

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

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

(c) Penalties for Part 487 of this Title.

Department regulations	Penalty per violation per day
487.3 (a)	\$ 50
(b)	50
(d)	50
(e)	50
(f)	50
487.4 (a)	\$ 50
[(b)] (c) (1)	50
(2)	50
(3)	50
(4)	50
(5)	50
(6)	50
(7)	50
(8)	50
[(9)]	[50]
[(10)] (9)	50
[(11)] (10)	50
[(12)] (11)	50
[(13)] (12)	50
[(14)] (13)	50
[(15)] (14)	50
[(16)] (15)	50
[(c)] (d)	100
[(d)] (e)	25
[(e)] (f)	5
[(f)] (g)	5

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

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

(f) Penalties for Part 490 of this Title.

Department regulations	Penalty per violation per day
490.3(a)	\$50
(b)	50
(c)	50
(d)	50
(e)	50
490.4(a)	50
[(b)] (c) (1)	50
(2)	50
(3)	50
(4)	50
(5)	50
(6)	50
(7)	50

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

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

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

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

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

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

Paragraph (9) of new subdivision (c) is repealed and paragraphs (10)-(16) of new subdivision (c) are renumbered (9)-(15), to read as follows:

Section 487.4 Admission standards

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

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

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

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

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

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

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

Section 488.4 Admission and retention standards

(b) An operator shall not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, and shall make reasonable accommodations to the

extent necessary to admit such individuals, consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section.

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

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

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

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

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

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

Section 490.4 Admission and retention standards

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

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

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

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

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

Section 494.4 Admission and retention standards

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

COSTS:

Costs to Private Regulated Parties:

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

Costs to State Government:

There will be no costs incurred by State government.

Costs to Local Governments:

There will be no costs incurred by local governments.

Local Government Mandates:

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

Paperwork:

There are no new reporting requirements imposed by the rule.

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

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

Effect of Rule:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

laws, regulations and ordinances.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

Cure Period:

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

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

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

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

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

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

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

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

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

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received comments from seven entities regarding the proposed amendments to sections 486.7, 487.4, 488.4, 490.4 and 494.4 and of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Comment: Several comments were received expressing concern that the proposed regulations prohibit adult homes or enriched housing programs from admitting individuals with mobility impairments or other disabilities, including individuals who require assistance to walk or climb stairs, in violation of the federal Americans with Disabilities Act (ADA) and other federal anti-discrimination statutes.

Response: The proposed regulations mandate that adult homes and enriched housing program operators may not exclude individual applicants or residents on the sole basis of an individual's use of a wheelchair for mobility and that operators make reasonable accommodations to the extent necessary to admit such individuals, consistent with the requirements of the ADA and other laws. The Department expects that all licensed adult homes and enriched housing programs have policies and procedures in place to protect the rights of prospective and current residents under all applicable state and federal laws and regulations. No changes were made to the regulation as a result of this comment.

Comment: Several comments were received expressing concerns that the proposed regulation may prevent adult homes or enriched housing programs from admitting individuals who are bedfast, dependent upon medical equipment, experiencing unmanaged urinary or bowel incontinence, or other types of skilled nursing care are summarily barred from admission and retention in adult homes and enriched housing programs. Commenters asserted that the amended regulations do not afford person-centered, individualized assessments of residents, or contemplate reasonable accommodation.

Response: Adult homes and enriched housing programs are not intended to serve individuals requiring continual nursing care or supervision. Instead, adult homes and enriched housing programs are intended to provide lower-level personal care and supervision to individuals unable or substantially unable to live independently but who do not require higher levels of care. Admission and retention standards ensure that the prospective resident's needs can be safely and thoughtfully accommodated. The operator of an adult home or enriched housing program must assess each applicant and resident in a person-centered manner and with full consideration of the existing population served by the facility. No changes were made to the regulation as a result of this comment.

Comment: The Department received a comment seeking clarification as to the effect the regulation will have on the current operations of an adult home or enriched housing program.

Response: The amended regulations require that the operator not exclude an individual on the sole basis that such individual is a person who primarily uses a wheelchair for mobility. The regulations also remove provisions prohibiting operators from accepting any person who is “chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer.” Admissions should be based on the provider’s ability to meet the individual needs of each prospective resident. This includes, but is not limited to, the reasonable accommodation of the individual’s needs, and the ability to safely evacuate in the event of an emergency. The Department expects that each provider has sufficient staff at all times to meet the needs of the residents it admits and retains in accordance with existing regulations. No changes were made to the regulation as a result of this comment.

Comment: Several comments were received asserting that the regulation creates confusion for some operators. The commenters assert that operators with additional certifications for different levels of care are subject to different admission/retention standards which appear in conflict with the proposed admission/retention standards affecting their base licenses.

Response: The proposed regulation does not require that an operator of an adult home or enriched housing program admit or retain any individual(s) for whom, by virtue of any license or certification conditions, the operator is unable to provide safe and appropriate care. No changes were made to the regulation as a result of this comment.

Comment: Several comments were received by the Department claiming that the proposed regulations require adult homes and enriched housing programs to obtain excessive documentation of applicants' medical and mental health conditions, conflicting with federal laws that prohibit overly broad pre-admission inquiries. The commenters requested that the Department prohibit adult homes and enriched housing programs from making overly broad pre-admission inquiries concerning applicants' physical and mental health.

Response: Consistent with the Rehabilitation Act of 1973, as amended in 1992 and 1998, and the Americans with Disabilities Act of 1990, individuals with disabilities and impairments must be identified, placed appropriately, and provided with the necessary services and supports to promote their highest level of functioning and independence. Pre-admission inquiries concerning the applicants' physical, mental, and medical conditions are necessary to ensure that the applicant is in the most appropriate setting and receiving the necessary services, as well as the safety and security of those already receiving services in those settings. Applicants who believe that their pre-admission inquiries were improperly broad are encouraged to notify the Department for review. No changes were made to the regulation as a result of this comment.