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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-3

Date: January 9, 1991

Division: Commissioner's
Office

TO: Local District Commissioners

SUBJECT: Filed Regulations

ATTACHMENTS: Attachment I - 343.2(a), 343.3(d) & 485.7(f)
(available on-line)
Attachment II - 360-4.1, 360-4.7, 360-4.8 & 360-7.8
(available on-line)
Attachment III - 387.1 & 387.13(h) (available on-line)
Attachment IV - 399.6(h)(4)(xi) (available on-line)
Attachment V - Parts 485, 486, 487, 488, 490 & 491
(available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 343.2(a), 343.3(d) & 485.7(f) relating to operating certificates for adult care facilities.

The final rule - Filed: 1/3/91 - Effective: 1/23/91.

18 NYCRR 360-4.1, 360-4.7, 360-4.8 & 360-7.8 relating to medical assistance for children and qualified working disabled individuals.

Filed as an emergency rule - 10/2/90 - effective 10/2/90.

Refiled as an emergency rule - 12/31/90 - effective 12/31/90.

The final rule - Filed: 12/31/90 - Effective: 1/16/91.

18 NYCRR 387.1 & 387.13(h) relating to the food stamp program.

The final rule - Filed: 1/3/91 - Effective: 1/23/91.

18 NYCRR 399.6(h)(4)(xi) relating to implementation of federal requirements concerning eligibility for food stamps.

The final rule - Filed: 1/3/91 - Effective: 1/23/91.

18 NYCRR Parts 485, 486, 487, 488, 490 & 491 relating to adult care facilities.

The final rule - Filed: 1/3/91 - Effective: 1/23/91.

Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections of 20(3)(d), 34(3)(f), 460 and 461-b the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby amend Sections 343.2(a), 343.3(d), and 485.7(f), reletter subdivisions (m)-(q) of Section 485.5 as (n)-(r) and add a new subdivision (m) to Section 485.5 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: January 2, 1991

Signed: _____
Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on, January 3, 1991 amending Sections 343.2(a), 343.3(d), and 485.7(f), relettering subdivisions (m)-(q) of Section 485.5 as (n)-(q) and adding a new subdivision (m) to Section 485.5 of the Official Regulations of the State Department of

Social Services, being Title 18 NYCRR,
the express terms of which were
published in the New York State
Register on September 5, 1990.

Dated: January 2, 1991

Signed: _____

Commissioner

Subdivision (a) of Section 343.2 is amended to read as follows:

343.2 General. (a) No operating certificate [shall] will be revoked, suspended, modified or limited nor [shall] will a civil penalty be assessed pursuant to section 486.5 of this Title, without a hearing held in accordance with the procedures established in this Part, except that an operating certificate may, nevertheless, be temporarily suspended or limited without a hearing for a period not in excess of 30 days upon written notice to the facility following a finding by the department that the public health, or an individual's health, safety or welfare, are in imminent danger.

Subdivision (d) of Section 343.3 is amended to read as follows:

(d) For a hearing held to revoke, suspend, modify or limit an operating certificate, the notice [shall] must specify the time and place of the hearing, the proposed action and the charges which are the basis for the proposed action. The charges [shall] must specify the statutes, rules and regulations, or other applicable requirements of law with which the facility failed to comply and [shall] must include a brief statement of the facts pertaining to such noncompliance.

Subdivisions (m) - (q) of Section 485.5 are relettered as (n) - (r) and a new subdivision (m) is added to read as follows:

(m) The department may revoke, suspend, modify, or limit an operating certificate of a shelter for adults, residence for adults or adult home upon determining that:

(1) such action would be in the public interest because:

(i) in the case of revocation, suspension or limitation, such action would conserve resources by restricting the number of beds, or the level of services, or both, to those beds or services which are actually needed, after taking into consideration the total number of beds necessary to meet the public need, and the availability of facilities or services such as ambulatory, home care or other services which may serve as alternatives or substitutes for the services provided by a shelter for adults, residence for adults or adult home; and

(ii) in the case of modification, the level of care and the nature and type of services provided by a facility or required by all or some of the individuals seeking admission to such facility or required by all or some of the residents of such a facility, is inconsistent with the operating certificate of the facility.

(2) Whenever the department proposes to revoke, suspend, modify or limit an operating certificate with respect to any particular facility based upon any of the factors set forth in paragraph (1) of this subdivision, the department must publish in a newspaper of general circulation in the geographic area of the facility at least 30 days prior to making such a determination

an announcement that such a determination is under consideration and an address to which interested persons can write to make their views known. The facility may request a public hearing, to be held in the county in which the facility is located, to discuss the department's proposed action. The department must take all public comments into consideration in making its determination.

(3) The department must, upon making a determination described in this subdivision with respect to any facility, notify such facility of the determination at least 30 days in advance of taking the proposed action to revoke, suspend, modify or limit the facility's operating certificate. The department must schedule an administrative hearing to provide the facility with an opportunity to contest the department's determination. In no event will the revocation, suspension, modification or limitation take effect prior to the 30th day after the date of the notice or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

Subdivision (f) of Section 485.7 is amended to read as follows:

(f) If the department determines that an application for renewal of an operating certificate should not be approved, or that an operating certificate should be limited or [otherwise] modified, the department shall must give notice to the operator. The operator may, in writing and in accordance with Part 343 of this Title, request administrative review of a decision by the department [under this section] not to renew his or

her operating certificate. The department must schedule an administrative hearing to provide an operator, whose certificate is to be limited or modified, with an opportunity to contest the department's determination. In no event will the limitation or modification take effect prior to the 30th day after the date of the notice or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

(Deleted material [brackets]; new material underlined.)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 363-a(2), 366(4)(p), 367-a(3)(a), and 367-a(3)(c) of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby amend Sections 360-4.1(b)(2), 360-4.7(b)(2), 360-4.7(b)(3), 360-4.8(a)(1), and 360-7.8(a), and the introductory language of Sections 360-4.1(b)(1) and 360-4.7(a), and add Sections 360-3.3(c)(16), 360-4.7(b)(4), 360-4.8(a)(4), 360-4.8(c)(4)(iii), and 360-7.7(h) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: December 28, 1990

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services made on December 28, 1990 amending Sections 360-4.1(b)(2), 360-4.7(b)(2), 360-4.7(b)(3), 360-4.8(a)(1), and 360-7.8(a), and the introductory language of Sections 360-4.1(b)(1) and 360-4.7(a), and adding Sections 360-3.3(c)(16), 360-4.7(b)(4), 360-4.8(a)(4), 360-4.8(c)(4)(iii), and 360-

7.7(h) of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on October 17, 1990

Dated: December 28, 1990

Signed: _____

Commissioner

Section 360-3.3(c)(16) is added to read as follows:

(16) A child who is receiving medically necessary in-patient care and services on his/her sixth birthday and who is eligible for MA because his/her household's income does not exceed 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of this Subpart will remain eligible for such in-patient care and services until the end of his/her in-patient stay.

The introductory language of section 360-4.1(b)(1) is amended to read as follows:

(b) How the process works. (1) For an applicant/recipient other than a pregnant woman, [or] an infant younger than one year of age, or a child at least one year of age but younger than six years of age whose family income does not exceed 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of this Subpart, financial eligibility will be determined as follows:

Section 360-4.1(b)(2) is amended to read as follows:

(2) For a pregnant woman, or an infant younger than one year of age, or a child at least one year of age but younger than six years of age whose family income does not exceed 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of this Subpart, who applies for or is in receipt of MA, financial eligibility will be determined as follows:

The introductory language of Section 360-4.7(a) is amended to read as follows:

(a) Resources. All resources available to the household of a pregnant woman, [or] an infant younger than one year

of age, or a child at least one year of age but younger than six years of age whose family income does not exceed 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of this Subpart, are exempt from consideration in determining whether such pregnant woman, [or] infant, or child is medically needy. The following resources are exempt from consideration in determining whether any other MA applicant/recipient is medically needy:

Section 360-4.7(b)(2) is amended to read as follows:

(2) The net available income of a pregnant woman or infant younger than one year of age will be compared to the highest of the following three items: the applicable MA standard; the applicable PA Standard of Need; or, 100 percent of the applicable poverty line, as listed in the following schedule:

		Poverty Lines			
Number in Household		1	2	3	4
		[\$5,980]	[\$8,020]	[\$10,060]	[\$12,100]
*Annual		<u>\$6,280</u>	<u>\$8,420</u>	<u>\$10,560</u>	<u>\$12,700</u>
**Monthly		[499]	[669]	[838]	[1,008]
		<u>523</u>	<u>701</u>	<u>880</u>	<u>1,058</u>
Number in Household		5	6	7	
		[\$14,140]	[\$16,180]	[\$18,220]	
*Annual		<u>\$14,840</u>	<u>\$16,980</u>	<u>\$19,120</u>	
**Monthly		[1,178]	[1,348]	[1,518]	
		<u>1,236</u>	<u>1,415</u>	<u>1,593</u>	

*For each additional person after seven add [\$2,040] \$2,140

**For each additional person after seven add [\$170] \$178

Section 360-4.7(b)(3) is amended to read as follows:

(3) If the net available income of a pregnant woman or infant younger than one year of age exceeds the highest of the three items in paragraph (2) of this subdivision, the social services district will compare it to 185 percent of the applicable poverty line, as listed in the following schedule:

185 Percent of Poverty Lines

Number in Household	1	2	3	4
	[\$11,063]	[\$14,837]	[\$18,611]	[\$22,385]
*Annual	<u>\$11,618</u>	<u>\$15,577</u>	<u>\$19,536</u>	<u>\$23,495</u>
	[921]	[1,236]	[1,550]	[1,865]
**Monthly	<u>968</u>	<u>1,298</u>	<u>1,628</u>	<u>1,957</u>
Number in Household	5	6	7	
	[\$26,159]	[\$29,933]	[\$33,707]	
*Annual	<u>\$27,454</u>	<u>\$31,413</u>	<u>\$35,372</u>	
	[2,179]	[2,494]	[2,808]	
**Monthly	<u>2,287</u>	<u>2,617</u>	<u>2,947</u>	

*For each additional person after seven add [\$3,774] \$3,959

**For each additional person after seven add [\$314] \$329

Section 360-4.7(b)(4) is added to read as follows:

(4) The net available income of a child at least one year of age but younger than six years of age, will be compared to the highest of the applicable MA standard or the PA Standard of Need. If the net available income of such child exceeds the highest of these two items, the social services district will compare it to 133 percent of the applicable federal poverty line, as set forth in

the following schedule:

133 Percent of Poverty Lines

Number in Household	1	2	3	4
*Annual	\$8,352	\$11,198	\$14,044	\$16,891
**Monthly	696	933	1,170	1,407
Number in Household	5	6	7	
*Annual	\$19,737	\$22,583	\$25,429	
**Monthly	1,644	1,881	2,119	
*For each additional person after seven add \$2,846				
**For each additional person after seven add \$237				

Section 360-4.8(a)(1) is amended to read as follows:

(a) Financial eligibility. (1) Except as provided in paragraphs (2), [and] (3), and (4) of this subdivision, an applicant/recipient is financially eligible for MA if his/her net available income and net available resources do not exceed the appropriate standards. The standards are found in section 360-4.7 of this Subpart. Financially eligible applicants/recipients will be authorized to receive MA if they also meet the [nonfinancial] non-financial eligibility requirements. The [nonfinancial] non-financial eligibility requirements are found in Subpart 360-3 of this Part.

Section 360-4.8(a)(4) is added to read as follows:

(4) A child at least one year of age but younger than six years of age is financially eligible for MA if his/her net available family income does not exceed 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of

this Subpart. The child must also meet the non-financial eligibility requirements found in Subpart 360-3 of this Part.

Section 360-4.8(c)(4)(iii) is added to read as follows:

(iii) A child at least one year of age but younger than six years of age whose net available family income exceeds 133 percent of the applicable federal poverty line set forth in section 360-4.7(b) of this Subpart cannot become eligible for MA coverage by incurring medical expenses equal to or greater than the amount by which his/her net available income exceeds 133 percent of such poverty line. Such a child can become eligible for MA coverage only by incurring medical expenses equal to or greater than the amount by which the child's net available family income exceeds the higher of the applicable MA standard or PA Standard of Need.

Section 360-7.7(h) is added to read as follows:

(h) Qualified Disabled and Working Individuals. As used in this section and section 360-7.8 of this subpart, the term qualified disabled and working individual means a person who is not otherwise eligible for medical assistance and:

(1) who is entitled to hospital insurance benefits under Section 1818A of Part A of Title XVIII of the Social Security Act;

(2) whose income does not exceed 200 percent of the official federal poverty line applicable to the person's family size; and

(3) whose resources do not exceed twice the maximum amount of resources that an individual or a couple, in the case of a

married individual, may have and obtain federal supplemental security income benefits under Title XVI of the federal Social Security Act, as determined for purposes of that program.

Section 360-7.8(a) is amended to read as follows:

(a) Payment of Medicare Part A monthly premiums will be made by the MA program for [a] qualified Medicare [beneficiary] beneficiaries and qualified disabled and working individuals, as defined in [subdivision (g) of] section 360-7.7 of this Subpart [, beginning] . Payment of Medicare Part A monthly premiums for a qualified Medicare beneficiary will begin with the month following the month he or she applies for MA payment of these amounts.

(Deleted material [bracketed]; new material underlined)

Paragraph (2) of subdivision (f) of section 387.1 is amended to read as follows:

(2) an employee designated by a publicly operated community mental health center or a private, nonprofit drug addiction or alcoholic treatment and rehabilitation facility, group living arrangement and/or shelter for battered women and children who will represent households which reside at such centers in applying for and obtaining food stamps; or

Subdivisions (m), (n), (p), (q), (r), (s) and (t) of section 387.1 are redesignated as subdivisions (n), (p), (q), (r), (s), (u), and (w) respectively. New subdivisions (m), (t) and (v) are added to section 387.1 to read as follows:

(m) Drug addiction or alcoholic treatment and rehabilitation facility is a facility operated by a private, non-profit organization or is a publicly operated community mental health center. Any drug addiction or alcoholic treatment facility must either be authorized as a retailer by the United States Department of Agriculture (USDA) or be eligible to receive funds under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) even if it does not actually receive such funding. Private, non-profit facilities must also be certified by the New York State Division of Alcoholism and Alcohol Abuse or the New York State Division of Substance Abuse Services.

(t) Group living facilities are public or private, non-profit residential facilities that serve no more than 16 residents. Such private, non-profit facilities must be certified by the appropriate State agency or agencies. To be eligible for food stamp benefits, a resident in such a group living facility must be blind or disabled and be in receipt of benefits under Title II or Title XVI of the Social Security Act.

(v) Homeless individual or family is a person or family which:

(1) lacks a fixed and regular night time residence; or

(2) has a primary night time residence that is:

(i) a supervised shelter, such as a hotel or motel or congregate shelter, which is designed to provide temporary accommodations; or

(ii) an institution providing temporary residence for individuals who need to be institutionalized; or

(iii) a temporary accommodation in the residence of another individual or family; or

(iv) a place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings, such as a hallway, a bus station, a lobby or other similar place.

Paragraph (9) of newly redesignated subdivision (n) of section 387.1 is amended and paragraph (10) is added to read as follows:

(9) is receiving an annuity under:

(i) section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or

(ii) section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act (Compilation of the Social Security Law, 1985; 99th Congress, 1st Session; page 491; section 1614 [a] [3] ; U.S. Government Printing Office, Washington, DC, Secretary of State file Nos. 00513, filed February 28, 1986 and 01036, referenced May 19, 1986) [.] ; or

(10) is receiving disability-related medical assistance under title XIX of the Social Security Act provided that the eligibility to receive such benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act.

Newly redesignated subdivision (q) of section 387.1 is amended to read as follows:

(q) Expedited service is the processing of an application for food stamps [,] in accordance with the provisions of section 387.8(a)(2)(i) of this Part [, made by households whose liquid resources do not exceed \$100 and either the household's monthly gross income is less than \$150 or the household consists of destitute migrant or seasonal farmworkers.] The following households are entitled to expedited service:

(1) Households with less than \$150 in monthly gross income, provided their liquid resources do not exceed \$100;

(2) Migrant or seasonal farmworker households who are destitute as defined in section 387.1(k) of this Part, provided their liquid resources do not exceed \$100;

(3) Eligible households in which all members are homeless individuals as defined in section 387.1(v) of this Part;

(4) Eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities.

Newly redesignated subdivision (u) of section 387.1 is amended to read as follows:

(u) Head of household. (1) General definition. The head of a household is [a] the member of the applicant household designated by the household to represent the household in all matters pertaining to [their] its eligibility for and receipt of food stamps [and in whose name the ATP will be issued]. The head of household classification must not be used to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, receive the ATP in his/her name or appear at the certification office to apply for benefits.

(2) Special definition. The head of household is considered to be the principal wage earner for purposes of compliance with the requirements of sections 387.13 and 387.22 of this Part.

Subparagraph (vi) of paragraph (4) of newly redesignated subdivision (w) of section 387.1 is amended to read as follows:

(vi) Individuals or groups of individuals who are residents of an institutional living arrangement [which does not meet the requirements set forth in this Part for such facilities.] except for the following:

(a) Residents of federally subsidized housing for the elderly, built under section 202 of the Housing Act of 1959 (P.L. 86-372) or section 236 of the National Housing Act (P.L. 73-479);

(b) Drug addicts or alcoholics residing in public or approved nonprofit private drug or alcoholic treatment centers which meet the requirements of subdivision (m) of this section;

(c) Blind or disabled persons who reside in approved group living facilities as defined in subdivision (t) of this section and who are in receipt of social security benefits under Title II or Title XVI of the Social Security Act;

(d) Women or women with their children who are residing in temporary shelters for battered woman and children as defined in subdivision (ee) of this section;

(e) Homeless individuals or families residing in temporary public or private non-profit shelters for homeless persons.

Subdivisions (u) through (dd) of section 387.1 are redesignated as subdivisions (x) through (gg). Newly redesignated subdivision (bb) is amended to read as follows:

(bb) Residents of institutions are those individuals who are provided the majority of their meals (over 50

percent of three meals daily) as part of the institution's normal service. [However, this definition shall only apply if the institution has not been authorized to accept food stamps].

Subdivisions (ee) through (hh) of section 387.1 are redesignated as subdivisions (ii) through (ll) and a new subdivision (hh) is added to read as follows:

(hh) Striker is anyone involved in a strike or a concerted stoppage of work by employees, including stoppage by reason of the expiration of a collective-bargaining agreement, and any concerted slowdown or other concerted interruption of operation by employees. Employees who are prevented from working by a strike but are not participating in a strike are considered non-strikers. Non-strikers who are eligible for food stamps include, but are not limited to, the following:

(1) Employees whose work place is closed by an employer in order to resist the demands of employees, such as a lockout; or

(2) Employees who are unable to work as a result of striking employees, such as truck drivers who are not working because striking newspaper pressmen prevent newspapers from being printed; or

(3) Employees who are not part of the bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death; or

(4) Employees who went on strike but who were exempt from work registration the day prior to the strike, other

than those who are exempt solely on the grounds that they are employed; or

(5) Employees whose jobs are no longer available because permanent replacements have been hired by the company. However, the employees will be considered strikers until such time as their jobs are no longer available.

Paragraph (1) of subdivision (h) of section 387.13 is amended to read as follows:

(h) Head of household. (1) Notwithstanding section 387.1 [(s)] (u) of this Part, for purposes of compliance with work registration requirements, compliance with the requirements specified by subdivision (d) of this section , and for voluntary termination of employment, the head of the household is the principal wage earner. The principal wage earner is the household member who had the greatest amount of earned income in the two months prior to the month of non-compliance with work registration requirements or voluntary termination of employment. This provision applies only if the employment involved 20 hours or more per week or resulted in weekly earnings at least equivalent to the federal minimum wage multiplied by 20 hours. The head of household may be an excluded household member whose income is applied in whole or in part to the household, pursuant to section 387.10(b)(3) of this Part. The designation of the principal wage earner as head of household takes precedence over a previous designation of head of household at least until the period of

disqualification for non-compliance or voluntary termination of employment is ended.

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 95 of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services do hereby amend subparagraph (xi) of paragraph (4) of subdivision (h) of Section 399.6 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR effective upon publication of the Notice of Adoption in the State Register.

Dated: January 2, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on January 3, 1991

amending subparagraph (xi) of paragraph (4) of subdivision (h) of Section 399.6 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on October 24, 1990

Dated: January 2, 1991

Signed: _____

Commissioner

Subparagraph (xi) of paragraph (4) of subdivision (h) of section 399.6 is amended to read as follows:

(xi) that if the participating household fails to sign and return [respond to] the [demand letter] repayment agreement within 30 days from the mailing date of [the demand letter] such agreement that the [local] social services district will [reduce the household's allotment without notice of adverse action] collect the over-issuance by allotment reduction.

(Deleted material brackets ; new material underlined.)

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NY

Pursuant to the provisions of Article 7 of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services do hereby designate the undesignated paragraph of subdivision (b) of section 485.3 as paragraph (3) and add subparagraphs (i) and (ii); amend section 485.5(h), amend section 485.12(b)(1)(i)-(iv), amend section 485.12(b)(2)(i)-(iv), amend section 486.7(c) and (f), amend section 487.4(e)(3), amend section 487.7(b), amend section 487.8(d)(2)(ii) and (iii), amend section 487.8(d)(3), add section 487.9(a)(16), amend section 487.10(g)(2), amend the opening language of section 487.11(b), amend section 487.11(h)(11), amend section 487.11(k)(15), amend section 487.11(l)(1) and (3), add section 488.9(a)(12), amend section 488.10(g)(2), amend section 488.11(e)(9), amend section 488.11(i)(1), amend section 490.7(b), amend section 490.8(d)(2)(ii) and (iii) and (3), add section 490.9(a)(14), amend section 490.10(g)(2), amend section 490.11(i)(11), amend section 490.11(l)(15), amend section 490.11(m)(1), and amend section 491.10(d)(2) of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the State Register.

Date: January 2, 1991

Signed: _____

Commissioner

This is to certify that this is the original of an order of the Department of Social Services, made on January 3, 1991 designating the undesignated paragraph of subdivision (b) of section 485.3 as paragraph (3) and adding subparagraph (i) and (ii); amending section 485.5(h), amending section 485.12(b)(1)(i)-(iv), amending section 485.12(b)(2)(i)-(iv), amending section 486.7(c) and (f), amending section 487.4(e)(3), amending section 487.7(b), amending section 487.8(d)(2)(ii) and (iii), amending section 487.8(d)(3), adding section 487.9(a)(16), amending section 487.10(g)(2), amending the opening language of section 487.11(b), amending section 487.11(h)(11), amending section 487.11(k)(15), amending section 487.11(l)(1) and (3), adding section 488.9(a)(12), amending section 488.10(g)(2), amending section 488.11(e)(9), amending section 488.11(i)(1), amending section

490.7(b), amending section
490.8(d)(2)(ii) and (iii) and (3),
adding section 490.9(a)(14), amending
section 490.10(g)(2), amending
section 490.11(i)(11), amending
section 490.11(1)(15), amending
section 490.11(m)(1), and amending
section 491.10(d)(2), a summary of
which was published in the State
Register on October 4, 1990

Dated: January 2, 1991

Signed: _____

Commissioner

The undesignated paragraph of subdivision (b) of section 485.3 is designated paragraph (3) and amended by adopting new subparagraphs (i) and (ii) as follows:

(3) For the purposes of this Chapter, an adult care facility [shall be] is considered to have a significant number of mentally disabled persons when: [the resident population is composed of 25 percent or more of persons released or discharged from any facility operated or certified by an Office of the Department of Mental Hygiene.]

(i) for the purpose of joint inspections with an Office of the Department of Mental Hygiene, the resident population is composed of 25 percent or more persons released or discharged from any facility operated or certified by an Office of the Department of Mental Hygiene; or

(ii) for the purpose of requiring a written agreement between an operator and a mental health service provider, 25 percent or more of the resident population or 25 residents, whichever is less, have been released or discharged from any facility operated or certified by an Office of the Department of Mental Hygiene.

Subdivision (h) section 485.5 is amended as follows:

An operator of a not-for-profit corporation [shall] must [give] annually provide to the department [written notice of any change in the officers] in writing the names and addresses of the current members of the board of directors.

Subparagraphs (i) through (iv) of paragraph (1) of subdivision (b) of section 485.12 are amended to read as follows:

(i) Residents receiving total Supplemental Security Income benefits of \$ [66] 90 per month or less must have personal allowances consisting of their total Supplemental Security Income benefit amount in addition to any income disregarded by the Social Security Administration in determining the recipient's eligibility for Supplemental Security Income, except third-party payments from [nonpublic] non-public sources treated as in-kind income.

(ii) Residents receiving Supplemental Security Income benefits greater than \$[66] 90 per month, and having no other income, must have personal allowances of at least \$[66] 90 per month.

(iii) Residents receiving Supplemental Security Income benefits greater than \$ [66] 90 per month, with other sources of income, must have personal allowances of at least \$[66] 90 per month in addition to any income disregarded by the Social Security Administration, except third-party payments from [nonpublic] non-public services treated as in-kind income.

(iv) Residents receiving Supplemental Security Income who were ["grandfathered"] "grandparented" from the Aid to the Aged, Blind and Disabled program (AABD), whose benefit amounts are above the standard Supplemental Security Income benefit levels, must have personal allowances of at least \$[66] 90 per

month in addition to any income disregarded by the Social Security Administration as described in subparagraph (i) of this paragraph.

Subparagraphs (i) through (iv) of paragraph (2) of subdivision (b) of section 485.12 are amended to read as follows:

(i) Residents receiving total Supplemental Security Income benefits less than \$[56] 80 per month must have personal allowances consisting of their total Supplemental Security Income benefit amount in addition to any income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

(ii) Residents receiving Supplemental Security Income benefits greater than \$[56] 80 per month, and having no other income, must have personal allowances of at least \$[56] 80 per month.

(iii) Residents receiving Supplemental Security Income benefits greater than \$[56] 80 per month, with other sources of income, must have personal allowances of at least \$[56] 80 per month in addition to any income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

(iv) Residents who are ["grandfathered"] "grandparented" from the Aid to the Aged, Blind and Disabled program (AABD), whose benefit amounts are above the standard Supplemental Security Income benefit levels, must have personal allowances of at least \$[56] 80 per month in addition to any

income disregarded by the Social Security Administration as described in subparagraph (1)(i) of this subdivision.

Subdivision (c) of section 486.7 is amended as follows:

487.5(f)

[(18)] (19) 25

487.9(a)

(16) 50

Subdivision (f) of section 486.7 is amended as follows:

490.9(a)

(14) (50)

Paragraph (3) of subdivision (e) of section 487.4 is amended to read as follows:

(3) in the event that a proposed resident has a known history of chronic mental disability, or the medical evaluation or resident interview suggests such disability, then a mental health evaluation [shall] must be conducted [by a psychiatrist, physician, nurse, psychologist or social worker who has experience in the assessment and treatment of mental illness].

Subdivision (b) of section 487.7 is hereby amended to read as follows:

(b) The operator of a facility [with a resident population composed of] in which at least 25 percent [or more] of the resident population or 25 residents, whichever is less, are mentally disabled persons who have been released or discharged from facilities operated or certified by an Office of the

Department of Mental Hygiene [shall] must arrange, by written agreement, with [either] the out-patient or after-care service of the nearest State psychiatric or developmental facility, the local community mental health service, or a community support provider, for assistance with the assessment of mental health needs, the supervision of general mental health care and the provision of related case management services for those residents enrolled in mental health programs.

Subparagraphs (ii) and (iii) of paragraph (2) of subdivision (d) of section 487.8 are amended to read as follows:

(ii) Meats - two or more servings of meat, fish, poultry, eggs, cheese or other equivalents[;] . [at least four to five ounces per edible portion per day;] Each serving must provide an edible portion of at least two ounces;

(iii) Vegetables and fruits - four or more servings of at least one-half cup each, citrus fruit or other fruit and vegetable with vitamin C should be used daily. A dark green or deep yellow vegetable or fruit with vitamin A should be used at least every other day. Fruit and vegetable juices may be used;

Paragraph (3) of subdivision (d) of section 487.8 is amended to read as follows:

(3) Water, milk, coffee, tea and a hot decaffeinated beverage [shall] must be [provided] available and offered at each meal.

Subdivision (a) of section 487.9 is amended by adopting new paragraph (16) as follows:

(16) The operator must inform the appropriate regional office by telephone or in writing within three business

days of a vacancy in the position of administrator, case manager, activities director, dietary consultant or health consultant.

Paragraph (2) of subdivision (g) of section 487.10 is amended to read as follows:

(2) [the most recent summary of inspection issued by the Department] the inspection report for the most recent complete or summary inspection, with any related follow-up inspection reports;

The opening language of subdivision (b) of section 487.11 is amended to read as follows:

(b) An operator seeking certification to operate [and] an adult home, or an operator of a certified facility planning renovation or remodeling, [shall] must:

Paragraph (11) of subdivision (h) of section 487.11 is amended to read as follows:

(11) The water temperature at faucets for bathing, showering and hand-washing must be capable of attaining a temperature of 95 degrees Fahrenheit (35 degrees Celsius) but [shall] must not [exceed] attain a temperature in excess of 110 [°] degrees Fahrenheit (43 [°] degrees Celsius).

Paragraph (15) of subdivision (k) of section 487.11 is amended to read as follows:

(15) To ensure safe, proper operating conditions, the following systems and equipment [shall] must be inspected or tested [as required by local codes or at least once every 12 months] by a service company at least once every 12 months, or more frequently if required by local codes;

Paragraph (1) of subdivision (1) of section 487.11 is amended to read as follows:

(1) Space in a facility [shall] must be used exclusively for the purposes set forth in this Part. An operator may request prior permission, in writing, to utilize space for other activities. The operator must demonstrate that the proposed use is not incompatible [to] with the facility program, [and] will not be detrimental to residents[.] and complies with applicable local codes. A request to use resident bedrooms for another purpose must include a request for an equal reduction in the certified capacity of the facility.

Paragraph (3) of subdivision (1) of section 487.11 is amended to read as follows:

(3) Space leased for administration, sleeping or passage shall not be considered [at] as dining or leisure space.

Subdivision (a) of section 488.9 is amended by adopting new paragraph (12) as follows:

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

Paragraph (2) of subdivision (g) of section 488.10 is amended to read as follows:

(2) [the most recent report of inspection issued by the department] the inspection report for the most recent or summary inspection, with any related follow-up inspections;

Paragraph (9) of subdivision (e) of section 488.11 is amended to read as follows:

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

Paragraph (1) of subdivision (i) of section 488.11 is amended to read as follows:

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

Subdivision (b) of section 490.7 is amended to read as follows:

(b) The operator of a facility [with a resident population composed of] in which at least 25 percent [or more] of the resident population or 25 residents, whichever is less, are mentally disabled persons who have been released or discharged from facilities operated or certified by an Office of the Department of Mental Hygiene must arrange, by written agreement, with [either] the outpatient or after-care service of the nearest State psychiatric or developmental facility, or alcoholism and substance abuse agency, the local mental health service or a

support service provider, for assistance with the assessment of mental health or other service needs, the supervision of general mental health care, including the provision of necessary alcoholism and substance abuse services, and the provision of related case management services for those residents enrolled in these service programs.

Subparagraphs (ii) and (iii) of paragraph (2) of subdivision (d) of section 490.8 are amended to read as follows:

(ii) meats - two or more servings of meat, fish, poultry, eggs, cheese or other equivalents[; at least four to five ounces per edible portion per day]. Each serving must provide an edible portion of at least two ounces.

(iii) vegetables and fruits - four or more servings of at least one-half cup each, citrus fruit or other fruit and vegetable with vitamin C should be used daily. A dark green or deep yellow vegetable or fruit with vitamin A should be used at last every other day. Fruit and vegetable juices may be used;

Paragraph (3) of subdivision (d) of section 490.8 is amended to read as follows:

Water, milk, coffee, tea and a hot decaffeinated beverage must be [provided] available and offered at each meal.

Subdivision (a) of section 490.9 is amended by adopting a new paragraph (14) as follows:

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

Paragraph (2) of subdivision (g) of section 490.10 is amended to read as follows:

(2) [the most recent summary of inspection issued by the department] the inspection report for the most recent complete or summary inspection, with any related follow-up inspection reports.

Paragraph (11) of subdivision (i) of section 490.11 is amended to read as follows:

The water temperature at faucets for bathing, showering, and [handwashing] hand-washing must be capable of attaining a temperature of 95 degrees Fahrenheit (35 degrees Celsius) but must not [exceed] attain a temperature in excess of 110 degrees Fahrenheit (43 degrees Celsius).

Paragraph (15) of subdivision (l) of section 490.11 is amended to read as follows:

(15) To ensure safe, proper operating conditions, the following systems and equipment must be inspected or tested as required by local codes or at least once every 12 months by a qualified service company by a service company at least once every 12 months or more frequently if required by local codes:

Paragraph (1) of subdivision (m) of section 490.11 is amended to read as follows:

(1) Space in a facility must be used exclusively for the purposes set forth in this Part. An operator may request prior permission from the department, in writing, to utilize space for other activities. The operator must demonstrate that the proposed use is not incompatible with the program, [and] will not

be detrimental to residents[.] and complies with applicable local codes. A request to use resident bedrooms for another purpose must include a request for an equal reduction in the certified capacity of the facility.

Paragraph (2) of subdivision (d) of section 491.10 is hereby amended to read as follows:

(2) if elsewhere in the State, [in compliance] complies with the State Building Construction Code for the B- 1 2 occupancy group.