

Assisted Living Licensure in Minnesota: Overview of Physical Plant Requirements for Legacy Facilities

Updated October 28, 2020

This overview is provided for discussion purposes only on the applicability of physical plant requirements under Minnesota Statutes, section 144G.45, for legacy assisted living facilities.

Goals of this overview

The goal of this overview is to achieve understanding and agreement between the Minnesota Department of Health (MDH) and provider association representatives (Providers) on the meaning of the current statutory requirements, on what the intended meaning was, and to identify where legislation may be needed to resolve differences between the two.

- It identifies the criteria to qualify as a “legacy” facility based on 2019 session law and 144G
- It identifies the current definition of “new construction” under 144G.08, subd. 62
- It outlines which physical plant requirements apply to legacy facilities in accordance with the definition of “new construction” under the existing requirements in 144G.45 for all facilities and under 144G.81 for facilities with secured dementia care units
- It includes proposed legislative amendments from the 2020 legislative session that were reviewed with and agreed upon by key stakeholders, including provider association representatives and consumer advocates representatives
- It includes questions to be discussed to help identify what legislative amendments are needed for the 2021 legislative session

Options to resolve unintended consequences of existing statutory requirements

In the process of drafting the proposed assisted living facility rules the department has been reviewing the statutory requirements and attempting to identify if necessary clarification could be included in rule. After careful analysis it was determined that this was outside the department’s rulemaking authority. The department is engaging in discussions about options on how to clarify the current statutory requirements under 144G.

Legacy facility criteria

The 2019 Laws of Minnesota, Chapter 90, Section 45, states that, “[e]ffective August 1, 2021, all existing housing with services establishments providing home care services under Minnesota Statutes, chapter 144A, must convert their registration to licensure under Minnesota Statutes, chapter 144[G].”

This means the following requirements must be met at the time the license application is submitted:

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- the HWS establishment is registered under Minnesota Statutes, chapter 144D and has an assigned Health Facility Identification (HFID) number;
- the HWS establishment is actively providing assisted living services as allowed under Minnesota Statutes, sections 144G.01 – 144G.07, to at least one resident; and
- the arranged home care provider is licensed under Minnesota Statutes, chapter 144A.

If all of these criteria are met then the facility is a “legacy facility.” The “legacy” is assigned to the building, not to the future license applicant or licensee.

Assisted living facility license application is required

A completed license application must be submitted in compliance with Minnesota Statutes, section 144G.12, in order to convert the legacy facility to an Assisted Living Facility (ALF) license or to an Assisted Living Facility with Dementia Care (ALFDC) license. There is no automatic conversion to the license.

The license application will be considered by the commissioner in accordance with Minnesota Statutes, section 144G.15. When a license application for a legacy facility is approved, the license will be issued as a non-provisional license. This means the licensee must renew the license annually and Minnesota Department of Health (MDH) will conduct a survey every two years. MDH expects to make assisted living facility license applications available by May 1, 2021.

Definition of “new construction”

Minnesota Statutes, section 144G.08, subdivision 42, defines "new construction" as meaning “a new building, renovation, modification, reconstruction, physical changes altering the use of occupancy, or addition to a building.”

Minimum site, physical environment, and fire safety requirements

Legacy facilities of all sizes

Legacy facilities of all sizes must meet all of the minimal requirements, fire protection and physical environment requirements, and local laws as identified under Minnesota Statutes, section 144G.45, subdivisions 1-3.

Design and life safety code requirements for legacy facilities

Legacy facilities with six or more residents

Minnesota Statutes, section 144G.45, subdivisions 4 and 5, apply to new licenses and new construction. A legacy facility is exempt from these requirements as long as there is no new construction at the facility because they are not a “new license.” Under the definition of “new

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construction” however, a legacy facility will be subject to these requirements whenever new construction begins at the legacy facility.

New construction; plan review requirements for legacy facilities

Minnesota Statutes, section 144G.45, subdivision 6, applies to new licenses and new construction, regardless of size. A legacy facility is exempt from these requirements as long as there is no new construction at the facility because they are not a “new license.” Under the definition of “new construction” however, a legacy facility will be subject to these requirements whenever new construction begins at the legacy facility.

Life safety code requirements for legacy facilities with secured dementia care units

Life safety code requirements Minnesota Statutes, section 144G.81, subdivision 3, also apply to new licenses and new construction. A legacy facility is exempt from these requirements as long as there is no new construction at the facility because they are not a “new license.” Under the definition of “new construction” however, a legacy facility will be subject to these requirements whenever new construction begins at the legacy facility.

Legislative proposals on physical plant and construction requirements

2020 proposal not passed

MDH’s 2020 legislative proposal for Assisted Living Licensure (ALL) included the creation of a new section in chapter 144G, [144G.191] ASSISTED LIVING FACILITY LICENSING IMPLEMENTATION; PROVISIONAL LICENSES; TRANSITION PERIOD FOR CURRENT PROVIDERS. This section was focused on the transition to ALL for legacy and new providers. The section was intended to be temporary and was set to expire on August 1, 2023, one year from its proposed effective date. The section included subdivision 2, on “prospective” facilities with “new construction” (possibly excluding legacy facilities).

Subd. 2. **New construction; building permit.** (a) All **prospective** assisted living facility license applicants **seeking a license for new construction** who have submitted a complete building permit application to the appropriate building code jurisdiction on or before July 31, 2022, may meet construction requirements in effect when the application was submitted.

(b) All **prospective** assisted living facility license applicants **seeking a license for new construction** who have submitted a complete building permit application to the appropriate building code jurisdiction on or after August 1, 2022, must meet the construction requirements under section 144G.45.

(c) For the purposes of paragraph (a), in areas of jurisdiction where there is no building code authority, a complete application for an electrical or plumbing permit is acceptable in lieu of the building permit application.

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(d) For the purposes of paragraph (a), in jurisdictions where building plan review applications are separated from building permit applications, a complete application for plan review is acceptable in lieu of the building permit application.

Issues with this proposal

This proposed language did not take into account:

- the definition of “new construction” under 144G.08, subd. 62
- how this would apply to a building that was a legacy facility that had “new construction” (per 144G.08 definition) that began on or before July 31, 2021; or
- non-legacy or “new” facilities that did not have any “new construction” underway at the time of license application

2021 proposals – discussion needed

- What were the intentions behind the existing language?
- How does the existing language meet these intentions?
- How does the existing language not meet these intentions?
- Is there agreement on the meaning of the existing language and the intentions?
- How can differences between understanding and intentions be resolved?