

**Title:** Part **488** - ADULT CARE FACILITIES STANDARDS FOR ENRICHED HOUSING

**PART 488**

**ADULT CARE FACILITIES**

**STANDARDS FOR ENRICHED HOUSING**

(Statutory authority: Social Services Law, Sections 20(3)(d), 34(3)(f),

131-o, 460--460-g, 461--461[i])

Sec.

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Section **488.1** Applicability. (a) This Part applies to enriched housing programs as defined herein.

(b) Parts 485 and 486 of this Title apply to enriched housing programs, except as specifically limited in this Part.

(c) This Part does not apply to any housing projects established pursuant to the Private Housing Finance Law, the Public Housing Law, the former Membership Corporations Law or the Not-for-Profit Corporation Law except for those distinct programs operated by such projects which provide an organized program of supervision or personal care and as such are approved and certified by the department.

(d) Any person, partnership, corporation, organization, agency, government unit, or other entity which operates an enriched housing program is subject to the jurisdiction of the department and must comply with requirements of this Part or cease operation unless such requirements are waived pursuant to section **488.3(f)** of this Part.

**488.2** Definitions. (a) An enriched housing program means an adult care facility established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons 65 years of age or older, in community-integrated settings resembling independent housing units. Such programs must provide or arrange for the provision of room, and provide board, housekeeping, personal care and supervision.

(b) For the purposes of this Part an enriched housing program will be considered to be serving persons primarily 65 years of age or older if no more than 25 percent of the residents are under 65 years of age and each resident is at least 55 years of age.

**488.3** General provisions. (a) The operator of an enriched housing program must provide, through its employees and agents, an organized program of supervision, care, and services which:

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

(2) assures the protection of resident rights; and

- (3) promotes the social, physical and mental well-being of the residents.
- (b) The operator must operate and maintain the enriched housing program in compliance with the regulations of the department and with applicable statutes and regulations of other State agencies and local governmental jurisdictions.
- (c) Nothing contained within this Part, or Parts 485 and 486 of this Title, prohibits an operator from exceeding the requirements of this Part.
- (d) An operator must afford any officers, duly authorized employees or agents of the department access at any time to the residents, grounds, and buildings and any records relating to resident care and services.
- (e) The operator of an enriched housing program issued an operating certificate by the department must maintain, make available for inspection and submit such statistical, financial or other information, records or reports, relating to the enriched housing program as the department may require.
- (f) Waivers. (1) Upon request by the operator, the department may waive nonstatutory requirements of this Part and may permit an operator to establish another method of achieving the intended outcome of the waived regulation.
- (2) An operator must request and receive written approval from the department prior to instituting any alternative to the requirements of this Part. Applications for waivers must be submitted in writing to the appropriate regional office of the department and must include:
- (i) the specific regulations for which a waiver is sought;
  - (ii) the reasons the waiver is necessary; and
  - (iii) a description of what will be done to achieve or maintain the intended outcome of the regulations and to protect the health, safety and well-being of the residents.
- (3) The department may require that the operator make physical plant modifications or adopt special methods or procedures to protect resident health and safety and will grant written approval of an application for a waiver only upon determining that the proposed waiver will not adversely affect the health, safety and well-being of residents.
- (4) The department must make a determination on a request for waiver within 90 days of receipt of all required information from the operator.
- (5) Failure to adhere to the terms of the approved waiver will result in rescission of the approval and imposition of penalties for the applicable regulation which is being violated.

**488.4** Admission and retention standards. (a) An operator may admit, retain and care for only those individuals who require the services the operator is certified to provide.

- (b) An operator must not accept nor retain any person who:
- (1) needs continual medical or nursing care or supervision as provided by an acute care facility or a residential health care facility certified by the Department of Health;
  - (2) suffers from a serious and persistent mental disability sufficient to warrant placement in an acute care or residential treatment facility operated or certified by an office of the Department of Mental Hygiene;
  - (3) requires health, mental health, or other services which cannot be provided by local service agencies;
  - (4) causes, or is likely to cause, a danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care, or safety of the resident or other residents or which substantially interferes with the orderly operation of the enriched housing program;

(6) requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purpose of reporting on a medical condition to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such refusal or inability causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

(9) is chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer;

(10) is chronically in need of the physical assistance of another person in order to walk;

(11) is chronically in need of the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;

(12) has chronic unmanaged urinary or bowel incontinence;

(13) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

(14) is dependent on medical equipment unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his/her room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) assistance in the use or maintenance of the equipment, if needed, is available from local social services agencies or approved community resources;

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

(15) has chronic personal care needs which cannot be met by enriched housing staff or approved community providers;

(16) is not self-directing; i.e., requires continuous supervision and is not capable of making choices about his/her activities of daily living; or

(17) engages in alcohol or drug use which results in aggressive or destructive behavior.

(c) An operator must not admit nor retain persons in excess of the capacity specified on the operating certificate.

(d) An operator must not admit nor retain an individual without a determination being made that the enriched housing program can support the physical and social needs of the resident. Such determination must be based upon:

(1) a medical evaluation (DSS-3122 or an approved substitute) written and signed by a physician, which includes:

(i) 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 and assistance needed in the activities of daily living;

(ii) a statement that a resident is medically or mentally suited for care in the enriched housing program;

(iii) a statement that the resident does not require placement in a hospital or residential health care facility; and

(iv) a dated statement indicating that the physician has physically examined the resident within 30 days prior to the date of admission, or for required annual evaluations within 30 days prior to the date of the report.

(2) an interview between the enriched housing program coordinator, or a designee responsible for admission and retention decisions and the resident and his/her representative(s), if any. Each applicant interview must:

(i) include an explanation of the conditions of residency including, but not limited to, the admission agreement, resident rights and responsibilities, enriched housing program rules and regulations and the personal allowance protections available to Supplemental Security Income or Home Relief recipients;

(ii) ascertain that the enriched housing program can:

(a) meet the physical needs and personal care needs of the resident, including dietary needs occasioned by cultural or religious practice or preference or medical prescription; and

(b) meet the psycho-social needs of the resident.

(iii) be summarized in writing, including the date of the interview and identification of those present.

(3) a mental health evaluation if a proposed resident has a known history of chronic mental disability, or the medical evaluation or resident interview suggests the existence of such a disability. Such evaluation must be a written and signed report from a psychiatrist, physician, registered nurse, certified psychologist or certified social worker who has experience in the assessment and treatment of mental illness, which includes:

(i) a significant mental health history and current conditions;

(ii) a statement that the resident is mentally suited for care in the enriched housing program;

(iii) a statement that the resident does not evidence need for placement in a hospital or residential treatment facility;

(iv) a dated statement indicating that the person signing the report has conducted a face-to-face examination of the resident dated within 30 days prior to admission.

(4) a functional assessment completed on a form prescribed or approved by the department. Each functional assessment must be a written report prepared by the program coordinator, case manager, or consultant registered nurse and must address:

(i) personal activities of daily living;

(ii) instrumental activities of daily living;

(iii) sensory impairments;

(iv) behavioral characteristics;

(v) personality characteristics; and

(vi) daily habits.

(e) The following assessments must be conducted whenever a change in a resident's condition warrants and no less than once every 12 months:

(1) a medical assessment;

(2) a mental health evaluation, if needed; and

(3) a functional assessment.

(f) The operator must assist an applicant in obtaining any required evaluations.

(g) The operator must assist a resident who cannot be retained because of the presence of one or more of the conditions set forth in subdivision (b) of this section to find an alternative placement and must document such assistance.

(h) Notwithstanding subdivision (d) of this section, medical evaluations need not be required of a competent adult who relies upon or is being furnished treatment by spiritual means through prayer, in lieu of medical treatment, in accordance with the tenets and practices of a recognized church or religious denomination of which the resident is a member or a bona fide adherent. In such cases the operator must:

(1) require documentation of the resident's standing as a member; and

(2) adhere to the admission and retention standards set forth in subdivision (b) of this section.

(i) The operator must not admit nor accept for return an individual directly from a general or special hospital, psychiatric center, developmental center, skilled nursing or health-related facility without a signed statement from the referral source which details significant medical conditions, prescribed health or mental health regimens and such psycho-social information as may be available to help the operator plan an adequate level of care for the resident. This statement may substitute for the medical and mental health evaluations or functional assessment if the requirements of subdivision (d)(1), (3) and (4) of this section are met.

(j) The operator must give each applicant at or prior to the admissions interview copies of:

(1) the admission agreement;

(2) the statement of resident rights;

(3) the enriched housing program rules, if any, relating to resident activities, office and visiting hours and other pertinent information concerning the operation of the program;

(4) a fact sheet about the Long-Term Ombudsman Program, if made available by the program; and

(5) the listing of legal services or advocacy agencies made available to the program by the department.

(k) The operator must provide to each applicant for admission and to the applicant's representative, if any, an opportunity to review the most recent inspection report issued by the department to the enriched housing program.

(1) If the applicant or resident is sight-impaired or hearing-impaired or otherwise unable to comprehend English or printed matter, the operator must arrange for the conduct of the required admission interview and transmission of the contents of the admission agreement, the statement of rights and responsibilities and enriched housing information in a manner comprehensible to the applicant.

**488.5 Resident protections.** (a) Residents rights. (1) Each operator must adopt a statement of rights and responsibilities of residents and treat each resident in accord with the principles contained in the statement.

(2) A copy of the statement of rights issued by the department must be provided to each resident.

(3) The following rights and protections must be afforded by the operator to each resident. Each resident has the right:

(i) to receive courteous, fair and respectful care and treatment, and not be physically, mentally or emotionally abused or neglected in any manner;

(ii) to exercise his/her civil rights and religious liberties, and to make personal decisions, including choice of physician, and to have the assistance and encouragement of the operator in exercising these rights and liberties;

(iii) to have private written and verbal communications or visits with anyone of the resident's choice, or to deny or end such communications or visits;

(iv) to send and receive mail or any correspondence unopened and without interception or interference;

(v) to present grievances or recommendations on his/her own behalf or the behalf of other residents to the program coordinator or staff, the Department of Social Services, other government officials, or any other parties without fear of reprisal or punishment;

(vi) to join other residents or individuals inside or outside the enriched housing program to work for improvements in resident care;

(vii) to confidential treatment of personal, social, financial and health records;

(viii) to have privacy in treatment and in caring for personal needs;

(ix) to receive a written statement (admission agreement) of the services regularly provided by the operator, those additional services which will be provided if needed or requested and the charges (if any) of these additional services;

(x) to manage his/her own financial affairs;

(xi) to not be coerced or required to perform the work of staff members or contractual work, and if the resident works, to receive fair compensation from the operator;

(xii) to have security for any personal possessions if stored by the operator;

(xiii) to have recorded on the program's accident or incident report the resident's version of the events leading to the accident or incident; and

(xiv) to object if the operator terminates the resident's admission agreement against his/her will.

(b) Grievances and recommendations. (1) The operator must:

(i) establish and maintain a system to receive and respond to grievances and recommendations for changes and improvements in the operation of an enriched program which are presented by residents; and

(ii) assist and enable residents to participate in planning for changes or improvements in enriched housing program operations and programs.

(2) The system referenced by paragraph (1) of this subdivision must include procedures for:

(i) confidential submission of grievances and recommendations, including identification of staff to whom grievances and recommendations may be made;

(ii) evaluation and the timely initiation of action or resolution which will protect the rights of those involved; and

(iii) informing residents of actions taken and resolutions of the grievances or recommendations.

(c) Admission agreements. (1) Each operator must execute with, and provide to, each resident at or prior to admission and periodically thereafter as changes necessitate, a written admission agreement, which constitutes the entire agreement of the parties and must contain at least the provisions required by paragraph (7) of this subdivision.

(2) The admission agreement must be dated and signed by the operator, the resident and, if appropriate, another person acting as an agent for the resident.

(3) The operator and resident must comply with all provisions of the admission agreement.

(4) Any modification or provision of the agreement which is not in compliance with law or regulation is null and void.

(5) Any waiver by the resident of any provision of the admission agreement required by law or regulation is null and void.

(6) The admission agreement must be printed in legible, easily-read type.

(7) The admission agreement must contain, at a minimum:

(i) the effective date of the agreement;

(ii) the due dates for payment;

(iii) a list of the services, material, equipment and food required by law or regulation to be provided to a resident;

(iv) the basic monthly, weekly or daily payment for services, material, equipment and food required by law or regulation to be provided to a resident;

(v) a detailed schedule of any other services, materials, equipment and food which the operator agrees to furnish and supply to the residents during the period of the admission agreement. Such schedule must include the basis for the charges for such supplemental services and supplies;

(vi) a guarantee that charges for supplemental services and supplies provided pursuant to subparagraph (v) of this paragraph must be made only at the resident's option and only for services and supplies actually provided to the resident;

(vii) the conditions and procedures under which the operator may adjust the basic monthly, weekly or daily rate or charges for supplemental services and supplies. Such adjustments may occur only:

(a) upon the express written approval and authority of the resident or his/her legal representative, if any; or

(b) in the event of an emergency which affects a resident, and then only if such additional charges are reasonable and necessary for services, material, equipment and food furnished and supplied to the resident during such emergency; or

(c) as a result of the provision of additional care, services or supplies, upon the express order of the primary physician of the resident; or

(d) upon the provision of 30 days written notice to the resident and his/her representative, if any, of additional

charges and expenses due to increased cost of maintenance and operation;

(viii) the actual rate charged the resident and accepted by the operator in satisfaction of the admission agreement;

(ix) a statement that neither the operator, program coordinator nor any employee or agent of the enriched housing program can accept any remuneration, or gratuity in any form for any services provided or arranged for as specified by statute, regulation or admission agreement;

(x) a list of any and all money, property or things of value given or promised to be given to the operator on admission or at any time, including any agreements made by third parties for payments for the benefit of a resident;

(xi) a statement that the operator offers to each resident who is a recipient of Supplemental Security Income (SSI) or Home Relief (HR) or representative payee, an opportunity to place funds for incidental use in an enriched housing program maintained resident account, and a statement to indicate resident and representative payee acceptance or rejection of this offer;

(xii) a statement that a signator other than the resident, who does not choose to place the resident's personal allowance funds in an enriched housing program maintained account, will comply with the Supplemental Security Income or Home Relief personal allowance requirement;

(xiii) the charge(s), which may not exceed the basic rate, to be levied for reserving a residential space in the event of temporary absence of the resident, and the length of time the reservation will apply;

(xiv) the terms, conditions and the time frames under which the resident or operator may terminate the occupancy;

(xv) the grounds under which the operator may terminate the admission agreement without the consent of the resident;

(xvi) the operator's obligation to:

(a) provide at least 30 days written notice to the resident, the resident's next of kin, and the person designated in the admission agreement as the responsible party, when the admission agreement is to be terminated, specifying the grounds for termination and date of discharge and advising that the resident has the right to object to, and contest, an involuntary termination;

(b) provide a list of free local legal services and advocacy resources, including the local social services district; and

(c) obtain prior court approval if the resident objects to the involuntary termination;

(xvii) provisions for a prorated refund of advance payments based on the rate, the actual days of residency, room reservation and the terms for notice;

(xviii) a guarantee that upon termination of the admission agreement, the resident or the resident's representative will receive a final written statement of his or her payment account and personal account and immediately receive any monies, property or things of value held in trust or in custody by the operator or which come into possession of the operator after discharge or transfer;

(xix) a statement that the resident agrees to provide the operator, prior to admission and at least every 12 months thereafter, a dated and signed medical evaluation which conforms to the requirements of section 488.4(d)(1)(i)-(iv) of this Part;

(xx) a statement that the resident agrees to inform the operator of changes in health status or medications, as they occur;

(xxi) a statement that the resident agrees to obey all reasonable rules of the enriched housing program and to respect the rights and property of the other residents; and

(xxii) a statement that waiver by a resident of any provision of the admission agreement is null and void.

(d) An operator must not enter into any contract or agreement with the resident or the resident's next of kin or sponsor for life care of the resident in the enriched housing program.

(e) Termination of admission agreements. (1) Every resident has the right to terminate his/her admission agreement.

(2) Where notice of termination has been given by the operator and the resident leaves voluntarily, it is not necessary for the operator to commence a special proceeding pursuant to paragraph (15) of this subdivision.

(3) No operator may terminate an admission agreement and involuntarily discharge a resident except for the following reasons:

(i) the resident requires continual medical or nursing care;

(ii) the resident requires services or supervision that cannot be provided or arranged for by the operator;

(iii) the resident's behavior poses imminent risk of death or imminent risk of serious physical harm to himself/herself or anyone else;

(iv) the resident fails to make timely payment for all authorized charges, expenses, and other assessments, if any, for services including use and occupancy of the premises, materials, equipment and food which the resident has agreed to pay pursuant to the resident's admission agreement;

(v) the resident repeatedly behaves in a manner that directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the enriched housing program;

(vi) the enriched housing program has had its operating certificate limited, revoked or temporarily suspended or the operator has voluntarily surrendered the operating certificate of the enriched housing program to the department; or

(vii) a receiver has been appointed pursuant to the provisions of section 461-f of the Social Services Law and is providing for the orderly transfer of all residents in the enriched housing program to other facilities or is making other provision for the resident's continued safety and care.

(4) If failure to make timely payment resulted from an interruption in the receipt by the resident of any public benefits to which he/she is entitled, no admission agreement may be involuntarily terminated unless the operator, during the 30-day notice period, assists the resident in obtaining such benefits, or any other available supplemental public benefits. Documented failure of the resident to cooperate with such efforts by the operator is considered evidence of assistance.

(5) In order to terminate the admission agreement of a resident and discharge him/her from the enriched housing program, the operator of an enriched housing program must give at least 30 days written notice, on a form prescribed by the department, to:

(i) the resident;

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

(iii) any person designated in the admission agreement as the responsible party other than next of kin, if any.

(6) The termination notice must indicate:

(i) the reason for termination;

(ii) the date of termination;

(iii) that the resident has the right to object to the termination of the agreement and the subsequent discharge; and

(iv) that if the resident does object, he/she may remain in the enriched housing program while the operator commences a special proceeding pursuant to paragraph (15) of this subdivision only until such time that the court finds in favor of the operator.

(7) In addition to the prescribed termination notice, the operator must furnish to the resident a list of agencies, including the Long-Term Care Ombudsman Program, which provide free legal services, and agencies engaged in resident advocacy services within the geographic vicinity of the enriched housing program. Such lists must be provided or approved by the department and must include names, addresses and telephone numbers of the advocacy program.

(8) A copy of the termination notice must be filed by the operator with the appropriate regional office of the department within five days after the notice is served upon the resident.

(9) Transfer of a resident may be arranged without 30 days notice under the following circumstances:

(i) when a resident develops a communicable disease, medical or mental conditions, or sustains an injury such that continual skilled medical and nursing services are required, arrangements must be made by the operator for appropriate professional evaluation and transfer to an appropriate facility; and

(ii) in the event that a resident's behavior poses an imminent risk of death or imminent risk of serious physical harm to himself/herself or others, the operator must arrange for transfer of the individual to an appropriate and safe location; in the event that a resident's behavior poses an imminent risk of death or serious physical harm to himself/herself or any other person, the operator should, whenever possible, seek the assistance of a peace officer, acting pursuant to the officer's special duties, or a police officer who is a member of an authorized police department or force or a sheriff's department, in transferring the resident to a safe location.

(10) When the basis for a transfer no longer exists, and the resident is deemed appropriate for placement in the enriched housing program, the operator must re-admit the resident, as long as the involuntary termination proceedings have not been completed.

(11) Transfer of a resident without notice of termination is not deemed a termination of the admission agreement. Such transfer does not relieve the operator from the requirement of proceeding, subsequent to the removal of the resident, to terminate the admission agreement.

(12) When the operator proceeds to terminate the admission agreement of a resident transferred without notice of termination, the operator must arrange for the written notice to be hand-delivered to the resident at the location to which he/she has been removed. If such hand-delivery is not possible, the notice must be given by any of the methods provided by law for personal service upon a natural person (section 308, Civil Practice Law and Rules).

(13) When a receiver has been appointed pursuant to the provisions of section 461-f of the Social Services Law and is providing for the orderly transfer of all residents in the enriched housing program to other facilities or is making other provisions for the residents' continued safety and care, the receiver may terminate admission agreements and arrange for the transfer of all residents to appropriate settings without regard to the notice and court review requirements of this subdivision.

(14) Except as described in paragraph (11) of this subdivision, a receiver must adhere to the requirements of this subdivision in any instance where termination of an admission agreement is not directly related to the closure of an enriched housing program.

(15) If the resident indicates to the operator within 30 days of receipt of notice that he/she objects to the termination of the agreement or if at the end of 30 days the resident remains in the enriched housing program, the operator must institute a special proceeding pursuant to section 461-h of the Social Services Law prior to termination and

discharge.

(16) While legal action is in progress, the operator must not:

- (i) seek to amend the admission agreement in effect as of the date of the notice of termination;
- (ii) fail to provide any of the care and services required by department regulations and the admission agreement; or
- (iii) engage in any action to intimidate or harass the resident.

(17) Both the resident and the operator are free to seek any judicial relief to which they may be entitled.

(18) The operator must assist any resident proposed to be transferred or discharged pursuant to this subdivision to the extent necessary to assure, whenever practicable, the resident's placement in care settings which are adequate, appropriate and consistent with the resident's wishes.

(19) In the event that an enriched housing resident holds a separate lease for the apartment he/she occupies, termination of the admission agreement does not constitute termination of the lease.

**488.6** Resident funds and valuables. (a) Funds. (1) The operator must issue a receipt to a resident for any funds received for:

- (i) payment of the facility rate;
- (ii) payment of appropriate supplemental charges;
- (iii) payment of funds owed to the operator by the resident;
- (iv) deposits to a personal allowance account established pursuant to section 485.12 of this Title;
- (v) any other funds held in custody for the resident; and
- (vi) any other funds received by the operator from the resident.

(2) An operator who receives any funds from a resident must issue a signed receipt to the resident which contains the following information:

- (i) the date of the receipt;
- (ii) the amount of funds received;
- (iii) the purpose of the transaction;
- (iv) the name of the resident; and
- (v) the signature of the person receiving the funds.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, an operator may establish a system other than individual receipts to document the exchange of funds for incidental shopping done for a resident. Such a system must have the prior written approval of the department.

(4) Resident personal allowance accounts or other resident personal funds must not be mingled with the personal funds of the operator or the operating funds of the facility, or become an asset of the operator.

(5) Personal allowance accounts and accounts for other resident personal funds must be separate and distinct from

each other and from any other accounts.

(6) Upon change of operator, the current operator must transfer all records to the proposed operator and provide the proposed operator with a written statement of all resident personal allowance accounts, and other resident accounts held in custody for the residents. This statement must document that the balance being transferred in each resident account is true and accurate as of the date of the proposed transfer, and must be confirmed by resident signature(s).

(7) Upon change of operator, the new operator must assume, in writing, responsibility for account balances of funds of residents turned over upon the change of operator, together with responsibility for all requirements of this section.

(8) Records of all transactions must be maintained as part of the enriched housing program records.

(b) Personal allowance. (1) Each resident who is receiving Supplemental Security Income (SSI) or Home Relief (HR) benefits, and who is entitled to a monthly personal allowance by section 131-o of the Social Services Law or section 352.8(c) of this Title, must receive that allowance in accordance with the requirements of section 485.12 of this Title and subdivision (c) of this section.

(2) In the event that the resident negotiates the full SSI or HR check to the operator, distribution of the personal allowance must be made to the resident within two banking days of the transaction.

(3) The operator must obtain written acknowledgement monthly from each resident, confirming receipt of his/her personal allowance.

(c) Personal allowance accounts. (1) At the time of admission and at the time of the first increase in the personal allowance occurring in any calendar year, the operator must in writing, offer an SSI or HR recipient or the recipient's representative, if any, an opportunity to place personal allowance funds for incidental use in an enriched housing program maintained account.

(2) The operator must provide for the safekeeping and accountability of a personal allowance account.

(3) The operator must hold personal allowance funds in custody for the sole use of the resident and must not use these funds for any other purpose.

(4) No service fee shall be charged by the operator for maintaining a personal allowance account for a resident who is in receipt of SSI or HR.

(5) Residents must have access to personal allowance accounts at least four hours a day, daily, except Saturdays, Sundays, and legal holidays. The access schedule must be posted and may not be changed without five days advance notice.

(6) Upon request, each resident must have the opportunity, during scheduled access hours, to examine his/her personal allowance account record including deposits, withdrawals and current balance.

(7) If the operator deposits resident personal allowance funds in individual or collective interest-bearing bank accounts, the operator must develop a written procedure for the equitable distribution of interest to each resident's account. Such distribution must be made quarterly.

(8) The operator must maintain individual records for each resident who has a personal allowance account, showing all deposits, withdrawals and the current balance.

(9) The operator must document all personal allowance transactions on department form (DSS-2854), Personal Allowance Ledger, and maintain all paid bills, vouchers and other appropriate payment and receipt documentation in the manner prescribed by the department.

(10) The operator must reconcile personal allowance account balances to the total personal allowance funds maintained by the enriched housing program at least monthly. The reconciliation requirement must be met by

maintaining a Personal Allowance Summary (DSS-2855).

(11) No alternative system of recordkeeping for resident personal allowance accounts may be substituted for the above without the prior written consent of the department.

(12) At least quarterly, the operator must give each resident who has a personal allowance account, a statement showing total deposits, withdrawals and current balance of the resident's account and secure the resident's acknowledgement in writing, of the accuracy of the statement.

(13) The operator must not require a resident to maintain a personal allowance account at the facility.

(14) The operator is not required to maintain any personal allowance account in amounts in excess of the SSI resource limit.

(15) The resident may terminate the personal allowance account at any time.

(d) Other funds held in custody. (1) The operator may offer an SSI or HR recipient or any other resident the opportunity to place funds, other than personal allowance funds provided pursuant to section 485.12 of this Title, in the operator's custody.

(2) Such funds must not be mingled with any personal allowance funds maintained pursuant to subdivision (b) of this section.

(3) The operator must maintain records and provide for the security of all funds which the resident has voluntarily given to the operator and the operator has voluntarily accepted to hold in his or her custody or to exercise control over.

(4) The operator must obtain written authorization from the resident to hold the resident's funds.

(5) Records of all transactions must be maintained as part of the enriched housing program records.

(e) Resident property and valuables. (1) The operator may offer a resident the opportunity to place property or items of value in the operator's custody.

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

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

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

(5) Records of all transactions must be maintained as part of the enriched housing program records.

(f) Return of resident funds and valuables. (1) At the time of discharge or termination of the admission agreement but in no case more than three business days after the resident leaves the enriched housing program, the operator must provide the resident or the resident's representative with:

(i) a final written accounting of the resident's payment and personal fund accounts;

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

(iii) any property or things of value held in trust or in custody by the operator.

(2) The operator must refund, in accordance with the admission agreement, any advance payment(s) made by the

resident.

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

(4) Upon the death of a resident, the operator must contact the next of kin or legal representative and arrange for the transfer of all property of the individual. When the whereabouts of the next of kin or legal representative are unknown, the operator must contact the appropriate surrogate's court to arrange for the transfer of the property.

**488.7** Resident services. (a) The operator will be responsible for the provision of resident services, which will include, at a minimum, supervision, personal care, case management, activities, housekeeping and food service as defined in this section and section **488.8** of this Part.

(b) Supervision. (1) Supervision includes:

(i) knowledge of the general whereabouts of each resident;

(ii) identification of abrupt or progressive changes in behavior or health status of each resident;

(iii) assistance to and encouragement of residents in performing basic activities of daily living including:

(a) appropriate nutritional intake;

(b) personal hygiene;

(c) participation in enriched housing program and community programs; and

(d) basic money management.

(iv) investigation of incidents involving resident health, safety, injury or death.

(2) In the event that a resident is absent from the enriched housing program and the resident's whereabouts are unknown, the operator shall initiate efforts to find the resident and, if the absence exceeds 24 hours:

(i) immediately notify the resident's next of kin or representative;

(ii) immediately notify the appropriate law enforcement agency;

(iii) notify the appropriate regional office of the department on the first available working day; and

(iv) send a copy of the Incident Report (DSS-3123) to the appropriate regional office of the department within five working days.

(3) In the event that a resident is unable or unwilling to consume regular meals for two consecutive days, the operator must immediately notify the resident's personal physician, act on the physician's instructions, and note the call and instructions in the resident's record.

(4) In the event that a resident requires emergency assistance because of illness or injury, the operator must:

(i) protect the resident's safety and comfort;

(ii) secure necessary emergency medical assistance; and

(iii) if necessary, arrange for the transfer of the resident to an appropriate medical facility.

(5) In the event that a resident becomes ill or displays a progressive deterioration of health or behavior, the operator must:

(i) protect the resident's safety and comfort;

(ii) obtain medical evaluation and services; and

(iii) if necessary, arrange for the transfer of the resident to an appropriate medical facility.

(6) In the event of illness or injury, the operator must also:

(i) notify the resident's personal physician or, in the event such physician is not available, a qualified alternate;

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

(iii) upon transfer of a resident to a health, mental health or other residential care facility, send an approved transfer form (or a copy of the DSS-3122 and the personal data sheet) and such other information as the receiving facility requests and the operator is required to maintain. In emergency transfers, this information may be telephoned to the receiving facility and written information sent within 72 hours of the transfer; and

(iv) make a notation of the illness or injury and transfer, if any, in the resident's record to include all items applicable in this paragraph. The incident report form may be substituted to record all accidents or illnesses.

(7) In the event that a resident exhibits behavior which constitutes a danger to himself/herself or others, the operator must:

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

(ii) if necessary, arrange for the transfer of the individual to a facility providing the proper level of care; and

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

(8) In the event of the death of a resident, the operator must:

(i) immediately take necessary action to notify the resident's next of kin, or representative, if known;

(ii) immediately take necessary action to notify the appropriate local authorities;

(iii) immediately report the death to the appropriate regional office of the department of health by telephone and submit a copy of the Incident Report (DSS-3123), which must be received by the appropriate regional office of the department of health, within twenty-four hours of the death, and

(iv) submit a report to the State Commission on Quality of Care for the Mentally Disabled, on a form prescribed by the Commission, if the resident had at any time received services from a mental hygiene service provider. Such form must be received by the Commission within twenty-four hours of the death.

(9) If a resident attempts suicide the operator must:

(i) immediately report the attempted suicide to the appropriate regional office of the department of health by telephone and submit a copy of the Incident Report (DSS-3123), which must be received by the appropriate regional office of the department of health, within twenty-four hours of the attempted suicide, and

(ii) submit a report to the State Commission on Quality of Care for the Mentally Disabled, on a form prescribed by the Commission, if the resident had at any time received services from a mental hygiene service provider. Such form must be received by the Commission within twenty-four hours of the attempted suicide.

(10) If it is believed that a felony crime may have been committed by or against a resident, the operator must immediately report the occurrence to the appropriate regional office of the department of health by telephone and submit a copy of the Incident Report (DSS-3123), which must be received by the appropriate regional office of the department of health, within twenty-four hours of the occurrence. The operator also must notify an appropriate law enforcement authority as soon as possible but at least within twenty-four hours. In addition, the operator must submit a report to the State Commission on Quality of Care for the Mentally Disabled, on a form prescribed by the Commission, if the resident had at any time received services from a mental hygiene service provider. Such form must be received by the Commission within twenty-four hours of the occurrence.

(11) The operator must prepare an Incident Report (DSS-3123) whenever:

- (i) a resident's whereabouts have been unknown for more than 24 hours;
- (ii) a resident assaults or injures or is assaulted or injured by another resident, staff or others;
- (iii) a resident attempts or commits harm to himself/herself;
- (iv) there is a complaint or evidence of resident abuse;
- (v) a resident dies;
- (vi) a resident behaves in a manner that directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the facility;
- (vii) the resident is involved in an accident which requires medical care, attention or services; or
- (viii) it is believed that a felony crime may have been committed by or against a resident.

(12) The operator must:

- (i) place a copy of the Incident Report (DSS-3123) in the resident's individual record;
- (ii) maintain a chronological log or file of all Incident Reports (DSS-3123) which includes identification of the resident or residents involved and the type of incident; and
- (iii) submit a copy of Incident Report (DSS-3123) required in paragraph (11) of this subdivision to the appropriate regional office of the department; if the resident is a participant in a service program operated under a cooperative agreement with the operator, to that program, and for all residents who had, at any time received services from a mental hygiene service provider, to the State Commission on Quality of Care for the Mentally Disabled.

(13) The operator must include the resident's version of the events leading to an accident or incident involving such resident, unless the resident objects, on all required Incident Reports (DSS-3123).

(c) Personal care. (1) Each resident must be provided some assistance with personal care 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 enriched housing program.

(2) Personal care functions must include some assistance with:

- (i) personal hygiene, including dressing, bathing and grooming; and
- (ii) assisting with self-administration of medications, as described in subdivision (d) of this section.

(3) Residents must not be confined to their room or bed, except as may be necessary for the treatment of a short-term illness.

(4) Commodes, must not be permitted, except as may be necessary for a short-term illness or for night use as a safety measure as confirmed by the written order of a physician.

(5) Residents must not be provided tray services except as may be necessary for a short-term illness.

(6) Physical restrains, i.e., any apparatus which prevents the free movement of a resident's arms or legs, or which immobilizes a resident and which the resident is unable to remove, must not be used.

(7) The operator must establish a system which assures that information regarding incidents or changes in residents' conditions affecting their need for personal care or supervision is available to all staff on an on-going basis.

(d) Medication assistance. (1) Each resident must be permitted to retain and self-administer medications provided that:

(i) the resident's physician attests, in writing, that the resident is capable of self-administration;

(ii) the resident keeps the operator informed of all medications being taken, including name, route, dosage, frequency, times and any instructions, including any contraindications, indicated by the prescribing physician; and

(iii) the medications, except for those kept by a resident on his/her person for emergency use, are stored in a locked container or area which cannot be removed or entered at will.

(2) With the written direction of the resident's physician, an operator may assist a resident in administration of medication by the resident including prompting the resident as to time, identifying the medication for the resident, bringing the medication and any necessary supplies or equipment to the resident, opening the container for the resident, positioning the resident for medication and administration, disposing of used supplies and materials and storing the medication properly.

(3) For residents in need of assistance, the operator must establish a system for staff to assist the resident.

(4) Recording for medications.

(i) Information on the medication regimen of each resident must be retained on file in a manner which assures both resident privacy and accessibility for assistance or in time of emergency.

(ii) The following information must be maintained for each resident:

(a) the person's name;

(b) identification of each medication used by the resident;

(c) the current dosage, frequency, time and route of each medication;

(d) the physician's name for each prescribed medication;

(e) the dates of each prescription change;

(f) any contraindications noted by the physician; and

(g) the type of assistance, if any, needed by the resident.

(5) Staff of an enriched housing program is not permitted to administer injectable medications to a resident, except that staff holding a valid license from the Education Department authorizing them to administer injectable medications may do so, providing that the injectable medication is one which licensed health care providers would customarily train a patient or his/her family to administer.

(6) If a resident refuses to take medications or appears unable to independently administer medications, the operator must notify the resident's primary physician.

(7) Under no circumstances will staff make a change in the dosage or schedule of administration of medication without the prior written authorization of a physician except that in cases of an emergency, authorization may be by telephone with written confirmation from the physician within seven days.

(8) Storage of medications by operators.

(i) Medications stored by operators must be kept in a cabinet which cannot be removed or entered at will and which cannot be opened except by a key.

(ii) Medications for external use must be stored separately from internal and injectable medications.

(iii) Refrigerators used for the storage of pharmaceuticals must not be used for the storage of food or beverages, unless the medications are stored in a separate, locked compartment.

(iv) Medications must not be emptied from one container into another.

(v) Directions on labels must not be changed by anyone other than a physician or pharmacist.

(vi) Stock supplies of prescription medications are prohibited.

(vii) Medications must be disposed of in accordance with the physician's or pharmacist's instructions.

(e) Case management. (1) Each resident must be provided such case management services as are necessary to support the resident in maintaining independence of function and personal choice.

(2) Case management services must include:

(i) evaluating initially and periodically, at least once every 12 months, the needs of a resident and the capability of the program to meet those needs;

(ii) orienting a new resident to the daily routine;

(iii) identifying adjustment problems and assisting the resident to resolve such problems if needed;

(iv) assisting each resident to maintain family and community ties and to develop new ones;

(v) encouraging resident participation in enriched housing and community activities;

(vi) identifying needs and arranging for services and entitlements from public and private sources for income, health, mental health and social services;

(vii) assisting the resident in obtaining and maintaining a primary physician or source of medical care of his/her choice who is responsible for the overall management of the individual's health and mental health needs;

(viii) coordinating the work of other case management and service providers within the enriched housing program;

(ix) assisting residents in need of alternative living arrangements to make and execute sound discharge or transfer plans; and

(x) assisting residents as needed in shopping for personal items such as toiletries, medical supplies, stationery, books and clothing.

(3) The operator must establish a system of recordkeeping which documents the case management needs of each resident and records case management activities undertaken to meet those needs.

(4) The operator and case management staff within the enriched housing program must utilize and cooperate with external service providers.

(5) The operator must:

(i) provide, without charge, space for residents to meet in privacy with service providers;

(ii) not inhibit access to individual residents who request services;

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

(iv) work with service providers in executing a plan for service for individual residents; and

(v) assist in arranging for transportation, as necessary, to ensure that residents are able to attend required services provided in an external location.

(f) Activities. (1) The operator must offer an environment conducive to the continuation and strengthening of family ties and friendships as well as the pursuit of intellectual, social and recreational interests.

(2) The operator must:

(i) inform the residents of available neighborhood programs and events;

(ii) assist in arranging transportation to such programs and events;

(iii) assist the resident in organizing desired activities;

(iv) directly provide periodic leisure activity programs in which residents are free to participate as desired; and

(v) offer to each resident a monthly schedule of activities which must take into account and reflect the age, sex, physical and mental capabilities, interests and the cultural and social background of the residents.

(3) Each activities schedule must be posted, identifying the location, date, time and a program staff contact person knowledgeable about each activity.

(4) The monthly schedule of activities, as planned and as implemented, must be maintained for six months.

(5) Accommodations and space must be provided for activity and socialization services.

(g) Housekeeping. (1) The operator must provide housekeeping services necessary to maintain a clean, well-kept, safe and healthy living environment.

(2) Housekeeping services must include:

(i) maintenance and cleaning of all individual and congregate space;

(ii) purchase and replacement of household items for common use;

(iii) provision of clean towels and linens at least once a week and more often if needed; and

(iv) provision of and assistance with laundry services including:

(a) laundering of the machine-washable personal clothing of residents although the operator may provide facilities and supplies for residents who choose to launder their own clothing;

(b) assisting residents to maintain nonwashable clothing; and

(c) laundering of blankets, bedspreads, and other furnishings as often as necessary.

**488.8 Food service.** (a) The operator must establish a food service program which will provide for meals which are balanced, nutritious and adequate in amount and content to meet residents' daily dietary needs.

(b) Congregate meals. (1) The operator must serve at a minimum, one hot midday or evening meal per day seven days a week in a congregate setting.

(2) Congregate meals must meet one third of the recommended dietary allowances of the Food and Nutrition Board of the National Academy of Science, National Research Council, adjusted for age, sex and activity.

(3) Menus for congregate meals must be:

(i) planned a minimum of three weeks in advance;

(ii) available in the food preparation area;

(iii) established in consultation with residents;

(iv) established in consultation with a dietary consultant; and

(v) recorded on an approved menu planning form which must be dated and amended to record any changes or substitutions served.

(4) Information on each resident's prescribed dietary regimen and food allergies must be available in the food service area and must be used in the planning, preparation and service of resident meals.

(5) Congregate meals must be varied in methods of preparation and content.

(6) Food on hand must be sufficient to permit the service of meals for a minimum of three days.

(7) Food must be stored, prepared and served in such a manner as to ensure its safety and nutritional value.

(8) There must be sufficient supply of dishes, glasses and utensils for the number of residents being served.

(c) Noncongregate meals. (1) The operator must ensure that each resident receives sufficient food for all noncongregate meals plus snacks.

(2) The operator must assist residents to the extent necessary with the shopping, preparation and clean-up of noncongregate meals.

(3) Residents must have free access to kitchen facilities for the purpose of preparing their own noncongregate meals and snacks.

(4) Information on each resident's prescribed dietary regimen and food allergies must be used when planning and providing food for all noncongregate meals and snacks.

(5) The operator must periodically assess resident shopping, food storage and preparation practices to minimize the potential for contamination or spoilage and to assure that each resident maintains a sound dietary regimen.

(6) Food on hand in congregate areas and individual apartments must be sufficient to permit the preparation and serving of meals in the event of an emergency for a minimum of three days.

**488.9** Personnel. (a) General requirements. (1) The operator must provide staff sufficient in number and qualified by training and experience to render, at a minimum, those services mandated by statute or regulation.

(2) The operator must conduct an initial program of orientation and in-service training for employees and volunteers which includes:

(i) orientation to the characteristics and needs of the population served by the enriched housing program;

(ii) discussion of the residents' rights and the program's rules and regulations for residents;

(iii) discussion of the duties and responsibilities of all staff;

(iv) discussion of the general and specific duties and responsibilities of the individual(s) being trained; and

(v) training in emergency procedures.

(3) The operator must develop and maintain current written staffing schedules. Staffing schedules must be retained for 12 months.

(4) The operator must maintain personnel records which include:

(i) individual employee records containing verification of qualifications for any position for which qualifications are set by regulation, pre-employment and annual medical evaluations, and any incident reports involving the employee; and

(ii) payment records containing all wages, benefits, reimbursements, bonuses, gifts or payments given each employee.

(5) At the time of employment and at least every 12 months thereafter, or more frequently if needed, an employee must provide the operator with a statement from a physician, or, with physician oversight, a physician's assistant (PA) or a registered professional nurse (RN) with special training in primary health care who has physically examined the individual, that:

(i) the individual is free from any health impairment which is of potential risk to residents of an enriched housing program or which might interfere with the performance of the individual's duties; and

(ii) the individual has had:

(a) a ppd (Mantoux) skin test for tuberculosis within 30 days prior to employment and no less frequently than every two years after employment begins; positive findings require appropriate clinical follow-up but no repeat skin test; and

(b) any test that may be required by the local board of health.

(6) Notwithstanding paragraph (5) of this subdivision, physical examinations need not be required for an applicant or an employee who relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which the employee is a member or bona fide adherent. In such cases the operator must require documentation of the employee's standing as a member.

(7) 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/herself or others or is unable to perform his/her assigned duties, may be employed or permitted to work as either an employee or volunteer.

(8) No individual is permitted to work, either as an employee or volunteer, if infected with a communicable disease that might endanger the health of residents.

(9) Each individual must:

(i) be emotionally, mentally and physically able, as required by function, to provide services and supervision to the population served by the enriched housing program; and

(ii) maintain personal hygiene and clothing which is clean and appropriate for the functions performed.

(10) Employees who have direct contact with residents must be able to speak, read and write English, and speak the predominant language of residents.

(11) No person under 18 years of age may be charged with direct responsibility for the supervision and personal care of residents; or be permitted to work without onsite supervision.

(12) The operator must inform the appropriate regional office by telephone, or in writing within three business days of a vacancy in the position of coordinator, case manager or dietary consultant.

(b) Resident employment. (1) Employment of residents may be permitted only to the extent that such employment:

(i) is entered into without use of coercion or threats to the resident;

(ii) is performed in return for fair compensation; and

(iii) meets all applicable requirements of federal and State Labor Law.

(2) The operator must maintain written records which document each instance in which a resident elects to perform routine paid or volunteer services, including:

(i) the name of each resident performing paid or volunteer services;

(ii) the tasks performed;

(iii) the rate, type and amount of compensation, if any; and

(iv) the hours and days worked.

(c) Administration. (1) The operator must appoint an enriched housing program coordinator who will be directly accountable to the operator for operating the enriched housing program and maintaining the program in compliance with applicable requirements.

(2) An enriched housing program coordinator must be employed on the basis of one and one-half hours per resident per week for the first 16 residents and one hour per resident per week for each additional resident until the equivalent of a full-time employee is attained.

(3) The program coordinator must be capable of and responsible for:

(i) supervision of the enriched housing program;

(ii) operation of the enriched housing program in compliance with law and regulations;

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

- (iv) supervision of resident services;
- (v) admission, transfer and discharge of residents;
- (vi) coordination with and development of community activities and services for residents;
- (vii) maintenance of community relations;
- (viii) protection of residents' rights and development of appropriate mechanisms for the residents' protection; and
- (ix) maintenance of a system to enable residents to present grievances or recommendations regarding facility operations and programs.

(4) The operator may be required to discharge a program coordinator who is unable or unwilling to carry out the responsibilities set forth in paragraph (3) of this subdivision.

(5) A program coordinator must:

(i) be at least 21 years of age; and

(ii) possess the following education and work experience:

(a) a master's degree in social work from an accredited college or university plus one year of related work experience; or

(b) a bachelor's degree from an accredited college or university in an approved course of study, plus three years of related experience acceptable to the department of which one must have been in a supervisory capacity. Approved courses of study may include, but need not be limited to, human services for dependent adults, health care management programs, social work programs, gerontological studies and home economics. Related work experience may include, but need not be limited to, work in residential care, rehabilitation, health care management and social work.

(d) Case management. (1) Each operator must designate sufficient staff to perform case management functions. This function may be carried out by the program coordinator. A qualified case manager must be on staff and on duty for one-half hour per week per program resident.

(2) A case manager must be capable of, and responsible for, executing, through direct performance and coordination, the services and functions described in section 488.7(e) of this Part.

(3) A case manager must have the following education and work experience:

(i) a master's degree in social work from an accredited college or university; or

(ii) a bachelor's degree from an accredited college or university with major work in human services or service delivery and one year of fulltime experience in the provision of services to a frail adult population; or

(iii) an associate degree from an accredited college or university with major work in human resources or service delivery and three years of full-time experience in the provision of services to a frail adult population.

(e) Personal care, housekeeping, food service. (1) An operator must provide sufficient staff to perform personal care, housekeeping and food service activities.

(2) The operator must provide housekeeping, personal care, and food service staff at a rate of six hours per resident per week. The hourly breakdown of service provided will depend on the aggregate service needs of residents.

(3) Operators desiring to train their own personal care staff must develop and submit to the department for approval an in-service training plan for personal care staff.

(4) Aides performing personal care tasks must have completed an approved certified personal care training program prior to employment or must:

(i) within six months of hiring complete a department-approved certified personal care training program; or

(ii) within three months of hiring complete an approved operator in-service training plan for personal care staff.

(5) Aides performing food service functions must:

(i) have demonstrated ability in meal preparation for groups of people;

(ii) be knowledgeable of nutritional needs of older persons;

(iii) be able to follow and prepare modified diets; and

(iv) have knowledge of food protection principles.

(f) The operator must arrange for the service of a qualified dietitian or dietetic technician as a dietary consultant to provide supervision and consultation sufficient to maintain compliance with food service requirements. A person utilized by an operator to provide food service and nutrition consultation and support is considered qualified if the person is:

(1) a dietitian who has received a baccalaureate degree with major studies in food and nutrition or institutional management from an accredited college or university, is a member or eligible for membership in the American Dietetic Association, participates annually in continuing dietetic education and has at least two years full-time work experience in dietetics; or

(2) a dietetic technician who has successfully completed an associate degree program which meets the educational standards established by the American Dietetic Association, and has at least three years full-time work experience in dietetics.

(g) Volunteers. (1) Resident volunteers. Residents choosing to volunteer may be permitted to do so only to the extent that such voluntary services are:

(i) entered into without use of coercion or threats to the resident;

(ii) not inconsistent with the physical or emotional needs or limitations of the resident.

(2) If an operator uses community volunteers, each volunteer must be:

(i) supervised by the program coordinator or his/her designee;

(ii) given orientation to the characteristics and needs of the resident population, the rights of residents, the physical layout of the enriched housing program, emergency procedures and an explanation of their specific responsibilities; and

(iii) given a copy of the residents' rights.

(3) The operator must maintain a record for each volunteer, which will include the individual's name, current address and telephone number.

(4) If a community volunteer organization is providing services within the enriched housing program, the operator

may have an agreement with the organization to retain the information required in paragraph (3) of this subdivision. Such agreement must include:

(i) the name and address of the organization;

(ii) a designated contact person; and

(iii) a statement that the volunteer organization is able and willing to provide the specific volunteer information as required in paragraph

(3) of this subdivision.

(5) Volunteer services must not be substituted for the program coordinator and case manager as required elsewhere in this Part.

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

(b) The department may examine the books and records of any enriched housing program to determine the accuracy of the annual financial statement or for any other reason deemed appropriate by the department to effectuate the purposes of this Title.

(c) Resident records. (1) The operator must maintain complete, accurate and current records for each resident which must be available for review and inspection by department staff or designees.

(2) Records must be maintained in a manner which assures resident privacy and accessibility to staff to use in the provision of routine and emergency services.

(3) The operator must maintain:

(i) financial records for each resident which contain at a minimum a copy of the current admission agreement, documentation of the status of the resident's payment account and personal fund account and a current inventory of any personal property held in custody for the resident by the operator;

(ii) personal records for each resident which contain at a minimum personal data, including identification of the resident's next of kin, family or resident's representative, the name and address of the person or persons to be contacted in the event of an emergency; copies of the resident's medical evaluations and other medical information; summaries of the social evaluations; copies of the initial and annual functional assessments; and details of referral and such other correspondence and papers as are available to document the physical, mental and social status of the resident; and

(iii) records which are readily available to food services staff and enable staff to plan for and accommodate prescribed dietary regimens, allergies and individual food preferences.

(4) In situations where residents of an enriched housing program have individual leases for their respective apartments, the operator must review these leases at least annually to ensure that all such leases are adhered to and renewed.

(d) Program records. (1) The operator must maintain complete, accurate and current records which document operation and maintenance of the enriched housing program in accordance with applicable law and regulation.

(2) Records must be maintained at the enriched housing program site unless written authorization is given by the department for record retention at another location. All records must be available for review and inspection by department staff and designees.

(3) Records must be maintained in a manner which assures the individual resident's right to confidentiality and privacy.

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

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

(ii) resident records required elsewhere in these regulations including incident reports;

(iii) a chronological admission and discharge register consisting of a listing of residents registered in and discharged from such enriched housing program by name, age, sex, and place from or to which the resident is registered or discharged;

(iv) program records, including a policies and procedures manual, activities schedules, agreements with external service providers, emergency plans and records of evacuation drills;

(v) food service records, including menus and food purchase records;

(vi) records of maintenance or documentation of efforts to ensure maintenance of the physical plant and environmental standards;

(vii) staff records, including personnel procedures, job descriptions, staffing schedules and payment records;

(viii) certificates or reports issued by local and other state jurisdictions related to the enriched housing program operations, on file and readily accessible for department review, or posted, if required; and

(ix) a valid current agreement with a building manager, if the enriched housing operator does not own or control the building in which the enriched housing program is located, which is in accordance with section 485.6(d)(13) of this Title.

(e) Program reports. (1) Annual financial statement.

(i) The operator of an enriched housing program must file an annual financial statement on an approved form with the department on or before the 15th day of the sixth calendar month after the close of its fiscal year. Such statement must clearly set forth all financial information pertaining to the operation of such enriched housing program in accordance with generally accepted accounting principles, including but not limited to revenues and expenses by categories during such fiscal year, together with such other information as may be required by the department.

(ii) The operator of an enriched housing program which submits a charitable organization annual report to the Secretary of State or a residential health care facilities annual report to the Department of Health may submit copies of those reports, together with such other data as may be necessary to satisfy the requirement in subparagraph (i) of this paragraph.

(iii) An operator must maintain and make available all such books and records as may be required by the department to determine the accuracy of any and all information contained in the financial statement filed by the operator.

(2) Financial statements must be filed by the operator as requested by the department.

(3) Apartment records. The operator of an enriched housing program must notify the department, using Form DSS-934, of any change in apartments occupied by program residents in a multiple apartment building at least 15 days before such change is expected.

(4) Quarterly reports. The operator must submit a quarterly statistical information report to the department which must:

(i) identify the quarter being reported on;

(ii) contain a census report; and

(iii) contain the number of resident deaths which occurred during the quarter being reported on.

(f) Mandated forms. (1) The department mandates utilization of the following forms for enriched housing programs:

(i) a Personal Data Sheet (DSS-2949);

(ii) an Incident Report (DSS-3123);

(iii) a Medical Evaluation (DSS-3122);

(iv) an Inventory of Resident Property (DSS-3027);

(v) a Notice of Change (DSS-934); and

(vi) a Chronological Admission and Discharge Register (DSS-3026).

(2) The following personal allowance account forms must be used unless prior written authorization for substitutions has been given by the department:

(i) a Statement of Offering (DSS-2853);

(ii) a Personal Allowance Summary (DSS-2855); and

(iii) a Personal Allowance Ledger (DSS-2854).

(g) The operator must post the following documents:

(1) the operating certificate;

(2) the inspection report for the most recent or summary inspection, with any related follow-up inspections;

(3) the statement of rights of residents;

(4) the current week's menus;

(5) the current month's activity schedule;

(6) the program's evacuation procedures; and

(7) the access schedule for personal needs accounts.

(h) Records retention. (1) Records required by the department, except financial records of the previous operator, must be retained by the enriched housing program upon change of operator.

(2) Records relating to an individual must be retained for three years after the death or discharge of a resident.

(3) Program records, business records and records relating to application or renewal for an operating certificate must be retained for seven years.

**488.11** Environmental standards. (a) Capacity. (1) The capacity of an enriched housing program located in a building with individual or shared apartments must not exceed the capacity that can be accommodated in 25 percent of the total number of units in the building.

(2) The capacity of an enriched housing program located in a building in which residents share all space other than bedrooms must not exceed seven residents.

(3) If the operator is a public agency, the capacity at any one site must not exceed 16 residents.

(b) Enriched housing programs must:

(1) be integrated within the community and readily accessible to medical and appropriate commercial and community service facilities; and

(2) not be located within existing adult care, health-related, skilled nursing or medical facilities, single room occupancy buildings (SROs), or hotels.

(c) Occupancy groups. (1) A building in which an enriched housing program is located must be in compliance with the requirements of the Uniform Fire Prevention and Building Code for the B-1 occupancy group, including any requirements specified for community residences, or for the B-3 occupancy group.

(2) If in New York City, a building in which an enriched housing program is located must be in compliance with the City Building and Fire Protection Codes for the J-2 occupancy group.

(d) (1) The operator must ensure that the building or buildings in which the enriched housing program is located and which is owned or managed by the operator is in a good state of repair and sanitation and in conformance with applicable State and local laws, regulations and ordinances.

(2) If the operator does not own or manage the building in which the enriched housing program is located, the operator:

(i) must make efforts to ensure that the building is in a good state of repair and sanitation and in conformance with applicable State and local laws, regulations and ordinances;

(ii) must initiate action to correct any deficiencies in the building which affect the building's state of repair and sanitation or which are in violation of applicable State and local laws, regulations and ordinances, and must document such action; and

(iii) may be required to relocate the enriched housing program if the deficiencies or violations remain uncorrected.

(e) Safety procedures. (1) Hasps, bars, padlocks and similar devices must not be used in any resident area in a way which would inhibit access to an exit or the free movement of residents.

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

(3) Storage of cleaning agents, bleaches, insecticides, or any other poisonous, dangerous or flammable materials must be kept separate from food storage and in a manner that assures resident protection.

(4) Heating pipes and radiators, with which residents may come in contact, must be shielded to prevent burns.

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

(6) A hallway or corridor must not be used for storage.

(7) Throw or scatter rugs must not be permitted unless equipped with a nonslip backing or secured to the floor.

(8) Polishes used on floors must provide a nonslip finish.

(9) The water temperature at faucets for bathing, showering, and handwashing must be capable of attaining a temperature of 95 degrees Fahrenheit (35 degrees Celsius) but must not attain a temperature in excess of 110 degrees Fahrenheit (43 degrees Celsius) where controllable by the operator.

(10) Grab bars must be provided for toilets and in tubs and showers.

(11) Bathtubs and showers must have nonslip protections.

(12) The floor area immediately adjacent to a shower or tub must have a nonslip mat.

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

(i) smoking in other than designated areas;

(ii) portable electric space heaters;

(iii) accumulation of combustible materials in any part of the building;

(iv) storage of flammable or combustible liquids in anything other than closed containers listed by an acceptable testing laboratory;

(v) storage of pressurized oxygen containers; and

(vi) cooking appliances in residents' bedrooms.

(14) All staff members must be familiar with the fire alarm systems and, where appropriate, with procedures for testing and resetting these systems.

(f) Furnishings and equipment. (1) The operator must assure that furnishings and equipment used by residents support daily activities, are appropriate to function, and do not endanger the residents' health, safety, and well-being.

(2) All resident areas must be decorated, painted and appropriately furnished.

(3) Basic furniture and household items, appropriate to size and function, and intended for common use must be provided or arranged for by the operator.

(4) When not supplied by the resident, the operator must provide each resident with the following minimum household equipment:

(i) a standard, single bed in good repair, a chair, a lamp;

(ii) lockable storage facilities for personal articles and medication which cannot be removed at will if the individual room or apartment is not equipped with a lock;

(iii) individual dresser and closet space for the storage of resident clothing;

(iv) dishes, glasses, utensils, table;

(v) household linens including, at a minimum, a pillow, a pillowcase, two sheets, blankets, a bedspread, towels and washcloths;

(vi) household supplies and equipment including soap and toilet tissue.

(5) All occupants must have access to radios and television sets either in their individual dwellings or in shared areas.

- (6) Each dwelling unit must contain at least one telephone.
- (7) All windows in resident-occupied areas must be equipped with curtains, shades or blinds.
- (8) All operable windows must be equipped with screens.
- (9) Light fixtures must be shaded.
- (g) Maintenance. (1) The operator of each enriched housing program must make certain of the continued maintenance of buildings and grounds in which programs are located or, in buildings not owned or under the control of the operator, document efforts to obtain adequate building maintenance.
  - (2) The building and grounds must be maintained in a clean, orderly condition and in good repair.
  - (3) All equipment and furnishings used by the enriched housing program must be maintained in a clean, orderly condition and in good working order.
  - (4) Walls and ceiling coverings must be free of cracks or tears, peeling wallpaper or paint, missing or cracked tiles.
  - (5) Floors and floor coverings must be free of cracks and missing or raised portions.
  - (6) Electrical systems, including appliances, cords and switches must be maintained in good working order.
  - (7) Plumbing and plumbing fixtures must be maintained in good working order.
  - (8) Ventilation, air conditioning, and air changing systems must be maintained in good working order.
  - (9) Heating systems must be maintained in good working order.
  - (10) The building, grounds, and other buildings on the premises must be kept free of breeding areas for flies, vermin and rodents.
  - (11) Entrances, exits, steps and outside walkways must be kept free from ice, snow and other hazards.
  - (12) Windows and screens must be kept clean and in good repair.
  - (13) Sprinkler systems must be maintained in good repair and working order.
  - (14) Smoke and fire protection equipment, including fire extinguishers, must be maintained in accordance with manufacturer's specifications.
  - (15) To ensure safe, proper operating conditions, the following systems and equipment must be inspected or tested as required by local codes:
    - (i) smoke detection systems;
    - (ii) fire alarm system;
    - (iii) sprinkler system; and
    - (iv) fire extinguishers.
  - (16) All inspection certificates required by State or local authorities for buildings, grounds and equipment must be available for review by the department and residents.
- (h) Space requirements for enriched housing programs. (1) Every enriched housing program must have common

space for congregate meals and activities.

(2) Dining rooms and leisure areas must be available for use by residents at appropriate times to provide periods of social and diversional individual and group activities.

(3) Space provided for dining and leisure must be sufficient to accommodate all residents.

(4) Space must be provided for administrative activities and records.

(5) Suitable equipment for storing, preparing and serving foods in a sanitary manner must be in good operating condition in each individual or shared dwelling unit. This equipment must include a cooking stove or range with oven, a refrigerator with freezer of appropriate size and sufficient capacity for the number of occupants, a kitchen sink with hot and cold running water, which drains into an approved private or public system, and cabinets for storage of chinaware, food, and cleaning supplies. There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage of garbage. Where required for the purpose of preparing and, or serving common meals, communal dining areas with sufficient space, a pleasant atmosphere, and sanitary conditions must be available within shared dwelling units or otherwise within the building.

(6) Individual and shared dwelling units must contain living, dining and sleeping areas which provide adequate space and comfortable, homelike surroundings. Adequate closet space for storing personal effects must be provided.

(7) Residents must have access to outdoor areas.

(8) Space must be provided for storage of equipment and supplies.

(9) The operator must maintain public areas suitable for posting required notice documents and other written materials which are visible to and accessible to residents, staff and visitors.

(10) Baths and toilet facilities. Each individual dwelling unit or shared dwelling unit must contain full bathroom facilities, including a toilet, lavatory, and a shower or tub. In shared residences, these should be sufficient in number so that each lavatory, toilet, shower or tub is not shared by more than three residents.

(11) Bedrooms. (i) Each resident, except those desiring to share a bedroom, must have a single bedroom.

(ii) Single bedrooms must have a minimum floor area of 85 square feet, exclusive of foyer, wardrobe, closets, lockers and toilet rooms.

(iii) Double bedrooms must have a minimum floor area of 140 square feet, exclusive of foyer, wardrobe, closets, lockers and toilet rooms.

(i) Heating/cooling. (1) The temperature in resident bedrooms and common areas must be, at a minimum, 72 degrees Fahrenheit (20 degrees Celsius) unless the operator can demonstrate that the building is in compliance with local heating requirements which are lower and that the operator does not have control of the building.

(2) When the outside temperature exceeds 85 degrees Fahrenheit (30 degrees Celsius) the operator must:

(i) take measures to maintain a comfortable environment;

(ii) monitor resident exposure and reactions to heat;

(iii) arrange for health care, if needed; and

(iv) arrange for the temporary relocation of residents, if needed.

**488.12** Disaster and emergency procedures. (a) The operator must have a written plan, approved by the department, which details the procedures to be followed for the proper protection of residents and staff in the event of an actual or threatened emergency or disaster which interrupts normal service.

(b) Emergency procedures must include:

- (1) protection of residents from harm to person and property;
- (2) monitoring emergency call systems within the buildings when available;
- (3) handling individual emergencies, or need for assistance, including arranging for medical or other services;
- (4) conducting and supervising evacuation drills; and
- (5) implementing the disaster and emergency plan.

(c) The disaster and emergency plan must include but not be limited to:

- (1) procedures and designated staff responsibilities for execution of any part of the plan;
- (2) procedures for full and partial evacuation of the enriched housing program including:
  - (i) designation of staff responsible for the conduct and supervision of evacuations;
  - (ii) a schedule and procedures for training all staff in evacuation procedures;
  - (iii) procedures for the conduct of semi-annual fire drills for staff and residents; and
  - (iv) specific and current procedures for the evacuation of any residents with need for individual procedures;
- (3) preliminary plans for relocation of residents, if necessary;
- (4) procedures for the coordination of the enriched housing program disaster and emergency plan with such community resources and local disaster and emergency planning organizations as may be available to provide temporary shelter, food and clothing, and other essential services;
- (5) plans for the maintenance of service in the event of reductions in personnel;
- (6) procedures for obtaining emergency medical services;
- (7) procedures for establishing links with community health care providers;
- (8) a list of personnel assigned to handle emergencies available to residents on site or by telephone 24 hours a day;
- (9) requirement for easy access to a telephone by all residents; and
- (10) requirement that at each telephone in a dwelling unit the following information must be posted in large lettering:
  - (i) the operator's emergency coverage number to call in case of crisis;
  - (ii) the address of the dwelling unit;
  - (iii) the telephone number of the dwelling unit;
  - (iv) the name of each resident in the dwelling unit;

(v) the name and telephone number of the physician or customary primary health care provider of each resident in the dwelling unit; and

(vi) the name and telephone number of the nearest relative of each resident in the dwelling unit.

(d) The operator must conduct training for each new and current employee and volunteer in both the overall disaster and emergency plan and the individual's specific responsibility in its execution, and must review with staff their performance after the conduct of each fire drill.

(e) Evacuation procedure must be conspicuously posted in each resident's apartment and in all congregate areas.

(f) Emergency contact numbers and procedures must be available to staff and residents.

(g) At least once every six months residents and staff must participate in a fire drill.

(h) The operator must arrange, at least annually, to have the local fire authorities, certified service agency or department staff observe one fire drill in which residents participate.

(i) The operator must maintain a record of all fire drills, including the date, and time of the drill, a description of the drill, and the number of residents participating.

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

(k) Notwithstanding subdivision (g) and (h) of this section, the operator is not required to conduct a full fire drill for enriched housing residents in buildings in which the housing management does not permit evacuation drills. In such circumstances, the operator must:

(1) document that fire drills are not permitted within the building and that the fire evacuation procedures are conducted in accordance with local fire department policy;

(2) describe procedures for fire evacuation and training in the disaster and emergency plan approved by the department;

(3) provide and document individual training on fire safety procedures for new residents; and

(4) repeat training for each resident every six months.

(l) Any time there is a work stoppage, a fire within the building that affects the program, the failure of any of the fire prevention or detection systems, a lack of hot water, interruption or shut off of essential services or any circumstance necessitating the implementation of the disaster and emergency plan, the appropriate regional office of the department will be notified by the next business day.