Notice of Adoption

[ ] This adoption will amend the NYCRR.
[ ] This adoption will not amend the NYCRR.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. Action taken:
   Amendment of 18 NYCRR Parts 485-486; repeal of 18 NYCRR Part 491; and addition of new 18 NYCRR Part 491.

2. Effective date of rule:
   [ ] Date this notice is published in the State Register.
   [ ] This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:
     [ ] Date of filing.
     [ ] Other date (specify): ______________________
     [x] Other date (specify): 01/01/2020
     [ ] ___ days after filing.

3. Statutory authority under which the rule was adopted:
   Social Services Law §§ 17(a)-(b) and (k), 20(2)(b), 20(3)(d)-(f), 34(3)(c)-(f), 34(6), 460, 460-a(1)-(2), 460-c(1), 460-d(1) and (7)(a), and 461

4. Subject of the rule:
   Adult-Care Facilities and Shelters for Adults

5. Purpose of the rule:
   To update State regulations pertaining to general provisions, inspections and enforcement, and shelters for adults.
6. Terms and identification of rule:
   A. I.D. No. of original notice of proposed or emergency/proposed rule making: TDA-19-19-00007 - P
   B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):
      [ ] No changes were made to the proposed rule.
      
      [ ] Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

      § 491.1
      §§ 491.3-4
      §§ 491.8-.9
      §§ 491.14-.15
      § 491.27
      §§ 491.11-.12
      §§ 491.18-.19

      [ ] This is a “rate making” as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

      [ ] Text attached.
      [ ] Summary attached.

   C. List the publication date and I.D. No. of any previously published notice(s) of revised rule making:
      
      Publication date: ____________________________ , I.D. No. ____________________________ -
      Publication date: ____________________________ , I.D. No. ____________________________ -

   D. Signed certification of adoption and full text of the rule are attached:
      [X] Signed certification of adoption (scanned pdf).
      [ ] Full text of the rule (MS Word).

7. The text of the final rule and any required statements and analyses may be obtained from:

   Agency contact Richard P. Rhodes, Jr.
   Agency name N.Y.S. Office of Temporary and Disability Assistance
   Office address 40 North Pearl Street, 16-C
                  Albany, NY 12243-0001
   Telephone       (518) 486-7503  E-mail: richard.rhodesjr@otda.ny.gov

8. Additional matter required by statute:
   [ ] Yes (include below material required by statute).

   [X] No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)
   (SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)
   A. The attached Revised RIS contains:
      [X] The full text of the Revised RIS.
      [ ] A summary of the Revised RIS.

   B. A statement is attached explaining why a revised RIS is not required (check one box):
      [ ] Changes made to the last published rule do not necessitate revision to the previously published RIS.
      [ ] This is a technical amendment exempt from SAPA §202-a.
C. [ ] A revised RIS is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

[ ] A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(_SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

[ ] The full text of the Revised RFA.

[ ] A summary of the Revised RFA.

B. A **statement is attached** explaining why a revised RFA is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RFA.

[ ] The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. [ ] A revised RFA is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

[ ] A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. **Revised Rural Area Flexibility Analysis (RAFA)**

(_SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

[ ] The full text of the Revised RAFA.

[ ] A summary of the Revised RAFA.

B. A **statement is attached** explaining why a revised RAFA is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published RAFA.

[ ] The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C. [ ] A revised RAFA is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

[ ] A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. **Revised Job Impact Statement (JIS)**

(_SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

[ ] The full text of the Revised JIS.

[ ] A summary of the Revised JIS.

B. A **statement is attached** explaining why a revised JIS is not required (check one box):

[ ] Changes made to the last published rule do not necessitate revision to the previously published JIS.

[ ] The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency’s findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is **not** attached because:

[ ] This rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

[ ] This rule was proposed by the State Comptroller or Attorney General.
13. **Assessment of Public Comment** *(includes legislative comments)*

(COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

[ ] Attached is an assessment of public comment.

No particular form is required, and it need only include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.

[ ] An assessment is not attached because no comments were received.

[ ] An assessment is not required because this action is for a “rate making” as defined in SAPA §102(2) (a)(ii).

14. **Referenced material (check one box):**

[ ] No information is being incorporated by reference in this rule.

[ ] This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

________________________
________________________
________________________
________________________

15. **Initial Review of Rule** *(SAPA §207)*

(SELECT AND COMPLETE ONE)

A. [ ] As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

B. [ ] As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year ________, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

C. [ ] As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year ________, which is no later than the 5th year after the year in which this rule is being adopted.

D. [ ] Not Applicable. This is a “rate making” or a “consensus rule,” or a repeal of a rule.
AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

<table>
<thead>
<tr>
<th>Name</th>
<th>Richard P. Rhodes, Jr.</th>
<th>Signature</th>
<th>/s/ Richard P. Rhodes, Jr.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>N.Y.S. O.T.D.A., 40 North Pearl Street, 16-C, Albany, NY 12243-0001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td>(518) 486-7503</td>
<td>E-mail</td>
<td><a href="mailto:richard.rhodesjr@otda.ny.gov">richard.rhodesjr@otda.ny.gov</a></td>
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<tr>
<td>Date</td>
<td>11/25/2019</td>
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</tbody>
</table>

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State’s Register procedures manual, *Rule Making in New York*.

2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.
Revised Summary of the Rule

The regulatory amendments revise 18 NYCRR Parts 485 and 486 of the current State regulations such that they no longer apply to shelters for adults but remain applicable to all other types of adult-care facilities, and repeal current 18 NYCRR Part 491 and replace it with a new Part 491 addressing publicly-funded shelters for adults, small-capacity shelters, and shelters for adult families with no children. The full text of the proposed rule is posted at the following OTDA website: http://otda.ny.gov/legal/regulatory-activities.asp. Revisions made in response to public comments received since the proposed regulations were published in the May 8, 2019 issue of the New York State Register define or clarify text and do not materially alter its purpose, meaning, or effect. A Notice of Revised Rule Making therefore is unnecessary.

Amend General Provisions of § 485.16 to make a technical update to the title of the section.

Amend § 485.1(b) to make technical updates to reflect the current name of the Office of Children and Family Services.

Amend § 485.4(a), (c)–(d) and (g) to add clarifying language excluding shelters for adults from the section’s provisions pertaining to certificates of incorporation.

Amend § 485.5(a)–(r) to make technical updates and to add new subdivision (a) clarifying that the section’s provisions pertaining to operating certificates shall apply to all adult-care facilities except shelters for adults.

Amend relettered § 485.5(c) and (k) to make technical updates.

Amend relettered § 485.5(n)(1)(i) to remove reference to shelters for adults.

Amend § 485.6(a) to add language clarifying that shelters for adults are excluded from the section’s provisions for obtaining approval to operate an adult-care facility.

Repeal § 485.6(f)(2) and renumber § 485.6(f)(3).

Amend § 485.7(a) to add language clarifying that shelters for adults are excluded from the section’s provisions pertaining to renewal of an operating certificate.

Amend § 485.9(a)(1) to add language clarifying that shelters for adults are excluded from the section’s provisions pertaining to receivership.

Amend § 485.9(a)(6)(i) to make a clarifying technical revision.

Amend § 485.11(d) to make technical updates to reflect the current name of the Office of Children and Family Services.

Amend § 485.11(g)(15) to make a clarifying technical revision.
Amend § 485.14(a)–(k) to make technical updates and to add a new subdivision (a) clarifying that the section’s provisions pertaining to services for nonresidents of adult-care facilities shall apply to all adult-care facilities except shelters for adults.

Amend relettered § 485.14(k) to update a cross-reference.

Amend the title of § 485.16 to make a clarifying technical revision.

Amend § 486.1(a) to clarify that the section’s provisions pertaining to inspection and supervision shall apply to all adult-care facilities except shelters for adults, to make a clarifying technical revision, and to make technical updates to reflect the current of the Office of Children and Family Services.

Amend § 486.1(b)–(d) to clarify that the section’s general provisions pertaining to inspection and supervision and enforcement shall apply to all adult-care facilities except shelters for adults.

Amend § 486.1(e)–(f) to clarify that the section’s general provisions apply to operators of facilities subject to inspection and supervision under this section.

Amend § 486.2(b) and (d) to clarify that the section’s general provisions pertaining to inspection shall apply to all adult-care facilities except shelters for adults.

Amend § 486.3(a) to clarify that the section’s provisions pertaining to inspection of uncertified shelters under this section apply to any facility which reasonably appears to the department to be an adult care facility other than a shelter for adults.

Amend § 486.5(a)(1) to clarify that the section’s provisions pertaining to civil penalties for certified adult-care facilities shall not apply to shelters for adults.

Amend § 486.5(b) to clarify that the section’s provisions pertaining to civil penalties for uncertified adult-care facilities shall not apply to shelters for adults.

Amend § 486.6(a) and (c) to clarify that the section’s provisions pertaining to withholding of funds and funds to be withheld, respectively relative to reimbursement for expenditures by a social services district (district) for the operation of an adult-care facility shall not apply to shelters for adults.

Repeal § 486.7(g).

Repeal existing Part 491 and add a new Part 491 pertaining to shelters for adults. Add new § 491.1 defining scope of new Part 491 to include shelters for adults, small-capacity shelters and shelters for adult families and clarifying that reimbursement for such shelter and services is contingent upon compliance with new Part 491.

Add new § 491.2 defining, among other things, the terms “shelter for adults,” “small-capacity shelter,” “shelter for adult families,” and “family.”

Add new § 491.2-a providing that, for any proposed or existing not-for-profit corporation desiring to file or amend a certificate of incorporation for the purpose of either establishing and operating a shelter for adults or fundraising for the eventual
establishment and operation of a shelter for adults, such not-for-profit corporation shall secure the written approval of OTDA prior to obtaining the endorsement of such certificate by a justice of the Supreme Court of the State of New York and filing of the endorsed certificate with the Secretary of State.

Add new § 491.3 providing that a district may be reimbursed from State grants or funds for costs incurred for shelter and services provided by a shelter for adults, a small-capacity shelter, or shelter for adult families only if the shelter is operated in accordance with both the requirements of Part 491, as amended. and with an operational plan approved by OTDA, outlining the requirements for an operational plan, and setting out the procedure for obtaining OTDA approval of an operational plan. Proposed § 491.3(c)(2) has been revised to identify persons with physical disabilities as an additional example of a population with particular needs.

Add new § 491.4 providing that upon approval of an operational plan, OTDA will issue an operating certificate to the operator of a shelter for adults, a small-capacity shelter, or shelter for adult families; indicating that reimbursement for costs incurred for shelter and services provided by such shelter is contingent upon the operator of such facility having a valid operating certificate; and reserving the right of OTDA revoke, suspend or terminate an operating certificate under certain circumstances. A clarifying technical revision has been made to proposed § 491.4.

Add new § 491.5 setting out the procedure for the voluntary closure of a shelter for adults, a small-capacity shelter, or shelter for adult families.

Add new § 491.6 requiring that shelters for adults, small-capacity shelters and shelters for adult families for which a district seeks reimbursement be operated in accordance with applicable State and local laws, regulations and codes.

Add new § 491.7 setting out general regulatory provisions relating to the operation of shelters for adults, small-capacity shelters, and shelters for adult families.

Add new § 491.8 setting out shelter staffing requirements and staff qualifications. Proposed § 491.8 has been revised to restore the prohibition in extant § 491.12(h) that no person shall be permitted by a shelter operator to work, either as an employee or a volunteer, if that person is known to be infected with communicable disease that might endanger the health of residents.

Add new § 491.9 clarifying requirements for referrals to shelters for adults, small-capacity shelters and shelters for adult families, assessments for public assistance and care needs and suitability for placement in shelter, and independent living plans. Proposed § 491.9 has been revised to make clarifying technical revisions and to clarify that a person with a physical or mental impairment that interferes with their ability to cooperate and complete an assessment need not provide documentation of their impairment where the physical or mental impairment is known or apparent to shelter or intake staff.

Add new § 491.10 allowing for excess-capacity admissions in emergency circumstances.
Add new § 491.11 clarifying the obligation of residents with income to pay for their care costs in shelters for adults, small-capacity shelters or shelters for adult families. Proposed § 491.11 has been revised to make a clarifying technical revision.

Add new § 491.12 setting out shelter resident rights, rules and obligations. Proposed § 491.12 has been revised to clarify that a resident shall have the right to receive visitors in designated areas of the facility where feasible, during reasonable hours as specified in the resident rules, and that facility rules must require that residents to apply for public benefits only to the extent that the resident is eligible to receive such benefits pursuant to 18 NYCRR § 349.3.

Add new § 491.13 setting out shelter operator obligations with respect to shelter residents’ funds and valuables.

Add new § 491.14 detailing services that must be provided to residents of shelters for adults, small-capacity shelters or shelters for adult families. Proposed § 491.14 has been revised to make technical revisions and a clarifying edit, namely, providing a definition of the term “resident census.”

Add new § 491.15 detailing the procedure for involuntarily discharging or transferring a resident of a shelter for adults, small-capacity shelter or shelter for adult families. Proposed § 491.15 has been revised to make a clarifying edit, and to eliminate the proposed new requirement that property left by a resident after the resident is discharged from shelter be stored by the shelter operator for ten days. The rules set forth in extant § 491.5(c) remain unchanged.

Add new § 491.16 detailing the process by which shelter operators and districts must report serious incidents at shelters that impact upon the safety and well-being of a shelter resident or member of a shelter’s staff.

Add new § 491.17 detailing the food services that operators of shelters for adults, small-capacity shelters, or shelters for adult families must provide.

Add new § 491.18 setting out environmental standards with which operators of shelters for adults, a small-capacity shelters, or shelters for adult families must comply. Proposed § 491.18(h) has been revised to clarify that a shelter may have either a tub or shower for each 15 residents, as currently permitted by extant § 491.10(o)(8)(i), and to clarify that hot water for bathing and washing be maintained at a minimum temperature of 110 degrees Fahrenheit. Additional clarifying revisions have been made to proposed § 491.18(e) and (g).

Add new § 491.19 detailing shelter operators’ obligations with respect to the collection and maintenance of information, records and reports. Proposed § 491.19 has been revised to clarify that the operational plan approved by the Office must be maintained at the facility and made available for review and inspection by facility residents and visitors.

Add new § 491.20 detailing shelter operators’ obligations with respect to the confidentiality of HIV- and AIDS-related information.

Add new § 491.21 clarifying conditions under which a shelter operator may contract with a separate independent entity to perform facility operations.
Add new § 491.22 setting forth OTDA’s obligation to inspect shelters for adults, small-capacity shelters, and shelters for adult families; clarifying districts’ obligations with respect to such inspections; and authorizing OTDA to address deficiencies at such shelters.

Add new § 491.23 clarifying OTDA’s authority to undertake investigations of the affairs and management of any shelter for adults, small-capacity shelter, or shelter for adult families and to take appropriate enforcement action as necessary.

Add new § 491.24 setting out the policy and procedures with respect to State reimbursement for costs incurred for shelter and services provided by a shelter for adults, a small-capacity shelter, or a shelter for adult families.

Add new § 491.25 setting forth the procedure whereby OTDA can withhold or deny reimbursement to a district where a shelter fails to comply with the requirements of State or local laws, regulations and codes, including those regulations set forth in new Part 491.

Add new § 491.26 setting out civil penalties that OTDA may impose against the operators of shelters for adults, small-capacity shelters, and shelters for adult families for regulatory violations that endanger residents or result in harm to residents.

Add new § 491.27 authorizing OTDA to seek the appointment of a receiver to operate a shelter for adults, a small-capacity shelter or a shelter for adult families in order to protect the health, safety and welfare of shelter residents. Proposed § 491.27 has been revised to make clarifying technical revisions.
Part 485 of Title 18 NYCRR is amended to read as follows:

The index of regulations in the General Provisions is amended to update the title of § 485.16 as follows:

Sec.
485.16 Services for residents of certain adult-care facilities

Subdivision (b) of § 485.1 is amended to read as follows:

(b) This Part shall not apply to State institutions for the education and support of the blind and the deaf, 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] Office of Children and Family Services 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.

Subdivisions (a) and (c)–(d) of § 485.4 are amended to read as follows:

(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 other than a shelter for adults 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.

(c) A request for approval of a certificate of incorporation or amendment thereto for the purpose of establishing and operating an adult-care facility other than a shelter for adults 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 other than a shelter for adults 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.

Subdivision (g) of § 485.4 is amended to read as follows:

(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 other than a shelter for adults, shall include:
Subdivisions (a)–(r) of § 485.5 are relettered subdivisions (b)–(s), and a new subdivision (a) is added to read as follows:

(a) This section shall apply to all adult-care facilities excluding shelters for adults, which are addressed in Part 491 of this Title.

Relettered subdivisions (c) and (k) of § 485.5 are amended to read as follows:

(c) An operating certificate for an adult care facility subject to this section shall:

(k) In the event that an operator elects to close a facility subject to this section and to surrender an operating certificate:

Subparagraph (i) of paragraph (1) of relettered subdivision (n) of § 485.5 is amended to read as follows:

(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

Subdivision (a) of § 485.6 is amended to read as follows:

(a) Approval to operate an adult care facility, except for a shelter for adults addressed in Part 491 of this Title, shall be granted only to an operator who satisfactorily demonstrates and documents, on forms and in a manner prescribed by the department, that:

Paragraph (2) of subdivision (f) of § 485.6 is REPEALED and paragraph 3 of subdivision (f) of § 485.6 is renumbered as paragraph (2) of subdivision (f) of § 485.6.

Subdivision (a) of § 485.7 is amended to read as follows:

(a) The operator of a facility subject to this part, excluding shelters for adults that are addressed in Part 491 of this Title, 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.

Paragraph (1) of subdivision (a) of § 485.9 is amended to read as follows:

(1) When the department revokes or temporarily suspends the operating certificate of [a] an adult care facility subject to this part, excluding shelters for adults that are addressed in Part 491 of this Title, 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.

Subparagraph (i) of paragraph (6) of subdivision (a) of § 485.9 is amended to read as follows:

(6) The receiver:

(i) shall be [intitled] entitled 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;

Subdivision (d) of § 485.11 is amended to read as follows:

(d) The department may request from any other State department or State or local agency, including
but not limited to the Department of Mental Hygiene, the [Division for Youth] Office of Children and
Family Services and the Board of Social Welfare, and such other department or agency shall furnish
such information as the department may require.

Paragraph (15) of subdivision (g) of § 485.11 is amended to read as follows:

(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'] resident’s record that the
information was released.

Subdivisions (a)–(k) of § 485.14 are relettered as subdivisions (b)–(l), and a new
subdivision (a) is added to read as follows:

(a) This section shall apply to all adult care facilities excluding shelters for adults, which are
addressed in Part 491 of this Title.

Relettered subdivision (k) of § 485.14 is amended to read as follows:

(k) 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)] (b)(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.
The title of § 485.16 is amended to read as follows:

§ 485.16. Services for nonresidents of certain adult-care facilities.
Part 486 of Title 18 NYCRR is amended to read as follows:

Section 486.1 is amended to read as follows:

(a) The department shall inspect and maintain supervision over all public and private adult care facilities as defined in Part 485 of this Title, excluding shelters for adults, the inspection and supervision of which are addressed in Part 491 of this Title, and excepting State institutions for the education and support of the blind and the deaf, facilities subject to the approval, visitation and inspection of the Department of Mental Hygiene, the State Commission of Correction, the Office of Children and Family Services or the Department of Health.

(b) Inspection and supervision of adult care facilities, excluding shelters for adults, shall be undertaken by the department to ascertain whether all applicable provisions of law and regulations are being complied with.

(c) Inspection and supervision of adult care facilities, excluding shelters for adults, shall include inquiry by the department into:

(d) The department may undertake enforcement action against any operator of an adult care facility, excluding shelters for adults, who fails to operate the facility in compliance with applicable provisions of law and regulation.

(e) Operators of facilities subject to the inspection and supervision of the department under this section, or any person, corporation, society, association or other entity which operates or holds itself out as being authorized to operate any such facility, shall allow the commissioner or designees full access to the grounds, buildings, books and papers relating to the facility and shall provide any information required by the department.

(f) The commissioner or any person designated by the commissioner may undertake an investigation of the affairs and management of any facility subject to the inspection and supervision of the department under this section, or of any person, corporation, society, association or organization which operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility. Persons empowered by the commissioner to conduct any such investigation are empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths and to examine persons under oath, and to exercise the same powers in respect to the conduct of such an investigation as belong to referees appointed by the Supreme Court.

Subdivisions (b) and (d) of § 486.2 are amended to read as follows:

(b) The department, or a local social services district where appropriate, shall each year conduct a minimum of one full inspection of each adult care facility that is not a shelter for adults subject to inspection and supervision pursuant to Part 491 of this Title. Such inspection shall include, but need not be limited to, examination of the medical, dietary and social services records of the facility, as well as the minimum standards of construction, life safety standards, quality and adequacy of care, rights of residents, payments and all other areas of operation.

(d) The department, or, where appropriate, a local social services district shall each year conduct a minimum of one unannounced full inspection of each adult care facility that is not a shelter for adults subject to inspection and supervision pursuant to Part 491 of this Title.
Subdivision (a) of § 486.3 is amended to read as follows:

(a) For the purposes of assessing whether an uncertified facility is [an adult care] a facility subject to the certification and inspection of the department under this section, the department may inspect any facility which reasonably appears to the department to be an adult care facility other than a shelter for adults. The needs of the residents, the care and services provided, the physical plant and the administration of the facility may be assessed in accord with applicable law and regulation.

Paragraph (1) of subdivision (a) of § 486.5 is amended to read as follows:

(1) Civil penalties of up to $1,000 per day, as specified in section 486.7 of this Part, may be assessed against adult care facilities, excluding shelters for adults subject to Part 491 of this Title, except those operated by a social services district, for violation of these regulations or of an order pursuant to subdivision 8 of section 460-d of the Social Services Law.

Subdivision (b) of § 486.5 is amended to read as follows:

(b) Civil penalties for uncertified adult care facilities other than shelters for adults.

(1) A civil penalty, not to exceed $1,000 per day, may be assessed against any facility which is an adult care facility, other than a shelter for adults subject to Part 491 of this Title, and which does not possess a valid operating certificate issued by the department.

(2) After an inspection has been conducted in accord with the procedures set forth in section 486.3 of this Part, and a decision has been made that a facility is an uncertified adult care facility, other than a shelter for adults, that is subject to fine, a hearing will be conducted in accord with the procedures set forth in Part 493 of this Title.

Subdivision (a) and (c) of § 486.6 are amended to read as follows:

(a) Withholding of funds. Reimbursement for expenditures by a social services district for the operation of an adult care facility, other than a shelter for adults subject to Part 491 of this Title, shall be subject to withholding or denial when the district, as operator of the adult care facility, fails to comply with the law and regulations pertaining to the certification and operation of such facilities.

(c) Funds to be withheld. If corrections have not been made within 30 days of the date the district received notice of the violations, or an approvable plan for correction has not been submitted by the district within 30 days of the date the district received notice of the violation, the department may withhold either up to 50 percent of the State reimbursement for allowable expenses for all publicly operated adult care facilities, other than shelters for adults, in the district, if two or more of the district's publicly operated facilities are subject to penalty pursuant to this section, or up to the entire State reimbursement for allowable expenses for the nonconforming facility, from the 31st day after the notice of violation until the department notifies the local district, in writing, that the facility is in compliance. The commissioner of the local district shall be given written notice of the decision to withhold reimbursement.

Subdivision (g) of § 486.7 is REPEALED.
Part 491 of Title 18 NYCRR is REPEALED and a new Part 491 is added to read as follows:

PART 491 SHELTERS FOR ADULTS

(Statutory authority: Social Services Law, §§ 17[1]-[b] and [j], 20[2][b], 20[3][d]-[f], 34[3][c]-[f], 34[6], 460, 460-a[1]-[2], 460-c[1], 460-d[1] and [7], 461)

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491.24 Reimbursement
491.25 Withholding and denying reimbursement
491.26 Civil penalties
491.27 Receivership

§ 491.1 Applicability.

(a) This Part shall apply to shelters for adults, small-capacity shelters and shelters for adult families as defined herein.

(b) Any person, partnership, corporation, organization, agency, governmental unit, or other entity that operates a shelter for adults, a small-capacity shelter or a shelter for adult families is subject to the jurisdiction of the Office of Temporary and Disability Assistance and must comply with these regulations.
A social services district shall not be reimbursed from State or State-administered grants or funds for costs incurred for shelter and services provided by shelters for adults, small-capacity shelters and shelters for adult families unless such facilities:

1. have been issued operating certificates by the Office of Temporary and Disability Assistance pursuant to section 491.4 of this Part, as amended;

2. are operating pursuant to operating certificates issued by the Office of Temporary and Disability Assistance pursuant to section 485.5 of this Title before the effective date of this Part; or

3. have been operating without operating certificates since before the effective date of this Part, in which case the facilities must be certified within three years from the effective date of the Part.

§ 491.2 Definitions.

(a) The Office shall mean the New York State Office of Temporary and Disability Assistance.

(b) 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 Office 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.

(c) A small-capacity shelter is defined as a facility not operated by a social services district, that was established and is operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and social rehabilitation services where required by the Office or otherwise deemed necessary by the operator, to fewer than twenty adults who are in need of temporary accommodations, supervision and services.

(d) A shelter for adult families is defined as a facility established and operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and, where required by the Office or otherwise deemed necessary by the operator, social rehabilitation services for families that do not include children younger than 18 years of age, which are in need of temporary accommodations, supervision and services.

(e) For purposes of this Part, family means:

1. two adults who are legally married to one another, in a domestic partnership, or in another legally recognized relationship;

2. two adults who can establish the medical dependence of one upon the other; or

3. two or more adults who share a “caretaking” (emotionally or physically supportive) or financially interdependent relationship, and who have resided with one another for 180 days immediately prior to the date of their application for temporary housing assistance.
(f) A commercial hotel or motel used as temporary placement pursuant to section 352.3(e) of this Title shall not be considered a shelter for adults, a small-capacity shelter, or a shelter for adult families, so long as such hotel or motel is not used primarily to provide shelter to recipients of temporary housing assistance.

§ 491.2-a 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 a shelter for adults, or for the purpose of fundraising for the eventual establishment and operation of a shelter for adults, prior to the endorsement of such certificate by a justice of the Supreme Court of the State of New York and filing with the Secretary of State, shall secure the written approval of the Office.

(b) Each certificate of incorporation or amended certificate of incorporation submitted to the Office for approval where a corporation desiring to establish and operate a shelter for adults, or raise funds for the eventual establishment and operation of a shelter for adults, shall indicate that at least one purpose of the proposed or existing not-for-profit corporation is:

To operate a shelter for adults as defined in section 2 of the New York Social Services Law for the purpose of providing temporary residential care, room, board, supervision, information and referral, and where required by the New York State Office of Temporary and Disability Assistance or otherwise deemed necessary, social rehabilitation services for adults in need of temporary accommodations, supervision and services; provided, however, that the Corporation shall not establish or operate such shelter for adults without the prior written approval of the New York State Office of Temporary and Disability Assistance.

§ 491.3 Operational plans.

(a) A social services district may be reimbursed from State or State-administered grants or funds for costs incurred for shelter and services provided by a shelter for adults, a small-capacity shelter, or a shelter for adult families where such facilities are operated in accordance with both the requirements of this Part and with operational plans approved by the Office pursuant to this section, and where such facilities have been issued operating certificates pursuant to section 491.4 of this Part. A separate operational plan must be submitted by the social services district for each shelter for adults, a small-capacity shelter or a shelter for adult families for which the social services district seeks reimbursement or makes payments to from State or State-administered grants or funds.

(b) Preliminary approval. Prior to the submission of an operational plan for a shelter for adults, a small-capacity shelter, or a shelter for adult families, a social services district must obtain the preliminary approval of the Office for the establishment of such facility. For acquisition, construction or operation of a new facility, a social services district must submit a request for preliminary approval prior to entering any binding commitments for the acquisition of the property, for construction, for financing or for operation of the facility. The Office must advise the social services district in writing of its approval or disapproval of an application for preliminary approval within 30 days of receipt of the plan except if it determines that additional information is required, in which case the Office must advise the social services district in writing within 30 days of receipt of the additional information of its approval or disapproval of the application.
(1) Preliminary approval to establish a shelter for adults, a small-capacity shelter, or a shelter for adult families will be granted only to a social services district that demonstrates and documents, on forms and in a manner prescribed by the Office:

(i) that there exists sufficient need for the establishment of the facility, including but not limited to a description of the number of homeless individuals and homeless adult families in the district, the vacancy rate for low income housing in the district, the geographic location of the shelter and the type of population to be served by the shelter;

(ii) that the costs of development, including, but not limited to, acquisition, construction/rehabilitation, professional fees, including legal and architectural fees, and financing costs, are reasonable as determined by the Office; and

(iii) how the proposed facility will be included in the district’s overall plan for providing emergency shelter to homeless individuals and families in receipt of temporary housing assistance.

(2) A social services district’s failure to submit a timely and complete application for the preliminary approval of the establishment of a shelter for adults, a small-capacity shelter or a shelter for adult families, or the failure to obtain such approval from the Office, including but not limited to approval of the costs of the development of the facility, consistent with the standards developed by the Office, may result in the denial of all or part of any available reimbursement for the operation of the facility under this Part.

(c) Operational plan requirements.

(1) For shelters for adults, small-capacity shelters, and shelters for adult families, the operational plan must provide the following information:

(i) name and location of the facility;

(ii) name and address of the entity which will operate the facility;

(iii) names, addresses and occupations of the members of the board of directors, if the operator is a corporation;

(iv) name and address of the owner of the land and premises, if other than the operator;

(v) financial resources and sources of future revenue of the facility;

(vi) a financial statement for the facility’s most recently completed fiscal year where available, or a financial statement for the facility operator’s most recently completed fiscal year, as required by section 491.24 of this Part;

(vii) a proposed one-year budget, including estimated income and expenditures, on forms and in a manner prescribed by the Office as required by section 491.24 of this Part. Such proposed budget must set forth the amount reasonable and necessary to operate and maintain the shelter;
(viii) admissions policies and procedures;

(ix) policies and procedures ensuring access by legal representatives and legal counsel to their clients who are residents of the facility;

(x) plan for health services, including any arrangements with accredited medical institutions, clinics or providers for the referral of residents for routine and for emergency treatment and care. In addition, if medical supplies are to be stored at the facility or refrigeration is to be provided for personal medical supplies of residents, the arrangements for safekeeping and refrigeration of such medical supplies must be specified;

(xi) procedures for assisting residents in making application for public benefits such as, but not limited to, public assistance, medical assistance (MA), Supplemental Nutrition Assistance Program (SNAP) benefits, Supplemental Security Income (SSI), or unemployment benefits;

(xii) facility staffing schedules and a description of each position, including job duties, and qualifications;

(xiii) bathroom arrangements, including the number of toilets, sinks and showers;

(xiv) food service arrangements. If a food service provider is used, written evidence of such arrangement must be included. If food is prepared onsite, provide the number of refrigerators, stoves, and microwaves. A description of the dining area and the number of chairs, tables and seating must also be included;

(xv) physical structure, including land, buildings and equipment, certificate of occupancy and building descriptions including type of construction, planned renovations, and room layouts with dimensions;

(xvi) documents sufficient to show that the facility will be in compliance with all State and local laws, regulations, and codes as specified in section 491.6 of this Part.

(xvii) procedures for the routine and preventative maintenance of the facility and its grounds including utility and building systems such as electric, water, gas, heat, ventilation, plumbing, sewage, air-conditioning if provided, elevators if any, and basic building components including foundations, walls, roofs, stairs, ceilings, floors, floor coverings, doors, and windows, and any preventative maintenance contracts, insurance contracts or warranties pertaining to such building systems or components;

(xviii) resident capacity;

(xix) resident rules and rights;

(xx) procedures for informing residents of their rights as residents and a listing of said rights;

(xxi) procedures for handling involuntary discharges and transfers;
(xxii) description of any other programs that are operating in the building and copies of the applicable licenses and certifications for programs operating in the building for the benefit of shelter residents;

(xxiii) procedures and environmental safeguards designed to ensure the well-being and safety of residents if the shelter facility is in the same building or on the same premises where another program is or will be operated; such procedures must indicate the circumstances under which common staff or joint services will be utilized; and procedures for safeguarding the confidentiality of medical records concerning residents of the shelter;

(xxiv) facility leave and resident absence policy;

(xxv) a description of the community services available to the shelter population including public transportation, parks and recreation areas, medical and mental health services, restaurants and stores;

(xxvi) procedures for advising residents of the conduct or activities for which temporary housing assistance may be discontinued as provided in section 352.35 of this Part;

(xxvii) procedures which describe the facility's responsibilities in relation to the social services district's requirements for discontinuing temporary housing assistance, including notification to the social services district of acts which may be grounds for the discontinuance of temporary housing assistance;

(xxviii) procedures for providing shelter residents with services including, at a minimum, those set forth in section 491.14 of this Part. If any services are provided off site, the name, location, contact information, and description of the service provider must be included;

(xxix) procedures for safeguarding residents' personal funds, property and items of value pursuant to section 491.13 of this Part;

(XXX) procedures for handling resident complaints and grievances, including those filed anonymously; and

(XXxi) such other information as may be requested by the Office.

(2) An operator who proposes to serve a population with particular needs, for example, the elderly, persons with mental illnesses, persons with physical disabilities, persons with substance use disorders, or persons re-entering the community from incarceration, shall demonstrate an ability to provide the services and supports necessary to appropriately serve that population.

(3) Security plan. In addition to the requirements contained in paragraph (1) of this subdivision, the operational plan for each shelter for adults, small-capacity shelter and shelter for adult families shall contain a plan for the shelter to provide security and help ensure the physical safety of residents and staff, which addresses, among other things:
(i) measures taken to control access to the shelter, including but not limited to admittance procedures in place for persons entering the facility, the installation and use of safety locks on exit and entry doors, and the use of security devices such as metal detectors, cameras and security or alarm systems if any;

(ii) measures taken to scan or x-ray incoming mail to residents, or other precautions taken to ensure that incoming mail does not contain contraband that could pose a threat to the security of the facility or to the health and safety of residents or staff;

(iii) the surveillance of the grounds, facility and activities of the residents to prevent theft and resident harm, by electronic or other means;

(iv) the training and deployment of staff responsible for security, and in the case of shelters with mental health or domestic violence programs, the availability of security staff or personnel trained in recognizing and responding to mental health or domestic violence issues;

(v) procedures for handling and documenting individual emergencies, including arranging for medical care or other emergency services, maintaining records of any special medical needs or conditions, the prescribed regimens to be followed, and the names and phone numbers of medical doctors to contact should an emergency arise concerning these conditions; and

(vi) other measures taken to help ensure the safety of shelter residents and staff.

(4) Disaster and emergency plan. The operational plan for each shelter for adults, small-capacity shelter and shelter for adult families also shall detail the facility’s plan 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, and shall describe, among other things:

(i) procedures for full and partial evacuations of the facility;

(ii) coordination with community resources and local disaster and emergency planning organizations as may be available to provide temporary shelter, food and clothing and other essential services;

(iii) training provided for each new and current employee and volunteer in both the overall disaster and emergency plan and his/her specific responsibility in its execution;

(iv) procedure for conducting monthly fire evacuation drills for staff and volunteers to ensure that each shift has an opportunity to practice their respective responsibilities;

(v) procedures for conducting periodic fire evacuation drills for residents. The operator shall arrange to have the local fire department or the Office observe at least one resident evacuation drill annually; and

(vi) procedure by which the operator will immediately notify the social services district and the Office if it becomes necessary to implement any element of the disaster and emergency plan.
(5) **Waivers.** To the extent that a shelter for adults, small-capacity shelters or shelter for adult families for which a social services district seeks reimbursement under this Part is unable to comply fully with these regulations, a social services district may include in the facility’s operational plan a request for a waiver that may be approved at the discretion of the Office. In approving any waiver request, the Office may require that additional procedures be implemented to protect residents’ health and safety. All waiver requests approved by the Office pursuant to this section will remain in effect only for so long as the Office determines appropriate, and the Office may from time to time review waivers to determine whether they should be continued.

(d) **Submission of operational plans.**

(1) The social services district must submit a proposed operational plan in writing to the Office no less than 45 days before the planned use of a facility as a shelter for adults, a small-capacity shelter or a shelter for adult families.

(2) An operational plan will be approved only where it is established that the shelter for adults, small-capacity shelter or shelter for adult families will meet and be operated in accordance with all applicable provisions of law and the requirements of this Part.

(3) If a program other than a shelter for adults, a small-capacity shelter or a shelter for adult families is or will be operating in the same building or on the same premises as any shelter for adults, small-capacity shelter or shelter for adult families, and such other program requires an operating certificate, license or permit issued by any State agency or department, an operational plan for the shelter for adults, small-capacity shelter or shelter for adult families will only be approved and an operating certificate for the shelter issued if there is a valid operating certificate, license or permit for such other program.

(4) (i) The Office must advise the social services district in writing of its approval or disapproval of an operational plan within 90 days of receipt of the plan except as provided in subparagraphs (ii) and (iii) of this paragraph.

(ii) Notwithstanding subparagraph (i) of this paragraph, if a shelter for adults, small-capacity shelter or shelter for adult families is located in the same building or on the same premises as a program requiring an operating certificate, license or permit issued by any State agency or department, and if such certificate, license or permit has not been issued at the time the proposed operational plan for the shelter for adults, small-capacity shelter or shelter for adult families is submitted, the Office will not approve the operational plan until after a certificate, license or permit has been issued for such other program. In no event may the Office delay a decision on an operational plan beyond 45 days after the issuance of the operating certificate, license or permit to the other program.

(iii) Notwithstanding subparagraph (i) and (ii) of this paragraph, if the Office determines that additional information is required before it can approve or disapprove the proposed operational plan, the Office, within 45 days of receiving the proposed operational plan, may request that the social services district submit additional information within 45 days of the request for such additional information. The Office must advise the social services district in writing within 90 days of receipt of the additional information of its approval or disapproval of the operational plan.
(e) **Duration.** An operational plan approved by the Office will remain in effect for a maximum period of five years. An operational plan for a shelter for adults, small-capacity shelter or shelter for adult families located in the same building or on the same premises as a program requiring an operating certificate, license or permit issued by the Office or any other State agency or department, however, will be considered approved only for so long as such other program has a valid operating certificate, license or permit but in no case longer than five years.

(f) **Renewal.** No later than 60 days before the expiration of an operational plan, the social services district must submit on forms and in the manner prescribed by the Office, a request to renew the approval of the operational plan. Such request must include appropriate financial data; any proposed new, or changes to existing, contracts; any proposed revisions to leases or rental agreements; documentation that the facility is in compliance with applicable State and local laws, regulations, and codes; and information regarding any other changes being proposed to the current operational plan. The social services district may request an extension of the 60-day period in order to submit appropriate financial data, and the Office may grant one extension, not to exceed six months. If an extension is granted, the Office may, subject to the approval of the Director of the Division of the Budget, continue reimbursement for costs found by the Office to be reasonable. State reimbursement will continue until such time as either the appropriate financial data is submitted and the operational plan is approved, or operational plan approval by the Office is withdrawn or expired.

(g) **Revisions or changes to information.** Proposed revisions to an approved operational plan and any changes to the information contained therein must be submitted by the social services district to the Office for approval prior to implementation. An operational plan for a shelter for adults, small-capacity shelter or shelter for adult families located in the same building or on the same premises as a program requiring an operating certificate, license or permit issued by any State agency or department must be revised if the operation of such other program ceases or if there is a change in the operating certificate, license or permit for such program. Proposed revisions are subject to the requirements of subdivision (c) of this section.

(h) **Reimbursement before Office approval.** For costs incurred by a shelter for adults, a small-capacity shelter or a shelter for adult families that begins operation after the effective date of this Part, reimbursement may be available from the date the social services district submits its proposed operational plan provided:

1. the facility is operational at the time the plan is submitted or within 90 days after the date of submittal;

2. if the Office has requested additional information, the social services district submits such information within 45 days or obtains the Office’s approval for an extension of the time in which to submit such information and provides the requested additional information on a timely basis; and

3. the operational plan is fully approved no later than one year from the date the social services district submits its proposed operational plan or a lesser time period as specified by the Office.

(i) **Shelters operating before the effective date of these regulations.**

1. Where a shelter for adults has been operating since before the effective date of this Part pursuant to an operating certificate issued by the Office, the social services district shall submit
a proposed operational plan for the facility to the Office no later than 90 days before the expiration of the facility’s existing operating certificate.

(2) Where a shelter for adults, small-capacity shelter or a shelter for adult families has been operating since before the effective date of this Part without an operating certificate issued by the Office, the social services shall submit a proposed operational plan for the facility to the Office within three years of the effective date of this Part or as otherwise directed by the Office.

§ 491.4 Operating certificates.

(a) Upon approval of an operational plan for a shelter for adults, a small-capacity shelter or a shelter for adult families, the Office will issue an operating certificate to the operator of the facility. A social services district will not be reimbursed for costs incurred for shelter and services provided by any shelter for adults, small-capacity shelter, or shelter for adult families where the operator of such facility does not have a valid operating certificate, and no shelter for adults, small-capacity shelter, or shelter for adult families for which a social services district seeks reimbursement under this Part may continue to operate without a valid operating certificate.

(b) The operating certificate will remain valid for so long as the operational plan approved by the Office pursuant to section 491.3 of this Part remains in effect, or for a maximum of five years.

(c) The Office may in its discretion issue a temporary or provisional operating certificate to the operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families:

(1) where the facility’s operational plan has been approved, the facility can be operated substantially but not fully in accordance with the operational plan, and the facility will be operated in full compliance with the operational plan within a reasonable time; or

(2) for other good cause.

(d) An operating certificate shall:

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

(2) be nontransferable, except when the facility for which the operating certificate issued is transferred to an operator of another shelter for adults, shelter for adult families, or a shelter for families with children subject to Part 900 of this Title that is operating pursuant to an operational plan approved by the Office and a valid operating certificate, in which case the new operator shall submit a new or revised operational plan for Office approval within 30 days of the transfer;

(3) remain the property of the Office; and

(4) be conspicuously posted in a publicly accessible area within the facility.

(e) The operating certificate of any facility may be revoked, suspended, limited or a request for renewal denied upon a determination by the Office that the operator has failed to comply with an operational plan approved by the Office pursuant to section 491.3 of this Part, these regulations, or any other State or local laws or regulations applicable to the operation of shelters for adults, small-capacity
shelters, or shelters for adult families. An operator may, in writing and in accordance with Part 343 of this Title, request administrative review of a decision by the Office under this section.

(f) The operating certificate of any facility may 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 in accordance with the operational plan approved by the Office and as certified; or

(2) unable, by reason of catastrophe such as fire or flood, to operate in accordance with the operational plan approved by the Office and as certified for a period in excess of 60 days.

(g) (1) The operating certificate of any facility may be revoked, suspended or 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:

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

(ii) 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 a class A misdemeanor.

(2) Such revocation, suspension or limitation of an operating certificate, or denial of an application for an operating certificate, must be preceded by a determination that:

(i) there is a direct relationship between one or more of the criminal convictions and the fitness of the individual to perform related duties or responsibilities; or

(ii) allowing an operating certificate would involve an unreasonable risk to property or to the safety or welfare of residents of the facility or of the general public.

(h) Each of the following factors must be considered in making the determinations required by subparagraphs (g)(2)(i) and (ii) of this section:

(1) the public policy of the State to encourage the licensure of persons previously convicted of one or more criminal offenses;

(2) the specific duties and responsibilities necessarily related to the license sought or held by the person;

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

(4) the time which has elapsed since the occurrence of the criminal offense or offenses;

(5) the age of the individual at the time of the occurrence of the criminal offense or offenses;

(6) the seriousness of the criminal offense or offenses;
(7) any information produced by the individual to demonstrate rehabilitation and good conduct, including but not limited to a valid Certificate of Relief from Disabilities or Certificate of Good Conduct issued in accordance with the State Correction Law; and

(8) the interest of the Office in protecting the safety and welfare of residents or potential residents of shelters for adults, small-capacity shelters or shelters for adult families, as well as the general public.

(i) Upon voluntary or involuntary closure of a shelter for adults, a small-capacity shelter or a shelter for adult families, any operating certificate issued by the Office to the operator shall be surrendered to the Office by personal delivery to a designated representative or by certified or registered mail.

(j) A social services district may not be reimbursed for costs incurred where a facility continues to operate after revocation or suspension of an operating certificate, or where a facility fails to comply with a limitation or limitations to an operating certificate imposed by the Office.

§ 491.5 Voluntary closure and surrender of operating certificates.

(a) In the event that an operator elects to close a shelter for adults, a small-capacity shelter or a shelter for adult families:

1. The operator shall notify both the social services district and the Office in writing as soon as possible, but no less than 90 days prior to the anticipated date of closure.

2. At least 45 days prior to the anticipated date of closure, the social services district shall submit to the Office for approval a plan for closure that shall include a timetable for the closure and describe the procedures and actions the operator and/or the social services district will take to:

   (i) notify residents of the closure;

   (ii) assess the needs and preferences of residents;

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

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

(b) Any operating certificate issued by the Office to the operator shall be surrendered to the Office by personal delivery to a designated representative or by certified or registered mail.

(c) Failure to notify the Office and the social services district of an intent to cease operations, failure to submit an approvable closure plan, failure to execute the approved closure plan, closure of the facility before all residents have been appropriately relocated, or failure to surrender any operating certificate issued by the Office may result in the denial of any reimbursement that remains owing to the social services district relative to the operation of the facility.
§ 491.6 Compliance with State and local laws, regulations, and codes.

(a) Shelters for adults, small-capacity shelters and shelters for adult families for which a social services district seeks reimbursement must be operated in accordance with State and local laws, regulations, and codes relating to:

1. building and construction of physical plants;
2. fire prevention and fire protection;
3. plumbing and water supply;
4. heating and electrical systems;
5. kitchens and food preparation facilities, where applicable;
6. sanitation and maintenance; and
7. health and safety.

(b) All inspection certificates and other documents required by State and local authorities for buildings, grounds and equipment must be maintained on the premises and available for Office review.

§ 491.7 General provisions.

(a) An operator of a shelter for adults, small-capacity shelter or a shelter for adult families shall afford any officers or duly authorized employees or agents of the social services district or the Office 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, a small-capacity shelter or a shelter for adult families 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 residents.

(c) The operator shall operate and maintain the facility in a manner that assures compliance with the operational plan approved by the Office, the regulations of the Office, and all other applicable State or local statutes, regulations, and codes.

(d) The operator of a facility issued an operating certificate by the Office 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 social services district or Office may require.
(e) The capacity of a shelter for adults, a small-capacity shelter or a shelter for adult families is limited to the capacity set forth in the operational plan approved by the Office. Approvals of capacity will be based upon the Office’s determination of whether the facility can operate at the requested capacity in compliance with the operational plan, State regulations, and applicable local codes and regulations concerning, but not limited to: the physical plant; environmental standards; the proposed program of services; and staffing ratios within the facility.

(f) No person younger than 18 years of age shall be admitted into a shelter for adults, a small-capacity shelter or a shelter for adult families or allowed entry for any purpose.

§ 491.8 Shelter staff and staff qualifications.

(a) The operator of a shelter for adults, small-capacity shelter or a shelter for adult families shall provide staff sufficient in number and qualified by training and experience to render those services mandated by statute or regulation. The Office will monitor the staffing of facilities to ensure comparability of staffing patterns and staff salaries in relation to the service needs of the residents.

(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) Facility Administrator. The operator shall designate an administrator who shall be directly accountable to the operator for operating and maintaining the facility in compliance with this Part, the Operational Plan approved by the Office, and all applicable statutes, regulations, codes, and ordinances. A facility operator may designate himself or herself as the facility administrator.

(1) The facility administrator shall be at least 21 years of age, be mentally and physically capable of carrying out the duties of an administrator, and shall be responsible for the following oversight activities:

   (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;

   (vi) protection of residents’ rights and development of appropriate mechanisms for their protection; and

   (vii) management of related program activities.
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. The person designated to be in charge in the absence of the administrator shall:

(i) be at least 21 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 facility administrator 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.

(f) Resident workers. Work by a resident as a volunteer, or 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 not under any express contract for hire; and
(3) is agreed to in writing.

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

(h) No person shall be permitted by a shelter operator to work, either as an employee or a volunteer, if that person is known to be infected with communicable disease that might endanger the health of residents.

§ 491.9 Referrals and assessments.

(a) Referrals. Any homeless adult who applies to a social services district for temporary housing assistance may be considered for referral to a shelter for adults or a small-capacity shelter; and, any homeless adult family that applies to a social services district for temporary housing assistance may be considered for referral to a shelter for adult families. A homeless adult family may not be referred to a shelter for adults or a small-capacity shelter unless the family can be provided with an individual room with a door containing a working door lock and with the minimum square footage per family member as required by the applicable State or local regulation or code.

(b) Assessments. (1) When an individual adult or adult family applies for temporary housing assistance, the social services district or the social services district’s designee shall commence to
evaluate the adult or adult family to assess the individual adult’s or the adult family’s housing and housing-related public assistance and care needs pursuant to section 352.35 of this Title, and the suitability of the individual adult or adult family for placement in a shelter, by the end of the next business day. The assessment shall be completed by the social services district or its designee as soon as possible thereafter.

(2) An individual or adult family must cooperate in and complete an assessment. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual’s or family’s application for temporary housing assistance unless non-compliance is due to a physical or mental impairment. When such a physical or mental impairment appears to be present and interfering with an individual’s ability to cooperate in and complete an assessment, the social services district must refer the individual or the family member with the apparent physical or mental impairment for an evaluation by an appropriate professional. When an individual states that they have a physical or mental impairment that interferes with their compliance, they must provide documentation of this impairment, unless the physical or mental impairment is known or apparent to shelter or intake staff, in which case the individual shall not be required to provide documentation of the physical or mental impairment. If they do not have such documentation and cannot obtain it with or without the assistance of the social services district, the social services district may refer the individual to an appropriate qualified professional for an evaluation and/or for such documentation. The social services district also may refer the individual to an appropriate qualified professional for an independent medical examination if the social services district believes additional information is necessary to confirm that the individual has a physical or mental impairment that is interfering with their ability to cooperate in and complete an assessment.

(c) A social services district shall not, without the approval of the Office, place any person in a shelter for adults, a small-capacity shelter, or a shelter for adult families who:

(1) has a mental or physical condition that makes such placement inappropriate or otherwise may cause danger to himself/herself or others;

(2) requires services beyond those that the shelter is authorized to provide by law and regulation, and by an operational plan approved by the Office;

(3) is likely to substantially interfere with the health, safety, welfare, care or comfort of other residents;

(4) is in need of a level of medical, mental health, nursing care or other assistance that cannot be rendered safely and effectively by the facility, or that cannot be reasonably provided by the facility through the assistance of other community resources;

(5) 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 the facility is equipped with an elevator;

(6) has a generalized systemic communicable disease or a readily communicable local infection which cannot be properly isolated and quarantined in the facility.
When a person cannot be referred to a shelter for adults, a small-capacity shelter, or a shelter for adult families for any of the reasons set forth in subdivision (c) of this section, the social services district must ensure that action is taken which is appropriate to the health, safety and needs of that person. Such action may include, but is not limited to, referral for appropriate medical or clinical services where a person is determined to be in need of treatment for physical or mental health issues, or to an appropriate adult protective or law enforcement agency or similar entity.

§ 491.10 Excess capacity admissions.

(a) An operator shall not admit or retain a number of persons in excess of the capacity specified in the operational plan approved by the Office.

(b) Notwithstanding subdivision (a) of this section, a social services district may authorize an operator to provide short-term emergency shelter to a number of persons in excess of the capacity specified in the operational plan approved by the Office. When the operational plan is approved, or at the request of a currently certified facility, the Office 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 (c) of this section.

(c) A social services district may authorize an operator to provide shelter to a number of persons in excess of the specified capacity if the following conditions are met:

1. snow emergencies or inclement winter weather as defined in section 304.1 of this Title, or other circumstances creating 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; and

5. The number of persons admitted to a given shelter does not exceed the authorized emergency limit.

(d) Where a social services district authorizes an operator to provide shelter to a number of persons in excess of the capacity specified in the operational plan approved by the Office, the social services district shall inform the Office by e-mail or telephone as soon as is practicable, but by no later than the end of the next business day. The Office may allow the operator to continue to operate above the capacity specified in the operational plan for a reasonable period.

§ 491.11 Facility charges.

(a) To the extent that a resident of a shelter for adults, small-capacity shelter or shelter for adult families has income, unless otherwise provided by law the resident must pay for the actual costs of their care, pursuant to the budgeting requirements set forth in Part 352 of this Title. For recipients of
Safety Net Assistance, Veteran Assistance, or Emergency Assistance for Adults, SSI or additional State payments, public assistance budgeting rules set forth in Part 352 of this Title must be used in determining the amount of available income to be applied toward the costs of care.

(b) Any amounts which are not permitted to be counted as income under the assistance program applicable to the resident shall not be counted as income for purposes of this section.

§ 491.12 Resident rights and obligations.

(a) The operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families shall adopt resident rules governing day-to-day life and activities in the facility and post these rules in a location accessible to residents of the facility and visitors.

(b) Upon admission to a shelter for adults, a small-capacity shelter or a shelter for adult families, each resident must be provided with a copy of the facility rules setting forth their rights and responsibilities while residing in the facility, and must be advised in writing of the consequences of failing to comply with the rules of the facility including discharge, and in certain circumstances discontinuance of temporary housing assistance.

(c) Resident Rights. At a minimum, the operator shall afford each resident the following rights, which will be set forth in the resident rules:

(1) a resident shall have the right to remain in the facility and not to be discharged except as provided in this Part;

(2) a resident shall have the right to leave and return to the facility and grounds at reasonable hours in accordance with the rules of the facility;

(3) a resident’s civil rights shall not be infringed;

(4) a resident’s religious liberties shall not be infringed;

(5) a resident shall have the right to have private written and verbal communications including the right to meet with legal representatives, legal counsel, medical providers, social workers, and any other service providers or persons authorized by the social services district. Any requirements as to prior notice and hours of access shall be set forth in the resident rules;

(6) a resident shall have the right to receive and send mail or any other correspondence without interception or interference, except that incoming mail may be scanned and x-rayed to ensure that it does not contain contraband that could pose a threat to the security of the facility or to the health and safety of residents or staff;

(7) a resident shall have the right to join with other residents or individuals to work for improvements in resident care;

(8) a resident shall have the right to present grievances on one’s own behalf, or on behalf of other residents, to the operator or operator’s designee, to the social services district, and/or the Office, without fear of reprisal:
(9) a resident shall have the right to manage one’s own financial affairs;

(10) a resident shall have the right to confidential treatment of personal, social, financial and medical records;

(11) a resident shall have the right to receive courteous, fair and respectful care and treatment;

(12) a resident shall have the right to be free from restraint or confinement and shall not be locked in a room at any time;

(13) a resident shall have the right to privacy in caring for personal needs;

(14) a resident shall have the right to have their version of the events leading to an accident or incident in which he/she is involved included on all accident or incident reports;

(15) a resident shall not be obliged to perform work by coercion or threat,

(16) 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;

(17) a resident shall have the right to receive visitors in designated areas of the facility, where feasible, during reasonable hours as specified in the resident rules; and

(18) a resident shall have the right to request that a shelter operator or social services district make reasonable accommodations for any physical or mental disability that substantially limits one or more major life activities.

(d) Resident rules. The resident rules must inform residents of the obligations upon which their continued residence in the shelter depends and the sanctions for noncompliance. At a minimum, rules concerning the following obligations must be set forth in the resident rules:

(1) applying for Safety Net Assistance, Veteran Assistance, Emergency Assistance for Adults, SSI, or additional State payments, whichever is applicable, to the extent that the resident is eligible to receive such benefits pursuant to section 349.3 of this Title;

(2) developing, carrying out and completing a service or independent living plan with facility or social services district staff to achieve permanent housing and reviewing such plan with facility staff at least once every two weeks;

(3) complying with any responsibilities, conditions or requirements set forth in the resident’s independent living plan, where applicable;

(4) seeking and accepting permanent housing;

(5) seeking and accepting employment;
(6) maintaining the cleanliness of their own sleeping and living areas, including bathroom and cooking areas, if any, as well as laundering and changing linens and towels regularly if required by facility staff or by resident’s independent living plan;

(7) using communal areas appropriately;

(8) notifying facility staff of any illnesses;

(9) cooperating with the social services district and facility staff in an assessment of the family’s housing and housing-related public assistance and care needs;

(10) refraining from engaging in acts which endanger the health and safety of oneself or others, or which substantially interfere with the orderly operation of the facility;

(11) complying with all public assistance requirements that apply to the resident or resident family; and

(12) paying to the facility or the social services district the resident or resident family’s share of the cost of temporary housing in the amount determined by the social services district.

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

§ 491.13 Resident funds and valuables.

(a) An operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families 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.

(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 described in the operational plan submitted for Office approval.

(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 made at least one business day in advance.

(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.

§ 491.14 Resident services.

(a) The operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families shall be responsible for the development and provision of resident services that shall include, at a minimum, room, board, health services, social rehabilitation services, supervision, and information and referral.

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

(c) The Office may impose additional staffing and program requirements based on such factors as resident need and the size, physical layout and location of the facility.

(d) Health services.

(1) Facilities must have an established relationship with a fully accredited medical institution or clinic for the referral of residents for emergency treatment. Facilities must assist residents to
access medical services for treatment for injury, illness or disease, or to obtain preventative care.

(2) Facilities must provide residents with a means to safely store and secure prescription medications. The operator of a facility may offer a resident the opportunity to store prescription medications in the operator’s custody for safe keeping.

(3) Residents with a generalized systemic communicable disease, or a readily communicable local infection that cannot be properly isolated and quarantined in the facility must be transferred to an appropriate medical facility or to another shelter facility that has the capability to accommodate such a condition.

(e) Social rehabilitation services.

(1) Social rehabilitation services shall be provided to residents of shelters for adults, small-capacity shelters, and shelters for adult families, either directly, through contract or cooperative agreement, or through the social services district.

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

(i) assistance in making applications for public benefits such as public assistance, MA, SNAP, SSI, and unemployment benefits, as needed. In a shelter operated by a social services district, action to secure such benefits must be initiated on or before the 15th consecutive day after the admission of the resident to the facility;

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

(iii) assistance in obtaining permanent housing;

(iv) assistance 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 when residents are in the facility;

(vi) provision of case management and counseling; and

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

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

(4) Social rehabilitation shall be available at least five days each week, including evenings, for periods sufficient to meet resident needs.
Supervision services.

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

(i) intake;

(ii) recording a daily census of residents;

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

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

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

(vi) conducting and supervising evacuations and periodic fire or evacuation drills and;

(vii) investigating, documenting and reporting incidents involving resident endangerment, injury or death.

(2) At least one staff member on each shift shall have completed an in person, basic first aid training course or its equivalent.

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

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

(5) If an operator learns that a resident has developed a medical condition requiring immediate or continual medical or skilled nursing services that cannot be provided on an outpatient basis or which constitutes a danger to the resident or to others, the operator shall:

(i) notify the social services district;

(ii) with the approval and assistance of the social services district, make arrangements for the transfer of such resident to an appropriate medical facility; and

(iii) notify the resident’s representative, or next of kin, if known and if the resident’s consent has been provided.

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

(i) notify the social services district;

(ii) refer the resident for appropriate professional evaluation of their condition;

(iii) notify the resident’s representative, or next of kin, if known and if the resident’s consent has been provided; and
(iv) if necessary, arrange for transfer of the individual to a facility providing the proper level of care.

(7) Each operator shall designate sufficient staff to monitor and supervise residents during all hours of operation.

(8) The minimum number of staff required to supervise and monitor residents shall be determined by resident census. The resident census shall be the number of residents of a shelter facility unless otherwise directed by the Office. The following number of staff shall be on duty and on site at all times:

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<th>Resident census</th>
<th>Staff required</th>
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<td>20 – 40</td>
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(9) Staff shall be immediately accessible while on duty.

(10) Provision shall be made for backup staff.

(11) Staff may be assigned other duties which do not interfere with their accessibility, provided that such staff remain responsible for, and available to supervise and monitor residents.

(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) identify persons in need of services and assist external services providers in establishing a relationship with these residents;
(ii) cooperate with service providers in executing a plan for service for individual residents;

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

(iv) in no way inhibit residents from accessing external service providers of their choice.

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

§ 491.15 Involuntary discharge and transfer.

(a) Involuntary discharge. An operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families, with approval of the social services district, may discharge an individual resident and/or adult family under the terms set forth in the facility rules or when the resident individual’s or family’s failure to comply with public assistance and care requirements, including those set forth in section 352.35 of this Title, has resulted in sanctions being imposed by the social services district, or when the social services district has determined the resident individual or family to be ineligible and has discontinued or denied temporary housing assistance.

(1) A decision to involuntarily discharge an individual resident or adult family residing in any shelter for adults, small-capacity shelter, or shelter for adult families involuntarily may be challenged in a fair hearing requested pursuant to Part 358 of this Title, and the individual resident or adult family may have the right to receive aid continuing pursuant to section 358-3.6 of this Title if a fair hearing is requested in timely fashion.

(2) An individual resident or adult family may not be involuntarily discharged from a shelter for adults, small-capacity shelter, or shelter for adult families until the following procedures are observed:

   (i) the individual resident or adult family has been given written notice on a form prescribed by the Office of the discharge decision and of the reasons therefor, which shall include a statement that the individual resident or adult family may request a fair hearing in which to challenge the discharge decision, and shall describe how a fair hearing may be requested and obtained;

   (ii) the individual resident or adult family’s need for protective services for adults, preventive services, or for other social services has been evaluated and an appropriate referral has been made if necessary; and

   (iii) if criminal activity may have occurred, the appropriate law enforcement agency has been contacted.

(3) An individual resident or adult family who has requested a fair hearing and who is found by the fair hearing decision to have been wrongfully discharged from a shelter for adults, a small-capacity shelter, or a shelter for adult families must be offered an opportunity to return to the facility from which the individual resident or adult family was discharged as soon as an
appropriate vacancy becomes available. No such opportunity may be offered if the individual resident or adult family no longer meets the requirements for residency in a shelter for adults, a small-capacity shelter, or a shelter for adult families or if the individual or family has obtained permanent housing.

(4) After receiving notification from the social services district of the social services district’s intention to discontinue temporary housing assistance pursuant to the provisions of section 352.35 of this Title, an individual resident or adult family may not be involuntarily discharged pursuant to the provisions of this subdivision without the approval of the social services district.

(b) Involuntary transfers. An individual resident or an adult family residing in any shelter for adults, small-capacity shelter, or shelter for adult families may be transferred upon at least 48 hours advanced written notice to another appropriate shelter facility, provided, however, that such 48 hours advanced written notice shall not be required where a delay will pose a risk to the health or safety of such individual or adult family, or to others in the facility. 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 State or local authority.

(f) The social services district must maintain a written record of all discharges and involuntary transfers.

§ 491.16 Serious incidents and incident reporting.

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

(1) immediately obtain necessary assistance and services;

(2) notify the resident’s representative, or next of kin, if known and if the resident’s consent has been provided; and

(3) notify the appropriate local authorities.
(b) In the event of any serious incident impacting upon the safety and well-being of any resident of a shelter or member of the shelter’s staff, including, but not limited to, deaths by unnatural causes or suicides, life-threatening injuries including drug overdoses, assaults, rapes, sexual assaults, or attempted rapes or sexual assaults, arrests, fires, disasters, or other events that cause evacuation of the building or injury to shelter residents, domestic violence that results in injury of one or more residents, criminal activity on the part of shelter staff, or any misconduct on the part of shelter staff that results in harm to the residents or other staff members, unless otherwise directed by the Office:

(1) the operator of the shelter or the social services district shall immediately report the serious incident to the Office by e-mail or telephone. In the event the operator of the shelter reports the serious incident to the Office, the social services district also must be immediately notified, and

(2) the social services district shall submit a copy of the Office-prescribed Incident Report form to the Office within three business days.

(c) The operator must maintain a chronological record of serious incidents of the type described in subdivision (b) of this section, using the Office-prescribed Incident Report form. 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 unless the resident objects.

(d) Where a security incident has been reported, or upon review of a facilities operational plan, the Office may direct the social services district or the operator to take additional security measures including, but not limited to, directing the shelter to deploy additional trained security staff or relocate residents to another facility or shelter. The Office also may direct the social services district or the operator to:

(1) engage a qualified third party, who has been approved by the Office, to conduct an evaluation of the security measures employed by the facility, and

(2) employ any or all of the recommendations made by the third party.

§ 491.17 Food service.

(a) The operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families shall make provision to ensure that residents can conveniently obtain meals which are balanced, nutritious and adequate in amount and content to meet their dietary needs.

(b) Meal service may be provided at the facility, or outside the facility, whether directly or through contractual arrangements, or in restaurants through the use of restaurant allowances or voucher arrangements.

(c) At a minimum, residents of shelters for adults, small-capacity shelters, or shelters for adult families shall be provided with the opportunity to obtain breakfast and evening meals at regularly scheduled times, and no more than 15 hours shall elapse between the times at which the evening meal and breakfast the next morning shall be made available.

(d) On-site meal preparation.
(1) In shelters that prepare meals for residents, food-buying and menu-planning arrangements must be overseen by a staff member, consulting dietician, or volunteer sufficiently knowledgeable in nutrition and dietetics to ensure the planning of well-balanced meals and the purchase, storage and preparation of good quality food.

(2) Menus shall be planned at least ten days in advance.

(3) Menus must be maintained for at least two weeks and shall be available for Office review.

(4) Shelters that prepare meals for residents shall have kitchens or food preparation and service facilities.

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

(6) 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.

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

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

(9) The operator of every shelter for adults, small-capacity shelter, or shelter for adult families shall comply with applicable county or local health and fire regulations, codes and ordinances.

(10) The operator of any facility with 40 or more residents shall comply with the New York State Sanitary Code (10 NYCRR, Part 14).

(11) 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 Office.

(e) **Off-site meal preparation.** Off-site food preparation may be permitted consistent with an operational plan approved by the Office provided that the operator establishes that the facility at which the meals are prepared complies fully with Part 14 of the New York State Sanitary Code (10 NYCRR, Part 14) and that meals meet the nutritional needs of the residents.

(f) **Contracted food services are allowable.** Meals may be purchased from a vendor that complies fully with Part 14 of the New York State Sanitary Code (10 NYCRR, Part 14), consistent with an operational plan approved by the Office, provided that such meals meet the nutritional needs of the residents.

(g) Special medically-prescribed dietary or nutritional needs, and any religious dietary restrictions, must be accommodated regardless of the food-buying and meal-preparation arrangements of the facility.
§ 491.18 Environmental standards.

(a) The operator of a shelter for adults, a small-capacity shelter or a shelter for adult families must maintain the facility in a good state of repair and sanitation and in conformance with applicable State and local laws, regulations, and codes. Shelters for adults, small-capacity shelters and shelters for adult families must comply with all applicable state and local codes including fire prevention, building and safety codes.

   (1) All areas of the facility, including exits that are accessible to residents, must be well- lighted, and clear of trash, clutter and obstructions.

   (2) All bathrooms, sleeping areas, recreational areas, hallways, and other living areas must be kept clean, sanitary, and free of insects, rodents and trash. Procedures must be established and implemented for the cleaning and maintenance of the entire facility.

   (3) All garbage and refuse containers must be securely covered and emptied on a regular daily basis.

(b) Smoke and fire protection.

   (1) Supervised smoke and carbon monoxide detectors that are Underwriters Laboratories Inc. (UL) listed must be installed and located in accordance with manufacturers' specifications and comply with all state and local codes including fire prevention, building construction and maintenance, and safety codes.

   (2) In a facility that is approved by the Office to house 40 or more residents, 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 that is approved by the Office to house fewer than 40 residents, 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) There must be at least 2 means of egress from each floor designated for public use or on which 11 or more residents are housed. Each means of egress shall:

      (i) be remote from each other;

      (ii) be 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 clear of trash, clutter or obstruction and freely accessible at all times.

   (5) 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.
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 inspected on at least an annual basis by a certified fire safety specialist.

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.

The following are fire hazards and are prohibited:

(i) portable electric space heaters;
(ii) self-contained, fuel-burning space heaters;
(iii) electric blankets;
(iv) accumulation of combustible materials in any part of the building;
(v) hot plates or other cooking appliances in residents’ rooms; and
(vi) any other items that are determined by the shelter operator to pose an unreasonable fire risk.

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

Electrical system.

Overcurrent protection devices must be maintained in safe operating condition, must not be locked or fastened in the “on” position and must be accessible.

Ground-fault circuit interrupters must be installed and operable in:

(i) all electrical receptacles in kitchen areas that serve countertop surfaces;
(ii) all electrical receptacles in bathrooms that are within 6 feet of the outside rims of sinks, toilets, bathtubs and shower stalls; and
(iii) where otherwise required by applicable State or local codes.
(d) Safety procedures.

(1) Neither devices such as chain locks, hasps, bars, nor other items such as furniture, can 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 units may be secured by the resident provided such doors can be unlocked from the outside by facility attendants or employees or security staff 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) Hallways, corridors and means of emergency egress must be free from obstruction and may not be used for storage of equipment or trash.

(e) Furnishings and equipment.

(1) The operator shall provide furnishings and equipment which support daily activities and are durable, clean, appropriate to function and do not endanger resident health, safety and welfare.

(2) The operator shall furnish each resident with a single bed that is a minimum of 30 inches in width. In lieu of two single beds, the operator of a shelters for adult families may furnish a double bed that is a minimum of 54 inches in width to be shared by couples where appropriate. Each bed shall be substantially constructed, in good repair, and have:

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

   (ii) a cover sufficient to protect against insect infestation; and

   (iii) one clean and comfortable pillow of average bed size for each single bed and two clean and comfortable pillows of average bed size for each double bed.

(3) Residents of shelters for adults, small-capacity shelters or shelters for adult families shall be supplied with:

   (i) suitable sheets, pillowcases, and blankets;

   (ii) towels;

   (iii) soap; and

   (iv) toilet tissue.

(4) Bed linens, blankets and towels shall be:
(i) clean and washable;
(ii) free from rips and tears; and
(iii) available when changes are necessary.

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

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

(7) All operable windows must be equipped with screens and where necessary to provide privacy, with curtains, shades or other appropriate window covering to ensure privacy.

(8) Light fixtures must be shaded to prevent glare.

(9) Heating and cooling systems must be in good working order.

(10) Suitable fans should be provided to residents when necessary to maintain reasonable air circulation.

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

(12) 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.

(13) Laundry facilities, either on-site in a clean, dry, well-lighted area, or at a nearby commercial laundromat.

(14) A telephone or telephones must be available for resident use.

(15) 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.

(f) *Housekeeping.*

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

(2) All areas of the facility shall be free of vermin, rodents and 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.
(g) Maintenance.

(1) The operator of each shelter for adults, small-capacity shelter or shelter for adult families shall ensure the continued maintenance of the facility in accordance with the Office-approved operational plan.

(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 in good repair and shall be kept free from ice, snow and other hazards.

(h) Space requirements.

(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 Office approval, as leisure space.

(6) 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.

(7) Bath and toilet facilities.

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

(ii) Toilet and shower areas must be accessible and in working order with hot and cold water 24 hours a day.
(iii) Hot water for bathing and washing must be maintained at no less than 110 degrees Fahrenheit.

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

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

(8) **Bedrooms in shelters for adults and small-capacity shelters.**

(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) With the exception of single bedrooms with locking doors, bedrooms shall have individual, lockable storage lockers for resident belongings. Each locker shall be large enough to accommodate winter clothing.

(9) **Bedrooms in shelters for adult families.** Each adult family must have at least one individual room with a door containing a working door lock and with the minimum square footage per family member as required by the applicable State or local regulation or code.

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

(i) **Kitchens in living areas.** Kitchens or food preparation areas in individual living areas, if any, must be well-lighted and ventilated, and comply with all State and local codes and regulations including, but not limited to, those relating to fire protection, safety, sanitation and health.
(i) **Reporting.** In the event of a heating, water, or electrical failure that is more than four hours in duration, the discovery of an environmental hazard such as lead paint or asbestos, or the discovery of a defect in the physical plant or structure of a facility that may threaten the health and well-being of residents, the operator will immediately notify both the social services district and the Office by e-mail or telephone.

§ 491.19 Records and reports.

(a) Operators of shelters for adults, small-capacity shelters and shelters for adult families shall collect and maintain such information, records or reports as determined by the Office to be necessary.

(b) Operators of shelters for adults, small-capacity shelters and shelters for adult families shall supply and provide access to such information and records in such form and at such times as the Office shall determine.

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

(d) The Office may request from any other State or local agency including, but not limited to, the Office of Children and Family Services, the Office of Mental Health, and the Department of Health, and such other State or local agency shall furnish, such information as the Office may require for the proper performance of its duties.

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

(f) **Confidentiality.**

(1) Officers or employees of the Office 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 Office without the written permission of the resident, provided that confidential HIV-related information concerning residents must be maintained in accordance with section 491.20 of this Part.

(3) Operators must maintain confidential HIV-related information concerning employees, volunteers, applicants for employment and prospective residents in accordance with section 491.20 of this Part.

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

Facility records.

(1) The operating certificate issued by the Office pursuant to section 491.4 of this Part must be conspicuously posted in a publicly accessible area within the facility, and the operational plan approved by the Office must be maintained at the facility and made available for review and inspection by facility residents and visitors.

(2) The operator shall maintain complete, accurate and current records which document operation and maintenance of the facility in accord with applicable laws, regulations, and codes.

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

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

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

   (ii) resident records required 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 or 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 Office review.

Forms. Records that must be retained by the operator of a shelter for adults, a small-capacity shelters or a shelter for adult families, and records that must be submitted by the operator of such a facility to the Office, shall be maintained on forms and in a manner prescribed by the Office.

§ 491.20 Confidentiality of HIV- and AIDS-related information.

(a) An operator or employee of a shelter for adults, small-capacity shelter or shelter for adult families must not require that an applicant for employment, volunteer, prospective resident, resident or employee be tested for HIV.
(b) An operator or employee of a shelter for adults, small-capacity shelter or shelter for adult families must not require an applicant for employment, volunteer, prospective resident, resident or employee to disclose confidential HIV-related information.

(c) 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's contacts. The terms HIV-related test, HIV infection, HIV-related illness and AIDS are defined in section 360-8.1 of this Title.

(d) The HIV status of an applicant for employment, prospective resident, resident, volunteer or employee cannot be used as the sole basis to deny admission, retention or employability.

(e) Confidential HIV-related information may be disclosed by an operator, employee or volunteer only in accordance with the procedures set forth in this section and only as necessary to provide appropriate services to a resident.

(f) (1) The operator of a shelter for adults, small-capacity shelters or shelter for adult families must maintain the confidentiality of individual resident records, and not release information in a resident record to anyone other than the resident, next of kin or authorized representative of the resident, an employee or designee of the Office or employees of the facility providing social services without the resident's written permission, provided that confidential HIV-related information concerning residents must be maintained in accordance with this section.

(2) The operator of a shelter for adults, small-capacity shelter or shelter for adult families must maintain confidential HIV-related information concerning employees, volunteers, applicants for employment and prospective residents in accordance with this section.

(g) An operator, volunteer or employee of a shelter for adults, small-capacity shelter or a shelter for adult families who obtains confidential HIV-related information concerning any prospective resident, resident, applicant for employment, employee or volunteer may disclose that 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. Except as specified in subdivision (k) of this section, in all other circumstances, an operator, volunteer, or employee 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:

(1) the protected individual; or

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

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

(1) be dated;

(2) specify to whom disclosure is authorized;
(3) specify the purpose for the disclosure;

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

(5) specify that the information to be disclosed is confidential HIV-related information; and

(6) 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.

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

(j) Whenever an operator, volunteer or employee of a shelter for adults, small-capacity shelter or shelter for adult families discloses confidential HIV-related information, that person must:

(1) enter a dated and signed notation of disclosure of confidential HIV-related information in the protected individual's record; and

(2) within 10 days of the date of disclosure, when disclosure is oral, or simultaneous, when disclosure is written, give a written statement to the person to whom the confidential HIV-related 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.

(k) Notwithstanding the requirements of this section, an operator of a shelter for adults, small-capacity shelter or shelter for adult families or an employee or volunteer of such a facility is obligated to release confidential HIV-related information to authorized employees or agents of the Office or a social services district when such information is reasonably necessary to supervise, monitor, or administer the facility and such employee or agent of the Office or a social services district would, in the ordinary course of business have access to such records. Authorized employees and agents of the Office or a social services district may obtain confidential HIV-related information under this subdivision even though the facility does not obtain the release specified in subdivision (h) of this section. In addition, when information is released under this section by a shelter for adults, small-capacity shelter or shelter for adult families, the facility is not required to give the statement specified in subdivision (j) of this section to the employees or agents of the Office nor is the facility required to indicate in any resident’s record that the information was released.

§ 491.21 Contracts.

(a) In the event that an operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families 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 Office staff or designees.

(3) The operator shall remain solely responsible for compliance with State 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's 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) provide 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 Office, and to cooperate with the Office 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.
§ 491.22 Inspections.

(a) The Office shall inspect each shelter for adults, small-capacity shelter, and shelter for adult families for which a social services district seeks or receives reimbursement from the State at least once a year, to ensure that the facility will operate or is operating in compliance with all applicable laws and regulations including the regulations in this Part, and with an operational plan that has been approved by the Office.

(b) Inspection means periodic scheduled, announced or unannounced onsite investigation, including the gathering of written, photographic, or other physical evidence by the Office or its staff, at any time irrespective of whether during regular business hours or at night or on weekends, for the purpose of determining whether a shelter for adults, a small-capacity shelter, or a shelter for adult families will be operated or is operating in compliance with the requirements of this Part and with an operational plan approved by the Office.

(c) Each shelter for adults, small-capacity shelter, and shelter for adult families shall allow the Office full access at any time to the facility’s grounds, buildings, employees and residents, and books and papers including, but not limited to, the residents’ case and medical records, if any. Interference with an inspection, refusal to allow admission, delay in allowing admission, or refusal to provide complete access to the facility or the facility’s books and papers will be deemed to be a violation, and may result in the Office taking immediate enforcement action.

(d) An inspection report shall be made of each inspection conducted by the Office, which shall identify and indicate in detail each area of operation inspected, including the premises, equipment, personnel, care and services, and whether each area of operation is or is not in compliance with the regulations in this Part and with an operational plan for the facility approved by the Office. The inspection report shall be forwarded to both the social services district and to the facility operator.

(e) Upon receipt of an inspection report noting areas where the facility fails to comply with the requirements of this Part, or with the operational plan for the facility approved by the Office, but in no case later than 30 days following the date the inspection report is issued, the social services district must correct the deficiencies or in the event that correction requires more than 30 days, submit an acceptable plan for correction to the Office for the Office’s review and approval.

(f) Notwithstanding any other provisions of this section, in the event that Office determines that there exist deficiencies, violations, or conditions at a shelter for adults, a small-capacity shelter or a shelter for adult families, which are dangerous, hazardous, imminently detrimental to life or health, or otherwise render the facility unfit for human habitation, the Office may take immediate emergency measures, including, but not limited to, one or more of the following:

(1) issuing an emergency order directing the facility to take immediate measures to rectify any deficiencies, violations or conditions; requiring additional security, or directing the transfer of the facility’s residents to other temporary emergency housing;

(2) issuing an emergency order revoking, suspending or limiting the facility’s operating certificate, subject to the notice and expedited hearing process set forth in section 493.8 of this Title; or

(3) taking any additional action authorized by State law or regulation.
Failure on the part of the social services district to correct a noted deficiency within the time period specified in an emergency order issued by the Office pursuant to subdivision (f) of this section, or to correct deficiencies in accordance with subdivision (e) of this section, may result in the revocation, suspension or limitation of the facility’s operating certificate, withholding or denial of reimbursement to the social services district in accordance with section 491.25 of this Part, and/or the imposition of civil penalties pursuant to section 491.26 of this Part.

The Office also may conduct inspections of shelters for adults, small-capacity shelters or shelters for adult families to determine the validity of complaints received by the Office concerning such a facility.

1. When such a complaint investigation is being conducted, the Office shall advise the operator of the complaint, review, findings, and may prescribe corrective action. However, the operator shall not be advised of the conduct of a complaint investigation if such notice would jeopardize the complainant’s confidentiality or when potential criminal wrongdoing is involved.

2. After a complaint investigation has been completed, the Office shall advise the complainant of the pertinent findings and prescribed corrective action, if any. However, a complainant shall not be advised of the outcomes of an investigation that is being contested by an operator or when civil or criminal action might be compromised by such notice.

The facility operator shall make the inspection report for the most recent inspection, and any related follow-up inspection reports, excluding any confidential information and/or confidential attachments, available for review by facility residents or visitors upon request.

Inspection reports, excluding any confidential information and/or confidential attachments, for the most recent two-year period shall be available for review upon request by residents or visitors.

§ 491.23 Investigations, immediate emergency measures and enforcement powers.

Investigations.

1. The Office may undertake an investigation of the affairs and management of any shelter for adults, small-capacity shelter, or shelters for adult families, or of any person, corporation, society, association or organization that operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility. The Office is empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths and to examine persons under oath, and to exercise the same powers in respect to the conduct of such an investigation as belong to referees appointed by the supreme court.

2. If it shall appear after such investigation that the residents of the facility are cruelly, negligently or improperly treated, or that inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary for their comfort and well-being, the Office, may issue an order in the name of the people, and under the official seal of the State, directing the appropriate officers or managers of such facility to modify such treatment or provide such other remedy as may be specified therein. Before any such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and
after an opportunity to be heard, and any person to whom such an order is directed who shall intentionally fail or refuse to obey its terms shall be guilty of a misdemeanor.

(b) **Enforcement.**

(1) *Enforcement* shall mean the action(s) undertaken or initiated by the Office to help assure that shelters for adults, small-capacity shelters and shelters for adult families are established and operated in compliance with all applicable State and local laws or regulations, including the applicable provisions of this Part, and in accordance with an operational plan approved by the Office.

(2) Enforcement actions undertaken by the Office may include, but are not limited to:

   (i) issuance of notice of intention to initiate enforcement;

   (ii) conduct of hearings to determine if an operator has failed to comply with applicable law and regulation;

   (iii) determination, after hearing, that civil penalties should be imposed;

   (iv) determination, after hearing, to revoke, suspend or limit an operating certificate;

   (v) issuance of an order pursuant to Social Services Law § 460-d(2) requiring an operator to immediately remedy conditions dangerous to residents;

   (vi) temporary suspension or limitation of an operating certificate upon finding that resident health and safety are in imminent danger;

   (vii) request to the Attorney General to seek an injunction against an operator for violations or threatened violations of law or regulation; or

   (viii) request to the Attorney General to take such action as is necessary to seek criminal prosecution, or to bring about compliance with any outstanding hearing determination or order.

(3) The operating certificate of any shelter for adults, small-capacity shelter, or shelters for adult families may be revoked, suspended or limited upon a determination by the Office, after a hearing in accordance with procedures set forth in Part 493 of this Title, that the operator has failed to comply with the operational plan approved by the Office or requirements of State or local laws or regulations applicable to the operation of such facility.

(4) The operating certificate of any shelter for adults, small-capacity shelter, or shelters for adult families may be temporarily suspended or limited without a hearing for a period not in excess of 60 days upon written notice to the facility that the Office has found that the public health, or an individual’s health, safety or welfare is in imminent danger. If the Office schedules an expedited hearing to begin during the suspension period, in a proceeding to suspend, revoke or limit the operating certificate, as set forth in section 493.8 of this Title, the temporary suspension will remain in effect until the hearing decision is issued.
(5) Any order or determination to limit an operating certificate shall specify the manner in which the operating certificate is to be limited. An operating certificate may be found subject to one or more of the following limitations:

(i) a limitation on the period of time for which such certificate remains effective, contingent on a determination that specified violations have been corrected or specified conditions have been met;

(ii) a limitation on the number of persons for which such facility is authorized to provide care;

(iii) a prohibition against the admission of new residents after a specified date; or

(iv) a limitation on the type(s) of service to be provided.

(c) Violations or threatened violations of law or State regulations at any shelter for adults, small-capacity shelter, or shelters for adult families may be enjoined by the Supreme Court. The Attorney General may seek such an injunction, in the name of the people, upon the request of the Office. Service in such an action shall state the nature of the violation and shall be accomplished in the manner prescribed by the Civil Practice Law and Rules; provided, however, that an ex parte temporary restraining order may be issued, notwithstanding the Civil Practice Law and Rules, if the court finds, on motion and affidavit, that such violation may reasonably be expected to result in imminent danger to the public health or to the health, safety or welfare of any individual in a facility subject to the Office’s inspection and supervision. The court, after a hearing, may issue a preliminary injunction or a permanent injunction enjoining a facility from admitting new residents, or directing the Office and such facility to arrange for the transfer of residents to other facilities, or any other injunctive relief the court may deem necessary.

(d) Whenever the Office has knowledge, acquired by announced or unannounced inspections, audits, or other methods, or has been advised by any State or local entity authorized to conduct inspections or audits, that there exists a violation of law, regulation, or code with respect to any shelter for adults, small-capacity shelter, or shelter for adult families in which there are conditions that are dangerous, hazardous, imminently detrimental to life or health, or otherwise render the building not fit for human habitation, the Office may take immediate emergency measures, including, but not limited to, one or more of the following:

(1) issuing an order directing the facility to take immediate measures to rectify any deficiencies, violations, or conditions, requiring additional security, or directing the transfer of the facility’s residents to other temporary emergency housing; or

(2) temporarily suspending the facility’s operating certificate or directing closure of the facility, subject to the notice and expedited hearing process set forth in section 493.8 of this Title.

(e) If the Office, after investigation, finds that any person, agency or facility subject to this regulation is causing, engaging in or maintaining a condition or activity which constitutes a danger to the physical or mental health of the residents of a facility subject to the inspection and supervision of the Office, and that it, therefore, appears to be prejudicial to the interests of such residents to delay action for 30 days until an opportunity for a hearing can be provided in accordance with the provisions of this section, the Office shall order the person, agency or facility, by written notice setting forth the basis for such finding,
to discontinue such dangerous condition or activity or take certain action immediately or within a
specified period of less than 30 days. The Office shall, within 30 days of issuance of the order, provide
the person, agency or facility an opportunity to be heard and to present any proof that such condition or
activity does not constitute a danger to the health of such residents.

§ 491.24 Reimbursement.

(a) The operational plan for each shelter for adults, small-capacity shelter or shelter for adult families must include on forms and in the manner prescribed by the Office a financial statement for the facility’s most recently completed fiscal year where available, or where a facility has not been in operation, a financial statement for the facility operator’s most recently completed fiscal year. In addition, the operational plan must contain a proposed one-year budget, including estimated income and expenditures. Such budget must set forth the costs reasonable and necessary to operate and maintain the facility consistent with each of the requirements of the operational plan and this Part. The budget must be based upon the estimated net actual expenditures for the operation and maintenance of facilities and for the care of the residents with respect to items approved under the operational plan. The budget must be presented in sufficient detail to enable the Office to identify costs not subject to federal financial participation. Budgets of facilities not operated by social services districts must be agreed upon between the social services district and the facility operator. All budgets must be formulated to ensure that the costs of resident services that may be paid from other funding sources, including but not limited to the MA program, are not included as costs in the proposed shelter budgets.

(b) Costs reasonably necessary under any operational plan shall be limited as follows:

(1) (i) Related party transactions. Actual costs for rental of land, building and equipment and other personal property owned or controlled by organizations or persons affiliated with an organization operating a facility, or owned or controlled by members, directors, trustees, officers or other key personnel of such operator or their families either directly or through corporations, trusts or other similar arrangements in which they hold more than 10 percent interest in such land, building and equipment or an interest valued at $1,000 or more, whichever is less, are allowable only to the extent that such rentals do not exceed the amount the operator would have received had legal title to the rented items or facilities been vested in the operator.

(ii) Actual charges in the nature of rent between or among organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance and maintenance; provided that no part of such costs shall duplicate any other allowed costs.

(iii) Nonrelated party transaction. Rental costs of land, building and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the areas, the type, life expectancy, condition and value of the facilities leased, options available and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve, among other considerations, comparison of rental costs with the amount which the operating organization would have received had it owned the facilities.
(iv) Sales/leaseback transactions. Rental costs specified in sale and leaseback agreements, incurred by persons or organizations through selling facilities to investment organizations, such as insurance companies, associate institutions or private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the organization would have received had it retained legal title to the facilities.

(2) Capital costs and depreciation are limited as follows:

(i) Capital costs are not allowable, except as provided in section 600.3(b)(7) of this Title.

(ii) Compensation for the use of buildings, capital improvements and capital equipment may be made through either depreciation or the allowance provided in section 609.5(f)(2) of this Title with respect to office space. Capital equipment is any equipment with an acquisition cost exceeding $1,500 and having a useful life of more than two years. No depreciation allowance is permitted with respect to the cost of land. Costs incurred for improvements which add to the permanent value of buildings and equipment or which appreciably prolong their intended life must be treated as capital expenditures. Costs incurred for necessary maintenance, repair or upkeep of buildings or equipment which neither add to nor appreciably prolong their useful life, but keep them in an efficient operating condition must not be treated as capital costs.

(iii) Depreciation allowances must use the straight-line method with a useful life reflecting the probable period of useful service, which in the case of a building must not be less than 25 years; provided, however, that the Office may authorize a shorter period for privately owned shelters, but in no case less than 10 years and then only when private financing cannot otherwise be obtained and a longer period would cause undue financial hardship. When a depreciation period less than 25 years is used, the aggregate amount by which the reimbursement paid exceeds the amount which would otherwise be payable over the same period constitutes an advance of reimbursement and the social services district must obtain and file a mortgage agreement securing any such advances. Such debt becomes due and owing upon the conversion of the facility to any use other than as a shelter for adults, small-capacity shelter or shelter for adult families, earlier than 25 years. With respect to publicly-owned shelters, the Office may permit a depreciation period shorter than 25 years, but in no event less than the applicable period of probable usefulness under section 11.00 of the Local Finance Law. Any determination to use a period shorter than 25 years must be approved by the Director of the Division of the Budget.

(iv) If less than a 25-year useful life is approved, then in the case of privately owned shelters subject to a mortgage, or similar financial arrangement, the amount allowed in any year for depreciation and interest will in no event exceed the amount paid by the facility for interest and principal on the mortgaged premises. With respect to publicly-owned shelters, the amount allowed for the depreciation and interest will in no event exceed the allocable amount paid by the social services district for principal payments and costs for debt service with respect to the premises.

(v) Interest costs may be considered an allowable cost subject to the following:
(a) the capital indebtedness does not exceed the current approved value of the property;

(b) the interest rate charged for the borrowed funds is competitive with existing interest rates;

(c) the interest is necessary and proper for the operation, maintenance or acquisition of the facility; and

(d) the interest must be supported by a contractual agreement for the payment of interest and for the eventual repayment of the loan for which the interest was incurred.

(vi) In the case of privately-owned shelters, depreciation shall be limited to the costs of acquisition, renovation and rehabilitation of the facility. The costs of acquisition shall be the lesser of the actual costs incurred by the provider to acquire the facility or the fair market value of the facility. Shelter operators must provide an appraisal of the property compiled by an independent appraiser with the financial material submitted with the operational plan to the Office.

(3) Costs of a shelter may include a reasonable allowance for reserve beds or standby capacity based upon the intended use of the facility, the capacity of the facility and foreseeable fluctuations in resident population.

(c) Revised budgets must be submitted to and approved by the Office prior to finalizing any purchase or rate agreement, and thereafter annually with respect to any facility subject to this Part.

(d) The Office must review the material provided and the proposed budget. State reimbursement is available for costs found by the Office to be reasonable, subject to the approval of the Director of the Division of the Budget.

(e) The social services district may, within 30 days, request a review of the Office’s determination of reimbursable costs by requesting consultation. The consultation period begins when a letter requesting consultation is received by the Office and continues until agreement is reached or the Office affirms or redetermines the costs allowable; provided, however, that if within 30 days of a request for a review no decision is reached, the Office’s determination will be deemed affirmed unless the social services district requests and the Office grants an extension of time for a decision.

(f) A social services district may claim and receive reimbursement from the Office for costs approved under subdivisions (d) and (e) of this section. Such reimbursement must be adjusted to reflect actual allowable costs in any fiscal period covered by an operational plan. Requests for adjustment for a fiscal period may be submitted during, but in no event later than 90 days after the end of, such fiscal period. No requests for adjustments will be approved if the actual occupancy rate of a facility falls below the minimum occupancy set forth in the operational plan for the facility approved by the Office. Reimbursement for the costs of shelter for persons receiving Safety Net Assistance, Veteran Assistance, or Emergency Assistance for Adults programs, or additional State payments must be charged to the applicable program. In addition, social services districts are subject to the recordkeeping requirements contained in Part 600 of this Title with respect to all shelter care for which reimbursement is claimed.
§ 491.25 Withholding and denying reimbursement.

(a) Reimbursement for all expenditures made by a social services district related to the provision of temporary residential care, room, board, supervision, information and referral, or social rehabilitation services for persons in need of temporary accommodations, supervision and services, may be subject to withholding or denial when any shelter for adults, small-capacity shelter, or shelter for adult families located within that social services district fails to comply with all applicable State or local laws, regulations, and codes, including the applicable provisions of this Part, or fails to operate in accordance with the operational plan for the facility approved by the Office.

(b) Notice of violations. The Office must notify the social services district of all violations of the provisions of this Part prior to withholding or denying reimbursement.

(c) Withholding. The Office may withhold up to 100 percent of the reimbursement for expenditures made by a social services district related to the provision of temporary residential care, room, board, supervision, information and referral, or social rehabilitation services for persons in need of temporary accommodations, supervision and services, if violations at any shelter for adults, small-capacity shelter, or shelter for adult families located within that social services district have not been corrected within 30 days from the date the social services district receives notice of the violations or within any lesser period ordered by the Office pursuant to section 491.22(f) of this Part, or an acceptable plan for correction is not submitted pursuant to section 491.22(e) of this Part. Reimbursement may be withheld beginning the 31st day after the social services district is provided with notice of the violations, or the day following the expiration of any lesser period ordered by the Office pursuant to section 491.22(f) of this Part, and continuing until the social services district notifies the Office in writing of its compliance and the Office notifies the social services district in writing it has verified that the facility is in compliance.

(d) Subsequent denial of withheld funds. If reimbursement is withheld pursuant to this section, the social services district shall immediately submit an acceptable plan for correction, or revise the plan for correction previously submitted by the social services district for Office approval, to set forth a date by which all violations described in the notice of violation will be corrected. The new or revised corrective action plan shall be subject to Office approval. If the violations identified in the notice of violation continue to remain uncorrected by the date set forth in the new or revised corrective action plan, any reimbursement previously withheld may be denied. The commissioner of the social services district shall be given written notice of the decision to deny reimbursement.

(e) The social services district shall have the right to judicial review of the decision to withhold or deny reimbursement in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

§ 491.26 Civil penalties.

The Office may assess civil penalties of $1,000 per day against the operators of shelters for adults, small-capacity shelters, and shelters for adult families for violations of these regulations or of an order issued pursuant to subdivision 8 of section 460-d of the Social Services Law or section 491.22(f) of this Part, where it establishes at a hearing held pursuant to Part 493 of this Title that the violations endangered residents or have resulted in harm to a resident. Civil penalties shall be calculated from either the date that a notice of violation is issued to the operator by the Office, or the date on which the
violation occurs, if earlier, and shall cease to run on the date that correction is made subject to verification by the Office. Violations that endanger residents may include, without limitation:

(a) the substantial failure of the facility’s fire protection or prevention systems required by section 491.18(b)(1) of this Part. Substantial failure will have occurred if more than half of the individual smoke and carbon monoxide detectors or fire sensors or alarm units are inoperative;

(b) the failure to maintain two means of egress from each floor of a facility on which 11 or more residents are housed, as required by section 491.18(b)(5)-(6) of this Part;

(c) the failure of a substantial number of the facility’s fire extinguishers to comply with section 491.18(b)(7) of this Part;

(d) the failure to implement appropriate measures to control access to the shelter, including but not limited to admittance procedures for persons entering the facility and the installation and use of safety locks on exit and entry doors or other suitable security devices;

(e) the failure to monitor or conduct surveillance of the grounds, facility and activities of the residents;

(f) the failure to remediate apparent structural defects or deficiencies in building components such as foundations, walls, roofs, stairs, ceilings, floors, floor coverings, doors, and windows that render the facility unsafe or unfit for human habitation; and

(g) the failure to remediate known defects in utility and building systems such as electric, water, gas, heat, ventilation, plumbing, sewage that render the facility unsafe or unfit for human habitation.

§ 491.27 Receivership.

(a) Receiver appointed upon application of the Office.

(1) When the Office revokes or temporarily suspends the operating certificate of a shelter for adults, a small-capacity shelter or a shelter for adult families and determines that appointment of a receiver is necessary to protect the health, safety and welfare of the residents of a facility, the Office 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 Office or the Office’s designee should not be appointed receiver to take charge of the facility.

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

(3) The Office 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.
Any receiver appointed upon application of the Office 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 Office.

(iii) The receiver, with the approval of the Office, shall incur expenses as may be necessary to operate the facility. The receiver shall collect incoming payments from all sources and apply them to the costs incurred in the performance of their 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 they use or cause 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.

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 Office 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 Office, 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 Office is less than the currently valid lease, the obligation of the operator shall not be altered or diminished.

The receiver:

(i) shall be entitled to a fee and reimbursement for expenses as determined by the Office, 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 an 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; the receiver shall not have any liability in a personal capacity, except for gross negligence and intentional acts;

(iii) may, subject to approval by the Office, 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 an official capacity,
remains liable for payment of wages and salaries at the rates and levels in effect at the
time of their appointment; and

(iv) shall notify the Office 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 their duties and
responsibilities as receiver.

(7) (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 or her. The receipt of the receiver for any sum paid
to them 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, the Office
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 Office 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 Office.

(i) The Office is authorized to make payments to a receiver only if the receiver demonstrates to the satisfaction of the Office 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 Office 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 Office for any such payments.

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

(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 Office 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 Office 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 Office. Such terms and conditions shall include:

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

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

(v) if the receiver indicates no intention to apply for an operating certificate, agreement to cooperate fully with potential operators and the Office 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 Office may make application to appear and advise the court of any objections it may have to the transfer of possession from the approved operator to any other persons, including a receiver, or of any objections it may have to continuing a receiver or any other person in possession.
1. Statutory authority:

Social Services Law (SSL) § 17(a)-(b) and (k) provide, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall “determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units … ,” shall “make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers … ,” and shall “exercise such other powers and perform such other duties as may be imposed by law.”

SSL § 20(2)(b) provides, in part, that OTDA shall “supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work.” Pursuant to SSL § 20(3)(d)-(f), OTDA is authorized to promulgate rules, regulations, and policies to fulfill its powers and duties under the SSL and “to withhold or deny state reimbursement, in whole or in part, from or to any social services district [(district)] or any city or town thereof, in the event of their failure to comply with law, rules or regulations of [OTDA] relating to public assistance and care or the administration thereof.”

SSL § 34(3)(c) requires OTDA’s Commissioner to “take cognizance of the interests of health and welfare of the inhabitants of the state who lack or are threatened with the deprivation of the necessaries of life and of all matters pertaining thereto.” Pursuant to SSL § 34(3)(d), OTDA’s Commissioner must exercise general supervision over the work of all districts. SSL § 34(3)(e) provides that OTDA’s Commissioner must enforce the SSL and the State regulations within the State and in the districts. Pursuant to SSL § 34(3)(f), OTDA’s Commissioner must establish regulations for the administration of public assistance and
care within the State by the districts and by the State itself, in accordance with the law. Pursuant to SSL § 34(6), OTDA’s Commissioner “may exercise such additional powers and duties as may be required for the effective administration of the department and of the state system of public aid and assistance.”

Pursuant to SSL § 460, OTDA, “acting directly or through [districts], and with the cooperation of other state agencies, shall have the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of state policy . . . in relation to shelters for adults and shelters for families.”

SSL § 460-a(1) requires that OTDA approve certificates of incorporation before they may be filed with the Department of State where the certificates include among their corporate purposes the establishment or operation of a shelter for adults, and SSL § 460-a(2) requires OTDA to promulgate regulations establishing the procedure for submitting certificates of incorporation to OTDA for approval.

SSL § 460-c(1) authorizes OTDA “to inspect and maintain supervision over all public and private facilities or agencies whether state, county, municipal, incorporated or not incorporated which are in receipt of public funds, which are of a charitable, eleemosynary, correctional or reformatory character,” and explicitly including “adult care facilities,” defined in SSL § 2(21) to include shelters for adults.

SSL § 460-d(1) authorizes OTDA to conduct investigations of the affairs and management of facilities that it inspects and supervises, and 460-d generally sets forth OTDA’s enforcement authority. SSL § 460-d(7)(a) requires OTDA to adopt regulations establishing civil penalties of up to $1,000 per day to be assessed against shelters for adults, except facilities operated by a district, for violations of, among other things, OTDA’s regulations pertaining to the care of residents in such facilities.
SSL § 461 provides that OTDA “shall promulgate and may alter or amend regulations effectuating the provisions of this title, including but not limited to establishing fiscal, administrative, architectural, safety, nutritional and program standards which apply to all adult care facilities subject to its inspection and supervision,” including shelters for adults.

2. Legislative objectives:

It is the intent of the Legislature in enacting the aforementioned statutes that OTDA establish rules, regulations and policies to provide for the health, safety and general welfare of residents of shelters for adults and families experiencing homelessness.

3. Needs and benefits:

The proposed regulatory amendments will subject all publicly-funded shelters for adults experiencing homelessness to State oversight, including small-capacity shelters that are excluded from the definition of “shelter for adults” set forth in SSL § 2(23), and shelters for adult families that are neither subject to OTDA’s regulations pertaining to shelters for families with children, nor explicitly addressed by OTDA’s current regulations pertaining to shelters for adults. The proposed regulatory amendments will update State regulations to reflect current State policies and procedures and to maintain consistency with OTDA regulations pertaining to publicly-funded shelters for families with children.

Current State regulations pertaining to shelters for adults are set forth in 18 NYCRR, Parts 485–486 and 491. The term “shelter for adults” is defined in SSL § 2(23) to 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.” SSL § 2(23) explicitly excludes from the definition of “shelters for adults” small-capacity
shelters that provide “temporary residential services to fewer than twenty persons, unless such facility is operated by a … district.”

The proposed regulatory amendments will subject all publicly-funded shelters for adults, irrespective of capacity, to OTDA oversight. Each facility providing shelter services to homeless adults with no children – whether a shelter for adults housing 20 or more residents, a small-capacity shelter housing fewer than 20 residents, or a shelter for adult families with no children – will be subject to OTDA oversight and will be required to become “certified” in order to receive reimbursement from State or State-administered funds. Each district will be required to submit, for OTDA approval, an operational plan pertaining to each facility; upon OTDA’s approval of the operational plan, the facility will receive an operating certificate. Each facility so credentialed will be required to operate in accordance with State regulations and its approved operational plan.

OTDA seeks to amend Parts 485–486 so that they will no longer apply to shelters for adults, but will continue to apply to all other types of adult care facilities; Part 491 will address all publicly-funded shelters for adults, including small-capacity shelters, and shelters for adult families with no children.

There are no substantial revisions in the proposed rule, but there are changes in the text of the rule as adopted when compared to the last published version of the proposed rule. As discussed in the accompanying Revised Summary of the Rule, the revisions made to 18 NYCRR §§ 491.3 – 491.4, 491.8 – 491.10, 491.12, 491.14 – 491.15, 491.18 – 491.19, and 491.27 were made in response to public comments and merely define or clarify proposed text and, in some cases, merely reiterate text contained in the previous version of 18 NYCRR Part 491 that was repealed by this published rule. The revisions do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections.
4. Costs:

The proposed regulatory amendments will not result in significant additional costs for the State or districts. Since February 1, 2017, pursuant to 18 NYCRR § 352.39, districts have been required to submit operational plans to OTDA for publicly-funded small-capacity shelters and shelters for adult families that were not previously certified by OTDA. The proposed regulatory amendments may reduce the current burdens insofar as the effective period for operational plans and operating certificates will be extended from four years to five years. Moreover, because OTDA reviews and approves current operational plans and inspects facilities, any additional costs associated with these amendments will be minimal and could be absorbed within current appropriations. Additionally, districts no longer will be required to submit district-wide general security plans for OTDA approval pursuant to 18 NYCRR § 352.38(b), which OTDA is seeking to repeal via a separate proposed rule making.

5. Local government mandates:

Initially, the proposed regulatory amendments will require districts to submit a separate operational plan for each “shelter for adults,” “small-capacity shelter” or “shelter for adult families” – as the terms will be defined in proposed new 18 NYCRR § 491.2 – for which the district seeks reimbursement or makes payments to or from State or State-administered grants or funds. Prior to the submission of an operational plan, a district will be required to obtain preliminary approval from OTDA to establish such a facility. Operational plans will include, among other things, information about the operations and services of the proposed shelter facility, shelter-specific security plans, and a financial statement for the shelter’s most recently completed fiscal year, or, for a shelter that has not previously been in operation, a financial statement for the shelter operator’s most recently completed fiscal year. The operational plan must contain a proposed one-year budget for the shelter, including the estimated income and expenditures projected for the shelter during the upcoming year. OTDA anticipates that operational plans will typically be
prepared by shelter operators and submitted to the districts, which, in turn, will submit the plans to OTDA for approval.

If an operator of a shelter for adults, small-capacity shelter or shelter for adult families determines to close a facility, the shelter operator will be required to inform the district and OTDA in writing as soon as possible, but no less than 90 days in advance, after which the district must submit a proposed closure plan to OTDA for approval.

In case of a serious incident impacting upon the safety and well-being of any shelter resident or staff member, either the shelter operator or the district will be required to immediately report the incident to OTDA. If the operator of the emergency shelter reports the serious incident directly to OTDA, it also must immediately notify the district. The district then will be required to submit an incident report form to OTDA within three business days after receiving notice.

6. Paperwork:

The paperwork requirements of the proposed regulatory amendments are discussed in § 5, above.

7. Duplication:

The proposed regulatory amendments will not duplicate, overlap, or conflict with any existing State or federal rules or regulations.

8. Alternatives:

A possible alternative to the proposed regulatory amendments would be to refrain from promulgating them. However, such inaction would diminish OTDA’s ability to exercise needed oversight of publicly-funded shelters for persons experiencing homelessness and shelters housing fewer than 20 residents and other shelters that currently operate as “uncertified.” The current State regulations pertaining to shelters for adults are outdated, in that they fail to address and provide for oversight of a significant number of shelters serving homeless individuals. Insofar as such inaction could impair OTDA’s ability to provide needed
services and safeguards to those individuals and families experiencing homelessness, OTDA does not consider it a viable alternative to the proposed regulatory amendments.

9. Federal standards:

The proposed regulatory amendments will not conflict with federal statutes, regulations or policies.

10. Compliance schedule:

Upon adoption of the proposed regulatory amendments, a district will first be required to obtain the preliminary approval of OTDA before establishing a new shelter for adults, a small-capacity shelter, or a shelter for adult families. A district then will be required to submit a proposed operational plan to OTDA at least 45 days before the planned use of a facility as a shelter for adults, a small-capacity shelter or a shelter for adult families. An OTDA-approved operational plan will remain in effect for a maximum of five years, and any proposed revisions or changes to an approved plan will have to be submitted to OTDA for approval. At least 60 days before the expiration of an operational plan, a district could request that OTDA reapprove the operational plan.

If an operator elects to close a shelter for adults, a small-capacity shelter or a shelter for adult families, the operator will be required to notify the district and OTDA in writing as soon as possible, but no less than 90 days in advance of the anticipated closure, and the district will then be required to submit a closure plan to OTDA at least 45 days before the anticipated closure date.

In case of a serious incident impacting upon the safety and well-being of any shelter resident or staff member, either the operator of the shelter or the district will be required to immediately report the incident to OTDA. If the shelter operator reports the serious incident directly to OTDA, it also will be required to immediately notify the district. The district then will be required to submit an incident report form to OTDA within three business days after receiving notice.
Districts, shelters for adults, small-capacity shelters, and shelters for adult families will be required to comply immediately with the proposed regulatory amendments that do not provide specific compliance dates including, but not limited to, those regulatory amendments addressing resident services, food services, and environmental standards.
Statement in lieu of a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG)

Changes made to the published rule do not necessitate revision to the previously published RFASBLG. The revisions made to 18 NYCRR §§ 491.3 – 491.4, 491.8 – 491.10, 491.12, 491.14 – 491.15, 491.18 – 491.19, and 491.27 were made in response to public comments and merely define or clarify proposed text and, in some cases, merely reiterate text contained in the previous version of 18 NYCRR Part 491 that was repealed by this published rule. The revisions do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections and do not necessitate modification of the analysis contained in the previously published RFASBLG.
Statement in lieu of a Revised Rural Area Flexibility Analysis (RAFA)

Changes made to the published rule do not necessitate revision to the previously published RAFA. The revisions made to 18 NYCRR §§ 491.3 – 491.4, 491.8 – 491.10, 491.12, 491.14 – 491.15, 491.18 – 491.19, and 491.27 were made in response to public comments and merely define or clarify proposed text and, in some cases, merely reiterate text contained in the previous version of 18 NYCRR Part 491 that was repealed by this published rule. The revisions do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections and do not necessitate modification of the analysis contained in the previously published RAFA.
Statement in lieu of a Revised Job Impact Statement (JIS)

Changes made to the published rule do not necessitate revision to the previously published JIS. The revisions made to 18 NYCRR §§ 491.3 – 491.4, 491.8 – 491.10, 491.12, 491.14 – 491.15, 491.18 – 491.19, and 491.27 were made in response to public comments and merely define or clarify proposed text and, in some cases, merely reiterate text contained in the previous version of 18 NYCRR Part 491 that was repealed by this published rule. The revisions do not materially alter the purpose, meaning, or effect of the enumerated regulatory sections.
Summary of Assessment of Public Comments

Regulatory Amendments to 18 NYCRR Part 491, et al.

The Office of Temporary and Disability Assistance (OTDA) received numerous public comments relative to the proposed regulatory amendments following their publication in the May 8, 2019 issue of the New York State Register. Some salient comments received have been summarized below and all comments have been duly considered in an assessment of public comments which is posted at the following OTDA website: http://otda.ny.gov/legal/regulatory-activities.asp.

OTDA received comments regarding the placement of transgender, gender-nonconforming, and non-binary individuals in suitable shelters and the use of pronouns that are not invalidating to such persons. While OTDA can issue administrative guidance regarding the placement of such persons in suitable shelters, it has revised the proposed regulation to use appropriate pronouns.

OTDA received multiple comments pertaining to the funding of shelters for adults, small-capacity shelters and shelters for adult families that are beyond the scope of the proposed regulatory amendments.

OTDA received multiple comments regarding the scope of the proposed regulatory amendments, including requests that: (1) the proposed regulations be revised to apply only to shelters “for which a social services district [district] seeks reimbursement from State or State-administered grants or funds for costs incurred for shelter and services provided by such facilities”; (2) all commercial hotels and motels used to provide shelter to recipients of temporary housing assistance (THA) be included within the scope of the proposed regulations; and (3) commercial hotels and motels used primarily to provide shelter to recipients of THA when the district plans to phase out use of the facilities be excluded from the scope of the proposed regulations. OTDA asserts that these comments can be addressed in administrative guidance and that regulatory revisions are unnecessary.

OTDA received comments suggesting that the proposed regulations should allow for the reimbursement of shelters opened on an emergency basis. If there is an emergency need for additional shelter capacity within a district and the district opens a new facility on an expedited basis, reimbursement would be available from the date on which a district submits a proposed operational plan for the new facility pursuant to proposed § 491.3(h). OTDA therefore disagrees that the suggested regulatory revisions are necessary.

OTDA received several comments regarding the contents of operational plans required by proposed § 491.3 and requesting that the proposed regulation be revised to require that an operational plan be posted in an accessible area within a shelter. OTDA does not believe that all of the suggested revisions are necessary but has revised proposed § 491.19(h)(1) to clarify that an operational plan approved by OTDA must be available for review and inspection by facility residents and visitors, and proposed § 491.3(c)(2) has been clarified by including a reference to “persons with physical disabilities” as an additional example of a “population with particular needs.”

OTDA received comments suggesting that the proposed regulations should be revised to require that residents be informed of their fair hearing rights when their THA is discontinued.
This issue is addressed in proposed § 491.15(a)(2), and the suggested revision is therefore unnecessary.

OTDA received several comments regarding the requirement that security plans be included in each facility’s operational plan, including objections that the requirement would prevent non-profit shelter providers from operating their facilities as they deem appropriate, and that the proposed requirement for residents’ incoming mail to be x-rayed is a heavy-handed policing measure that is carceral and will impede shelters’ efforts to connect with residents. Proposed § 491.3(c)(3) requires that a security plan be included as part of each facility’s operational plan, and that such security plan detail the measures taken to provide security and to help ensure the physical safety of shelter residents and staff. OTDA does not consider the proposed regulatory amendments to be overly prescriptive and asserts that they will allow shelter operators and districts flexibility to work with shelter operators to develop reasonable facility security plans based on their direct knowledge of the facilities and the specific populations they serve. Moreover, proposed § 491.3(c)(3) does not require shelter operators to scan or x-ray incoming resident mail. Rather, it requires that the security plan portion of a facility’s operational plan describe, among other things, precautions taken to help ensure that incoming resident mail does not contain contraband that could pose a threat to the security of the facility or to the health and safety of residents and staff. OTDA believes that the use of such technology would be appropriate in some circumstances.

OTDA received several comments asserting that the proposed regulations would conflict with the 1981 consent decree entered by the State Supreme Court in Callahan v. Carey, 2012 WL 680318 (Sup Ct NY County, Feb. 21, 2012, No. 42582/79 (Callahan Consent Decree). The Callahan Consent Decree applies only to shelters for adults located in New York City, whereas proposed Part 491 will apply across the State. Moreover, OTDA maintains that the proposed regulations are consistent with the Callahan Consent Decree.

OTDA received comments suggesting that the proposed regulations be revised to allow minor children to visit shelter residents. OTDA disagrees that the suggested revision is necessary.

OTDA received multiple comments suggesting that: (1) individuals who suffer from mental or physical disabilities should not be excluded from shelters; (2) districts cannot be required to deny an application for THA because of a failure to cooperate in an assessment when the applicant is unable to cooperate because of a disability or other chronic need; (3) districts cannot be prohibited from placing those with a mental or physical conditions that “may” make the placement inappropriate or cause a danger, as this would exclude those who can be safely provided with shelter; and (4) the “comfort of other residents” should not be a reason to exclude an applicant for THA from shelter. Proposed § 491.9(c) addresses the appropriateness of the placement of THA recipients in shelters, not eligibility for THA. It makes clear that when a person eligible for THA cannot be placed in a shelter for any of the reasons set forth in proposed § 491.9(c), the district must take action appropriate to the health, safety and needs of that person. OTDA disagrees that the suggested revisions are necessary.

OTDA received comments suggesting that districts should be allowed to place adult-only families and single women in shelters for families with children to afford districts the flexibility needed to meet fluctuating shelter needs. “Mixed-use” facilities could be allowed in appropriate circumstances where waivers are requested and obtained from OTDA pursuant to proposed § 491.3(c)(5). Consequently, OTDA does not believe that a revision of the proposed regulatory amendments is necessary.
OTDA received comments regarding proposed § 491.11, which obligates shelter residents to contribute available income to the costs of their care. The comments suggested that homeless persons should not be required to pay for temporary shelter, and that the proposed regulation be revised to clarify that a resident would not be removed from shelter on account of an inability or failure to pay. Proposed § 491.11 makes the payment of facility charges contingent upon the shelter resident having available income pursuant to the budgeting rules set forth in Social Services Law (SSL) § 131-a and 18 NYCRR Part 352. If a resident has no available income, they would not be obligated to pay facility charges. OTDA therefore disagrees that the proposed regulation requires revision.

OTDA received several comments regarding proposed § 491.12, which sets forth requirements relating to resident rules and rights. One comment requested that the regulation be revised to clarify that shelter residents who are ineligible to receive THA on the basis of their immigration status should not be required to apply for public assistance benefits as a condition to remaining in shelter. OTDA revised proposed § 491.12 to clarify that resident rules must address the requirement that residents apply for public benefits only to the extent that the residents are eligible to receive such benefits under 18 NYCRR § 349.3.

OTDA received a comment suggesting that proposed § 491.12(c)(17), which provides that a resident shall have the right to receive visitors in designated areas of the facility during reasonable hours as specified in the resident rules, would present significant operational difficulties in facilities lacking appropriate space for visits or staffing to supervise visitation. OTDA has revised the regulatory amendments to provide that a resident shall have the right to receive visitors in designated areas of the facility where feasible.

OTDA received a comment proposing that staffing ratios for shelters for adult families, addressed in proposed § 491.14(f)(8), be based on the number of number of families residing in such facility, rather than the number of persons. OTDA acknowledges that overstaffing could result in shelters for adult families in some circumstances and anticipates that districts may seek waivers of the staffing requirements pursuant to proposed § 491.3(c)(5) in appropriate circumstances. Further, proposed § 491.14(f)(8) has been revised to clarify that the “resident census shall be the number of residents of a shelter facility unless otherwise directed by the Office.”

OTDA received several comments suggesting that proposed § 491.15 be revised to clarify that administrative transfers may be used only in emergency circumstances. While OTDA does not use the term “administrative transfer” in its proposed regulations, it has revised proposed § 491.15(b) to clarify that a resident of any shelter for adults, small-capacity shelter, or shelter for adult families may be transferred absent 48 hours advanced written notice where a delay would pose a risk to the health or safety of such individual or adult family, or to others in the facility.

OTDA received comments expressing concerns regarding the requirement in proposed § 491.15(d) that a shelter operator store property left behind by a resident after a resident’s discharge or transfer for no less than 10 business days. OTDA has revised the proposed regulation in view of these comments and notes that rules regarding the storage of resident property and belongings following the discharge or transfer may be addressed by OTDA in administrative guidance to the extent necessary.

OTDA received comments regarding proposed § 491.17, which addresses food service, including one comment requesting the “repeal” of the requirement that three daily meals be
served to shelter residents, and one comment suggesting that the regulation be revised to require that vegan, vegetarian, and lactose intolerant diets be accommodated. Food intolerances and allergies already are addressed by proposed § 491.17(g). Further, proposed § 491.17(a) obligates operators of shelters for adults, small-capacity shelters, and shelters for adult families to ensure that all residents, including those subsisting on vegetarian or vegan diets, can conveniently obtain meals that are balanced, nutritious and adequate to meet the residents' dietary needs. Consequently, the requested regulatory revisions are unnecessary.

OTDA received several comments regarding proposed § 491.25, suggesting that OTDA not be authorized to withhold reimbursement from a district for all district expenditures related to the provision of shelter or services to recipients of THA. OTDA disagrees with these comments. OTDA already is authorized under SSL § 20(3)(e) “to withhold or deny state reimbursement, in whole or in part, from or to any district that fails to comply with law, rules or regulations of the department relating to public assistance and care or the administration thereof.” Proposed § 491.25(c) is consistent with SSL § 20(3)(e), and affords OTDA discretion to determine the amount of reimbursement subject to withholding when a district and a shelter for adults, a small-capacity shelter, or a shelter for adult families located within the district fails to address violations in timely fashion.
Assessment of Public Comments – Regulatory Amendments to 18 NYCRR Part 491, et al.

The Office of Temporary and Disability Assistance (OTDA) received public comments relative to the proposed regulatory amendments following their publication in the May 8, 2019 issue of the New York State Register. The public comments received have been duly assessed in this assessment of public comments.

General Comments:

Comment 1:

The proposed regulations should include language requiring that transgender individuals be allowed to choose gender-specific shelters where they feel most comfortable. This protection is critical for transgender people who are often marginalized. Additionally, the pronoun “their” should be used instead of “his or her,” which may be invalidating to transgender, gender-nonconforming, and non-binary persons.

Response to Comment 1:

OTDA maintains that guidance regarding the placement of transgender, gender-nonconforming, and non-binary individuals in suitable shelters can be addressed in administrative guidance, and that revision of the regulation to add clarifying language is unnecessary. OTDA agrees that the pronoun “their” should be used in lieu of “his or her,” and “they” should be used in the place of “he” or “she.” The proposed regulations have been revised accordingly.

Comment 2:

The State should continue to work with the City to ensure that sufficient funding is maintained to properly resource providers to implement the changes set forth in the proposed revisions to Part 491.

Response to Comment 2:

Issues relating to funding are beyond the scope of the proposed regulatory revisions.

§ 491.1 Applicability.

Comment 1:

Proposed § 491.1(a) should be revised to clarify that the proposed Part 491 regulations are applicable only to shelters “for which a social services district seeks reimbursement from State or State-administered grants or funds for costs incurred for shelter and services provided by such shelters for families,” and will not apply to stabilization beds, respite beds, church beds missions and privately-funded shelters which are not reimbursed by the State from temporary housing assistance (THA) funds.
Response to Comment 1:

The proposed language could exclude from the scope of proposed Part 491 some facilities that OTDA is charged with regulating, and the scope of proposed Part 491 can be more fully addressed in administrative guidance. OTDA therefore disagrees that the suggested revision is necessary.

Comment 2:

Proposed § 491.1(b) should be revised to require OTDA’s written approval before a shelter operator changes the delivery of services to shelter residents.

Response to Comment 2:

Proposed § 491.3 requires that shelter operators submit any proposed revisions to operating plans to OTDA for approval before they are implemented. The suggested revision therefore is unnecessary.

Comment 3:

Proposed § 491.1(c)(3) and proposed § 491.2(f) should be revised to exclude from the scope of Part 491 commercial hotels and motels used primarily to provide shelter to recipients of temporary housing assistance (THA) when the district plans to phase out use of the facilities. In lieu of operational plans for such facilities, the social services district should be permitted to submit “phase-out” plans that would describe the standards and inspection procedures in place during the phase-out, consistent with 18 NYCRR §§ 352.3(g) and (h).

Response to Comment 3:

OTDA agrees that it may not be necessary for districts to submit operational plans for hotels or motels used primarily to provide shelter to recipients of THA when the district is phasing out use of the hotels or motels to place persons experiencing homelessness. In such circumstances the district should consult with OTDA and apply for a waiver of the requirement that it submit an operational plan and submit a closure plan pursuant to proposed § 491.5 to the extent necessary. OTDA does not agree that the suggested revision is necessary.

491.2 Definitions.

Comment 1:

Proposed rule § 491.2 should be amended to provide definitions for the terms: “adult care facilities,” “shelters,” “supervision,” “transfer shelter to shelter,” “transfer inside the same shelter to another dormitory or dorm room,” “voluntary transfer,” “involuntary transfer,” “emergency transfer,” “independent living plan,” “housing appointment,” “housing referral,” “housing placement,” “general population,” “mentally ill population,” “mentally ill chemically addicted population,” “elderly population,” “formerly incarcerated population,” “out of state population,” “immigrate,” “refuge” (s/c) and “commercial hotels.”
Response to Comment 1:

The term “adult care facility” is defined in SSL § 2; “shelter for adults” is defined in SSL § 2 and in proposed § 491.2; and “independent living plan” is defined in 18 NYCRR § 352.35. The terms “supervision,” “transfer shelter to shelter,” “transfer inside the same shelter to another dormitory or dorm room,” “voluntary transfer,” and “involuntary transfer,” “commercial hotel,” “mentally ill population,” “mentally ill chemically addicted population,” “elderly population,” “formerly incarcerated population,” “out of state population,” “immigrate,” and “refuge” all are either self-defining, terms of common usage, or terms that are not used in the proposed regulations. The definitions of the foregoing terms therefore need not be included in the regulations and the suggested revisions are unnecessary.

Comment 2:

Proposed § 491.2(f) would remove commercial hotels from the definition of a shelter unless it is primarily used as shelter. Any space used to temporarily shelter homeless people is shelter and should be regulated as such.

Response to Comment 2:

Commercial hotels and motels used to place THA recipients that are not primarily used as shelters will continue to be addressed by 18 NYCRR § 352.3(e) – (h). OTDA therefore disagrees that the proposed revision is necessary.

Comment 3:

OTDA should remove proposed § 491.2(f) from the proposed amendments. Alternatively, OTDA should revise proposed Part 491 to (1) define “not used primarily to provide shelter” to mean only those hotels and motels where shelter placement represents less than fifty percent of occupancy in a given fiscal year; (2) release those hotels and motels from only those specifically enumerated facility requirements that may be too financially onerous; and (3) include language requiring hotels and motels used as shelter placements to observe the rights that inhere to all recipients of temporary housing assistance, regardless of their placement.

Response to Comment 3:

Proposed Part 491 is intended to apply only to shelters for adults, small capacity shelters, and shelters for adult families. Proposed § 491.2(f) is intended to exclude commercial hotels and motels that are addressed in 18 NYCRR § 352.3(e)-(h). Commercial hotels and motels may be subject to proposed Part 491 to the extent that they become de facto shelters for the homeless used primarily to provide shelter to recipients of THA. The question of when a commercial hotel or motel facility is used primarily to provide shelter to recipients of THA is one that is better addressed in administrative guidance. OTDA therefore disagrees that the suggested revisions are necessary.

Comment 4:

Safe haven shelters in New York City, meant to provide low threshold/low barrier beds to get the hardest to reach clients to come in from the streets, should not be subject to the requirements of Part 491 because requiring safe havens to provide certain levels of security, staffing, and other
interventions will disrupt the low threshold/low barrier safe space that these facilities provide, particularly where time constraints are imposed on required interventions.

Response to Comment 4:

To the extent that a safe-haven shelter constitutes a shelter for adults, a small-capacity shelter, or a shelter for adult families that would be subject to proposed Part 491, a waiver of regulatory requirements may be requested pursuant to proposed § 491.3(c)(5). OTDA does not agree that the suggested revisions are necessary.

§ 491.2-a Certificates of incorporation.

Comment 1:

Proposed § 491.2-a should be revised to disallow limited liability companies ("LLCs") from operating shelters.

Response to Comment 1:

Proposed § 491.1(b) provides that any person, partnership, corporation, organization, agency, governmental unit, or other entity may operate a shelter for adults, a small-capacity shelter or a shelter for adult families subject to the jurisdiction of OTDA and must comply with the regulations in proposed Part 491. Section 491.2-a implements Social Service Law ("SSL") § 460-a and Not-for-Profit Corporations Law (NPCL) § 404(b)(1), which require OTDA approval of a not-for-profit corporation's certificate of incorporation before the certificate can be filed with the New York State Department of State. Neither SSL § 460-a nor NPCL § 404(b)(1) apply to LLCs and the comment therefore is beyond the scope of the proposed § 491.2-a. OTDA also disagrees that either proposed § 491.1 or proposed § 491.2-a should disallow LLCs from operating shelters so long as they are able to fully comply with the Social Services Law and OTDA's regulations, including proposed Part 491.

Comment 2:

Government agency responsibilities should be defined in proposed Part 491 as they were in extant § 485.3 and, with respect to proposed § 491.2-a, a rationale should be provided if the prior endorsement of a court will not be required of small capacity shelters and shelters for adult families.

Response to Comment 2:

OTDA is responsible for the administration of THA and the oversight of shelters for persons experiencing homelessness. Extant § 485.3 applies to the numerous types of "adult care facilities" identified in SSL § 2(21), that are not subject to OTDA oversight. Because proposed Part 491 applies only to shelters for homeless adults and adult families that are subject to OTDA oversight, there is no reason to define responsibilities of other government agencies. Regarding proposed § 491.2-a, it implements SSL § 460-a and Not-for-Profit Corporations Law (NPCL) § 404(b)(1). SSL § 460-a and NPCL § 404(b) require OTDA to approve a not-for-profit's certificate of incorporation before the certificate may be filed with the DOS. OTDA disagrees that the suggested revisions are necessary.
§ 491.3 Operational plans.

Comment 1:

OTDA should revise proposed § 491.3 to allow reimbursement when shelters are opened on an emergency basis to address inadequate capacity due to seasonal surges or lack of planning.

Response to Comment 1:

If there is an emergency need for additional shelter capacity within a social services district, the district could request preliminary approval of a new facility on an expedited basis and reimbursement would be available from the date on which a social services district submits a proposed operational plan for the new facility pursuant to proposed § 491.3(h). OTDA therefore disagrees that the suggested revisions are necessary.

Comment 2:

Proposed § 491.3(c)(1) should be revised to require that the operational plan be posted on the walls in the lobby, common areas, hallways, the social service offices, cafeteria, computer lab, laundry room, reading rooms, library, public phone area, or lounges.

Response to Comment 2:

Proposed § 491.19(h) requires that the operating certificate issued by OTDA be conspicuously posted in a publicly accessible area within the facility. Proposed § 491.18(e) requires that shelters have areas suitable for posting required notices, documents and other written materials in locations visible to, and accessible to, residents, staff and visitors. OTDA disagrees that the operational plan for a shelter must be posted throughout the facility, but does agree that it should be available for review. OTDA therefore is revising § 491.19(h)(1) to clarify that the operational plan approved by OTDA be maintained at the facility and available for review and inspection by facility residents and visitors.

Comment 3:

Proposed § 491.3(c)(1)(x) should be revised to require that personal medical supplies be secured and that non-medical personnel be prohibited from dispensing narcotic, prescription, or maintenance medications to residents.

Response to Comment 3:

Proposed § 491.14(d)(2) requires shelters to provide residents with a means to safely store and secure prescription medications and authorizes facility operators to store residents’ prescription medications in the operator’s custody for safe keeping. If a facility offers to store prescription medications in the operator’s custody for safe keeping, facility staff must be able to dispense the medications. OTDA therefore disagrees that the suggested revision is necessary.

Comment 4:

Proposed § 491.3(c)(1)(xiii) should be revised to add language requiring operational plans to include an inventory of toilets, sinks and showers.
Response to Comment 4:

Proposed § 491.3(c)(1)(xiii) already requires that operational plans describe bathroom arrangements and provide the number of toilets, sinks and showers available to residents. OTDA disagrees that the suggested revision is necessary.

Comment 5:

Proposed § 491.3(c)(1)(xiv) should be revised to (1) prohibit catered food from being transported in unrefrigerated trucks or vans, (2) require that meals to be served at posted times and have petty cash on site for emergencies when food is unavailable, (3) prohibit shelter staff from rationing food and from serving food to or saving food for persons not residing in the shelter; (4) prohibit staff from “snatching” plates from residents at posted meal times, (5) prohibit staff from washing and reusing durable hard plastic plates or coffee cups, and (6) prohibit staff from rushing or harassing residents while the residents are eating their meals, from sweeping the floors while residents are eating, and from cleaning tables while residents are eating.

Response to Comment 5:

The transportation of food prepared off-site is addressed in the New York State Sanitary Code, and in particular by 10 NYCRR §§ 14-1.40 and 14-1.50. Proposed § 491.17 requires that shelter residents be provided with the opportunity to obtain breakfast and evening meals at regularly scheduled times, and that the meals be balanced, nutritious and adequate in amount and content to meet their dietary needs. OTDA disagrees that the proposed revisions are necessary.

Comment 6:

Proposed § 491.3(c)(1)(xv) should be amended to require the submission of facility floor plans and blueprints with operational plans.

Response to Comment 6:

Proposed § 491.3(c)(1)(xv) requires that operational plans contain a description of the physical structure of the shelter facility, including land, buildings and equipment, a certificate of occupancy and descriptions of the building including type of construction, planned renovations, and room layouts with dimensions. Pursuant to proposed § 491.6(b), all inspection certificates and other documents required by State and local authorities for buildings, grounds and equipment must be maintained on the premises. OTDA therefore disagrees that the proposed revision is necessary.

Comment 7:

Proposed § 491.3(c)(1)(xvii) should be amended to require all common areas, offices, dormitories, and sleeping rooms to be properly ventilated, locks on doors of single occupancy residential units, thermal double-pane windows, air-conditioning to be installed in all shelters, and that plumbing be properly maintained and sewage piped to the local public works system.

Response to Comment 7:

Proposed § 491.18(e) already requires, among other things, that heating and cooling systems must be in good working order, and that suitable fans should be provided to residents when
necessary to maintain reasonable air circulation. Proposed § 491.3(c)(1) requires an operational plan to detail procedures for the routine and preventative maintenance of the facility and its grounds, including utility and building systems such as electric, water, gas, heat, ventilation, plumbing, sewage, and air-conditioning if provided. Proposed § 491.6 requires compliance with State and local laws, regulations, and codes relating plumbing and water supplies, and heating and electrical supplies, among other things. Proposed § 491.18(d) allows that doors in residents' sleeping units may be secured by the resident provided that such doors can be unlocked from the outside by facility staff. Proposed § 491.18(h)(8)(ix) provides that, except for single bedrooms with locking doors, bedrooms shall have individual, lockable storage lockers for resident belongings. In light of the aforementioned provisions, OTDA disagrees that the suggested revisions are necessary.

Comment 8:

Proposed § 491.3(c)(1)(xxiv) and proposed § 491.12(c)(2) each should be revised to require that residents sign for their beds once every 24 hours, and to authorize a shelter to release a resident’s bed for reassignment if there is no contact from the resident within a 24-hour period, and to prohibit shelters from imposing curfews on residents.

Response to Comment 8:

Proposed § 491.3 requires that a facility’s operational plan, which must be approved by OTDA, detail the facility’s leave and resident absence policy, among other things. OTDA believes that facilities and local social services districts should be able to develop their own leave and resident absence policies, so long as those policies are consistent with rules regarding THA eligibility and are subject to OTDA approval. OTDA also recognizes that curfews may be necessary to avoid the disruption of other shelter residents during evening hours, especially in shelter facilities with congregate living arrangements. Thus, proposed § 491.12(c) provides that residents shall have the right to leave and return to the facility and grounds at reasonable hours in accordance with the rules of the facility. OTDA disagrees that the suggested revisions are necessary.

Comment 9:

Proposed § 491.3(c)(1) should be revised to require that residents be informed of their fair hearing rights when their THA is discontinued.

Response to Comment 9:

Proposed § 491.15(a)(2) provides that a shelter resident may not be involuntary discharged from shelter before (1) being provided with written notice of the reasons for the discharge, (2) being informed that they may request a fair hearing in which to challenge the discharge decision, and (3) being provided with instructions on how to request and obtain a fair hearing. OTDA therefore disagrees that the suggested revision is necessary.

Comment 10:

Proposed § 491.3(c)(1) should be revised to require that when resident services required under proposed rule § 491.14 are provided off-site, the operational plan identify the name of any parent company of the service provider as well as the legal status of the provider and the legal status of the provider’s employees.
Response to Comment 10:

The conditions under which a shelter operator may contract with a separate independent entity to perform facility operations are addressed in proposed § 491.21, and the suggested revision is unnecessary.

Comment 11:

Proposed § 491.3(c)(1)(xxx) should be revised to require that the operational plan include New York State and local procedures for handling resident complaints and grievances.

Response to Comment 11:

OTDA believes that facilities and local social services districts should be able to develop their own grievance procedures, subject to OTDA approval. OTDA believes the suggested revision is unnecessary.

Comment 12:

The reference to physically disabled residents should be retained and included in proposed § 491.3(c)(2).

Response to Comment 12:

OTDA agrees that proposed § 491.3(c)(2) can be clarified by including a reference to “persons with physical disabilities” as an additional example of a “population with particular needs.”

Comment 13:

Proposed § 491.3(c)(3) should be revised to prohibit shelter staff from breaching residents’ confidentially by using a public address to call them to get medication, to attend appointments, or to retrieve mail or packages, and to require shelter security employees to wear audio recorders while working.

Response to Comment 13:

Proposed § 491.12(c) already provides that resident shall have the right to confidential treatment of personal, social, financial and medical records, to receive courteous, fair and respectful care and treatment, and to privacy in caring for personal needs. OTDA disagrees that the proposed revision is necessary.

Comment 14:

Proposed § 491.3(c)(4) should be revised to (1) require each shelter operator to prepare a written handbook documenting the shelter’s disaster and emergency plan, and (2) prohibit “fake fire drills.”

Response to Comment 14:

A facility’s disaster and emergency plan must be documented in a facility’s operational plan. Requiring shelter operators to also document their disaster and emergency plans in separate
handbooks would be superfluous and create unnecessary expense. Fire drills are necessary to practice evacuating a shelter facility in anticipation of a real fire or emergency. OTDA disagrees that the proposed revisions are necessary.

Comment 15:

Proposed § 491.3(i) should be amended to allow extensions of the three-year period during which a shelter operating without an operational plan or operating certificate since before the effective date of the revised regulation must submit an operational plan for OTDA approval.

Response to Comment 15:

Proposed § 491.3(i) provides that operational plans must be submitted “within three years of the effective date of this Part or as otherwise directed by [OTDA]” (emphasis added). OTDA thus has discretion to allow extensions for good cause and disagrees that the suggested revision is necessary.

Comment 16:

Proposed § 491.3(c)(3), which requires the inclusion of a security plan as part of each facility’s operational plan submitted to OTDA approval, will grant OTDA unilateral control of security plans, disempowering non-profit providers from operating their facilities in a way which they feel is most appropriate based on their direct knowledge of the population they are serving.

Response to Comment 16:

OTDA disagrees with this comment. Proposed § 491.3(c)(3) requires that a security plan be included as part of each facility’s operational plan. The security plan must detail the measures taken to provide security and to help ensure the physical safety of shelter residents and staff. Among other things, the security plan should address: (1) measures taken to control access to the shelter; (2) precautions taken to ensure that incoming mail does not contain contraband; (3) the surveillance of the grounds by electronic or other means; (4) training and deployment of staff responsible for security; and (5) procedures for handling and documenting individual emergencies. The subdivision is not overly prescriptive and allows shelter operators and social services districts flexibility to work with shelter operators to develop reasonable facility security plans based on their direct knowledge of the facilities and the specific populations those facilities serve.

Comment 17:

The requirement in proposed § 491.3(c)(3) requiring that residents’ incoming mail be x-rayed is a heavy-handed policing measure that is carceral and will impede shelters’ efforts to connect with residents. There is no serious issue of “contraband” entering a shelter through the mail. OTDA should not create a policy that will cause further difficulties for shelter residents in receiving their mail, which this proposal would. Furthermore, this proposed regulation would conflict with the 1981 consent decree entered by the State Supreme Court in Callahan v. Carey, 2012 WL 680318 (Sup Ct NY County, Feb. 21, 2012, No. 42582/79) (Callahan Consent Decree), which calls for delivery of mail without interference.
Response to Comment 17:

Proposed § 491.3(c)(3) does not require shelter operators to scan or x-ray incoming resident mail. Rather, it requires that the security plan portion of a facility’s operational plan describe, among other things, precautions taken to ensure that incoming resident mail does not contain contraband that could pose a threat to the security of the facility or to the health and safety of residents or staff. While shelter operators may elect to utilize x-ray machines or scanners for that purpose, they are not required to do so, and OTDA believes that the use of such technology to help ensure that contraband is not introduced into shelter facilities could be appropriate in some circumstances. With respect to the Callahan Consent Decree, it applies only to shelters for adults located in New York City, whereas proposed Part 491 will apply generally across the State. Finally, OTDA disagrees that taking reasonable precautions to ensure that incoming mail does not contain contraband that could pose a threat to the security of the facility or to the health and safety of residents or staff would unreasonably interfere with residents’ rights to send and receive mail. OTDA disagrees that the proposed regulation should be revised.

Comment 18:

Proposed § 491.3(c)(4) should be revised to require that operators provide training on the facility’s disaster and emergency plan.

Response to Comment 18:

Proposed § 491.3(c)(4)(iii) already requires that the operational plan detail the training provided for each new and current employee and volunteer in both the overall disaster and emergency plan and his/her specific responsibility in its execution. Proposed § 491.8 requires members of a shelter’s staff to be qualified by training and experience to render services required by law or regulation. OTDA disagrees that the suggested revisions are necessary.

Comment 19:

The broad waiver authority in proposed § 491.3(c)(5) should be replaced with language that more narrowly defines areas in which waivers may be granted by OTDA.

Response to Comment 19:

Proposed § 491.3(c)(5) affords OTDA broad discretion to allow waivers because the proposed regulations must apply generally to shelter facilities across the state that have diverse characteristics. Determinations as to whether waiver requests should be granted will be made on a case-by-case basis by OTDA after it takes into account the characteristics of the facility for which the waiver is being request and the nature of the population it serves, among other things. OTDA disagrees that the suggested revision is necessary.

§ 491.4 Operating certificates.

Comment 1:

Proposed § 491.4(g)(2) should be revised to require all current and future shelter employees to submit to criminal background checks, credit checks, and fingerprinting; and provide certified birth certificates, original social security cards, passports, certified high school diplomas, and
certified college degrees. It should be further revised to prohibit the employment of individuals with only a general education diploma (GED) or with an “unclear identity,” and should require shelter operators to terminate employees who concealed their criminal backgrounds, identities, educational records, or legal statuses.

Response to Comment 1:

This comment is beyond the scope of proposed § 491.4, which addresses operating certificates. Even if not beyond the scope, OTDA disagrees with these comments, insofar as shelter staff and qualifications are addressed in proposed rule § 491.8. The suggested revisions therefore are unnecessary.

Comment 2:

The conditions for revocation, suspension, or limitation set forth in proposed § 491.4 should remain mandatory when the operator is unable to continue to operate, rather than changed to permissive.

Response to Comment:

Proposed § 491.4 is intended to allow OTDA discretion to determine whether to revoke, suspend or limit an operating certificate when an operator is unable to continue to operate a facility so that: (a) OTDA may allow the facility to continue operating if a new operator agrees to assume responsibility for the operation of the facility; (b) a temporary operator can be appointed pursuant to SSL § 17(i); or (c) other appropriate arrangements can be made so that the shelter may remain operational. OTDA therefore disagrees with this Comment.

§ 491.6 Compliance with State and local laws, regulations, and codes.

Comment 1:

Proposed § 491.6 should be revised to indicate that where there exists a conflict between requirements of proposed Part 491 and State and local laws, such State and local laws and regulations will govern.

Response to Comment 1:

Where a conflict exists between the requirements of proposed Part 491 and any State or local law, the district should bring the conflict to the attention of OTDA and request a waiver of the applicable Part 491 provision to the extent necessary. OTDA disagrees that the suggested revision is necessary.

§ 491.7 General provisions.

Comment 1:

Proposed § 491.7 should be amended to require shelter operators to distinguish between residents that require supervision and residents that do not, to recognize that economically injured shelter homeless residents who do not require supportive housing can live in independent housing, to acknowledge that many senior citizens and persons over 50 years of
age are homeless due to market rents, to prohibit shelter staff from violating a resident’s rights or endangering a resident, and to require shelter operators to terminate “under-performing” shelter staff.

Response to Comment 1:

Resident rights are addressed in proposed § 491.12, and proposed § 491.12(c) provides, among other things, that a resident’s civil rights shall not be infringed. Otherwise, the comment is beyond the scope of the proposed regulations, and the suggested revisions are unnecessary.

Comment 2:

An exception to the exclusion from shelters of those under age 18 contained in proposed § 491.7(f) should be made for families and friends visiting shelter residents with their minor children.

Response to Comment 2:

Many shelters for homeless adults are congregate and many shelters lack facilities to accommodate visitation. OTDA does not believe that minor children should be allowed in shelters for adults, small-capacity shelters, or shelters for adult families. OTDA therefore disagrees that the suggested revision is necessary.

§ 491.8 Shelter staff and staff qualifications.

Comment 1:

Proposed § 491.8(e)(vi) should be revised to require the physical posting of residents’ rights in common areas; § 491.8(f) should be amended to add a new subparagraph (4) requiring resident workers to sign a confidentiality agreement prohibiting disclosure of information about other shelter residents they obtain in the course of their work and prohibiting them from working in shelters for victims of domestic violence; and proposed rule § 491.8(g) should be amended to impose the same requirements upon volunteers who work in shelters.

Response to Comment 1:

Proposed rule § 491.12(a) requires that the resident rules be physically posted in a location accessible to shelter residents and visitors. Pursuant to proposed rule § 491.12(b) shelter residents also must be provided with a copy of the facility rules on admission to the facility. The confidentiality of facts and information in resident records is addressed in proposed rule § 491.19. The suggested amendments therefore are unnecessary.

Comment 2:

Proposed § 491.8 should contain “character and competence” provisions like those contained in extant §§ 485.6 and 491.13(d)(3)-(6).
Response to Comment 2:

Proposed § 491.8 requires an operator of a shelter for adults, a small-capacity shelter or a shelter for adult families to provide staff sufficient in number and qualified by training and experience to render the services mandated by statute or regulation. Proposed § 491.4 provides that OTDA may revoke, suspend, or limit an operating certificate, or deny an application for an operating certificate, if an individual shelter operator, or a member of the board of directors, the executive director, or a chief administrator of a not-for-profit operator is or has been convicted of certain crimes. OTDA believes these provisions adequately address the issues of “character and competence,” and that the proposed revisions therefore are unnecessary.

Comment 3:

General staff capabilities to serve and supervise clients and communicate with them in current § 491.13 should be retained in proposed § 491.8, along with requirements for tuberculosis tests and exclusion of staff presenting a danger with a communicable disease.

Response to Comment 3:

Proposed § 491.8(a) requires shelter operators to provide staff sufficient in number and qualified by training and experience to render those services mandated by statute or regulation. Implicit is the requirement that the shelter staff be able to serve and supervise clients and communicate with them. OTDA therefore disagrees that the suggested revision is necessary. OTDA does agree that no person should be permitted by a shelter operator to work, either as an employee or a volunteer, if that person is known to be infected with communicable disease that might endanger the health of residents. Accordingly, OTDA is revising proposed § 491.8(a) to restore that regulatory prohibition, which currently is in extant § 491.12(h).

Comment 4:

Proposed § 491.8(f) would allow residents to serve as “workers” for services or payment. There is an inherent contradiction between a shelter resident and a shelter employee, including that access to resident information, normally reserved for staff members on an as-needed basis, presents a safety risk.

Response to Comment 4:

OTDA believes that residents of homeless shelters should be permitted to volunteer or work in the shelter in which they reside in return for services or monetary payment so long as they are not coerced, and subject to the other terms set forth in proposed § 491.8(f). Regarding access to resident information, proposed § 491.19(g) makes clear that resident records must be maintained in a manner that assures resident privacy. OTDA therefore disagrees with the comment.
§ 491.9  Referrals and assessments.

Comment 1:

With respect to proposed § 491.9, homeless adults seeking temporary housing should be provided with shelter consistent with their immediate needs, and not merely “considered for a referral to a shelter,” kept in limbo for many hours awaiting evaluation and assessment before placement or left waiting for indefinite periods for their immediate needs to be met. In addition, proposed § 491.9(b) should be amended to require that (1) when an applicant for shelter is assessed, he or she must be evaluated for placement at an adult care facility, nursing home, shelter for single adults, program for the mentally impaired chemically addicted (MICA), facility for youth or young adults, facility for the aged, or other appropriate facility, (2) the “length of stay” in shelter be calculated from the day of admission to the shelter, and (3) where an independent living plan requires meetings to take place on a bi-weekly basis, the resident must not be scheduled for weekly meetings in order to increase Medicaid reimbursement.

Response to Comment 1:

Proposed § 491.9 speaks to the referral of homeless adults applying for THA to shelters for adults, small-capacity shelters, or shelters for families as appropriate. While § 491.9(b) requires that the assessment of an applicant’s public assistance and care needs and suitability for placement in shelter be commenced within one business day, proposed § 491.9 is not intended to address the requirement that temporary housing be provided to homeless adults or adult families consistent with their immediate needs. Social Services Law § 133 mandates that upon application for public assistance or care, the local social services district shall determine whether such person is in immediate need, and “[i]f it shall appear that a person is in immediate need, emergency needs assistance or care shall be granted pending completion of an investigation.” Moreover, an applicant may be unsuitable for placement in shelter for any of the reasons set forth in proposed § 491.9(c). When an applicant cannot be placed in shelter, proposed rule § 491.9(d) requires that the district ensure that action appropriate to the health, safety and needs of the applicant is taken. Such action may include referral to appropriate medical or clinical services when a person is determined to need treatment for physical or mental health issues, or referral to an appropriate adult protective or law enforcement agency or similar entity. Regarding “length of stay” in shelter and the scheduling of independent living plan conferences, those issues are beyond the scope of the proposed rule. In light of the foregoing, the suggested amendments are unnecessary.

Comment 2:

The mandate in proposed § 491.9(b) requiring an individual or adult family to cooperate with and complete an assessment creates a barrier to shelter, and the intake process should remain low-threshold to ensure homeless persons are not further disincentivized from seeking help.

Response to Comment 2:

The assessment requirement in proposed § 491.9(b) is consistent with 18 NYCRR § 352.35, which requires districts to assess an individual’s or family’s public assistance and care needs, including the availability of housing, and obligates the individual or family to cooperate in and complete the assessment as a precondition to obtaining THA. OTDA disagrees that the suggested revision is necessary.
Comment 3:

Access to shelter should be guided by the Callahan Consent Decree, and individuals who suffer from mental or physical disabilities should not be excluded from shelter. Moreover, the “comfort of other residents” should not be a reason to exclude an applicant for THA from shelter because it could disproportionately impact LGBTQI individuals, persons who are malodorous, or those with obvious symptoms of mental illness.

Response to Comment 3:

The Callahan Consent Decree applies only to shelters for adults in New York City. Proposed Part 491 will be applicable throughout the State. In any event, proposed § 491.9(c) speaks to the appropriateness of the placement of THA recipients in shelter, and does not address eligibility for THA. Proposed § 491.9(c) makes clear that when a person eligible for THA cannot be placed in shelter for any of the reasons set forth in proposed § 491.9(c), the social services district must take action appropriate to the health, safety and needs of that person. Such action may include, but is not limited to, referral for appropriate medical or clinical services, or to an appropriate adult protective or law enforcement agency or similar entity. In some circumstances where a person cannot be accommodated in a shelter, it may be appropriate to place the person or the person’s family in a commercial hotel or motel. OTDA therefore disagrees with the comment.

Comment 4:

Pursuant to Federal and State disability law, districts cannot be required to deny an application for failure to cooperate, particularly when an applicant is unable to cooperate because of a disability or other chronic need, and districts cannot be prohibited from placing those with a mental or physical condition that “may” make the placement inappropriate or cause a danger, as this will exclude those who can be safely provided with shelter.

Response to Comment 4:

Both 18 NYCRR § 352.35(c) and proposed § 491.9(b)(2) make clear that an application for THA may not be denied where an applicant’s failure to cooperate in and complete an assessment is due to a physical or mental impairment. Proposed § 491.9(d) requires that when a person has a mental or physical condition that may make placement in a shelter for adults, a small-capacity shelter, or a shelter for adult families inappropriate, or may cause danger to that person or to others, the social services district must ensure that action is taken appropriate to the health, safety and needs of that person. In some circumstances, it could be appropriate to refer the person for appropriate medical or clinical services. In other circumstances where there are no suitable shelters, the person could be placed in a commercial hotel/motel. OTDA therefore disagrees with the comment.

Comment 5:

Proposed § 491.9 should not bar shelter grants to individuals requiring services beyond those the shelter is authorized to provide, or assistance that the facility cannot provide with or without community resources. Pursuant to Federal and State disability law these individuals should be provided with reasonable accommodations to ensure their access to the services they need.
Response to Comment 5:

Proposed § 491.9(c)(2) does not bar shelter grants provided pursuant to 18 NYCRR § 352.3. Rather, it ensures that districts place individuals requiring specialized services in facilities where those services are available. Proposed § 491.9(c)(4) requires OTDA approval to place a person in a shelter when that person is in need of a level of medical, mental health, nursing care or other assistance that cannot be rendered safely and effectively by the facility or cannot reasonably be provided by the facility through the assistance of other community resources. These two proposed regulatory provisions are intended to help ensure that THA applicants have access to necessary services. OTDA disagrees with the comment.

Comment 6:

The proposed inclusion in § 491.9(c)(5) of an elevator option for those incapable of ambulation on stairs without personal assistance as an alternative to assignment to the ground floor should be reconsidered given the potential safety risks for shelter residents with mobility impairments.

Response to Comment 6:

Proposed § 491.3(c)(4) requires that each facility’s operational plan include a disaster and emergency plan detailing, among other things, procedures for full and partial evacuations of the facility. Where a shelter has an elevator and will be housing mobility-impaired residents above the ground floor, the facility’s disaster and emergency plan would have to describe the means by which those residents would be evacuated in the event of an emergency should the elevator become nonfunctional. Each facility’s operational plan, including the disaster and emergency plan, are subject to OTDA approval. OTDA therefore disagrees that proposed § 491.9(c)(5) needs to be reconsidered.

Comment 7:

Shelters should be required to interview new residents within 24 hours to assess immediate needs and determine if shelters can meet them; inform residents of rules; and relocate them within 72 hours if their needs cannot be met.

Response to Comment 7:

Proposed § 491.9(b) requires that a district or district’s designee, which may be a shelter operator, should commence to evaluate an adult or adult family to assess the individual adult’s or the adult family’s housing and housing-related public assistance and care needs, and their suitability for placement in a shelter, by the end of the next business day. The suggested revision is unnecessary.

Comment 8:

The provisions in proposed § 491.9(b)(2) requiring documentation for an apparent physical or mental impairment violate the settlement in Butler v. City of New York, US Dist Ct, SD NY, 15-CV-3783, Sweet, J., 2017, which mandates that shelter staff will not require documentation where a disability is known or apparent to shelter or intake staff, and therefore should be revised to clarify that an individual with a physical or mental impairment that is known or apparent to shelter staff shall not be required to provide documentation in order to obtain a reasonable accommodation.
Response to Comment 8:

Proposed § 491.9(b)(2) does not address the obligation to provide reasonable accommodations under the Americans with Disabilities Act or the Butler settlement. Rather, it addresses the requirement that an applicant for THA cooperate in and complete an assessment of the applicant’s housing and housing-related public assistance and care needs pursuant to 18 NYCRR § 352.35 in order to remain eligible for THA, except where the applicant is unable to cooperate in and complete an assessment due to a physical or mental impairment. That being said, OTDA is revising the proposed rule to clarify that an individual with a physical or mental impairment that is known or apparent to shelter or intake staff shall not be required to provide documentation of the physical or mental impairment.

Comment 9:

Social services districts should be allowed to place adult-only families and single women in shelters for families with children to allow districts the flexibility needed to meet fluctuating shelter needs.

Response to comment 9:

“Mixed-use” facilities could be allowed in appropriate circumstances where waivers are requested and obtained from OTDA pursuant to proposed § 491.3(c)(5).

§ 491.10 Excess capacity admissions.

Comment 1:

Proposed § 491.10 should be revised to allow excess capacity for only 90-days to help foster adequate shelter capacity planning on the part of local social services districts.

Response to Comment 1:

Proposed § 491.10 allows for excess capacity admissions on a short-term basis in emergency circumstances and provides that OTDA may allow a shelter operator to continue to operate above the capacity specified in the shelter’s operational plan for a reasonable period. The proposed rule allows OTDA discretion to determine what is reasonable under given circumstances. OTDA disagrees that the suggested revision is necessary.

Comment 2:

Proposed § 491.10(a) should be amended to clarify that shelters may not admit a number of persons in excess of the capacity allowed by OTDA and local fire codes; and (2) proposed rule § 491.10(b) should be amended to set forth additional conditions under which a social services district may authorize a shelter operator to provide short-term emergency shelter to a number of persons in excess of the capacity of an OTDA-approved operational plan referable to the facility; specifically, those conditions enumerated in Appendix “B” of the Callahan Consent Decree).
Response to Comment 2:

OTDA disagrees with these comments, insofar as the conditions under which a social services district may authorize a shelter operator to provide short-term emergency shelter already are addressed in proposed § 491.10(c). The Callahan Consent Decree is applicable only to shelters for adults in New York City, whereas the proposed regulations will be applicable across the State. Proposed § 491.10(c) also is largely consistent with Callahan Consent Decree. Consequently, the suggested revisions are unnecessary.

Comment 3:

OTDA should create an expedited process that allows social services districts to quickly bring shelters online through an emergency procurement process when additional shelter capacity is urgently needed.

Response to Comment 3:

Social services districts are authorized under § 491.3(h) to allow a shelter facility to commence operations before its operational plan has been approved by OTDA and to be reimbursed for expenditures made from the date the social services district submits its proposed operational plan provided. This regulatory provision would allow social services districts to bring shelters online relatively quickly when additional capacity is needed. OTDA therefore disagrees that the proposed revisions are necessary.

Comment 4:

Proposed § 491.10 should be revised to require that if a shelter is over capacity for more than 90-days a new shelter must be opened, or residents must be transferred to a shelter with capacity.

Response to Comment 4:

Proposed § 491.10 allows OTDA discretion to determine whether it is reasonable to allow excess capacity admissions beyond 90 days under given circumstances. OTDA disagrees that the suggested revision is necessary.

§491.11 Facility charges.

Comment 1:

Proposed § 491.11 codifies a “rent for shelter” approach and no person in shelter should be made to pay for temporary shelter – their monies are much better used to help save for housing and daily living requirements so they can leave shelter and enter into a home. If not retracted, proposed § 491.11, which address Facility Charges should be revised to clarify that a resident will not be removed from shelter for their inability or failure to pay.

Response to Comment 1:

Proposed § 491.11 makes the payment of facility charges contingent upon the shelter resident having available income pursuant to the budgeting rules set forth in Social Services Law § 131-
a and 18 NYCRR, Part 352. If a resident has no available income, they would not be obligated to pay facility charges. OTDA therefore disagrees that the proposed regulation needs to be revised to clarify that a resident will not be removed from shelter for their inability or failure to pay.

Comment 2:

Soc. Serv. Law 36-c allows the City of New York to require clients to participate in a savings plan in lieu of applying their income towards the cost of shelter. All districts should have the option for such a savings plan in lieu of facility charges. Such plans should be phased in for all populations, including single adults and adult families.

Response to Comment 2:

This comment is beyond the scope of the proposed regulations.

§ 491.12 Resident rights and obligations.

Comment 1:

The requirements in extant § 491.7(b) and (c) that resident rules be posted in a conspicuous location in a public area and that they be explained to each resident and staff member should be retained in proposed § 491.12, or proposed § 491.12 should require that the resident rules be posted on the walls in the lobby, common areas, hallways, social service offices, cafeteria, computer lab, laundry room, reading rooms, library, public phone area, or lounges.

Response to Comment 1:

Proposed § 491.12(a) requires that resident rules be posted in a location accessible to residents of the facility and visitors. Proposed § 491.12(b) requires that upon admission to a shelter, each resident must be provided with a copy of the facility rules. The suggested revisions are unnecessary.

Comment 2:

Proposed § 491.12(b) should be revised to clarify that facility rules do not suspend, supersede, or circumvent the United States Constitution, New York State laws, the Callahan Consent Decree, and local laws.

Response to Comment 2:

The Callahan Consent Decree is applicable only to shelters for adults in New York City. As a matter of law, facility rules cannot suspend, supersede, or circumvent the United States Constitution, applicable New York State laws, or the Callahan Consent Decree. OTDA does not agree that the suggested amendments are necessary.

Comment 3:

Proposed § 491.12(c) should be revised to clarify that the resident rules, and in particular, the resident rights and responsibilities set forth in resident rules shall not be edited, rewritten, or altered by shelter staff.
Response to Comment 3:

Proposed rule § 491.12(c) sets forth resident rights that at a minimum must be included in resident rules adopted by each shelter for adults, small-capacity shelter, and shelter for adult families. The resident rules adopted by a shelter for adults, small-capacity shelter, or shelter for adult families must be included in the operational plan submitted by the social services district for OTDA approval pursuant to proposed rule § 491.3, and proposed rule § 491.3(g) expressly requires that any changes to an operational plan to be approved by OTDA before being implemented. Given that the resident rights required by proposed rule § 491.12(c) could not be revised without OTDA approval, the suggested revision is unnecessary.

Comment 4:

Proposed § 491.12(c)(7) should be amended to clarify that shelter residents cannot be expelled from shelter or retaliated against by shelter staff because they join with other residents or individuals to work for improvements in resident care, and proposed rule § 491.12(c)(9) should be amended to clarify that a resident may not be retaliated against for exercising the right to manage his or her own financial affairs.

Response to Comment 4:

Proposed § 491.12(c)(7) makes clear that shelter residents have the right to join with other residents or individuals to work for improvements in resident care. Proposed rule § 491.12(c)(9) provides that shelter residents have the right to manage their own financial affairs. Implicit in these proposed rule regulatory sections is that shelter residents may not be subjected to retaliation for exercising those rights. The suggested revision is unnecessary.

Comment 5:

Proposed § 491.12(c)(8) should be revised to provide that residents have the right to present grievances to anyone they choose.

Response to Comment 5:

Grievances regarding shelter conditions or shelter staff must be made to persons who can effectively address them. This would include the shelter operator, the facility administrator, the relevant social services district, or OTDA. OTDA disagrees that the suggested revision is necessary.

Comment 6:

Proposed rule § 491.12(c)(11) and § 491.12(c)(15) should be revised to clarify that residents shall have the right to receive courteous, fair and respectful care and treatment, and shall not be obligated to perform work, from or by shelter staff.

Response to Comment 6:

The topic of resident workers is addressed in proposed § 491.8(f). OTDA believes that the suggested revision would be superfluous and therefore is unnecessary.
Comment 7:

Proposed § 491.12(d)(1) should be revised to clarify that shelter residents who are ineligible to receive THA on the basis of their immigration status should not be required to apply for public assistance benefits as a condition to remaining in shelter.

Response to Comment 7:

Nothing in proposed § Part 491 precludes a district from referring a person that is not eligible for THA or other public benefits to a shelter for adults, a small-capacity shelter, or a shelter for adult families, and nothing in proposed Part 491 requires that a person ineligible to receive THA must be involuntarily discharged from shelter. Stated simply, an undocumented person need not be eligible for THA, or to participate in other public benefit programs, in order to be placed in a shelter by a district. However, there would be no reimbursement by the State where a person ineligible for THA is placed in shelter. Notwithstanding the foregoing, OTDA is revising proposed § 491.12 to clarify that resident rules must address the requirement that residents apply for public benefits only to the extent that they are eligible to receive such benefits under 18 NYCRR § 349.3.

Comment 8:

Proposed § 491.12(d)(3) should be amended to provide that residents shall not be required to sign independent living plans (“ILPs”) but are required to follow to posted rules that are reflected in their ILPs; proposed rule § 491.12(d)(4) should be amended to provide that residents are required to seek and accept permanent housing only when they have income or a subsidy voucher to pay rent; (3) proposed rule § 491.12(d)(5) should be amended to provide that residents must seek and accept employment, attend college, or participate in a literacy program, GED program, social service district-approved training or volunteer program, college, or public service employment; (4) proposed § 491.12(d)(6) should be amended to require residents to improve daily living skills and develop a personal hygiene skill set; (5) proposed § 491.12(d)(7) should be amended to require that residents must use any computer labs, WiFi, and the resident telephones appropriately; and (6) proposed § 491.12(d)(12) should be amended to clarify how the resident’s or resident family’s share of the cost of temporary housing should be calculated.

Response to Comment 8:

In regard to proposed § 491.12(d)(3), 18 NYCRR § 352.35(c)(2) requires that “[a]n individual or family must cooperate with the social services district in carrying out and completing an [ILP], if the social service district, based on its assessment of the individual or family, has determined that such a plan will assist such individual or family to relocate to other housing either than temporary housing,” and “[w]hen an individual or family unreasonably fails to comply with the [ILP] requirements, the social services district must discontinue temporary housing assistance.” OTDA believes that individuals should sign their ILPs given that the failure to comply with their ILPs could result in the discontinuance of THA. As to proposed § 491.12(d)(4), it is implicit that residents of shelters should seek and accept permanent housing they can afford. Regarding proposed § 491.12(d)(6), daily living skills and personal hygiene can more appropriately be addressed on an as-needed basis in the course of providing residents with case management and counseling required under proposed § 491.14(e). With respect to the use of any computer labs, Wi-Fi, or resident telephones at a shelter facility, § 491.12(d) sets forth the rules that, at a minimum, the facility must adopt. Shelter facilities are free to adopt additional rules as
Proposed rule § 491.12(d) should be amended to include the following additional rules: (1) residents are prohibited from slamming doors, lockers, drawers, or otherwise creating nuisances loud noises; (2) menacing other residents verbally, staring, or threatening other residents is prohibited; (3) adult daily living skills (personal hygiene) must be practiced daily when living communally with other residents; and (4) no hoarding, no smelly bags or trash is allowed in the building or dormitories.

Response to Comment 9:

Proposed rule § 491.12(d) sets forth the minimum resident rules that must be adopted by shelter facilities, and shelter operators may adopt additional rules that are reasonable and believed to be necessary, subject to OTDA approval. OTDA does not agree that the proposed regulatory provision needs to be amended to expressly mandate adoption of the four rules suggested in the comment.

Comment 10:

Proposed § 491.12(c)(17), which provides that a resident shall have the right to receive visitors in designated areas of the facility during reasonable hours as specified in the resident rules, would present significant operational difficulties in facilities that do not have appropriate space for such visits or staffing to supervise persons seeking such access, including children. The proposed regulation therefore should be revised to provide that residents shall have the right to receive visitors in designated areas of the facility, where feasible.

Response to Comment 10:

Proposed § 491.7(f) provides that no person younger than 18 years of age shall be admitted into a shelter for adults, a small-capacity shelter or a shelter for adult families or allowed entry for any purpose. Children thus are prohibited from visiting on-site with a resident of a shelter for adults, a small-capacity shelter, or a shelter for adult families. OTDA acknowledges that some facilities may not have appropriate space for on-site visits, or staffing to supervise persons seeking such access. Accordingly, proposed § 491.12(c)(17) is being revised to provide that a resident shall have the right to receive visitors in designated areas of the facility, where feasible, during reasonable hours as specified in the resident rules.

§ 491.13 Resident funds and valuables.

Comment 1:

Proposed rule § 491.13 should be amended to require that when a shelter resident has a facility-maintained account in which he or she keeps personal funds and has cash in excess of $2,500 in the account, the shelter operator must report the funds to the Internal Revenue Service under the resident’s social security number.
Response to Comment 1:

Persons who are not residents of homeless shelters may have funds in excess of $2,500 in a bank account without those funds being reported to the Internal Revenue Service. OTDA believes that the suggested revision could be discriminatory and does not agree that it is necessary.

Comment 2:

Proposed § 491.13 should be revised to include a requirement that individuals have the right to withdraw funds at any time.

Response to Comment 2:

Proposed § 491.13(b)(4) already provides that personal funds maintained in a resident account are held by the shelter operator in trust for the sole use of the resident. Residents obviously must be permitted to withdraw funds, and the proposed revision therefore would be superfluous. Moreover, the proposed revisions would be impractical given that shelter operators presumably would allow only certain employees to access resident accounts, and those employees may not be on duty or available at all times. OTDA therefore disagrees that the proposed revision is necessary.

§ 491.14 Resident services.

Comment 1:

Staffing ratios are based on residents, not families, which will result in overstaffing of adult family facilities. Since each adult family is one case on a caseload, staffing should be proportionate, and proposed § 491.14(f)(8) should be revised to provide that for shelters for adults and small-capacity shelters, resident census shall be the number of residents of such facility; whereas, for shelters for adult families, resident census shall be the number of families residing in such facility, unless otherwise directed by OTDA.

Response to Comment 1:

OTDA disagrees with this comment and believes that staffing ratios generally should be determined based on resident census, i.e., the number of residents of a shelter facility. OTDA does acknowledge that overstaffing could result in shelters for adult families in some circumstances and anticipates that districts may seek waivers of the staffing requirements pursuant to proposed § 491.3(c)(5) in appropriate circumstances. To underscore that OTDA retains discretion to waive staffing requirements, proposed § 491.14(f)(8) has been revised to clarify that the “resident census shall be the number of residents of a shelter facility unless otherwise directed by the Office.”

Comment 2:

The requirement in current § 491.18(f) that shelters provide guidance to residents to assure that they attend meals and maintain appropriate nutritional intake, practice personal hygiene and grooming, and dress appropriately for weather and activities, should be retained in proposed § 491.14(f).
Response to Comment 2:

Not all shelter residents need this type of guidance, which can be offered on an as-needed basis in the course of providing residents with case management and counseling required under proposed § 491.14(e). OTDA disagrees that the suggested revision is necessary.

Comment 3:

Proposed § 491.14(f) should be revised to require that at least one staff member on each shift shall have completed an in-person crisis intervention training.

Response to Comment 3:

Proposed § 491.8(a) requires shelter operators to provide staff sufficient in number and qualified by training and experience to render services mandated by statute or regulation. Proposed § 491.14(f) requires that shelters provide supervision services, which include monitoring residents to identify abrupt or progressive changes in behavior or appearance that may signify the need for clinical or medical assessment. OTDA believes it unnecessary to explicitly require training in crisis intervention.

§ 491.15 Involuntary discharge and transfer.

Comment 1:

The public assistance sanctioning process should not intersect with the sheltering process. When a person is sanctioned, they already have lost basic benefits and losing shelter can only worsen their situation.

Response to Comment 1:

This comment is beyond the scope of the regulations, and the proposed regulation is consistent with 18 NYCRR § 352.35, which addresses eligibility for THA.

Comment 2:

Proposed § 491.15 should be revised to address “administrative transfers” and to clarify that administrative transfers may be used only in emergency circumstances. In other words, the proposed regulation should allow an exception to the 48-hour notice requirement for emergency involuntary transfers (e.g., facility issues that necessitate moving clients immediately, or other risks to health and safety).

Response to Comment 2:

While OTDA does not use the term “administrative transfer” in its proposed regulations, it agrees and has revised proposed § 491.15(b) to clarify that a resident of any shelter for adults, small-capacity shelter, or shelter for adult families may be transferred upon at least 48 hours advanced written notice to another appropriate shelter facility, provided, however, that such 48 hours advanced written notice shall not be required where a delay will pose a risk to the health or safety of such individual or adult family, or to others in the facility.
Comment 3:

The requirement in proposed § 491.15(d) that client belongings be stored for no less than 10 business days would be onerous because many shelters lack sufficient storage space on site, and the rule should be revised to require that client belongings be stored only for at least 48 hours.

Response to Comment 3:

OTDA has deleted the requirement in proposed § 491.15(d) that a shelter operator store property left behind by a resident after a resident's discharge or transfer for no less than ten (10) business days. Proposed § 491.15(c), like extant § 491.5(c), already requires that a resident being discharged or transferred from a shelter be returned any property in the custody of the shelter operator within 72 hours of the resident’s departure from the shelter, and like extant § 491.5(d), proposed § 491.15(c) requires a shelter operator to return to the resident any property or items of value that come into the possession of the operator after the resident’s discharge or transfer. The rules regarding the storage or resident property and belongings following the discharge or transfer of the resident will remain unchanged at this time and can be addressed by OTDA in administrative guidance to the extent necessary.

Comment 4:

Proposed § 491.15 should require that residents with physical or mental impairments be referred for services.

Response to Comment 4:

Proposed § 491.9(d) makes clear that when an applicant for THA cannot be referred to a shelter for adults, a small-capacity shelter, or a shelter for adult families because the person has a mental or physical condition that make the placement inappropriate, the social services district must ensure that appropriate action is taken. That action may include referral for appropriate medical or clinical services. Proposed § 491.15(b) allows a shelter resident with physical or mental impairments to be involuntarily transferred to an appropriate health, mental health, or other suitable facility where appropriate services are available. OTDA disagrees with the comment.

Comment 5:

Proposed §491.15 is inconsistent with the Callahan Consent Decree in that the Callahan Consent Decree requires that when a resident of shelter for adult men is found by fair hearing to be wrongfully discharged, he be returned to the facility from which he was discharged irrespective of whether an appropriate vacancy exists at that facility.

Responses to Comment 5:

The Callahan Consent Decree applies only to shelters for adults located in New York City, whereas proposed Part 491 will be applicable generally to all publicly-funded shelters for adults, small-capacity shelters and shelters for adult families located throughout the State of New York. To the extent that a shelter is subject to the Callahan Consent Decree, or any other court order for that matter, it may be legally obligated to comply and can request a waiver from any inconsistent OTDA regulations to the extent necessary. That being said, the Callahan Consent
Decree does not require that a resident of shelter for adults found to have been wrongfully discharged after a fair hearing be returned to the facility from which he was discharged irrespective of whether an appropriate vacancy exists at that facility. Moreover, proposed § 491.15 provides that an individual resident or adult family who has requested a fair hearing and who is found by the fair hearing decision to have been wrongfully discharged from a shelter must be offered an opportunity to return to that shelter as soon as an appropriate vacancy becomes available. OTDA therefore disagrees with the comment.

§ 491.16 Serious incidents and incident reporting.

Comment 1:

Proposed § 491.16(b) should require shelter operators to submit incident reports to OTDA in order to ensure transparency around safety and hygiene requirements.

Response to Comment 1:

Proposed § 491.16(b) requires that either the operator of the shelter or the social services district immediately report serious incidents to OTDA by e-mail or telephone. In the event the shelter operator directly reports incidents to OTDA, it also must immediately notify the social services district. The social services then must follow-up by submitting an incident report to OTDA within three business days. OTDA believes this procedure adequately ensures transparency regarding safety and hygiene requirements, and that the suggested revision is unnecessary.

§ 491.17 Food service.

Comment 1:

The requirement that shelter operators provide three meals per day should not be repealed and replaced with a provision requiring only breakfast and evening meals, and the duty for operators to provide meals should not be replaced with a provision to ensure residents can conveniently obtain them.

Response to Comment 1:

Extant § 491.9(b) requires that a shelter operator provide, at a minimum, breakfast and an evening meal to be served at regularly scheduled times. Only when a shelter for adults is operated directly by a social services district are residents required under the current regulation to be provided with three meals each day. OTDA believes the distinction between shelters that are operated by not-for-profit corporations and shelters that are “direct runs” operated by social services districts is irrelevant, and that the same standards should apply to all shelters for adults, small-capacity shelters, and shelters for adult families. Proposed § 491.17 requires that shelter operators must make provision to ensure that residents can conveniently obtain meals because it recognizes that some shelters provide residents with meal vouchers so meals can be obtained from restaurants. OTDA disagrees with this comment, and does not believe that the regulation requires revision.

Comment 2:
Proposed § 491.17(d)(1) should be revised to require that onsite meal duties must be performed by staff, not by a consulting dietician or volunteer.

Response to Comment 2:

This comment misstates proposed § 491.17(d)(1), which provides that food-buying and menu-planning arrangements must be overseen by a staff member, consulting dietician, or volunteer sufficiently knowledgeable in nutrition and dietetics to ensure the planning of well-balanced meals and the purchase, storage and preparation of good quality food. OTDA disagrees with the comment and believes the suggested revision to be unnecessary.

Comment 3:

Proposed § 491.17(d) should be amended to (1) require that menus be changed quarterly and rotated to avoid food intolerance and allergies, and (2) prohibit residents’ food from being eaten, stolen, or saved for shelter staff or former residents, and proposed § 491.17(g) should be amended to require that vegan, vegetarian, and lactose intolerant diets be accommodated.

Response to Comment 3:

Proposed § 491.17(g) provides that medically-prescribed dietary or nutritional needs, and religious dietary restrictions, must be accommodated regardless of the food-buying and meal-preparation arrangements of the facility. Consequently, food intolerances and allergies already are addressed. Proposed § 491.17(a) obligates operators of shelters for adults, small-capacity shelters, and shelters for adult families to ensure that residents can conveniently obtain meals that are balanced, nutritious and adequate in amount and content to meet the residents’ dietary needs. Operators thus should ensure that residents with reasonable dietary restrictions, such as those subsisting on vegetarian or vegan diets, can obtain meals that are balanced, nutritious and adequate in amount. OTDA can further address such dietary restrictions in administrative guidance. A prohibition on shelter food being eaten or used by shelter staff or non-residents is beyond the scope of the proposed rule regulation. The suggested revisions are unnecessary.

Comment 4:

The provisions of proposed § 491.17(d)(5)-(1l) relating to food storage, lighting, ventilation, equipment, refrigeration, preparation, serving, space, cleanliness, garbage handling, and inspections should continue to apply with respect to the provision of off-site or contracted meals, where appropriate, and the proposed regulation should be amended to require that catered food be transported in refrigerated trucks or vans, and to prohibit food from being served past its expiration date.

Response to Comment 4:

Meals prepared off-site and contracted meals must be prepared in food preparation facilities that comply with the New York State Sanitary Code, 10 NYCRR, Part 14. The New York State Sanitary Code addresses such things as food storage, ventilation, equipment, refrigeration, preparation, serving, space, and cleanliness. The transportation of food is addressed in 10 NYCRR §§ 14-1.40 and 14-1.50. Proposed § 491.17 requires that meals be balanced, nutritious and adequate in amount and content to meet the dietary needs of residents. The requirement that food not be spoiled is implicit. OTDA disagrees that the suggested revisions are necessary.
Comment 5:

Proposed § 491.17 conflicts with the Callahan Consent Decree, which requires each shelter for adults to offer space for dining and leisure activities.

Response to Comment 5:

The Callahan Consent Decree applies only to shelters for adults located in New York City, whereas proposed Part 491 will be applicable generally to all publicly-funded shelters for adults, small-capacity shelters and shelters for adult families located throughout the State of New York. Proposed § 491.17 addresses food services, and the means by which an operator of a shelter for adults, a small-capacity shelter, or a shelter for adult families may provide shelter residents with meals. The requirement that shelter facilities have space for dining and leisure activities is addressed in proposed § 491.18(h). OTDA disagrees with the comment.

§ 491.18 Environmental standards.

Comment 1:

The existing requirement for smoke barriers of at least one-hour fire rating between floors in current § 491.10(g)(4) is an important safeguard for resident safety and should be retained in proposed § 491.18(b).

Response to Comment 1:

Smoke barriers are addressed in the International Building Code, as adopted by New York State, and proposed § 491.6 requires that shelters for adults, small-capacity shelters and shelters for adult families for which a social services district seeks reimbursement be operated in accordance with State and local laws, regulations, and codes relating to fire prevention and fire protection, among other things. OTDA therefore believes the suggested revision to be unnecessary.

Comment 2:

Proposed § 491.18(b) prohibits “fire hazards” such as space heaters, which makes sense if all sheltering facilities have consistently adequate heating systems, which they do not.

Response to Comment 2:

Proposed § 491.18(e)(9) requires that heating and cooling systems be in good working order. OTDA believes that space heaters could create fire hazards. Space heaters may be used in some circumstances if a waiver is requested and obtained and their use is authorized by OTDA.

Comment 3:

Proposed § 491.18(c) should be revised to require that electrical systems be maintained to current code.
Response to Comment 3:

Proposed § 491.6(a) requires that shelters for adults, small-capacity shelters and shelters for adult families be operated in accordance with State and local laws, regulations, and codes relating to heating and electrical systems, among other things. The suggested revision is unnecessary.

Comment 4:

Proposed § 491.18(d) should be revised to require that single adults residing in single rooms be provided with a lock and key.

Response to Comment 4:

Single bedrooms for adults may have locking doors, in which case the residents occupying those rooms will have to be provided with keys or other means to access and secure those rooms. If single bedrooms do not have locking doors, proposed rule § 491.18(h)(8) requires that they be equipped with storage lockers in which the resident may secure his or her personal belongings. The proposed revision is unnecessary.

Comment 5:

The requirement in proposed § 491.18(b)(5) that there be two means of egress from each floor designated for public use or on which 11 or more residents are housed should be modified to permit facilities approved by the Fire Department of the City of New York (FDNY) to serve a larger number than 11 residents with one means of egress accompanied by additional fire protection measures.

Response to Comment 5:

The proposed regulations are intended to be applicable across the State and not only to shelters in New York City. Social services may request waivers with respect to proposed § 491.18(b)(5) pursuant to proposed § 491.3(c)(5), and OTDA can exercise its discretion to grant waivers when it is satisfied that the safety and welfare of shelter residents and shelter staff would not be imperiled where there is only one means of egress from a floor designated for public use or on which 11 or more residents are housed. OTDA believes that the dual-egress requirement in § 491.18(b)(5) is an important fire safety precaution that should be retained and disagrees that the suggested revision is necessary.

Comment 6:

Proposed § 491.18(h)(7)(i) should be revised to require shelters to have one tub or shower for each 15 residents rather than just one shower, so that shelters currently in operation under the existing rules do not fall out of compliance as a result of the adoption of a new standard.

Response to Comment 6:

OTDA agrees and has revised § 491.18(h)(7)(i) to allow a tub or shower, as is currently the rule under extant § 491.10(o)(8).
Comment 7:

The minimum bath and toilet facility calculations are based on number of residents, not units, and may not be feasible for some existing sites. § 491.18(h)(7) should be revised to provide an exception for facilities operating before the effective date of proposed Part 491, requiring them to maintain at least the number of toilets, sinks, and showers that existed on the effective date of proposed Part 491, and to clarify that the requirements do not apply to facilities in which residents have private, self-contained rooms with bathrooms, toilets and showers.

Response to Comment 7:

To the extent that facilities operating before the effective date of proposed Part 491 cannot comply with the requirements of proposed § 491.18(h)(7), they can request a waiver from OTDA pursuant to § 491.3(c)(5). With respect to facilities in which residents have private, self-contained rooms with bathrooms, toilets and showers, OTDA anticipates that they already will satisfy the requirements of proposed § 491.18(h)(7) and revision of the proposed regulation therefore is unnecessary.

Comment 8:

Proposed § 491.18(h)(7)(iii), which requires that hot water for bathing and washing be maintained at 110 degrees Fahrenheit, conflicts with § 27-2031 of the New York City Administrative Code, which requires that hot water be maintained at a minimum of 120 degrees Fahrenheit.

Response to Comment 8:

OTDA has revised the proposed § 491.18(h)(7)(iii) to require that hot water be maintained at a temperature of no less than 110 degrees Fahrenheit.

Comment 9:

Proposed § 491.18 is inconsistent with the Callahan Consent Decree, which requires shelter operators to provide residents with clean linens and laundry service.

Response to Comment 9:

The Callahan Consent Decree applies only to shelters for adults located in New York City, whereas proposed Part 491 will be applicable generally to publicly-funded shelters for adults, small-capacity shelters and shelters for adult families located throughout the State of New York. In any event, the Callahan Consent Decree requires that residents be provided with, among other things, “a change of bed linens and towels at least once a week and more often as needed . . . .” and with “access to laundry services not less than twice a week.” Proposed § 491.18(e)(5) requires that shelter residents be provided with clean bed linens, blankets, and towels on at least a weekly basis, or more often if needed, and proposed § 491.18(e)(13) requires that shelter residents have access to laundry facilities. OTDA disagrees that proposed § 491.18 is inconsistent with the Callahan Consent Decree.
Comment 10:

Proposed § 491.18(h) should be amended so that the space requirements set forth in that section are consistent with the space requirements imposed by Appendix A to Callahan Consent Decree.

Response to Comment 10:

While Appendix A to the Callahan Consent Decree requires each shelter to offer space for dining and leisure activities, it also explicitly allows those requirements to be waived when the facility operator demonstrates that the food services and program needs of the residents can be met. Like the Callahan Consent Decree, proposed § 491.18(h) requires that shelters for adults, small-capacity shelters and shelters for adult families have space for dining and leisure activities unless waivers are obtained pursuant to proposed § 491.3(c)(5). Notably, the waiver provision in proposed § 491.3(c)(5) is consistent with the waiver provision in Appendix A to Callahan Consent Decree. In any event, and as noted above, the Callahan Consent Decree applies to shelters for adults located in New York City, and the space requirements set forth in the Callahan Consent Decree are inapplicable with respect to shelters located in other areas of the State. OTDA disagrees with the comment.

Comment 11:

Some older shelters do not have leisure and dining space; some newer shelters with leisure and dining space may not meet the required square footage requirements in proposed § 491.18(h)(3) and proposed § 491.18(h)(4); residents in shelters for adult families should have a reduced need for dining and leisure space; and some shelters will provide meal service outside the facility pursuant to proposed § 491.17(b) and should not need dining space. Proposed § 491.18(h)(1) therefore should be revised to provide that every facility shall have space for dining and leisure activities, except that facilities providing meal service outside the facility pursuant to proposed § 491.17(b) shall not be required to have dining space, and that facilities operating before the effective date of proposed Part 491 shall only be required to have space for dining and leisure activities if they had such space before proposed Part 491 became effective.

Response to Comment 11:

Shelter facilities that provide meal service outside the facility pursuant to proposed § 491.17(b) and do not need dining space, and shelters that provide meal service on-site and which do not meet the required square footage requirements in proposed § 491.18(h)(3), may request waivers pursuant to proposed § 491.3(c)(5). OTDA therefore believes the suggested revisions to be unnecessary.

Comment 12:

Proposed § 491.18 should be revised to require that (1) shower curtains be changed once weekly to prevent fungus, mold, and sharing bacteria amongst residents; and (2) lockable soap dispensers that cannot be contaminated shall be installed in bathrooms, filled with unadulterated liquid soap, and replaced as needed.
Response to Comment 12:

Proposed rule § 491.18(a)(2) requires that bathrooms be kept clean and sanitary, and § 491.18(e)(3) requires that shelter residents be supplied with soap. The suggested revisions would be superfluous and therefore are unnecessary.

§ 491.22 Inspections.

Comment 1:

Provisions regarding private interviews with residents and a review of books, as well as collateral investigations, should remain part of the inspection process.

Response to Comment 1:

Proposed § 491.22(b) defines the term “inspection” to mean the “periodic scheduled, announced or unannounced onsite investigation, including the gathering of written, photographic, or other physical evidence.” Proposed § 491.22(c) mandates that each shelter subject to proposed Part 491 must allow the Office full access at any time to the facility’s grounds, buildings, employees and residents, and books and papers including, but not limited to, the residents’ case and medical records. Implicit in the proposed regulation is that the inspection process can include private interviews with residents and a review of facility’s books. Proposed § 491.22(d) requires OTDA to prepare an inspection report with respect each inspection it conducts. The inspection reports must identify and indicate in detail each area of operation inspected, including the premises, equipment, personnel, care and services, and whether each area of operation is or is not in compliance with the OTDA’s regulations and with an approved operational plan. Proposed § 491.22(i) explicitly requires the shelter’s operator to make the inspection report for the most recent inspection, and any related follow-up inspection reports available for review by facility residents or visitors upon request. Proposed § 491.23 further authorizes OTDA to undertake an investigation of the affairs and management of any shelter for adults, small-capacity shelter, or shelters for adult families, or of any person, corporation, society, association or organization that operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility. In light of the foregoing, OTDA does not agree that the suggested revisions are necessary.

Comment 2:

Proposed § 491.22 should be revised to maintain the existing requirements in current § 486.2(b) and (d) for one annual full inspection and one unannounced full inspection annually.

Response to Comment 2:

OTDA complies with current § 486.2 by conducting at least one unannounced full inspection of each certified shelter for adults each year. Proposed § 491.22 reflects this practice and requires OTDA to conduct, at a minimum, one inspection of each shelter every year. Notably, proposed § 491.22 also requires OTDA to inspect small-capacity shelters and shelters for adult families that were not previously certified and previously were inspected by social services districts pursuant to 18 NYCRR § 352.3(m). OTDA retains discretion under proposed § 491.22 to inspect shelters more than once per year. The suggested revisions are unnecessary.
Comment 3:

Proposed § 491.22(i) should be revised to require that all shelter inspection reports be made available on OTDA’s website.

Response to Comment 3:

OTDA disagrees with this comment and believes the suggested revision to be unnecessary.

§ 491.23 Investigations, immediate emergency measures and enforcement powers.

Comment 1:

Proposed § 491.23 grants new investigatory powers to OTDA that should be reserved for court officers and courts.

Response to Comment 1:

OTDA disagrees with this comment. OTDA oversees shelters and must retain authority to conduct investigations to effectively exercise its oversight authority.

§ 491.25 Withholding and denying reimbursement.

Comment 1:

Proposed § 491.25 is too broad and should not authorize OTDA to withhold reimbursement for all expenditures made by a social services district related to the provision of temporary residential care, room, board, supervision, information and referral, or social rehabilitation services for persons in need of temporary accommodations, supervision and services if any shelter within the SSD has violations that are not corrected within 30 days (or less for certain violations) and/or does not submit an approved corrective action plan within such time.

Response to Comment 1:

OTDA disagrees with this comment. OTDA is authorized under SSL § 20(3)(e) “to withhold or deny state reimbursement, in whole or in part, from or to any social services district that fails to comply with law, rules or regulations of the department relating to public assistance and care or the administration thereof” (emphasis added). Proposed § 491.25(c) is fully consistent with SSL § 20(3)(e) in that it authorizes OTDA to withhold up to 100% of the reimbursement for expenditures made by a social services district relating to the provision of THA, and thus affords OTDA discretion to determine the amount of reimbursement that should be subject to withholding when a district and a shelter for adults, a small-capacity shelter, or a shelter for adult families located within the district fail to address violations in timely fashion.

Comment 2:

The mandatory withholding requirement in current § 486.6(a) should be retained in proposed § 491.25 with an added exception for good cause.
Response to Comment 2:

Current § 486.6(a) does not include a requirement that OTDA withhold reimbursement. Rather, it provides that “reimbursement for expenditures . . . shall be subject to withholding” (emphasis added). In other words, § 486.6(a) confers discretion on OTDA to determine when it would be appropriate to withhold reimbursement. This is perfectly consistent with SSL § 20(3)(e), which authorizes, but does not require, OTDA to withhold reimbursement in whole or in part from any social services district in the event of a failure to comply with the law, rules or regulations of OTDA relating to public assistance and care. Notably, current § 486.6(a) allows withholding only where a shelter is a “direct-run” facility operated by a social services district. By contrast, proposed § 491.25 allows OTDA discretion to withhold reimbursement for up to 100% of the expenditures made by a social services district related to the provision of shelter to recipients of THA. Given that OTDA will continue to have discretion to determine when reimbursement should be withheld, there is no need to include a “good cause” provision in the proposed regulation, and OTDA disagrees that the suggested revision is necessary.

§ 491.26 Civil penalties.

Comment 1:

Proposed § 491.26 should be revised to specify that civil penalties will be imposed only until a corrective action plan is approved by OTDA given that some capital improvements take time.

Response to Comment 1:

Proposed § 491.26 authorizes OTDA to impose civil penalties when OTDA establishes at an administrative hearing that violations endangered residents or resulted in harm to a resident. Where a violation would pose an imminent risk to the safety of shelter residents, the deficiencies would have to be remediated immediately if residents are to remain in the facility or in the section of the facility where the deficiencies were found. In such circumstances, it would not be appropriate for OTDA to approve a corrective action plan. OTDA disagrees that the suggested revision is necessary.

Comment 2:

Proposed § 491.26 should be revised to make the owner of the shelter facility, and not the operator of the shelter, responsible for any civil penalties imposed.

Response to Comment 2:

OTDA disagrees with the comment and believes that shelter operators, with whom social services districts have contractual relationships, should be primarily liable for any civil penalties.
Comment 3:

Proposed § 491.26 should be revised to provide that penalties will not be levied against a provider if sufficient funding for repairs is not provided or, if a request for such funds is disallowed or ignored.

Response to Comment 3:

Proposed § 491.26 allows civil penalties to be assessed after a hearing where violations endangered residents or resulted in harm to a resident. It is the responsibility of the shelter operator and the social services district that contracts directly with the shelter operator, to address violations in an appropriate and timely fashion. OTDA disagrees with the comment.

Comment 4:

There must be a process to appeal civil penalties.

Response to Comment 4:

Decisions made after a hearing conducted pursuant to 18 NYCRR, Part 493 are subject to CPLR Article 78 review pursuant to 18 NYCRR § 493.13(c).
CERTIFICATION

I hereby certify that the attached amendments of Parts 485-486, repeal of Part 491, and addition of new Part 491 of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York are duly adopted by me, Commissioner Michael P. Hein, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance by Social Services Law §§ 17(a)-(b) and (k), 20(2)(b), 20(3)(d)-(f), 34(3)(c)-(f), 34(6), 460, 460-a(1)-(2), 460-c(1), 460-d(1) and (7)(a), and 461.

These amendments shall be effective on January 1, 2020.

The Notice of Proposed Rule Making for these amendments was previously published in the New York State Register on May 8, 2019, under I.D. No. TDA-19-19-00007-P.

No other publication of prior notice is required by statute.

/s/ Michael P. Hein 11/22/19
Michael P. Hein
Commissioner

Date