DEPARTMENT OF HEALTH

ALL Presentation Notes

Date: Thursday, February 17, 2022 Time: 10:00 am – 11:30 am

Agenda

- Survey Updates and Closure Review
 - o Immediate Orders
 - Planned Closures
- ALL License Renewal Process
- ALL License Renewal Application

Welcome

I just want to say hello and welcome to the Home Care and Assisted Living Teleconference Call for Thursday, February 17th. My name is Lindsey Krueger and for those of you who may not know me, I am a program manager within the Health Regulation Division at the Minnesota Department of Health. I want to say thank you so much for joining us today.

On the Agenda today are two main topics: Survey Updates & Closure Review and Assisted Living License Renewal. We will start by discussing the setting for Immediate Orders and then plan to discuss the closure process, which is one of the main questions coming into the department and a topic we are working through at this time. Then I will hand it off to a colleague from the team to discuss the assisted living renewal process and renewal application.

Housekeeping

Before we get started, there are housekeeping items that I will go over. All participants other than the panelists are muted. If you have a question, please place in the chat feature on the right-hand side of your screen. We should have time today to get the questions but if, for some reason, we are not able to get to your specific question, you can email it into the department at <u>health.assistedliving@state.mn.us</u>, and we can help you with your question. Questions that are posted privately to me, to Jia, or one of the other speakers will not be able to be answered today, but we keep these questions for future context and WebEx's.

I encourage you to review all the previous session documentation if you have not been able to join us for teleconferences held in 2021 or if you are new in your role. They are all posted on the <u>Home Care and Assisted Living Teleconference Calls</u>

(www.health.state.mn.us/facilities/regulation/homecare/providers/calls.html) webpage. We have walked through almost every area of the statute over the past year. There is also a

<u>Assisted Living Resources & Frequently Asked Questions (FAQs)</u> (www.health.state.mn.us/facilities/regulation/assistedliving/faq.html) webpage dedicated to frequently asked questions and answers on the Assisted Living Licensure website as well. I encourage you to review those if you have not.

Immediate Orders and Closure Review

Immediate Orders

One of the things I wanted to cover today are Immediate Orders. Pointing these out on surveys or complaint investigations that these areas that need to be fixed immediately, because the risk of harm to the residents is great if they are not addressed right away. So, in that spirit, we want to provide this information to you so that you can think about your facility and determine if these areas are in place for your residents.

The first one is Assisted Living Director or Assisted Living Director in Residence. This is found in <u>Minn. Stat. 144G.10 Subd. 1a (www.revisor.mn.gov/statutes/cite/144G.10)</u> and states that the facility must employ an assisted living director licensed or permitted by the Board of Executives for Long Term Services and Supports (BELTSS). So please make sure that you have your LALD/ALDIR in place and all paperwork is complete or we will send Immediate Correction Orders.

The next one up is lack of background studies for employees. I do have the statutory reference here: <u>Minn. Stat. 144G.60 Subdivision 1</u>

(www.revisor.mn.gov/statutes/cite/144G.60#stat.144G.60.1). Employees, contractors, and regularly scheduled volunteers of the facility are subject to background studies and may be disqualified under Chapter 245C. It is very important to ensure staff that are working with vulnerable adults have gone through all the necessary background checks. They cannot work until that study is complete. So, we are citing this, for staff who are working without background studies completed. Now, we have had questions in the past about what is a volunteer? The volunteer per this area of statute is a *regularly* scheduled volunteer.

All right, improper use of bed rails. This falls under Minn. Stat. 144G.91 Subd. 4

(www.revisor.mn.gov/statutes/cite/144G.91) where residents have the right for appropriate care and services. The residents have a right to assisted living services that are appropriate based on the residents needs and according to their service plan. According to acceptable health standards, bed rails cannot be used to keep somebody in bed, nor can they be used to prevent falls. Bed rails should only be used for bed mobility, so residents are able to utilize and to adjust positions while in bed. The FDA indicates that health care providers should base the use of bed rails on individual risk assessment to ensure the individual is an appropriate candidate to reduce the risk of entrapment. We do have a link here for health care providers if you do utilize bed rails in your facility. I encourage you to visit <u>Recommendations for Health</u> <u>Care Providers about Bed Rails | FDA (https://www.fda.gov/medical-devices/bed-railsafety/recommendations-health-care-providers-about-bed-rails</u>). Also, I want to mention that if you are using portable bed rails, you check to see they are not recalled. There are quite a large number, if not all, portable bed rails that have been recalled due to the risk of entrapment. So, if you do utilize bed rails in your facility, please make sure you are following the proper guidance on the use of bed rails.

Next is the lack of 24-hour awake staff in a secure dementia care unit. This is found in <u>Minn.</u> <u>Stat. 144G.81 Subd. 4 (www.revisor.mn.gov/statutes/cite/144G.81)</u> regarding awake staff requirements. If you have an assisted living facility with dementia care providing services in a secure dementia care unit, there must always be an awake person who is physically present in the dementia care unit 24 hours a day, seven days per week who is responsible for responding to the requests of the residents for assistance with health and safety needs. So, what we are seeing is staff may be leaving the unit because they are required to assist in other units if there has been a fall or they are needed to help with a transfer, etc. This is not permitted per statute. The staff need to be *physically present* in the secure dementia care unit 24 hours per day, seven days per week. I want to make mention that the 24/7 Awake Staff requirement is a requirement for assisted living licensure, but for the dementia care license, awake staff also needs to be present in that secure dementia care unit.

Continuing on with Immediate Orders that we are seeing, <u>Minn. Stat. 144G.41 Subdivison 1 (14)</u> (<u>www.revisor.mn.gov/statutes/cite/144G.41</u>) states an RN should be on call 24 hours a day, seven days per week. So, what we are seeing at times is there is an RN employed and working in the facility but also working part-time in another facility, at another job or hospital. During the time these are nurses are working in a different location or at different job, they are NOT considered available, so you need to have an RN that is Available 24 hours a day, seven days a week if staff need to call and consult with that Registered Nurse.

Here is lack of staff training prior to administering medication or other delegated nursing tasks. I do have statutes for you to reference (144G.60, 144G.61, 144G.62 and 144G.71 Subd. 7). The bottom line is you cannot have staff performing delegated tasks without training competency assessed prior to completing that task. What we are seeing is that staff are passing medications or performing other delegating nursing tasks without any training or proper evaluation. This is something that we'll site, and we need an Immediate Correction Order on.

As much as we would all like to move past Covid-19, it is still here. Please ensure that you are screening residents, staff, visitors and following other Infection Control guidance. If you do have a Covid-19 outbreak at your facility, please follow MDH and CDC guidance on follow-up and next steps after identifying the outbreak. Many times, we are walking into a facility where we are not screened, and the facility does not have any screening process in place.

Closures

The next topic I want to cover today before we get to the renewal information, is planned closures. Planned closures fall under Minn. Stat. 144G.57 (www.revisor.mn.gov/statutes/cite/144G.57). If there is an unfortunate situation that comes up in which a Provider needs to close their facility, there are required steps that you must follow. Even in an emergency, which is found in 144G.57 Subd. 6, you must follow the steps outlined in the statute. So, Subdivision 1, states a closure plan is required. If an assisted living facility voluntarily closes, the facility must notify the Commissioner and the Office of Ombudsman for Long-Term Care (OOLTC) in writing by submitting a proposed closure plan. Now, Subdivision 2 outlines contents of closure plan. The plan must include procedures and actions the facility will implement to notify residents of the closure, including a copy of the written notice to be given to the residents, designated representative, legal representative and family or other resident contacts. It also needs to include procedures and actions the facility will implement to ensure all residents receive appropriate termination planning and assessed needs appropriate for the individual resident.

Subdivision 3 talks about the how the commissioner's approval is required prior to implementation of the closure. The closure plan is subject to the commissioner's approval. The facility shall take no action to close the residence prior to the commissioner's approval of the plan. The commissioner shall approve or otherwise respond to the plan as soon as practical, and we are trying to get to these as soon as possible. We are finding out about closures without being properly notified.

The plan also includes notification to the resident and what your letter or information you will be providing to your residents includes. You cannot move forward with a planned closure without the approval from MDH first. You cannot notify your residents without MDH approval first.

There are rules (Minn. Rules 4659.0130 (www.revisor.mn.gov/rules/4659.0130/)) for conditions for planned closures. Review these if you need to close a facility. Subpart 1 for planned closures and notifying the commissioner before voluntarily closing the facility. You must submit to the commissioner, the Office of Ombudsman of Mental Health and Developmental Disabilities and the Office of Ombudsman for Long-Term Care, the proposed closure plan. You must also submit the name and contact information for the staff person who is responsible for managing the facility during the facilities closure process.

Now, so the department understands what is going on with the closure we do have a <u>Assisted</u> <u>Living Providers Closure Form (PDF)</u>

(www.health.state.mn.us/facilities/regulation/assistedliving/docs/surveyforms/f4045.pdf) posted on our web page. So, if you find yourself in a situation where you do need to close your facility, you do need to fill out the MDH closure form and submit it to the department before you move forward with any other processes.

If there is an event that you need to close in an emergency, there is an area in statute for emergency closures (Minn. Stat. 144G.57 Subd. 6 (www.revisor.mn.gov/statutes/cite/144G.57)) that still needs to be followed. Subdivision 6 states that even in an emergency, a closure plan must be approved by the department prior to notifying and moving the residents. This also includes the communication to your residents. What are you planning to communicate to your residents? That also needs to be approved by the department before you can give that letter to your residents.

If you find yourself in a situation where you need to close a facility, we need to have proper steps being followed. Otherwise, we could be looking into improper closures. So, I want to make sure to bring this information to you, so we don't need to follow up later an improper closure.

So, moving on, we have a newish newsletter that we developed back in October. We do hope to have regular publications of it. We include information and education regarding assisted living licensure. It is a way to provide to you another avenue of information. We know that at times it is hard to join our teleconferences, so this is a way to read the information when it works best for you. If you are interested in subscribing, you can go ahead and click here: <u>ALL</u> <u>Together Newsletter - Subscribe</u>

(https://public.govdelivery.com/accounts/MNMDH/subscriber/new?topic_id=MNMDH_660). Additionally, as we move forward with license renewals, we will be providing some information in the newsletter. We want to make sure the newsletter is not too long to read through. We do have regularly scheduled WebEx's coming up regarding renewals.

Questions

If you are closing a facility and you do not have any residents at that location, you still should follow the closure process and send in the Closure Form in notifying the department that you are closing. Then we will work to close the license after that.

Thank You

Currently, I am going to pass the baton to Jane Danner. Jane oversees administrative areas within the Health Regulation Division, and I have passed this area of assisted living licensure and work to her team. You will be hearing from them in the month leading up to August 1st and the renewal process. Because I oversee the survey process, you will probably still see me providing updates as time allows on these teleconferences. It really has been my pleasure to speak with all of you over this last year. I want to say thank you for your questions and input to help make assisted living licensure a success in Minnesota. So, Jane, I would like to pass the remaining portion of this WebEx and future assisted living renewal WebEx's off to you and your team. Thank you.

Introductions

Good morning, everyone. For those of you who may not know me, my name is Jane Danner, and I am the Regional Operations Executive Manager for the Health Regulation Division. As Lindsey mentioned, I am one of her teammates and I oversee Licensing and Registration. I am newer to the Department of Health; however, I know a lot of you from my 30 plus years of experience on the provider side. And I am happy to partner with you and assist in the renewal process. You will be hearing a lot from these fellow team members, Rick Michals, who has been on past WebEx's, and the State Operations Manager that oversees the Licensing, Certification and Registration (LCR) teams. And we also have Alison Helm who is the LCR Supervisor.

Assisted Living Licensure Renewals

Introduction

Today, we are going to review the renewal process. I want to make sure that people are aware we are here to partner with you. We consider you one of our external stakeholders and we want to support the renewal process. Some things are the same. Some things will be different. We do partner with Leading Age and Care Providers, and we work with Randy Snyder and Rebecca Bollig from BELTSS, so we did get a lot of feedback from those groups as well.

Updates

I want to remind you to register Provider Updates

(https://public.govdelivery.com/accounts/MNMDH/subscriber/new?topic_id=MNMDH_626). Just as a reminder and a way to get those provider updates. We want to make sure that the audience is the largest possible and that we are sharing information with as many as we can. Be sure to share with your peers as well. There are a lot of questions coming into the chat but know that we do keep track of those and utilize them for upcoming webinars as well.

We are going to be reviewing what is new with the 2,000+ assisted living conversion licenses that were effective last August 1st that will be renewed this August. We will be talking about the renewal application, which is being built now and it should be available on or before May 1st. We will also be talking about provider notification. We will be covering the randomization of license period. What we can and cannot change. Again, we are listening for your feedback and working to make improvements as we are able. Rick will talk about the renewal application as well. Therefore, I'm going to hand it off to Rick Michals, Program Manager for LCR to take it away from here.

Assisted Living Licensure Renewals

Renewal License Timelines

My name is Rick Michals, and I am the State Operations Manager for HRD. I work with license enforcement for state regulated providers. I have been involved with planning for the implementation of assistant living licensure. It is exciting now that we are moving into the first round of renewals. Today, we are going to be discussing general timelines, as well as some of the new and unique elements of this first year of assisted living licensure. The focus right now has been renewal for licenses that converted to assisted living licensure last year. And they make up the bulk of our provider group that will need to renew beginning in August and the first group that will need to renew. However, many of the requirements will also apply to the renewal process for providers who were licensed as Provisionals. I will try to highlight the areas that apply to only one scenario or the other but there will be some overlap as well.

To begin with the conversion licensees, the application will be available by May 1, 2022. All license renewals for conversions will be effective August 1st. The different piece here is the duration of the initial renewal period will be prorated and randomly assigned to each licensee

based on the licensed period aligned in statute. The potential initial renewal license period assigned to each licensee may be up to seven months shorter than the standard license period or up to four months longer. This allows MDH to spread out nearly 2,000 conversion license renewals throughout the year to avoid an influx of renewals due in June/July and allow for them to spread out in the future. After the initial renewal license period, licensees will return to standard 12 month renewal period with license effective and expiration dates consistent with the end date of the initial prorated renewal period.

Example, licensees assigned a renewal period expiring on December 31, 2022, will renew as of January 1, 2023, through December 31, 2023, and so on and so on. February licensees expiring the end of January of 2023 will then assume that year and 12 month periods throughout the year.

License renewal fees will be prorated based on the number of months and randomly assigned renewal period and calculated using license type base fee plus per resident fee outlined in <u>Minn. Stat. 144.122 (www.revisor.mn.gov/statutes/cite/144.122)</u>. This is the same formula used to calculate the license application fee as well. \$2,000 base plus \$75 per resident capacity with assisted living facility licenses and \$3,000 fee plus \$100 per resident capacity with assisted living facilities with dementia care. These are just some of the examples of potential renewal application fees for providers on either end of the potential random renewal periods, five months versus 16 months. In this example if the provider had 10 residents plus the base fee for the standard 12 months, the license would be \$2,750 for an ALF license. At five months, we would divide that by 12, use that fraction to calculate the fee of \$1,145.83. On the other end of the spectrum for a 16 month license, where licenses are obviously more than that stand year (12 month) period the renewal application fee will more. Using the same number of residents times 16 divided by 12 we come up with \$3,666.67. Again, compared to that \$2,750 standard fee for licensing.

Actually, <u>Minn. Stat. 144G.191 Subd. 5 (b)(3) (www.revisor.mn.gov/statutes/cite/144G.191)</u> allows for licensees to request a change to the assigned licensed period based on financial hardship. These instructions will be included in the renewal letter, as well as posted to the ALL website once the randomly assigned renewal period has been determined. This process will include a form for applicants to fill out and to be reviewed by HRD to determine if they qualify for a change to their assigned renewal period. The process will not allow applicants to select a specific license period but allow for random reassignment greater than 12 months to less than 12 months or vice versa, depending on the scenario.

Business entities with multiple licenses may request that all their licenses renew in the same month or renew in separate periods to the extent possible based on number of licenses. Instructions for this request will also be included on the website and in the renewal notice. We ask that you consider the potential consequences of randomization for your business, and we will be asking for feedback from licensees who would request a change due to financial hardship or with multiple licenses during the next WebEx meeting. For example, would a shorter or longer renewal present a greater hardship? Or which timeframe would potentially be more difficult financially. For multiple license holders, please consider whether you would prefer all renewals in the same license period, spread out, or no preference? We will be looking to do a survey at our next meeting.

MDH will send renewal notices by May 1, 2022, for conversions and at least 90 days prior to expiration for all other renewals. Per <u>Minn. Stat. 144G.17 (1)</u>

(www.revisor.mn.gov/statutes/cite/144G.17) renewal applications must be submitted at least 60 calendar days prior to expiration of the license to remain in compliance. This would be June 1, 2022, for conversion applicants. Per Minn. Stat. 144G.12 Subd. 4 (a)

(www.revisor.mn.gov/statutes/cite/144G.12) there is a \$200 penalty for submitting a renewal application less than 30 days prior to the expiration date of the license. It must be submitted by July 1, 2022, at the latest to avoid this penalty. To reiterate, because this is a new penalty that we didn't have before, a renewal application submitted less than 30 days prior to the expiration date are subject to a \$200 penalty. Please make a note because again, this is a new addition to statute for assisted living licensure and this penalty is very avoidable by simply getting your application submitted on time. We obviously would like to see applications submitted on time to avoid that fine where possible.

In addition to the \$200 penalty for submitting the renewal application less than 30 days prior to the expiration date, there is a \$250 penalty per day that the licensee operates after expiration of the license and before the renewal license is issued. This is also outlined in <u>Minn. Stat.</u> <u>144G.12 Subd. 4 (a) (www.revisor.mn.gov/statutes/cite/144G.12)</u>. Again, this is a *per day* penalty and is in addition to the \$200 late submission penalty and any enforcement action that may be pursued due to operating without a license, including misdemeanors. These penalties will add up quickly so please be sure to submit the renewal applications timely.

To summarize MDH will send the renewal notices approximately 90 days prior to the expiration date of the license. For conversion applicants, these will contain the prorated renewal period for the licensee as well as instructions on how to request changes for financial hardship or for multiple license holders. The renewal applications are required to be submitted 60 days prior to the expiration date to remain in compliance however, no fines are associated with the initial 60 day deadline. Applications submitted less than 30 days prior to the license expiration date are subject to a one-time penalty of \$200. Licensees operating after the license expiration date are subject to \$250 per day penalty until the renewal license is issued. Again, all of these penalties are easily avoided by getting the application in so please be sure to submit those applications. We will be looking to send renewal letters out by or before May 1st. If we are getting into the first week of May and you have not received your renewal letter yet, please email health.assistedliving@state.mn.us to notify us.

Renewal Application Process

I would like to talk a little bit about the general application process as well as some things to consider as we get closer to the application posting date this spring. The applications will be filled out and reviewed within the Improved Customer Service Delivery (ICSD) system and posted there on or before May 1, 2022. If you filled out a conversion application last year or ever filled out a renewal application for a home care license, you are familiar with ICSD. We

plan to go through the basics and more specific application requirements in a future presentation for those who are unfamiliar with the system or with this type of application.

Renewal letters containing login credentials to ICSD, and prorated license periods will be emailed to the licensee's permanent business email address. Make sure to monitor that mailbox and make sure MDH has the correct email on record. Your permanent business email was recorded based on your conversion or provisional license application. As the name implies, this email is intended to be permanent, however, if it has changed please update MDH by submitting the <u>Change of Information for Assisted Living Providers (PDF)</u> (www.health.state.mn.us/facilities/regulation/assistedliving/docs/surveyforms/f4040.pdf). Please note that the business mailing address may change, but the facility location may not change without obtaining a new provisional license.

When filling out the application, the most important aspect will be to provide the most complete and accurate information possible. Missing information or false representations may result in the denial of the license. Various fields will be auto-populated based on current information we already have in our system for each licensee. This is important to keep up to date, not only because it is a statutory requirement but also, so we are putting correct pre-filled information on the applications (making it easier for you to fill out). As you are reviewing these auto-populated fields, please review carefully and make changes as necessary and allowable within the application. The license renewal in ICSD is NOT an opportunity to renew your Assisted Living Director license renewal. A change of ownership also cannot be done during renewal but will have to occur before or after the renewal.

Physical Plant

The physical plant requirements and engineering review if adding a new building to a campus or renovating or otherwise adding new construction to an old building, you must submit plans to the engineering department. This is a separate process and must be completed to remain in compliance. So, I will say that again, it is a separate process outside of the renewal process. We will be taking these attachments during the credential review phase of the renewal; however, the applicant should be aware of the process for submitting plans for review and getting approval. Please see <u>Minn. Stat. 144g.45 (www.revisor.mn.gov/statutes/cite/144G.45)</u>, <u>Minn. Stat. 144G.81 (www.revisor.mn.gov/statutes/cite/144G.81)</u>, and <u>Minn. Stat. 144G.191 Subd. 2 (www.revisor.mn.gov/statutes/cite/144G.191)</u> for these requirements. Also see <u>Engineering Services for Assisted Living Facilities</u>

(www.health.state.mn.us/facilities/regulation/engineering/assistedliving.html) for forms and contact information. The applicant is responsible for ensuring compliance with the requirements and following up the processes. As noted previously, false, or misleading or incomplete statements or attestations can be a denial of the renewal license. And just to emphasize here, the plan review will NOT be part of the licensee's renewal if plans for review. There is a separate process submitting outside of ICSD.

Capacity

Licensed resident capacity is something we will continue to talk about as we get closer to the renewal period. You will need to submit the information for each building. If you are a single building there will be one building listed and if you are a campus, there will be multiple buildings listed, each with their own set up information. The renewal applicants will enter the building information, including the requested licensed resident capacity for each building individually. ICSD will add the requested licensed capacity for each building together for the TOTAL capacity for the license. For example, a campus with two buildings, each with a capacity of 10 residents, the applicant would add that information on under the two separate buildings. Then the total licensed capacity would be 20. As I mentioned, we will go over this in more detail, but I wanted to introduce the system. We continue to explore solutions to change capacity during the year however, at this time during renewal is the only time that capacity can be changed. So, please carefully consider what your licensed resident capacity will be for your next renewal year. Also note that any change in capacity will be effective with the license renewal date and not the remainder of the current license.

Change of Address

The address and location of the licensed facility may not change. If the licensee chooses to open a new facility and add another location, they must apply for and be granted a new provisional license prior to opening the new location. There have been rare exceptions where the address of the facility has changed due to changes with the post office, but the building hasn't moved. We've been able to work through those situations on an individual basis. So, the license is tied to the building and the location. The business mailing address may change, but again, if the facility location changes that requires a new provisional license prior to providing services at that location.

Change of Ownership

A change of ownership (CHOW) cannot occur during the license renewal. It must occur prior to or after the license renewal. Please review Minn. Stat. 144G.19 (www.revisor.mn.gov/statutes/cite/144G.191) for things to watch out for. You might have undergone a change of ownership, which requires a new license with a new application. Any change in business entity type or transfer of ownership control of the business by 50% or more. That is something that can't change and will indicate a CHOW. If you have an updated Tax ID that will almost always indicate a CHOW is taking place. If you anticipate a CHOW prior to renewal, then submit that application as soon as possible. There is a 60 day notice required by statute.

License Type

License type may not change on renewal. An ALFDC may relinquish the dementia care portion of the license through a process outlined in <u>Minn. Stat. 144G.80 Subd. 3</u> (www.revisor.mn.gov/statutes/cite/144G.80) and <u>Minn. Rule 4659.0160</u> (www.revisor.mn.gov/rules/4659.0160/) either prior to or after renewal. If you are a licensee who plans to relinquish this aspect prior to renewal, please do so as soon as possible. The licensee may not apply for a new assisted living facility with dementia care license for one year from the date of relinquishment. If the licensee would like to move from an ALF to ALFDC they must apply for a new license. The ALFDC license will NOT be effective until the provisional license is issued.

Licensed Assisted Living Director

The ALF/ALFDC renewal application is not a renewal application for the LALD. Please see <u>Requirements for Assisted Living Dirctor Licensure (https://mn.gov/boards/nursing-home/applicants/assisted-living-director/)</u> on the BELTSS website for information. As Lindsey mentioned earlier, not employing an LALD or ALDIR led to the issuance of Immediate Orders on Assisted Living surveys.

Conclusion

We wanted to do a high level overview today to get you started thinking about the assisted living application renewal process as licenses are effective through July 31st. I want to reiterate that we will renewing over 2,000 licenses again this year so, we really appreciate providers applying sooner versus than later.

I just want to remind you to sign up for the ALL Newsletter. Signing up to get these communications is important so you can stay in the loop regarding the renewal process, website updates, and future WebEx presentations. Publications (statute books) have been updated and include the December Special Session so those can be ordered now, as well as Food Code books.

Thank you for joining us today.

Minnesota Department of Health Assisted Living Licensure Health Regulation Division PO Box 3879 St. Paul, MN 55101-3789 651-201-4200 health.assistedliving@state.mn.us www.health.state.mn.us

2/17/2021

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