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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 96 ADM-19

TO: Commissioners of
 Social Services

DIVISION: Services and
 Community
 Development

DATE: December 18, 1996

SUBJECT: Family-Type Homes for Adults: Revisions to Part 489 of
 Department Regulations

 SUGGESTED

DISTRIBUTION: | Directors of Services
 | Family-Type Home for Adults Coordinators
 | Staff Development Coordinators

CONTACT
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ATTACHMENTS:

Revisions to Part 489 (Not Available On Line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
85 ADM-36		Part 458			
89 ADM-22		Part 485	Article 7		
91 INF-55	91 INF-55	Part 486 Part 489			

I. PURPOSE

The purpose of this directive is to advise local social services districts of recent revisions to Part 489 of the Department's regulations and their implications on the Family-Type Home for Adults (FTHA) Program. The revisions to Part 489 became effective on November 15, 1996.

II. BACKGROUND

Section 2(22) of the Social Services Law (SSL) defines a Family-Type Home for Adults as "an adult care facility established and operated for the purpose of providing long term residential care and personal care and/or supervision to four or fewer adult persons unrelated to the operator." Section 460-c.1 SSL requires the Department to inspect and maintain supervision over all adult care facilities, including FTHA. In accordance with Section 460-c.7 SSL, the Department has delegated its inspection and supervision responsibilities for the FTHA program to the local social services districts.

In response to previous revisions to Part 489 and 458 of the Department's regulations, two significant Administrative Directives were issued to social services districts. These directives, 85 ADM-36 "Implementation of Revised Regulations for the FTHA Program" and 89 ADM-22 "Residential Placement Services for Adults", remain as core directives for this program area. The information in this release reflects the programmatic easements and clarifications for operators and districts accomplished through the most recent revisions to Part 489 of the Department's regulations, a copy of which is attached.

III. PROGRAM IMPLICATIONS

The revised regulations reduce regulatory requirements and/or clarify policy in specific areas of the FTHA Program. These easements and clarifications, which are discussed below, will provide social services districts with additional flexibility in the administration of the FTHA Program. Furthermore, many of the changes discussed below also will be beneficial to FTHA applicants and operators.

A. Application and Certification

The FTHA application and certification process is designed to ensure that appropriate care and services are provided to residents in a safe setting by qualified individuals. While the revised regulations maintain the integrity of this process, the time frames for the submission of certain information has been extended to make the process easier for applicants and social services districts.

The revised regulations also clarify certain aspects of the FTHA application and certification process. These changes are summarized below.

1. The revised Section 489.4(b)(1) (ii), (v), (vi) and (ix) requires that physicians statements for operators and substitute care givers, the fire inspection report and the water quality report for homes without a municipal source be signed and dated within 90, instead of 45 days after the date a new or renewal application to operate a FTHA is submitted to a social services district.
2. Section 489.4(b)(1)(v) has been amended so local social services districts no longer are required to submit a waiver request when fire inspections are conducted by an appropriate entity other than the local fire department, including the building department, code enforcement officer or other approved local authority.
3. Section 489.4(c)(1) has been amended so FTHA applicants and operators seeking renewal now have 120, instead of 45 days after the date of application to submit all the required supporting information to the social services district.
4. A new Section 489.4(d) has been added which provides that FTHA applications will be considered withdrawn if the applicant does not submit all the required supporting documentation to the Department within 225 days of the date of application. If the applicant still wishes to be certified after the allowable time has lapsed, a new application and new supporting documentation must be submitted.
5. Section 489.4(f)(2) has been amended so FTHA operators have 60 instead of 45 days in which to submit the required information for recertification after they are notified that their operating certificate is about to expire.
6. Section 489.4(f)(3) has been amended to require local social services districts to submit renewal applications to the Department at least 15, instead of 30 days before the operating certificate expires.
7. Section 489.13(g) has been amended to require a physician's statement for operators only at the time of application and subsequent renewals. Physician's statements for substitute caretakers who work 20 or more hours a week are also only required at the time of application and subsequent renewals. The time of application for substitute caretakers is considered to be the date they apply for employment in the FTHA. The local social services district may require additional medical

evaluations if it has reason to believe that an operator or substitute caretaker is no longer physically or mentally capable of providing adequate care to dependent adults.

8. A new Section 489.4(i) has been added which prohibits a facility licensed or certified by another agency from becoming certified as a FTHA. This subdivision also prohibits a FTHA from becoming licensed or certified by another agency. The regulation does, however, permit a person who is certified as a foster parent for a child to become certified as an operator of a FTHA in order to provide care for a former foster child who is over age 21, but remains in need of personal care and/or supervision when:
 - the former foster child meets the admission criteria set forth in Section 489.7 of the regulations;
 - the home complies with the appropriate operating provisions of Part 489;
 - the district ensures that appropriate child welfare staff are aware of the continued placement of the individual in the home, that such staff have assessed the impact on any remaining foster children in the home and have approved the situation; and
 - unless a waiver is issued, the FTHA operating certificate will permit only one former foster child to be cared for in the home at one time and will expire when the former foster child moves out of the home.

B. Inspection and Enforcement

Inspection and enforcement procedures for Adult Care Facilities, including FTHA, are contained in Part 486 of the Department's regulations. Section 489.5(a)(2) of the Department's regulations has been revised to reduce the required frequency of FTHA inspections by social services districts from a complete inspection once every six months to an unannounced complete inspection at least once a year. The revised regulation also requires additional inspections by the local social services district whenever necessary to ensure the health, safety and well-being of the residents. This means that at least one additional inspection must be conducted whenever a regularly scheduled inspection or a complaint investigation reveals deficiencies that threaten the health, safety and well-being of one or more residents. It is also recommended that local social services districts inspect all newly certified FTHA every six months during the first year of operation to ensure that adequate care and supervision is being provided.

The inspection and enforcement procedures outlined in 85 ADM-36 "Implementation of Revised Regulations for the Family-Type Home for Adults Program" and 89 ADM-22 "Residential Placement Services for Adults" are still valid. Residents must still be interviewed privately and assessed to ascertain that their needs are being met and that they continue to be appropriate for this level of care. Resident and facility records must be reviewed. A Survey Report (DSS-2867) must be completed. A Report of Inspection (DSS-3720) that lists every violation, the necessary corrective action and the timeframe in which each violation is to be corrected must be sent to the operator. Timeframes for correcting violations must relate to the seriousness of the violation with immediate correction being required for any violations that place residents at serious risk. Local social services districts must verify that all violations have been corrected via a follow-up inspection in accordance with Section 486.2(e)(5) of the regulations. The need to document the inspection process in a manner that will support enforcement proceedings when warranted remains paramount. Local social services districts are encouraged to review the pertinent ADMs and regulations governing the inspection and enforcement process and consult with Department staff if they are unclear regarding any of the procedures to be followed.

C. Capacity Issues

1. Adult Relatives Requiring Care

There has been much confusion regarding the status of a relative in a FTHA when the relative requires personal care and/or supervision or nursing care. To address this confusion, the Department amended Sections 489.2(b) and 489.4(a) of the Department's regulations. Section 489.2(b) now states "Unrelated to the operator of a family-type home means that the relationship between the operator and the resident is not that of spouse, parent or parent-in-law, child or step-child". Section 489.4(a) now states "The operator of family-type home for adults must be a natural person. An individual may, but is not required to, seek certification as an operator of a family-type home for adults to care for persons related to her or him provided that the relationship is not that of a spouse, parent or parent-in-law, child or step-child." The following policy clarifications are based on these revisions.

- ° A person does not have to be certified to provide personal care and/or supervision in his/her own home to a relative.
- ° A person cannot be certified to provide personal care and/or supervision in his/her own home to his/her spouse, parent, parent-in-law, child or step-child.
- ° An operator of a FTHA may provide care for his/her spouse, parent, parent-in-law, child or step-child without any of

these individuals being counted in the certified capacity of the home.

- When an operator of a FTHA is providing personal care and/or supervision in his/her own home to a relative other than a spouse, parent, parent-in-law, child or step-child who is appropriate for the level of care permitted in a FTHA, that relative must be counted in the certified capacity of the home.
- Section 489.7(c) of the regulations prohibits relatives, other than a spouse, parent, parent-in-law, child or step-child, from remaining in a FTHA if they require a higher level of care unless: the operator moves the other FTHA residents to other appropriate locations and surrenders the operating certificate; or the local social services district grants prior approval to an operator to continue to care for a relative who requires a higher level of care. In determining whether to grant such approval, the district must consider the potential impact on the remaining FTHA residents and the ability of the operator to provide the required care.

2. Permissible Use of Space in a Family-Type Home for Adults

It has been a long standing requirement that space in a family-type home for adults must be used exclusively for long-term residential care and family activities unless an operator obtains prior approval from a social services district. There are two general regulatory requirements that the operator must satisfy in order to secure approval for the alternative use of space in a FTHA. First, the operator must demonstrate that the proposed use is not incompatible with the FTHA program. Second, the operator must demonstrate that the additional use can be physically accommodated within the FTHA. If the FTHA has to be renovated in order to accommodate the additional activity, Section 489.12(c) of the Department's regulations requires the operator to demonstrate that all applicable building and safety codes have been satisfied.

To provide additional clarity to social services districts on the use of additional space in a FTHA, Section 489.12(b) was amended and a new Section 489.16 was added to the regulations. These provisions codify existing Department guidelines which were included in 91 INF-55.

Section 489.12(b) has been amended to provide specific standards for local social services districts to apply when an operator requests permission to utilize space to provide respite care, adult day care or placements for protective services for adults clients. These standards are explained below.

- For respite care and Protective Services for Adults (PSA) placements, it must be demonstrated that the proposed resident meets, or in the case of a PSA placement appears to meet the admission standards set forth in Section 489.7 of the regulations, that the FTHA will not exceed its certified capacity by admitting a temporary resident who requires personal care and/or supervision unless prior approval is granted by the district, and that the length of stay will not exceed 30 days. In determining whether or not to approve a request by an operator to exceed certified capacity, the district must consider the impact on the FTHA residents and the ability of the operator to care for additional persons in need of care and supervision.
- For adult day care it must be demonstrated that the operator has provided a substantially consistent high level of care to the FTHA residents of the home.

Section 489.16 states that the total number of FTHA residents, room and boarders, persons receiving respite care, adult day care and protective services for adults placements must not exceed six persons for a FTHA certified on or after November 15, 1996. It is important to note that the maximum certified capacity of a FTHA, which is four, has not changed. Consequently, the maximum number of persons in need of personal care and/or supervision in a FTHA cannot exceed four unless permitted by a social services district for respite and PSA placements as discussed above.

Section 489.3(b)(ii) of the revised regulations also clarifies the operator's responsibility to notify the local social services districts of any changes in household circumstances or composition, including family members and other persons commencing or terminating residency at the home as well as the admission and discharge of all FTHA residents.

D. Discharge Requirements

The admission and retention standards for residents in a FTHA are specified in Section 489.7 of the Department's regulations. It is not uncommon for FTHA residents to develop a physical or mental condition that requires a higher level of care than is permitted to be provided in a FTHA. A new subdivision, subdivision (g), has been added to Section 489.7 of the Department's regulations in order to clarify the roles and responsibilities of both the operator and local social services district in these situations. The amended regulations require the operator to immediately notify the local social services district that there is a resident that cannot be retained in a FTHA. The operator is then responsible for initiating persistent efforts to secure an appropriate alternative placement for the resident. The local social services district must monitor the operator's persistent efforts and document them in

the case record. If an appropriate alternative placement is not immediately available, the operator must arrange for other appropriate services when necessary to assure that the health and safety of the resident are maintained until placement is secured. The local social services district must document such efforts in the case record.

Many FTHA residents awaiting placement for a more appropriate level of care will require personal care services, home health care services or in-home nursing services until a placement can be secured. To assure that FTHA operators are able to access these services when necessary, local social services staff must assist FTHA operators in establishing the necessary linkages with appropriate providers pursuant to Section 489.6 of the regulations.

IV. REQUIRED ACTION

- A. Family Type Home Coordinators and other local district staff who are involved in the FTHA Program must become knowledgeable about the revised regulations and the provisions of this directive to ensure that these standards are effectively implemented.
- B. Local social services districts must inform FTHA applicants and operators of these revised regulations and their implications as part of their provider training and orientation responsibilities.

V. SYSTEMS IMPLICATIONS

None

VI. EFFECTIVE DATE

December 15, 1996

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