

**Office of Children and Family Services
Assessment of Public Comments**

Proposed Rules:

18 NYCRR Part 452 – General Provisions for Residential Programs
18 NYCRR Part 453 – Standards for Domestic Violence Shelters & Mixed Occupancy Shelters
18 NYCRR Part 454 – Standards for Safe Home Networks & Safe Homes
18 NYCRR Part 455 – Standards for Domestic Violence Sponsoring Agencies & Safe Dwellings
18 NYCRR Part 462 – Non-Residential Services for Victims of Domestic Violence

Action:

Response to public comments made during 1/8/2020 – 2/24/2020 public comment period.

General Comments Received:

OCFS received four comments. Of the four, two are not-for-profit agencies that provide residential and/or non-residential services to victims of domestic violence, one is an individual, and one is the state coalition of domestic violence providers.

Summary:

The Office of Children and Family Services (OCFS) reviewed existing regulations related to programs providing residential and non-residential services to victims of domestic violence (DV). The purpose of the review is to bring the regulations into compliance with current federal/state statute and, as applicable, provide clarification to existing requirements.

Overall Changes:

Clean up of grammar/spelling errors

Part 452 – General Provisions and/or Part 462 – Non-Residential Services of Victims of Domestic Violence

Definitions

Victim of Domestic Violence Part 452.2(t) & Part 462.2(e)

Two commenters expressed concerns related to the definition. One commenter requested specificity to “over the age of sixteen” and clarification of the expanded acts in the definition. One commenter suggested the language does not match Social Services Law (SSL) §459-a. OCFS disagrees and clarifies changes of the definition in SSL §459-a were made on 8/8/2019 when Governor Cuomo signed S.2625/A.5625. No changes made.

Person with a disability 452.2(i)

One commenter inquired if mental illness could be considered a disability? The definition in the regulations is from the American with Disabilities Act. Their guidance notes that mental illness may constitute a disability. No changes made.

Reasonable accommodation for a disability 452.2(m)

One commenter suggested the definition should include criteria of how reasonable accommodations are assessed and/or provided. No change was made to the definition since this is addressed in 452.9(a)(4).

Non-discrimination of protected classes 452.9(a), 452.9(a)(i)(I), Part 462.6(c)

One commenter suggested adding, “predisposing genetic characteristics, limited English proficiency and familiar status” to the specified citations above. OCFS agrees and made the suggested changes.

Service animals and Therapy dogs 452.2(r), 452.2(s), 452.9(a)(5)

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One commenter had several questions related to the definitions of service animals, therapy dogs and how programs would assess undue burden. No changes made; OCFS will provide technical assistance to address this commenter's questions.

Data reporting requirements 462.3(c)(4)

One commenter recommends changing the language "any other data required by the Office" to "any other data required by State or federal law." OCFS disagrees. No changes made.

Core Services

One commenter suggested minor changes to align the language for the core services of: advocacy, counseling, and support groups in 452.12 and 462.4. OCFS agrees and made the applicable changes.

Information and Referral 452.12(b)

One commenter conflated the requirement to provide information and referrals to community resources with the admission standards in 452.9(a). This core service is simply providing information to DV victims. No changes made.

Community Outreach and Education 452.12(j) & 462.4(a)(5)

One commenter suggested changes to better clarify collaboration with other programs in the same county/area is to avoid duplication of activities. OCFS agrees and made applicable changes to both parts.

Language Access 452.12(k) & 462.4(a)(6)

One commenter expressed concern regarding residential and non-residential programs ability to provide language access services without additional funding. OCFS made no changes in response to this comment.

Staff Training

ACES (Adverse Childhood Experiences) Training 452.11(h)(2)(ii) & 462.5(3)(ii)

One commenter suggested to simply mention the training plan must also include training in ACES. OCFS agrees and made the applicable changes to both parts.

Individualized Development Plan 452.11(h)(3) & 462.5(4)

One commenter suggested removing the provision that would enable staff to be exempt from a training topic based on the staff person's expertise. OCFS respectfully disagrees. No changes made.

Application for an operating certificate 452.3(f)

One commenter thought "residential program" is mentioned twice unnecessarily within this provision. The mention is not duplicate. One refers to an applicant, the other a provider. No changes made.

Hearings 452.5(e)(1), 452.5(e)(2)(iii), 452.5(e)(4)

One commenter provided 3 comments related to hearings:

- It's unclear of the time frame for notification of the hearing. The provision in 452.5(a)(1) indicates 30 days. No change needed.
- Suggested that temporary suspension as indicated in 452.5(e)(2)(iii) be limited to 30 days. OCFS respectfully disagrees. No change.
- Suggested that in instances in which an enforcement action is taken against one facility operated by a provider that operates multiple facilities, OCFS should not assess for the safety of residents at the other facilities until AFTER the enforcement action is finalized. OCFS disagrees with the suggestion and will not delay assessing the safety of residents.

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Inspection and Supervision by the Office 452.8(b), 452.8(d), 452.10(a)(1)

One commenter recommends removing the reference in 452.8(b) of SSL §460-c (5), which addresses consequences of denying the Office access to a facility or agency for the purpose of inspection. OCFS disagrees. No changes made.

One commenter suggested removing the provision that allows for unannounced inspections in relation to complaints and/or follow-up to an initial application or renewal application. OCFS disagrees. No changes made.

Interviews with residents 452.8(c), 452.10(a)(1), 452.10(d)(1)(iii)

In one commenter's opinion, OCFS should be limited to interviewing residents only when investigating complaints, and only if the resident has provided informed, written and time-limited consent. OCFS respectfully disagrees. Interviews with residents are voluntary. A resident can refuse an interview.

Residential Admission Standards 452.9(a)(2)(iii)

One commenter inquired how a provider would determine whether an individual has a communicable disease/illness? The NYS Dept. of Health website, as well as local county Dept. of Health, are robust sources of information.

Residents Rights, Responsibilities and Program Responsibilities 452.9(a)(9)(i) – 452.9(a)(9)(iii)

One commenter suggested the following changes: to add a resident's right to send and receive mail; remove the section regarding resident responsibilities; and provide clarification in the program's responsibility related to informing residents of OCFS access to the program, specifically as it pertains to personally identifying information (PII). OCFS made applicable changes to include resident's right to mail, and clarification related to OCFS access to resident's PII. OCFS disagrees with the removal of resident responsibilities and did not make changes to 452.9(a)(9)(ii).

Incorporated non-for-profit organization; general terms and conditions 452.9(e)

One commenter disagrees with the nonprofit corporation general terms and conditions as set forth in this subsection, and argues it creates an unnecessarily higher standard than required by the NYS Not-for-Profit Corporation law. OCFS respectfully disagrees. OCFS clarified that the references to 'law' in this subsection means the 'Not-for-Profit Corporation Law.'

Confidentiality

Residential programs sharing information in a resident's record 452.10(a)(3)

One commenter noted that the provision in 452.10(a)(3) to allow one residential program to share a resident's record with another program is contrary to confidentiality requirements related to PII. OCFS agrees and made applicable corrections to maintain confidentiality of a resident's PII.

Local district access to residents 452.10(d)(2)

One commenter maintains federal guidance does not recognize a local district's access to a resident for the purpose of assessing service needs and/or assisting with finding housing as reasons to meet with a resident and suggests 452.10(d)(2) be removed. After a review, OCFS finds the changes made in SSL related to a victim's choice to apply for temporary assistance (TA), makes 452.10(d)(2) not relevant as residents that choose to apply for TA would have already provided consent to the local district for access to their information. Therefore, OCFS has repealed 452.10(d)(2). OCFS reiterates that access to a resident as per 452.10(d)(1) remains.

Redisclosure of confidential information by OCFS or Local District employee 462.9(b)(2)

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Once commenter recommend modifying the language to indicate any OCFS or local district employee that rediscloses confidential information will be subject to disciplinary action. Therefore no changes made.

Personnel 452.11 & 452.11(f)(2)

One commenter suggested modifying the terms, “prospective employees, volunteers, consultants, and contractors” throughout 452.11(a) – 452.11(e). OCFS respectfully disagrees. No changes made.

One commenter disagrees with 452.11(f) that requires programs to have a recruitment plan for bilingual staff when the local community has a significant non-English speaking population. OCFS has not made changes in response to this comment.

Part 453 - Standards for Domestic Violence Shelters & Mixed Occupancy Shelters, Part 454 – Standards for Safe Home Networks and Safe Homes and/or Part 455 – Standards for Domestic Violence Sponsoring Agencies and Safe Dwellings

General Requirements 454.3(b) & 455.3(c)

One commenter suggested that only approved domestic violence shelters/programs be permitted to operate a safe home network or sponsoring agency. OCFS disagrees. This would constitute a hardship for small nonprofits in rural areas. The application requirements in 452.3 and 452.4 ensure a vetting process that operating certificates are only issued to an applicant who has met all the licensing requirements. No changes made.

Staffing 453.5, 454.8, 455.7

One commenter recommends the definition for “staff” in the applicable sections be removed and all references be replaced with “compensated employees and/or volunteers.” OCFS disagrees as these sections refer general staffing patterns and staff/resident ratios. No changes made.

Environmental standards 453.7, 454.9(d), 455.9

One commenter recommends the environmental standards for physical plants of the respective parts 453.7, 454.9(d) and 455.9 be removed. OCFS disagrees. No changes made

Emergency Egress Windows 453.7(c)(iii) & 455.9(c)(ix)

One commenter disagreed with OCFS making different specifications for New York City and the rest of state, as there has never been different requirements based on geography and recommends removing the egress window requirements. OCFS disagrees and notes that the differing standards are not arbitrary, but are based upon local code in New York City. No changes made.

Separate and distinct sleeping areas 453.7(c)(2) & 455.9(d)

One commenter noted that the requirement that sleeping areas be separate and distinct from other areas appears to restrict the use of studio apartments and seeks clarification. OCFS notes that studio apartments are not prohibited per-se. This is a fact specific inquiry that requires an examination of the overall physical plant. No change made.

Square footage requirements for sleeping rooms 453.7(c)(2)(iv) & 455.9(d)(3)

One commenter seeks clarification regarding why OCFS added minimum square footage requirements. The provision was added because several providers asked for guidance related to square footage. No changes necessary.

Prohibition of toxic paints or finishes on furniture, furnishings, materials or equipment that may be used or accessible to children

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One commenter stated this creates a hardship for programs to test paint/finishes. As most programs rely on donated furniture, furnishings and/or equipment, the program would have no way of knowing whether these contain toxic paints/finishes.

Response: OCFS disagrees and restates its position. No changes made.

Carbon monoxide detector and alarm 453.7(c)(10)(iii), 454.9(d)(11), and 455.9(k)(3)

One commenter had a question whether carbon monoxide detector and alarm are considered one or two pieces of equipment? This is a technical description. It is one piece of equipment. No changes needed.

Use of Extension Cords 453.7(c)(10)(vii)(h) & 455.9(k)(8)(vii)

One commenter suggests removing the requirement that OCFS approves in writing the use of extensions cords. OCFS disagrees. No changes made.

Storage of Firearms in Safe Homes 454.9(d)(15)

One commenter recommends the level of detail regarding safe storage of firearms and ammunition is not needed in regulation. OCFS agrees and made applicable changes.

Any other condition deemed hazardous 453.7(c)(10)(vii)(i) & 455.9(k)(8)(viii)

One commenter recommends removing the provision regarding the prohibition any other condition deemed hazardous by the Office. OCFS disagrees. No changes made.

Disaster and emergency plans 453.8(a) & 455.9(l)

One commenter suggested examples of types of emergencies/disasters is not necessary. OCFS modified the wording to broaden preparedness to naturally occurring or human caused emergency or disaster.

Per diem rate for Safe Home Providers 454.9(e)(2)(i)(c)

One commenter questioned why a safe home network cannot negotiate its per diem rate with the local district? SSL §131-u (2) and §459-f state the per diem rate is set by OCFS, not local districts.