

DSS-4357EL

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GENERAL INFORMATION SYSTEM

06/27/96

DIVISION: Health and Long Term Care

PAGE 1

GIS 96 MA/023

TO: Personal Care Services Program Directors

FROM: Martin J. Conroy, Acting Deputy Commissioner, Division of Health and Long Term Care

SUBJECT: New Notice, Aid-Continuing and Related Procedures Applicable to Hospitalized MA Recipients Who Received Personal Care Services Immediately Prior to Hospitalization(Granato v. Bane; McCoy v. Schimke; Burland v. Dowling)

EFFECTIVE DATE: Immediately

CONTACT PERSON: Bureau of Long Term Care Personal Care Services Monitoring Staff

These instructions set forth new notice, aid-continuing and related procedures that social services districts must apply to all hospitalized Medical Assistance (MA) recipients who were authorized to receive personal care services immediately prior to their hospitalizations.

These instructions comply with two court decisions: the federal court decision issued recently in the combined cases of Granato v. Bane and McCoy v. Schimke, [74 F.3d 406 (2d Cir. 1996)]; and, the State court temporary restraining order (TRO) issued in Burland v. Dowling (S.Ct.N.Y.Co., 1994). We have previously advised you of the Burland TRO. (See GIS message entitled "Burland v. Dowling TRO, which was issued on January 7, 1994, and Section II of 95 LCM-76, which is entitled "Reminder regarding Burland temporary restraining order" and was issued July 18, 1995.) **The new instructions set forth in this GIS replace the instructions set forth in the January 7, 1994, Burland GIS and Section II of 95 LCM-76.** By following these new instructions, social services districts will be complying with both the Burland TRO and the Granato/McCoy decision.

SOCIAL SERVICES DISTRICT ACTIONS WITH RESPECT TO HOSPITALIZED PERSONAL CARE SERVICES RECIPIENTS:

Under the Department's prior policy, MA recipients who received personal care services immediately prior to entering a hospital were not entitled to aid-continuing when social services districts proposed to reduce or discontinue their personal care services upon discharge. Under this prior policy, these recipients were treated as personal care services applicants, not recipients, for notice and aid-continuing purposes.

The Department has changed its policy to comply with the court decisions discussed above. Under the new policy, MA recipients who received personal care services immediately prior to entering a hospital are entitled to timely notice and the right to request aid-continuing when social services districts propose to reduce or discontinue their personal care services upon discharge. Under the new policy, these recipients are thus treated as personal care services recipients, not applicants, for notice and aid-continuing purposes.

Consequently, when a social services district learns that an MA recipient has been hospitalized and the recipient was authorized to receive personal care services immediately prior to entering the hospital, the social services district must follow the procedures set forth below:

I. Suspension notice (DSS-4009) no longer required.

We have previously issued instructions to social services districts that applied when personal care services recipients were hospitalized, [89 ADM-21, entitled "Mandatory Client Notices (Public Assistance, Food Stamps, Medical Assistance)]. This administrative directive instructed social services districts to send hospitalized personal care services recipients a notice that their personal care services were suspended because they were hospitalized. The required notice was the DSS-4009, entitled "Notice of Decision to Suspend the Authorization for Personal Care Services," and was attached to 89 ADM-21 as Attachment 38.

Effective immediately, social services districts should discontinue use of the DSS-4009 suspension notice or any other suspension notice that the Department may have previously approved as an alternative to the DSS-4009. However, a social services district may send the hospitalized recipient an informational letter when the district learns that the recipient has been hospitalized. This informational letter, which is not a notice of fair hearing rights, would merely let the recipient know what to expect regarding his or her personal care services. For example, the letter may advise the recipient that: (1) during the recipient's hospitalization, he or she will not receive the previously authorized services; (2) the district will reinstate the recipient's previously authorized services when the recipient is ready to be discharged provided that the recipient's physician agrees that the previously authorized services can maintain the recipient's health and safety; and (3) the district may determine to reassess the recipient's need for personal care services and will send the recipient the appropriate timely and adequate notice, with the right to request aid-continuing, when the district intends to reduce or discontinue the recipient's personal care services. (These procedures, which are explained more fully below, must be followed even when a social services district does not send such an informational letter.)

II. The social services district should reassess the hospitalized recipient when the recipient's medical condition, social circumstances or mental status may have changed during the recipient's hospitalization and such change could affect the recipient's need for personal care services.

When the social services district believes that the recipient's medical condition, social circumstances or mental status may have changed during the recipient's hospitalization, the district should reassess the recipient.

The district would follow the appropriate reassessment procedures set forth in Department regulation 18 NYCRR 505.14(b)(5)(x)(a) through (c). This regulation specifies the procedures that a social services district must follow when an unexpected change in the recipient's medical condition, social circumstances or mental status occurs during the authorization period. The social services district must send the recipient the appropriate notice advising the recipient of his or her right to request a fair hearing with aid-continuing. (See section III of this GIS for a complete discussion of the notice requirements.)

A social services district may decide that a reassessment is not necessary because the recipient's medical condition, social circumstances or mental status has not changed since the recipient entered the hospital. In such case, the district would simply reinstate the recipient's previously authorized services when the recipient is ready to be discharged from the hospital.

III. The social services district must send the recipient the appropriate notice when the district reassesses the recipient's need for personal care services.

A. Which notice must be sent?

Upon completing the reassessment, the social services district must send the recipient the appropriate notice, as explained below:

1. Recipients for whom the district determines that personal care services should be increased, reduced or discontinued (non-fiscal assessment):

When the social services district determines that the recipient's personal care services should be increased, reduced or discontinued for reasons unrelated to the fiscal assessment, the district must send the recipient the DSS-4008, entitled "Notice of Intent to Increase, Reduce or Discontinue Personal Care Services," which is attached to 89 ADM-21 as Attachment 37, or a local equivalent notice that the Department has approved.

2. Recipients for whom the district determines that personal care services should be discontinued (fiscal assessment):

When the social services district determines that the recipient's personal care services should be discontinued for reasons related to the fiscal assessment, the district must send the recipient the "Notice of Decision to Discontinue Personal Care Services (Fiscal Assessment)," which is attached to 92 ADM-49 as Attachment 4.

3. Recipients for whom the district determines that personal care services should be reauthorized at the same level and amount that was authorized immediately prior to hospital admission.

When the social services district determines that the recipient should be reauthorized to receive the same level and amount of personal care services that the recipient was authorized to receive immediately prior to entering the hospital, the district must send the recipient the DSS-4007, entitled "Notice of Decision of Initial Authorization/Reauthorization or Denial of Personal Care Services," which is attached to 89 ADM-21 as Attachment 36, or a local equivalent notice that the Department has approved.

B. Where should the notice be sent?

If the recipient is still in the hospital, the district should send a copy of the appropriate notice referenced in #1, 2 or 3, above, to the hospital and a copy to the recipient at his or her last known address. If the recipient has been discharged from the hospital, and the district knows the address at which the recipient is currently residing, the district must send the notice to the recipient at such address.

C. When must the previously authorized services be reinstated even though the district has not completed its reassessment or issued its notice?

When the recipient's physician has determined that the recipient may be discharged from the hospital with the same level and amount of personal care services that he or she received immediately prior to entering the hospital, the recipient is entitled to have his or her services reinstated. This applies even if the social services district has not yet completed its reassessment and has not yet sent the recipient the appropriate notice. The social services district would simply reinstate the previously authorized services pending the district's completion of the reassessment and issuance of the appropriate notice to the recipient.

To explain, the fact that the district has not yet issued its reduction or discontinuance notice prior to the recipient's discharge does not alter the recipient's status as a recipient of the personal care services that he or she was authorized to receive immediately prior to entering the hospital. He or she continues to be a recipient of the previously authorized services until the social services district lawfully reduces or discontinues such services through the notice and fair hearing process. Consequently, the recipient may be discharged home with the same level and amount of services that he or she received immediately prior to entering the hospital unless the recipient's physician has determined that the previously authorized services are insufficient to maintain the recipient's health and safety.

D. Aid-continuing:

When the recipient requests a fair hearing with aid-continuing prior to the effective date of a reduction or discontinuance notice, the Department's Office of Administrative Hearings will issue an aid-continuing directive to the district. Aid-continuing means the same level and amount of personal care services that the recipient was authorized to receive immediately prior to entering the hospital. The aid-continuing directive is effective unless

DSS-4357EL

WGIUPD

GENERAL INFORMATION SYSTEM

06/27/96

DIVISION: Health and Long Term Care

PAGE 5

GIS 96 MA/023

the recipient's physician has determined that the previously authorized level and amount of services is insufficient to maintain the recipient's health and safety in his or her own home or other location in which personal care services can be provided.

IV. Questions?

Districts having questions regarding this message should contact the Bureau of Long Term Care's Personal Care Services Program field monitors: Marcia Anderson, George Fleury or Margaret O. Willard at 1-800-343-8859, extension 3-5602, 3-8269 or 3-5569 or (518) 473-5602, 473-8269 or 473-5569, or on-line at OLT130, AW5610 or AW8310, respectively.