

# Adult Care Facility Common Application

# ACF Common Application

The Adult Care Facility “Common Application” replaces the

- Certificate of Need (CON) application that is also used for:
  - Adult Home (AH) and Enriched Housing Program (EHP) applications;
  - Assisted Living Residence (ALR/E/SN)
  - Assisted Living Program (ALP)
- The Common Application combines the three above referenced applications for Adult Care Facilities into one concise and comprehensive application.
- Additional schedules allow for an expedited review process under certain circumstances.

# The ACF Common Application is required for

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Establishment of a AH or EHP with or without construction

Increase in capacity of an AH or EHP by more than 9 beds

Change of operator of an existing licensed ACF, ALR or ALP

Establishment of a new manager

Establishment of an ALP after receiving ALP award through solicitation

Increase in capacity of an ALR, EALR or SNALR by more than 9 beds

Transfer of 10% or more ownership interest to a new person (C and C required)

Increase in ownership interest to an existing owner to 10% or more

Construction/renovation of an existing Licensed Facility that exceeds routine maintenance and/or repair

Licensure change for ALR/EALR/SNALR or ALP for which an abbreviated application is not permissible

# Common Application Schedules

- ▶ The Common Application is divided into eight (8) schedules:
  - ▶ Schedule 1: General Information
  - ▶ Schedule 2: Personal Qualifying Information (PQI)
  - ▶ Schedule 3: Legal Information
  - ▶ Schedule 4: Financial Information
  - ▶ Schedule 5: Architectural Information
  - ▶ Schedule 6: Program Information (Part II)
  - ▶ Schedule 7: Expedited Forms
    - ❖ Limited Change of Ownership Notice
    - ❖ ACF Business Conversion
    - ❖ Bed Increase in Capacity for up to 9 beds (AH, EHP, ALR, EALR, SN)
    - ❖ Day Program for non-residents
    - ❖ Decertification of Bed Capacity
  - ▶ Schedule 8: Operator in Good Standing (Request for Approval)

- ▶ Part I of the application consists of the following components
  - Character and Competence
  - Legal
  - Financial
  - Architectural
  - Need (for Adult Homes and ALP's only)
  - Residency Agreement (RA) (may also be completed after Part I is approved). The main body of the RA is submitted with Part I.

Please note: The review of the EALR and SNALR addendum is completed during the Part II review by the Regional Office

# Common Application Schedules

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- **Schedules 1 through 5** are reviewed by the DOH Central Office ACF & Assisted Living Project Management team in Albany. Successful completion of Schedules 1–5 will result in Part I Approval.
- **Schedule 6** is reviewed by the Regional Office that serves the county in which the facility will be operating or where it is currently located. Successful completion of Schedule 6 will result in Part II Approval.
- **Part I and Part II will be reviewed simultaneously.**
- Final approval to commence or assume operations requires both Part I and II approval (Schedules 1-6).
- The Common Application has expedited processes for the legal, financial and/or architectural component, as well as for licensed operators in good standing, each of which may be utilized under specific circumstances.
  - The expedited processes may be found within Schedules 3B, 4E, 4F, 5E and Schedule 8.
  - These schedules are to be used **in conjunction with** (not in place of) Part 1 of the application. All appropriate documentation must be submitted along with the entire application.
  - When utilizing these schedules, the applicant must note that they will be utilizing the abbreviated schedules within the Project Description (Schedule 1B) and indicated on the accompanying checklist (Schedule 1C).

▶ **1A General Information**

▶ **1B Project Description**

- ✓ Business type, facility type, county, number of beds (not units) must be indicated

▶ **1C Checklist of Schedules**

All three schedules A-C are required from all applicants

▶ **1D ALR/E/SN Applicants Only**

- ✓ Additional General Information and Biennial Fee Calculation

▶ **1E ALP Applicants Only (additional information required)**

- ✓ Must have an active ALP award
- ✓ Must become approved either as an AH or EHP **-and-**
- ✓ Licensed Home Care Services Agency (LHCSA), Long Term Home Health Care Program (LTHHCP) or Certified Home Health Agency (CHHA).
- ✓ Both entities must be under identical ownership
- ✓ Must attach a letter of interest from the County DSS and Office of Aging
- ✓ Payor Source (% of Public vs. Private Pay)
- ✓ Shareholder and Medicaid Affidavit
- ✓ Enrollment in MMIS is initiated **after** full approval from Licensure and Certification (OC number required for enrollment)

- ▶ **Schedule 2 Worksheet to list Officers, Directors or Members**
- ▶ **Schedule 2A Personal Qualifying Information (PQI) for the Director's/Members**
  - ✓ No longer requires Social Security Numbers
  - ✓ Full disclosure on all questions for all relevant history within the past **10 years** including;
    - ✓ Identifying information, education, licenses, employment history of each Member;
    - ✓ Offices Held, Ownership Interest or any affiliations with any other ACF or health care facilities;
    - ✓ Relatives Ownership Interest in any other ACF or health care facilities;
    - ✓ All Enforcement History and Record of Legal Action;
    - ✓ Affirmative Qualifying Statement (for applicants with little to no previous experience); and
    - ✓ Attestation, signature and notary required (certifying under penalty of perjury, that all information is accurate and complete).

➤ **Schedule 2B Personal Financial Statement**

- ✓ Full disclosure of all relevant history within the past **10 years**
- ✓ Attestation, signature and notary required

➤ **Schedule 2C Director's Statement**

- ✓ To be completed by directors of not-for-profit corporations
- ✓ Required for all NFP adult care facility establishments
- ✓ Attestation, signature and notary required

➤ **Schedule 2D Compliance Form for Out of State Facilities**

- ✓ To be initiated by the applicant after a project number and manager is assigned to the application
- ✓ Letter and compliance form must be sent to the state regulatory or licensing department of each/any affiliated health care entity located out of state
- ✓ Include project number and manager information to whom the completed report should be sent
- ✓ Include a stamped envelope addressed to the assigned project manager at the NYS Department of Health for all out of state regulatory agencies to return information

▶ **Schedule 3A General Legal Requirements for all applicants**

- ✓ Must complete forms located within 3A
- ✓ Sample language and provisions for each type of legal entity is contained within the instructions. Applicants should refer to these sample statements located in 3A when preparing the legal documents

Must include Provisions and/or Language within

➤ **Lease** “Notice to the Department” language

- ✓ Must maintain fiscal authority, sole control of facility’s revenue and expenditures and accounts must be in the name of the established operator

➤ **Purpose Language**

- ✓ Required for the Certificate of Incorporation or Articles of Organization (amended and restated as appropriate)

➤ **General Partnership**

- ✓ Specific Provisions within the Partnership Agreement

➤ **LLC**

- ✓ Specific Provisions within the Articles of Organization for proposed changes need written approval from the Department

▶ **Schedule 3A General Legal Requirements (continued)**

➤ **Corporation Requirements**

- ✓ Provision within the Certificate of Amendment or Certificate of Incorporation to include:
  - Limit the directors liability;
  - Transfer of members interest; and
  - Shareholder affidavit

➤ **Not-For Profit Corporations**

- ✓ Minimum of **7** Board Members

➤ **Management Agreements**

- ✓ Include provisions and statements that demonstrate:
  - ✓ Compliance with statutes/regulations and
  - ✓ That the operator maintains authority

- ❖ **Schedule 3B “ ACF Legal Certification”** is optional for certifying some or all of the legal component of the common application. **It must be completed and certified by an attorney licensed to practice in NYS.**
  - Through this certification, the legal reviewer (attorney) is attesting that they are knowledgeable as to the laws and regulations of NYS for Adult Care Facilities and Assisted Living Residences **-and-**
  - That all submitted legal documents are thorough and correct
  - While the submission of the Legal Certification will help expedite the legal component of the application if properly submitted, it does not guarantee approval of the legal component based on such factors as: significant deviation or omissions of the statutes/regulations identified by the Department

- ▶ **Schedule 4A General Financial Information - All Applicants**
  - ✓ Must be filled out completely. If the answer is not applicable, this must be indicated
- ▶ **4B Start up Operating Projections for**
  - ✓ All ACF and/or ALR
  - ✓ New facilities or increases in capacity by more than 9 beds
  - ✓ Must include 2 Year Projections; reaching 90% occupancy
- ▶ **4C Annual Operating Budget Projections for**
  - ✓ All ACFs and/or ALRs
  - ✓ Projected budget at 90% Occupancy
  - ✓ Encompass a 12 month period
- ▶ **4D ALP Applications Only Projected Budget**
  - ▶ Encompass a 12 month period

❖ **Schedule 4E Financial Attestation for Substantial Bed Increase (optional)**

- This Attestation may be submitted in place of Schedule 4B Start Up Operating Budget Projections and 4C Annual Operating Budget Projections for the following:
  - Ten or more AH or EHP bed increase application
  - ALR/E/SN bed increase of 10 or more, except where a new certification (EALR or SNALR) is added

If the bed increase involves construction that is being financed, the Department will not accept financial attestation. The applicant must submit construction financing documents

This Attestation may only be utilized if the facility is current with its Financial Reporting requirements on the Health Commerce System (HCS)

❖ **Schedule 4F Financial Attestation for Change of Operator (optional)**

- This Attestation may be submitted in lieu of Schedule 4B Start Up Operating Budget Projections and 4C Annual Operating Budget Projections for the following:
- Change of Operator application where the budget will not change in any material way as a result of the proposed license transfer
  - All other required application information must be submitted for Department review
  - This Attestation may only be utilized if the following entities are current with their Financial Reporting requirements:
    - the facility for which the change of ownership application is being submitted
    - all facilities owned and operated by the proposed selling operator
    - all facilities owned and operated by the proposed new operator

By regulation ACF CON applications involving Adult Homes, Enriched Housing Programs and Assisted Living Programs must meet applicable provisions of the Existing Building Code of New York State, Title 18 NYCRR Parts 485, 487, 488, 494 and/or Assisted Living Residences Title 10 NYCRR Section 1001.13.

**The following regulatory references apply to Adult Care Facilities and Assisted Living**

- ✓ 18 NYCRR § 487.11 Environmental Standards-Adult Home
- ✓ 18 NYCRR § 488.11 Environmental Standards-Enriched Housing
- ✓ 18 NYCRR § 494.7 Environmental Standards-Assisted Living Program
- ✓ 10 NYCRR § 1001.13 Structural and Environmental Standards – Assisted Living Residences

► **Schedule 5A – General Architectural Requirements**

All applicants must complete this schedule for the following projects:

- ✓ New Establishment
- ✓ Conversion to an ALR, EALR, SNALR and/or ALP
- ✓ All Construction Applications including increase in capacity with construction
- ✓ Renovations that make structural changes to the facility
- ✓ Change of Operator

► **Schedule 5B – Adult Care Facility Architectural Certification**

- ✓ Completed for the above referenced projects (see Matrix for further guidance)
- ✓ Must certify that the project is or will be in compliance with all state and local laws, regulations and ordinances
- ✓ If certifying that project “will be in compliance” prior to construction, a Final Architectural Certification (5C) will be required
- ✓ Completed by a Professional Engineer or Registered Architect
- ✓ Signature and Notarization required

▶ **Schedule 5C – Final Architectural Certification**

- ✓ To be submitted only if the original ACF Architectural Certification was based on preliminary drawings
- ✓ To be submitted after completion of construction or renovations **and prior to** final approval and/or licensing by the NYS Department of Health
- ✓ All other requirements apply

▶ **Schedule 5D – Adult Care Facility Architectural Matrix**

- ✓ Assists with determining what type of project requires architectural certification and whether it must be certified by a Primary Registered Architect or Professional Engineer, or requires an additional Third Party certification

❖ **Schedule 5E Early Commencement of Construction (optional)**

➤ This acknowledgment form is to be used when an applicant wishes to commence construction prior to Part I Approval

- This form must be submitted with the Part 1 application, including the Architectural Certification form signed by a Professional Engineer or Registered Architect, and the preliminary plans or sketches
- The Department will respond to the applicant within **60 days** approving early commencement or articulating the Department's concerns or reason for denial
- The applicant understands that the project has not received Part I or Part II approval and acknowledges that it cannot commence operation of an ACF without full approval from the Department
- The applicant further acknowledges that it commences construction at its own risk and that the facility must be constructed in accordance with all applicable laws, codes and regulations of NYS
- Final approval will not be granted until the Final Architectural Certification Form, Schedule 5C, is submitted along with the final set of plans, and not until after a final walk-through of the facility is conducted by the Department

## Conducted by the Regional Office

- ▶ Ensures the physical plant meets all state and local codes
- ▶ Reviews and approves
  1. Policies and procedures
  2. Administration
  3. Staffing
  4. Programs for Residents
  5. EALR and SNALR Addendums
  6. Waivers and Model Residency Agreements (with Central Office)
- Regional Office will inform the project manager via email of the outcome of their review

## Process for Part II

- Increased detail is now provided within Schedule 6 for the required documentation necessary for the Part II approval process
- Schedule 6 must be accompanied by a cover letter, with the project number noted, and submitted in its entirety to the Regional Office
- Applicants may submit Schedule 6 at any time during the approval process, however it must be submitted no later than 90 days after the approval of Part I
- A copy of the cover letter (only), for Schedule 6 (Part II), must be submitted to the assigned Project Manager in the DOH Central Office
- An applicant may indicate that there will be no change in established policies and procedures, item by item such as
  - ✓ indicating that there will be no change in admission policies in an application for adding ALR certification to an Adult Home
- Applicants may maintain certain documents for onsite review by the Regional Office at the time of the pre-opening or initial survey. Applicants must communicate in their submission which documents they are maintaining onsite. Applicants may also submit all documents at one time.

## Waivers

- ▶ Applicants request waivers for alternate methods of complying with regulations
- ▶ Applicant sends waiver request to Regional Office
- ▶ Regional Office forwards recommendation to Central Office (Surveillance Program)
- ▶ Waivers that may pose risk to residents will not be granted
- ▶ Waivers may have contingencies
- ▶ A letter of approval or denial is sent to the applicant
- ▶ Waivers are non-transferrable. New waivers must be requested with a change of ownership

- ▶ Schedule 7 includes 5 applications that may be expedited and approved within **90** Days
  - ✓ **7A** Limited Change of Ownership Notice
  - ✓ **7B** Notification of Business Conversion
  - ✓ **7C** Bed Capacity Increase
  - ✓ **7D** Approval to operate a Day Program for non-residents
  - ✓ **7E** Bed Capacity Decrease

## ❖ **Schedule 7A Limited Change of Ownership Notice**

- Used for transfers of less than 10% interest or voting rights to a new person or any transfers to a person already approved by the Department for this operator/entity
  - Within ninety days from the date of receipt of such notice, the Department may bar any such transaction only if it finds there are reasonable grounds to believe the proposed transaction does not satisfy the good standing or character and competence review criteria, as set forth in section 1001.5(e). The Department shall state specific reasons for barring any transactions and shall so notify each party to the proposed transaction
  - Send 1 original and 2 copies to Central Office

## ❖ **Schedule 7B Notification of Business Conversion**

- Provides the Department with notifications of the intent of an existing facility to convert its business operations (e.g. Partnership to LLC with same members)
  - Schedule 7B must be submitted to the Department 90 days prior to the transaction along with
    - A transaction narrative (proposed change)
    - All appropriate legal documentation of the proposed (new) operator (e.g. agreements, D/B/A, Articles of Organization)
  - Send 1 original and 2 copies to Central Office

## ❖ Schedule 7C Bed Capacity Increase

- May be used for increases up to nine (9) ACF, ALR, EALR and/or SNALR beds
- Cannot exceed the maximum capacity of **200** beds
- Cannot be used more than once within a five year period
- Cannot be used for more than a 9 bed increase (which requires a full application)
- The Department reserves the right to deny applications if the applicant has submitted multiple applications that constitute a misuse of the expedited process.
- This form may be used for projects that require minor renovations to existing buildings, but may not be used for construction projects
- This form will prompt the Department to issue the revised Operating Certificate reflecting the new bed count
- Send 1 original and 2 copies to Central Office

- ❖ **Schedule 7D Approval to operate a Day Program for non-residents** as indicated in 485.2 (r) and 492
  
- This form should be submitted along with
  - The qualifications of the proposed Program Director
  - A written description of the proposed Day Program
  - Additional Program Forms including:
    - Agreements which non residents must sign
    - Medical evaluation
    - Re-admission interview form
    - Written plan for services
  - Send 1 original and 2 copies to the Central Office

- ❖ **Schedule 7E Bed Capacity Decrease** (decertification of capacity)
- Must be used to decertify an Adult Care Facility, Assisted Living Residence, Enhanced Assisted Living Residence, Special Needs Assisted Living residence or Assisted Living Program beds
  - This form will prompt the Department to issue the revised Operating Certificate reflecting the new bed count
  - If the decertification requires construction, additional information may be requested
  - Send 1 original and 2 copies to Central Office

➤ **Request for Approval of Operator in Good Standing (optional)**

- ❖ The applicant must submit this form in conjunction with a complete Common Application pursuant to SSL 461-b(2)b or PHL 4653 (2)
- Current Operators in good standing who wish to be approved to operate an additional “like” facility with the same licenses and certifications as one or more of its existing facilities, may submit this form for approval of the project, provided that the applicant’s last approval was issued within the past **two years** and is in good standing with the Department. This form contains the following 5 sections
  - I. Project Information
  - II. Determination of Eligibility through Compliance and Enforcement History
  - III. Applicant’s most current NYS operations (list of other ACF operated by the Applicant)
  - IV. Applicant’s Self Certifications for each of the following:
    - ✓ Architectural, Legal, Financial and Out of State Compliance (if applicable)
  - V. Applicant’s most recently approved material per component
    - ✓ e.g. previously approved lease, Management Agreement, etc.

- ▶ The Department will take the following steps when reviewing the Operator in Good Standing Form
  - Verify that the form is complete
  - Verify that the Operator is in good standing pursuant to the standards in Chapter 414 of the Laws of NY 2013
  - May conduct a character and competence review pursuant to Title 18NYCRR 485.6(b), provided that the Department considers the certification in Section II of this form
  - Verify that the Operator currently operates a NYS facility that has the identical licenses
  - Verify that the last approval for the “like” facility was within the last two years from the effective date on the facility’s Operating Certificate
  - Items identical to those approved by the Department in the last two years will not be re-reviewed
  - Verify that the architectural certification has been submitted and is complete, or that one is not necessary for the expedited review

- If all components of the Department's review of the Operator in Good Standing Form have been satisfied, and the applicant's last application was approved within the past two years, the Department will
  - Notify the applicant within 60 days of receipt of the application that they qualify for consideration under the good standing process
  - If qualified, the Department will allow the applicant to operate the facility pending full approval by the Department of their project
  - Issue a "Conditional Approval" to operate the identical facility. This conditional approval will be reevaluated every 6 months to ensure that the applicant maintains their good standing while the project is being completed
- In order to maintain in Good Standing the Applicant
  - Must continue to work with their Project Manager on their application and respond to all requests for information
  - Remain in good standing with existing facilities

Failure to promptly respond to the Department's request for information will result in revocation of the Good Standing Approval and a referral for enforcement action may be taken

- If the applicant's last approval occurred more than two years ago, but meets all other requirements, the applicant may request to be deemed eligible for approval of Operator in Good Standing by submitting the following:
  - The applicant and facility name of the previous application
  - The project number
  - The approval date for the previous application and
  - The certification in Section V (Previously Approved Material)

During its review the Department may determine in its reasonable discretion that a Good Standing Approval is not appropriate and a full review is required

# Table of Required Schedules

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## Application Type

## Schedules

- ▶ Establishing, with or without construction, a new ACF or ALR 1,2,3,4,5 and 6
- ▶ Establishing an ALP after receipt of Departmental Approval 1,2,3,4,5 and 6
- ▶ Construction or Renovation of an existing Licensed Facility that exceeds routine maintenance and repair 1,4,5
- ▶ Change of Operator of an existing licensed ACF, ALR or ALP 1,2,3,4,and 6
- ▶ Increase in capacity of an ACF or ALR/E/SN by more than 9 beds 1,4,5 and 6
- ▶ Establishment of a new manager 1,2a,3 and 4c
- ▶ Transfer of 10% or more ownership interest in the Operator to a new person or increase in the ownership interest of an existing owner to 10% or more if such person never underwent a character and competence review 1,2 and 3

# Regulatory References

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## Day Program for Non-Residents

## Schedule 7D

485.2 (r) (1) Services for nonresidents in adult homes, residences for adults and enriched housing programs means an organized program of services which an operator of an adult home, residence for adults or enriched housing program is authorized to provide to residents of such facilities but which are provided to nonresidents who are aged or disabled for the purpose of enabling such persons to remain in or return to the community. Such services may include an organized day program, temporary residential care, or other services the facility is authorized to provide.

(2) Eligible nonresident participant means a person 18 years of age or older who is not a resident of an adult home, residence for adults or enriched housing program and who, by reason of social, physical, and/or mental dependencies, requires nonresident services provided by such facilities or programs in order to remain in or return to the community.

(3) Day program means an organized program for nonresidents of adult homes, residences for adults or enriched housing programs which includes personal care, supervision and such other services which the operator is authorized to provide to residents of such facilities but which are provided for less than 24 hours during any period of the day or night.

# Links for Additional Information

## ▶ Assisted Living Programs (ALP's)

For Home Care License Applications, go to

LHCSA – [www.health.ny.gov/forms/doh-1056.pdf](http://www.health.ny.gov/forms/doh-1056.pdf)

CHHA - [www.health.ny.gov/facilities/cons/more\\_information/docs/sch\\_21.doc](http://www.health.ny.gov/facilities/cons/more_information/docs/sch_21.doc)

Inquiries can be made at: [Homecare@health.ny.gov](mailto:Homecare@health.ny.gov)

**Medicaid enrollment** for ALP providers should contact MMIS after the Bureau of Licensure and Certification issues your Operating Certificate at

[www.emedny.org/info/ProviderEnrollment/assisted\\_living/index.aspx](http://www.emedny.org/info/ProviderEnrollment/assisted_living/index.aspx)

Inquiries can be made at: 1-800-343-9000

**All questions related to the use of the ACF Common Application, revised forms or processes should be forwarded to [acfcon@health.ny.gov](mailto:acfcon@health.ny.gov)**