

Pursuant to the authority vested in the Commissioner of Health by Section 4662 of the Public Health Law, a new Chapter X consisting of Part 1001 is hereby added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon publication of a Notice of Adoption in the New York State Register to read:

Chapter X  
Assisted Living Residences

Part 1001  
Assisted Living Residences

(Statutory Authority: Public Health Law, Section 4662)

Sec.

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1001.1 Applicability.

(a) This Part applies to assisted living residences, enhanced assisted living residences and special needs assisted living residences as defined herein.

(b) The requirements of this Part shall be in addition to those required of an adult care facility pursuant to Parts 485, 486, 487 and 488 of Title 18 of the New York Code of Rules and Regulations (Title 18). In the event of a conflict between any provision of this Part and a provision of Parts 485, 486, 487 and 488 of Title 18, the applicable provision of this Part shall supercede the applicable provision of such Part under Title 18, to the extent of such conflict.

(c) Any person, partnership, corporation, organization, agency, government unit or other entity which operates an assisted living residence is subject to the jurisdiction of the Department, and must comply with this Part or cease operating such program.

(d) An assisted living operator shall comply with all applicable statutes, rules and regulations required for maintaining a valid operating certificate issued pursuant to Title 2 of Article 7 of the Social Services Law and shall obtain and maintain all other licenses, permits, registrations, or other government approvals required in addition to requirements under such Article.

1001.2 Definitions.

As used in this Part:

(a) *Assisted Living, Assisted Living Residence* or *ALR* means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of Article 46-B of the Public Health Law and this Part must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of Assisted Living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.

Assisted Living, Enhanced Assisted Living and Special Needs Assisted Living shall not include:

(1) residential health care facilities or general hospitals licensed under Article 28 of the Public Health Law;

(2) continuing care retirement communities which possess a certificate of authority pursuant to Article 46 of this chapter, unless the continuing care retirement is operating an assisted living residence as defined under this section;

(3) residential services for persons that are provided under a license pursuant to Article 16, 19, 31 or 32 of the Mental Hygiene Law or other residential services primarily funded by or primarily under the jurisdiction of the Office for Mental Health;

(4) naturally occurring retirement communities, as defined in section 209 of the Elder Law;

(5) assisted living programs approved by the Department pursuant to section 461-l of the Social Services Law;

(6) public or publicly assisted multi-family housing projects administered or regulated by the U.S. Department of Housing and Urban Development or the Division of Housing and Community Renewal or funded through the Homeless Housing Assistance Program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to section 1701-q-2 of the United States Code shall be licensed as an assisted living residence pursuant to Article 46-B of the Public Health Law and this Part;

(7) an operating demonstration as such term is defined in paragraph (d) of subdivision (1) of section 4403-f of the Public Health Law;

(8) hospice and hospice residences as defined pursuant to section 4002 of the Public Health Law;

(9) an adult care facility as defined in subdivision (21) of section 2 of the Social Services Law that is not utilizing the term assisted living (or any derivation thereof) or is not required to obtain licensure as assisted living or certification as enhanced assisted living or special needs assisted living; and

(10) independent senior housing, shelters or residences for adults.

(i) For purposes of determining the necessity to become licensed as an Assisted Living Residence, the term *Independent Senior Housing* shall mean a housing setting serving seniors in which

(a) no individual or entity provides, arranges for or coordinates long-term housing, on-site monitoring and either personal care or home care services for five or more residents of such housing setting unrelated to the housing provider; and in which

(b) neither the housing setting nor other services provided in such setting are advertised or marketed to the public as assisted living, assistive living or any similar term.

(ii) For purposes of determining the necessity to become licensed as an adult home, enriched housing program or residence for adults, the term *Independent Senior Housing* shall mean a housing setting serving seniors in which no individual or entity provides, arranges for or coordinates long-term housing and either personal care or supervision for five or more residents of such housing setting unrelated to the housing provider.

(iii) A resident of Independent Senior Housing shall have the ability to obtain, personally and directly, personal care services or home care services from a home care services agency licensed or certified pursuant to Article 36 of the Public Health Law.

(iv) The provision, arrangement for or coordination of one or more of the following services shall not, in and of itself, require licensure as an adult care facility or assisted living residence: room, board, laundry, housekeeping, information and referral, security, concierge-like services, or case management services, including assisting tenants with housing issues, providing information to tenants regarding services and activities available in the community and assisting tenants in contacting such services and activities, and contacting appropriate responders in urgent and emergency situations. Case management services in independent senior housing shall not include case management in any setting in which an entity

(a) provides, arranges for or coordinates housing, on-site monitoring and personal care services and/or home care services to five or more adults unrelated to provider; or

(b) on a continual basis supervises or monitors the health status of five or more adults unrelated to the provider.

(v) An individual or entity that provides housing and either personal care or supervision (either directly or indirectly) to persons unrelated to the operator shall be subject to licensure under the appropriate category as an adult care facility.

(vi) Where a housing entity and a services entity are commonly owned or otherwise subject to the control of one or more entities or principals and work together to provide, arrange or coordinate housing and such services as are set forth in subdivision (a) or (b), such housing and services entities shall be subject to licensure under the appropriate category as an adult care facility and/or assisted living residence.

(vii) Indicators that an entity or individual is providing or arranging for personal care services and/or home care services include, but are not limited to, provision or arrangement for the following:

(a) initiation, implementation or overseeing of a schedule of personal care or home care visits for residents; or

(b) overseeing of the provision of personal care, home care or monitoring services to residents; or

(c) conducting initial and follow up health assessments regarding residents' health needs and functioning; or

(d) having a written contract or otherwise providing a statement under which the entity or individual agrees to provide, arrange for or coordinate the services stated herein.

(b) *Applicant* means the entity which submits an assisted living licensure application with the Department pursuant to Article 46-B of the Public Health Law and this Part.

(c) *Adult Home* means an adult home as defined by subdivision (25) of section 2 of the Social Services Law.

(d) *Enriched Housing Program* means an enriched housing program, as defined in subdivision (28) of section 2 of the Social Services Law.

(e) *Assisted Living Operator* or *Operator* means a person, persons or an entity which has obtained the written approval of the Department to operate an assisted living residence in accordance with Article 46-B of the Public Health Law and this Part.

(f) *Controlling Person* means any person who by reason of a direct or indirect ownership interest, whether of record or beneficial, has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity.

(g) *Resident* means an adult not related to the provider, who, pursuant to a residency agreement with a provider resides in an assisted living residence, enhanced assisted living residence, or special needs assisted living residence, as applicable.

(h) *Resident's Representative* means a family member or other individual identified in the residency agreement required under section 4658 of the Public Health Law and this Part who is authorized by a resident to communicate with residence employees regarding the health, well-being, needs of and services provided to such resident and to assist the resident in obtaining needed services.

(i) *Resident's Legal Representative* means a person duly authorized under applicable state law to act on behalf of a resident. Such legal representative could include, but is not necessarily limited to, a court appointed guardian, an attorney in-fact under a durable power of

attorney, an agent under a health care proxy or a representative payee, depending upon the action to be taken.

(j) *Home Care Services* means the services defined in subdivision (1) of section 3602 of the Public Health Law, as provided by a home care services agency which has been approved to operate pursuant to Article 36 of such law.

(k) *Individualized Service Plan* or *ISP* means a written plan developed pursuant to section 4659 of the Public Health Law and this Part.

(l) *Monitoring* means an ability of the assisted living operator to respond to urgent or emergency needs or requests for assistance with appropriate staff, at any hour of any day or night of the week. Such monitoring must be provided on site.

(m) *Aging in Place* means care and services at a facility which possesses an Enhanced Assisted Living certificate which, to the extent practicable, within the scope of services set forth in the written residency agreement executed pursuant to section 4658 of the Public Health Law and this Part, accommodates a resident's changing needs and preferences in order to allow such resident to remain in the residence as long as the residence is able and authorized to accommodate the resident's current and changing needs. A residence that does not possess an Enhanced Assisted Living certificate shall not be deemed able to accommodate a resident's needs if the resident requires or is in need of either enhanced assisted living or twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to Article 28 of the Public Health Law, or Articles 19, 31 or 32 of the Mental Hygiene Law.

(n) *Enhanced Assisted Living* or *Enhanced Assisted Living Residence* means the care or services provided pursuant to an enhanced assisted living certificate.



(o) *Enhanced Assisted Living Certificate* means a certificate issued by the Department which authorizes an assisted living residence to provide aging in place by retaining residents who desire to continue to age in place, including those who: (i) are chronically chairfast and unable to transfer, or chronically require the physical assistance of one or more persons to transfer; (ii) chronically require the physical assistance of one or more persons in order to walk; (iii) chronically require the physical assistance of one or more persons to climb or descend stairs; (iv) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (v) have chronic unmanaged urinary or bowel incontinence.

(p) *Enhanced Assisted Living Resident* means a resident who is provided care and services pursuant to an enhanced assisted living certificate.

(q) *Special Needs Assisted Living or Special Needs Assisted Living Residence* means the care and services provided pursuant to a special needs assisted living certificate.

(r) *Special Needs Assisted Living Certificate* means a certificate issued by the Department which authorizes an assisted living residence to serve persons with special needs in accordance with a special needs plan approved by the Department, pursuant to the requirements of this Part.

(s) *Special Needs Assisted Living Resident* means a resident who is provided services pursuant to a special needs assisted living certificate.

(t) *Commissioner* means the State Commissioner of Health.

(u) *Department* means the New York State Department of Health.

1001.3 Certificates of Incorporation; Articles of Organization.

(a) Any proposed or existing not-for-profit corporation or business corporation desiring to file or amend a certificate of incorporation, and any proposed or existing limited liability company desiring to file or amend articles of organization for the purpose of establishing and operating an assisted living residence, enhanced assisted living residence or special needs assisted living residence shall, prior to filing with the Secretary of State, secure the written approval of the Commissioner. A request for such approval shall be submitted to the Department in accordance with the application procedures set forth in this Part.

(b) In no event shall any existing corporation or other entity hold itself out as being authorized to establish or operate, or to raise funds for the establishment or operation of, an assisted living residence, enhanced assisted living residence or special needs assisted living residence without having secured the prior written approval of the Department.

(c) A request for approval of a certificate of incorporation or amendment thereto for the purpose of soliciting funds for the eventual establishment and operation of an assisted living residence, enhanced assisted living residence or special needs assisted living residence shall contain such information as may be required to determine that the corporation has the competency to develop and operate a residence in compliance with applicable law and regulations, and would be successful in raising funds necessary to establish the proposed residence within a period of not more than five years from the date of the Department's approval. Such a request shall include:

- (1) the certificate of incorporation and amendments thereto;
- (2) a description of the governing structure of the proposed organization, including any governing board and advisory committees;

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

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

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

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

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

(8) names and locations of each and every facility licensed by the Department, the Department of Mental Hygiene pursuant to articles 19, 23 and 31 of the Mental Hygiene Law, the Office of Children and Family Services, and the Office of Temporary and Disability Assistance, with which the applicant(s) is, or has been within the past 10 years an administrator, employee, incorporator, director, member, operator, sponsor, principal stockholder or owner;

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

(10) a certified corporation resolution of the board of directors authorizing the request, signed by an appropriately designated individual.

(d) 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 on behalf of a separate entity that is an assisted living residence, enhanced assisted living residence or special needs assisted living residence, shall include those items listed in subdivisions (e)(1)-(3), and (8) – (10). In addition the requestor shall include a letter from the intended beneficiary acknowledging that it will accept funds raised by the requestor.

(e) A proposed or existing not-for-profit corporation which desires to file or amend a certificate of incorporation for the purpose of fundraising for the eventual establishment of an assisted living residence shall comply with the provisions of section 485.4 of Title 18 of the NYCRR as well as the provisions set forth in this section.

(f)(1) The Department shall approve or disapprove a certificate of incorporation, or amendment to an existing certificate, articles of organization or amendment to an existing articles of organization, by either endorsement or by notice of disapproval.

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

#### 1001.4 Operating Certificates and Additional Certifications; Authority Limited to Operator.

(a) An operator of an assisted living residence must comply with the following standards in addition to the applicable standards contained in section 485.5 of Title 18 of the NYCRR.

(b) Only the following may be issued an operating certificate by the Department for the purpose of operating an assisted living residence:

- (1) a natural person;
  - (2) a partnership composed only of natural persons;
  - (3) a public corporation as defined in section 66 of the General Construction Law;
  - (4) a business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such corporation or a corporation any of the stock of which is owned by another corporation;
  - (5) a not-for-profit corporation;
  - (6) a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the membership must be natural persons;
  - (7) a social services district; or
  - (8) other governmental agency.
- (c) In order to operate an assisted living residence, an operator must be issued an operating certificate in accordance with the requirements of this Part.
- (d) An operating certificate for an assisted living residence shall:
- (1) Specify the name and location of the residence, the name of the operator, the type of residence to be provided, the capacity of the residence, any conditions or limitations and the duration of the certificate;
  - (2) be nontransferable;
  - (3) remain the property of the Department, and
  - (4) be used only by the licensed operator for the designated site of operation.
- (e) An operating certificate shall be issued for a period of two years.

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

(g) No operator shall, for purposes of advertisement, represent the residence by any designation or terminology that misrepresents the licensure or certification status of the residence.

(h) No operator shall change or modify the services originally approved and stipulated by the operating certificate, or make changes to the existing floor plan or to the fire safety systems, without the prior written approval of the Department.

(i) An operator shall not, without the prior written approval of the Department:

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

(2) change the composition of the entity which is the operator, including but not limited to, a change in sole proprietor, partner, director, stockholder, member or membership interest of the operator, except in accordance with subparagraph (o) of this Part;

(3) convey title to, or enter into a lease or other use agreement, or amend an existing lease or use agreement, with respect to the real property on which the residence is located; or

(4) enter into or significantly amend, a management agreement relating to the management of the residence in accordance with section 1001.16 of this Part.

(j) In the event that an operator elects to close a residence and to surrender an operating certificate and/or certification as an enhanced or special needs ALR, the following provisions shall apply.

(1) The operator shall notify the appropriate regional office of the Department in writing at least 90 days prior to the anticipated date of closure of the assisted living residence and, if applicable, the adult care facility, and/or the decertification of the residence.

(2) Such written notice shall include a proposed plan for closure and/or decertification. The plan shall be subject to Department approval in accordance with Department protocols, and shall include timetables and shall describe the procedures and actions the operator will take to:

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

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

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

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

(3) The operator shall take no action to close the residence prior to Department approval of the plan for closure and/or decertification.

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

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

(k) In the event of the death of an operator of an assisted living residence who is a sole proprietor, or a sole director, shareholder or member, or a natural person partnership, the Department may give approval to a plan submitted by the remaining partner(s), the operator's spouse or executor for the continued operation of the residence, on a temporary basis, under the

outstanding operating certificate. Such plan shall be submitted within 30 days of the death of the operator and shall include notice of intent from the remaining partners, spouse or another applicant to file an application for a new operating certificate and a proposed timetable for application or a plan for closing the residence. The proposed timetable for application shall not exceed 90 days unless the applicant can demonstrate that extension is necessary. Approval under this subdivision to operate the residence shall continue only while the residence is in compliance with regulations.

(l) The operating certificate of any residence may be revoked, suspended, limited or an application for renewal denied upon a determination by the Department that the operator has failed to comply with these regulations or the requirements of State or local laws or regulations applicable to the operation of the residence. Section 1001.15 of this Part shall apply to such enforcement actions.

(m) Any operating certificate issued by the Commissioner to the operator of an assisted living residence shall remain the property of the Department and upon voluntary or involuntary closure shall be surrendered to the Department by personal delivery to a designated representative or by certified or registered mail.

(n) Enhanced assisted living certification.

(1) Nothing in this Part shall require a residence to obtain an enhanced assisted living certificate unless such residence elects to provide aging in place by retaining residents described in subdivision 1001.2 of this Part.

(2) No assisted living residence shall be certified as enhanced assisted living unless and until the applicant submits an application to the Department for such certification and obtains the written approval of the Department in accordance with the provisions of this Part. Such



application must include, among other things, a plan setting forth how the additional needs of the residents shall be met, in accordance with the provisions of section 1001.5 of this Part.

(3) An enhanced assisted living certificate shall not be required of an adult care facility, or part thereof, which has obtained approval by the Department to operate an assisted living program pursuant to section 461-d of the Social Services Law, provided, however, such exemption shall only apply to those beds at the facility which are subject to the assisted living program.

(o) (1) Any transfer, assignment or other disposition of ten percent or more of an interest or voting rights in a partnership, business corporation or limited liability company which is the operator of a residence to a new partner, shareholder or member must have the prior written approval of the Department.

(2) With respect to a transfer, assignment or disposition involving less than ten percent of an interest or voting rights in such partnership, business corporation, or limited liability company to a new partner, shareholder or member, no prior approval of the Department shall be required. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the Department notice on a form, to be developed by the Department, which shall disclose such information as may reasonably be necessary for the Department to determine whether it should bar the transaction. Within ninety days from the date of receipt of such notice, the Department may bar any such transaction under this subparagraph if it finds (1) there are reasonable grounds to believe the proposed transaction does not satisfy the good standing or character and competence review, as may be appropriate, as set forth in section 1001.5(e) and (f) of this Part; or (2) if the transaction, together with all other such transactions,

during any five year period, would in the aggregate, involve twenty-five percent or more of the interest in the entity that constitutes the operator. The Department shall state specific reasons for barring any transaction under this subparagraph and shall so notify each party to the proposed transaction.

(3) An operator which is a not-for-profit corporation must annually provide to the Department in writing the names and addresses of its current directors and officers.

(p) Special needs assisted living certification.

(1) Any residence that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit an application to the Department for certification as a special needs assisted living residence. Such application must include, among other things, a special needs plan in accordance with the provisions of section 1001.5 of this Part. No residence shall market itself as providing specialized services to persons with special needs unless and until the Department has approved such applicant for a special needs assisted living certificate.

(q) Authority Limited to Operator.

(1) Only an operator approved by the Department and issued an operating certificate to operate an assisted living residence can exercise independent decision-making authority over any of the following:

- (i) appointment or dismissal of residence management-level employees;
- (ii) approval of residence operating and capital budgets;
- (iii) adoption or approval of residence operating policies and procedures;
- (iv) approval of certificate of need applications filed by or on behalf of the residence;

(v) the disposition of assets and the authority to incur liabilities on behalf of the residence;

(vi) approval of residence contracts for management or, where appropriate, for clinical services;

(vii) approval of settlements of administrative proceedings or litigation to which the residence is party, and

(viii) control of the records of the residence.

(2) Nothing in subdivision (q)(1) of this section shall require the establishment of any member of a not-for-profit corporation, which operates an assisted living residence, based solely upon such member's reservation and exercise of the power to require that the residence operate in conformance with the mission and philosophy of the residence member.

(3) The established operator shall be legally responsible for the quality of resident care services, for the conduct and obligations of the residence and for ensuring compliance with all applicable Federal, State and local laws.

(4) An individual or entity which has not received Department approval as an operator may not participate in the total gross income or net revenue of an assisted living residence.

(5) Any operating account of an assisted living residence shall be in the name of, and for the benefit of, the operator only.

Section 1001.5 Applications for licensure as an assisted living residence; certification as enhanced assisted living and special needs assisted living.

(a) The following standards will apply to applicants for licensure as an assisted living residence and certification as enhanced assisted living and special needs assisted living, in

addition to those contained in section 485.6 of Title 18 of the NYCRR unless expressly provided otherwise in this section.

(b) In order to operate an assisted living residence, an operator must be licensed as an adult home or enriched housing program. Applications for licensure as an assisted living residence must be filed with the Department.

(1) Applications may be filed simultaneously with an application for licensure as an adult home or enriched housing program.

(2) Applications for assisted living licensure must include all licensed adult home or enriched housing program beds on the facility's operating certificate, or in the same building, excluding assisted living program beds.

(c) In order to operate as enhanced assisted living or special needs assisted living, an operator must be licensed as an assisted living residence, and must obtain additional certification as either enhanced assisted living or special needs assisted living.

(1) Assisted living residences may apply for enhanced and/or special needs assisted living certification for either all or a portion of their licensed beds.

(2) Certified special needs assisted living beds must be located in a fixed area within a building. They cannot "float", i.e. be designated within the building as the need arises.

(3) Enhanced assisted living beds may float, but the number of beds designated as enhanced assisted living beds and the number of residents receiving enhanced assisted living services may not exceed the number of such beds on the facility's operating certificate. An applicant that proposes to use such floating beds must describe in its application how it will ensure that all applicable program and structural requirements of regulation will be met.

(d) An application for licensure as an assisted living residence or for certification as enhanced assisted living or for certification as special needs assisted living shall be submitted in writing on application forms provided by the Department. Such application shall be subscribed by the chief executive officer or other officer duly authorized by the board of a corporate applicant, the managing member of a limited liability company, a general partner or proprietor of the proposed residence, or, where an application is to be submitted by a local governmental applicant, the president or chairman of the board of the proposed facility or the chief executive officer if there is no board. The application shall be accompanied by a certified copy of a resolution of the board of a corporate applicant authorizing the undertaking which is the subject of the application, and the subscribing and submission thereof by an appropriately designated individual. In the event that an application is to be submitted by an entity which necessarily remains to be legally formed, it shall be subscribed and submitted by one of the proposed stockholders, directors, members, or another appropriately designated person. If a local governmental applicant submitting an application has not designated a president, chairman or chief executive officer for the proposed facility, the application shall be subscribed by the chairman or president of the local legislature or board of supervisors having jurisdiction, or other appropriate executive officer.

(e) The Department may grant approval for licensure or certification pursuant to this title only to an applicant who satisfactorily demonstrates:

(1) that such applicant possesses a valid operating certificate to operate as an adult home or enriched housing program. An applicant that does not currently possess such operating certificate as an adult home or enriched housing program may simultaneously apply and be approved for such certificate and all other licenses and certifications authorized under this title;

(2) that such applicant which has an existing valid adult home or enriched housing program operating certificate is in good standing with the Department. For purposes of this section, the term applicant shall include proposed incorporators, directors, members, sponsors, sole proprietors or partners of the operator or proposed operator. In accordance with Public Health Law section 4656 (3)(b), applicants that are in good standing are those who have not:

(i) received any official written notice from the Department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence;

(ii) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision (7) of section 460-d of the Social Services Law for a violation that has not been rectified;

(iii) within the previous year, received any official written notice from the Department of a proposed assessment of a civil penalty for a violation described in subparagraph (2) of paragraph (b) of subdivision (7) of section 460-d of the Social Services Law;

(iv) within the previous three years, been issued an order pursuant to subdivision (2), (5), (6), or (8) of section 460-d of the Social Services Law;

(v) within the previous three years, been placed on, and if placed on, removed from the Department's "do not refer list" pursuant to subdivision (15) of section 460-d of the Social Services Law.

In the case of an applicant which otherwise meets the requirements of this section, but is not in good standing as provided in this subparagraph (2), the Department may approve such applicant if it determines that the applicant is of good moral character and is competent to operate the residence. As part of the review provided pursuant to this section, the Department shall, on its website, solicit and consider public comment with respect to all applications submitted;

(3) that the applicant has adequate financial resources to provide such assisted living as proposed;

(4) that the building, equipment, staff, standards of care and records to be employed in the operation comply with applicable statutes and any applicable local law;

(5) that any license or permit required by law for the operation of such residence has been issued to such operator; and

(6) that in the case of an applicant which does not have an existing valid adult home or enriched housing program operating certificate as of the time of submission of the application for licensure as an assisted living residence, such applicant complies with the provisions for certification as prescribed by Article 7 of the Social Services Law.

(f) A review of character and competence pursuant to section 485.6 (a)(1)(i) and (ii) of Title 18 of NYCRR shall be conducted for:

(1) applicants who have an existing valid adult home or enriched housing program operating certificate who are not in good standing pursuant to this section; and

(2) applicants who do not have an existing valid adult home or enriched housing program operating certificate at the time of submission of the application for licensure as an assisted living residence.

(g) General Requirements. Applications shall contain information and data with reference to:

(1) the financial resources and sources of future revenue of the facility to be operated by the applicant;

(2) the fitness and adequacy of the premises and equipment to be used by the applicant for the proposed facility;

- (3) plan for administration;
- (4) services to be offered;
- (5) provision of required consumer information as set forth in sections 1001.7 and 1001.8 of this Subpart;
- (6) the following legal documentation:
  - (i) a certified copy of the applicant's certificate of doing business, if any;
  - (ii) evidence of site control, such as a deed, lease or a use agreement;
  - (iii) management or consulting agreement, if any, which shall be in accordance with the provisions of section 1001.16 of this Part.
  - (iv) where the applicant is a partnership, full and true copies of all partnership agreements, which shall include the following language:

"By signing this agreement, each member of the partnership created by the terms of this agreement acknowledges that the partnership and each member thereof has a duty to report to the New York State Department of Health any proposed change in the membership of the partnership. The partners also acknowledge that the prior written approval of the Department of Health is necessary for such change before such change is made, except that a change resulting from an emergency caused by the severe illness, incompetency or death of a member of the partnership shall require immediate notification to the Department of Health of such fact and application shall be made for the approval of such change within 30 days of the commencement of such emergency. The partners also acknowledge that they shall be individually and severally liable for failure to make the aforementioned reports and/or applications".
  - (v) where the applicant is a corporation:



(a) a photocopy of the executed proposed certificate of incorporation or certificate of amendment to the certificate of incorporation, containing purposes which authorize the establishment and operation of an assisted living residence and, if applicable, an enhanced assisted living residence or a special needs assisted living residence, in accordance with the provisions of section 1001.3 of this Part, subject to the prior written approval of the Department.

(b) a certified copy of the resolution of the board of directors authorizing the submission of the application and the subscribing and submission thereof, by an appropriate designated individual;

(c) bylaws of the corporation;

(vii) where the applicant is a business corporation:

(1) an affidavit from each shareholder that he or she is to be the sole beneficial owner of the shares for which he or she is to be the owner of record; the number of voting shares of which he or she is to be owner of record; and that all stock authorized by the certificate of incorporation will be issued and outstanding;

(2) the total number of outstanding (not issued) shares of the corporation;

(3) a statement that the shares are not traded on a national securities exchange and are not regularly quoted on a national over-the-counter market; that the corporation is not a subsidiary of a corporation whose shares are traded on a national exchange or over-the-counter market; and that no stock of the corporation is owned by another corporation.

(4) stock certificates of the corporation shall state that: no person may own any share of or have any voting rights in the corporation, unless approved by the Department; and that any transfers, assignments or other dispositions of shares or voting rights must be approved by the Department.

(viii) where the applicant is a limited liability company, the application must include the following documentation:

(a) a photocopy of the applicant's fully executed Articles of Organization, and any amendments thereto, containing purposes which authorize the establishment and operation of an assisted living residence and if applicable, an enhanced assisted living residence or a special needs assisted living residence, in accordance with the provisions of section 1001.3 of this Part, subject to the prior written approval of the Department.

(b) a photocopy of the applicant's fully executed Operating Agreement;

(c) identification of all members of the applicant and the percentage of membership interest of each;

(d) a statement that the LLC is an eligible LLC under the provisions of Social Services Law section 461-b(1)(a) as follows: a statement as to whether any of the members identified in subdivision (2) above is a corporation, an LLC or a partnership. If the LLC has any member that is a corporation, identification of all shareholders of each member corporation and a statement that all members of each member corporation are natural persons. If the LLC has any member that is an LLC, identification of each member of the member LLC and a statement that all members of the member LLC are natural persons. If the LLC has any members that are partnerships, identification of each member of the member partnership and a statement that all members of the member partnership are natural persons;

(e) if the applicant has any business corporation members, (1) fully executed copies of their Certificates of Incorporation which must include sufficient powers and purposes to own membership interests in the applicant LLC, and (2) identification of all officers, directors and stockholders;

(f) if the applicant has any not-for-profit corporation members, fully executed copies of their Certificates of Incorporation and Bylaws which must include sufficient powers and purposes to own membership interests in the applicant LLC;

(g) if the applicant has any LLC members, (1) fully executed copies of their Articles of Organization, (2) fully executed copies of their Operating Agreements, and (3) identification of all members and managers. The Articles of Organization and the Operating Agreement of such member LLC must provide that: all of the “second tier” LLC members shall be natural persons; and that any transfer, assignment or other disposition of membership interests or voting rights must have the prior approval of the New York State Department of Health.

(h) if the applicant has any general partnership members, (1) fully executed copies of their Partnership Agreements, and (2) identification of all partners; (3) identification of all managers of the applicant;

(i) if the applicant will be managed by managers who are not members, a photocopy of the proposed management agreement between the applicant and the manager;

(j) if the LLC will be managed by managers who are not members, that the following powers are reserved to the members: (1) direct independent authority over the appointment of the administrator, approval of all other persons working in the facility and dismissal of all persons working in the facility; (2) approval of facility operating and capital budgets and independent control of the books and records including that all facility accounts and billing must be in the name of, on behalf of and for the benefit of the operator; (3) adoption or approval of facility operating policies and procedures and independent adoption of policies affecting the delivery of facility services; (4) authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations; (5) approval of facility debt

necessary to finance the cost of compliance with operational or physical plant standards required by law; (6) approval of contracts; and (7) approval of settlements of administrative proceedings or litigation to which the facility is a party.

(7) information on the ownership of the property interests in such facility, including: the name and address and a description of the interest held, or proposed to be held, by each of the following persons:

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

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

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

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

(v) any person who, directly or indirectly has any interest as a lessor or lessee in any lease or sublease of the equipment used in the building in which the facility is located; if any person named in response to paragraph (1) of this subdivision is a partnership, then the name and address of each partner;

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

stockholder and, if known, each principal stockholder and controlling person of such corporation; and

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

(8) Any other information requested by the Department that the Department may deem necessary for the evaluation of the application, provided the information is not duplicative of what is otherwise required of the applicant in obtaining an adult care facility operating certificate.

(h) The applicant shall provide any information and documentation requested by the Department within 60 days of such request, unless the applicant obtains from the Department an extension of the time in which to provide such information or documentation. Any request for such extension of time shall set forth the reasons why such information or documentation could not be obtained within the prescribed time. The granting of such extension of time shall be at the discretion of the Department, provided such extensions are not for more than 60 days and the Department is satisfied as to the reasons why such information or documentation could not be obtained within the prescribed time. The Department is authorized to deny a request for an extension of time. Failure to provide such information or documentation within the time prescribed may constitute an abandonment and withdrawal of the application by the applicant.

(i) Application requirements for Enhanced Assisted Living Certification.

An application for Enhanced Assisted Living Certification shall also include a plan which sets forth how the additional needs of residents will be safely and appropriately met at the enhanced assisted living residence. Such plan shall include, but need not be limited to:

- (1) a written description of services;
- (2) staffing levels;
- (3) staff education and training;
- (4) work experience of individuals (operator's staff or contractors) who will provide services to residents; and

(5) any environmental modifications that will be made to protect the health, safety and welfare of the residents.

Such plan must be in accordance with the requirements set forth in this Part.

(j) Application Requirements for Special Needs Assisted Living Certification.

An application for Special Needs Assisted Living Certification shall also include a special needs plan setting forth how the special needs of such residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to:

- (1) a written description of specialized services;
- (2) staffing levels;
- (3) staff education and training;
- (4) work experience of individuals (operator's staff or contractors) providing services to residents;

(5) professional affiliations or special characteristics relevant to serving persons with special needs; and

(6) any environmental modifications that have been or will be made to protect the health, safety and welfare of such persons in the residence.

Such plan must be in accordance with the requirements set forth in this Part.

(k) Expedited application for additional enhanced or special needs ALR Beds. A certified operator of enhanced or special needs assisted living may apply, on an expedited basis, for Department approval of up to five additional beds to serve current residents of the operator's licensed residence who would be appropriate for residence in such certified setting. Such application shall be submitted on a form provided by the Department, which shall include a narrative setting forth the need for such beds, documentation that the residence can add such beds in accordance with applicable structural and environmental standards, and such additional information as the Department deems necessary. The Department shall respond to such applications for approval within 30 days of receiving all necessary information from the operator.

(l) Amendments to applications. An application may be amended while the application is pending before the Department.

(1) Any amendment to an application which constitutes a substantial change in the information contained in the original application, or any prior amendments thereto, must be accompanied by a satisfactory written explanation as to the reason such information was not contained in the original application.

(2) Prior to issuance of a license, any change as set forth in this subdivision shall constitute an amendment to the application and the applicant shall submit appropriate documentation as may be required in support of such amendment. The approval of the Department must be obtained for any amended application.

(m) Administrative withdrawal of applications by the Department.

(1) At any time during the application review and approval process, the Department may request an applicant to submit information that is missing from the application; to submit information in addition to that described in this section and/or on the application form; or to submit more current information than that in its application. Applicants must submit such information within 60 calendar days of being notified by the Department that such information is required. If the applicant fails to submit the required information by the end of the sixty day period, the application may be administratively withdrawn without prejudice to the applicant; provided, however, all fees will be forfeited and will not be refunded. Applications submitted by the applicant subsequent to such administrative withdrawal will be processed as new applications. All applicable fees will apply.

(2) The Department may notify the applicant that it is required to modify the information in its application in order to ensure that the facility, ownership, operations, physical plant, etc., are in compliance with all applicable federal, state and local statutes, rules and regulations. The Department may administratively withdraw the application if the applicant fails to modify its application as directed by the Department within 60 calendar days of such notification. All fees will be forfeited and will not be refunded. Applications submitted by the applicant subsequent to such administrative withdrawal will be processed as new applications. All applicable fees will apply.

(n) Withdrawals of applications by the applicant.

(1) Licensure and certification fees associated with applications that are withdrawn pursuant to subdivisions (2) and (3) of this section are forfeited and will not be refunded to the



applicant. Applicants who submit applications subsequent to withdrawing an application pursuant to subdivisions (2) and (3) of this section must pay all applicable fees.

(2) An application may, on written request of the applicant, be withdrawn prior to decision by the Department at any time without prejudice to the applicant.

(o) Failure to implement an application. The failure, neglect or refusal of an applicant to obtain a license and commence operation as an assisted living residence within one year of issuance of approval or contingent approval of the application shall constitute an abandonment of the application by the applicant and any approval or contingent approval issued by the Department shall be deemed cancelled and withdrawn. Licensure and certification fees associated with applications that have not been implemented are forfeited and will not be refunded.

(p) Licensure and other fees.

(1) Every assisted living residence shall pay a non-refundable assisted living residence licensure fee upon initial licensure application and biennially thereafter, following two years of licensed operation.

(i) Such fee shall be comprised of a base fee per license issued or biennial license renewal, plus an additional fee for each resident whose annual income is above four hundred percent of the federal poverty level for the year in which the license is issued or renewed.

(ii) Such additional per resident fee shall be based on the total occupied beds at the time of application, or at the time of biennial license renewal, up to the maximum initial or biennial licensure fee set forth in statute.

(iii) Applicants must pay the per resident fee for every resident for whom they do not have documentation that the resident's income is 400% or less than the federal poverty level. Residents

who are eligible for Medicaid or Supplemental Security Income payments are presumptively at or below 400% of the federal poverty level.

(iv) If the facility is under construction at the time the initial licensure application is submitted, the basic fee per license shall be paid at time of application. The additional fee for each resident whose income is 400% or less than the federal poverty level shall be determined at the time that the license is approved.

(2) Every assisted living residence that applies for an enhanced assisted living certificate or a special needs assisted living certificate shall pay an additional non-refundable initial and biennial fee, in addition to any other required licensure fee, in an amount set forth in statute.

(3) All applicable licensure and certification fees shall be paid prior to the processing and approval of an application for licensure or certification or the biennial renewal of such license and certification.

(4) Applicants must pay the licensure fees provided for in this section for each adult home and/or enriched housing program operating certificate that is to be issued, amended to include licensure as an assisted living residence, certification as an enhanced assisted living residence, or certification as a special needs assisted living residence, or biennially renewed.

(5) The fees referenced in this subsection (p) shall be in the amount or amounts specified in statute. All such fees received by the Department shall be nonrefundable.

#### 1001.6 General Provisions.

(a) The operator of an assisted living residence must provide, through its employees and agents, an organized program of care, supervision and services which meets the standards set

forth in this Part; assures the protection of resident rights; and promotes the social, physical and mental well-being of its residents.

(b) No entity shall establish, operate, provide, conduct or offer assisted living in this state, or hold itself out as an entity which otherwise meets the definition of assisted living or advertise itself as assisted living or by a similar term, without obtaining the approval of the Department to operate as an adult home or enriched housing program pursuant to Title 2 of Article 7 of the Social Services Law, obtaining the approval of the Department to operate as an assisted living residence pursuant to Article 46-B of the Public Health Law and this Part, and otherwise acting in accordance with this Part. An entity may simultaneously apply for approval to operate as an adult home or enriched housing program and as an assisted living residence pursuant to Article 46-B of the Public Health Law and this Part. This provision shall not apply to assisted living programs approved by the Department pursuant to section 461-1 of the Social Services Law.

(c) The knowing operation of an assisted living residence or enhanced assisted living residence without the prior written approval of the Department shall be a Class A misdemeanor.

(d) The requirements of this part shall be in addition to those required of an adult care facility. In the event of a conflict between any provision of Article 46-B of the Public Health Law and a provision of Article 7 of the Social Services Law or a regulation adopted thereunder, the applicable provision of Article 46-B of the Public Health Law and the applicable provision of this Part which implements such statute shall supercede Article 7 of the Social Services Law or the applicable provision thereunder to the extent of such conflict. The operator shall operate and maintain the residence in compliance with the regulations of the Department and with other applicable federal, state and local statutes and regulations.

(e) (1) Upon request by an applicant or operator, the Department may waive non-statutory requirements of this Part. An applicant or operator must request and receive written approval prior to operating in accordance with any waiver. Applications for a waiver must be submitted in writing to the Department and must include:

- (i) the specific regulation for which a waiver is sought;
- (ii) the reason the waiver is necessary; and
- (iii) a description of what will be done to achieve or maintain the purpose of the regulation to be waived and to protect the health, safety and well-being of the residents.

(2) Before granting a waiver, the Department may require that the applicant or operator make physical plant modifications or adopt special methods or procedures to protect resident health and safety and may grant written approval of a waiver request only after making a determination that the proposed waiver will not adversely affect the health, safety and well being of the residents.

(3) This subdivision (e) shall apply to requests for a waiver under this Part unless a more specific waiver provision related to a particular operating standard is specified elsewhere in this Part.

(4) The Department shall make a determination on a request for waiver within 90 days of receipt of all required information from the applicant or operator.

(5) The Department may make a determination that an operational practice or procedure for which a waiver is frequently granted is deemed to be a Department-approved regulation equivalency, that is, equivalent to the intent of the regulation waived.

(6) An operator may submit notification to the Department of the operator's adoption of a Department-approved regulation equivalency, in accordance with Department protocols.

(7) Failure to adhere to the terms of the approved waiver or regulation equivalency will result in rescission of the approval and may result in a regulatory citation and imposition of penalties for violation of the applicable regulation, in accordance with the provision of section 1001.15 of this Part.

#### 1001.7 Admission and Retention Standards.

(a) Unless stated otherwise in this section, an operator of an assisted living residence shall admit and retain only those individuals who meet the admission and retention standards prescribed in sections 487.4(a)-(e) or 488.4(a)-(d) of Title 18 NYCRR, depending upon the facility's certification under Title 18 NYCRR.

(b) An adult home certified pursuant to Part 487 of Title 18 NYCRR or an enriched housing program certified pursuant to Part 488 of Title 18 NYCRR in possession of a retention standards waiver for one or more residents as of June 3, 2005 shall not be required to apply for and obtain enhanced assisted living certification pursuant to section 1001.4(n) of this Title with respect to the residents included in such existing waiver, and limited to the conditions of such waiver; however, such waiver expires when such resident or residents either are discharged from the facility or die.

(c) Any resident of an adult home certified pursuant to Part 487 of Title 18 NYCRR or an enriched housing program certified pursuant to Part 488 of Title 18 NYCRR or an assisted living residence licensed pursuant to Part 1001 of this Title who is currently occupying a bed under the retention standards waiver shall be allowed to continue to occupy such bed so long as the resident is within the conditions of the waiver granted; provided, no other resident shall be

allowed to occupy a bed within such facility or residence under such retention standards waiver once the bed has been vacated.

(d) An operator possessing an enhanced assisted living certificate issued by the Department pursuant to section 1001.4(n) of this Title may admit persons either from an assisted living residence or from the community, and may retain persons who exceed the admission and retention standards of an assisted living residence, provided that the enhanced assisted living residence can provide or arrange an adequate and safe plan of care in accordance with the ISP. Such individuals may include those who:

(1) are chronically chairfast and unable to transfer, or chronically require the physical assistance of one or more person(s) to transfer;

(2) chronically require the physical assistance of one or more person(s) to walk;

(3) chronically require the physical assistance of one or more person(s) to climb or descend stairs;

(4) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or

(5) have chronic unmanaged urinary or bowel incontinence.

(e) Twenty-Four Hour Skilled Nursing or Medical Care.

(1) An operator shall not admit individuals in need of twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to Article 28 of the Public Health Law or Articles 19, 31 or 32 of the Mental Hygiene Law.

(2) If a resident reaches the point where (s)he is in need of twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to Article 28 of the Public Health Law or Articles 19, 31 or 32 of the Mental Hygiene Law, then the resident shall be

discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident in accordance with the provisions of section 461-h of the Social Services Law and of 18 NYCRR 487.5(f) or 488.5(e), as applicable; provided, however, a resident may remain at a residence certified as an enhanced assisted living residence if each of the following conditions are met:

(i) the resident's physician and home care services agency, if applicable, and hospice medical director, if applicable, determine and document that, with the provision of additional nursing, medical and/or hospice care, the resident can be safely cared for in the residence and would not require placement in a hospital, nursing home or other facility licensed under Article 28 of the Public Health Law or Articles 19, 31 or 32 of the Mental Hygiene Law;

(ii) the resident hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

(iii) the operator agrees to retain the resident and to coordinate the care provided by the enhanced assisted living residence and other provider staff; and

(iv) the resident is otherwise eligible to reside in the facility.

(f) Prior to admission, or upon request, an operator must disclose, on a separate information sheet in plain language and in twelve point type, the information set forth in section 1001.8(f)(5), to any individual who expresses an interest in residing in the residence, and to his or her designated representative and his or her legal representative, if any, and any current resident and to his or her designated representative and his or her legal representative, if any, if such information has not previously been disclosed to them.

(g) Pre-admission evaluation. The operator shall conduct a pre-admission evaluation of each prospective resident within 30 days prior to admission, using the Personal Data and

Resident Evaluation Form, to determine whether or not the individual is appropriate for admission. Such evaluation shall be conducted by the operator, through its administrator or case manager, and if necessary, in conjunction with either a home care services agency approved under Public Health Law Article 36 or an appropriately licensed and trained employee of the operator, such as a registered professional or licensed practical nurse, a physical or occupational therapist, or a social worker.

(h) Medical evaluation. The operator shall assure that a medical evaluation, on a Department form or a Department-approved substitute, is conducted for every prospective resident. The medical evaluation shall be conducted within 30 days prior to the date of admission; and whenever a change in the resident's condition warrants, but no less than once in every 12 months. Such medical evaluation shall be a written and signed report from a physician, which includes:

(1) the date of examination, significant medical history and current conditions, known allergies, the prescribed medication regimen, including information on the applicant's ability to self-administer medications, recommendations for diet, exercise, recreation, frequency of medical examinations, cognitive and mental health status, and assistance needed in the activities of daily living;

(2) a statement that the individual is or is not medically suited for care in the assisted living residence and, if applicable, the enhanced assisted living residence or special needs assisted living residence;

(3) a statement that the individual is or is not mentally suited for care in the assisted living residence, and, if applicable, the enhanced assisted living residence or special needs assisted living residence;



(4) a statement that the individual is or is not in need of long term medical or nursing care or supervision, which would require placement in a hospital or nursing home; and

(5) a statement that the individual is or is not in need of twenty-four hour skilled nursing care.

(i) Information collected through the required prospective resident interview, mental health evaluation if required, medical evaluation, the pre-admission evaluation including the Personal Data and Resident Evaluation Form, and any other information as needed, on forms approved by the Department, must be used to determine whether the individual is appropriate for admission to the assisted living residence.

(j) The operator shall not admit any individual if the operator is not able to meet the individual's care needs within the scope of services authorized to be provided by the assisted living residence and the individualized service plan.

(k) Individualized Service Plan.

(1) A written Individualized Service Plan shall be developed for each resident upon admission.

(2) The Individualized Service Plan shall be developed with the resident, the resident's representative and resident's legal representative, if any, the assisted living operator, and if necessary a home care services agency approved under Public Health Law Article 36 or equivalent staff as authorized by Public Health Law section 4655(1)(d). The initial Individualized Service Plan shall be developed in consultation with the resident's physician and such consultation shall be documented in writing by the residence. If a resident is determined by his or her physician not to be in need of home care services, as documented in the medical

evaluation or otherwise, the participation of a home care services agency in the development of the Individualized Service Plan shall not be necessary.

(3) The Individualized Service Plan shall be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the resident and shall be implemented within 30 days of admission of the resident.

(4) The Individualized Service Plan shall include the services to be provided, and how and by whom services will be provided and accessed.

(5) The Individualized Service Plan shall be reviewed and revised every six months and whenever ordered by the resident's physician or as frequently as necessary to reflect the changing care needs of the residents. To the extent necessary, such review and revision shall be undertaken in consultation with the resident's physician.

(1) No residence or agent, consultant, employee or representative thereof, shall make any payment to any party as compensation for referring a resident for admission without having obtained a signed agreement with the referring party, that provides that: (i) the referring party will be compensated by the referred residence; and (ii) the referring party is responsible for disclosing to its clients that the referring party will be compensated by the referred residence.

#### 1001.8 Consumer and Resident Protections

(a) General. An operator of an assisted living residence must provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.

(b) Resident Rights.

(1) Each operator of an assisted living residence must adopt and post conspicuously in a public place in the residence a statement of the rights and responsibilities of residents and shall treat each resident in accordance with the provisions of such statement.

(2) Resident's rights and responsibilities shall include but not be limited to the following:

(i) Every resident's participation in assisted living shall be voluntary, and prospective residents shall be provided with sufficient information regarding the residence to make an informed choice regarding participation and acceptance of services;

(ii) Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed;

(iii) Every resident shall have the right to have private communications and consultations with his or her physician, attorney, and any other person;

(iv) Every resident, resident's representative and resident's legal representative, if any, shall have the right to present grievances on behalf of himself or herself or others, to the residence's staff, administrator or assisted living operator, to governmental officials, to long term care ombudsmen or to any other person without fear of reprisal, and to join with other residents or individuals within or outside of the residence to work for improvements in resident care;

(v) Every resident shall have the right to manage his or her own financial affairs;

(vi) Every resident shall have the right to have privacy in treatment and in caring for personal needs;

(vii) Every resident shall have the right to confidentiality in the treatment of personal, social, financial and medical records, and security in storing personal possessions;

(viii) Every resident shall have the right to receive courteous, fair and respectful care and treatment and a written statement of the services provided by the residence, including those required to be offered on an as-needed basis;

(ix) Every resident shall have the right to receive or to send personal mail or any other correspondence without interception or interference by the operator or any person affiliated therewith;

(x) Every resident shall have the right not to be coerced or required to perform the work of staff members or contractual work;

(xi) Every resident shall have the right to have security for any personal possessions if stored by operator;

(xii) Every resident shall have the right to receive adequate and appropriate assistance with activities of daily living, to be fully informed of their medical condition and proposed treatment, unless medically contraindicated, and to refuse medication, treatment or services after being fully informed of the consequences of such actions, provided that an operator shall not be held liable or penalized for complying with the refusal of such medication, treatment or services by a resident who has been fully informed of the consequences of such refusal;

(xiii) Every resident and visitor shall have the responsibility to obey all reasonable regulations of the residence and to respect the personal rights and private property of the other residents;

(xiv) Every resident shall have the right to include their signed and witnessed version of the events leading to an accident or incident involving such resident in any report of such accident or incident;

(xv) Every resident shall have the right to receive visits from family members and other adults of the resident's choosing without interference from the assisted living residence; and

(xvi) Every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective date of the fee increase, provided however, providing additional services to a resident in accordance with section 461-c(2) of the Social Services Law, shall not be considered a fee increase pursuant to this paragraph in the following situations:

(a) if a resident, resident representative or legal representative agrees in writing to a specific rate or fee increase, through an amendment of the residency agreement, due to the resident's need for additional care, services or supplies, the operator may increase such rate upon less than forty-five days written notice;

(b) if the operator provides additional care, services or supplies upon the written order of the resident's primary physician, the operator may, through an amendment to the residency agreement, increase such rate upon less than forty-five days written notice; or

(c) in the event of an emergency which affects the resident, the operator may assess additional charges for the benefit of the resident as are reasonable and necessary for services, materials, equipment and food supplies during such emergency.

(xvii) Every resident of an assisted living residence that is also certified to provide enhanced assisted living and/or special needs assisted living shall have a right to be informed by the operator, by a conspicuous posting in the residence, on at least a monthly basis, of the then-current vacancies available, if any, under the operator's enhanced and/or special needs assisted living programs.

(3) Waiver of any provision contained in paragraph (2) of this section shall be void.

(4) Each assisted living operator shall give a copy of the statement of rights and responsibilities to each resident at or prior to the time of admission to the residence, the resident's representative and resident's legal representative, if any, and to each member of the residence's staff and any current resident.

(c) Resident organizations.

(1) The operator shall encourage and assist residents to organize and maintain committees, councils, or such other self-governing body as the residents may choose.

(2) The operator shall:

(i) assure that the residents' organization:

(a) meets as often as the membership deems necessary;

(b) is chaired and directed by the residents; and

(c) may meet with any member of the supervisory staff, provided that reasonable notice of the request is given to such staff;

(ii) appoint a staff person to act as an advisor to the residents' organization, who shall serve as a liaison between the organization and administration to report all problems, issues and suggestions discussed by the residents which require administrative action; and

(iii) assure that any complaints, problems or issues reported by the residents' organization to the designated staff person or administration are addressed and that a written report addressing the problems, issues or suggestions is sent to the organization.

(d) Family organizations.

(1) The operator shall encourage and assist residents' families and representatives who so desire to organize and maintain committees, councils, or such other self-governing body as the residents' families and representatives may choose.

(2) The operator shall:

(i) assist the residents' family and representative organization:

(a) in meeting as often as the membership deems necessary;

(b) in assuring the organization is chaired and directed by the residents' families and/or representatives; and

(c) in meeting with any member of the supervisory staff, provided that reasonable notice of the request is given to such staff;

(ii) appoint a staff person to act as an advisor to the residents' family and representative organization, who shall serve as a liaison between the organization and administration to report all problems, issues and suggestions discussed by the families and representatives which require administrative action; and

(iii) assure that any complaints, problems or issues reported by the residents' family and representative organization, if formed, to the designated staff person or administration are addressed, and that a written report addressing the problems, issues or suggestions is sent to the organization.

(iv) assure that the residents' family and representative organization, if formed, have the freedom to meet without interference and be provided space to conduct such meetings.

(e) Grievances and recommendations. The operator shall develop written procedures and shall establish and maintain a system to receive and respond, within 21 days of receipt, to grievances and recommendations for change or improvement in residence operations and programs which are presented by residents and their family and representatives, in accordance with section 487.5 (c) and 488.5 (b) of Title 18 NYCRR.

(f) Residency agreements and disclosures.

(1) An operator of an assisted living residence must comply with the following standards in addition to the applicable standards contained in sections 487.5 (d), (e) and (f) and 488.5 (c) of Title 18 NYCRR.

(2) Every operator shall execute with each resident a written residency agreement, in no less than twelve point type and written in plain language, which satisfies the requirements of this section. Such agreement shall:

(i) be dated and signed by the operator, the resident, resident's representative, and resident's legal representative, if any, and any other party to be charged under the agreement;

(ii) contain the entire agreement of the parties and shall include the disclosures required by subdivision (5) of this section.

(3) The resident, resident's representative and resident's legal representative, if any, shall be given a complete copy of the agreement and all supporting documents and attachments and any changes whenever changes are made to the agreement.

(4) The residency agreement shall include, at a minimum:

(i) the name, telephone number, street address and mailing address of the residence;

(ii) the name and mailing address of the owner of the residence and at least one natural person authorized to accept personal service on behalf of the owner of the residence;

(iii) the name and address of the assisted living operator and at least one natural person authorized to accept personal service on behalf of the operator;

(iv) a statement, to be updated as necessary, describing the licensure or certification status of the assisted living operator and any provider offering home care services or personal care services under an arrangement with the residence, including a specific listing of such providers;



- (v) the effective period of the agreement;
- (vi) a description of the type and amount of services and any limitation thereto, to be provided to the resident and the base rate to be paid by the resident for those services;
- (vii) a description of any additional services available for an additional, supplemental, or community fee from the assisted living operator directly or through arrangements with the operator, stating who would provide such services, if other than such operator;
- (viii) a rate or fee schedule, including any additional, supplemental, or community fees charged for services provided to the resident, with a detailed explanation of which services and amenities are covered by such rates, fees, or charges;
- (ix) a description of the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party;
- (x) a description of the complaint resolution process available to residents;
- (xi) the name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities;
- (xii) the criteria used by the operator to determine who may be admitted and who may continue to reside in the residence, including criteria related to the resident's care needs and compliance with reasonable rules of the residence;
- (xiii) procedures and standards for termination of contract, discharge and transfer to another dwelling or facility;
- (xiv) billing and payment procedures and requirements;

(xv) procedures in the event the resident, resident's representative or resident's legal representative are no longer able to pay for services provided for in the resident agreement or for additional services or care needed by the resident;

(xvi) terms governing the refund of any previously paid fees or charges in the event of a resident's discharge from the assisted living residence or termination of the resident agreement, and

(xvii) clear notice to the consumer that the operator cannot mandate that a resident or other person agree to a guarantor of payment as a condition of admission unless the operator has reasonably determined, on a case by case basis, that the prospective resident would lack either the current capacity to manage financial affairs and/or the financial means to assure payment due under the residency agreement.

(5) In conjunction with any marketing materials and with the residency agreement required by this section, the assisted living operator shall disclose on a separate information sheet in plain language and in twelve point type the following to (a) any individual who expresses an interest in residing in the residence, and to his or her designated representative and his or her legal representative, if any, upon request or prior to admission, whichever occurs first, and (b) any current resident and to his or her designated representative and his or her legal representative, if any, if such information has not previously been disclosed to them:

(i) the Consumer Information Guide developed by the commissioner;

(ii) a statement: listing and describing the residence's licensure and stating whether it has an enhanced assisted living certificate and/or special needs enhanced assisted living certificate and the availability of enhanced assisted living and/or special needs beds; stating the maximum number of enhanced assisted living beds and/or special needs assisted living beds the operator is

currently approved to provide; and stating that the operator will post prominently in the residence, on at least a monthly basis, the then-current number of vacancies under its enhanced assisted living and/or special needs assisted living programs.

(iii) any ownership interest in excess of ten percent on the part of the operator, whether legal or beneficial, in any entity which provides care, material, equipment or other services to residents;

(iv) any ownership interest in excess of ten percent on the part of any entity which provides care, material, equipment or other services to residents, whether legal or beneficial, in the operator;

(v) a statement regarding the ability of residents to receive services from service providers with whom the operator does not have an arrangement;

(vi) a statement that residents shall have the right to choose their health care providers, notwithstanding any other agreement to the contrary;

(vii) a statement regarding the availability of public funds for payment for residential, supportive or home health services including, but not limited to availability of coverage of home health services under Title 18 of the Federal Social Security Act (Medicare);

(viii) the Department's toll free telephone number for reporting of complaints regarding home care services and the services provided by the assisted living operator; and

(ix) a statement regarding the availability of long term care ombudsman services and the telephone number of the local and state long term care ombudsman.

(6) An operator shall use the Model Residency Agreement for assisted living residences developed by the Department, or a Department-approved substitute. Any proposed substitute Residency Agreement must include or otherwise address every provision required by statute or

regulation included in the Model Residency Agreement in a manner acceptable to the Department.

(7) Assisted Living Residency Agreements and related documents executed by each resident, resident's representative or resident's legal representative shall be maintained by the operator in files from the date of execution until three years after the agreement is terminated. The agreements shall be made available for inspection by the commissioner upon request at any time.

#### 1001.9 Resident funds and valuables.

(a) The requirements of this section shall be in addition to those required of an adult home or enriched housing program in accordance with sections 487.6 and 488.6 of Title 18, NYCRR.

(b) An assisted living operator or employee of a residence or any other entity which is a representative payee of a resident of such residence pursuant to designation by the social security administration or which otherwise assumes management responsibility over the funds of a resident shall maintain such funds in a fiduciary capacity to the resident. Any interest on money received and held for the resident shall be the property of the individual resident.

#### 1001.10 Resident Services

(a) The operator shall be responsible for the provision or arrangement of resident services, which shall include, at a minimum, housing, twenty-four hour on-site monitoring, daily food service, case management services, development of an individualized service plan, personal care and/or home care services.

(b) Unless conflicted or contradicted by subdivision (a) of this section, the operator shall be responsible for the provision or arrangement of resident services pursuant to the facility's certification as either an adult home or enriched housing program as prescribed in Part 487 or 488 of Title 18 NYCRR, respectively.

(c) The services to be provided to the resident shall be delineated in the signed residency agreement executed pursuant to section 1001.8(f) of this Part and shall be consistent with the resident's Individualized Service Plan developed pursuant to section 1001.7(k) of this Part.

(d) Additional services, supplies or amenities may be available from the operator directly or through arrangements with the operator and may be subject to additional charges, provided the provision of such services, supplies or amenities and charges for such are specified in the residency agreement executed pursuant to section 1001.8(f) of this Part.

(e) Residents shall have the ability to receive services from service providers with whom the operator does not have an arrangement. The operator shall assist the resident in arranging such services, if necessary, and, as part of the operator's case management responsibility, shall be responsible for coordinating the care the operator provides or arranges with the care provided by such other service providers.

(f) Residents shall have the right to choose their health care providers, notwithstanding any other agreement to the contrary.

(g) Monitoring.

(1) The operator shall designate sufficient staff who shall be responsible for monitoring residents on-site.

(2) Monitoring shall be provided at any hour of the day or night of the week, and shall include but not be limited to the ability:

(i) to respond to urgent or emergency needs or requests for assistance with appropriate staff; and

(ii) to identify abrupt or progressive changes in behavior, appearance, or in performing basic activities of daily living which may signify the need for re-assessment and changes in service as reflected on the Individualized Service Plan.

(h) Daily Food Service.

(1) Unless otherwise stated in the resident's residency agreement, the provision of food service shall be dictated by and in compliance with the facility's certification as either an adult home or enriched housing program and provided pursuant to Part 487 or Part 488 of Title 18 NYCRR.

(2) All food purchasing, storage, preparation and service shall be in compliance with the New York State Sanitary Code (10 NYCRR Part 14) and other applicable county and local health codes and the standards for such practices as dictated by the facility's certification as either an adult home or enriched housing program pursuant to Part 487 or Part 488 of Title 18 NYCRR.

(3) Food services shall be provided in a manner that respects the dietary needs of the residents in relation to health conditions, food allergies and dietary intolerances, religious and ethnic mandates, and that allows for a reasonable variation in taste preferences.

(i) Case Management Services.

In addition to the case management services provided pursuant to Part 487.7(g) or Part 488.7(e) of Title 18 NYCRR, the residence shall:

(1) identify and evaluate the resident's needs, interests, and strengths and the capability of the facility to meet those needs, prior to admission and then at least once every 12 months, using the Personal Data and Resident Evaluation Form prescribed by the Department;

(2) oversee and coordinate a written Individualized Service Plan for each resident, as per the conditions of paragraph (2) of this subdivision;

(3) provide information upon admission including meeting with prospective residents and residents and their representatives and legal representatives, if any, to discuss whether and how the residence can meet the needs of such prospective resident or residents, and to explain the various levels of care and services available in a basic assisted living residence, an enhanced assisted living residence and a special needs assisted living residence;

(4) meet with prospective residents and residents, and their representatives and legal representatives to discuss matters described in the residency agreement and disclosures required under Article 46-B of the Public Health Law and this Part, including the services that the residence can provide to meet the needs of the prospective resident or residents;

(5) provide information and referral on an ongoing basis;

(6) coordinate with service providers selected by the residents and with other available resources on an ongoing basis to best address the resident's identified needs and interests;

(7) develop a formal mechanism between the case manager and facility staff who serve the resident to identify abrupt or progressive changes in behavior or appearance, which may signify the need for assessment and service; and

(8) maintain a complete and accurate personal record for each resident as specified in section 1001.12 of this Part.

(j) Personal Care.

(1) Each resident shall be provided such personal care as is necessary to enable the resident to maintain good personal hygiene, to carry out the activities of daily living, to maintain good health, and to participate in the ongoing activities of the residence, as per the resident's Individualized Service Plan developed pursuant to section 1001.7(h) of this Part.

(2) Unless otherwise stated in the resident's residency agreement, the provision of personal care shall be dictated by and in compliance with the facility's certification as either an adult home or enriched housing program and provided pursuant to Part 487 or Part 488 of Title 18 NYCRR.

(3) Personal care service tasks shall be performed by staff, hereafter referred to as resident aides, appropriately trained to perform such tasks pursuant to section 1001.11(c)(2) of this Part.

(k) Health Care Services.

(1) Pursuant to section 1001.7(k) of this Part, the resident's Individualized Service Plan shall specify any necessary health care services to be provided to the resident, including those provided by a home care services agency licensed pursuant to Article 36 of the Public Health Law.

(2) Unless approved by the commissioner to provide enhanced or special needs assisted living, the residence shall arrange for any needed health care services to be provided by a home care services agency approved pursuant to Article 36 of the Public Health Law. For purposes of this Part, such services shall include: nursing, home health aide services, physical therapy, occupational therapy, speech therapy, respiratory therapy, social work, nutrition, and medical supplies, equipment and appliances.



(3) A home care services agency shall not provide in a residence those basic services required to be provided by an adult home or enriched housing program certified pursuant to Part 487 or Part 488 of Title 18 NYCRR, including personal care services, unless an assisted living residence operator has contracted with a home care services agency approved pursuant to Article 36 of the Public Health Law for the provision of such required services on its behalf, and such services are included in the resident's basic rate. If such home care services agency fails to provide services in compliance with the requirements for the residence as an adult home or enriched housing program, pursuant to such contract, the assisted living residence operator shall continue to be responsible for assuring that such services are provided in accordance with applicable regulations.

(4) The receipt of hospice services by a resident of an assisted living residence shall be permitted, and additional certification for enhanced assisted living shall not be required for the resident to receive hospice services within the residence, so long as the following conditions are met:

(i) the ALR, the resident's physician and the hospice determine that, with the provision of hospice services, the resident can be safely cared for in the assisted living residence;

(ii) service responsibilities of the residence and the hospice are specified on the Individualized Service Plan; and

(iii) the operator agrees to retain the resident and to coordinate the care provided by the operator with the hospice.

(1) Medication Management.

(1) Medication acquisition, storage and disposal, and assistance with self-administration of medication shall be performed in conformance with the standards for such practice dictated

by the facility's certification as either an adult home or enriched housing program, pursuant to section 487.7(f) or section 488.7(d) of Title 18 NYCRR respectively, and consistent with any and all operative guidance documents relating to medication services provided to facility residents issued by the Department.

(2) The operator shall develop policies and procedures for medication management in compliance with the requirements of section 29.7(1)(21)(ii)(b) of Title 8 NYCRR, sections 80.5 and 80.6 of this Title, section 487.7(f) or section 488.7(d) (depending on facility certification) of Title 18 NYCRR.

(3) A medication assistance record shall be maintained for each resident to include, at a minimum, the diagnoses of the resident, all medications used by the resident, including both prescribed and over-the-counter medications, the indication for the medications prescribed, labels for medications that are dispensed as generic drugs labeled as such, any special directions for taking or storing medications, known allergies, and a picture of the resident or other electronic means to identify the resident.

(4) Medication orders received from the physician of a resident prescribed as PRN shall be reviewed with the physician in terms of the resident's ability to identify the need for medication.

(5) The physician's order for all PRN medications, including prescriptions and over-the-counter, shall identify those resident behaviors or symptoms warranting consideration of need for the medication(s).

(6) Unless at the time that a medication order is issued, the resident's physician has indicated that the resident is able to identify the need for the medication, a resident may not be assisted with any PRN medication, whether prescription or over-the-counter, without observation

by or consultation with appropriate licensed nursing or medical providers. The record of assistance with such medications shall include the behavior or symptoms observed as well as the nature of such observation by or consultation with such licensed staff.

(7) The use of prescription PRN medications for persons with dementia shall be limited to only those instances where the physician has determined after review with residence staff that there is no alternative to the order.

(m) Enhanced Assisted Living.

(1) In addition to the services of the assisted living residence provided pursuant to an executed residency agreement, a resident of enhanced assisted living within a residence granted an enhanced assisted living certificate pursuant to section 1001.4 of this Part may receive health care services provided by staff directly employed by the enhanced assisted living residence. The operator may, but is not required to, obtain licensure or certification pursuant to Article 36 of the Public Health Law, to provide such health care service.

(2) If an enhanced assisted living residence provides health care services that would ordinarily be provided by a home care services agency licensed pursuant to Article 36 of the Public Health Law, then the operator of the enhanced assisted living residence shall develop appropriate policies and procedures related to such health care services, to include but not be limited to:

(i) service specific delivery standards consistent with current professional standards of practice, including staff supervision, which are reviewed and revised as necessary;

(ii) documentation of service delivery;

(iii) storage, cleaning and disinfection of medical supplies, equipment and appliances;

(iv) provision of nursing or therapeutic service, procedure or treatment not previously provided by the enhanced assisted living residence;

(v) resident discharge which assures a timely, safe and appropriate transition; and

(vi) appropriate quality assurance and improvement activities.

(3) Personal care tasks that exceed the approved scope of tasks in which the resident aide is trained, shall be performed by home health aides trained in such tasks pursuant to section 700.2(b) of this Title.

(4) An enhanced assisted living residence shall provide or arrange for nursing services for its residents as necessary. Such services shall include but not be limited to: assessment and evaluations of residents; supervision of aides; and nursing care and treatments.

(5) If a resident reaches the point where he or she is in need of twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to Article 28 of the Public Health Law or Article 19, 31 or 32 of the Mental Hygiene Law, then the resident must be discharged from the residence and the operator shall initiate proceeding for the termination of such residency agreement of such resident in accordance with the provisions of section 461-h of the Social Services Law. Provided, however, a resident may remain at the enhanced assisted living residence if each of the following conditions are met:

(i) the resident in need of twenty-four hour skilled nursing care or medical care hires appropriate nursing, medical or hospice staff to care for his or her increased needs;

(ii) the resident's physician, home care agency and/or hospice determine that, with the provision of such additional services, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other health or mental health facility;

(iii) the operator agrees to retain the resident and to coordinate the care provided by the operator and the additional nursing, medical and/or hospice services; and

(iv) the resident is otherwise eligible to reside at the residence.

(n) Special Needs Assisted living.

(1) In addition to the services of the assisted living residence provided pursuant to an executed residency agreement, a resident of special needs assisted living within a residence granted a special needs assisted living certificate pursuant to section 1001.4 of this Part is entitled to receive the services approved to be offered by the special needs assisted living residence pursuant to the operator's approved special needs plan and consistent with the resident's Individualized Service Plan developed pursuant to section 1001.7(h) of this Part.

(2) The operator shall provide a comprehensive and coordinated program to regularly observe and assess the need for services in a professional, respectful, competent, and timely manner.

(3) Services provided to a resident of special needs assisted living shall be provided by individuals appropriately trained, experienced and licensed or certified, if applicable, pursuant to section 1001.11 of this Part.

(4) The operator shall ensure initial and on-going efforts to establish community-based individual and agency linkages and contacts, specific to serving a special needs population.

(5) Supervision in Special Needs Assisted Living.

(i) The operator shall maintain knowledge of the general whereabouts of each resident.

(ii) In the event a resident is absent from the residence and the resident's whereabouts are unknown, immediate efforts shall be undertaken to locate the resident, including immediate notification to the appropriate law enforcement agency and the Department's regional office.

Notification shall also be made immediately to the resident's family and representative, unless a different time frame has been agreed upon pursuant to the residency agreement executed pursuant to section 1001.8(e) of this Title.

(iii) Sufficient staff to supervise residents and respond to their needs must be available on all shifts.

(6) Medication Assistance in Special Needs Assisted Living.

When disruptive or aggressive behaviors are exhibited, the operator shall evaluate the special needs assisted living resident, determine precipitating factors, make staff aware of precipitating factors that need to be avoided, and develop a plan to include successful interventions and to promote the highest level of resident function.

(7) Case Management in Special Needs Assisted Living.

(i) In addition to the case management services required by paragraph (i) of this section, the operator shall assist the special needs assisted living resident to maintain family ties by assisting residents' family members and representatives to:

(a) adjust to and remain involved with the resident's initial placement and continued residence in the special needs assisted living residence;

(b) establish, operate, and maintain individual and collective methods or recommendations for change or improvement in residence operations and programs, regarding both individual and congregate resident-related issues;

(c) remain active in the care planning process for the resident; and remain informed in a timely manner about significant issues regarding the resident's care and supervision needs and changes made to the care plan.

(ii) Individualized Service Plans and case management records shall identify when a resident is periodically resistant to the provision of personal care services by staff of the special needs assisted living residence and include a plan for addressing such services.

(8) Activities in Special Needs Assisted Living.

(i) The operator shall provide frequent individual and group activities which are geared towards individuals with special needs and which are meaningful to the residents. This programming shall be based on initial and on-going, historical and current, interests, assessments, and observations.

(ii) There shall be sufficient staff to ensure that activities programs are available throughout every day and evening.

(iii) Weather permitting, residents of special needs assisted living residences shall have the opportunity and be encouraged to be outdoors, each day, with appropriate and sufficient supervision.

(9) Food Service in Special Needs Assisted Living.

(i) Food should be offered outside of the usual meal times in a manner acceptable to the special needs assisted living resident and mindful of the resident's functional abilities, preferences and needs. The resident's care plan should reflect these needs and preferences.

(ii) To ensure optimal intake at mealtimes, unless contrary to the physician's orders, prescribed nutritional supplements shall be provided between and not at the same time as scheduled meals.

1001.11 Personnel.

(a) The operator shall designate an individual to be responsible for operating the residence in compliance with applicable law and regulations and through direct performance or coordination.

(b) Unless otherwise stated in this section, the operator shall ensure sufficient staff in number and qualifications to conduct the functions specified for an adult home or enriched housing program as prescribed in Part 487 or 488 of Title 18 NYCRR, respectively.

(c) The operator shall provide staff sufficient in number and qualified by training and experience to render, at a minimum, those services mandated by law or regulation, including:

(1) Case Management.

(i) Staff shall carry out the functions specified in section 1001.10(i) of this Title.

(ii) In an assisted living residence where the approved capacity is less than 25 beds, a qualified case manager shall be on site for at least 20 hours per week and available to provide case management services.

(iii) In a residence with 25 or more beds, a qualified case manager shall be on site on a basis of one hour per week per each additional bed up to a maximum of 40 hours per week and available to provide case management services as follows:

Resident Census	Case Manager Hours Required
1-24	20 hours/week
25-44	20 hours/week +1 hour/week/each bed over 24 up to 40 hours

(iv) In a residence of 45 or more beds one or more case managers must be onsite at least 40 hours and available to assure that case management services adequately meet the needs of the residents.

(2) Personal Care. The operator shall assign sufficient staff, hereafter referred to as resident aides, to perform personal care functions on a 24-hour basis as specified in sections 487.7 and 488.7 of Title 18 NYCRR.



(i) Resident aides shall receive 40 hours of initial training as specified in the Department's training requirements and curriculum or an approved equivalent program.

(ii) Resident aides shall receive 12 hours of ongoing, inservice education annually in topics applicable to their responsibilities.

(iii) Records documenting training and education shall be maintained in the personnel record of each resident aide as specified in section of 1001.12 of this Title.

(iv) An annual assessment of the performance and effectiveness of all resident aides must be conducted including at least one direct observation of performance.

(d) The operator shall ensure that the health status of all new personnel is assessed and documented prior to assuming resident care duties. The assessment shall be of sufficient scope that no individual who is suffering from a degree of mental illness or habituation or addiction to alcohol or other drugs such that the individual causes, or is likely to cause, danger to himself or others or is unable to perform his or her assigned duties, shall be employed or permitted to work as either an employee or a volunteer.

(e) The operator shall maintain, or if services are provided through contract, have access to, personnel records which include the information specified in section 1001.12 of this Part.

(f) All personnel must receive orientation to the policies and procedures related to the provision of assisted living residence, enhanced assisted living residence and/or special needs assisted living residence services as applicable, to include, but not be limited to general duties of staff, applicable facility and service delivery procedures, responsibility for responding to resident emergencies, emergency evacuation and disaster plan, and personal appearance of the employee.

(g) There must be a current written job description for each position which delineates responsibilities and specific education and experience requirements.

(h) A program must be implemented and enforced for the prevention of circumstances which could result in an employee, including but not limited to housekeeping and direct care staff, or resident becoming exposed to significant body substance which could put them at significant risk of HIV or other blood-borne pathogen infection during the provision of services, as defined in sections 63.1 and 63.9 of this Title. Such a program shall include:

(1) use of scientifically accepted protective barriers during job-related activities which involve, or may involve, exposure to significant risk body substances. Such preventative action shall be taken by the employee with each patient/client and shall constitute an essential element for the prevention of bi-directional spread of HIV or other blood-borne pathogen;

(2) use of scientifically accepted preventative practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries;

(3) training at the time of employment and yearly staff development programs on the use of protective equipment, preventative practices, and circumstances which represent a significant risk for all employees whose job-related tasks involve, or may involve, exposure to significant risk body substances;

(4) provision of personal protective equipment for employees which is appropriate to the tasks being performed; and

(5) a system for monitoring preventative programs to assure compliance and safety shall be in place.

(i) Policy and procedures shall be implemented and enforced for the management of individuals who are exposed to significant risk body substances under circumstances which constitute significant risk of transmitting or contracting HIV or other blood-borne pathogen infection. The policy and procedure shall include:

(1) a system for reporting to a designated individual in the agency exposure thought to represent a circumstance which constitutes significant risk of transmitting or contracting HIV or other blood-borne pathogen infection;

(2) evaluation of the circumstances of a reported exposure and services for providing follow-up of the exposed individual which includes:

(i) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;

(ii) if indicated epidemiologically, HIV or other blood-borne pathogen counseling and voluntary testing of the source individual. Disclosure of the HIV status of the source individual can be made with the express written consent of the protected individual, or a person authorized pursuant to law to consent to health care for the protected individual if such person lacks capacity to consent, or pursuant to court order, if the HIV status is not known to the exposed individual.

(a) appropriate medical follow-up of the exposed individual; and

(b) assurances for protection of confidentiality for those involved in reported exposures.

(j) An enhanced assisted living residence or a special needs assisted living residence shall provide, either directly or through contract, sufficient nursing staff to meet the health care needs of the residents. Nursing coverage requirements, at a minimum, include:

(1) a registered professional nurse on duty and on-site at the residence, for eight hours per day, five days a week, and a licensed practical nurse shall be on duty and onsite at the residence for eight hours per day for the remainder of such week;

(2) a registered professional nurse on call and available for consultation 24 hours a day, seven days a week, if not available onsite; and

(3) additional nursing coverage, as determined necessary and documented by the resident's medical evaluation or otherwise by the resident's attending physician and/or the ISP.

(k) An applicant for, or operator of, an enhanced assisted living residence or special needs assisted living residence with 40 or fewer operational beds may submit to the Department a written request for a waiver of the minimum requirements for nursing coverage set forth in paragraph (1) of subdivision (j) of this section. This subdivision (k) will apply to such requests, in place of subdivision (e) of section 1001.6 of this Part. Such waiver request must contain the following:

(1) documentation acceptable to the Department that either

(i) the applicant or operator is unable to meet such minimum requirements; or

(ii) the current needs of the residents can be appropriately and safely met with coverage that is less than or otherwise different from the minimum requirements; and

(2) a description acceptable to the Department of what will be done by the operator to protect the health, safety and well-being of the residents, and specifically how the nursing needs of the residents will be addressed, in accordance with the medical evaluations and ISPs of the residents; and

(3) documentation acceptable to the department that the operator will include in its disclosure statements provided to prospective residents, residents and their representatives the details of any such waiver of the minimum nursing coverage requirements, if approved by the Department; and

(4) acknowledgment that the operator will be required to comply with paragraphs (3) and (4) of subdivision (j) of this section.

(l) The Department will review each such waiver request submitted pursuant to subdivision (k) on a case by case basis, and may approve a waiver request to the extent and for the duration it deems appropriate, in accordance with the provisions of this section. No waiver request may be implemented by the operator unless or until it receives written approval from the Department. Before granting a waiver request the Department may require additional information and may require that the operator adopt special methods or procedures to protect resident health and safety. The Department may grant written approval to such waiver request only after making a determination that the proposed waiver will not adversely affect the health, safety and well-being of residents.

(m) A licensed nurse assuming nursing coverage responsibilities in an enhanced assisted living residence or special needs assisted living residence as specified in subdivision (j) of this section may also provide:

- (i) case management services as specified in subdivision (c) of this section, or
- (ii) serve as administrator, so long as the nursing care needs and case management needs of the residents, and the administration needs of the residence, are adequately met.

(n) At any time in which a registered professional nurse is not on duty and on-site at an enhanced assisted living residence or a special needs assisted living residence, the operator shall provide at a minimum directly or through contract, sufficient home health aide staff to meet the care needs of the residents. In addition to the training required in section 700.2 of this Title, such home health aides shall receive training in first aid and medication assistance as specified by the Department, and shall be thoroughly oriented to procedures to be followed in emergency situations, as approved by the Department.

(o) An enhanced assisted living residence or a special needs assisted living residence may employ or contract for appropriately trained personnel with professional licenses and registrations, as applicable, to provide health care services directly.

(p) Home health aides in an enhanced assisted living residence or a special needs assisted living residence must be trained as specified in section 700.2 of this Title and receive 12 hours of in-service education annually in topics relevant to their responsibilities.

(q) In addition to the assessed and documented health status of all new personnel required pursuant to subdivision (d) of this section, the operator shall maintain a record of the following tests for direct care staff of an enhanced assisted living residence or a special needs assisted living residence:

(i) a certificate of immunization against rubella;

(ii) a certificate of immunization against measles for all personnel born on or after January 1, 1957;

(iii) a written statement, if applicable from any licensed physician, physician assistant, special assistant, licensed midwife or nurse practitioner, which certifies that immunization with measles and/or rubella vaccine may be detrimental to the person's health. The requirements of subparagraphs (i) and (ii) of this paragraph relating to measles and/or rubella immunizations shall be inapplicable until such immunization is found no longer to be detrimental to such person's health. The nature and duration of the medical exemption must be stated in the individual's personnel record and must be in accordance with generally accepted medical standards (for example, the recommendations of the Immunization Practices Advisory Committee of the U.S. Department of Health and Human Services); and

(iv) tuberculin skin test or whole blood assay for tuberculosis screening prior to assuming patient care duties and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow up but no repeat skin test. The residence shall develop and implement policies regarding follow up of positive test results.

#### 1001.12 Records and Reports.

(a) The operator must collect and maintain such information, records or reports as determined by the Department to be necessary including those records set forth in Parts 485, 487 and 488 of Subchapter D of this Title.

(b) The operator must maintain complete, accurate and current personal records for each resident which must be available for review and inspection by Department staff or designees and which contain at a minimum:

(1) personal data, including identification of the resident's next of kin, family or resident's representative, legal representative, if any, and the name and address of the person or persons to be contacted in the event of an emergency;

(2) medical evaluations and other medical information;

(3) health care proxy or other advance directives, if applicable;

(4) pre-admission evaluation and subsequent functional and social evaluations;

(5) individualized service plans;

(6) medication assistance record; and

(7) case management notes which include details of referrals, service coordination and such other correspondence and papers as are available to document the activities undertaken to meet the resident's needs.

(c) The operator must maintain complete, accurate and current program records which document operation and maintenance of the assisted living residence with applicable law and regulations, including but not limited to:

(1) a chronological admission and discharge register consisting of a listing of residents separately identified as registered in and discharged from the assisted living residence, enhanced assisted living residence and special needs assisted living residence by name, age, sex, and place or level of care from or to which the resident is registered or discharged;

(2) a record of any complaints, actions taken to address the complaint and complaint resolution outcome;

(3) a personnel record for each employee which includes, as appropriate, records of professional licenses and registrations; verifications of employment history and qualifications for the duties assigned; signed and dated applications for employment; records of physical examinations and health status assessments; performance evaluations; dates of employment, resignations, dismissals, and other pertinent data, provided that all documentation and information pertaining to an employee's medical condition or health status, including such records of physical examinations and health status assessments shall be maintained separate and apart from the non-medical personnel record information and shall be afforded the same confidential treatment given personal records of residents, and provided that the operator shall have access to such personnel records for all staff of contractors who provide services to residents; and

(4) copies of all approved waivers and notifications to the Department of adoption of regulation equivalencies.



(d) The operator must maintain daily census reports at the residence that specify the names of all residents in each level of licensed and/or certified care, and the room location of each resident. The operator must submit annually to the Department a census report for assisted living residents, enhanced assisted living residents and special needs assisted living residents.

(e) The operator must submit to the Department an annual financial report consistent with the requirements for adult homes and enriched housing programs in accordance with sections 487.10 and 488.10 of Title 18 of the NYCRR; provided, however, that such financial report shall clearly set forth financial information pertaining to the assisted living residence, enhanced assisted living residence and special needs assisted living residence.

#### 1001.13 Structural and Environmental Standards.

(a) An operator of an assisted living residence must comply with the following standards in addition to the applicable standards contained in sections 487.11, 488.11 and, if applicable, 494.7 of Title 18 of the NYCRR, as well as any other regulation applicable to assisted living residences, adult homes or enriched housing programs adopted subsequent to the date of adoption of this section.

##### (b) Existing Structures.

(1) Buildings which have both Part 1 and architectural approval pursuant to section 485.6 of 18 NYCRR and for which construction commenced prior to the date of adoption of this Part, and for which certificates of occupancy have been issued, or for which occupancy has been locally approved but which are not yet occupied on such date, or were licensed as an adult home or enriched housing program prior to such date, will be considered existing structures. The Department reserves the right to re-examine the adequacy of life and fire safety features in

existing licensed structures should it be determined that codes, rules and regulations that were applicable to the structure at the time of licensure are not met.

(2) An existing building that is not currently licensed as an enriched housing program or adult home and is seeking to be licensed as an ALR, Enhanced ALR or Special Needs ALR shall meet all applicable structural and environmental requirements currently in effect for either an enriched housing program or an adult home, as applicable.

(3) In situations where a certificate of occupancy reflecting currently applied occupancy group designation for an enriched housing program or an adult home is not available or attainable from the local authority having jurisdiction, but there is a valid certificate of occupancy in place for the building, the Department will accept an architect's or engineer's letter of certification signed by a registered architect (RA) or professional engineer (PE) certifying that the building under consideration meets all applicable codes, rules and regulations.

(4) In addition to meeting the requirements set forth in subparagraph (2) above, a building used by the operator of an ALR, Enhanced ALR or Special Needs ALR must comply with the following fire safety features.

(i) An automatic sprinkler system throughout the building.

(a) An ALR with 5 to 16 beds shall have a NFPA 13R or NFPA 13 automatic sprinkler system installed.

(b) An ALR with 17 or more beds, and an Enhanced ALR or Special Needs ALR of any size, shall have a NFPA 13 automatic sprinkler system installed.

(ii) A supervised smoke-detection system throughout the building, including all bedrooms.

(iii) Fire protection systems directly connected to the local fire Department, or to a

24-hour attended central station.

(iv) Handrails on both sides of all resident-use corridors and stairways.

(v) A centralized emergency call-system in all bedrooms easily reachable from bedside and in all resident-use toilet and bathing areas, easily reachable from each fixture.

(5) A building used by the operator of an Enhanced ALR or Special Needs ALR must, in addition, comply with the following sixth safety feature:

(i) Buildings with a capacity of 17 or more residents shall have smoke barriers to divide each floor into at least two smoke compartments, neither of which shall have corridors exceeding 100 feet in length. For the purposes of this Part, a smoke barrier means a continuous fire-rated partition or wall, extending from one exterior wall to another exterior wall, with all openings (doorways, etc.) protected with fire-rated and smoke-tight doors equipped with appropriate hardware.

(c) New Structures.

(1) A new building constructed as an ALR, Special Needs ALR or Enhanced ALR shall meet the applicable structural and environmental requirements currently in effect for a new enriched housing program or an adult home. A new building shall be any building for which construction is commenced after the date of adoption of this Part.

(2) New Buildings will also be required to meet the five safety features referenced in subparagraph (b)(3) of this section. Enhanced ALRs and Special Needs ALRs with capacities of 17 or more beds shall also meet the additional sixth safety feature referenced above in subparagraph (b)(4) of this section.

(3) New buildings, except for buildings in New York City, are subject to the New York State Building Code, Occupancy Group I-1. Residences with 5-16 beds may comply with Occupancy Group R-4 as an alternative to I-1.

(4) New buildings in New York City are subject to New York City Building Code, Occupancy Group J-2.

(d) The following additional standards will apply to every ALR, Enhanced ALR and Special Needs ALR:

(1) All bedrooms shall be limited to single or double occupancy.

(2) Minimum corridor widths shall be 60 inches.

(3) Minimum door widths shall be 32 inches to assure wheelchair accessibility.

(e) An applicant for initial licensure or certification for, or an approved operator of, an ALR, Enhanced ALR or Special Needs ALR may submit to the Department a written request for Department approval of an alternate method of assuring resident welfare and safety. The request should describe how the alternative would meet the intended purpose of the particular safety feature. Proposals will also be accepted that phase in modification to permit a facility to meet these standards over a specified period of time. The Department will review such requests on a case-by-case basis, considering the various facts and circumstances presented, consistent with law applicable to assisted living residences and adult care facilities. Such review will include but not be limited to the following: documentation by architects, local code enforcement and/or fire/safety officials supporting the contention that the proposed alternative will meet the intended safety outcome of the particular feature; staffing availability in the event of evacuation; the proposed timeframe for the applicant to come into conformance with the specified safety features; documentation of hardship to the applicant if the safety features were to be included;

the fiscal impact of adding the safety features; the compliance record of the applicant; and any other information applicants wish to submit.

#### 1001.14 Disaster and Emergency Planning.

(a) Operators of assisted living residences that are adult homes must maintain compliance with the disaster and emergency planning requirements stated at 18 NYCRR section 487.12.

(b) Operators of assisted living residences that are enriched housing programs must maintain compliance with the disaster and emergency planning requirements stated at 18 NYCRR section 488.12.

(c) Emergency plans and procedures must include an evacuation plan to address any emergency situation that necessitates full or partial evacuation.

(d) Emergency plans and procedures must explicitly address the coordination and allocation of roles and responsibilities between assisted living residence employees and the employees of each home care services agency that has admitted a resident of the assisted living residence. The assisted living residence must maintain documentation that all assisted living residence employees, and all home care services agency employees, and their supervisors, who provide services to residents, are familiar with and understand their roles and responsibilities in the event of a disaster or emergency.

(e) Operators of assisted living residences shall obtain from the Department's Health Provider Network (HPN) an HPN account, if the operator does not already have one by virtue of operating an adult home or enriched housing program. Operators shall maintain

compliance with all of the provisions of sections 487.12(k) and 488.12(k) of Title 18 NYCRR for adult homes and enriched housing programs, respectively.

(f) Operators of residences with enhanced assisted living certification must update the written disaster and emergency plan at least twice a year, and periodically, but at least annually, review the written plan with existing staff.

#### 1001.15 Inspection and Enforcement.

(a) Unless otherwise specified in this section, an operator of an assisted living residence shall be subject to the inspection and enforcement authority, standards and remedies of Part 486 of Title 18 NYCRR, and Social Services Law sections 460-c, 460-d, 461-a and 461-f, both with respect to the operation of the residence in compliance with the provisions of Public Health Law Article 46-B and of Part 1001 of this Title, and the operation of an adult home or enriched housing program in compliance with the provisions of Social Services Law Article 7 and of sections 485, 486, 487, 488, 492 through 494 of Title 18 of NYCRR.

(b) The Commissioner is authorized to receive and investigate complaints regarding the condition, operation and quality of care of any entities holding themselves out as assisted living or advertising themselves by a similar term.

(c) The Commissioner is authorized to make necessary investigations to procure information to implement the provisions of this Part.

(d) Inspection of Unlicensed Facilities.

(1) For the purposes of assessing whether an unlicensed facility is an assisted living residence subject to the licensure and inspection of the Department, the Department may inspect any facility which reasonably appears to the Department to be an assisted living residence. The

needs of the residents, the care and services provided, the physical plant and the administration of the facility may be assessed in accordance with applicable statute and regulation.

(2) 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.

(3) 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 or administrator, to the Supreme Court in the county in which the facility is located for an order granting the Department access to such facility.

(e) No civil penalty shall be assessed, and no operating certificate shall be revoked, suspended or limited, without opportunity for a hearing held in accordance with the procedures established in Part 493 of 18 NYCRR; provided, however, that 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 a hearing to begin during the suspension period, in a proceeding to suspend, revoke or limit the operating certificate, the temporary suspension will remain in effect until the hearing decision is issued.

(f) Schedule of Penalties.

(1) Civil penalties for licensed assisted living residences. Civil penalties of up to \$1,000 per day may be assessed against assisted living residences, 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 for unlicensed assisted living residences. Civil penalties of up to \$1,000 per day may be assessed against any facility: (i) which is an assisted living residence and which does not possess a valid operating certificate issued by the Department; (ii) which permits aging in place and which would require an enhanced assisted living certificate but which does not possess such certificate; or (iii) which, whether or not it is serving residents, advertises or markets itself as serving individuals with special needs, but which does not possess a special needs assisted living certificate.

#### 1001.16 Contracts.

(a) In the event that an operator contracts with a separate entity to perform any aspect of the residence's operation or management, the provisions of section 485.10 of Title 18 of the NYCRR will apply. In addition, the operator must comply with the provisions of this section.

(b) Management contracts.

(1) For purposes of this Part, a management contract is an agreement between the operator and a management entity for the purpose of managing the day-to-day operations of a residence or any part thereof, subject to the direction and supervision of the operator. The following shall not be considered management contracts:

- (i) a contract solely for the provision of professional or other services;
- (ii) an employment contract; or



(iii) a contract for the provision of administrative, consulting or support services if all of the following factors are present:

(a) the residence's operator retains responsibility for the day-to-day operations of the residence;

(b) the contracting entity has no authority to hire or fire any personnel working in the residence;

(c) the contracting entity does not exercise control of the books and records of the residence;

(d) the contracting entity has no authority to dispose of assets or to incur any liability on behalf of the residence; and

(e) the contracting entity has no authority to adopt or enforce policies regarding the operation of the residence.

(2) An operator may enter into a management contract if the requirements of this section are met. A management contract shall be effective only with the prior written consent of the Department. Management contracts shall include the following:

(i) a description of the proposed roles of the operator and managing entity during the period of the proposed management contract. The description shall clearly reflect retention by the operator of ongoing responsibility for compliance with all statutory and regulation requirements;

(ii) the method and amount of payment, expressed as a flat fee or, notwithstanding §1001.4(q)(4) of this Part, a percentage, for management services provided to the assisted living residence;

(iii) a provision which recognizes clearly that the responsibilities of the operator are in no way lessened by entering into the management contract, that the operator retains full legal authority over the operation of the residence, and that any powers not delegated specifically to the managing entity through the provisions of the contract remain with the operator.

(iv) provisions stating that, notwithstanding any other provision of the contract, the operator retains:

(a) direct, independent authority to hire or discharge any person working in the residence;

(b) independent control of the residence's books and records;

(c) independent authority over the disposition of assets and the independent authority to incur liability on behalf of the residence;

(d) independent authority for the adoption and enforcement of policies affecting the delivery of services;

(e) independent approval of residence operating and capital budgets;

(f) independent approval of certificate of need applications filed by or on behalf of the residence;

(g) independent approval of residence contracts for home care or clinical services;

(h) independent approval of settlements of administrative proceedings or litigation to which the residence is party;

(i) its name on all residency agreements and disclosures entered into pursuant to this

Part; and

(j) beneficial and legal control of any accounts relating to the operation of the residence.

(v) an express representation that any management contract approved by the Department is the sole agreement between the operator and the managing entity for the purpose of managing

the day-to-day activities of the residence and that any amendments or revisions to the management contract which increase the amount or extent of authority delegated to the managing entity shall be effective only with the prior written consent of the Department.

(3) The operator shall retain sufficient authority and control to discharge its responsibilities under this Part. The following elements of control shall not be delegated to a managing entity:

(i) direct independent authority to hire and discharge any person working in the residence;

(ii) independent control of the residence's books and records;

(iii) independent authority over the disposition of assets and the independent authority to incur liability on behalf of the residence;

(iv) independent authority for the adoption and enforcement of policies affecting the delivery of services;

(v) independent approval of residence operating and capital budgets;

(vi) independent approval of resident contracts for home care or clinical services;

(vii) independent approval of settlements of administrative proceedings or litigation to which the residence is party;

(viii) the right to have other than the operator's name on residency agreements or disclosures as the licensed operator of the residence; and

(ix) beneficial and legal control of any accounts relating to the operation of the residence.

(4) The operator may use the Model Management Contract developed by the Department in consultation with appropriate stakeholders; provided, however, that the development of such

model agreement shall not be a prerequisite for the implementation of the provisions of this section.

(5) An operator wishing to enter into a management contract shall submit a proposed written contract to the Department, at least 60 days prior to the intended effective date, unless a shorter period is approved in writing by the Department, due to extraordinary circumstances. In addition, the operator shall also submit, within the same timeframe, the following:

- (i) documentation demonstrating that the proposed managing entity holds all necessary approvals to do business in New York State;
- (ii) evidence of the managing entity's financial stability; and
- (iii) information necessary to determine that the character and competence of the proposed managing authority, and its principals, members, officers and directors, is satisfactory, including evidence that all facilities it has managed in any jurisdiction have provided a substantially consistent high level of care in accordance with section 485.6 of Title 18 of NYCRR, during the term of their management contract or operating certificate.

(6) During the period between an operator's submission of a request for initial approval of a management contract and disposition of that request, an operator may not enter into any arrangement for management contract services other than a written interim consultative agreement with the proposed managing entity. Any interim agreement shall be consistent with the provisions of this section and shall be submitted to the Department no later than five days after its effective date.

(7) The term of a management contract shall be limited to five years and may be renewed for additional periods not to exceed five years only when authorized by the Department. The Department may approve a request for renewal provided that compliance with this section is

demonstrated and that the quality of care provided by the facility during the term of the contract has been maintained or has improved.

(8) The Department shall provide a written response to a submitted proposed management agreement within 90 days of such submission, provided the Department has received all information necessary for its review of such proposed agreement.

(9) A contract for which the request for renewal has been submitted to the Department at least 60 days prior to its expiration may be extended on an interim basis until the Department approves or disapproves the request for renewal.

(10) Once a management contract has been approved by the Department, any subsequent proposed substantive change to such agreement relative to powers delegated, management fees, the term of the agreement, and any change in the management entity or its principals must receive the prior written approval of the Department.

(c) The Department may direct an assisted living residence operator to terminate a management agreement should the residence provide a severe and persistent substandard level of care as demonstrated by non-compliance with the provisions of this Part.