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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 94 ADM-9

TO: Commissioners of  
 Social Services

DIVISION: Health and  
 Long Term Care

DATE: June 7, 1994

SUBJECT: The Assisted Living Program (ALP)

SUGGESTED  
 DISTRIBUTION:

Home Care Services Staff  
 Medical Assistance Staff  
 Adult Services Staff  
 Director of Social Services  
 Staff Development Coordinators

CONTACT  
 PERSON:

Margaret O. Willard, Division of Health and Long  
 Term Care on issues pertaining to ALP/MA Home Care,  
 Frank Rose, Office of Housing and Adult Services on  
 issues pertaining to the ALP residential component  
 by telephoning 800-343-8859 extension 3-5569 or 432-  
 2404 respectively, or directly at 518-473-5569 or  
 518-432-2404.

ATTACHMENTS:

ALP Screen and Assessment Instrument (not on-line)  
 Notice Letter (on-line)  
 ALP Contract (on-line)  
 ALP MA Recipient Absence Roster(DSS-4455)(not-on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		485.2	SSL 367-c		PHL 3614(6)
		485.3	(5)		10 NYCRR
		485.6	SSL 367-h		Part 86-7
		485.17	SSL 461-1		42 CFR
		486.5(c)			Section
		Part 494			435.1009
		505.35			

I. PURPOSE

The purpose of this administrative directive is to explain policies and procedures social services districts must follow in the authorization and reauthorization of Title XIX funded home care services in the Assisted Living Program (ALP). These policies and procedures reflect the addition of Section 505.35 to the Department of Social Services regulations, as required by Sections 367-h and 461-1 of the Social Services Law, as added by Sections 32 and 33, respectively, of Chapter 165 of the Laws of 1991.

II. BACKGROUND

In recent years many changes have occurred in the arena of long term care due to an increasing elderly and disabled population. New York State population trends indicate that the over 65 years of age population may reach three million by the year 2000.

The increase in the elderly population has resulted in a shortage of affordable low-income housing in some areas of New York State causing many frail elderly individuals to seek premature placement in residential health care facilities (RHCFs). Other individuals seek placement because it has been determined that their home is not a safe or suitable environment in which to provide home care services.

The combination of these factors has resulted in a population of individuals without skilled care needs residing in residential health care facilities while another segment of the population with skilled care needs await RHCF placement from hospitals or their homes.

Four thousand two hundred (4,200) RHCF beds were identified by the Department of Health as being necessary in 1993 for people who historically have been admitted to nursing facilities for reasons that are primarily unrelated to their need for skilled medical care and services. Appropriate and cost effective alternative options for meeting the needs of these individuals were explored by the Departments of Health and Social Services.

In response to these factors, the Assisted Living Program (ALP) was established by Chapter 165 of the Laws of 1991 to serve individuals who are medically eligible for RHCF placement, yet who are not in need of the highly structured, medicalized environment of a nursing facility and whose needs could be met in a less restrictive and lower cost residential setting. The ALP meets the needs of these individuals by combining residential services of an adult home or enriched housing program with a licensed home care services agency (LHCSA), a long term home health care program (LTHHCP) or a certified home health agency (CHHA) for the provision of supportive home care services. The ALP is also identified in Chapter 165 as an efficiency to be considered in the personal care and home health services fiscal

assessment and management process which, when appropriate, should be incorporated into the patient's plan of care.

### III. PROGRAM IMPLICATIONS

The ALP will increase the capacity of New York State's community based long term care services system to serve greater numbers of people as we move toward the year 2000. The ALP will offer social services districts a new cost effective level of care for Medical Assistance (MA) recipients in need of residential and home care services. It will also ensure that RHCf beds will be more readily available for individuals requiring that level of care by providing a new alternative for some individuals whose placement choice was previously limited. RHCf beds will then be available to those with the greater need for that level of care. The ALP will decrease the number of individuals awaiting alternate level of care placements from hospitals or community settings.

### IV. REQUIRED ACTION

To comply with the provisions of Social Service Law Sections 367-h and 461-1 and Department regulations at Part 494 and 505.35, the policies and procedures contained in Section IV. B-F of this directive must be followed in the prior authorization of ALP services.

#### A. Definition of the Assisted Living Program (ALP)

The ALP is an entity established and operated for the purpose of providing long term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five or more eligible adults unrelated to the operator.

An ALP is jointly approved to operate by the Department of Social Services and the Department of Health. An ALP must possess a valid operating certificate as an adult home or enriched housing program and must be either a LHCSA, a CHHA or a LTHHCP. In the ALP, skilled nursing services and therapies may only be provided by a CHHA or LTHHCP. Consequently, if the ALP is an enriched housing program or adult home and a LHCSA, the ALP must establish a contract with either a CHHA or a LTHHCP to provide nursing and therapy services. In accordance with 18 NYCRR 505.14 (c)(8)(ii), personal care services must be provided directly by the ALP.

Federal regulations at 42 CFR Section 435.1009 provide that federal financial participation (FFP) is not available for State MA expenditures for services provided to residents of public institutions. A public institution includes any institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This means that a public home, for example, cannot become an ALP because no FFP would be available for the ALP services it would provide.

#### B. ALP Resident Criteria

Referrals for the ALP may be received from a number of sources including:

hospital discharge planners, residential health care facility social workers and social service district staff. It will be the responsibility of the ALP to assess, on forms designated by the Department, potential candidates for the program.

The physical capability of an individual as well as their capacity to act in the event of an emergency are used in determining ALP appropriateness. Served by the ALP are individuals who:

- require more care and services to meet their daily health or functional needs than can be provided by an adult care facility;
- are medically eligible for placement in a residential health care facility;
- have a stable medical condition; and,
- are able, with direction, to take sufficient action to assure self-preservation in an emergency.

The ALP cannot provide services to individuals who:

- require continual nursing or medical care;
- are chronically bed or chairfast requiring lifting equipment or two persons to transfer; or
- are cognitively, physically or medically impaired to a degree that their safety or the safety of others would be endangered.

In New York State, participation in the ALP is not limited to MA eligible recipients. Consequently, there are two funding streams for the ALP, Supplemental Security Income (SSI) Congregate Care Level II or private payment for the residential services, and MA or private payment for home care services. It is possible that varying financial arrangements could be involved for a resident within the program. For instance, an ALP applicant may:

- o qualify categorically for MA/SSI which will provide full MA eligibility for the home care services portion of the ALP; or
- o qualify as a private pay admission to a Level II facility and be MA eligible with a spenddown for the home care services; or
- o be private pay for both residential and home care services.

C. Criteria and Procedures for Authorization of Title XIX Home Care Services in the ALP

1. Responsibilities of the ALP

An initial screening to determine whether the individual may be appropriate for and chooses to participate in the ALP must be

completed by the ALP. A copy of the initial screen is included as Attachment A.

Prior to admission to the ALP, the assisted living program must determine that the ALP can support the physical, supervisory and psycho-social needs of the individual. This determination must be based on the following:

- (a) a physician's order, based on a physical examination conducted within 30 days prior to the date of admission, indicating appropriateness for the program;
- (b) a nursing assessment completed by the ALP's designated CHHA or LTHHCP, which includes the Patient Review Instrument (PRI) or its successor and other tools approved by the Department;
- (c) a social assessment completed by designated staff of the ALP;
- (d) a mental health evaluation by a physician, psychiatrist, nurse, psychologist or social worker who has experience in the assessment and treatment of mental illness if the proposed resident has a known history of mental illness or the assessment suggests such a disability; and
- (e) an interview between the administrator or a designee responsible for admission and retention decisions and the resident and the resident's representative, if any.

If the individual is determined appropriate for the ALP, based on the review of the above completed assessments which includes the ALP making a Resource Utilization Group (RUG) category determination, a copy of the assessments, respective RUG category determination and the resident's plan of care is then forwarded by the ALP to the social services district in which the ALP is located.

## 2. Responsibilities of the Social Services District in the ALP

### For MA Applicants

An ALP applicant may also be applying for a MA eligibility determination at the same time he/she is applying for MA funded home care services in the ALP.

The district in which the ALP is located may make an initial MA determination, but the fiscally responsible social services district must make the final determination and enter the required information into the Welfare Management System (WMS) prior to authorization of MA funded home care services.

Consequently, when determining MA eligibility, districts must adhere to existing regulations and requirements regarding district of fiscal responsibility with the following exceptions required by new Department regulations at 18 NYCRR 505.35(i):

(i) for individuals who are MA eligible at the time of admission to the ALP, the district that is fiscally responsible for the individual immediately prior to his or her admission to the ALP will retain fiscal responsibility; and

(ii) for non-MA eligible individuals admitted to the ALP who later become MA eligible, the district in which the individual resided immediately prior to his or her admission to the ALP is the fiscally responsible district.

For MA Recipients

For individuals determined MA eligible, it will be the responsibility of the district in which the ALP is located to review the ALP assessments and RUG category determination, but the fiscally responsible social service district must complete the prior authorization of service.

For example, if a MA recipient from District A is assessed and determined appropriate for an ALP located in District B, then District B will review the assessments and RUG category determination. District A will then complete the prior authorization for payment of service.

Upon receipt of the ALP's assessment and RUG category determination, the district in which the ALP is located will review the assessments and RUG determination and within 10 working days of the district's receipt of this documentation and the ALP's request for prior authorization of MA funded home care services for the applicant/recipient (A/R), take one of the following actions:

(i) agree with the the ALP's determinations and authorize payment for 45 calendar days from date of admission to the ALP. If not the district of fiscal responsibility, forward the assessments and RUG category determination to the fiscally responsible social services district for prior authorization; or

(ii) conduct its own assessment and based upon the findings of the assessment agree with the ALP's assessments and authorize payment for 45 calendar days from date of admission; if not the fiscally responsible district, forward the assessments and RUG category determination to the fiscally responsible district for prior authorization; or

(iii) conduct its own assessment and based upon those findings disagree with the ALP's assessment. The district must then forward both the district's and the ALP's assessments to the local professional director (LPD), or designee, for review and final determination of the appropriate payment. This determination must be made within 5 working days of the LPD or designee's receipt of the request for review. If the LPD's or designee's determination affirms the recipient's appropriateness for the ALP, and the district in which the ALP is located is the fiscally responsible district, the district must prior authorize home care services at the RUG

reimbursement category determined by the LPD, or designee. If the district in which the ALP is located is not the fiscally responsible district, the LPD's, or designee's, final determination must be forwarded with the assessments and RUG category determination to the fiscally responsible district for prior authorization.

Note: When the district's and the ALP's assessments disagree, an agreement may be reached by sharing information or conducting a joint assessment.

D. Reassessment/Reauthorization Procedures

The ALP must reassess the individual's appropriateness for the ALP no later than 45 calendar days from the date of the individual's admission to the ALP and at least once during each subsequent six month period. If the individual's condition changes during the initial 45 day authorization period or at any other time during the authorization or reauthorization period so that the RUG category also changes, a new assessment must be completed by the ALP and submitted to the district.

Upon receipt of the ALP's initial reassessment and request for reauthorization of services, the social services district must, within 10 working days, authorize or reauthorize ALP services in accordance with the procedures identified in C.2., Responsibilities of the Social Services District in the ALP.

E. Fair Hearings

The district of fiscal responsibility is responsible for notifying the applicant in writing of a decision and advising the recipient of his/her fair hearing rights only when an action taken by the district results in an adverse action affecting the recipient. Consequently, notice and fair hearing rights will only be afforded in the following two circumstances:

- o When an ALP makes a decision to accept an MA recipient for admission, the district's assessment disagrees with the ALP's assessment and the local professional director upholds the district's decision, the district must send a denial notice which contains fair hearing rights.
- o When an ALP determines to reauthorize an ALP participant and the district disagrees with the ALP's assessment and the local professional director upholds the district's decision, the district must send a timely discontinuance notice which contains recipient fair hearing and aid-continuing rights.

Attachment B is a copy of the written notice form that must be used to notify the MA recipients when MA funded home care services in the ALP are being denied or discontinued. Social services districts must photocopy this notice and issue it as a two-sided notice, not a two-paged notice.

F. Termination of ALP Services

If it is determined that the ALP participant is no longer appropriate for the ALP or does not meet the adult care facility (ACF) retention standards, then procedures must be initiated by the ALP to obtain the appropriate level of care for the individual. Until the appropriate level of care is obtained, the ALP is responsible for continuing to provide services and will be reimbursed at the RUG category determined appropriate by the ALP and approved by the social services district.

G. Case Management in the ALP

The ALP is responsible for the overall case management of individuals participating in the program.

Case management functions that are the responsibility of the ALP include, but are not limited to:

- receiving the initial referral for the assisted living program, providing information to the applicant about the program, assisting the applicant, when appropriate, in completing an MA application and forwarding the application to the social services district in which the ALP is located for a final determination;
- assisting the applicant to obtain a physician's order when the applicant or the applicant's representative is unable to do so;
- completing the applicant's social assessment on forms approved by the Department and arranging for completion of the nursing assessment which includes the Patient Review Instrument (PRI) or its successor and other tools approved by the Department;
- determining the Resource Utilization Group (RUG) category of the individual based upon the assessments and physician's order;
- forwarding to the social services district for its review the completed nursing/functional/social assessments, RUG category determination and physician's order form;
- providing or arranging for the delivery of ALP services;
- allowing the individual access to his/her written case records;
- establishing linkages to services provided by other community agencies, providing information about these services to MA recipients and establishing criteria for referring MA recipients to these services;
- achieving, to the maximum extent possible, economic efficiencies, including, but not limited to, using shared aides consistent with the ALP's staffing standards; and
- arranging for the reduction or discontinuance of an MA recipient's



services when the ALP reassesses the recipient and determines that the recipient's services must be reduced or discontinued.

Case management must be provided by ALP staff that meet the requirements of Department regulations at 18 NYCRR 494.6(b). This regulation requires that the case manager:

1. be a currently registered professional nurse with one year of full-time experience; or
2. have a master's degree in social work from an accredited college or university; or
3. have a bachelor's degree from an accredited college or university with major work in human services or service delivery and one year of full-time experience in the provision of services to a dependent adult population; or
4. have an associate's degree from an accredited college or university with major work in human resources or service delivery and three years of full-time experience in the provision of services to a dependent adult population.

#### H. Contracts

A contract must be executed between the ALP and the social services district in which the ALP is operating. The contract establishes the role of the ALP as a provider of Title XIX home care services.

Attachment C is a copy of the model contract that must be used by the social services district. Social services districts may add additional local requirements to the model contract. For example, the district may require the ALP to give consideration to employment of recipients involved with Office of Employment Opportunities programs or require priority review of individuals on Alternate Level of Care for participation in the ALP. If a social services district wishes to add local variations to the model contract, the district must attach the local variations to the model contract as Appendix A. The social services district must then submit the contract, including any appendices, to the Department for approval.

#### I. Rates and Reimbursement

Payment for services provided to eligible MA recipients by the ALP is made through two funding mechanisms:

The residential component is paid for by the resident to the ALP at the SSI Level II rate or at a private pay rate established by the ALP if the resident is ineligible for SSI.

As stipulated in the model contract described in Section H. above and appended to the directive as Attachment C, the ALP may not charge more than the SSI Congregate Care Level II rate for the residential component to a

resident in receipt of MA funded home care services.

The home care services component is paid through the district's prior authorization of the appropriate RUGS category. This daily rate is equal to 50% of the amount that would be expended for an individual patient within the same RUG category in a residential health care facility located in the same district as the ALP. Services covered under the daily MA rate and for which no additional separate billing may be made include the following:

- Title XIX personal care services
- Home health aide services
- Personal emergency response services
- Nursing services
- Physical therapy
- Occupational therapy
- Speech therapy
- Medical supplies and equipment not requiring prior approval
- Adult day health care in a program approved by the Commissioner of Health.

Payment for the MA home care services provided to a recipient in an ALP will be authorized by the social services district on MMIS. The rate codes and corresponding reimbursement rates to be used when prior authorizing MA home care services for an ALP resident will be forwarded to the district in a Local Commissioner's Memorandum (LCM) from the Department. Annual updates of reimbursement rates will be forwarded to the social services districts by the Department.

No payment for MA funded home care services may be made to the ALP while the recipient is receiving residential health care facility services or inpatient hospital services.

MA payment will continue to be made to the ALP when an MA eligible resident is absent from the ALP for a 24 hour period in order to visit friends or relatives under the following conditions:

- the recipient has resided in the ALP for at least thirty (30) days;
- a statement is obtained from the recipient's physician approving of the absence;
- the ALP can assure that the recipient's health care needs can be met during his or her absence;
- the visit is limited to two (2) days duration for any single absence;

- the ALP has obtained prior authorization from the fiscally responsible district if the recipient's total days of absence exceed eighteen (18) days in a twelve (12) month period;
- the ALP is fiscally responsible for the provision of any home care services included in the MA home care services rate which are required by the recipient during his/her absence and which the family member or friend is unable or unwilling to provide.

Attachment D is a copy of the form designed by the Department which must be utilized by the ALP to document all absences.

#### V. SYSTEMS IMPLICATIONS

The prior approval system presently utilized for prior authorization of the Title XIX Personal Care Services Program will be used to authorize payment for MA funded home care services in the ALP.

#### VI. EFFECTIVE DATES

This administrative directive will be effective June 1, 1994.

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Sue Kelly  
Deputy Commissioner  
Division of Health and Long Term Care