§ 461-l. Assisted living program. 1. Definitions. As used in this section, the following words shall have the following meanings:

(a) "Assisted living program" means an entity or entities with identical ownership, which are approved to operate pursuant to subdivision three of this section and possesses a valid operating certificate as an adult care facility, other than a shelter for adults, a residence for adults or a family type home for adults, issued pursuant to this article and which possesses either: (i) a valid license as a home care services agency issued pursuant to section thirty-six hundred five of the public health law; or (ii) a valid certificate of approval as a certified home health agency issued pursuant to section thirty-six hundred six of the public health law; or (iii) valid authorization as a long term home health care program issued pursuant to section thirty-six hundred ten of the public health law.

(b) "Capitated rate of payment" means the rate established pursuant to subdivision six of section thirty-six hundred fourteen of the public health law.

(c) "Eligible applicant" means:

(i) A single entity that is:

(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 a 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 which possesses or is eligible pursuant to this article to apply for an adult care facility operating certificate; and

(B) either: (1) an entity which possesses or is eligible pursuant to article thirty-six of the public health law to apply for licensure as a home care services agency; (2) an entity which possesses valid authorization as a long term home health care program; or (3) an entity which possesses a valid certificate of approval as a certified home

health agency pursuant to article thirty-six of the public health law; or

(ii) One or more entities listed in subparagraph (i) of this paragraph with identical owners that, in combination, meet each of the criteria set forth by subparagraph (i) of this paragraph.

(d) "Eligible person" means a person who:

(i) requires more care and services to meet his or her daily health or functional needs than can be directly provided by an adult care facility and although medically eligible for placement in a residential health care facility, can be appropriately cared for in an assisted living program and who would otherwise require placement in a residential health care facility due to factors which may include but need not be limited to the lack of a home or a home environment in which to live and receive services safely; and

(ii) is categorized by the long-term care patient classification system as defined in regulations of the department of health as a person who has a stable medical condition and who is able, with direction, to take action sufficient to assure self-preservation in an emergency. In no event shall an eligible person include anyone in need of continual nursing or medical care, a person who is chronically bedfast, or anyone who is cognitively, physically or medically impaired to such a degree that his or her safety would be endangered.

(e) "Services" shall mean all services for which full payment to an assisted living program is included in the capitated rate of payment, which shall include personal care services, home care services and such other services as the commissioner in conjunction with the commissioner of health determine by regulation must be included in the capitated rate of payment, and which the assisted living program shall provide, or arrange for the provision of, through contracts with a social services district, long term home health care programs, certified home health agencies, and other qualified providers.

2. General requirements. (a) Applicability. Unless expressly provided otherwise in this article or article thirty-six of the public health law, an assisted living program shall be subject to any other law, rule or regulation governing adult care facilities, long term home health care programs, certified home health agencies, licensed home care

agencies or personal care services.

(b) If an assisted living program itself is not a certified home health agency or long term home health care program, the assisted living program shall contract with one or more certified home health agencies and/or long term home health care programs for the provision of services pursuant to article thirty-six of the public health law.

(c) Participation by eligible persons. Participation in an assisted living program by an eligible person shall be voluntary and eligible persons shall be provided with sufficient information regarding the program to make an informed choice concerning participation.

(d) Patient services and care. (i) An assisted living program shall, either directly or through contract with a long term home health care program or certified home health agency, conduct an initial assessment to determine whether a person would otherwise require placement in a residential health care facility if not for the availability of the assisted living program and is appropriate for admission to an assisted living program.

(ii) No person shall be determined eligible for and admitted to an assisted living program unless the assisted living program finds that the person meets the criteria provided in paragraph (d) of subdivision one of this section.

(iii) Appropriate services shall be provided to an eligible person only in accordance with a plan of care which is based upon an initial assessment and periodic reassessments conducted by an assisted living program, either directly or through contract with a long term home health care program or certified home health agency. A reassessment shall be conducted as frequently as is required to respond to changes in the resident's condition and ensure immediate access to necessary and appropriate services by the resident, but in no event less frequently than once every six months. No person shall be admitted to or retained in an assisted living program unless the person can be safely and adequately cared for with the provision of services determined by such assessment or reassessment.

(iv) Eligible individuals shall be permitted to receive hospice services from a provider under article forty of the public health law while continuing to reside in an adult care facility under this title and enrolled in the assisted living program, subject to the availability

of federal financial participation. The commissioner shall make regulations and take other actions reasonably necessary and appropriate to implement this subparagraph.

(e) Medical evaluations. Medical evaluations used to determine that the assisted living program can support the physical, supervisory and psycho-social needs of a resident must be conducted within thirty days prior to the date of admission and signed by either a physician, physician assistant or nurse practitioner.

3. Assisted living program approval. (a) An eligible applicant proposing to operate an assisted living program shall submit an application to the department. Upon receipt, the department shall transmit a copy of the application and accompanying documents to the department of health. Such application shall be in a format and a quantity determined by the department and shall include, but not be limited to:

(i) a copy of or an application for an adult care facility operating certificate;

(ii) a copy of or an application for a home care services agency license or a copy of a certificate for a certified home health agency or authorization as a long term home health care program;

(iii) a copy of a proposed contract with a social services district or in a social services district with a population of one million or more, a copy of a proposed contract with the social services district or the department;

(iv) if the applicant is not a long term home health care program or certified home health agency, a copy of a proposed contract with a long term home health care program or certified home health agency for the provisions of services in accordance with article thirty-six of the public health law; and

(v) a detailed description of the proposed program including budget, staffing and services.

(b) If the application for the proposed program includes an application for licensure as a home care service agency, the department of health shall forward the application for the proposed program and accompanying documents to the public health and health planning council for its written approval in accordance with the provisions of section

thirty-six hundred five of the public health law.

(c) An application for an assisted living program shall not be approved unless the commissioner is satisfied as to:

(i) the character, competence and standing in the community of the operator of the adult care facility;

(ii) the financial responsibility of the operator of the adult care facility;

(iii) that the buildings, equipment, staff, standards of care and records of the adult care facility to be employed in the operation comply with applicable law, rule and regulation;

(iv) the commissioner of health is satisfied that the licensed home care agency has received the written approval of the public health and health planning council as required by paragraph (b) of this subdivision and the equipment, personnel, rules, standards of care, and home care services provided by the licensed home care agency and certified home health agency or long term home health care program are fit and adequate and will be provided in the manner required by article thirty-six of the public health law and the rules and regulations thereunder; and

(v) the commissioner and the commissioner of health are satisfied as to the public need for the assisted living program.

(d) The department shall not approve an application for an assisted living program for any eligible applicant who does not meet the requirements of this article, including but not limited to, an eligible applicant who is already or within the past ten years has been an incorporator, director, sponsor, principal stockholder, 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 institution for the care, custody or treatment of the mentally disabled which is subject to approval by an office of the department of mental hygiene, or of any residential health care facility or home care agency as defined in the public health law, unless the department, in conjunction with the department of health, finds by substantial evidence as to each such applicant that a substantially consistent high level of care has been rendered in each such facility or institution under 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 despite a record of violations of applicable rules and regulations, if such violations (i) did not threaten to directly affect the health, safety or welfare of any patient or resident, and (ii) were promptly corrected and not recurrent.

(e) The commissioner of health shall provide written notice of approval or disapproval of portions of the proposed application concerning a licensed home care agency, certified home health agency or long term home health care program, and, where applicable, of the approval or disapproval of the public health and health planning council to the commissioner. If an application receives all the necessary approvals, the commissioner shall notify the applicant in writing. The commissioner's written approval shall constitute authorization to operate an assisted living program.

(f) No assisted living program may be operated without the written approval of the department, the department of health and, where applicable, the public health and health planning council.

(g) Notwithstanding any other provision of law to the contrary, any assisted living program having less than seventy-five authorized bed slots, located in a county with a population of more than one hundred ten thousand and less than one hundred fifty thousand persons based upon the decennial federal census for the year two thousand, and which at any point in time is unable to accommodate individuals awaiting placement into the assisted living program, shall be authorized to increase the number of assisted living beds available for a specified period of time as part of a demonstration program by up to thirty percent of its approved bed level; provided, however, that such program shall otherwise satisfy all other assisted living program requirements as set forth in this section. In addition, any program which receives such authorization and which at any point on or after July first, two thousand five is unable to accommodate individuals awaiting placement into the assisted program, shall be authorized to further increase the number of assisted living beds available as part of this demonstration program by up to twenty-five percent of its bed level as of July first, two thousand five; provided, however, that such program shall otherwise satisfy all other assisted living program requirements as set forth in this section.

(h) The commissioner is authorized to add one thousand five hundred assisted living program beds to the gross number of assisted living

program beds having been determined to be available as of April first, two thousand seven.

(i) (a) The commissioner of health is authorized to add up to six thousand assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand nine. Nothing herein shall be interpreted as prohibiting any eligible applicant from submitting an application for any assisted living program bed so added. The commissioner of health shall not be required to review on a comparative basis applications submitted for assisted living program beds made available under this paragraph. The commissioner of health shall only authorize the addition of six thousand beds pursuant to a seven year plan ending prior to January first, two thousand seventeen.

(b) The commissioner of health shall provide an annual written report to the chair of the senate standing committee on health and the chair of the assembly health committee no later than January first of each year. Such report shall include, but not be limited to, the number of assisted living program beds made available pursuant to this section by county, the total number of assisted living program beds by county, the number of vacant assisted living program beds by county, and any other information deemed necessary and appropriate.

(j) The commissioner of health is authorized to add up to four thousand five hundred assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand twelve. Applicants eligible to submit an application under this paragraph shall be limited to adult homes established pursuant to section four hundred sixty-one-b of this article with, as of September first, two thousand twelve, a certified capacity of eighty beds or more in which twenty-five percent or more of the resident population are persons with serious mental illness as defined in regulations promulgated by the commissioner of health. The commissioner of health shall not be required to review on a comparative basis applications submitted for assisted living program beds made available under this paragraph.

(k) (i) Existing assisted living program providers may apply to the department of health for approval to add up to nine additional assisted living program beds that do not require major renovation or

construction. Eligible applicants are those that agree to dedicate such beds to serve only individuals receiving medical assistance, are in good standing with the department of health, and are in compliance with appropriate state and local requirements as determined by the department of health.

(ii) Existing assisted living program providers licensed on or before April first, two thousand eighteen may submit applications under this paragraph beginning no later than June thirtieth, two thousand eighteen and until a deadline to be determined by the department of health. Existing assisted living program providers licensed on or before April first, two thousand twenty may submit such applications beginning no later than June thirtieth, two thousand twenty and until a deadline to be determined by the department of health.

(iii) The number of additional assisted living program beds approved under this paragraph shall be based on the total number of previously awarded beds either withdrawn by applicants or denied by the department of health. The commissioner of health shall utilize an expedited review process allowing certification of the additional beds within ninety days of such department's receipt of a satisfactory application.

(l) (i) The commissioner of health is authorized to solicit and award applications for up to a total of five hundred new assisted living program beds in those counties where there is one or no assisted living program providers, pursuant to criteria to be determined by the commissioner.

(ii) The commissioner of health is authorized to solicit and award applications for up to five hundred new assisted living program beds in counties where utilization of existing assisted living program beds exceeds eighty-five percent. All applicants shall comply with federal home and community-based settings requirements, as set forth in 42 CFR Part 441 Subpart G. To be eligible for an award, an applicant must agree to:

(A) Dedicate such beds to serve only individuals receiving medical assistance;

(B) Develop and execute collaborative agreements within twenty-four months of an application being made to the department of health, in accordance with guidance to be published by such department, between at least one of each of the following entities: an adult care facility; a

residential health care facility; and a general hospital; and

(C) Enter into an agreement with an existing managed care entity.

(iii) The commissioner of health is authorized to award any assisted living program beds for which a solicitation is made under subparagraph (i) of this paragraph, but which are not awarded, to applicants that meet all applicable criteria pursuant to a solicitation made under subparagraph (ii) of this paragraph.

(m) Beginning April first, two thousand twenty-five, additional assisted living program beds shall be approved on a case by case basis whenever the commissioner of health is satisfied that public need exists at the time and place and under circumstances proposed by the applicant.

(i) The consideration of public need may take into account factors such as, but not limited to, regional occupancy rates for adult care facilities and assisted living program occupancy rates and the extent to which the project will serve individuals receiving medical assistance.

(ii) Existing assisted living program providers may apply for approval to add up to nine additional assisted living program beds that do not require major renovation or construction under an expedited review process. The expedited review process is available to applicants that are in good standing with the department of health, and are in compliance with appropriate state and local requirements as determined by the department of health. The expedited review process shall allow certification of the additional beds for which the commissioner of health is satisfied that public need exists within ninety days of such department's receipt of a satisfactory application.

(n) The commissioner of health is authorized to create a program to subsidize the cost of assisted living for those individuals living with Alzheimer's disease and dementia who are not eligible for medical assistance pursuant to title eleven of article five of this chapter and reside in a special needs assisted living residence certified under section forty-six hundred fifty-five of the public health law. Subject to appropriations, the program shall authorize vouchers to individuals through an application process and pay for up to seventy-five percent of the average private pay rate in the respective region. The commissioner of health may propose rules and regulations to effectuate this provision.

4. Revocation, suspension, limitation or annulment. Authorization to operate an assisted living program may be revoked, suspended, limited or annulled by the commissioner in accordance with the provisions of this article if the adult care facility fails to comply with applicable provisions of this chapter or rules or regulations promulgated hereunder or by the commissioner of health in accordance with the provisions of article thirty-six of the public health law if the licensed home care service agency, certified home health agency or long term home health care program fails to comply with the provisions of article thirty-six of the public health law or rules or regulations promulgated thereunder.

5. Rules and regulations. The commissioner and the commissioner of health shall jointly promulgate any rules and regulations necessary to effectuate the provisions and purposes of this section and section thirty-six hundred fourteen of the public health law. Such regulations shall provide that the department and the department of health shall coordinate their surveillance and enforcement efforts, including but not limited to, on-site surveys of assisted living programs.

6. Report. The commissioner and the commissioner of health shall submit a joint report to the governor, the temporary president of the senate, the speaker of the assembly, the state hospital review and planning council and health systems agencies on or before March first, nineteen hundred ninety-three which shall include a description of the programs, including the number of programs established and authorized by geographic area, the cost of the program, including the savings to state and local governments, the number of persons served by the program by geographic area, a description of the demographic and clinical characteristics of patients served by the program and an evaluation of the quality of care provided to persons served by the program. Such report shall be utilized by the department of health in estimating statewide need for long term care beds for the planning target year next succeeding nineteen hundred ninety-three. In addition, the state hospital review and planning council shall consider the results of such report in approving the methodology for determining statewide need for long term care beds for the planning target year next succeeding nineteen hundred ninety-three.