

ARTICLE 46-B

ASSISTED LIVING

- Title I. Findings and definitions (§§ 4650-4651).
- Title II. Assisted living (§§ 4652-4653).
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TITLE I

FINDINGS AND DEFINITIONS

- Section 4650. Legislative purpose and findings.
- 4651. Definitions.

§ 4650. Legislative purpose and findings. The legislature hereby finds and declares that congregate residential housing with supportive services in a home-like setting, commonly known as assisted living, is an integral part of the continuum of long-term care. Further, the philosophy of assisted living emphasizes aging in place, personal dignity, autonomy, independence, privacy and freedom of choice. The intent of this article is to create a clear and flexible statutory structure for assisted living that provides a definition of assisted living residence; that requires licensure of the residence; that requires a written residency agreement that contains consumer protections; that enunciates and protects resident rights; and that provides adequate and accurate information for consumers, which is essential to the continued development of a viable market for assisted living. Entities, which hold themselves out as assisted living residences must apply for licensure and be approved by the state to operate as assisted living residences pursuant to this article, and must comply with the requirements of this article.

§ 4651. Definitions. As used in this article:

1. "Assisted living" and "assisted living residence" means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly) in a home-like setting to five or more adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of this article must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of assisted living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status. Assisted living and enhanced assisted living shall not include:
 - (a) residential health care facilities or general hospitals licensed under article twenty-eight of this chapter;
 - (b) continuing care retirement communities, which possess a certificate of authority pursuant to article forty-six of this chapter, unless the continuing care retirement community is operating an assisted living residence as defined under this section;
 - (c) residential services for persons that are provided under a license pursuant to article sixteen, nineteen, thirty-one or thirty-two of the mental hygiene law or other residential services primarily funded by or primarily under the jurisdiction of the office for mental health;
 - (d) naturally occurring retirement communities, as defined in section

five hundred thirty-six-g of the executive law;

(e) assisted living programs approved by the department pursuant to section four hundred sixty-one-1 of the social services law;

(f) public or publicly assisted multi-family housing projects administered or regulated by the U.S. department of housing and urban development or the division of housing and community renewal or funded through the homeless housing assistance program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to Section 1701-q-2 of the United States Code shall license as an assisted living pursuant to this article;

(g) an operating demonstration as such term is defined in paragraph (d) of subdivision one of section four thousand four hundred three-f of this chapter;

(h) hospice and hospice residences as defined pursuant to section four thousand two of this chapter;

(i) an adult care facility as defined in subdivision twenty-one of section two of the social services law that is not utilizing the term assisted living (or any derivation thereof) or is not required to obtain an enhanced assisted living certificate; and

(j) independent senior housing, shelters or residences for adults. For purposes of this article and for purposes of determining certification pursuant to article seven of the social services law, the department shall by regulation, define independent senior housing, provided such definition shall be based on whether the operator does not provide, arrange for, or coordinate personal care services or home care services on behalf of residents; and the facility does not provide case management services in a congregate care setting for residents. Nothing in this chapter shall preclude a resident of independent senior housing from personally and directly obtaining private personal care or home care services from a licensed or certified home care agency.

2. "Applicant" shall mean the entity, which submits an assisted living licensure application with the department pursuant to title two or three of this article.

3. "Adult home" means an adult home as defined by subdivision twenty-five of section two of the social services law.

4. "Enriched housing program" means an enriched housing program, as defined in subdivision twenty-eight of section two of the social services law.

5. "Assisted living operator" or "operator" means a person, persons or an entity, which has obtained the written approval of the department to operate an assisted living residence in accordance with this article.

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

7. "Resident" means an adult not related to the provider, who, pursuant to a residency agreement with a provider resides in an assisted living or enhanced assisted living residence, as applicable.

8. "Resident's representative" means a family member or other individual identified in the residency agreement required under section Four thousand six hundred fifty-eight of this articles who is authorized

by a resident to communicate with residence employees regarding the health, well-being, needs of and services provided to such resident and to assist the resident in obtaining needed services.

9. "Resident's legal representative" means a person duly authorized under applicable state law to act on behalf of a resident. Such legal representative could include, but is not necessarily limited to, a court appointed guardian, an attorney in-fact under a durable power of attorney, an agent under a health care proxy or a representative payee, depending upon the action to be taken.

10. "Home care services" means the services defined in subdivision one of section three thousand six hundred two of this chapter, as provided by a home care services agency which has been approved to operate pursuant to article thirty-six of this chapter.

11. "Individualized service plan" or "ISP" means a written plan developed pursuant to section four thousand six hundred fifty-nine of this article.

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

13. "Aging in place" means, care and services at a facility which possesses an enhanced assisted living certificate which, to the extent practicable, within the scope of services set forth in the written residency agreement executed pursuant to section four thousand six hundred fifty-eight of this article, accommodates a resident's changing needs and preferences in order to allow such resident to remain in the residence as long as the residence is able and authorized to accommodate the resident's current and changing needs. A residence that does not possess an enhanced assisted living certificate shall not be deemed able to accommodate a resident's needs if the resident requires or is in need of either enhanced assisted living or twenty-four hour skilled nursing care or medical care provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law.

14. "Enhanced assisted living" or "enhanced assisted living resident" means the care or services provided, or a resident who is provided the care and services, pursuant to an enhanced assisted living certificate.

15. "Enhanced assisted living certificate" means a certificate issued by the department which authorizes an assisted living residence to provide aging in place by retaining residents who desire to continue to age in place and who: (a) are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer; (b) chronically require the physical assistance of another person in order to walk; (c) chronically require the physical assistance of another person to climb or descend stairs; (d) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (e) has chronic unmanaged urinary or bowel incontinence.

TITLE II

ASSISTED LIVING

Section 4652. General requirements; applicability of laws to assisted living.

4653. Licensure procedures and requirements for assisted living.

§ 4652. General requirements; applicability of laws to assisted living.

Adult homes and enriched housing programs which possess a valid operating

certificate issued pursuant to title two of article seven of the social services law, may call themselves assisted living provided they:

1. file an application for licensure and are approved by the department as assisted living;
2. comply with all the requirements of this article.

§ 4653. Licensure procedures and requirements for assisted living.

In order to operate as assisted living, an operator shall be licensed as an adult home or enriched housing program and apply and be approved for licensure with the commissioner pursuant to this article. The operator shall provide, on an application form developed by the commissioner, the following information to the commissioner in order to be licensed:

1. business name, street address, and mailing address of the residence and of the owners of the residence;

2. status of current operating certificate;

3. verification that the operator has a valid residency agreement in compliance with this article to be entered into with each resident, resident's representative and resident's legal representative, if any, and shall include a copy of the information to be included in the residency agreement and disclosures as required pursuant to the Provisions of section four thousand six hundred fifty-eight of this article that will be given to prospective residents; and

4. any other information the department may deem necessary for the evaluation of the application provided such information is not duplicative of what is otherwise required of the applicant in obtaining an adult care facility license.

TITLE III

ENHANCED ASSISTED LIVING CERTIFICATE

Section 4654. General requirements; applicability of laws to enhanced assisted living.

4655. Certification procedures and requirements.

§ 4654. General requirements; applicability of laws to enhanced assisted living. Nothing in this article shall require a residence to obtain an enhanced assisted living certificate pursuant to this title unless such residence elects to provide aging in place by retaining residents described in subdivision fifteen of section four thousand six hundred fifty-one of this article.

§ 4655. Certification procedures and requirements. 1. Notwithstanding any other provision of law, an assisted living operator may apply to the department to obtain an enhanced assisted living certificate pursuant to this section.

(a) Such application shall be on a form approved by the department.

(b) An assisted living operator may apply for such a certificate for the entire facility or any number of beds at the facility.

(c) To obtain an enhanced assisted living certificate, the applicant must submit a plan to the department setting forth how the additional needs of residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of services, staffing levels, staff education and training, work experience, and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence.

(d) In addition to any other requirements of assisted living, an operator of enhanced assisted living may hire care staff directly

pursuant to standards developed by the department or contract with a home care services agency which has been approved to operate pursuant to article thirty-six of this chapter.

(e) No assisted living residence shall be certified as enhanced assisted living unless and until the applicant obtains the written approval of the department.

2. No resident shall be permitted to continue to age in place under the terms of an enhanced assisted living certificate unless the operator, the resident's physician, and, if applicable, the resident's licensed or certified home care agency, agree that the additional needs of the resident can be safely and appropriately met at the residence. A resident eligible for enhanced assisted living or his or her representative shall submit to the residence a written report from a physician, which report shall state that:

(a) the physician has physically examined the resident within the last month; and

(b) the resident is not in need of twenty-four hour skilled nursing care or medical care which would require placement in a hospital or residential health care facility.

3. The residence must notify a resident that, while the residence will make reasonable efforts to facilitate the resident's ability to age in place pursuant to an individualized service plan, there may be a point reached where the needs of the resident cannot be safely or appropriately met at the residence, requiring the transfer of the resident to a more appropriate facility in accordance with the provisions of this article.

4. If a resident reaches the point where he or she is twenty-four hour skilled nursing care or medical care required to be provided by facilities licensed pursuant to article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law, then the resident must be discharged from the residence and the operator shall initiate proceedings for the termination of the residency agreement of such resident in accordance with the provisions of section four hundred sixty-one-h of the social services law. Provided, however, a resident may remain at the residence if each of the following conditions are met:

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

(b) the resident's physician and home care services agency both determine and document that, with the provision of such additional nursing, medical or hospice care, the resident can be safely cared for in the residence, and would not require placement in a hospital, nursing home or other facility licensed under article twenty-eight of this chapter or article nineteen, thirty-one or thirty-two of the mental hygiene law;

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

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

5. In addition to the requirements otherwise required for licensure as assisted living, any residence that advertises or markets itself as serving individuals with special needs, including, but not limited to, individuals with dementia or cognitive impairments, must submit a special needs plan to the department setting forth how the special needs of such residents will be safely and appropriately met at such residence. Such plan shall include, but need not be limited to, a written description of specialized services, staffing levels, staff education and training, work experience, professional affiliations or special characteristics relevant to serving persons with special needs,

and any environmental modifications that have been made or will be made to protect the health, safety and welfare of such persons in the residence. In approving an application for special needs certification, the department shall develop standards to ensure adequate staffing and training in order to safely meet the needs of the resident. The standards shall be based upon recommendations of the task force established by section five of the chapter of the laws of two thousand four which added this section. No residence shall market themselves as providing specialized services unless and until the department has approved such applicant for a special needs assisted living certificate.

6. An enhanced assisted living certificate shall not be required of an adult care facility, or part thereof, which has obtained approval by the department to operate an assisted living program pursuant to section four hundred sixty-one-1 of the social services law. Provided, however, such exemption shall only apply to those beds at the facility which are subject to the assisted living program.

TITLE IV

GENERAL REQUIREMENTS

Section 4656. General requirements; applicability of laws to assisted living and enhanced assisted living.

- 4657. Residency admission.
- 4658. Residency agreement and disclosures.
- 4659. Individualized service plan.
- 4660. Rights of residents in assisted living residences.
- 4661. Resident funds.
- 4662. Powers of the commissioner.
- 4663. Penalties and enforcement.

§ 4656. General requirements; applicability of laws to assisted living and enhanced assisted living. 1. No entity shall establish, operate, provide, conduct, or offer assisted living in this state, or hold itself out as an entity which otherwise meets the definition of assisted living or advertise itself as assisted living or by a similar term, without obtaining the approval of the department to operate as an adult care facility pursuant to title two of article seven of the social services law, obtaining the approval of the department as required in this article, and otherwise acting in accordance with this article. Provided however that an entity may simultaneously apply for approval to operate as an adult care facility and as an assisted living residence pursuant to this article. This subdivision shall not apply to assisted living programs approved by the department pursuant to section four hundred sixty-one-1 of the social services law.

2. An assisted living operator shall comply with all applicable statutes, rules and regulations required for maintaining a valid operating certificate issued pursuant to title two of article seven of the social services law and shall obtain and maintain all other licenses, permits, registrations, or other governmental approvals required in addition to requirements under this article.

3. Approval for licensure or certification pursuant to this article may be granted only to an applicant who satisfactorily demonstrates:

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

(b) that such applicant which has an existing valid adult care facility operating certificate, is in good standing with the department. For purposes of this subdivision, good standing shall mean the applicant has not (i) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (ii) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law for a violation that has not been rectified; (iii) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of the social services law; (iv) within the previous three years, been issued an order pursuant to subdivision two, five, six, or eight of section four hundred sixty-d of the social services law; (v) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law. Provided however that in the case of an applicant which otherwise meets the requirements of this section, but is not in good standing as provided in this paragraph, the department may approve said applicant if it determines that the applicant is of good moral character and is competent to operate the residence. Such character and competence review shall be limited to applicants not in good standing pursuant to this paragraph or an applicant subject to paragraph (f) of this subdivision. As part of the review provided pursuant to this paragraph, the department shall, on its webpage, solicit and consider public comment;

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

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

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

(f) in the case of an applicant which does not have an existing valid adult care facility operating certificate, such applicant shall otherwise comply with the provisions for certification as prescribed by article seven of the social services law.

4. The department shall develop an expedited review and approval process.

5. The knowing operation of an assisted living or enhanced assisted living residence without the prior written approval of the department shall be a class A misdemeanor.

6. Every assisted living residence that is required to possess an assisted living residence license shall be licensed on a biennial basis and shall pay a biennial licensure fee. Such fee shall be five hundred dollars per license, with an additional fee of fifty dollars per resident whose annual income is above four hundred percent of the federal poverty level. Such additional fee shall be based on the total occupied beds at the time of application, up to a maximum biennial licensure fee of five thousand dollars. Said fee shall be in addition to the fee charged by the department for certification as an adult care facility. Every assisted living residence that applies for an enhanced assisted living certificate or a special needs assisted living certificate shall pay an additional biennial fee, in addition to any other fee required by this subdivision, in the amount of two thousand dollars, provided that for any residence applying for both an enhanced assisted living certificate and a special

needs assisted living certificate the amount of such fee shall be three thousand dollars.

7. The requirements of this article shall be in addition to those required of an adult care facility. In the event of a conflict between any provision of this article and a provision of article seven of the social services law or a regulation adopted thereunder, the applicable provision of this article or the applicable regulation shall supersede article seven of the social services law or the applicable regulation thereunder to the extent of such conflict.

8. The assisted living operator shall not use deceptive or coercive marketing practices to encourage residents or potential residents to sign or reauthorize the residency agreement required pursuant to section four thousand six hundred fifty-eight of this article.

§ 4657. Residency admission. 1. An assisted living operator shall conduct an initial pre-admission evaluation of a prospective resident to determine whether or not the individual is appropriate for admission to the assisted living residence. Such evaluation shall be conducted by the operator and, if necessary, in conjunction with a home care services agency or appropriate employee pursuant to paragraph (d) of subdivision one of section four thousand six hundred fifty-five of this article. The operator shall conduct all such evaluations using an evaluation tool developed by the department, to be based on the recommendations of the task force created pursuant to section five of the chapter of the laws of two thousand four which added this section or one developed by the operator that receives approval by the department.

2. The assisted living operator shall not admit any resident if the operator is not able to meet the care needs of the resident within the scope of services authorized under this article, and the individualized service plan; provided, further that no operator shall admit any resident in need of twenty-four hour skilled nursing care.

§ 4658. Residency agreement and disclosures. 1. Every operator shall execute with each resident a written residency agreement, in no less than twelve point type and written in plain language, which satisfies the requirements of this section. Such agreement shall:

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

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

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

2. The residency agreement shall include, at a minimum:

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

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

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

(d) a statement, to be updated as necessary, describing the licensure or certification status of the assisted living operator and any provider offering home care services or personal care services under an

arrangement with the residence, including a specific listing of such providers;

(e) the effective period of the agreement;

(f) a description of the services to be provided to the resident and the base rate to be paid by the resident for those services;

(g) a description of any additional services available for an additional, supplemental, or community fee from the assisted living operator directly or through arrangements with the operator, stating who would provide such services, if other than such operator;

(h) a rate or fee schedule, including any additional, supplemental, or community fees charged for services provided to the resident, with a detailed explanation of which services and amenities are covered by such rates, fees, or charges;

(i) a description of the process through which the agreement may be modified, amended, or terminated, and setting forth the terms and time frames under which the agreement may be terminated by either party;

(j) a description of the complaint resolution process available to residents;

(k) the name of the resident's representative and resident's legal representative, if any, and a description of the representative's responsibilities;

(l) the criteria used by the operator to determine who may be admitted and who may continue to reside in the residence, including criteria related to the resident's care needs and compliance with reasonable rules of the residence;

(m) procedures and standards for termination of contract, discharge and transfer to another dwelling or facility;

(n) billing and payment procedures and requirements;

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

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

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

(i) the consumer information guide developed by the commissioner pursuant to subdivision one of section forty-six hundred sixty-two of this title;

(ii) a statement listing the residence's licensure and if it has an enhanced assisted living certificate and/or special needs enhanced assisted living certificate and the availability of enhanced assisted living and/or special needs beds;

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

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

residents, whether legal or beneficial, in the operator;

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

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

(vii) a statement regarding the availability of public funds for payment for residential, supportive or home health services including, but not limited to availability of coverage of home health services under title eighteen of the federal social security act (Medicare);

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

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

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

§ 4659. Individualized service plan. 1. A written individualized service plan shall be developed for each resident of an assisted living residence upon admission.

2. The individualized service plan shall be developed with the resident, the resident's representative and resident's legal representative if any, the assisted living operator, and if necessary a home care services agency. The initial individualized service plan shall be developed in consultation with the resident's physician; provided such consultation is documented in writing by the residence. If a resident is determined by his or her physician not to be in need of home care services, the participation of a home care services agency in an evaluation conducted pursuant to this subdivision shall not be necessary.

3. The individualized service plan shall be developed in accordance with the medical, nutritional, rehabilitation, functional, cognitive and other needs of the resident.

4. The individualized service plan shall include the services to be provided, and how and by whom services will be provided and accessed.

5. The individualized service plan shall be reviewed and revised as frequently as necessary to reflect the changing care needs of the resident, but no less frequently than every six months. To the extent necessary, such review and revision shall be undertaken in consultation with the resident's physician.

§ 4660. Rights of residents in assisted living residences. 1. The principals enunciated in subdivision three of this section are declared to be the public policy of the state and a copy of such statement of rights and responsibilities shall be posted conspicuously in a public place in each residence covered hereunder.

2. Every assisted living residence shall adopt and make public a statement of the rights and responsibilities of the residents residing in such residence, and shall treat such residents in accordance with the provisions of such statement.

3. Resident's rights and responsibilities shall include, but not be limited to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) every resident shall have the right to written notice of any fee increase not less than forty-five days prior to the proposed effective

date of the fee increase, provided however providing additional services to a resident shall not be considered a fee increase pursuant to this paragraph. Waiver of any provision contained within this subdivision shall be void;

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

§ 4661. Resident funds. An assisted living operator or employee of a residence or any other entity which is a representative payee of a resident of such residence pursuant to designation by the social security administration or which otherwise assumes management responsibility over the funds of a resident shall maintain such funds in a fiduciary capacity to the resident. Any interest on money received and held for the resident shall be the property of the individual resident.

§ 4662. Powers of the commissioner. 1. The commissioner is hereby authorized to:

(a) develop, in consultation with the director of the state office for the aging, consumers, operators of assisted living residences and home care service agency providers, a consumer information guide to inform and assist the consumer in the selection of an assisted living residence;

(b) promulgate, in consultation with the director of the state office for the aging, such rules and regulations as are necessary to implement the provisions of this article;

(c) receive and investigate complaints regarding the condition, operation and quality of care of any entities holding themselves out as assisted living, or advertising themselves by a similar term;

(d) make necessary investigations to procure information required to implement the provisions of this article; and

(e) exercise all other powers and functions as are necessary to implement the provisions of this article.

2. Nothing in this section shall restrict the availability of powers otherwise available to the commissioner under the provisions of this chapter and under the social services law.

§ 4663. Penalties and enforcement. Any person who violates any provision of this article or any rule or regulation promulgated by the department, or the terms or conditions of any order or permit issued by the department pursuant to this article, shall be subject to the maximum penalties which may be levied against a licensed adult care facility.

§ 3. Subdivision 25 of section 2 of the social services law, as added by chapter 601 of the laws of 1981, is amended to read as follows:

25. An adult home shall mean an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, (either directly or indirectly), and supervision to five or more adults unrelated to the operator. The provisions of this subdivision shall not apply to any housing projects established pursuant to the private housing finance law, the public housing law, the membership corporations law or the not-for-profit corporation law except for those distinct programs operated by such projects which provide supervision and/or personal care and which are approved or certified by the department.

§ 4. The state finance law is amended by adding a new section 99-1 to read as follows:

§ 99-1. Assisted living residence quality oversight fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of health a special fund to be known as the "assisted living residence quality oversight fund".

2. Such fund shall consist of all moneys collected by the department of health pursuant to article forty-six-B of the public health law. Any interest earned by the investment of moneys in such fund shall be added to such fund, become a part of such fund, and be used for the purpose of such fund.

3. Moneys of such fund shall be available to the department of health for the purpose of carrying out the provisions of article forty-six-B of the public health law. Additionally, five hundred thousand dollars shall be available to the state office for the aging for the long term care ombudsman program for the purpose of carrying out the provisions of article forty-six-B of the public health law.

4. The moneys of the fund shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of health.

§ 5. A task force on adult care facilities and assisted living residences is hereby created, and shall consist of ten members to be appointed as follows: six members shall be appointed by the Governor, two members shall be appointed by the temporary president of the senate, and two members shall be appointed by the speaker of the assembly. The purpose of such task force, which shall be convened not later than December 1, 2004, shall be to update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence. Ex officio members of the task force shall include the commissioner of health, the director of the state office for the aging, the commissioner of the office of mental health, the chair of the commission on quality of care for the mentally disabled, or their designees. The task force shall gather information regarding the various ways in which existing requirements and guidelines unduly infringe on affordability of care and services, individual resident choice, autonomy and independence, examine and evaluate such requirements and guidelines, and make recommendations to improve them so that they achieve their desired objectives for the resident populations they are designed to protect without infringing upon the choice, autonomy and independence of other residents. Such recommendations shall include, but not be limited to: (a) minimizing duplicative or unnecessary regulatory oversight; (b) ensuring that the indigent have adequate access to, and that there are a sufficient number of enhanced assisted living residences; (c) developing affordable assisted living; (d) promoting resident choice and independence; (e) the evaluation tool as required by section 4657 of the public health law; and, (f) specific standards and criteria relating to the special needs certificates required by section 4655 of the public health law. The task force shall issue a report of its findings and recommendations to the governor and legislature on or before June 1, 2005 and annually thereafter.

§ 6. Any entity which qualifies as an assisted living residence pursuant to article 46-B of the public health law as added by section two of this act and operating as an assisted living residence on or before the effective date of this act shall within sixty days of such effective date apply to be licensed or certified with the commissioner of health in accordance with article 46-B of the public health law as added by section two of this act and shall be required to comply with the provisions of article 46-B of the

public health law as added by section two of this act upon approval of all licenses and certifications for which the entity has applied during such period.

§ 7. The department of health shall not be authorized to issue emergency regulations in regard to article 46-B of the public health law.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such date.