

## **SUMMARY OF EXPRESS TERMS**

This regulation amends Sections 1001.4, 1001.7, 1001.8, 1001.11, and 1001.13 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

Subdivision (i) of Section 1001.4 is amended to remove the requirement that an operator shall not, without the prior written approval of the Department, convey title to, or enter into a lease or other use agreement, or amend an existing lease or use agreement, with respect to the real property on which the residence is located.

Subdivision (g) of Section 1001.7 is amended to add paragraphs (1) through (3) to read as follows:

(1) Assisted living residences shall keep and maintain accurate records identifying veterans and their spouses residing within such facilities. Such information shall be solicited by asking prospective and current residents the question “Have you or your spouse ever served in the United States military?” Admission forms and resident files must include the answer to this question.

(2) Every assisted living residence licensed by the department shall in writing advise all individuals identifying themselves as veterans or spouses of veterans that benefit assistance to veterans and their spouses is available through the Department of Veterans’ Services and local veterans’ service agencies; and provide the name, address, and telephone number of the New York State Department of Veterans’ Services, the nearest Department of Veterans’ Services

office, the nearest county or city veterans' service agency, and the nearest accredited veterans' service officer.

(3) With the permission of the individuals identifying as veterans or spouses of veterans, the assisted living residence shall transmit veteran status information to the Department of Veterans' Services.

Subparagraph (xvi) of paragraph (2) of subdivision (b) of Section 1001.8 is amended to make clear that every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase, provided however, providing additional services to a resident shall not be considered a fee increase.

Subdivision (j) of Section 1001.11 is amended to remove the specified minimum nursing coverage requirements.

Subdivisions (k), (l), (m), (n), and (p) of Section 1001.11 are repealed.

Section 1001.13 is repealed and replaced by a new section 1001.13, which contains updated structural and environmental standards.

Pursuant to the authority vested in the Commissioner of Health by section 4662 of the Public Health Law, Sections 1001.4, 1001.7, 1001.8, 1001.11, and 1001.13 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Subdivision (i) of Section 1001.4 is amended to read as follows:

- (i) An operator shall not, without the prior written approval of the Department:
- (1) transfer responsibility for operation of the residence to another person or entity; or
  - (2) change the composition of the entity which is the operator, including but not limited to, a change in sole proprietor, partner, director, stockholder, member or membership interest of the operator, except in accordance with subparagraph (o) of this Part; or
  - (3) [convey title to, or enter into a lease or other use agreement, or amend an existing lease or use agreement, with respect to the real property on which the residence is located; or
  - (4)] enter into or significantly amend, a management agreement relating to the management of the residence in accordance with section 1001.16 of this Part.

Subdivision (g) of Section 1001.7 is amended to add paragraphs (1) through (3) to read as follows:

- (1) Assisted living residences shall keep and maintain accurate records identifying veterans and their spouses residing within such facilities. Such information shall be solicited by asking prospective and current residents the question “Have you or your spouse ever served in the

United States military?” Admission forms and resident files must include the answer to this question.

(2) Every assisted living residence licensed by the department shall in writing advise all individuals identifying themselves as veterans or spouses of veterans that benefit assistance to veterans and their spouses is available through the Department of Veterans’ Services and local veterans’ service agencies; and provide the name, address, and telephone number of the New York State Department of Veterans’ Services, the nearest Department of Veterans’ Services office, the nearest county or city veterans’ service agency, and the nearest accredited veterans’ service officer.

(3) With the permission of the individuals identifying as veterans or spouses of veterans, the assisted living residence shall transmit veteran status information to the Department of Veterans’ Services.

Subparagraph (xvi) of paragraph (2) of subdivision (b) of Section 1001.8 is amended to read as follows:

(xvi) Every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase, provided however, providing additional services to a resident [in accordance with section 461-c(2) of the Social Services Law,] shall not be considered a fee increase pursuant to this paragraph. [in the following situations:

(a) if a resident, resident representative or legal representative agrees in writing to a specific rate or fee increase, through an amendment of the residency agreement, due to the resident’s need for

additional care, services or supplies, the operator may increase such rate upon less than forty-five days written notice;

(b) if the operator provides additional care, services or supplies upon the written order of the resident's primary physician, the operator may, through an amendment to the residency agreement, increase such rate upon less than forty-five days written notice; or

(c) in the event of an emergency which affects the resident, the operator may assess additional charges for the benefit of the resident as are reasonable and necessary for services, materials, equipment and food supplies during such emergency.]

Subdivision (j) of Section 1001.11 is amended to read as follows:

(j) An enhanced assisted living residence or a special needs assisted living residence with enhanced assisted living residence certification shall provide, either directly or through contract, sufficient nursing staff to meet the health care needs of the residents. [Nursing coverage requirements, at a minimum, include:

(1) a registered professional nurse on duty and on-site at the residence, for eight hours per day, five days a week, and a licensed practical nurse shall be on duty and onsite at the residence for eight hours per day for the remainder of such week;

(2) a registered professional nurse on call and available for consultation 24 hours a day, seven days a week, if not available onsite; and

(3) additional nursing coverage, as determined necessary and documented by the resident's medical evaluation or otherwise by the resident's attending physician and/or the ISP.]

Subdivisions (k), (l), (m), (n), and (p) of Section 1001.11 are repealed. Subdivision (o) of Section 1001.11 is redesignated as subdivision (k), subdivision (q) of Section 1001.11 is redesignated as subdivision (l), and subdivision (r) of Section 1001.11 is redesignated as subdivision (m).

Section 1001.13 Structural and environmental standards is repealed and replaced by a new section 1001.13, to read as follows:

Section 1001.13 Structural and environmental standards.

(a) An operator of an assisted living residence (ALR) shall comply with the following standards in addition to all applicable standards contained in sections 487.11, 488.11 and, 494.7 of Title 18 of the NYCRR.

(b) Existing Structures.

(1) Definition. Existing structures are buildings:

(i) which have Part 1 approval, including architectural approval, pursuant to section 485.6 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York;

(ii) for which construction commenced prior to the date of adoption of this Part; and

(iii) for which certificates of occupancy have been issued, for which occupancy has been locally approved but such building was not yet occupied as of the date of adoption of this Part, or which were licensed as an adult home or enriched housing program prior to the date of adoption of this Part.

(2) An existing structure that is not currently licensed as an enriched housing program or adult home and is seeking to be licensed as an ALR, Enhanced ALR, or Special Needs ALR shall meet all applicable structural and environmental requirements currently in effect for either an enriched

housing program or an adult home, as applicable. Provided further, the Department may re-examine the adequacy of structural and environmental standards in existing structures should it be determined that codes, rules and regulations that were applicable to the structure at the time of licensure were not met.

(3) In situations where a certificate of occupancy reflecting currently applied occupancy group designation for an enriched housing program or an adult home is not available or attainable from the local authority having jurisdiction, but there is a valid certificate of occupancy in place for the building, the Department will accept an architect's or engineer's letter of certification signed by a registered architect (RA) or professional engineer (PE) certifying that the building under consideration meets all applicable codes, rules and regulations. Where there will be a change in the occupancy classification, the existing building shall meet all applicable codes, rules and regulations for the new proposed occupancy.

(4) In addition to meeting the requirements set forth in paragraph (2) of this subdivision, a building used by the operator of an ALR, Enhanced ALR or Special Needs ALR shall comply with the following safety features:

(i) An automatic sprinkler system throughout the building, meeting the following specifications:

(a) An ALR with five to sixteen beds shall have an automatic sprinkler system that follows the National Fire Protection Association (NFPA) 13R or NFPA 13 Codes and Standards.

(1) In Group R facilities within New York City, such facilities shall follow the New York City Building Code, notwithstanding subclauses (2) and (3) of this clause.

(2) Sprinklers cannot be substituted with heat detection, except as set forth in item (i) of subclause (3) of this clause.

(3) In R-4, Condition 2 Occupancies, attics not used for living purposes, storage, or containing fuel-fired equipment shall be protected in accordance with one of the following:

(i) protected throughout by a heat detector system arranged to activate the building fire alarm system in accordance with the New York State Uniform Fire Prevention and Building Code, as incorporated herein, and such heat detection system must be serviced annually;

(ii) constructed of noncombustible materials. A licensed professional shall demonstrate that the entire attic is constructed of noncombustible or fire-retardant-treated material;

(iii) constructed of fire-retardant-treated wood framing in compliance with the Uniform Fire Prevention and Building Code of New York State (Subchapter A of Chapter XXXIII of Title 19 of the NYCRR) or, for buildings located within New York City, with the New York City Building Code; or

(iv) The automatic sprinkler system shall be extended to provide protection throughout the attic space. The remainder of the building must be fully sprinklered in accordance with NFPA 13R or NFPA 13 Codes and Standards.

(b) An ALR with seventeen or more beds and an Enhanced ALR or Special Needs ALR of any size, and such ALRs which are located within New York City and to which the New York City Building Code applies, shall have a NFPA 13 Codes



and Standards automatic sprinkler system provided throughout buildings with an Occupancy Group I fire area.

(1) Sprinklers may be substituted with automatic fire detection in attics that are of noncombustible construction with wholly noncombustible contents, provided that the attic does not contain equipment, is not used for storage, is not used as a living space, and is a concealed space with no general access. The remainder of the facility must be fully sprinklered in accordance with NFPA 13 Codes and Standards, and the fire detection system must be serviced annually. A licensed professional shall demonstrate that the entire attic is constructed of noncombustible or fire-rated material and that the fire detection system is compatible with the existing sprinkler system.

(2) Sprinklers can be omitted in rooms or areas that are of noncombustible construction with wholly noncombustible contents, where such rooms or areas are protected with an approved automatic fire detection system in accordance with the New York State Uniform Fire Prevention and Building Code or, for buildings located within the jurisdiction of New York City, in accordance with the New York City Building Code.

(ii) A supervised smoke-detection system, installed in accordance with the New York State Uniform Fire Prevention and Building Code or, for buildings located within New York City, the New York City Building Code, shall be provided throughout the building, including in all bedrooms and within attics and basements. Such automatic smoke detection systems shall utilize smoke detectors unless ambient conditions prohibit such an installation, including but not limited to conditions relating to dust and temperature. In

spaces where smoke detectors cannot be utilized due to ambient conditions, approved automatic heat detectors shall be permitted. Smoke detection may be substituted with approved automatic heat detection in attics, where the remainder of the facility has a sprinkler system installed throughout, pursuant to subparagraph (i) of this paragraph, and provided that the attic is not a living space and has no general access. A waiver for heat detection substitution must be approved by the Department, and a licensed professional shall demonstrate that the chosen heat detection system is compatible with the existing sprinkler system. The heat detection system shall be serviced annually.

(iii) Fire protection notification systems shall be directly connected to the local fire department, or to a twenty-four-hour attended central station.

(iv) Handrails must be installed on both sides of all resident-use corridors and stairways.

(v) A centralized emergency call system shall be installed in all bedrooms and easily reachable from the bedside and installed in all resident-use toilet and bathing areas and easily reachable from each fixture.

(vi) Accessibility: Provisions for new construction, as set forth in subdivision (c) of this section, shall apply to all building additions to existing structures. An addition that affects the accessibility to or contains an area of a primary function shall comply with the requirements for accessibility as set forth in the New York State Uniform Fire Prevention and Building Code, as incorporated by reference herein. An area of primary function shall mean an area where a major activity conducted by the facility is intended to occur. Areas of primary function include, but are not limited to, lobbies, dining areas, and meeting rooms, but shall generally not include mechanical rooms, boiler rooms, supply

storage rooms, or restrooms. Any facility that is not currently licensed or certified shall comply with current codes, rules and regulations for accessibility.

(5) A building used by the operator of an Enhanced ALR or Special Needs ALR which has a capacity of seventeen or more residents shall, in addition to all other requirements of subdivision

(b) of this section, have smoke barriers to divide each floor into at least two smoke compartments, neither of which shall have corridors exceeding one hundred feet in length. For the purposes of this section, a smoke barrier means a continuous fire-rated partition or wall, extending from one exterior wall to another exterior wall, with all openings, including but not limited to doorways, protected with 45-minute fire-rated and smoke-tight doors equipped with hardware appropriate for the fire resistance rating and function of the door for the proposed location within the facility.

(6) A building used by the operator of a Special Needs ALR, without regard to the capacity of residents, shall, in addition to all other requirements of subdivision (b) of this section, comply with the following additional environmental standards:

(i) Units shall be designed and operated as self-contained sub-units, otherwise known as household units. If operated as a portion of a residence, the unit must also provide self-contained leisure and dining room space. Support services and spaces may be located within adjacent programs or areas, and visitors and staff shall not regularly pass through a special needs unit to reach other areas of the residence.

(ii) Secure outdoor space and walkways shall be provided that will allow residents to ambulate, with or without assistive devices such as wheelchairs or walkers.

(a) Residents shall have regular access to secure outdoor areas, with appropriate supervision provided by staff.

(b) Outdoor space shall have fencing or barriers that prevent injury and elopement. Fencing shall be designed not to be easily climbable and shall be a minimum of 72 inches high.

(c) Provide lighting for evening visibility with use of direct down-light fixtures with careful consideration to control light pollution and unwanted light glare affecting adjacent dwelling units or sleeping units.

(iii) All windows shall be equipped with mechanisms to limit window openings to a maximum of four inches to prevent elopement and accidental falls.

(iv) If the facility is of Type V construction, areas designated for Special Needs ALR must be restricted to grade level or one level above grade level if the building structure exceeds one story in height.

(v) Controlled-egress systems are prohibited on required exit doors from a facility.

(vi) Units shall be equipped with a delayed-egress system on all exit and other doors leading from the facility that could be accessed by Special Needs residents, including roof areas, and leading to other areas of the facility, unless prior approval of an alternate method for the prevention of resident elopement from the unit has been obtained from the Department. For facilities within the jurisdiction of New York City Department of Buildings, delayed egress locks may be subject to special review and approval by the Commissioner of New York City Department of Buildings.

(a) Such delayed egress system shall comply with the following safety measures:

(1) A building occupant shall not be required to pass through more than two delayed egress locking systems before reaching a building exit, provided the combined delay does not exceed 30 seconds and the building is equipped

throughout with an automatic sprinkler system installed in accordance with the code in effect at the time of construction. Provided, however, that for facilities within the jurisdiction of the New York City Department of Buildings, a building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before reaching a building exit.

(2) The door must unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

(3) The door must unlock upon loss of power controlling the lock or mechanism.

(4) The door locks must have the capability of being unlocked by a signal from the fire command center.

(5) The initiation of an irreversible process must release the latch to open the device within 15 seconds when a force of not more than 15 pounds is applied for three seconds, or, for facilities located within the jurisdiction of the New York City Department of Buildings, when a force of not more than 15 pounds is applied for one second. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. The audible signal shall also be transmitted to the care provider's control station or another approved, constantly-attended location. Once the door lock has been released by the application of force to the releasing device, relocking shall be by manual means only.

(6) The latch release timeframe set forth in subclause (5) of this clause may be extended to a maximum of 30 seconds if such an extended timeframe has been approved by both the local building code officer and the Department. Where the latch release will exceed the standard 15-second timeframe, the sign required

under subclause (7) of this clause shall reflect the appropriate period in which the door can be opened.

(7) A sign must be provided on the door located above and within 12 inches of the release device reading: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15 SECONDS. To reduce the potential for unwanted alarms, manual fire alarm boxes may be located at the care providers control stations or another approved constantly attended location. This is subject to approval from the local code authority having jurisdiction.

(8) Emergency lighting shall be provided at the door.

(9) The operator shall provide a supportive environment for residents, staff, and visitors, including but not limited to the use of self-contained units of limited size, quiet areas, and appropriate wander paths.

(10) The operator shall limit access to potentially harmful or disruptive equipment, including but not limited to fire alarms, elevators, fire extinguishers, and cooking equipment.

(11) To ensure safety for all, the operator shall consider whether to allow smoking within the program or facility. If residents are allowed to smoke, appropriate supervision and locations must be provided.

(12) The operator shall maintain site control over the building in which the program is located.

(b) The operator shall have a written policy and procedure plan approved by the Department, which details the procedures to be followed for the proper protection of residents and staff in the event of an actual or threatened emergency or disaster,

which interrupts normal service. All staff shall be trained to execute the facility disaster and emergency plan. Such policy and procedure plans shall be designed appropriately for residents with dementia characteristics, which may include relying more heavily on staff training and support than resident training or practice.

(c) Where appropriate and approved by both local authorities and the Department, progressive evacuation procedures are recommended.

(d) Monthly fire drills for staff and volunteers shall be conducted at varied times during the day and night.

(c) New Structures.

(1) A new structure constructed as an ALR, Special Needs ALR or Enhanced ALR shall meet the applicable structural and environmental requirements currently in effect for a new enriched housing program or an adult home, as set forth in Parts 487 and 488 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York. A new structure is defined as any building for which construction is commenced after the date of adoption of this Section.

(2) All new ALR structures shall meet the safety features set forth in paragraph (4) of subdivision (b) of this section. Enhanced ALRs and Special Needs ALRs with capacities of seventeen or more beds shall also meet the safety features set forth in paragraph (5) of subdivision (b) of this section. Special Needs ALRs, without regard to the capacity of residents, shall also meet the requirements set forth in paragraph (6) of subdivision (b) of this section.

(3) New structures, except for structures within New York City and to which the New York City Building Code applies, shall follow New York State Uniform Building Code Occupancy Group

I-1, Condition 2 codes and rules. Residences with five to sixteen beds may alternatively comply with Occupancy Group R-4, Condition 2.

(4) New structures within New York City and to which the New York City Building Code applies, shall follow New York City Building Code Occupancy Group I-1 codes and rules.

Residences with five to sixteen beds may alternatively comply with Occupancy Group R-2.

(5) New buildings constructed as Enhanced ALR or Special Needs ALR with capacities of seventeen or more beds and constructed with more than one story shall contain a minimum of one elevator able to support emergency medical response, including the ability to accommodate one standard stretcher and emergency responders.

(d) The following standards shall apply to all ALRs, Enhanced ALRs and Special Needs ALRs:

(1) All bedrooms shall be limited to single or double occupancy;

(2) Minimum corridor widths shall be sixty inches; and

(3) Minimum door clear widths shall be thirty-two inches to assure wheelchair accessibility.

(e) For each safety and environmental requirement set forth in subdivisions (a) through (d) of this section, an applicant for initial licensure or certification for, or an approved operator of, an ALR, Enhanced ALR or Special Needs ALR may submit to the Department a written request for Department approval of an alternate safety or environmental feature which will continue to assure resident welfare and safety. The request shall describe how the proposed alternative would meet the intended purpose of the particular safety feature. Written requests to the Department may also propose to phase in modifications that would permit the facility to meet the standards set forth in subdivisions (a) through (d) of this section over a specified period of time. The



Department will review such requests on a case-by-case basis, considering the various facts and circumstances presented, consistent with all applicable laws and regulations relating to ALRs and adult care facilities, including but not limited to Part 1001 of this Title and Parts 487 and 488 of Title 18 of the New York Codes, Rules and Regulations. Facts and circumstances considered by the Department may include, but not be limited to: documentation by architects, local code enforcement and/or fire and safety officials supporting the operator's contention that the proposed alternative will meet the intended safety goals of a particular feature; staffing availability in the event of evacuation; the proposed timeframe for the applicant to come into conformance with the specified safety features; documentation of hardship to the applicant if the safety features were to be included; the fiscal impact of adding the safety features; the compliance record of the applicant; and any other information applicants wish to submit. If an applicant seeks relief from a safety feature required under the New York State Uniform Fire Prevention and Building Code, the applicant must provide the Department with proof of a variance from that specific code requirement granted by the New York State Department of State, Division of Building Standards and Codes.

(f) Mixed-use buildings and facilities.

(1) In structures comprised of both ALRs and Independent Living Residences:

(i) occupancies shall be separated by fire rated separations and fire rated horizontal assemblies in accordance with the New York State Uniform Fire Prevention and Building Code; and

(ii) where all residents have access to the same common areas, the entire building shall also meet the requirements set forth in paragraphs (4) and (5) of subdivision (b) of this section, as well as paragraphs (2) and (3) of subdivision (d) of this section.

(2) In buildings comprised of self-contained Special Needs ALR and Independent Living Residences, where residents shall not share access to any rooms, the portion of the building containing the Independent Living Residences does not need to meet ALR environmental standards as set forth in this section.

(g) Incorporation by Reference.

(1) The following National Fire Protection Association (NFPA) Codes and Standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. These codes and standards are available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. The codes and standards are published by the National Fire Protection Association, and copies are also available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, 1-800-344-3555 or [www.nfpa.org](http://www.nfpa.org). The various codes and standards are available from the NFPA either as individual publications or as contained within the Compilation of NFPA National Fire Codes:

(i) NFPA 13, Standard for the Installation of Sprinkler Systems, 2016 edition.

(ii) NFPA 13R-16, 2016.

(2) All references in this section to the New York State Uniform Fire Prevention and Building Code refer to the 2020 New York State Uniform Fire Prevention and Building Code, which is hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. This code is available for public inspection and copying at the New York State Department of State at the following address: New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001. Copies may also be

obtained from the publisher at the following address: International Code Council, Inc. 500 New Jersey Avenue, NW, 6th Floor Washington, DC 20001.

(3) All references in this section to the New York City Building Code refer to the 2022 New York City Construction Codes, including the Building Codes contained therein, which are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein.

This code is available for public inspection and copying at the New York State Department of State at the following address: New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001. Copies are also viewable on the New York City Department of Building's website at: <https://www1.nyc.gov/site/buildings/codes/2022-construction-codes.page#admin>.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) section 4662 authorizes the Commissioner of Health (Commissioner) to adopt and amend regulations to implement the purposes and provisions of PHL Article 46-B, including the establishment of uniform standards governing the operation of Assisted Living Residences (ALRs). Additionally, section 461(1) of the Social Services Law (SSL) provides authority for the Commissioner to promulgate regulations for adult care facilities, including adult homes and enriched housing, which serve as the base licensure for ALRs.

Public Health Law Section 2805-o, as amended by Laws of 2022, Chapter 56, Part PP, Section 78, is the statutory authority for the amendments to subdivision (g) of Section 1001.7.

### **Legislative Objectives:**

The legislative objective of SSL section 461 and PHL section 4662 is to promote the life, health, safety and comfort of adults residing in adult care facilities.

The legislative objective of Public Health Law Section 2805-o is to ensure that adult care facilities keep and maintain accurate records concerning the veteran status of their residents and to notify veterans that they may be eligible for benefits.

### **Needs and Benefits:**

The proposed regulatory changes will advance the Legislature's objectives to protect the health and well-being of adult care facility residents by providing smoke and fire protection to the residents and staff of the facility. These changes will allow strong safety measures in the

event of an emergency facility evacuation. The applicable building code references have been made current, as advancements made in the fire and smoke protection industry have enhanced since the regulations were first promulgated. Further, ALRs are held to the newer standards, and there is a need to support those standards through regulation, lending to consistent application of the standards.

Also, this regulation deletes portions of regulations that the Department is not legally able to enforce for the reasons explained in the Adult Care Facility “Dear Administrator Letter” dated September 21, 2010 (DAL 10-10). Specifically, pursuant to settlement of 2008 litigation brought by the Empire State Association of Assisted Living and the New York Coalition of Quality Assisted Living, Section 1001.11 was updated to reflect that nursing coverage is to be maintained not at a minimum of eight hours per day but rather on an as is determined necessary basis to support the residents’ needs as documented in the residents’ medical evaluation, by the residents’ physicians, and/or in the resident’s Individualized Service Plan. In addition, to ensure that updates made comport to the litigation settlement, operators of ALRs are not required to obtain the Department’s approval on the sale or lease of real property so such language has been stricken, and a paragraph in the existing regulation requiring notice of fee increase that was annulled by the litigation settlement is amended here to reflect the annulment.

In addition, this regulation implements Public Health Law Section 2805-o, which will allow adult care facilities keep and maintain accurate records concerning the veteran status of their residents and notify veterans that they may be eligible for benefits.

**Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

This regulation is applicable to Assisted Living Residences (ALRs) as defined in Public Health Law Article 46-B. New York State Building Codes must be adhered to when facilities are constructed. These regulations provide conformity with the Building Codes. As such, the additional costs of compliance are minimal.

**Cost to State and Local Government:**

This regulation does not impose any costs on State or local governments.

**Cost to the Department of Health:**

This regulation does not impose any costs on the Department of Health. The Department will be able to use existing resources to update surveillance staff and regulated parties regarding these regulatory amendments.

**Local Government Mandates:**

This amendment does not impose any new programs, services, duties, or responsibilities on local governments, unless they operate an ALR, in which case the compliance requirements will be the same as for private ALR operators.

**Paperwork:**

To comply with proposed changes to subdivision 1001.7 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), ALRs need to document individualized information to link consenting veterans and/or their spouses with

available veterans' services. Such documentation may pose a minimal paperwork increase. Changes to subdivision 1001.13 of Title 10 of the NYCRR will eliminate the need for certain paperwork currently required in the licensure/certification process, specifically with regard to substitute heat detection in lieu of smoke detection where ambient conditions make smoke detection unreliable (i.e., in attics). Otherwise, there are no additional paperwork requirements imposed by this proposed change.

**Duplication:**

These amendments do not conflict with any state or federal rules. Indeed, the proposed regulations will align with programmatic policy interpretations and current building code standards in New York State.

**Alternative Approaches:**

Since the Department issued the Adult Care Facility "Dear Administrator Letter" dated September 21, 2010 (DAL 10-10) notifying facilities that certain regulations would not be enforced, the Department has nevertheless left those regulations in place. This has proven problematic both for operators and Department surveillance staff responsible for regulatory compliance, requiring reference to guidance documents that explain which regulations must be followed and resulting in an unacceptable error rate. Accordingly, it is no longer viable to leave regulations on the books that the Department cannot enforce.

An alternative would be to leave current environmental standards in place. However, this alternative is not viable because the current environmental standards must be updated to align

with current building codes and life safety standards, often resulting in a cumbersome licensure/certification process for new ALRs.

The Department has a responsibility to implement Public Health Law Section 2805-o. Surveillance staff rely on Department regulations to know and enforce the rules for the facilities they regulate, and they cannot be expected to enforce laws that are not reflected in regulation.

**Federal Requirements:**

No applicable federal requirements exist.

**Compliance Schedule:**

The regulation is effective upon publication of the Notice of Adoption in the New York State Register.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

These regulations would require Assisted Living Residences (ALRs) to adhere to updated environmental standards, including building and fire code standards, to align with current New York State code standards and best protect ALR residents in the event of an emergency, such as a fire. Currently, there are no ALRs operated by county governments and there are 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

### **Compliance Requirements:**

Subdivision (i) of Section 1001.4 is amended to remove the requirement that an operator shall not, without the prior written approval of the Department, convey title to, or enter into a lease or other use agreement, or amend an existing lease or use agreement, with respect to the real property on which the residence is located. Subdivision (g) of Section 1001.7 is amended to add provisions regarding the identification of veterans and their spouses so that residents may be referred for services available to veterans and their spouses. Subparagraph (xvi) of paragraph (2) of subdivision (b) of Section 1001.8 is amended to make clear that every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase. Subdivision (j) of Section 1001.11 is amended to remove the specified minimum nursing coverage requirements. Subdivisions (k), (l), (m), (n), and (p) of Section 1001.11 are repealed. Section 1001.13 is repealed and replaced by a new section 1001.13, which contains updated structural and environmental standards.

All Department of Health-regulated ALRs must comply with the revised requirements.

**Professional Services:**

There are no additional professional services required as a result of this regulation.

**Compliance Costs:**

Because the regulations are drafted to reflect and align with current code requirements, facilities that are code-compliant will bear no costs to comply and minimal costs to maintain compliance. Facilities that are not code-compliant will bear costs to align with current environmental requirements designed to protect residents and property in the event of an emergency.

**Economic and Technological Feasibility:**

The proposed regulation is expected to be financially and technologically feasible; currently, all adult care facilities, including ALRs, are required to be in compliance with current New York State Building Codes and local municipality codes and zoning regulations. Because the regulations are drafted to reflect and align with current code requirements, facilities that are code-compliant will face minimal disruption to comply and maintain compliance. Facilities that are not code-compliant may experience challenges required to align with current environmental requirements designed to protect residents and property in the event of an emergency.

**Minimizing Adverse Impact:**

The Department will work with facilities to provide guidance on changes to environmental standards and respond to questions relating to the new standards.

**Small Business and Local Government Participation:**

All stakeholders, including individual facilities operated by small businesses and local governments, are invited to submit public comments in response to the filing of the proposed regulation. Additionally, the Department plans to issue a Dear Administrator Letter, alerting ALRs, including those operated by small businesses and local governments, of the publication of this regulation and the opportunity to provide public comments.

**Cure Period:**

The regulation does not set forth a cure period, as current NYS Building Code offers no relief period and immediate compliance is necessary to align with existing New York State building codes and adequately protect ALR residents from harm in the event of an emergency.

## RURAL AREA FLEXIBILITY ANALYSIS

### Type and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout New York 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 (<https://www.census.gov/quickfacts/>).

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	Schoharie County
Broome County	Niagara County	Schuyler County
Dutchess County	Oneida County	Seneca County
Erie County	Onondaga County	St. Lawrence County

115 Assisted Living Residences (ALRs) are located in these identified rural areas.

**Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:**

Subdivision (i) of Section 1001.4 is amended to remove the requirement that an operator shall not, without the prior written approval of the Department, convey title to, or enter into a lease or other use agreement, or amend an existing lease or use agreement, with respect to the real property on which the residence is located. Subdivision (g) of Section 1001.7 is amended to add provisions regarding the identification of veterans and their spouses so that residents may be referred for services available to veterans and their spouses. Subparagraph (xvi) of paragraph (2) of subdivision (b) of Section 1001.8 is amended to make clear that every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase. Subdivision (j) of Section 1001.11 is amended to remove the specified minimum nursing coverage requirements. Subdivisions (k), (l), (m), (n), and (p) of Section 1001.11 are repealed. Section 1001.13 is repealed and replaced by a new section 1001.13, which contains updated structural and environmental standards.

All Department of Health-regulated ALRs must comply with the revised requirements, including facilities located in rural areas. There are no reporting or recordkeeping requirements set forth in the proposed rule, nor are there any additional professional services required as a result of this regulation.

**Costs:**

Because the regulations are drafted to reflect and align with current policy interpretations and code requirements, facilities should bear no added costs to comply and minimal costs are to maintain compliance. However, facilities that are not code-compliant will bear costs to align

with current environmental requirements designed to protect residents and property in the event of an emergency.

**Minimizing Adverse Impact:**

The Department will work with facilities and design industry professionals to provide guidance and respond to questions relating to the new standards.

**Rural Area Participation:**

All stakeholders, including individual facilities located in rural areas, are invited to submit public comments in response to the filing of the proposed regulation. Additionally, the Department plans to issue a Dear Administrator Letter, alerting ALRs, including those located in rural areas, of the publication of this regulation and the opportunity to provide public comments.

## **JOB IMPACT STATEMENT**

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

## ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (“Department”) received comments regarding the proposed amendments to Sections 1001.4, 1001.7, 1001.8, 1001.11, and 1001.13 of Title 10 of the New York Codes, Rules, and Regulations. The comments received and the Department’s responses are summarized below.

**COMMENT:** A commenter requested that the word “accurate” be removed in the phrase “Assisted living residences shall keep and maintain accurate records identifying veterans...” The commenter also requested removing the requirement that records be included in resident files.

**RESPONSE:** The regulation reflects the requirements in Public Health Law § 2805-o. No changes have been made to the regulation in response to this comment.

**COMMENT:** A commenter believed that the proposed 10 NYCRR § 1001.7(g)(2) should simply make reference to every assisted living residence licensed by the Department, not every assisted living residence licensed “and certified” by the Department, as such term was confusing and unnecessary.

**RESPONSE:** The Department agrees with this comment. The words “and certified” have been removed from section 1001.7(g)(2).

**COMMENT:** A commenter requested that the regulation in sections 1001.7(g)(2) and (3) refer to “prospective residents” identifying themselves as veterans, not “all individuals” identifying themselves as veterans.



**RESPONSE:** As indicated in Public Health Law § 2805-o, adult care facilities are required to inquire about the veteran status of current and newly admitted residents and their spouses and advise in writing all individuals identifying themselves as veterans or spouses of the availability of veterans' services through the Department of Veterans' Services and local veterans' service agencies and transmit confirmed information to the New York State Department of Veterans' Services. No changes have been made to the regulation in response to this comment.

**COMMENT:** A commenter proposed that additional language be added to section 1001.8(b)(2)(xvi) to allow for a fee increase to be made with less than 45 days' notice if there is written consensus between the resident representative or legal representative and the Operator to a specific rate change through an amended residency agreement.

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** Multiple commenters stated that Special Needs Assisted Living Residences should not and cannot be expected to hire nurses to deliver nursing services to residents as a result of a 2010 lawsuit brought by the industry against the Department and accordingly, the proposed amendment to section 1001.11(j) should omit reference to Special Needs Assisted Living Residences and read "An enhanced assisted living residence may employ or contract for appropriately trained personnel with professional licenses and registrations, as applicable, to provide health care services directly."

**RESPONSE:** As more than 30 Special Needs Assisted Living Residences have opened in the past two calendar years, and there are approximately 75 new such certifications under consideration, the Department disagrees that Special Needs Assisted Living Residences should be excluded from

the requirement to provide or arrange for nursing staff sufficient to meet the health care needs of its residents. However, the regulations have been amended to make clear that the requirement in section 1001.11(j) only applies to special needs assisted living residences with enhanced assisted living residence certification.

**COMMENT:** A commenter stated that the proposed organization of this section is confusing especially as many referenced standards are applicable to both new and existing structures.

**RESPONSE:** As the proposed regulations identify the various stages of a facility for purposes of applicability, no changes were made as a result of this comment.

**COMMENT:** It is recommended that the Department adopt January 1, 2024, as the date when referencing and defining “existing structures.”

**RESPONSE:** As the proposed regulations identify the various stages of a facility for purposes of the definition’s applicability, no changes were made as a result of this comment.

**COMMENT:** A commenter encouraged the Department to solicit specific input from architects, engineers, and fire safety professionals about the proposed modifications in section 1001.13 to ensure the proposed modifications reflect current standards and practices.

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** A commenter suggested that the Department implement an ad hoc evaluation process that not only considers the safety of residents but also the provider’s costs and time associated with compliance.

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** A commenter suggested amending section 1001.13(b)(6)(ii)(a) to strike the word “constant” because one might infer that “constant supervision provided by staff” requires one-on-one supervision.

**RESPONSE:** To support variability in individual resident capabilities, the term “constant” has been replaced with “appropriate.”

**COMMENT:** A commenter suggested that existing Special Needs Assisted Living Residences not be retroactively required to comply with requirements for evening visibility through direct down-lighting fixtures as listed in section 1001.13(b)(6)(ii)(c).

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** A commenter requested that the word “you” be replaced with “the applicant” in section 1001.13(e), requiring the applicant to provide the Department with proof of variance from specific code requirements granted by the New York State Department of State, Division of Building Standards and Codes.

**RESPONSE:** The Department agrees with the commenter and the final regulation will reflect the replacement.

**COMMENT:** A commenter suggested that in mixed-use buildings, where residents of both the independent living and licensed building sections have access to the same common areas, only those common areas, and not the entire building, meet the requirements of the regulation.

**RESPONSE:** Mixed-use buildings are subject to specific requirements as indicated in section 1001.13(f). No changes were made as a result of this comment.

**COMMENT:** A commenter suggested the entire section 1001.13 be reordered.

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** A commenter stated that New York City Building Code does not sub-classify I-1 occupants into groups 1 and 2 as in the New York State Building Code and encourages the Department to clarify the apparent discrepancy through the amended regulations.

**RESPONSE:** For permitting, the New York City Building Code requires that these buildings be classified as I-2 Occupancy Group. This conflicts with the Department’s licensure and some fire separation requirements. The additional requirements are requested and provided during the Department’s Architectural Review Unit. No changes were made as a result of this comment.

**COMMENT:** A commenter indicated that within New York City, compliance with the 2022 New York City Building Code is expected and recommended the proposed regulation be updated to reflect this expectation.

**RESPONSE:** Reference to the New York City Building Code has been updated to reflect the 2022 version.

**COMMENT:** A commenter suggested that section 1001.13(c)(3) be revised to read “Group I-2 Condition 1 shall be allowed provided the corridor is restricted to less than eight feet and the resident doors to less than 44.”

**RESPONSE:** As this New York City Department of Buildings Occupancy Group classification issue is satisfactorily addressed through the Department’s Architecture Review Unit, no changes were made as a result of this comment.

**COMMENT:** A commenter suggested that section 1001.13(c)(5) be modified to add a provision stating: “When using the I-2 Condition 1 use group category, the smoke barrier shall be placed at 200 feet from the farthest point within a room or program space and provided with a 20-minute door in accordance with 407.5. No compartment shall exceed 22,500 square feet.”

**RESPONSE:** Since the New York State requirement is stricter than that of New York City Department of Buildings, and the stricter requirement supersedes all others, no changes were made as a result of this comment.

**COMMENT:** A commenter encouraged the Department to add a provision to section 1001.13(g) specifying that demonstrated compliance with codes that were applicable at the time of licensure satisfies the requirement.

**RESPONSE:** No changes were made as a result of this comment.

**COMMENT:** A commenter stated that the term “twenty-four hour attended central station” at section 1001.13(b)(4)(iii) is confusing and requested that the Department define this term.

**RESPONSE:** Fire alarm systems are required by the Fire Code of NYS 907.6.6 to be monitored by an approved supervising station in accordance with NFPA 72. A 24-hour attended central station is a facility that receives signals from alarm systems and is staffed at all times with personnel who can respond to such signals. No changes were made as a result of this comment.

**COMMENT:** A commenter stated that the reference to “appropriate hardware” in section 1001.13(b)(5) related to smoke-tight doors is too subjective.

**RESPONSE:** The Department has amended the language to read: “...hardware appropriate for the fire resistance rating and function of the door for the purposed location within the facility...”

**COMMENT:** A commenter stated that there are inconsistent references to the National Fire Protection Agency standards that require clarity.

**RESPONSE:** Each facility’s design professional is responsible to use all the codes that are applicable to the design of the building. National Fire Protection Association (NFPA) Codes and Standards are incorporated by reference in New York State and New York City Building Codes. While utilizing New York State and New York City Building Codes, the design professional must apply the NFPA Code references for proper and complete design of the building systems. No changes were made as a result of this comment.