*** § 4651. Definitions.** As used in this article:

1. "Assisted living" and "assisted living residence" means an entity which provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more adult residents unrelated to the assisted living provider. An applicant for licensure as assisted living that has been approved in accordance with the provisions of this article must also provide daily food service, twenty-four hour on-site monitoring, case management services, and the development of an individualized service plan for each resident. An operator of assisted living shall provide each resident with considerate and respectful care and promote the resident's dignity, autonomy, independence and privacy in the least restrictive and most home-like setting commensurate with the resident's preferences and physical and mental status.

Assisted living and enhanced assisted living shall not include:

(a) residential health care facilities or general hospitals licensed under article twenty-eight of this chapter;

(b) continuing care retirement communities which possess a certificate of authority pursuant to article forty-six of this chapter, unless the continuing care retirement community is operating an assisted living residence as defined under this section;

(c) residential services for persons that are provided under a license pursuant to article sixteen, nineteen, thirty-one or thirty-two of the mental hygiene law or other residential services primarily funded by or primarily under the jurisdiction of the office for mental health;

(d) naturally occurring retirement communities, as defined in section five hundred thirty-six-g of the executive law;

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

(f) public or publicly assisted multi-family housing projects administered or regulated by the U.S. department of housing and urban development or the division of housing and community renewal or funded through the homeless housing assistance program that were designed for the elderly or persons with disabilities, or homeless persons, provided such entities do not provide or arrange for home care, twenty-four hour

supervision or both, beyond providing periodic coordination or arrangement of such services for residents at no charge to residents. Except, however, such entities that are in receipt of grants for conversion of elderly housing to assisted living facilities pursuant to section 1701-q-2 of the United States Code shall license as an assisted living pursuant to this article;

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

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

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

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

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

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

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

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

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

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

8. "Resident's representative" means a family member or other individual identified in the residency agreement required under section four thousand six hundred fifty-eight of this article who is authorized by a resident to communicate with residence employees regarding the health, well-being, needs of and services provided to such resident and to assist the resident in obtaining needed services.

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

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

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

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

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

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

15. "Enhanced assisted living certificate" means a certificate issued by the department which authorizes an assisted living residence to provide aging in place by either admitting or retaining residents who desire to age in place and who: (a) are chronically chairfast and unable to transfer, or chronically require the physical assistance of another person to transfer; (b) chronically require the physical assistance of another person in order to walk; (c) chronically require the physical assistance of another person to climb or descend stairs; (d) are dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel; or (e) has chronic unmanaged urinary or bowel incontinence. In no event shall a person be admitted to an assisted living residence who is in need of continual

twenty-four hour nursing or medical care, who is chronically bedfast, or who is cognitively, physically or medically impaired to such a degree that his or her safety would be endangered.

* NB There are 2 § 4651's