

May 26, 1998

Dear Administrator:

On May 18, 1998 we mailed you a letter containing three regulatory interpretations.

One of those interpretations, which was titled "Managed Incontinence," has been revised to reflect in the title and the body the correct regulatory terminology of "chronic unmanaged incontinence." This revised regulatory interpretation, which is attached, is titled "Chronic Unmanaged Incontinence" and dated May 26, 1998.

In addition, the other two regulatory interpretations in that original letter are also attached and now dated for ease of reference. You should therefore disregard the May 18, 1998 letter and utilize this present letter and the three interpretations dated "5/26/98" instead.

We apologize for any inconvenience this may have caused you.

Sincerely,

/s/

John C. Fredericks
Director
Office of Housing & Adult Services

Attachments

May 18, 1998

Dear Administrator:

The purpose of this letter is to provide all operators and administrators of adult homes, residences for adults, and enriched housing programs with recent regulatory interpretations.

The Office of Housing and Adult Services regularly receives requests for clarification of regulatory intent and implementation requirements. These requests and the official responses are periodically consolidated and distributed to all facility operators and administrators. Attached to the present letter are the following three (3) regulatory interpretations:

Necessity of Medical Evaluation When Transferring to Another Facility;

Residents and Risks: Operator Requiring Residents to Hold Harmless the Facility Operator and Employees; and

Unmanaged Incontinence.

Since adult care facilities are required to be operated in compliance with the standards reflected in the attached regulatory interpretations, operators and administrators are advised to study and understand the interpretations covered in this letter. If you have any question about this material, please contact the appropriate Regional Office of this Department:

Mr. Jay Dorney
Western Regional Office
716/238-8185
Toll Free: 800/462-6443

Mr. Martin McMahon
Eastern Regional Office
518/432-2873
Toll Free: 800/286-4830

Ms. Mary Hart
Metropolitan Regional Office
212/383-1745
Toll Free: 800/554-5391

Mr. Carl Reo
Long Island Regional Office
516/294-2877
Toll Free: 800/635-7920

Sincerely,

John C. Fredericks, Director
Office of Housing & Adult Services

Part 487
Part 488
Part 490

CHRONIC UNMANAGED INCONTINENCE

487.4(b)(12)
488.4(b)(12)
490.4(b)(14)

QUESTION: Department regulations [487.4(b)(12), 488.4(b)(12), and 490.4(b)(14)] require that no person be admitted or retained as a resident of an adult care facility (ACF) if that person has chronic unmanaged urinary or bowel incontinence. Within this context, what is meant by "chronic unmanaged incontinence"?

ANSWER: Incontinence refers to a person's inability to control bodily evacuations. "Managed incontinence" means that instances of the individual's incontinence are minimized or avoided by the resident, with or without the assistance of facility staff or others, through such measures as scheduled bathroom trips, the use of a urinal, bedpan or commode, or by adult diapers. "Chronic unmanaged incontinence" means that the individual resident chronically is either unwilling or unable to participate in steps to minimize or avoid instances of incontinence, such that the resident's cleanliness and sanitation cannot be maintained.

Please note that Adult Care Facility Directive No. 6-91, dated December 31, 1991, indicated that the Retention Standards Waiver Program would consider granting a retention standards waiver for residents who required assistance to manage their bladder or bowel incontinence. A retention standards waiver is no longer needed for a resident whose incontinence is managed as described above. The resident, of course, is required to be otherwise appropriate for admission or retention.

5/26/98

Social Services Law, section 461

Part 487

Part 488

Part 490

Necessity of Medical Evaluation When Transferring to Another Facility

Section 461-c(7) of Social Services Law

487.4(i)

488.4(d)(1)(iv)

490.4(j)

Question: Is a new medical evaluation required whenever a resident transfers from one adult care facility to another? Even if the same operator owns both facilities? Or if a parent not-for-profit facility directly or indirectly operates both facilities under different corporate structures?

Answer: Section 461-c(7) of Social Services Law explicitly requires that a resident must submit a physician's report at the time of admission to an adult care facility, which means each adult care facility.

In instances of a discharged resident who within 30 days of discharge reapplies for admission to the same ACF that he or she left, a 1981 policy statement recommends that if the medical condition of the resident appears unchanged and the physician's statement on file in the facility had been completed within the previous 90 days, then (and only then) in such an instance another pre-admission physician's statement is not required.

5/26/98

Social Services Law, section 461

Part 487

Part 488

Part 490

**Residents and Risks: Operator Requiring Residents to
Hold Harmless the Facility Operator and Employees**

Social Services Law, section 461-d

487.5(d)

488.5(c)

490.5(d)

Question One: May an operator include a statement in an admission agreement by which a resident would agree to not hold the operator, facility, employees, or agents liable for an injury or loss incurred by the resident?

Answer: Section 461-d(3) (a) of Social Services Law provides that every resident's civil liberties, including the right to independent personal decisions, must not be infringed and the facility must encourage and assist in the fullest possible exercise of these rights. Section 461-d(3) also states that waiver of this provision by a resident of an adult care facility is void.

Therefore, an admission agreement may not contain a statement by which a resident would be waiving his/her right to seek legal redress or compensation regarding any misfortune experienced by virtue of living in and receiving services through the adult care facility.

5/26/98