

1584 ALP Application Questions and Answers
RFA #1584

Program Component Questions

Q1. May an entity that responded to the 2007 Berger Commission ALP RFA re-submit its same application in the same county for consideration in this RFA? May it submit the same application with a simple change such as increasing the number of ALP beds? If an entity submitted an application under the beds for the Berger Commission 3 county solicitation, should they submit another one for this solicitation? If they should re-submit materials, can they submit a copy of what was provided for the Berger solicitation, or must it conform to the details of this particular solicitation?

A1. *The 230 bed Berger ALP Application and the 1584 bed ALP Application are distinct applications with distinct criteria. An applicant who applied for the 230 bed Berger ALP must also submit an application that responds to the requirements for the 1584 ALP RFA if the applicant is interested in being considered in the 1584 ALP competitive process. It is recommended that applicants carefully review each application, as there are differences in the requirements for each application.*

Q.2 If an organization has submitted an ALR application, and would now rather apply for ALP for some of or all of those beds, what would be the process? What is the time frame for approval?

A.2. *It is permissible for an entity that has submitted an ALR application to first withdraw the ALR application and then submit an ALP application. An ALP operator may choose to also operate as an ALR and the ALP application should state whether or not it is the intention of the applicant to operate as an ALP as well as an ALR. Each applicant must submit an application that responds to the requirements for the 1584 ALP RFA if the applicant is interested in being considered in this competitive process. Each application will be reviewed with the same evaluation criteria and will be evaluated based on its own merits, giving all applicants the same opportunities.*

Q3. How can we obtain the U.S. Census projections for the year 2015? What elements (total population, population over age 65, disabled population, etc.) of the U.S. Census Bureau's 2015 population projections will the Department of Health rely upon most heavily in assessing the need for ALP beds in each part of the State? On Page 1 of the September 27, 2007 RFA announcement letter, the NYSDOH notes that it will use 2015 census projections. Given that a number of entities (e.g., Claritas, NYS Dept. of Economic Development) develop census estimates independent of one another, will the NYSDOH please list the source that it will use for 2015 census projections, to allow applicants to develop consistent projections?

A3. *You will find the US Census projections at the following website:*
http://www.ciser.cornell.edu/PAD/nysis_data/county_projections_pdf/nystotal.pdf
The Department will use the projections of population over age 75 in the year 2015 as a guideline when assessing the proposed bed allocation. The marketing study submitted by the applicants will also be used when making this determination.

Q4. May the Department issue notices of contingent approval that approve a lesser number of ALP beds than the applicant requested?

A4. *Yes. The Department reserves the right to approve a lesser number of ALP beds than the applicant requested.*

Q5. A part of the original concept of ALP beds was to allow residents to age in place. This RFA does not specifically speak to that concept. May an applicant assume that demonstration of methods that will allow for such aging in place, and preventing future RHCF admission, would be considered as helping the applicant to satisfy the first "highest consideration" criterion?

A5. *Please refer to 18 NYCRR section 494.4(c) and (d). In accordance with this regulation, an ALP may care only for individuals who meet the criteria under (c), and may NOT care for an individual who fits the criteria under (d), which can be found at: <http://www.health.state.ny.us/nysdoh/phforum/nycrr18.htm>*

Q6. Clarification is requested regarding Program Schedule 1-1, Page 1 of 3. For corporate applicants, should No. 1 be the proposed doing-business-as name of the applicant and No. 2 be the corporate name of the applicant?

A6. Yes.

Q7. Confirmation is requested. It appears that a separate application for an Adult Home or Enriched Housing Program is not required as part of a complete RFA response, and that the ALP application will suffice to cover both the ALP and AH/EHP housing component. Is that correct?

A7. Yes.

Q8. Since the enactment of the Assisted Living Program (ALP), approximately one-third of the counties in the State have no operational ALP beds or an extraordinarily low number of ALP beds, relative to other counties. Can the NYSDOH provide any clarification of its statement on the first page of its September 27, 2007 letter regarding "taking into consideration the number of currently licensed ALP beds and counties without any licensed ALP beds?" Will this "consideration" be higher than or at least as high as the four stated review criteria that will be given "the highest consideration" in the review of RFA responses?

A8. *ALP applications will be evaluated with respect to the criteria set forth in 18 NYCRR 485.6(n). These criteria include, among others, "the geographic location of the proposed program" per 18 NYCRR section 485.6(n)6(v). The applications will be evaluated with highest consideration given to those applicants who demonstrate the criteria outlined in §485.6(n)(7), which can be found at: <http://www.health.state.ny.us/nysdoh/phforum/nycrr18.htm>*

Q9. Will an applicant for a new LHCSA license be judged less favorably than an applicant possessing an existing LHCSA license?

A9. *No. All applicants will be evaluated equally. Whether the applicant holds a current license or is applying for a license as part of its application is not a factor in the application review process.*

Q10. Would the department consider preference to applicants who wish to operate as an Enriched Housing Program rather than an Adult Home?

A10. *Enriched Housing applicants cannot be given preference over Adult Home applicants since either model is acceptable to operate an ALP under existing statute. However, the Department encourages applicants to describe in the program narrative how they intend to maximize resident independence, resident self-direction, provide residents with a wide range of choice with regard to activities, food selection, community involvement, and otherwise supports the quality of life for potential ALP residents.*

Q11. Would any consideration in scoring - positive or negative - be shown to an applicant who is an existing ALP operator and who proposes, in this RFA response, to convert existing AH/EHP beds to ALP beds at another location that is not currently approved to provide ALP beds?

A11. *Each application will be reviewed with the same evaluation criteria and will be evaluated based on its own merits. Whether the applicant is an existing APL is not a factor in the application review process.*

Q12. Can you confirm that the current allotment for ALP beds is 1,730 beds?

A12. *The current allotment of ALP beds for this solicitation is 1,584.*

Q13. Will the Department favor applicants who comply with the ADA, support resident rights, have procedures which demonstrate accurate level of care determinations, and appropriately apply Medicaid reimbursement to resident services?

A13. *The Department has a distinct interest in ADA compliance, resident rights and accurate level of care determinations. Such issues are monitored during the PART 2 review of the selected applicants and during periodic surveillance and audit activities once the ALP is operational.*

Q14. Where can we access the ALP and LHCSA application forms that are not in PDF but rather in Microsoft Word document format that allows data entry into the various fields of the forms?

A14. *The interactive form will be available on the DOH web site shortly.*

Q15. If you are an existing, approved ALP, and are looking to expand ALP bed capacity by converting remaining ACF beds, do you need to complete another application? Is this considered an expansion or NFP conversion A.H.? Even though you are already an ALP?

A15. *Yes, applicants who are converting beds should complete a 1584 ALP Application if they wish to be considered in this solicitation. This is not an expansion; it is a conversion of existing beds only.*

Q16. If an existing and/or new ACF is approved for a specific number of ALP beds, can those same beds be utilized by non-ALP residents of the Home or will they need to remain empty until an appropriate ALP candidate is identified?

A16. *New ALP beds may only filled with ALP qualified residents. . Once a converted ACF bed is empty, it must remain empty until filled by a qualified ALP resident. Therefore, if an adult care facility is approved for 20 ALP beds but has only 18 ALP residents, there must be two more beds available for potential ALP residents.*

Q17. Under what criteria will individual applications be reviewed and judged? What weights will be attached to the various criteria? What criteria is the dept scoring, and how is each component weighted in relation to the others? Will the NYSDOH make available to the public its scoring system for this RFA?

A17. *The Department will review the ALP applications in accordance with regulatory criteria set forth at 18 NYCRR 485.*

Q18. Will applications be grouped and judged on a regional basis or on a statewide basis? Does the Department have bed-count goals for the different regions of the State or for different counties? If so, what are the goals? Under what criteria are ALP beds allocated to the various counties across the state?

A18. *In accordance with 18 NYCRR §485.6(n)(6), ALP applications will be evaluated with respect to criteria that include “the geographic location of the proposed program” and “the geographic distribution of existing and proposed programs.” The regional configuration outlined in the Commission on Health Care Facilities in the 21st Century (a.k.a. The Berger Report) will be used for the regional bed consideration factor in place of the Health System Agency regions. These regions can be found on page 66 of the Berger Commission Report. (www.nyhealthcarecommission.org)*

Legal Component Questions

Q19. Who is an “applicant” as that term is used in the ALP application? Who is an Assisted Living Program “sponsor” as that term is used in the ALP application?

A19. *The terms “applicant” and “sponsor” are used interchangeably; each meaning a person or entity licensed, or to be licensed to operate an Assisted Living Program. In Program Schedule 1-1, question 4, the applicant must state the legal form of the applicant or each co-applicant.*

Q20. If an adult home and home care provider are separate legal entities, are they both “applicants” and/or “sponsors?” If the adult home and home care provider are legally separate entities owned by exactly the same individuals, are the entities “identical” (even if the individuals’ percentage interests may differ)? If the adult home and home care provider are legally separate entities owned by exactly the same individuals, are the entities “identical” if the entities are in different forms (such as one partnership and one business corporation)?

A20. *If an adult home operator and a home care provider are separate legal entities they would both be considered co-applicants. To be considered as “eligible co-applicants” under ALP they need to have identical ownership. If the exact same individuals are the owners of each co-applicant, and if applicable, have the same directors, members, shareholders, they will generally be found to have identical ownership. For example, if John and Mary Smith operate an adult home as general partners, and they are the only two shareholders and directors of a business corporation that operates the home care component, they have identical ownership.*

Q21. May business corporations and LLCs simply sign page 16 of the ALP application in order to satisfy the “Board Resolution” requirement, or must a business corporation or

LLC attach a separate document? If a separate document must be attached, what must the Board Resolution say?

A21. *The required board resolution is in addition to the signature and certification on page 16. It is to be submitted as an attachment to the application and program schedule 1-3. It is recommended that the applicant consult a lawyer for advice regarding the resolution. In general, a resolution is documentation that a corporation or LLC has met and has voted to take the action to submit the ALP application and related documents.*

Q22. Who may sign pages 16 and 29 of the ALP Application on behalf of a business corporation or LLC? Must all shareholders or members sign these pages?

A22. *The signatory should be an individual who is authorized to sign on behalf of the applicant. Again, it is recommended that the applicant consult with an attorney to determine who has been authorized under the corporate by-laws, the LLC operating agreement, or otherwise, to sign on behalf of the applicant.*

Q23. The first bulleted paragraph in ¶ 7 on page 21 of the ALP application says that personal care services must be provided by the “applicant.” If the adult home and the home care provider are separate, identical legal entities, may either entity provide the personal care services?

A23. *The ALP operator is directly responsible for providing personal care services. See Program Instructions page 4 of 5; section 3.*

Q24. If an applicant in New York City wishes to contract with the NYS Department of Health instead of with the New York City Human Resources Administration, how should the applicant go about obtaining such a contract? Who will be the Department’s contact person, and how can that person be reached? Will the Department provide a signed contract or a letter of intent to contract? Will this documentation satisfy the requirements of the third bulleted paragraph in ¶ 7 on page 21 of the ALP Application? Will NYSDOH provide an executed contract with an applicant in Region 7 for inclusion in the applicant’s response, as opposed to a letter of intent? Alternatively, may an applicant in Region 7 simply say that it is electing to contract with NYSDOH and include an unsigned copy of the NYSDOH standard contract in its response?

A24. *The NY State Department of Health is acting as the contract agency for New York City. The Bureau of Licensure and Certification will provide further procedural information to an approved applicant at the appropriate time. Applicants from New York City will not be required to provide a letter of intent or executed contract in their application. It is not necessary to include an unsigned copy of the Department’s standard contract with the application as this requirement is waived for NYC applicants.*

Q25. May the addresses of “Persons with an Interest in Association/Organization” (page 29) be business addresses if the applicant does not have home addresses for these persons? What should an applicant do if it does not know the names and addresses of the individual shareholders, partners or other interest-owners holding an interest in the land or building where the ALP is proposed to be located? Question number 4 on page 1 of 2, Legal Schedule 2-2 regarding the Land and Building being directly or indirectly leased subleased or mortgaged? Please explain further? We have a HUD mortgage for our land and building, how would we answer this question?

A25. *All applications must be completed to the best of the applicant's ability and should disclose as much pertinent information as possible for review purposes.*

Q26. Clarification is requested regarding LHCSA Addendum Schedule 4 - Part 2. Is it correct that a controlling person may be an individual member or shareholder of an applicant that is a LLC or business corporation, even in a case where there is no parent member of the applicant corporate entity? For example, a stand-alone LLC may have a single manager who is one of several members. In such a case, would the response to Question 1 be "Yes", with the applicable documentation presumably being the operating agreement of the LLC, which would demonstrate the controls to be exercised by the manager?

A26. *Yes, to all three questions, assuming the person otherwise meets the definition of what is considered a controlling person.*

Q27. On page 74, question 3 states: Does the applicant have any partners, members or stockholders that are not natural persons? If yes, the applicant must comply with the requirements of Section 3611 of Article 36 of the New York State Public Health Law. If a not-for-profit corporation named X is currently a RHCF provider and has another not-for-profit corporation named Y as its sole corporate member, can X apply for the LHCSA licensure or does a separate new corporate entity named Z need to be created to have the legal authority over the LHCSA operations?

A27. *A new corporation must be created.*

Q28. With regard to an "eligible applicant" comprised of two or more entities with identical ownership, how is "identical ownership" defined? Does the composition of the Boards of Trustees need to be identical? I know that ALP providers must have both an ACF and a LHCSA, what I'm not sure about is if they need to have the same Board? Or could they have two separate Boards? Our current Adult Home ALP and LHCSA are all under the same corporation. Do you consider us one applicant or 3 co-applicants?

A28. *If the ACF and the LHCSA have identical ownership, by implication they should have the same board of directors. For specific situations, applicants should contact the Department.*

Q29. Will any preference or prejudice be shown to an applicant who will respond to this RFA, in the case where that applicant was: disapproved in the NYSDOH 2004 ALP batch; was informed by the NYSDOH at that time that it had hearing rights as a result of its disapproval; preserved those hearing rights in accordance with the NYSDOH's stated requirements; and may now legally contest the fact that the NYSDOH appears to have dismissed those hearing rights through the issuance of this RFA?

A29. *In reviewing ALP applications the Department will act in accordance with applicable law. Approval or disapproval of an application in the 2004 RFA process or previous ALP RFAs will not be used as a factor in this application review process.*

Q30. Can we assume that Appendix 1 and Appendix 2 are not applicable for a not-for-profit applicant?

A30. *Yes. Appendix 1 and Appendix 2 are not applicable for NFP applicants.*

Financial Component Questions

Q31. Are we correct in understanding that the shareholders of a business corporation and the members of an LLC are required to file personal financial statements only if the business corporation or LLC is unable to provide financial statements for the previous two fiscal years? Is Financial Schedule 3-3 (Anticipated Personal Income) required of each shareholder of a business corporation or member of an LLC if the corporation or LLC provides financial statements for the previous two fiscal years? Confirmation is requested regarding Schedules 3-2 and 3-3. If the applicant is a LLC or business corporation with assets that may be demonstrated through the submission of financial statements, is it true that the applicant's members/shareholders do not need to complete and submit Schedules 3-2 and 3-3?

A31. *Yes to both questions. Please note that the most recent financial statement of the LLC or Business Corporation or the applicant(s)' personal financial statement must not be more than one year old at the time the application is submitted.*

Q32. Does Column D of the Projected Twelve Month Operating Budget apply only to home care services provided to non-ALP clients who are residents of the facility where the proposed ALP will be located (see the fifth bulleted paragraph under ¶ 4 on page 32)?

A32. *Column D also pertains to services provided by the Home Care Agency to individuals who reside in the community, outside of the ALP.*

Q33. If a CHHA is providing services to the facility's non-ALP residents, but the CHHA sub-contracts with the home care entity to have the home care entity serve these residents, does Column D of the Projected Twelve Month Operating Budget encompass the home care entity's revenues derived from these services to non-ALP residents pursuant to the sub-contract?

A33. *All expenses for staffing, whether direct or contracted, must be shown in the staffing schedule (Program Schedule 1-5) with the total annual salary, or contract price amount from that schedule transferred to the projected 12-month operating budget (Financial Schedule 3-4). Similarly, all ALP revenue must be indicated in the applicable column in the budget. If the ALP contracts with the CHAA, and the CHAA then contracts back with the home care entity to provide services to non-ALP facility residents, then the revenue to the ALP home care entity should be indicated in column D of the projected operating budget. A footnote explaining the contractual arrangement should be provided in this type of circumstance.*

Q34. The ALP RUGS reimbursement rates posted on the NYSDOH web-site are for 2006. Assuming that an applicant prepares a budget in 2007 dollars, what escalation percentage should an applicant apply to these 2006 RUGS rates in order to ensure that its budget is entirely in 2007 dollars? When will the 2007 reimbursement rates be released? I found the 2006 and 2005 charts on this site (http://www.nyhealth.gov/facilities/long_term_care/reimbursement/); however, I didn't see any info for 2007.

A34. *2007 RUGS reimbursement rates are now available at the site referenced in the question above.*

Q35. Which Project Costs are reimbursable and to what extent? What is the reimbursement formula? Are there other project costs that are not listed but are reimbursable? What are they and to what extent? In order to qualify for project cost reimbursement, to what extent and how are lease costs for ALP space reimbursed?

A35. *Reimbursement for capital costs is included in the per diem payment rates that are calculated annually for each of 16 regions statewide. The payment rates are calculated to be fifty percent of the amount which otherwise would have been expended to provide the appropriate level of care in a residential health care facility in the applicable regions and consists of a direct, and other than direct component. Lease costs for ALP space are also included in the various per diem payment rates in the same manner as capital costs are reimbursed.*

Note: There is also a provision for capital cost reimbursement in addition to the 50% indirect component contained in the per diem rates. This provision applies to not-for-profit operated ALPs that meet certain criteria.

For more information please refer to Public Health Law 3614(6)(a)(b) and 10 NYCRR Subpart 86-7 for ALP Medicaid reimbursement rate information. The per diem Medicaid ALP reimbursement rates can be accessed at the following web site:

www.nyhealth.gov/facility/long_term_care/reimbursement

Q36. Does the ALP have to be on property that is separate from that of a Residential Health Care Facility (RHCF)?

A36. *No, a separate facility on the same property would be allowed.*

Q37. Can the ALP and RHCF be under the same corporate governance?

A37. *Applicants who operate a RHCF corporation may also operate an ALP entity provided the corporation meets the definition of an eligible ALP applicant as defined on page 2 of the application.*

Architectural Component Questions

Q38. It is our understanding that the addition of beds to existing adult homes in New York City requires NYC Planning Commission approval, which is a process that normally takes at least 16 months. Has the NYSDOH considered this in its 22-month post-contingent approval initiation time frame, or is it possible that a different time frame may apply for New York City projects? The RFA "highest consideration" criteria indicate that an increase in the supply of new beds is preferred over a conversion of existing AH/EHP beds to ALP beds. Would this factor be mitigated in an area in which need for ALP beds was demonstrated on a relative basis compared to other geographic areas?

A38. *Applications will be competitively evaluated in accordance with the criteria outlined in §485.6 (n)(7).*

Q39. For the architectural section, "Preliminary plans describing complete proposal and construction shall be submitted in duplicate." What level of detailed drawings is required?

A39. *At a minimum, preliminary plans should be submitted on a registered architect's letterhead and should show a complete layout including sizes of all rooms and spaces of the proposed ALP.*

Q40. We are an existing licensed Adult Care Facility (Adult Home and/or Enriched Housing Program) which was initially licensed before current structural/environmental Adult Care Facility (ACF) regulations became effective in 1984. Our licensed ACF building(s) currently lacks an automatic sprinkler system throughout, but has remained licensed because our ACF was "grandfathered in" when the 1984 ACF regulatory environmental standards took effect. If we propose to convert some and/or all of our licensed ACF beds to Assisted Living Program (ALP) beds, will compliance with the sprinkler requirements in Section 494.7 of the ALP regulations be mandated? Can currently licensed ACFs be able to submit a request for a waiver of the sprinkler requirements?

A40. *The sprinkler requirements in §494.7 are mandatory. Compliance with Part 494.7(c)(2) requires that an automatic sprinkler system be installed throughout the building will be mandated. In addition, the Department will not grant any waiver of this regulation.*

Character and Competence Component Questions

Q41. Must each member of an LLC or shareholder of a business corporation submit personal references? Is a not-for-profit applicant required to submit 3 letters of personal reference for the members of the Board of Directors and Officers?

A41. *Yes. Three Letters of Reference are required for each individual, board member, and shareholder of all LLCs, corporations and Not-For-Profit organizations.*