

THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS

CORRECTED

DATE: March 10, 1980

DEPARTMENTAL MEMORANDUM

TO: Borough Superintendents

FROM: Irwin Fruchman, P. E., Commissioner

SUBJECT: COMMUNITY RESIDENCE FOR THE MENTALLY DISABLED

The Governor signed into law on July 6, 1978 the following legislation, which is mandated on this city, under Chapter 468 of the laws of 1978:

Senate Bill Number 8213-B; Assembly Reprint 30039-A, entitled:

"An Act to amend the mental hygiene law and the eminent domain procedure law, in relation to site selections of community residential facilities for the disabled"

The above legislation concerning Community Residential facilities for the mentally disabled was enacted so as to provide living accommodations for developmentally disabled clients who, in addition to the basic human requirements of food, shelter and supportive interpersonal relationships, need training and assistance in the activities of daily living. In said law, Subdivision (e) of the new Section 41.34 of the Mental Hygiene Law, states as follows:

"(e) A Community Residence established pursuant to this section and family care homes shall be deemed a family unit for all purposes of local laws and ordinances."

Said legislation further defines Community Residential facilities for the disabled as any facility operated or subject to license by the Office of Mental Health or the Office of Mental Retardation & Development Disabilities which provides a supervised residence for four to fourteen mentally disabled persons.

To effectuate this, in accordance with Section 41.34 of the Mental Hygiene Law, as enacted under Chapter 468 of the law of 1978, the New York State Office of Mental Health has adopted regulations under Part 586 of State Regulation (Title 14, N. Y. C. R. R.) relating to the operation of Community Residence for the mentally ill. Within said regulations, Section 586.9, relating to buildings and equipment, sets forth fire protection and egress criteria; and further, indicates that community residences serving only persons capable of self preservation shall be authorized in buildings complying with code requirements applicable to private dwellings, as well as requiring that the building house no more than 14 persons, including residents and staff.

Continued.....

1701

The New York State Office of Mental Retardation & Developmental Disabilities has similarly promulgated regulations regarding the operation of Community Residences for the developmentally disabled, under Part 686 of State regulations (Title 14, NYCRR). Section 686.9 of these regulations relating to sites, buildings, and equipment has provision therein relating to fire protection and egress criteria. Such Community Residences that serve clients ~~that~~ are capable of self preservation are authorized to be in buildings conforming with private dwelling construction criteria, provided that maximum number of such clients living in the community residence shall be limited to 14, exclusive of staff.

Further, the New York State Office of Mental Retardation and Developmental Disabilities has just recently promulgated regulations regarding the operation of Intermediate Care facilities, under Part 681 of State regulations (Title 14, NYCRR). Section 686.10 of these regulations relating to buildings and equipment has provisions therein relating to fire protection and egress criteria. Such facilities shall be governed by occupancy limitations similar to those cited above, for residences for the developmentally disabled (Part 686, NYCRR).

The above-mentioned parts 686.9, 686.9 and 681.10 of State regulations further indicate supplemental fire protection and egress criteria; and, include requirements relating to clients that are not capable of self preservation, as well as guidelines for buildings housing more than the above described number of clients. In order to establish uniform design criteria and administrative procedures for the facilities coming within the responsibility of either the New York State Office of Mental Health (OMH), or the New York State Office of Mental Retardation and Developmental Disabilities (OMRDID), the following procedure and requirements shall be adhered to for all such applications being filed with our borough offices, whether for new buildings or for alterations:

1. Prior to the approval of plans to construct a Community Residence or Intermediate Care Facility, the applicant shall file the following with the application:

a. A copy of the Certificate of Incorporation which has been approved by either the Office of Mental Retardation & Developmental Disabilities, or the Office of Mental Health, or other written communication equivalent thereto, and written approval of said agency verifying that the individuals either are or are not capable of self preservation in emergency situations; and

1702

b. A written statement by the cognizant state office, of the following, or its equivalent:

"We have complied with the procedures required by the 'Padavan law' (which have been incorporated into section 41.34 of the New York State Mental Hygiene Law) in regard to community notification and acceptance on this site."

2. The specification sheet and subsequent Certificate of Occupancy shall state the following:

"This building is occupied (entirely or in part) as a community residence for the developmentally disabled (or the mentally ill) or intermediate care facility in accordance with Section 41.34 of the Mental Hygiene Law. Occupancy is limited to a total of 14 long term clients who are capable of self preservation (not capable of self preservation). This occupancy is predicated on on-going maintenance of an operating certificate from the N.Y.S. Office of Mental Retardation & Developmental Disabilities (or the New York State Office of Mental Health)."

3. A final Certificate of Occupancy shall not be granted until an operating Certificate is obtained from either of the above-mentioned State Offices.

4. The limitations as to the number of occupants specified in either part 586, part 686, or part 681, as appropriate as delineated above, and the prerequisite that the clients be capable of self preservation are both mandatory prerequisites for approval of applications in conformance with New York City Building Code requirements for J-3 occupancies. Further, where in the case of authorization by Part 686 or Part 681, additional persons are allowed as caretakers, etc., in addition to the 14 clients, not more than three such persons shall be authorized as part of the J-3 occupancy; nor shall two such facilities be authorized to be permitted within buildings conforming with J-3 occupancies.

5. In addition to the Building Code criteria, the provisions of Section 589.6, 689.6, or 681.10, as appropriate shall be required to be complied with, with respect to exits and fire protection.

6. Any application for persons who are not capable of self preservation shall be required to comply with Building Code provisions relating to institutional occupancies.

1703

7. Any application filed for facilities which will house clients capable of self preservation, but which exceed the number of clients (or in the case of facilities for the mentally ill, the total number of occupants per se) shall be permitted to conform with requirements of either institutional (H-2) or Class A Multiple Dwelling (J-2); or, if short term clients, J-1 Occupancy. In the case of the J-2 Occupancy option, the attached proposed legislation amending Section 66 of the Multiple Dwelling Law may be utilized in the approval of the arrangement and design of the sleeping facilities.

However, not more than one of the above described "J-3" occupancies shall be permitted in existing Class 3, Class A multiple Dwellings, nor more than two such occupancies be permitted in existing Class 1, Class A multiple dwellings.

  
Irwin Fruchtman, P.E.,  
Commissioner

1704