



# Update on Assisted Living Licensure

House Human Services Finance and Policy Committee  
January 26, 2021

- Approximately 60,000 people live in 1,663 assisted living settings across Minnesota
- In 2014, 58% of residents in assisted living were over age 85 and 39% had dementia
- Residents are remaining in care longer, and settings must meet the residents' increasing care needs

## Licensed Nursing Homes

### Peaked in the 1980s

- 468 Nursing Homes
- 48,307 beds

### Today

- 364 Nursing Homes
- 27,299 beds
- Approx. 23,000 residents

## Assisted Living Establishments

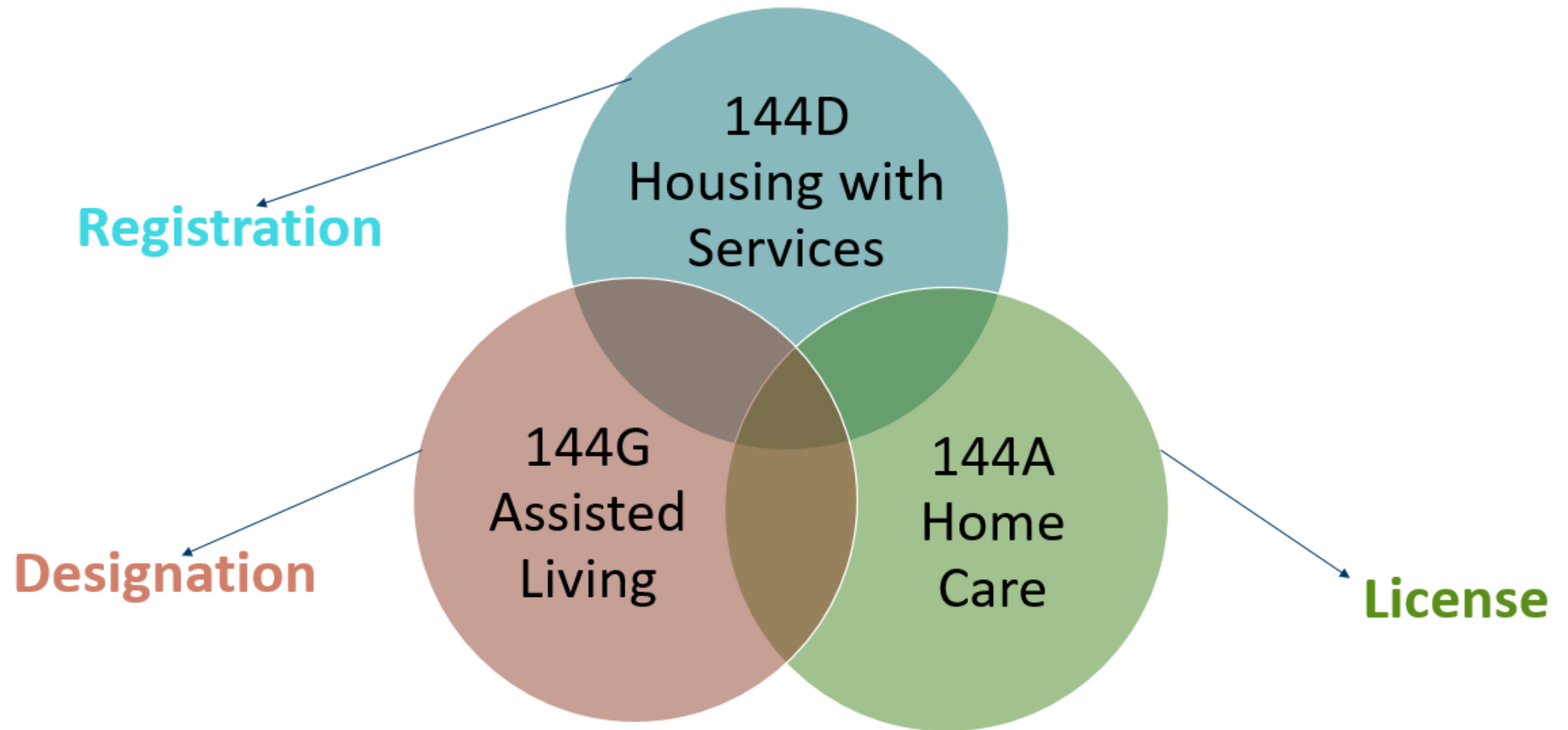
### 1980s

- 0 Assisted Living Establishments

### Today

- 2,480 Housing With Services
- 1,663 Home Care Providers
- Approx. 60,000 clients

# Three Main Statutes



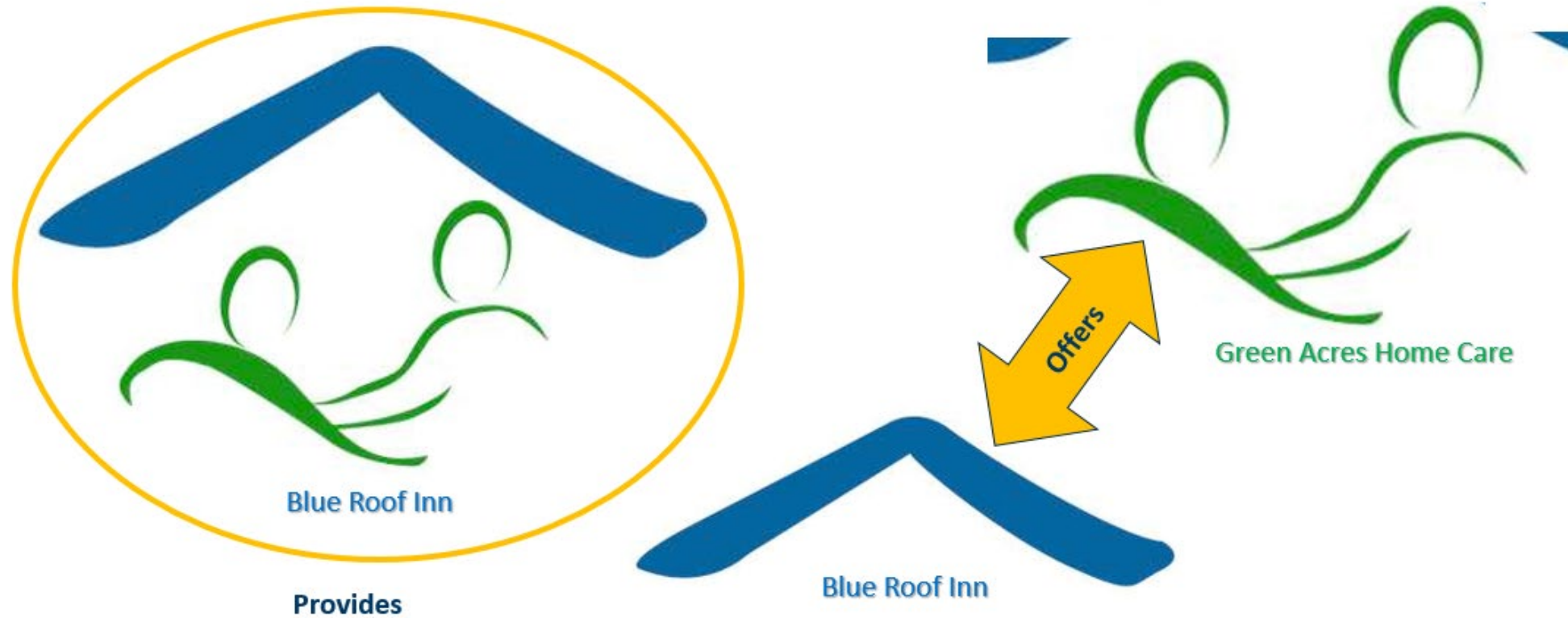
## 144D and 144G

- Annual registration
- No inspection
- No mandatory incident reporting
- No complaint investigation
- No physical plant requirements
- Protected by landlord tenant law

## 144A

- Annual license
- Temp license inspection & every 3 years
- Required incident reports
- Complaint investigation authority
- Client care and business related requirements
- Protected by 144A, VAA and child maltreatment

# Housing With Services & Home Care Provider Relationship



- Who's responsible?
- No authority over registration
- Involuntary discharge and eviction
- Lack of transparency for fees/rates

# Where We've Been - 2018

- Intense legislative session but final bill not signed
- Office of Legislative Auditor Report
- Commissioner convenes informal work groups
  - Licensing approaches for AL
  - AL report card
  - Certification for dementia care
  - Consumer rights
  - Electronic monitoring in NHs and ALs
  - Prevention strategies to improve quality and safety





- May 2019
  - Passage of Assisted Living Licensure Law (144G)
    - Establishing Assisted Living Licensure and removing Housing With Services Registration
    - Effective date August 1, 2021
  - 144G.09 subd. 3 authorized MDH rulemaking authority

- Fall 2019
  - MDH drafts rules as directed in 144G.09
    - Rules Advisory Committee includes stakeholders who participated in drafting 144G
      - Meetings held from November 2019 – November 2020
      - Public attendance and input
  - Notice of Hearing December 2020

# Key Highlights of Assisted Living Licensure

- Single license and assisted living contract
- Physical plant requirements & fire safety
- Enhanced bill of rights and consumer protections
- Licensing of Assisted Living Directors
- Facility responsibilities and requirements
- Surveys, investigations, and enforcement

# Two Categories of Licensure

## Assisted Living License

- Provides housing and AL services to residents
- May provide AL services to residents with dementia
- Must meet resident's assessed needs
- Diagnosis does not dictate setting
- Prohibited from having a secured dementia care unit

## Assisted Living License w/Dementia Care

- Can advertise, market, or promote as providing specialized care for residents with dementia
- Must meet requirements of AL Facility license **and** additional requirements:
  - License
  - Training
  - Programming
- May have a secure dementia care unit

# Physical Environment - Highlights

## Starting August 1, 2021:

- A physical environment survey every two years
- Plan reviews and final construction inspections for a new license or new construction by MDH
- Smoke detectors in each occupied room or automatic sprinkler system
- Portable fire extinguishers and fire drills
- Physical environment in good repair
- Existing buildings must always be maintained in a manner that does not 'constitute a distinct hazard to life'

# Minimum Requirements - Highlights

## Staffing

- Biannual evaluation of staffing levels
- Must meet the scheduled and reasonably foreseeable unscheduled needs of each resident at all times

## Food

- Offer to provide or make available:
  - Three nutritious daily meals, seven days a week, according to USDA guidelines
  - Food prepared and served according to Minnesota Food Code

# Enhanced Bill of Rights - Highlights

## Includes right to:

- Continuity of care from properly trained and competent people in sufficient numbers to provide services
- Have legal and designated representatives participate in care and services planning
- Resident/family councils
- Assess to technology
- Immediate access to counsel and advocacy services

# Assisted Living Director - Highlights

## Licensed Assisted Living Director (L.A.L.D.)

- Board of Executives of Long-Term Services and Supports (BELTSS)
  - Approves director's qualifications and training
  - Currently in rulemaking process
  - Online application roll-out date no later than May 1, 2021
- L.A.L.D. – Person who administers, manages, supervises, or is in general administrative charge of an assisted living facility



# Surveys and Enforcement- Highlights

## Surveys

- Assisted Living Facilities surveyed every two years
- Provisional licenses surveyed within one year

## Enforcement

- Increased fines for violations
- Maltreatment Compensation Fund
- Follow-up surveys required for Level 3/Level 4 violations

## Four key activities

- Legislation
- Rulemaking
- Infrastructure development
- Communications

- December 2020 – 7<sup>th</sup> Special Session of Legislature
  - Passed technical amendment to the Assisted Living Law
    - Addressed key issues required for smooth transition to the new Law by August 1, 2021
    - Ensured protections for residents
- 2021 Session Engagement Plan
  - HRD facilitating engagement process
  - Goals are to find areas of agreement and discuss areas of disagreement
  - To include previously discussed and novel concepts

- Proposed Rules and SONAR posted October 8, 2020
  - <https://www.health.state.mn.us/facilities/regulation/assistedliving/docs/proposedrules.pdf>
- Notice of Hearing published December 14, 2020 opening 30-day public comment period
- Virtual public hearing January 19 & 20

- Following the hearing:
  - Public comment period
  - Rebuttal period
- Modifications
  - The department may modify the proposed rules as a result of the rule hearing process
- Administrative Law Judge to issue report

- Key areas of comments so far:
  - Staffing
  - Emergency Preparedness
  - Contract Terminations

# Infrastructure Development & Communication Updates

- Implementation planning while balancing COVID
- In process of staff hiring and training
- Strategy for communication and technical support for providers is under way since November 2020
- Developing fact sheets, webinars, “how to” videos
- Collaborative stakeholder planning meetings including DHS, Ombudsman’s Office for LTC and Mental Health, BELTSS, and others

# Infrastructure Development & Communication Updates

- Internal workgroups to build processes
- Application in full development
- Resident Quality of Care and Outcomes Improvement Task Force is launched



# Implementation Timeline

	FY21												FY22				
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Q4 2021	
Legislation	2nd SS	3rd SS	Prep for 2021 general session			7th SS- technical Amendments Passed	2021 Session										
Licensing	Design Applications & Licensing Process		System & Process Preparation: Conversions, New Applicants, Proration 144A conversions, Licensed ADL verification, DHS Provider Enrollment changes							Begin accepting ALF applications	Adjust per final rule and statute changes Issue ALF & ALF w DC Licenses eff. 8/1		Continue issuing ALF & ALF w DC Licenses				
Engineering												Plan Reviews, Site Reviews, Variance Requests and initial surveys- physical plant and Life Safety					
Evaluation & Enforcement				Design Evaluations & Enforcement			Development & Testing				Adjust per final rule and statute changes						
Provider Surveys	Intent to Apply				Provider Cost Survey		144A Providers Survey w/Renewal										
HRD Transition Preparation		Hiring, training Licensing and Engineering staff						Hiring, training Survey and Enforcement staff									
Rulemaking	Development	EO Rvw	EO Rv and Gov Office rvw & approval		Prep Notice of Hearing (NOH)	Publish NOH	Rules Hearing	Post-hearing response	OAH Review	Review & Finalize ALJ Order		Order of Adoption	Notice of Adoption				
Provider Preparation	2nd Fact Sheet email		Update on timeline		Provider Webex Overview- Q&A	Prepare Training approach and materials		Provider Webex	ALL Application Process webinars and process support				Adjust per final rule and statute				

# Time for Questions



**Thank you.**

Lindsey Krueger – [Lindsey.Krueger@state.mn.us](mailto:Lindsey.Krueger@state.mn.us)