

Pursuant to the authority vested in the Commissioner of Health by sections 461 and 461-e of the Social Services Law, sections 487.2, 487.4, 487.5, 487.10, and 488.4 of Title 18 (Social Services) 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 a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (c) of section 487.2 is amended to read as follows:

(c) Persons with serious mental illness means individuals who meet criteria established by the commissioner of mental health, which shall be persons who have a designated diagnosis of mental illness under the Diagnostic and Statistical Manual of Mental Disorders ([DSM-IV-TR] DSM-5, American Psychiatric Association, [July 2000] May 2013), published by American Psychiatric Association Publishing, 800 Maine Avenue SW, Suite 900, Washington, DC 20024), and whose severity and duration of mental illness results in substantial functional disability. The DSM-5, referenced herein, is hereby incorporated by reference, with the same force and effect as if fully set forth herein, and may be examined at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237, or at the New York State Department of State, 99 Washington Avenue, Albany, NY 12231.

Subdivisions (e)-(r) of section 487.4 are re-lettered (f)-(s), and a new subdivision (e) of section 487.4 is added to read as follows:

Reference to subdivision (j) is re-lettered to subdivision (k) in new subdivision (n).

Reference to subdivision (g) is re-lettered to subdivision (h) in new subdivision (o).

Reference to subdivision (h) is re-lettered to subdivision (i) in new subdivision (o).

(e) Prior to any prospective resident's admission to a transitional adult home, as defined in subdivision (b) of section 487.13 of this Part, the operator shall contact the Department, in a manner prescribed by the Department, to obtain a pre-admission screening as to whether the prospective resident may be a person with serious mental illness, as defined in subdivision (c) of section 487.2 of this Part.

(1) To obtain such pre-admission screening, the operator shall, in a manner prescribed by the Department, provide the Department with the prospective resident's full name, date of birth, guardianship information if applicable, and Medicaid identification number if applicable. For individuals who are not currently enrolled in Medicaid, the operator shall state whether an interview and/or medical evaluation indicate the need for a mental health evaluation pursuant to paragraph (3) of subdivision (g) of this section. The results of the Department's pre-admission screening shall be provided to the operator within three business days of receipt of a complete request. A complete request is one that contains all of the information required by this paragraph.

(2) The Department shall conduct its pre-admission screening in consultation with the Office of Mental Health by reviewing the prospective resident's Medicaid claims data for relevant Health and Recovery Plan eligibility criteria, which may indicate that the prospective resident is a person with serious mental illness.

(3) Possible pre-admission screening results:

(i) Where the Department's pre-admission screening of the prospective resident does not indicate that the prospective resident may be a person with serious mental illness or, in the case of a prospective resident for whom recent Medicaid claims data is not available, the operator has advised that an interview and/or medical evaluation do not indicate the need for a mental health evaluation pursuant to paragraph (3) of subdivision (g) of this section, the Department shall advise the operator that it may admit the prospective resident within 30 days of receipt of the results, provided that all other relevant admission criteria are met. In the event an operator does not admit the prospective resident within 30 days of receipt of the results of the Department's pre-admission screening, the operator must obtain a new pre-admission screening pursuant to this subdivision.

(ii) Where the Department's pre-admission screening indicates that the prospective resident may be a person with serious mental illness or, in the case of a prospective resident for whom recent Medicaid claims data is not available, the operator has advised that an interview and/or medical evaluation indicate the need for a mental health evaluation pursuant to paragraph (3) of subdivision (g) of this section, the operator shall not admit the prospective resident without conducting or obtaining a mental health evaluation, documented on a form prescribed by the Department and developed in consultation with the Office of Mental Health, within 30 days prior to the date of admission, pursuant to paragraph (1) of subdivision (k) of this section. The operator may admit the prospective resident only when the mental health evaluation concludes the individual: (a) is not a person with serious mental illness; or (b) is a person with serious

mental illness, but the individual is a former resident of a transitional adult home and the operator obtains a waiver approved by the Department pursuant to subdivision (g) of section 487.3 of this Part.

Subdivision (h) of section 487.4, re-lettered as subdivision (i), is amended to read as follows:

[(h)] (i) Each mental health evaluation shall be a written and signed report, from a psychiatrist, physician, registered nurse, certified psychologist or certified social worker who is approved by the Department [department] in consultation with the Office of Mental Health, and who has experience in the assessment and treatment of mental illness[, which includes]. Such report shall be documented on a form prescribed by the Department and developed in consultation with the Office of Mental Health and shall include:

(1) the date of examination;

(2) significant mental health history and current conditions, including whether the resident or prospective resident [has] is a person with [a] serious mental illness as defined in section 487.2(c) of this Part;

(3) a statement that the resident's or prospective resident's mental health needs can be adequately met in the facility and a statement that the resident does not evidence need for placement in a residential treatment facility licensed or operated pursuant to article 19, 23, 29 or 31 of the Mental Hygiene Law; and

(4) a statement that the person signing the report has conducted a face-to-face examination of the resident or prospective resident within 30 days [of]prior to the date of admission or, for required annual evaluations or evaluations conducted due a change in condition, within 30 days of the report.

Subparagraph (xix) of paragraph (6) of subdivision (d) of section 487.5 is amended to read as follows:

(xix) state that the resident agrees to provide the operator, prior to admission and at least every 12 months thereafter, a dated and signed medical evaluation which conforms to the requirements of section 487.4[(f)](h) of this Part;

A new paragraph (4) is added to subdivision (e) of section 487.10 to read as follows:

(4) For facilities with a certified capacity of 80 beds or more in which twenty percent or more of the resident population are persons with serious mental illness as defined in section 487.2(c) of this Part, a monthly admissions report identifying all persons admitted to the facility during the prior calendar month.

Paragraph (3) of subdivision (e) of section 488.4 is amended to read as follows:

(3) a mental health evaluation if a proposed resident has a known history of chronic mental disability, or the medical evaluation or resident interview suggests the existence of such a disability. Such evaluation must be a written and signed report from a psychiatrist, physician,

registered nurse, certified psychologist or certified social worker who has experience in the assessment and treatment of mental illness[, which includes]. Such report shall be documented on a form prescribed by the Department and developed in consultation with the Office of Mental Health and shall include:

- (i) a significant mental health history and current conditions;
- (ii) a statement that the resident or prospective resident is mentally suited for care in the enriched housing program;
- (iii) a statement that the resident or prospective resident does not evidence need for placement in a hospital or residential treatment facility; and
- (iv) a dated statement indicating that the person signing the report has conducted a face-to-face examination of the resident or prospective resident which, for prospective residents, shall be dated within 30 days prior to admission.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Social Services Law (SSL) section 461(1) requires the Department of Health (Department) to promulgate regulations establishing general standards applicable to adult care facilities. SSL section 461-e(5) authorizes the Department to promulgate regulations to require an adult care facility to maintain certain written records with respect to the facility's residents and the operation of the facility.

### **Legislative Objectives:**

The legislative objective of SSL section 461 is to promote the health and well-being of adults residing in adult care facilities. SSL section 461-e is intended to ensure that adult care facilities maintain sufficient records to enable the Department to monitor facilities serving residents.

### **Needs and Benefits:**

The proposed regulatory changes will strengthen compliance with current regulations at Title 18 of the New York Codes, Rules and Regulations (NYCRR), Part 487, pertaining to Transitional Adult Homes. A Transitional Adult Home is defined by 18 NYCRR § 487.13(b)(1) as an adult home with a certified capacity of 80 or more beds in which 25 percent or more of the resident population are persons with serious mental illness. Persons with serious mental illness, as defined in 18 NYCRR section 487.2(c), are "individuals who meet criteria established by the commissioner of mental health, which shall be persons who have a designated diagnosis of

mental illness” and “whose severity and duration of mental illness results in substantial functional disability.”

Section 487.13(c) requires each Transitional Adult Home operator to submit to the Department “a compliance plan that is designed to bring the facility’s census of persons with serious mental illness to a level that is under 25 percent of the resident population over a reasonable period of time, through the lawful discharge of residents with appropriate community services to alternative community settings.” Pursuant to 18 NYCRR section 487.4(d), a Transitional Adult Home operator may not admit any person whose admission will increase the census of persons with serious mental illness in the facility.

Although the number of admissions of persons with serious mental illness to Transitional Adult Homes appears to have decreased as a result of these existing regulations, ongoing enforcement activities indicate that admissions of such persons to Transitional Adult Homes are still occurring in violation of those provisions. Accordingly, this proposal delineates a clear pre-admissions process for determining whether a prospective resident is a person with serious mental illness and thus not eligible for admission without a waiver. The admissions process set forth in section 487.4(e) will assist Transitional Adult Home operators in determining whether a prospective resident is a person with serious mental illness and thus will improve compliance with the existing provisions limiting admissions that would increase the facility’s census of persons with serious mental illness.

The Department shall conduct the pre-admission screening in consultation with the Office of Mental Health by reviewing the prospective resident’s Medicaid claims data using Health and Recovery Plan (HARP) eligibility criteria. The HARP is a managed care product that manages physical health, mental health, and substance use services in an integrated way for



adults with significant behavioral health needs. The New York State Office of Mental Health recognizes the HARP criteria as a method of identifying individuals with the most serious needs. In the case of an individual for whom there is no recent Medicaid claims data, the Transitional Adult Home shall be required to identify whether an interview and/or medical evaluation of the prospective resident indicate that a mental health evaluation is required, consistent with existing regulations at 18 NYCRR section 487.4(f)(3).

The Department will notify a Transitional Adult Home of the screening results within three business days of receipt of the required information. If the screening results in an indication that the individual may be a person with serious mental illness, the prospective resident will not be eligible for admission unless a mental health evaluation, conducted within the 30-day period preceding admission, concludes that the individual: (1) is not a person with serious mental illness; or (2) the individual is a person with serious mental illness, but the individual is a former resident of a Transitional Adult Home and the operator of the admitting facility obtains a waiver from the Department permitting such admission pursuant to 18 NYCRR section 487.3(g). The mental health evaluation must be conducted by a qualified practitioner, as defined by existing regulations.

The two-pronged pre-admissions approach outlined above will provide greater clarity to Transitional Adult Home operators and help them avoid impermissible admissions. This proposal thus will strengthen compliance with the existing regulations, which were based on a clinical determination by the Office of Mental Health that large adult homes with a significant number of individuals with serious mental illness are not settings that are conducive to the recovery or rehabilitation of the residents. Accordingly, this proposal will protect resident health and safety, consistent with the legislative objectives of SSL section 461(2) and with the State's

overall efforts to ensure that care is provided in the most integrated settings as required by *Olmstead v. L.C.*, 527 U.S. 581 (1999) and as emphasized in Governor Cuomo’s Executive Order No. 84.

**COSTS:**

**Costs to Private Regulated Parties:**

Transitional Adult Homes may incur costs to provide information to the Department for purposes of conducting the pre-admission screening. However, these costs should be minimal. The only information that must be submitted to the Department is the prospective resident’s full name, date of birth, applicable guardianship information, and Medicaid identification number – information that the facility would be required to obtain as part of its usual admission screening.

Transitional Adult Homes may also incur costs for conducting or obtaining a higher volume of mental health evaluations under this proposal. Pursuant to 18 NYCRR section 487.4, applicable to all adult homes, a prospective resident cannot be admitted until the resident is interviewed and a medical evaluation takes place. If the individual “has a known history of chronic mental disability, or the medical evaluation or resident interview suggests such disability,” then a mental health evaluation is required. Thus, Transitional Adult Homes are already required to conduct or obtain mental health evaluations when warranted by an interview or the medical evaluation.

Under the proposal, Transitional Adult Homes will be required to conduct or obtain mental health evaluations in each case where they are interested in admitting an individual who, pursuant to the Department’s pre-admission screening, may be a person with serious mental illness. However, incurrence of these costs will assist Transitional Adult Home operators in

avoiding admissions that would increase the census of persons with serious mental illness in their facilities in violation of the existing regulations.

All adult homes and enriched housing programs, including those that do not meet the definition of a Transitional Adult Home, would be required to use the Department-prescribed mental health evaluation form. Since mental health evaluations already must be documented under existing regulations, the use of a standardized form is not expected to increase costs for these facilities.

This proposal also includes a requirement that Transitional Adult Homes submit monthly admissions lists to the Department for the purpose of monitoring compliance. The Department previously requested that these lists be provided by some of the Transitional Adult Homes and so no new costs are associated with the inclusion of the requirement in regulation for those facilities. For the remaining Transitional Adult Homes, while this is a new requirement, the provision of such information should not be burdensome since facilities are expected to track admissions.

**Costs to Local Government:**

This proposal will not impact local governments unless they operate Transitional Adult Homes, in which case the impact would be the same as outlined above for private parties.

**Costs to the Department of Health:**

The Department will utilize existing resources to conduct the pre-admission screening, in consultation with the Office of Mental Health, and monitor compliance with these regulations.

**Costs to Other State Agencies:**

The proposed regulatory changes will not result in any additional costs to other state agencies. The Office of Mental Health will consult with the Department for the purposes of the pre-admission screening and development of the mental health evaluation form, which will be managed within existing resources.

**Local Government Mandate:**

Local governments that operate Transitional Adult Homes must comply with this regulation. No new local government program, project or activity is required by the proposed regulations.

**Paperwork:**

The regulations will impose minimal paperwork requirements on Transitional Adult Home operators. Transitional Adult Home operators will be required to submit information about a prospective resident to the Department so it can conduct the pre-admission screening. The only information that must be submitted to the Department is the prospective resident's full name, date of birth, applicable guardianship information, and Medicaid identification number – information that the facility would be required to obtain as part of its usual admission screening.

As noted above, Transitional Adult Homes are already required to conduct or obtain mental health evaluations when warranted by an interview or the medical evaluation. Under the new proposal, they will be required to conduct or obtain mental health evaluations when they want to admit an individual who, pursuant to the Department's pre-admission screening, may be a person with serious mental illness. The Department, in consultation with the Office of Mental

Health, will prescribe the form upon which the evaluation must be documented, promoting standardization. The paperwork associated with any additional evaluations is warranted to assist Transitional Adult Homes in avoiding admissions that would increase the census of individuals with serious mental illness in their facilities in violation of the existing regulations.

Adult homes that do not meet the definition of a Transitional Adult Home as well as enriched housing programs would also be required to use the mental health evaluation form prescribed by the Department. Since mental health evaluations already must be documented under existing regulations, the use of a standardized form is not expected to significantly increase paperwork for these facilities.

This proposal also includes a requirement that Transitional Adult Homes submit monthly admissions lists to the Department for the purpose of monitoring compliance. The Department previously requested that these lists be provided by some of the Transitional Adult Homes and so no new paperwork is associated with the inclusion of the requirement in a regulation for those facilities. For the remaining Transitional Adult Homes, while this is a new requirement, the provision of such information should not be burdensome since facilities are expected to track admissions.

**Duplication:**

These regulatory amendments do not duplicate existing State or federal requirements.

**Alternatives:**

There are no viable alternatives to the proposed regulation. The proposed changes are necessary to avoid what appears to have been continued admissions of persons with serious

mental illness to Transitional Adult Homes in violation of 18 NYCRR section 487.13. Further, the new pre-admissions process offers Transitional Adult Homes more certainty in determining which prospective residents may not be admitted under the existing regulations, particularly since the initial screening will be conducted by the Department using resources that are not generally available to Transitional Adult Home operators (i.e., HARP criteria in Medicaid claims data). This will allow Transitional Adult Homes to more effectively comply with the existing requirement, which will minimize the risk of regulatory enforcement.

**Federal Standards:**

The proposed regulations do not duplicate or conflict with any federal regulations.

**Compliance Schedule:**

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse economic impact on small businesses or local governments and do not impose any significant reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF  
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.



**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

A Job Impact Statement for the proposed regulatory 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.

## ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received comments from a transitional adult home operator, legal services providers, and an advocacy organization regarding the proposed amendments to sections 487.2, 487.4, 487.5, 487.10, and 488.4 of Title 18 of the New York Codes, Rules and Regulations, relating to admission standards for individuals with serious mental illness. These comments, and the Department's responses, are summarized below.

**Comment:** Some not-for-profit operators of transitional adult homes should be exempt from the census limits for individuals with serious mental illness when certain requirements are met; i.e., the operator operates a continuum of housing and residential services, including supportive housing and independent housing, and promotes independence and integration into the community.

**Response:** Facility-specific considerations are made on an ad hoc basis and upon request of the facility operator. Therefore, no changes were made to the regulation in response to this comment.

**Comment:** The proposed regulation affords the Department three (3) business days to conduct the requisite pre-admission screening and provide the transitional adult home operator with the results. Such screening must be expedited.

**Response:** The Department appreciates the need for operators to make admission decisions in a timely manner so as not to interrupt the service continuum and has been transparent in identifying best practices for operators. Balancing Department resources with these recognized

operator needs, the Department finds that three business days is an appropriate amount of time for the Department to duly conduct the pre-admission screening and provide results to the operator with sufficient time to make an admission determination. As such, no changes were made to the regulation in response to this comment.

**Comment:** The Department's pre-admission screening should include a search to identify whether that prospective resident was a former resident of a transitional adult home.

**Response:** It is incumbent upon the operator to identify historical residency information via the pre-admission interview process. Accordingly, no changes were made to the regulation in response to this comment.

**Comment:** The proposed regulation requires that a mental health evaluation be documented on a form prescribed by the Department, but no such form is currently available. Further, the provider network must be included in any such form development.

**Response:** The Department will alert providers when a mental health evaluation form is available, and such form is currently under development in consultation with the New York State Office of Mental Health (OMH), the State agency charged with promoting the mental health of all New Yorkers, with a particular focus on adults with serious mental illness. As such, no changes were made to the regulation in response to this comment.

**Comment:** The Department must expand its pre-admission screening criteria to include an assessment of substantial functional disability resulting from the individual's serious mental illness. The narrow Health and Recovery Plan (HARP) eligibility criteria relies on Medicaid

data and therefore misses the cohort of individuals covered by Medicare and other third-party insurance or those who receive services from private practitioners not licensed by OMH, and identifies only those individuals with the most serious needs, therefore allowing many individuals with serious mental illness to pass through the pre-admission screen.

**Response:** Prior to proposing these regulations, the Department duly considered its options regarding pre-screening criteria and, upon consultation with OMH, determined that the HARP criteria would provide an accurate initial assessment in a timely manner. Where Medicaid claims data is not available, the regulations provide that the operator must indicate to the Department that an interview and/or medical evaluation of the prospective resident do not indicate the need for a mental health evaluation. Therefore, no changes were made to the regulation in response to this comment.

**Comment:** The Department should collect and review medical evaluations and medication lists as part of the pre-admission screening process.

**Response:** Prior to proposing these regulations, the Department duly considered its options regarding pre-screening criteria and, upon consultation with OMH, determined that the HARP criteria would provide an accurate initial assessment in a timely manner. Where Medicaid claims data is not available, the regulations provide that the operator must indicate to the Department that an interview and/or medical evaluation of the prospective resident do not indicate the need for a mental health evaluation. All documentation used in the determination must be retained and made available to the Department upon request. Therefore, no changes were made to the regulation in response to this comment.

**Comment:** To avoid conflicts of interest, the mental health assessments should be performed by an assessor independent of the transitional adult home.

**Response:** This comment, regarding persons permitted to conduct the mental health evaluation, is outside the scope of these proposed regulations, which concerned the pre-admission screening process. Accordingly, no changes were made to the regulation in response to this comment.

**Comment:** Transitional adult homes should be required to notify the Department of the admission referral source to assist the Department in identifying discharge practices of licensed facilities and to allow cross-agency information sharing.

**Response:** Collection of referral source information and discharge procedures is outside the scope of these proposed regulations. As such, no changes were made to the regulation in response to this comment.

**Comment:** The Department should offer HARP enrollment to those individuals identified as HARP eligible.

**Response:** Insurance benefit eligibility is outside the scope of these proposed regulations. Therefore, no changes were made to the regulation in response to this comment.

**Comment:** The Department should monitor transitional adult homes and take all necessary steps to prevent segregation and institutionalization of individuals with disabilities.

**Response:** General transitional adult home oversight and monitoring activities is outside the scope of these proposed regulations. Therefore, no changes were made to the regulation in response to this comment.