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 | ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 93 ADM-36

TO: Commissioners of  
 Social Services

DIVISION: Health and  
 Long Term Care

DATE: November 18, 1993

SUBJECT: Delegation of Personal Care Services Responsibilities

SUGGESTED  
 DISTRIBUTION:

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

CONTACT  
 PERSON:

Questions regarding this release should be directed to Marcia Anderson, Priscilla Ferry, George Fleury or Margaret O. Willard, Bureau of Long Term Care, 1-800-342-4100, extensions 3-5602, 3-5498, 3-8269 or 3-5569. On-line 0LT130.

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	None	505.14 515	367-n Section 79, Ch.41, Laws of 1992	None	None

I. PURPOSE

The purpose of this administrative directive is to inform social services districts of policies and procedures to be followed in the delegation of personal care services program responsibilities as defined in Regulation 505.14 (g) (1),(2),(3),and (4), currently performed by the social services district, to providers of home health or personal care services or other entities. These policy and procedural changes are required by Section 367-n of the Social Services Law (SSL) as added by Chapter 41 of the Laws of 1992. A copy of the statute is included as Appendix A.

II. BACKGROUND

Social services districts have reported declining fiscal resources and staff reductions while the population and the needs of the frail elderly and disabled have increased. In order to best meet the needs of applicant/recipients it is important that social services districts efficiently manage all home care responsibilities and tasks including investigating the possibility of eliminating duplicative activities performed by the social services districts, providers of home health or personal care services or other entities.

In an attempt to design an efficient, cost effective service delivery prototype, districts were offered the opportunity to participate in the CASA program. Eight district proposals were accepted and CASAs were formed. This model for the delegation of personal care services responsibilities has been adopted voluntarily by additional districts. Districts will continue to have the ability to function or delegate in this manner.

III. PROGRAM IMPLICATIONS

Chapter 41 of the Laws of 1992 creates an opportunity for social services districts, providers of home health and personal care services or other entities to utilize their creativity and operational knowledge in the development of delegation models that will improve the districts' provision of personal care services.

Protocols for the delegation of personal care services responsibilities are the standards that must be addressed by the social services districts and the provider(s)/entity(ies) to which responsibilities will be delegated. The standards were developed to provide a framework by which districts and provider(s)/entity(ies) will formulate a plan for delegation which includes adequate quality assurance for the delivery of personal care services.

The social services districts may choose to delegate personal care responsibilities in order to allow increased district staff time to perform quality assurance reviews, review fiscal assessments, complete prior approvals and make timely medical assistance eligibility determinations.

The protocols for the delegation of personal care services are as follows:

1. The district must specify the responsibilities to be delegated.
2. The performance of the delegated responsibilities must adhere to the program mandates of the Departments of Health and Social Services.
3. The quality of service delivery must be assured and evaluated.
4. Cost containment mechanisms must be utilized in the delivery of personal care services.
5. An efficient interagency information and referral process must be established involving social service districts, auxiliary services and all provider(s)/entity(ies) to whom responsibilities are delegated.
6. The procedure for social service district access, audit and review of service delivery must be established.
7. Procedures for acceptance, denial, or discontinuation of services must meet Department of Social Services mandates for timely and adequate notice and consider the client's health and safety.
8. All personal care services responsibilities delegated to a provider of home health services or personal care services or another entity must adhere to provisions contained in 18 NYCRR 515.

The Protocols/Criteria for delegation, including the information required for demonstrating compliance with protocols, are found in Appendix B.

#### IV. REQUIRED ACTIONS

Four months after the effective date of this administrative directive, the social services districts must submit a Plan for Delegation of Personal Care Services which reflects one or a combination of the following options:

- Continue the existing plan for delegation to a CASA or another entity;

- Develop a new plan of delegation to providers or other entities;
- Request a waiver allowing the district to retain current operating procedures.

The Plan for Delegation of Personal Care Services is included as Appendix C.

Before preparing the plan, each social services district must determine the district's need and willingness to delegate requirements for the provision of personal care services to providers of home health and personal care services or other entities.

Responsibilities that may be delegated include, but are not limited to, the following responsibilities as specified in 18 NYCRR 505.14(g)(3):

- receiving referrals for personal care services;
- requesting necessary physician's orders;
- completing the nursing and social assessment, including the completion of the home care assessment instrument;
- assessing hospice eligibility;
- obtaining or completing the fiscal assessment;
- negotiating with informal caregivers;
- determining the level, amount, frequency and duration of personal care services to be authorized or reauthorized; and/or
- arranging for the delivery of personal care services.

The district must retain the responsibility for:

- eligibility determination;
- review of high cost cases;
- contracting for provision of personal care services;
- auditing to determine contract compliance; and
- entering prior approval on the on-line system.

Procedures for complying with the delegation options vary with district choice and are described below.

A. Procedure for Social Services Districts Currently Delegating Responsibilities

Social services districts currently delegating personal care services program responsibilities to other entities, such as a CASA, may continue

to delegate those responsibilities. Districts must initially, and annually thereafter, complete the form, Continue Current Delegation, and submit to the Department for approval. The form is included as Appendix C-1.

B. Procedure for Social Services Districts Planning to Delegate Responsibilities

A social services district which has determined the need, appropriateness and feasibility of delegating requirements for the provision of personal care services, must submit a plan for delegation to the Department. The plan must address each protocol for delegation as described in Appendix B.

The district has the ability to establish additional standards under which delegation may occur. The district may choose to:

- delegate some, but not all, responsibilities;
- accept proposals from providers within a limited time-frame;
- delegate responsibility for specific populations, such as Alzheimer's or quadriplegia; or
- target certain geographic areas.

The social services district also has the ability to accept or reject any proposal for delegation submitted to them by any provider of home health services and personal care services or other entity.

Districts which decide to delegate personal care services responsibilities and have chosen the provider(s)/entity(ies) to whom responsibilities will be delegated must submit the plan along with the list of providers and how they will implement and support the criteria for meeting the protocols. A district may choose to submit an interim plan for delegation without an indication of provider(s)/entity(ies) to whom responsibilities will be delegated. The Department will review the interim plan for general acceptability. Final approval of the plan will be pended until receipt of the final plan for service delivery which identifies the specific provider(s)/entity(ies) to whom responsibilities will be delegated.

The social services district and the provider(s)/entity(ies) to whom services are to be delegated must understand that there is no additional Medicaid funded reimbursement available to the providers for the delegated responsibilities for the delivery of personal care services at this time. Delegated activities, such as nursing assessment and supervision, which have been reimbursable will continue to be reimbursable. There are no new rate codes for billing purposes to be established for the purpose of delegation.

All proposed delegation plans for the delivery of personal care services must be completed on a form developed by the Department and submitted to the Department of Social Services for review. The approved form, Delegate, is contained in this Administrative Directive as Appendix C-2. The Department of Social Services will consult with the Department of Health to assure that all certified home health agencies and licensed home care services agencies to whom responsibilities have been delegated are in compliance with Article 36 of Public Health Law. Within 90 days of the receipt of the proposal by the Department, the social services district will be notified of the Department's decision.

If the proposal is acceptable to the social services district and the Department, a Memorandum of Understanding will be established between the social services district and the potential provider(s)/entity(ies). The Memorandum of Understanding must contain, at a minimum:

- clarification of the personal care services responsibilities delegated;
- a referral to the delegation plan for adherence to the protocols; and
- termination procedures for both the social services districts and the provider(s)/entity(ies).

All Memoranda of Understanding will be reviewed no less frequently than annually and signed copies forwarded to the Department in conjunction with Appendix C-1, Continue Current Delegation. A model Memorandum of Understanding is included as Appendix D.

The delegation of responsibility and/or the Memorandum of Understanding may be revoked by the social services district if the provider(s)/entity(ies) fails to perform any of the delegated responsibilities according to the standards established in Department regulation 505.14.

The provider(s)/entity(ies) may choose to terminate the agreement following procedures detailed in the Memorandum of Understanding.

C. Procedure for Social Service Districts Choosing not to Delegate Responsibilities

The social services district may choose not to delegate any responsibilities for the provision of personal care services. To request a waiver of the delegation process the district must demonstrate in writing, on forms developed by the Department, how its present personal care program service delivery addresses the following issues:

- assuring cost effectiveness
- maximizing third party insurance coverage

- automating service delivery and monitoring
- assuring efficient service delivery
- maintaining communication and cooperation with providers of services and related entities
- complying with Department regulation 18 NYCRR 505.14

Within 90 days of the receipt of the request for a waiver the Department will notify the social services district of approval/disapproval.

The approved form, Request a Waiver, is included as Appendix C-3.

All social services districts participating in the waiver process must update and submit the request for waiver annually.

Beginning in 1995, the Annual Plan for Delegation of Personal Care Services must be submitted in conjunction with the Annual Plan for Personal Care Services on forms to be provided by this Department.

V. SYSTEMS IMPLICATIONS

There are no systems implications.

VI EFFECTIVE DATE

The effective date of this directive is December 15, 1993

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Sue Kelly  
Deputy Commissioner

ATTACHMENT 1

Appendix A	Chapter 41, Laws of 1992, Section 367-n
Appendix B	Protocols/Criteria for Delegation
Appendix C	Annual Plan for Delegation
Appendix C-1	Continue Current Delegation
Appendix C-2	Delegate
Appendix C-3	Request a Waiver
Appendix D	Model Memorandum of Understanding

(All Appendices are available on-line)

APPENDIX A

Chapter 41, Laws of 1992, Section 367-n

S. 367-n. Delegation of responsibility by social services districts.

1. The departments of social services and health shall by September first, nineteen hundred ninety-two develop delegation protocols whereunder the social services districts delegate activities related to home care services which currently are the responsibility of local districts to providers of home health and personal care services or other entities. Such protocols shall address the required assessment form; provide for review of fiscal assessments; arrange for alternative placements; care plan management; and shall reflect improved social services district activities, including, but not limited to, medical assistance eligibility determinations, audits, review of high cost cases, and such other matters relating to delegation as determined by the commissioners.
2. By January first, nineteen hundred ninety-three, districts must submit to the department a plan for the delegation of responsibilities to one or more providers or other entities in accordance with the delegation protocols of the departments of health and social services. Nothing shall preclude a district from delegating responsibilities to some but not all providers operating within the district.
3. Notwithstanding subdivision two of this section, a district may submit to the department in lieu of a delegation plan, a request for a waiver of the requirement of such subdivision two, provided it furnishes the department with the basis for such waiver. The commissioner is authorized in his or her discretion, to grant or deny such waiver requests.
4. The plan for delegation, which must be approved or disapproved within ninety days of receipt of the plan, must be reviewed in accordance with the delegation protocols and also reviewed in accordance with the following:
  - (a) The department of health shall review whether licensed or certified home health agencies to whom it is proposed to delegate responsibilities have complied with department of health standards as outlined in article thirty-six of the public health law.
  - (b) The department shall review any department audits, reports or other materials regarding the agencies to whom it is proposed to delegate responsibilities to determine if the agency has engaged in any unacceptable practices as defined in department regulations.
5. The department and the department of health shall be responsible for auditing the performance of the delegated tasks by the provider agency.
6. The delegation of responsibility may be revoked by the department if the agency fails to perform any of the delegated responsibilities according to standards established in the regulations.

APPENDIX B

PROTOCOLS

INFORMATION REQUIRED FOR  
DEMONSTRATING COMPLIANCE WITH  
PROTOCOLS

<p>1. The district must specify the responsibilities to be delegated.</p>	<p>A list of all responsibilities which will be delegated must be included.</p>
<p>2. Delegation of responsibilities must assure adherence to the program mandates of the Departments of Health and Social Services.</p>	<p>Utilize regulatory citations where applicable and describe which agency will be responsible for the following: review of fiscal assessment, care plan management, arrangement for alternate placement and completion of required assessment forms.</p>
<p>3. The quality of service delivery must be assured and evaluated.</p>	<p>What methods will the service provider utilize to demonstrate quality assurance ,i.e. client satisfaction surveys, nursing supervisory reports, system for client complaint resolution? What will be included in the provider's quality assurance program? What training criteria will be followed for provision of service to special populations? The district must describe the method for monitoring the delivery of service.</p>
<p>4. Cost containment mechanisms must be utilized in the delivery of personal care services.</p>	<p>Will the provider be expected to utilize task oriented care plans or a team service approach? The ability to access third party insurance must be considered. Will the agencies utilize automation in service delivery and monitoring? How will the use of Personal Emergency Response Services, Shared Aide or Cluster Care be maximized and evaluated?</p>

APPENDIX B

PROTOCOLS

INFORMATION REQUIRED FOR  
DEMONSTRATING COMPLIANCE WITH  
PROTOCOLS

<p>5. An efficient interagency referral process must be established involving social service districts, auxiliary services and all provider(s)/entity(ies).</p> <p>6. The procedure for social service district access, audit and review of service delivery must be established.</p> <p>7. Procedures for acceptance, denial, or discontinuation of services must meet Department mandates for timely and adequate notice and consider the client's health and safety.</p> <p>8. All personal care services responsibilities delegated to a provider of home health services or personal care services or another entity must adhere to provisions contained in 18 NYCRR 515.</p>	<p>How will referrals for clients in need of Protective Services for Adults be conducted? What forms will be utilized in the referral process? Knowledge of available resources and ability to access must be demonstrated?</p> <p>What reports will be required by the district? What databases will be maintained by the provider?</p> <p>Describe the procedure for timely notification? Are the needs of the hard to serve provided for under delegation?</p> <p>Describe the methods by which the district will conduct audits and on-site record reviews to determine compliance. Describe the circumstances under which referrals will be made to NYSDSS, Audit and Quality Control for further review.</p>
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APPENDIX C

ANNUAL PLAN FOR DELEGATION OF PERSONAL CARE SERVICES

The plan is divided into three separate sections. The district should complete the appropriate section(s) for the option(s) chosen as discussed in Delegation of Personal Care Services Responsibilities, Sections IV. . The sections are as follows:

APPENDIX C-1: CONTINUE CURRENT DELEGATION

APPENDIX C-2: DELEGATE

APPENDIX C-3: REQUEST A WAIVER

APPENDIX C-1

CONTINUE CURRENT DELEGATION

\_\_\_\_\_ County Department of Social Services

Name of current agency(ies) to which responsibilities are delegated:

Continue current plan for delegation?

+----+  
YES | | |  
+----+

+----+  
NO | | |  
+----+

If no, describe any changes:

(If further space is needed, please attach additional sheets.)

APPENDIX C-2

DELEGATE

\_\_\_\_\_ County Department of Social Services

	+++		+++
Plan included.	Final	Interim	
	+++		+++

If interim, submit proposed plan and leave identification of providers blank.

Provider(s) chosen:

Identify any special conditions (i.e. specific populations or program initiatives such as Shared Aide):

Please provide a written description as to how the social services district will implement each of the following protocols of delegation. The minimal information required to demonstrate compliance is contained in the Protocols for Delegation. The district may include additional information as necessary to meet the individual district and /or provider needs.

1. The district must specify the responsibilities to be delegated.
  
  
  
  
  
  
  
  
  
  
2. Delegation of responsibilities must assure adherence to the program mandates of the Departments of Health and Social Services.

3. The quality of service delivery must be assured and evaluated.
  
4. Cost containment mechanisms must be utilized in the delivery of personal care services.
  
5. An efficient interagency referral process must be established involving social service districts, auxiliary services and all provider(s)/entity(ies).
  
6. The procedure for social service district access, audit and review of service delivery must be established.
  
7. Procedures for initiation, denial or termination of services must meet Department mandates for timely and adequate notice and consider the client's health and safety.
  
8. All personal care services responsibilities delegated to a provider of home health services or personal care services or another entity must adhere to provisions contained in 18 NYCRR 515.

(If further space is needed please attach additional sheets.)

APPENDIX C-3

REQUEST A WAIVER

\_\_\_\_\_ County Department of Social Services

Describe how your organization addresses each of the following responsibilities in the delivery of personal care services?

Assure cost effectiveness of home care services:

Maximize third party insurance coverage (i.e. Medicare, AARP, BC/BS et al.):

Automate service delivery and monitoring:

Assure efficient service delivery (i.e. Shared Aide, Personal Emergency Response Services utilization):

Maintain communication and cooperation with providers of services and related entities:

Comply with Department regulation 18 NYCRR 505.14:

In addition, to the above information, the Division of Health and Long Term Care will be reviewing current annual plans for the delivery of personal care services and the results of personal care services record reviews and monitoring visits to determine approval or disapproval of the waiver request.

(If further space is needed, please attach additional sheets.)

APPENDIX D

(MODEL)

AGREEMENT FOR DELEGATION OF PERSONAL CARE SERVICES  
RESPONSIBILITIES

BETWEEN

\_\_\_\_\_ COUNTY DEPARTMENT OF SOCIAL SERVICES

AND

\_\_\_\_\_

This agreement is between the \_\_\_\_\_ County Department of  
Social Services having its principal office  
at \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_, a  
Provider/Entity, hereafter known as Provider, having its principal office at  
\_\_\_\_\_.

WITNESSETH

WHEREAS, according to Social Services Law 367-n and 505.14(g), the  
social services district has chosen to delegate specific personal care  
services program responsibilities to another entity and,

WHEREAS, the district and the entity has developed a plan for delegation  
of those responsibilities.

NOW, THEREFORE, the \_\_\_\_\_ County Department of  
Social Services, (the "DISTRICT"), and \_\_\_\_\_, (the  
"PROVIDER"), agree that:

FIRST: The following personal care services program responsibilities  
will be assumed by the PROVIDER:

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

SECOND: All services provided must adhere to 18 NYCRR 505.14.

THIRD: All activities must be completed as delineated in the plan approved by the social services district, the provider and New York State Department of Social Services.

FOURTH: The DISTRICT and the PROVIDER agree that the plan for delegation of personal care services program responsibilities may be terminated by either party.

FIFTH: Either party choosing to terminate this agreement must provide a 30 days notice of intent.

SIXTH: All records relating to the provision of services must be promptly transferred to the DISTRICT upon termination of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

\_\_\_\_\_ COUNTY  
DEPARTMENT OF SOCIAL SERVICES

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

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

DATE: \_\_\_\_\_

BY: \_\_\_\_\_