§ 461-c. Resident care, services and charges. 1. Every operator of an adult care facility, except a shelter for adults, shall execute with each applicant for admission a written admission agreement, dated and signed by the operator and the parties to be charged, which shall contain the entire agreement of the parties and such other information as department regulations shall require.

2. Such agreement executed pursuant to subdivision one of this section shall enumerate in such detail as may be required by department regulation all charges, expenses and other assessments, if any, for services, materials, equipment and food, required by law or regulations and other services, materials, equipment and food which such operator agrees to furnish and supply to such resident during the period of residency. No additional charges or expenses may be assessed against any resident of a residence for adults, adult home or enriched housing program, in excess of that contained in such agreement, except (a) upon express written approval and authority of the resident, or his or her sponsor, if any, or (b) in order to provide additional care, services or supplies, upon the express order of the attending physician of the resident, or (c) upon thirty days notice to the resident and to his or her sponsor, if any, of additional charges and expenses due to increased cost of maintenance and operation. However, in the event of any emergency arising which affects such resident, additional charges may be assessed for the benefit of such resident as are reasonable and necessary for services, materials, equipment and food furnished and supplied during such emergency.

2-a. (a) There shall be an implied warranty of habitability in each written admission agreement executed pursuant to this section that shall ensure the premises be fit for human habitation and for the uses reasonably intended by the operator and the resident and that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare. Such statement shall not be read to be in any way limiting a resident's rights to relief in an administrative or judicial proceeding.

(b) An action for breach of the warranty of habitability and any

violation of a written admission agreement may be maintained in a court of competent jurisdiction by the resident or representative of the resident. The court shall apply New York Rules of Court Part 130 to any action brought pursuant to this section.

3. The written agreement executed pursuant to subdivision one of this section shall include a statement indicating that the resident and any person designated by the resident shall be notified by the operator at the request of the resident pursuant to regulations promulgated by the department and, shall be provided written notification by the facility not less than thirty days prior to a termination of the resident's admission and services agreement; a statement that upon discharge or transfer, the resident and any person designated by the resident shall be notified by the operator at the request of the resident pursuant to regulations promulgated by the department and, is entitled to a final written statement of his or her account and that the resident is entitled to the prompt return, within three business days, of any of his or her money, property or thing of value held in trust or in custody by the facility; a statement which details any and all money, property or thing of value which is given, or promised to be given to the facility on admission or at any other time, including any agreements made by third parties for the benefit of a resident; and such other provisions as the department determines necessary to fully inform the resident of those items of care, services, materials, equipment and food that must be provided by the facility pursuant to other applicable laws and regulations, and the frequency thereof, and any additional items of care, services, materials, equipment and food that the facility may in its discretion agree to provide, and the frequency thereof. Waiver of any provision contained herein by a resident shall be void. Such statement as herein provided shall be annexed to the admission agreement.

4. No resident of an adult care facility who is entitled to receive a personal allowance pursuant to the provisions of section one hundred thirty-one-o of this chapter shall be required to use any of the proceeds from such allowance to pay the operator of an adult care facility for any services or supplies, unless the resident elects to

purchase such services or supplies and the department has determined that such services or supplies are not otherwise required to be provided by the operator pursuant to law, regulation or agreement and the charges for such services or supplies are reasonable.

5. Whenever a resident authorizes an operator of an adult care facility or any person affiliated therewith, to exercise control over his or her money, property or thing of value, such authorization shall be in writing and subscribed by the parties to be charged. Any such money, property or thing of value belonging to the resident shall not be mingled with the funds or become an asset of the person receiving the same, but shall be segregated and recorded on the facility's financial records as independent accounts.

6. No adult care facility shall receive or retain any person who is in need of continual medical or nursing care as provided by facilities licensed pursuant to article twenty-eight of the public health law or articles nineteen, twenty-three, thirty-one and thirty-two of the mental hygiene law.

7. (a) At the time of the admission to an adult care facility, other than a shelter for adults, a resident shall submit to the facility a written report from a physician, a physician assistant or a nurse practitioner, which report shall state:

(i) that the physician, physician assistant or nurse practitioner has physically examined the resident within one month and the date of such examination;

(ii) that the resident is not in need of acute or long term medical or nursing care which would require placement in a hospital or residential health care facility; and

(iii) that the resident is not otherwise medically or mentally unsuited for care in the facility.

(b) For the purpose of creating an accessible and available record and assuring that a resident is properly placed in such a facility, the report shall also contain the resident's significant medical history and current conditions, the prescribed medication regimen, and recommendations for diet, the assistance needed in the activities of

daily living and where appropriate, recommendations for exercise, recreation and frequency of medical examinations.

(c) Such resident shall thereafter be examined by a physician, a physician assistant or a nurse practitioner, at least annually and shall submit an annual written report in conformity with the provisions of this subdivision.

(d) Following a resident's stay in a hospital or residential health care facility, upon return to the adult care facility, the adult care facility shall not be required to obtain the report in paragraph (a) of this subdivision, and instead shall obtain a statement from the discharging facility which shall:

(i) state that the resident is appropriate to return to the facility; and

(ii) include the reason for the resident's stay, the treatment plan to be followed, and any new or changed orders, including medications.

The statement shall be completed by a physician, a physician assistant or a nurse practitioner.

(e) Nothing required in this section shall require the use of an identical form in adult care facilities and assisted living residences, either upon admission or return.

8. The department shall promulgate regulations with respect to the safekeeping and administration of medications in any adult care facility subject to the provisions of section four hundred sixty-c of this article, in accordance with applicable provisions of law, and after consultation with the state department of health and appropriate offices of the state department of mental hygiene.

9. The department shall, with the consent of a resident living in a facility which has received the lowest rating for eighteen months from the effective date of this subdivision, pursuant to section four hundred sixty-one-n of this title, present the resident and any person designated by the resident with options on relocating such resident to a facility which has obtained a higher rating, or other housing alternatives.