

NEW YORK STATE

**DEPARTMENT OF SOCIAL SERVICES**

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

GREGORY M. KALADJIAN  
Acting Commissioner



FRANK PUIG

*Deputy Commissioner*

*Division of Services & Community Development*

**OFFICE OF HOUSING AND ADULT SERVICES**

**ADULT CARE FACILITY DIRECTIVE NO. 1-93**

**MAY 5, 1993**

**TO:** Adult Care Facility Operators

**SUBJECT:** Regulations for the Assisted Living Program

**CONTACT**

**PERSON:** Frank Rose, Bureau of Policy and Standards, 1-800-342-3715, extension 432-2404.

**I. PURPOSE**

To inform operators of adult care facilities (ACFs) of amendments to Department regulations Parts 485, 494 and 505 pertaining to the requirements of the Assisted Living Program (ALP).

**II. BACKGROUND**

Periodically, the Office of Housing and Adult Services revises and updates existing regulations. Informational Letter No. 8-92 dated September 8, 1992 notified operators of ACFs that proposed regulatory amendments to the requirements for the ALP were published in the State Register on September 2, 1992. After reviewing comments received during the public comment period, some modification was made to the proposed amendments.

The final amendments have been filed with the Secretary of State and were effective on March 17, 1993. A copy of the regulations and the Assessment of Public Comment are attached.

**III. PROGRAM IMPLICATIONS**

The amendments will implement the ALP established by Chapter 165 of the Laws of 1991. Chapter 165 directed the Department and the Department of Health to jointly promulgate any regulations necessary for implementation of the ALP. Adult Home and Enriched Housing Program operators approved to have an ALP will be able to meet certain residential and health care needs of residents who would otherwise require placement in a nursing facility. An ALP cannot be operated by any operator without first having received the necessary approval from the Department.

**IV. REQUIRED ACTION**

Operators should review the attached final regulatory amendments in order to become familiar with them. They should also be advised that this Directive serves as notice of promulgation to those who have submitted ALP applications. Those applicants should carefully review these regulations in light of their previously submitted applications. Since modifications made to the proposed regulations were not substantive, modification of previously submitted ALP applications is not required and will not be accepted.

**V. EFFECTIVE DATE**

These regulations were effective March 17, 1993 and are applicable immediately.



---

Peter R. Brest  
Acting Associate Commissioner

## Assessment of Public Comment

The regulations implement Sections 28 through 33 of Chapter 165 of the Laws of 1991 to create the Assisted Living Program.

The Department received written comments from one social services district, one health systems agency and five associations which individually represent either hospitals, home care providers or adult care facility operators. Oral comments were received from other social services districts and the Office of Business Permits and Regulatory Assistance.

Many of the issues raised in the comments could not be addressed by modification of the proposed regulatory amendments since they pertained to federal or State statutes, existing Department of Social Services (Department) or Department of Health (DOH) regulations, the Assisted Living Program (ALP) application process or existing procedures. As such, the issues raised were outside the scope of these regulations. For example, some commentors expressed concern that the proposed regulations would require ALP operators to comply with both the current operating standards applicable to adult homes or enriched housing programs, as well as the current operating standards applicable to the various types of home health care programs that may participate in an ALP. However, this is a requirement of the statute (Social Services Law Section 461-1(2)), and cannot be changed in the proposed regulations. Other commentors questioned why the application process letter issued by this Department and DOH did not include information regarding the process for obtaining a

Medical Assistance (MA) provider number, and questioned how the application due date for the first set of applications was established. One social services district commented that district administrative costs should be fully reimbursed by the Department, and should not be subject to an existing administrative cap. There is no provision in statute for a change in the reimbursement rate to social services districts or an exemption of ALP administrative costs from the administrative cap. Another commentor stated that the proposed program does not allay quality assurance concerns about adult homes in New York City. These are all examples of comments that cannot be addressed through changes in the proposed regulations.

The majority of the comments which related to the proposed regulations did not require revisions to the proposed regulatory amendments. Instead, a more complete explanation was needed of current practices, policies or procedures that would apply to ALP, or further procedure/protocol review and development. These issues will be specifically addressed through individual responses to commentors and will also be addressed in future Department releases.

The following comments were addressed by amending the proposed regulations:

Comment: Numerous commentors questioned how the district of fiscal responsibility for furnishing MA will be determined for ALP residents.

Response: A new subdivision (i) has been added to proposed section 505.35 to address this issue. Specifically, the social

services district fiscally responsible for furnishing MA is the district in which the ALP resident resided immediately prior to his or her admission to the ALP if the resident was not a recipient of MA at the time of his or her admission. If the resident was a recipient of MA at the time of admission, the district of fiscal responsibility would be the district responsible for furnishing MA to the ALP resident immediately prior to his or her admission to the ALP.

Comment: One commentor suggested that proposed section 485.6(n)(5) be modified to provide the flexibility of permitting the applicant to include in the ALP application as a projected date for commencement of operation of the ALP the projected number of days from approval to operation OR to establish a time period within which the State agencies must review an application. The commentor stated that without either change, applicants cannot credibly project an anticipated date of operation.

Response: Proposed section 485.6(n)(5)(v) has been modified to permit an ALP applicant to include in its application either the anticipated date of operation for the program or the number of days from issuance of Department approval to program operation.

It is not possible to establish in regulation a time frame for review of ALP applications, given the complexity of the review process and the concurrent review of the application by staff of two State agencies. For example, Chapter 165 requires the Commissioner of DOH to review all ALP applications, make a recommendation and submit the recommendation to this Department

before a decision can be made by this Department. However, the Department and DOH have committed to review applications as expeditiously as possible.

Comment: Two commentors recommended that in 494.3(b) "good cause" be defined or limited.

Response: Proposed section 494.3(b) has been modified to provide that the reasons for approval of additional contracts may include, but need not be limited to, satisfactory documentation that an additional contract or contracts are necessary in order to provide, as reasonably projected by the assisted living program, the volume of services, or the type of services, or where the assisted living program has been approved to operate at more than one site.

Comment: Two commentors stated that there is a reference to a model contract in 494.4(h)(1) and 505.35(f) but one has not been made available.

Response: Proposed sections 494.4(h)(1) and 505.35(f) have been modified to delete the reference to a model contract. Section 494.4(h)(1) now lists the provisions which must be included in each ALP contract.

A complete copy of a model contract will be released when the implementing Administrative Directive is released.

Comment: Numerous commentors stated that proposed sections 494.6(a) and (b) are unclear about whether the director of the home care program may also be the program director of the ALP and, if so, whether the training and experience requirements for the approved adult care facility administrator apply.

Response: It was the intent of this Department and DOH that the administrator of the adult home or the program coordinator of the enriched housing program or director of the home care program (as defined by Title 10 of NYCRR) could be appointed to perform the program director function for an ALP. Proposed section 494.6(a)(2) has been modified to clarify this intent and to permit an ALP operator to name as ALP program director a person approved to be either an adult home administrator, an enriched housing program coordinator, or an approved director of the applicable home health care program component of the ALP. If the individual appointed was the director of the home health care program, the training and qualifications of the facility administrator or the enriched housing program coordinator would not apply.

