

Text of Rule

1
2 1. Subdivision (a) of section 427.2 of Title 18 of the Official Compilation of Codes,
3 Rules and Regulations of the State of New York is amended to read as follows:

4 (a) Foster care of children means all activities and functions provided relative to the care
5 of a child away from [his] their home 24 hours per day in a foster family free home or a duly
6 certified or approved foster family boarding home or a duly certified group home, agency
7 boarding home, child care institution, a supervised setting, a qualified residential treatment
8 program, programs for youth who have been or are at-risk of sex trafficking, specialized
9 programs to serve prenatal, postpartum or parenting youth, or in a health care facility or any
10 combination thereof.

11 2. Paragraph (2) of subdivision (b) of section 427.2 of Title 18 of the Official Compilation
12 of Codes, Rules and Regulations of the State of New York is amended to read as follows:

13 (2) Residential program. The child is cared for away from [his or her] their home 24
14 hours a day in a foster family free home; a duly licensed, certified, or approved foster family
15 boarding home; a duly licensed or certified group home, agency boarding home, child care
16 institution, supervised setting, a qualified residential treatment program, programs for youth
17 who have been or are at-risk of sex trafficking, specialized programs to serve prenatal,
18 postpartum or parenting youth, or in a health care facility; or any combination thereof.

19 3. Paragraph 4 of subdivision (c) of section 427.2 of Title 18 of the Official Compilation
20 of Codes, Rules and Regulations of the State of New York is amended to read as follows:

21 (4) [Minor parent/child] Parenting youth and child of parenting youth case.

22 (i) the [minor parent] parenting youth and child of the parenting youth meets the criteria
23 specified in paragraphs (1) through (3) of this subdivision;

24 (ii) the child [or children of the minor parent] of the parenting youth reside(s) with the
25 [minor parent] parenting youth in a foster family home or residential facility and such child of a
26 parenting youth or children of a parenting youth are not in the care and custody or custody and
27 guardianship of the local commissioner of social services; and

28 (iii) the costs of the care of the child of the parenting youth or children of the [minor
29 parent] parenting youth are combined with the costs of the care of the [minor parent] parenting
30 youth.

31 4. Subdivision (d) of section 427.2 of Title 18 of the Official Compilation of Codes, Rules
32 and Regulations of the State of New York is amended to read as follows:

33 (d) *Foster family boarding home* means a residence owned, leased, or otherwise under
34 the control of a single person or family who has been certified or approved by an authorized
35 agency or is used by a local probation department, the State Department of Mental Hygiene or
36 the Office of Children and Family Services to care for children, and such person or family
37 receives payment from the agency for the care of such children. Such home may care for not
38 more than six children, including all children under the age of 13 residing in the home, whether
39 or not they are received for board. However, up to two additional children may be cared for if

1 such children are siblings, or are siblings of a child living in the home, or are part of a [minor
2 parent/child] parenting youth and child of a parenting youth unit as defined in section 427.2(s) of
3 this Part, or are children freed for adoption and placed for adoption with the person(s) who have
4 been certified or approved as foster parents. Such home may exceed these limits only to
5 receive or board a child or children returning to that foster family boarding home pursuant to
6 section 443.6 of this Title.

7 5. Subdivision (h) of section 427.2 of Title 18 of the Official Compilation of Codes,
8 Rules and Regulations of the State of New York is amended to read as follows:

9 (h) Group home means a family-type home for the care and maintenance of not less
10 than seven nor more than 12 children who are at least five years of age, operated by an
11 authorized agency, in quarters or premises owned, leased, or otherwise under the control of
12 such agency; except that such minimum age shall not be applicable to siblings placed in the
13 same facility, nor to children of parenting youth whose [mother] parent is placed in the same
14 facility.

15 6. Subdivision (s) of section 427.2 of Title 18 of the Official Compilation of Codes, Rules
16 and Regulations of the State of New York is amended to read as follows:

17 (s) [Minor parent/child] Parenting youth and child of parenting youth unit means a family
18 consisting of a [foster] child in foster care or an adopted child who is a [minor] parent and the
19 child or children of such [minor parent] child in foster care or an adoptive child residing together
20 in the same foster family home, residential facility or adoptive home.

21 7. Subdivision (b) of section 428.3 of Title 18 of the Official Compilation of Codes, Rules
22 and Regulations of the State of New York is amended to add new paragraphs (3) and (4) to
23 read as follows:

24 (3) For foster care placement cases in which the child is placed in a qualified residential
25 treatment program as defined in section 441.2 of this Title, the uniform case record must also
26 include:

27 (i) Details regarding the family and permanency team, including but not limited to:

28 (a) Its composition;

29 (b) The reasonable and good faith effort to identify and include all the individuals
30 described in section 409-h of the Social Services Law and section 439.3 of this Title to
31 participate in the family and permanency team;

32 (c) All contact information for members of the family and permanency team, as well as
33 contact information for other family members and fictive kin who are not part of the family and
34 permanency team;

35 (d) Evidence that meetings of the family and permanency team, including meetings
36 relating to the assessment required under section 409-h of the Social Services Law, are held at
37 a time and place convenient for the family;

1 (e) If reunification is the goal, evidence demonstrating that the parent from whom the
2 child was removed provided input from the members of the family and permanency team;

3 (f) Evidence that the assessment required under section 409-h of the Social Services
4 Law is determined in conjunction with the family and permanency team;

5 (g) The placement preferences of the family and permanency team relative to the
6 assessment that recognizes children should be placed with their siblings unless there is a
7 finding by the court that such placement is contrary to their best interest; and

8 (h) If the placement preferences of the family and permanency team and child are not
9 the placement setting recommended by the qualified individual conducting the assessment
10 under section 409-h of the Social Services Law, the reasons why the preferences of the team
11 and of the child were not recommended.

12 (ii) Details regarding the assessment conducted by the qualified individual, as such term
13 is defined in section 441.2 of this part, including, but not limited to:

14 (a) The written assessment completed by a qualified individual; and

15 (b) The determination of whether the child's needs can be met in a foster home, and if it
16 was determined by the qualified individual that the needs of the child cannot be met by the
17 family of the child or in a foster family home, in accordance with section 409-h of the Social
18 Services Law, the specific reasons why; and

19 (iii) Documentation of the court's findings at the court review of the placement in a
20 qualified residential treatment program in accordance with sections 393 of the Social Services
21 Law, or section 353.7, 756-b, 1055-c, 1091-a, or 1097 of the Family Court Act, as may be
22 applicable.

23 (iv) If the child meets the definition of long stayer as provided for in section 439.5 of this
24 Title and a long stayer review is conducted in accordance with that section, the determination of
25 the commissioner of OCFS, or the commissioner's designee, regarding the appropriateness of
26 the child's continued placement in a qualified residential treatment program.

27 (4) If a youth is parenting a child, as part of a parenting youth and child of parenting
28 youth unit as defined in section 427.2 of this Title, the uniform case record shall be updated to
29 include information on casework contacts with both the parenting youth and child of the
30 parenting youth as required under section 441.21 of this Title.

31 8. A new Part 439 is added to Article 3 of Volume B of Title 18 of the Official Compilation
32 of Codes, Rules and Regulations of the State of New York to read as follows:

33 PART 439 QUALIFIED RESIDENTIAL TREATMENT PROGRAMS

34 439.1 Applicability

35 439.2 Required Assessment

1 439.3 Family and Child Permanency Team

2 439.4 Qualified Residential Treatment Program Requirements

3 439.5 Long Stayers - Special Provisions

4 439.6 Aftercare

5 439.7 Certification for Qualified Residential Treatment Programs

6 439.8 Waivers

7 439.1 Applicability. The provisions of this Part shall apply whenever, on or after
8 September 29, 2021, a child in the care and custody or the custody and guardianship of the
9 commissioner of a local social services district or the Office of Children and Family Services is:

10 (a) Placed into a qualified residential treatment program, as such term is defined in
11 section 441.2 of this Title on or after September 29, 2021; or

12 (b) Where placement of a child into a qualified residential treatment program is
13 contemplated and an assessment in accordance with section 439.2 of this Part and in
14 accordance with section 409-h of the Social Services Law is initiated regarding potential
15 placement of a child into a qualified residential treatment program on or after September 29,
16 2021.

17 439.2 Required Assessment.

18 (a) Prior to a child's placement in a qualified residential treatment program, as defined in
19 section 441.2 of this Title, but at least within 30 days of the start of a placement in a qualified
20 residential treatment program of where the placement into the qualified residential treatment
21 program would occur on or after September 29, 2021, a qualified individual as defined in section
22 441.2 of this Title shall complete an assessment as to the appropriateness of such placement
23 utilizing an age-appropriate, evidence-based, validated, functional assessment tool approved by
24 the federal government for such purpose.

25 (b) Such assessment shall be in accordance with section 409-h of the Social Services
26 Law and any applicable federal requirements, and shall include, at minimum:

27 (1) An assessment of the strengths and needs of the child;

28 (2) A determination of the most effective and appropriate level of care for the child in the
29 least restrictive setting, including whether the needs of the child can be met with family
30 members or through placement in a foster family home, or a qualified residential treatment
31 program or a qualified residential treatment program exception, as such terms are defined in
32 section 441.2 of this Title, consistent with the short-term and long-term goals for the child as
33 specified in the child's permanency plan. Such assessment shall be completed in conjunction
34 with the family and permanency team established pursuant to section 439.3 of this Part; and

1 (3) Develop a list of child-specific short-and long-term mental and behavioral health
2 goals.

3 439.3 Family and Permanency Team

4 (a) If an assessment is initiated pursuant to section 439.2 of this Part and in accordance
5 with section 409-h of the Social Services Law, the social services district shall assemble a
6 family and permanency team for the child as such term is defined in section 441.2 of this Title.
7 The qualified individual, as such term is defined in section 441.2 of this Title, that is conducting
8 the assessment required under section 409-h of the Social Services Law shall work in
9 conjunction with the team while conducting and making the assessment.

10 (b) The family and permanency team shall consist of all appropriate biological family
11 members, relatives, and fictive kin of the child as well as, as appropriate, professionals who are
12 a resource to the family of the child, such as the attorney for the child or the attorney for the
13 parent, if applicable, and teachers, medical or mental health providers who have treated the
14 child, or clergy. In the case of a child who has attained age 14, the family and permanency team
15 shall include the members of the permanency planning team for the child that are selected by
16 the child in accordance with 42 United States Code section 675 and the state's approved Title
17 IV-E state plan.

18 (c) The social services district shall document in the child's case plan those items as set
19 forth in section 428.5 of this Title pertaining to the formation and preferences of the family and
20 permanency team.

21 439.4 Qualified Residential Treatment Program Requirements

22 (a) A qualified residential treatment program as defined in section 441.2 of this Title shall
23 meet all applicable requirements contained within Parts 442, 447 and 448 of this Title, as
24 applicable, except:

25 (1) As expressly stated within this section;

26 (2) Where there is a conflict between the standards in this Part and standards set forth
27 elsewhere in this Title, in which case the standards set forth in this Part shall apply; or

28 (3) When a waiver or exception to the particular regulatory requirement is granted under
29 this Title.

30 (b) A qualified residential treatment program must also meet the following requirements:

31 (1) A qualified residential treatment program must be operated by an authorized
32 agency as defined in section 371 of the Social Services Law and must meet applicable federal
33 and state statutory requirements and administrative directives issued by the Office for qualified
34 residential treatment programs.

35 (2) The provisions of Parts 476 and 477 of this Title shall apply to any application for,
36 and issuance and conditions of, an operating certificate to operate a qualified residential
37 treatment program.

1 (3) The qualified residential treatment program must have a trauma-informed treatment
2 model designed to address the needs, of children with serious emotional or behavioral
3 disorders, including clinical needs as appropriate, as approved by the Office. Such trauma-
4 informed model must align with nationally recognized standards for trauma-informed principles
5 and meet the requirements set by the Office, which may include, but not be limited to, a plan for:

6 (i) Implementation of the use of evidence-based, peer-reviewed and research-supported
7 clinical practices;

8 (ii) Staff training and development regarding how trauma-informed care will be provided
9 within the program, including, but not necessarily limited to, a description of initial and ongoing
10 training for staff; and

11 (iii) How the staff leadership of the qualified residential treatment program will implement
12 the qualified residential treatment model of care, including, but not limited to a description of:

13 (a) What measures or indicators are included in an organizational assessment that
14 evaluates progress and ongoing status of implementation;

15 (b) How feedback on measures or indicators from staff, children and youth, and other
16 family members will be gathered;

17 (c) Efforts to sustain the qualified residential treatment program’s model of care; and

18 (d) Efforts to promote among staff and throughout the program, including work with the
19 children and families, cultural awareness, and competency regarding race, culture, gender,
20 sexual orientation and socioeconomic factors

21 (4) The qualified residential treatment program shall have available 24 hours a day, seven
22 days a week:

23 (i) Nursing available from either a registered nurse or licensed nurse practitioner; and

24 (ii) Other licensed clinical staff who provide care on-site and within the scope of their
25 practice as defined by state law in accordance with the selected treatment model for the qualified
26 residential treatment program as approved by the Office of Children and Family Services.

27 (5) The qualified residential treatment program must have programs, approved by the
28 Office, regarding facilitation of family and resource outreach and inclusion in the treatment
29 process of including a plan of how the qualified residential treatment program will:

30 (i) Conduct case activities with the needs of the children, youth and/or parent(s) in mind;

31 (ii) Elicit children’s, youth’s and/or parents’ understanding and perspective on case
32 circumstances;

33 (iii) Conduct case discussions with transparency, including conversations regarding
34 permanency options and concurrent planning; and

1 (iv) Demonstrate active involvement of children, youth and family in case planning
2 discussions

3 (6) Qualified residential treatment programs must incorporate the child's family and
4 permanency team as defined in section 441.2 of this Title into the activities of the child's support
5 team as required by section 441.22 of this Title.

6 (7)(i) The program must provide discharge planning.

7 (ii) Discharge planning must begin on the first day of placement.

8 (a) The discharge plan must be developed in conjunction with the support team and as
9 appropriate, with input from health care providers, mental health service providers, other service
10 providers involved with the child, the parent/caretaker, identified kin or fictive kin resources and
11 the child; and

12 (b) Goals in a child's discharge plan must be measurable and contain factors that may
13 include, but not be limited to the following:

14 (1) Goals based on the child's support plan;

15 (2) A permanency goal that addresses the reasons for placement in the qualified
16 residential treatment program and how the child's living arrangement will be supported post-
17 discharge;

18 (3) An education goal that describes the child's educational needs, whether any special
19 education services are required, and how this goal will be supported post-discharge;

20 (8) Aftercare. The qualified residential treatment program must offer and plan to provide
21 at least six months of aftercare services in accordance with section 439.6 of this Part.

22 (9) The program must be certified by the Office of Children and Family Services in
23 accordance with section 439.7 of this Part.

24 439.5 Long Stayers – Special Provisions

25 (a) As used in this section the term "long stayer" shall mean any child who is placed in a
26 qualified residential treatment program as defined in section 441.2 of this Title, for:

27 (1) More than 12 consecutive months when the child is age 13 or over; or

28 (2) More than 18 nonconsecutive months when the child is age 13 or over; or

29 (3) More than 6 consecutive or nonconsecutive months when the child has not yet
30 attained 13 years of age.

31 (b)(1) When a child meets the definition of long stayer as defined in subdivision (a) of
32 this section, the local department of social services with care and custody or care custody and

1 guardianship of the child must submit information justifying such continued placement to the
2 Office for a long stayer review, as described in subdivision (c) of this section.

3 (2) Prior to submitting the justification, a review of the appropriateness of the continued
4 placement must be made by either a qualified individual or to a team of staff including licensed
5 clinicians that have been regularly serving the child. Such review shall consider the same
6 factors as required by section 409-h of the Social Services Law and section 439.2 of this Part to
7 determine the appropriateness of the child's continued placement in the qualified residential
8 treatment program. Provided, however, that:

9 (i) For children age 13 or older approaching 12 consecutive months in a qualified
10 residential treatment program, such information shall be submitted by day 310 of the child's
11 placement;

12 (ii) For children age 13 or older approaching 18 nonconsecutive months in a qualified
13 residential treatment program, such information shall be submitted by day 485 of the child's
14 placement; and

15 (iii) For children under age 13, such information shall be submitted by day 125 of the
16 child's placement in a qualified residential treatment program.

17 (3) The local department of social services with care and custody or care, custody and
18 guardianship of the child shall be responsible for submitting to a qualified individual, or team of
19 staff including licensed clinicians that have been regularly serving the child in the qualified
20 residential treatment programs, and the Office of Children and Family Services all the necessary
21 documentation for the long stay review team to conduct their review.

22 (i) For children age 13 or older approaching 12 consecutive months in a qualified
23 residential treatment program, such determination shall be submitted by day 320 of the child's
24 placement.

25 (ii) For children age 13 or older 18 nonconsecutive months in a qualified residential
26 treatment center, such determination shall be submitted by day 495 of the child's placement.

27 (iii) For children under age 13, such determination shall be submitted by day 135 of the
28 child's placement in a qualified residential treatment program.

29 (c) Prior to submission of the necessary information to the Office of Children and Family
30 Services, a qualified individual or team of staff including licensed clinicians that have been
31 regularly serving the child in the qualified residential treatment programs, shall:

32 (1) Review all relevant information;

33 (2) Conduct an evaluation in accordance with the standards outlined in section 409-a of
34 the Social Services Law and section 439.2 of this Part;

35 (3) Make a recommendation as to the necessity of the child's continued placement in a
36 qualified residential treatment program;

1 (4) Provide a written copy of such evaluation to the Office of Children and Family
2 Services and the applicable local department of social services; and

3 (5) Enter such determination into the system of record.

4 (d) If the child is in the care and custody or care or custody and guardianship of a local
5 department of social services, the commissioner of such local department of social services
6 must review and certify the recommendation, and if it is a recommendation to continue
7 placement, the justification for continued placement in a qualified residential treatment program
8 prior to submission to the Office of Children and Family Services.

9 (e) The Office of Children and Family Services will conduct a long stayer review, utilizing
10 a long stayer review team, to determine if a continued placement in a qualified residential
11 treatment program level of care is appropriate and required.

12 (1) Upon receipt of the required information from the local department of social services,
13 the long stayer review team shall:

14 (i) Review the documentation for completeness. If the documentation is incomplete or if
15 no such determination is submitted by the date due, the long stayer review team shall promptly
16 notify the local department of social services that, if the missing information is not submitted
17 within two days, the Office of Children and Family Services may deny the request for continued
18 placement in a qualified residential treatment program.

19 (ii) If the long stayer review team determines that continued placement in the qualified
20 residential treatment program is not supported, notify the local department of social services
21 and the qualified residential treatment program of its decision and recommend that an
22 appropriate placement be found for the child.

23 (a) For children age 13 or older approaching 12 consecutive months in a qualified
24 residential treatment program, such notification shall be made by day 335 of the child's
25 placement.

26 (b) For children age 13 or older approaching 18 nonconsecutive months in a qualified
27 residential treatment program, such notification shall be made by day 515 of the child's
28 placement.

29 (c) For children under age 13, such notification shall be made by day 155 of the child's
30 placement in a qualified residential treatment program.

31 (iii) If the long stayer review team determines that continued placement in the qualified
32 residential treatment program is supported, it shall submit its recommendation to the
33 commissioner of the Office of Children and Family Services, or such commissioner's designee,
34 for review and consideration, and for such commissioner or such commissioner's designee to
35 make a determination regarding the appropriateness of the child's continued placement in a
36 qualified residential treatment program.

37 (a) For children age 13 or older approaching 12 consecutive months in a qualified
38 residential treatment program, such recommendation shall be submitted by day 340 of the
39 child's placement.

1 (b) For children age 13 or older approaching 18 nonconsecutive months in a qualified
2 residential treatment program, such recommendation shall be submitted by day 520 of the
3 child's placement.

4 (c) For children under age 13, such recommendation shall be submitted by day 160 of
5 the child's placement in a qualified residential treatment program.

6 (f) Formal notification of the commissioner's determination will be forwarded to the local
7 department of social services and the qualified residential treatment program and documented
8 in the system of record.

9 (1) For children age 13 or older approaching 12 consecutive months in a qualified
10 residential treatment program, such determination shall be forwarded by day 365 of the child's
11 placement.

12 (2) For children age 13 or older approaching 18 nonconsecutive months in a qualified
13 residential treatment program, such determination shall be forwarded by day 540 of the child's
14 placement.

15 (3) For children under age 13, such information shall be submitted by day 180 of the
16 child's placement in a qualified residential treatment program.

17 439.6 Aftercare

18 (a) Youth who are stepped down to a placement in a foster family-home or discharged
19 from foster care from a qualified residential treatment program must be offered, at minimum, six
20 months of aftercare services as such term is defined in section 441.2 of this Title by the agency
21 that provided the qualified residential treatment services.

22 (b) Qualified residential treatment programs shall:

23 (1) Begin planning discharge and aftercare services for every child entering their
24 qualified residential treatment program within 72 hours of the child's entry into that residential
25 program and incorporate such planning into the child's discharge planning activities required
26 pursuant to section 439.4 of this Part;

27 (2) Utilize the support team plan developed in accordance with section 441.22 of this
28 Title to identify the goals and objectives that will guide the discharge and aftercare plan;

29 (3) Provide or contract for the provisions services identified by the support team and
30 aftercare plan for at least six months.

31 (c)The local department of social services with care and custody or custody and
32 guardianship of the child must partner with the authorized agencies operating the qualified
33 residential treatment programs around each child's aftercare goals and objectives where
34 necessary.

35 439.7 Certification for Qualified Residential Treatment Programs

1 (a) Any authorized agency may apply to the Office of Children and Family Services for
2 certification for the program as a qualified residential treatment program. Such application must
3 be in writing and shall be made in the time and manner as directed by the Office of Children and
4 Family Services.

5 (b) At minimum, such application must:

6 (1) Demonstrate that the program is in compliance with requirements of this Part and,
7 specifically, any requirement that may apply to a qualified residential treatment program through
8 application of Parts 441 or 442 of this Title.

9 (2) Demonstrate that the program has obtained approval from the Office of Children and
10 Family Services for the requisite manuals, policies and procedures for certification as a qualified
11 residential treatment program, including, but not necessarily limited to:

12 (i) Policy and policy manuals required by section 441.4 of this Title;

13 (ii) Appropriate policies and procedures specific to the care and services that must be
14 provided to children anticipated to be placed in the qualified residential treatment program and
15 their families as may be required by this Part or a policy or administrative directive of the Office
16 of Children and Family Services.

17 (3) Any other information as may be required by the Office of Children and Family
18 Services.

19 439.8 Waivers

20 (a) Any provision of other Parts of this Title notwithstanding, a written waiver of one or
21 more of the non-statutory requirements of this Title may be issued by the Office of Children and
22 Family Services to an applicant for, or the holder of, an operating certificate from the Office of
23 Children and Family Services to operate a qualified residential treatment program under this
24 Part. Provided however, that no program may apply for a waiver for any requirements regarding
25 non-discrimination. A waiver pursuant to this section may be issued at the time of application for
26 an operating certificate to become a qualified residential treatment program or subsequent to
27 the issuance of an operating certificate to operate a qualified residential treatment program. A
28 program which applies for a waiver subsequent to the issuance of an operating to be a qualified
29 residential treatment program, must operate in full compliance with the regulations at all times
30 prior to the issuance of a waiver.

31 (b) An applicant for, or holder of, a certificate to operate a qualified residential treatment
32 program must submit to the Office of Children and Family Services, in writing, any request for a
33 waiver pursuant to this section. The Office of Children and Family Services may prescribe a
34 form to be used for waiver requests. The application for a waiver must include:

35 (1) The specific regulation or regulations for which a waiver is
36 sought;

37 (2) The reason a waiver is necessary; and

1 (3) A description of what will be done to achieve or maintain the intended purpose of the
2 regulation or regulations for which a waiver is sought and to protect the health, safety and
3 welfare of the youth in the program.

4 (c) The Office of Children and Family Services may require the applicant for, or holder
5 of, an operating certificate to make physical plant modifications, and/or to adopt special
6 methods, procedures, and/or policies to protect the health, safety and welfare of youth as a
7 condition of granting and maintaining a waiver granted pursuant to this section.

8 (d) Written approval of a request for a waiver will be granted only pursuant to a
9 determination by the Office of Children and Family Services that the proposed waiver will not
10 adversely affect the health, safety or welfare of the youth in the program and that the intended
11 purpose of the regulation or regulations to be waived will be met.

12 (e) Waivers may be time limited, at the discretion of the Office of Children and Family
13 Services. Where a waiver is time limited, the program may apply for a continuation of the
14 waiver. If the program does not apply for a continuation of the time-limited waiver or the
15 continuation of the time-limited waiver is not granted by the Office of Children and Family
16 Services, the program must resume compliance with the regulation or regulations for which the
17 waiver had been issued upon the expiration of the waiver.

18 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
19 by the Office of Children and Family Services as a condition of granting the waiver will result in
20 recission of the waiver and may constitute sufficient cause for the Office of Children and Family
21 Services to limit, suspend, or revoke the operating certificate of the qualified residential
22 treatment program for which the waiver was granted. The Office of Children and Family
23 Services must notify the program in writing of the recission of a waiver, and the recission will
24 become effective upon the receipt by the program of the written notification. The written
25 notification of the recission may be communicated through personal delivery, electronic mail,
26 telefax or regular mail, at the discretion of the Office of Children and Family Services.

27 9. Article 3 of Volume B of Title 18 of the Official Compilation of Codes, Rules and
28 Regulations of the State of New York is amended to add a new Part 440 to read as follows:

29 PART 440 PROGRAMS FOR YOUTH WHO HAVE BEEN OR ARE AT-RISK OF SEX
30 TRAFFICKING

31 440.1 Purpose

32 440.2 Definitions

33 440.3 Approval

34 440.4 General Requirements

35 440.5 Other Applicable Standards

36 440.6 Waivers

1 440.1 Purpose. The purpose of this Part is to establish the requirements to operate a
2 program that provides high-quality residential care and supportive services to children and
3 youth aged 10 and older who have been found to be, or are at risk of becoming, survivors of sex
4 trafficking.

5 440.2 Definitions

6 (a) Approval to operate a facility means a written operating certificate issued by the
7 Office to an authorized agency to operate a group home, agency boarding home or institution
8 facility in accordance with all applicable regulations.

9 (b) Culture includes but is not limited to the practices of people in the facility that
10 promote healing, connection and participation in self-growth of youth and families.

11 (c) Facility is defined as the building and grounds of a group home, agency
12 boarding home or institution, as those terms are defined in section 441.2 of this Title, that has
13 been approved by the Office pursuant to Parts 476 or 477 of this Title.

14 (d) Justice Center means the New York State Justice Center for the Protection of People
15 With Special Needs.

16 (e) Office means the Office of Children and Family Services.

17 (f) Permanency resources is defined as an individual or individuals who are willing and
18 available to care for the youth upon discharge.

19 (g) Positive youth development is defined as an intentional, prosocial approach that
20 engages youth within their communities, schools, organizations, peer groups, and families in a
21 manner that is productive and constructive; recognizes, utilizes, and enhances young people's
22 strengths; and promotes positive outcomes for young people by providing opportunities,
23 fostering positive relationships and furnishing the support needed to build on their leadership
24 strengths.

25 440.3 Approval.

26 (a) An authorized agency shall apply to the Office in writing for an operating certificate to
27 operate a group home, agency boarding home or institution as a facility in which this program
28 type operates, in a form and manner as required by the Office.

29 (1) At minimum, such application shall:

30 (i) Demonstrate that the facility is in compliance with requirements of this Part and,
31 specifically, any requirement that may apply to a program for youth who have been or are at-risk
32 of sex trafficking through application of Part 441 of this Title and that the program will serve no
33 more than 12 youth;

34 (2) Demonstrate that the facility has obtained approval from the Office for the requisite
35 manuals, policies and procedures for certification as a program for youth who have been or are
36 at-risk of sex trafficking, including, but not necessarily limited to:

1 (i) Policy and policy manuals required by section 441.4 of this Title; and

2 (ii) Policies and procedures specific to the care and services that shall be provided to
3 youth and their families who may be served in a program for youth who have been or are at-risk
4 of sex trafficking as may be required by this Part or a policy or administrative directive of the
5 Office; and

6 (3) Any other information as may be required by the Office.

7 (b) The provisions of Parts 476 and 477 of this Title shall apply to any application for,
8 and issuance and conditions of, an operating certificate to operate a group home, agency
9 boarding home or institution as a facility for this program type.

10 440.4 General Requirements.

11 (a) Programs shall have a physical environment, culture and programming to support
12 the healing of youth who have experienced significant sexual trauma.

13 (b) Physical Plant. In addition to all physical plant requirements set forth in Parts 442,
14 447 and 448 as applicable, facilities shall additionally maintain a physical environment that
15 is home-like and welcoming.

16 (1) Furnishings shall be maintained in good and clean condition, and be durable without
17 being institutional in nature, materials and design.

18 (2) The facility should apply standards of design and materials that are trauma-
19 responsive as required by the Office. Such standards include efforts to minimize noise, and the
20 use of color and light to promote healing and calming responses.

21 (3) Single occupancy bedrooms should be made available to each youth. Youth may opt
22 to share a bedroom with one other youth in a bedroom that meets all requirements with Parts
23 442, 447 and Part 448 as applicable.

24 (c) Program Requirements.

25 (1) A program must provide high-quality residential care and supportive community-based
26 services tailored to the needs of adolescents and young adults as approved by the Office. The
27 program must meet the cultural, therapeutic, medical, developmental and recreational needs of
28 the youth as required by the Office.

29 (2) Therapeutic model. Programs must utilize therapeutic approaches that are evidence
30 based or evidence informed to promote healing for adolescents with complex sexual trauma
31 histories.

32 (3) Health care and health education. Programs must provide comprehensive sexual
33 health education and health care that is responsive to youth with sexual trauma.

34 (4) Education and vocational supports. Programs must provide access to community-
35 based education and vocational services and opportunities to children and youth served.

1 (d) Program culture.

2 (1) Programs must be strengths based, rooted in positive youth development, and
3 provide community-based opportunities for youth to thrive as required by the Office.

4 (2) The program must create a positive affirming environment for youth of all racial and
5 ethnic backgrounds and gender identities and sexual orientations.

6 (3) The culture should reflect and affirm the backgrounds and identities of the youth and
7 families and be oriented toward self-efficacy and risk tolerance.

8 (e) Youth engagement and positive youth development. Programs must include
9 meaningful opportunities for youth voice, choice and leadership in their lives, in the program and
10 in their community. Such engagement should include input into hiring, program design,
11 behavioral supports and other areas as required by the Office.

12 (f) Policies and procedures manual. Programs must maintain a policy and procedure
13 manual, which is to be updated with input from youth and families, as required by the Office.

14 (g) Youth manual. Programs must have a youth manual written in plain, youth-
15 friendly language that clearly explains the rights and responsibilities of youth, program rules and
16 other elements as required by the Office. Manuals must be reviewed annually, and there must
17 be a process by which youth are involved in the updates.

18 (h) Engagement of permanency resource(s). Programs must engage and
19 support youth's permanency resources. Such support may include but not be limited to:

20 (1) Psychoeducation about commercial sexual exploitation and trafficking;

21 (2) Safety planning, including online safety;

22 (3) Prevention for siblings and other youth in the home, as applicable;

23 (4) Addressing stigma; and

24 (5) Therapeutic supports to facilitate a successful transition and discharge plan;

25 (i) Staffing.

26 (1) Programs must have direct care and supervisors of direct care staff to meet the
27 needs of youth and as required by the Office.

28 (2) Programs should implement a staff recruitment and retention strategy
29 that encourages the employment of persons with relevant lived experiences.

30 (3) Programs should provide supportive supervision and opportunities for self-care to all
31 staff to address any secondary traumatic stress.

1 (j) Aftercare. Programs must provide for aftercare to youth and families as required by
2 the Office.

3 (k) Admissions and Discharges.

4 (1) Admission. Youth of all genders may be admitted to a program only after all other
5 options have been explored, except in those circumstances where a youth who otherwise meets
6 the requirements set out by this section requests to be admitted.

7 (2) Discharge. Youth shall not be discharged solely due to frequent episodes of leaving a
8 program without consent or destruction of property.

9 (l) Office approval. Programs must seek Office approval for changes to any
10 approved program model, staffing plan, therapeutic approach, admission and discharge
11 procedure, or aftercare services.

12 440.5 Other Applicable Standards.

13 (a) An institution, group home or agency boarding home holding an operating certificate
14 from the Office as a facility in which this program type will operate shall comply with all
15 standards otherwise applicable to such facility pursuant to this Title, except where there is a
16 conflict between the standards in this Part and standards set forth elsewhere in this Title, in
17 which case the standards set forth in this Part shall apply. Placements into these facilities and
18 any changes in the placement of such youth shall be subject to all applicable provisions of the
19 Family Court Act, section 404 of the Social Services Law, and all other applicable provisions of
20 law in addition to the requirements of this Part.

21 (b) Office staff performing official functions shall have full access at all times to the
22 grounds and buildings of these programs and facilities, the staff and residents, and any records
23 of the facility in whatever form the records are maintained, including electronic and video
24 records. The Office may require from the persons and/or agency operating the facility and/or
25 program any information or documents the Office deems necessary for the discharge of
26 the Office's oversight of the facility and/or program.

27 (c) A group home, agency boarding home or institution holding an operating certificate
28 from the Office as a facility in which this program type will operate shall be subject to and must
29 comply with the requirements as set forth in Part 433 of this Title.

30 (d) A group home, agency boarding home or institution holding an operating certificate
31 from the Office as a facility in which this program type will operate shall be subject to and must
32 comply with the requirements set forth in Part 441 of this Title and, as applicable to the type of
33 facility, Parts 442, 447 or 448 of this Title.

34 (e) Records of youth in a facility in which this program type will operate or
35 receive programming as defined in this Part shall be maintained in the form and manner
36 required by the Office, including but not limited to maintenance of those records required by
37 the Office to be maintained in the system of record in the same manner as records for youth in
38 foster care under the Social Services Law and Part 428 of this Title.

1 (f) Records concerning youth in these facilities or receiving this programming are
2 confidential and shall be subject to the provisions of section 372 of the Social Services Law and
3 any other applicable provisions of law concerning the confidentiality of records. Information that
4 could reasonably identify a youth as being in such a program or facility shall not be released by
5 the Office, a social services district, or an authorized agency, except as otherwise provided by
6 law.

7 440.6 Waivers.

8 (a) Any provision of other Parts of this Title notwithstanding, a written waiver of one or
9 more of the non-statutory requirements of this Title may be issued by the Office to an applicant
10 for, or the holder of, an operating certificate from the Office to operate a program for youth who
11 have been or are at-risk of sex trafficking under this Part. Provided however, that no program
12 may apply for a waiver for any requirements regarding non-discrimination. A waiver pursuant to
13 this section may be issued at the time of application for an operating certificate to become a
14 program for youth who have been or are at-risk of sex trafficking or subsequent to the issuance
15 of an operating certificate to program for youth who have been or are at-risk of sex trafficking. A
16 program which applies for a waiver subsequent to the issuance of an operating to be a program
17 for youth who have been or are at-risk of sex trafficking, must operate in full compliance with the
18 regulations at all times prior to the issuance of a waiver.

19 (b) An applicant for, or holder of, a certificate to operate a program for youth who have
20 been or are at-risk of sex trafficking must submit to the office, in writing, any request for a waiver
21 pursuant to this section. The Office may prescribe a form to be used for waiver requests. The
22 application for a waiver must include:

23 (1) The specific regulation or regulations for which a waiver is
24 sought;

25 (2) The reason a waiver is necessary; and

26 (3) A description of what will be done to achieve or maintain the intended purpose of the
27 regulation or regulations for which a waiver is sought and to protect the health, safety and
28 welfare of the youth in the program.

29 (c) The Office may require the applicant for, or holder of, an operating certificate to make
30 physical plant modifications, and/or to adopt special methods, procedures, and/or policies to
31 protect the health, safety and welfare of youth as a condition of granting and maintaining a
32 waiver granted pursuant to this section.

33 (d) Written approval of a request for a waiver will be granted only pursuant to a
34 determination by the Office that the proposed waiver will not adversely affect the health, safety
35 or welfare of the youth in the program and that the intended purpose of the regulation or
36 regulations to be waived will be met.

37 (e) Waivers may be time limited, at the discretion of the Office. Where a waiver is time
38 limited, the program may apply for a continuation of the waiver. If the program does not apply
39 for a continuation of the time-limited waiver or the continuation of the time-limited waiver is not

1 granted by the Office, the program must resume compliance with the regulation or regulations
2 for which the waiver had been issued upon the expiration of the waiver.

3 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
4 by the Office as a condition of granting the waiver will result in rescission of the waiver and may
5 constitute sufficient cause for the Office to limit, suspend, or revoke the operating certificate of
6 the program for youth who have been or are at-risk of sex trafficking for which the waiver was
7 granted. The Office must notify the program in writing of the rescission of a waiver, and the
8 rescission will become effective upon the receipt by the program of the written notification. The
9 written notification of the rescission may be communicated through personal delivery, electronic
10 mail, telefax or regular mail, at the discretion of the Office.

11 10. Paragraph (3) of subdivision (a) of section 441.2 of Title 18 of the Official
12 Compilation of Codes, Rules and Regulations of the State of New York is amended to read as
13 follows:

14 (3) Placement.

15 (i) the child's care and custody or guardianship and custody have been transferred to an
16 authorized agency pursuant to the provisions of section 358-a, 383-c, 384 or 384-a of the Social
17 Services Law; or

18 (ii) the child has been placed with a social services official pursuant to article 3, 7, 10,
19 10-B or 10-C of the Family Court Act.

20 11. Subdivisions (h) and (i) of section 441.2 of Title 18 of the Official Compilation of
21 Codes, Rules and Regulations of the State of New York are amended to read as follows:

22 (h) Group home means a family-type home for the care and maintenance of not less
23 than seven, nor more than 12, children who are at least five years of age, operated by an
24 authorized agency, in quarters or premises owned, leased or otherwise under the control of
25 such agency, except that such minimum age shall not be applicable to siblings placed in the
26 same facility nor to children whose [mother] parent is placed in the same facility.

27 (i) Agency boarding home means a family-type home for the care and maintenance of
28 not more than six children operated by an authorized agency, in quarters or premises owned,
29 leased or otherwise under the control of such agency, except that such a home may provide
30 care for more than six [brothers and sisters] siblings of the same family.

31 12. Subdivision (k) of section 441.2 of Title 18 of the Official Compilation of Codes,
32 Rules and Regulations of the State of New York is amended to add a new paragraph (7) to read
33 as follows:

34 (7) Carbon monoxide detector means a device that detects the presence of carbon
35 monoxide (CO) gas to prevent carbon monoxide poisoning.

36 13. Section 441.2 of Title 18 of the Official Compilation of Codes, Rules and
37 Regulations of the State of New York is amended to add new subdivisions (q), (r), (s), (t), (u)
38 and (v) to read as follows:

1 (q) Family and permanency team means the family and child permanency team that is
2 required to be assembled in accordance with section 409-h of the Social Services Law and
3 section 439.2 of this Title.

4 (r) Qualified individual means a trained professional or licensed clinician acting within
5 their scope of practice who shall have current or previous relevant experience in the child
6 welfare field and who shall conduct the assessment required for a child in accordance with
7 section 409-h of the Social Services Law and section 439.2 of this Title. Such individual shall
8 not be an employee of the Office of Children and Family Services, nor shall such person have a
9 direct role in case management or case planning decision-making authority for the child for
10 whom such assessment is being conducted, in accordance with 42 United States Code sections
11 672 and 675a and the state's approved Title IV-E state plan.

12 (s) Qualified residential treatment program means a program that is a non-foster family
13 residential program in accordance with 42 United States Code sections 672 and 675a and the
14 state's approved Title IV-E state plan and that meets the requirements of section 439.4 of this
15 Title and which is approved by the Office to operate as a qualified residential treatment
16 program.

17 (t) Aftercare shall mean services and supports provided to a child and, where applicable,
18 such child's family or discharge resource to increase the success and well-being of the child
19 when stepped-down to a home-based placement or when discharged from foster care
20 altogether.

21 (u) Qualified residential treatment program exception means: a supervised setting as
22 defined in section 371 of the Social Services Law and governed by Part 449 of this Title; a
23 program for youth who have been or at risk of sex trafficking governed by Part 440 of this Title;
24 or a specialized program to serve prenatal, postpartum or parenting youth certified pursuant to
25 this Title.

26 (v) Child of a parenting youth, means a child, children or an infant who is not in foster
27 care but who resides with their parent who is in foster care, pursuant to paragraph (3) of
28 subdivision (a) of this section, and where the child and parent are part of a parenting youth and
29 child of a parenting youth unit as such term is defined in section 427.2 of this Title.

30 14. Subdivision (a) of section 441.4 of the Official Compilation of Codes, Rules and
31 Regulations of the State of New York is amended to read as follows:

32 (a) Each child-care agency and facility operated by such agency will maintain, and keep
33 current and available, a manual or manuals which clearly state the policies of such agency with
34 respect to its programs including policies on agency continuous quality improvement, admission
35 criteria and procedures, psychiatric and medical care, social services, treatment of youth of all
36 sexual orientations, genders, gender identities and expression, child care, education, religious
37 observance, religious instruction and training, discharge criteria and procedures, discipline and
38 restraint, appropriate custodial conduct, children's rights, use of de-escalation rooms, shelter,
39 clothing, youth's personal property, diet, work and recreation, plant maintenance, fire, sanitation
40 and safety, and any other policy or procedure that is subject to approval of the Office in
41 accordance with any provision contained within this Title.

1 15. Paragraph (1) of subdivision (c) of section 441.21 of the Official Compilation of
2 Codes, Rules and Regulations of the State of New York is amended to read as follows:

3 (1) *Casework contacts with the child* is defined as individual or group face-to-face
4 contacts between the case planner, or the caseworker assigned to the child, as directed by the
5 case planner, or the case manager, and the child. The purpose of the contacts is to assess the
6 child's current safety and [well being] well-being, to evaluate or reevaluate the child's
7 permanency needs and permanency goal, and to guide the child towards a course of action
8 aimed at resolving problems of a social, emotional or developmental nature that are contributing
9 towards the reason(s) why such child is in foster care. Where a youth is parenting a child, as
10 part of a parenting youth and child of parenting youth unit as defined in section 427.2 of this
11 Title, diligent efforts must be made to also see the child, children or infant of the parenting youth
12 at each casework contact, to assess the safety and wellbeing of such child, children or infant of
13 the parenting youth and to observe the parenting skills of the parenting youth. Such contact,
14 assessment and observations must be documented in the parenting youth's uniform case
15 record.

16 16. Subdivision (a) of section 441.24 of the Official Compilation of Codes, Rules and
17 Regulations of the State of New York is amended to read as follows:

18 (a) Authorized agency staff and volunteers shall not engage in or condone discrimination
19 or harassment against prospective foster parents, foster parents, or [foster] children in foster
20 care or any family members being served by the agency, on the basis of race, creed, color,
21 national origin, age, sex, religion, sexual orientation, gender identity or expression, marital
22 status, or disability. Authorized agencies shall promote and maintain a safe environment, take
23 reasonable steps to prevent discrimination and harassment against youth by other youth;
24 promptly investigate incidents of discrimination and harassment by staff, volunteers and youth[,];
25 and take reasonable and appropriate corrective or disciplinary action when such incidents
26 occur. Certified or approved foster parents shall not engage in discrimination or harassment
27 against [foster] children in foster care or any family members being served by the agency, on
28 the basis of race, creed, color, national, origin, age, sex, religion, sexual orientation, gender
29 identity or expression, marital status, or disability, and shall promote and maintain a safe
30 environment.

31 17. Part 441 of the Official Compilation of Codes, Rules and Regulations of the State of
32 New York is amended to add a new section 441.26 to read as follows:

33 441.26 Waivers. (a) Any provision of other Parts of this Title notwithstanding, a written
34 waiver of one or more of the non-statutory requirements of this of this Part may be issued by the
35 Office to an applicant for, or the holder of, a license or an operating certificate from the Office to
36 operate a program or facility pursuant to this Title. Provided however, that no program or facility
37 may apply for a waiver for any requirements regarding non-discrimination. A waiver pursuant to
38 this section may be issued at the time of application for a license or operating certificate to
39 become a program or facility pursuant to this Title. A program or facility which applies for a
40 waiver subsequent to the issuance of a license or operating certificate, must operate in full
41 compliance with the regulations at all times prior to the issuance of a waiver.

42 (b) An applicant for, or holder of, a license or certificate to operate a program or facility
43 pursuant to this Title must submit to the office, in writing, any request for a waiver pursuant to

1 this section. The Office may prescribe a form to be used for waiver requests. The application for
2 a waiver must include:

3 (1) The specific regulation or regulations for which a waiver is
4 sought;

5 (2) The reason a waiver is necessary; and

6 (3) A description of what will be done to achieve or maintain the intended purpose of the
7 regulation or regulations for which a waiver is sought and to protect the health, safety and
8 welfare of the youth in the program or facility.

9 (c) The Office may require the applicant for, or holder of, a license or operating
10 certificate to make physical plant modifications, and/or to adopt special methods, procedures,
11 and/or policies to protect the health, safety and welfare of youth as a condition of granting and
12 maintaining a waiver granted pursuant to this section.

13 (d) Written approval of a request for a waiver will be granted only pursuant to a
14 determination by the Office that the proposed waiver will not adversely affect the health, safety
15 or welfare of the youth in the program or facility and that the intended purpose of the regulation
16 or regulations to be waived will be met.

17 (e) Waivers may be time limited, at the discretion of the Office. Where a waiver is time
18 limited, the program or facility may apply for a continuation of the waiver. If the program or
19 facility does not apply for a continuation of the time-limited waiver or the continuation of the
20 time-limited waiver is not granted by the Office, the program or facility must resume compliance
21 with the regulation or regulations for which the waiver had been issued upon the expiration of
22 the waiver.

23 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
24 by the Office as a condition of granting the waiver will result in rescission of the waiver and may
25 constitute sufficient cause for the Office to limit, suspend, or revoke the license or
26 operating certificate of the facility or program for which the waiver was granted. The Office must
27 notify the program or facility in writing of the rescission of a waiver, and the rescission will become
28 effective upon the receipt by the program of the written notification. The written notification of
29 the rescission may be communicated through personal delivery, electronic mail, telefax or regular
30 mail, at the discretion of the Office.

31 18. Section 442.17 of the Official Compilation of Codes, Rules and Regulations of the
32 State of New York is amended to read as follows:

33 442.17 [Mother and baby] Parenting facilities; special provisions. A facility for the care
34 and maintenance of [not more than 10 mothers, who themselves are children] parenting youth
35 and child of a parenting youth unit as defined in subdivision (s) of section 441.2 of this Title,
36 [and 10 babies of such mothers,] shall be in compliance all applicable laws, ordinances, rules,
37 regulations and codes relating to buildings fire protection and health and safety, and may be
38 operated in compliance with the following standards, in lieu of those provided for in sections
39 442.6 and 442.7 of this Part or of any other sections of this Part which are inconsistent with this
40 section. All other provisions of this Part shall otherwise be applicable to such facility, except the

1 requirements contained in paragraphs (1) and (2) of subdivision (b) of section 442.4 of this Part
2 [that the facility must be in substantial compliance with the State Building Construction Code].

3 (a) [Each facility which shall accept and care for newborn infants, those up to 28 days of
4 age, or below the weight of five and one-half pounds, shall comply with the provisions of the
5 rules of the Department of Health, relating to the care of such infants (Part 722 of Title 10 of the
6 Official Compilation of Codes, Rules and Regulations of the State of New York), in addition to
7 such other provisions established by or under the Public Health Law for institutions for children.
8 (b)] Plant and equipment.

9 (1) Occupancy by [mothers] parenting youth and [babies] child of a parenting youth units
10 shall not be permitted above the second floor of a building of wood frame construction, nor
11 above the third floor in a building constructed of masonry exterior walls with wood frame floors.

12 (2) All buildings shall have smoke detectors [in exit corridors, stairways, attics and
13 basements] and carbon monoxide detectors as defined in section 441.2 of this Title installed in
14 compliance with all applicable laws, ordinances, rules, regulations and codes relating to
15 buildings, fire protection and health and safety.

16 (3) Buildings partially constructed of wood exceeding three stories in height shall be
17 sprinklered throughout.

18 [(c)] (b) Sleeping accommodations.

19 [(1)] A [mother] parenting youth and [her baby] infant child of a parenting youth may
20 occupy the same sleeping rooms or adjoining sleeping rooms if requested by the parenting
21 youth and where it is determined to be in the best interest of the parenting youth and the child,
22 children or infant of the parenting youth. Where a parenting youth and child of a parenting youth
23 occupy the same sleeping room, they must have separate sleeping accommodations
24 appropriate to their age and development state and consistent with safe sleep practices;
25 provided, however, that [

26 (2) The minimum floor area of a single sleeping room occupied by a mother shall not be
27 less than 80 square feet, and by a baby not less than 40 square feet.

28 (3) The minimum floor area of a multiple sleeping room for a mother shall not be less
29 than 60 square feet and for baby not less than 40 square feet.

30 (4) No more than three mothers and no more than three babies shall occupy any
31 sleeping room.

32 (5) The minimum horizontal dimension for a sleeping room shall be eight feet, except
33 that for a single sleeping room occupied by a baby such dimension may be seven feet.

34 (6) Each mother or baby] each infant of a parenting youth shall have a separate [bed or]
35 crib [which shall be at least two feet distant from any other bed or crib].

36 (7)] Staff members shall be provided with sleeping quarters separate from those
37 provided for the [mothers and babies] parenting youth and child of parenting youth unit.

1 [(d)] (c) Bathing and toilet facilities shall be provided as follows:

2 (1) Minimum requirements as to lavatories, tubs or showers:

[Mothers] <u>Parenting youth and child of parenting youth</u>	Lavatories	Tubs or showers
3-5	2	1
6-8	2	2
9-10	3	2

3 (2) At least one toilet shall be provided for every three [mothers] parenting youth.

4 (3) [Bathinettes, toilet training equipment and other necessities for infant bathings and
5 toilet shall be provided] Appropriate bathing and toileting equipment specific to the ages and
6 developmental stages of any child of a parenting youth served by the facility must be provided
7 and shall be kept in a safe and sanitary condition. [(e)]

8 (d) Day room [or nursery] area. A [day room, or nursery] designated area with safe, age
9 and developmentally appropriate equipment, educational items and toys shall be provided for
10 use by [the babies] any child of a parenting youth served by the program; such [day room or
11 nursery] area shall be located within easy access to a direct exit from the floor, which floor shall
12 be no more than one story above grade and in compliance with all applicable laws, ordinances,
13 rules, regulations and codes relating to buildings, applicable fire code and fire protection and
14 health and safety standards. [(f)]

15 (e) Safety.

16 (1) [Mothers] Parenting youth and staff shall be instructed at regular intervals in
17 evacuation of the building.

18 (2) No [infant] child of a parenting youth shall be permitted to remain above the first floor
19 unless attended by either [its mother] their parent or a member of staff. [(g)]

20 (f) Increased capacity.

21 (1) If a facility wishes to provide care and maintenance to more than 10 [mothers and 10
22 babies of such mothers] parenting youth and child of parenting youth unit as defined in
23 subdivision (s) of section 427.2 of this Title, the facility must first submit a written request for an
24 increase in capacity to the [appropriate office of the department] Office and receive the
25 [department's] written approval from the Office.

26 (2) Approval of such a request is subject to both an assessment of the need for the
27 [mother and baby] parenting facility to care for additional residents and the ability of the facility
28 to maintain the health and safety standards set forth in this section and to meet such other
29 requirements of this section and this Part, which the [department] Office deems appropriate.

30 19. Subdivision (e) of section 442.21 of the Official Compilation of Codes, Rules and
31 Regulations of the State of New York is amended to read as follows:

1 (e) An institution [primarily] serving [children under 12] parenting youth and a child of
2 parenting youth unit as defined in subdivision (s) of section 427.2 of this Title shall have on its
3 staff, or otherwise make provision for the services of, a pediatrician.

4 20. Subdivision (i) of section 442.21 of the Official Compilation of Codes, Rules and
5 Regulations of the State of New York is amended to read as follows:

6 (i)(1) The agency must always have on duty at least one person at each site operated
7 by an institution for each shift who is certified by the American Red Cross as trained in first aid
8 and cardiopulmonary resuscitation, including infant cardiopulmonary resuscitation if the program
9 is providing care to a parenting youth and child of a parenting youth unit as defined in
10 subdivision (s) of section 427.2 of this Title. All child care staff whose duties are predominantly
11 recreational in nature must be certified by the American Red Cross as trained in first aid.

12 (2) All nursing staff employed by an institution must be certified by the American Red
13 Cross as trained in first aid and cardiopulmonary resuscitation techniques, including infant
14 cardiopulmonary resuscitation if the program is providing care to a parenting youth and a child
15 of a parenting youth unit as defined in subdivision (s) of section 427.2 of this Title.

16 21. Section 442.25 of the Official Compilation of Codes, Rules and Regulations of the
17 State of New York is REPEALED and a new section 442.25 amended to read as follows:

18 442.25 Waivers.

19 (a) Any provision of other Parts of this Title notwithstanding, a written waiver of one or
20 more of the non-statutory requirements of this of this Part may be issued by the Office of
21 Children and Family Services to an applicant for, or the holder of, a license to operation of an
22 institution under this Part. Provided however, that no program may apply for a waiver for any
23 requirements regarding non-discrimination. A waiver pursuant to this section may be issued at
24 the time of application for a license to operate an institution. An institution which applies for a
25 waiver subsequent to the issuance of a license to operate an institution under this Part, must
26 operate in full compliance with the regulations at all times prior to the issuance of a waiver.

27 (b) An applicant for, or holder of, a license to operate an institution must submit to the
28 Office, in writing, any request for a waiver pursuant to this section. The Office of Children and
29 Family Services may prescribe a form to be used for waiver requests. The application for a
30 waiver must include:

31 (1) The specific regulation or regulations for which a waiver is
32 sought;

33 (2) The reason a waiver is necessary; and

34 (3) A description of what will be done to achieve or maintain the intended purpose of the
35 regulation or regulations for which a waiver is sought and to protect the health, safety and
36 welfare of the youth in the facility

37 (c) The Office of Children and Family Services may require the applicant for, or holder
38 of, a license to make physical plant modifications, and/or to adopt special methods, procedures,

1 and/or policies to protect the health, safety and welfare of youth as a condition of granting and
2 maintaining a waiver granted pursuant to this section.

3 (d) Written approval of a request for a waiver will be granted only pursuant to a or
4 welfare of the youth in the facility and that the intended purpose of the regulation or regulations
5 to be waived will be met.

6 (e) Waivers may be time limited, at the discretion of the Office of Children and Family
7 Services. Where a waiver is time limited, the program may apply for a continuation of the
8 waiver. If the program does not apply for a continuation of the time-limited waiver or the
9 continuation of the time-limited waiver is not granted by the Office of Children and Family
10 Services, the facility must resume compliance with the regulation or regulations for which the
11 waiver had been issued upon the expiration of the waiver.

12 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
13 by the Office of Children and Family Services as a condition of granting the waiver will result in
14 recission of the waiver and may constitute sufficient cause for the Office of Children and Family
15 Services to limit, suspend, or revoke the license to operate an institution for which the waiver
16 was granted. The Office of Children and Family Services must notify the facility in writing of the
17 recission of a waiver, and the recission will become effective upon the receipt by the institution
18 of the written notification. The written notification of the recission may be communicated through
19 personal delivery, electronic mail, telefax or regular mail, at the discretion of the Office of
20 Children and Family Services.

21 22. A new section 442.26 is added to Part 442 of the Official Compilation of Codes,
22 Rules and Regulations of the State of New York is added to read as follows:

23 442.26. Certification for Specialized Programs to Serve Prenatal, Postpartum or
24 Parenting Youth.

25 (a) Any facility governed by this Part, including but not necessarily limited to a facility
26 governed by section 442.17 of this Part, may apply to the Office for certification for the program
27 as a specialized program to serve prenatal, postpartum or parenting youth. Such application
28 shall be in writing and shall be made in the time and manner as directed by the Office.

29 (b) At minimum, such application must:

30 (1) Demonstrate that the facility is in compliance with requirements of this Part and,
31 specifically, any requirement contained within this Part that applies to parenting a youth, a child
32 of a parenting youth, or a parenting youth and child of a parenting youth unit, as such terms are
33 defined in section 427.2 of this Title.

34 (2) Demonstrate requisite Office approval of manuals, policies and procedures for a
35 specialized program to serve pregnant, postpartum or parenting youth. Such materials include
36 but are not limited to:

37 (i) Policy and policy manuals required by section 441.4 of this Title;

38 (ii) Policies and procedures specific to the care and services that shall be provided to a
39 parenting youth, a child of a parenting youth, a parenting youth and a child of a parenting youth

1 unit, as such terms are defined in section 427.2 of this Title, and for youth who are pregnant or
2 postpartum, including but not limited to:

3 (a) Admission and intake procedures;

4 (b) Training for staff on topics related to the care and treatment of pregnant, postpartum
5 or parenting youth and the children of parenting youth, which may include, but not necessarily
6 be limited to:

7 (1) Child development;

8 (2) Care for postpartum youth;

9 (3) Youth and family engagement;

10 (4) Safety risks during pregnancy and for postpartum youth; and

11 (5) Safety risks for infants if the facility will provide care to any child of a parenting youth
12 that may be an infant;

13 (c) Staffing ratios;

14 (d) Proposed model of trauma-informed care;

15 (e) Promotion of cultural awareness, and competency regarding race, culture, gender,
16 sexual orientation and socioeconomic factors.

17 (f) Community engagement;

18 (g) Case planning and permanency services;

19 (h) Clinical and behavioral health services;

20 (i) Availability of medical services;

21 (j) Educational, vocational, training and independent living services; and

22 (k) Specific services and programing tailored to meet the needs of pregnant, postpartum,
23 parenting youth or the children of parenting youth; and

24 (3) Include any other information as may be required by the Office.

25 23. The opening clause of subparagraph (i) of paragraph (4) of subdivision (b) of
26 section 447.2 of the Official Compilation of Codes, Rules and Regulations of the State of New
27 York is amended to read as follows:

28 (i) An agency boarding home must be protected by carbon monoxide detectors as
29 defined in section 441.2 of this Title, and a fire detection system or a sprinkler system. Such
30 system must be designed, installed and maintained in accordance with [the New York State

1 Uniform Fire Prevention and Building Code] all applicable laws, ordinances, rules, regulations
2 and codes and shown on a diagram of the floor plan approved by the [department] Office of
3 Children and Family Services. A fire detection system must include the following:

4 24. Subparagraphs (vi) and (vii) of paragraph (4) of subdivision (b) of section 447.2 of
5 the Official Compilation of Codes, Rules and Regulations of the State of New York are amended
6 to read as follows:

7 (vi) All floors used by children including children of parenting youth must be separated
8 from each other by a smoke stop separation and have alternate means of egress remotely
9 located from each other and readily accessible to the children. An agency boarding home must
10 have a minimum of two means of egress from each floor. For a window opening to qualify as a
11 means of egress, it must be at least 30 inches in its smallest dimension with the bottom of the
12 window no higher than three feet six inches above the floor unless acceptable access is
13 provided by steps or furniture fixed in place. An upper level window, to qualify as a means of
14 egress, must also have a platform outside the window and a stair, permanently affixed to the
15 building, leading to ground level.

16 (vii) Children are not permitted above the second story in a building of type 5, wood
17 frame construction (that type of construction in which the walls, partitions, floors and roof are
18 wholly or partly of wood or other combustible materials). Children of limited mobility are not
19 permitted above the first story in a building of wood frame construction unless attended by a
20 member of the staff, or in the case of a parenting youth and child of a parenting youth unit as
21 defined in section 427.2 of this Title, unless the child of a parenting youth is attended by the
22 parenting youth. A building of wood frame construction occupied by children of limited mobility
23 must be protected by a sprinkler system and the first story must be accessible to children of
24 limited mobility and accommodate the needs of such children.

25 25. Subparagraph (xvi) of paragraph (4) of subdivision (b) of section 447.2 of the Official
26 Compilation of Codes, Rules and Regulations of the State of New York is amended to read as
27 follows:

28 (xvi) A minimum of one [non-coin operated, single-line] operable telephone must be
29 provided and must be accessible at all times, including accessible by any parenting youth, in
30 each building occupied by children. Emergency telephone numbers for fire, police and medical
31 assistance must be posted [on or adjacent to all telephones] conspicuously within the agency
32 operated boarding home.

33 26. Paragraphs (8)-(12) of subdivision (b) of section 447.2 of the Official Compilation of
34 Codes, Rules and Regulations of the State of New York are amended to read as follows:

35 (8) [Adequate bathing, toilet and lavatory facilities] Appropriate bathing and toileting
36 equipment specific to the age and developmental stages of the children, including any child of a
37 parenting youth served in the program, shall be provided, and shall be kept in safe and sanitary
38 condition.

39 (9) Each child and child of a parenting youth cared for shall have a separate bed or crib,
40 as applicable. Sleeping rooms shall provide at least 30 square feet of floor space for each bed,
41 and two feet of space between beds or cribs, as applicable. No more than three children shall
42 occupy any bedroom unless such children are part of a parenting youth and child of a parenting

1 youth unit, as such term is defined in section 427.2 of this Title and it has been determined to be
2 in the best interests of the parenting youth and the child of the parenting youth. Provided
3 however, that in order for a parenting youth and a child of the parenting youth to share a
4 sleeping room, safe sleep protocols must be followed and the sharing of a room by the
5 parenting youth and child of a parenting youth unit must not create a danger to the health and
6 safety of any of the occupants of the agency operated boarding home.

7 (10) Every sleeping room occupied by children and/or children of parenting youth shall
8 have good natural light and ventilation, and every sleeping room occupied by children shall have
9 one or more windows opening directly to the outside.

10 (11) No bed shall be located in any unfinished attic, basement, stair hall, closet or room
11 commonly used for other than bedroom purposes.

12 (12) Children of different [sex] genders above the age of four shall not sleep in the same
13 room unless:

14 (i) Such occupants of the room are siblings or would constitute a parenting youth and a
15 child of a parenting youth unit, as such term is defined in section 427.2 of this Title; and

16 (ii) It has been determined to be in the best interest of all children to share a sleeping
17 room age-appropriate safe sleep protocols are followed, and the sharing of the same sleeping
18 room does not create a danger to the health or safety of the occupants of the agency boarding
19 home.

20 27. Paragraph (1) of subdivision (d) of section 447.2 of the Official Compilation of
21 Codes, Rules and Regulations of the State of New York is amended to read as follows:

22 (1) No more than two children under 2 years of age shall be cared for in any agency
23 boarding home unless such children are children of parenting youth.

24 28. Part 447 of Title 18 of the Official Compilation of Codes, Rules and Regulations of
25 the State of New York is amended to add a new section 447.10 to read as follows:

26 447.10 Certification for Specialized Programs to Serve Prenatal, Postpartum or
27 Parenting Youth.

28 (a) Any facility governed by this Part may apply to the Office of Children and Family
29 Services for certification for the program as a specialized program to serve prenatal, postpartum
30 or parenting youth. Such application shall be in writing and shall be made in the time and
31 manner as directed by the Office of Children and Family Services.

32 (b) At minimum, such application must:

33 (1) Demonstrate that the facility is in compliance with requirements of this Part and,
34 specifically, any requirement contained within this Part that applies to parenting a youth, a child
35 of a parenting youth, or a parenting youth and child of a parenting youth unit, as such terms are
36 defined in section 427.2 of this Title.

1 (2) Demonstrate requisite Office of Children and Family Services approval of manuals,
2 policies and procedures for a specialized program to serve pregnant, postpartum or parenting
3 youth. Such materials include but are not limited to:

4 (i) Policy and policy manuals required by section 441.4 of this Title;

5 (ii) Policies and procedures specific to the care and services that shall be provided to a
6 parenting youth, a child of a parenting youth, a parenting youth and a child of a parenting youth
7 unit, as such terms are defined in section 427.2 of this Title, and for youth who are pregnant or
8 postpartum, including but not limited to:

9 (a) Admission and intake procedures;

10 (b) Training for staff on topics related to the care and treatment of pregnant, postpartum
11 or parenting youth and the children of parenting youth, which may include, but not be limited to:

12 (1) Child development;

13 (2) Care for postpartum youth;

14 (3) Youth and family engagement;

15 (4) Safety risks during pregnancy and for postpartum youth; and

16 (5) Safety risks for infants if the facility will provide care to any child of a parenting youth
17 that may be an infant.

18 (c) Staffing ratios

19 (d) Proposed model of trauma-informed care;

20 (e) Promotion of cultural awareness, and competency regarding race, culture, gender,
21 sexual orientation and socioeconomic factors;

22 (f) Community engagement;

23 (g) Case planning and permanency services;

24 (h) Clinical and behavioral health services;

25 (i) Availability of medical services;

26 (j) Educational, vocational, training and independent living services; and

27 (k) Specific services and programing tailored to meet the needs of pregnant,
28 postpartum, parenting youth or the children of parenting youth; and

29 (3) Include any other information as may be required by the Office of Children and
30 Family Services.

1 29. Part 447 of Title 18 of the Official Compilation of Codes, Rules and Regulations of
2 the State of New York is amended to add a new section 447.11 to read as follows:

3 447.11 Waivers

4 (a) Any provision of other Parts of this Title notwithstanding, a written waiver of one or
5 more of the non-statutory requirements of this of this Part may be issued by the Office of
6 Children and Family Services to an applicant for, or the holder of, a license or an operating
7 certificate from the Office of Children and Family Services to operate a program or facility
8 pursuant to this Part. Provided however, that no program or facility may apply for a waiver for
9 any requirements for non-discrimination. A waiver pursuant to this section may be issued at the
10 time of application for a license or operating certificate to become a program or facility pursuant
11 to this Title. A program or facility which applies for a waiver subsequent to the issuance of a
12 license or operating certificate, must operate in full compliance with the regulations at all times
13 prior to the issuance of a waiver.

14 (b) An applicant for, or holder of, a license or certificate to operate a program or facility
15 pursuant to this Part must submit to the office, in writing, any request for a waiver pursuant to
16 this section. The Office of Children and Family Services may prescribe a form to be used for
17 waiver requests. The application for a waiver must include:

18 (1) The specific regulation or regulations for which a waiver is sought;

19 (2) The reason a waiver is necessary; and

20 (3) A description of what will be done to achieve or maintain the intended purpose of the
21 regulation or regulations for which a waiver is sought and to protect the health, safety and
22 welfare of the youth in the program or facility.

23 (c) The Office of Children and Family Services may require the applicant for, or holder
24 of, a license or operating certificate to make physical plant modifications, and/or to adopt special
25 methods, procedures, and/or policies to protect the health, safety and welfare of youth as a
26 condition of granting and maintaining a waiver granted pursuant to this section.

27 (d) Written approval of a request for a waiver will be granted only pursuant to a
28 determination by the Office of Children and Family Services that the proposed waiver will not
29 adversely affect the health, safety or welfare of the youth in the program or facility and that the
30 intended purpose of the regulation or regulations to be waived will be met.

31 (e) Waivers may be time limited, at the discretion of the Office of Children and Family
32 Services. Where a waiver is time limited, the program or facility may apply for a continuation of
33 the waiver. If the program or facility does not apply for a continuation of the time-limited waiver
34 or the continuation of the time-limited waiver is not granted by the Office of Children and Family
35 Services, the program or facility must resume compliance with the regulation or regulations for
36 which the waiver had been issued upon the expiration of the waiver.

37 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
38 by the Office of Children and Family Services as a condition of granting the waiver will result in
39 recission of the waiver and may constitute sufficient cause for the Office of Children and Family
40 Services to limit, suspend, or revoke the license or operating certificate of the program or facility

1 for which the waiver was granted. The Office of Children and Family Services must notify the
2 facility or program in writing of the rescission of a waiver, and the rescission will become effective
3 upon the receipt by the program of the written notification. The written notification of the
4 rescission may be communicated through personal delivery, electronic mail, telefax or regular
5 mail, at the discretion of the Office of Children and Family Services.

6 30. Paragraph (4) of subdivision (b) of section 448.3 of the Official Compilation of
7 Codes, Rules and Regulations of the State of New York is amended to read as follows:

8 (4) Provision for a staff member to be in attendance to care for every four children of
9 parenting youth who are infants under two years of age in a facility caring for [mothers and their
10 children when the mothers are] parenting youth and children of parenting youth when the
11 parenting youth is placed out of the home.

12 31. Subparagraphs (i) – (vi) of paragraph (4) of subdivision (d) of section 448.3 of the
13 Official Compilation of Codes, Rules and Regulations of the State of New York are amended to
14 read as follows:

15 (i) Every sleeping room occupied by children and/or children of parenting youth shall
16 have good natural light and ventilation, and shall have one or more windows opening directly to
17 the exterior.

18 (ii) Separate and accessible drawer space for personal belongings and sufficient closet
19 space for indoor and outdoor clothing shall be available for each child and each child of a
20 parenting youth.

21 (iii) No bed shall be located in any unfinished attic, basement, stair hall, closet, or room
22 commonly used for other than bedroom purposes.

23 (iv) Except for [mothers and their children] parenting youth and any child of a parenting
24 youth, children of different [sexes] genders over the age of five shall not sleep in the same room
25 unless such children are siblings, and unless it has been determined to be in the best interest of
26 the children who are either part of a parenting youth and a child of a parenting youth unit, as
27 such term is defined in section 427.2 of this Title or part of a sibling group. Where children of
28 different genders occupy the same sleeping room in accordance with this subparagraph, they
29 must have separate sleeping accommodations appropriate to their age and developmental
30 stage, and consistent with safe sleep protocols.

31 (v) [All single sleeping rooms for children] The minimum floor area of a single sleeping
32 room occupied by a child, including a parenting youth shall contain not less than 80 square feet
33 of floor area and a minimum horizontal dimension of seven feet, and for a child of a parenting
34 youth, not less than 40 square feet.

35 (vi) [All sleeping rooms for the accommodation of more than one child] The minimum
36 floor area of a multiple sleeping room for children, including children of parenting youth, shall
37 contain not less than 60 square feet of floor area per child and a minimum horizontal dimension
38 of eight feet per child, or parenting youth, and for a child of a parenting youth.

1 (a) No more than three children shall occupy any bedroom unless such children are a
2 parenting youth and a child of a parenting youth, and there is sufficient space in the bedroom to
3 allow for such arrangement.

4 (b) Each child and child of a parenting youth shall have a separate bed or crib,
5 consistent with their age and developmental stage, spaced at least two feet apart from other
6 beds or cribs. Any crib provided must conform to safe sleep protocols.

7 32. Subparagraphs (iii) and (iv) of paragraph (5) of subdivision (d) of section 448.3 of
8 the Official Compilation of Codes, Rules and Regulations of the State of New York are amended
9 and a new subparagraph (v) is added to read as follows:

10 (iii) be provided with [his] their own towel, washcloth, tooth brush and comb; [and]

11 (iv) Appropriate bathing and toileting equipment specific to the ages and developmental
12 stages of the children, parenting youth and any child of a parenting youth served by the facility
13 must be provided and shall be kept in safe and sanitary condition; and

14 (v) separate staff lavatory and toilet facilities.

15 33. Paragraph (7) of subdivision (f) of section 448.3 of the Official Compilation of Codes,
16 Rules and Regulations of the State of New York is amended to read as follows:

17 (7) During a period of one month following the birth of [her] their child, no mother in a
18 facility caring for [mothers and their children] a parenting youth and a child of a parenting youth,
19 as such term is defined in section 427.2 of this Title, may engage in work, work training, school,
20 or any other program which requires [her] them to be away from the group home, without written
21 approval from a physician.

22 34. Subdivision (j) of section 448.3 of the Official Compilation of Codes, Rules and
23 Regulations of the State of New York is amended to read as follows:

24 (j) Children under five years of age—special provisions. [A]

25 (1) An agency must not accept any child under five 5 years [who is] of age in a group
26 home unless:

27 (i) the child is a sibling of another child over such age who is a resident in the group
28 home[, may be cared for in such facility, provided: (1)]; or

29 (ii) the child is part of a parenting youth and child of a parenting youth unit, as such term
30 is defined in section 427.2 of this Title, and both the parenting youth and the child of the
31 parenting youth would be residents of the group home, and the group home has been approved
32 by the Office of Children and Family Services;

33 (2) For each child under the age of five there shall be provided:

1 (i) Separate sleeping accommodations appropriate to their age and developmental stage
2 and in accordance with safe sleep protocols, provided further that a crib [is] shall be provided for
3 [such a child] any children under two years of age.

4 [(2)] (ii) Highchairs or tables and chairs suitable to the size of the children under five
5 years of age in care shall be provided at feeding time.

6 (iii) Safe and developmentally appropriate equipment including educational items and
7 toys.

8 (3) An agency must not accept any child under five years of age in a group home in
9 accordance with this subdivision unless it has notified the [department] Office of Children and
10 Family Services of its intent to care for such child and the plan of care thereof and it has
11 received a written statement from the [department] Office of Children and Family Services that
12 its program and facilities for the care of such child are in compliance with the rules of the
13 department.

14 35. Subdivision (c) of section 448.9 of the Official Compilation of Codes, Rules and
15 Regulations of the State of New York is amended to read as follows:

16 (c) Additional safety precautions will be taken for children including any child of a
17 parenting youth with special [problems, including handicapping] needs or medical conditions
18 that may inhibit their ability to participate in recreational activities, who are cared for in a group
19 home.

20 36. Part 448 of Title 18 of the Official Compilation of Codes, Rules and Regulations of
21 the State of New York is amended to add a new section 448.11 to read as follows:

22 448.11 Certification for Specialized Programs to Serve Prenatal, Postpartum or
23 Parenting Youth.

24 (a) Any facility governed by this Part may apply to the Office of Children and Family
25 Services for certification for the program as a specialized program to serve prenatal, postpartum
26 or parenting youth. Such application shall be in writing and shall be made in the time and
27 manner as directed by the Office of Children and Family Services.

28 (b) At minimum, such application must:

29 (1) Demonstrate that the facility is in compliance with requirements of this Part and,
30 specifically, any requirement contained within this Part that applies to parenting a youth, a child
31 of a parenting youth, or a parenting youth and child of a parenting youth unit, as such terms are
32 defined in section 427.2 of this Title.

33 (2) Demonstrate requisite Office of Children and Family Services approval of manuals,
34 policies and procedures for a specialized program to serve pregnant, postpartum or parenting
35 youth. Such materials include but are not limited to:

36 (i) Policy and policy manuals required by section 441.4 of this Title;

1 (ii) Policies and procedures specific to the care and services that shall be provided to a
2 parenting youth, a child of a parenting youth, a parenting youth and a child of a parenting youth
3 unit, as such terms are defined in section 427.2 of this Title, and for youth who are pregnant or
4 postpartum, including but not limited to:

5 (a) Admission and intake procedures;

6 (b) Training for staff on topics related to the care and treatment of pregnant, postpartum
7 or parenting youth and the children of parenting youth, which may include, but not be limited to:

8 (1) Child development;

9 (2) Care for postpartum youth;

10 (3) Youth and family engagement;

11 (4) Safety risks during pregnancy and for postpartum youth; and

12 (5) Safety risks for infants if the facility will provide care to any child of a parenting youth
13 that may be an infant; and

14 (c) Staffing ratios;

15 (d) Proposed model of trauma-informed care;

16 (e) Promotion of cultural awareness, and competency regarding race, culture, gender,
17 sexual orientation and socioeconomic factors;

18 (f) Community engagement;

19 (g) Case planning and permanency services;

20 (h) Clinical and behavioral health services;

21 (i) Availability of medical services;

22 (j) Educational, vocational, training and independent living services; and

23 (k) Specific services and programing tailored to meet the needs of pregnant, postpartum,
24 parenting youth or the children of parenting youth; and

25 (3) Include any other information as may be required by the Office of Children and
26 Family Services.

27 37. Part 448 of Title 18 of the Official Compilation of Codes, Rules and Regulations of
28 the State of New York is amended to add a new section_448.12 to read as follows:

29 448.12 Waivers.

1 (a) Any provision of other Parts of this Title notwithstanding, a written waiver of one or
2 more of the non-statutory requirements of this of this Part may be issued be the Office to an
3 applicant for, or the holder of, a license or an operating certificate from the Office to operate a
4 program or facility pursuant to this Part. Provided however, that no program or facility may
5 apply for a waiver regarding any requirements regarding non-discrimination. The waiver
6 pursuant to this section may be issued at the time of application for a license or operating
7 certificate to become a program or facility pursuant to this Title. A program or facility which
8 applies for a waiver subsequent to the issuance of a license or operating certificate, must
9 operate in full compliance with the regulations at all times prior to the issuance of a waiver.

10 (b) An applicant for, or holder of, a license or certificate to operate a program or facility
11 pursuant to this Part must submit to the office, in writing, any request for a waiver pursuant to
12 this section. The Office may prescribe a form to be used for waiver requests. The application for
13 a waiver must include:

14 (1) The specific regulation or regulations for which a waiver is sought;

15 (2) The reason a waiver is necessary; and

16 (3) A description of what will be done to achieve or maintain the intended purpose of the
17 regulation or regulations for which a waiver is sought and to protect the health, safety and
18 welfare of the youth in the program or facility.

19 (c) The Office may require the applicant for, or holder of, a license or operating
20 certificate to make physical plant modifications, and/or to adopt special methods, procedures,
21 and/or policies to protect the health, safety and welfare of youth as a condition of granting and
22 maintaining a waiver granted pursuant to this section.

23 (d) Written approval of a request for a waiver will be granted only pursuant to a
24 determination by the Office that the proposed waiver will not adversely affect the health, safety
25 or welfare of the youth in the program or facility and that the intended purpose of the regulation
26 or regulations to be waived will be met.

27 (e) Waivers may be time limited, at the discretion of the Office. Where a waiver is time
28 limited, the program or facility may apply for a continuation of the waiver. If the program or
29 facility does not apply for a continuation of the time-limited waiver or the continuation of the
30 time-limited waiver is not granted by the Office, the program or facility must resume compliance
31 with the regulation or regulations for which the waiver had been issued upon the expiration of
32 the waiver.

33 (f) Failure to adhere to the terms of the waiver and to any alternative measures required
34 by the Office as a condition of granting the waiver will result in rescission of the waiver and may
35 constitute sufficient cause for the Office to limit, suspend, or revoke the license or
36 operating certificate of the program or facility for which the waiver was granted. The Office must
37 notify the facility or program in writing of the rescission of a waiver, and the rescission will become
38 effective upon the receipt by the program of the written notification. The written notification of
39 the rescission may be communicated through personal delivery, electronic mail, telefax or regular
40 mail, at the discretion of the Office.

1 38. The title of Part 449 of Title of the Official Compilation of Codes, Rules and
2 Regulations of the State of New York is amended to read as follows:

3 Part 449 Supervised [Independent Living Programs] Settings.

4 39. Subdivision (c) – (h) of section 449.1 of the Official Compilation of Codes, Rules and
5 Regulations of the State of New York are amended and new subdivisions (i) and (j) are added to
6 read as follows:

7 (c) Supervised setting means, in accordance with section 371 of the Social Services
8 Law, a residential placement in the community approved and supervised by an authorized
9 agency in accordance with this Part to provide a transitional experience for older youth in which
10 such youth may live independently. A supervised setting includes, but is not limited to,
11 placement in a supervised independent living program as defined in this section, college
12 housing, shared housing with non-foster care youth and room rentals.

13 (d) Supervised setting program authorization means written approval issued by OCFS to
14 an authorized agency for the operation and approval of supervised settings.

15 (e) Supervised independent living program authorization means written approval issued
16 by OCFS to an authorized agency in accordance with this Part for the operation of a supervised
17 independent living program.

18 [(d)] (f) Supervised independent living program means one or more of a type of agency-
19 operated boarding home operated and certified by an authorized agency in accordance with this
20 Part to provide a transitional experience for older youth who, based upon their circumstances,
21 are appropriate for transition to the level of care and supervision provided in the program.

22 [(e)] (g) Supervised independent living unit means a home or apartment certified in
23 accordance with the standards set forth in this Part by an authorized agency approved by OCFS
24 to operate a supervised independent living program for the care of up to four youth including
25 their children. Each supervised independent living unit must be located in the community
26 separate from any of the authorized agency's other congregate dwellings.

27 [(f)] (h) Supervised independent living program certification means a certificate issued by
28 an authorized agency approved to operate a supervised independent living program for the
29 operation of a supervised independent living unit. Such certification is non-transferable and is
30 effective for a one year period.

31 [(g)] (i) Youth means a child or young adult in the care and custody or the custody and
32 guardianship of the commissioner of a local department of social services or OCFS.

33 [(h)] (j) Adult permanency resource means a caring committed adult who has been
34 determined by a social services district to be an appropriate and acceptable resource for a
35 youth and is committed to providing emotional support, [advise] advice and guidance to the
36 youth and to assist the youth as the youth makes the transition from foster care to responsible
37 adulthood.

38 40. Section 449.2 of Title of the Official Compilation of Codes, Rules and Regulations of
39 the State of New York is amended to read as follows:

1 449.2 Conditions for application and approval of a supervised [independent living] setting
2 program.

3 (a) An authorized agency may not operate a supervised [independent living] setting
4 program until it [received] receives the written approval of OCFS.

5 (b) An authorized agency desiring to operate a supervised [independent living] setting
6 program must apply to OCFS for authorization to operate such a program in a manner as
7 required by OCFS. Such application must include:

8 (1) a description of the need for the program and a list of the social services districts
9 interested in using the program, [including letters of support from all districts that intend to use
10 the proposed program];

11 (2) a description of the services that will be provided, including a plan setting forth how
12 the services will be provided;

13 (3) the population to be served;

14 (4) proposed staffing, including the proposed staff to youth ratio for the program and the
15 procedures for obtaining background checks on prospective employees, volunteers or
16 consultants;

17 (5) a description of how [units] settings will be located and [certified] approved or
18 certified;

19 (6) a certification that all supervised [independent living units] settings will be operated in
20 compliance with this Part; and

21 (7) any other information required by OCFS.

22 (c) A review to determine the applicant's compliance with OCFS requirements will be
23 conducted by OCFS after the receipt of the application and all required supporting
24 documentation.

25 (d) A notice of approval or denial of the application will be issued by OCFS after the
26 completion of the review [and, if],

27 (1) If the application is approved, a letter of approval will be issued by OCFS to the
28 applicant.[(e)]

29 (2) If an application is denied, OCFS will give written notice of the denial to the
30 applicant, informing the applicant of the reasons therefore and of the applicant's right to request
31 a hearing before a hearing officer designated by OCFS in accordance with the procedures set
32 forth in Part 343 of this Title. [(f)] The applicant's request for a hearing to review the denial of an
33 application for an operating certificate must be made within 60 days after written notice of
34 denial.[(g) the supervised independent living program and each independent living unit]

1 (e) Supervised settings are subject to the inspection, supervision and enforcement
2 powers of OCFS, as set forth in Article 7 of the Social Services Law.

3 41. Section 449.3 of Title of the Official Compilation of Codes, Rules and Regulations of
4 the State of New York is amended to read as follows:

5 449.3 Conditions for operation of a supervised [independent living program] setting
6 program by an authorized agency.

7 (a) After receiving approval to operate a supervised [independent living] setting program
8 from OCFS, the authorized agency may operate a program and certify or approve supervised
9 [independent living units] settings for occupancy by youth at the sites for which the authorized
10 agency has issued supervised [independent living program] setting certifications or approvals.

11 (b) An authorized agency may only issue supervised [independent living program]
12 setting certifications or approvals for sites that are in compliance with the requirements of this
13 Part.

14 (c) [An authorized agency operating an approved supervised independent living program
15 must notify OCFS of the certification, renewal and/or closure of each supervised independent
16 living unit. Such notification must be made by the authorized agency within 10 days of such
17 certification, renewal or closure in the form and manner as required by OCFS.] Prior to
18 placement in a supervised setting, with the exception of college-owned housing, the authorized
19 agency operating the supervised setting program must perform a readiness assessment for the
20 youth. Such readiness assessment must be in a form and manner prescribed by OCFS and
21 must determine that the placement in the supervised setting is appropriate based on the needs
22 of the individual youth.

23 (d) The authorized agency is responsible for the inspection, monitoring and/or
24 supervision, as applicable, of all the supervised [independent living units operated] settings
25 certified or approved by the authorized agency.

26 (e) [A professionally trained caseworker, a person with experience in child welfare, or a
27 person holding a master's degree in a related field who is in the employ of the authorized
28 agency must supervise the supervised independent living program.

29 (f) The person designated to supervise the program must make the determination as to
30 the youth to be placed in each supervised independent living unit, or such determination may be
31 made by an interdisciplinary team when it is the general practice of the authorized agency to
32 use such teams to make placement decisions.

33 (g) Adequate staffing must be maintained to provide services, visits, and supervision.
34 The supervision of youth participating in a supervised independent living program must be
35 performed by designated staff member(s) of the authorized agency who are qualified to perform
36 such function; staff member(s) so designated must visit and consult with each youth at the
37 supervised independent living unit at least twice per week. At least one visit per week must be
38 held outside of standard business hours. An increased number of visits are required, when
39 necessary, to address the individual health and safety needs of the residents of the supervised
40 independent living unit. Visits conducted pursuant to this subdivision may satisfy the casework
41 contact requirements of section 441.21(c) of this Title to the extent that visits are made by the

1 child's case planner or caseworker assigned to the child by the case planner.(h)] The authorized
2 agency must re-evaluate and renew the certification or approval of each supervised
3 [independent living unit] setting on an annual basis using standards contained in this Part. This
4 evaluation must be documented in the authorized agency's record.[(i)]

5 (f) Reimbursement for certified or approved supervised [independent living units]
6 settings will be provided on a basis and in a manner as determined by OCFS. [(j)]

7 (g) An authorized agency operating a supervised [independent living program] setting
8 program must submit fiscal and program data to OCFS in accordance with the provisions of Part
9 427 of this Title.

10 (h) In addition to the requirements for casework contacts contained in 441.21, staff must
11 visit or communicate with each youth placed in a supervised setting no less than once per week
12 and in the case of a supervised independent living unit, no less than twice a week. With the
13 exception of youth placed in college-owned housing, at least one casework contact per month
14 must be a face-to-face contact.

15 (i) Supervised setting must be in compliance with all applicable provisions of state and
16 local laws, ordinances, rules and regulations concerning health, safety and nondiscrimination.

17 (j) In addition to the conditions set forth above, the following conditions apply solely to
18 supervised independent living programs:

19 (1) An authorized agency operating an approved supervised independent living program
20 must notify OCFS of the certification, renewal and/or closure of each supervised independent
21 living unit. Such notification must be made by the authorized agency within 10 days of such
22 certification, renewal or closure in the form and manner as required by OCFS.

23 (2) A professionally trained caseworker, a person with experience in child welfare, or a
24 person holding a master's degree in a related field who is in the employ of the authorized
25 agency must supervise the supervised independent living program.

26 (3) The person designated to supervise the program must make the determination as to
27 the youth to be placed in each supervised independent living unit, or such determination may be
28 made by an interdisciplinary team when it is the general practice of the authorized agency to
29 use such teams to make placement decisions.

30 (4) Adequate staffing must be maintained to provide services, visits, and supervision.
31 The supervision of youth participating in a supervised independent living program must be
32 performed by designated staff member(s) of the authorized agency who are qualified to perform
33 such function; staff member(s) so designated must visit and consult with each youth at the
34 supervised independent living unit at least twice per week. At least one visit per week must be
35 held outside of standard business hours. An increased number of visits are required, when
36 necessary, to address the individual health and safety needs of the residents of the supervised
37 independent living unit. Visits conducted pursuant to this subdivision may satisfy the casework
38 contact requirements of section 441.21(c) of this Title to the [extend] extent that visits are made
39 by the youth's case planner or caseworker assigned to the youth by the case planner.

1 42. The title of section 449.4 of the Official the Official Compilation of Codes, Rules and
2 Regulations of the State of New York is amended to read as follows:

3 449.4 Requirements for each supervised [independent living unit] setting.

4 43. The opening clause and subparagraph (i) of paragraph (1) of subdivision (a) of
5 section 449.4 of the Official the Official Compilation of Codes, Rules and Regulations of the
6 State of New York is amended to read as follows:

7 (a) Personnel

8 (1) Each authorized agency operating a supervised [independent living] setting program
9 must establish a procedure to review and evaluate the backgrounds of and information supplied
10 by all applicants for employee, volunteer or consultant positions in the supervised [independent
11 living] setting program. This procedure must take into account any appropriate collective
12 bargaining agreement(s), and in the case of a supervised independent living program operated
13 by a social services official, must also comply with applicable provisions of the Civil Service
14 Law. As part of this procedure, each employee, volunteer, or consultant applicant must submit
15 all of the following information:

16 (i) a statement or summary of the applicant's employment history, including, but not
17 limited to, any relevant child-caring experience, any experience working with transition age
18 youth with histories of trauma, incarceration, homelessness or foster care, and any of the
19 applicant's own lived experience in foster care;

20 44. Paragraphs (2) and (3) of subdivision (a) of section 449.4 of the Official the Official
21 Compilation of Codes, Rules and Regulations of the State of New York are amended to read as
22 follows:

23 (2) Persons [caring] providing supervision and support for youth must be in good
24 physical and mental health, and free from any communicable disease infection, must be shown
25 by a certificate from a physician at the time of initial employment and annually thereafter.

26 (3) If an applicant discloses in the sworn statement furnished in accordance with
27 subparagraph (1)(iv) of this subdivision that he or she has been convicted of a crime, the
28 authorized agency operating the supervised [independent living] setting program must
29 determine, in accordance with guidelines developed and disseminated by OCFS, whether to
30 hire the applicant or to use the volunteer or consultant. If the authorized agency determines it
31 will hire the applicant or use the applicant as a volunteer or consultant, the authorized agency
32 must maintain a written record, as part of the application file or employment or other personnel
33 record of such person, of the reason(s) why such person was determined to be appropriate and
34 acceptable as an employee, volunteer or consultant.

35 45. The opening clause of subparagraph (i) of paragraph (4) of subdivision (a) of section
36 449.4 of the Official the Official Compilation of Codes, Rules and Regulations of the State of
37 New York is amended to read as follows

38 (i) With regard to any person who is actively being considered for employment, or to any
39 individual or any person who is employed by an individual, corporation, partnership or
40 association which provides goods or services to the authorized agency, the authorized

1 agency operating the supervised [independent living] setting program must inquire of OCFS
2 whether any such person is the subject of an indicated report of child abuse or maltreatment on
3 file with the Statewide Central Register of Child Abuse and Maltreatment. In addition, the
4 authorized agency may inquire whether any current employee or any person who is being
5 considered for use as a volunteer or for hiring as a consultant with youth who are being cared
6 for by the supervised setting [independent living] program is the subject of an indicated report of
7 child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and
8 Maltreatment. An inquiry regarding any current employee may be made only once in any six-
9 month period.

10 46. Subparagraph (v) and the opening clause of subparagraph (vi) of paragraph (4) of
11 subdivision (a) of section 449.4 of the Official the Official Compilation of Codes, Rules and
12 Regulations of the State of New York are amended to read as follows:

13 (v) If the applicant, employee or other person about whom the authorized agency has
14 made an inquiry is found to be the subject of an indicated report of child abuse or maltreatment,
15 the authorized agency must determine, on the basis of information it has available and in
16 accordance with guidelines developed and disseminated by OCFS, whether to hire, retain or
17 use the person as an employee, volunteer or consultant, or to permit the person providing
18 goods or services to have access to youth being cared for by the authorized agency. Whenever
19 such person is hired, retained, used or given access to youth, the authorized agency must
20 maintain a written record, as part of the application file or employment or other personnel record
21 of such person, of the specific reason(s) why such person was determined to be appropriate
22 and acceptable as an employee, volunteer, consultant, or provider of goods or services with
23 access to youth being cared for by the supervised [independent living] setting program.

24 (vi) If the authorized agency denies employment or makes a decision not to retain an
25 employee, not to use a volunteer, not to hire a consultant, or not to permit a person providing
26 goods or services to have access to youth being cared for by the supervised [independent
27 living] setting program, the authorized agency must provide a written statement to the applicant,
28 employee, volunteer or consultant or other person indicating whether the denial or decision was
29 based in whole or in part on the existence of the indicated report and, if so, reasons for the
30 denial or decision. If the denial or decision was based in whole or in part on such indicated
31 report, the statement must also include written notification, in the form prescribed by OCFS to
32 the applicant, employee, volunteer, consultant or other person that:

33 47. Subparagraph (iii) of paragraph (5) of subdivision (a) of section 449.4 of the Official
34 the Official Compilation of Codes, Rules and Regulations of the State of New York is amended
35 to read as follows:

36 (iii) Each program under this section is required by section 553 of the Executive Law,
37 and subdivision 1 of section 378-a of the Social Services Law, to obtain criminal history
38 background checks for certain prospective employees, [or] volunteers[who will have the
39 potential for substantial, unsupervised or unrestricted physical contact with children or
40 vulnerable persons] or consultants through the Justice Center as authorized by article 20 of the
41 Executive Law.

42 48. Subdivisions (b), (c) and (d) of section 449.4 of the Official the Official Compilation
43 of Codes, Rules and Regulations of the State of New York are amended to read as follows:

1 (b) Physical facility requirements for supervised setting, except for college-owned
2 housing

3 (1) A safety checklist in a form and format prescribed by OCFS must be completed with
4 the youth prior to initial placement in any supervised setting, with the exception of a setting
5 classified as college-owned housing, and prior to any change in placement to another
6 supervised setting, or at least annually thereafter.

7 (2) A supervised [independent living unit] setting must be in an appropriate
8 neighborhood and so located that it [is readily accessible] allows access to necessary services
9 and adequate transportation.

10 [(2)] (3) A supervised [independent living unit] setting must be of sufficient size to provide
11 proper accommodations for the youth placed in the [unit] setting and in compliance with all
12 applicable state and local ordinances, rules, regulations and codes.

13 [(3)] (4) A supervised [independent living unit] setting must be kept in clean and sanitary
14 condition and in good repair, and must provide for the reasonable comfort and wellbeing of the
15 youth.

16 [(4)] (5) A supervised [independent living unit] setting must be [protected by a fire
17 detection system, a sprinkler system, as those terms are defined in section 441.2 of this Title,
18 or] in compliance with all applicable state and local ordinances, rules, regulations and codes,
19 including having a smoke detection system or individual smoke detectors and individual carbon
20 monoxide detectors as required by applicable local codes and the New York State Uniform Fire
21 Prevention and Building Code.

22 (i) Buildings used in whole or in part as a supervised [independent living unit] setting
23 must comply with all applicable laws, ordinances, rules, regulations and codes relating to
24 buildings, fire protection, health and safety.

25 (a) In addition to the above, the following requirements also apply if the supervised
26 setting is a supervised independent living unit:

27 [(ii)] (1) All areas of fire hazard in the supervised independent living unit must be
28 protected by a sprinkler system or fire detection system, as those terms are defined in section
29 441.2 of this Title. Areas of fire hazard must be separated from other areas by construction
30 having a fire resistance rating of at least one hour. An area of fire hazard means a heating
31 equipment room; a woodworking shop; a paint shop; a storeroom for mattresses, furniture,
32 paints and/or other combustible or flammable materials or liquids; and any other space or room
33 exceeding 100 square feet in floor area where other combustible or flammable materials are
34 regularly stored.

35 [(iii)] (2) Other than quantities of flammable materials necessary for the operation and
36 maintenance of the supervised independent living unit, which must be kept in closed containers
37 in storage cabinets, and fuel oil, which must be kept in oil storage tanks, flammable materials
38 must not be stored in the supervised independent living unit.

39 [(iv)] (ii) All fire protection systems and equipment must be designed, installed and
40 maintained in accordance with the New York State Uniform Fire Prevention and Building Code.

1 All fire protection systems and equipment must be inspected according to local and New York
2 State building codes. A written report of such inspections must be kept on file by the authorized
3 agency. All identified defects in systems or equipment must be corrected and re-inspected
4 immediately. This inspection requirement does not apply to supervised settings that are located
5 in private, owner-occupied buildings or college owned housing.

6 [(v)](iii) A supervised [independent living unit] setting must be free from all conditions that
7 constitute a hazard to the life, health or safety of any person. The following are prohibited:

8 (a) portable electric space heaters or self-contained fuel-burning space heaters, unless
9 specifically permitted by the authorized agency and plugged into a grounded outlet

10 (b) solid-fuel-burning, free-standing stoves, except where approved in writing by the
11 authorized agency;

12 (c) use of fuel-burning or electric "hot plates";

13 (d) illegal connections for gas appliances;

14 (e) combustible or flammable containers for ashes;

15 (f) the accumulation of combustible or flammable materials in any part of the unit;

16 (g) damaged equipment, furnishings or physical plant, when their condition makes them
17 unsafe for normal use

18 (h) broken plumbing or stopped sewers that are not promptly repaired;

19 (i) [exposed steam pipes, heating pipes and radiators and unenclosed heating plants
20 and equipment with which youth may come in contact;

21 (j) use of materials containing asbestos in any construction, renovation or repair of any
22 supervised independent living program where such construction, renovation or repair occurs on
23 or after July 1, 1993;

24 (k) any furniture, toys or construction containing lead-based paint;

25 (l) any lead paint hazard or paint condition conducive to lead poisoning, as such term is defined
26 in 10 NYCRR 67.1. Any building used in whole or in part as a supervised independent living unit
27 occupied by a child six years of age or younger must be inspected to determine if it presents
28 such hazard. The authorized agency must request the local health department to perform such
29 inspection and is responsible for correcting any hazard called to its attention as a result of such
30 inspection. In the event that such request for inspection is rejected by the local health
31 department, the authorized agency must notify OCFS immediately;

32 [(m)] (j) extension cords, unless approved in writing by the authorized agency; and

33 [(n)] (k) any other condition deemed hazardous by OCFS or the authorized agency

1 (l) In addition to the above, the following items are additionally prohibited if the
2 supervised setting is a supervised independent living unit:

3 (1) exposed steam pipes, heating pipes and radiators and unenclosed heating plants
4 and equipment with which youth may come in contact;

5 (2) use of materials containing asbestos in any construction, renovation or repair of any
6 supervised independent living program where such construction, renovation or repair occurred
7 on or after July 1, 1993;

8 (3) any furniture, toys, or construction containing lead-based paint in any supervised
9 independent living unit in which the youth lives with their child.

10 [(vi)] (iv) Fire extinguishers must be provided in each supervised [independent living unit]
11 setting and maintained in accordance with the New York State Uniform Fire Prevention and
12 Building Code. Additionally, if the supervised setting is a supervised independent living unit the
13 fire extinguishers must be wall mounted between two feet and four-and-one-half feet above the
14 floor; all staff members and youth must be instructed in the proper operation of extinguishers;
15 and in each unit there must be a minimum of one fire extinguisher on each floor and,
16 additionally, one in the kitchen, one in the laundry room and one outside any heating equipment
17 room. [(vii)]

18 (v) A supervised [independent living unit] setting must have a minimum of two means of
19 egress from the unit's floor that are readily accessible to the youth. For a window opening to
20 qualify as a means of egress, it must be in compliance with all applicable state and local
21 ordinances, rules, regulations and codes. A fully sprinklered building does not require a second
22 means of egress. In addition, if the supervised setting is a supervised independent living unit, for
23 the window opening to qualify as a means of egress, it must be at least 24 inches high and 20
24 inches wide with the bottom of the window no higher than three feet eight inches above the floor
25 unless acceptable access is provided by steps or furniture fixed in place. An upper level
26 window, to qualify as a means of egress, must also have a platform outside the window and a
27 stair, permanently affixed to the building, leading to ground level. [(viii)]

28 (vi) Youth placed in a supervised setting that is a supervised independent living unit are
29 not permitted to sleep above the second story in a building of type 5, wood frame construction
30 (that type of construction in which the walls, partitions, floors and roof are wholly or partly of
31 wood or other combustible materials) unless a fully approved operating fire protection and/or fire
32 detection systems exists throughout the building including basement and attic areas. Youth of
33 limited mobility and an unaccompanied child of parenting youth as such term is defined in
34 section 441.2 of this Title are not permitted above the first story in a building of wood frame
35 construction. A building of wood frame construction occupied by youth of limited mobility must
36 be protected by a sprinkler system and the first story must be handicap accessible for youth of
37 limited mobility and accommodate the needs of such youth.

38 [(ix)] (vii) All exit doors and means of egress, halls and stairs must be in compliance with
39 all applicable state and local ordinances, rules, regulations and codes and must be well lighted
40 and kept clean, free of obstruction and ready at all times for immediate use. [Battery-operated]
41 In addition, if the supervised setting is a supervised independent living unit, battery-operated or
42 generator-powered emergency lighting units or systems must be provided and maintained in
43 accordance with the New York State Uniform Fire Prevention and Building Code.

- 1 [(x) Each supervised independent living unit must be provided with emergency lights, such as
2 flashlights or battery-operated lanterns, in good working order.
- 3 (xi) Each supervised independent living unit must have a plan for evacuation of the unit, posted
4 in a conspicuous place on each floor level in the unit. The agency must maintain a diagram of
5 the living unit's floor plan on file.
- 6 (xii) Youth and staff must be instructed in how to evacuate the building in which the supervised
7 independent living unit is located. Newly admitted youth, newly hired staff and volunteers must
8 be instructed in evacuation procedures as part of their orientation to the supervised independent
9 living unit. Evacuation procedures must be reviewed quarterly with youth after placement.
- 10 (xiii) Electrical wiring and equipment must comply with the New York State Uniform Fire
11 Prevention and Building Code and any other applicable laws, ordinances, rules, regulations and
12 codes. Certification of such compliance is required for all new supervised independent living
13 units prior to opening and a record of such certification of compliance must be kept on file by the
14 authorized agency. OCFS may require recertification of the safety of an electrical system in any
15 supervised independent living unit where the electrical system appears to be unsafe or
16 inadequate, or if new electrical work has been done.
- 17 (xiv) Heating, ventilating and other mechanical systems must comply with the New York State
18 Uniform Fire Prevention and Building Code and any other applicable laws, ordinances, rules,
19 regulations and codes and must be designed, installed, located and maintained so that under
20 normal conditions of use such equipment and systems are not a danger to the health or welfare
21 of youth or staff in the building in which the supervised independent living unit is located.
22 Heating plants and equipment must be protected from tampering by youth.
- 23 (xv) All shop, maintenance, grounds and farm equipment must be equipped with approved
24 safety devices and must be maintained in safe working condition. Youth must not operate such
25 equipment except under the close supervision of responsible staff members.
- 26 (xvi) A minimum of one non-coin operated, single line telephone must be provided and must be
27 accessible at all times in each supervised independent living unit occupied by youth or each
28 youth must be provided with a personal cellular telephone. Emergency telephone numbers for
29 fire, police and medical assistance must be posted in the supervised independent living unit.
- 30 (xvii) Each authorized agency must request in writing an annual safety inspection of the
31 buildings in which supervised independent living units are located and all fire protection
32 equipment by local fire authorities and/or the authorized agency fire and casualty insurance
33 carrier who must be requested to give the authorized agency a written report of their findings.
34 An authorized agency is responsible for correcting any hazards called to its attention as a result
35 of such inspection that could affect a supervised independent living unit in the building and for
36 keeping a copy of the report and a written record of the action taken, with date, on file. An
37 authorized agency must keep a copy of the written request for inspection and the response on
38 file and must notify OCFS immediately in the event that such request for inspection is rejected
39 by the local fire authorities or the authorized agency's fire and casualty insurance carriers.
- 40 (xviii)]

1 (viii) An authorized agency must report promptly by telephone to OCFS the occurrence
2 of any fire in any supervised [independent living unit] setting, or within any building in which
3 such authorized agency has approved or certified a supervised [independent living unit] setting.
4 This report must be made as soon as possible and in no event later than 24 hours after the fire,
5 and the authorized agency must then confirm the occurrence of the fire by a written report to
6 OCFS within 10 working days after the date of the fire. The written report must include:

7 (a) the date and time of the fire;

8 (b) the extent of personal injuries;

9 (c) the extent of property damage;

10 (d) the probable cause of the fire, if known;

11 (e) which fire department responded;

12 (f) whether youth were relocated, and, if so, where;

13 (g) whether fire and smoke detection and alarm devices or systems operated properly;

14 (h) whether evacuation procedures were followed;

15 (i) the location of the fire;

16 (j) a description of the progress of the fire, the manner in which the fire spread and what
17 efforts were made and methods were used to combat the fire; and

18 (k) any problems encountered with evacuation procedures, response by the fire
19 department and ability of the fire department to combat the fire effectively.

20 [(xix)] (ix) All fireplaces and their chimneys in the supervised [independent living unit]
21 setting must be inspected and cleaned annually by a qualified person. [(5)]

22 (x) The following additional requirements only apply if the supervised setting is a
23 supervised independent living unit:

24 (a) Each supervised independent living unit must be provided with emergency lights,
25 such as flashlights or battery-operated lanterns, in good working order.

26 (b) Each supervised independent living unit must have a plan for evacuation of the unit,
27 posted in a conspicuous place on each floor level in the unit. The agency must maintain a
28 diagram of the living unit's floor plan on file.

29 (c) Youth and staff must be instructed in how to evacuate the building in which the
30 supervised independent living unit is located. Newly admitted youth, newly hired staff and
31 volunteers must be instructed in evacuation procedures as part of their orientation to the
32 supervised independent living unit. Evacuation procedures must be reviewed quarterly with
33 youth after placement.

1 (d) Electrical wiring and equipment must comply with the New York State Uniform Fire
2 Prevention and Building Code and any other applicable laws, ordinances, rules, regulations and
3 codes. Certification of such compliance is required for all new supervised independent living
4 units prior to opening and a record of such certification of compliance must be kept on file by the
5 authorized agency. OCFS may require recertification of the safety of an electrical system in any
6 supervised independent living unit where the electrical system appears to be unsafe or
7 inadequate, or if new electrical work has been done.

8 (e) Heating, ventilating and other mechanical systems must comply with the New York
9 State Uniform Fire Prevention and Building Code and any other applicable laws, ordinances,
10 rules, regulations and codes, and must be designed, installed, located and maintained so that
11 under normal conditions of use such equipment and systems are not a danger to the health or
12 welfare of youth or staff in the building in which the supervised independent living unit is located.
13 Heating plants and equipment must be protected from tampering by youth.

14 (f) Each authorized agency must request in writing an annual safety inspection of the
15 buildings in which supervised independent living units are located and all fire protection
16 equipment by local fire authorities and/or the authorized agency fire and casualty insurance
17 carrier who must be requested to give the authorized agency a written report of their findings.
18 An authorized agency is responsible for correcting any hazards called to its attention as a result
19 of such inspection that could affect a supervised independent living unit in the building and for
20 keeping a copy of the report and a written record of the action taken, with date, on file. An
21 authorized agency must keep a copy of the written request for inspection and the response on
22 file and must notify OCFS immediately in the event that such request for inspection is rejected
23 by the local fire authorities or the authorized agency's fire and casualty insurance carriers.

24 (6) There must be an adequate and accessible supply of hot and cold water of safe
25 quality in the supervised [independent living unit] setting. [(6)]

26 (7) The supervised [independent living unit] setting must be effectively screened against
27 flies and other insects. [(7)]

28 (8) Temperature in the supervised [independent living unit] setting must be maintained
29 at a comfortable level according to New York State Fire Prevention and Building Codes. [(8)]

30 (9) Adequate bathing, toilet and lavatory facilities must be provided in the supervised
31 [independent living unit,] setting and must be kept in sanitary condition. [(9)]

32 (10) Each youth must have a separate bed. Single bedrooms must [contain at least 70
33 square feet. Bedrooms occupied by more than one youth must have 70 square feet plus an
34 additional 50 square feet of floor area per additional youth. There must be at least two feet of
35 space between beds. Youth must not walk through one bedroom to get to another bedroom]
36 comply with all applicable state and local ordinances, rules, regulations and codes. [(10)]

37 (11) All habitable rooms[, except the kitchen,] must [be no less than seven feet in any
38 dimension. For rooms with sloped ceilings, include only the floor dimensions with a clear ceiling
39 height of five feet or more in this calculation. One-third of the minimum required floor area of
40 each room must have a ceiling height of seven feet] comply with all applicable state and local
41 ordinances, rules, regulations and codes regarding room dimensions and ceiling clearances.
42 [(11)]

1 (12) The kitchen must [have at least three feet of clear passage between counter fronts
2 and appliances or counter fronts and walls] comply with all applicable state and local
3 ordinances, rules, regulations and codes. [(12)]

4 (13) Every sleeping room occupied by youth must have [good] a source of natural light
5 and ventilation, and must have one or more windows [opening] facing directly to the outside.
6 [(13)]

7 (14) No bed may be located in an unfinished attic, unfinished basement or other space
8 commonly used for other than bedroom purposes and all sleeping areas must comply with all
9 applicable state and local ordinances, rules, regulations and codes. [(14)]

10 (15) Separate and accessible drawer space for personal belongings, and sufficient
11 closet space for indoor and outdoor clothing, must be available for individual youth. [(15)]

12 (16) Supervised settings which are a supervised independent living [units which] units
13 and that [house] provide housing to parenting youth and their children must comply with the
14 following additional conditions:

15 (i) no peeling or damaged paint or plaster may be present;

16 (ii) access to outdoor play space must be available;

17 (iii) radiators and piping accessible to children must be covered or have a barrier to
18 protect children;

19 (iv) porches, decks, and stairways must have railings with a barrier to prevent children
20 from falling;

21 (v) adequate barriers to prevent children from gaining access to unsafe, dangerous or
22 hazardous areas or devices, such as fireplaces, wood burning stoves, gas space heaters, pools,
23 spa pools, hot tubs, and second floor and above windows, must be provided;

24 (vi) protective caps, covers, or permanently installed obstruction devices on all electrical
25 outlets accessible to children must be present;

26 (vii) all matches, lighters, medicines, drugs, cleaning material, detergents, aerosol cans,
27 beauty aids, and poisonous or toxic materials and plants must be safely stored and must be
28 used in such a way that they will not contaminate play surfaces, food and food preparation
29 areas, or constitute a hazard to children, and other such materials must be kept in a place
30 inaccessible to children;

31 (viii) hand bags, backpacks, briefcases, plastic bags, toys and objects small enough for
32 children to swallow must not be accessible to children; and

33 (ix) each child must have a separate bed or crib, as appropriate. [(16)]

34 (17) Children of different genders above the age of four years may not sleep in the
35 same room unless otherwise deemed appropriate by the authorized agency responsible for

1 operating or certifying the supervised independent living unit, except that a parenting youth may
2 sleep in the same room as [his or her] their children.

3 (c) Services

4 (1) At initial entry to a supervised setting program and at least on a quarterly basis and
5 thereafter, an authorized agency operating an approved supervised setting program must
6 conduct a diligent and ongoing effort to establish adult permanency resources available to the
7 youth; including identification and engagement of all kinship supports and resources who may
8 contribute positively to the youth.

9 (2) Supervised [independent living] setting programs must include but are not limited to
10 the following service components to provide youth with opportunities to demonstrate and
11 achieve positive outcomes and make successful transitions to [self-sufficiency] adulthood:

12 (i) [an ongoing support network of consistent adults or families in their lives;(ii)] a diligent
13 and ongoing effort to [establish an adult permanency resource for each youth] actively involve
14 the youth in identifying, establishing, and maintaining connections, as well as fostering
15 relationships with adult permanency resources who will continue to provide support and
16 guidance to the youth prior to and following discharge from foster care; [(iii)]

17 (ii) preventive health care and programs to provide the youth with an understanding of
18 appropriate health and behavioral health care literacy, including but not limited to navigation of
19 medical systems, routine health care standards and non-routine or emergency/urgent care
20 experiences, including accessing preventive health care in their community when available,
21 which may include but are not limited to sexual and reproductive health and where relevant,
22 parenting skills; [(iv)]

23 (iii) employment skills/training opportunities and the development of work ethics,
24 including services that develop a youth's ability to find, apply for and retain appropriate
25 employment as well as employment programs/vocational training that help youth gain
26 experience and skills in a specific field or profession; [(v)]

27 (iv) educational support, including secondary academic services designed to help a
28 youth complete high school or complete classes for the New York State high school equivalency
29 exam and/or post-secondary services designed to help a youth enter or complete a college or
30 vocational program; [(vi)]

31 (v) housing support, including working with the youth to look for, secure and maintain
32 stable housing; [(vii)]

33 (vi) budgeting and financial [management] literacy skills, including but not limited to an
34 assessment of the youth's income and expenses to prepare for self-sufficiency; [(viii)]

35 (vii) home management skills, including but not limited to shopping, cooking and
36 [housecleaning skills] maintaining the living environment; [(ix)]

37 (viii) access to community resources/community linkages, including but not limited to
38 medical, mental health, youth development, civic, social and other supports that provide the
39 youth knowledge and awareness of their neighborhood/community;

1 [(x) connections with caring adults, such as mentors; (xi)]
2 (ix) positive youth development; [(xii)]
3 (x) necessary developmentally appropriate services, as determined based on an
4 assessment of the needs of the individual youth; [(xiii)]
5 (xi) preparation for discharge and the transition to [adulthood] self-sufficiency;[(xiv)]
6 (xii) parenting skills, healthy pregnancy skills, child development education and any
7 other [child rearing training] individualized and developmentally appropriate training deemed
8 necessary for a parenting youth and their child; and [(xv)]
9 (xiii) ongoing comprehensive assessment of life skills [competency] for each individual
10 youth and for pregnant or parenting youth life skills specific to their needs. [(2)]
11 (3) Supervised settings [independent living units] that house [parent youth and their
12 children] a parenting youth and a child of a parenting youth unit, as defined in section 427.2 of
13 this Title, or a youth who may be pregnant, must also meet the following criteria:
14 (i) The authorized agency staff and pregnant or parenting youth must maintain current
15 first-aid and CPR training certification.
16 (ii) The [plan for youth in placement must include] pregnant or parenting youth in
17 placement must have a plan that includes developmentally appropriate childcare for the child
18 and is established in consultation with authorized agency staff.
19 (iii) [No] The authorized agency must make available to pregnant or parenting youth and
20 their children services to support the youth's ability to parent effectively and to support the
21 developmental needs of the youth and the family.
22 (iv) Additionally, if the supervised setting is a supervised independent living unit, no more
23 than two children under 2 years of age may be cared for in [a]the supervised independent living
24 unit.
25 (d) Other conditions required for youth participation in supervised [independent living]
26 setting programs.
27 (1) Youth who participate in the supervised [independent living] setting program must be
28 at least 16 years of age and not more than 21 years of age.
29 (2) Such youth must have [been in a foster care placement for at least 45 consecutive
30 days during the period immediately preceding the date on which the youth entered a supervised
31 independent living program, or must have been in the care and custody or custody and
32 guardianship of a social services official or OCFS and have been discharged from foster care on
33 a trial basis in accordance with the provisions of section 430.12(f)(4) of this Title] a readiness
34 assessment completed with them prior to initial placement in a supervised setting or prior to a
35 change in placement; this requirement does not apply to youth placed in a college-owned
36 housing.

- 1 (3) The supervised [living] setting program must comply with applicable discharge
2 planning requirements set forth in Part 428 and section 430.12(f) of this Title.
- 3 (4) As required by section 428.7 of this Title, a plan amendment must be documented
4 and approved by the social services district with case management responsibility for the child
5 within 30 days of discharge of the child from foster care.
- 6 (5) Prior to the transfer of a [foster child] youth in foster care to a supervised
7 [independent living] setting program, the local district which has care and custody or custody
8 and guardianship of the child, or, for a youth in the custody of OCFS, OCFS, must give written
9 approval of the transfer. This written requirement does not apply to youth placed in college-
10 owned housing.
- 11 (6) Health supervision, medical and dental care must be provided to each youth in
12 accordance with section 441.22 of this Title.
- 13 (7) The educational, vocational and recreational needs of youth must be met.
14 Opportunities to explore higher education and financial aid information and support must be
15 made available to the youth as appropriate.
- 16 (8) Each supervised independent [living unit] setting must have facilities that will enable
17 youth to prepare meals. The authorized agency must [require that] support the youth [maintain]
18 in maintaining sufficient quantities of good quality, properly prepared food specific to the dietary
19 needs of the youth. This requirement does not apply if the supervised setting is college-owned
20 housing with communal meal space.
- 21 (9) Youth must have individual toilet articles [and requisites] for personal grooming and
22 hygiene[suitable to ages and needs] that are safe and age and developmentally appropriate.
- 23 (10) Youth must have appropriate seasonal clothing in sufficient quantity. Clothing must
24 be kept clean and in good repair.
- 25 (11) [A supervised independent living unit may occupy a house or apartment rented or
26 owned by the authorized agency.
- 27 (12) No supervised independent living unit may house more than four youth including their
28 children.
- 29 (13) If two or more youth live together in the same unit, they must be of the same gender unless
30 the authorized agency receives approval to place siblings of the opposite gender together by
31 utilizing the waiver process identified in section 449.6 of this Part.
- 32 (14) Only persons placed in the supervised independent living program by the authorized
33 agency may reside in a supervised independent living unit] Youth must be provided regular and
34 ongoing opportunities to engage in age or developmentally-appropriate activities, in accordance
35 with the requirements of the reasonable and prudent parenting standard. [(15)]

1 (12) Supervised [independent living] setting programs must be in compliance with all
2 applicable provisions of State and local laws, ordinances, rules and regulations concerning
3 health, safety and nondiscrimination.

4 49. Subdivision (b) of section 449.6 of the Official Compilation of Codes, Rules and
5 Regulations of the State of New York is amended to read as follows:

6 (b) An authorized agency operating a supervised [independent living] setting program
7 must maintain a record of each youth received for care, showing the name, date of birth and
8 religious faith of the youth; the supervised [independent living unit] setting to which the youth is
9 assigned; and other information pertinent for identification and supervision of the youth.

10 50. Section 449.7 of the Official Compilation of Codes, Rules and Regulations of the
11 State of New York is amended to read as follows:

12 449.7 Waivers

13 (a) [In] Any provision of other Parts of this Title notwithstanding and in order to
14 encourage the development of appropriate programs that will enable [foster] youth in foster care
15 to live on their own in the community, a written waiver of one or more of the non-statutory
16 provisions of this Part may be granted by OCFS to authorized agencies which propose to
17 operate or which operate supervised [independent living program and supervised independent
18 living units] setting programs. Provided however, that no authorized agency may apply for a
19 waiver regarding any requirements regarding non-discrimination. Such waiver may be granted
20 only after an authorized agency has submitted to OCFS: the specific regulation or regulations
21 for which a waiver is sought; the reason a waiver is necessary; and a plan which describes the
22 operation or proposed operation of the authorized agency's supervised [independent living]
23 setting program and demonstrates that granting the waiver will not create any hazardous
24 conditions which could impair the health or safety of the youth, and OCFS has approved the
25 waiver plan in writing.

26 (b) An authorized agency which operates a supervised [independent living] setting
27 program and which has applied for a waiver must comply with the provisions of this Part until
28 OCFS approves the requested waiver in writing.

29 (c) An authorized agency which does not operate a supervised [independent living] setting
30 program but proposes to do so subject to a waiver and which submits a waiver plan to OCFS
31 pursuant to this subdivision may not operate the supervised [independent living program or
32 supervised independent living unit] setting program or approve any supervised setting until such
33 waiver plan has been approved pursuant to this subdivision.

34 (d) OCFS may require the applicant for, or holder of, a license or operating certificate to
35 make physical plant modifications, and/or to adopt special methods, procedures, and/or policies
36 to protect the health, safety and welfare of youth as a condition of granting and maintaining a
37 waiver granted pursuant to this section.

38 (e) Written approval of a request for a waiver will be granted only pursuant to a
39 determination by OCFS that the proposed waiver will not adversely affect the health, safety or
40 welfare of the youth in the program or facility and that the intended purpose of the regulation or
41 regulations to be waived will be met.

1 (f) Waivers may be time limited, at the discretion of OCFS. Where a waiver is time
2 limited, the program or facility may apply for a continuation of the waiver. If the program or
3 facility does not apply for a continuation of the time-limited waiver or the continuation of the
4 time-limited waiver is not granted by OCFS, the program must resume compliance with the
5 regulation or regulations for which the waiver had been issued upon the expiration of the waiver.

6 (g) Failure to adhere to the terms of the waiver and to any alternative measures required
7 by OCFS as a condition of granting the waiver will result in rescission of the waiver and may
8 constitute sufficient cause for OCFS to limit, suspend, or revoke the license or
9 operating certificate of the facility or program for which the waiver was granted. OCFS must
10 notify the facility or program in writing of the rescission of a waiver, and the rescission will become
11 effective upon the receipt by the program of the written notification. The written notification of
12 the rescission may be communicated through personal delivery, electronic mail, telefax or regular
13 mail, at the discretion of OCFS.

14 51. Section 449.8 of the Official Compilation of Codes, Rules and Regulations of the
15 State of New York is amended to read as follows:

16 449.8 Discontinuance.

17 An authorized agency may not discontinue the operation of a supervised [independent
18 living] setting program except upon service of written notice to OCFS at least 90 days in
19 advance of the proposed discontinuance. Such notice must comply with the requirements of
20 section 476.2(d) of this Title.

21 52. Subparagraph (vi) of paragraph (4) of subdivision (a) of section 628.3 of the Official
22 Compilation of Codes, Rules and Regulations of the State of New York is amended to read as
23 follows:

24 (vi) running away--up to seven consecutive days, except authorized agencies that have
25 received approval from the Office of Children and Family Services to operate a program for
26 youth who have been or are at risk of sex trafficking, pursuant to Part 440 of this Title, may be
27 reimbursed for up to 14 consecutive days for youth who have been or are at risk of sex
28 trafficking who run away.