§ 461-a. Responsibility for inspection and supervision. 1. The department shall be responsible for the inspection and supervision of all adult care facilities subject to the provisions of section four hundred sixty-c of this chapter; provided, however, that the department shall by a written cooperative agreement entered into by October first, nineteen hundred seventy-seven, develop a system of joint inspection with the department of mental hygiene, with respect to any such facility providing residential care to a significant number of mentally disabled persons.

2. (a) With respect to adult care facilities the department shall conduct a minimum of one unannounced inspection of each such facility to determine the adequacy of care being rendered, pursuant to the following:

(1) Such facilities receiving the department's highest rating shall be inspected at least once every eighteen months on an unannounced basis.

(2) All other such facilities shall be inspected on an unannounced basis no less than annually. The commissioner may provide for more frequent inspections of any such facilities. Such inspection shall not be required with respect to any facility for which the commissioner has delegated responsibility for inspection and supervision to a social services official pursuant to section four hundred sixty-c of this chapter. Any employee of the department or a social services district who gives or causes to be given advance notice of such unannounced inspections to any unauthorized persons shall, in addition to any other penalty provided by law, be suspended by the department or the social services district from all duties without pay for at least five days or for such greater period of time as the department or social services district shall determine. Any such suspension shall be made by the department or social services district in accordance with all other applicable provisions of law.

(b) The department or a social services district, where appropriate, shall each year conduct a minimum of one full inspection of each adult care facility. Such inspection shall include, but shall not be limited to, examination of the medical, dietary and social services records of the facility as well as the minimum standards of construction, life safety standards, quality and adequacy of care, rights of residents,

payments and all other areas of operation. The purpose of any inspection shall be to determine compliance with requirements of applicable provisions of law and regulations of the department.

(c) An inspection report shall be made of each inspection which shall clearly identify and indicate in detail each area of operation, including, but not limited to, the premises, equipment, personnel, resident care and services, and whether each such area of operation or any of its component parts is or is not in compliance with the regulations of the department and all other applicable requirements. It also shall identify those areas of operation or any of its component parts found not in compliance as a result of failure in systemic practices and procedures. The operator shall be notified of the results of the inspection in a manner to be determined by regulations of the department. Such notification shall contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected. The department shall also require the operator of an adult home or residence for adults to develop, biannually update and implement plans for quality assurance activities for each area of operation. Quality assurance activities include but are not limited to, development and maintenance of performance standards including infection control, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design, and implementation of corrective action. Each plan must also include the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and identifying trends and improvement activities. While reviewing facility performance, the committee shall not examine personally identifiable resident incidents. Such committee shall include the administrator or operator of the facility, the resident council president or other resident representative, and representatives from frontline employees from each area of operation.

(d) Systemic practices or procedures are those activities related to each area of operation which indicate a pattern or an inability to bring the operation of the facility into compliance with applicable provisions

of laws and regulations.

(e) Nothing contained in this subdivision shall limit or restrict the ability of the department or social services district, where appropriate, to conduct more than one inspection of an adult care facility, for whatever purpose, as is deemed necessary for ensuring compliance with applicable provisions of law and regulations of the department.

3. (a) Pursuant to regulations promulgated by the commissioner, in consultation with the director of the state office for the aging, no facility or individual shall restrict or prohibit the access to the facility nor interfere with the performance of the official duties, including confidential visits with residents, of duly designated persons participating in the long term care ombudsman program as provided for in section five hundred forty-five of the executive law. No facility or individual shall retaliate or take reprisals against any resident, employee, or other person for having filed a complaint with, or having provided information to, any long term care patient ombudsman functioning in accordance with section five hundred forty-four or section five hundred forty-five of the executive law.

(b) In addition, no facility which provides residential care and services for adults shall restrict or prohibit the access to the facility nor interfere with confidential visits with residents by:

(i) Family members, guardians, friends of an individual resident and legal representatives, legal counsels and case managers;

(ii) Individuals representing community organizations or service agencies who will provide, free of charge, a service or educational program to residents;

(iii) An employee or representative of any public or private not-for-profit corporation, community organization or association whose primary purposes for visiting include assisting residents in resolving problems and complaints concerning their care and treatment, and in securing adequate services to meet their needs. The operator shall make available a common area of the facility for such visits.

(c) The department shall establish and maintain a registry of public or private not-for-profit corporations, community organizations or associations assured access to facilities which provide residential care

and services for adults pursuant to subparagraph (iii) of paragraph (b) of this subdivision. Any such corporation, community organization or association shall file a copy of its certificate of incorporation with the registry established and maintained by the department.

(d) Persons assured access to a residential care facility for adults pursuant to this subdivision shall not enter the living area of any resident without identifying themselves to the resident, stating the purpose of the visit, and receiving the permission of the resident and the resident's roommate to enter the living area.

(e) Individual residents shall have the right to terminate or deny any visit to them by persons assured access to the facility pursuant to this subdivision.

(f) Visits by individuals assured access to facilities which provide residential care and services for adults pursuant to subparagraphs (i), (ii) and (iii) of paragraph (b) of this subdivision shall be permitted during a period of at least ten hours between 9:00 o'clock a.m. and 8:00 o'clock p.m. unless extended by arrangement with the facility.

(g) Notwithstanding any provision of paragraph (b) of this subdivision, the operator of a facility which provides residential care and services for adults may restrict or prohibit access to the facility or interfere with confidential visits with residents by individuals who the operator has reasonable cause to believe would directly endanger the safety of such residents.

(h) Whenever an individual is denied access pursuant to paragraph (g) of this subdivision the operator must record a detailed written statement describing the reasons for denial of access to any such individual. This statement shall be maintained by the facility and be accessible to residents, persons denied access, and the department.

(i) If the operator of a facility denies access pursuant to paragraph (g) of this subdivision, the person denied access may bring an action in supreme court in the county in which the facility is located for an order granting such person access to such facility. If the court finds that such denial was made in bad faith, the operator of the facility shall be liable for all costs, including reasonable attorney's fees, and the court may, in its discretion, assess a civil penalty not to exceed fifty dollars per day for each day such access was denied.

4. Pursuant to regulations promulgated by the commissioner in consultation with the director of the office for the aging, no facility shall restrict or prohibit access by records access ombudsmen specially designated under section five hundred forty-four of the executive law to the medical or personal records of any patient or resident if such patient or resident, or, where appropriate, committee for an incompetent, has given express written consent to such disclosure; provided, however, that (i) in the case of medical records, disclosure may be exclusive of the personal notes of the physician as defined in such regulations and (ii) access may be limited to such times as may be specified in such regulations. Such records shall be made available by a member or members of the facility's staff who shall be designated by the facility to provide access to and, where necessary, interpretation of such records to such access ombudsman, who shall have the right to photocopy such records. The facility may charge a reasonable fee for photocopying pursuant to such regulations. Disclosure to a records access ombudsman of records of any patient or resident pursuant to the written consent of such patient or resident shall not give rise to any claim against the facility, its staff, or the patient's or resident's physician based solely on the fact of such disclosure pursuant to such written consent. Nothing in this subdivision shall be construed to limit or abridge any right of access to records, including financial records, otherwise available to ombudsmen, patients or residents, or any other person.