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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 92 ADM-15

TO: Commissioners of  
 Social Services

DIVISION: Medical  
 Assistance

DATE: March 27, 1992

SUBJECT: Provision of Title XIX Home Care Services  
 in Adult Care Facilities and Implementation of  
 Retention Standards Waiver Program in Adult Homes  
 and Enriched Housing Programs

SUGGESTED

DISTRIBUTION: Home Care Services Staff  
 Medical Assistance Staff  
 Adult Services Staff  
 Director of Social Services  
 Family-type Home Coordinators  
 Staff Development Coordinators

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 extension 3-5617, or 432-2404 respectively, or  
 directly at (518) 473-5617 or (518) 432-2404. For  
 information pertaining to Family Type Homes call,  
 Sharon Lane, Division of Adult Services, at 432-2985.

ATTACHMENTS: See Attachment 1 for listing of Appendices  
 (Available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
80 ADM-9		485-490	Article 5		DAS
90 ADM-25		360-6.6(a)	Title 11		Facility
78 ADM-19		505.14	365-a(2)(d)		Info.
79 ADM-34		505.23	365-a(2)(e)		Letter-22
83 ADM-20					Fac. Dir.
86 INF-47					3-90 &
88 INF-20					6-91

I. PURPOSE

The purpose of this directive is to clarify the policies regarding the provision of Title XIX home care services in adult care facilities (ACFs) and to advise social services districts of the implementation of a retention standards waiver program for adult homes and enriched housing programs. The administrative directive is intended to encourage social services districts to consider ACFs as part of the community-based, long-term care system.

II. BACKGROUND

Title XIX Personal Care Services are defined in Department regulation 18NYCRR 505.14 as:

"Personal care services mean some or total assistance with personal hygiene, dressing and feeding; nutritional and environmental support functions; and health-related tasks. Such services must be essential to the maintenance of the patient's health and safety in his or her own home, as determined in accordance with the regulations of the Department of Health; ordered by the attending physician; based on an assessment of the patient's needs and of the appropriateness and cost-effectiveness of services specified in subparagraph (iv) of paragraph (3) of subdivision (b) of this section; provided by qualified person in accordance with a plan of care; supervised by a registered professional nurse; and, if required for more than 60 days, be provided in accordance with the fiscal assessment procedures specified in subparagraph (v) of paragraph (3) of subdivision (b) of this section." (Emphasis added.)

Department regulation 18NYCRR 360-6.6, describing "a recipient's home", has historically considered an ACF as an individual's home and permitted Medical Assistance (MA) reimbursement for personal care services. This definition of "his or her own home" is included as Appendix A.

The omission of ACFs as a specific listing in the definition of a recipient's home has sometimes been interpreted to mean that an ACF was not considered a MA recipient's own home. A recipient's home

is defined as including "a home where he/she receives room and board". ACFs provide room and board to residents; therefore, the ACF is a recipient's home.

ACF operators are being asked to retain residents with increasing need for health and health-related services. Because of generally declining health, mental health or temporary problems such as illness or accident, ACF residents often have increasing care needs which exceed ACF retention standards and require services ACF operators are not authorized to provide under Department regulations. Experience has shown that many ACF residents with increased care needs can be safely and adequately cared for at the ACF with appropriate medical services and home care services provided by community-based home care providers. However, the protection of resident health and safety and the maintenance of statutory requirements and appropriate boundaries between ACFs and nursing facilities must be assured. This led to the development of criteria for waiving of certain non-statutory ACF retention standards which will allow qualified operators to retain certain residents with home care needs who might otherwise be considered inappropriate for continued residency. Department regulations 18NYCRR 487.3(g) and 488.3(f) allow the Division of Adult Services to waive non-statutory requirements.

Questions have arisen regarding what services the ACFs are required to provide, what home care services can be provided, and what actions operators of ACFs should take when residents' care needs exceed those services which operators are authorized or required to provide.

This directive provides an explanation of:

1. the community-based home care services which may be provided in ACFs;
2. the agencies which may provide the services;
3. the current ACF retention standards and,
4. the adult home and enriched housing program retention standard waiver program.

### III. PROGRAM IMPLICATIONS

Using the information in this administrative directive, social services districts will assist eligible residents of ACFs to access community-based home care services when medically necessary. The adult home and enriched housing program retention standard waiver

program will allow eligible residents, in approved program settings, whose care needs exceed certain non-statutory retention standards, to remain in the community with the provision of community-based home care services. The provision of community-based home care services in ACFs delays admission of ACF residents to residential health care facilities (RHCFs).

Additionally, in accordance with Chapter 165 of the Laws of 1991, social services districts should consider ACFs as a cost-effective alternative housing and supervision resource for some current home care recipients whose living environment, cognitive impairment or lack of informal support jeopardizes their health and safety. For example, the recipient's private home may be considered substandard and a barrier to service delivery, or the recipient may be cognitively impaired and unable to function independently. Admission to an ACF, if the recipient meets the admission standards, would allow these recipients to remain in the community.

ACFs and social services districts should establish working relationships for the referral of residents for admission to ACFs and the referral of requests for community-based home care services. The social services district should identify a home care liaison whom ACF operators may contact for information and requests for service.

#### IV. REQUIRED ACTION

The types of ACFs in which Title XIX home care services may be delivered are described below. Although Title XIX home care services are delivered in family care or community residences certified by the New York State Office of Mental Health, the information in this directive is only intended to describe the provision of home care services in ACFs.

##### A. Where May Services Be Provided?

###### 1. Adult Homes

An adult home is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator.

###### 2. Enriched Housing Programs

An enriched housing program is established and operated

for the purpose of providing long term residential care to five or more adults, primarily persons age sixty-five years or older, in community-integrated settings resembling independent housing units. The program provides or arranges the provision of room, and provides board, housekeeping, personal care and supervision.

3. Family-type Homes

A family-type home for adults is established and operated for the purpose of providing long term residential care, room, board, housekeeping, personal care and/or supervision to four or fewer adult persons unrelated to the operator.

4. Residence for Adults

A residence for adults is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, case management, activities, and supervision to five or more adults unrelated to the operator, who are unable or substantially unable to live independently.

B. Where May Services Not Be Provided?

Home care services may not be provided in shelters for adults. This is because shelters for adults are only temporary residences.

C. Who May Be Served?

To receive Title XIX community-based home care services, the ACF resident must be eligible for MA (Title XIX) and have a medical need for home care. In addition, ACF residents who may be served are:

1. Those who meet the ACF retention standards criteria established for the specific type of ACF where the individual resides. The retention standards are discussed in Section G. of this directive; or
2. Those whose care needs exceed the ACF retention standards criteria but can remain in the ACF and receive home care services while the ACF makes persistent efforts for alternative placement or if the Adult Home or Enriched Housing Program has received prior approval to

participate in the retention standards waiver program. The retention standards waiver program is discussed in Section H. of this directive.

The ACF operator is responsible for arranging privately funded community-based home care services for those residents not eligible for MA but who have a medical need for home care services and meet one of the conditions listed above.

D. Which Types of Title XIX Home Care Services Programs May Be Provided in an ACF?

Before providing any Title XIX home care services program services, the maximum use of home health services provided under Medicare, Title XVIII, should be made whenever program eligibility conditions under that title can be met.

All Title XIX home care services programs may be provided in an ACF. These programs are described as follows:

1. Long Term Home Health Care Programs (LTHHCP)

LTHHCPs are granted operating certificates by the New York State Department of Health under authority contained in Section 3610 of the Public Health Law (PHL) and Part 770 of the New York State Department of Health Regulations (10NYCRR).

A LTHHCP may be provided by a certified home health agency, a residential health care facility (RHCF) or hospital and is required to provide or make available the following services: nursing, home health aide services, physical therapy, speech therapy, occupational therapy and personal care services including homemaker and housekeeper. In addition, a LTHHCP may provide 11 waived services (home maintenance tasks, home improvement services, respite care, social day care, social transportation, home delivered meals, moving assistance, personal emergency response services, respiratory therapy, nutritional counseling and education, and medical social services).

Generally, LTHHCP services are delivered to persons who are medically eligible for RHCF placement, and whose comprehensive services plan does not exceed a specific cost cap. Administrative Directive, 90 ADM-25, "Chapter

854 of the Laws of 1987: Long Term Home Health Care Program Services Provided in Adult Care Facilities", should be consulted for information pertaining to the provision of LTHHCP services in ACFs.

However, services provided by the LTHHCP must not duplicate or replace those services which the ACF is required by law or regulation to provide. Therefore, not all services available through the LTHHCP should be authorized for ACF residents. See Appendix D, Guidelines for Service Responsibility, for specific information regarding services.

Chapter 165 of the Laws of 1991 revised subsection 5 of Section 367-c of the Social Services Law (SSL). This revision eliminated the six-month residency requirement for the LTHHCP for residents of ACFs. Effective immediately, an ACF resident may be eligible for care through the LTHHCP regardless of his or her length of stay at the ACF.

2. AIDS Home Care Program (AHCPs)

Chapter 622 of the Laws of 1988 and SSL 367-e authorizes MA to pay for services provided by AIDS Home Care Programs. AHCPs are designated to serve only those patients who have been diagnosed by a physician as having AIDS, or who are infected with the AIDS etiologic agent and have an illness, infirmity or disability which can be reasonably ascertained to be associated with that infection. An AHCP is a LTHHCP or an AIDS Center Hospital which has received approval from the New York State Department of Health to establish an AHCP.

If the AHCP is provided to a resident of an ACF, that ACF must be specifically approved to admit or retain residents for such a program.

The Department is currently preparing an administrative directive entitled "Chapter 622 of the Laws of 1988: AIDS Home Care Program" which should be consulted for additional information.

3. Certified Home Health Agencies (CHHAs)

CHHAs are agencies operated under Article 36 of the

Public Health Law and Parts 700 and 760-764 of the New York State Department of Health regulations (10NYCRR) and are eligible for reimbursement under Title XVIII (Medicare) and Title XIX (Medicaid). State law and regulatory authority is also established in SSL 365-a(2)(d) and Department regulations 18 NYCRR Part 505.23.

CHHAs must provide nursing services, home health aide services, medical supplies, equipment and appliances, and at least one of the following services: physical therapy, speech/language pathology, occupational therapy, social work services and nutritional services.

However, services provided by the CHHA must not duplicate or replace those services which the ACF is required by law or regulation to provide. Therefore, not all services available through the CHHA should be authorized for ACF residents. See Appendix D, Guidelines for Service Responsibility, for specific information regarding services.

All CHHA services must be ordered by the resident's physician. CHHA services may be provided directly by CHHA staff or through subcontracts.

#### 4. Personal Care Services

Personal care services under the MA program are provided under SSL Article 5, Title 11, Section 365-a(2)(e) and Department regulations 18 NYCRR Part 505.14.

Personal care services programs are administered by social services districts. Personal care services include environmental and nutritional functions and personal care functions. However, services provided as Title XIX personal care services must not duplicate or replace those services which the ACF is required by law or regulation to provide. Therefore, not all services available through Title XIX personal care services should be authorized for ACF residents. See Appendix D, Guidelines for Service Responsibility, for specific information regarding services.

All Title XIX personal care services must be ordered by the resident's physician. Following a nursing and social assessment, and a fiscal assessment if personal care

services will be needed for more than 60 days, services are prior authorized by the social services district. No payment for personal care services can be made without the prior authorization of the social services district. Most personal care services are delivered by home care provider agencies under contract to the social services district.

a. Types of Title XIX Personal Care Services (PCS) Provider Agencies

There are three types of Title XIX Personal Care Services provider agencies:

(1) Certified home health agencies (CHHAs) as described in D. 3. above, may have contracts with social services districts to provide Title XIX Personal Care Services in addition to the home health care services they are certified to provide.

(2) Licensed home care services agencies (LHCSAs) are required to be licensed by the New York State Department of Health, under PHL Section 3605 and State Department of Health regulation Part 766 (10NYCRR). LHCSAs are home care provider agencies that are not under exclusive contract to government agencies. Informational Letter, 86 INF-47, "Licensure of Home Care Services Agencies and Certification of Home Health Agencies" contains information regarding the procedures for becoming a LHCSA.

Home Care Program Directors at the New York State Department of Health's Area Offices of Health System Management (OHSM) may be contacted for additional information pertaining to licensure.

(3) Exempt agencies are home care provider agencies that are under exclusive contract to government agencies and operate under the regulatory requirements of those agencies. This type of home care provider agency is not required to be licensed.

b. Title XIX PCS Provider Agency Training Plan Approval Requirements

All certified, licensed or exempt home care services provider agencies under contract to a social services district to provide personal care services must have a training plan approved by either the State Department of Social Services or the State Department of Health. A provider agency associated with an ACF must also meet this requirement.

Appendix B contains information pertaining to the components of a training plan, the qualifications of personal care aide training candidates and the procedures for submitting a training plan for approval.

Agencies interested in becoming a provider of personal care services that currently do not have an approved training plan may develop and submit a personal care aide training plan through the social services district for this Department's review and approval or develop and submit a home health aide training plan to the Department of Health Area Office of Health System Management (OHSM).

c. Title XIX PCS Contract and Rate Approval Process

In order for a provider agency to become a Title XIX personal care services provider, the social services district must agree to contract with the provider agency. The contract and rate negotiated between the social services district and the provider agency must be submitted to and approved by the Department. Appendix C, Steps for Provider Agency Approval and Contracting Process for Personal Care Services should be consulted for an explanation of the contract and rate approval process.

d. Shared Aide Model for Provision of Services

As defined in 18NYCRR 505.14(a)(7), shared aide means a method of providing personal care

services under which a social services district authorizes one or more nutritional and environmental support functions, personal care functions, or health-related tasks for each personal care services recipient who resides with other personal care services recipients in a designated geographic area, such as in the same apartment building and a personal care services provider completes the authorized functions or health-related tasks by making short visits to each such recipient.

Wherever possible, personal care services shared aide models should be used when providing additional Title XIX personal care services tasks to ACF residents to assure that the services are delivered in an efficient and cost-effective model. ACF operators can assist by arranging for rooms of residents requiring Title XIX personal care services to be located in close proximity, or for such residents to room together. Since shared aide services are based on tasks, the social services district and the ACF operator must collaborate to plan, implement and coordinate this mode of service.

Additional information about the delivery of personal care services through the shared aide model is available in administrative directive 92 ADM-4, "Personal Care Services: Development and Implementation of Shared Aide Programs".

E. What are the ACFs' Responsibilities in Accessing Title XIX Home Care Services?

1. Primary Responsibility for Admission and Retention

The ACF operator has primary responsibility for all decisions related to the admission and retention of residents in an ACF including:

- a. determining the appropriateness of individuals for admission and retention in the facility;
- b. deciding about the on-going ability of facility staff and services to meet resident needs; and

c. identifying individuals for whom community-based home care services may be appropriate.

2. Determining Services Responsibilities and Selecting the Appropriate Community-Based Home Care Services

The Guidelines for Service Responsibility, Appendix D, details the service responsibilities of the ACF and each of the Title XIX home care services (personal care services, certified home health agency services, and LTHHCP services). The AIDS Home Care Program services replicate the LTHHCP services. Generally, the ACF is responsible for room, board, supervision, environmental and nutritional functions, as well as certain amounts of personal care services functions. As indicated in Appendix D, the ACF is usually responsible for the "some assistance" level of service and the Title XIX home care services are responsible for the "total assistance" level of service.

Title XIX personal care services aides will not be responsible for assisting an ACF resident with any task related to self-administration of medication.

The Guidelines for Services Responsibility, will assist with the development of the home care plan of care. The guidelines provide a reference for the types of services available from each of the home care services programs. For many eligible ACF residents, Title XIX personal care services will be the Title XIX home care services program appropriate to meet the additional care needs.

F. How are Title XIX Personal Care Services Accessed and Delivered in ACFs?

1. Initiating a Home Care Service Request

Once a resident has been identified as possibly needing community-based home care services, the ACF operator assists the resident in contacting his or her physician. Based on a medical examination of the resident, the physician completes a "Physician's Order for Home Care" form. Copies of the "Physician's Order for Home Care" form are available from the social services district. The completed "Physician's Order for Home Care" is then forwarded to the social services district.

Interaction between the ACF and the social services district will be necessary to make requests for Title XIX personal care services, schedule assessments, select the provider agency, arrange for nursing supervision of the Title XIX personal care services aide, and reassess and reauthorize services as necessary.

2. Authorization Procedures

The decision to authorize personal care services to a resident residing in an ACF must be made on an individual basis as a result of coordination between the facility, the resident or the resident's representative, the resident's physician and the social services district.

As discussed in Section D. 4. above, the completion of assessments, preparation of the authorization and arrangements for the delivery of personal care services for residents in an ACF are the responsibilities of the social services district. Districts should follow the assessment and authorization procedures specified in Department Regulations 18NYCRR 505.14 (a) and (b) and their Annual Plan for the Delivery of Personal Care Services and should use their currently approved forms for physician's orders and assessments. The social assessment is completed by the caseworker from the social services district or a case management agency associated with the social services district and the nursing assessment is completed by the nurse assessor designated by the social services district.

The caseworker from the social services district completes a fiscal assessment for persons who will need personal care services for more than 60 days.

The ACF operator should participate in the community-based home care assessment and reassessment of a resident. The ACF operator or facility representative must make available to the social services district or other authorized assessor, pertinent information regarding the health and functional ability of the resident, as well as any social and environmental information requested. For example, the ACF operator may be asked to provide information concerning facility operation and services such as meal and activity

scheduling to facilitate the development of the Personal Care Services plan of care.

Once the authorization process is complete, the ACF resident or his or her representative will receive a "Written Notification of Services" advising the resident of the scope, frequency and duration of the Title XIX personal care services authorized. If the services request is denied, the resident or his or her representative will receive a "Written Notification of Denial of Services". Social services districts will use the standard written notices for these purposes with the required advisement of right to conference and fair hearing rights.

3. Case Management Responsibilities

Case management responsibilities for individuals receiving Title XIX personal care services in an ACF are shared by the ACF operator and the social services district.

For those individuals judged appropriate for referral, case management is an important factor in determining the roles of the parties involved in the provision of care. It is expected that ACFs and social services districts will work closely to coordinate their respective services.

The case management responsibilities for the provision of Title XIX personal care services for the district and the ACF are examined against a functional definition of case management: Intake and Screening; Assessment and Reassessment; Comprehensive Service Planning; Service Acquisition; and Monitoring and Follow-up on the following page:

Case Management Responsibilities  
Specific to the Provision of Title XIX  
Personal Care Services (PCS) in  
Adult Care Facilities

Activity/Function	ACF	District
Intake/Screening	Identify appropriate referrals for Title XIX PCS	
Assessment and Reassessment	Provide necessary information	Major responsibility for completing nursing and social assessments and fiscal assessment for Title XIX PCS
Comprehensive Services Planning	Responsibility shared	
Service Acquisition		Major responsibility for Title XIX PCS
Monitoring and Follow-up	Primary responsibility for 24 hour monitoring of client, and for discharge planning from the ACF as necessary	Primarily responsible for service delivery, reassessment and on-going supervision of Title XIX PCS services  Primarily responsible for discharge from the Title XIX PCS program if necessary

4. Provision of Title XIX Personal Care Services

Once assessments are completed and a home care plan of care is established, a summary of services requirements is written. If Title XIX personal care services are indicated, an authorization is created which describes the level, amount, and duration of personal care services and the frequency of service delivery.

Title XIX personal care services are delivered by home care provider agencies under contract to the social services district. Selection of the home care provider agency which will deliver the personal care services to eligible ACF residents is the responsibility of the social services district. See Section D. 4. c. above for information pertaining to contracting.

Social services districts may use existing home care provider agency contracts for the provision of these services. If the ACF has a home care provider agency associated with it, the social services districts may also choose to contract with that agency to deliver these services.

5. Discontinuation of Title XIX Personal Care Services

The social services district is primarily responsible for the discontinuation of the ACF resident from the Title XIX personal care services program. Program discontinuation may occur for a variety of reasons. The resident may be reassessed as needing a different level of home care such as home health aide services or may become a recipient of the LTHHCP. The resident may have developed an unstable medical condition and have been hospitalized. An assessment in the hospital may have determined that alternative placement is necessary, or the resident may have an improved medical condition and require only the services provided by the ACF.

The ACF operator is responsible for informing the social services district of any change in a resident's medical condition or status so that appropriate action can be taken.

All discontinuations require the social services district to send a "timely", ten-day written notification of the action as required by Department regulation 18NYCRR Part 358.

G. What are the ACF Retention Standards?

Generally, the resident requiring additional home care services must meet the admission and retention criteria established for the type of ACF in which the person is living.

The criteria for admission and retention for each type of ACF, except shelters for adults, is described in Appendix E. Although primarily concerned with the health and functional abilities of individuals, the criteria also reflect the different settings and services offered by each type of facility. Therefore, despite the similarity, the criteria for each type of facility is different from the others, a fact that social services districts must consider when determining service eligibility or when reassessing service needs.

As determined by the ACF operator, residents deemed appropriate for RHCF placement can only be retained in an ACF if the residents' care needs can adequately be met, or if the facility operator makes persistent efforts to secure appropriate alternative placement. A DMS-1 score of over 60, or any other indicator developed by the Department of Health for establishing medical eligibility for RHCF admission does not in itself prohibit the retention of a resident in the ACF setting.

H. What Actions Are Taken When Resident's Needs Exceed the ACF Retention Standards?

If the ACF retention standard has been exceeded, the ACF operator is required under Section 487.4 of Department regulations to take one of the following actions:

1. initiate transfer arrangements to secure the appropriate alternative placement. In these cases, community-based home care services can be delivered during the interim period while awaiting placement, to assure the maintenance of the individual's health and safety. The ACF operator will continue to make persistent efforts for transfer as described below:
  - a. assisting the resident or resident's representative with filing five applications with appropriate facilities;
  - b. telephoning the facilities for follow-up every two weeks;

c. appealing rejections.

The operator must regularly inform the Division of Adult Services and document both the undertaking and the outcome of such efforts.

2. use the retention standard waiver program described in Section I. of this directive.

If the resident's health and safety can not be assured with the delivery of community-based home care services, immediate transfer to an appropriate alternative placement will be necessary.

I. What is the Retention Standards Waiver Program For Adult Homes and Enriched Housing Programs?

The purpose of this program is to permit approved operators to retain residents whose care needs exceed current regulations for ACF non-statutory retention standards.

1. Description

A significant number of adult home and enriched housing program residents are self-directing and exhibit stable medical conditions which do not require continual medical or nursing intervention. These residents, though medically eligible for placement in a RHCF, do not need placement in a RHCF and can be safely and appropriately cared for in the ACF with the assistance of community-based health care providers. It appears to be economically reasonable and socially responsible to permit adult home operators and enriched housing programs to retain such residents under a retention standards waiver program.

2. Retention Standards Waiver Program Approval Process

Adult home operators and enriched housing program directors must obtain written approval of the Department's Division of Adult Services prior to instituting a waiver of retention standards program to retain residents whose care needs exceed the non-statutory retention standards.

The waiver request establishes a plan for a set number of beds and is not resident specific. Beds approved under a

retention standards waiver may be used by residents meeting current retention standards when not in use by those retained under the waiver.

The Division of Adult Services has issued Adult Care Facility Directives, No. 6-91 entitled "Implementation of the Retention Standards Waiver Program" and No. 1-92, "Provision of Title XIX Home Care Services to Eligible Residents of ACFs Except Shelters for Adults" concurrently with this Administrative Directive. The Adult Care Facility Directive No. 6-91, advises adult home operators and enriched housing program directors about the retention standards waiver program, the purpose of the program and the procedures for its implementation. Division of Adult Services, Regional Office staff may contact the social services district's home care services unit to request information during the review of the adult home or enriched housing program's waiver request. The second Directive No. 1-92, pertains to Title XIX Home Care Services.

To be considered for an initial waiver or continuation of the retention standards waiver program, the Division of Adult Services requires operators to:

- a. have a history of compliance with 18NYCRR Department regulations Parts 485, 486, 487 or 488. Continuation of the waiver requires the operator to remain in compliance with Department regulations;
- b. demonstrate necessary letters of intent with the social services district outlining procedures for requesting Title XIX personal care services, assisting with the completion of the authorization process and facilitating the service delivery process for the provision of Title XIX personal care services to eligible residents;
- c. demonstrate necessary letters of intent with other community-based home care providers such as LTHHCPS and CHHAs including arrangements for service provision, community-based supervision and oversight under the terms and conditions of the waiver. This may include letters with other appropriate elements of their organization which are involved in the delivery of home care services;

- d. demonstrate necessary applications and/or licenses as may be required by the State Department of Health; training plan approval by either the State Department of Health or Social Services; an approved personal care services contract and rate, if the adult home or enriched housing program has an associated provider agency under contract to the social services district for the provision of Title XIX personal care services; and
- e. establish an ACF written individual resident care plan at the time of entry to the program. Periodic ACF reassessment and ACF plan modifications must be completed every 45 days after entry to the program and every 6 months thereafter or more frequently if necessary.

3. Resident Criteria for Waiver Retention Standards

The development of criteria for waiver of retention standards enables the Department's Division of Adult Services to work with qualified adult home and enriched housing program operators to structure a retention standards waiver program so that facility operators may request permission to retain a specified number of residents who have some additional care needs.

The waiver program is based on four key resident criteria. Each criteria is described below using Division of Adult Services, Adult Care Facility, terminology followed by the corresponding MA, Personal Care Services terminology.

a. Medical Stability

Department regulations 18NYCRR Sections 487.4 and 488.4 specify that the resident must not be in need of continual medical or nursing care. This means that the resident must not need such care to preserve or maintain an otherwise unstable medical condition. There should be no need for frequent medical or nursing judgment to determine changes in the resident's plan of care.

Department regulation 18NYCRR 505.14(a)(4) specifies that the patient's medical condition must be stable. Therefore, the medical

condition is not expected to exhibit sudden deterioration or improvement and the condition does not require frequent medical or nursing judgement to determine changes in the resident's plan of care.

b. Capacity to Perform Activities of Daily Living

Residents retained under these waivers may be more frail and in need of additional home care services than are routinely provided to an ACF resident. Department regulations 18NYCRR 487.4(b)(9), (10) and (11) and 488.4(b)(9), (10) and (11) may be waived so that residents could be in chronic need of physical assistance to transfer, walk and climb or descend stairs. However, an individual requiring a two-party transfer or two-party physical assistance can not be retained. An individual who requires lifting equipment to transfer can not be retained.

Department regulations 18NYCRR 487.4(b)(12) and (14) and 488.4(b)(12) and (14) may be waived so that individuals in need of chronic assistance to manage incontinence and use medical supplies and equipment may also be retained. However, all residents must continue to be involved in the life and activities of the facility.

Residents can be retained who have a "total assistance " need to transfer, walk and toilet as defined in Department regulation 18NYCRR 505.14(a). A resident with "managed" incontinence may be retained.

c. Cognition

Persons with limited judgement or confusion may be retained if there are informal or formal surrogates to assist the resident in managing his or her care and affairs. Careful assessment of the individual's ability to inform staff of needs and his or her capacity for self-preservation must be made.

Department regulation 18NYCRR 505.14(a)(4), states that the patient must be self-directing or have an individual or agency willing to assume the direction. A resident can be assisted by the ACF staff in making choices about activities of daily living.

d. Health and Safety

Department regulations 18NYCRR 487.4(d) and 488.4(d), specify that the particular facility must be able to support the physical and social needs of the individual. When retaining residents under the retention standards waiver program, mobility, cognitive capabilities and location in the facility must be considered.

Department regulation 18NYCRR 505.14(a)(4) specifies that the personal care services can be provided only if the services are medically necessary and the patient's health and safety in the home can be maintained by the provision of such services, as determined in accordance with the regulations of the Department of Health.

Appendix F, Retention Standards Waiver Program expands on points a.- d. above.

The Retention Waiver Conditions Worksheet, Appendix G of this directive, should be consulted to determine each retention standard criteria, the threshold for providing community-based home care and the exclusion statement. The exclusion statement determines the circumstances under which a resident can no longer be retained in the adult home or enriched housing program.

J. What are the Social Services District Implementation Procedures?

The social services district will determine through their standard completion of assessments, whether Title XIX home care services are required, and with the ACF operator, will determine whether the retention standards for that particular type of ACF are met. The procedures outlined in Section F. 1.- 3. of this directive should be followed to determine a resident's eligibility for home care services.

When a home care plan including an authorization of personal care services is established, the social services district will select the provider of services. Collaboration is expected between the ACF operator and the social services district for the delivery of services.

If another form of Title XIX community-based home care

services is needed, such as LTHHCP or CHHA services, the social services district will make the necessary referrals or arrangements for service provision.

1. Assisting the ACF to Access Home Care Services and Providing Information about Becoming a Provider of Personal Care Services

The social services district should provide technical assistance about Department and local policies as needed. Upon request, the social services district will provide copies of Department regulations and pertinent informational letters and administrative directives to the ACF operator.

As needed, the social services district will provide copies of the "Physician's Order for Home Care" form to ACF operators and will also provide the ACF operator with information about becoming a provider of Title XIX Personal Care Services.

2. Process to Determine Retention Standard Waiver Program Approval

When an adult home resident or enriched housing resident appears to exceed the ACF retention standard, the social services district should request from the operator or director, a copy of the specific adult home or enriched housing program's approval to operate a retention standards waiver program as issued by the Department's Division of Adult Services. Otherwise, the operator must demonstrate persistent efforts to transfer the resident to an appropriate care setting.

3. Referral to Regional Offices for Assistance with Questions or Problems

The social services district should contact the Regional Office of the Division of Adult Services if the district:

- a. questions the practices of an ACF;
- b. identifies problems within the ACF regarding

the provision of resident care or the presence of inappropriate residents;

- c. receives an unusual number of referrals or a significant number of inappropriate/unfounded referrals;
- d. finds that community-based home care services were used to duplicate or replace services required of the ACF.

The Regional Office Directors of the Division of Adult Services are listed in Appendix H.

V. SYSTEMS IMPLICATIONS

The MMIS prior approval system is used to prior approve the Title XIX Personal Care Services authorized for ACF residents and for billing the services rendered. The MMIS provider enrollment system is used to enroll new provider agencies, such as those associated with an ACF. There are no new systems implications for the delivery of Title XIX community-based services in ACFs.

VI. EFFECTIVE DATE

This Administrative Directive is effective on May 1, 1992.

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Jo-Ann A. Costantino  
Deputy Commissioner  
Division of Medical Assistance

ATTACHMENT 1

LIST OF APPENDICES

APPENDIX A	18NYCRR 360-6.6 Where Care and Services May Be Provided
APPENDIX B	Training for Personal Care Services Providers Summary
APPENDIX C	Steps for Provider Agency Approval and Contracting Process for Personal Care Services
APPENDIX D	Guidelines for Service Responsibility
APPENDIX E	Admission and Retention Criteria for ACFs
APPENDIX F	Retention Standards Waiver Program
APPENDIX G	Retention Waiver Conditions Worksheet
APPENDIX H	Division of Adult Services, Regional Office Directors

(All available on-line)

APPENDIX A

18NYCRR 360-6.6(a)  
Where Care and Services May Be Provided

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360-6.6 Where care and services may be provided. Medical care and services under the MA program may be provided to a recipient residing in his/her own home or in an approved medical institution or facility.

(a) A recipient's home may be a home where he/she receives room and board, a family home or boarding home, an approved nonprofit institution for child care, a licensed public child care institution which accommodates no more than 25 children and is not operated primarily for delinquent children or family-type group, or a family-type, family care or residential care facility certified by the department or an office of the State Department of Mental Hygiene.

APPENDIX B

TRAINING FOR PERSONAL CARE SERVICES PROVIDERS SUMMARY

I. TRAINING FOR PERSONAL CARE SERVICES PROVIDERS

The purpose of this section is to outline training requirements for personal care providers. Training is a quality of care standard. Use of untrained or improperly trained providers places the client's health and safety at risk and raises questions about the quality of service being delivered. It is important, therefore, to have regulations and guidelines which clearly define the training requirements and provide for the ability for audits and sanctions against agencies not complying with these requirements.

Each person performing personal care services other than household functions only shall be required, as a condition of initial or continued participation in the provision of personal care services under 505.14, to participate successfully in a training program approved by the New York State Department of Social Services.

A. Qualifications of Personal Care Aide Training Candidates

The purpose of this section is to identify the requirements of the Department of Social Services regulation 505.14(d) which pertains to the minimum criteria for selection of persons providing personal care services. Criteria for selection of persons providing personal care services must include:

- (1) maturity, emotional and mental stability, and experience in personal care or homemaking;
- (2) ability to read and write, understand and carry out directions and instructions, record messages, and keep simple records;
- (3) sympathetic attitude towards providing services for patients at home who have medical problems; and
- (4) good physical health, as indicated by the documentation in the personnel file of all persons providing personal care services. This documentation must include the same assurances and proof of good physical health that the Department of Health requires for employees of certified home health agencies pursuant to 10 NYCRR 763.4.

The home care provider agency must be able to attest to each employee's satisfaction of the minimum selection criteria identified above in 505.14(d).

II. QUALIFICATIONS/REQUIREMENTS OF THE PERSONAL CARE PROVIDER AGENCIES

In order to be eligible to provide Title XIX Personal Care Services in an Adult Care Facility, the personal care provider agency must be licensed or certified by the New York State Department of Health or exempt from such requirements. Additionally, the provider agency must have either a New York State Department of Health approved Home Health Aide training plan or a New York State Department of Social Services approved Personal Care Aide training plan. Agencies who currently do not have a training plan approved by the New York State Department of Social Services or Health may develop and submit a Personal Care Aide training plan through their local social services district for the Department's review and approval. The training plan submittal must include the agency's plan for providing basic training, periodic and in-service training, on-the-job training instruction and evaluation of the aide's overall job performance. The agency may also choose to include an assessment/competency testing methodology, which is an optional training plan component. A description of each training plan component and the information which must be included in the provider agency's training plan submittal follows.

A. Basic Training

Basic training is defined as a formal course which involves supervised practice and theory. Such training must include an orientation to the roles and responsibilities of the personal care services providers and to the policies and procedures of the employing agency.

Personal care provider agencies submitting an initial training plan in order to provide personal care services in adult care homes, are encouraged to use the Department developed Home Care Core Curriculum (HCCC), for basic training. The HCCC is a forty hour minimum basic training course, exclusive of testing, containing twelve discrete content areas. The HCCC meets Personal Care Aide (Level II) training standards for content and length. The curriculum identifies minimum hour requirements for each of the twelve content areas. It also includes evaluation instruments, vocabulary lists, and additional resource listings. Copies may be obtained by contacting the Department Resource Center at: (518) 473-8320.

B. Basic Training Course Information Which Must Be Submitted For Review

1. Identify the qualifications of individuals accepted for basic training. As a minimum, these qualifications must include those identified in 505.14(d)(iv).

2. Submit the name and resume of the Director/Coordinator of Training. The individual must meet the qualifications stipulated on Page 3, III.B.1(b) in 83 ADM-20, "Training for Personal Care Services Providers".
3. Submit the names and resumes of all basic training course instructors. Page 4 of 83 ADM-20 may be referred to for course instructor qualifications.
4. Submit a daily training schedule which includes reference to the HCCC modules and units, time allocations for each content area, time allocations for written and skills evaluations, and the instructor(s) presenting each content area. Although the HCCC represents the Department's minimum 40 hours of required content, basic training programs may exceed 40 hours in length and expand the hour allocations identified in the HCCC or include content related to other topics. (Recent updates to the HCCC, especially in Module XII, may require additional teaching and evaluation time beyond the hour allocations in the HCCC.) Content related to other topics, however, must be provided as a supplement to the 40 hours, and may not be substituted for required topics. Agencies may refer to page 4 of 83 ADM-20 for the Department's standards for basic training course instructors.
5. Identify the agency's plan for evaluation of basic training course content. The HCCC contains modular quizzes and procedural checklists for evaluation of required and optional procedures. Agencies may opt to use the evaluation plan as presented in the HCCC, or the agency may choose to consolidate the modular quizzes into one or more exams. Time required for aide testing will vary with the number of students and instructors involved in testing, and should not be included in the 40 minimum hours required for presentation of the HCCC course content.
6. Submit a copy of the form, i.e., certificate awarded to the aide upon successful course completion. The form should, as a minimum, include space for:
  - o the appropriate training level title - "Personal Care Aide"
  - o the aide's name
  - o name and address of the training agency
  - o date of certificate issuance
  - o signature of the basic training course Coordinator/Director
  - o statement of training plan approval by the New York State Department of Social Services

Agencies may prefer to choose to adapt the model certificate included in the HCCC.

C. Assessment Methodology

The Department allows individuals with qualifying prior related training or experience to be exempted from basic training if the individual can successfully complete an assessment methodology. Agencies with Department approved Personal Care Aide training plans which utilize the Home Care Core Curriculum for basic training are eligible to receive free of charge, a copy of the Department developed Standardized Assessment Methodology (SAM). In order to obtain a copy of the SAM, agencies should request a copy be sent to them at the time their Personal Care Aide Training Plan is submitted through the local department of social services to the Department for review and approval.

D. In-Service Training (IST)

In-service training is defined as training provided on a regularly scheduled basis to develop specialized techniques, skills, or knowledge which are not included in the basic training course. Such training may also be provided to review certain aspects of the basic training when it is determined by the supervisor that deficiencies in performance exist, or to provide more in-depth and intensive training in relation to a specific basic training area. As such, a program of in-service training builds or enhances on the skills, techniques, and knowledge included in the basic training and is given on a formalized group basis.

As a minimum, the Department requires that individuals providing personal care services be required to participate in 6 hours of in-service training annually. It is the responsibility of the employing agency to insure such training is provided. It is also the employing agency's responsibility to establish criteria and methodology for continued evaluation of the personal care service provider during the in-service training.

Content of in-service training will vary from agency to agency depending on the objectives of the personal care service program, characteristics of the personal care service caseload, and assessed needs of personal care service providers themselves. Alternatives for providing in-service will also vary and may include participation in group training sessions directed by the agency, attendance at relevant institutes, conferences or training sessions held by various other community agencies, or any combination of these methods.

In-Service Training Information Which Must Be Submitted For Review

1. Identify the frequency in which the agency will offer in-service training.
2. Submit a tentative one year schedule of in-service training offerings, identifying the topics, instructors, and projected hour allocation for each topic.
3. Identify the agency's method for documenting each individual's participation in required in-service training, and submit a copy of the form(s) used to document compliance with the requirement.

E. On-the-Job Training (OJT)

On-the-job training is defined as training provided, as the need is identified, to instruct an individual personal care service provider in a specific skill or technique or to assist the provider in resolving problems in individual case situations. As such, it is a fluid, unstructured type of training, frequently given on a one-to-one basis.

On-the-job training may be administrative in nature - such as individual case conferences involving the provider, the case manager and the R.N. supervisor. It may also be technical in nature whereby individualized instruction in performing a basic skill or technique related to the client's need is provided by the supervising R.N. or other appropriate professional.

As part of supervisory responsibilities for personal care services, the registered nurse is responsible for evaluating the personal care provider's ability to carry out assigned functions. The registered nurse is also responsible for providing on-the-job training related to personal care skills when the need for instruction is identified.

Information Which Must Be Submitted for On-the-Job Training (OJT)

1. Individual(s) responsible for provision of OJT are identified and appropriate.
2. Method(s) for providing and documenting OJT are identified and form(s) used to document its provision have been submitted and are appropriate.

F. Overall Job Performance Evaluation (OJPE)

The employing agency is responsible for conducting overall job performance evaluations (OJPE). The purpose of the evaluation is to determine how competently an individual is performing

his or her job as provider of personal care services. The OJPE is not intended to reflect the individual's performance in a specific case situation.

Evaluations may be completed by the individual responsible for administrative supervision, a registered professional nurse employed by the agency to provide nursing supervision, another person on the agency's staff or jointly by all of these individuals. To complete performance evaluations, the employing agency may review and utilize information about the individual's performance on specific cases as reflected in the nursing supervisory reports. Information from training and personnel records may also be used. An individual's performance on an active case may be observed but is not required.

As a minimum, the Department requires that evaluations be completed annually. Evaluations should be maintained in each individual's personnel record and should include the comments and signatures of the employee and the individual or individuals who completed the evaluation.

OJPE Information Which Must Be Submitted for Review

1. Identify the criteria and methods used for evaluating the aide's overall job performance.
2. Submit the form(s) used in evaluating the aide's overall job performance.

## APPENDIX C

### STEPS FOR PROVIDER AGENCY APPROVAL AND CONTRACTING PROCESS FOR PERSONAL CARE SERVICES

1. Provider agency meets with Commissioner of social services district or his/her representative regarding intent to become a provider. Some social services districts have an RFP process. Provider agency follows local practices. Provider agency receives and reviews regulations and administrative directives.
2. Provider agency submits personal care services training plan to social services district. (Steps 2-4 do not apply to NYC where centralized training is done.)
3. Social services district forwards training plan to NYSDSS.
4. NYSDSS reviews and forwards notice to social services district. Social services district notifies provider agency of approval/disapproval. If disapproved, provider agency resubmits additional information to social services district for forwarding to NYSDSS. Repeat process until training plan is approved.
5. Provider agency completes Provider Information Sheet, B.3.b.1. If social services district agrees to contract with agency, the district forwards copy of B.3.b.1. and requests approval for use of agency to NYSDSS.
6. NYSDSS verifies training plan approval and reviews B.3.b.1. If acceptable, NYSDSS notifies social services district of approval to contract, using NYSDSS approved contract.
- \*7. Social services district and provider agency negotiate rate and local contract variations. Rate and local variations are established by social services district.
- \*8. Social services district submits local contract variations and rate information to NYSDSS with justifications. NYSDSS reviews and approves rate(s) and local contract variations. NYSDSS submits rate(s) to Division of the Budget (DOB). DOB approves rate.
- \*9. NYSDSS notifies social services district of rate(s) and approval of intent to contract. Social services district submits copies of signed and dated NYSDSS approved contract.
- \*10. Social services district uses MMIS system for payment.
  - a) NYSDSS notifies MMIS of approval to use the agency.
  - b) MMIS assigns Provider Identification number following completion of provider enrollment forms by provider agency.
  - c) The personal care services rates are entered in the system after approval by NYSDSS and social services district.

- d) Social services district prior approves services according to established client specific procedures and assigns authorizations to provider agency as needed.
- e) After rendering services, provider agency bills MMIS for services. Payment is made to the provider agency.

\*Effective for rates beginning on or after January 1, 1992 in all social services districts outside of New York City:

- \*7. NYSDSS sends Personal Care Cost Report and instructions to provider agency. Provider agency completes and returns the cost report to NYSDSS.
- \*8. NYDSS promulgates rate using methodology. NYSDSS submits rates to Division of the Budget (DOB). DOB approves rate.
- \*9. NYSDSS notifies social services district of rates(s) and approval of intent to contract. Social services district submits copies of signed and dated NYSDSS approved contract.
- \*10. Social services district uses MMIS system for payment.
  - a) NYSDSS notifies MMIS of approval to use the agency.
  - b) MMIS assigns Provider Identification number following completion of provider enrollment forms by provider agency.
  - c) The personal care services rates are entered into the system after approval by DOB.

ADMISSION AND RETENTION CRITERIA

## Adult Homes

## 487.4 Admission Standards

(a) An operator shall admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(b) An operator shall not accept nor retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential facility licensed pursuant to article 19, 23, 29 or 31 of the Mental Hygiene Law;

(3) requires health or mental health services which are not available or cannot be provided safely and effectively by local service agencies or providers;

(4) causes, or is likely to cause, danger to himself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the facility;

(6) has a medical condition which is unstable and which requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purposes of reporting to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such failure causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

(9) is chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer;

(10) chronically requires the physical assistance of another person in order to walk;

(11) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;

(12) has chronic unmanaged urinary or bowel incontinence;

(13) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

(14) is dependent on medical equipment, unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) such assistance, if needed, is available from approved community resources; and

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

(15) engages in alcohol or drug use which results in aggressive or destructive behavior; or

(16) is under 18 years of age; or, in a public adult home, under 16 years of age.

#### Enriched Housing

#### 488.4 Admission and retention standards.

(a) An operator may admit, retain and care for only those individuals who require the services the operator is certified to provide.

(b) An operator must not accept nor retain any person who:

(1) needs continual medical or nursing care or supervision as provided by an acute care facility or a residential health care facility certified by the Department of Health;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in an acute care or residential treatment facility operated or certified by an office of the Department of Mental Hygiene;

(3) requires health, mental health, or other services which cannot be provided by local service agencies;

(4) causes, or is likely to cause, a danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care, or safety of the resident or other residents or which substantially interferes with the orderly operation of the enriched housing program;

(6) requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purpose of reporting on a medical condition to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such refusal or inability causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

(9) is chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer;

(10) is chronically in need of the physical assistance of another person in order to walk;

(11) is chronically in need of the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;

(12) has chronic unmanaged urinary or bowel incontinence;

(13) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

(14) is dependent on medical equipment unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his/her room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) assistance in the use or maintenance of the equipment, if needed, is available from local social services agencies or approved community resources;

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

(15) has chronic personal care needs which cannot be met by enriched housing staff or approved community providers;

(16) is not self-directing; i.e., requires continuous supervision and is not capable of making choices about his/her activities of daily living; or

(17) engages in alcohol or drug use which results in aggressive or destructive behavior.

#### Family-Type Home for Adults

##### 489.7 Admission Standards and Procedures

(a) An operator shall admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(b) An operator shall not accept nor retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant

to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29, and 31 of the Mental Hygiene Law;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential facility licensed pursuant to article 19, 23, 29 or 31 of the Mental Hygiene Law;

(3) requires health or mental health services which are not available or cannot be provided safely and effectively by local services agencies or providers;

(4) causes, or is likely to cause, danger to himself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the facility;

(6) has a medical condition which is unstable and which requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purposes of reporting to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a proscribed medications regimen when such failure causes, or is likely to cause, in the judgement of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

(9) is chronically chairfast and unable to transfer, or chronically requires the physical assistance of another person to transfer;

(10) chronically requires the physical assistance of another person in order to walk;

(11) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;

(12) has chronic unmanaged urinary or bowel incontinence;

(13) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

(14) is dependent on medical equipment, unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) such assistance, if needed, is available from approved community resources; and

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

(15) is under 18 years of age;

(16) does not provide the operator with the required medical evaluations;

(17) refuses or fails to inform the operator on an on-going basis of changes in medications or other elements of the medical evaluation as they occur;

(18) engages in alcohol or drug use which results in aggressive or destructive behavior; or

(19) is unable to communicate with the operator in a common language;

#### Residence for Adults

#### 490.4 Admission and Retention Standards

(a) An operator may admit, retain and care for only those individuals who do not require services beyond those the operator is permitted by law and regulation to provide.

(b) An operator must not accept or retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article twenty-eight of the Public Health Law or licensed or operated pursuant to articles nineteen, twenty-three, twenty-nine and thirty-one of the Mental Hygiene Law;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential treatment facility licensed or operated pursuant to articles nineteen, twenty-three, twenty-nine or thirty-one of the Mental Hygiene Law;

(3) requires health or mental health services which are not available or cannot be provided safely and effectively by local social services agencies or providers;

(4) causes, or is likely to cause, danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents or which substantially interferes with the orderly operation of the facility;

(6) has a medical condition which requires continual skilled observation of symptoms or reactions to medications or accurate recording of such skilled observations for the purpose of reporting to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen, when such refusal or inability causes, or, in the judgement of a physician, is likely to cause life-threatening danger to the resident or other;

(8) requires more than supervision and assistance with self-administration of medications in order to maintain a prescribed medication regimen;

(9) chronically requires physical assistance with the personal activities of daily living, including grooming, bathing, dressing, toileting, or eating;

(10) is chronically chairfast and unable to transfer or chronically requires the physical assistance of another person to transfer;

(11) is chronically bedfast;

(12) chronically requires the physical assistance of another person in order to walk;

(13) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;

(14) has chronic unmanaged urinary or bowel incontinence;

(15) suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

(16) is dependent on medical equipment unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his/her room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the facility;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent and occasional assistance from medical personnel, and such assistance is available from local social services agencies or approved community resources; and

(v) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

(17) engages in alcohol or drug use which results in aggressive or destructive behavior;

(18) is under 18 years of age; or under 16 years of age if such person is to be admitted to a residence for adults operated by a social services district.

## Retention Standards Waiver Program

The Department has structured this Retention Standards Waiver Program to permit the retention of some residents whose care needs exceed current limits. It has been developed in response to changes in population, demographics and the roles and standards of other elements of the long term care and in recognition that some operators can support residents with additional needs. The program is based on four key residents factors described below using Division of Adult Services, Adult Care Facility terminology first followed by the corresponding Medical Assistance, Personal Care Services terminology.

a. Medical Stability

Department regulations 18NYCRR Sections 487.4 and 488.4 specify that the resident must not be in need of continual medical or nursing care. This means that the resident must not need such care to preserve or maintain an otherwise unstable medical condition. There should be no need for frequent medical or nursing judgment to determine changes in the resident's plan of care.

Department regulation 18NYCRR 505.14(a)(4) specifies that the patient's medical condition must be stable. Therefore, the medical condition is not expected to exhibit sudden deterioration or improvement and the condition does not require frequent medical or nursing judgement to determine changes in the resident's plan of care.

b. Capacity to Perform Activities of Daily Living

Residents retained under these waivers may be more frail and in need of additional home care services than are routinely provided to an ACF resident. Department regulations 18NYCRR 487.4(b)(9), (10) and (11) and 488.4(b)(9), (10) and (11) may be waived so that residents could be in chronic need of physical assistance to transfer, walk and climb or descend stairs. However, an individual requiring a two-party transfer or two-party physical assistance can not be retained. An individual who requires lifting equipment to transfer can not be retained.

Department regulations 18NYCRR 487.4(b)(12) and (14) and 488.4(b)(12) and (14) may be waived so that individuals in

need of chronic assistance to manage incontinence and use medical supplies and equipment may also be retained. However, all residents must continue to be involved in the life and activities of the facility.

Residents can be retained who have a "total assistance " need to transfer, walk and toilet as defined in Department regulation 18NYCRR 505.14(a). A resident with "managed" incontinence may be retained.

c. Cognition

Persons with limited judgement or confusion may be retained if there are informal or formal surrogates to assist the resident in managing his or her care and affairs. Careful assessment of the individual's ability to inform staff of needs and his or her capacity for self-preservation must be made.

Department regulation 18NYCRR 505.14(a)(4), states that the patient must be self-directing or have an individual or agency willing to assume the direction. A resident can be assisted by the ACF staff in making choices about activities of daily living.

d. Health and Safety

Department regulations 18NYCRR 487.4(d) and 488.4(d), specify that the particular facility must be able to support the physical and social needs of the individual. When retaining residents under the retention standards waiver program, mobility, cognitive capabilities and location in the facility must be considered.

Department regulation 18NYCRR 505.14(a)(4) specifies that the personal care services can be provided only if the services are medically necessary and the patient's health and safety in the home can be maintained by the provision of such services, as determined in accordance with the regulations of the Department of Health.

APPENDIX H

DIVISION OF ADULT SERVICES REGIONAL OFFICES

Western Regional Offices

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NYS DSS - DAS WRO  
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Rochester, New York 14607  
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Districts Served

Allegany  
Cattaraugus  
Cayuga  
Chautauqua  
Chemung  
Erie  
Genesee  
Livingston  
Monroe  
Niagara  
Onondaga  
Ontario  
Orleans  
Oswego  
Schuyler  
Seneca  
Steuben  
Tioga  
Tompkins  
Wayne  
Wyoming  
Yates

Eastern Regional Office

Ms. Mary E. Hart  
Director  
NYS DSS - DAS ERO  
488 Broadway  
Arcade Building - 3rd Fl.  
Albany, New York 12243  
Phone: (518) 432-2873

Districts Served

Albany  
Broome  
Chenango  
Clinton  
Cortland  
Delaware  
Dutchess  
Essex  
Franklin  
Fulton  
Greene  
Hamilton  
Herkimer  
Jefferson  
Lewis  
Madison  
Montgomery  
Oneida  
Otsego  
Rensselaer  
St. Lawrence  
Saratoga  
Schenectady  
Schoharie  
Ulster  
Warren  
Washington

Long Island Regional Office

Mr. Carleton Reo  
Director  
NYS DSS - DAS LIRO  
Drawer 61, Suite 480  
1 Old Country Road  
Carle Place, New York 11514  
Phone: (516) 294-2877

Districts served

Nassau  
Queens  
Suffolk

Metropolitan Regional Office

Mr. Carleton Reo  
Acting Director  
NYS DSS - DAS MRO  
80 Maiden Lane  
6th Floor  
New York, New York 10038  
Phone: (212) 804-1234  
Fax # 212-804-1023

Districts served

Bronx  
Kings  
New York  
Orange  
Putnam  
Richmond  
Rockland  
Sullivan  
Westchester