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| INFORMATIONAL LETTER |
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TRANSMITTAL: 90 INF-12

TO: Commissioners of
Social Services

DIVISION: Adult Services

DATE: March 9, 1990

SUBJECT: Family-type Home for Adults: Clarification of
Inquiries and of Regulations

SUGGESTED

DISTRIBUTION: Director of Services
Adult Services Staff
Family-type Coordinators
Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be
directed to the appropriate adult services program
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ATTACHMENTS: NONE

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
85 ADM 36		Part 489	Article 7		
89 ADM 22					

Purpose

The purpose of this release is:

1. to answer questions that were raised by local district staff at six regional technical assistance sessions which were held in the Fall of 1989 on 89 ADM-22 "Residential Placement Services for Adults"; and
2. to provide regulatory interpretations on specific provisions of Part 489 of the Department's regulations which should assist districts and operators with the administration of the Family-type Home for Adults (FTHA) program.

RESPONSES TO QUESTIONS RAISED AT REGIONAL TECHNICAL ASSISTANCE SESSIONS

Question:

Should an operator keep an "Inventory of Resident Property" (DSS-3027) when the operator is not actually holding the valuables?

Answer:

Section 489.9(b)(4) only requires an operator to maintain an inventory for all items of value which the resident has voluntarily given to the operator to hold in custody or to exercise control over. If the operator opts to record items which the operator is not holding, this information should be noted on the form.

Question:

Is a release of information, signed by the resident, required to enable local district staff to contact day programs to obtain their evaluation of a resident's functioning and adjustment?

Answer:

No. However, an agency may require a release of information before giving any information to local district staff. If the resident refuses to sign a release, other arrangements should be made to interview the resident in order to satisfy the requirement that each resident must be interviewed every six months as set forth in Section IV.A.2.a of 89 ADM-22.

Question:

Is there any mechanism to reimburse Family-type Home for Adults (FTHA) operators for travel expenses related to training?

Answer:

No, there is no mechanism to reimburse operators for expenses related to training.

Question:

If a resident requires personal care services and these services are not being provided by the operator but by a home health care agency, is that person considered a resident?

Answer:

Yes. Section 489.2(a) of the Department's regulations defines a resident of a Family-type Home for Adults as a person, unrelated to the operator, receiving long term residential care, room and board, personal care and/or supervision. The operator must provide a certain level of personal care, as described in Section 489.10(c) of the Department's regulations. If a resident requires additional care, personal care services can be provided by a home health agency. However, the definition of resident is totally dependent on the needs of the resident, not who provides the care.

Question:

Can the income from a boarder be considered as the outside source of income for a FTHA operator?

Answer:

Yes. Section 489.3(b)(8) states that the operator of a FTHA shall demonstrate sufficient income, not solely derived from income from residents, to meet the operator's household expenses.

Question:

Can another caseworker, other than the homefinder, conduct the interview that is required every six months to assess the continued appropriateness of the resident's placement and care?

Answer:

Yes. When a services case is opened for a FTHA resident, the resident's caseworker can conduct the required six month interview and discuss the caseworker's assessment with the homefinder. The homefinder must document this discussion and include the caseworker's assessment of the resident in the facility file as part of the six month inspection report in accordance with the progress note recording requirements contained in 89 ADM-22. Of course, the resident's service case record must also reflect the casework contact in accordance with progress note reporting requirements.

Question:

Does the definition of "unrelated to the operator" mean that a brother must be certified to care for his handicapped sister?

Answer:

No. As set forth in Section 461-b.1(b) of the Social Services Law, a person may choose to seek certification as a family-type home if they are providing long term residential care and/or supervision to persons related to them as long as the relationship is not that of spouse, child, stepchild, parent, or in-law. Once the home is certified the resident may be eligible to receive Level I payments if the resident meets the eligibility criteria.

PART 489 REGULATORY INTERPRETATIONS

ADMISSION STANDARDS

489.7(b)(13)

Question:

What is the Department's policy regarding the appropriateness of admitting or retaining:

- 1) A person who is in the active stages of Hepatitis B; and
- 2) A person who is a carrier of Hepatitis B.

Answer:

1. A person who is in the active stages of Hepatitis B is infectious. An operator may not admit or retain a person who suffers from a communicable disease or health condition which constitutes a danger to other residents and staff. Therefore, an operator may not admit or retain a person who is in the active stages of Hepatitis B.

2. A person who is diagnosed as a carrier of Hepatitis B may be admitted or retained in a Family-type Home provided the person meets all the admission and retention standards outlined in regulation.

MEDICATION MANAGEMENT
489.10(d)

Question:

May FTHA operators accept medication orders from a Veterans Administration (VA) hospital that are signed by nurse practitioners and psychologists?

Answer:

At the present time, nurse practitioners are not permitted by New York State Law to prescribe medications, and neither are psychologists. Although VA hospitals may not be subject to New York State law, our operators are. Therefore, in conformance with current state statutes, only physicians and physicians' assistants may prescribe medications, and operators may accept medication information for residents only if signed by physicians and physicians' assistants.

We are aware that the Governor has recently signed into law a bill which will allow nurse practitioners to prescribe drugs if they have been certified by the State Health Department as having completed a program which includes a pharmacology component. Since this law will not take effect for some time, the regulatory interpretation stated above will be operative until further notice.

Question:

What procedures should be followed when a resident is out of the home when medications are distributed?

Answer:

The New York State Department of Health advises that either of the following procedures must be followed when a resident is out of the house during the time the medications are distributed:

- 1) The operator may give the total container (bottle, blister pack, etc.) to the resident; or
- 2) The resident may obtain a separate prescription for the medication that will cover the time the resident is gone.

In lieu of giving a resident the entire container, the operator should request residents to give prior notice when they are going out for the day(s) to allow time to get a new prescription for only the amount needed during the resident's absence from the FTHA.

As an alternative to option #1 above, the resident may remove an appropriate quantity of medication under staff supervision. This will allow the resident to take only the required amount for the time out of the home, and will allow the FTHA to retain the remaining medication in the original container.

Question:

May operators impose a policy to determine the degree of supervision the resident needs even though the physician has stated the resident is capable (or incapable) of self-medication?

Answer:

No. Operators may not impose such a policy on residents. Residents who are determined by their physicians to need supervision and assistance must receive it. Residents determined by their physicians to be capable of self-administration who wish to self-administrate may not be required by operators to delegate this responsibility to the operator. If operators have reason to believe that a resident is no longer capable of self-administration without assistance, the relevant information must be brought to the physician's attention. After the physician reviews this information, he may revise the medical evaluation in accordance with Section 489.10(d)(8).

Question:

May the operator maintain medications for residents whose physicians have attested to their ability to self-medicate, but the residents prefer to have the operators maintain and dispense their medications?

Answer:

The regulations do not prohibit operators from storing medications for residents whose physicians state that they are capable of self-medication. Residents who are capable of self-medication and have physicians' statements attesting to this should, however, be encouraged to self-medicate in order to lead as independent a lifestyle as possible.

Question:

May a FTHA operator set up a system whereby some residents who have been determined by their physician to need assistance with self-administration of medications, will, upon the judgment of the operator, not be observed ingesting their medication?

Answer:

No. Section 489.10(d)(6) requires that for residents in need of supervision and assistance, the operator must establish a system to observe and record residents taking their medication, as well as supervising and assisting the residents.

RESIDENT FUNDS AND VALUABLES
489.9(b)(2)(3)

Question:

May an operator of a FTHA give a resident a monetary advance from the following month's personal needs allowance (PNA) and then provide the resident the monthly allowance less the amount advanced?

Answer:

Yes, an operator may give the resident a monetary advance from the following month's PNA and deduct that amount from the monthly allowance before giving it to the resident. There must be written documentation of the transaction which must include the following:

- 1) the resident's request for the advance;
- 2) a receipt signed by the resident for the amount advanced;
- 3) written authorization from the resident to deduct the amount advanced from future PNA funds; and
- 4) a record of repayment or reconciliation.

RECORDS AND REPORTS
489.7(o)

Question:

With reference to the DSS-2949, Personal Data Sheet, who may be a "resident's representative" and who may be a "resident's admission sponsor?"

Answer:

For purposes of the DSS-2949 only, "resident's representative" is to be interpreted as whomever the resident designates as the resident's representative. If there is no next-of-kin or if the resident does not wish to designate a relative, then the resident may designate another individual, or leave this box blank.

"Resident's Admission Sponsor (if any)" shall be interpreted as any person, agency or entity who intercedes to advocate for the client to be admitted as a resident or anyone who may guarantee funding for the resident.

ENVIRONMENTAL STANDARDS
489.12(n)

Question:

May an operator limit smoking to designated areas within the home?

Answer:

The operator has the authority to designate specific areas as either non-smoking or smoking.

Question:

Should a resident who may create a potential fire hazard be moved to a room close to the operator?

Answer:

There is nothing in regulation to prohibit an operator from moving a resident who may create a fire hazard to a room close to the operator.

Question:

Should smoke alarms be placed in the rooms of residents who smoke?

Answer:

There is nothing in regulation to prohibit the placement of smoke alarms in rooms of residents who smoke.

Question:

May a resident be charged for damage resulting from careless smoking?

Answer:

There is nothing in regulation to prohibit an operator from charging a resident for damage resulting from careless smoking.

Question:

What are the "careless smoking" criteria that make a resident a danger to himself and to others and therefore, inappropriate for a FTHA?

Answer:

The following list provides some "careless smoking" criteria to determine if a resident is a danger to self or to others:

1. habitually smoking in non-designated areas;
2. leaving cigarettes unattended; and
3. not extinguishing a cigarette completely.

If, in the operators' judgment, the resident causes, or is likely to cause, danger to self or others (Section 489.7(b)(4)) and/or repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the home (Section 489.7(b)(5)), the operator must initiate an involuntary termination proceeding or transfer the resident, as appropriate, in order to protect the other residents.

Judith Berek
Deputy Commissioner