

Update Standards for Adult Homes and Standards for Enriched Housing Programs

Effective date: 11/21/18

Pursuant to the authority vested in the Commissioner of Health by sections 461 and 461-l(5) of Social Services Law, sections 486.7, 487.4, 488.4, 490.4 and 494.4 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are hereby amended, to be effective upon filing with the Department of State.

Section 486.7(c) of Title 18 of the NYCRR is amended as follows:

(c) Penalties for Part 487 of this Title.

Department regulations	Penalty per violation per day
487.3 (a)	\$ 50
(b)	50
(d)	50
(e)	50
(f)	50
487.4 (a)	\$ 50
[(b)] (c) (1)	50
(2)	50
(3)	50
(4)	50
(5)	50
(6)	50
(7)	50
(8)	50
[(9)]	[50]
[(10)] (9)	50
[(11)] (10)	50
[(12)] (11)	50
[(13)] (12)	50
[(14)] (13)	50
[(15)] (14)	50
[(16)] (15)	50
[(c)] (d)	100

Department regulations	Penalty per violation per day
[(d)] (e)	25
[(e)] (f)	5
[(f)] (g)	5
[(g)] (h)	25
[(h)] (i)	25
[(i)] (j) (1)	25
(2)	25
[(j)] (k)	25
[(k)] (l) (1)	
[(k)] (l) (2)	25
[(1)] (m) (1)	10
(2)	10
[(m)] (n)	10
[(k)] (l)	NA
(ii)	1,000
(iii)	1,000
(iv)	1,000
[(n)] (o)	10
[(o)] (p) (1)	10
(2)	10
(3)	10
(4)	10
[(p)] (q)	10
[(q)] (r)	25

Section 486.7(f) of Title 18 of the NYCRR is amended as follows:

(f) Penalties for Part 490 of this Title.

Department regulations	Penalty per violation per day
490.3(a)	\$50
(b)	50
(c)	50
(d)	50
(e)	50
490.4(a)	50
[(b)] (c) (1)	50
(2)	50
(3)	50
(4)	50

Department regulations	Penalty per violation per day
(5)	50
(6)	50
(7)	50
(8)	50
(9)	50
[(10)]	[50]
[(11)] <u>(10)</u>	50
[(12)] <u>(11)</u>	50
[(13)] <u>(12)</u>	50
[(14)] <u>(13)</u>	50
[(15)] <u>(14)</u>	50
[(16)] <u>(15)</u>	50
[(17)] <u>(16)</u>	50
[(18)] <u>(17)</u>	50
[(d)] <u>(e)</u>	100
[(e)] <u>(f)</u>	25
[(f)] <u>(g)</u>	25
[(g)] <u>(h)</u>	25
[(h)] <u>(i)</u>	25
[(i)] <u>(j)</u>	25
[(j)] <u>(k)</u> (1)	25
(2)	25
[(k)] <u>(l)</u>	25
[(l)] <u>(m)</u> (1)	50
[(m)] <u>(n)</u> (1)	10
(2)	50
[(n)] <u>(o)</u>	25
[(o)] <u>(p)</u>	10
[(p)] <u>(q)</u>	10
[(q)] <u>(r)</u>	10
[(r)] <u>(s)</u>	10
[(s)] <u>(t)</u>	25

Subdivisions (b)-(q) of section 487.4 of Title 18 of the NYCRR are re-lettered (c)-(r) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered to subdivision (c) in new subdivision (l).

Reference to subdivision (i) is re-lettered to subdivision (j) in new subdivision (m).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (m).

Reference to subdivisions (f) and (g) are re-lettered (g) and (h) in new subdivision (n).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(16) of new subdivision (c) are renumbered (9)-(15), to read as follows:

Section 487.4 Admission standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(k) of section 488.4 of Title 18 of the NYCRR are re-lettered (c)-(l) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered subdivision (c) in new subdivision (h).

Reference to subdivision (d) is re-lettered subdivision (e) in new subdivision (i).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (i).

Reference to subdivision (d) is re-lettered to subdivision (e) in new subdivision (j).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(17) of new subdivision (c) are renumbered (9)-(16), to read as follows:

Section 488.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(s) of section 490.4 of Title 18 of the NYCRR are re-lettered (c)-(t) and a new subdivision (b) is added.

Reference to subdivision (b) is re-lettered to subdivision (c) in new subdivision (m).

Reference to subdivisions (e), (f), and (j) are re-lettered to subdivisions (f), (g), and (k) in new subdivision (n).

Reference to subdivision (b) is re-lettered to subdivision (c) in paragraph (2) of new subdivision (n).

References to subdivision (f) and (g) are re-lettered to (g) and (h) in new subdivision (p).

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(18) of new subdivision (c) are renumbered (9)-(17), to read as follows:

Section 490.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

Subdivisions (b)-(j) of section 494.4 of Title 18 of the NYCRR are re-lettered (c)-(k) and a new subdivision (b) is added.

References to subdivision (b) is re-lettered to subdivision (c) in paragraph (4) of new subdivision (i).

Reference to subdivision (c) is re-lettered to subdivision (d) in new subdivision (k).

Paragraph (3) of new subdivision (e) is repealed and paragraph (4) of new subdivision (e) is renumbered (3), to read as follows:

Section 494.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in sections 461 and 461-l(5) of Social Services Law. Section 461(1) provides the authority for the department to promulgate regulations for adult care facilities, specifically adult homes, enriched housing, and residences for adults. Section 461-l(5) provides the authority for Commissioner to promulgate regulations for assisted living programs.

Legislative Objectives:

The Legislature has determined that oversight of adult care facilities is in the interests of the state because the residents, who are typically over the age of 65, can be vulnerable to conditions that the resident is unable to change. The primary purpose of these amendments is to prevent adult care facilities from excluding an applicant on the sole basis that such individual is a person who primarily uses a wheelchair for mobility.

Needs and Benefits:

New York State has the responsibility to ensure the support and safety of its most vulnerable citizens. These amendments address Admission Standards (Part 487 – Adult Homes), and Admission and Retention Standards (Parts 488 – Enriched Housing, 490 – Residences for Adults, and 494 – Assisted Living Programs) for adult care facilities regulated by the Department of Health. The changes incorporate provisions that prohibit a provider from excluding an applicant on the sole basis that such applicant is a person who primarily uses a

wheelchair for mobility, thereby aligning with the provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

Adult care facilities provide a range of care options in non-institutional, home-like, flexible living environments, to benefit the health and general welfare of individuals who require care but are capable of independent living. The amended regulations will ensure that individuals who are otherwise eligible for admission are not denied access to the benefits and services provided by adult care facilities solely because they primarily use a wheelchair for mobility.

COSTS:

Costs to Private Regulated Parties:

Projected provider costs are minimal, as all regulated Parties are already required to maintain compliance with applicable federal, state and local laws, regulations and ordinances.

Costs to State Government:

There will be no costs incurred by State government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

There is no local government program, service, duty or responsibility imposed by the rule.

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

There are no other rules or other legal requirements of the state and federal governments that may duplicate, overlap or conflict with the rule.

Alternatives:

This rule is a necessary update to maintain the Department's oversight of the adult care facility program and to align regulations with controlling law. There were no significant alternatives to this rule that achieve these goals.

Federal Standards:

Not applicable. Adult care facility programs are regulated by the State only.

Compliance Schedule:

Adult care facilities will be able to comply with this regulation upon promulgation.

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**REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

Effect of Rule:

The proposed regulations will apply to all adult homes, enriched housing, residences for adults, and assisted living programs in New York State. This regulation will not impact local governments or small business unless they operate such adult care facilities. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

Compliance Requirements:

This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Professional Services:

This regulation is not expected to require any additional use of professional services.

Compliance Costs:

There are no additional compliance costs associated with this proposed regulation, as providers are already required to maintain compliance with applicable federal, state and local

laws, regulations and ordinances.

Economic and Technological Feasibility:

This regulation is economically and technically feasible. The intent of the amended section of regulation is to protect the rights of individuals who rely in part on a wheelchair for mobility. Currently, all admissions should be based on the provider's ability to meet the individual needs of each prospective resident, including but not limited to, the reasonable accommodation of the individual's needs. If the facility is not able to meet the needs of prospective resident, they should not admit that individual.

Minimizing Adverse Impact:

There is no adverse impact. This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Small Business and Local Government Participation:

The proposed regulation will have a 60-day public comment period.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other

opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Approximately 17% of adult care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with

population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are 291 adult homes, 90 enriched housing programs, 0 residences for adults and 95 assisted living programs in rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Costs:

There are no additional costs associated with this proposed regulation, as providers are already required to maintain compliance with applicable federal, state and local laws, regulations and ordinances.

Minimizing Adverse Impact:

There is no adverse impact. This regulation does not represent a practical change in compliance requirements, as providers are already required to maintain compliance with all applicable federal, state and local laws, regulations and ordinances.

Rural Area Participation:

The proposed regulation will have a 60-day public comment period.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

EMERGENCY JUSTIFICATION

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and general welfare of individuals who primarily use a wheelchair for mobility and who are eligible for admission to adult care facilities.

Adult care facilities, including Adult Homes, Enriched Housing, and Assisted Living Programs, provide a range of care options in non-institutional, home-like, flexible living environments, and benefit the health and general welfare of individuals who require care but are capable of independent living. Denying otherwise eligible individuals admission to adult care facilities solely on the grounds that they primarily use a wheelchair for mobility compels such individuals to either enter nursing homes unnecessarily or continue living independently while foregoing the care they need.

The Department is concerned that some adult care facility operators may be denying admission solely on the grounds that applicants primarily use a wheelchair for mobility. Without this emergency regulation some operators will continue to refuse admission to otherwise eligible applicants, to the detriment of the health and general welfare of such individuals.