NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

MARY JO BANE
Commissioner

(518) 474-9475

LOCAL COMMISSIONERS MEMORANDUM

DSS-4037EL (Rev. 9/89)

Transmittal No: 92 LCM-164

Date: October 22, 1992

Division: Health and Long Term Care

TO: **Local District Commissioners**

SUBJECT: Department of Health Proposed Regulation Regarding Patient Referral, Admission and Discharge from Certified Home Health Agencies for Health and Safety Reasons

ATTACHMENTS: Attachment I: Section 763.5 DOH Proposed Regulation (not available on-line)

This memorandum is to inform social services districts that the New York State Department of Health has proposed draft amendments to 10 NYCRR 763.5, "Patient Referral, Admission and Discharge for Health and Safety Reasons". These health and safety standards apply to certified home health agencies. Since the proposed Department of Health's health and safety standards will be considered as the basis for the Department of Social Services regulations pertaining to health and safety standards in personal care services programs, the proposed standards are being forwarded to each district so that districts may have an opportunity to comment on these draft regulations.

Chapter 165 of the Laws of 1991 required the New York State Department of Health to establish health and safety standards in home care programs. Home care and protective services for adults staff in the Department of Social Services have been involved in discussions with the Department of Health as the regulations have been developed. In addition, the Department of Health transmitted these proposed regulations to home care provider associations and consumer groups for review and comment. These regulations were published in the State Register for comment on October 14, 1992.

Since these regulations, when finalized, will impact several social services district functions, the regulations should be reviewed by home care services staff, medical assistance staff and adult services staff. Any comments you may have should be sent by November 13, 1992 to:

Marcia Anderson
Medical Assistance Specialist II
Bureau of Long Term Care
Division of Health and Long Term Care
New York State Department of Social Services
40 North Pearl Street
Albany, New York 12243-0001

Comments may also be e-mailed to OLT130 or faxed to (518) 473-4232.

Any questions relating to the proposed regulation should be directed to Marcia Anderson at 1-800-432-4100, extension 3-5602, or directly at (518) 473-5602.

Gregory M. Kaladjian
Executive Deputy Commissioner

Pursuant to the authority vested in the State Hospital Review and Planning Council and the Department of Health by section 367-m of the Social Services Law, and section 3612(5) of the Public Health Law, section 763.5 of Part 763 of Article 7 of Subchapter C of Chapter V of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to read as follows:

Section 763.5 Patient referral, admission and discharge. The governing authority shall ensure that [:] decisions regarding patient referral, admission and discharge are made based on the patient's assessed needs and the agency's ability to meet those needs in a manner that protects and promotes the patient's health and safety and does not jeopardize the safety of staff. Such decisions shall reflect a commitment to providing physician ordered care and services while honoring the patient's expressed needs and choices to the extent practicable and shall be made in accordance with the provisions of this section.

(a) [as indicated by the needs of the patient, the] The initial patient visit [is] shall be made within 24 hours of receipt and acceptance of a community referral or return home from institutional placement unless:

(1) the patient's physician orders otherwise; or

(2) there is written documentation that the patient or family refuses such a visit[;].

(b) [a] A patient [is] shall be admitted to the home health agency after [a home care] an assessment, using a form prescribed or approved by the department, is performed during the initial patient visit, [indicating] which indicates that the patient's health and supportive needs can be met

safely [met] and adequately at home and that the patient's condition requires the services of the agency.

(1) In determining whether a prospective patient's health and supportive needs can be met safely at home, the agency shall consider for admission a prospective patient who meets at least one of the following criteria: is self-directing; is able to call for help; can be left alone; or has informal supports or other community supports who are willing, able and available to provide care and support for the patient in addition to the services being provided by the agency. For purposes of this section:

(i) A self-directing patient means an individual who is capable of making choices about his/her clinical care and activities of daily living, understanding the impact of the choice and assuming responsibility for the results of the choice, or has informal supports willing and able to provide advice and/or direction on behalf of the patient, if needed, in accordance with State law;

(ii) A patient who is able to call for help means an individual who is physically, mentally and cognitively capable of initiating effective communication to individuals outside the immediate presence of the patient who can provide timely assistance to the patient;

(iii) A patient who can be left alone means an individual who, based on his/her physical, mental and cognitive capability does not require continuous presence of another individual to meet his/her minimal ongoing health and safety requirements; and

(iv) Informal supports or other community supports means friends, relatives or associates of the patient, whether compensated or not, unaffiliated with the agency, who are able, available and willing to provide needed care, support and other services to the patient during the periods

agency staff are not present. Such supports may include staff of an adult care facility in which the patient resides.

(2) The agency shall not be required to admit a patient:

(i) who does not meet any of the criteria of paragraph (1) of this subdivision;

(ii) when conditions are known to exist in or around the home that would imminently threaten the safety of staff, including but not limited to:

(a) actual or likely physical assault which the individual threatening such assault has the ability to carry out;

(b) presence of weapons, criminal activity or contraband material which creates in staff a reasonable concern for personal safety; or

(c) continuing severe verbal threats which create in staff a reasonable concern for personal safety and which the individual making the threat has the ability to carry out;

(iii) when the agency has valid reason to believe that agency staff will be subjected to continuing and severe verbal abuse which will jeopardize the agency's ability to secure sufficient staff resources or to provide care that meets the needs of the patient; or

(iv) who, based on previous experience with the delivery of care from the agency, is known to repeatedly refuse to comply with a plan of care agreed upon, as appropriate, by: the patient; the patient's family; any legally designated patient representative; the patient's physician; agency staff; and/or any case management entity, and such non-compliance will:

(a) lead to an immediate deterioration in the patient's condition serious enough that home care will no longer be safe and appropriate; or

(b) make the attainment of reasonable therapeutic goals impossible.

(3) [Such] The assessment shall be conducted by a registered professional nurse except in those instances where physical therapy or speech/language pathology is the sole service prescribed by the patient's physician[;] and the agency elects to have the therapist conduct the assessment.

(c) At the time a determination is made to deny a patient admission based on the criteria listed in paragraph (2) of subdivision (b) of this section, the agency shall determine whether the patient appears to be eligible for services from the local Protective Services for Adults program in accordance with the criteria set forth in subdivision (b) of section 457.1 of 18 NYCRR.

(1) If the patient appears to be eligible for such services, the agency shall make a referral to the appropriate local Protective Services for Adults program. Such referral shall include the patient's identity, the patient's ongoing care needs and the reason for the decision not to admit.

(2) If the local Protective Services for Adults program accepts the referral, takes action to address the problems preventing admission and notifies the certified home health agency that such problems have been resolved, the agency shall reassess the patient to determine whether admission has become appropriate or remains inappropriate.

[(c)] (d) [any] Any patient who is assessed or reassessed as inappropriate for certified home health agency services [is] shall be

assisted by the agency, in collaboration with the discharge planner, the local Social Service Department and other case management entity, as appropriate, with obtaining the services of an alternate provider, if needed, and the patient's physician shall be so notified[;]. If alternate services are not immediately available, and the local Protective Services for Adults program, the Office of Mental Retardation and Developmental Disabilities, the Office of Mental Health or other official agency requests that home care services be provided on an interim basis, the agency may provide home care services which address minimally essential patient health and safety needs for a period of time agreed upon by the agency and the requesting entity, provided that the patient and family or informal supports, as appropriate, have been fully informed of the agency's intent to transfer the patient to an alternate service, when available, and have been consulted in the development of an interim plan of care.

[(d)] (e) [services] Services which the agency provides [are] shall be available to all persons without regard to age, race, color, creed, sex, national origin, disability, service need intensity, location of patient's residence in the service area, or source of payment[;].

[(e)] (f) [services] Services [are] shall not be diminished or discontinued solely because of the change in the patient's source of payment or the patient's inability to pay for care[;].

[(f] (g) [a] A discharge plan [is] shall be initiated prior to agency discharge to assure a timely, safe and appropriate transition for the patient[; and].

[(g)] (h) [a] A patient [is] may be discharged by the agency only after [notification of] consultation, as appropriate, with the patient's physician, [and consultation with] the patient, the patient's family or

informal supports, any legally designated patient representative and any other professional staff including any other case management entity involved in the plan of care. If the agency determines that the patient's health care needs can no longer be met safely at home due to the circumstances specified in paragraphs (4) and (5) of this subdivision, the agency must continue to provide home health services only to the extent necessary to address minimally essential patient health and safety needs until such time as an alternative placement becomes available and such placement is made or the patient or the patient's legal representative, who has the authority to make health care decisions on behalf of the patient, makes an informed choice to refuse such placement. As appropriate, the patient and family or informal supports, any legally designated patient representative and any other professional staff, including any case management entity involved, shall be fully informed of the agency's intent to discharge the patient to an alternate service, when available, and shall be consulted in the development of an interim plan of care. Discharge shall be appropriate when:

(1) therapeutic goals have been attained and the patient can function independently or with other types of community support services;

[(2) maintenance of the patient care needs/requires the resources of a health care institution or an alternate health care provider; or]

(2) conditions in the home imminently threaten the safety of the staff providing services or jeopardize the agency's ability to provide care as described in subparagraphs (ii) and (iii) of paragraph (2) of subdivision (b) of this section;

(3) all agency services are terminated by the patient[.];

(4) the patient, the patient's family, informal supports or any legally designated patient representative is non-compliant or interferes

with the implementation of the patient's plan of care and the scope and effect of such non-compliance or interference:

(i) has led to or will lead to an immediate deterioration in the patient's condition serious enough that home care will no longer be safe and appropriate; or

(ii) has made attainment of reasonable therapeutic goals at home impossible; and

(iii) the likely outcome of such non-compliance or interference has been explained to the patient, or the patient's legally designated patient representative, family or informal supports, and any case management entity, as appropriate, and the patient continues to refuse to comply with, or others continue to interfere with the implementation of, the plan of care; or

(5) the availability of home health services or community support services is no longer sufficient to meet the patient's changing care needs and to assure the patient's health and safety at home and the patient requires the services of a health care institution or an alternate health care provider. An agency may determine that the patient's health care needs can no longer be met safely at home by the agency if any of the criteria or circumstances of paragraph (2) of subdivision (b) of this section apply.

(i) If a patient is to be discharged in accordance with subdivision (h) of this section, and the agency believes there will continue to be a substantial risk to the patient's health and safety subsequent to discharge, a referral shall be made to the appropriate local Protective Services for Adults program or other official agency, as appropriate, at the time the discharge determination is made. Such referral shall not impair

the agency's ability to discharge the patient in accordance with the provisions of subdivision (h) of this section.

(1) If the local Protective Services for Adults program or other official agency to which the patient has been referred accepts the referral, takes action to address adequately the problems leading to the discharge determination and notifies the home care agency that such problems have been resolved, the agency shall reassess the patient.

(2) After reassessment, the home care agency shall determine whether action to discharge the patient should be discontinued or the discharged patient should be readmitted.