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Administrative Directive Memorandum

Section 1

Table with 2 columns: Field (Transmittal, To, Issuing Division/Office, Date, Subject, Suggested Distribution, Contact Person(s), Attachments) and Value.

Filing References

Table with 6 columns: Previous ADMs/INFs, Releases Cancelled, Dept. Regs., Soc. Serv. Law & Other Legal Ref., Manual Ref., Misc. Ref.

02-OTDA-INF-11 00-OTDA-INF-19 94-DSS-LCM-153 93-DSS-ADM-24 92-DSS-LCM-104		18 NYCRR 452			10408
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Section 2

I. Purpose

The Office of Children and Family Services (OCFS) and the Office of Temporary and Disability Assistance (OTDA) are issuing this directive to advise social services districts (districts) and residential programs for victims of domestic violence (DV) of amendments made to Sections §§ 131-u and 459-f of Social Services Law (SSL) in accordance with Part J of Chapter 56 of the Laws of 2019, and to clarify the funding sources available for paying for residential programs for services rendered to victims of DV. This release also advises districts that applicants or recipients of public assistance, commonly referred to as temporary assistance (TA), receiving DV residential shelter services, are no longer required to contribute towards the cost of their stay in the DV shelter. Finally, this release advises districts and DV shelter providers about the strengthening of protections of personally identifying information of victims of DV by requiring the victim and head of household’s consent prior to sharing personally identifying information.

II. Background

Districts are required to offer and provide emergency shelter and services at a licensed residential program for victims of DV when such residential program is necessary and available to victims of domestic DV.

The federal Family Violence Prevention Services Act (FVPSA) (42 USC 10408) requires that states provide DV services and residential shelter to victims in need regardless of the victim’s ability to pay for such shelter or services and institute procedures to protect the confidentiality of victims. The U.S. Department of Health and Human Services recently determined that certain provisions of New York State’s laws are inconsistent with FVPSA on the basis of privacy concerns and that requiring some victims to pay a portion of their shelter costs is prohibited. OCFS and other state agencies presently use federal grant funds from FVPSA to support a multitude of services for victims of DV.

Consistent with Federal regulations prohibiting placing any conditions on the receipt of residential services for victims of DV, amendments were made to Sections 131-u and 459-f of the SSL in Part J of Chapter 56 of the Laws of 2019 to eliminate the requirement that victims of DV apply for TA to pay for the costs of emergency shelter and services at a residential program for victims of DV, and to repeal requirements that providers charge certain victims a share of the costs for services. These changes will allow New York State to continue to receive funding from FVPSA.

In addition, the amendments articulate that a district fiscally responsible for a victim of DV must reimburse a DV residential program at the per diem rate established by OCFS reduced by any other reimbursement available for such costs. Federal statutory requirements indicate that fees cannot be levied against a victim of DV for receipt of services.

The changes in legislation were also necessary to comply with federal statutory and regulatory requirements which prohibit placing any condition upon the receipt of services for victims of DV. This guidance supersedes any prior guidance.

III. Program Implications

As a result of the changes in the SSL, emergency regulations amending 18 NYCRR Parts 408 and 452 have been filed. These changes eliminate the requirement that a DV victim must apply for TA and prohibit the levying of fees against a victim of DV. There is no change to the policy that requires districts to offer and provide emergency shelter and services at a DV residential program to DV victims regardless of whether a person is eligible for TA. Applying for TA remains voluntary and confidential. These changes apply to victims of DV who receive residential services as of the effective date of this release.

A. Informing DV Victims about the right to apply for TA upon entry into a Residential Program for victims of DV

Regulations now require that within the first business day of entry into the residential program, a residential program must provide victims of DV with information explaining their right to apply for TA and relevant information to make an informed decision whether to apply for such assistance. This information must include, but is not limited to, understanding what personally identifying information is required, how that information will be used, what benefits and services are available through TA, and the personal privacy requirements and program waivers required under TA.

B. The protection of personally identifying information of victims of DV

The regulations strengthen the protection of personally identifying information of victims of DV by requiring the victim and head of household's consent prior to sharing personally identifying information with a district for purposes of either applying for TA or providing payment to a residential program for victims of DV.

The increase in protection of personally identifying information does not affect a program's requirements under SSL § 413 and related regulations at 18 NYCRR Part 452.9(d) and 18 NYCRR 452.10(a)(4)(ii)(a) to comply with mandatory reporting of suspected child abuse or maltreatment.

C. DV Victims cannot be required to apply for TA

Statutory amendments eliminate any requirement that victims of DV apply for TA to pay for the costs of emergency shelter and services at a residential program for victims of DV as a condition of shelter. Districts and DV providers may not require that a victim of DV apply for TA in order to receive residential DV services.

D. DV Victims who choose to apply for TA, or who are already receiving TA

If an individual in need of DV residential services chooses to apply for, or to continue receiving TA, they must sign the "Domestic Violence Release of Information" form (attachment 2) commonly referred to in this document as the "consent form." Completing the consent form is required for all TA applicants and recipients, and can be done either at the DV shelter or at the district office.

Districts should continue to provide TA application forms and client information booklets to the residential programs in their districts to facilitate the application process should anyone wish to apply for TA, or any of the other benefit programs that are available to them through the use of such forms.

E. Forms

Districts are prohibited from disclosing personally identifying information to DV providers without a signed consent form. Likewise, DV providers are prohibited from disclosing personally identifying information to districts without a signed consent form.

The consent form can be found as Attachment 2. This form is also available for download on LDSS E-Forms.

For those DV victims who choose not to apply for TA, and for whom no personally identifiable information is provided to the district, the District of Fiscal Responsibility (DFR) will be determined by the residential program using the OCFS District of Fiscal Responsibility (DFR) Determination Worksheet for Non-TA Cases (attachment 3).

How to obtain forms:

1. These forms are available on the OCFS Intranet website at: <http://ocfs.state.nyenet/> in English. OCFS is in the process of translating these forms into the following languages: Arabic, Chinese, Haitian-Creole, Bengali, Korean, Russian and Spanish. Once they are completed, they will be posted on the OCFS Intranet website.
2. This form may be available for downloading by districts for reproduction locally, depending on print specifications.

How to Request Approval for a Local Equivalent Form:

1. Local equivalent forms are forms developed by districts which are designed to be used in place of state-mandated forms. Local equivalent forms must contain all the information required on the state-mandated forms, but may also contain additional information required for the district's own purposes. Local equivalents may differ in format as well as media from the mandated forms. Districts develop local equivalent forms for many reasons, including producing forms to accommodate sight-impaired workers; producing different sized forms which better fit in district case folders; producing forms which have the district address preprinted; and producing electronic forms to be used in place of hard copy forms. The goal of the local equivalent form approval process is to guarantee that districts are using forms which are legally, programmatically and systematically accurate and up-to-date.
2. The district must receive written approval from the OCFS prior to using the local equivalent form. To make changes to a mandated LDSS form, districts **MUST** submit a request on county letterhead with a modified version of the form attached, prior to implementing use of the form. The request must include the reason for the change and a contact person.

Please submit your request either electronically or by hard copy to:

Pamela Jobin
Director, Bureau of Domestic Violence Prevention and Victim Support
Office of Children and Family Services
52 Washington Street
North Building, Room 334
Rensselaer, New York 12144

IV. Required Action

A. Districts:

Districts may no longer require a victim of DV to apply for TA as a condition for receiving residential DV services. Additionally, victims cannot be required to provide personally identifying information to the district for any purpose including payment of the cost for the shelter stay. A victim may choose to apply for TA, in which case their TA benefit will be applied to the cost of the DV residential program. The victim must be provided with information to assist them to make an informed decision whether to apply for TA. This information includes and is not limited to: what benefits and services are available, what personally identifying information is required for the application, and how such information will be used.

All applicants and recipients of TA receiving DV residential services must sign the “Domestic Violence Release of Information” form (attachment 2) as a condition of TA eligibility. If a DV victim seeking DV residential services goes directly to the district, the victim must be referred to the district’s domestic violence liaison (DVL), and the DVL must offer the consent form to the victim. If the victim agrees to share their information with the DV residential program, the DVL must send a copy of the completed and signed consent form to the authorized DV shelter provider. The DVL must keep a copy of the consent form in their confidential case files.

Districts are reminded that no information indicating the presence of DV, including the consent form, must ever be imaged into the district’s document repository, or otherwise entered into the individual’s TA case record.

In addition, if a victim chooses to apply for TA they must submit a completed and signed [LDSS-2921](#) “Application for Certain Benefits and Services.” They must complete an eligibility interview and comply with all TA eligibility requirements, unless they have received a DV waiver for an eligibility requirement or have good cause for not complying. If they are found eligible for TA, then their TA benefit may be applied toward the costs of their stay at a residential program for victims of DV.

If the victim does not wish to apply for, continue to receive, or is ineligible for TA, the district will reimburse the costs of the victim’s stay in the domestic violence shelter through Title XX of the federal Social Security Act, or other funding sources administered under the direction of OCFS.

District of Fiscal Responsibility:

The DFR must pay the established per diem rate to the applicable residential program for victims of DV through either TA, non-TA or a combination of both funding sources, for the costs of temporary shelter and emergency services provided to victims of DV and any minor children of such victim. The DFR is the district in which the victim was a resident at the time of the DV incident that prompted entry into the DV residential shelter.

For example, if a person is a resident of district A, and while this person is staying with friends outside of their home district, a DV incident occurs that prompts their entry into a DV residential shelter, district A would be the DFR.

For those DV victims who chose to apply for TA, there is no change to DFR procedures as described in 00 INF-19. In addition, if districts have any questions regarding DFR determinations for a TA applicant or recipient they may continue to contact the OTDA TA Bureau for assistance.

For those DV victims who choose not to apply for TA, and for whom no personally identifiable information is provided to the district, the DFR will be determined by the residential program using the OCFS District of Fiscal Responsibility (DFR) Determination Worksheet for Non-TA Cases (attachment 3). If districts have any questions regarding DFR determinations for non-TA cases they may contact Pam Jobin at Pamela.Jobin@ocfs.ny.gov or by phone at 518-474-4787.

Districts are reminded that existing policy delineated in [93-ADM-24](#) requires districts to pay residential programs for victims of DV within sixty days of receipt of billing. OCFS will provide oversight in coordination with OTDA. DV providers with concerns about delays in payment should immediately call Pam Jobin.

Districts should be actively monitoring all DV shelter non-TA payments that are made. If a district observes a substantial increase in non-TA DV shelter costs as compared to prior years, that district should notify the OCFS Bureau of Budget Management. If a further review of claims determines that the changes set forth in this policy have placed a significant burden upon a district's availability of funding, consideration may be given to provide that district with an advance of open-ended adult protective/domestic violence funding.

Calculating the TA Benefit for DV victims receiving DV Shelter:

Previously, districts calculated the TA benefit in accordance with TA budgeting rules. If the TA applicant/recipient's TA benefit was equal to or greater than the cost of the residential provider, then the provider was paid in full and any remaining TA benefit was given to the applicant/recipient. If the applicant/recipient's TA benefit was less than the cost of the residential program, then the entire TA benefit was paid directly to the provider and the applicant/recipient was responsible for paying the difference out of their monthly income.

When a victim has applied for, or is in receipt of TA, districts must continue to calculate such TA benefits in accordance with the TA budgeting rules in 18 NYCRR 352. When the TA benefit is less than the actual cost of the DV shelter, the provider is no longer allowed to bill the victim for any portion of their stay in the DV shelter. Instead, districts will reimburse shelters for this shortfall and claim these costs from either the district's allocation under Title XX of the federal Social Security Act that is required to be spent on adult protective or DV services, or services expenditures made by a district which will be subject to the applicable percent state reimbursement.

For further information on budgeting examples for both TA and non-TA payment of DV shelter costs please see the "Temporary Assistance Budgeting Examples and Payment Examples," attachment 1.

TA Sanctions and Non-Cooperation with TA Requirements:

If a TA applicant/recipient is currently residing in a DV residential program and requests that TA pay for the cost of the DV shelter, and the individual is within the durational sanction period, the cost of the individual's stay in the DV shelter is not eligible for reimbursement using TA funds. The application to pay for the cost of the individual's stay in the DV shelter must be forwarded to the district's Services bureau for a determination of eligibility for Title

XX, or other funding sources administered under the direction of OCFS. If there are other family members on the application, they may be eligible for TA for their share of the needs.

If a TA applicant/recipient refuses to cooperate with TA requirements without good cause and without a DV waiver, and as a result their TA is denied, sanctioned or closed, the DV shelter costs of that individual would only be eligible for reimbursement through TA up to the point of such non-compliance. After that time, the shelter would be ineligible for payment for that individual through TA, and the application must then be forwarded to the district's Services bureau for a determination of eligibility for Title XX, or other funding sources administered under the direction of OCFS. If there are other family members on the application, who are otherwise eligible, TA payments may continue to be made for their share of the needs.

A TA applicant/recipient currently residing in a DV residential program who was previously sanctioned but who is not in a durational sanction period is eligible for a shelter payment through TA if the individual cooperates to the extent possible while in the DV residential program, and TA is able to make a determination of TA eligibility.

For example: An individual's TA case was closed because of failure to cooperate with employment requirements in a ROS district. As an adult without children, the first instance of employment non-cooperation resulted in a sanction of 90 days and until compliance. The individual is two months past the end of the 90-day durational sanction period at the time of entry into the DV program and application for TA. The district conducted an initial eligibility interview and had all necessary documentation to determine TA eligibility. However, it cannot schedule the applicant for an interview with the employment unit for nine days. Two days before the employment interview, the individual leaves the shelter and moves out of state.

Since the applicant cooperated to the extent possible while in the DV shelter, and the district can determine the individual is eligible for TA, TA must pay for the cost of the DV stay.

In the event that an individual submits a TA application but leaves the DV shelter prior to the initial eligibility interview, the application for TA would be denied, no payment could be made using TA funds, and the application would be referred to the district's Services bureau for determination of eligibility and for payment under Title XX or other funding sources administered under the direction of OCFS.

Making DV Shelter Payments Without a TA Application:

Title XX funding may be utilized to reimburse the costs associated with residential DV services without the victim applying for TA, having an income eligibility determination made, or sharing their personally identifying information. Specifically, Title XX claims that are not classified as Title XX under 200% as a result of a transfer of Temporary Assistance for Needy Families funding to Title XX do not require income or personally identifying information regarding a victim of DV to be provided to the district in order for the residential DV services to be reimbursable. In these instances, a district only needs verification of the provision of eligible residential DV services; no eligibility checklist is required. A victim may choose to apply for TA and have their TA benefit applied to the cost of the domestic violence residential program. The victim must be provided with information to assist them to make an informed decision whether to apply. This information includes and is not limited to: what benefits and services are available, what personally identifying information is required for the application, and how such information will be used.

A district can seek reimbursement of expenditures through Title XX of the federal Social Security Act and through other funding sources administered under the direction of OCFS, so

long as the district abides by the rules of the applicable funding source. Providers are responsible for submitting accurate service bills to the district that is reflective of services that have actually been provided. The district is required to pay the provider for such services, as billed by the provider. Upon provider review, reconciliation or audit, a provider may amend a district bill for services and the district will pay or credit the provider as appropriate to reflect the revised provider billing.

Districts may utilize Title XX Below 200% funds to pay a DV per diem only when the family has applied for TA and completes a consent form. Eligibility of the family will be determined by the district through the TA application process. Please refer to chapter three, Title XX Below 200% Eligibility, in the NYS OCFS Eligibility Manual for Child Welfare Programs available at:

<https://ocfs.ny.gov/main/publications/eligibility/07%20Chapter%203%20Title%20XX%20Below%20200%20of%20Poverty.pdf> for the eligibility determination process.

Since Welfare Management System (WMS) requires the entry of an individual's name and date of birth, if the individual does not consent to the release of personal identifying information to the LDSS, payments to DV residential program must be made outside of WMS and BICS. See Section VI System Implications for more information.

B. Residential Programs for Victims of Domestic Violence:

At intake, DV programs must inform victims of DV that they have a right to apply for TA. In addition to TA, the DV program must provide information to the victim related to: all other potential benefits and services including, Daycare subsidies, Supplemental Nutrition Assistance Program (SNAP) benefits, Special Supplemental Nutrition Program for Women, Infants and Children (WIC) benefits, what personally identifying information is required, and how the personally identifying information will be used, so that the victim can make an informed decision whether to apply for such programs. If the DV victim chooses not to apply for TA, this decision shall be documented by the residential program.

When a victim of DV, who is not already in receipt of TA goes directly to a DV residential program, the residential program must provide the DV victim with the consent form and allow the client to decide whether to complete the form prior to submitting their application for TA. If the victim agrees to continue with the TA application process and share their information with the district, then the DV shelter must send a copy of the completed and signed consent form to the authorized district(s) and retain the original.

In all instances, when a residential program determines that a person is eligible for admission and admits such person into the program, it must provide notice of such admission to the district where the person was a resident at the time of the domestic violence incident. Such notice must be given on or before the first working day following admission. If the victim does not sign the consent form, the DV residential program must provide the following non-personally identifying statistical information on or before the first working day:

- The OCFS District of Fiscal Responsibility (DFR) Determination Worksheet for Non-TA Cases, (attachment 3). The worksheet will contain the unique case ID for each DV victim as entered into the OCFS Domestic Violence Information System (DVIS) and explain the program's determination of DFR.
- The date of admission for the victim and any minor children to the residential program.

To be eligible for reimbursement by the district, the DV shelter must also maintain accurate records and submit accurate service bills to the district. In addition to the information noted above, these records and bills must include the following:

- The unique case ID for each DV victim as entered into the OCFS DVIS.
- The number of nights each individual stayed overnight in the residential program.
- The date the victim and any minor children depart the residential program.

V. OCFS Monitoring and Oversight

OCFS, in conjunction with OTDA, will examine compliance across the state with the recent statutory and regulatory changes and policy directives to determine if there are potential procedural and/or claiming issues. OCFS will perform desk reviews to assess changes in length of stay, number of clients seeking payment of DV shelter through TA, and payments to programs for victims who decline to share their personally identifying information. The findings will be shared with the districts as appropriate. Additionally, during case record reviews conducted at the DV program, OCFS staff will examine program practices regarding informing victims of their right to apply for TA and check files for the presence of completed DFR and consent forms.

VI. Systems Implications

WMS Rest of State (ROS):

ROS Districts must use shelter type 22 Residential Program for Victims of Domestic Violence (3 Meals/Day) (u) or shelter type 37 Residential Program for Victims of Domestic Violence (Less Than 3 Meals/Day) (u) when calculating budgets for TA applicants or recipients residing in residential DV shelters.

ROS districts cannot use Client Notification System (CNS) to produce notices for cases with shelter type 22 or 37. Districts must send manual notices for cases budgeted with these shelter types. ROS districts must not use CNS code R70 for shelter types 22 and 37 as there will not be a clients' share for these shelter types.

In order to accommodate this change in policy, a new variant of the CNS notice R15 restricted shelter payment code will be created for shelter types 22 and 37 that will remove language indicating any responsibility on the part of the client to pay excess shelter costs. Districts will be notified when this new CNS code is available for use. In the interim, districts must create a manual notice.

WMS Downstate:

NYC must use shelter type 13 - Residential Programs for Victims Of Domestic Violence (Less than 3 Meals Per Day) or shelter type 14 -Residential Programs For Victims Of Domestic Violence (3 Meals Per Day) when processing budgets for household residing in residential DV shelters. Workers will need to issue a manual notice to households while the language in the current CNS is being revised. Workers should suppress notice using an M3E indicator of A.

WMS Services System Instructions:

For those individuals who have submitted a completed and signed [LDSS-2921](#) "Application for Certain Benefits and Services" and a signed consent form, the district is to open a WMS Services case (CT 40) in the usual manner. If all or a portion of the DV shelter per diem is

claimed from either the district's allocation under Title XX or applicable state reimbursement, Services 23G (Title XX) or 23C (Title XX Below 200%) is to be authorized for residential DV services in both the direct service (DIR) and purchase of services (POS) fields. Residential DV services paid on behalf of a non-qualified or undocumented alien are authorized with service type 23Y in DIR and POS fields.

BICS:

Service type 23 does not appear on system generated rosters but will appear on BICS Services Lists requested through BICS Production Request 23-Request for Services List. From the Services Lists generated, and a review of the DSS-2970 authorizing the service type 23, accounting staff can prepare manual vouchers for processing. Please see the BICS Services Payment Processing manual, Chapter 4 for additional information regarding Services Lists and manual voucher processing.

Payments for service type 23G made through BICS appear on the BICS composite Schedule G, Line 22, Column 12 as "DOM-VIOLENCE-A-SERV/DV-TITLE-XX".

Payments for service Type 23C made through BICS appear on the BICS composite Schedule G, Line 22, Column 13 as "DOM-VIOLENCE-A-SERV/DV-BELOW-200%".

Payments for service type 23Y made through BICS appear on the BICS composite Schedule H, Line 7, Column 17 as "DOMESTIC-VIOLENCE-UNDALIEN-FNP".

Making Payments Outside of WMS and BICS:

When it is not possible to authorize and pay for DV services through WMS and BICS, the local district should develop and/or follow existing local processes and procedures for off-line payments. As noted previously, these cannot include personally identifying information for victims who have not signed a consent form.

Payments made off-line must be added to the Automated Claiming System (ACS) manually for reimbursement purposes. DV claims would be included on Schedule G in Column 12 (Title XX) or Column 13 (Title XX under 200%), as applicable, on line 22 (DV) or Schedule H in Column 17, on line 7 (DV Undocumented Alien FNP)

VII. Effective Date

Immediately

Issued By

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Name: Derek J. Holtzclaw
Title: Associate Commissioner
Division: Administration and Financial Management, NYS OCFS