

# Assisted Living Licensure in Minnesota: Frequently Asked Questions

November 20, 2020

## Background

The 2019 Minnesota Legislature enacted a law creating new licensing requirements for assisted living in Minnesota. The new Assisted Living Licensure laws can be found here: [2020 Minnesota Statutes Chapter 144G. Assisted Living \(www.revisor.mn.gov/statutes/cite/144G\)](https://www.revisor.mn.gov/statutes/cite/144G).

Assisted Living Licensure goes into effect Aug. 1, 2021 and applies to:

- Current and future facilities providing assisted living services and sleeping accommodations.
- Arranged home care providers in a housing with services (HWS) establishment. HWS designation will no longer be available as of Aug. 1, 2021.
- Providers of customized living services under the Elderly Waiver (EW), Brain Injury (BI), or Community Access for Disability Inclusion (CAD I) waiver (exemptions are listed below).
- Organizations planning to provide assisted living services and/or customized living services in Minnesota (exemptions are listed below).

## Frequently Asked Questions

### Basic Information and Instructions

#### How do I know whether or not I need to apply for an Assisted Living License?

If you intend to operate a facility that offers sleeping accommodations and assisted living services, either with or without dementia care, on or after Aug. 1, 2021, you must apply for an Assisted Living License.

You will be prohibited from operating such a facility on or after Aug. 1, 2021, unless you have an Assisted Living License.

Refer to “Background” section above.

Certain housing settings are *exempt* from Assisted Living Facility Licensure, meaning an assisted living license is not required. Those settings are listed here: [2020 Minnesota Statutes 144G.08 Definitions; Subdivision 10, paragraphs \(1-10\) \(www.revisor.mn.gov/statutes/cite/144G.08\)](https://www.revisor.mn.gov/statutes/cite/144G.08).

HWS establishments will sunset after Assisted Living Licensure is implemented on Aug. 1, 2021. After that date, the housing or services CANNOT be called “Assisted Living” unless the building is licensed as an assisted living facility under 2020 Minnesota Statutes 144G, sections 144G.08 through 144G.9999.

Also note, providers of the Home and Community-Based Services (HCBS) waiver service of customized living services *must* have an assisted living license to continue delivering customized living services. This applies to the following waiver programs:

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

Finally, there are a limited number of customized living settings that are excluded from Assisted Living Licensure. These settings may continue to deliver customized living services, pending federal approval. The list of excluded settings include:

- Public Housing Buildings and Developments
- Section 202 (elderly) Multi-Family Buildings
- Section 811 (disability) Multi-Family Buildings

These settings are excluded from Assisted Living Licensure: [2020 Minnesota Statutes 144G.08](http://www.revisor.mn.gov/statutes/cite/144G.08) Definitions: Subdivision 7, paragraphs (11-13) ([www.revisor.mn.gov/statutes/cite/144G.08](http://www.revisor.mn.gov/statutes/cite/144G.08)).

### **Will I still be able to use my Basic or Comprehensive Home Care License to provide other (non-customized living) services?**

Yes. Refer to: [2020 Minnesota Statutes 144A. Nursing Homes and Home Care](http://www.revisor.mn.gov/statutes/cite/144A) ([www.revisor.mn.gov/statutes/cite/144A](http://www.revisor.mn.gov/statutes/cite/144A)), which will continue.

If you plan to provide any services that fall under assisted living services found here: [2020 Minnesota Statutes 144G.08 Definitions: Subdivision 9](http://www.revisor.mn.gov/statutes/cite/144G.08) ([www.revisor.mn.gov/statutes/cite/144G.08](http://www.revisor.mn.gov/statutes/cite/144G.08)), you must have an Assisted Living License.

### **Will I be able to continue to renew my Basic or Comprehensive Home Care License?**

Yes

### **Where can I obtain an Assisted Living License application?**

Applications are not yet available. MDH plans to begin the application process on or around May 1, 2021. At that time, applications will be available on the MDH website.

### **As a HWS provider, what should I do if I have not been issued a 2020-2021 HWS certificate by the date that I need to apply for the new Assisted Living License?**

At this time, MDH has suspended HWS renewals due to the Covid-19 pandemic. Please check: [MDH Housing with Services Establishments/Assisted Living Designation/Uniform Consumer Information Guide](http://www.health.state.mn.us/facilities/regulation/hws/index.html) ([www.health.state.mn.us/facilities/regulation/hws/index.html](http://www.health.state.mn.us/facilities/regulation/hws/index.html)) for updates on the status of HWS renewal restart date.

A HWS registration that expired on or after April 8, 2020, while in good standing, is considered in effect until the registrant has been notified otherwise by MDH.

### **What is the fee for an Assisted Living License?**

The fee structure for the new license will be:

- Assisted Living Facility License = \$2,000 plus \$75 per resident
- Assisted Living Facility with Dementia Care License = \$3,000 plus \$100 per resident

### **What is the deadline by which to apply for a HWS registration that is not subject to the new Assisted Living Licensure requirements?**

On Aug. 1, 2021, the HWS registration will no longer be in effect. At this time, MDH has suspended HWS renewals due to the Covid-19 pandemic. Please check: [MDH Housing with Services Establishments/Assisted Living Designation/Uniform Consumer Information Guide \(www.health.state.mn.us/facilities/regulation/hws/index.html\)](http://www.health.state.mn.us/facilities/regulation/hws/index.html) for updates on the status of HWS renewal restart date.

If you wish to continue as an assisted living facility providing assisted living services on Aug. 1, 2021, you must apply for an Assisted Living License.

An Assisted Living License must be obtained prior to providing assisted living services.

### **Currently, the Department of Human Services (DHS) Provider Eligibility and Compliance, enrolls customized living services providers under the EIN and information of the comprehensive license holder, rather than the HWS registrant. Should I be applying for an Assisted Living License with the information of the current comprehensive license holder, or the information of the current HWS registrant?**

You will use your HWS HFID information.

### **Do I need to develop policies and procedures for the Assisted Living Licensure?**

Yes, in order to obtain and retain an Assisted Living License, you must develop assisted living policies and plans as outlined by the statute.

### **What are the new requirements to customized living facilities?**

Providers of HCBS waiver service of customized living services must have an Assisted Living License to continue delivering customized living services. This applies to the following waiver programs:

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

There are a limited number of customized living settings that are excluded from Assisted Living Licensure. These settings may continue to deliver customized living services, pending federal approval. The list of excluded settings include:

- Public Housing Buildings and Developments
- Section 202 (elderly) Multi-Family Buildings
- Section 811 (disability) Multi-Family Buildings

These settings are excluded from Assisted Living Licensure under: [2020 Minnesota Statutes 144G.08 Definitions; Subdivision 7, paragraphs \(11-13\)](#) ([www.revisor.mn.gov/statutes/cite/144G.08](http://www.revisor.mn.gov/statutes/cite/144G.08)).

### **What happens to my HWS business if I don't have an Assisted Living License?**

You can no longer provide or advertise assisted living services without an Assisted Living License after Aug. 1, 2021. The facility will be subject to misdemeanor penalties for operating after license expiration.

### **Where do I find more information about resident notices of termination, moves, closure, and coordinated planning?**

MDH will provide ongoing updates to assist you through these events.

### **What will the new survey process look like?**

MDH is currently developing survey documents for survey licensure which will be shared upon completion.

### **When will the new survey process begin?**

Immediately upon the new Assisted Living Licensure becoming effective on Aug. 1, 2021.

### **What will enforcement look like? Are there new consequences (penalties/fines)?**

Enforcement: [2020 Minnesota Statutes 144G.20 Enforcement](#) ([www.revisor.mn.gov/statutes/cite/144G.20](http://www.revisor.mn.gov/statutes/cite/144G.20))

Violations and Fines: [2020 Minnesota Statutes 144G.31 Violations and Fines](#) ([www.revisor.mn.gov/statutes/cite/144G.31](http://www.revisor.mn.gov/statutes/cite/144G.31))

### **What are residents' rights and protections?**

Effective Aug. 1, 2021: [2020 Minnesota Statutes; Resident Rights and Protections \(144G.90-144G.9999\)](#) ([www.revisor.mn.gov/statutes/cite/144G.31](http://www.revisor.mn.gov/statutes/cite/144G.31)) and [2020 Minnesota Statutes 144G.07 Retaliation Prohibited](#) ([www.revisor.mn.gov/statutes/cite/144G.07](http://www.revisor.mn.gov/statutes/cite/144G.07))

Effective through July 31, 2021: [2020 Minnesota Statutes 144A.44 Home Care Bill of Rights](#) ([www.revisor.mn.gov/statutes/cite/144A.44](http://www.revisor.mn.gov/statutes/cite/144A.44))

## **What questions should residents/caregivers ask providers/prospective providers?**

MDH will be developing a resource to assist residents and their loved ones to navigate the transition to Assisted Living Licensure.

## **Standards & Requirements**

### **Do I need to be licensed as an Assisted Living Facility if I have residents receiving *customized living services* and on a Medicaid waiver?**

Yes, if you are providing assisted living services to those residents and are not exempt under [2020 Minnesota Statutes 144G.08 Definitions; Subdivision 7 \(www.revisor.mn.gov/statutes/cite/144G.08\)](http://www.revisor.mn.gov/statutes/cite/144G.08). You will need an Assisted Living License if you plan to deliver these services to any new or existing residents on or after Aug. 1, 2021.

### **Do I need to be Medicaid certified to be licensed as an Assisted Living Facility?**

No. You are not required to be enrolled with DHS in order to be licensed as an assisted living facility. However, you are required to be enrolled with DHS, and be licensed as an assisted living provider through MDH, if you plan to deliver customized living services to people on HCBS waivers.

### **If I am already a licensed home care provider or a registered HWS facility, do I need to complete another background study?**

Potentially, yes. Any new individuals listed on the assisted living facility application, who have a direct ownership interest in the license or who are controlling individuals; including managerial officials, are subject to background study requirements. No individual may be involved in the management, operation, or control of an assisted living facility if the individual has been disqualified under [2020 Minnesota Statutes Chapter 245C. Human Services Background Studies \(www.revisor.mn.gov/statutes/cite/245C\)](http://www.revisor.mn.gov/statutes/cite/245C).

Current direct care staff who already have a completed background study do not need to repeat it.

### **What are the staffing requirements for the Assisted Living License?**

[2020 Minnesota Statutes 144G.60 Staffing Requirements \(www.revisor.mn.gov/statutes/cite/144G.60\)](http://www.revisor.mn.gov/statutes/cite/144G.60).

### **Do I need to hire a Licensed Assisted Living Director?**

Yes. See [2020 Minnesota Statutes 144G.08 Definitions; Subdivision 6 \(www.revisor.mn.gov/statutes/cite/144G.08\)](http://www.revisor.mn.gov/statutes/cite/144G.08) and [2020 Minnesota Statutes 144A.20 Administrator Qualifications; Subdivision 4 \(www.revisor.mn.gov/statutes/cite/144A.20\)](http://www.revisor.mn.gov/statutes/cite/144A.20).

### **Can the director and the clinical nurse supervisor be the same person?**

Yes, as long as the individual holds the proper licenses for each role.

### **What are the new training requirements for Assisted Living Staff?**

See: [2020 Minnesota Statutes 144G.63 Orientation and Annual Training Requirements \(www.revisor.mn.gov/statutes/cite/144G.63\)](http://www.revisor.mn.gov/statutes/cite/144G.63) for assisted living and [2020 Minnesota Statutes 144G.64 Training in Dementia Care Required \(www.revisor.mn.gov/statutes/cite/144G.64\)](http://www.revisor.mn.gov/statutes/cite/144G.64) for assisted living with dementia care.

### **What "experience" is required for an Assisted Living Dementia Care applicant (or consultant)?**

See: [2020 Minnesota Statutes 144G.80 Additional Licensing Requirements for Assisted Living Facilities with Dementia Care \(www.revisor.mn.gov/statutes/cite/144G.80\)](http://www.revisor.mn.gov/statutes/cite/144G.80) and [2020 Minnesota Statutes 144G.83 Additional Training Requirements for Assisted Living Facilities with Dementia Care \(www.revisor.mn.gov/statutes/cite/144G.83\)](http://www.revisor.mn.gov/statutes/cite/144G.83). MDH continues to develop more guidance around this topic.

### **If I have multiple buildings that house residents, how many licenses do I need?**

As of now, one license per physical address. Some exceptions exist for properties that consist of more than one building on a single property, or two or more buildings at different addresses which share a portion of a legal property boundary. See Proposed Rules 4659 Licensing in General: [Assisted Living Facilities Proposed Rules \(PDF\) \(www.health.state.mn.us/facilities/regulation/AssistedLiving/docs/proposedrules100820.pdf\)](http://www.health.state.mn.us/facilities/regulation/AssistedLiving/docs/proposedrules100820.pdf)

### **If I am converting to the new Assisted Living Licensure, what are the physical plant requirements?**

See: [2020 Minnesota Statutes 144G.45 Minimum Site, Physical Environment, and Fire Safety Requirements \(www.revisor.mn.gov/statutes/cite/144G.45\)](http://www.revisor.mn.gov/statutes/cite/144G.45). MDH continues to develop more guidance around this topic.

### **What will the food code compliance expectations be?**

See: [2020 Minnesota Statutes 144G.41 Minimum Assisted Living Facility Requirements; Subdivision 1, Paragraph \(13\) \(www.revisor.mn.gov/statutes/cite/144G.41\)](http://www.revisor.mn.gov/statutes/cite/144G.41) for food code requirements.

### **Can I accept Assisted Living residents before I get my new Assisted Living License?**

You may continue to provide services under [2020 Minnesota Statutes 144A. Nursing Homes and Home Care \(www.revisor.mn.gov/statutes/cite/144A.20\)](http://www.revisor.mn.gov/statutes/cite/144A.20) until Aug. 1, 2021.

You may *not* provide assisted living services under [2020 Minnesota Statutes 144G. Assisted Living \(www.revisor.mn.gov/statutes/cite/144G.41\)](http://www.revisor.mn.gov/statutes/cite/144G.41) until Aug. 1, 2021.

### **How can I ensure that our new construction/new building(s) are in compliance with new Assisted Living requirements?**

See: [2020 Minnesota Statutes 144G.45 Minimum Site, Physical Environment, and Fire Safety Requirements \(www.revisor.mn.gov/statutes/cite/144G.45\)](http://www.revisor.mn.gov/statutes/cite/144G.45) for information on physical plant requirements.

### **Can I submit my construction plans for MDH to review prior to Aug. 1, 2021?**

No. At this time the new Assisted Living Licensure statues do not allow for plan review prior to Aug. 1, 2021. MDH is in further discussion surrounding this topic.

### **How will changes in ownership (CHOWs) be handled during this transition?**

CHOW sales must be finalized prior to Aug. 1, 2021. An Assisted Living License may not be transferred to another party. See: [2020 Minnesota Statutes 144G.19 Transfer of License Prohibited \(www.revisor.mn.gov/statutes/cite/144G.19\)](http://www.revisor.mn.gov/statutes/cite/144G.19) for more information. Further guidance is currently being developed by MDH on this topic.

### **When will I get surveyed for the Assisted Living License?**

Per [2020 Minnesota Statutes 144G.16 Provisional License; Subdivision 2 Initial Survey \(www.revisor.mn.gov/statutes/cite/144G.16\)](http://www.revisor.mn.gov/statutes/cite/144G.16), within 60 days of notice of having a resident receiving services and at a minimum of once every two years after Aug. 1, 2021.

### **What is the new licensing and renewal process?**

New applicants: [2020 Minnesota Statutes 144G.12 Application for Licensure \(www.revisor.mn.gov/statutes/cite/144G.12\)](http://www.revisor.mn.gov/statutes/cite/144G.12).

Renewals: [2020 Minnesota Statutes 144G.17 License Renewal \(www.revisor.mn.gov/statutes/cite/144G.17\)](http://www.revisor.mn.gov/statutes/cite/144G.17).



## Troubleshooting Issues

### **How do I get a licensed director when BELTSS (Board of Executives for Long Term Services and Supports) isn't licensing at this time?**

This situation is under discussion and more information will be forthcoming.

### **I submitted an application/registration, but I haven't heard back from MDH?**

During COVID, under the Minnesota Governor's Executive Order 20-32, MDH suspended license applications reviews. MDH will provide notification when the application/registration process is restarted.

### **How will I be allowed to promote my Assisted Living Facility?**

You must have an assisted living license to advertise as an assisted living provider.

You must have an assisted living with dementia care license to advertise and provide specialized care for dementia related diagnoses.

### **I have already applied for a HWS registration, but MDH has not processed it yet. Can I be grandfathered in?**

During COVID, under the Minnesota Governor's Executive Order 20-32, MDH suspended license and HWS registrations reviews. MDH will provide notification when the review process is restarted.

### **If I have not paid fines by my next renewal date, is outstanding debt a reason for revoking or not re-licensing?**

Yes, outstanding debts may be a reason for not renewing a license.

## Next Steps

We encourage you to read the new Assisted Living Licensure laws: [2020 Minnesota Statutes Chapter 144G. Assisted Living \(www.revisor.mn.gov/statutes/cite/144G\)](http://www.revisor.mn.gov/statutes/cite/144G).

Please visit the Assisted Living Home Page on the MDH Website to review the Assisted Living Facilities Licensure proposed rules:

[Assisted Living Facilities Proposed Rules \(PDF\)](#)

[www.health.state.mn.us/facilities/regulation/AssistedLiving/docs/proposedrules100820.pdf](http://www.health.state.mn.us/facilities/regulation/AssistedLiving/docs/proposedrules100820.pdf)

Before the end of 2020, a Notice of Hearing regarding the proposed rules will be posted. You will have at least 30 days to provide comments regarding these proposed rules prior to the Office of Administrative Hearing process.

Questions about an *existing* HWS registration should be directed to the Health Regulation Division's (HRD) HWS team: [health.HWS@state.mn.us](mailto:health.HWS@state.mn.us)



Questions about an *existing* Home Care license should be directed to HRD's Home Care and Assisted Living Program (HCALP) team: [health.assistedLiving@state.mn.us](mailto:health.assistedLiving@state.mn.us)

## Additional Resources

Additional sources of information regarding Assisted Living Licensure in Minnesota include:

- [2020 Minnesota Statutes 144G.02 Assisted Living; Subdivision 1. Protected title, restriction on use \(www.revisor.mn.gov/statutes/cite/144G.02\)](http://www.revisor.mn.gov/statutes/cite/144G.02)
- [Minnesota Department of Health Assisted Living Home Page \(www.health.state.mn.us/assistedLiving\)](http://www.health.state.mn.us/assistedLiving)
- [Assisted Living Licensure in Minnesota Fact Sheet \(PDF\) \(www.health.state.mn.us/facilities/regulation/assistedLiving/docs/factsheet.pdf\)](http://www.health.state.mn.us/facilities/regulation/assistedLiving/docs/factsheet.pdf)
- [Assisted Living Licensure in Minnesota Making the Transition \(PDF\) \(www.health.state.mn.us/facilities/regulation/assistedLiving/docs/transitionfs.pdf\)](http://www.health.state.mn.us/facilities/regulation/assistedLiving/docs/transitionfs.pdf)

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