18 NYCRR 486.1

18 N.Y. Comp. Codes R. & Regs. 486.1

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.1.* General provisions.

(a) The department shall inspect and maintain supervision over all public and private adult care facilities as defined in Part 485 of this Title, excepting State institutions for the education and support of the blind, the deaf and the dumb, facilities subject to the approval, visitation and inspection of the Offices of the Department of Mental Hygiene, the State Commission of Correction, the Division for Youth or the Department of Health.

(b) Inspection and supervision of adult care facilities 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 shall include inquiry by the department into:

(1) general management and financial condition of the facility;

(2) operator's methods of administration;

(3) the development, implementation and updating of quality assurance activities for each area of operation of an adult home and residence for adults;

(4) methods of, and the equipment and physical plant for, providing residential care and services for residents;

(5) qualifications and general conduct of operators and employees;

(6) condition of grounds, buildings and other property;

(7) whether the laws and regulations regarding residents' rights are obeyed; and

(8) any other matter relating to the management of the facility and care of residents.

(d) The department may undertake enforcement action against any operator of an adult care facility 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, 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, 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.

18 NY ADC 486.1
18 NY ADC 486.1
2008 WL 75310997
18 NY ADC 486.1

18 NY ADC 486.2

18 NYCRR 486.2

18 N.Y. Comp. Codes R. & Regs. 486.2

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.2.* Inspection.

(a) Inspection shall mean a process of inquiry and investigation which shall include, but need not be limited to, announced and unannounced onsite investigations, private interviews with residents, review and investigation of the books and records of the facility, gathering of written, photographic or other physical evidence, and such collateral contacts as the department deems necessary for the purpose of determining compliance with applicable laws and regulations.

(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. 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.

(c) In each private proprietary adult home or residence, the department shall conduct at least one additional inspection each year.

(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.

(e) The types of inspections undertaken by the department include, but are not limited to:

(1) complete inspections conducted prior to certification or renewal, or, in facilities with serious or continual deficiencies, to determine compliance with regulatory provisions in all areas of operation;

(2) summary inspections to determine compliance with key regulatory provisions in all areas of operation;

(3) partial inspections conducted to examine specific areas of operation; this inspection may examine key regulatory provisions in any one area or be a thorough examination of every regulation pertaining to that area;

(4) complaint inspections conducted in order to determine the validity of a complaint concerning a facility;

(5) follow-up inspections conducted in order to determine whether deficiencies noted during another inspection have been corrected; and

(6) such other inspections as may be necessary to ascertain compliance in a certified facility or to determine if an uncertified facility should be classified as an adult care facility.

(f) The requirement for a full inspection shall be satisfied by either a complete or summary inspection. In enriched housing programs a partial inspection may also satisfy the requirement for an unannounced full inspection.

(g) Partial, complete, summary or follow-up inspections qualify as the second inspection required for each proprietary adult home or residence. If a complaint investigation produces a complete, summary or partial inspection, such inspection qualifies as the second required inspection.

(h) An inspection report shall be made of each inspection, 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.

(i) A written report of inspection shall be sent to the operator, and shall include:

(1) a statement attesting that of the areas reviewed, if no violations or findings are noted in a given area, then said area(s) shall be deemed to be in compliance with applicable requirements;

(2) identification of any areas which are in violation of applicable requirements, including areas found in violation as a result of failure in systemic practices and procedures; and

(3) directions as may be appropriate as to the manner and time in which compliance with

applicable requirements of law or regulations of the department shall be effected.

(j) Upon receipt of the report of inspection, but in no case later than 30 days following the date of issuance, the operator shall:

(1) correct the violations; or

(2) in the event that correction requires more than 30 days, submit an acceptable plan for correction.

(k) The operator shall notify the department, in writing, within one week after completion of corrective action.

(l) The operator shall post the inspection report for the most recent complete or summary inspection, and any related follow-up inspection reports, conspicuously in a public area of the facility which is accessible to residents and visitors.

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

(n) When a complaint investigation is being conducted, the department shall advise the operator of the complaint, review, findings, and 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.

(o) After a complaint investigation has been completed, the department shall advise the complainant of the findings and corrective action, if any. However, a complainant shall not be advised of the outcomes of an investigation which is being contested by an operator or when civil or criminal action might be compromised by such notice.

CASE NOTES:

State Department of Health's denial of provider's application for Quality Incentive Payment Program (QUIP) payments was not arbitrary and capricious, because it was rationally based on inspection reports finding that the provider violated stated regulatory standards, notwithstanding the Department's alleged failure to comply with certain statutory requirements in its inspection reports. Lakeside Manor Home for Adults, Inc. v. Novello, 43 A.D.3d 1057, 843 N.Y.S.2d 108 (2d Dep't 2007).

18 NY ADC 486.2
18 NY ADC 486.2
2008 WL 75310998
18 NY ADC 486.2

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18 NYCRR 486.3

18 N.Y. Comp. Codes R. & Regs. 486.3

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.3.* Inspection of uncertified facilities.

(a) For the purposes of assessing whether an uncertified facility is an adult care facility subject to the certification and inspection of the department, the department may inspect any facility which reasonably appears to the department to be an adult care facility. 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.

(b) Upon arrival at the facility for purposes of conducting an inspection pursuant to this section, the department representative must give verbal notice to the operator, administrator or other person in charge that the inspection will be conducted unless such person objects to the inspection, and that if such person does object, the department is empowered to request the Attorney General to apply for a court order granting the department access to the facility.

(c) Denial of access.

(c) If access to the facility is denied to the department representatives by the operator, administrator or other person in charge, the department is authorized to request the Attorney General to apply, without notice to the operator, administrator or chairman of the board of directors of a not-for-profit facility, to the Supreme Court in the county in which the facility is located for an order granting the department access to such facility.

18 NY ADC 486.3
18 NY ADC 486.3
2008 WL 75310999
18 NY ADC 486.3

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18 NY ADC 486.4

18 NYCRR 486.4

18 N.Y. Comp. Codes R. & Regs. 486.4

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.4.* Enforcement.

(a) Enforcement shall mean the action(s) undertaken or initiated by the department to assure that adult care facilities are established and operated in compliance with all applicable provisions of law and regulation.

(b) Enforcement actions undertaken by the department include, but are not limited to:

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

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

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

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

(5) issuance of a commissioner's order, or an order approved by a justice of the Supreme Court, requiring an operator to immediately remedy conditions dangerous to residents;

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

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

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

(c) The operating certificate of any facility may be revoked, suspended or limited upon a determination by the department, after a hearing in accordance with procedures set forth in Part 493 of this Title, that the operator has failed to comply with the requirements of State or local laws or regulations applicable to the operation of such facility.

(d) An operating certificate 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 department has found that the public health, or an individual's health, safety or welfare is in imminent danger. If the department 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.

(e) 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:

(1) 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;

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

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

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

(f) Violations or threatened violations of law or the regulations of the department, by any facility subject to the inspection and supervision of the department, 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 department. 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 issue, 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 department'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 department and such facility to arrange for the transfer of residents to other facilities, or any other injunctive relief the court may deem necessary.

(g) Whenever the commission, 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 department, 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 commissioner 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 commissioner 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.

(h) Any official, operator or his agent, designee or employee of a facility who intentionally refuses to admit any officer or inspector of the department, or intentionally refuses or fails to furnish the

information required by the department or any officer or inspector, shall be guilty of a misdemeanor.

18 NY ADC 486.4
18 NY ADC 486.4
2008 WL 75311000
18 NY ADC 486.4

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18 NY ADC 486.5

18 NYCRR 486.5

18 N.Y. Comp. Codes R. & Regs. 486.5

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.5.* Civil penalties.

(a) Civil penalties for certified adult care facilities.

(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, 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.

(2) Civil penalties shall be calculated from receipt of the report of inspection, except that civil penalties assessed pursuant to paragraph (4) of this subdivision may be calculated from the date the violation occurs. The penalties shall cease to run on the date that correction is made, subject to verification by the department.

(3) No penalty can be imposed, except as provided in paragraph (4) of this subdivision, if at the time of a hearing, the operator satisfactorily demonstrates that either (i) the violations have been rectified within 30 days of receipt of the written report of inspection first citing the violation, or (ii) an acceptable plan for rectification and monitoring to ensure that violations do not recur had been submitted to the department within 30 days of receipt of such written report of inspection and the plan was being implemented in accordance with the procedures and time frames approved by the department. A violation is not deemed rectified unless an operator implements and maintains the necessary corrective actions. When the department inspects a facility and finds one or more

violations of this Title, it must issue a report of inspection to the operator of that facility. This report shall contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected. If the violations require facility-wide rectification, the operator must rectify all conditions which constitute a violation of the cited regulation.

(4) Even where correction of a violation has occurred in accordance with paragraph (3) of this subdivision, the department may assess a penalty if it establishes at a hearing that the particular violation endangered or resulted in harm to a resident as the result of:

(i) the total or substantial failure of the facility's fire protection or prevention systems, or the emergency evacuation procedures. Substantial failure will have occurred if more than half of the individual sensor or alarm units required in paragraph (f)(1), (2), (3), (4), or (16) of section 487.11 of this Title are inoperative, of if more than half of the evacuation procedures required in section 487.12(d) of this Title are not posted. Substantial failure will also have occurred for any violation of paragraph (f)(6), (12) or (20) of section 487.11, or section 487.12(a), (f)(1) or (g);

(ii) the retention of any resident who has been evaluated by the resident's physician as requiring placement in a hospital or residential health care facility and for whom the operator has not made and documented persistent efforts to secure appropriate placement as required by section 487.4(k)(2) of this Title;

(iii) the failure of the operator to take actions in the event of a resident's illness, accident, death or attempted suicide as required by sections 487.7(d)(6)(iii)(a)-(b), (d)-(e), (8)-(9), 488.7(b)(6), (8), (9) and 490.7(d)(4)(iii)(a)-(d), (6)-(7) of this Title;

(iv) the failure of the operator to provide at all times supervision of residents by numbers of staff at least equivalent to the staffing requirements required by section 487.9(f)(6)-(9) of this Title;

(v) the failure of systemic practices and procedures as evidenced by a pattern of violations or an inability to bring a specific area of facility operation into compliance with section 487.4, 487.5, 487.6, 487.7, 487.8, 487.9(a)(1), (3), (7), (8), (10)-(15), (b)-(d), (f), (g)(1), 487.10(a)-(b), 487.11, 487.12(b), (g)-(j), 488.4, 488.5, 488.6, 488.7, 488.8, 488.9(a)(1), (2), (4), (5), (7)-(11), (b)-(e), 488.10(a)-(b), 488.11, 488.12(b)-(c), (g)-(i), (l), 490.4, 490.5, 490.6, 490.7, 490.8, 490.9(a)(1), (3), (5), (6), (8)-(13), (b)- (d), (f), 490.10(a)-(b), 490.11, 490.12(b), or (g)-(j) of this Title; or

(vi) threats of retaliation or taking reprisals against a resident of an adult home, residence for adults or enriched housing program, which constitute a violation of section 487.5(a)(3)(ix), 488.5(a)(3)(i) or 490.5(a)(3)(i) of this Title, including unreasonable threats of eviction or hospitalization against a resident, employee or other person who makes a complaint concerning the operation of an adult home, enriched housing program or residence for adults, participates in the investigation of a complaint or is the subject of an action identified in a complaint.

(5) If, however, the violation cited under paragraph (4) of this subdivision was caused solely by an act of God, and the operator took immediate action to correct it, the department shall not assess a penalty under paragraph (4) of this subdivision for such violation.

(6) No civil penalty can be assessed without a hearing held in accordance with the procedures established in Part 493 of this Title.

(b) Civil penalties for uncertified adult care facilities.

(1) A civil penalty, not to exceed $1,000 per day, may be assessed against any facility which is an adult care facility 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 subject to fine, a hearing will be conducted in accord with the procedures set forth in Part 493 of this Title.

(3) No penalty shall be imposed if the operator demonstrates that it possesses a valid operating certificate issued pursuant to article 7 of the Social Services Law, article 28 of the Public Health Law, or article 19, 23 or 31 of the Mental Hygiene Law.

(c) Civil penalties for adult homes and enriched housing programs which have received approval to operate an assisted living program.

(1) An adult home operator who has received written approval to operate an assisted living program in accordance with the provisions of this Title must operate such program in compliance with all applicable provisions of Parts 485, 486, 487 and 494 of this Title. Failure to operate the assisted living program in compliance with the provisions of Parts 485, 486 and 487 of this Title may result in the imposition of civil penalties in accordance with subdivision (a) of this section and section 486.7(a), (b) and (c) of this Title.

(2) An enriched housing program operator who has received written approval to operate an assisted living program in accordance with the provisions of this Title must operate in compliance with all applicable provisions of Parts 485, 486, 488 and 494 of this Title. Failure to operate the assisted living program in compliance with the provisions of Parts 485, 486 and 488 of this Title may result in the imposition of civil penalties in accordance with subdivision (a) of this section and section 486.7(d) of this Title.

(d) Upon the request of the department, the Attorney General may commence an action in any court of competent jurisdiction for the recovery of any penalty assessed by the department in accordance with the provisions of this Part.

(e) Any penalty assessed by the department before the matter has been referred to the Attorney General may be released or compromised and any action commenced to collect the penalty may be settled and discontinued by the Attorney General with the consent of the department. In determining the amount of any such release or compromise, the department shall consider the promptness of rectification, delays in the hearing process caused by the department, and any specific circumstances of the violations.

CASE NOTES:

1. Validity

Department of Health did not violate State Administrative Procedure Act (SAPA) by enacting, on emergency basis, regulation defining "systemic practices and procedures" that adult care facility operators could not cure before being subjected to a civil penalty. Empire State Ass'n of Adult

Homes, Inc. v. Novello, 193 Misc. 2d 543, 751 N.Y.S.2d 694 (Sup 2002).

Department of Health did not exceed its statutory authority when it adopted emergency regulation defining a failure of "systemic practices and procedures" that adult care facility operators could not cure before being subjected to a civil penalty; Social Services Law providing that 30-day rectification period would not apply to certain violations gave Department authority to define systemic practices and procedures. Empire State Ass'n of Adult Homes, Inc. v. Novello, 193 Misc. 2d 543, 751 N.Y.S.2d 694 (Sup 2002).

Emergency regulation defining a failure of "systemic practices and procedures" that adult care facility operators could not cure before being subjected to a civil penalty was not arbitrary and capricious; regulation sought to concentrate non-rectifiable civil penalties against adult homes with aggregations of deficiencies which, by their compound and continuous nature, produced substandard living conditions. Empire State Ass'n of Adult Homes, Inc. v. Novello, 193 Misc. 2d 543, 751 N.Y.S.2d 694 (Sup 2002).

2. In general

Letter sent by city department of health to operator of residential apartment buildings to tenants 65 or older, which informed operator of its determination regarding its operation status, was not a final determination, and thus dismissal was required of operator's article 78 proceeding seeking review of department's determination that it was an adult care facility (ACF) subject to licensing under the Social Services Law. Menorah Campus Independent Senior Apartments, Inc. v. Novello, 38 A.D.3d 1321, 832 N.Y.S.2d 355 (4th Dep't 2007).

Action brought by association of adult care facility operators, challenging emergency regulation defining a failure of "systemic practices and procedures" that operators could not cure before being subjected to a civil penalty, was ripe for review, where member of the association had been cited for violating portion of the regulation. Empire State Ass'n of Adult Homes, Inc. v. Novello, 193 Misc. 2d 543, 751 N.Y.S.2d 694 (Sup 2002).

Association of adult care facility operators had standing to challenge emergency regulation defining a failure of "systemic practices and procedures" that operators could not cure before being subjected to a civil penalty. Empire State Ass'n of Adult Homes, Inc. v. Novello, 193 Misc. 2d 543, 751 N.Y.S.2d 694 (Sup 2002).

18 NY ADC 486.5
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18 NY ADC 486.5

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18 NY ADC 486.6

18 NYCRR 486.6

18 N.Y. Comp. Codes R. & Regs. 486.6

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 18. DEPARTMENT OF SOCIAL SERVICES
CHAPTER II. REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES
SUBCHAPTER D. ADULT-CARE FACILITIES
PART 486. INSPECTION AND ENFORCEMENT
Current through January 15, 2009

* Section 486.6.* Penalties for noncompliance by local social services districts.

(a) Withholding of funds.

(a) Reimbursement for expenditures by a social services district for the operation of an adult care facility 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.

(b) Notification.

(b) The department shall notify the district of all violations pursuant to the procedures set forth in section 486.2(i) of this Part.

(c) Funds to be withheld.

(c) 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 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.

(d) Subsequent denial of withheld funds.

(d) If the local district does not correct the violations cited in the notice of violations within the time periods specified in the notice of withholding, the department may deny up to the entire amount of the withheld reimbursement. The commissioner of the local district shall be given written notice of

the decision to deny reimbursement.

(e) The local district shall have the right to a 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.

(f) Reimbursement may be withheld or denied in whole or in part until such time that the district notifies the department in writing of its compliance and the department notifies the district in writing it has verified that the facility is in compliance.

CASE NOTES:

Where Department of Social Services (DSS) is only State agency which is empowered to determine if local Social Services District is in compliance with regulations governing certification and operation of adult-care facilities, and under 18 NYCRR § 486.6(d), DSS also has sole discretion to deny reimbursement of withheld funds on grounds that local District failed to timely correct violations, Division of Budget (DOB) is not empowered to determine whether City was in compliance with welfare regulations or whether City corrected violations in timely manner, and therefore DOB's refusal to release funds as result of any alleged delay by City is improper and in violation of DOB's mandate under law. City of New York v. New York State Div. of Budget, 160 Misc. 2d 1028, 612 N.Y.S.2d 309 (Sup 1994).

18 NY ADC 486.6
18 NY ADC 486.6
2008 WL 75311002
18 NY ADC 486.6

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