

Assisted Living Residences and Adult Care Facilities

Effective date: 2/19/14

Pursuant to the authority vested in the Commissioner of Health by section 461 of the Social Services Law and 4662 of the Public Health Law, section 487.4(f) of Title 18, section 488.4(d)(1) of Title 18, and section 1001.7(h) of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (f) of Section 487.4 of Title 18 is amended as follows:

(f) Each medical evaluation (DSS-03122 or an approved substitute) shall be a written[,] and signed report from a physician, physician assistant or nurse practitioner which includes:

- (1) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations and assistance needed in the activities of daily living;
- (2) a statement that the resident is not medically or mentally unsuited for care in the facility;
- (3) a statement that the resident does not require placement in a hospital or residential health care facility; and

(4) a statement that the physician, physician assistant or nurse practitioner has physically examined the resident within 30 days prior to the date of admission or, for required annual evaluations, within 30 days prior to the date of the report.

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Paragraph (1) of subdivision (d) of Section 488.4 of Title 18 is amended as follows:

(d) An operator must not admit nor retain an individual without a determination being made that the enriched housing program can support the physical and social needs of the resident. Such determination must be based upon:

(1) a medical evaluation (DSS-3122 or an approved substitute) written and signed by a physician, physician assistant or nurse practitioner, which includes:

(i) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations and assistance needed in the activities of daily living;

(ii) a statement that a resident is medically or mentally suited for care in the enriched housing program;

(iii) a statement that the resident does not require placement in a hospital or residential health care facility; and

(iv) a dated statement indicating that the physician, physician assistant or nurse practitioner has physically examined the resident within 30 days prior to the date of admission, or for required annual evaluations within 30 days prior to the date of the report.

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Subdivision (h) of Section 1001.7 of Title 10 is amended as follows:

(h) Medical evaluation. The operator shall assure that a medical evaluation, on a Department form or a Department-approved substitute, is conducted for every prospective resident. The medical evaluation shall be conducted within 30 days prior to the date of admission; and whenever a change in the resident's condition warrants, but no less than once in every 12 months. Such medical evaluation shall be a written and signed report from a physician, physician assistant or nurse practitioner, which includes:

- (1) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations, cognitive and mental health status, and assistance needed in the activities of daily living;
- (2) a statement that the individual is or is not medically suited for care in the assisted living residence and, if applicable, the enhanced assisted living residence or special needs assisted living residence;
- (3) a statement that the individual is or is not mentally suited for care in the assisted living residence, and, if applicable, the enhanced assisted living residence or special needs assisted living residence;
- (4) a statement that the individual is or is not in need of long term medical or nursing care or supervision, which would require placement in a hospital or nursing home; and

(5) a statement that the individual is or is not in need of twenty-four hour skilled nursing care.

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NOTICE OF CONSENSUS RULEMAKING

Statutory Authority:

Section 461 of the Social Services Law authorizes the New York State Department of Health to promulgate, alter or amend regulations governing adult care facilities, including but not limited to establishing fiscal, administrative, architectural, safety, nutritional and program standards which apply to all adult care facilities subject to its inspection and supervision, after consultation with the New York State Office for the Aging and the Department of Mental Hygiene. Section 4662 of the Public Health Law authorizes the Commissioner to promulgate, in consultation with the director of the New York State Office for the Aging, rules and regulations necessary to implement statutes governing assisted living residences.

Basis:

Section 1 of Chapter 168 of the Laws of 2011, which became effective on July 20, 2011, amended the Public Health Law and the Social Services Law in relation to pre-admission reports for persons entering assisted living residences and adult care facilities and permitting reports to be made by a physician assistant or a nurse practitioner. New subdivision 3 of Section 4657 of the Public Health Law and subdivision 7 of Section 461-c of the Social Services Law require that at the time of the admission to an assisted living residence or adult care facility, other than a shelter for adults, a resident shall submit to the facility a written report from a physician, a physician assistant or a nurse practitioner. The report must state that the physician, physician assistant or nurse practitioner has physically examined the resident within one month and the date of such examination.

The resident must be examined by a physician, physician assistant or nurse practitioner at least annually and must submit an annual written report from that physician, physician assistant or nurse practitioner.

Current regulations governing adult care facilities and assisted living residences require that each medical evaluation (DSS-3122 or an approved substitute) be a written and signed report from a physician. The proposed amendments allow physician assistants and nurse practitioners to sign required medical evaluations, and simply conforms the regulations to existing statutory provisions. The New York State Office for the Aging and the Office of Mental Health have no objection to the proposed amendments and the Department anticipates that the proposed amendments will be non-controversial.

Since this is a rule proposed by the Department of Health for adoption with the expectation that no person is likely to object to its adoption because it merely conforms to non-discretionary statutory provisions, the proposed rule qualifies as a consensus rule. A consensus rule is “a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial.” SAPA § 102(11).

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.