93 INF-015

Protective Services for Adults (PSA): Revised Admission and Discharge Criteria for Certified Home Health Agencies (CHHAs)

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
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INFORMATIONAL LETTER

TRANSMITTAL: 93 INF-015

DIVISION: Services & Community Development

TO: **Commissioners of Social Services**

DATE: April 19, 1993

SUBJECT: Protective Services for Adults (PSA): Revised Admission and Discharge Criteria for Certified Home Health Agencies (CHHAs)

SUGGESTED DISTRIBUTION:
Directors of Services
Adult Service Staff
Personal Care Services Staff
Agency Attorneys
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Thomas Burton, ext. 432-2987
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Janet Morrissey, ext. 432-2997, or
Irvin Abelman at 1-800-554-5391, ext. 804-1247

ATTACHMENTS: Section 763-5 DOH regulations (available on-line)
DOH Memorandum 93-3 (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
90 ADM-40 92 ADM-49		457	Article 9-B		Section 763.5, Title 10 NYCRR Dept. of Health Memorandum 93-3

I. Introduction

The purpose of this release is to inform local social services districts of amendments to Section 763.5 of Title 10, NYCRR [Department of Health (DOH) regulations]. The revised DOH regulations clarify the criteria to be used by certified home health agencies (CHHAs) in making admission and discharge decisions when the health and safety of patients or the agency staff are in question. In addition, a DOH Memorandum (DOHM 93-3) has been issued to further clarify these regulatory charges. Copies of both the regulations and the DOHM attached to this release.

The amendments to Section 763.5 of the DOH regulations, which became effective on January 6, 1993, and the accompanying DOHM also address the linkage between Protective Services for Adults (PSA) and CHHAs regarding the delivery of services to certain clients/patients with health and safety problems. These revised standard address the concerns raised by many social services districts regarding the difficulties they encounter in obtaining home health care services for certain hard to serve clients. It is anticipated that the DOH regulations and the DOHM will resu1 tin enhanced cooperation between PSA and CHHAs and improved service delivery to clients with health and safety risks. Presented below is a summary of the new provisions of Section 763.5 of the DOH regulations and their impact on PSA.

II. Admission and Discharge Criteria

The amendments to Section 763.5 of the DOH regulations provide CHHAs with specific, but flexible criteria concerning the admission am discharge of patients with health and safety risks. According to the revised regulations, a person cannot be considered for admission by a CHHA unless at least one of the following criteria is met: the patient is self directing; able to call for help; can be left a1one; or has other informal or community supports in addition to the services to be provided by a CHHA. As set forth in the regulations and discussed in the DOHM, home care services also may be denied in certain situations when a client has a history of non-compliance with care plans. In addition, the revised regulations permit CHHAs to deny admission to a patient if conditions in the home pose an imminent risk to the safety of home care workers.

These regulations also specify the situations in which a CHHA may discharge a patient. These situations include when:

- therapeutic goals have been achieved;
- conditions in the home pose an imminent threat to staff or jeopardize their ability to provide care;
- services are terminated by the client;

- the patient, the patient's family, informal supports or any legally designated representative is non-compliant, or interferes with the implementation of the care plan to the extent that home health care services will no longer be safe and appropriate or the attainment of reasonable therapeutic goals is impossible; and

- the availability of home health care services is no longer sufficient to meet the patient's needs and to assure the health and safety of the patient at home.

The application of these criteria are discussed in more detail in DOHM 93-3. The revised regulations also require CHHAs to refer any person to PSA who either is not admitted for, or is to be discharged from home health care services if it appears that the individual meets the PSA eligibility criteria. The regulations further provide that if PSA accepts the referral and adequately addresses the prob1ems preventing admission or necessitating discharge, a CHHA must reassess the person's situation. The scope and types of PSA interventions to be employed by district staff on behalf of PSA eligible persons who have been denied admission to, or discharged from home health service will of course, depend on the nature of the situation. In some situations, environmental hazards will have to be addressed through the use of heavy duty cleaning services or household repairs. In situations in which the actions of family members or other persons in the household are preventing the delivery of home health care services, Orders of Protection and/or other legal interventions will have to be utilized when appropriate if other less restrictive measures, such as counseling, are not successful.

III. Service Delivery to Persons Not Admitted or Discharged by a CHHA

In those situations in which it is ultimately determined that the admission for home health care services is inappropriate, the amended regulations require CHHAs to assist the client, in collaboration with PSA and/or other case management entities, in obtaining alternative services. If alternate services are not immediately available, the CHHA, upon request from PSA or another case management entity, may provide home heal the care services on an interim basis to address the patient's minimal health and safety needs. A discussion of minimal health and safety needs is contained in the attached DOHM. Furthermore, the DOHM encourages CHHAs to cooperate with PSA and other agencies in the development and implementation of interim care plans on behalf of persons who are denied admission for home health care services. In many situations, alternate services will not be immediately available for PSA clients because they will lack the capacity to give informed consent. In these cases, local social services districts are required by Article 9B of the Social Services Law and Part 457 of the Department's regulations to pursue the appropriate lega1 intervention, such as Guardianship, in order to secure appropriate services, including placement in a residential care facility.

In cases of patient discharge from home health care services, the amended regulations require CHHAs to continue providing those services which are necessary to address the minimally essential health and safety needs of the patient until an alternative placement becomes available when:

- the patient, the patient's family, informal supports or legally designated representative is non-compliant, or interferes with the implementation of a care plan to the extent that home health care will no longer be safe and appropriate, or the reasonable attainment of therapeutic goals is impossible; and

- the availability of home health care services is no longer sufficient to meet the patient's needs and assure the patient's health and safety at home.

CHHAs also are required to consult with family members, legal representatives and the staff of other agencies, including PSA, in the development of interim care plans. As stated above, for many PSA c1ients, alternate services or placement will not be immediately available due to the client's inability to give informed consent. In these cases, local social services districts, as part of their PSA responsibilities must pursue the appropriate legal interventions on behalf of these clients.

Local social services districts are encouraged to meet with CHHAs in order to establish the necessary relationships and procedures to help assure the effective implementation of these regulations.

IV. PSA and Personal Care Services

Although these regulations are limited to home health care services provided by CHHAs, the Department is currently developing companion standards for the Personal Care Services Program. In the interim, local district staff are directed to 92 ADM-049, entitled "Fiscal Assessment and Management of Personal Care Services". In Section IV. B. 2, on page 7 of this release, the linkage between PSA and Personal Care Services is briefly discussed, including the need for the continuation of Personal Care Services in certain types of cases invo1ving PSA.

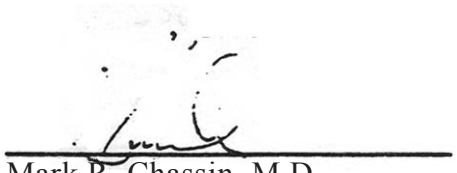
Frank Puig
Deputy Commissioner
Division of Services & Community Development

eff 1-6-93

I HEREBY APPROVE the attached amendment of section 763.5 of Part 763 of Title 10 of the Official Compilation of Codes, Rules And Regulations of the State of New York, which was enacted at the meeting Of the State Hospital Review and Planning Council on December 3, 1992, in New York City, to be effective upon publication of a Notice of Adoption in the New York State Register, pursuant to the authority vested in the State Hospital Review and Planning Council by section 3612(5) of the Public Health Law and section 367-m of the Social Services Law.

PRIOR NOTICE OF this action, required under the provisions of the State Administrative Procedure Act, was published in the New York State Register on October 14,1992.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 16 day of December, 1992.



Mark R. Chassin, M.D.
Commissioner of Health

I HEREBY CERTIFY that the attached amendment of section 763.5 of Part 763 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, was enacted at the meeting of the State Hospital Review and Planning Council on December 3, 1992, in New York City, to be effective upon publication of a Notice of Adoption in the New York State Register, pursuant to the authority vested In the State Hospital Review and Planning Council by section 3612(5) of the Public Health Law and section 367-m of the Social Services Law.

PRIOR NOTICE OF this action, required under the provisions of the State Administrative Procedure Act, was published in the New York State Register on October 14, 1992.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 15th day of December, 1992.

Donna W. Peterson
Executive Secretry, State
Hospital Review & Planning Council

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 ca1l 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 carryout;

(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 the individua1 making the threats has the ability to carry out and which create in staff a reasonable concern for personal safety;

(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 or others interfere with the patient's ability 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 goa1s 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 I8 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, gender, 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 [when:]. 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 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 none of the criteria or circumstances of paragraph (1) of subdivision (b) of this section apply any longer to the patient.

(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.

(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 sbe discontinued or the discharged patient should be readmitted.

STATE OF NEW YORK

DEPARTMENT OF HEALTH MEMORANDUM

Series – 93-3
Date – 1/29/93

HEALTH FACILITIES SERIES: HHA-1

SUBJECT: HEALTH AND SAFETY STANDARDS FOR CERTIFIED HOME HEALTH AGENCY PATIENTS

The purpose of this memorandum is to clarify the criteria to be used by certified home health agencies (CHHAs) in making appropriate admission and discharge decisions based on the health and safety of the patient as well as the safety of agency staff and in accordance with amendments to Section 763.5 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. (copy attached) This memorandum supersedes Department of Health Memorandum (DOHM) 90-46.

LEGISLATIVE INTENT AND REGULATORY REQUIREMENTS REGARDING ADMISSION

Public Health Law Section 3600 expresses the Legislature's intent that high-quality home care services be available throughout the state as an integral part 0f the health care system. The statute is implemented, in part, through the department's regulation in 10 NYCRR Section 763.5 (e) which provides that the governing authority of a CHHA shall ensure that: services which the agency provides shall be available to all persons without regard to age, race, color, creed, gender, national origin, disability, service need intensity, location of patient's residence in the service area, or source of payment."

While Section 763.5 (e) prohibits discrimination against patients because of "disability or service need intensity, "this language should be interpreted in conjunction with other regulatory provisions which indicate that patients should not be admitted to the care of a CHHA if they cannot be cared for adequately and safely at home by the agency. Subdivision (b) of 10 NYCRR Section 763.5 states that: "A patient shall be admitted to the home health agency after an assessment... indicates that the patient's health and supportive needs can be met safely and adequately at home and that the patient's condition requires the services of the agency."

The Federal Medicare Conditions of participation at 42 CFR Section 484.18, which CHHAs are required to meet, also state that: "Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing and social needs can be met adequately by the agency in the patient's place of residence." Although federal and state regulations require agencies to accept

appropriate referrals and admit patients without discrimination, these regulations do not require CHHAs to admit or accept any and all patients under every circumstance.

Decisions regarding whether an agency can provide care that is medically adequate and safe for both the patient and staff must be made on a case-by-case basis consistent with the requirements of Section 763.5 of 10 NYCRR and based on the judgement of the agency's professional staff in collaboration with the physician, the discharge planner, the local social services district, and other case managers, if applicable.

If a patient is determined to be inappropriate for CHHA services, the regulations allow a CHHA to admit the patient temporarily and to provide home care services, which address the minimally essential patient health and safety needs, on an interim basis, until alternate services become available. Minimally essential care may include, but is not 1imited to:

- Providing skilled services which only maintain the patient's medical and functional status. Minimal deterioration in patient status may be unavoidable, but it is neither life threatening nor irreversible.
- Providing an amount of home care services which does not fully ensure patient safety for intermittent periods throughout the day. The risk of injury or patient discomfort is acceptable to the patient or the patient's legally designated representative.
- Providing assistance with activities of daily living (ADL's) or independent activities of daily living (IADL's) less frequently than preferred or normally expected but with the expectation that no serious or long range detrimental effects are likely to occur.

Within the context of the regulatory provisions set forth in Section 763.5 of 10 NYCRR there are four general circumstances under which a CHHA would not be expected to accept or admit a patient, although the CHHA could stil1 choose to admit such a patient

1. An agency is not required to admit a patient who is not self-directing; is not able to call for help; cannot be left alone; and does not have 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.

   Willing, able, and available to provide care; and support means the person agrees to accept responsibility for providing or directing care; has sufficient intellect, physical capability and legal

authority to provide such direction or care; and has substantial daily contact with the patient.

Informal supports or other community supports include, but are not limited to, friends, relatives or associates of the patient, who are unaffiliated with the agency and who may or may not be compensated to participate in the plan of care. Such supports may also include staff of an adult care facility in which the patient resides, or volunteers or employees of religious, social, health-related or other organizations within the community. In making health and safety determinations, the availability of informal supports or community supports must be considered in combination with whether the patient is self-directing, able to call for help or can be left alone. Lack of informal or community supports alone is not a sufficient reason to deny a patient admission to home care. Furthermore, the availability and willingness of informal supports or other community supports to participate in the plan of care does not diminish the agency's responsibility for providing the services agreed upon within the plan of care. The agency is also responsible for securing adequate staff resources to provide such services including arranging for replacement staff to cover the planned or unplanned absences of agency employees who usually provide care to the patient.

2. An agency is not required to admit a patient when conditions are known to exist in or around the home that would imminently threaten the safety of staff, including but not limited to physical assault, presence of weapons, criminal activity or contraband material, or continuing, severe verbal threats which create in staff a reasonable concern for personal safety.

3. An agency is not required to admit a patient when mere is a 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 to care for the patient safely and adequately at home. A CHHA should have a reasonable, sympathetic attitude toward patients and be sensitive to the fact that because of their age, medical problem or mental condition, some patients may exhibit behavior that, although not physically dangerous, may be irritating to staff. Staff should be able to handle a reasonable degree of difficult behavior that may be exhibited by some patients, provided such behavior does not jeopardize the ability of staff to care for the patient safely and adequately at home or jeopardize the safety of staff. Irritating behavior is not a sufficient basis for refusal to admit a patient.

4. An agency is not required to admit a patient who is known to repeatedly refuse to comply with an agreed upon plan of care or where others interfere with the patient's ability to comply with a

plan of care, and such non-compliance will lead to an immediate deterioration in the patient's condition or make the attainment of reasonable therapeutic goals impossible.

Reasonable therapeutic goals are those goals which are critical to the patient's heath and well being and are likely to be achieved by the patient given the patient's physical status and capabilities. As part of the assessment or reassessment process, the agency should determine with the patient, family, other informal supports, other service providers and legal representative of the patient, whether a plan of care can be established which will facilitate achievement of the goal's whether, despite reasonable efforts by the agency, the patient or others will continue to behave in a manner which precludes achievement of the goals.

REGULATORY REQUIREMENTS REGARDING DISCHARGE

Certified home health agency regulations relating to the discharge of patients are set forth in 10 NYCRR 763.5, subdivisions (f), (g), (h) & (i). The intent of the regulations is to assure that patients who no longer need or want the services of the CHHA are appropriately and safely discharged and to preclude abandonment of patients who continue to need health care services. As specified in the regulations, patient discharge may be appropriate when:

L. Therapeutic goals have been attained and the patient can function independently or with other types of community support services.

2. Conditions in the home imminently threaten the safety of the staff providing services or jeopardize the agency's ability to provide care.

An agency may immediately discharge a patient who subjects agency staff to physical abuse or criminal activity which exposes staff to imminent danger or verbal threats which create in staff a reasonable concern for personal safety. If substantial risk to the patient's health and safety will continue subsequent to discharge, a referral should be made to Protective Services for Adults (PSA) or another official agency as appropriate.

An agency may also discharge a patient who subjects staff to continuing and severe verbal abuse which jeopardizes the agency's ability to secure sufficient staff resources or provide care that meets the needs of the patient. Under these circumstances, referral to PSA or another official agency may also be indicated. It should be noted that upon admission, agencies are required to conduct a comprehensive assessment and establish a plan of care which addresses the medical, social, and environmental needs of the patient. During the course of care agencies would be expected to identify in the plan of care, patient behaviors which interfere

with care but do not imminently threaten staff safety and efforts should be made in collaboration with other case managers, PSA other community services to work with the patient and family in Changing patient/family behavior. Such efforts could include, but are not limited to, provision of counseling and behavior modification services by social work staff; psychiatric consultation and therapy, if indicated; further medical consultation and evaluation to determine if there is a treatable medical basis for the difficult behavior; training of staff in behavior management; and written contracts between the agency and the patient/family regarding behavioral expectations and conditions of service delivery. Reasonable efforts to assess and work with other entities to implement behavior management strategies which address patient care problems as identified on the plan of care should be attempted before the decision is made to discharge the patient.

3. All agency services are terminated by the patient.

   If a patient refuses or terminates some but not all home care treatments or services, a limited rejection would not justify discharge. If such refusal would lead to immediate deterioration in the patient's condition or an inability to attain reasonable therapeutic goals to the extent that the patient could no longer be cared for solely and adequately at home, the agency should make a referral to PSA or another official agency as appropriate and arrange for alternate services prior to discharge, in accordance with the provisions set forth in the regulations.

4. The patient, family, informal supports or other legally designated patient representative is non-compliant or interferes nth the plan of care; such non-compliance or interference has led to or will lead to an immediate deterioration in the patient's condition or has made attainment of reasonable therapeutic goals at home impossible; and the likely outcome of such non-compliance or interference has been explained to the patient and others involved in patient care, as appropriate.

   In order to facilitate compliance with or acceptance of services, it is important for agency staff to be flexible, to establish mutually acceptable goals and objectives with patients and to agree upon the services to be provided within the plan of care, including responsibilities to be assumed by the patient, the family or other informal supports as well as by the agency staff. If the patient/family are non-compliant with the plan of care, reasonable efforts should be made by the agency to ascertain the basis for the non-compliance, to provide any training, coaching or help needed to improve the functioning and participation of the patient or informal supports, and to renegotiate a more workable and implementable plan of care. If, however, reasonable efforts

to renegotiate a workable plan of care fail and the patient/family's behavior would lead to an immediate patient deterioration or make attainment of reasonable therapeutic goals impossible, the agency may discharge the patient in accordance with the provisions set: forth in the regulations.

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.

   Despite the fact that the patient may require alternative services, persons are frequently reluctant to leave their home for an alternative living or care setting and may refuse a transfer. Situations should be evaluated on a case-by-case basis to determine if an agency would be justified in discharging such a patient. The CHHA should collaborate with the patient's family and/or the physician in explaining the consequences of the patient's decisions to the patient to assure that the patient fully comprehends the nature and consequences of such refusal. If the patient or legal representative makes an informed choice to refuse such placement, the agency may discharge the patient. If the patient lacks the capacity to make an informed choice and there is no person legally appointed to represent the patient, the agency may not discharge the patient until a legal representative has been appointed to make health care decisions on behalf of the patient. Such a discharge, when the patient still needed health care and health related services and lacked capacity to make an informed decision about transfer to an alternate provider, would be considered abandonment of the patient.

   Although the regulations set forth the conditions or circumstances as to when discharge from a CHHA is appropriate, these circumstances do not include inability to pay for care. On the contrary, subdivision 763.5(f) states that: "services shall not be diminished or discontinued solely because of a change in the patient's source of payment or the patient's inability to pay for care". Therefore, the CHHA may not discharge the patient solely because of a change in the patient's ability to pay for care. The agency must continue to provide such services if the patient's health and safety can be maintained in the home.

REFERRAL T0 PSA OR OTHER OFFICIAL AGENCY

At the time a determination is made not to admit the patient, based on the criteria set forth in the regulations, the agency is required to make a referral to PSA or another official agency if the patient appears to be eligible for such services, if the client is residing in the community, and if the health and safety of the patient will continue to be at substantial risk. A referral to PSA is indicated if the patient meets the following conditions:

- The patient has a reduced ability to engage in the process of planning for his or her own care due to a mental and/or physical impairment;
- The health and safety of the patient is at substantial risk and the patient is inappropriate for admission, or the health and safety of the patient will be at substantial risk upon discharge; and
- No other person or agency is willing and able to assume responsibility for the patient's care and protection.

With the exception of New York City, PSA referrals should be made to the local department of social services in the county in which the patient resides. Patients residing in New York City should be referred to the PSA program administered by the New York City Human Resources Administration. Patients served by case management programs administered by the State Offices of Mental Health (OMH) and Mental Retardation and Developmental Disabilities (OMRDD) should initially be referred to their respective programs, which will make a referral to PSA if the program lacks the capacity to meet the patient's needs.

The CHHA is encouraged to cooperate with PSA or the other official agency to develop and implement an interim plan of care that will meet minimally essential patient health and safety needs until alternative services can be arranged. If PSA or another official agency effectively intervenes to stabilize the patient's situation, the CHHA should reassess the patient to determine if admission to the agency would then be appropriate.

If the agency intends to discharge the patient in accordance with subdivision (h) of Section 763.5 of 10NYCRR, a referral should also be made to PSA or another official agency, if substantial health and safety risks are expected to be present subsequent to discharge. As specified on pages 5 and 6 of this memorandum, if patients are non-compliant or others interfere with the plan of care or the patient's changing care needs can no longer be sufficiently met by available home care and community support services, the agency, if possible, should continue to provide home health services to the extent necessary to address the minimally essential health and safety needs of the patient until more appropriate alternative services can be arranged.

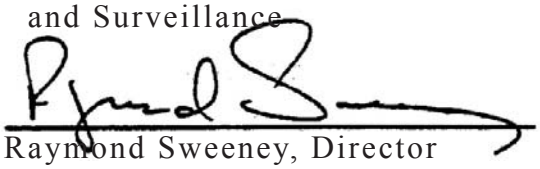
If conditions exist in the home which imminently threaten the safety of staff or if agency services are abruptly terminated by the patient, the agency may be unable to give PSA or another official agency advance notice of the discharge. However, if such referral is a result of non-compliance with the plan of care, verbally abusive behavior, or changing patient care needs necessitating the services of an alternate provider, the agency

should make such as referral as far in advance as possible to allow the agency receiving the referral sufficient time to assess and intervene in the situation. If there is strong likelihood that the PSA or another official agency can succeed in stabilizing the situation and rendering the patient appropriate for continued home care, the CHHA is encouraged to continue services until final resolution is determined.

Any question regarding this DOHM should be directed to the Area Office Home Care Program Director in the appropriate Office of Health Systems Management service area. (Listing attached)

ENDORSED: 

Thomas W. Hartman, Deputy Director
Division of Health Care Standards
and Surveillance



Raymond Sweeney, Director
Office of Health Systems Management

Attachments