



# Office of Children and Family Services

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## Local Commissioners Memorandum

<b>Transmittal:</b>	24-OCFS-LCM-03
<b>To:</b>	Local Departments of Social Services Commissioners
<b>Issuing Division/Office:</b>	Division of Child Welfare and Community Services Bureau of Adult Services
<b>Date:</b>	March 19, 2024
<b>Subject:</b>	<b>Application for Hospice Services in a Family-Type Home for Adults (FTHA)</b>
<b>Contact Person(s):</b>	See section IV.
<b>Attachments:</b>	<a href="#">Attachment A: OCFS-4258</a> , <i>Family-Type Home for Adults Application for Hospice Services</i> Attachment B: <i>Family-Type Home for Adults Operator Letter and Guidance for Hospice Services Requests</i>

### I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to provide guidance to local departments of social services (LDSSs) regarding the application, review, and approval process for the provision of hospice services to residents in a Family-Type Home for Adults (FTHA).

### II. Background

FTHAs are adult care facilities in which an operator provides residential care, personal care, and/or supervision services in the operator's own home to four or fewer adults (residents) who are unrelated to the operator, as defined in New York Codes Rules and Regulations (NYCRR) 489.3(a).

An FTHA provides a home-like living environment. It is a community-integrated and a supported housing alternative for dependent adults who can no longer live alone due to advanced age, developmental disabilities, or physical or mental health but do not require skilled medical or nursing services. With prior approval from the LDSS, the New York City Human Resources Administration (HRA) or the LDSS designee (FTHA coordinator), FTHA operators may also have boarders, meaning persons who are independent and who do not need personal care or supervision. The total capacity of residents and boarders cannot exceed six people, with no more than four residents in the home. It is important to note that adult care facilities with five or more adults who require personal care and/or supervision are regulated by the New York State Department of Health.

The New York State Office of Children and Family Services' (OCFS) Bureau of Adult Services (BAS) has regulatory authority and oversight of FTHAs. Upon successful completion of the application process, BAS issues an operating certificate to the applicant that is valid for up to four years. Operators,

applicants, and potential residents must meet the certification and admissions criteria, respectively, as specified in 18 NYCRR 489.

As part of this responsibility, OCFS reviews and provides a decision for requests from FTHA operators to waive certain regulations under which an FTHA must operate. It is important to note that state law cannot be waived; therefore, any waiver that requests specific regulatory relief from a requirement that is required by statute cannot be approved.

Over the past several years, there has been an increased number of requests to allow the provision of hospice services to residents while continuing to reside in an FTHA. Prior to the process outlined in this LCM, hospice services requests for FTHA residents were made through the existing waiver request process.

To clarify practices involving the application process for and provision of hospice services for FTHA residents, OCFS has created an application form OCFS-4258, *Family-Type Home for Adults Application for Hospice Services* (Attachment A), separate from the waiver form, and a guidance document (Attachment B) outlining the process and requirements. The guidance document outlines the following:

- when an operator may request approval for hospice to be provided in the FTHA;
- what must be included in the written hospice plan of care; and
- who is allowed to provide hospice care and services in an FTHA.

### III. Program Implications

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

An operator requesting hospice services for a resident in an FTHA must submit the completed OCFS-4258 form and supporting documents to the corresponding LDSS FTHA coordinator or designee for initial review and approval. Upon receipt of the OCFS-4258 form, the LDSS FTHA coordinator or designee must assess if the application criteria are met. Specifically, if at the time of the request the resident for which hospice services are being requested

- still meets the FTHA retention standards as described in 18 NYCRR Part 489;
- has resided in an FTHA for a minimum of six consecutive months prior to the request; and
- the provision of hospice services will not disrupt or diminish needed services for non-hospice residents who reside in an FTHA.

It is important to note that New York State Social Services Law 461-c and 18 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. Therefore, 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.

If it is determined that the resident meets the application criteria, the LDSS FTHA coordinator or designee must review the OCFS-4258 form and confirm that the operator has completed, dated, and signed the form and provided all of following required documentation:

- A completed or preliminary care plan from the hospice provider on hospice letterhead.
- A 24-hour care coverage plan completed by the operator(s) that names the 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 home health staff, hospice staff, personal or compassionate caregivers as designated by either the resident or the resident’s representative. The plan must contain a weekly coverage chart and a backup contingency coverage plan if non-FTHA staff are unable to provide care.
  - The plan must also identify care coverage in the event that the resident may require one or two-person assistance to transfer and ambulate. One-person assistance requires a minimum of one caregiver (non-FTHA) 24 hours a day for the resident receiving hospice services, two-person assistance requires a minimum of two caregivers (non-FTHA) 24 hours a day for the resident receiving hospice services.
- A written plan of who will administer controlled substance medication and the method of storage of that medication. If the resident cannot self-administer, it must be clearly stated who will administer the medication and where it will be stored.
- The LDSS FTHA coordinator or designee must submit the following supporting documents to OCFS for review:
  - Signed OCFS-4258, *Application for Hospice Services*
  - Coverage plan
  - Hospice care plan or preliminary care plan on hospice letterhead

OCFS will consider each OCFS-4258 form and supporting documents 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.

**IV. Contacts**

Any programmatic questions should be addressed to the appropriate Bureau of Adult Services representatives.

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***/s/ Gail Geohagen-Pratt*** \_\_\_\_\_

**Issued by:**

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