

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

November 1, 2018

Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
Via email at REGSQNA@health.ny.gov

Re: Proposed Amendment of Parts 487, 488, 490 and 494 of Title 18 NYCRR (Admission and Retention Standards for Adult Care Facilities)

Dear Ms. Ceroalo:

I am writing on behalf of the Long Term Care Community Coalition and the undersigned organizations to provide comments on the Department of Health's (DOH) proposed amendments to the state's adult care facility regulations. Adult care facilities include adult homes, assisted living facilities, enriched housing, residences for adults, and family type homes for adults.

The Long Term Care Community Coalition (LTCCC) is a nonprofit organization dedicated to improving quality of care, quality of life, and dignity for elderly and disabled people in nursing homes, assisted living, and other residential settings. The other organizations listed below are, similarly, dedicated to ensuring that individuals have access to quality care in an appropriate setting.

The DOH regulations governing adult care facilities discriminate against people with disabilities. For example, the regulations bar the admission or retention of individuals who chronically require the physical assistance of another person in order to walk.

While some people cannot be served by an adult care facility, that determination should be made on an individualized, case-by-case basis, not the result of a blanket prohibition against people with certain disabilities. Such blanket prohibitions are discriminatory.

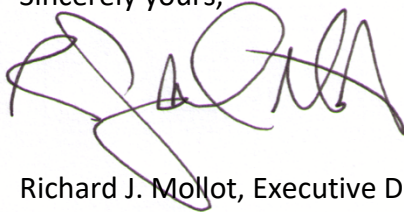
Furthermore, the proposed regulations fail to effectively address the many discriminatory provisions that bar individuals with mobility impairments from living in adult care facilities. For example, while the proposed changes purport to remedy discrimination against wheelchair

users, they would instead have little practical effect because the regulations would still bar individuals who need physical assistance to walk or climb stairs from living in adult care facilities. As a result, even if the proposed amendments were adopted, people who use wheelchairs will still be barred from living in adult care facilities. This violates the Fair Housing Act and other federal anti-discrimination statutes.

DOH regulations governing adult care facilities also discriminate against individuals with other disabilities. For example, the regulations bar people who are chronically bedfast, people who are dependent on medical equipment, and people who have “chronic unmanaged urinary or bowel incontinence.” As a result, people with these disabilities are often relegated to unnecessary institutionalization in nursing homes, in violation of the U.S. Supreme Court’s decision in *Olmstead v. L.C.*, which held that unnecessary institutionalization of people with disabilities constitutes discrimination. Given that the 20th anniversary of the *Olmstead* decision is fast approaching, compliance with its protections is, we believe, long overdue.

We strongly urge the Department to take swift and concrete action to bring our state’s adult care facility policies in compliance with federal non-discriminatory requirements, including the *Olmstead* decision and other important federal protections.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Richard J. Mollot', written over a horizontal line.

Richard J. Mollot, Executive Director
Long Term Care Community Coalition

On behalf of:

The National Consumer Voice for Quality Long-Term Care

Center for Independence of the Disabled, NY

Center for Medicare Advocacy, Inc.

Metro Justice, Elder Justice Committee