

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 3612(5) and 3612(7)(a) of the Public Health Law, sections 763.7 and 766.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Sections 763.7(a)(3)(i) and (ii) are amended as follows:

763.7 Clinical records.

(a) The agency shall maintain a confidential clinical record for each patient admitted to care or accepted for service to include:

* * *

(3) medical orders and nursing diagnoses to include all diagnoses, medications, treatments, prognoses, and need for palliative care. Such orders shall be:

(i) signed by the authorized practitioner within [30 days] 12 months after admission to the agency, or prior to billing, whichever is sooner;

(ii) signed by the authorized practitioner within [30 days] 12 months after issuance of any change in medical orders or prior to billing, whichever is sooner, to include all written and oral changes and changes made by telephone by such practitioner; and

(iii) renewed by the authorized practitioner as frequently as indicated by the patient's condition but at least every 60 days;

Sections 766.4(d)(1) and (2) are amended as follows:

Section 766.4 Medical Orders

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(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and

(1) shall be authenticated by an authorized practitioner within [thirty (30) days] 12 months after admission to the agency; and

(2) when changes in the patient's medical orders are indicated, orders, including telephone orders, shall be authenticated by the authorized practitioner within [thirty (30) days] 12 months.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 3612(5) of the Public Health Law authorizes the adoption and amendment of regulations for certified home health agencies pursuant to Article 36 of the Public Health Law (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs). Section 3612(7) (a) of the Public Health Law authorizes the adoption and amendment of regulations for licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Article 36 of the Public Health Law was intended to promote the quality of home care services provided to residents of New York State and to ensure their adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by aligning state regulations with federal rules governing payment for home health episodes, thereby making home care rules and regulations clear and consistent to both home health providers and physicians ordering home health care services for their patients.

Needs and Benefits:

The proposed rule making achieves consistency with the federal rules governing home health episode payment for certified home health agencies, long term home health care programs and AIDS home care programs. There are no corresponding federal rules and regulations for licensed home care services agencies.

Home care providers have identified difficulties in obtaining signed physician orders under the current timeframe of thirty (30) days, which adversely impacts their ability to

bill and receive payment for services that were delivered based on verbal orders. The increased reliance on the use of hospitalists, whose relationship with patients tend to be transient in nature, and the use of hospital based clinics for medical care, contribute to the difficulty in obtaining signed physician orders within the current timeframes. Typically, the initial and subsequent follow-up physician orders are in the form of verbal orders. Obtaining the required signed orders from the physician who prescribed the care is challenging and time consuming. The current 30-day timeframe, coupled with payment rules, adversely impacts the ability of the home care agencies to bill and obtain reimbursement for services.

The inability to obtain signed physician orders in the 30 day period was identified as a main concern of the Home and Community Based Care Workgroup (Workgroup). In 2013, the Legislature created the Workgroup by enacting PHL Section 3614, as a response to changes in the delivery of, and reimbursement for, home health care services through New York State's Medicaid Redesign initiatives. The Workgroup, composed of eleven members representing providers, managed care plans and consumers, examined and made recommendations on issues which included but were not limited to state and federal regulatory requirements and related policy guidelines (including the applicability of the federal conditions of participation); efficient home and community based care delivery, including telehealth and hospice services; and alignment of functions between managed care entities and home and community based providers. The Workgroup, consistent with input from the provider associations, determined that a longer period to obtain signed physician orders would decrease the number of denied claims for payment from governmental payers. Additional input from Medicaid payment policy makers also

indicated that extending the allowable time to obtain signed physician orders would alleviate the adverse impact related to claims submissions and payment exception rules.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

Proposed rules will be consistent with federal rules for home health agencies certified to participate in the Medicare and Medicaid programs. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards. During its discussions with providers, provider associations and the Workgroup, the Department evaluated timeframes ranging from sixty (60) days to two years. After careful analysis, it was determined that 12 months is optimal because it provides consistency with payment rules for governmental payers.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments. As the amendments are consistent with federal standards that were already in effect, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS**

No regulatory flexibility analysis for small businesses and local governments is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on small businesses or local governments, and it does not impose additional reporting, record keeping or other compliance requirements on small business home care agencies or local government home care agencies. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

No Job Impact Statement is required pursuant to section 201 a (2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules for certified home health agencies and as consistent as feasible with proposed certified home health agency state regulations for licensed home care services agencies. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.