



First Step Toward AL Licensure: Preparing to Complete Your Application Form

Wednesday, April 7, 2021
10:30 a.m. - Noon



**Assisted Living
Licensure**

AND OLDER ADULT PROTECTIONS

Presenters

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Learning Objectives

- Refresh your knowledge of the required application information contained in Minnesota Statute 144G.12 so you can be prepared to provide it.
- Identify those data gathering points that might prove challenging and/or take the longest to retrieve to help you prioritize your efforts and activities.
- List the attachments that you must prepare in advance to accompany the completed application form.
- Discuss current areas of uncertainty regarding the application form so you can monitor them for important developments.
- Learn about elements that might be added based on discussions with various stakeholder groups.
- Take home ideas and suggestions to help you and your team gather the necessary information required for your application.

Agenda

1. Initial action items before application can be started
2. Specific information that will be needed to complete the application
 - a) Applicant and key person information
 - b) Facility information
 - c) Background studies
 - d) Other information
 - e) Attachments
3. Questions and Discussion

Timeline

April

- Get ready to apply so that you can do so asap when the application becomes available

May

- ~May 1: AL application available, complete as soon as possible
- ~May 1: Legacy ALD applications available
- May 31: 60-day notices due

June

- June 1: application deadline for converting AL providers
- June 30: Last day to apply for Legacy ALD licensure
- June 30: 30-day notices due

July

- Obtain resident signatures on updated resident contracts
- Distribute universal checklist, bill of rights, other notices to residents
- Ensure all policies & procedures in place for compliance by August 1
- Update staff training and competency evaluations for compliance by August 1
- See LeadingAge's "Implementing Assisted Living Licensure" checklist in the ALL Toolkit

August

- Go live!

Initial Actions

Are you ready?

- Initial Questions
 - a) Who will be the license holder
 - b) Determine staffing structure
 - c) Update management contract, if applicable

Who needs a license?

- All “assisted living facilities.” Minn. Stat. § 144G.10, Subd. 1. An assisted living facility is “facility that provides sleeping accommodations and assisted living services to one or more adults.”
- Generally, each facility needs its own license.
 - There is a narrow exception for multiple buildings on the same “campus” operated by the same licensee. Minn. Stat. § 144G.10, Subd. 1 (as amended in December).
 - “Campus” is defined in 144G.08. It includes (i) a single building with multiple addresses, but one PID; (ii) two buildings with separate addresses, but one PID; and (iii) multiple buildings with different addresses with different PIDs, if they share a legal property boundary.
- An AL and AL with dementia care on the same campus may be able to have a single license if the license identifies the buildings operating as an AL with dementia care.
- The same legal entity can hold multiple licenses.

Who can hold the AL license?

- Owner
 - Lessee
 - Management company
- Key feature is that the AL licensee must be “legally responsible for the management, control, and operation of the facility”

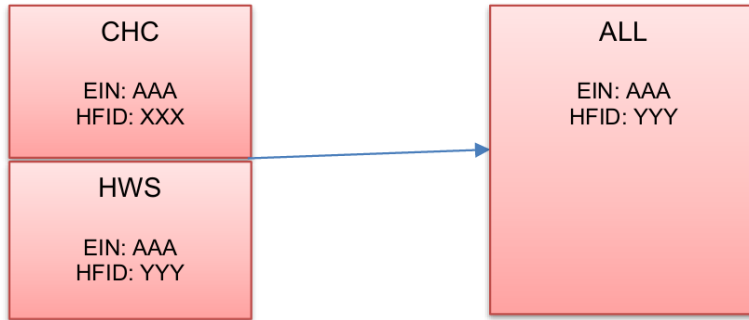
Carefully consider which legal entity *should* have the license

- Factors may be:
 - Will the applicant be able to “convert” an existing HWS registration or CHC license to an AL license?
 - Which entity employs the staff?
 - Who can obtain liability and worker’s comp. insurance?
 - Does the facility’s lender have requirements or expectations about who will be licensed?
 - Are all owners/controlling individuals willing to provide required info and can they pass background checks?
 - Which entity is currently enrolled in MHCP as a customized living (EW) provider?

What is “conversion”?

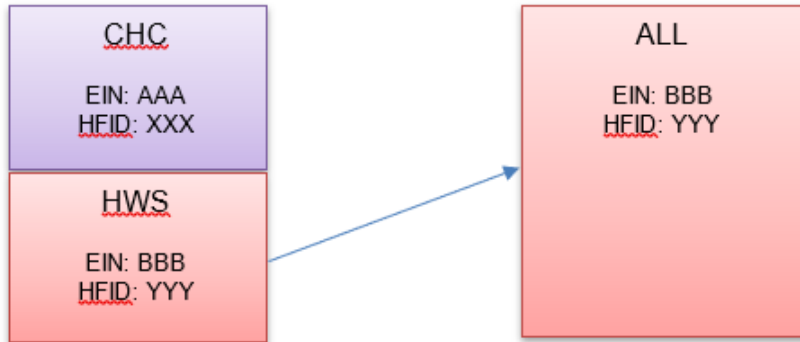
- Minn. Stat. § 144G.191, Subd. 4 (passed in December 2020 special session) allows (or requires) some existing providers to “convert” to an AL license if they intend to provide AL services after 8/1.
 - “HWS registrants providing home care services according to chapter 144A” must apply for an AL license by June 1, 2021.
- Why do we care?
 - License application may be streamlined for “converting” applicants.
 - “Converting” applicants will use the “Improved Customer Service Delivery” (ICSD) portal
 - Application will be submitted under the HWS registrant’s HFID number (make sure you have access!)
 - May be able to avoid redoing employee background studies.
 - Owners and controlling individuals who have already received background studies may not need them again.
 - May avoid provisional licensing
 - Currently, due to a drafting error converting licensees will receive a *provisional* license, but technical amendment is pending that would correct this, and allow converting applicants to receive a full license immediately

Conversion Scenario 1: One entity



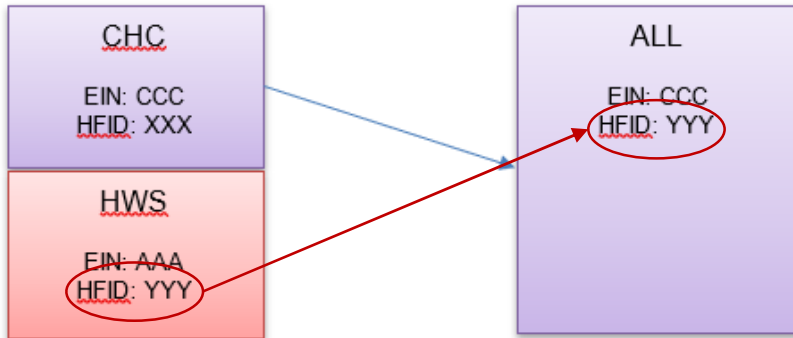
- Considered a “conversion” under § 144G.191, subd. 4
 - Provisional licensing due to drafting error, unless corrected
- Do not need to redo resident assessments and service plans
 - Except update as needed to meet minimum AL services requirements
- Employee background screening, training and TB screening should carry over
- Owner/controlling individuals background studies should carry over
- EW enrollment just needs AL license updated

Conversion Scenario 2: HWS becomes the ALL



- Considered a “conversion” under § 144G.191, subd. 4
 - Provisional licensing due to drafting error, unless corrected
- Do not need to redo resident assessments and service plans
 - Except update as needed to meet minimum AL services requirements
- Employee background screening, training and TB screening should carry over
- Owner/controlling individuals background studies should carry over
- ALL will need to enroll in EW as a new provider

Conversion Scenario 3: CHC becomes the ALL



- Considered a “conversion” under § 144G.191, subd. 4
 - Provisional licensing due to drafting error, unless corrected
- Do not need to redo resident assessments and service plans
 - Except update as needed to meet minimum AL services requirements
- Employee background screening, training and TB screening should carry over
- Owner/controlling individuals background studies should carry over
- EW enrollment just needs AL license updated

What does AL licensure mean for employees?

- The licensee is responsible for the management and control of the facility.
- The staff at the facility may be W-2 employees of the licensee or they may be employed by a different entity and provided to the licensee via contract
- Either way, the staff must meet all applicable training and background study requirements
- *Consider if staffing agreements are needed, whether staff needs to change their “employment home,” and, if so, what employee notices are required.*

Management Contracts

- Amendment needed?
 - If your basic arrangement is not changing
 - Ensure management contract provides that AL licensee is “responsible for the management, control, and operation of the facility, regardless of the existence of a management agreement or subcontract”
 - Update references to types of licenses, if needed
 - Consider addition of requiring manager to operate facility in compliance with all requirements under 144G
 - If your basic arrangement is changing
 - For example:
 - Management company doesn’t hold license now but will hold ALL
 - Management company was CHC but owner will be ALL
 - Update to reflect new arrangement
 - In addition to tweaks noted above
- Management Contract must be provided with application
 - Will become public information

Specific information required to complete application

(Minn. Stat. § 144G.12)

Application form coming around May 1

- MDH has not released the final application form.
- We'll discuss the requirements of the statute for **new licenses**.
- It's possible the conversion application will ask for somewhat less information

Applicant and key person contact information

Applicant Identifying Information

- Legal name
- DBA
- Mailing address and street
- Current HWS registrants will need to provide their HFID.
- If the HWS had a comprehensive home care license, it will have to provide the HFID associated with its home care license.
- Federal EIN and Minnesota tax ID

Key Personnel—Assisted Living Director

- A person who administers, manages, supervises, or is in general administrative charge of an assisted living facility, whether or not the individual has an ownership interest in the facility, and whether or not the person's functions or duties are shared with one or more individuals and who is licensed by the Board of Executives for Long Term Services and Supports pursuant to section 144A.20.
 - Minn. Stat. § 144G.08, Subd. 6.

Licensed Assisted Living Director—Qualifications

- Requirements listed in § 144A.20, Subd. 4 and [proposed rules](#). Requires certain work experience, training, and passage of an examination.
- Rules allow for grandfathering under specific circumstances—to qualify, must apply **by JUNE 30, 2021**.
 - Alternative pathways to be grandfathered in, all of which require some combination of education, training, and experience
 - For specific requirements: <https://mn.gov/boards/nursing-home/applicants/assisted-living-director/>



Gather supporting materials now—depending on the legacy licensure pathway, you will need some combination of educational **official transcripts**, updated **resume** showing relevant work experience, and **validation letters** from past employers

Identification of Other Required Personnel

- All assisted living facilities must have a ***clinical nurse supervisor*** who is a registered nurse licensed in Minnesota.
 - Name, phone, email, and RN license number
- The ***authorized agent(s)*** must be one or more owners, controlling individuals, or employees who can accept service on behalf of the licensee
 - Name, phone, email
 - No specific training/education requirements
- ***Managerial official*** is “individual or legal entity designated by the licensee through a management agreement to act on behalf of the licensee in the on-site management of the assisted living facility.”
 - Name, phone, email

“Direct” and “Indirect” Owners—Who Are They?

- A ***direct ownership interest*** means an individual or entity with the possession of at least 5% equity in the licensee, or who is a member of an LLC that holds the license.
- An ***indirect ownership interest*** means an individual or entity with a direct ownership interest in an entity that has a direct or indirect ownership interest of at least 5% in the licensee.
- Chapter 144G provides that for the purpose of 144G, the “owners” of a nonprofit corporation means the “president and treasurer of the board of directors.”

“Direct” and “Indirect” Owners—Info You Need

- Names, titles, address, phone, email, ownership percentage, whether the person will have direct patient contact, whether the person has been convicted of certain crimes or barred from government programs.
- An **org chart** showing ownership interests.
- Disclosure of past, current, or pending **enforcement actions** in any state.

Controlling Individuals

- Controlling individuals and managerial officials must provide the same information as owners.
- **Controlling individual** is defined in 144G.08, Subd. 15. It generally includes:
 - Each officer of the organization, including the CEO and CFO
 - Each “managerial official”
 - An entity with “at least a five percent mortgage, deed of trust, or other security interest in the facility” other than a financial institution, unless that institution “operates a [AL?] program directly or through a subsidiary”
 - Individual members of tax-exempt organizations are not “controlling individuals” solely because they are members.
 - Other less common exceptions may apply

Background Studies

- Each application for a new license must include documentation for the applicant and for each individual with a five percent or more direct or indirect ownership in the applicant;
- Information about initiating background studies will be provided ***after MDH confirms receipt of the application***
- MDH has indicated that persons “affiliated with the licensee” who have had a background study may not need to complete another background study
 - Employees and owners/controlling individuals of converting licensees should not need new background studies if they have had them
 - More information will be provided after the application is submitted

Facility Information

License Category

License category refers to AL or AL with Dementia Care

- ***Assisted living facility with dementia care*** means a licensed assisted living facility that is advertised, marketed, or otherwise promoted as providing specialized care for individuals with Alzheimer's disease or other dementias. An assisted living facility with a secured dementia care unit must be licensed as an assisted living facility with dementia care.
- AL with dementia care applicants must have long-term care experience or hire a qualified consultant for at least the first 6 months of operation. 144G.80.

Capacity and License Fee

- The number of residents that will be served by the licensee during the license period (the applicant may request a licensed capacity that is lower than the maximum building capacity).
- The total maximum capacity.
- A breakdown of the capacity for each building on a “campus,” if applicable.
- The license fee is based on the licensed capacity.
 - AL facilities: \$2,000 plus \$75 per resident.
 - AL facilities with dementia care: \$3,000 plus \$100 per resident
- *After the application is submitted* and MDH determines it is complete, MDH will contact applicants regarding payment of the license fee.

Physical Plant

- Applicants for a new license will receive a plan review and on-site inspection
- Applicants (and licensees) proposing new construction (including renovation or modification) after 8/1/21 must submit architectural and engineering plans to MDH. 144G.45, Subd. 6.
- Physical plant requirements (fire safety, design, etc.) are in 144G.45. There is a variance process.
- Existing providers converting to ALDC:
 - Note new requirement that requires “access to secured outdoor space and walkways that allow residents to enter and return without staff assistance” 144G.84(g)
 - No specific grandfathering, but providers may be able to request “innovation variance” under 144G.33 if they can demonstrate an alternative that will “likely improve the services provided”

Kitchen and Food Preparation Information

- Application will request:
 - Number of spaces in the facility where food will be prepared or served, and what type of activities happen there (e.g., dietary kitchen, service kitchen, etc.).
 - Are any of these areas used by AL residents only?
 - Does the facility use food prep areas that are offsite?
- 144G has minimum requirements relating to food (menus prepared at least a week in advance, food prepared according to Minnesota Food Code, etc., residents able to access food at any time).

Other

Proof of Insurance

- **“Evidence of workers’ compensation coverage.”** 144G.12(7)
 - Be prepared to provide a certificate of insurance from the entity that is the employer (even if not the AL licensee). The employer of the staff at the AL facility must provide evidence of coverage.
- ***Liability coverage:*** request a certificate of insurance from your insurer now and make sure it lists the name of the applicant correctly.
 - The statute does not specify a minimum level of coverage.

Certification

- The owner or authorized agent must certify that they have read:
 - Chapter 144G
 - The (proposed) ALL rules (will be chapter 4659)
 - Minnesota Statutes Section 626.557 (relating to vulnerable adults reporting)
 - Section 144.6502 (relating to electronic monitoring (“granny cams”))

Attachments

Attachments

- Corporate formation documents (articles of incorporation, articles of organization, etc.), and a brief description of the organization's structure.
- Assumed name documents from Secretary of State.
- List of all board members, members, or owners, as applicable.
- Capacity information for each building.
- Executed lease agreement between landlord and licensee, if applicable.
- Management agreement, if applicable.
- Ownership-level org chart.
- Building permit, if applicable.
- Signed architecture and engineering plans, if applicable.

Uniform Checklist Disclosure of Services

- Applicants must provide a completed “uniform checklist disclosure of services” to residents and with the application. 144G.40.
- MDH is developing a form.
- It may require disclosure of services provided, including:
 - whether unlicensed staff are available 24/7,
 - whether a RN/LPN is onsite 24/7,
 - the number of staff scheduled per shift,
 - the payment methods the facility accepts (e.g., private pay, sliding scale, EW, CADI, BI, and other);
 - dining and nutrition options; and
 - information about amenities

Pulling It All Together

- ✓ Decide initial structural questions
- ✓ Update management agreement
- ✓ Identify ALD and ensure they gather supporting info and apply for their license
- ✓ Gather detailed information about key individuals
- ✓ Decide on licensing category & capacity
- ✓ Review physical plant requirements and develop plan to meet them, or request variance
- ✓ Prepare individuals who will need to do background studies
- ✓ Obtain certificates of insurance
- ✓ Read Chapter 144G, the proposed regulations, VA reporting and electronic monitoring rules
- ✓ Gather or create an organizational chart, list of board members and owners, description of organizational structure
- ✓ Obtain copies of organizational documents from Secretary of State
- ✓ If applicable, obtain copy of building permit and/or signed architectural and engineering plans
- ✓ Prepare for payment of the licensing fee

Pulling It All Together

- **Most important:** Watch for additional updates
 - MDH website
 - MDH webinars
 - DHS announcements
 - LeadingAge newsletter and ALL toolkit

Questions and Discussion

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