

Pursuant to the authority vested in the Commissioner of Health by Section 461 of the Social Services Law, Sections 487.4, 488.4, and 490.4 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 the Notice of Adoption in the New York State Register, to read as follows:

Subdivisions (b) and (c) of Section 487.4 are amended to read as follows:

(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, or on the basis of such individual's mobility impairment, 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. Provided, however, the operator must determine that the adult home: can safely accommodate the needs of such individual; is in compliance with local fire codes; and has an appropriate level of staffing to evacuate such individual; or the operator must determine that such individual is capable of self-preservation in the event of an emergency. Persons incapable of self-preservation are those who, because of age, physical limitations, mental limitations, chemical dependency, or medical treatment, cannot respond as an individual in an emergency situation.

(c) An operator shall not accept nor retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law;

- (2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential facility licensed pursuant to article 19, 23, 29 or 31 of the Mental Hygiene Law;
- (3) requires health or mental health services which are not available or cannot be provided safely and effectively by local service agencies or providers;
- (4) causes, or is likely to cause, danger to himself or others;
- (5) repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the facility;
- (6) has a medical condition which is unstable and which requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purposes of reporting to the resident's physician;
- (7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such failure causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;
- (8) is chronically bedfast;
- [(9) chronically requires the physical assistance of another person in order to walk;
- (10) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;]
- [(11)] (9) has chronic unmanaged urinary or bowel incontinence;
- [(12)] (10) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;
- [(13)] (11) is dependent on medical equipment, unless it has been demonstrated that:
 - (i) the equipment presents no safety hazard;

- (ii) use of the equipment does not restrict the individual to his room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;
 - (iii) use of the equipment does not restrict or impede the activities of other residents;
 - (iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;
 - (v) such assistance, if needed, is available from approved community resources; and
 - (vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;
- [(14)] (12) engages in alcohol or drug use which results in aggressive or destructive behavior; or
- [(15)] (13) is under 18 years of age; or, in a public adult home, under 16 years of age.

Subdivisions (b) and (c) of Section 488.4 is amended to read as follows:

(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, or on the basis of such individual's mobility impairment, 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. Provided, however, the operator must determine that the enriched housing program: can safely accommodate the needs of such individual; is in compliance with local fire codes; and has an appropriate level of staffing to evacuate such individual; or the operator must determine that such individual is capable of self-preservation in the event of an emergency. Persons incapable of self-preservation are those who, because of age, physical limitations, mental limitations, chemical dependency, or medical treatment, cannot respond as an individual in an emergency situation.

(c) An operator must not accept nor retain any person who:

(1) needs continual medical or nursing care or supervision as provided by an acute care facility or a residential health care facility certified by the Department of Health;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in an acute care or residential treatment facility operated or certified by an office of the Department of Mental Hygiene;

(3) requires health, mental health, or other services which cannot be provided by local service agencies;

(4) causes, or is likely to cause, a danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care, or safety of the resident or other residents or which substantially interferes with the orderly operation of the enriched housing program;

(6) requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purpose of reporting on a medical condition to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such refusal or inability causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

[(9) is chronically in need of the physical assistance of another person in order to walk;

(10) is chronically in need of the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;]

[(11)] (9) has chronic unmanaged urinary or bowel incontinence;

[(12)] (10) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

[(13)] (11) is dependent on medical equipment unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his/her room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) assistance in the use or maintenance of the equipment, if needed, is available from local social services agencies or approved community resources;

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

[(14)] (12) has chronic personal care needs which cannot be met by enriched housing staff or approved community providers;

[(15)] (13) is not self-directing; i.e., requires continuous supervision and is not capable of making choices about his/her activities of daily living; or

[(16)] (14) engages in alcohol or drug use which results in aggressive or destructive behavior.

Subdivisions (b) and (c) of Section 490.4 is amended to read as follows:

(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, or on the basis of such individual's mobility impairment, 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. Provided, however, the operator must determine that the residence for adults: can safely accommodate the needs of such individual; is in compliance with local fire codes; and has an appropriate level of staffing to evacuate such individual; or the operator must determine that such individual is capable of self-preservation in the event of an emergency. Persons incapable of self-preservation are those who, because of age, physical limitations, mental limitations, chemical dependency, or medical treatment, cannot respond as an individual in an emergency situation.

(c) An operator must not accept or retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential treatment facility licensed or operated pursuant to articles 19, 23, 29 or 31 of the Mental Hygiene Law;

(3) requires health or mental health services which are not available or cannot be provided safely and effectively by local social services agencies or providers;

(4) causes, or is likely to cause, danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care, or safety of the resident or other residents or which substantially interferes with the orderly operation of the facility;

(6) has a medical condition which requires continual skilled observation of symptoms or reactions to medications or accurate recording of such skilled observations for the purpose of reporting to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen, when such refusal or inability causes, or, in the judgment of a physician, is likely to cause life-threatening danger to the resident or others;

(8) requires more than supervision and assistance with self-administration of medications in order to maintain a prescribed medication regimen;

(9) chronically requires physical assistance with the personal activities of daily living, including grooming, bathing, dressing, toileting, or eating;

(10) is chronically bedfast;

[(11) chronically requires the physical assistance of another person in order to walk;

(12) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;]

[(13)] (11) has chronic unmanaged urinary or bowel incontinence;

[(14)] (12) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

[(15)] (13) is dependent on medical equipment unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his/her room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the facility;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel, and such assistance is available from local social service agencies or approved community resources; and

(v) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

[(16)] (14) engages in alcohol or drug use which results in aggressive or destructive behavior;

[(17)] (15) is under 18 years of age; or under 16 years of age if such person is to be admitted to a residence for adults operated by a social services district.

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: specifically, adult homes, enriched housing, and residences for adults.

Legislative Objectives:

The legislative objective of Social Services Law section 461 is to promote the life, health, safety and comfort of adults residing in adult care facilities (see Social Services Law section 460).

Needs and Benefits:

This regulation is intended to ensure that adult care facilities comply the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq (ADA). The regulation clarifies admission and retention standards to make clear that adult care facilities must make reasonable accommodation for residents who use wheelchairs for mobility. The adult care facility nevertheless must be able to safely accommodate the needs of such individual, must be in compliance with local fire codes, or must have an appropriate level of staffing to evacuate such individual. The operator must also determine that such individual is capable of self-preservation in the event of an emergency. Persons incapable of self-preservation are those who, because of age, physical limitations, mental limitations, chemical dependency, or medical treatment, cannot respond as an individual in an emergency situation.

This regulation is needed to make sure that the admission and retention standards for adult care facilities are consistent with the ADA.

Costs:

Costs to Regulated Parties:

This regulation imposes no costs on adult care facilities, because adult care facilities should already be in compliance with the ADA. This regulation simply clarifies what is required by the ADA.

Costs to State and Local Governments:

This regulation imposes no costs on State and local governments, because adult care facilities should already be in compliance with the ADA. This regulation simply clarifies what is required by the ADA.

Paperwork:

This regulation creates no new paperwork requirements.

Local Government Mandates:

This amendment does not impose any new programs, services, duties or responsibilities on local government.

Duplication:

These regulations will not conflict with any State or federal rules.

Alternatives:

The alternative is to not make these amendments to the regulations. This alternative was rejected, because the current regulations are arguably not consistent with the ADA.

Federal Standards:

This regulation is consistent with federal standards.

Compliance Schedule:

This regulation is effective upon publication of a Notice of Adoption in the 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 amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose 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 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.

JOB IMPACT STATEMENT

The Department of Health has determined that these regulatory changes will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.