



OFFICE OF POLICY, PROCEDURES AND TRAINING

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Executive Deputy Commissioner

DHS-PB-2021-004

SUBJECT: DHS Compliance Procedure	APPLICABLE TO: All DHS Directly-Operated or Funded Facilities, DHS Facilities and Logistics, and DSS ORCA	ISSUED: March 26, 2021 (Replaces DHS-PB-2018-012)
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ADMINISTERED BY: DSS Office of Regulatory Compliance and Accountability (ORCA)	APPROVED BY: Joslyn Carter, Administrator Department of Social Services/ Department of Homeless Services
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PURPOSE

The purpose of this procedure is to inform staff of the Department of Homeless Services (DHS or “Agency”) of DHS’ policy and procedure concerning provider accountability within the DHS temporary housing system.

INTRODUCTION

With its providers, DHS provides Temporary Housing Assistance (THA) to homeless individuals and families when needed. The applicable law requires DHS to provide THA in a setting that is safe, habitable and in compliance with all governing laws, codes, regulations and rules. Additionally, the provision of THA must include appropriate social services for DHS’ clients.

The provision of THA is also governed by the terms set forth in contracts with providers. When an Agency review of services and/or formal audits are conducted, negative findings may warrant additional compliance requirements.

POLICY

This procedure delineates the enforcement process for ensuring providers' compliance with the practices and tools used by DHS to fulfill its obligation to provide homeless individuals and families with safe, habitable temporary housing that complies with all governing laws, codes, regulations and rules. However, DHS reserves the right to utilize all means, authorized by law, to compel compliance with this procedure, its contracts, and the governing laws, codes, regulations and rules.

COMPLIANCE WITH INSPECTIONS AND MONITORING INSTRUMENTS

- Purpose: to ensure compliance with the below oversight:
 - The Routine Site Review and Inspection (RSRI), Monitoring Instruments (MI), which include but are not limited to the Monitoring Tool Evaluation (MTE) and the Shelter Monitoring Instrument (SMI), and the Shelter Performance Scorecard (SPS), are DHS's primary tools to determine whether a shelter's physical environment and programmatic services remain in compliance with the laws, codes, contracts, regulations and rules governing THA.
 - Additionally, the RSRI and MI help DHS evaluate the appropriateness and efficiency of the provider's use of budgeted funds.
 - RSRI and MI produce inspection and performance reports that stipulate whether and the extent to which facilities are complying or performing in accordance with the relevant laws, codes, contracts, regulations, rules, and budgets for THA and DHS temporary housing provision.
 - Additionally, the Agency undertakes other reviews of services, which may include any and all aspects of a provider's operation and organizational capacity – garnered via complaints or other forms of feedback, and/or formal audits conducted by the Office of New York State Comptroller (OSC), Office of the New York City Comptroller (NYCC), the Department of Investigations (DOI), as well DSS-required audits (Audits), may warrant additional compliance actions, including corrective action plans (CAPs).
 - Providers are responsible for ensuring that the operation of their DHS-funded facilities complies with all governing laws, codes, regulations and rules, as well as contractual requirements, where applicable. Included in this responsibility is the requirement that providers respond to CAPs in accordance with the timeframes established by the responsible DHS division(s).

- Note that most inspections or reviews of service/performance report conducted by DHS and its oversight agencies require separate responses and CAPs from providers. Providers are required to respond to each inspection report or performance report, including but not limited to, the RSRI, MI, and the New York State Office of Temporary and Disability Assistance (OTDA) inspection reports, in the manner, timeliness, and form prescribed by the respective issuing DHS division or oversight agency.
- Responding to one inspection or reviews of service/performance report does not necessarily satisfy a provider's responsibility towards all other reports. For instance, responding to an OTDA inspection report does not necessarily satisfy a CAP resulting from an RSRI, and responding to an MTE or SPS report does not necessarily satisfy an RSRI CAP.

OTHER COMPLIANCE ISSUES

DHS providers must also comply with the terms of their contracts and failure to do so could lead to a referral for an enforcement conference. Examples of this include, but are not limited to, issues involving invoicing: invoicing, timeliness of documentation submission; failing to complete inventory; and failing to submit requests for major purchases in advance. An enforcement conference referral may also be requested when Agency reviews of services and/or formal audits indicate possible non-compliance and/or negative findings.

NOTICE OF NON-COMPLIANCE

- The responsible DHS division must adhere to its own process for completing an inspection and/or MI and conducting appropriate follow-up to ensure that a provider complies with the results of an inspection, MI and/or CAP executed in response to an agency review or Audit MI, where applicable.
- The responsible DHS division shall issue a Notice of Non-Compliance (**DHS-88**) to providers who fail to deliver a CAP within the required timeframe(s) as determined by the responsible DHS division's process. The responsible DHS division will take into consideration the provider's efforts to comply.
- The provider must deliver or comply with the required CAP to the responsible DHS division within the specified timeframe, as determined by the responsible DHS division.
- A provider's failure to comply with a notice of non-compliance may result in the responsible DHS division referring such non-compliance to the Department of Social Services (DSS) Office of Regulatory Compliance and Accountability (ORCA) to initiate an enforcement conference.

- Prior to referring a provider for an enforcement conference, the responsible DHS division may elect to hold a pre-enforcement conference to provide the provider with a final opportunity to deliver, comply with a CAP, and/or correct any other areas of non-compliance resulting from an inspection, MI and/or CAP executed in response to an agency review or Audit MI, where applicable.

DHS COMPLIANCE ENFORCEMENT

- Enforcement Referral. Upon a provider's failure to comply with the directives and timeframes delineated in an inspection report, MI, and/or CAP executed in response to an Agency review or Audit, or failure to comply with terms of a contract, the responsible DHS division may refer the provider's non-compliance to ORCA to initiate an enforcement conference.
 - An enforcement referral can be based on one or more of the following instances of a provider's non-compliance:
 - fails to submit a CAP pursuant to a notice of non-compliance;
 - fails to demonstrate that it has properly addressed the conditions listed in an inspection, including the RSRI, MI, and OTDA Inspection;
 - fails to document compliance with the directives issued by DHS with respect to an OTDA inspection; or
 - fails to demonstrate that it has properly addressed the conditions pursuant to inspections by other oversight agencies (Comptroller of the City of New York (Comptroller), Department of Buildings (DOB), Housing Preservation and Development (HPD), New York City Fire Department (FDNY), Department of Health and Mental Hygiene (DOHMH), Department of Investigation (DOI), etc.).
 - fails to comply with contract terms, including submitting invoices and requested documentation timely; completing inventory and/or requests for authorization for purchases, as well as compliance with CAPs currently in place;
 - fails to comply with CAPs executed in response to an Agency review or Audit.

Exception: Agreed upon conditions which require capital construction measures that have been identified and addressed in the CAP or other conditions where the Agency has approved an extension of time required for repair will not be subject to enforcement referrals. Such extensions are granted within the sole discretion of the Agency. Instead, the DHS Facilities and Logistics division shall monitor these matters as part of its project management portfolio.

- The responsible DHS division must include all relevant information regarding a provider's non-compliance when making an enforcement referral to ORCA. Specifically, the responsible DHS division must submit the following with an enforcement referral: a copy of the inspection report or MI, the provider's CAP or responses, any relevant communications between the responsible DHS division and the provider, and a copy of the division's notice of non-compliance. A referral made for non-compliance with other agreements, such as contracts, should include that agreement and any other relevant information, such as internal reports, where necessary.

ORCA will review the enforcement referral to ensure that it contains all required documentation delineated above. Upon its approval of the enforcement referral, ORCA will issue a notice of enforcement.

- Notice of Enforcement Conference. ORCA shall issue a Notice of Enforcement Conference (**DHS-86**) in accordance with the below.
 - The notice of enforcement conference shall list the outstanding items for correction or the areas of non-compliance and inform the provider of the date of the enforcement conference.
 - Pursuant to the notice of enforcement conference, the provider will be advised to bring all documentation related to the correction of the deficiencies and it may bring its counsel to the enforcement conference.
- Enforcement Conference
 - At the enforcement conference, ORCA shall discuss the provider's non-compliance and review all documentation supplied by the provider.
 - Upon conclusion of the Enforcement Conference, ORCA will review all submitted documentation and statements from the provider to determine whether to uphold the finding(s) of non-compliance.

- If ORCA upholds the finding(s) of non-compliance, it shall render a written determination describing the reason(s) for upholding the finding(s) of non-compliance within 14 business days of the date of the enforcement conference.
 - The written determination upholding the finding(s) of non-compliance will be sent to the provider and forwarded to the DHS program administrator(s) assigned to the provider and DSS Office of Legal Affairs (OLA).
 - If ORCA does not uphold the finding(s) of non-compliance, it shall describe the reasons for its determination in writing within 14 days of the date of the enforcement conference. The written determination to dismiss the finding(s) of non-compliance shall be sent to the provider and forwarded to the responsible DHS division that submitted the referral to ORCA.

- Post-Enforcement Conference
 - Upon ORCA's determination upholding a finding of non-compliance, the provider will be subjected to one or all of the following actions:
 - Withholding of funds:
 - Based on the nature of the non-compliance, ORCA will consult with the responsible DHS division to assess the value of the work or services that the provider failed to perform in accordance with DHS directives. The amount of the assessed value will then be withheld from funds allocated in the provider's Budget for Administrative Overhead.¹
 - Withholding of funds may be surrendered at DHS's discretion or as follows:
 - 50% of the withheld amount to be released once the provider submits a plan that demonstrates that it has taken concrete steps to resolve the deficiency(ies) at issue and ensure compliance with DHS directives going forward (submitted supporting documentation, i.e., contracts, letters of intent, etc.).
 - The remaining 50% to be released once the deficiency(ies) has been properly addressed.
 - The provider may request the release of withheld funds in extenuating circumstances or undue hardship.

¹ See "Human Service Providers Fiscal Manual", Section III, Payment Procedures.

- **Liquidated Damages** as described under the Agency's contracts. Liquidated Damages apply only to findings of non-compliance relating to the RSRI Report.
 - For each day that the provider fails to address a Category 1 Deficiency within the prescribed 5-day deadline, DHS may assess liquidated damages in the amount of one hundred twenty-five dollars (\$125.00) per day until the deficiency is properly addressed.
 - For each day after the 30-day deadline that the provider fails to address a Category 2 Deficiency, DHS may assess liquidated damages in the amount of fifty dollars (\$50.00) per day until the deficiency is properly addressed.
 - For each day after the 60-day deadline that the provider fails to address a Category 3 Deficiency, DHS may assess liquidated damages in the amount of twenty-five dollars (\$25.00) per day until the deficiency is properly addressed.

 - An adverse performance evaluation rating in PASSPort.

 - Any of the above remedies assessed against the provider will be in addition to any chargeback of funds that the Agency initiates in accordance with this procedure and DHS's contracts. However, liquidated damages will only be assessed for instances of non-compliance where the Agency elects not to initiate a chargeback in accordance with this procedure and DHS's contracts.

 - This remedy is in addition to, and not in lieu of, any other remedies the Agency may have under its contract with the provider or otherwise by law.
- ORCA will inform the provider in writing of the selected actions within 30 days of the date of the written determination upholding the finding(s) of non-compliance.

DEFINITIONS

- Corrective Action Plan. The term “Corrective Action Plan” or “CAP” shall mean a detailed proposal which describes measures taken or to be taken and the corresponding deadlines for correcting or curing the deficiencies listed in an inspection report conducted by DHS and/or oversight agencies including, but not limited to, the New York State Office of Temporary and Disability Assistance (OTDA), NYC Department of Buildings (DOB), NYC Department of Housing Preservation and Development (HPD), NYC Fire Department (FDNY), NYC Department of Health and Mental Health (DOHMH), NYC Comptroller’s Office (Comptroller), New York State Comptroller’s Office (OSC) and the NYC Department of Investigations (DOI). The CAP must include evidence (e.g. photographs, invoices, etc.) that demonstrates the concrete steps taken or to be taken to correct the deficiencies listed in a covered Inspection Report.
- Enforcement Conference. The term “Enforcement Conference” shall mean a conference convened by the Office of Regulatory Compliance and Accountability (ORCA) and issued pursuant to a notice of enforcement to enforce this procedure, DHS contracts (if applicable) and the laws, codes, regulations and rules governing the provision of temporary housing assistance including, but not limited to, the Housing Maintenance, Building and Fire Codes.
- Facility. The term “facility” shall mean temporary housing as defined by 18 NYCRR §§ 491.2, 900.2 and 352.35(b) (3), and any unit, hotel room, apartment, apartment building, hotel, or location (contracted or not) utilized by the Department for the provision of THA. This includes shelters, assessment centers operated by the Division of Adult Services and the Division of Family Services, and safe havens operated by the Street Homelessness Solutions division.
- Hotel/Motel Inspection. The term “Hotel/Motel Inspection” shall mean an examination of a commercial hotel site conducted by the Department pursuant to 18 NYCRR § 352.3 (h) and OTDA’s GIS 16 TA/DC049: Inspections of commercial hotels/motels used for temporary housing assistance.
- Law(s). The term “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administration Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States of America and State of New York, a statute of the United States of America or State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- OTDA Inspection. The term “OTDA Inspection” shall mean an examination of a facility conducted by OTDA pursuant to 18 NYCRR §§ 491 and 900 *et seq*, or 94 ADM 20.

- Programmatic Monitoring Instrument. The term “Programmatic Monitoring Instrument” shall mean an examination conducted by the Department’s Divisions, including but not limited to: the Division of Family Services, the Division of Adult Services, the Street Homelessness Solutions Division with its Safe Haven Monitoring Inspection (SMI) and Drop-in Monitoring Inspection (DIMI) and the Agency’s Shelter Performance Scorecard (SPS), pursuant to 18 NYCRR §§ 352.3(m), 486.2 and 900.14. The MI evaluate a facility’s social services program, housing placement targets, housekeeping and safety factors in the facility’s units and unit. The SPS assesses providers’ performances in key areas of service delivery.
- Provider. The term “Provider” shall mean to any person, entity, organization who provides temporary housing or operates a facility on behalf of the Agency.
- Responsible DHS Division. The term “Responsible DHS Division” shall mean the Department Division responsible for conducting and overseeing an inspection including, but not limited to, a program inspection conducted by the DHS’ Division of Family Services, Division of Adult Services, or Street Homelessness Solutions division and a Routine Site Review Inspection (“RSRI”) by DHS’ Facilities and Logistics Division (“F and L”). For purposes of OTDA Inspections, the Office of Regulatory Compliance and Accountability shall be the Responsible DHS Division.
- Routine Site Review Inspection. The term “Routine Site Review Inspection” or “RSRI” shall mean an examination conducted by the Department pursuant to the procedure and 18 NYCRR §§ 352.3(m), 486.2 and 900.14. An RSRI constitutes an inspection and an audit pursuant to Article V of the Human Services Standard Contract and Section 5.04 of Appendix A of the Human Services Standard Contract.
- Temporary Housing. The term “Temporary Housing” or “TH” shall mean facilities authorized by 18 NYCRR §900 or §352.(8)(a) & (b), §352.3(e) and §491.
- Temporary Housing Assistance. The term “Temporary Housing Assistance” or “THA” refers shall mean a public assistance benefit provided temporarily for an eligible homeless individual or family to meet an immediate need for shelter.

REFERENCES

This procedure incorporates the following Agency policies and procedures, and provisions laws, rules, and regulations by reference:

- A. DHS procedure No. 10-210 (Facility Access)
- B. 18 NYCRR § 352.3, including but not limited to § 352.3 (e) – (i), (m)
- C. 18 NYCRR § 352.8
- D. 18 NYCRR § 900 *et seq*, including but not limited to 18 NYCRR §§ 900.5, 900.11, and § 900.12

- E. 18 NYCRR § 491 *et seq*, including but not limited to 18 NYCRR § 491.10
- F. 94 ADM 20
- G. Human Services Standard Contract Section 1.01(l)
- H. Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services) for all DHS shelter contracts, including but not limited to:
 - 1. Section 1.01(J), Section 5.04 (Audit), Section 8.07 (Withholding of Payments) and Section 13.04 (Compliance with Laws).
- I. Appendix B (Scope) for all DHS shelter contracts, including but not limited to:
 - 1. Section 2.03 (Applicable Standards), Section 4.07 (Recoupment of Disallowances, Improperly Incurred Costs and Overpayments and Article XIII (Environmental Standards)).
- J. Consent Decree, Callahan v. Carey (1981).
- K. Stipulation of Settlement, Butler v. City of New York (2017).
- L. PPB Rules, including but not limited to, §4-06(c)(3)(iv).

ATTACHMENTS

- DHS-86** Notice of Enforcement Conference
- DHS-88** Notice of Non-Compliance



**Department of
Social Services**

Office of Regulatory Compliance and Accountability

NOTICE OF ENFORCEMENT CONFERENCE

Facility Name	Facility Code
Provider Name	
Site/Shelter Director	
Executive Director:	
The DHS Compliance Procedure (_____) delineates the enforcement process for ensuring the providers' compliance with the practices and tools used by DHS to fulfill its obligation to provide individuals and families experiencing homelessness with safe, habitable temporary housing that complies with all governing laws, codes, regulations and rules.	

Hearing Date	Hearing Time	<input type="checkbox"/> AM <input type="checkbox"/> PM
Hearing Address		
Reported or Documented Instances of Non-Compliance		

SAMPLE

INTERNAL USE ONLY

<div style="text-align: right; margin-bottom: 10px;"> / / Date of Notice </div>		
_____ ORCA (Print Name)	_____ Title	_____ Signature
_____ DHS Programs (Print Name)	_____ Title	_____ Signature

Date: _____

Provider Name: _____

Provider Address _____

Re: Notice of Non-Compliance

Related inspection/review/MI/Audit report, i.e. "Shelter Performance Scorecard (SPS)"

Dear: _____
 Name

On _____, DHS _____ placed you on a
 (date) (program division)
 corrective action plan (CAP) to address areas of concern that were discussed with you during an initial meeting
 on _____ and a follow-up meeting on _____.
 (date of initial meeting) (date of follow-up meeting)

To date, you have either failed to submit responses describing your plans to comply with the terms of the CAP within the timeframe(s) agreed upon during the follow-up meeting or you have not demonstrated reasonable efforts to comply with the terms of the CAP. Delineated below are the terms of the CAP and final due dates for outstanding items.

CAP Terms <i>(List each corrective action)</i>	Final Due Dates <i>(provide final due dates for outstanding items or indicate that provider has sufficiently complied with the corrective action).</i>

Failure to comply with this Notice of Non-Compliance and sufficiently address the outstanding items by the final due dates described above may result in the DHS _____
 (program division)

issuing an enforcement referral to the Department of Social Services' Office of Regulatory Compliance and Accountability (ORCA) to conduct enforcement conference, in accordance with the DHS Compliance Procedure: (XXXX).

Sincerely,

 Name and Title

CC: _____
 DHS Program Administrator

 Responsible DHS Division's Assistant Commissioner