

SUMMARY OF EXPRESS TERMS

In New York State, Parts 487 and 488 of Title 18 NYCRR regulate the operations of Adult Homes (AHs) and Enriched Housing Programs (EHPs), Part 490 regulates Residences for Adults, Part 489 governs Family Type Home for Adults, and Part 494 governs assisted living programs (ALPs). Collectively there are, as of May 21, 2018, 548 AHs and EHPs, 144 of which have additional certification as an ALP.

Part 487 applies to 407 AHs, which are established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator. Part 488 applies to 141 EHPs, which are established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons 65 years of age or older, in community-integrated settings resembling independent housing units. Such programs shall provide or arrange the provision of room, and provide board, housekeeping, personal care and supervision. There are currently zero (0) Residences for Adults in operation, and a number of family type home for adults. Family type home for adults, under oversight of the Office for Children and Family Services, are private homes providing an atmosphere of family living for adults aged 18 and above who are substantially unable to live independently.

These proposed updated regulations address Admission Standards (Part 487), Admission and Retention Standards (Parts 488, 490, and 494), and Admission Standards and Procedures (Part 489) for these adult care facilities. The changes incorporate provisions that prevent a provider's

exclusion of an applicant on the sole basis that such individual is a person who primarily uses a wheelchair for mobility.

Pursuant to the authority vested in the Commissioner of Health by sections 461-l(5), 20, 34, 131-o, 460, 460-a through 460-g, 461, 461-a through 461-h of Social Services Law, sections 487.4, 488.4, 489.7, 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, are hereby amended, to be effective upon filing with the Department of State.

Section 487.4 of Title 18 is hereby amended as follows:

§ 487.4 Admission standards

(a) An operator shall admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(a-1) 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.

(b) 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) is chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer;]
- [(10)] (9) chronically requires the physical assistance of another person in order to walk;
- [(11)] (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;
- [(12)] (11) has chronic unmanaged urinary or bowel incontinence;
- [(13)] (12) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;
- [(14)] (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 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;

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

[(16)] (15) is under 18 years of age; or, in a public adult home, under 16 years of age.

Section 488.4 of Title 18 is hereby amended as follows:

§ 488.4 Admission and retention standards

(a) An operator may admit, retain and care for only those individuals who require the services the operator is certified to provide.

(a-1) 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.

- (b) 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 chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer;]

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

[(11)] (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;

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

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

[(14)] (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 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;

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

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

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

Section 489.7 of Title 18 is hereby amended as follows:

§ 489.7 Admission standards and procedures

(a) An operator shall admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(a-1) 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.

(b) 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 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 home;
- (6) has a medical condition which is unstable, and which requires continuous 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) is chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer;]
- [(10)] (9) chronically requires the physical assistance of another person in order to walk;
- [(11)] (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;
- [(12)] (11) has chronic unmanaged urinary or bowel incontinence;
- [(13)] (12) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;
- [(14)] (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 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;

[(15)] (14) is under 18 years of age;

[(16)] (15) does not provide the operator with the required medical evaluations;

[(17)] (16) refuses or fails to inform the operator on an on-going basis of changes in medications or other elements of the medical evaluation as they occur;

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

[(19)] (18) is unable to communicate with the operator in a common language.

Section 490.4 of Title 18 is hereby amended as follows:

§ 490.4 Admission and retention standards

- (a) An operator may admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(a-1) 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.

(b) 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 chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer]

[(11)] (10) is chronically bedfast;

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

[(13)] (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;

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

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

[(16)] (15) 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;

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

[(18)] (17) 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.

Section 494.4 of Title is hereby amended as follows:

§ 494.4 Admission and retention standards

(a) An operator must admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(a-1) 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.

(b) Appropriate services must be provided to or arranged for an eligible individual only in accordance with a plan of care which is based upon an initial assessment and periodic reassessments conducted by an assisted living program, or if the assisted living program itself is not an approved long-term home health care program or certified home health agency, by an assisted living program and a long-term home health care program or certified home health agency.

(c) An assisted living program may care only for a person who:

- (1) is medically eligible for, and would otherwise require placement in, a residential health care facility due to the lack of a home or a suitable home environment in which to live and safely receive services;
- (2) requires more care and services to meet daily health or functional needs than can be provided directly by an adult care facility;
- (3) exhibits a stable medical condition as categorized by the long-term care patient classification system as defined in Title 10 NYCRR;
- (4) is able, with direction, to take action sufficient to assure self-preservation in an emergency; and
- (5) voluntarily chooses to participate in an assisted living program after being provided with sufficient information to make an informed choice.

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

- (1) requires continual nursing or medical care;
- (2) is chronically bedfast and requires lifting equipment to transfer or the assistance of two persons to transfer; or

[(3) is chronically chairfast and requires lifting equipment to transfer or the assistance of two persons to transfer; or]

[(4)] (3) is cognitively, physically or medically impaired to a degree which endangers the safety of the resident or other residents.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in sections 461-l(5), 20, 34, 131-o, 460, 460-a through 460-g, 461, 461-a through 461-h of Social Services Law.

Legislative Objectives:

The legislature has determined that oversight of adult care facilities is in the interests of the state, as the residents who typically are over the age of 65 can be vulnerable to conditions that the resident is unable to change. The proposed rule change provides clear guidance to the operators of adult care facilities, that will continue to promote a safe, neighborly and accessible environment for New York's elders to reside.

Needs and Benefits:

New York State has the responsibility to ensure the support and safety of its most vulnerable citizens. These proposed updated regulations address Admission Standards (Part 487), Admission and Retention Standards (Parts 488, 490, and 494), Admission Standards and Procedures (Part 489) for adult care facilities. The changes incorporate provisions that prevent a provider's exclusion of an applicant on the sole basis that such individual is a person who primarily uses a wheelchair for mobility, thereby aligning with the provisions of the American 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, and benefit the health and general welfare of individuals who require care but are capable of independent living. The proposed rule changes 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 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 the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. There were no significant alternatives to this rule which enhance accessibility for frail and elderly New Yorkers.

Federal Standards:

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

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department will provide educational webinars for all adult care facilities prior to promulgation.

Compliance Schedule:

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

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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.

**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.

EMERGENCY JUSTIFICATION

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and general welfare of individuals who primarily use a wheelchair for mobility and who are eligible for admission to adult care facilities.

Adult care facilities, including Adult Homes, Enriched Housing, Family-Type Homes, and Assisted Living Programs, provide a range of care options in non-institutional, home-like, flexible living environments, and benefit the health and general welfare of individuals who require care but are capable of independent living. Denying otherwise eligible individuals admission to adult care facilities solely on the grounds that they primarily use a wheelchair for mobility compels such individuals to either enter nursing homes unnecessarily or continue living independently while foregoing the care they need.

The Department is concerned that some adult care facility operators may be denying admission solely on the grounds that applicants primarily use a wheelchair for mobility. Without this emergency regulation some operators will continue to refuse admission to otherwise eligible applicants, to the detriment of the health and general welfare of such individuals.