rate” and “rent”.

Although nothing in the law prohibits you from "bundling" charges into packages or from having a mandatory monthly "base rate," the 2010 amendments to 144D.04, subd. 2, require that you explain in your contract what the charges are for services included in any monthly "base rate" that are in addition to the actual "rent" charges. And, although you can choose to offer bundled packages of supportive and health-related services for private pay residents/clients, if you accept Medical Assistance (MA) waiver payments for any of your residents/clients, you must be able to identify the charges for individual services in those bundled packages in order to determine that your private pay charges are not less than your MA waiver payment. This is a requirement of the federal Medicaid program and violations can have serious consequences.

It is important to note that laundry and certain housekeeping services that are NOT bundled are automatically subject to Minnesota sales tax.

Breaking out charges for supportive services, even if the charges to residents/clients are ultimately bundled, can also be an important step to determining whether your charges are appropriate and cover your costs. In addition, if you accept MA waiver payments, it is very helpful to know how those payments compare to normal market rate charges. By breaking out your charges in your budgeting process as well as in your consumer documents, you can better track how much waiver supported clients are being subsidized by your private paying residents/tenants and the charitable contributions of your organization.

The guidance breaks out services and charges in the following way:

1) What is included in rent: You should identify these items for your own building, but we have provided a number of examples of items typically included in "rent." Charges for any item included in your “rent” **DO NOT** need to be separately broken out, but your residents should have clear information about what items are included in the rent charge.
2) Landlord services that are not included in rent, e.g., those landlord services that are charged a la carte in addition to rent: To comply with the HWS Contract Act, you should provide a list of these "building-related" services and a fee schedule. These services are different than those provided by a home care agency pursuant to a service agreement or plan.

3) Services available through your home care agency: Even if you offer bundled packages of services for a set fee, doing a break out of each charge is important if you participate in any MA waiver programs. "Base rates" are no longer permitted for MA Elderly Waiver clients. Instead, the reimbursement for these clients is now based on individual tasks the clients need.

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RECOMMENDED RESIDENCY AGREEMENT STRUCTURE:

- **Residency Agreement**
  - Normal landlord tenant provisions generally
  - Also incorporate many or all of the HWS 144D required disclosures
  - Then, either in the body of the agreement, or in attachments which are more easily modified from time to time, include the following lists

- **What is Included in Rent** – Spell out in some detail what is available and included in the monthly rent (in accordance with 144D.04, subd. 2, (7)). Although residents should receive a list of the items included in the rent, the costs for the following applicable items DO NOT need to be broken out—they are part of the rent. The following are examples only:
  - Apartment, including furnishings, appliances, window coverings, wiring for telephone, cable, and internet, to extent included
  - Utilities, to extent included
     - Heat
     - Electricity
     - Air conditioning
     - Telephone (local and/or long distance)
     - Garbage
     - Recycling
     - Water
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- Sewer
- Cable or satellite television service
- Internet service
- Access to common areas and amenities, to extent available and included
  - Library
  - Multi-purpose room
  - Community Room
  - Chapel
  - Private dining room
  - Lounges and other gathering areas
  - Game room
  - Theater
  - Ability to reserve certain common areas for private use
  - Walking paths
  - Gardens
  - Fitness center/pool
  - Spa rooms
  - WI FI
  - Resident computers
  - Sundry and/or gift store (charges extra)
  - Snack bar and/or restaurant (charges extra)
  - Beauty/Barber Services (charges extra)
  - Laundry rooms (no charge or charges extra)
  - Etc
- Vehicle Parking
  - Guest parking
  - Tenant Surface Parking
  - Tenant Garage Parking, if included
  - Garage opener
- Staff services
  - Resident Services Director or other staff services
  - Recreation and Activities, to extent included
  - Transportation, to extent included
  - Front desk service, to extent included
  - Housekeeping, to extent included
  - Laundry, to extent included
  - Maintenance, to extent included
  - Notary, copy, and fax services, to extent included

This guidance was created by the Long-Term Care Imperative (comprised of Aging Services of Minnesota and Care Providers of Minnesota), attorney Barb Blumer (Barb Blumer Law, P.A.) and attorney Michelle Klegon (Voigt, Klegon & Rode, LLC) in October 2010. This document should be used solely as a guide. The contents are not to be construed as legal advice. Any questions concerning the implementation of this material should be directed to your legal or professional advisor. Aging Services of Minnesota, Care Providers of Minnesota, attorney Barb Blumer (Barb Blumer Law, P.A.) and attorney Michelle Klegon (Voigt, Klegon & Rode, LLC) disclaim any and all liability related to or arising from the information contained in this guidance document.
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- Meals
  - Meals, to extent included
  - Snacks
  - Coffee Service
- Other
  - Storage unit, if included
  - Controlled access and tools for access (keys, cards, etc.)
  - Mail service (key)
  - Light bulbs, if included
  - Availability of emergency response hardware (not response costs)
  - Access to community events and services
  - Assistance with accessing needed additional services, to extent included
  - Assistance with coordination of certain appointments and transportation to the same, to extent included
  - Etc

- List, and enumerate charges per HWS requirements in 144D.04, subd. 2, (7) and (8), for these landlord provided services or items that are not included in rent. Charges for some of the following items may currently be included in a mandatory monthly fee (which is sometimes called a "base rate") and, if so, the charges should be separately delineated to comply with the 2010 amendments to 144D.04, subd. 2 (7).

- The following are examples only
  - Second occupant charge, if any
  - Utilities if not included in rent or paid separately by tenant
  - Guest services
    - Guest room
    - Cots, cribs, and rollaways
    - Guest meals
    - Ability to reserve certain common areas for private use if not included in rent
  - Meal Options
    - Required meal package, if any, to extent not included in rent
    - Extra meals
    - Catering services
    - Tray delivery and pickup (if not provided through home care agency)
    - Meal escorts (if not provided through home care agency)
    - Special diet services (if not provided through home care agency)
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- **Personal services**
  - Housekeeping services (to extent not included in rent or provided through home care agency)
  - Laundry (to extent not included in rent or provided through home care agency)
  - Maintenance or handyperson services for personal items and/or unit, to extent not included in rent
    - Appliances
    - Painting
    - Picture hanging
    - Light bulb changing
    - Etc
  - Move in, move out, and internal move cleaning and moving services

- **Activities and Recreation, to extent not included in rent (probably say charges posted at time of event)**
  - Use of fitness amenities, if there is a fee

- **Transportation, to extent not included in rent (probably say charges posted at time of event)**

- **Storage unit, if not included in rent**

- **Vehicle Parking**
  - Garage space, if not included in rent
  - Garage opener, if not included in rent
  - Replacement garage opener
  - Winter Plug ins

- **Replacement of items initially included in rent, or extra items for families**
  - Building access keys or cards
  - Unit access keys or cards
  - Mail box keys or cards
  - Emergency response device

- **Supplies available**
  - Light bulbs
  - Batteries
  - Etc

- **Service fees**
  - Late rent payment charges
  - Returned Check or rejected electronic payment fees
  - Interest charges
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- Deposits or other charges
  - Security Deposit
  - Pet Deposit
  - Smoking Deposit

- List, and enumerate charges per HWS requirements in MN Statutes 144D.04, subd. 2 (7) and (8) as amended in 2010, for these Home Care Agency provided services or items (to extent HCA makes them available and charges for them). Charges for some of the following items may currently be included in a mandatory monthly fee (which is sometimes called a "base rate") and, if so, the charges should be separately delineated to comply with the 2010 amendments to 144D.04, subd. 2 (7).
  - “Supportive Services” as defined in HWS statute, unless otherwise included in other lists of services in this section
    - Personal laundry
    - Handling or assisting with personal funds
    - Arranging for medical services
    - Arranging for health related services
    - Arranging for social services
    - Arranging for transportation to medical or social services appoints
  - Basic Package of Services required to be purchased (but not necessarily utilized due to home care bill of rights requirements) as a condition of residency, if any – these are examples only
    - Emergency response device, if not included in rent
    - Wellness assessments – initial and/or periodic
    - Licensed nurse services
    - Clinical record maintenance
    - I’m ok checks
    - Periodic assessments
    - 24 hour staffing for emergency response
    - Some amount of emergency response services
    - Some “supportive services” as defined by statute?
    - Other?
    - Etc.
  - Other bundled home care services
  - A la Carte Home Care Services
  - Supplies