

18 NY ADC 491.1

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 491. SHELTERS FOR ADULTS

Current through January 15, 2009

* Section 491.1.* Applicability.

(a) This Part shall apply to shelters for adults as defined herein.

(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.

(c) Parts 485 and 486 of this Title apply to shelters for adults.

(d) Any person, partnership, corporation, organization, agency, governmental unit, or other entity, which operates a shelter for adults is subject to the jurisdiction of the department and must comply with these regulations or modify or cease operation.

CASE NOTES:

Where homeless persons sought order directing Commissioner of Department of Social Services (DSS) to enforce certain regulations establishing maximum limits for capacity of each shelter facility established in armories and other large structures within City, order was denied since Commissioner was deemed to have waived regulations which established such maximum limits for armories and other large structures. *Wilkins v. Perales*, 128 Misc. 2d 265, 487 N.Y.S.2d 961 (Sup 1985), judgment aff'd, 119 A.D.2d 1018, 501 N.Y.S.2d 549 (1st Dep't 1986).

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* Section 491.2.* Definition.

A shelter for adults is defined as 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. This definition shall not include facilities providing such temporary residential service to fewer than 20 persons, unless such facility is operated by a social services district.

CASE NOTES:

Where homeless persons sought order directing Commissioner of Department of Social Services (DSS) to enforce certain regulations establishing maximum limits for capacity of each shelter facility established in armories and other large structures within City, order was denied since Commissioner was deemed to have waived regulations which established such maximum limits for armories and other large structures. *Wilkins v. Perales*, 128 Misc. 2d 265, 487 N.Y.S.2d 961 (Sup 1985), judgment aff'd, 119 A.D.2d 1018, 501 N.Y.S.2d 549 (1st Dep't 1986).

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* Section 491.3.* General provisions.

(a) An operator shall afford any officers or duly authorized employees or agents of the department full access at any time to the residents, grounds, buildings and during facility business hours, to books and papers relating to said facility.

(b) The operator of a shelter for adults shall provide, through its employees and agents, an organized, 24-hour-a-day program of supervision and services which:

(1) meets the standards set forth in this Part;

(2) assures the protection of resident rights; and

(3) promotes the social, physical and mental well-being of the resident.

(c) The operator shall operate and maintain the facility in a manner that assures compliance with the regulations of the department and with applicable statutes and regulations of other State and local jurisdictions.

(d) The operator shall designate an administrator who shall be directly accountable to the operator for operating and maintaining the facility in compliance with applicable requirements.

(e) The operator of a facility issued an operating certificate by the department shall maintain and submit such statistical, financial or other information, records or reports, in such form, at such time and in such manner as the department may require.

(1) Upon written request by the operator, the department may waive nonstatutory requirements of Parts 485, 486 and 491 of this Title, and may permit an operator to establish another method of achieving the intended outcome of the waived regulation. An operator must request and receive written approval prior to instituting any alternative methods. Applications for approval must be submitted to the appropriate regional office of the department and must include:

(i) the specific regulation for which a waiver is sought;

(ii) the reasons the waiver is desirable or necessary; and

(iii) a description of what will be done to achieve or maintain the intended outcome of the regulation and to protect the health and safety of the residents.

(2) The department may require that the operator adopt additional methods or procedures to protect resident health and safety and shall grant written approval only upon determination that the proposed waiver will not adversely affect the health and safety of residents.

(g) The capacity of a shelter for adults is limited to the capacity approved by the department at the time of certification, or subsequently at the request of the operator. Approvals of capacity will be based upon the department's determination of whether the shelter for adults can operate at the requested capacity in compliance with department regulations and applicable local codes concerning, but not limited to: the physical plant; environmental standards; the proposed program of services; and staffing ratios within a shelter for adults.

CASE NOTES:

Where City of New York was aware of overcrowded condition of homeless shelters and took no steps to comply with regulatory 200-bed limit per shelter under 18 NYCRR § 491.3(g)(1)(i), lack of funding does not constitute defense for failure to comply with regulations because existing conditions violate petitioner's constitutional rights, and preliminary injunction against City was proper. *Doe v. Dinkins*, 192 A.D.2d 270, 600 N.Y.S.2d 939 (1st Dep't 1993).

Where homeless persons sought order directing Commissioner of Department of Social Services (DSS) to enforce certain regulations establishing maximum limits for capacity of each shelter facility established in armories and other large structures within City, order was denied since Commissioner was deemed to have waived regulations which established such maximum limits for armories and other large structures. *Wilkins v. Perales*, 128 Misc. 2d 265, 487 N.Y.S.2d 961 (Sup 1985), judgment aff'd, 119 A.D.2d 1018, 501 N.Y.S.2d 549 (1st Dep't 1986).

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* Section 491.4.* Admission standards.

(a) The operator shall retain and care for only those individuals who do not require services beyond those permitted by law and regulation.

(b) The operator shall not accept, except on an emergency basis, nor retain any person who:

(1) causes danger to himself or others or interferes with the care and comfort of other residents;

(2) is in need of a social, religious, cultural or dietary regimen that cannot or will not be met by the facility;

(3) is in need of a level of medical, mental health, or nursing care that cannot be rendered safely and effectively by approved community resources;

(4) is incapable of ambulation on stairs without personal assistance unless such a person can be assigned a room on a floor with ground level egress; or

(5) is under 18 years of age.

(c) The administrator or a designee, responsible for admission decisions, shall interview each resident within 24 hours of entry to determine the immediate needs of the resident and whether or not the facility can meet or continue to meet these needs.

(d) Within 24 hours of entry, the administrator or a designee shall inform the resident of the conditions and rules governing residency and termination of residency, of the services to be provided and of the charges for services, if any.

(e) The operator shall assist persons who are accepted on an emergency basis and who are not appropriate for retention to relocate within 72 hours of admission.

(f) An operator shall not admit or retain a number of persons in excess of the capacity specified on the operating certificate.

(g) Notwithstanding subdivision (f) of this section, the department may authorize an operator to provide short-term emergency shelter to a number of persons in excess of the certified capacity of the facility. At the time of certification, or at the request of a currently certified facility, the department shall establish a limit on the number of persons that may be admitted to a given shelter in emergency situations. This emergency capacity shall be predicated on the physical layout of the facility and the conditions set forth in subdivision (h) of this section.

(h) The operator may provide short-term emergency shelter to persons in excess of certified capacity only if all the following conditions are met:

(1) Snow emergencies, excessive cold or other circumstances create an emergency need for additional shelter space.

(2) the operator is able to meet the food and shelter needs of all persons in residence.

(3) The operator assigns staff sufficient to meet census-based staffing requirements set forth in this Part.

(4) The facility remains in compliance with applicable local building, fire protection, health and sanitation codes.

(5) The number of persons admitted is not in excess of the authorized emergency limit.

(6) The facility is operated above certified capacity for no longer than the period approved by the department, which period will in no event exceed 90 days in any calendar year.

(7) The appropriate regional office is notified, within three working days, that the operator has admitted persons in excess of the certified capacity.

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* Section 491.5.* Discharge and transfer.

(a) An operator may discharge a resident under the terms set forth in the facility rules.

(b) In the event of transfer to a health, mental health or other facility, the operator shall send identifying information and identification of the resident's representative and physician, if available.

(c) At the time of discharge or transfer but in no case more than 72 hours after leaving the facility, the resident, representative or other appropriate individual or agency shall be:

(1) provided a final written accounting of any resident accounts;

(2) provided a check for the outstanding balance, if any; and

(3) returned any monies, property or things of value held in trust or in custody by the operator.

(d) The operator shall return to the resident, representative or other appropriate individual or agency any monies, property or items of value which come into the possession of the operator after discharge or transfer.

(e) Upon the death of a resident, a final statement of the resident's accounts shall be made and all remaining funds, property or items of value shall be transferred to the resident's estate or to the appropriate local authority.

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* Section 491.6.* Resident funds and valuables.

(a) An operator who receives any funds or property from a resident or who acts in any way as a financial agent for a resident, either formally or informally, shall issue a signed receipt to the resident noting the date, amount or description of property and the nature of the transaction. Records of all transactions must be maintained as part of the operator's permanent records.

(b) Resident fund accounts.

(1) The operator may offer a resident an opportunity to place personal funds in a facility-maintained account.

(2) The operator shall not require a resident to maintain a personal fund account at the facility against the resident's wish.

(3) The operator shall provide for the safekeeping and accountability of resident funds.

(4) The operator shall hold resident funds in trust for the sole use of the resident and shall not use these funds for any other purpose.

(5) Resident funds shall not be commingled with the personal funds of the operator or the operating funds of the facility or become an asset of the operator.

(6) The resident may terminate the personal fund account at any time.

(7) No service fee shall be charged by the operator for maintaining a fund account for a resident.

(8) A system of recordkeeping for resident personal funds shall be approved by the department at the time of certification, or, for facilities certified prior to November 15, 1981, at the time of renewal of the operating certificate. No alternative system may be substituted without the prior written consent of the department.

(9) Upon change of ownership, the current operator shall transfer all records and provide the new operator with a written statement of all resident personal fund accounts. This statement shall verify that the balance being transferred in each resident fund account is true and accurate as of the date of transfer and shall be confirmed by resident signatures.

(10) At change of ownership, the new owner shall assume, in writing, responsibility for account balances turned over at the change of ownership together with responsibility for all requirements of this section.

(11) Each resident shall have the opportunity, during business hours, to examine his/her personal fund account records upon request.

(c) Resident valuables.

(1) The operator may offer a resident the opportunity to place money, property or items of value in the operator's custody.

(2) The operator shall maintain inventory records and provide for the security of all property or items of value which the resident has voluntarily given to the operator to hold in custody or to exercise control over.

(3) The operator shall obtain written authorization from the resident to hold property or items of value and shall provide each resident with a receipt therefor.

(4) Resident property or items of value shall be segregated from the assets of the operator.

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* Section 491.7.* Resident rights.

(a) The operator shall adopt a statement of the rights and responsibilities of residents and shall treat each resident in accord with the principles contained in the statement.

(b) A copy of the statement shall be posted in a conspicuous location in a public area of the facility.

(c) Each member of the staff and each resident shall be given an explanation of the rights and responsibilities of residents.

(d) At a minimum, the operator shall afford each resident the following rights and protections:

(1) A resident's civil rights shall not be infringed.

(2) A resident's religious liberties shall not be infringed.

(3) A resident shall have the right to have private, written and verbal communications.

(4) A resident shall have the right to present grievances on his/her behalf, or the behalf of other residents, to the operator or anyone else without fear of reprisal.

(5) A resident shall have the right to join with other residents or individuals to work for improvements in resident care.

(6) A resident shall have the right to manage his or her own financial affairs.

(7) A resident shall have the right to privacy in caring for personal needs.

(8) A resident shall have the right to confidential treatment of personal, social, financial and medical records.

(9) A resident shall have the right to receive courteous, fair and respectful care and treatment.

(10) A resident shall not be restrained nor locked in a room at any time.

(11) A resident shall have the right to receive and to send mail or any other correspondence without interception or interference.

(12) A resident shall be permitted to leave and return to the facility and grounds at reasonable hours.

(13) A resident shall not be obliged to perform work by coercion or threat.

(14) A resident shall not be permitted, or obliged, to provide any operator or agent of the operator any gratuity in any form for services provided or arranged for in accord with law or regulation.

(15) A resident must have the right to have his or her version of the events leading to an accident or incident in which he/she is involved included on all accident or incident reports.

(e) Each resident shall have the responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents.

CASE NOTES:

State's comprehensive regulation of shelter for homeless adults preempted local zoning board's attempts to use zoning ordinances or permit requirements to control the details of shelter operations. *City of New York v. Town of Blooming Grove Zoning Bd. of Appeals*, 305 A.D.2d 673, 761 N.Y.S.2d 241 (2d Dep't 2003).

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* Section 491.8.* Resident services.

(a) The operator shall be responsible for the development and provision of resident services which shall include, at a minimum, room, board, supervision, and information and referral.

(b) An operator who proposes to serve a population with particular needs, e.g., the aged, substance abusers, alcoholics or alcohol abusers, ex-offenders, or the mentally or physically disabled, shall demonstrate that cooperative arrangements have been made with appropriate providers of funding or services and that a program of service and staff sufficient to meet the needs of the population:

(1) is planned at the time of application; and

(2) is in place at the start of operation and thereafter.

(c) The operator shall establish procedures and assign staff sufficient to carry out the activities required in this section.

(d) For facilities with a resident census in excess of 200 persons, the department may impose additional staffing and program requirements based on such factors as resident needs, physical layout and location of the facility.

(e) Social rehabilitation services.

(1) Any operator may provide, and a local department of social services operator must provide, either directly or through contract or cooperative agreement, social rehabilitation services.

(2) Social rehabilitation services must include, but not be limited to:

(i) assistance to the resident in making application for income entitlements or public benefits such as medical assistance, SSI, and unemployment benefits. In a shelter operated by a local department of social services, action to secure such entitlements must be initiated on or before the 15th consecutive day of residency;

(ii) assistance to the resident in securing supportive, social and mental health services;

(iii) assistance in obtaining permanent housing;

(iv) assistance to the resident in securing employment assessments, job training and job placement services;

(v) provision of a program of individual and group activities which enables each resident to sustain and improve physical and psychosocial functioning. Such programming must be available at times which correspond with the free time of residents;

(vi) provision of case management and counseling; and

(vii) transportation between the shelter and any site used by the operator for intake.

(3) An operator providing social rehabilitation services must designate sufficient staff to meet resident need for such services.

(4) Social rehabilitation must shall be available on site at least five days a week, including evenings, for periods sufficient to meet resident needs.

(f) Supervision services.

(1) Supervision services shall include, but shall not be limited to:

(i) intake;

(ii) recording a daily census;

(iii) monitoring residents to identify abrupt or progressive changes in behavior or appearance which may signify the need for assessment and service;

(iv) surveillance of the grounds, facility and activities of residents to prevent theft and resident harm;

(v) handling individual emergencies, including arranging for medical care or other services;

(vi) conduct and supervision of evacuations and periodic fire or evacuation drills;

(vii) investigation and recording of incidents involving resident endangerment, injury or death;

(viii) guidance to assure residents attend meals and maintain appropriate nutritional intake;

(ix) guidance to assure that personal hygiene and grooming activities are performed; and

(x) guidance to assist residents in dressing appropriately for weather and activities.

(2) All staff shall be trained in the means of rapidly evacuating the building.

(3) At least one staff person on each shift shall be designated as responsible for the conduct and supervision of any evacuation.

(4) In the event that a resident develops a medical condition which requires immediate or continual medical or skilled nursing services which cannot be provided on an outpatient basis or which constitutes a danger to self or others, the operator shall:

(i) make arrangement for transfer of such resident to an appropriate medical facility; and

(ii) notify the resident's representative, or next of kin, if known.

(5) In the event that a resident exhibits behavior which constitutes a danger to self or others, the operator shall:

(i) arrange for appropriate professional evaluation of the resident's condition;

(ii) notify the resident's representative, or next of kin, if known; and

(iii) if necessary, arrange for transfer of the individual to a facility providing the proper level of

care.

(6) In the event of the serious injury or death of a resident, the operator shall:

- (i) immediately obtain necessary assistance and services;
- (ii) notify the resident's next of kin or representative; and
- (iii) notify the appropriate local authorities.

(7) In the event of death by other than natural causes or in the case of a death by natural causes in which unusual circumstances exist, the operator shall telephone the appropriate regional office of the department by the next working day and send a copy of the incident report to the regional office within three working days.

(8) The operator must maintain a chronological record of resident injury or death using the Incident Report form (DSS-3123). In the case of injury, the operator must include the resident's version of the events leading to an accident or incident involving such resident on all Incident Reports (DSS-3123) unless the resident objects.

(9) Each operator shall designate staff to perform supervision functions during all hours of operation.

(10) The minimum number of supervision staff required shall be determined by resident census. The following number of supervisory staff shall be on duty and on site at all times:

Resident census	Staff required
1- 19	1
20- 40	2
41- 80	3
81-120	4
121-150	5
151-200	6

(11) Staff shall be immediately accessible at all times while on duty.

(12) Provision shall be made for backup staff.

(13) Staff may be assigned other duties which do not interfere with their accessibility, provided that such staff remain responsible for, and available for, the supervision of residents.

(14) In facilities with 20 or more persons, one of the staff required between 11 p.m. and 7 a.m. may be permitted to sleep.

(g) Information and referral services.

(1) The operator shall have knowledge of, and linkages with, community resources which can assist each resident to maintain or improve his/her level of functioning.

(2) Information and referral services shall include:

(i) establishing linkages with and arranging for services from public and private sources for income, housing, health and social services;

(ii) cooperating with providers of services essential to residents;

(iii) assisting residents to secure services needed; and

(iv) arranging for resident participation in community-based and community-sponsored activities.

(3) The operator shall utilize and cooperate with external services providers and shall:

(i) permit residents to meet in privacy with service providers;

(ii) in no way inhibit access to residents who need and desire services;

(iii) identify persons in need of services and assist external services providers in establishing a relationship with these residents; and

(iv) cooperate with service providers in executing a plan for service for individual residents.

(4) Each operator shall designate sufficient staff to perform information and referral services.

CASE NOTES:

Paragraph of parties' stipulation of settlement in action to abate a public nuisance that limited city officials' ability to utilize all available resources in effectuating their legal obligation towards homeless shelter residents in assisting them in finding appropriate permanent housing by removing county from consideration as a resource was invalid as being inconsistent with applicable State law and regulations. *Rampe v. Giuliani*, 281 A.D.2d 609, 722 N.Y.S.2d 564 (2d Dep't 2001).

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* Section 491.9.* Food service.

(a) The operator shall provide meals which are balanced, nutritious and adequate in amount and content to meet the dietary needs of residents.

(b) The operator shall provide, at a minimum, breakfast and an evening meal to be served at regularly scheduled times. A local department of social services operator shall serve three meals a day.

(c) No more than 15 hours shall elapse between service of the evening meal and breakfast the next morning.

(d) The operator shall assign staff sufficiently knowledgeable in nutrition and dietetics to insure the planning of well-balanced meals and the purchase, storage and preparation of food of good quality and sufficient quantity.

(e) Menus shall be planned:

(1) in facilities with 40 beds or less, at least three days in advance; and

(2) in facilities with 41 beds or more, at least two weeks in advance.

(f) At least twice a year, upon notice from the department, the operator shall record and submit menus as planned and as served, for a two-week period.

(g) Each shelter shall have food preparation and service facilities; however, off-site food preparation may be permitted with the prior written approval of the department if the operator can demonstrate that nutritional and sanitary standards will be and are maintained.

(h) Food preparation, service and storage methods shall protect against contamination and spoilage.

(i) All kitchens or food preparation areas shall be adequately lighted, ventilated, and provided with essential and proper equipment for food storage, refrigeration, freezing, preparation and serving, for the number of residents to be served.

(j) The food service area shall be provided with sufficient and suitable space and equipment to maintain efficient and sanitary operation of all required functions.

(k) All kitchen equipment and surroundings shall be kept clean, and garbage and trash shall be kept in suitably covered containers and removed regularly.

(l) The operator shall comply with any applicable county or local health and fire regulations relating to kitchen operations.

(m) The operator of a facility with 40 or more beds shall comply with Part 14 of the New York State Sanitary Code (10 NYCRR 14.1).

(n) In the event that a facility has been inspected by the State or local health authorities, a record of such inspection shall be kept on file at the facility for review by the department.

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* Section 491.10.* Environmental standards.

(a) In order to assure a safe, comfortable environment for residents, the operator must maintain the facility in a good state of repair and sanitation and in conformance with applicable State and local laws, regulations and ordinances. Shelters for adults must comply with all provisions of the

New York State Uniform Fire Prevention and Building Code (9 NYCCR 600 et. seq.) in localities where it applies.

(b) An operator seeking certification to operate a shelter or an operator of a certified facility planning renovation or remodeling shall:

(1) submit to the department, in duplicate, plans and specifications for construction, renovation or building addition; and

(2) proceed with implementation of such plans only after obtaining written approval of the department.

(c) Plans and specifications for construction, renovation or remodeling shall be in compliance with the regulations of the department and any applicable building construction and safety codes.

(d) A building newly constructed after January 1, 1981, for use as a shelter shall:

(1) if in New York City, be in compliance with the City Building and Fire Protection Codes for the J-1 occupancy group; and

(2) if elsewhere in the State, complies with the State Building Construction Code for the B-2 occupancy group.

(e) In an existing certified shelter or an existing structure renovated for use as a shelter after January 1, 1981:

(1) No resident shall occupy any portion of the third or higher floor in a building of frame construction or unprotected ordinary construction, as defined by the State Building Construction Code.

(2) No resident shall occupy any portion of the seventh or higher floor in a building of protected ordinary construction, as defined by the State Building Construction Code.

(f) Space in a shelter for adults shall be used exclusively for the purposes set forth in this Part. An operator may request prior permission, in writing, to utilize space for other activities. The operator must demonstrate that the proposed use is not incompatible to the shelter program and will not be detrimental to residents.

(g) Smoke and fire protection.

(1) Supervised smoke detectors which are Underwriters Laboratories Inc. (UL) listed must be installed and located in accordance with manufactures' specifications.

(2) In a facility with 40 beds or more, at least one of the fire protection systems shall be connected directly to the local fire department or a central station unless local fire officials refuse to establish such a connection. The operator must document such refusal.

(3) In a facility with less than 40 beds which has a fire protection system capable of being directly

connected to the local fire department or a central station, at least one of the fire protection systems shall be so connected unless local fire officials refuse to establish such a connection. The operator must document such refusal.

(4) Smoke barriers of at least one hour fire rating must be installed between floors.

(5) There must be two means of egress from each floor designated for public or resident use.

(6) The required means of egress shall:

- (i) be remote from one another;
- (ii) open in the direction of exit travel;
- (iii) be equipped with panic (quick-release) hardware;
- (iv) be equipped with a self-closing device; and
- (v) be freely accessible at all times.

(7) A fire escape may be approved as a second means of egress if there is free access to the exit and the use is approved by local fire and building officials.

(8) Fire extinguishers which meet National Fire Protection Association standards and which are appropriate for the type of fire which may occur at the site of installation shall be:

- (i) placed at accessible locations on each floor and each wing;
- (ii) wall-hung; and
- (iii) properly charged and checked.

(9) Evacuation procedures which set forth emergency stations, the duties of all staff and residents, and directions for the rapid evacuation of the premises shall be posted in a conspicuous place on each floor and wing.

(10) The following are fire hazards and are prohibited:

- (i) portable electric space heaters;
- (ii) self-contained, fuel-burning space heaters;
- (iii) accumulation of combustible materials in any part of the building; and
- (iv) cooking appliances in resident's room.

(12) At least one staff member on duty during each shift shall be familiar with the fire alarm systems and procedures for resetting these systems.

(h) Electrical system.

(1) Overcurrent protection devices must be maintained in safe operating condition, must not be locked or fastened in the "on" position and must be accessible.

(2) Electrical wiring and equipment must be grounded to provide protection against shock.

(i) Safety procedures.

(1) Chain locks, hasps, bars, padlocks and similar devices cannot be used in any resident use area in a way that would inhibit access to an exit or the free movement of residents.

(2) Doors in residents' sleeping rooms may be secured by the resident provided such doors can be unlocked from the outside and keys are carried by attendants at all times.

(3) Residents must not have access to storage areas used for cleaning agents, bleaches, insecticides, or any other poisonous, dangerous or flammable materials unless necessary for work they are performing.

(4) Night lights must be provided and working in all hallways, stairways and bathrooms which are not private.

(5) A hallway or corridor must not be used for storage of equipment.

(j) Furnishings and equipment.

(1) The operator shall provide furnishings and equipment which do not endanger resident health, safety and well-being and which support daily activities.

(2) All furnishings and equipment shall be durable, clean and appropriate to function.

(3) The operator shall furnish each resident with a bed, a minimum of 30 inches in width, substantially constructed, and in good repair which has:

(i) clean springs maintained in good condition;

(ii) a clean, comfortable and well-constructed mattress, standard in size for the bed; and

(iii) a clean and comfortable pillow of average bedsize.

(4) Each resident shall be supplied with:

- (i) sheets;
- (ii) a pillowcase;
- (iii) at least one blanket;
- (iv) towels;
- (v) soap; and
- (vi) toilet tissue.

(5) Bed linens, blankets and towels shall be:

- (i) clean and washable;
- (ii) free from rips and tears; and
- (iii) available when changes are necessary.

(6) A complete change of bed linens and towels shall be provided to each resident at entry, at least once a week, and more often if needed.

(7) Sufficient numbers of noncombustible trash containers with covers shall be available.

(8) All operable windows must be equipped with screens and where necessary to provide privacy, with curtains or shades.

(9) Dining areas shall be furnished with dining tables and chairs appropriate to the size and function of the facility.

(10) Living rooms, sitting rooms, lounges and recreation areas shall be furnished with tables, chairs, lighting fixtures and other equipment appropriate to the size and function of the specific area and of the facility.

(k) If provided, laundry facilities shall be located in a clean, dry, well-lighted area.

(l) The operator shall maintain areas suitable for posting required notices, documents and other written materials in locations visible to, and accessible to, residents, staff and visitors.

(m) Housekeeping.

(1) The operator shall maintain a clean and comfortable environment.

(2) All areas of the facility shall be free of:

(i) vermin;

(ii) rodents; and

(iii) trash.

(3) All areas of the facility, including, but not limited to, the floors, walls, windows, doors, ceilings, fixtures, equipment and furnishings shall be clean and free of odors.

(4) Blankets and pillows shall be laundered as often as necessary for cleanliness and freedom from odors.

(5) Adequate, properly maintained supplies and equipment for housekeeping functions shall be provided.

(n) Maintenance.

(1) The operator of each facility shall insure the continued maintenance of the facility.

(2) The building and grounds shall be maintained in a clean, orderly condition and in good repair.

(3) All equipment and furnishings shall be maintained in a clean, orderly condition and in good working order.

(4) Electrical systems, including appliances, cords and switches shall be maintained in good working order.

(5) Entrances, exits, steps and outside walkways shall be kept free from ice, snow and other hazards.

(6) All inspection certificates required by State and local authorities for buildings, grounds and equipment shall be available for review.

(o) Space requirements for shelter for adults.

(1) Every facility shall have space for dining and leisure activities.

(2) Space used for sleeping or for passage shall not be considered as dining or leisure space.

(3) Space provided for dining shall be at least 12 square feet per certified bed for the first 50 beds and 10 square feet for each additional bed.

(4) Space provided for leisure area shall be at least 12 square feet per bed.

(5) When not in use, dining space may be used, with prior written department approval, as leisure space.

(6) An operator may make a written request for department approval of a waiver to reduce the square footage requirements for dining and leisure space. A waiver shall be granted only upon demonstration by the operator that the food service and the program needs of residents can be met.

(7) An operator providing social rehabilitation services shall have:

(i) space for residents to meet privately with staff of the shelter, visitors or external service providers; and

(ii) separate, private space for either mental health or health services providers, or both, with whom the operator has a cooperative or contractual service agreement.

(8) Bath and toilet facilities.

(i) There shall be a minimum of one toilet and one lavatory for each 10 residents and a minimum of one tub or shower for each 15 residents.

(ii) All toilet and bathing areas shall be vented by means of natural or mechanical ventilation to the outside air.

(iii) All toilet and bathing areas shall be properly enclosed and separated from other areas by ceiling-high partitions and doors.

(9) Bedrooms.

(i) In single occupancy sleeping rooms, a minimum of 80 square feet per resident shall be provided.

(ii) In sleeping rooms for two or more residents, a minimum of 60 square feet per resident shall be provided.

(iii) A minimum of three feet, which is included in the per resident minima, shall be maintained between beds and for aisles.

(iv) No more than 30 beds are permitted in a sleeping area.

(v) If partitions are used to subdivide sleeping areas within the same room, their minimum height shall be sufficient to afford individual privacy, approximately four feet.

(vi) Partitions separating sleeping rooms from other rooms shall be ceiling high and smoke-tight.

(vii) Bedrooms or sleeping areas must open directly into exit corridors.

(viii) A passageway or corridor may not be used as a bedroom.

(ix) Bedrooms shall have individual, lockable storage lockers for resident belongings. Each locker shall be large enough to accommodate winter clothing.

(10) Adequate storage space for cleaning supplies and equipment shall be provided.

CASE NOTES:

Where City of New York was aware of overcrowded condition of shelters but took no steps to comply with regulatory 30-bed limit in dormitory rooms under 18 NYCRR § 491.10(o)(9)(iv), lack of funding does not constitute defense for failure to comply with regulations because existing conditions violate petitioner's constitutional rights and preliminary injunction against City was proper. *Doe v. Dinkins*, 192 A.D.2d 270, 600 N.Y.S.2d 939 (1st Dep't 1993).

Where homeless persons sought order directing Commissioner of Department of Social Services (DSS) to enforce certain regulations establishing maximum limits for capacity of each shelter facility established in armories and other large structures within City, order was denied since Commissioner was deemed to have waived regulations which established such maximum limits for armories and other large structures. *Wilkins v. Perales*, 128 Misc. 2d 265, 487 N.Y.S.2d 961 (Sup 1985), judgment aff'd, 119 A.D.2d 1018, 501 N.Y.S.2d 549 (1st Dep't 1986).

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18 NY ADC 491.10

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18 NY ADC 491.11

18 NYCRR 491.11

18 N.Y. Comp. Codes R. & Regs. 491.11

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SUBCHAPTER D. ADULT-CARE FACILITIES
PART 491. SHELTERS FOR ADULTS

Current through January 15, 2009

* Section 491.11.* Disaster and emergency planning.

(a) The operator shall have a written plan, acceptable to the department, which details the procedures to be followed for the proper protection of residents and staff in the event of an actual or threatened internal or external emergency or disaster which interrupts normal service.

(b) The plan shall include, but not be limited to:

(1) procedures for full and partial evacuation of the facility; and

(2) coordination of the facility plan with such community resources and local disaster and emergency planning organizations as may be available to provide temporary shelter, food and clothing and other essential services.

(c) The operator shall conduct training for each new and current employee and volunteer in both the overall plan and his/her specific responsibility in its execution.

(d) The operator shall conduct monthly fire evacuation drills for staff and volunteers to insure that each shift has an opportunity to practice their respective responsibilities.

(e) At least once in each calendar quarter, residents shall participate in a fire evacuation drill.

(f) The operator shall arrange to have the local fire department or department staff observe at least one resident evacuation drill annually.

(g) Anytime it is necessary to implement any element of the disaster and emergency plan, the appropriate regional office of the department shall be notified by the next working day.

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18 NYCRR 491.12

18 N.Y. Comp. Codes R. & Regs. 491.12

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PART 491. SHELTERS FOR ADULTS

Current through January 15, 2009

* Section 491.12.* Personnel.

- (a) The operator shall provide staff sufficient in number and qualified by training and experience to render those services mandated by statute or regulation.
- (b) The operator shall develop and maintain written personnel policies and procedures.
- (c) A current, written staffing schedule shall be maintained.
- (d) The operator shall maintain personnel records which are current, contain sufficient information to support placement in any position required by these regulations and record all wages, benefits, reimbursements, bonuses, gifts or payments given any employee or resident.
- (e) At least one staff member on each shift shall have completed an approved basic first aid training course or its equivalent.
- (f) Any person working in the food service area must have a tuberculin skin test or a chest X-ray at the time he/she begins work and at least every 24 months thereafter. A positive skin test requires a chest X-ray.
- (g) No individual who is suffering from a degree of mental illness or habituation or addiction to alcohol or other drugs such that the individual causes, or is likely to cause, danger to himself or others or is unable to perform his/her assigned duties, shall be employed or permitted to work as either an employee or volunteer.
- (h) No individual shall be permitted to work, either as an employee or volunteer, if infected with a communicable disease that might endanger the health of residents.
- (i) Work by a resident as a volunteer in return for services or monetary payment shall be permitted only if the work:
 - (1) is entered into without the use of coercion or threats to the resident;
 - (2) is incidental to or in return for charitable aid conferred upon the resident;

(3) is not under any express contract for hire; and

(4) is agreed to in writing.

(j) Volunteers who work in the shelter shall be placed in assignments compatible with their skills or training.

18 NY ADC 491.12
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18 NY ADC 491.13

18 NYCRR 491.13

18 N.Y. Comp. Codes R. & Regs. 491.13

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* Section 491.13.* Staff qualifications.

(a) Each staff member shall be capable of associating with, and providing services and supervision to, the population served by the facility.

(b) Staff who have contact with residents shall be able to communicate in the predominant language of residents, understand and carry out directions and instructions, record messages and keep records.

(c) No person under 18 years of age shall be:

(1) charged with direct responsibility for the supervision of residents; or

(2) permitted to work without on-site supervision.

(d) Administrator.

(1) The administrator shall be responsible for, and capable of:

(i) general supervision of the facility;

(ii) recruitment and general supervision of staff and volunteers;

(iii) general supervision of resident services;

(iv) admission, transfer and discharge of residents;

(v) coordination with community activities and services; and

(vi) protection of resident's rights and development of appropriate mechanisms for their protection.

(2) A person may not be designated as administrator without the prior review and written approval of the department.

(3) An administrator shall:

(i) be at least 21 years of age;

(ii) be of good character as evidenced by at least three letters of recommendation from unrelated individuals knowledgeable of the proposed administrator's background, qualifications and interest in the field of adult care;

(iii) have the following minimum education and work experience:

(a) a high school diploma or equivalency certificate, plus three years of related work experience and/or training acceptable to the department, one year of which includes related supervisory experience; or

(b) an associate degree from an accredited college or university in an approved course of study plus two years of related work experience and/or training, acceptable to the department, one year of which includes related supervisory experience.

(4) Administrators approved by the department prior to November 15, 1981, are exempt from the minimum employment and education requirements specified in subparagraph (3)(iii) of this subdivision until November 15, 1984.

(5) Related work experience may include, but need not be limited to, work in residential care, rehabilitation, health care management, social work, community organization, counseling and hotel management.

(6) Related supervisory experience may include, but need not be limited to, work in a setting

described in paragraph (5) of this subdivision where the individual had responsibility for the recruitment and supervision of staff and the coordination and management of related program activities.

(7) During a temporary absence of the administrator, a responsible person shall be designated to be in charge of the facility and shall be so identified on the facility staffing schedule.

(8) The person in charge in the absence of the administrator shall:

(i) be at least 18 years of age;

(ii) be mentally and physically capable of carrying out the duties of an administrator;

(iii) be knowledgeable of facility operations;

(iv) have access to resident and other records concerned with facility operations;

(v) be empowered to act on behalf of the operator during the administrator's absence concerning the health, safety, comfort and well-being of the residents; and

(vi) have had training to carry out assignments and take care of emergencies and sudden illnesses of residents.

18 NY ADC 491.13
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18 NY ADC 491.13

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18 NY ADC 491.14

18 NYCRR 491.14

18 N.Y. Comp. Codes R. & Regs. 491.14

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* Section 491.14.* 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 substitute 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 for the proper performance of its duties.

(e) Other State departments or State agencies may request such information as that 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 or employees of the department shall maintain the confidentiality of facts and information obtained as the result of any inspection or investigation of a facility.

(2) Operators must maintain the confidentiality of facts and information obtained and retained as part of individual resident records. No facts and information retained as part of individual resident records may be released to anyone other than the resident, the next of kin or authorized representatives of the resident, or an employee or designee of the department without the written permission of the resident, provided that confidential HIV-related information concerning residents must be maintained in accordance with section 485.11(g)(9)-(15) of this Title.

(3) Operators must maintain confidential HIV-related information concerning employees, volunteers, applicants for employment and prospective residents in accordance with section 485.11(g)(9)-(15) of this Title.

(g) Resident records.

(1) Resident records shall be maintained in a manner which assures resident privacy and accessibility to staff to use in the provision of routine and emergency services.

(2) The operator shall maintain personal data which includes resident identification and identification of next of kin or representative if known.

(3) The operator shall maintain documentation of the status of any resident's accounts and of valuables held in custody for the resident.

(h) Facility records.

(1) The operator shall maintain complete, accurate and current records which document operation and maintenance of the facility in accord with applicable law and regulation.

(2) These records shall be maintained in the facility, unless written authorization is given by the department for record retention in another location, and shall be available for review and inspection by department staff and designees.

(3) At a minimum, the operator shall maintain:

(i) resident records as required in subdivision (g) of this section;

(ii) resident records stipulated elsewhere in these regulations, including daily census reports and incident reports;

(iii) program records, including service procedures, agreements with external service providers, emergency plans and records of evacuation drills;

(iv) records of maintenance of the physical plant and environmental standards;

(v) staff records, including personnel procedures, job descriptions for the administrator and resident services staff, current staffing schedules and payment records; and

(vi) certificates of reports issued by local and other State jurisdictions related to the facility operations. Such certificates shall be posted if required; otherwise, such certificates or reports shall be kept on file and readily accessible for department review.

(4) Records required by the department, excepting financial records of the previous owner, shall be retained in the facility upon change of ownership.

(i) Mandated forms.

(i) The department mandates utilization of the following forms:

(1) an Incident Report (DSS-3123); and

(2) an Inventory of Resident Property (DSS-3027).

(j) A Statistical Information Report (DSS-3004) shall be submitted to the department as required.

(k) The operator shall post the following documents:

(1) the operating certificate; and

(2) the most recent summary of inspection issued by the department.

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