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 | OCFS INFORMATIONAL LETTER |
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TRANSMITTAL: 98 INF-9

TO: Commissioners of
 Social Services

DIVISION: Development
 and Prevention
 Services

DATE: June 19, 1998

SUBJECT: Family-Type Homes for Adults: Operators Required to Prove
 Workers' Compensation and Disability Benefits Insurance
 Coverage for Substitute Caretakers

SUGGESTED DISTRIBUTION: Directors of Services
 Family Type Home for Adults Coordinators
 Staff Development Coordinators
 CONTACT PERSON: Any questions concerning this release should be
 directed to:
 Janet Morrissey (518) 432-2987 or USER ID OPM100 or
 Carole Fox (518) 432-2864 or USER ID AX5050
 (ATTACHMENTS ARE NOT AVAILABLE ON-LINE)
 ATTACHMENTS: I. C-105.21 Statement That Applicant Does Not
 Require Workers' Compensation Nor Disability
 Benefits Coverage
 II. C-105.2 Application for Certificate of Workers
 Compensation Insurance
 III. DB-120.1 Employer's Application for Certificate
 of Compliance with Disability Benefits Law
 IV. SI-12 Affidavit Certifying that Compensation
 Has Been Secured
 V. DB-155 Compliance with Disability Benefits Law
 VI. U.26.3 State Insurance Fund Certification
 (Copies of the above forms may be obtained From NYS
 Workers Compensation Board Area Offices)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		Part 458	460-e.1		
		Part 485	461-b		
		Part 486	Section 57		
		Part 489	of WCL		
			Section		
			220.8 of		
			DBL		

Background Information

The purpose of this release is to advise social services districts that in order to obtain Family Type Homes for Adults (FTHA) certification, applicants and operators of Family Type Homes for Adults must prove that they have obtained Workers' Compensation and disability benefits coverage, or that such coverage is not required under New York State Worker's Compensation Law.

Section 461-b(2)(a) of Social Services Law (SSL) allows approval to operate an adult care facility such as a FTHA only to an operator who satisfactorily demonstrates that any license or permit required by law for the operation of such facility has been issued to such operator. Section 460-e(1) permits the New York State Office of Children and Family Services (OCFS) to require an operator of a Family Type Home for Adults to provide such information and records in such form and at such times as this Office shall determine for the purpose of establishing and maintaining such facilities.

The New York State Workers' Compensation Law Section 57 and Section 220.8 of the Disability Benefits Law requires that prior to issuance of a certificate to operate a Family Type Home for Adults by the OCFS, the applicant/operator must submit proof that the operator has obtained the required workers' compensation and disability benefits insurance coverage for any substitute caretakers in the operator's employ, or that the operator is not required to provide such coverage. This law applies both to issuance of new certificates and renewal of such certificates.

The information in this release addresses the requirements necessary for operators and districts to comply with these laws and submit the required documentation to OCFS to obtain an operating certificate.

Workers Compensation and Disability Benefits Coverage Requirements

a. Who Must be Covered

The New York State Workers' Compensation Board has determined that Workers' Compensation Law requires workers' compensation insurance coverage for any Family Type Home for Adults employing "substitute caretakers." Workers' Compensation Law requires that all workers in this industry must be covered by workers' compensation insurance coverage regardless of the number of hours worked, the workers' relationship to the owners, or whether workers are "volunteering" their services for the family business. Since under Social Services Law only natural persons may operate a Family Type Homes for Adults, the only exclusion that may be made for Workers' Compensation and Disability Benefits is a family type home owned by one individual with no employees.

b. Liability for Operators

Under Section 26-a of the Workers' Compensation Law, employers who do not obtain appropriate workers' compensation insurance coverage may be personally liable for the following:

- ° paying an assessment of \$250 for each claim incurred while uninsured, plus 15% of the amount awarded (minimum \$1,500 - maximum of \$5,000);
- ° paying the actual award, including both compensation and medical costs;
- ° any penalties the Workers' Compensation Board assesses for noncompliance. There is a series of penalties for noncompliance with the Workers' compensation Law, including a \$250 penalty for every 10 days without the required coverage.

Activities Required to Comply with
Workers' Compensation and Disability Benefits Law

a. District Responsibilities

- 1) Family Type Home Coordinators or other local district staff who are involved in the FTHA program certification or renewal process must become knowledgeable about the provisions of this release to ensure that the required Workers' Compensation and Disability Benefit Insurance coverage certification accompanies each Family Type Home for Adults application which they submit to the OCFS.
- 2) Social services districts must inform FTHA applicants and operators of Workers' Compensation and Disability Benefit certification requirements prior to certification or renewal of Family Type Homes for Adults operating certificates.

No operating certificate will be issued without proof of Workers' Compensation Insurance, as required by the Workers' Compensation Board, being forwarded to the social services district.

b. Operator Responsibilities

- 1) To comply with coverage provisions of the Workers' Compensation Law Disability Benefits Law requirements, Family Type Home operators must:
 - be legally exempt from having to obtain worker's compensation insurance coverage;
 - obtain such coverage from insurance carriers; or,
 - be self insured.

b. Operator's Responsibilities, Continued

- 2) Family Type Home applicants requesting certification or certified operators requesting renewal of their certificates must provide one of the following forms to the local district with their application. The Workers' Compensation form must accompany the districts' submission of the application to the New York State Office of Children and Family Services:

° C-105.21 Statement that Applicant Does not Require Workers' Compensation Nor Disability Benefits Coverage; (see Attachment I to this release)

OR

° C-105.2 Certificate of Workers' Compensation Insurance (Attachment II) - AND - DB 120.1 Certificate of Disability Benefits Insurance (Attachment III);

OR

° SI-12 Certificate of Workers' Compensation Self-Insurance (Attachment IV) or GSI-12 Certificate of Group Workers' Compensation Self-Insurance - AND - DB-155 Certificate of Disability Benefits Self Insurance (Attachment V)

For those operators insured by the State Insurance Fund, it is acceptable for districts to receive a computer generated form, U-26.3, in the place of prescribed form C-105.2 (sample attached, see Attachment VI).

- 3) Operators may obtain forms from the New York State Workers' Compensation Board District Offices:

Albany	(518) 486-3349
Binghamton	(607) 721-8333
New York City	(718) 802-6890
Buffalo	(716) 847-6890
Hempstead	(516) 560-7742
Rochester	(716) 238-8335
Syracuse	(315) 428-4455

- 4) Applicants for Approval or Operators of Family Type Homes for Adults who have any questions regarding Section 57 of Workers' Compensation Law or Section 220.8 of the Disability Benefits Law should call the New York State Workers' Compensation Board, Bureau of Compliance at (518) 486-6307.

The requirement to submit a certificate of Workers' Compensation and Disability Benefits Insurance coverage with all new and renewal applications is effective immediately.

In the future, the Application for Approval FTHA (DSS-2865) will be revised to indicate that certification of Workers' Compensation and Disability Benefits insurance coverage is a required document for all new and renewal applications.

No Family Type Home for Adults operating certificate will be issued without proof of Workers' Compensation and Disability Benefits Insurance coverage effective immediately.

Donald K. Smith
Acting Deputy Commissioner
Development and Prevention Services