



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

November 15, 2022
DAL: DACF #22-39
Subject: Transitional Adult Home
Regulations

Dear Adult Care Facility Administrator,

As you know, on October 6, 2022, the Albany County Supreme Court issued a ruling in the matter Oceanview Home for Adults et al. v. the New York State Department of Health et al. Index No. 906012-16 (hereinafter referred to as “the Oceanview ruling”). This ruling found the regulations at Title 18 of New York Codes, Rules, and Regulations (“18 NYCRR”) §§ 487.2(c), 487.4 (c),(h), 487.10(e)(3) and 487.13 violate, and are preempted by, the 42 U.S.C. § 3601, the Fair Housing Act. As a result of the ruling, the Department of Health (“Department”) was immediately enjoined from enforcing these regulations. The Department is appealing this matter and had sought a stay of the Supreme Court ruling while the matter is being appealed. Opposing counsel filed an order to show cause opposing the Department’s stay application. On November 1, 2022, the Appellate Division Third Department granted Department’s application for a stay of the Oceanview ruling until such time as the court makes a determination on the order to show cause pending before it. Please note that the stay does not apply to “admissions scheduled” on or before November 2, 2022.

Currently, the regulations at 18 NYCRR §§ 487.2(c), 487.4(c),(h), 487.10(e)(3) and 487.13 are enforceable. Thus, it is the Department’s expectation that all adult care facilities will comply with applicable regulatory requirements; moreover, Transitional Adult Homes (“TAH’s”) must continue to use Kepro to conduct mental health evaluations of prospective admissions and Kepro will continue conducting mental health assessments for TAH’s pursuant to [Dear Administrator Letter \(DAL\) # 22-21](#).

If you have any questions regarding the contents of this DAL, please email transitionalah@health.ny.gov.

Sincerely,

Heidi L. Hayes, Acting Director
Division of Adult Care Facility
and Assisted Living Surveillance

cc: A. Herbst
V. Deetz
S. McGarvey
K. Marks
T. Hennige
transitionalah@health.ny.gov
commtran@health.ny.gov