

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243 - 0001

CESAR A. PERALES
Commissioner



DIVISION OF ADULT SERVICES

ADULT CARE FACILITY INFORMATIONAL LETTER NO. 9-91

DECEMBER 19, 1991

TO: Adult Care Facility Operators

SUBJECT: Chapter Laws of 1991

CONTACT
PERSON: Martha Fennell, Division of Adult Services, Bureau of Policy and Standards, 1-800-342-3715, extension 432-2998

PURPOSE

To inform operators of adult care facilities of legislative proposals that were enacted during the 1991-92 legislative session.

BACKGROUND

During the past legislative session the Governor signed into law a number of proposals that have implications for adult care facility (ACF) operators, residents or individuals who might wish to enter an ACF. The degree to which each Chapter Law impacts on ACFs is conditioned by the specific law itself. The laws enacted relate to the assisted living program, COBRA case management, SSI increase, lease termination, non-resident services program, do-not-resuscitate (DNR) orders, food handling and MA utilization thresholds.

IMPLICATIONS

Each Chapter Law outlined below has implications for ACFs. Those that require more detailed information or require operators to take specific actions will be the subject of a future facility directive or informational letter:

o Assisted Living Program

Chapter 165 of the Laws of 1991 amends the Public Health Law and Social Services Law to provide for the establishment of an assisted living program (ALP). The ALP will meet the residential and health care needs of individuals who would otherwise require placement in a nursing facility and provide supportive housing and home care services. Home care services will be provided for, through a capitated Medicaid or private pay rate. Payment for the residential services will be through SSI or private pay. In order to be approved as an ALP an entity must be certified to operate an adult home or an

enriched housing program and either a home care services agency, certified home health agency or long term health care program. It also removes that section of statute which required six months of ACF residency before long term home care program (LTHHCP) services could be provided to eligible residents.

A program summary and letter of solicitation was sent to ACF operators and other persons and agencies who may be interested in developing an ALP.

o COBRA Case Management

Chapter 165 of the Laws of 1991 provides statutory authority for payment of health insurance premiums under the Medicaid program for certain persons with AIDS whose household incomes are above the Medicaid eligibility level but at or below 185 percent of the comparable federal poverty line. Persons with AIDS include persons who have been diagnosed as having AIDS or who have HIV related illness as defined in regulations promulgated by the New York State Department of Health. Chapter 165 requires social services districts to pay the health insurance for persons with AIDS who:

- 1) are unemployed or if employed on a part-time basis, are ineligible to participate in the plan of health insurance through their current employers, or the employers offer no such plan;
- 2) participate in the plan of health insurance provided by their prior employers and are eligible to continue or convert their participation in such plan by assuming the health insurance costs associated with such plan although no longer employed by such employers;
- 3) reside in a household whose household income is less than or equal to 185 percent of the federal poverty line; and
- 4) are not otherwise eligible for Medical Assistance benefits.

The Division of Medical Assistance is currently developing regulations to implement the statutory requirements. Questions regarding the Health Insurance Continuation Program for persons with AIDS may be directed to staff in the Division of Medical Assistance at 1-800-342-3715, extension 3-5562.

o Supplemental Security Income Increase

Chapter 201 of the Laws of 1991 provides for an automatic increase for 1992 in the monetary standards of need used to determine eligibility and payment of SSI and additional State payments to the aged, blind and disabled to reflect SSI benefit increases that may result from any cost-of-living adjustment (COLA) occurring between January 1 and June 30, 1992. As in previous years, the percentage increase in the personal needs allowance for ACF residents is also factored into the

COLA. At present the annual COLA is divided proportionately between the board and care rate paid to facility operators and the PNA that SSI residents receive. The COLA percentage is first applied to the annual PNA rate and rounded upward. The remainder is available to pay the operator of the facility.

Operators were informed of the amount of the increase in an ACF directive 7-91, dated November 15, 1991.

o Lease Termination

Chapter 215 of the Laws of 1991 amends the real property tax law to permit a tenant sixty-two years of age or older who has been accepted for residency in a residential health care facility, an adult care facility (except a shelter for adults) or certain senior citizen housing to terminate his or her lease or rental agreement. This law also would release the tenant from any obligation to pay rent after the effective date of termination. The tenant must submit documentation of admission or pending admission to a facility to the lessor or owner or to the lessor or owner's agent. This amendment will make it easier for elderly citizens of New York State to relocate to appropriate facilities.

o Non-Resident Services

Chapter 268 of the Laws of 1991 amends Chapter 779 of the Laws of 1986 extending until July 1, 1993 the non-residents services program. The program authorizes the provision of services to non-residents of adult homes, residences for adults and enriched housing programs. Services that may be provided include adult day services and temporary residential care. The program is limited to those facilities which have valid operating certificates issued by the Department and prohibits operation of a program without written approval of the Department. The program must be operated in accordance with applicable laws and regulations and must ensure that the quality of care provided to facility residents does not diminish.

o Do-Not-Resuscitate Orders

Chapter 370 of the Laws of 1991 amends the Public Health Law regarding the procedural requirements for issuance of do-not-resuscitate (DNR) orders. The DNR orders apply to withholding measures to restore cardiac function or support ventilation in the event an individual succumbs to cardiac or respiratory arrest. The provisions link health care agents for DNRs to the practices and procedures put into effect by the Health Proxy Law (INF 4-91) and allow surrogates to request a DNR order on behalf of a patient who lacks the capacity to do so.

The exact nature of the implications and statement of the role of an ACF operator must await the development of Department of Health policies and procedures.

o Food Service

Chapter 529 of the Laws of 1991 amends Section 225 of the Public Health Law in relation to the handling of food not in containers. It requires that all persons involved in the direct preparation or handling of food outside of containers to wear disposable plastic gloves or use any other method provided for in regulations to be promulgated by the New York State Department of Health that would permit minimal manual contact with food. The regulations take effect January 19, 1992. The exact nature of the implications for ACFs must await the promulgation of Department of Health regulations.

o Utilization Threshold Program

Chapter 938 of the Laws of 1990 authorized the Department of Social Services to implement a Utilization Threshold Program for certain medical assistance recipients between the ages of 21 through 64 who are in the Home Relief (HR), HR-related or HR-Federally non-participating Parent (FNP) categories. The Utilization Threshold Program establishes thresholds on many physician/clinic, pharmacy and laboratory services in order to deter unnecessary utilization of select ambulatory services under the medical assistance program and to ensure that the care and services provided are medically necessary and appropriate, that alternative delivery options are considered and that the care rendered conforms to accepted professional standards. For recipients of HR between the ages of 21 through 64 the program became effective July 1, 1991. For all other Medicaid recipients the program became effective September 15, 1991. If a recipient in one of the affected categories expects to require services above a given threshold, the recipient or service provider should apply for an exemption from a particular threshold. In such a case, the Department may review the recipient's medical history to determine whether or not to refer the recipient to a managed care program (health maintenance program). Recipients enrolled in managed care programs will not be subject to utilization thresholds. MA recipients in the previously mentioned categories will be encouraged to enroll in managed care programs to provide on-going health care. Operators of ACFs may wish to discuss the option and advantages of enrolling in a managed care program where available with those residents who retain the right to choose their health care providers. Any questions about the Utilization Threshold Program should be directed to your local social services MA eligibility representative.

RECOMMENDED ACTION

Operators, administrators and case managers should review this letter and take whatever action is necessary in order to comply with the Chapter Laws.



William E. Gould
Acting Deputy Commissioner
Division of Adult Services

