
 | INFORMATIONAL LETTER |

TRANSMITTAL: 95 INF-9

TO: Commissioners of
 Social Services

DIVISION: Office of
 Housing and
 Adult Services

DATE: March 23, 1995

SUBJECT: Family Type Homes for Adults: Responses to Questions
 Raised by Local Social Services District Staff

SUGGESTED

DISTRIBUTION: Director of Services
 Family Type Home Coordinators
 Adult Services Staff
 Staff Development Coordinator

CONTACT PERSON: Any questions should be referred to: Janet Morrissey
 at (518) 432-2864 or Tom Burton at (518) 432-2987

ATTACHMENTS: None

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
| 86 INF-18 | | 458, 485, | Art. 7 of | | |
| 89 ADM-22 | | 486, 489 | Social | | |
| 90 ADM-33 | | | Services | | |
| 91 INF-55 | | | Law | | |

The purpose of this release is to answer the technical and programmatic questions raised by local social services district staff regarding the Family Type Homes for Adults program.

1. Q. If a relative of the FTHA operator is being cared for in the Family Type Home along with other residents who are not related to the operator, does the relative count toward the operating capacity?

A. Section 489.2 of Department regulations defines a Family Type Home for Adults as an adult care facility established and operated for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four or fewer adult persons unrelated to the operator. "Unrelated to the operator" is defined in 485.2(g) as a relationship other than that of spouse, parent or parent-in-law, child or stepchild. Therefore, if the relative is not any of the above relationships to the operator, he or she must be counted toward the operating capacity of the home.

2. Q. May the operator administer eyedrops or foot soaks to FTHA residents?

A. No, not unless the operator or staff performing the administration holds a valid license from the New York State Education Department to administer medications. Non-licensed staff, however, may assist the resident with self-administration of the eyedrops or foot soaks.

3. Q: What is meant by "assistance with self-administration of medication" and to what extent may an operator assist a resident to take medications?

A: Residents capable of self-administration are those who are able to correctly read the label on the medication container, correctly interpret the label, correctly ingest, inject, or apply the medication, correctly follow instructions as to the route, time, dosage and frequency, open the container, measure or prepare medications, including mixing, shaking, and filling syringes, and safely store the medication. Assistance with self-administration includes assistance with any of the above activities. Section 489.10(d) of the Department's regulations discusses medication management. A resident who is capable of self-administration of medication must be permitted to retain and self-administer medications provided that the resident's physician attests, in writing, that the resident is capable of self-administration and the resident keeps the operator informed of all medications being taken, including name, route, dosage, frequency, times and any instructions, including any contraindications, indicated by the physician. Many Family Type Home residents need assistance with all aspects of self-administration of medication and as such must be provided with such assistance.

4. Q. May a family member of a resident set up pill boxes for a resident to enable self-administration of medications?
 - A. Section 489.10(d)(12) of Department regulations states that medications may not be emptied from one container into another, except when necessary to enable a resident to take medications during temporary absences from the home. Unless the pill box is being set up for this purpose, no one, including FTHA operators or resident's family may set up pill boxes.

5. Q. A potential FTHA operator must demonstrate "sufficient income" not solely derived from income from the residents in order to be certified. What is the definition of "sufficient income"?
 - A. It is not possible to state a specific dollar amount which would be applicable in all situations, and it is thus up to the district to make the initial determination of what constitutes "sufficient income". Section 489.3(b)(8) of Department regulations indicates that the operator must demonstrate sufficient income, not solely derived from income from residents, to meet the household expenses of the operator and members of his/her personal household. This means that the operator must not be solely dependent on the income derived from the residents to meet these expenses. The operator must therefore demonstrate that he or she has some other regular source of income which is not derived from residents.

6. Q. Is it permissible for a resident to name the FTHA operator as beneficiary of a life insurance policy?
 - A. There is nothing stated in the Social Services Law or Department regulations specifically prohibiting it, so it is permissible, as long as the resident has elected to do so freely of his or her own will and is capable of making such a decision.

7. Q. May an operator withhold personal allowance money from a resident when, for instance, the resident is an alcohol or drug abuser and the operator wishes to control the substance abuse by giving the resident small amounts of money at a time?
 - A. No. Section 489.9(b) of Department regulations addresses the establishment of resident personal fund accounts and the managing of these funds and related records. Section 489.9(b)(2)(ii) and (vi) states that an operator may not require a resident to maintain a personal fund account at the home and that the resident may terminate the personal fund account at any time. Clearly, then, such rationing of personal allowance money without the specific consent of the resident is not permitted. If control over a resident's personal allowance money is determined to be necessary, the establishment of a representative payee would be the appropriate mechanism to pursue.

8. Q. Why is it necessary to fill out a Survey Report at each six month visit, especially if there are no changes since the last visit?
- A. The Survey Report (DSS 2865) is the official documentation of the results of the periodic inspection visits to an FTHA. It measures the FTHA operator's compliance with Department regulations and is the basis for the report of inspection which must be sent to an operator following the inspection visit. As such, it is essential that the survey report be completed following each inspection, as required by Sections 486.2(h) and (i) and 489.5(a)(2) of Department regulations. The Survey Report must be completed for all certified FTHAs, even if there have not been any residents in the home during the past six month period. This is to ensure that the home continues to meet regulatory requirements in anticipation of residents being admitted to the home.
9. Q. For some FTHA operators the amount of paper work is confusing and sometimes overwhelming. What can be done to alleviate this?
- A. It is true that there is a significant amount of paperwork and documentation that is required of FTHA operators. The purpose of this documentation is to provide a means of demonstrating that the operator is adequately meeting the needs of the residents. If an operator is having trouble fulfilling this responsibility, it is the responsibility of the district to provide the necessary guidance and assistance to enable the operator to fulfill the necessary recordkeeping requirements per Section 489.6(a)(4) of Department regulations.
10. Q. With regard to fire/safety aspects of the FTHA survey, can the district be held liable if the caseworker does not recognize a fire/safety violation or deficiency?
- A. This question was addressed in 86 INF-18 entitled: "Family Type Homes for Adults: Responses to Questions Raised by Local Staff at Regional Technical Assistance Sessions". This release states in part: "If local district staff (including supervisors) negligently overlook a condition that directly results in injury to a resident, the staff and the county could be found liable for civil damages. Negligence is the failure to employ reasonable care under the particular circumstances in the discharge of a duty to an injured party. As long as a county worker exercises reasonable care in undertaking duly authorized action, there should be no civil liability. Of course, any time an allegation of negligence is raised, the court will make a determination based upon the specific facts and circumstances of the case. The best protection is to do a thorough inspection and document your efforts." If a district believes there are special problems in a particular home, they should contact the appropriate Regional Office of the Office of Housing and Adult Services, the local fire department, or building inspector to resolve any questions.

11. Q. Must inspection visits to FTHA's be unannounced? Often clients are at day programs and the operator is away from the home when the caseworker arrives for the inspection visit. This is problematic when the worker must travel a significant distance to the home only to find no one at home. Some districts question the necessity of paying for travel to the same location twice in one month.
- A. 90 ADM-33: "Family Type Homes for Adults: Unannounced Inspection Visits" addressed this issue. Section 489.5 of the Department's regulations states that local district staff must perform a complete inspection of each certified Family Type Home for Adults at least once every six months in accordance with definitions and procedures set forth in Sections 486.1 and 2 of these regulations. Section 486.2(d) of the Department's regulations requires the Department, or where appropriate, a local district, to conduct a minimum of at least one unannounced full inspection a year of each adult care facility. Because the Department has delegated its authority for the inspection and supervision of FTHAs to the local districts, it is their responsibility to conduct the unannounced inspections of these homes. In order to minimize unproductive travel and associated costs in the situation described above, it may be helpful for caseworkers to ascertain from the FTHA provider those times or days which should be avoided. While such an approach cannot guarantee that the provider will be at home at every visit, it should at least minimize the problem.
12. Q: Are residents of Family Type Home for Adults eligible to receive Food Stamps?
- A: No. There has been some confusion on this issue, as a few districts have indicated that Family Type Home residents may be eligible for food stamps. The source of this confusion lies in the fact that residents who live in Family Care homes certified by either OMH or OMRDD are eligible to receive food stamps if they meet certain eligibility requirements. Residents of Family Type Homes for Adults certified by NYSDSS are not eligible.
- 13 Q: Which emergency numbers must be posted by the phone in Family Type Homes?
- A: Section 489.10(b)(5)(v) of the Department regulations states that the operator must post emergency telephone numbers by the telephone. It does not specify which numbers must be posted. We recommend that, if the area is not serviced by a 911 emergency number, the operator post the phone numbers of fire, police and ambulance services. Many areas make available stickers containing these numbers which can be attached to each phone. This is an acceptable way of maintaining compliance with this regulation. In areas served by a 911 emergency number, that number should be posted.

14. Q: The regulations prohibit an "unsafe accumulation of combustible material" in any part of the building as well as "overloaded circuits". What does this mean and how is it determined if an unsafe accumulation of combustible material or overloaded circuits exists?

A: While caseworkers are not trained as, and are not expected to be fire/safety experts, a reasoned and common sense approach to this question must be taken. It would be impossible to list every fire hazard which could arise. Generally speaking, an unsafe accumulation of combustible material would be any flammable material which poses the risk of becoming ignited accidentally. Examples would be piles of newspapers in a resident's room or other area of the home, particularly if people smoke, or paint cans piled up next to a furnace or stove.

An overloaded circuit exists if too many electrical appliances are plugged into the same outlet, such that a fire could start because of overheated wires caused by too large a load for the circuit to handle. Some overloaded circuit problems might appear quite obvious, such as an outlet with a multi-plug adaptor which has six heavy electric usage appliances such as an air conditioner, hot plate, toaster, iron, refrigerator and convection oven. Other situations may be much less obvious. If you have questions or just don't know if a problem exists, you should call the appropriate Office of Housing and Adult Services (OHAS) regional office, your local fire inspector or code enforcement officer for guidance.

15. Q: How soon must a new FTHA operator complete the course in basic first aid?

A: A new operator must complete the first aid course as soon as possible following certification. Therefore, we strongly recommend that new FTHA operators be enrolled in the first available course which is available in the area.

16. Q: Section 489.3(b)(5) of Department regulations requires that FTHA operators be able to speak, read and write English. However, if an operator speaks Spanish or another language and only has residents who speak that particular language, may this requirement be waived?

A: An operator must be able to competently care for the needs of all residents in the home, as well as be able to respond to day to day occurrences necessitating communication, not only with residents, but outside service providers as well, such as physicians, pharmacists, public health nurses, etc. It may not be sufficient, therefore, for an operator to be unable to converse in English, regardless of the language spoken by the residents. For these reasons, such situations are best dealt with on a case by case basis through the Department's waiver process.

17. Q: Is it permissible for a Family Type Home operator to work outside the home when the residents are in day program?

A: Section 489.3(b)(9) of Department regulations states that the operator of a Family Type Home for Adults must not be otherwise employed in or outside the home unless he or she can demonstrate substitute provision for the care and maintenance of the residents and receives prior written approval from the local department of social services. Therefore, there is nothing in the regulations preventing the operator from having outside employment provided that the above provisions are met. Districts should be cautioned, however, that unforeseen circumstances should be taken into account when approving outside employment. For example, the operator might feel very comfortable leaving the home unattended if all the residents are in day program, but arrangements must be made for substitute care in the event that the resident must return from the program at other than the regularly scheduled time because of illness or other reasons.

18. Q: The Survey Report for Family Type Homes for Adults (DSS 2867) asks for the number of residents who have been discharged from the Office of Mental Hygiene and the Office of Mental Retardation/Developmental Disabilities. If an FTHA resident resided in a facility operated by one of these agencies years ago, but is no longer receiving services from that agency, does he or she have to be listed in this demographic block?

A: No. Only those residents who formerly lived as in-patients in OMH or OMRDD facilities and are currently receiving services from these agencies should be counted in these categories.

19. Q: Where can the "Residential Placement Assessment Form" (DSS 4055) be found? Some districts have never seen the form and do not know what it is for.

A: The purpose of the Residential Placement Assessment Form is to assist casework staff in determining the appropriate type of residential placement an individual needs. The DSS 4055 guides the worker in identifying the physical and social needs of an individual so that the client may be placed in an appropriate residential environment. It is also used to determine whether or not individuals living in an uncertified home have needs which would require the operator to be certified as an FTHA. The form can be ordered from the Department's Forms and Publications Unit or from the district's materials resources office. A copy of the form is also included in 89 ADM-22: "Residential Placement Services for Adults".

20. Q: Is it permissible for FTHA operators to administer injectable medications if the operator is trained to do so by a public health nurse?

- A: Not unless the operator holds a valid license from the New York State Education Department to administer injectable medications. Section 489.10 of Department regulations specifies that the operator or substitute caretaker shall not be permitted to administer injectable medications to a resident unless he or she holds such a license, provided that the injectable medication is one which licensed health care providers would customarily train a patient or his/her family to administer. Therefore, even if the operator is a registered nurse, the only injectable medication he or she would be permitted to administer would be one which patients or their family can be trained to administer, such as insulin.
21. Q: Under what circumstances may a Protective Services for Adults (PSA) client be placed in a Family Type Home for Adults?
- A: Section 489.12(b) of Department regulations specifies that, unless the operator has received prior written approval from the local department of social services, space in a Family Type Home for Adults shall be used only for long-term residential care and for family activities. The operator may request approval to utilize space for other activities such as room and board to individuals not in need of personal care and/or supervision, respite care or protective services for adults placements. To obtain approval, the operator must demonstrate that the proposed use is not incompatible with the FTHA program and that the additional use can be physically accommodated within the home. With regard to PSA clients, districts are authorized to utilize FTHA's as an emergency placement resource for a period not to exceed 30 days, provided that the client appears to meet the admissions standards set forth in Section 489.7 of Department regulations and the home does not exceed its certified capacity by admitting a PSA client who requires personal care and/or supervision. For further information, refer to 91 INF-55: FTHAs: Clarification of the Use of Space in Family Type Homes for Other Activities".) This INF goes on to describe the process of arranging for long term care of PSA clients in FTHAs. It is important to note that PSA clients must be visited by a PSA caseworker at least monthly while living in an FTHA.
22. Q: FTHA regulations require that nightlights must be provided and working in all hallways, stairways and bathrooms which are used by residents. What if a hallway or stairway does not have an electrical outlet to plug it into?
- A: The intent of this requirement is to provide for the safety of residents should they have to leave their bedroom during the night. If it is not possible to install a nightlight in any of the above locations and it is not possible to leave a hall light on during the night, a waiver must be sought from the Department, whose responsibility will be to determine if the intent of the regulation can be met by utilizing other means to ensure the safety of the residents.

23. Q: If an FTHA operator is an R.N. or LPN, must the operator demonstrate that he or she has completed an approved basic first aid training course?

A: No, an operator who has a current license to practice as an R.N., LPN or Physician's Assistant is considered qualified in basic first aid. Similarly, an operator who can demonstrate that he or she has had first aid training as part of the requirements of another profession, such as Emergency Medical Technician, would be exempted from the basic first aid course requirement.

24. Q: May capable residents be entrusted to supervise other residents while the operator is away from the home temporarily (e.g. shopping)? What about a 16 or 17 year old son or daughter of the operator?

A: No. Family Type Home residents may not perform supervision services. Family Type Homes for Adults are established for the purpose of providing room, board and personal care and/or supervision to adults who are unable to independently meet their personal care and supervision needs. If a resident were to perform supervision services, he or she would be functioning as a substitute caretaker and would have to meet the qualifications as stated in 489.13(e) of Department regulations, including being mentally and physically capable of operating the home, including handling emergencies. Since residents of FTHAs lack the ability to independently meet their own needs, they would not be considered capable of operating the home and are therefore not permitted to supervise other residents.

With regard to individuals under the age of 18, section 489.13(j) of Department regulations states that persons under the age of 18 shall not be charged with direct responsibility for the supervision and personal care of residents and may not work without onsite supervision.

Peter R. Brest
Associate Commissioner
Office of Housing and Adult Services