§ 461-b. Provisions related to establishment of adult care facilities. 1. (a) Only a natural person or partnership composed only of natural persons, a not-for-profit corporation, a public corporation, a business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such corporation or a corporation any of the stock of which is owned by another corporation, a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the member partnership must be natural persons, a social services district or other governmental agency may be issued an operating certificate by the department for the purpose of operating an adult care facility, except family type homes for adults, which may be issued operating certificates by the department or social services district only if such facilities are operated by a natural person or persons. The holder of an operating certificate for the purposes of operating an adult home shall not be issued an operating certificate for the purposes of operating an enriched housing program if such adult home operator has not met compliance standards during the most recent inspection cycle. Provided however, the department may deem an operator eligible to receive an operating certificate for the purposes of operating an enriched housing program upon the consideration of the results of previous inspections and whether the operator is meeting the needs of the residents and is providing quality care.

(b) A natural person may seek certification as an operator of a family-type home for adults to provide long-term residential care and personal care and/or supervision to persons related to the operator, provided that the relationship between the operator and resident is not that of spouse, in-law, child or step-child.

(c) An appropriation made available for the purposes of funding the operating assistance sub-program for enriched housing up to the amount appropriated for such purpose in the nineteen hundred ninety-six--ninety-seven state fiscal year shall be limited to any enriched housing program operated by a public agency, public corporation or a not-for-profit corporation, which may be issued an operating

certificate by the department to operate an enriched housing program.

2. (a) No adult care facility shall be operated unless and until the operator obtains the written approval of the department. Such approval may be granted only to an operator who satisfactorily demonstrates: that the operator is of good moral character; that the operator is financially responsible; that there is a public need for the facility; that the buildings, equipment, staff, standards of care and records to be employed in the operation comply with applicable law and regulations of the department and that any license or permit required by law for the operation of such facility has been issued to such operation. In determining whether there is a public need for the facility, the department shall give consideration to the relative concentration of such facilities in the area proposed to be serviced. Such approval for family type home for adults shall not be granted unless the appropriate social services official has made the required visitation and inspection and has submitted a report thereof to the department in accordance with this article.

(b) For existing licensed operators in good standing and their affiliates, the department shall develop a streamlined application review and approval process, in collaboration with representatives of associations of operators, to be available for use in relation to approval of an additional facility of the same type. Notwithstanding any provision of law or regulation to the contrary, the streamlined application review and approval process shall include, but not be limited to, the following:

(i) a certification process and form for the operator or its affiliate to attest that it will have sufficient financial resources, revenue and financing to meet facility expenses and resident needs, which shall satisfy the statutory and regulatory financial component of the application review and approval process;

(ii) a certification process and form for the operator or its affiliate to attest that its legal, corporate and organizational documents comply in substance with department requirements, which shall satisfy the statutory and regulatory legal component of the application review and approval process;

(iii) a certification process and form for the operator or its

affiliate to attest that it is in substantial compliance with all applicable codes, rules and regulations in any other state in which it operates, and to disclose any enforcement or administrative action taken against it in any other state;

(iv) issuance by the department of a conditional approval to operate the facility for a specified period of time upon substantial completion of the character and competence, legal, financial and architectural components of the application, so long as the operator or its affiliate agrees in writing to satisfy all pending conditions prior to the expiration of the conditional approval period or a time frame established by the department;

(v) issuance by the department of a conditional approval to construct a facility, at the operator's or its affiliate's own risk, upon substantial completion of the architectural component of the application;

(vi) elimination of duplicative submission and review of any application information which has been previously reviewed and approved by the department or any of its regional offices within the past two years through a certification process and form whereby the operator or its affiliate will attest that such application information is duplicative;

(vii) with respect to any programmatic application information to be reviewed by the regional office, such review shall be conducted on-site by the regional office during the pre-opening inspection or first full annual inspection, if the department has previously approved the operator or its affiliate to operate the same type of program at another facility within the past two years;

(viii) electronic submission of applications; and

(ix) a combined application for licensure as an adult care facility, assisted living residence and/or assisted living program, to the extent the department determines such a combined application is feasible.

(b-1) For purposes of paragraph (b) of this subdivision, "affiliate" shall mean an entity, for which a majority of the ownership or controlling interest is the same as the ownership or controlling interest in an existing licensed operator under this section (provided that an affiliate may have different percentages of ownership or control or fewer natural persons with ownership or control than an existing

operator) and, further:

(i) for any entity owned, directly or indirectly, by natural persons:

(A) at all times, more than half of the ownership interest of the entity shall be owned, directly or indirectly, by natural persons who have previously been determined to have undergone a satisfactory determination of character, competence and standing in the community;

(B) at all times, any owner with a direct or indirect ownership interest who has not undergone a satisfactory determination of character, competence and standing in the community review must possess a less than ten percent direct or indirect interest in the entity, until a satisfactory determination has been made; and

(C) for any natural person proposed to be an owner, directly or indirectly, of the entity who is a controlling person, member, director, or officer of an existing licensed operator under this section, such existing licensed operator must be in good standing with the department; and

(ii) for any not-for-profit corporation or other entity not under subparagraph (i) of this paragraph:

(A) more than half of the entity's total board members, directors, officers and controlling persons shall have previously undergone a satisfactory determination of character, competence and standing in the community; and

(B) if any natural person proposed to be a board member, director, or officer of the entity has an ownership interest, directly or indirectly, or is a board member, director, officer, or controlling person, in an existing licensed operator under this section, such existing licensed operator must also be in good standing with the department.

(b-2) For purposes of paragraph (b) of this subdivision, "good standing" shall mean the operator and its affiliates have not (A) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (B) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of this article for a violation that has not been rectified; (C) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty

for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of this article; (D) within the previous three years, been issued an order pursuant to subdivision two, five, six or eight of section four hundred sixty-d of this article; (E) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of this article. Provided, however, that in the case of an operator or affiliate that is not in good standing as provided in this paragraph, the department may permit the operator or affiliate to use the streamlined application process, in its discretion, if it determines that the disqualifying violation was an isolated occurrence that was promptly corrected by the operator or affiliate.

(c) After an operator obtains approval of the department for the operation of an adult care facility he may operate such facility only so long as he continues to do so in compliance with the requirements of such approval, applicable law, and the regulations of the department.

(d) The knowing operation of an adult care facility without the prior written approval of the department shall be a class A misdemeanor.

3. (a) The department shall not approve an application for establishment of an adult care facility unless it is satisfied insofar as applicable, as to (i) the character, competence and standing in the community, of the applicant; provided, however, with respect to any such applicant who is already or within the past ten years has been an incorporator, director, sponsor, stockholder, operator, administrator, member or owner of any adult care facility which has been issued an operating certificate by the board or the department, or of a halfway house, hostel or other residential facility or of a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state, or a program serving persons with mental disabilities, or other persons with disabilities as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services, no approval of such application shall be granted unless the department shall affirmatively find by substantial evidence as to each

such applicant that a substantially consistent high level of care is being or was being rendered in each such facility or institution with which such person is or was affiliated; for the purposes of this paragraph, there may be a finding that a substantially consistent high level of care has been rendered where there have been violations of applicable rules and regulations, that (1) did not threaten to directly affect the health, safety or welfare of any patient or resident, and (2) were promptly corrected and not recurrent; (ii) the financial resources of the proposed facility and its sources of future revenue; and (iii) such other matters as it shall deem pertinent.

(b) Any natural person or partnership composed only of natural persons, not-for-profit corporation, public corporation, business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such corporation or a corporation any of the stock of which is owned by another corporation, a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the member partnership must be natural persons, social services district or other governmental agency filing an application for approval to operate a residence for adults, adult home or enriched housing program, shall file with the department such information on the ownership of the property interest in such facility as shall be prescribed by regulation, including the following:

(i) The name and address and a description of the interest held by each of the following persons:

(1) any person, who directly or indirectly, beneficially owns any interest in the land on which the facility is located;

(2) any person who, directly or indirectly, beneficially owns any interest in the building in which the facility is located;

(3) any person who, directly or indirectly, beneficially owns any interest in any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located; and

(4) any person who, directly or indirectly, has any interest as lessor

or lessee in any lease or sub-lease of the land on which or the building in which the facility is located.

(ii) If any person named in response to subparagraph (i) of this paragraph is a partnership or limited liability company, then the name and address of each partner or member.

(iii) If any person named in response to subparagraph (i) of this subdivision is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, stockholder and, if known, each principal stockholder and controlling person of such corporation.

(iv) If any corporation named in response to subparagraph (i) of this subdivision is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation.

(v) For the purpose of this section the term "controlling person" shall mean 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. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity, nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position. The term "principal stockholder" shall mean any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

(c) No articles of organization of a limited liability company

established pursuant to the New York limited liability law which includes among its powers or purposes the establishment or operation of any adult home, residence for adults or enriched housing program as defined in section two of this chapter, shall be filed with the department of state unless the written approval of the department is annexed to the articles of organization.

3-a. (a) Every person who is a controlling person of any adult care facility liable under any provision of this article to any person or class of persons for damages or to the state for any civil fine, penalty, assessment of damages, shall also be liable, jointly and severally, with and to the same extent as such adult care facility, to such person or class of persons for damages or to the state for any such civil fine, penalty, assessment or damages.

(b) For the purposes of this section the term "controlling person" shall mean 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. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity, nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position. The term "principal stockholder" shall mean any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

4. No person, corporation, home, institution, hotel or other residential facility or accommodation other than a facility or agency which possesses a valid operating certificate, as required under the provisions of this chapter, the mental hygiene law or public health law shall hold itself out, advertise or otherwise in any form or manner

represent that it is a facility offering accommodations and services for dependent, aged or disabled adults.

5. Any adult care facility subject to the provisions of this section that possesses a valid operating certificate as of October first, nineteen hundred seventy-seven shall be deemed to have department approval to continue operation of such facility for the duration or the period for which such certificate was issued, provided such facility continues to be operated in accordance with applicable provisions of law and department regulations.

6. (a) The department, prior to making a final determination with respect to approving the establishment of, or the certificate of incorporation of, or the articles of organization of, or an operating certificate for a residence for adults, adult home, or enriched housing program, shall in addition to any other requirements of law take into consideration and be empowered to request information and advice as to the availability of facilities or services such as ambulatory, home care or other services which may serve as alternatives or substitutes for the whole or any part of a proposed facility and the possible economies and improvements in services to be anticipated from the operation of centralized facilities and services reasonably available in the regional services area.

(b) In determining whether there is a public need for a residence for adults or an adult home, the department shall consider the advice of the state health planning and development agency designated pursuant to the provisions of the national health planning and resources development act of nineteen hundred seventy-four and any amendments thereto.

(c) Notwithstanding any other provision of this article, the department shall not consider public need in determining whether to approve any proprietary adult home that was in existence and operating on September first, nineteen hundred seventy-five as a family care home under the mental hygiene law or an adult care facility operated by a social services district.

7. (a) The department shall suspend, limit, modify or revoke an operating certificate of a shelter for adults, residence for adults or

adult home upon determining that such action would be in the public interest in order to conserve resources by restricting the number of beds, or the level of services, or both, to those 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 whole or any part of a facility, and 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 residents in or seeking admission to such facility, and whether such level of care is consistent with the operating certificate of the facility.

(b) Wherever any finding as described in this subdivision is under consideration with respect to any particular facility, the department shall cause to be published in a newspaper of general circulation in the geographic area of the facility at least thirty days prior to making such a finding an announcement that such a finding is under consideration and an address to which interested persons can write to make their views known. The department shall take all public comments into consideration in making such a finding.

(c) The department shall, upon such finding described in this subdivision with respect to any facility or project, cause such facility to be notified of the finding at least thirty days in advance of taking the proposed action to revoke, suspend, limit, or modify the facility's operating certificate. Upon receipt of any such notification and before the expiration of the thirty days or such longer period as may be specified in the notice, the facility may request a public hearing to be held in the county in which the facility is located. In no event shall the revocation, suspension, limitation, or modification take effect prior to the thirtieth 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.

(d) Except as otherwise provided by law, all appeals from a finding of the department made pursuant to this subdivision shall be directly to the appellate division of the supreme court in the third department. Except as otherwise expressly provided by law, such appeals shall have preference over all issues in all courts.

8. No adult care facility certified by the department which is operating in compliance with this chapter and regulations shall be required to be certified by the office of mental health as a residential care center for adults.

9. (a) The prior written approval of the department is required for: (i) any transfer, assignment or other disposition of ten percent or more of an interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility to a new partner, shareholder or member; or (ii) any transfer, assignment or other disposition of interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility which results in the ownership or control of more than ten percent of the interest or voting rights thereunder by any person who has not been previously approved by the department for that operator.

(b) With respect to a transfer, assignment or disposition involving less than ten percent of an interest or voting rights in such partnership, business corporation or limited liability company to a new partner, shareholder or member, no prior approval of the department shall be required except where required by paragraph (a) of this subdivision. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice on a form, to be developed by the department, which shall disclose such information as may reasonably be necessary for the department to determine whether it should prohibit the transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this subparagraph if it finds: (i) there are reasonable grounds to believe the proposed transaction does not satisfy the character and competence review, as may be appropriate; or (ii) if the transaction, together with all other such transactions during any five year period, would in the aggregate, involve twenty-five percent or more of the interest in the entity that constitutes the operator. The department shall state the specific reasons for prohibiting any transaction under

this subparagraph and shall so notify each party to the proposed transaction.

(c) With respect to a transfer, assignment or disposition of an interest or voting rights in a partnership, business corporation or limited liability company to any existing partner, shareholder or member, no prior approval of the department shall be required. However, if the transaction involves the withdrawal of the transferor from the partnership, business corporation or limited liability company, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice of such transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this paragraph if the equity position of the partnership, business corporation or limited liability company, determined in accordance with generally accepted accounting principles, would be reduced as a result of the transfer, assignment or disposition. The department shall state the specific reason for prohibiting any transaction under this paragraph and shall so notify each party to the proposed transaction.

10. Notwithstanding any provision of law to the contrary, the department is authorized to approve a certificate of incorporation or articles of organization for establishment of an adult care facility on an expedited basis where: (a) the certificate of incorporation or articles of organization reflects solely a change in the form of the business organization of an existing entity which had been approved by the department to operate an adult care facility; (b) every incorporator, stockholder, member and director of the new entity shall have been an owner, partner, incorporator, stockholder, member or director of the existing entity; (c) the distribution of ownership interests and voting rights in the new entity shall be the same as in the existing entity; and (d) there shall be no change in the operator of the adult care facility other than the form of its business organization, as a result of the approval of such certificate of incorporation or articles of organization. Upon submission, if the department does not object to the proposal within ninety days of the

receipt of a complete application, the proposal will be deemed acceptable to the department and an amended operating certificate shall be issued.