

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
 Commissioner

[An Informational letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.]

INFORMATIONAL LETTER

TRANSMITTAL NO.: 82 INF-10
 [Services]

TO: Commissioners of Social Services
 SUBJECT: Residential Care Facilities for
 Children and Adults

DATE: May 12, 1982

SUGGESTED DISTRIBUTION: Commissioners
 Directors of Services
 All Child Welfare Workers
 All Adult Services Workers

CONTACT PERSON: Any questions concerning this release and its application to residential child care programs or facilities for children should be directed to Mr. H. A. Harkess, Office of Policy Planning, Division of Services, by calling toll free 1-800-342-3715, Extension 4-9574. Questions concerning this release and its application to adult residential care facilities should be directed to Mr. Richard McDevitt, Bureau of Certification and Finance, Division of Adult Services, by calling toll free 1-800-342-3715, Extension 4-9531.

I. PURPOSE

The purpose of this letter is to inform local districts of the amendments made by Chapter 689 of the Laws of 1981 to Section 460-d of the Social Services Law. This change strengthens the authority of the attorney general to seek equitable relief against violations or threatened violations of law or regulations by operators of residential care facilities for children or adults. The appointment of receivers is specifically included as one permissible type of such equitable relief.

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
77 INF 16		SSL, Article 7 SSL 460-d SSL 461-f		
CENTRAL FILES				

II. BACKGROUND

In 1977, a new Article 7 to the Social Services Law was enacted. It provided general rules for the certification, operation, inspection and supervision of residential care programs for adults and children. Included in Section 460-d of that Article were provisions on enforcement powers, which, in subdivision 5 thereof, provided authority for seeking relief against violations of law or regulations in the operation of residential care facilities for children or adults. This was generally in the nature of injunctive relief which would enjoin the operator(s) of a facility from committing or continuing a violation or act or from admitting new residents, or which would direct the Department of Social Services and the facility to arrange for the transfer of residents to other facilities.

One means of providing for the orderly transfer of such residents and/or to provide for the continued safe management of a facility while this or any other transition takes place is the legal device of receivership.

In the 1977 enactment of the new Article 7 to the Social Services Law, Section 461-f of that article established a limited authority for receiverships in certain cases. However, it dealt only with residential programs for adults and did not apply to residential facilities for children at all.

In order to provide express authority to the Department of Social Services and to the Attorney General to seek appropriate and adequate relief and protection regarding residential care facilities and in order to insure the inclusion of facilities for children as well as adults within this authority, the Legislature enacted and the Governor approved Chapter 689 of the Laws of 1981. It specifically provides that the Attorney General, upon the request of the Department of Social Services and on behalf of the People of the State of New York, may seek such "equitable relief" as may be deemed necessary to halt a violation or threatened violation. Such relief may include not only injunctive relief but the appointment of a receiver in order to protect the public health, safety or welfare of a facility's residents.

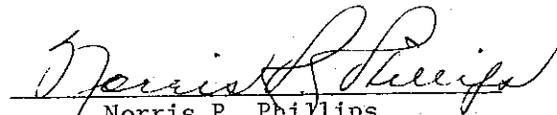
III. PROGRAM IMPLICATIONS

These new provisions in Section 460-d of the Social Services Law strengthen the enforcement powers of the Department of Social Services and broaden the options available to the Department and to the State in seeking such enforcement, particularly in relation to residential facilities for children. Because these new provisions appear in Title 1 of Article 7, they extend both the equitable relief and the receivership provisions of the enforcement powers to include all residential facilities for children and adults which are subject to the inspection and supervision of the Department of Social Services.

The use of the term "equitable relief" provides the courts with authority to grant remedies beyond those explicitly enumerated in statute law. Equitable relief can be tailored to fit the facts of the particular case, in order to satisfy the court that justice is being done, and is not being controverted by a specific set of statutory remedies, none of which adequately rights the wrong or compensates an injured party. The appointment of a receiver to manage the facility, specifically mentioned in this law, would otherwise have been an example of a possible form of equitable relief. Other possible equitable remedies in this context might include awarding damages to a resident (if damages can be proven), exercising continuing court jurisdiction to supervise compliance, or injunctive relief incorporating punitive damages as a deterrent.

IV. RECOMMENDATIONS:

As these provisions apply directly to enforcement by the State Department of Social Services, no specific action by local districts is required. However, it is recommended that this letter or its content be distributed to all local district personnel who have dealings with residential care facilities for children or adults.


Norris P. Phillips
Deputy Commissioner
Division of Services


Corinne Plummer
Deputy Commissioner
Division of Adult Services

10-10-10

