

**New York State Department of Health
Supplemental Compliance Plan Guidance
January 31, 2014**

On January 16, 2013, regulatory amendments pertaining to “transitional adult homes” (TAHs) were adopted. Under 18 NYCRR 487.13(c), “The operator of every transitional adult home shall submit to the department a compliance plan that is designed to bring the facility’s mental health census to a level that is under 25 percent of the resident population over a reasonable period of time, through the lawful discharge of residents with appropriate community services to alternative community settings.” Compliance plans were due on May 16, 2013.

In guidance on compliance plans issued on May 3, 2013, the Department, recognizing that information that could assist TAHs in detailing their compliance plan was not yet available, directed TAHs to set forth the broad parameters of their compliance plan and noted that it would work with TAHs to modify their compliance plans. Today’s guidance supplements prior guidance on compliance plans, focusing on areas that DOH believes, after a review of submitted compliance plans, merit additional guidance or information.

A frequently asked question is whether TAHs must discharge residents with Serious Mental Illness (SMI) who do not wish to leave. To clarify, the regulations specify that compliance plans should provide for the lawful discharge of Adult Home residents. They do not require the discharge of residents against their will. Accordingly, the reduction of a facility’s mental health census by attrition should be an element of every TAH’s compliance plan. Operators should review their records of resident turnover during the past year or more to determine an average monthly rate of attrition (i.e., on average, how many residents normally leave the facility permanently each month). Amended compliance plans should include the average monthly rate of attrition, describe the way in which it was calculated, and specify the role of attrition in the facility’s compliance plan – for example, the facility may choose to reduce its mental health census by replacing each resident with SMI that leaves the facility with a new resident without SMI. The average monthly rate of attrition should be considered in estimating the time in which the facility intends to come into compliance.

Attrition should not be the facility's sole approach to compliance, however. It should supplement other measures that should also be undertaken to decrease a facility's mental health census.

A successful compliance plan may also include one or more of the following approaches to reducing the facility's mental health census:

- Decertification of beds to reduce the facility's certified capacity to less than 80 beds.
- Seeking an alternative type of certification or licensure for some beds or for the facility.
 - Assisted Living Program certification. As a result of an amendment to Social Security Law § 461.1, the Department of Health has made available up to 4500 ALP beds specifically for Transitional Adult Homes. In addition, facilities that choose to house exclusively ALP beds may be eligible for reimbursement of capital construction costs associated with renovations undertaken in connection with conversion to a 100% ALP facility. As residents with SMI leave the TAH, they may be replaced by ALP-eligible residents without SMI.¹
 - Consider seeking licensure to operate the facility as an Enriched Housing Program.
 - TAHs that intend to pursue alternative licensure or certification should so state in their compliance plan. Operators of existing facilities pursuing alternative licensure may take advantage of a new, streamlined licensure application process.
- Engage in marketing strategies to attract individuals without SMI.

In addition, an acceptable compliance plan must explain how the facility will accomplish the following:

- Collaborating with on-site and/or off-site mental health service providers to identify residents who wish to leave the adult home and the skills required for successful transition.
- Providing residents the opportunity to participate in goal-directed life skills training programs (*e.g.*, cooking, cleaning, hygiene practices, medication management, money

¹ Individuals occupying ALP beds are not excluded from a facility's mental health census. A TAH may not admit any person, whether to an ALP bed or a non-ALP bed whose admission will increase the mental health census of the facility. 18 N.Y.C.R.R. 487.4(c).

management, shopping, conflict resolution, and other instrumental activities of daily living that foster independence).

- Fostering community involvement and integration – (*e.g.*, theater events, trips, shopping, religious services, dining out, movies, public transportation, filling scripts, vocational opportunities and library visits).
- Establishing a working relationship with providers of Community Housing. Compliance plans should set forth how the facility intends to provide information to residents about opportunities to move to community housing, and should identify the providers of community housing, including OMH Supported Housing, in the facility’s geographic location with which the facility intends to work in order to transition residents. The plan should include how the facility will invite housing providers to communicate with residents.
- Assisting residents who desire discharge to develop and execute a sound discharge plan in accordance with 18 NYCRR 487.7(g)(1)(ii).
- Compliance plans should explain the role that the Resident Council will have in achieving compliance with the regulations.

Twenty-three TAHs fall under the definition of “NYC Impacted Adult Homes” under the terms of a July 23, 2013, Settlement Agreement entered into by the State of New York with the U.S. Department of Justice and private plaintiffs. United States v. State of New York, CV-13-4165 (EDNY), O’Toole, et al. v. Cuomo, CV-13-4165, (EDNY). Under the Agreement, the State (through housing providers and care managers) will provide Residents with the information they need about community housing and services to make informed decisions and to take advantage of the opportunity to transition to the community. Residents will have the opportunity to enroll in Health Homes (HHs) and/or Managed Long Term Care Plans (MLTCPs), which will conduct comprehensive assessments of the Residents’ physical and behavioral health needs and coordinate necessary services. HHs and MLTCPs will work affirmatively with Residents, and housing contractors as appropriate to recommend housing to coordinate the social, medical and behavioral health services necessary to enable the residents who wish to move to live in the community.

Compliance plans for NYC Impacted Adult Homes **must** explain how the Home will provide reasonable access by housing contractors, HHs and MLTCPs to their NYC Impacted Adult Home Residents and how the Home will cooperate with these entities, as well as State agencies and their designees, and the Independent Reviewer, who are involved in implementing the settlement.

The Department recognizes that it will take time to reduce the mental health census and looks forward to working in collaboration with your facility to develop and implement an acceptable compliance plan.