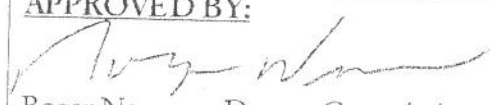



PROCEDURE 03-504

<u>SUBJECT:</u> Involuntary Transfers	<u>APPLICABLE TO:</u> Tier II Family Shelters, Hotels, Scatter Sites and Reception Centers	<u>ISSUED:</u> January 1994 <u>RE-ISSUE DATES:</u> May 2003 September 2003
<u>ADMINISTERED BY:</u> Division of Family Services and Division of Legal Affairs		<u>APPROVED BY:</u>  Roger Newman, Deputy Commissioner Family Services  Clarke Bruno, General Counsel Legal Affairs

I. PURPOSE

To provide instructions, in accordance with applicable State regulations 18 NYCRR 352.35 and Part 900 and the DHS Client Responsibility Procedure (03-502), to evaluate transfers from one shelter facility to another due to conduct by families eligible for Temporary Housing Assistance (THA).

II. APPLICABILITY

The procedure is applicable to staff at Tier II shelters, Hotels, Scatter Sites, and DHS.

III. FORMS USED

- A. Notice of Involuntary Transfer/Right to a Pre-Transfer Hearing
- AS. Notice of Involuntary Transfer/Right to a Pre-Transfer Hearing - Spanish
- B. Involuntary Transfer Approval/Denial
- C. Notice of Involuntary Transfer Addendum
- D. Resident Request for Pre-Transfer Hearing
- DS. Resident Request for Pre-Transfer Hearing - Spanish
- E. Notice of Scheduled Pre-Transfer Hearing
- F. Involuntary Transfer Hearing Decision
- FS. Involuntary Transfer Hearing Decision - Spanish
- G. Request for Resident Transfer Following Involuntary Transfer Hearing

IV. INTRODUCTION

This procedure describes when and how family shelter providers may seek the involuntary transfer of a family from one facility to another within the shelter system. The DHS principles state that individuals and families receiving services should treat every person involved in their care, other temporary shelter residents, and their shelter space, with respect. At the same time, DHS intends to reduce the disruption of families and their children's education by drastically

reducing transfers from one shelter to another as a penalty for disruptive behavior. New standards of client responsibility (Procedure 03-502) provide deterrence to disruptive behavior not previously available to the shelter system. As a result, the bases for transfer as a consequence of disruptive behavior are dramatically reduced.

When a shelter provider believes that a family or family member should be involuntarily transferred to another shelter facility based on the guidelines set forth below, it will submit a request for an involuntary transfer to the DHS Program Administrator. The Program Administrator will review the request and recommend whether the transfer should be forwarded to the Sanction Review Committee (SRC) or if additional information is required.

The SRC will review the recommendation by the Program Administrator and determine if an involuntary transfer is appropriate or if the family's conduct that is the subject of the request rises to the level of a violation of client responsibility rules and that the transfer request should be considered a request for a discontinuance of THA pursuant to DHS Procedure 03-502.

If the final decision is to transfer the family or family member to another shelter facility, the shelter provider serves notice on the family, which may request a pre-transfer hearing from DHS.

In rare circumstances, certain behavior by a family or family member may justify both an involuntary transfer and a subsequent discontinuance of shelter.

V. GUIDELINES

A family or family member may be transferred from one shelter facility to another when the family or family member engages in certain types of behavior that does not result in a sanction pursuant to Client Responsibility standards.

Examples of conduct which may result in an involuntary transfer:

- a. Interfering with the orderly operation of the facility in such a way that it creates an undue hardship on the facility to keep that family or family member;
- b. Threatening or attempting to inflict physical harm on other residents or staff;
- c. Stealing or destroying property at the shelter facility that does not rise to the level of discontinuance of THA.

A provider may only submit a request for an involuntary transfer if the family's case file reflects appropriate interventions and services offered by the shelter staff relevant to the incident or course of conduct described. When the family or family member(s) commits an act of violence or engages in criminal conduct within a shelter, the provider must call the NYPD or other governing City or State agency. A shelter provider must consult with a DHS Program Administrator, to explore other interventions with the family before requesting a transfer from the shelter facility.

This policy applies to situations when a provider makes a request for an involuntary transfer based on behavior in the shelter facility. It does not apply in the following situations where a provider can initiate a transfer without requesting review by the SRC and without affording an involuntary transfer hearing:

- a. Discharge for a 48 hour violation – if a family or family member is absent from the shelter for 48 hours without having complied with the facility's rules concerning absences, that family or family member will be discharged from the shelter.
- b. Medical Transfers – a family may be transferred to another shelter facility if a family member is no longer medically appropriate to reside in the facility.
- c. Voluntary Transfers – transfers requested by a family:
 - i. For clients who voluntarily seek transfers, the shelter provider may seek a transfer directly from the HERO unit. Such transfers will only be granted when based on the criteria cited in 94 ADM-20, in the complete discretion of DHS.
 - ii. Such transfers must also be approved by the Program Administrator supervising the shelter provider involved after HERO determines that the transfer request meets the above criteria.

VI. DETAILED INSTRUCTIONS

REFERRING SHELTER

1. When a shelter facility employee believes that a family should be transferred to another facility, the shelter's managing director must be consulted. The family's case file must contain the family's most recent Independent Living Plan (ILP), all case conferences, entries detailing client contacts, and all interventions and services provided by the shelter staff that are relevant to the incident or course of conduct.
2. The Managing Director:
 - a. Reviews the family's case file;
 - b. Approves or disapproves the request to submit the case file to the DHS Program Administrator for a determination and enters the decision in the family's case file;
 - c. Submits the case file and the Notice of Involuntary Transfer (Form A) to the Program Administrator;
 - d. If approved by the DHS Program Administrator and/or the SRC, the shelter's managing director or appropriate designee serves a Notice of Involuntary Transfer (Form A) to the family, and
 - e. Submits all relevant documentation to the DHS hearing officer, if a pre-transfer hearing is requested by the family's head of household.

DHS/SANCTION REVIEW COMMITTEE

1. The Program Administrator will review the Notice of Involuntary Transfer (Form A) and the family's case file within one (1) business day of the request. At any point, the Program Administrator may request additional documentation from the shelter's managing director, and extend the time for review, up to three (3) business days from the date requested documents are submitted.
2. The Program Administrator may approve or disapprove the shelter provider's request for an involuntary transfer. If disapproving the request, the Program Administrator notifies the shelter's managing director using the Involuntary Transfer Acceptance/Denial (Form B).
3. If the request is approved, the Program Administrator will forward copies of the family's case file and the Notice of Involuntary Transfer (Form A) to the SRC.

4. The SRC reviews the recommendation of the Program Administrator and all relevant documentation within three (3) business days of receipt. The SRC will then determine whether to approve or disapprove the recommendation or request that the shelter's managing director submit a request for Discontinuance of Shelter based on non-compliance with the Client Responsibility Procedure (03-502), using the Involuntary Transfer Acceptance/Denial (Form B). At any point, the SRC may request additional documentation from the shelter's managing director, and extend the time for review up to three (3) business days from the date requested documents are submitted.

5. If the transfer request is approved, the SRC prepares and submits the Involuntary Transfer Acceptance/Denial (Form B) and the Notice of Involuntary Transfer (Form A) to the referring shelter's managing director with instructions that copies of the form be placed in the family's case file and be reviewed with the family or family member who is the subject of the transfer. The managing director or appropriate designee must then serve the Notice of Involuntary Transfer (Form A) on the family.

6. Requests for an expedited review of an Involuntary Transfer may be requested by the shelter provider when it believes that a family poses a significant safety threat to other shelter residents and/or staff. The Program Administrator has the discretion to approve all requests for expedited review. If the Program Administrator approves the request for an expedited transfer, they fill out Notice of Involuntary Transfer (Form A) and the Involuntary Transfer Acceptance/Denial (Form B), as above.

INVOLUNTARY TRANSFER HEARINGS

After receiving a notice of transfer, a family or affected family member may request a pre-transfer hearing from DHS to challenge the involuntary transfer. DHS Legal Division staff will act as the impartial adjudicator at the hearing. The hearing will be held at DHS, 33 Beaver Street, 17th Floor, New York, NY 10004.

1. If an involuntary transfer is approved, the shelter provider serves a copy of the Notice of Involuntary Transfer (Form A) on the family or affected family member:

- a. Every reasonable effort must be made to serve a copy of the notice to the family or family member in person and to have the form signed.
- b. If the family or family member refuses to accept or sign the notice, or cannot be located, the specific details of the efforts to deliver the notice should be documented on the Addendum (Form C).

2. If a family waives its right to a hearing, the family may be transferred immediately. A copy of the Notice of Involuntary Transfer (Form A) must be faxed to the DHS Legal Division within 48 hours of delivery of the notice and must be received prior to a request to HERO for a transfer.

3. The family may request an involuntary transfer hearing orally or in writing. The family must be given a minimum of two (2) hours to request a pre-transfer hearing after the Notice of Involuntary Transfer (Form A) is served. If a pre-transfer hearing is requested, the shelter provider must fax a copy of the Resident Request for Pre-Transfer Hearing (Form D) to the DHS Legal Division.

4. The DHS Legal Division will notify the shelter provider of the date, time and location of the pre-transfer hearing. The shelter provider must serve the Notice of Scheduled Pre-Transfer Hearing (Form E) to the family or affected family member, who must sign the notice, at least four (4) hours prior to the scheduled hearing. Reasonable efforts must be made to serve a copy of the notice to the family or affected family member in person and to have the form signed. All such efforts must be documented. A copy of the notice must promptly be faxed to the DHS Legal Division.

- a. Pre-transfer hearings will be scheduled during regular business hours on regularly scheduled business days.
- b. The shelter provider must allow the family or family members (or their representative) to examine and obtain copies of the family's case file and any other relevant documents at least two (2) hours before the hearing. A translator will be provided for the hearing if necessary and requested at the time the hearing request was made.

5. The shelter will provide for transportation of the family or family member(s) and any necessary witness(es) between the shelter and the hearing location at the designated date and time.

- a. The shelter must also provide childcare to shelter residents who attend hearings, when needed.

6. The impartial adjudicator will render a decision and fax the Involuntary Transfer Hearing Decision (Form F) to the shelter provider within four (4) hours of the end of the hearing. The shelter must provide the family with a copy of the decision and place another copy in the family's case file.

7. If the impartial adjudicator has determined that the family should be involuntarily transferred, DHS will submit the Request for Transfer (Form G) to the HERO unit within 24 hours of the determination.

8. If a family believes that the impartial adjudicator wrongfully determined that a transfer was appropriate, a State Fair Hearing may be requested (instructions for the request are included on Form F). If the hearing overturns the transfer decision, the family will (a) remain in the current facility if the transfer has not yet occurred, or (b) return to the shelter of origin as soon as space becomes available that is appropriate to the family's size.

DHS will not honor any requests to HERO for transfers if the above procedures are not followed.