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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 92 ADM-48

TO: Commissioners of  
 Social Services

DIVISION: Health & Long  
 Term Care

DATE: December 1, 1992

SUBJECT: Requirements for Physician's Order for Personal Care Services

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 SUGGESTED

DISTRIBUTION: | Medical Assistance Staff  
 | Home Care Staff  
 | Long Term Care/CASA Coordinators  
 | Local Medical Directors  
 | Services Staff  
 | Fair Hearings Staff

CONTACT

PERSON: | Contact Richard Alexander, (800)342-3715, extension  
 | 3-5506 with questions concerning this directive or  
 | the form. Questions concerning the assessment and  
 | authorization process should be directed to Marcia  
 | Anderson, extension 3-5602, Priscilla Ferry,  
 | extension 3-5498 or Margaret Willard, extension  
 | 3-5569.

ATTACHMENTS: | See Appendix 1 for list of attachments.

FILING REFERENCES

| Previous<br>ADMs/INFs | Releases<br>Cancelled | Dept. Regs.  | Soc. Serv.<br>Law & Other<br>Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|--------------|---|-------------|------------|
| 80 ADM-9              |                       | 505.14(b)(3) | 20(3)(d)                                |             |            |
| 92 ADM-27             |                       | 505.14(b)(4) | 34(3)(f)                                |             |            |
|                       |                       | 505.14(g)(3) | 145-b                                   |             |            |
|                       |                       | 515          | 363-a(2)                                |             |            |
|                       |                       | 516          | 365-a(2)(e)                             |             |            |
|                       |                       | 517          | 42 C.F.R.                               |             |            |
|                       |                       | 518          | 440.170(f)                              |             |            |

## I. PURPOSE

The purpose of this administrative directive is to explain the revised requirements for physicians' orders for personal care services found in Department regulations (18 NYCRR 505.14(b)(3)(i) and (g)(3)(ii)). Section 505.14(b)(3)(i) describes the requirement for the completion of the physician's order for personal care services, including a prohibition on ordering hours of service, and the use of a department required form as well as the applicability of Department regulations (18 NYCRR 515; 516; 517; and 518) to physicians' orders for personal care. Section 505.14(g)(ii) clarifies the responsibility of the case manager in supplying physician order forms and, under certain circumstances, assisting in obtaining its completion.

## II. BACKGROUND

As a part of the required process for assessing a recipient's/patient's need for personal care services, social services districts must consider a number of factors in determining whether personal care services are appropriate for a recipient/patient and if so, the level, frequency and duration of services to be authorized. These factors include the recipient's/patient's medical condition, availability of informal supports, appropriateness for other types of care or service, and the suitability of the recipient's/patient's residence as a setting for the provision of personal care. Although a variety of factors are relevant to the determination of the scope of services to be provided, generally the physician is fully cognizant only of the recipient's/patient's medical condition.

In recent years, many social services districts have reported increasing difficulty in obtaining required physician orders which accurately describe the recipient's/patient's medical condition and needs. Physicians are under increasing pressure from recipients/patients and their families to order services to meet social and family rather than medical needs.

In response to the requirement that the district obtain appropriate information regarding the recipient's/patient's medical condition and to ensure that the authorization for personal care services is based upon an analysis of the recipient's/patient's medical needs, Department regulation 505.14 has been revised to require the use of a mandated physician's order form and prohibit physicians from specifying the amount of personal care services to be provided. In addition, the revised regulations reflect the responsibility of physicians to describe the recipient's/patient's medical condition in a way which facilitates a thorough evaluation of the appropriateness of home care for that recipient/patient.

Form DSS-4359, Physician's Order for Personal Care Services, was developed as the result of an intensive review of the various forms currently in use in the social services districts.

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### III. PROGRAM IMPLICATIONS

As a result of this regulatory change, a standardized form developed by the Department for a physician's order for personal care services is now required. This form must be completed for each recipient/patient requesting an authorization or re-authorization for personal care services. Home care services other than personal care services are not affected by the requirements described in this directive.

In addition, the regulation specifically states that a physician's order for personal care services may not specify hours of service. The physician's responsibility in the determination of the scope and duration of personal care services to be provided is to complete the order form by accurately describing the recipient's/patient's medical condition and regimens, including any medication regimens and the recipient's/patients need for assistance with personal care services tasks, and by providing only such other information as the form requires. The information required for the completion of the form is described on the form and in the instructions for its completion (Attachment A).

The regulation provides that the form must be completed by a physician licensed in accordance with Article 131 of the State Education Law, a physician's assistant or specialist's assistant registered in accordance with Article 131-B of the State Education Law, or a nurse practitioner certified in accordance with Article 139 of the State Education Law and must be based upon an examination of the recipient/patient within 30 days of the completion of the order. Although a physician's assistant, specialist's assistant, or nurse practitioner may complete the form, a physician's signature is required in conformance with Federal regulation (42 C.F.R. 440.170(f)). By signing the form, a physician certifies that the recipient's/patient's medical condition, as described on the form, is accurate and that the recipient/patient requires medically necessary personal care services.

The ordering of care which is not medically necessary is addressed in Department regulations ( 18 NYCRR 515, 516, 517 and 518). These regulations, as referenced in the regulations on physician orders for personal care, define the requirements for providing only medically necessary services and identify circumstances under which monetary penalties may be assessed against persons who supply, or cause to be supplied, services which are excessive or not medically necessary. In this context, a physician who issues an order for personal care services in a manner which results in a recipient/patient receiving services which are excessive or not medically necessary may be liable for the cost of the excessive or unnecessary services and subject to other actions as detailed in law and regulation.

The use of the Department developed form is mandatory. Local equivalents are not permitted. An initial supply of the DSS-4359 will be sent to districts as soon as possible. The form attached to this directive may be reproduced locally without modification.

Additional supplies may be obtained via regular Department channels. Districts may also request supplies of the DSS-4359 be sent directly to providers. Such requests should be made by the district, in writing, to:

New York State  
Department of Social Services  
Division of Health and Long Term Care  
Bureau of Long Term Care  
40 North Pearl Street  
Albany, NY 12243-0001  
Attention: Richard Alexander

#### V. REQUIRED ACTION

As a result of these regulatory changes, districts are directed to take action to ensure that:

1. The recipient/patient or the recipient's/patient's representative is informed of the need for a physician's order for personal care services;
2. Copies of the required form for the physician's order for personal care services are available to recipients/patients or recipient's/patient's representatives, hospital discharge planners, physicians, or other appropriate entities;
3. Assistance is provided to the recipient/patient to obtain a physician's order when the recipient/patient or the recipient's/patient's representative is unable to obtain the order;
4. The completed physician's order or a copy is forwarded to the appropriate case management entity.
5. Existing requirements for the completion of nursing assessments and social assessments, development of a service plan, and authorization of services continue as previously described in 80 ADM-9, issued February 22, 1980.

Physician orders which are not on the required form, specify hours of service to be provided or which do not adequately define and describe the recipient's/patient's medical condition must be returned to the physician with an explanation of the regulatory requirements and a request for clarification as necessary. A sample letter for this purpose is attached to this directive (Attachment C).

Districts or case management entities should take steps to ensure that physicians, clinics, and hospital discharge planners are aware of the requirements of these regulations and the completion of this form. An article on these requirements will be published in a forthcoming edition of Medicaid Update. The requirements contained in this directive have been shared with the Medical Society of the State of New York.

V. SYSTEMS IMPLICATIONS

There are no systems implications to this directive.

VI. EFFECTIVE DATE

The requirements of this directive shall be effective January 1, 1993 for new requests for personal care services and at the time of the next periodic re-assessment for current cases.

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Gregory M. Kaladjian  
Executive Deputy Commissioner

APPENDIX 1  
LIST OF ATTACHMENTS

- A. Form DSS-4359, Physician's Order for Personal Care Services and Instructions (Not available on-line)
- B. Department Regulations 18 NYCRR 505.14(b)(3)(i) and 505.14(g)(3)(ii). (Available on-line)
- C. Sample Letter: Physician's order returned incomplete or missing information. (Available on-line)

DSS-4359 PHYSICIAN'S ORDER FOR PERSONAL CARE SERVICE  
INCOMPLETE ORDER: SAMPLE LETTER

+-----+  
| Return Form To: |  
+-----+

+-----+  
| To: |  
| Physician's |  
| Name and |  
| Address |  
+-----+

+-----+  
| Re: Recipient Name |  
| ID Number |  
+-----+

Dear Dr. \_\_\_\_\_:

We are returning form DSS-4359, Physician's Order For Personal Care Services for the following reason:

\_\_\_ The following information was missing from the form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ The following items require further explanation to properly evaluate the recipient's service needs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ The form contained a recommendation for hours of service. Department regulation 18 NYCRR 505.14(b)(3)(i)(3) states that "Such medical professional must not recommend the number of hours of personal care services that the patient should be authorized to receive". Please delete the recommendation for hours of service and resubmit.

Please return the completed form with the requested information to the above address.

Incomplete or missing information may delay services to this patient.

Sincerely,

+-----+  
| Sender's |  
| Signature and |  
| Title |  
+-----+