



Department of Health

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Subject: DAL ACF 25-22
Admission and Residency
Agreement Expectations

Dear Adult Care Facility Administrator:

The purpose of this correspondence is to clarify expectations related to the completion of an Admission or Residency Agreement, including those referenced in DAL 22-28 and supplemented by DAL 22-28-A1, and when a 30-Day Notice of Residency Termination is required as referenced in DAL 24-15.

Social Services Law § 461-c: Resident Care, Services, and Charges

Social Services Law (SSL) § 461-c(1) requires that every Adult Care Facility (ACF) operator execute with each prospective resident a written admission agreement, signed and dated by all parties, which contains the entire agreement between the parties and other required information as applicable.

SSL § 461-c(2) requires that the agreement enumerate in such detail as may be required by the Department regulation all charges, expenses and other assessments, if any, for services, materials, equipment and food, required by law or regulations and other services, materials, equipment and food which such operator agrees to furnish and supply to such resident during the period of residency. No additional charges or expenses may be assessed against any resident in excess of that contained in such agreement except upon express written approval and authority of the resident, or his or her sponsor, if any, or in order to provide additional care, services or supplies, upon the express order of the attending physician of the resident, or upon appropriate notice to the resident and to his or her sponsor, if any, of additional charges and expenses due to increased cost of maintenance and operation. However, in the event of any emergency arising which affects such resident, additional charges may be assessed for the benefit of such resident as are reasonable and necessary for services, materials, equipment and food furnished and supplied during such emergency.

SSL § 461-c(2-a) states there is an implied warranty of habitability in each Admission Agreement that ensures the facility is fit for habitation and for the uses intended by the operator and resident. Further, this paragraph states that the residents will not be subjected to dangerous, hazardous conditions and assures that their health, life, safety, and welfare will be maintained. Importantly, this paragraph adds that the statement cannot be read in any way to limit the resident's rights to legal relief as may be appropriate.

Title 18 of New York Codes, Rules, and Regulations, Sections 487.5(d)(6) and 488.5(c)

Title 18 of New York Codes, Rules, and Regulations ("18 NYCRR"), Sections 487.5(d)(6) and 488.5(c) outline the expectations of the Admission Agreement composition for those adult care facilities with Adult Home and Enriched Housing Program base licensure.

Public Health Law § 4658

In addition to requirements with SSL § 461-g, Public Health Law § 4658(2) requires that Assisted Living Residences include the following elements in the written Residency Agreement:

- a. *The name, telephone number, street address, and mailing address of the facility.*
- b. *The name and mailing address of the owner of the residence and at least one natural person authorized to accept personal service on behalf of the owner of the residence.*
- c. *The name and mailing address of the operator and at least one natural person authorized to accept personal service on behalf of the operator.*
- d. *A statement, to be updated as necessary, describing the licensure or certification status of the facility and any provider offering home care services or personal care services under an arrangement with the Assisted Living Residence, including a specific listing of such providers.*
- e. *The effective period of the agreement.*
- f. *a description of the services to be provided to the resident and the base rate to be paid by the resident for those services.*
- g. *A description of any additional services available for an additional, supplemental, or community fee from the assisted living operator directly or through arrangements with the operator, stating who would provide such services, if other than such operator.*
- h. *A rate or fee schedule, including any additional, supplemental, or community fees charged for services provided to the resident, with a detailed explanation of which services and amenities are covered by such rates, fees, or charges.*
- i. *A description of the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and timeframes under which the agreement may be terminated by either party.*
- j. *A description of the complaint resolution process available to residents.*
- k. *The name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities.*
- l. *The criteria used by the operator to determine who may be admitted and who may continue to reside in the residence, including criteria related to the resident's care needs and compliance with reasonable rules of the residence.*
- m. *Procedures and standards for termination of contract, discharge and transfer to another dwelling or facility.*
- n. *Billing and payment procedures and requirements.*
- o. *Procedures in the event the resident, resident's representative or resident's legal representative are no longer able to pay for services provided for in the resident agreement or for additional services or care needed by the resident.*
- p. *Terms governing the refund of any previously paid fees or charges in the event of a resident's discharge from the assisted living residence or termination of the resident agreement.*

Regulatory Notice Requirements – Admission Agreements

Adult Home Base Licensure

18 NYCRR § 488.5(a)(3)(xix) allows residents to object if their Admission or Residency Agreement is terminated against their will and requires the operator to provide instructions for formalization of the objection if requested by the resident.

18 NYCRR § 487.5(d)(6) outlines the minimum expectations of the Admission or Residency Agreement's composition, including at 487.5(d)(6)(xvi)(a-c) which codifies the requirements for thirty days' written notice of termination served to the resident, the resident's next of kin, and the responsible party as designated in the Admission Agreement that specifies the grounds for termination, date of discharge, and rights of objection and contest; the provision of a list of free local legal services and advocacy resources including the local social services district; and obtain prior court approval if the resident objects to the involuntary termination.

Enriched Housing Program Base Licensure

18 NYCRR § 488.5(a)(3)(xix) allows residents to object if their Admission or Residency Agreement is terminated against their will and requires the operator to provide instructions for formalization of the objection if requested by the resident.

18 NYCRR § 488.5(c)(7) outlines the minimum expectations of the Admission or Residency Agreement's composition, including at § 488.5(c)(7)(xvi)(a-c) which codifies the requirements for thirty days' written notice of termination served to the resident, the resident's next of kin, and the responsible party as designated in the Admission Agreement that specifies the grounds for termination, date of discharge, and rights of objection and contest; the provision of a list of free local legal services and advocacy resources including the local social services district; and obtain prior court approval if the resident objects to the involuntary termination.

Social Services Law § 461-g: Termination of Admission Agreements

Various protections for residents are afforded in New York State law and associated regulations, including the right to remain in the facility unless a limited set of circumstances applies. Specifically, SSL § 461-g(1) states that *"No [adult care facility] which is subject to certification and supervision of the department shall terminate the admission agreement of any resident of such facility and involuntarily discharge [them] therefrom except for the following reasons -*

- a. *The need of the resident for continual medical or nursing care which the [adult care facility] cannot provide.*
- b. *Behavior of the resident which poses imminent risk of death or imminent risk of serious physical harm to such resident or any other person.*
- c. *Failure of the resident to make timely payment for all authorized charges, expenses and other assessments, if any, for services including use and occupancy of the premises, materials, equipment and food which the resident has agreed to pay pursuant to the resident's admission and services agreement.*
- d. *Repeated behavior of the resident which directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the facility.*
- e. *The facility has had its operating certificate limited, revoked or temporarily suspended pursuant to subdivision 4 of section 460-d of this article, or the operator has voluntarily surrendered the operating certificate for the facility to the Department.*
- f. *A receiver has been appointed pursuant to the provisions of section 461-f of this article and, as required by such section, is providing for the orderly transfer of all residents in the*

facility to other facilities or is making other provisions for the residents' continued safety and care.

Resident-Initiated Transfers and Discharges

Per 18 NYCRR §§ 487.5(f)(1) and 488.5(e)(1), it is the residents' right to terminate their Admission or Residency Agreement. When a resident or, if applicable, the resident's representative, initiates their transfer or discharge, it is indicative of the resident's intent to leave the facility. Such instances may be verbal or written, and in these instances, the resident's record must contain evidence of the resident's or resident representative's verbal or written notice of intent to leave the facility. However, a Notice of Discharge is not required in instances of mutual voluntary consent or in instances of documented resident-initiation. Please note the following:

- A resident's expression of a general desire or goal to return home or to the community, or elopement by a resident who is cognitively impaired, is not considered appropriate notice of intent to leave the facility.
- It is not permissible to discharge a resident based solely on their payer source, insurance changes, or a change to the facility's licensure or certification outside of those afforded at SSL §§ 461-g(1)(e),(f).
- If the resident did not specifically request the discharge and/or the discharge is not in alignment with the resident's admission and desired outcomes, then the discharge is considered facility-initiated.

Facility-Initiated Transfers and Discharges

For clarity, a facility-initiated discharge is one that the resident objects to, did not originate through their verbal or written request, and/or is not in alignment with the resident's stated person-centered goals for care or preferences.

- In situations where the facility has decided to discharge the resident while the resident is hospitalized or for reasons of health and safety or has been transferred without notice, the facility must hand-deliver a Notice of Discharge to the resident and resident representative, if applicable, at the location to which they were removed.

Be reminded that statute and regulation limit the circumstances under which a facility may initiate a transfer or discharge, thus protecting residents from involuntary transfers or discharges. Accordingly, the Department strongly encourages adult care facility administrators familiarize themselves with the terms of 18 NYCRR §§ 487.5(f) and 488.5(e) which outline the expectations of residency termination for adult homes and enriched housing programs, respectively. The following table illustrates minimum requirements the facility must demonstrate when one of the referenced statutory and regulatory circumstances apply. Please note that this table is not intended to be all-inclusive as each circumstance is unique.

Statutory Circumstance	Regulatory Circumstance	Minimal Compliance Standard
SSL § 461-g(1)(a)	18 NYCRR §§ 487.5(f)(14)(i), 488.5(e)(3)(i-ii)	The resident's record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge.

Statutory Circumstance	Regulatory Circumstance	Minimal Compliance Standard
		<p>The resident's physician must document the basis for transfer or discharge. At minimum the documentation made by the resident's physician must include:</p> <ul style="list-style-type: none"> • The specific resident needs the facility could not meet; • The facility's efforts to meet those needs; and • The specific services the receiving facility will provide to meet the needs of the resident that cannot be met at the current facility.
SSL § 461-g(1)(b)	18 NYCRR §§ 487.5(f)(14)(ii), 488.5(e)(3)(iii)	<p>The resident's record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge.</p> <p>The resident's physician must document the basis for transfer or discharge.</p>
SSL § 461-g(1)(c)	18 NYCRR §§ 487.5(f)(14)(iii), 488.5(e)(3)(iv)	<p>The resident's record must substantiate the basis for the transfer or discharge. Accordingly, such documentation must be made before or as close as possible to the actual time of transfer or discharge.</p>
SSL § 461-g(1)(d)	18 NYCRR §§ 487.5(f)(14)(iv), 488.5(e)(3)(v)	
SSL § 461-g(1)(e)	18 NYCRR §§ 487.5(f)(14)(v), 488.5(e)(3)(vi)	
SSL § 461-g(1)(f)	18 NYCRR §§ 487.5(f)(14)(vi), 488.5(e)(3)(vii)	

As a reminder, facilities are required to determine their capacity and ability to care for the residents they admit and should not admit residents whose needs they cannot meet based on the facility's assessment. Accordingly, absent atypical changes of a resident's condition, it is considered rare for a facility that properly assessed their capacity and ability to care for a resident to then discharge the same resident on the basis that the facility is unable to meet the resident's needs.

Notice Requirements

When a transfer or discharge is not resident-initiated, a 30-day Notice of Termination and associated rights and protections afforded under SSL and applicable governing regulation are required. Be reminded that:

- The Department provides a regulatory-compliant Notice of Termination, [DOH-5237](#). At the request of the adult care facility industry, it is not yet considered a prescribed form. Accordingly, many facilities have adapted the form's content and issue a facility-specific Notice. The Department will continue to review facilities' Notices of Termination to ensure their compliance and generate citations where applicable.

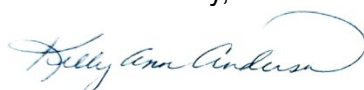
- Residents and/or resident representatives who receive a Notice of Termination must be provided a copy of the list of legal and advocacy services for the county in which the facility is located and all contiguous counties. A Guide of Community Resources Providing Resident Advocacy Services, updated annually, can be found at https://health.ny.gov/facilities/adult_care/resources.htm.
- A copy of the completed 30-Day Notice of Termination must be provided to the applicable Regional Office of the Department within five (5) days of the notice being served upon the resident. For ease, Regional Office email addresses follow:

<u>Region</u>	<u>Mailbox</u>
Capital District	acfcdro@health.ny.gov
Central	syradulthomes@health.ny.gov
Western	acfwro@health.ny.gov
Metropolitan	acfmaro@health.ny.gov

- The resident has the right to object to the termination of their agreement and the subsequent discharge and if the resident does object, they may remain in the facility while the operator commences a special proceeding consistent with New York State SSL § 461-h, pending the court's decision.
- Transfer of a resident without Notice of Termination is not a termination of the Admission or Residency Agreement and does not relieve the operator from the requirement of proceeding, after the removal of the resident, to meet the prescribed requirements for service of termination as outlined within Social Services Law § 461-g.

If you have any questions regarding this correspondence, please email acfinfo@health.ny.gov or contact the appropriate Regional Office of the Department.

Sincerely,



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and Assisted Living Surveillance

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