

**Family Care Homes for Individuals With Intellectual and/or
Developmental Disabilities
Amendments to 14 NYCRR Part 687**

**ADOPTED REGULATIONS
Effective: Upon Publication**

- **Existing title of Part 687 is amended to read as follows:**

PART 687. FAMILY CARE HOMES FOR [PEOPLE] INDIVIDUALS WITH
INTELLECTUAL AND/OR DEVELOPMENTAL DISABILITIES

- **Existing section 687.1 is amended to read as follows:**

- (a) This Part shall apply to all state sponsored and agency sponsored family care homes (see section 687.99 of this Part) operating or to be operated under an operating certificate (see section 687.99 of this Part) obtained from the Office for People With Developmental Disabilities (hereinafter referred to as OPWDD; see section 687.99 of this Part).
- (b) This Part sets forth specific minimum requirements with which an OPWDD certified family care home must comply. This is in addition to any other regulations issued by OPWDD and designated as applicable to family care homes and/or their sponsoring agencies (see section 687.99 of this Part).

- **Existing subdivisions 687.2(a)(b)(e) are amended to read as follows:**

- (a) The family care program (see section [687.11] 687.99 of this Part) has been developed to make it possible for a certified family care provider to care for an individual or individuals in the provider's own home, thus providing a family-oriented, home-like environment.
- (b) Family care placement is available, in accordance with processes established by OPWDD, to those individuals with intellectual and/or developmental disabilities who do not need residential care and treatment in a more restrictive, structured setting, but who are unable to function adequately in their own homes[;] or for

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whom the family-oriented environment is more appropriate than other available community settings or independent community living arrangements.

- (e) Exceptions to the provisions of this Part, other than statutory requirements, may be made by the commissioner (see section [687.11] 687.99 of this Part) when it is determined that an exception is necessary and in the best interest of an individual(s) and is consistent with the health, safety and welfare of the individual(s).

- **Existing subdivision 687.3(b) is amended to read as follows:**

- (b) Section 131-o of the Social Services Law sets forth [the] certain applicable requirements for the maintenance of personal allowance accounts (see section [687.11] 687.99 of this Part and Part 633 of this Title) for individuals residing in family care homes who receive State-supplemented SSI.

- **Existing paragraph 687.4(a)(8) is amended to read as follows:**

- (8) The certified capacity (see section [687.11] 687.99 of this Part) of the family care home shall be stated on the operating certificate[,] and shall not be exceeded.

- **Existing paragraph 687.4(b)(11) is amended to read as follows:**

- (11) Except as provided in paragraph ([10]12) of this subdivision, no family care home shall be issued an operating certificate for the purpose of providing suitable care therein to more than [six persons] four individuals receiving services.

- **Existing paragraph 687.4(b)(12) is amended to read as follows:**

- (12) Any provider of services providing family care to [more than six]five or more individuals [persons on July 1, 1975] on the effective date of this regulation [shall] may be recertified [issued an operating certificate for] as a family care home [effective April 1, 1977,] at the provider's approved capacity on the date of recertification pursuant to the provisions of this Part, provided that such [person] provider fulfills all requirements of this Part except for the number of individuals receiving services [persons in care, and that such person agrees to provide family care to no more than 10 persons on and after April 1, 1977]. In such cases, upon the discharge or death of an individual residing in the home, the certified capacity of the

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home will be reduced, on each occasion, until the capacity is reduced to a maximum of four.

- **Existing subparagraph 687.4(c)(1)(iii) is amended to read as follows:**

- (iii) the adequacy of arrangements made with other providers of services for the provision of health, habilitation, day services [programs], education, [sheltered workshop,] transportation or other services as may be necessary and appropriate to meet the needs of individuals who will reside in the family care home;

- **Existing subdivision 687.5(f) is amended to read as follows:**

- (f) The commissioner may impose a fine upon a finding that the holder of the certificate has failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or regulation. The maximum amount of fine shall be \$1,000 per day or \$15,000 per violation. Such penalty may be recovered by an action brought by the commissioner in any court of competent jurisdiction. Such penalty may be released or compromised by the commissioner before the matter has been referred to the Attorney General. Any such penalty may be released or compromised, and any action commenced to recover the same may be settled or discontinued by the Attorney General with the consent of the commissioner.

- **A new subdivision 687.5(g) is added to read as follows:**

- (g) Any notice of suspension, revocation, or limitation of an operating certificate, or notice of intent to take such action, must also be addressed and sent to the executive director of an agency sponsored family care program.

- **Existing subdivisions 687.6(a)(b)(c)(d) are amended to read as follows:**

- (a) In the event that the holder of an operating certificate for a family care home wishes to cease the operation or conduct of any of the activities, as defined in this Part, for which such certificate has been issued[;], wishes to transfer ownership or possession of the premises in which such activities are being conducted[;] or elects not to apply to OPWDD for recertification upon the expiration of any current period of certification, it shall be the duty of the family care provider to give OPWDD and the sponsoring agency written notice of such intention not less than 60 days prior to the intended effective date of such transaction.

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- (b) Such notice shall set forth a detailed plan developed in conjunction with OPWDD and the sponsoring agency which makes provision for the safe and orderly transfer of each individual served by the family care provider into a program of services appropriate to each individual's ongoing needs.
- (c) The family care provider shall not cease to provide any such services to any individual under any of the circumstances described in this section until the notice and plan required hereby are received, reviewed and approved by the sponsoring agency and OPWDD, with OPWDD having final authority to approve.
- (d) For the purposes of this section, the requirement of prior notice and continuous provision of programs and services by the family care provider shall not apply to those situations and changes in circumstances directly affecting the family care provider that are not reasonably foreseeable at the time of occurrence, including but not limited to death or other sudden incapacitating disability or infirmity. Written notice shall be given to OPWDD and the sponsoring agency as soon as reasonably possible thereafter, in the manner set forth within this section.

- **Existing subdivision 687.7(c) is amended to read as follows:**

- (c) OPWDD shall have the power to conduct investigations into the operations of any person(s) or entity which holds an operating certificate issued by the commissioner, into the operation of any family care home issued an operating certificate by the commissioner, and into the operations related to the provision of services regulated by this Part of any person(s) or entity providing a family care home for [one or more unrelated persons] individuals with intellectual and/or developmental disabilities. OPWDD may designate a sponsoring agency to conduct such investigations.

- **Existing subdivision 687.8(g) is amended to read as follows:**

- (g) A family care provider shall [maintain the] comply with the family care [policy] manual policies and updates to such [subsequent] policies promulgated [and distributed] by OPWDD [so as to be current and accessible]. The purpose of the [policy] manual is to enable a family care provider to have access to guidelines for the day-to-day operation of the family care home and information as to the family care provider's relationship with OPWDD. [The policy manual shall not be construed as the basis for determining compliance for certification purposes.] The sponsoring agency must ensure every family care provider is aware of and has access to the family care manual.

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- **Existing paragraph 687.8(h)(2) is amended to read as follows:**
 - (2) personal requirements and incidental needs of the individuals;
- **Existing subparagraph 687.8(h)(3)(i) is amended to read as follows:**
 - (i) A family care provider shall maintain an individual's personal allowance account [for individuals receiving State-supplemented SSI,] in conformance with the requirements set forth in the Social Services Law and Part 633 of this Title.
- **Existing paragraph 687.8(p)(1) is amended to read as follows:**
 - (1) The family care provider shall request that the sponsoring agency [request] obtain background checks prior to or when such party begins to reside in the family care home or reaches the age of 18 years. The requested background checks include:
- **Existing paragraph 687.8(p)(3) is deleted and reserved.**
- **Existing paragraph 687.8(p)(4) is amended to read as follows:**
 - (4) The [family care provider] sponsoring agency shall ensure the provision of all required statements/information/fingerprints no later than five business days after the subject party becomes a resident or attains the age of 18 years.
- **Existing section 687.9 is deleted and replaced to read as follows:**

687.9 Family Care Respite and Use of Substitute Providers.

A family care program substitute provider is a party approved by a sponsoring agency to provide non-waiver respite services to individuals receiving family care services when a family care provider is temporarily not available to provide services. The approval and provision of these respite services must be in accordance with the process established by OPWDD.

- **A new subdivision 687.11(c) is added to read as follows:**

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- (c) The application must be made in accordance with admission processes established by OPWDD.
- **Existing subdivision 687.99(a) is deleted and subdivisions (b) through (i) are re-lettered to be (a) through (h).**
 - **A new subdivision 687.99(i) is added to read as follows:**
- (i) Sponsoring Agency.

An agency that provides oversight of OPWDD certified family care homes and the delivery of services to individuals therein. An agency is approved to be a sponsoring agency of OPWDD certified family care homes upon execution and approval of the written agreement between OPWDD and the agency, provided that it is and remains a provider of services under the Home and Community Based Services (HCBS) comprehensive waiver operated by OPWDD and complies with all of the provisions of the agreement. A family care home may be sponsored by a Developmental Disabilities State Operations Office (“state sponsored”) or a voluntary agency (“agency sponsored”).

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