

Schedule 3 – Legal Information

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Instructions for Completing Schedules 3A and 3B.

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Instructions

The following instructions provide information as to the required contents of the legal documents that are requested in the legal schedule, and should be carefully reviewed prior to completing the legal schedule.

A. Lease Requirements

1. All Adult Care Facility leases must include a provision substantially similar to the following:

"NOTICE TO THE DEPARTMENT OF HEALTH: Notwithstanding anything in this Lease to the contrary, the Lessor acknowledges that its right to re-enter the leased premises does not confer upon it the authority to operate an Adult Care Facility, as defined in the Social Services Law, on the leased premises and agrees that it will give the New York State Department of Health, Division of Adult Care Facility & Assisted Living Surveillance, Bureau of Licensure and Certification, 875 Central Ave., Albany, NY 12206, notification by certified mail of its intent to re-enter the leased premises or to initiate dispossession proceedings or that the Lease is due to expire, at least 30 days prior to the date on which the Lessor intends to exercise its right of re-entry or to initiate such proceedings or at least 60 days before expiration of the Lease.

Upon receipt of any notice from the Lessor of its intent to exercise its right of re-entry or upon the service of process and dispossession proceedings and 60 days prior to the expiration of this Lease, Lessee agrees to immediately notify by certified mail the Department of the receipt of such notice or service of such notice or that the Lease is about to expire, and shall further notify the Department of its anticipated response to said notice.

Each party further agrees to comply with all additional regulations of the New York State Department of Health and any other agency having regulatory control over either party. A copy of all such notices shall also be sent to the Department's regional office at [insert address of regional office]."

2. Full operational and fiscal authority for the facility must remain vested in the established operator;
3. The established operator must retain sole control of the facility's revenue and expenditures; and
4. All facility accounts must be in the name of, on behalf of, and for the benefit of the established operator.

B. Purpose Language Requirements

All applicable purpose statements are required in the Certificate of Incorporation or Articles of Organization for all Not-for-Profit Corporations, Business Corporations, and Limited Liabilities Companies. If a corporation or limited liability company is already formed with a general purpose, the purposes must be amended to include the authority to operate an adult home or enriched housing program, as the case may be.

1. **Adult Home:** The purpose for which the [corporation or limited liability company, as applicable] is formed is to establish, maintain and operate an Adult Home as defined in Section 2(25) of the Social Services Law, provided however, that the [corporation or limited liability company] shall not establish or operate such Adult Home without the prior written approval of the New York State Department of Health.
2. **Enriched Housing Program:** The purpose for which the [corporation or limited liability company] is formed is to establish, maintain and operate an Enriched Housing Program as defined in Section 2(28) of the Social Services Law, provided however, that the [corporation or limited liability company] shall not establish or operate such Enriched Housing Program without the prior written approval of the New York State Department of Health.
3. **Assisted Living Residence:** The purposes for which the [corporation or limited liability company, as applicable] is formed are: to establish, maintain and operate an Assisted Living Residence as defined in Section 4651 (1) of the Public Health Law; provided, however, that the [corporation or limited liability company, as applicable] shall not establish or operate such Assisted Living Residence without the prior written approval of the New York State Department of Health.

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4. **Enhanced Assisted Living Residence:** The purposes for which the [corporation or limited liability company, as applicable] is formed are: to establish, maintain and operate an Assisted Living Residence with an enhanced assisted living certificate, as those terms are defined in Section 4651 of the Public Health Law; provided, however, that the [corporation or limited liability company, as applicable] shall not establish or operate such Assisted Living Residence with an enhanced assisted living certificate without the prior written approval of the New York State Department of Health.
5. **Special Needs Assisted Living Residence:** The purposes for which the [corporation or limited liability company, as applicable] is formed are: to establish, maintain and operate an Assisted Living Residence with a special needs assisted living certificate, as those terms are defined in Sections 4651 and 4655 of the Public Health Law; provided, however, that the [corporation or limited liability company, as applicable] shall not establish or operate such Assisted Living Residence with a special needs assisted living certificate without the prior written approval of the New York State Department of Health.
6. **Assisted Living Program:** The purpose for which the [corporation or limited liability company, as applicable] is formed are: to establish, maintain and operate an Assisted Living Program as defined in Section 461-l of the Social services Law; provided however that the [corporation limited liability company] as applicable shall not establish or operate such Assisted Living Program without the prior written approval of the New York State Department of Health.
7. **Licensed Home Care Services Agency:** The purpose for which the [corporation or limited liability company, as applicable] is formed are: to establish, maintain and operate a home care agency licensed as authorized under Article 36 of the Public Health Law of the State of New York; provided however, that the [corporation or limited liability company, as applicable] shall not establish or operate such a home care services agency without the prior written approval of the Public Health and Health Planning Council and the New York State Department of Health.

C. General Partnership Requirements:

The applicant's Partnership Agreement must include the following provision:

"By signing this agreement, each member of the partnership created by the terms of this agreement acknowledges that the partnership and each member thereof has a duty to report to the New York State Department of Health any proposed change in the partners or their respective percentage interests in the partnership. The partners also acknowledge that the prior written approval of the Department may be required before such change is made."

D. LLC Requirements:

The applicant's Articles of Organization must include provisions to the following effect:

1. The name of the LLC which must contain either the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.";
2. A statement that the LLC is an eligible LLC under the provision of section 461-b (1)(a) of the Social Services Law, as amended by Chapter 591 of the Laws of 1999, and providing the basis for such statement. (For example, that all members are natural persons; or if a member is a corporation, an LLC or a general partnership, that the members of such member corporation, member LLC or member partnership are natural persons.);
3. Designation of the Secretary of State as agent of the LLC for service of process and an address to which the Secretary of State may mail a copy of any such process;
4. A statement of the purpose which must include the authority to operate the specific type of adult care facility for which certification is being sought;
5. A statement as to who will manage the LLC (i.e., managed by its members or by non-member managers) and a statement that neither the management structure, nor any provision setting forth such structure may be deleted, modified or amended without the prior approval of the New York State Department of Health;
6. If the LLC will be managed by managers who are not members, that the LLC's manager may not be changed without the prior approval of the New York State Department of Health;
7. That no person may own any membership interest or voting rights unless approved by the New York State Department of Health or otherwise acquired in accordance with Social Services Law § 461-b; and
8. That any transfers, assignments or other dispositions of membership interests must be effectuated in accordance with Social Service Law § 461-b.

In addition, if the Applicant's Articles of Organization includes a provision that limits a member's liability, such language must include the following provision:

"to the extent such limitation is consistent with Section 461-b (3-a) of the Social Services Law." See SSL 461-b (3-a).

The applicant's Operating Agreement must include provisions to the following effect:

1. A statement as to who will manage the LLC (i.e., managed by its members or by non-member managers) and a statement that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the Department of Health;

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2. That the LLC will be managed by its own members (either directly or through a board comprised exclusively of such members) and/or by non-member managers. **NOTE:** if the LLC will be managed by any non-member managers, please so state in the executive summary and review 10 NYCRR § 1001.5(g)(6)(viii)(j) for the requirements associated with this type of management structure.
3. That no person may own any membership interest or voting rights unless approved by the Department of Health or otherwise acquired in accordance with Social Services Law § 461-b; and
4. That any transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Social Service Law § 461-b.

E. Corporation Requirements

If the Applicant's Certificate of Incorporation or Certificate of Amendment includes a provision that limits a director's liability, such language must include the following provision:

"to the extent such limitation is consistent with Section 461-b (3-a) of the Social Services Law." See SSL 461-b (3-a).

The Applicant's Certificate of Incorporation must include a provision to the following effect: That any transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Social Service Law § 461-b.

The Applicant must submit: (1) an affidavit from each shareholder that he or she is to be the sole beneficial owner of the shares for which he or she is to be the owner of record; the number of voting shares of which he or she is to be owner of record; and that all stock authorized by the Certificate of Incorporation will be issued and outstanding; (2) a statement of the total number of outstanding (not issued) shares of the corporation; and (3) a statement that the shares are not traded on a national securities exchange and are not regularly quoted on a national over-the-counter market; that the corporation is not a subsidiary of a corporation whose shares are traded on a national exchange or over-the-counter market; and that no stock of the corporation is owned by another corporation.

Stock certificates of the corporation shall state that: no person may own any share of or have any voting rights in the corporation, unless approved by the Department or otherwise acquired in accordance with Social Services Law § 461-b; and that any transfers, assignments or other dispositions of shares or voting rights must be effectuated in accordance with Social Services Law § 461-b. Submit one sample stock certificate.

F. Not-For-Profit Corporations

Not for profit operators must have a minimum of 7 board members and their bylaws must explain how any by whom directors will be appointed or elected.

G. Management Agreements

The Management Agreement must:

- a. Comply with the requirements of 18 NYCRR 485.10, and if an ALR, 10 NYCRR 1001.16.
- b. Include a provision that the manager may not be changed without the prior approval of the Department of Health, and
- c. Be approved by the Department of Health before it is effective.
- d. Include provisions that the operator retains:
 - i. direct independent authority over the appointment of the administrator, approval of all other persons working in the facility and dismissal of all persons working in the facility;
 - ii. approval of facility operating and capital budgets and independent control of the books and records including that all facility accounts and billing must be in the name of, on behalf of and for the benefit of the operator;
 - iii. adoption or approval of facility operating policies and procedures and independent adoption of policies affecting the delivery of facility services;
 - iv. authority over the disposition of assets and authority to incur liabilities not normally associated with day-to-day operations;
 - v. approval of facility debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
 - vi. approval of contracts relating to the facility; and
 - vii. approval of settlements of administrative proceedings or litigation to which the facility is a party.

H. Adult Care Facility Legal Certification

Schedule 3B contains the Adult Care Facility Legal Certification. The certification is optional for the applicant and is designed to help streamline and facilitate the Department's review of voluminous legal documents. Submission of the ACF Legal Certification does not guarantee approval of the legal component of the application, and the Department makes no assurances as to the ultimate issuance or timing of such approval.

Instructions: Complete all sections and refer to instructions for requirements for Corporate Documents.
Check "no change" or "not applicable" where appropriate.

I. All Applicants – Organizational Information

A. Is the name of the facility different from the name of the applicant's legal entity? Yes No No Change
If yes, submit the Certificate of Assumed Name. Attachment # _____

B. What type of legal organization is the applicant?

- Sole Proprietor
- Not-for-Profit Corporation
- Limited Liability Company
- General Partnership
- Business Corporation
- Other, specify _____
Please review Social Services Law § 461-b for list of eligible entities.

List all partners, members or shareholders below. If a Not for Profit or other entity without owners, list all members, if any, and all officers and directors. Interest should be listed as sole proprietors, partner, shareholder or board member.

Name	Interest	Percentage Ownership
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. Submit an organizational chart showing the applicant's legal structure. Attachment # _____

D. Are any of the partners, members or shareholders listed above a business corporation, limited liability company, partnership or not for profit corporation? Yes No

II. Additional Documentation Depending on Applicant's Type of Legal Entity

Submit the following legal documentation as applicable for the applicant's type of legal entity. If the applicant is an entity other than what is listed in Sections A through C below, the applicant should submit similar organizational documents to those listed in this section for like entities. Please review Social Services Law § 461-b for list of eligible entities.

A. General Partnership Applicants

1. Partnership Agreement: Attachment # _____ No Change

B. Not-for-Profit Corporation and For Profit Corporation Applicants

1. Certificate of Incorporation: Attachment # _____ No Change

2. Bylaws: Attachment # _____ No Change

3. If the applicant is not a New York corporation, Application for Authority to Do Business in New York: Attachment # _____ No Change Not Applicable

4. For Not For Profit Corporations only, explain how and by whom the directors will be appointed or elected:

Schedule 3A General Legal Information

5. For For Profit Corporations only, answer the following questions:

- | | | |
|---|------------------------------|-----------------------------|
| a. Are the shares of the applicant traded on a national securities exchange? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. Are the shares of the applicant regularly quoted on a national over-the-counter market? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. Is the applicant a subsidiary of a corporation whose shares are traded on a national securities exchange or over-the-counter market? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. Are any of the shares of the applicant owned by another corporation? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered answered **Yes** to any of the above questions a-d, Applicant entity is not eligible to operate an Adult Care Facility.

C. Limited Liability Company Applicants

1. Are all members managers? Yes No If No, list the managers below.

2. Articles of Organization: Attachment # _____

3. Operating Agreement: Attachment # _____

4. If the applicant is not a New York limited liability company, Application for Authority to Do Business in New York: Attachment # _____
 No Change Not Applicable

III. Additional Information Required for "Second Entities"

INSTRUCTIONS: Complete section III only if you answered yes to question I.D. Attach additional sheets as needed.

1. If you answered "yes" to Question 1.D. above, complete the following "Second Level Entity" chart for each such entity. Attach additional copies of this page as necessary:

Entity Name: _____	Chart #1 of _____	
Name	Interest	Percentage Ownership
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Entity Name: _____	Chart # _____ of _____	
Name	Interest	Percentage Ownership
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Schedule 3A
General Legal Information

2. Submit the following legal documentation as applicable for the second entities listed in the “second level entity charts”. If the applicant is an entity other than one that is listed below, the applicant should submit similar organizational documents to those listed in this section for like entities. Please review Social Services Law § 461-b for list of eligible entities.

Business Corporation Members

For each business corporation member (2nd Level Member), attach the following documentation:

- 1. Certificate of Incorporation Attachment(s) # _____
- 2. Bylaws Attachment(s) # _____

In addition to any other provisions required by the Business Corporation Law, the Certificate of Incorporation must include provisions to the following effect:

- That all stockholders must be natural persons.
- That no transfers, assignments or other dispositions of ownership interests or voting rights of the 2nd Level Member may be made unless approved by the New York State Department of Health or otherwise effectuated in accordance with Social Services Law § 461-b .
- That the foregoing provisions may not be deleted, modified or amended without the prior approval of the Department.

General Partnership Members

For each general partner member (2nd Level Member), attach the following documentation:

- 1. Partnership Agreement Attachment(s) # _____

Not-for-Profit Members

For each not-for-profit corporation member (2nd Level Member), attach the following documentation:

- 1. Certificate of Incorporation Attachment(s) # _____
- 2. Bylaws Attachment(s) # _____

Limited Liability Company Members

For each limited liability company member (2nd Level Member) answer the following question:

- 1. Are all members managers? Yes No If No, list the managers below.

2. For each business corporation member (2nd Level Member), attach the following documentation:

- a. Articles of Organization Attachment(s) # _____
- b. Operating Agreement Attachment(s) # _____

In addition to any other provisions required by the Limited Liability Company Law, the Articles of Organization must include provisions to the following effect:

- a. That all members must be natural persons;
- b. That no transfers, assignments or other dispositions of membership interests or voting rights of the 2nd level LLC shall be made unless approved by the New York State Department of Health or otherwise effectuated in accordance with Social Services Law § 461-b ; and
- c. That the foregoing provisions may not be deleted, modified or amended without the prior approval of the Department of Health.

Schedule 3A General Legal Information

The Operating Agreement must include provisions to the following effect:

- a. That all members must be natural persons;
- b. That no transfers, assignments or other dispositions of membership interests or voting rights of the 2nd Level LLC shall be made unless approved by the New York State Department of Health or otherwise acquired in accordance with Social Services Law § 461-b ;
- c. That the LLC will be managed by its own members (either directly or through a board comprised exclusively of such members) and/or by non-member managers. NOTE: If the 2nd Level LLC will be managed by any non-member managers, please so state in the executive summary and review 10 NYCRR § 1001.5(6)(viii)(j) for the requirements associated with this type of management structure ; and
- d. That the foregoing provisions may not be deleted, modified or amended without the prior approval of the Department of Health.

IV. Managers and Management Agreements

1. Does the applicant intend to enter into a management agreement for the day-to-day operations of the facility? Yes No

If yes, attach a copy of the proposed management agreement. Attachment # _____

Please Note: Management agreements are subject to the approval of the Department in accordance with the requirements in 18 NYCRR 485.10 and, if an ALR, 10 NYCRR 1001.16.

If no, skip to Part V.

2. Has the proposed management entity previously been approved to operate or manage an Adult Care Facility? Yes No

If Yes, enter the following information below; the addresses of the facilities/agencies operated or managed by the proposed management entity and the time period that each was owned, operated or managed by the proposed management entity. Include out-of-state entities.

Attach additional sheets, if necessary. Attachment # _____

Facility Name	Facility Type	Facility Address	Time Period Owned or Managed
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTE: For each facility named in Question 2 above, documentation must be submitted reflecting its current and past compliance with the applicable regulations in the state in which it operates. This information is required for the most recent ten-year period, or for the period it was owned, operated or managed by the proposed management entity, whichever is less. See Schedule 2D for instructions on how to acquire this documentation.

3. Has the proposed management entity been the subject of an enforcement action or similar administrative action related to the ownership, operation or management of any health care facility, residential care facility or agency? Yes No

If yes, provide further details regarding the administrative action in the space below.

4. Are there any criminal actions pending against the proposed management entity? Yes No

If yes, provide further details regarding the criminal action in the space below.

5. Is the proposed management entity a party to, or has the proposed management entity been a party to a corporate integrity agreement or exclusion from either the Medicare or Medicaid programs? Yes No

If yes, provide further details in the space below.

Schedule 3A
General Legal Information

V. Site Control and Landlord Authority

1. Will the applicant lease the premises on which the facility will be located? Yes No No Change

If yes, attach a copy of the lease and all superior leases. Attachment(s) # _____

If no, attach a copy of the deed or other document such as an operating agreement giving the Applicant site control. Attachment(s) # _____

VI. ALP Applicants only

1. Are any of the directors or owners (partners, stockholders or members) of the applicant physicians who are in a position to make referrals to the facility? Yes No

If yes, submit a signed statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Attachment # _____

SCHEDULE 3 ATTACHMENTS

Complete the section labeled "All Applicants." Then, check the box(es) that apply to your organizational structure and enter the corresponding information for each attached document. If the document is not applicable, enter "N/A" in the column labeled "Attachment Title."

Document	Attachment Title	Attachment #	Electronic File Name (PDF Preferred)
ALL APPLICANTS			
Unanimous Consent	_____	_____	_____
Certificate of Assumed Name or DBA	_____	_____	_____
Documentation of Site Control	_____	_____	_____
Organizational Chart	_____	_____	_____
Management Agreement	_____	_____	_____
List of Out-of-State Entities	_____	_____	_____
<input type="checkbox"/> GENERAL PARTNERSHIPS			
Partnership Agreement	_____	_____	_____
<input type="checkbox"/> NOT-FOR-PROFIT CORPORATIONS			
Certificate of Incorporation	_____	_____	_____
Bylaws	_____	_____	_____
Application for Authority to do Business in NYS	_____	_____	_____
<input type="checkbox"/> BUSINESS CORPORATIONS			
Certificate of Incorporation	_____	_____	_____
Bylaws	_____	_____	_____
Application for Authority to do Business in NYS	_____	_____	_____
<input type="checkbox"/> LIMITED LIABILITY COMPANIES			
Articles of Organization	_____	_____	_____
Operating Agreement	_____	_____	_____
Application for Authority to do Business in NYS	_____	_____	_____
<input type="checkbox"/> OTHER TYPE OF ENTITY			
Submit organizational documents similar to those listed above for like entities			
OTHER ATTACHMENTS (SPECIFY)			
<input type="checkbox"/> Adult Care Facility Legal Certification (3B)	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Adult Care Facility Common Application**Adult Care Facility Legal Certification**

This certification is optional for the applicant and is designed to help streamline and facilitate the Department's review of voluminous legal documents. An electronic copy of the legal documents must be submitted with this certification.

The applicant acknowledges and understands that the Division of Legal Affairs may decide to review (any or all of) the legal documents in their entirety and may opt not to rely upon this legal certification (in whole or in part) if the Division reasonably believes the certification will not streamline the legal component of the application or help facilitate compliance with Department regulations based on one or more significant factors (e.g., significant number of deviations identified in the certification, the experience of the legal reviewer, the nature of the application is unique and substantially varies from standard applications).

The submission of this certification does not guarantee approval of the legal component of the application, and the Department makes no assurances as to the ultimate issuance or timing of such approval.

PROJECT INFORMATION

Project Number: _____

Applicant Name: _____

Project Address: _____

APPLICANT'S ATTORNEY INFORMATION

Legal Reviewer: _____

Business Name: _____

Business Address: _____

Business Phone Number: _____

Email address: _____

LEGAL DOCUMENTS REVIEWED AND CERTIFIED BY LEGAL REVIEWER (check only those that apply) Facility Leases (including any master or superior leases) Management Agreement Purchase & Sale Agreement Loan Documents Operations Transfer Agreement Application for Authority to do Business in New York State Organizational Documents Corporations – Certificate of Incorporation & Bylaws Limited Liability Companies – Articles of Organization & Operating Agreement Partnership – Partnership Agreement Other _____

Schedule 3B - Adult Care Facility Legal Certification

I certify that I am an attorney licensed to practice in New York State. I further certify that I am knowledgeable and have experience as to the laws, Department regulations and policies applicable to the adult care facility and assisted living residence licensing applications and the legal documents being submitted for review. I further certify that I have reviewed the above-referenced legal documents and to the best of my knowledge, information and belief, the legal documents are in compliance with such laws, regulations and policies as set forth on the attached checklist, except where deviations have been noted for further review for the Division of Legal Affairs. I understand that the Department will rely on this certification and further certify that to the best of my knowledge, information and belief, the information provided herein is true, accurate and complete in all material respects.

SIGNATURE OF APPLICANT'S ATTORNEY

DATE

ATTORNEY'S NEW YORK STATE REGISTRATION NUMBER

The undersigned applicant understands and agrees that, notwithstanding this legal certification, the Department of Health shall have continuing authority to (a) review the legal documents submitted herewith; and (b) withdraw its approval thereto. The applicant shall have a continuing obligation during the application process to verify any changes made to the legal documents to comply with the Laws, Department regulations and policies applicable to the licensing application and legal documents being submitted for review.

SIGNATURE OF APPLICANT

DATE

TYPE OR PRINT NAME

TITLE