18 NY ADC 485.1

18 NYCRR 485.1

18 N.Y. Comp. Codes R. & Regs. 485.1

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* Section 485.1.* Applicability.

(a) This Part shall apply, except as may be otherwise limited, to adult-care facilities as defined herein. If any provision of this Part or of Part 486, 487, 488, 490, 492, 493 or 494 of this Title or any portion thereof is held invalid, the remaining sections shall not be affected by such holding and shall remain in full force and effect.

(b) This Part shall not apply to State institutions for the education and support of the blind, the deaf and the dumb, facilities subject to the approval, visitation and inspection of the State Department of Mental Hygiene or the State Commission of Correction, facilities operated by or under the supervision of the Division for Youth or facilities subject to the supervision of the Department of Health pursuant to article 28 of the Public Health Law, nor to any housing projects established pursuant to the Private Housing Finance Law, the Public Housing Law, the former Membership Corporations Law or the Not-for-Profit Corporation Law, except for those distinct programs operated by such projects which provide supervision or personal care and which are approved or certified by the department.

(c) Any person, partnership, corporation, organization, agency, governmental unit or other entity which operates an adult-care facility is subject to the jurisdiction of the department and must comply with these regulations or cease operation.

(d) Any action to establish, operate, expand or modify an adult-care facility shall be subject to the approval of the department. No adult-care facility shall be operated unless and until the operator obtains the certification of the department.

18 NY ADC 485.2

18 NYCRR 485.2

18 N.Y. Comp. Codes R. & Regs. 485.2

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* Section 485.2.* Definitions.

(a) Adult-care facility shall mean a family-type home for adults, a shelter for adults, a residence for adults or an adult home, which provides temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to article 28 of the Public Health Law or articles 19, 23, 29 and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

(b) Adult home shall mean an adult-care facility 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.

(c) Enriched housing program shall mean an adult-care facility 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 program shall provide or arrange the provision of room, and provide board, housekeeping, personal care and supervision.

(d) Residence for adults means an adult-care facility established and operated for the purposes of providing long-term residential care, room, board, housekeeping, case management, activities and supervision to five or more adults, unrelated to the operator, who are unable or substantially unable to live independently.

(e) Shelter for adults shall mean an adult-care facility established and operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and, where required by the department or otherwise deemed necessary by the operator, social rehabilitation services, for adults in need of temporary accommodations, supervision and services. Such definition shall not include facilities providing such temporary residential services to fewer than 20 persons, unless such facility is operated by a social services district.

(f) Family-type home for adults shall mean an adult-care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, supervision and/ or personal care to four or fewer adults unrelated to the operator.

(g) Unrelated to the operator of a family-type home shall mean that the relationship between the operator and the resident is not that of spouse, parent or parent-in-law, child or stepchild.

(h) Public home means an adult home, shelter for adults or residence for adults operated by a social services district.

(i) Private proprietary adult-care facility shall mean an adult-care facility which is operated for compensation and profit.

(j) An operator shall include any natural person or entity which provides or purports to provide residential care and services in an adult-care facility.

(k) Operating certificate shall mean a time-limited, nontransferable document issued by the department to signify approval to operate an adult-care facility.

(l) Application shall mean the process of submitting prescribed data and information to the department for an operating certificate for a proposed facility, or for the modification or renewal of the operating certificate of an existing facility.

(m) Certification shall mean the issuance of an operating certificate by the department, following appropriate review and such site visits as may be necessary, authorizing an operator to operate an adult-care facility.

(n) Determination of public need is the process by which the department, in consultation with appropriate State and local planning agencies, determines whether there is a need for more adult-care facility beds in a prescribed geographic area.

(o) Prescribed geographic area shall mean the county in which the proposed program is located, unless:

(1) the department determines that another geographic area is more appropriate because an applicant proposes to serve a special, ethnic or religious population, or because of population density, adult-care facility distribution or service availability; or

(2) the applicant demonstrates, to the satisfaction of the department, that another geographic area defining the service area is more appropriate.

(p) Department shall mean the New York State Department of Social Services.

(q) Commissioner shall mean the Commissioner of the New York State Department of Social Services.

(1) Services for nonresidents in adult homes, residences for adults and enriched housing programs means an organized program of services which an operator of an adult home, residence for adults or enriched housing program is authorized to provide to residents of such facilities but which are provided to nonresidents who are aged or disabled for the purpose of enabling such persons to remain in or return to the community. Such services may include an organized day program, temporary residential care, or other services the facility is authorized to provide.

(2) Eligible nonresident participant means a person 18 years of age or older who is not a resident of an adult home, residence for adults or enriched housing program and who, by reason of social, physical, and/or mental dependencies, requires nonresident services provided by such facilities or programs in order to remain in or return to the community.

(3) Day program means an organized program for nonresidents of adult homes, residences for adults or enriched housing programs which includes personal care, supervision and such other services which the operator is authorized to provide to residents of such facilities but which are provided for less than 24 hours during any period of the day or night.

(4) Temporary residential care means the provision of care to frail or disabled adults on behalf of or in the absence of the person's caregiver for up to six weeks in any 12-month period, in an adult home, residence for adults or enriched housing program. Care includes those services that the

adult home, residence for adults or enriched housing program is authorized to provide to residents of such facilities.

(s) Assisted living program means an entity which is approved to operate pursuant to section 485.6(n) of this Part, and which is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five or more eligible adults unrelated to the operator.

18 NY ADC 485.3

18 NYCRR 485.3

18 N.Y. Comp. Codes R. & Regs. 485.3

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* Section 485.3.* Responsibility of government agencies.

(a) The commissioner, acting directly or through local social services districts, and with the cooperation of other State agencies, shall have the authority and responsibility to:

(1) promote the development of sufficient and appropriate residential care programs for dependent adults;

(2) prescribe and promulgate regulations, standards, policies and procedures governing the establishment and operation of adult-care facilities which assure the protection of the health, safety and well-being of the residents in the least restrictive environment available and which provide residents with the opportunity for maximum privacy, personal development and independence;

(3) authorize, through the issuance of operating certificates, qualified operators to establish and operate adult-care facilities;

(4) approve, prior to endorsement by a justice of the Supreme Court and filing with the Secretary of State, certificates of incorporation or amendments thereto of not-for-profit corporations which have among their purposes the establishment and operation, or fundraising for the eventual establishment and operation, of any adult-care facility subject to the jurisdiction of the department; and

(5) administer a system of supervision, inspection and enforcement for adult-care facilities which

assures compliance with regulations and the maintenance of standards of care.

(b) The Offices of the Department of Mental Hygiene:

(1) shall join with the department in the inspection of any adult-care facility, other than family-type homes for adults, which cares for a significant number of mentally disabled persons, and may, by mutual agreement with the department, participate when the number of mentally disabled persons is less than significant or where the inspection and supervision of family-type homes for adults is involved; and

(2) may propose additional standards to protect the health, safety and well- being of mentally disabled persons. Such standards may, with the approval of the department, be adopted and promulgated as regulations by the department and shall apply to adult-care facilities which care for a significant number of mentally disabled persons.

(3) For purposes of this Chapter, an adult-care facility is considered to have a significant number of mentally disabled persons when:

(i) for the purpose of joint inspections with an Office of the Department of Mental Hygiene, the resident population is composed of 25 percent or more persons released or discharged from any facility operated or certified by an Office of the Department of Mental Hygiene; or

(ii) for the purpose of requiring a written agreement between an operator and a mental health service provider, 25 percent or more of the resident population or 25 residents, whichever is less, have been released or discharged from any facility operated or certified by an Office of the Department of Mental Hygiene.

(c) Local social services districts.

(c) The commissioner has delegated responsibility for the inspection and supervision of family-type homes for adults to the commissioner of the local social services district in which the facility is located. The commissioner of the local social services district shall perform such duties and make such reports regarding these facilities as are prescribed by the department.

(d) For the purposes of the assisted living program, the Department of Health will:

(1) propose and, with the approval of the department, promulgate any standards deemed necessary to implement the assisted living program; and

(2) coordinate surveillance and enforcement efforts with the department.

18 NY ADC 485.3
18 NY ADC 485.3
2008 WL 75310981
18 NY ADC 485.3

END OF DOCUMENT

18 NY ADC 485.4

18 NYCRR 485.4

18 N.Y. Comp. Codes R. & Regs. 485.4

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* Section 485.4.* Certificates of incorporation.

(a) Any proposed or existing not-for-profit corporation desiring to file or amend a certificate of incorporation for the purpose of establishing and operating, or for the purpose of fundraising for the eventual establishment and operation of, an adult-care facility shall, prior to the endorsement of such certificate by a justice of the Supreme Court and filing with the Secretary of State, secure the written approval of the commissioner.

(b) In no event shall any existing corporation or other entity hold itself out as being authorized to operate or to raise funds for operation of a facility subject to the approval of the department without having secured the prior written approval of the department.

(c) A request for approval of a certificate of incorporation or amendment thereto for the purpose of establishing and operating an adult-care facility shall be submitted to the department in accord with the application procedures set forth in this Part.

(d) A request for approval of a certificate of incorporation or amendment thereto for the purpose of soliciting funds for the eventual establishment and operation of an adult-care facility shall contain such information as may be required to determine that the not-for-profit corporation has the competency to develop and operate a facility in compliance with applicable law and regulations, and would be successful in raising funds necessary to establish the proposed facility within a period of not more than five years from the date of the department's approval.

(e) The board of directors of a not-for-profit corporation shall have a minimum of seven members.

(f) No officer of the board of directors of a not-for-profit corporation may be, either at the time of application or thereafter, the chief administrative officer, executive director, administrator, or an employee responsible for any financial operation of the facility or program.

(g) A request from a proposed or existing not-for-profit corporation for approval of a certificate of incorporation, or amendment thereto, for the purpose of soliciting funds for the eventual establishment and operation of an adult-care facility, shall include:

(1) the certificate of incorporation and amendments thereto;

(2) a description of the governing structure of the proposed organization, including any governing boards and advisory committees;

(3) an applicant profile for each member of the board of directors and the executive director or chief administrative officer, if any;

(4) a description of the type of facility, the anticipated location, capacity, population and services;

(5) evidence of a public need for the proposed facility;

(6) statements of support from local governing bodies, elected officials, community service organizations and others potentially affected by the establishment of the proposed facility;

(7) statement of assets and liabilities, sources and amounts of working capital, loan commitments including purpose, source, type and amount), anticipated revenues and expenses for the initial and second year;

(8) evidence that actual or potential financial resources for the establishment and operation exist and can be reasonably expected to be successfully raised within a period of not more than five years from the date of the department's approval;

(9) names and locations of each and every facility licensed by the department, the Department of Mental Hygiene pursuant to articles 19, 23 and 31 of the Mental Hygiene Law, or the Department of Health pursuant to article 28 of the Public Health Law, with which the applicant(s) is, or has been within the past 10 years an administrator, employee, incorporator, director, operator, sponsor, principal stockholder or owner; and

(10) signed authorization allowing the commissioner or designees or agents to undertake such investigations as may be necessary to ascertain the validity of state ments represented to the department or to ascertain from independent sources the character, competence and standing in the community of the applicant.

(1) The department shall approve or disapprove a certificate of incorporation, or amendment to an existing certificate, by either endorsement or by notice of disapproval. A certificate of incorporation not acted upon within 60 days of the receipt of all required information and documentation shall be deemed to be disapproved.

(2) Any notice of disapproval shall be in writing and shall include the reasons for disapproval.

18 NY ADC 485.4
18 NY ADC 485.4
2008 WL 75310982
18 NY ADC 485.4

END OF DOCUMENT

18 NY ADC 485.5

18 NYCRR 485.5

18 N.Y. Comp. Codes R. & Regs. 485.5

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* Section 485.5.* Operating certificates.

(a) Only a natural person or partnership composed only of natural persons, a not-for-profit corporation, a public corporation, a social services district or other governmental agency may be issued an operating certificate by the department for the purpose of operating an adult care facility. Family-type homes for adults may be issued an operating certificate only if the operator is a natural person or persons. Enriched housing programs may be issued an operating certificate only if the operator is a public agency, public corporation or a not-for-profit corporation.

(b) An operating certificate for an adult care facility shall:

(1) specify the name and location of the facility, the name of the operator, the type of facility and services to be provided, the capacity of the facility, any conditions or limitations and the duration of the certificate;

(2) be nontransferable; and

(3) remain the property of the department.

(c) An operating certificate shall not be issued for a period in excess of four years. The department may issue an operating certificate for a period of less than four years.

(d) No facility shall be operated other than in accord with the terms and conditions of the operating certificate and the regulations of this Title pertaining to the specified type of facility.

(e) No operator shall, for purposes of advertisement, represent the facility by any designation or terminology other than that which is contained on the operating certificate.

(f) No operator shall change or modify a facility, or the services originally approved and stipulated by the operating certificate, without the prior written approval of the department.

(g) An operator shall not, without the prior written approval of the department:

(1) transfer responsibility for operation of the facility to another person or entity; or

(2) change the composition of a partnership.

(h) An operator of a not-for-profit corporation must annually provide to the department in writing the names and addresses of the current members of the board of directors.

(i) No person, corporation, home, institution, hotel or other residential facility or accommodation, other than a facility or agency which possesses a valid operating certificate, as required under the provisions of this Title, the Mental Hygiene Law or Public Health Law, shall hold itself out, advertise, or otherwise in any form or manner represent that it is a facility offering accommodations and services for dependent, aged or disabled adults.

(j) In the event that an operator elects to close a facility and to surrender an operating certificate:

(1) The operator shall notify the appropriate regional office of the department in writing at least 120 days prior to the anticipated date of closure.

(2) Such written notice shall include a proposed plan for closure. The plan shall be subject to department approval and shall include timetables and shall describe the procedures and actions the operator will take to:

(i) notify residents of the closure, including provisions for termination of admission agreements and involuntary discharge;

(ii) assess the needs and preferences of individual residents;

(iii) assist residents in locating and transferring to appropriate alternative settings; and

(iv) maintain compliance with these regulations until all residents have relocated.

(3) The operator shall take no action to close the facility prior to department approval of the plan for closure.

(4) The operator shall implement the approved plan to insure that arrangements for continued care which meets each resident's social, emotional and health needs are effectuated prior to closure.

(5) Failure to notify the department of intent to cease operations, failure to submit an approvable plan, to execute the approved plan, or closure before all residents have been appropriately relocated, may result in the imposition of civil penalties.

(k) In the event of the death of the operator of a private proprietary adult care facility, the department may give approval to a plan submitted by the remaining partners, the operator's spouse or executor for the continued operation of the facility, on a temporary basis, under the outstanding operating certificate. Such plan shall be submitted within 30 days of the death of the operator and shall include notice of intent from the remaining partners, spouse or another applicant to file an application for a new operating certificate and a proposed timetable for application or a plan for closing the facility. The proposed timetable for application shall not exceed 90 days unless the

applicant can demonstrate that extension is necessary. Approval under this subdivision to operate the facility shall continue only while the facility is in compliance with regulations.

(l) The operating certificate of any facility may be revoked, suspended, limited or an application for renewal denied upon a determination by the department that the operator has failed to comply with these regulations or the requirements of State or local laws or regulations applicable to the operation of the facility. Parts 486 and 343 of this Title shall apply.

(m) The department may revoke, suspend, modify, or limit an operating certificate of a shelter for adults, residence for adults or adult home upon determining that:

(1) such action would be in the public interest because:

(i) in the case of revocation, suspension or limitation, such action would conserve resources by restricting the number of beds, or the level of services, or both, to those beds or services which are actually needed, after taking into consideration the total number of beds necessary to meet the public need, and the availability of facilities or services such as ambulatory, home care or other services which may serve as alternatives or substitutes for the services provided by a shelter for adults, residence for adults or adult home; and

(ii) in the case of modification, the level of care and the nature and type of services provided by a facility or required by all or some of the individuals seeking admission to such facility or required by all or some of the residents of such a facility, is inconsistent with the operating certificate of the facility.

(2) Whenever the department proposes to revoke, suspend, modify or limit an operating certificate with respect to any particular facility based upon any of the factors set forth in paragraph (1) of this subdivision, the department must publish in a newspaper of general circulation in the geographic area of the facility at least 30 days prior to making such a determination an announcement that such a determination is under consideration and an address to which interested persons can write to make their views known. The facility may request a public hearing, to be held in the county in which the facility is located, to discuss the department's proposed action. The department must take all public comments into consideration in making its determination.

(3) The department must, upon making a determination described in this subdivision with respect to any facility, notify such facility of the determination at least 30 days in advance of taking the proposed action to revoke, suspend, modify or limit the facility's operating certificate. The department must schedule an administrative hearing to provide the facility with an opportunity to contest the department's determination. In no event will the revocation, suspension, modification or limitation take effect prior to the 30th day after the date of the notice or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

(n) The operating certificate of any facility shall be revoked, suspended or limited if an operator is:

(1) unable, by reason of loss of access or loss of right of possession to a facility, to continue to operate as certified;

(2) unable, by reason of catastrophe such as fire or flood, to operate as certified for a period in excess of 60 days.

(o) The operating certificate of any facility shall be revoked, suspended, limited, or an application for an operating certificate denied, if an individual operator, or a member of the board of directors, the executive director or chief administrative officer of a not-for-profit operator is or has been within 10 years:

(1) convicted of a class A, B or C felony;

(2) convicted, in another state or in Federal court, of a crime which would, if committed in New York State, be considered a class A, B or C felony; or

(3) convicted of a felony or class A misdemeanor related to the provision of care for dependent adults or children.

(p) Notwithstanding subdivision (n) of this section, revocation, suspension or limitation of an operating certificate or denial of an application shall not be automatic if the individual holds a valid certificate of relief from disabilities issued in accord with the State Correction Law. Any decision to take action to deny, revoke, suspend or limit a certificate in such instances shall be based on consideration of the following factors:

(1) the bearing the criminal offense or offenses for which the individual was previously convicted will have on his fitness to perform related duties or responsibilities;

(2) the time which has elapsed since the occurrence of the criminal offense;

(3) the age of the individual at the time of the occurrence of the criminal offense;

(4) the seriousness of the offense;

(5) any information produced by the individual to demonstrate rehabilitation and good conduct; and

(6) the interest of the department in protecting the safety and welfare of residents or potential residents of adult care facilities.

(q) Any operating certificate issued by the commissioner to the operator of an adult care facility shall remain the property of the department and upon voluntary or involuntary closure shall be surrendered to the department by personal delivery to a designated representative or by certified or registered mail.

(r) Continuation of facility operation after revocation, suspension or limitation of an operating certificate shall be the basis for imposition of sanctions in accordance with Part 486 of this Title.

18 NY ADC 485.5
18 NY ADC 485.5
2008 WL 75310983
18 NY ADC 485.5

END OF DOCUMENT

18 NY ADC 485.6

18 NYCRR 485.6
18 N.Y. Comp. Codes R. & Regs. 485.6

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* Section 485.6.* Application.

(a) Approval to operate an adult care facility shall be granted only to an operator who satisfactorily demonstrates and documents, on forms and in a manner prescribed by the department, that:

(1) The operator:

(i) is of good moral character and standing in the community;

(ii) has the competence to effectively operate the proposed program;

(iii) has developed a facility and program of operation which is in compliance with applicable law and regulations; and

(iv) possesses sufficient financial resources to successfully establish and operate the proposed program; and

(2) There exists a public need for the establishment and operation of the proposed facility.

(3) If more than one applicant proposes to establish an adult care facility in the same prescribed geographic area or to serve the same population, approval shall not be based solely on the date of application. The department will compare such factors as demonstrated competence, financial feasibility, the adequacy of the proposed program of care and services and the responsiveness of the application to the public need.

(4) A public hearing may be held by the department at its discretion to solicit comments and recommendations regarding the proposed adult home.

(b) Character and competence.

(1) Determination of the adequacy of the applicant's character, competence and standing in the community of the proposed program, shall be made on assessment and verification of the information submitted by the applicant or solicited from other sources by the department, and shall be based upon such factors as financial status, education, experience, past or current performance in the management and operation of adult care facilities or like services to dependent adults; past business associations; letters of personal recommendation; information acquired through credit review, review of related public documents, public comment, or collateral contacts.

(2) If an applicant is, or within the past 10 years has been, an incorporator, director, operator, sponsor or principal stockholder of an adult-care facility, a facility certified by the Department of Mental Hygiene or a residential health care facility certified by the Department of Health, approval will be granted only if the department affirmatively finds that a substantially consistent high level of care is being or was being rendered in each such facility with which the applicant is or was affiliated. There may be a finding that a substantially consistent high level of care has been rendered where there have been violations of applicable rules and regulations that did not threaten to directly affect the health, safety or welfare of the patient or resident and were promptly corrected and not recurrent.

(c) Public need.

(1) In determining whether there is a public need for adult home beds, the department must consider the following:

(i) the number of certified and occupied adult home beds per 1,000 population 65 years of age or older in the area to be served, as compared to the statewide average of the number of such beds per 1,000 population;

(ii) the number of persons 65 years of age or older residing in the area to be served, and the number of persons in receipt of SSI residing in adult homes in the area to be served, as compared to statewide averages for each;

(iii) the percent of certified adult home beds that are occupied in the area to be served, as compared to the statewide average of occupied adult home beds;

(iv) the number of persons awaiting placement into certified adult homes in the area to be served, as determined by the department;

(v) recommendations from the social services district and the local office for the aging in the area to be served and a recommendation, if available, from the regional health systems agency in the area to be served;

(vi) the availability of alternatives to adult homes, including certified family-type homes for adults and home care services in the area to be served; and

(vii) the number of certified beds per 1,000 population 65 years of age or older in the counties that are contiguous to the county in which the proposed adult home would be located, and the number of persons from contiguous counties who have moved into adult homes in the county in which the proposed adult home would be located and the number of persons who have moved from the county in which the proposed adult home would be located into adult homes in contiguous counties; and

(viii) such other information as the department may deem appropriate.

(2) In determining whether there is a public need for residence for adults beds, the department must consider the following:

(i) the number of certified residence for adults beds per 1,000 population 18 years of age or older in the area to be served, as compared to the statewide average of the number of such beds per 1,000 population;

(ii) the number of certified adult home beds occupied by persons who were discharged from psychiatric institutions per 1,000 population 18 years of age or older in the area to be served, as compared to the statewide average of the number of such beds per 1,000 population;

(iii) the availability of alternatives to residences for adults, including housing certified by the Office of Mental Health in the area to be served;

(iv) the projected need for beds for mentally disabled persons in the area to be served, as estimated by the Office of Mental Health;

(v) recommendations from the social services district and the local governmental unit designated pursuant to section 41.05 of the Mental Hygiene Law in the area to be served; and

(vi) such other information as the department may deem appropriate.

(3) The department may deny an application solely on the basis of a determination of lack of public need in advance of its consideration of any other certification criteria, including, but not limited to, the applicant's character and competence, architectural proposal, financial resources and the financial feasibility of the proposal, without waiving its right to consider such criteria at a later date.

(i) If the department denies an application solely on the basis of lack of public need and the applicant requests an administrative hearing to review that denial, the department, at its discretion, may review the other certification criteria required by this section and include the results as grounds for the denial to be considered at the administrative hearing.

(ii) Notice of any other grounds for the denial shall be mailed to the applicant at least 30 days prior to the date set for the administrative hearing.

(4) Without consideration of public need, the department may approve up to nine additional beds in any adult home or residence for adults in any five-year period.

(5) The following types of situations are excluded from determination of public need:

(i) applications related exclusively to a change of operator;

(ii) applications from the operator of a family-care home established under the Mental Hygiene Law and in operation prior to September 1, 1975;

(iii) application from a social services official to establish a public home;

(iv) construction or renovation designed to replace, on a bed-for-bed basis, an existing adult-care facility or part thereof for which the applicant holds a valid operating certificate. Such replacement shall be limited to the certified capacity of the existing facility and to the prescribed geographic area in which the existing facility was originally certified.

(d) The applicant shall submit part I of an application, which shall include:

(1) the type, name, exact location and proposed capacity of the facility;

(2) unless otherwise excluded by paragraph (c)(5) of this section, documentation of an unmet public need for the proposed facility, including but not limited to:

(i) demographic data on the proposed resident population-at-risk;

(ii) numbers of persons awaiting placement in other like adult care facilities;

(iii) location, capacity and occupancy of existing residential facilities and alternative services in the community;

(3) statements of support from local governing bodies, elected officials, community service organizations and others potentially affected by construction or expansion of the facility;

(4) in the case of a not-for-profit corporation, the certificate of incorporation and amendments thereto;

(5) in the case of a partnership, a copy of the partnership agreement;

(6) a description of the governing structure of the proposed organization, including any governing boards and advisory committees;

(7) an applicant profile for each individual or partner and for the officers of the board of directors and, if applicable, the executive director or chief administrative officer of a not-for-profit corporation;

(8) three current letters of reference from nonrelated individuals qualified to assess the applicant's ability to successfully operate a facility for each individual partner and for the officers of the board of directors of a not-for-profit corporation;

(9) documentation of education, training and experience that have prepared the applicant(s) to operate the proposed facility;

(10) statement of assets and liabilities, sources and amounts of working capital, loan commitments (including purpose, source, type and amount), lease agreements, anticipated revenues and expenses by operating division for the start-up, initial and second year of operation and other evidence that actual financial resources exist or can be successfully acquired to:

(i) successfully establish the proposed facility within the time periods set by the department;

(ii) insure financial viability for the period of the initial operating certificate; and

(iii) operate the facility in compliance with applicable law and regulations;

(11) a statement of real property ownership information, which shall include:

(i) the name and address and a description of the interest held by each of the following persons:

(a) any person who, directly or indirectly, beneficially owns any interest in the land on which the facility is located;

(b) any person who, directly or indirectly, beneficially owns any interest in the building in which the facility is located;

(c) any person who, directly or indirectly, beneficially owns any interest in any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which, or building in which, the facility is located; and

(d) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sublease of the land on which, or the building in which, the facility is located;

(ii) if any person named in response to subparagraph (i) of this paragraph is a partnership, then the name and address of each partner;

(iii) if any person named in response to subparagraph (i) of this paragraph is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, stockholder and, if known, each principal stockholder and controlling person of such corporation;

(iv) if any corporation named in response to subparagraph (i) of this paragraph is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation;

(v) for the purpose of this paragraph, the term controlling person shall mean any person who by reason of a

direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position. The term principal stockholder shall mean any person who beneficially owns, holds or has the power to vote, 10 percent or more of any class of securities issued by said corporation;

(12) copies of all lease and purchase agreements;

(13) a signed agreement between an enriched housing operator and building manager if the applicant does not own or control the building in which the enriched housing program is to be located. This agreement shall outline the terms by which the enriched housing program will operate within the building and shall contain, but not be limited to, a statement from the building management which:

(i) grants approval for the enriched housing program to operate within the building;

(ii) delineates the building space to be available to the operator;

(iii) describes the services to be provided by the building management; and

(iv) provides for six months' minimum notice of termination of the agreement by either party;

(14) names and locations of each and every facility licensed by the department, the Department of Mental Hygiene pursuant to articles 19, 23 and 31 of the Mental Hygiene Law, the Department of Health pursuant to article 28 of the Public Health Law, or of any facility which, if located in New York State, would require such licensure with which the applicant(s) is, or has been within the past 10 years, an operator, administrator, employee, incorporator, director, sponsor, principal stockholder or owner;

(15) a description of the kinds of services to be provided to the proposed resident population;

(16) a description of the availability of existing:

(i) recreational, social, volunteer, religious and other community support services;

(ii) safety services, such as police and fire protection;

(iii) health, mental health and social support services;

(17) a preliminary staffing plan;

(18) a physical description of the facility, including land, buildings and equipment;

(19) if new construction, renovation or alteration is planned, architectural plans and specifications sufficient to determine financial feasibility and compliance with physical plant requirements;

(20) documentation of compliance with applicable local ordinances;

(21) signed authorization allowing the commissioner, his/her designees or agents, to undertake such investigations as may be necessary to ascertain the validity of statements represented to the department or to ascertain from independent sources the character, competence and standing in the community of the applicant.

(e) The department shall make a determination on a request for part I approval within 90 days of receipt of all required information from the operator and all required recommendations and information from local or State agencies or other sources. The operator shall be given written notice of the decision of the department, and advised of the availability of an administrative review in the event of an unfavorable determination.

(f) Within 90 days of notice of approval for part I, the applicant shall submit, on forms and in a manner prescribed by the department, the following part II information:

(1) The applicant for an adult home or residence for adults shall submit:

(i) a plan for administration, including personnel policies and procedures, job descriptions, staff orientation and in-service training, planned staffing schedules;

(ii) the job descriptions and, prior to employment, the qualifications for the administrator and, if applicable, case manager and activities director;

(iii) a description of the proposed resident services program, including all services the applicant proposes to provide, admission and discharge policies, admission agreement, a statement of resident rules, and resident record forms including personal allowance records and procedures;

(iv) a description of provision for special services if mentally disabled, physically handicapped persons or persons with other special needs will be admitted to or are in residence in the facility. This plan shall include specifications of special activities and operating practices, adaptation of supervision, personal care and other services, and evidence of cooperation and coordination with other persons and agencies providing services to such residents;

(v) a disaster and emergency plan;

(vi) a description of food services, including the kitchen and dining layout, equipment, the service system and proposed menus;

(vii) a housekeeping plan;

(viii) a maintenance plan; and

(ix) a plan for use of volunteers if volunteers are to be used in the facility.

(2) The applicant for a shelter for adults shall provide the following information to the department:

(i) a plan for administration, including personnel policies and procedures, staffing schedules, admission and discharge policies, and a statement of resident rules;

(ii) a statement of qualifications of the administrator;

(iii) a description of resident services;

(iv) a disaster and emergency plan;

(v) a description of food services, including a kitchen layout, equipment and food service system; and

(vi) a plan for the volunteers, if volunteers are to be used in the facility.

(3) If applicable, complete architectural plans and specifications for any planned construction, renovation or alteration.

(g) Within 90 days of notice of approval of part II of an application which involves no construction or renovation, and at least 30 days prior to anticipated occupancy, the applicant shall request a final facility inspection. Such inspection shall not be conducted until requested modifications or changes have been made; the qualifications of the proposed administrator and, if applicable, case manager and activities director, have been submitted and approved; actual staffing schedules and hiring is complete; and the applicant can provide, at the time of inspection, written documentation of compliance with local codes and ordinances.

(h) For an application which involves construction or renovation, the applicant shall:

(1) within 90 days of the notice of approval of part II, notify the department, in writing, of the date such construction or renovation will start and of the anticipated completion date, which shall be within 18 months of the date of part II approval; and shall submit copies of all applicable construction or renovation contracts;

(2) submit a written report on the progress of the construction or renovation every 90 days;

(3) at least 30 days prior to anticipated occupancy, request a final architectural inspection. Such inspection shall not be conducted until all fire protection systems are installed and operational, and the applicant can provide written documentation of compliance with applicable local codes and ordinances;

(4) at least 30 days prior to anticipated occupancy, but following the architectural inspection, request a final facility inspection. Such inspection shall not be conducted until requested modifications or changes have been made; the qualifications of the proposed administrator and, if applicable, case manager and activities director, have been submitted and approved; actual staffing schedules and hiring is complete; and the applicant can provide, at the time of inspection, written documentation of compliance with local codes and ordinances.

(i) The department will notify the applicant in writing of the need for any required or supplemental information. If the applicant fails, at any point in the application process, to provide the information, or to complete construction or renovation or other required activities within the specified time period, the application may be denied for failure to proceed.

(j) An applicant may submit a written request for a 90-day extension of any of the specified timetables. Extension may be granted upon determination that:

(1) the need for extension is caused by circumstances beyond the applicant's control; and

(2) the need for extension is not caused by the applicant's inability to secure financing.

(k) Upon determination by the department that the proposed operator of a facility has satisfied all conditions specified in the application and that the facility meets and will be operated in compliance with department regulations, the department shall issue the operator an operating certificate.

(l) If during the review of any part of the application, the department determines that the applicant should not be granted approval, the department shall give written notice of disapproval which includes the reasons for disapproval.

(m) An applicant or operator may, in writing and in accordance with Part 343 of this Title, request administrative review of a decision by the department under this section.

(n) Assisted living program.

(1) Approval to operate an assisted living program will be granted only to an applicant which satisfactorily demonstrates and documents, on forms and in a manner prescribed by the department, that the applicant is:

(i) a natural person or partnership composed only of natural persons, a not-for-profit corporation, a public corporation, a social services district or other governmental agency which possesses or is eligible, pursuant to this Part, to apply for an adult care facility operating certificate; and

(ii) either an entity which possesses or is eligible, pursuant to Title 10 NYCRR, to apply for:

(a) licensure as a home care services agency;

(b) authorization as a long-term home health care program; or

(c) a certificate of approval as a certified home health agency.

(2) The applicant must comply with all requirements of this Part, Part 494, and with applicable sections of article 36 of the Public Health Law and Title 10 NYCRR.

(3) An applicant proposing to operate an assisted living program must submit an application to the department. The department will transmit a copy of the application and accompanying documents to the Department of Health.

(4) The commissioner, after consultation with the Commissioner of the Department of Health, will establish periods for the submission of assisted living program applications. Such application submission periods shall be based upon the public need for assisted living program beds, as determined by the Department of Health. If such public need is determined to exist, application submission periods shall be established at least annually. All applications received during each such period will be processed and reviewed comparatively in a group.

(5) In addition to the other requirements of this Part, the application must include:

(i) documentation of existing certification or application for certification as either an adult home or enriched housing program and either:

(a) documentation of existing licensure, or application for licensure, as a home care services agency; or

(b) documentation of existing certification or application for certification as a home health agency; or

(c) documentation of approval or application for approval as a long-term home health care program;

(ii) a copy of a proposed contract with a social services district in accordance with the requirements of section 494.4(h) of this Title;

(iii) if the applicant is not a long-term home health care program or certified home health agency, a copy of a proposed contract with a long-term home health care program or certified home health agency for the provision of services;

(iv) a detailed description of the proposed program including:

(a) the proposed number of residents to be served by the program;

(b) the location of the program;

(c) the target population to be served by the program;

(d) the budget for the program;

(e) the staffing plans for the program; and

(f) the operating standards and services to be provided by the program; and

(v) the anticipated date of operation for the program, or the anticipated number of days from issuance of department approval to program operation.

(6) In addition to the standards contained in other subdivisions of this section, applications to operate an assisted living program will be evaluated on the following criteria:

(i) the appropriateness of the proposed target population;

(ii) the extent to which the program will admit and retain individuals whose care is paid for at public expense;

(iii) the relation of the proposed program to the target population;

(iv) the proposed number of residents;

(v) the geographic location of the proposed program;

(vi) the geographic distribution of existing and proposed programs within a health systems agency region;

(vii) the public need for the assisted living program and the particular type of adult care facility and the particular type of home care program that the applicant intends to establish;

(viii) the extent to which the proposed program will increase the supply of existing adult home or enriched housing beds;

(ix) the character, competence and standing in the community of the applicant;

(x) the financial responsibility of the applicant;

(xi) the financial feasibility of the program;

(xii) the anticipated construction and operating costs;

(xiii) the anticipated date of operation of the program;

(xiv) a description of existing contracts, referral, or other service relationships with the social services districts;

(xv) a description of existing contracts, referral, or other service relationships with other providers or services in the community to serve the residents of the program; and

(xvi) the buildings, equipment, staff, standards of care and records of the adult care facility to be employed in the program must comply with applicable Federal, State and local laws, rules and regulations.

(7) Applications will be rated in accordance with the criteria in paragraph (6) of this subdivision and other requirements of this Part, with first consideration given to applications which:

(i) commit to the admission and retention of individuals eligible for or in receipt of supplemental security income, home relief or medical assistance;

(ii) will increase the supply of existing adult home or enriched housing beds; and

(iii) demonstrate the ability to commence service provision most quickly.

(8) An application for an assisted living program will not be approved unless the commissioner has determined:

(i) that there is a public need for the assisted living program and that the commissioner has received written notice of approval of public need for the assisted living program from the Commissioner of the Department of Health;

(ii) that the Commissioner of the Department of Health has provided written notice of the Department of Health's approval of:

(a) the applicant as either a licensed home care service agency, certified home health agency or long-term home health care program; and

(b) where applicable, the public health council; and

(iii) that the assisted living program will be operated in compliance with applicable Federal, State and local laws, rules and regulations.

(9) The commissioner or commissioner's designee must notify the applicant in writing of whether the application to establish and operate an assisted living program has been approved or disapproved, including, in the case of disapproval, the reason for disapproval. The written approval of the commissioner or commissioner's designee constitutes authorization to operate an assisted living program.

(10) An applicant for approval to operate an assisted living program who fails, neglects or refuses to submit documentation or information requested by the department, within 30 days or such longer period as may be specified by the department, will be deemed to have abandoned or withdrawn the application, and will receive written notice of the same from the department.

(11) An applicant for approval to operate an assisted living program who fails to submit complete or sufficient information or documentation within 30 days or such longer period as may be specified by the department will receive written notification that the application has been disapproved.

(12) Notwithstanding the provisions of subdivisions (h)(1) and (i) of this section, the failure, neglect or refusal of an applicant to complete construction or renovation and commence operation of an assisted living program within 18 months of issuance of approval of the application by the department constitutes an abandonment of the application and any such approval is deemed cancelled, withdrawn and annulled, unless an extension has been granted pursuant to paragraph (13) of this subdivision. The department will provide written notice of any such cancellation, withdrawal or annulment to the applicant.

(13) An applicant may submit a written request for a 90-day extension(s) of the timetable specified in paragraph (12) of this subdivision. Extension(s) may be granted upon a determination by the department that:

(i) the need for extension is caused by circumstances beyond the applicant's control; and

(ii) the need for extension is not caused by the applicant's inability to secure financing.

18 NY ADC 485.7

18 NYCRR 485.7

18 N.Y. Comp. Codes R. & Regs. 485.7

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* Section 485.7.* Renewal.

(a) The operator of a facility shall be required to submit an application for renewal of an operating certificate, on forms and in the manner prescribed by the department, no more than 90 nor less than 45 days prior to expiration of said certificate. Such application shall include appropriate financial data, any new contracts, leases or rental agreements and documentation that the facility is in compliance with applicable regulations, codes and ordinances.

(b) Renewal shall be dependent upon demonstration of the operator's continuing ability to operate the facility in compliance with department regulations.

(c) If application is made for renewal by an operator of a facility for which the department has issued a statement of charges, or by an operator who is or has been within the period of the prior operating certificate an incorporator, director, sponsor, principal stockholder or operator of any other adult-care facility, community residence or residential health-care facility for which enforcement action has been initiated for failure to meet the standards of that department or agency, the department may deny or withhold renewal until the operator submits documentation which affirmatively demonstrates that the operator is competent to continue operation of the facility for which renewal is sought.

(d) Failure to submit an application for renewal of an operating certificate within the time limits established by subdivision (a) of this section may constitute grounds for the imposition of civil penalties or for denial of that or any subsequent application for renewal.

(e) Failure to submit an application for renewal will be considered surrender of an operating certificate. The operator must submit a plan for closure as required by section 485.5(j) of this Part and must remain responsible for operating the facility in compliance with applicable department regulations until closure or transfer of all residents is accomplished.

(f) If the department determines that an application for renewal of an operating certificate should not be approved, or that an operating certificate should be limited or modified, the department must give notice to the operator. The operator may, in writing and in accordance with Part 343 of this Title, request administrative review of a decision by the department not to renew his or her operating certificate. The department must schedule an administrative hearing to provide an operator, whose certificate is to be limited or modified, with an opportunity to contest the department's determination. In no event will the limitation or modification take effect prior to the 30th day after the date of the notice or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

18 NY ADC 485.7
18 NY ADC 485.7
2008 WL 75310985
18 NY ADC 485.7

END OF DOCUMENT

18 NY ADC 485.8

18 NYCRR 485.8

18 N.Y. Comp. Codes R. & Regs. 485.8

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* Section 485.8.* Application for family-type homes.

Application to establish and operate a family-type home for adults shall be submitted to the commissioner of the local social services district in which the proposed facility is located, and shall be in accordance with the requirements of section 489.4 of this Title.

18 NY ADC 485.8
18 NY ADC 485.8
2008 WL 75310986
18 NY ADC 485.8

END OF DOCUMENT

18 NY ADC 485.9

18 NYCRR 485.9

18 N.Y. Comp. Codes R. & Regs. 485.9

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* Section 485.9.* Receivership.

(a) Receiver appointed upon application of the commissioner.

(1) When the department revokes or temporarily suspends the operating certificate of a facility

and the commissioner determines that appointment of a receiver is necessary to protect the health, safety and welfare of the residents of a facility, the commissioner may seek the appointment of a receiver by applying to the Supreme Court in the county where the facility is situated for an order directing the operators, owners and prime lessors, if any, of the premises to show cause why the commissioner, or at the discretion of the commissioner his designee, should not be appointed receiver to take charge of the facility.

(2) The commissioner shall not be required to seek the appointment of a receiver or to assume the responsibilities of a receiver directly or indirectly through his designee; nor shall any court be authorized to compel the commissioner to assume the responsibilities of a receiver or to appoint a designee to assume such responsibilities.

(3) The department may, if it deems appropriate, grant an operating certificate to any facility operating or scheduled to operate under a receiver. The duration of the operating certificate shall not exceed the duration of the receivership.

(4) Any receiver appointed upon application of the commissioner shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with the following additional powers and duties:

(i) The receiver shall, with all reasonable speed but, in any case, within six months after the date on which the receivership was ordered, unless otherwise extended by the court, provide for the orderly transfer of all residents in the facility to other facilities or make other provisions for their continued safety and care.

(ii) The receiver shall operate the facility in compliance with regulations of the department.

(iii) The receiver, with the approval of the commissioner, shall incur expenses as may be necessary to operate the facility. He shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his functions as receiver. The receiver shall honor all existing leases, mortgages and chattel mortgages that have previously been undertaken as obligations of the owners or operators of the facility. No security interest in any real or personal property comprising the facility or contained within the facility, or in any fixture of the facility, shall be impaired or diminished by the receiver. The receiver shall compensate the owners of any goods held in inventory for those goods which he uses or causes to be used by reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which owners have already been reimbursed.

(iv) The receiver shall not be required to file any bond.

(5) Notwithstanding paragraph (4) of this subdivision and, except in the case where the receiver is assuming an existing bona fide arm's-length lease, the commissioner shall determine a reasonable monthly rental for the facility, based on consideration of all appropriate factors, including the condition of such facility. The rent, as determined by the commissioner, shall be paid by the receiver to the owners or prime lessors as may be directed by the court for each month that the receivership remains in effect. In the event that the amount established by the commissioner is less than the currently valid lease, the obligation of the operator shall not be altered or diminished.

(6) The receiver:

(i) shall be intitled to a fee and reimbursement for expenses as determined by the commissioner, based upon consideration of all appropriate factors relating to the operation of the facility, to be

paid as a charge against the operator, not to exceed the fees, commissions and necessary expenses authorized to be paid to receivers in an action to foreclose a mortgage;

(ii) shall be liable only in his official capacity for injury to person and property by reason of conditions of the facility in a case where an owner or operator would have been liable; he shall not have any liability in his personal capacity, except for gross negligence and intentional acts;

(iii) may, subject to approval by the commissioner, ratify any collective bargaining agreement in effect between the operator and the employees of a facility, or suspend such collective bargaining agreement; provided, however, that the receiver, in his official capacity, remains liable for payment of wages and salaries at the rates and levels in effect at the time of his appointment; and

(iv) shall notify the commissioner of any lien or conveyance made in contemplation of receivership with an intent to remove an asset of the facility from the jurisdiction and use of the receiver, or to hinder or delay the receiver in the execution of his duties and responsibilities as receiver.

(i) Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

(ii) Any person who refuses or omits to make such payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver for any such payments made to him. The receipt of the receiver for any sum paid to him shall, in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment who would have been entitled to receive the sum so paid. No resident shall be discharged, nor shall any contract of rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(8) All transactions involving the receivership shall be on the accrual basis of accounting.

(9) Obligations of the operators, owners or prime lessors.

(i) The operators, owners or prime lessors shall not be relieved of any civil or criminal liability or obligation incurred, or any duty imposed by law, by reason of acts or omissions of such persons prior to the appointment of any receiver. During the period a facility is operated by a receiver, the operator, owner or prime lessor, if any, shall continue to be liable for all obligations for the payment of taxes or other operating and maintenance expenses of the facility, and the owner or other appropriate person shall continue to be liable for the payment of mortgages or liens.

(ii) Expenses incurred by a receiver to meet the operating and maintenance expenses of the facility and the basic needs of the residents of the facility shall be deemed the obligations of the operator, and not the obligations of the receiver or the State.

(iii) The receiver shall not be responsible for any obligations incurred by the owner, operator or prime lessor, if any, prior to the appointment of the receiver.

(iv) The receiver shall be entitled to use for operating and maintenance expenses, and for the basic needs of the residents of the facility, a portion of the revenues due the operator during the month in which the receiver is appointed. This portion shall be established on the basis of the amounts of the operating and maintenance expenses for such month. Such amounts shall be prorated by dividing the number of days of the receivership appointment by the number of days in the month.

(v) Any sums determined to be due and owing by the receiver to the owner, operator or prime lessor shall be offset by any charges determined to be the obligations of the owner, operator or prime lessor.

(10) The court shall terminate the receivership only under any of the following circumstances:

(i) six months after the date on which it was ordered, except that the court may extend such period for good cause shown;

(ii) when the department grants an operator a new operating certificate; or

(iii) at such time as all of the residents in the facility have been provided alternative modes of care, either in another facility or otherwise.

(11) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the court and shall dispose of any profit or surplus as instructed by the court.

(12) Payments to receivers appointed upon application of the commissioner.

(i) The commissioner is authorized to make payments to a receiver only if the receiver demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet operating and maintenance expenses of the facility and the basic needs of the residents of the facility.

(ii) The operator shall be liable for all monies made available to the receiver pursuant to this paragraph.

(iii) Any payments made by the commissioner to a receiver shall be made without any obligation on the part of the social services district, in which the receiver-operated facility is located, to reimburse the department for any such payments.

(b) Court-appointed receiver without application of the commissioner.

(1) In the event of a transfer of possession of the premises of a facility from an approved operator to a court-appointed receiver, the department may authorize such court-appointed receiver to continue to operate the facility for a temporary period pending the filing and review of an application to the department by the receiver or by another person for an operating certificate.

(2) Such temporary authorization shall be granted and continued only if the court-appointed receiver agrees to and complies with the terms and conditions set by the department. Such terms and conditions shall include:

(i) operation of the facility in compliance with the regulations of the department;

(ii) a waiver by the receiver of any assessment of fees against the department, the commissioner, and the State;

(iii) submission of a statement of intention to apply or not to apply for certification as operator of the facility within 15 days after transfer of possession to the receiver;

(iv) if the receiver indicates an intention to apply for an operating certificate, submission of an application for an operating certificate within 90 days after the transfer of possession to the receiver, unless the time for such filing is extended by the department;

(v) if the receiver indicates no intention to apply for an operating certificate, agreement to cooperate fully with potential operators and the department in the orderly transfer of the facility to a certified operator or to provide for the orderly transfer of all residents in the facility to other facilities or make other provisions for their continued safety and care.

(3) The commissioner may make application to appear and advise the court of any objections he may have to the transfer of possession from the approved operator to any other persons, including a receiver, or of any objections he may have to continuing a receiver or any other person in possession.

18 NY ADC 485.9
18 NY ADC 485.9
2008 WL 75310987
18 NY ADC 485.9

END OF DOCUMENT

18 NY ADC 485.10

18 NYCRR 485.10

18 N.Y. Comp. Codes R. & Regs. 485.10

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* Section 485.10.* Contracts.

(a) In the event that an operator contracts with a separate independent entity to perform any of the

facility operations, the following conditions shall apply:

(1) The contractor shall demonstrate to the satisfaction of the operator that the contractor is:

(i) financially stable; and

(ii) able, by reason of past performance or like qualification, to perform the duties delegated by the operator.

(2) If required, the contractor shall be certified by any appropriate local or State agency or unit of government, and shall comply with said regulations. Documentation of such certification and compliance shall be provided to the operator and shall be available for inspection by the department staff or designees.

(3) The operator shall remain solely responsible for compliance with department regulations and the operation of the facility in compliance with all applicable laws and regulations.

(4) The contract shall:

(i) be in writing, dated and signed by all parties;

(ii) include each party' responsibilities and functions;

(iii) include all financial arrangements and charges;

(iv) specify those powers and duties delegated to the contractor by the operator;

(v) specify that the powers and duties not delegated to the contractor remain with the operator;

(vi) stipulate that the operator retains the authority to discharge any person working in the facility;

(vii) state the terms by which the contractor may hire and discharge persons working in the facility;

(viii) require the contractor to comply with all applicable provisions of law and regulations;

(ix) require the contractor to provide all information required by the department, and to cooperate with the department in carrying out inspection and enforcement activities;

(x) stipulate that the operator, notwithstanding any other provisions of the contract, remains responsible for operation of the facility in compliance with applicable law and regulations; and

(xi) specify the terms of the contract and the provisions governing renewal and termination prior to expiration.

(5) A copy of each contract shall be retained on file by the operator and shall be available for inspection.

18 NY ADC 485.10
18 NY ADC 485.10
2008 WL 75310988
18 NY ADC 485.10

END OF DOCUMENT

18 NY ADC 485.11

18 NYCRR 485.11

18 N.Y. Comp. Codes R. & Regs. 485.11

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* Section 485.11.* Records and reports.

(a) The operator shall collect and maintain such information, records or reports as determined by the department to be necessary.

(b) Operators of facilities subject to the inspection and supervision of the department shall supply and provide access to such information and records in such form and at such times as the department shall determine.

(c) No substitution for department forms may be made without prior written approval of the department.

(d) The department may request from any other State department or State or local agency, including the Department of Mental Hygiene, the Division for Youth and the Board of Social Welfare, and such other department or agency shall furnish such information as the department may require.

(e) Other State departments or State agencies may request such information as such department or agency may require for the proper discharge of its duties. Such departments and agencies shall safeguard the confidentiality of such information, records and reports in the same manner as the department.

(f) Confidentiality.

(1) Officers, employees or designees of the department shall maintain the confidentiality of facts and information obtained as the result of submittal of any annual financial report, any inspection or investigation of a facility.

(2) Operators shall maintain the confidentiality of facts and information obtained and retained as part of individual resident records.

(3) No facts and information retained as part of individual resident records may be released to anyone other than the resident, the operator, his employees or agents, or an employee or designee of the department, without the written permission of the resident.

(g) Confidentiality of HIV- and AIDS-related information.

(1) An operator or employee must not require that an applicant for employment, prospective resident, resident, volunteer or employee undergo an HIV-related test.

(2) An operator or employee must not require an applicant for employment, prospective resident, resident, volunteer or employee to disclose confidential HIV-related information.

(3) Confidential HIV-related information means any information, in the possession of a person who provides one or more health or social services or who obtains the information pursuant to a release of confidential HIV related information, concerning whether an individual has been the subject of an HIV related test, or has HIV infection, HIV related illness or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual' contacts.

(4) AIDS means acquired immune deficiency syndrome, as may be defined from time to time by the centers for disease control of the United States public health service.

(5) HIV infection means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(6) HIV related illness means any illness that may result from or may be associated with HIV infection.

(7) HIV related test means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

(8) There must be no discrimination based on handicap, as that term is defined in section 303.7 of this Part, in determining admission, retention or employability; nor shall there be any adverse action on that basis against an applicant for employment, prospective resident, resident, employee or volunteer.

(9) Confidential HIV related information may be disclosed by an operator or employee only in accordance with the procedures set forth in this Part and only when appropriate services cannot be provided without disclosure.

(10) Except as specified in paragraphs (14) and (15) of this subdivision, an operator, employee or volunteer who obtains confidential HIV related information concerning any applicant for

employment, prospective resident, resident, employee or volunteer must not disclose that information without specific written authorization to release that information from:

(i) the protected individual; or

(ii) a person authorized by law to consent to health care for the individual.

(11) The authorization to release confidential HIV-related information must:

(i) be dated;

(ii) specify to whom disclosure is authorized;

(iii) specify the purpose for the disclosure;

(iv) specify the time period during which the release is effective;

(v) specify that the information to be disclosed is confidential HIV information; and

(vi) be signed by the protected individual or, if the individual lacks capacity to consent, a person authorized pursuant to law to consent to health care for the individual.

(12) A general authorization for the release of medical or other information cannot be used as an authorization to release confidential HIV-related information.

(13) Whenever an operator or employee discloses confidential HIV information, that person must:

(i) enter a dated and signed notation of disclosure of HIV information in the protected individual' record; and

(ii) within 10 days of the date of disclosure if the disclosure is oral, and simultaneously when disclosure is written, give a written statement to the person to whom the HIV information is disclosed which states:

"This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."

(14) Notwithstanding the requirements of this section, an operator may disclose confidential HIV related information to a health care provider or health facility when knowledge of the confidential HIV related information is necessary to provide appropriate care or treatment to the protected individual. No authorization for release of confidential HIV related information is required for such disclosure. However, the operator must follow the disclosure procedure specified in paragraph (13) of this subdivision.

(15) Notwithstanding the requirements of this section, an operator is obligated to release confidential HIV related information to authorized employees or agents of the department or social services districts when such information is reasonably necessary to supervise, monitor, or administer the facility and such employee or agent of the department or social services districts would, in the ordinary course of business have access to such records. Authorized employees and agents of the department or social services districts may obtain confidential HIV related information under this paragraph even though the adult care facility does not obtain the release specified in paragraph (10) of this subdivision. In addition, when information is released under this section by an adult care facility, the facility is not required to give the statement specified in paragraph (13) of this section to the employees or agents of the department or social services district nor is the facility required to indicate in any resident' record that the information was released.

18 NY ADC 485.11
18 NY ADC 485.11
2008 WL 75310989
18 NY ADC 485.11

END OF DOCUMENT

18 NY ADC 485.12

18 NYCRR 485.12

18 N.Y. Comp. Codes R. & Regs. 485.12

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* Section 485.12.* Personal allowances for Supplemental Security Income or Home Relief recipients.

(a) Each resident of an adult care facility who is receiving Supplemental Security Income or Home Relief benefits and who is entitled to a monthly personal allowance by Social Services Law, section 131-o, or section 352.8(c) of this Title, shall be afforded the following protections:

(1) Each resident must receive a personal allowance equal to the amount stipulated in subdivision (b) of this section or section 352.8(c) of this Title.

(2) Any waiver of the right of an SSI or HR recipient to a personal allowance shall be void.

(3) The personal allowance may be used at the discretion of the resident for personal needs not provided by the operator pursuant to the law and regulations.

(4) The operator shall not demand, require or contract for payment of any part of the personal allowance or any income disregarded by the Social Security Administration in determining eligibility for Supplemental Security Income, in satisfaction of the basic facility rate for supplies and services or for any services or supplies, unless the resident elects to purchase such services or supplies and the department has determined that such services or supplies are not otherwise required to be provided by the operator pursuant to law, regulation or agreement, and the charges for such services or supplies are reasonable.

(5) Any individual who has not received or been able to control his/her personal allowance to the extent and in the manner required by section 131-o of the Social Services Law may maintain an action in his own behalf for recovery of any such funds and, upon a showing that the funds were intentionally withheld or misappropriated to other than the intended use, for recovery of additional punitive damages in an amount equal to twice the amount misappropriated or withheld.

(6) The department shall investigate any suspected misappropriation or withholding of personal allowance funds, and may maintain an action on behalf of any individual or group of individuals to recover any funds so misappropriated or withheld, including any punitive damages.

(7) In any case where the operator is suspected of misappropriating a resident' personal allowance, the department or its designee shall investigate and, where appropriate, take the steps necessary to insure recovery of resident funds, including referral for prosecution. Funds recovered in this manner shall be given to the respective resident or credited to his/her personal allowance account at the earliest possible date.

(8) Any person who intentionally withholds, commingles, borrows or pledges the personal allowance of an SSI recipient, or who demands, beneficially receives or contracts for payment of all or any part of the personal allowance in satisfaction of the facility rate for supplies and services, shall be guilty of a class A misdemeanor.

(b) Effective January 1, 1987, each resident receiving Supplemental Security Income benefits in an adult care facility as defined in Social Services Law, section 209, or Home Relief benefits as set forth in section 352.8(c) of this Title, is entitled to a monthly personal allowance out of such benefits in the following minimum amounts:

(1) In adult care facilities certified for level II Supplemental Security Income payments:

(i) Residents receiving total Supplemental Security Income benefits of $90 per month or less must have personal allowances consisting of their total Supplemental Security Income benefit amount in addition to any income disregarded by the Social Security Administration in determining the recipient' eligibility for Supplemental Security Income, except third-party payments from non-public sources treated as in-kind income.

(ii) Residents receiving Supplemental Security Income benefits greater than $90 per month, and having no other income, must have personal allowances of at least $90 per month.

(iii) Residents receiving Supplemental Security Income benefits greater than $90 per month, with other sources of income, must have personal allowances of at least $90 per month in addition to any income disregarded by the Social Security Administration, except third-party payments from non-public sources treated as in-kind income.

(iv) Residents receiving Supplemental Security Income who were "grandparented" from the Aid to the Aged, Blind and Disabled program (AABD), whose benefit amounts are above the standard Supplemental Security Income benefit levels, must have personal allowances of at least $90 per month in addition to any income disregarded by the Social Security Administration as described in subparagraph (i) of this paragraph.

(2) In adult care facilities certified for level I Supplemental Security Income payments:

(i) Residents receiving total Supplemental Security Income benefits less than $80 per month must have personal allowances consisting of their total Supplemental Security Income benefit amount in addition to any income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

(ii) Residents receiving Supplemental Security Income benefits greater than $80 per month, and having no other income, must have personal allowances of at least $80 per month.

(iii) Residents receiving Supplemental Security Income benefits greater than $80 per month, with other sources of income, must have personal allowances of at least $80 per month in addition to any income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

(iv) Residents who are "grandparented" from the Aid to the Aged, Blind and Disabled program (AABD), whose benefit amounts are above the standard Supplemental Security Income benefit levels, must have personal allowances of at least $80 per month in addition to any income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

(3) In any month in which a resident receives a prorated SSI or HR benefit, the resident shall also be entitled to an identically prorated personal allowance.

18 NY ADC 485.12
18 NY ADC 485.12
2008 WL 75310990
18 NY ADC 485.12

END OF DOCUMENT

18 NYCRR 485.13

18 N.Y. Comp. Codes R. & Regs. 485.13

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* Section 485.13.* Certified long-term care ombudsmen.

(1) An operator must not restrict or prohibit the access to the residents of the facility nor interfere with the performance of the official duties of a duly authorized ombudsman certified by the State Office for the Aging.

(2) Such access shall be permitted for at least 10 hours between 9 a.m. and 8 p.m. daily.

(3) In addition to the access permitted under paragraph (2) of this subdivision, an operator shall not restrict access at other times if the ombudsman is seeking to investigate a complaint or is responding to a specific request of a resident.

(4) The operator shall not interfere with the privacy and confidentiality of the visits between the resident and the ombudsman.

(5) An operator may not retaliate nor take reprisals against any resident, employee or other person for having filed a complaint with or having provided information to a duly authorized ombudsman.

(1) The operator shall not restrict or prohibit access to resident records maintained by the operator, provided that:

(i) the person seeking access has been specially designated as a records access ombudsman by the director of the State Office for the Aging; and

(ii) the resident or, where appropriate, a committee for an incompetent, has given express written consent.

(2) Access to records shall be permitted between 9 a.m. and 5 p.m., Monday through Friday.

(3) The operator shall designate a member or members of staff who shall be responsible for providing access to such records and, where necessary, interpretation of such records.

(4) Records access ombudsmen shall have the right to photocopy onsite such records; however, records shall not be removed from the facility by the ombudsman.

(5) The operator may charge a reasonable fee, not to exceed $1 per page, for photocopying.

(6) Disclosure to a duly designated records access ombudsman, pursuant to the express written consent of a resident, shall not, based solely on such disclosure, give rise to any claim as to a breach of confidentiality by the operator.

(7) Nothing in this section shall be construed to permit access to a physician's records, clergy records, or to other community service agency records, which are not maintained by the operator as part of the resident's records.

(c) The operator shall require anyone seeking access to the facility or to resident records as an authorized ombudsman to show identification and to sign a visitor's register or like record.

18 NY ADC 485.13
18 NY ADC 485.13
2008 WL 75310991
18 NY ADC 485.13

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18 NY ADC 485.14

18 NYCRR 485.14

18 N.Y. Comp. Codes R. & Regs. 485.14

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* Section 485.14.* Access to adult-care facilities.

(a) An operator shall not restrict or prohibit access to the facility by:

(1) family members, guardians, friends of an individual resident and legal representatives, legal counsels and case managers;

(2) individuals representing community organizations or service agencies who will provide, free of

charge, a service or educational program to residents; or

(3) an employee or representative of any public or private not-for-profit corporation, community organization or association whose primary purposes for visiting include assisting residents in resolving problems and complaints concerning their care and treatment, and in securing adequate services to meet their needs.

The operator shall make available a common area of the facility for such visits.

(b) Such access shall be permitted for at least 10 hours between 9 a.m. and 8 p.m. daily.

(c) The operator may require anyone seeking access to the facility to sign a visitor's register or like record.

(d) The operator shall not interfere with confidential visits with residents and persons assured access under this section.

(e) Persons assured access under this section shall not enter the living area of any resident without identifying themselves to the resident, stating the purpose of the visit, and receiving the permission of the resident and the resident's roommate to enter the living area.

(f) A resident shall have the right to terminate or deny any visit from persons assured access under this section.

(g) Notwithstanding subdivision (a) of this section, the operator may restrict or prohibit access to the facility or interfere with confidential visits with residents by individuals who the operator has reasonable cause to believe would directly endanger the safety of such residents.

(h) If the operator denies access for reasonable cause, the operator shall:

(1) record a written statement of the incident, including the reasons for denial, the date and time and identification of the individuals involved;

(2) maintain the statement at the facility; and

(3) make such statement available upon request to the resident involved and persons denied access.

(i) If the operator of a facility denies access, the person denied access may bring an action in Supreme Court in the county in which the facility is located for an order granting such person access to such facility. If the court finds that such denial was made in bad faith, the operator of the facility shall be liable for all costs, including reasonable attorney's fees, and the court may, in its discretion, assess a civil penalty not to exceed $50 per day for each day such access was denied.

(j) Public or private not-for-profit corporations, community organizations or associations who wish to have their employees or representatives assured access to facilities, under paragraph (a)(3) of this section, shall register with the department. Corporate organizations shall file a copy of the certificate of incorporation; others shall file agency bylaws or a written statement of purposes, including a description of the services or assistance the organization intends to make available to

residents.

(k) The department shall maintain a registry of such organizations and shall provide periodic notice of changes to operators.

CASE NOTES:

Issue of whether refusal to permit petitioner to solicit votes in homeless shelter was moot with respect to violation of First Amendment rights, since relevant election was held two years ago. Gold-Greenberger v. Human Resources Admin. of City of New York, 77 N.Y.2d 973, 571 N.Y.S.2d 897, 575 N.E.2d 383, 68 Ed. Law Rep. 771 (1991).

18 NY ADC 485.14
18 NY ADC 485.14
2008 WL 75310992
18 NY ADC 485.14

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18 NY ADC 485.15

18 NYCRR 485.15

18 N.Y. Comp. Codes R. & Regs. 485.15

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* Section 485.15.* Development grants for enriched housing programs.

(a) The department may, to the extent funds are available for such purpose, award development grants to, and contract with, approved enriched housing programs.

(b) Grants shall be made for the purpose of defraying reasonable and necessary start-up expenses and reducing initial operating deficits incurred in the first 12 months of a program's operations

resulting from initial low occupancy rates.

(1) Use of such grant funds may include, but shall not be limited to:

(i) administrative expenses, including staff salaries, office overhead and equipment;

(ii) rent prior to occupancy;

(iii) security deposits;

(iv) minor renovations of existing structures;

(v) furnishings and household equipment;

(vi) moving expenses of residents; and

(vii) reasonable anticipated operating deficits resulting from low initial occupancy rates.

(2) Awards for start-up expenses and initial operating deficits will be based upon:

(i) the quality of the proposed program;

(ii) demonstrated financial need;

(iii) geographic distribution of enriched housing programs; and

(iv) the availability of and demand for long-term care services in the geographic area to be served by the proposed program.

(c) Grants may be awarded for the purpose of moderate renovations or modifications of existing structures when determined to be necessary by the commissioner. Awards made for moderate renovation or modification will be based on:

(1) finding that, without such renovation or modifications, a geographic area may be underserved because of the lack of available or suitable existing structures;

(2) demonstrated financial need;

(3) confirmation that, when renovations or modifications are completed, the building will meet all applicable building and fire safety codes and enriched housing program site requirements; and

(4) documentation of a legally binding agreement for the use of the building by enriched housing programs for a minimum of seven years.

(d) Requests for development grants under either subdivision (b) or (c) of this section shall be made

using forms required by the department, and will be received and reviewed with the application for certification. Determination of awards will be made at such time that a final determination is made with respect to approving the establishment of, or granting an operating certificate for, an enriched housing program.

18 NY ADC 485.15
18 NY ADC 485.15
2008 WL 75310993
18 NY ADC 485.15

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18 NY ADC 485.16

18 NYCRR 485.16

18 N.Y. Comp. Codes R. & Regs. 485.16

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* Section 485.16.* Services for nonresidents of adult-care facilities.

(a) No operator of a certified adult home, residence for adults or enriched housing program can provide services to eligible nonresident participants of such facilities as defined in section 485.2 of this Part without the prior written approval of the department.

(b) An operator of a certified adult home, residence for adults or enriched housing program must apply for department approval to provide services to nonresidents of such facilities. Applications must be on forms approved by the department. Such application must include a written description of the proposed nonresident service program including, but not limited to:

(1) a description of the services to be provided to nonresidents and a description of how such services would be coordinated with the services provided to permanent residents;

(2) a description of the physical space to be used including plans for how such space is to be used and coordinated with the space used by the permanent residents;

(3) the number of staff engaged in delivering services to nonresidents, including duties, hours to be worked and staff qualifications and how such staff would be coordinated with existing staff;

(4) the number of nonresidents to be served during the day, evening and night;

(5) a description of how the participant's community-based plan of care, if any, will be used and coordinated with the nonresident services program;

(6) a description of the information and referral services to be provided to participants and the participants' caregivers;

(7) the transportation services, if any, which are available to participants;

(8) a description of fees or charges, if any;

(9) a budget for the services to be provided;

(10) proposed forms, including any agreements which nonresidents must sign; and

(11) plans to insure that participants, staff and volunteers are included in the provisions for disaster and emergency planning contained in sections 487.12 and 488.12 of this Title.

(c) The department will issue a letter of authorization to the operator of the adult home, residence for adults or enriched housing program who has been approved to establish and operate a program of services for nonresidents of such facilities. Approval will be granted only when the department finds that a substantially consistent high level of care is being provided to residents of the facility or program.

(d) The commissioner or his/her designee will administer a system of supervision, inspection and enforcement for approved services for nonresidents in adult homes, residences for adults and enriched housing programs which assures compliance with department regulations and the maintenance of standards which would assure that appropriate care is provided to participants.

(e) In accordance with Part 486 of this Title, the department may rescind authorization for an operator of an adult home, residence for adults or enriched housing program to provide services to nonresidents.

(f) Nonresidents of adult homes, residences for adults or enriched housing programs who apply to receive services in such facilities must be admitted in compliance with the admission standards specified in department regulations for the particular facility.

(g) Services provided to nonresidents of adult homes, residences for adults or enriched housing programs must be provided in compliance with the department's regulations concerning the delivery of services to residents of such facilities.

18 NY ADC 485.16
18 NY ADC 485.16
2008 WL 75310994
18 NY ADC 485.16

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18 NY ADC 485.17

18 NYCRR 485.17

18 N.Y. Comp. Codes R. & Regs. 485.17

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* Section 485.17.* Long-term home health care program.

(a) Services provided under the long-term home health care program (LTHHCP) or AIDS home care program (AHCP), as defined in section 505.21 of this Title, may be provided to a resident of an adult care facility, except a shelter for adults, who:

(1) has been deemed medically eligible by a physician for placement in a residential health care facility but who can remain in an adult care facility if he/she receives LTHHCP or AHCP services;

(2) as the result of an assessment authorized by a social services district has been determined appropriate to receive LTHHCP or AHCP services, provided the assessment is conducted prior to the provision of such services and in compliance with the provisions of section 505.21 of this Title; and

(3) meets the admission and continued stay criteria for the type of adult care facility in which the person is residing.

(b) LTHHCP or AHCP services may not duplicate or replace those services which the adult-care facility operator is required by law or regulation to provide.

(c) A representative of the adult-care facility must be consulted during the home assessment process in accordance with the provisions of section 505.21 of this Title.

(d) An operator of an adult-care facility must coordinate service delivery and case management services with the LTHHCP or AHCP program. The operator is solely responsible for managing and providing those services which the facility is required by law or regulation to provide.

(e) The commissioner may specify additional forms and reports regarding the provision of LTHHCP or AHCP services to residents of adult-care facilities for the purpose of preparing reports to the Governor and the Legislature.

18 NY ADC 485.17
18 NY ADC 485.17
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18 NY ADC 485.17

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18 NY ADC II D 486 Notes

18 NYCRR II D 486 Notes

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(Statutory authority: Social Services Law, §§ 20, 34, 131-o, 460, 460-a--460-g,461, 461-a, 461-h)

18 NY ADC II D 486 Notes
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