

Pursuant to the authority vested in the Commissioner of Health by Section 461 of the Social Services Law, Sections 487.10 and 490.10 and 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 the Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ix) of paragraph (5) of subdivision (d) of Section 487.10 is amended to read as follows:

(ix) records documenting the development, implementation and, at a minimum, the bi-annual updating of plans for quality assurance activities for each area of facility operation. These must include, at a minimum, the development and maintenance of performance standards including infection control, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design and implementation of corrective action. Each plan must also include the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and identifying trends and improvement activities. While reviewing facility performance, the committee shall not examine personally identifiable resident incidents. Such committee shall include the administrator or operator of the facility, the resident council president or other resident representative, and representatives from frontline employees from each area of operation.

Subparagraph (ix) of paragraph (4) of subdivision (d) of Section 490.10 is amended to read as follows:

(ix) records documenting the development, implementation and, at a minimum, the bi-annual updating of plans for quality assurance activities for each area of facility operation. These must include, at a minimum, the development and maintenance of performance standards including infection control, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design and implementation of corrective action. Each plan must also include the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and identifying trends and improvement activities. While reviewing facility performance, the committee shall not examine personally identifiable resident incidents. Such committee shall include the administrator or operator of the facility, the resident council president or other resident representative, and representatives from frontline employees from each area of operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Sections 461(1) of the Social Services Law provides authority for the Department to promulgate regulations for adult care facilities, including adult homes and residences for adults.

Legislative Objectives:

The legislature has determined that oversight of adult care facilities is in the interest of the State as the residents, who are typically over age 65, can be vulnerable to conditions the resident is unable to change. Effective March 22, 2022, Laws of 2021, Chapter 769 amended Social Services Law Section 461-a(2)(c) to provide that plans for quality assurance activities in adult homes and residences for adults must include infection control and the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and identifying trends and improvement activities. While reviewing facility performance, the committee shall not examine personally identifiable resident incidents. Such committee shall include the administrator or operator of the facility, the resident council president or other resident representative, and representatives from frontline employees from each area of operation.

This regulation implements Laws of 2021, Chapter 769.

Needs and Benefits:

New York State has the responsibility to ensure the support and safety of its most vulnerable citizens. These updated regulations address the requirement for quality improvement

activities in adult homes and residences for adults to include infection control and the creation of a quality improvement committee.

Given the congregate nature and traditional population residing in adult care facilities, maintaining a quality assurance plan that includes infection control standards is crucial to protect the health and wellbeing of residents and employees. Consulting an array of varied individuals is imperative in establishing a quality assurance committee, because each group will provide unique and distinct insight into how to best protect the health and wellbeing of a facility's residents and employees.

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

Adult Homes and Residences for Adults are required to comply with the requirements in this regulation under Social Services Law Section 461-a(2)(c). This regulation implements that statute as written and does not impose any additional costs on these regulated entities. The amendments to Social Services Law Section 461-a(2)(c) under Laws of 2021, Chapter 769 already will impose minimal costs, because adult care facilities are already required to be in compliance with Social Services Law Section 461-a(2)(c), and they will be able to use existing resources to comply with the law as amended.

Cost to State and Local Government:

Only those adult homes and residences for adults operated by county departments of social services are expected to be impacted by this requirement.

Cost to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health. Any increased surveillance and enforcement activities relating to this regulation will be handled with existing resources.

Local Government Mandates:

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

Paperwork:

Adult homes and residences for adults will be required to maintain records under these regulations that plans for quality assurance activities include infection control and the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and identifying trends and improvement activities.

Duplication:

These amendments do not conflict with any state or federal rules.

Alternative Approaches:

An alternative would be to leave current regulatory structure in place. This alternative is impractical, because Department surveyors use the Department's regulations to enforce the law, in this case Social Services Law Section 461-a(2)(c), as amended by Laws of 2021, Chapter 769.

Federal Requirements:

No applicable federal requirements exist.

Compliance Schedule:

This proposal will go into effect upon publication of a Notice of Adoption in the New York State Register.

Contact Person:

Ms. Katherine E. Ceroalo
NYS Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, NY 12237
(518) 473-7488
(518) 473-2019 –FAX
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

These regulations require adult homes and residences for adults to implement or strengthen composition and focus of the facility's existing quality improvement committee. Currently, there are two adult homes operated by county governments (Chenango and Warren Counties), and there are 483 adult care facilities that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

All Department of Health-regulated adult homes and residences for adults must comply with the revised requirements which require implementation or strengthened composition and focus of the facility's existing quality assurance committees.

Professional Services:

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

Compliance Costs:

Anticipated compliance costs are minimal. Facilities that are not compliant will bear costs to align with current standards.

Economic and Technological Feasibility:

The proposed regulation is expected to be financially and technologically feasible. Adult care facilities are already required to be in compliance with Social Services Law Section 461-a(2)(c), and they will be able to use existing resources to comply with the law as amended.

Minimizing Adverse Impact:

The Department will work with facilities to provide guidance on changes 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, were 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 adult homes and residences for adults, including those operated by small businesses, of the publication of this regulation and the opportunity to provide public comments.

Cure Period:

The regulation does not set forth a cure period.

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 44 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2020 (<https://www.census.gov/quickfacts/>).

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

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County	Oswego County	Washington County
Essex County	Otsego County	Wayne County
Franklin County	Putnam County	Wyoming County
Fulton County	Rensselaer County	Yates County
Genesee 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 2020.

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

285 licensed Adult Homes are located in these identified rural areas. There are 0 currently licensed Residences for Adults.

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

All Department of Health-regulated Adult Homes and Residences for Adults must comply with the revised requirements, including facilities located in rural areas. There is a recordkeeping requirement set forth in the proposed rule, but no additional professional services required as a result of this regulation.

Costs:

Compliance costs are anticipated to be minimal.

Minimizing Adverse Impact:

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

Rural Area Participation:

All stakeholders, including individual facilities located in rural areas, were invited to submit public comments in response to the filing of the proposed regulation. Additionally, the Department plans to issue a Dear Administrator Letter to alert adult care facilities, 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.