

<u>SUBJECT:</u> Involuntary Transfers	<u>APPLICABLE TO:</u> Tier II Family Shelters, Hotels, Scatter Sites and Reception Centers	<u>ISSUED:</u> January, 1994 <u>RE-ISSUED:</u> May 2003
<u>ADMINISTERED BY:</u> Division of Family Services and Division of Legal Affairs		<u>APPROVED BY:</u> Roger Newman, Deputy Commissioner Family Services Clarke Bruno, General Counsel Legal Affairs

I. PURPOSE

To provide instructions, in accordance with applicable State regulations 18 NYCRR 352.35 and Part 900 and the DHS Client Responsibility Procedure (03-502), to evaluate transfers from one shelter facility to another due to conduct by families eligible for Temporary Housing Assistance (THA).

II. APPLICABILITY

The procedure is applicable to staff at Tier II shelters, Hotels, Scatter Sites, and DHS.

III. FORMS USED

- A. Notice of Involuntary Transfer/Right to a Pre-Transfer Hearing
- AS. Notice of Involuntary Transfer/Right to a Pre-Transfer Hearing - Spanish
- B. Involuntary Transfer Approval/Denial
- C. Notice of Involuntary Transfer Addendum
- D. Resident Request for Pre-Transfer Hearing
- E. Notice of Scheduled Pre-Transfer Hearing
- F. Involuntary Transfer Hearing Decision
- FS. Involuntary Transfer Hearing Decision - Spanish
- G. Request for Resident Transfer Following Involuntary Transfer Hearing

IV. INTRODUCTION

This procedure describes when and how family shelter providers may seek the involuntary transfer of a family from one facility to another within the shelter system. The DHS principles state that individuals and families receiving services should treat every person involved in their care, other temporary shelter residents, and their shelter space, with respect. At the same time, DHS intends to reduce the disruption of families and their children's education by drastically reducing transfers from one shelter to another as a penalty for disruptive behavior. New standards of client responsibility (Procedure 03-502) provide deterrence to disruptive behavior

not previously available to the shelter system. As a result, the bases for transfer as a consequence of disruptive behavior are dramatically reduced.

When a shelter provider believes that a family or family member should be involuntarily transferred to another shelter facility based on the guidelines set forth below, it will submit a request for an involuntary transfer to the DHS Program Administrator. The Program Administrator will review the request and recommend whether the transfer should be forwarded to the Sanction Review Committee (SRC) or if additional information is required.

The SRC will review the recommendation by the Program Administrator and determine if an involuntary transfer is appropriate or if the family's conduct that is the subject of the request rises to the level of a violation of client responsibility rules and that the transfer request should be considered a request for a discontinuance of THA pursuant to DHS Procedure 03-502.

If the final decision is to transfer the family or family member to another shelter facility, the shelter provider serves notice on the family, which may request a pre-transfer hearing from DHS.

In rare circumstances, certain behavior by a family or family member may justify both an involuntary transfer and a subsequent discontinuance of shelter.

V. GUIDELINES

A family or family member may be transferred from one shelter facility to another when the family or family member engages in certain types of behavior that does not result in a sanction pursuant to Client Responsibility standards.

Examples of conduct which may result in an involuntary transfer:

- a. Interfering with the orderly operation of the facility in such a way that it creates an undue hardship on the facility to keep that family or family member;
- b. Threatening or attempting to inflict physical harm on other residents or staff;
- c. Stealing or destroying property at the shelter facility that does not rise to the level of discontinuance of THA.

A provider may only submit a request for an involuntary transfer if the family's case file reflects appropriate interventions and services offered by the shelter staff relevant to the incident or course of conduct described. When the family or family member(s) commits an act of violence or engages in criminal conduct within a shelter, the provider must call the NYPD or other governing City or State agency. A shelter provider must consult with a DHS Program Administrator, to explore other interventions with the family before requesting a transfer from the shelter facility.

This policy applies to situations when a provider makes a request for an involuntary transfer based on behavior in the shelter facility. It does not apply in the following situations where a provider can initiate a transfer without requesting review by the SRC and without affording an involuntary transfer hearing:

- a. Discharge for a 48 hour violation – if a family or family member is absent from the shelter for 48 hours without having complied with the facility's rules concerning

- absences, that family or family member will be discharged from the shelter.
- b. Medical Transfers – a family may be transferred to another shelter facility if a family member is no longer medically appropriate to reside in the facility.
 - c. Voluntary Transfers – transfers requested by a family:
 - i. For clients who voluntarily seek transfers, the shelter provider may seek a transfer directly from the HERO unit. Such transfers will only be granted when based on the criteria cited in 94 ADM-20, in the complete discretion of DHS.
 - ii. Such transfers must also be approved by the Program Administrator supervising the shelter provider involved after HERO determines that the transfer request meets the above criteria.

VI. DETAILED INSTRUCTIONS

REFERRING SHELTER

1. When a shelter facility employee believes that a family should be transferred to another facility, the shelter's managing director must be consulted. The family's case file must contain the family's most recent Independent Living Plan (ILP), all case conferences, entries detailing client contacts, and all interventions and services provided by the shelter staff that are relevant to the incident or course of conduct.
2. The Managing Director:
 - a. Reviews the family's case file;
 - b. Approves or disapproves the request to submit the case file to the DHS Program Administrator for a determination and enters the decision in the family's case file;
 - c. Submits the case file and the Notice of Involuntary Transfer (Form A) to the Program Administrator;
 - d. If approved by the DHS Program Administrator and/or the SRC, the shelter's managing director or appropriate designee serves a Notice of Involuntary Transfer (Form A) to the family; and
 - e. Submits all relevant documentation to the DHS hearing officer, if a pre-transfer hearing is requested by the family's head of household.

DHS/SANCTION REVIEW COMMITTEE

1. The Program Administrator will review the Notice of Involuntary Transfer (Form A) and the family's case file within one (1) business day of the request. At any point, the Program Administrator may request additional documentation from the shelter's managing director, and extend the time for review, up to three (3) business days from the date requested documents are submitted.
2. The Program Administrator may approve or disapprove the shelter provider's request for an involuntary transfer. If disapproving the request, the Program Administrator notifies the shelter's managing director using the Involuntary Transfer Acceptance/Denial (Form B).
3. If the request is approved, the Program Administrator will forward copies of the family's case file and the Notice of Involuntary Transfer (Form A) to the SRC.
4. The SRC reviews the recommendation of the Program Administrator and all relevant

documentation within three (3) business days of receipt. The SRC will then determine whether to approve or disapprove the recommendation or request that the shelter's managing director submit a request for Discontinuance of Shelter based on non-compliance with the Client Responsibility Procedure (03-502), using the Involuntary Transfer Acceptance/Denial (Form B). At any point, the SRC may request additional documentation from the shelter's managing director, and extend the time for review up to three (3) business days from the date requested documents are submitted.

5. If the transfer request is approved, the SRC prepares and submits the Involuntary Transfer Acceptance/Denial (Form B) and the Notice of Involuntary Transfer (Form A) to the referring shelter's managing director with instructions that copies of the form be placed in the family's case file and be reviewed with the family or family member who is the subject of the transfer. The managing director or appropriate designee must then serve the Notice of Involuntary Transfer (Form A) on the family.

6. Requests for an expedited review of an Involuntary Transfer may be requested by the shelter provider when it believes that a family poses a significant safety threat to other shelter residents and/or staff. The Program Administrator has the discretion to approve all requests for expedited review. If the Program Administrator approves the request for an expedited transfer, they fill out Notice of Involuntary Transfer (Form A) and the Involuntary Transfer Acceptance/Denial (Form B), as above.

INVOLUNTARY TRANSFER HEARINGS

After receiving a notice of transfer, a family or affected family member may request a pre-transfer hearing from DHS to challenge the involuntary transfer. DHS Legal Division staff will act as the impartial adjudicator at the hearing. The hearing will be held at DHS, 33 Beaver Street, 17th Floor, New York, NY 10004.

1. If an involuntary transfer is approved, the shelter provider serves a copy of the Notice of Involuntary Transfer (Form A) on the family or affected family member:

- a. Every reasonable effort must be made to serve a copy of the notice to the family or family member in person and to have the form signed.
- b. If the family or family member refuses to accept or sign the notice, or cannot be located, the specific details of the efforts to deliver the notice should be documented on the Addendum (Form C).

2. If a family waives its right to a hearing, the family may be transferred immediately. A copy of the Notice of Involuntary Transfer (Form A) must be faxed to the DHS Legal Division within 48 hours of delivery of the notice and must be received prior to a request to HERO for a transfer.

3. The family may request an involuntary transfer hearing orally or in writing. The family must be given a minimum of two (2) hours to request a pre-transfer hearing after the Notice of Involuntary Transfer (Form A) is served. If a pre-transfer hearing is requested, the shelter provider must fax a copy of the Resident Request for Pre-Transfer Hearing (Form D) to the DHS Legal Division.

4. The DHS Legal Division will notify the shelter provider of the date, time and location of the

pre-transfer hearing. The shelter provider must serve the Notice of Scheduled Pre-Transfer Hearing (Form E) to the family or affected family member, who must sign the notice, at least four (4) hours prior to the scheduled hearing. Reasonable efforts must be made to serve a copy of the notice to the family or affected family member in person and to have the form signed. All such efforts must be documented. A copy of the notice must promptly be faxed to the DHS Legal Division.

- a. Pre-transfer hearings will be scheduled during regular business hours on regularly scheduled business days.
 - b. The shelter provider must allow the family or family members (or their representative) to examine and obtain copies of the family's case file and any other relevant documents at least two (2) hours before the hearing. A translator will be provided for the hearing if necessary and requested at the time the hearing request was made.
5. The shelter will provide for transportation of the family or family member(s) and any necessary witness(es) between the shelter and the hearing location at the designated date and time.
 - a. The shelter must also provide childcare to shelter residents who attend hearings, when needed.
6. The impartial adjudicator will render a decision and fax the Involuntary Transfer Hearing Decision (Form F) to the shelter provider within four (4) hours of the end of the hearing. The shelter must provide the family with a copy of the decision and place another copy in the family's case file.
7. If the impartial adjudicator has determined that the family should be involuntarily transferred, DHS will submit the Request for Transfer (Form G) to the HERO unit within 24 hours of the determination.
8. If a family believes that the impartial adjudicator wrongfully determined that a transfer was appropriate, a State Fair Hearing may be requested (instructions for the request are included on Form F). If the hearing overturns the transfer decision, the family will (a) remain in the current facility if the transfer has not yet occurred, or (b) return to the shelter of origin as soon as space becomes available that is appropriate to the family's size.

DHS will not honor any requests to HERO for transfers if the above procedures are not followed.

NOTICE OF INVOLUNTARY TRANSFER

Shelter: _____ Address: _____

To: _____ Date: _____

From: _____ Time: _____

(Name of Person Making Decision to Transfer)

Family Members Affected: _____

Case Number(s): _____

This is to inform you that on _____ at _____, you will be transferred from this shelter for the following violation(s).

VIOLATION(S), INCLUDING DATES, TIMES AND PLACES WHERE APPROPRIATE	REGULATION CITATION*	PERSON(S) COMMITTING THE VIOLATION
1.		
2.		
3.		
4.		

* Based on 18 NYCRR Part 900.8(a)(2) which specifies grounds for transfer from shelter facilities. The specific grounds are provided below.

A family or family member may be involuntarily transferred when the family or family member engages in the following types of conduct or activities:

900.8(a)(2)(i) acts which endanger the health or safety of such person or others, but do not rise to the level of non-compliance with the Client Responsibility Procedure (03-502);

900-8(a)(2)(ii) acts which substantially and repeatedly interfere with the orderly operation of the facility, including violations of the facility rules, but do not rise to the level of non-compliance with the Client Responsibility Procedure (03-502);

900.8(a)(2)(vi) failure to apply for public assistance benefits within two working days of admission to the facility or to reapply for public assistance benefits within two working days if the family's or family member's case is closed while residing in the facility;

900.8(a)(2)(vii) failure to pay the shelter provider the family's share of the cost of temporary housing in the amount determined by the social services district;

900.8(a)(2)(viii) failure to constitute a family as defined in section 900.2 of this Part and cannot reasonably be expected to constitute a family within 30 days of the date it is determined the resident(s) does not constitute a family;

RIGHT TO A PRE-TRANSFER HEARING

If you want to appeal your involuntary transfer, you have the right to request a pre-transfer hearing, **but not a State Fair Hearing**. If you request a pre-transfer hearing, you have the right to remain in the shelter until the pre-transfer hearing is held and a decision issued. You do not have a right to a pre-transfer hearing if the reason you are being transferred is because you or a member of your family is no longer medically appropriate, you or a member of your family have been absent from the shelter for more than 48 hours, without complying with the shelter rules, or you or your family's temporary housing assistance has been discontinued according to 18 NYCRR 352.35.

If you want a pre-transfer hearing, you must fill out one of the two copies of the form Request for a Pre-Transfer Hearing and sign it. You must then return it to the shelter director or a shelter supervisor. To avoid having to leave this shelter, you must ask for a pre-transfer hearing by doing these things within 2 hours of receiving this Notice of Involuntary Transfer or the shelter will transfer you.

If you ask for a pre-transfer hearing, the hearing will be scheduled and held at 33 Beaver Street, 17th Floor, New York, NY 10004. You will be given a written Notice of Scheduled Pre-Transfer hearing which will state the date, time and place of the hearing. Usually, the hearing is held between 4 and 48 hours after you are given notice. The shelter will provide transportation to and from the hearing.

RIGHT TO REPRESENTATION AND TO INSPECT YOUR CASE RECORD

You have the right to be represented by legal counsel, a relative, friend or other person or you may represent yourself at the pre-transfer hearing. If you want legal representation, you must obtain it before the hearing. If you need free legal assistance, you may be able to obtain such assistance by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or advocate group by checking your Yellow Pages under "Lawyers." You have the right to call witnesses on your behalf, and to present oral and written evidence. You have the right to review your shelter case record. Upon your request, you have the right to free copies of documents from your shelter case record which you need for your pre-transfer hearing. To request such documents or to find out how you may review your shelter case record, contact your caseworker or a shelter supervisor.

RIGHT TO AN INTERPRETER

You have the right to bring an interpreter with you to the pre-transfer hearing or to request that the shelter provide an interpreter.

RIGHT TO A STATE FAIR HEARING

You do not have a right to a State Fair Hearing at this time. You will have a right to a State Fair hearing if you request **and** participate in a pre-transfer hearing. You will be provided with information about how to request a State Fair Hearing when you receive the decision from your pre-transfer hearing. Even if you request a State Fair Hearing, you do not have the right to remain in the shelter from which you are being transferred.

ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE OF INVOLUNTARY TRANSFER

☐ I have been given a copy of a Notice of Involuntary Transfer from Shelter Staff.

Client Signature: _____

Date: _____ Time: _____ AM/PM

☐ Client refused to sign acknowledgment.

Shelter Staff Signature: _____

Date: _____ Time: _____ AM/PM

AVISO DE TRANSFERENCIA INVOLUNTARIA

Centro de Refugio: _____ Dirección: _____

Para: _____ Fecha: _____

De: _____ Hora: _____

(Nombre de quien toma la decisión de transferencia involuntaria)

Miembros de la familia afectados: _____

Número o números del caso: _____

Con esta notificación se le informa que el _____ a las _____, se le transferirá de este centro de refugio debido a las siguientes violaciones:

VIOLACIONES, INCLUYENDO LAS FECHAS, HORAS Y LUGARES, CUANDO SEA PERTINENTE	REGULACIÓN*	PERSONA QUE COMETIÓ LA(S) VIOLACION(ES)
1.		
2.		
3.		
4.		

* Basado en 18 NYCRR Sección 900.8(a)(2), que especifica las razones que justifican una transferencia involuntaria. Las siguientes son razones para una transferencia involuntaria.

La familia o uno de los miembros de la familia puede ser transferido involuntariamente cuando se involucra en los siguientes tipos de conducta o actividades:

900.8(a)(2)(i) actos que ponen en peligro la salud y la seguridad de tal persona u otras, pero que no se elevan al nivel de no obedecer el Procedimiento de la Responsabilidad del Cliente (03-502);

900-8(a)(2)(ii) actos que sustancialmente y repetidamente interfieren con el funcionamiento ordenado del centro de refugio, incluyendo violaciones de las reglas del centro de refugio, pero que no se elevan al nivel de no obedecer el Procedimiento de la Responsabilidad del Cliente (03-502);

900.8(a)(2)(vi) falla en no aplicar para los beneficios de la asistencia pública dentro de los dos días laborales previos a la admisión al centro de refugio, o falla en no volver a aplicar para los beneficios de la asistencia pública dentro de los dos días laborales si el caso de la familia o el caso de un miembro de la familia se cierra mientras reside en el centro de refugio;

900.8(a)(2)(vii) falla en no pagar al proveedor de vivienda la porción de la familia del costo de la vivienda temporaria en la cantidad determinada por el distrito de servicios sociales;

900.8(a)(2)(viii) falla en no constituir una familia según la definición en la sección 900.2 de ésta Parte, y no se puede esperar razonablemente que constituya una familia dentro de 30 días de la fecha en que se determina que el/los residente(s) no constituye(n) una familia.

DERECHO A UNA AUDIENCIA PREVIA A LA TRANSFERENCIA INVOLUNTARIA

Si desea apelar la decisión de transferirlo involuntariamente de la vivienda, tiene el derecho de solicitar una audiencia previa a la transferencia involuntaria, **pero no a una audiencia imparcial estatal**. Si solicita una audiencia previa a la transferencia involuntaria, tiene el derecho de permanecer en el centro de refugio hasta que ésta se realice y se dicte una decisión. No tiene derecho a una audiencia previa a la transferencia involuntaria si la razón por la cual será transferido involuntariamente es porque usted o un miembro de su familia deja de calificar bajo los requisitos médicos debidos, o usted o un miembro de su familia se ha ausentado del refugio durante más de 48 horas, sin cumplir con las normas del refugio, o usted o la asistencia de vivienda temporaria para su familia ha sido discontinuada de acuerdo a 18 NYCRR 352.35.

Si desea una audiencia previa a la transferencia involuntaria, debe llenar una de las dos copias del formulario de "SOLICITUD DE AUDIENCIA PREVIA A LA TRANSFERENCIA INVOLUNTARIA" y firmarla. Luego, debe devolverla al director del centro de refugio o a uno de los supervisores del centro de refugio. Para evitar que abandone este centro de refugio, debe solicitar la audiencia previa a la transferencia involuntaria, haciendo lo indicado, dentro de un plazo de 2 horas, a partir de recibir este Aviso de Transferencia Involuntaria, o el centro de refugio lo transferirá involuntariamente.

Si solicita una audiencia previa a la transferencia involuntaria, la audiencia se programará y se realizará en el 33 Beaver Street, 17th Piso, New York, NY 10004. Se le dará aviso por escrito de la audiencia previa a la transferencia involuntaria. El aviso indicará la fecha, la hora y el lugar de la audiencia. Normalmente, las audiencias previas a la transferencia involuntaria se realizan de 4 a 48 horas después de haberse dado el aviso por escrito. El centro de refugio le proporcionará transporte de ida y regreso a la audiencia.

DERECHO DE TENER UN REPRESENTANTE Y DE EXAMINAR EL EXPEDIENTE DE SU CASO

Usted tiene el derecho de ser representado por un abogado, un pariente, un amigo u otra persona, o de representarse a sí mismo en la audiencia previa a la transferencia involuntaria. Si desea que le represente un abogado, debe obtenerlo antes de la audiencia previa a la transferencia involuntaria. Si necesita asesoría jurídica gratuita, puede obtenerla comunicándose con el Legal Aid Society local u otro grupo legal de abogados. Puede encontrar el Legal Aid Society o grupo de abogados más cercano, en la sección de "Lawyers" ("Abogados") de las Páginas Amarillas telefónicas. Usted tiene el derecho de presentar testigos a su favor y de presentar pruebas verbales y escritas. Tiene el derecho de estudiar su expediente del centro de refugio. Si lo solicita, tiene el derecho de obtener copias gratuitas de los documentos de su expediente del centro de refugio, que necesite para la audiencia previa a la transferencia involuntaria. Para solicitar tales documentos o saber cómo puede estudiar su expediente del centro de refugio, diríjase al trabajador encargado de su caso o a un supervisor del centro de refugio.

DERECHO A UN INTÉRPRETE

Usted tiene el derecho de traer un intérprete a la audiencia previa a la transferencia involuntaria o de solicitar que el centro de refugio se lo proporcione.

DERECHO A UNA AUDIENCIA IMPARCIAL ESTATAL

Actualmente, usted no tiene derecho a una audiencia imparcial estatal. Tendrá el derecho a una audiencia imparcial estatal, si solicita y participa en la audiencia previa a la transferencia involuntaria. Cuando reciba la decisión de la audiencia previa a la transferencia involuntaria, se le dará información sobre la forma de solicitar una audiencia imparcial estatal. Aunque solicite una audiencia imparcial estatal, usted no tiene derecho a permanecer en el centro de refugio del cual ha sido transferido involuntariamente.

RECONOCIMIENTO DE HABER RECIBIDO EL AVISO DE TRANSFERENCIA INVOLUNTARIA

☐ El funcionario del centro de refugio me ha entregado una copia del aviso de transferencia involuntaria.

Firma del Cliente: _____ Fecha: _____ Hora: _____ AM/PM

☐ El cliente se rehusó a firmar el reconocimiento.

Firma del funcionario del centro de refugio: _____

Fecha: _____ Hora: _____ AM/PM

INVOLUNTARY TRANSFER APPROVAL/DENIAL

Family _____

Case # _____

Family members affected (if entire family, so indicate and do not list names)

Name	Age	Sex	Name	Age	Sex

Shelter: _____ Room # _____ Borough: _____

Address: _____

Based on the documents submitted by the shelter, it has been determined that: (Check One)

- ☐ The request for involuntary transfer has been approved.
- ☐ The request for involuntary transfer has been denied and no action is to be taken at this time.
- ☐ The request for involuntary transfer has been denied. Submit for non-compliance with Client Responsibility Procedure (03-502).
- ☐ More information is needed before a determination can be reached. Please provide the following information: _____

Authorized Signature: _____ Date of Decision: _____