Meeting Space in Transitional Adult Homes

Effective date: 10/23/20

Pursuant to the authority vested in the Commissioner of Health by section 461 of the Social Services Law, section 487.13 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended, to be effective upon filing with the Secretary of State, to read as follows:

Paragraph (5) of subdivision (b) of section 487.13 is amended to read as follows:

(5)(i) Housing contractors means housing providers that have contracted with the Office of Mental Health to provide residents with information regarding housing alternatives and community services, assess residents to determine their housing and service needs and preferences, and make community housing available to residents pursuant to such contracts.

(ii) Peer bridger agencies mean agencies that have contracted with the Office of Mental Health to provide residents with access to peer bridgers. Peer bridgers are individuals employed by, or whose services have otherwise been retained by, peer bridger agencies, and who use their training and experience to provide mentoring and support to residents considering community transition.

Subdivision (h) of section 487.13 is amended to read as follows:

(h) The operator shall cooperate with the community transition coordinator, housing contractors, [and] peer bridger agencies, care managers, health [home] homes, and managed long-term care [plan assessors] plans and shall provide, without charge, space for residents to meet privately with such individuals or entities. The operator shall not attempt to influence or otherwise discourage individual residents from meeting with such entities and individuals.

New subdivisions (i) and (j) are added to section 487.13 to read as follows:

(i) Space provided for meetings with providers defined in this section shall be:

(1) a minimum of 160 square feet;

(2) above grade level;

(3) adequately lighted and ventilated and meet the temperature requirements of subdivision (m) of section 487.11;

(4) with a door that closes to ensure conversations held within the space are private and that outside disruptions are minimized;

(5) space separate and distinct from an occupied or reserved resident room or space used primarily for storage; and

(6) space that is not under surveillance by adult home staff.

(j) Upon request from the Department, operators shall be required to submit a plan to the Department, in the form and format prescribed by the Department, explaining how the operator

will meet the space requirements set forth in subdivision (i) of this section. Operators shall have 30 calendar days to submit such plan from the date of the Department's request. The operator shall implement the plan upon approval by the Department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 461(1) requires the Department of Health (Department) to promulgate regulations establishing general standards applicable to adult care facilities.

Legislative Objectives:

The legislative objective of SSL section 461 is to promote the health and well-being of adults residing in adult care facilities.

Needs and Benefits:

The proposed regulatory changes are necessary to bring Transitional Adult Homes into full compliance with current regulations at Title 18 of the New York Codes, Rules and Regulations (NYCRR), Part 487, which seek to promote resident access to service providers specializing in promoting community transition. A Transitional Adult Home is an adult home with a certified capacity of 80 or more beds in which 25 percent or more of the resident population are persons with serious mental illness (*see* 18 NYCRR 487.13[b][1]). Persons with serious mental illness are "individuals who meet criteria established by the commissioner of mental health, which shall be persons who have a designated diagnosis of mental illness" and "whose severity and duration of mental illness results in substantial functional disability" (18 NYCRR 487.2[c]).

Specifically, Transitional Adult Home operators are required under 18 NYCRR 487.13(h) to cooperate with providers seeking to meet with residents to discuss "community services,"

defined in 18 NYCRR 487.13(b)(3) as "services and supports provided in New York State that assist individuals with mental illness to live in the community." Transitional Adult Home operators must also "cooperate with the community transition coordinator, housing contractors, and health home and managed long-term care plan assessors and shall provide, without charge, space for residents to meet privately with such individuals or entities. The operator shall not attempt to influence or otherwise discourage individual residents from meeting with such entities and individuals" (18 NYCRR 487.13[h]). Further, all adult homes—including Transitional Adult Homes—must "provide space for residents to meet privately with staff of the facility, visitors or other service providers" (18 NYCRR 487.11[l][12]).

Despite these existing regulations, service providers have reported to the Department that they have visited certain Transitional Adult Homes for the purpose of assisting residents considering community transition, or who are in the process of such transition, and were unable to meet with residents in a space that allowed for private conversations, pursuant to the requirements of 18 NYCRR 487.13(h). In several instances, providers have reported that residents have been discouraged from meeting with them due to the inability to meet privately.

To address these concerns from service providers and ensure that Transitional Adult Homes are meeting regulatory requirements, this proposal will establish criteria for suitable meeting space that will permit private conversations, allowing residents to explore or pursue community transition without fear of being overheard or retaliated against by facility staff. For clarity for all stakeholders, this proposal will also update the definitions set forth in 18 NYCRR 484.13(b), which identify the service providers who may meet with residents to discuss community services. Specifically, the proposal will update the existing definition of "housing contractors" to provide that such agencies also assess residents for housing and other services

that residents would need in the community. In addition, the proposal will add a definition of Peer Bridger agencies, which are contracted by the Office of Mental Health to establish mentoring relationships with residents and help answer questions they may have about community transition.

By strengthening compliance with existing regulations that seek to promote resident access to community transition service providers, this proposal will protect resident health, safety, and well-being. This proposal is thus consistent with the legislative objectives of SSL section 461(2) and with the State's overall efforts to ensure that care is provided in the most integrated settings, as required by *Olmstead v. L.C.*, 527 U.S. 581 (1999), and as emphasized in Governor Cuomo's Executive Order No. 84.

COSTS:

Costs to Private Regulated Parties:

Transitional Adult Homes are already required by existing regulations to make space available so that residents may meet privately with providers. The proposed regulation seeks only to delineate criteria that will ensure that Transitional Adult Homes are meeting the current regulatory requirements to provide private space for service provider meetings regarding community transition and to not discourage individual residents from attending such meetings. It is possible that a Transitional Adult Home may decide to create a dedicated meeting space that fits the criteria outlined in the proposed regulation by requesting to decertify a room that would otherwise be occupied by residents and foregoing the revenue for that room. However, the regulation does not expressly direct such action, and it is incumbent upon an operator to comply with all existing regulations, including the current requirement to make space available for

residents to meet privately with providers. This proposal merely clarifies what constitutes adequate space for private meetings and thus does not directly impose new costs upon Transitional Adult Homes.

Costs to Local Government:

This proposal will not impact local governments unless they operate Transitional Adult Homes, in which case the impact would be the same as outlined above for private parties.

Costs to the Department of Health:

The Department will utilize existing resources to request, review and approve plans delineating how Transitional Adult Homes will comply with the proposed regulations and to monitor compliance with the approved plan.

Costs to Other State Agencies:

The proposed regulatory changes will not result in any additional costs to other state agencies.

Local Government Mandate:

Local governments that operate Transitional Adult Homes must comply with this regulation. No new local government program, project or activity is required by the proposed regulations.

Paperwork:

The proposed regulatory changes require that upon the request of the Department, Transitional Adult Home operators will have 30 days to submit a plan to the Department explaining how the operator will meet the space requirements.

Duplication:

These regulatory amendments do not duplicate existing State or federal requirements.

Alternatives:

The Department found no viable alternatives to incentivize full compliance with existing regulations absent a regulatory amendment defining what constitutes adequate space for service provider meetings regarding community transition. Doing nothing is also not a viable option, given the ongoing violations of 18 NYCRR 487.4(h) and concerns that residents' rights to explore community transition were being infringed.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The regulations will be effective on an emergency basis upon filing with the Secretary of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect of Rule:

The proposed regulatory changes will affect Transitional Adult Homes that constitute small businesses or are operated by local governments. At present, according to data available at healthdata.ny.gov, there are 37 Transitional Adult Homes.

Compliance Requirements:

This proposal will build upon the existing requirements of 18 NYCRR 487.11(l)(12), which provides that all adult home operators must "provide space for residents to meet privately with staff of the facility, visitors or other service providers," and 18 NYCRR 487.4(h), which provides that Transitional Adult Home operators "shall cooperate with the community transition coordinator, housing contractors, and health home and managed long-term care plan assessors and shall provide, without charge, space for residents to meet privately with such individuals or entities." This proposal will establish criteria for suitable meeting space that will permit such private conversations to occur, and it will require Transitional Adult Home operators to submit a plan to the Department, upon the request and subject to the approval of the Department, to explain how such requirements will be met.

Professional Services:

Small businesses will need no additional professional services to comply with the proposed regulatory changes.

Costs to Private Regulated Parties:

Transitional Adult Homes are already required by existing regulations to make space available so that residents may meet privately with providers. The specific criteria outlined in the proposed regulation define what was already required under the existing regulations – that the space be adequate to permit privacy in conversations about community transition and not be conducive to efforts to discourage individual residents from meeting with those providers. This proposal merely clarifies what constitutes sufficient space for private meetings and thus does not impose new costs upon Transitional Adult Homes. It is possible that a Transitional Adult Home may decide to create a dedicated meeting space that fits the criteria outlined in the proposed regulation by requesting to decertify a room that would otherwise be occupied by residents and foregoing the receipt of revenue for that room. However, the regulation does not direct such action, and it is incumbent upon an operator to comply with all existing regulations, including the requirement to make space available for residents to meet privately with providers.

Costs to Local Government:

This proposal will not impact local governments unless they operate Transitional Adult Homes, in which case the impact would be the same as outlined above for private parties.

Economic and Technological Feasibility:

This proposal will not impose any economic or technological compliance burdens. It is possible that a Transitional Adult Home may decide to create a dedicated meeting space that fits the criteria outlined in the proposed regulation by decertifying a room that would otherwise be occupied by residents and foregoing the revenue for that room. However, as noted above, operators were already responsible for making space available for residents to meet privately

with providers under existing regulations; therefore, any associated costs are not new, and are not directly imposed by this regulation.

Minimizing Adverse Impact:

The Department will work with Transitional Adult Homes to ensure that they are aware of the requirements, including issuing administrative guidance.

Small Business and Local Government Participation:

Small business and local governments were not consulted during the creation of this proposed rule; however, small businesses and local governments will be able to submit public comments during the public comment period of the proposed regulation.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). At present, two Transitional Adult Homes are located in one of these counties.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010. At present, six Transitional Adult Homes are located in one of these counties.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This proposal will build upon the existing requirements of 18 NYCRR 487.11(l)(12), which provides that all adult home operators must "provide space for residents to meet privately with staff of the facility, visitors or other service providers," and 18 NYCRR 487.4(h), which provides that Transitional Adult Home operators "shall cooperate with the community transition coordinator, housing contractors, and health home and managed long-term care plan assessors and shall provide, without charge, space for residents to meet privately with such individuals or entities." This proposal will establish criteria for suitable meeting space that will permit such private conversations to occur, and it will require Transitional Adult Home operators to submit a plan to the Department, upon the request and subject to the approval of the Department, to explain how such requirements will be met.

Costs:

Transitional Adult Homes are already required by existing regulations to make space available so that residents may meet privately with providers. The specific criteria outlined in the proposed regulation define what was already required under the existing regulations – that the space be adequate to permit privacy in conversations about community transition and not be conducive to efforts to discourage individual residents from meeting with those providers. It is possible that a Transitional Adult Home may decide to create a dedicated meeting space that fits the criteria outlined in the proposed regulation by requesting to decertify a room that would otherwise be occupied by residents and foregoing the receipt of revenue for that room. However, it is incumbent upon an operator to comply with all existing regulations, and Transitional Adult Home operators are already responsible under existing regulations for making space available for

residents to meet privately with providers. This proposal merely clarifies what constitutes sufficient space for private meetings and thus does not impose new costs upon Transitional Adult Homes.

Minimizing Adverse Impact:

The Department will work with Transitional Adult Homes to ensure that they are aware of the requirements, including issuing administrative guidance, as necessary.

Rural Area Participation:

The Transitional Adult Homes located in rural areas will be able to submit public comments during the public comment period for the proposed rule.

STATEMENT IN LIEU OF
JOB IMPACT STATEMENT

A Job Impact Statement for the proposed regulatory amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

EMERGENCY JUSTIFICATION

This proposal is immediately necessary to ensure full compliance with existing Transitional Adult Home regulations, which seek to promote resident access to providers who help residents consider and pursue community transition. Under the existing regulatory requirements, all adult home operators must "provide space for residents to meet privately with staff of the facility, visitors or other service providers" (18 NYCRR 487.11[l][12]), and Transitional Adult Home operators must "cooperate with the community transition coordinator, housing contractors, and health home and managed long-term care plan assessors and shall provide, without charge, space for residents to meet privately with such individuals or entities" (18 NYCRR 487.4[h]). In addition, 18 NYCRR 487.4(h) provides that "[t]he operator shall not attempt to influence or otherwise discourage individual residents from meeting" with those enumerated providers.

Despite these requirements, providers have reported to the Department that they have visited certain Transitional Adult Homes for the purpose of assisting residents considering or in the process of pursuing transition to the community and were unable to meet with residents in a space that allowed for private conversations. In several instances, providers have reported that residents have been discouraged from meeting with them due to the inability to meet in private. This proposal will establish criteria for a suitable private meeting space to help ensure that conversations are fully private, thereby allowing residents to adequately explore the services that would be available to them in the community without fear of being overheard or retaliated against by facility staff.

Full and immediate compliance with these regulatory requirements is necessary to ensure that care is provided in the most integrated settings, as required by *Olmstead v. L.C.,* 527 U.S. 581 (1999) and as emphasized in Governor Cuomo's Executive Order No. 84.