



New York State Department of Health  
Center for Health Care Provider Services and Oversight  
Division of Adult Care Facilities/Assisted Living Surveillance

Opportunity for Development

**Assisted Living Program 3400 Initiative**

Modifications, Questions & Answers

**Modification to Section VII. Application Instructions:**

Please note that **Part E. Application Submission: Letters of Support Indicating Need for an ALP** has been amended. Applicant facilities located within New York City (NYC) are not required to submit a letter of support from the NYC Department of Aging. Applicant facilities located outside NYC will still be required to provide a letter of support from their local county office on aging.

**Modification to Section IX. Attachments:**

Please note that the Department erroneously excluded a signature page from the OFD. Please complete **Attachment 5 – Certification** and submit with your complete OFD application.

**Modification to Attachment 4 – OFD Application Sections 1, 2 and 3:**

Please note that due to clarifications to the Federal Rule: Home and Community Based Settings, the *Desired Components of an ALP* have been amended. These amendments are reflected on page 3 of the **Revised Attachment 4**.

Additionally, the page limit referenced on page 2 of this attachment has been corrected. Applicants are now instructed to “Provide an attachment to this application that includes a project description not to exceed **8** pages in length.”

The new and revised attachments resulting from these modifications may be accessed at [https://www.health.ny.gov/facilities/assisted\\_living/program\\_application/](https://www.health.ny.gov/facilities/assisted_living/program_application/)

## ***Assisted Living Program Questions & Answers***

### Acronyms:

ACF	Adult Care Facility
AH	Adult Home
ALP	Assisted Living Program
CHHA	Certified Home Health Agency
DOH	Department of Health
EHP	Enriched Housing Program
HCBS	Home and Community Based Settings
LHCSA	Licensed Home Care Services Agency
LTHHCP	Long Term Home Health Care Program
MLTCP	Managed Long Term Care Plan
OFD	Opportunity for Development
SNF	Skilled Nursing Facility

(The date in parentheses at the end of each question is the date the email was received by the Department.)

- 1. Question:** What is meant, in Point I of the OFD, that eligible ALP residents may not “be impaired to the degree that they endanger the safety of other ALP residents”? (4/1/15)

**Answer:** Please refer to 18 NYCRR 494.4 (d) (4), “an operator must not accept nor retain any person who: is cognitively, physically or medically impaired to a degree which endangers the safety of the resident or other residents.” Per (e) of the same Section “Before an operator admits an individual to an assisted living program, a determination must be made that the assisted living program can support the physical, supervisory and psycho-social needs of the resident.”

- 2. Question:** What is meant by “continual nursing care” in Point I? (4/1/15)

**Answer:** Continual nursing care is routine skilled care provided by a registered professional nurse and includes medical monitoring and treatments, as well as services provided by specially trained professionals.

- 3. Question:** I have a question about opening an assisted living facility in upstate NY. I saw on the DOH website something about opening 6000 assisted living facilities. Please help me understand what this is. If you can give me any guidance on where and how to start the licensing process it would be very appreciated. (4/2/15)

**Answer:** The Department is not seeking to open 6,000 assisted living facilities. Rather, the Department is, through a series of solicitations, awarding assisted living program beds across New York State to existing and new adult care facilities.

Through this Opportunity for Development (OFD), the remaining 3,400 of 6,000 ALP beds authorized under Chapter 58 of the Laws of 2009, Social Services Law 461-I, will be awarded and granted to submit applications for licensure through a comparative process. This OFD will allow entities new to the delivery of adult home services, current adult homes new to the delivery of ALP services, and current providers of ALP services to apply for ALP beds.

The application to open a new facility is available at [http://www.health.ny.gov/facilities/adult\\_care/](http://www.health.ny.gov/facilities/adult_care/). Those applications are received continuously.

### **Federal Rule: Home and Community Based Settings**

**4. Question:** What is meant by “privacy in sleeping or living unit” in Point II of OFD? (4/1/15)

**Answer:** According to clarification to the Federal Rule: Home and Community Based Settings, this setting is no longer applicable. Please see Addendum #3.

**5. Question:** What is meant by providing opportunities to seek employment in Point II of the OFD? (4/1/15)

**Answer:** The Department understands that residents may not take the opportunity to seek employment, although the opportunity must be made available to explore that option within their community. Employment and community life should be discussed when developing the person-centered service plan.

**6. Question:** The OFD lists out aspects of the federal home and community based settings rule. The first bullet states that the setting should “provide opportunities for residents to seek employment and work in competitive integrated settings, engage in community life, and control personal resources”. We note that it would be rare for an ALP resident to want to seek employment. Can the Department develop a waiver of this requirement, rather than requiring operators to address this on a case by case basis? (4/13/15)

**Answer:** Please refer to response provided for Question #5.

**7. Question:** What is meant by “person-centered service plans” in Point II of the OFD? (4/1/15)

**Answer:** The final federal rule requires home and community based settings to “Create person-centered service plans documenting options based on the individual’s needs, and preferences.” A person-centered service plan addresses health and long-term care services and support needs in a manner that reflects the individual’s preferences and goals.

Questions 8 - 11 are regarding the following statement found on page 2, **Section II. Federal Rule: Home and Community Based Settings**, of the OFD:

“An ALP that is on the grounds of a private or public institution or located adjacent to public institutions is presumed institutional by the federal government. In this instance, the Department must submit evidence, including stakeholder/public input, to prove to the Secretary of Health and Human Services’ satisfaction that the setting has all the qualities and characteristics of a home and community based setting in order to bill Medicaid for services provided to individuals living in such settings.”

**8. Question:** How is private or public institution defined and what types of facilities are included? (4/7/15)

**Answer:** The Department has not defined private or public institution within the OFD and does not list the types of facilities considered as such. The intent of the federal rule is to require the state to integrate individuals receiving public services and support into neighborhoods and communities and ensure they are able to receive services in an integrated setting.

**9. Question:** In a densely populated urban area such as New York City, would a building tower that included an ALP, a private or public institution, and other community housing (including market-rate housing) be presumed to be institutional? (4/7/15)

**Answer:** Insufficient information is provided for the Department to answer this question.

**10. Question:** In a densely populated urban area such as New York City, if a SNF [skilled nursing facility] is located adjacent to a building tower that included an ALP and market-rate housing be presumed to be institutional? (4/7/15)

**Answer:** Insufficient information is provided for the Department to answer this question.

**11. Question:** What is the process and steps for rebutting the institutional presumption and how long does the process take? Are there stated timeframes for the federal government to respond to the State's evidence? What constitutes "stakeholder/public input" and how is it specifically defined? (4/7/15)

**Answer:** These questions are not pertinent to this OFD.

For information regarding the Home and Community Based Services Settings rule, please go to

[http://www.health.ny.gov/health\\_care/medicaid/redesign/home\\_community\\_based\\_settings.htm](http://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm) .

**12. Question:** Lease Requirement under the Home and Community Based Settings Rule: Section II (P.3): The HCBS Final Rule provides that units be occupied under legally enforceable agreements, and the application further adds that termination notices and other requirements and protections be comparable to those afforded to residents under landlord and tenant law in the jurisdiction where the ALP is located. Please confirm that the New York State resident agreement requirements set forth under NYS Social Security Law Sections 461-g and 461-h that apply to ALP units and others living in adult care facilities comply with these requirements. (4/13/15)

**Answer:** The New York State residency agreement requirements set forth under NYS **Social Services Law** Sections 461-g and 461-h comply with the Home and Community Based Settings requirements.

### ***Who May Apply***

**13. Question:** Can a Nursing Home apply for the OFD? (3/25/15)

**Answer:** A nursing home can apply for ALP beds under this OFD only if the nursing home is proposing in its application to establish an adult home or enriched housing program which will operate the assisted living program.

**14. Question:** If a New York State limited liability company has a C.O.N. [Certificate of Need] application pending with the NYSDOH to become the new operator of an existing New York State nursing home, can the limited liability company apply through this ALP OFD to add ALP beds to the nursing home facility that is the subject of the pending C.O.N. application, even though it does not technically own or control that nursing home at this time, provided that the limited liability company demonstrates site control (e.g. proposed lease or asset purchase agreement)? (4/13/15)

**Answer:** As stated on page 3, **Section III. Who May Apply**, “Applicants can be new to the delivery of adult home services, current adult home providers new to the delivery of ALP services, and current providers of ALP services.” The application to operate a nursing home is secondary to this OFD. If you choose to submit an application for ALP beds, you must propose to establish an adult home or enriched housing program which will operate the assisted living program.

### ***Legal Entity Requirements***

**15. Question:** May a partnership of two entities which together possess the requisite licenses apply for ALP beds? (3/24/15)

**Answer:** A partnership of two entities which together possess the requisite licenses may apply for ALP beds as long as the legal entity for the ALP and the legal entity for the Licensed Home Care Services Agency (LHCSA) have identical ownership.

**16. Question:** May a not for profit corporation which is the sole member of two other not for profit corporations which together possess the requisite licenses apply for ALP beds? (3/24/15)

**Answer:** Yes. The not-for-profit corporation may apply for ALP beds as long as the ALP and the LHCSA have identical members on each Board of Directors.

**17. Question:** If an existing Adult Home (AH)/Assisted Living Program (ALP) operator already has dual licensure as an AH and a Licensed Home Care Service Agency (LHCSA); can the existing AH license be utilized or does an additional license need to be obtained to be awarded beds under the ALP 3400 initiative? (4/1/15)

**Answer:** The Department will accept applications through this OFD to establish a new ACF with an ALP, increase the capacity of existing ALP facilities, or establish the ALP in an existing facility.

**18. Question:** If an existing AH/ALP operator already has dual licensure as an AH and as a LHCSA; can the existing LHCSA license be utilized or does an additional license need to be obtained to be awarded beds under the ALP 3400 initiative? (4/1/15)

**Answer:** Yes. The existing LHCSA license may be utilized by the applicant, when the LHCSA has identical membership as the applicant and the LHCSA is licensed to do business in the county/counties of the proposed ALP.

**19. Question:** On page 3 of the application it states: If the ALP is licensed as a LHCSA, it must contract with a CHHA for the provision of skilled services (nursing, therapies) to ALP residents. If the LHCSA is able to secure a contract with an MLTCP and the LHCSA is able to provide nursing and therapies as part of their license, does the LHCSA still need to contract with a CHHA? (4/13/15)

**Answer:** Please refer to 18 NYCRR 494.3 (b). The LHCSA will need to contract with a Certified Home Health Agency (CHHA) for the provision of skilled services (nursing and therapies).

## ***ALP Bed Capacity***

**20. Question:** If an existing AH/ALP operator already has dual licensure as an AH and as a LHCSA; assuming the existing AH/ALP operator wishes to acquire more beds, is there a maximum number of beds that can be operated under the existing AH and/or LHCSA license? Is there a maximum number of beds that can be operated under a new AH and/or LHCSA license? (4/1/15)

**Answer:** Yes. According to Section 487.3 (f) (1) of the **Social Services Law**, the capacity of an adult home shall be limited to 200 beds. Therefore, an applicant may request to be awarded a number of ALP beds that will result in no more than 200 ALP beds in the adult care facility.

**21. Question:** I read in the application materials that: “No applicant will be permitted to have more than 200 total licensed ALP beds”. If an existing AH/ALP operator has 100 beds, is he/she limited to 100 additional beds (total 200 beds)? Or can said operator acquire licensure for an additional 200 beds through submission of an ALP 3400 Initiative application? Note: These beds will not necessarily have to be located in the same physical plant but may be located on the same campus as the existing beds. (4/1/15)

**Answer:** Yes. The operator is limited to 100 additional beds. Please refer to the response provided for Question #20.

**22. Question:** Page 4 of the OFD states “No applicant will be permitted to have more than 200 total licensed ALP beds.” Please clarify whether the cap of 200 beds includes or excludes existing ALP beds operated by the applicant. (4/7/15)

**Answer:** Please refer to response provided for Question #20.

**23. Question:** ALP Bed Limits (Who May Apply, ALP Bed Capacity) Section III. C. (P.4): The application provides that “no applicant will be permitted to have more than 200 total licensed ALP beds.” We request that the Department issue a clarification that the 200 total bed limit refers to the maximum number of ALP beds that may be available at each individual facility, and does not imply that there is a 200 bed limit on the total number of ALP beds that an individual owner or operator may have across multiple facilities. (4/13/15)

**Answer:** Please refer to response provided for Question #20.

## ***Application Instructions***

**24. Question:** This question is in regard to the preferred format of the response. Would the reviewers prefer to have the answers to the questions immediately following the questions within the application itself (for example, the project description) or in a completely separate attachment? (4/2/15)

**Answer:** Applicants should fill out the application in the space provided, attaching additional pages when necessary. The Project Description instructions in Attachment 4 state to submit an attachment to the application to include a summary of the proposed ALP.

**25. Question:** What documentation do not-for-profit applicants need to submit in order to demonstrate their not-for-profit status? (4/13/15)

**Answer:** Not-for-profit applicants do not need to submit documentation to demonstrate their not-for-profit status in its application for ALP beds through this OFD. As noted in the modifications on page 1, please refer to Attachment 5 - Certification to indicate sponsorship.

**26. Question:** Page Limits and Attachments (Questions 13-15). Section IX, Attachment 4, Section 1. If applicants include attachments in Section 3, such as architectural information, please confirm that this does not count against the 8 page limit. (4/13/15)

**Answer:** Correct. Attachments will not be counted against the 8 page limit when submitted as supporting the information provided in your project description.

**27. Question:** Please confirm whether applicants will be permitted to include additional attachments (i.e., charts, tables, or marketing studies related to need) or if this would count against the 8 page limit? (4/13/15)

**Answer:** Please refer to the response provided for Question #26.

**28. Question:** In light of the page limit, would applicants still be permitted to include attachments to materials they are using to support statements that are made in the application without having such attachments count towards the page limit, or should applicants just reference the materials used? (4/13/15)

**Answer:** Please refer to the response provided for Question #26.

**29. Question:** Contract Review. What contracts/worksheets should be provided as part of the ALP OFD to facilitate the Department's review? (4/13/15)

**Answer:** Insufficient information is provided for the Department to answer this question.

### ***Section 1 – Project Description***

**30. Question:** Can you please clarify the page limit for the Narrative? It is alternatively listed as 8 and 5 pages. (4/6/15)

**Answer:** The project description must not exceed **8** pages in length. The page limit referenced on Page 2 of Attachment 4 has been corrected to read "Provide an attachment to this application that includes a project description not exceed **8** pages in length." Please see the revised Attachment 4.

**31. Question:** Page 6 of the OFD states, "Project Summary: A summary of your proposed ALP must be attached. This project description is not to exceed 8 pages in length..." Page 2 of Attachment 4 states "Project Description Provide an attachment to this application that includes a project description not to exceed 5 pages in length." Please clarify whether the maximum number of pages is 5 of 8 pages. (4/7/15)

**Answer:** Please refer to the response provided for Question #30.

**32. Question:** Section VII, Item B, Project Description, Page 6, states that the project description is not to exceed 8 pages. But Attachment 4, Project Description, Page 2, says the project description is not to exceed 5 pages. Which figure is correct? (4/13/15)

**Answer:** Please refer to the response provided for Question #30.

**33. Question:** What is the permitted length of the Project Description? Page 6, Part VII Application Instructions, B. Application submission: Section 1, Project Description states the project description is not to exceed 8 pages in length while Attachment 4, page 2, Project Description indicates it should not exceed 5 pages in length. (4/12/15)

**Answer:** Please refer to the response provided for Question #30.

**34. Question:** What is the maximum number of pages for the Project Description? Page 6 of the application instructions indicates 8 pages, while Attachment 4, Section 1, Page 2 of the actual application indicates 5 pages. (4/13/15)

**Answer:** Please refer to the response provided for Question #30.

**35. Question:** Page Limit for Project Description. In the Project Description Section under Section IX, Attachment 4, Section 1 (P.17/21), the instructions ask applicants to include “an attachment to this application that includes a project description not to exceed 5 pages in length.” However, under Section VII (Application Instructions) the instructions provide that applicants should submit “a project description not to exceed 8 pages in length”. As these are contradictory instructions, please clarify what the correct page limit should be for the project description section. In light of the information to be addressed, we would request that this be 8 pages in length, at a minimum. (4/13/15)

**Answer:** Please refer to the response provided for Question #30.

**36. Question:** What is the maximum number of pages for the **Project Description**? Page 6 of the application instructions indicates 8 pages, while Attachment 4, Section 1, Page 2 of the actual application indicates 5 pages. (4/13/15)

**Answer:** Please refer to the response provided for Question #30.

**37. Question:** With respect to demonstrating need for ALP beds/service gaps within a geographic region, is it permissible to attach a market study, or must that be included within the 8 page narrative? (4/6/15)

**Answer:** Yes. It is permissible to attach a market study to demonstrate a need for the ALP. This attachment will not count towards the 8 page Project Description and could be used to support your assumptions on bed need.

**38. Question:** On page 2 of Attachment 4 (5. Residents and Services (c)) – asks if the program will accept residents who are receiving SSI and if so to estimate the percentage of total beds that will be available at the SSI rate; however on Page 8 Section VIII (Review and Award Process) of the OFD lists commitment to admitting/retaining SSI, Safety Net (SN) and Medicaid (MA) eligible individuals as a factor in conducting the application reviews. Can the DOH clarify on this difference? Often individuals living in ACFs or ALRs may become eligible for Medicaid due to medical needs or because of



financial need but may not be SSI eligible. Will the commitment to admit or retain Medicaid eligible individuals be compared as favorable as SSI individuals? (4/6/15)

**Answer:** The Department seeks the percentage of total ALP beds that the applicant will commit to occupy with public pay residents (SSI, SN, MA). This percentage will be considered during the review of applications. The Department has no minimum requirement regarding the percentage of beds designated for public pay residents, however higher percentages will be scored more favorably.

**39. Question:** General Information, Project Description, Resident Services: Section IX, Attachment 4, Section 1, 5.a. and 5.c. (P.2): (4/13/15)

- In sub-section "5.c." please clarify if the Department intended to ask about the percentage of beds that would be available for residents who are receiving Medicaid (it currently asks about SSI availability).
- In sub-section "5.c." please also clarify if the Department will consider ALP programs that serve both Medicaid eligible ALP residents and private pay ALP residents, or alternatively, if 100% of ALP beds awarded must be reserved for Medicaid eligible residents.
- If less than 100% of ALP beds may be designated for Medicaid eligible residents, please indicate if there is a minimum percentage of beds that must be designated as Medicaid beds to be a successful applicant?
- Please indicate the lowest portion of Medicaid beds that was included in the successful ALP applications during the OFD process since 2009.

**Answer:** Please refer to the response provided for Question #38.

The Department does not provide information pertaining to the lowest portion of Medicaid beds that was included in the successful ALP applications during the OFD process since 2009. Under this OFD, there are a number of factors which will be considered in determining a successful applicant. These factors are listed on page 8, **Section VIII. Review and Award Process** of the OFD.

**40. Question:** *Section VII, Review and Award Process, A: Scoring of the Application, and Project Description, pg. 2, Q. 5c.* The OFD asks the applicant to provide an estimated percentage of the number of SSI recipients they plan to serve in the ALP. Later in the application, it is a factor in scoring. (4/13/15)

- a. Please clarify if this percentage is a *commitment* that the provider will be held to; or rather, an estimate that could be adjusted?
- b. It is extremely difficult to make an ALP work financially with 100% of the population on SSI/Medicaid. Does the Department have expectations around the percentage of Medicaid vs. Private Pay residents; and if so, what are they?

**Answer:** The percentage provided to the Department is a commitment. Please refer to the response provided for Questions #38 and #39.

**41. Question:** Under Project Description #7 for detailed description of the proposed ALP, is there a desired square footage for each room? (4/13/15)

**Answer:** Yes. The Department has established minimum square footage requirements. According to 18 NYCRR 494.7 (a), “an operator of an assisted living program must comply with the following (ALP) standards in an addition to the applicable standards contained in Sections 487.11 and 488.11 of this Title.”

Adult Home ALPs must refer to 18 NYCRR 487.11 (j) (14) (vi), which states that “single bedrooms shall have a minimum floor area of 100 sq. ft.; (vii) double bedrooms shall have a minimum floor area of 160 sq. ft. exclusive of foyer, wardrobe, closets, lockers and toilet room.”; Enriched Housing Program ALPs must comply with 18 NYCRR 488.11 (h) (11) (ii), “single bedrooms must have a minimum floor area of 85 sq. ft.; (iii) double bedrooms must have a minimum floor area of 140 sq. ft. exclusive of foyer, wardrobe, closets, lockers and toilet rooms.”

**42. Question:** General Information, Project Description, Resident Services: Section IX, Attachment 4, Section 1, 5.a. and 5.c. (P.2):

- a. Under 5.a. “Residents and Services”, the application includes reference to facilities increasing programs “by more than nine beds” and how they will meet a public need in the “geographic area” to be served. The reference to nine or more beds appears to have been taken from the common application that applies to both Assisted Living Residences and Adult Care Facilities, and refers to an expedited process that is available for expansions of existing programs involving less than nine beds. However, we believe this reference is not applicable in this context. Please confirm if the Department’s intent was to require every facility requesting beds to describe how they will meet a public need in the area to be served, regardless of the number of beds sought. (4/13/15)

**Answer:** The intent of the Department through this OFD is to require every applicant requesting ALP beds to describe how the proposed ALP will meet a public need in the area to be served, regardless of the number of beds sought.

**Section 1 – Desired Components of an ALP**

**43. Question:** Home and Community Based Setting Rule Clarifications (Section II (Federal rule: Home and Community Based Setting) and IX, Attachment 4 (“Project Description, Desired Components of an ALP” (P.3)) :

The application sets forth two different standards for home and community based settings. First, in Section II, it states the language of the final rule. However, in Attachment 4, it prompts applicants to describe how their projects comply with a different set of standards that predated the final rule. We believe that the appropriate standard to be applied to ALPs is the current final rule and ask the department to clarify which standards should be discussed in the project narrative and will be used to evaluate and score the applications. (4/13/15)

Following are examples where the two standards in the application are significantly different.

“Resident choice in choosing from whom to receive services and supports”: This is no longer a requirement under the Federal Rule. The Final Rule and comment, and related CMS Guidance, has clarified that in provider owned settings where providers receive a single bundled rate to provide care for all of their resident’s service needs, residents

have *chosen* to receive all such services from that residential provider, and may not choose from whom to receive services and supports from individual sub-ordinate providers unless the services are not included as part of the bundle. Accordingly, this should be revised, and the only requirement should state, as correctly stated in Section II. (P.2) that settings are to “facilitate individual choice regarding services and supports, and who provides them.”

Individuals will share units only by choice—both potential roommates must agree to share the room with the other roommate”. The Final Rule does not require that individuals share units only by choice. Instead, it requires that individuals have a choice in who their roommates are, and also clarifies that the State is required to provide options for a private setting, but the availability of options will depend on several factors. Accordingly, this requirement should be revised to reflect what the Final Rule’s requirements actually are, as stated in Section II. P.2: “Support residents sharing units with the right to have choice of roommates”; and, “Create person-centered service plans documenting options based on the individual’s needs, and preferences”.

“Individual and shared (double occupancy) dwelling units must contain separate living, dining and sleeping areas which provide adequate space and comfortable, home-like surroundings.” The HCBS Rule does not require separate living and dining space for each dwelling unit. Separate living and dining areas in provider settings have never been mentioned in any version of the Rule as being a requirement. To list this as an expectation is not only inconsistent with the Final Rule and all CMS Guidance, but is antithetical to the rationale for the changes that were made to the Final Rule, which were initially done so the focus of the Rule would be on the individual’s experience and outcomes, rather than the particular physical characteristics of a setting. Accordingly, while such features may be useful background information as to how a facility may demonstrate that it is a home and community based setting, it is inappropriate to list them as requirements or expectations when they are not nor have they ever been discussed as requirements under the Final Rule.

“Kitchen is to include area for food storage, refrigeration, and meal preparation”; “Residents must be provided full access to such features as a kitchen and cooking facilities and small dining areas, as appropriate”; “Resident cooking may be accommodated in several ways, including use of a supervised common kitchen or through renovating existing adult home space to provide for the cooking apparatus in a non-resident sleeping area, such as a galley style kitchen separated from the bedroom.” These three requirements all relate to the same Final Rule requirement regarding ensuring “access to food at any time”, and appear on P.3-4 of Attachment 4, Section IX. The Final Rule and related CMS Guidance provided extensive clarification about what is meant by the requirement to provide “access to food at any time”. The guidance and clarification make it abundantly clear that this requirement does not require facilities to provide food storage and food preparation equipment in units. In fact, there is a prohibition against all cooking appliances in resident rooms in Adult Homes pursuant to 18 NYCRR 487.11(f) (19) (vii).

CMS has discussed that the “access to food at any time” requirement can be met in many ways, and does not mean individual units must have access to full food preparation and storage equipment. Thus, to include these here, as expectations, is completely inconsistent with the intent of the Final Rule. We therefore request that these expectations be deleted and that expectations include only what is required by the Final

Rule, namely, that individuals have “access to food at any time,” allowing facilities to demonstrate how they will exhibit this using the guidance that has been provided.

**Answer:** Based on clarifications to the Federal Home and Community Based Settings Rule, pages 3-4 (**Desired Components of an ALP**) of Attachment 4 – Opportunity for Development Application Sections 1, 2 and 3 have been amended. As noted in the modifications on page 1, please refer to **Revised Attachment 4**, which replaces the *Desired Components of an ALP* section of *Attachment 4 – Opportunity for Development Application*, when describing your project.

The Department understands it may not be practical for an ALP to create a setting which has every desirable component. It is incumbent on the applicant to describe in detail how the proposed components of the applicant’s ALP will meet the intent of this OFD.

**44. Question:** There are aspects of the OFD that exceed or differ from the final home and community based settings rule outlined in Section II. For, example, the OFD requires the following, which is not required in the federal rule, or the language has been changed to allow for more flexibility:

- each unit must contain a full bathroom (including a toilet, washstand and shower or tub);
- resident choice in choosing from whom to receive services and supports;
- privacy in the sleeping unit will be provided unless a roommate is chosen;
- individual and shared dwelling units must contain separate living, dining and sleeping areas; which provide adequate space and comfortable, home-like surroundings;
- kitchen is to include area for food storage, refrigeration and meal preparation; and,
- residents must be provided full access to such features as a kitchen and cooking facilities and small dining areas as appropriate.
- Why is DOH establishing the above as desired components, if not required by the federal rule? (4/13/15)
- We respectfully request that the expectations be amended to be consistent with the final rule and subsequent clarifications issued by CMS. (4/13/15)

**Answer:** Please refer to the response provided for Question #43.

**45. Question:** Regarding resident choice of whom they receive services from; Are you indicating that a resident should have the choice of which specific caregiver provides that service or which “agency” provides service? (3/23/15)

**Answer:** ALP residents must have a choice of whom they receive services from, however the ALP must have a contract with the LHCSA, CHHA or LTHHCP which provides the services. Please refer to the DAL issued June 7, 2012 which removes the limitation on the number of contracts an ALP may hold with a CHHA and LTHHCP.

**46. Question:** With regard to the HCBS settings rule section, if the requirement for resident choice in choosing from whom to receive services and supports is a requirement, how exactly is that defined? Obviously, the ALP—by statute—is a combination of ACF and home care services. How could the ALP offer another choice? Clearly, the resident can

select a physician, hospital, etc.; however the construct of the ALP is such that the choice is not limitless. (4/13/15)

**Answer:** Please refer to the response for Question #45.

**47. Question:** Must we provide TWO separate and distinct dining room areas in a semi-private room? (3/23/15)

**Answer:** A separate dining area for each resident is not required. Please refer to the response provided for Question #43.

**48. Question:** Does the sleeping quarters each need to have a private door to that sleeping quarter? (3/23/15)

**Answer:** Please refer to the response provided for Question #43.

**49. Question:** What is the difference between a sleeping quarter and a living quarter? Historically they are one in the same in a typical resident room. (3/23/15)

**Answer:** A living area is a location other than a sleeping area to provide leisure space. Please refer to the response provided for Question #43.

**50. Question:** Does a bedside table with lockable storage satisfy the requirement to have an “immobile device” in which to lock personal items? (3/23/15)

**Answer:** Refer to 18 NYCRR 487.11 (i) (4) (v). A bedside table with lockable storage does satisfy the requirement to have an “immobile device” in which to lock personal items, so long as the lockable storage unit cannot be removed at will.

**51. Question:** What is considered “Adequate closet space” for purposes of storing personal effects? Is there a Square Footage minimum requirement? (3/23/15)

**Answer:** There is no minimum square footage required for closet space. Please refer to 18 NYCRR 487.11 (i) (1) and 488.11 (f) (1).

**52. Question:** There is an indication that each resident should have access to “their own” refrigerator... Are you requiring each ALP resident should be provided a personal refrigerator? (3/23/15)

**Answer:** No. The Department is not requiring that each ALP resident be provided a personal refrigerator. The Department is requiring that each ALP resident have access to food at all times, which could be fulfilled by resident access to food stored in food pantries or refrigerators in their rooms and/or congregate areas or common kitchens.

**53. Question:** Regarding Section II, Federal Rule: Home and Community Based Settings, please explain what is meant by “access to food at any time”. (4/13/15)

**Answer:** Please refer to page 3 of the Revised Attachment 4.

**54. Question:** Do in-room refrigerators satisfy the 24-hour access to food requirement? (4/1/15)

**Answer:** Yes. Please refer to the response provided for Questions #52 and #53.

**55. Question:** Must there be an agreement with a nursing home for access to nursing home beds? (4/1/15)

**Answer:** Insufficient information is provided for the Department to answer this question.

**56. Question:** What is required for the ALP resident to have a choice of roommate? (4/1/15)

**Answer:** In order to fulfill the requirement that the ALP resident have a choice of roommate, each resident must consent to sharing the living space.

**57. Question:** Regarding Section II, Federal Rule: Home and Community Based Settings, please explain how an applicant can be expected to “support residents sharing units with the right to have choice of roommates” and simultaneously “ensure that each individual has privacy in their sleeping or living unit”. (4/13/15)

**Answer:** Please refer to the response for Question #43.

**58. Question:** May two ALP residents have separate sleeping quarters but a shared living space to be considered private? (4/1/15)

**Answer:** Please refer to the response for Question #43.

**59. Question:** Do dwelling units have to contain separate living and dining areas connected to the sleeping unit? (4/1/15)

**Answer:** Please refer to the response provided for Question #43.

**60. Question:** Do common living and dining areas with private sleeping areas meet the ALP criteria? (4/1/15)

**Answer:** Please refer to the response for Question #43.

**61. Question:** Please define “separate” under Desired Components of an ALP in bullet “Individual and shared (double occupancy) dwelling units must contain separate living dining and sleeping areas which provide adequate space and comfortable, home-like surroundings.” (4/13/15)

**Answer:** Please refer to the response for Question #43.

**62. Question:** If a unit contains a sleeping area and powder room, does a private in unit shower/bathtub have to be provided? (4/1/15)

**Answer:** Please refer to the response for Question #43.

**63. Question:** Will the HCBS rule permit a central, shared shower for multiple rooms if each room has its own bathroom (sink/toilet)? (4/7/15)

**Answer:** Please refer to the response for Question #43.

**64. Question:** Regarding Section II, Federal Rule: Home and Community Based Settings, is it acceptable to have a central shared shower if each resident room has its own bathroom (toilet and washstand)? If so, how many individuals are permitted to share the central shower? (4/13/15)

**Answer:** Please refer to the response for Question #43.

**65. Question:** Regarding Section II, Federal Rule: Home and Community Based Settings, is it acceptable for two (2) single, separate resident rooms to share a shower? (4/13/15)

**Answer:** Please refer to the response for Question #43.

**66. Question:** Does the ALP Opportunity for Development expect or require qualified applicants to provide single room occupancy to ALP residents? (4/13/15)

**Answer:** The applicant is required to provide the option of single room occupancy to an ALP resident. Double room occupancy is allowed, when both residents of that double room agree to live in a double room, and with the other resident in that room.

**67. Question:** If a private sleeping unit shares a common bathroom with other private sleeping units, does this satisfy the ALP criteria? (4/1/15)

**Answer:** Please refer to the response for Question #43.

**68. Question:** Attachment 4, Desired Components of an ALP, Page 4, notes that an EHP must provide suitable equipment for preparing foods in each resident room, but also notes that cooking appliances are prohibited in resident rooms. Can the Department provide clarification? How can food be prepared in a room if no cooking appliances may be present? (4/13/15)

**Answer:** The resident must have access to food and food preparation space at all times. This space may be available as a shared common kitchen with a refrigerator, sink and cabinet/counter space. An EHP may provide cooking appliances within the unit, however not in the resident sleeping area.

**69. Question:** If the “desired components of an ALP” section described in question #10 is not revised to match the requirements of the Final Rule, please clarify if it is the Department’s intent for the ALP’s to possess settings characteristics that go above and beyond what is required by the HCBS Rule as well as above and beyond what has been required in past ALP application opportunities, including the Transitional Adult Home ALP solicitation. (4/13/15)

**Answer:** Please refer to the response for Question #43.

**70. Question:** Scoring of the Application: HCBS Final Rule vs. Desired Components of an ALP (Questions 10-11). It appears that there are two sets of scoring standards in the application. In Section VIII.A. on P.8, the application provides that applicants will be scored based on how they demonstrate an understanding of the provisions of the HCBS final rule. Meanwhile, in the Attachments, in Section One, under the “Desired Components of an ALP” (P.3-4), applicants are asked to describe how they will meet expectations that are inconsistent with the Final Rule. These include Bullet Points 2

(Resident Choice in choosing from who to receive services and supports without clarification for provider owned settings), 3 (individuals share units only by choice, which is misleading as it is an incomplete statement of what the final rule requires), 5 (units must contain separate living, dining and sleeping areas...this has never been a requirement of the HCBS Rule), 6 (the unit must contain a full bathroom), 11 (kitchen is to include an area for food storage, refrigeration and meal preparation) 12 (full access to features as a kitchen and cooking facilities and small dining areas, as appropriate), etc. These expectations are not requirements under the Final Rule.

Thus, there is some inconsistency in the requirements of the application relating to the HCBS Rule. Please clarify what criteria will be used to score applications. (4/13/15)

**Answer:** As noted in the modifications on page 1 and in the response for Question #43, the criteria explained in Revised Attachment 4 – *Desired Components of an ALP*, will be used to score applications.

**71. Question:** Attachment 4, Page 4, 4<sup>th</sup> bullet states that cooking appliances are prohibited within resident rooms in an Enriched Housing Program. This contradicts 18 NYCRR 488.11 (h) (5) which requires "...a cooking stove or range with oven..." in good operating condition"... in each individual or shared dwelling unit." Will this bullet be revised to comply with the regulatory requirement? If not, must certified EHPs applying in this OFD process commit to disable any working cooking stoves or ranges within dwelling units? (4/12/15)

**Answer:** An EHP does require cooking appliances within a resident dwelling unit, however cooking appliances may not exist in the sleeping area of the resident room. Licensed EHPs which comply with this regulation do not need to disable any working appliances within a dwelling unit.

**72. Question:** Are the Desired Components of an ALP (pp. 3-4 of application) meant to go beyond the federal regulations? (4/13/15)

**Answer:** No. The desired components of an ALP are meant to comply with federal regulation. Please refer to the response for Question #43.

**73. Question:** ALP Quality of Care Performance: General Information, Desired Components of an ALP, Section IX. Attachment 4, Section 1, 7. (P.3): The application asks applicants to justify how the ALP beds would address the need for long term care services in the facility's region, in part, through "Quality of care performance." Please clarify whether this is asking applicants to discuss past quality of care performance or how the entity intends to perform quality improvement evaluations at the new or expanded program in the future. (4/13/15)

**Answer:** An applicant to this OFD should include in the applicant's justification for the ALP some indication on those quality standards the ALP expects to maintain or achieve, and how the applicant intends to measure these standards.

**74. Question:** What is meant by access to nursing home beds? (4/1/15)



**Answer:** Access to nursing home beds to provide additional levels of care, when necessary, may be established through relationships with nursing homes within the community of the proposed ALP.

## **Section 2 – Financial Information**

**75. Question:** Must the applicant include evidence of site control for proposed ALP along with the OFD, (e.g. deed, lease, ownership or right of access to property) particularly in cases of new construction? (4/6/15)

**Answer:** Applicants will be scored on the ability to demonstrate financial feasibility. Although proof of site control is generally included with an application's legal component, this information is also used in the financial review. **Attachment 4 – Opportunity for Development Application Sections 1, 2 and 3, Section 2 - Financial Information, Question 2. C.**, response should include a narrative and any information, including site control documentation (i.e. deed, executed lease agreement(s), from property owner to Operator), which will assist with the final determination of financial feasibility; attach additional pages if necessary.

**76. Question:** Does the Department expect to see executed contracts, such as if an application involves a new purchase or lease in order to approve beds for a brand new operator/facility? (4/13/15)

**Answer:** Please refer to the response provided for Question #75.

**77. Question:** With respect to financial feasibility, must the applicant submit evidence of ability to finance the project? (e.g., letter of intent for financing or balance sheet)? (4/6/15)

**Answer:** The applicant may choose to submit any available information which may demonstrate financial feasibility of the ALP. Also refer to the response provided for Question #75.

**78. Question:** In the Financial Section (Section 2, Question 3.) regarding new construction/rehabilitation, must the applicant describe and/or attach evidence of financing source? The Question as written only asks for an estimate of total project cost. (4/6/15)

**Answer:** The applicant should document the source(s) of financing.

**79. Question:** With respect to evidence of project financial feasibility, is the Department looking for projections of revenues and expenses for the proposed ALP? (4/6/15)

**Answer:** A proposed budget is not required for this OFD.

**80. Question:** In Financial, Section 2: Question 2, does 2. C. (documentation of financing arrangements) refer only to the purchase of an existing facility or also to the financing arrangements for renovation or construction of a new facility? (4/6/15)

**Answer:** The applicant should respond to 2.C. for any project that will require financing On page 5, **Attachment 4, Section 2--Financial Information**, it states "2.C. Briefly

describe and enclose any necessary documentation to show any other purchase and/or financing arrangements not covered in A, B, and C of this part.”

The question is directed towards those applicants that will purchase an existing facility, however all applicants are encouraged to use this question to demonstrate financial feasibility. Financial arrangements for renovation or construction of a new facility, and a contract/letter of intent to purchase or acquire an existing facility may be submitted to demonstrate financial feasibility of the project.

- 81. Question:** Section 2 – Financial Information – Question #2 asks “Does the application involve purchase of an existing certified adult care facility?” As such, can you confirm that a party who has a contract / letter of intent to purchase / acquire an existing facility would be able to become an applicant under this ALP 3400 solicitation? (4/13/15)

**Answer:** Proposals should be submitted by eligible applicants. Please refer to the OFD, page 3, **Section III: Who May Apply.**

- 82. Question:** Reference to Form 990 in Financial Information (Section IX. Attachment 4, Section 2, 4. (Financial Information) (P.5): This question appears to have been included in error and we request that the Department clarify that it is not requiring submission of this information for applicants. It asks applicants applying as a business corporation or who wish to establish a not-for-profit adult care facility to provide two most recent Form 990s or their annual financial report to show revenues in excess of expenses. This question is included in the “common application” for adult care facilities and assisted living residences and appears to be inconsistent with the scope of information collected as part of the ALP OFD, and is more appropriately collected from those facilities ultimately chosen to develop beds under this OFD. (4/13/15)

**Answer:** Please provide a “yes” or “no” answer to assist with the determination of financial feasibility of this project. The Department is not requiring a submission of these forms as part of this OFD process.

- 83. Question:** Financial Information. VII.C. Financial Information (P.7). Does the Department want a copy of the member(s)’ financials if they are funding the project with their own funds? In what form do they want such financing? (4/13/15)

**Answer:** On page 7, **Section VII. Application Instructions, C. Application Submission: Section 2**, the OFD states, “The applicant must demonstrate the financial feasibility of the proposed ALP.” Although not required, the applicant may submit financials summaries to demonstrate financial feasibility.

### **Section 3 – Architectural Information**

- 84. Question:** Does the 24 month timeline mean that the ALP must be open and operational within 24 months? (4/7/15)

**Answer:** On page 8, **Section VIII. Review and Award Process**, subsection A. *Scoring of the Application*, the OFD states, “The ALP beds will be operational within 24 months.” ALP applications that propose to be operational within 24 months will score higher (for this one factor) than those that do not. ALPs that propose to be operational after 24 months will be reviewed and scored on all factors listed in this Section of the OFD.

**85. Question:** In the architectural section it states that "...the applicant will obtain within 24 months of the award all necessary approvals, permits, easements, endorsements or support which are necessary to operationalize the awarding of ALP beds." Can you please clarify the following: (4/13/15)

- a. Award – is this the award date for to submit the CON or approval of the CON
- b. Confirm that the ALP does not need to be operating within 24 months of the project consists of new construction.

**Answer:** Please refer to the response for Question #84.

Upon an award of ALP beds under this OFD, the applicant will be instructed in the Department's award letter to the applicant to submit an Adult Care Facility Common Application to the Department within 4 months. The 24 months to operationalize the ALP would commence with the submission of the ACF Common Application to the Department.

**86. Question:** The OFD does not require architectural drawings. Are applicants allowed to attach architectural drawings, and if so, might the provision of architectural drawings enhance an application's score? (4/13/15)

**Answer:** Applicants may attach architectural drawings, if the applicant considers architectural drawings to support information contained in the application. However, the submission of architectural drawings will have a neutral effect on the scoring of the application.

**87. Question:** Please clarify the architectural standards for projects for: (4/13/15)

- i. Existing ACFs that are seeking ALP licensure for some or all of the beds
- ii. Existing unlicensed buildings seeking ALP licensure
- iii. New construction

**Answer:** See 18 NYCRR 494.7 for ALP environmental standards. Although the Department is not requiring architectural designs through this OFD, architectural information for all applications should include a detailed description of how the facility will comply with the federal rule and the desired components of the ALP.

**88. Question:** We understand that the State may adopt new architectural standards in the future, based on International Code Committee recommendations. We are concerned that the timing of that potential adoption could coincide with the development of a new ALP project. Should applicants consider the possibility of being held to a different architectural standard than answered in the aforementioned set of questions? If so, please provide the necessary guidance for them to do so. (4/13/15)

**Answer:** This question is not pertinent to this OFD.

### ***Letters of Support Indicating Need for an ALP***

**89. Question:** What content is required in the letters of support? (4/1/15)

**Answer:** The letters of support should reflect the need for assisted living program services in the community/region of the proposed ALP.

**90. Question:** Would letters from social workers satisfy the “health care facilities” portion of letters of support required in Point VII? (4/1/15)

**Answer:** The Department has no reservation on the title of a signatory, which is intended to satisfy the “health care facilities” portion of letters of support.

**91. Question:** The ALP 3400 application checklist requires that applicants submit a letter of support from the local office for the aging in the geographic region of the facility. Are applicants located in the 5 boroughs required to secure letters of support from the New York City Department for the Aging? I notice that applicants in the boroughs are not required to secure letters from the NYC Human Resources Administration. (4/8/15)

**Answer:** Applicants for ALP beds in New York City (NYC) are not required to seek or submit a letter of support from the NYC Department of the Aging. This is a change from the requirements of submission detailed in the OFD. Further, the lack of this Department of Aging letter of support from applicants for ALP beds in NYC will not be a factor in the Department review of an application.

**92. Question:** Section VII, Item E., Page 7. In a recent project in which the Department required a letter of support/assessment of need from the New York City Department of the Aging, as the Department is aware, that office refused to provide such a letter, indicating that such matters are not within its jurisdiction. How should New York City applicants address this problem with respect to this OFD, given the requirement to secure such letter? Will NYSDOH reach out to the New York City Department for the Aging to clarify this matter and provide further guidance to applicants? (4/13/15)

**Answer:** Please refer to the response for Question #91.

**93. Question:** In Section VII, Application Instruction, Part E, should the Letters of Support be addressed to Jacquelyn Paratore? (4/8/15)

**Answer:** Letters of Support should be addressed to the Division of Adult Care Facilities/Assisted Living Surveillance at the NYS Department of Health, to the attention of Ms. Jacquelyn Paratore.

**94. Question:** Letters of Support: Section VII.E. (P.7): We request clarification that applicants are permitted to submit more than three additional letters of support. We believe that certain stakeholders may be able to highlight different aspects of the project and to the extent there is intent to limit the total number of additional letters that may be sent to three, we would request that the Department revise this limitation so applicants can include evidence of support from more than three sources. Such a limitation would preclude the inclusion of evidence from distinct providers and provider groups, as well as individuals, officials and community representatives. (4/13/15)

**Answer:** On page 7, **Section VII. Application Instructions, E. Application Submission: Letters of Support Indicating Need for an ALP**, the OFD states “It is recommended that applicants submit 3 additional letters of support and need for an

ALP....” The number 3 is not intended to limit the applicant; applicants may submit additional letters to demonstrate support and need for ALP beds in the community.

### ***Geographic Region***

**95. Question:** With regard to the geographic location of the proposed ALP beds (VIII.A. Scoring of the Application, first bullet point): (4/13/15)

- a) Has the Department ruled out any locations as overly-saturated with ALP beds?
- b) Will the Department look at both the number of ALP beds in an area and occupancy rates?
- c) Is there a location where applicants can obtain more recent occupancy rates than the New York State Health Data Set Website, where the most recent data seems to be from 2012?

**Answer:** The Department will not exclude any application based solely on geographic location and will consider need as a factor in scoring.

More recent information on occupancy rates can be requested through the Department’s Records Access Office.

**96. Question:** Section V, Department of Health’s Reserved Rights, Page 5, notes in No. 15 that the Department may award beds on geographical or regional considerations. Is it the Department’s intention to do so? Can the Department provide a regional/geographic analysis of unmet need, so that applicants may direct their resources to areas with the most unmet need, which would seem to be in the best interest of public health and everyone’s time? (4/13/15)

**Answer:** Please refer to the response for Question #95.

**97. Question:** Applicants are able to determine existing, certified ALPs relatively easy from the Department’s website, in the section that shows certified beds by county, by facility. Could the Department publish a list of all approved, non-operational beds, so that applicants will be able to determine geographic areas of unmet need more easily? (4/13/15)

**Answer:** No. The Department will not publish a list of all approved non-operational beds.

### ***Scoring of the Application***

**98. Question:** Are applications that propose a “conversion” of existing ACF beds going to be accepted? If so, will they be scored negatively against an application that proposes “new” ALP beds? Thank you. (3/25/15)

**Answer:** No. Applications that propose a conversion of existing ACF beds to ALP beds will be accepted. The Department will not score negatively against any application which proposes either a conversion of ACF beds to ALP or creating new ACF/ALP beds.

**99. Question:** Will there be any penalty if Adult Home beds are being transferred to ALP beds? (4/1/15)

**Answer:** Please refer to the response for Question #98.

**100. Question:** Will the Department consider an application that includes decertification of nursing facility beds more favorably – e.g. award extra points? (4/6/15)

**Answer:** No. The decertification of nursing home beds is not a factor in the scoring of the application.

**101. Question:** Section VIII, Review and Award Process – what documentation is required to demonstrate site control? (4/13/15)

**Answer:** The applicant may submit any available information relevant to demonstrating site control of the ALP facility, such as a deed or an executed lease agreement.

**102. Question:** Page 8 of the OFD lists the factors that will be considered in scoring of an application, and one factor is “The ALP beds will be operational within 24 months.” If an ALP is also part of a larger restructuring project and a Capital Restructuring Financing Program grant application was submitted through a PPS [Principal Provider System] as part of the State’s 5 year DSRIP [Delivery System Reform Incentive Payment Program], can there be any flexibility in the 24-month timeframe (i.e., go beyond the 24 months) without affecting the overall scoring of the application? (4/7/15)

**Answer:** This 24 month timeline does not require the ALP be open and operational within 24 months.

**103. Question:** Under the scoring section, it states that the beds will be operation within 24 months. Please clarify when the 24 months would commence. After approval of the ALP CON, LHCSA CON, notification to submit a CON for the ALP beds, etc.... (4/13/15)

**Answer:** Twenty-four months will commence upon receipt of the Adult Care Facility Common Application by the Department.

**104. Question: *Section VIII, Review and Award Process, A. Scoring of the Application.***

We appreciate the Department of Health’s (DOH’s) interest to have the ALP become operational, ideally, within 24 months. However, we note that the processing of home care agency Certificate of Need (CON) applications by the Department have taken a substantial amount of time. Will there be any prioritization of licensed home care services agency (LHCSA) CONs submitted for the purpose of developing an ALP? (4/13/15)

**Answer:** No. There will be no prioritization of LHCSA applications submitted for the purpose of developing an ALP.

**105. Question:** If an existing ACF is awarded ALP beds, what is the Department’s expectation of the timeline to transition the beds from current residents who may not be eligible for ALP to ALP residents? Attrition rate may vary for different applicants. (4/13/15)

**Answer:** This question is not pertinent to this OFD.

### **Previous ALP Awardees**

**106. Question:** Previous ALP Awardees: Section VIII.B.(p. 8) Please clarify the applicability of this restriction (e.g., does this restriction apply to the proposed building/site where ALP beds have previously been awarded but are not yet operational, or is this requirement more expansive?). (4/13/15)

**Answer:** As stated on page 8, **Section VIII. Review and Award Process, B. Previous ALP Awardees**, “At the time of the Department’s final determination on ALP beds to be awarded, no award will be made to any applicant who, under any other Department ALP initiative issued prior to 2013, has either a pending application for ALP beds, or has been licensed by the Department for ALP beds but has not succeeded in making those beds operational.” Applications from owners or operators who did not succeed in making those awarded beds operational may not be considered for an award under this solicitation. Please refer to the exception referenced in Section VIII of the OFD, page 8, **B. Previous ALP Awardees**.

### **Capital Reimbursement**

**107. Question:** For purposes of forecasting financial feasibility we need to know if capital reimbursement will be paid for new ALP beds constructed. The current Public Health Law 3614 (6) (b) limits the payment of capital reimbursement to facilities meeting the criteria. Does or will the Assisted Living Program 3400 Initiative have a provision to expand capital reimbursement to include for-profit corporations? (3/25/15)

**Answer:** Capital Reimbursement will be available based solely on existing legislation as noted in Public Health Law 3614 (6) (b).

Public Health Law 3614 (6) (b), as added by Chapter 645 of the Laws of 2003, has been amended. Chapter 56 of the Laws of 2013, Part A, § 69 establishes that real property capital construction costs “...shall only be included in rates of payment for assisted living programs if: the facility houses exclusively assisted living program beds authorized pursuant to paragraph (j) of subdivision three of section four hundred sixty-one-1 of the social services law or (i) the facility is operated by a not-for-profit corporation; (ii) the facility commenced operation after nineteen hundred ninety-eight and at least ninety-five percent of the certified approved beds are provided to residents who are subject to the assisted living program; and (iii) the assisted living program is in a county with a population of no less than two hundred eighty thousand persons.”

**108. Question:** Does or will the Assisted Living Program 3400 Initiative have a provision to expand Capital reimbursement to include For-Profit corporations? (3/25/15)

**Answer:** Please refer to the response provided for Question #107.

**109. Question:** Will applications from not-for-profit providers be eligible for capital reimbursement? (4/13/15)

**Answer:** Please refer to the response provided for Question #107.

**110. Question:** Does or will the Assisted Living Program 3400 Initiative have a provision to expand capital reimbursement to counties smaller than 280,000 persons? (3/25/15)

**Answer:** Please refer to the response provided for Question #107.

**111. Question:** Is capital reimbursement available for non-profits that meet requirements in Public Health Law 3614 (6) (b) that allows for capital reimbursement for ALPs if the following criteria are met:

- Facility houses exclusively ALP beds;
- Operated by a not for profit;
- Facility commenced operation after 1998 and at least 95% of certified approved beds are to residents who are subject to assisted living program; and
- ALP is located in a county with no less than 280,000 residents. (4/7/15)

**Answer:** Please refer to the response provided for Question #107.

### **Miscellaneous**

**112. Question:** Will personal delivery of the ALP 3400 Initiative be accepted? Page 6, Part VI Intent of the Opportunity for Development (OFD) seems to indicate the application should be mailed and excludes the acceptance via fax or e-mail; no mention is made of personal delivery. (4/12/15)

**Answer:** Yes. The Department will accept hand delivery of an application to Ms. Jacquelyn Paratore at the address listed in the OFD, no later than **3 PM, June 22, 2015**.

**113. Question:** Application Submission by Hand Delivery. In the instructions under Section VI. on page 8, it provides that applications (including the electronic copy) must be sent via mail and may not be sent electronically via fax or email. However, for some applicants it would be more efficient to hand deliver their materials directly to DOH. This has always been accepted in the past as well. Please confirm if applications may be hand delivered to the Department of Health at the mailing address provided under this Section. (4/13/15)

**Answer:** Please refer to the response for Question #112.

**114. Question:** If an applicant is in contract for the acquisition of a county nursing home and a county operated adult home, can the proposed purchaser put in the application for the ALP 3400 OFD. The county has requested that the proposed buyer put in the application. (4/13/15)

**Answer:** Yes. The proposed operator may apply for ALP beds through this OFD.

**115. Question:** The current DOH model contract for ALPs with their Social Services district is outdated due to recent changes in the ALP law. Will the Department provide a revised model contract for awardees? (4/13/15)

**Answer:** No. The Department will not provide a revised model contract.

**116. Question:** May residents with dementia be eligible for ALP? (4/1/15)

**Answer:** Residents with cognitive symptoms labeled as dementia may be eligible for ALP beds, if those residents are in need of the services delivered by an assisted living program.



**117. Question:** Does the State anticipate allocating the remainder of the authorized ALP beds through this OFD or will there likely be an additional solicitation? (4/7/15)

**Answer:** This OFD intends to award the remaining 3,400 beds from the 6,000 ALP beds authorized pursuant to Chapter 58 of the Laws of 2009, **Social Services Law** 461-I. The Department will assess the need for an additional solicitation prior to the expiration of the statute on January 1, 2017.