



Office of Children and Family Services

KATHY HOCHUL
Governor

SUZANNE MILES-GUSTAVE, ESQ.
Acting Commissioner

Date

Name

Address

Address

RE: Request to allow hospice services for residents in a Family-Type Home for Adults (FTHA)

Dear FTHA Operator:

The New York State Office of Children and Family Services (OCFS) is responsible for the certification and oversight of the Family-Type Home for Adults (FTHA) program. As part of this responsibility, OCFS receives requests from operators to waive certain regulations under which an FTHA must operate. Please note that state law cannot be waived. Therefore, any waiver that requests specific regulatory relief from a requirement that is also required by statute (state law) cannot be approved.

To clarify practices involving hospice services for FTHA residents, this letter will provide instructions on the following:

- When operators must request approval for hospice to be provided for a resident in their FTHA.
- What must be included in the written hospice plan of care.
- Who is allowed to provide hospice care and services in an FTHA.

According to the Hospice Foundation of America, hospice care can be provided to adults with a terminal illness and lifetime prognosis of six months or less. Hospice care is most beneficial when the individual and family can receive care early to take advantage of the many benefits available through hospice services. Hospice is not a replacement for nursing home care.

FTHA operators are not obligated to agree to allow the provision of hospice services for residents in the home. If the operator does not wish to allow hospice services within an FTHA, the operator must advise the resident and/or their representative that the resident must be relocated through dissolution of the admission agreement and provide the resident and/or their representative a 30-day notice. The local department of social services (LDSS) or the Human Resources Administration (HRA) will assist as needed in relocating the resident.

When FTHA operators are willing and able to allow hospice services for a resident, they must do so in partnership with the resident and their family/representatives, hospice providers, LDSS/HRA, and OCFS.

If operators initially agree to allow for hospice services and subsequently determine they cannot or will not allow hospice services in the home, the operator has the right to request

that the hospice services be discontinued in their home. Alternate housing options will be pursued by the operator with the assistance of LDSS/HRA and family/representatives.

Final written approval permitting the FTHA operator to allow hospice services for a resident in the home is determined by OCFS on a case-by-case basis. The determination will include an assessment of the impact of hospice services on the care and supervision needs of all the residents in the FTHA. LDSS/HRA (FTHA coordinators) are involved in the approval process. For a hospice services application to be considered, there are several conditions that must be met by both the resident and operator. These conditions and steps are outlined in the attached guidance document.

If the minimum criteria are met, the operator must submit the OCFS-4258, *Family-Type Home for Adults Application for Hospice Services* form (attached), with either a completed or a preliminary care plan from the hospice provider on hospice letterhead and a 24-hour coverage plan completed by the operator(s). This must include the identity of the non-FTHA caregiver(s) who will provide direct care needed by the resident in the event the resident's health declines and no longer meets the FTHA level of care standards.

It is important to note that New York State Social Services Law 461-c and 18 New York Codes Rules and Regulations (NYCRR) Parts 487 and 489 prohibit FTHAs (adult care facilities) from providing nursing and medical care to residents. An FTHA operator or substitute caregiver who is trained as a certified nursing assistant (CNA), home health aide (HHA), or registered nurse (RN) may not function as such in their FTHA role by providing nursing care to residents.

It is also important to note that FTHAs do not qualify under New York State Public Health Law (PHL) for any licensure to control, dispense, or administer controlled substances. FTHA operators and substitute caregivers are therefore prohibited from engaging in any of these activities regarding controlled substances prescribed to an FTHA resident.

Any resident in an FTHA who is prescribed a controlled substance as defined under PHL 3306 must be able to independently control (store) and self-administer such controlled substances independently, without the assistance of the FTHA operator or substitute caregiver(s). Controlled substances must be kept in the resident's bedroom in a secure storage box, which must be locked and under the control of the resident. Prescribed controlled substances that require refrigeration must be stored in a locked refrigerator or a secure storage box within an unlocked refrigerator located in the resident's bedroom.

If a resident becomes unable to independently manage their medication, including controlled substances, the designated hospice care provider(s) must control and administer the medications with training from the hospice provider.

To clarify, the FTHA operator and substitute caregiver may **NOT** engage in any of the following activities:

- Provide total assistance with feeding, including swallowing.
- Perform one- or two-person transfers.
- Control/store and/or administer controlled substances.
- Provide any nursing tasks, including wound care.

If the hospice plan of care states that the resident may eventually require one or more of the above-noted activities, the operator's plan must indicate who, **other than** the operator or substitute caregiver, will be responsible for the completion of these activities.

Fire safety is a paramount concern in an FTHA program. This becomes even more important when there is a possibility that there is a non-ambulatory resident in the home under hospice care. When completing the hospice care coverage plan, the operator must include a staffing plan that continues to support the needs of the non-hospice residents in the home, including the ability to safely evacuate all residents. To be evacuated safely, there must be sufficient FTHA staff to evacuate all residents and sufficient hospice care providers to evacuate any resident receiving hospice care.

It is important to note that hospice staff or individuals providing hospice care in the home are not permitted to provide assistance or supervision to any resident in the FTHA other than the resident receiving hospice services.

Additional staffing requirements and incurred costs for the resident receiving hospice services can be paid by the resident and/or their family/representative. The operator is not required to pay for additional staffing that may be needed to safely support the resident receiving hospice. It is best practice that a written agreement is developed between the operator and resident/family/representative clarifying these details.

With the submission of the OCFS-4258 form, operators attest that they

- agree to and will follow the hospice care plan; and
- acknowledge that they are responsible for the care, coverage, and staffing plans;
- are aware that such plans are regulatory or statutorily allowable only within the limitations of an FTHA; and
- must notify the LDSS/HRA when a change in resident health status occurs.

Once the request for the provision of hospice services has been approved, operators must maintain full compliance with the approved plan detailed in the OCFS-4258 form. It is critical that operators communicate significant changes or other issues to their FTHA coordinator immediately.

If an operator fails to adhere to the approved OCFS-4258 form, it may result in withdrawal or modification of the approval. Operators will be subject to citations for any violations of applicable regulation(s).

Finally, under no circumstances should FTHA operators bypass or circumvent the hospice application process and independently provide hospice services in their FTHA.

We acknowledge and appreciate FTHA operators' desire to provide care that is compassionate and that supports a resident's dignity and autonomy. We hope that this process provides clarity and instruction regarding the extent of the flexibility allowed in an FTHA that supports the intention of hospice.

Please direct any questions to your FTHA coordinator.

Sincerely,

Director
Bureau of Adult Services

cc: FTHA Coordinators

Attachment B

GUIDANCE FOR HOSPICE SERVICES REQUEST

Operator agrees to pursue hospice services approval on behalf of the resident.

Operator confirms all of the following:

- At the time of the request, the resident still meets the FTHA retention standards as described in 18 New York Codes Rules and Regulations (NYCRR) Part 489.
- The resident has resided in the FTHA for a minimum of six consecutive months prior to the request.
- The process of having hospice services in the FTHA will not disrupt or diminish needed services for non-hospice residents.

Operator in partnership with resident, family/representatives, and hospice providers must develop a 24-hour staffing plan to support the resident's needs and provision of hospice.

The proposed staffing plan must include the following:

- Weekly coverage chart and a backup contingency staffing coverage plan.
- Names of caregivers (non-FTHA staff) who will be providing direct hospice care to the resident and their relationship to the resident. Acceptable caregivers can be family and friends of the resident, privately hired visiting nurses or other appropriate home health staff, hospice staff, personal or compassionate caregivers, as designated by the resident or representative,
 - If the resident requires one-person assistance to transfer and ambulate, then there is a minimum requirement of one caregiver (non-FTHA) 24/7.
 - If the resident requires two-person assistance to transfer and ambulate, then there is a minimum requirement of two caregivers (non-FTHA) 24/7.
 - A written plan of who will administer controlled substance medication and the method of storage of that medication is necessary if the resident cannot self-administer medication.

***Any residents in an FTHA who are prescribed a controlled substance as defined under Public Health Law 3306 must be able to independently control (store) and self-administer such controlled substances on their own without the assistance of the FTHA operator or substitute caregiver(s). Controlled substances must be kept in a locked storage box, in the resident's bedroom. Prescribed controlled substances that require refrigeration must be stored in a locked refrigerator or a secure storage box within an unlocked refrigerator located in their bedroom for which the resident controls access.*

Operator secures a copy of the completed care plan or a preliminary care plan from the hospice provider.

- This plan must be on hospice letterhead and include the type, frequency, and expected duration of hospice services.

Operator completes, signs, and dates the *Family-Type Home for Adults Application for Hospice Services* form.

Operator submits the following to the LDSS/HRA FTHA coordinator:

- Signed OCFS-4258 form.
- Staffing plan.
- Hospice care plan or preliminary care plan on hospice letterhead.