



# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

January 25, 2019

Re: DAL 19-03  
Transitional Adult Home Regulations

Dear Adult Care Facility Operator:

On January 4, 2019, a decision was rendered by the United States District Court, Northern District of New York, in the case of Doe v. Zucker, et al., 17-CV-1005 (GTS/CFH). In that decision, the Court denied the petitioner's request for a preliminary injunction. Accordingly, **effective immediately**, the provisions of Title 18 of the New York Code of Rules and Regulations Part 487 that were temporarily restrained and enjoined are in full effect and enforceable. Those provisions are as follows:

### **§487.4 Admission Standards**

- (d) *An operator shall not admit or retain a number of persons in excess of the capacity specified on the operating certificate. No operator of an adult home with a certified capacity of eighty or more and a mental health census, as defined in section 487.13(b)(4) of this Part, of 25 percent or more of the resident population shall admit any person whose admission will increase the mental health census of the facility.*

### **§487.13 Transitional Adult Homes**

- (c) *The operator of every transitional adult home shall submit to the department a compliance plan that is designed to bring the facility's mental health census to a level that is under 25 percent of the resident population over a reasonable period of time, through the lawful discharge of residents with appropriate community services to alternative community settings.*
- (d) *The compliance plan shall be submitted by the deadline set forth in subsection (e) of this section and shall specify:*
- (1) *how and by when the operator will achieve a mental health census that is under 25 percent of the resident population;*
  - (2) *how the operator will address the needs of its residents, in particular those residents who are persons with serious mental illness as defined in subsection 487.2(c) of this Part, while the reduction in mental health census is being achieved, including but not limited to:*
    - (i) *fostering the development of independent living skills;*
    - (ii) *ensuring access to and quality of mental health services;*
    - (iii) *encouraging community involvement and integration; and*
    - (iv) *fostering a homelike atmosphere.*
- (e) *The operator shall submit the compliance plan no later than 120 calendar days after the effective date of this regulation.*
- (f) *The department, in consultation with the Office of Mental Health, shall review each compliance plan and within 90 calendar days, shall either:*

- (1) *approve the compliance plan; or*
  - (2) *require modification of the compliance plan by the operator. Any such modifications shall be submitted within 30 calendar days of notice by the department and shall be subject to the approval of the department, in consultation with the Office of Mental Health.*
  - (3) *If the operator does not submit a compliance plan, or submits a compliance plan that is not acceptable to the department after modification, the department will impose a compliance plan on the operator.*
- (g) *Upon approval of the compliance plan by the department, or, if no compliance plan is submitted or approved, upon the imposition of a compliance plan on the operator by the department, the operator shall implement the compliance plan.*

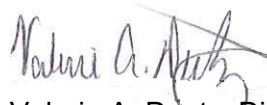
The Department recognizes that discharged residents with Serious Mental Illness may express a desire for admission to a Transitional Adult Home. Such request may be accommodated if:

- 1) the Adult Care Facility is able to ascertain the resident meets applicable admission and retention criteria; **and**
- 2) prior to that resident's admission to the Transitional Adult Home, a waiver of 18 NYCRR §487.4(d) is requested by the Transitional Adult Home and subsequently approved by the Department utilizing the established waiver approval process.

An updated list of Transitional Adult Homes is enclosed with this correspondence. Those facilities defined as a Transitional Adult Home per 18 NYCRR §487.13(b)(1) must submit or revise and submit the facility's compliance plan, with appropriate timeframes, no later than **February 21, 2019**. Please refer to DAL 13-10 for guidance regarding information to be included with your compliance plans.

All compliance plan submissions and/or questions regarding this correspondence should be forwarded via email to [transitionalah@health.ny.gov](mailto:transitionalah@health.ny.gov). Thank you for your attention to and cooperation with this matter.

Sincerely,



Valerie A. Deetz, Director  
Division of Adult Care Facilities  
and Assisted Living Surveillance

Enclosure

cc: D. Sheppard  
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