LOCAL COMMISSIONERS MEMORANDUM

Transmittal No: 90 LCM-201

Date: December 12, 1990

Division: Commissioner's Office

TO: Local District Commissioners

SUBJECT: Filed Regulations

ATTACHMENTS:

Attachment I -	485.17 & 505.21	(available on-line)
Attachment II -	505.3	(available on-line)
Attachment III -	517.3	(available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 485.17 & 505.21 relating to AIDS home care programs.

The final rule - Filed: 12/7/90 - Effective: 12/26/90.

18 NYCRR 505.3 relating to mail order drugs and medical supplies.

The final rule - Filed: 12/7/90 - Effective: 12/26/90.

18 NYCRR 517.3 relating to retention of records.

The final rule - Filed: 12/7/90 - Effective: 12/26/90.

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Michael J. McNaughton
Director, Local District
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 363-a.2 and 367-e of the Social Services Law, I Cesar A. Perales, Commissioner of Social Services, do hereby amend Sections 485.17 and 505.21 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the State Register.

Dated: December 7, 1990

Signed:_____

Executive Deputy Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on December 7, 1990 amending Sections 485.17 and 505.21 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, a summary of which was published in the New York State Register on April 25, 1990

Dated: December 7, 1990

Signed:_____

Executive Deputy Commissioner

Section 485.17 is amended to read as follows:

485.17 Long term home health care program; AIDS home care program. (a) Services provided under the long term home health care program (LTHHCP) or AIDS home care program (AHCP), as defined in section 505.21 of this Title, may be provided to a resident of an adult-care facility, except a shelter for adults, who:

(1) has been deemed medically eligible by a physician for placement in a [skilled nursing or health-related facility] residential health care facility or a hospital but who can remain in an adult-care facility if he/she receives LTHHCP or AHCP services;

(2) as the result of an assessment authorized by a social services district, has been determined appropriate to receive LTHHCP or AHCP services, provided the assessment is conducted prior to the provision of such services and in compliance with the provisions of section 505.21 of this Title;

(3) has resided in one or more adult-care facilities for a total of at least six continuous months, except that this six month residency requirement does not apply to the AHCP; and

(4) meets the admission and continued stay criteria for the type of adult-care facility in which the person is residing.

(b) [Long term home health care program] LTHHCP or AHCP services may not duplicate or replace those services which the adult-care facility operator is required by law [and] or regulation to provide.

(c) A representative of the adult-care facility must be consulted during the home assessment process in accordance with the provisions of section 505.21 of this Title.

(d) An operator of an adult-care facility must

coordinate service delivery and case management services with the [long term home health care program] LTHHCP or AHCP. The operator is solely responsible for managing and providing those services which the facility is required by law or regulation to provide.

(e) The commissioner may specify additional forms and reports regarding the provision of [long term home health care] LTHHCP or AHCP services to residents of adult-care facilities for the purpose of preparing reports to the Governor and the Legislature.

The title of section 505.21 is amended to read as follows:

505.21 Long term home health care programs; AIDS home care programs.

Paragraph (1) of subdivision (a) of section 505.21 is amended to read as follows:

(1) Long term home health care program (LTHHCP) means a coordinated plan of care and services provided at home to invalid, infirm or disabled persons who are medically eligible for placement for an extended period of time in a hospital or residential health care facility (RHCF) if the LTHHCP were unavailable. Such program can be provided in the person's home, including an adult care facility other than a shelter for adults, or in the home of a responsible relative or other responsible adult.

Paragraph (2) of subdivision (a) of section 505.21 is renumbered paragraph (3) and a new paragraph (2) is added to read as follows:

(2)(i) AIDS home care program (AHCP) means a coordinated plan of care and services provided at home to persons who are medically eligible for placement in a hospital or an RHCF and who are diagnosed by a physician as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)-related illness as defined by the AIDS Institute of the State Department of Health. Such definitions are contained in directives issued by the department from time to time.

(ii) An AHCP can be provided only by a LTHHCP provider specifically authorized under article 36 of the Public Health Law to provide an AHCP as a discrete part of the LTHHCP.

(iii) An AHCP can be provided in the person's home, which includes an adult care facility specifically approved to admit or retain residents for such program, the home of a responsible relative or other responsible adult, or in other residential settings as approved by the Commissioner of Health in conjunction with the Commissioner of Social Services.

Paragraphs (1) through (5) of subdivision (b) of section 505.21 are amended to read as follows:

(b) Assessment and authorization. (1)(i) If a [long term home health care program] LTHHCP, as defined under article 36 of the Public Health Law, is provided in the social services district for which he or she has authority, the local social services official, before he or she authorizes care in [a nursing home or intermediate care facility] an RHCF, [shall] must notify the person in writing of the availability of the [long term home health care program] LTHHCP.

(ii) If an AHCP, as defined under article 36 of the Public Health Law, is provided in the social services district for which he or she has authority, the local social services official, before authorizing RHCF care, home health services, or personal care services for a person with AIDS, must notify the person in writing of the availability of the AHCP. If the person desires to remain and is deemed by his or her physician able to remain in his or her own home if the necessary services are provided, such person or his or her representative must so inform the local social services official, who must authorize an assessment under the provisions of section 3616 of the Public Health Law and paragraph (2) of this subdivision. If the results of the assessment indicate that the person can receive the appropriate level of care at home,

the official must prepare for that person a plan for the provision of services comparable to services that would be rendered in a hospital or an RHCF, as appropriate for the person. In developing such plan, the official must consult with those persons performing the assessment and must assure that such plan is appropriate to the person's needs and will result in an efficient use of services.

(2) If a person who has been assessed in accordance with section 505.9(b) of this Part by a [long term home health care program] LTHHCP or an AHCP, a physician or discharge planner or, at the option of the [local department of] social services district, another certified home health agency, as needing care in [a skilled nursing or health-related facility] an RHCF or a hospital, desires to remain and is deemed by his or her physician able to remain in his/her own home or the home of a responsible relative or other responsible adult or an adult care facility, other than a shelter for adults, if the necessary services are provided and, for purposes of an adult care facility, the person meets the admission and continued stay criteria for such facility, the [local] social services [department] district must authorize a home assessment of the appropriateness of [long term home health care] LTHHCP or AHCP services. The assessment must include, in addition to the physician's recommendation, an evaluation of the social and environmental needs of the [individual] person. The assessment will serve as a basis for the development of an appropriate plan of care for the [individual] person.

(i) If the person is in a hospital or [a residential health care facility] an RHCF, the home assessment [shall] must be performed by the person's physician, the discharge coordinator of the hospital or [residential health care facility] RHCF referring the

[patient] person, a representative of the [local department of] social services district, and a representative of the [long term home health care program] LTHHCP or AHCP that will provide services [for] to the [patient] person.

(ii) If the person is in his/her own home, the home assessment [shall] must be authorized by the [local] social services [department] district and [shall] must be performed by the person's physician, a representative of the [local] social services [department] district, and a representative of the [long term home health care program] LTHHCP or AHCP that will provide services [for] to the person.

(iii) The assessment [shall] must be completed prior to or within 30 days after the provision of services begins. Payment for services provided prior to the completion of the assessment [shall] may be made only if it is determined, based upon such assessment, that the [recipient] person qualifies for such services.

(iv) If the person is in an adult care facility, the home assessment must be performed by representatives of the [long term home health care program] LTHHCP or AHCP and the [local] social services district in consultation with the operator of the adult care facility.

(v) Persons provided [long term home health care program] LTHHCP or AHCP services in adult care facilities must meet the admission and continued stay criteria for such facilities.

(vi) For [individuals] persons requesting [long term home health care program] LTHHCP or AHCP services in adult care facilities, assessments must be completed prior to the provision of services.

(vii) No person residing in an adult care facility will be deemed eligible for the [long term home health care program]

LTHHCP authorized under this section until he or she has resided in one or more adult care facilities for a total of at least six continuous months. This residency requirement does not apply to the AHCP.

(viii) Services provided by the [long term home health care program] LTHHCP or AHCP must not duplicate or replace those which the adult care facility is required by law or regulation to provide.

(ix) The commissioner [shall] must prescribe the forms on which the assessment will be made.

(3) [Insofar as] If there is disagreement among the persons performing the assessment, or questions regarding the coordinated plan of care, or problems in implementing the plan of care, the issues [shall] must be reviewed and resolved by a physician designated by the Commissioner of Health.

(4) At the time of the initial assessment, and at the time of each subsequent assessment performed for a [long term home health care program] LTHHCP, or more often if the person's needs require it, the [local] social services district must establish a monthly budget in accordance with which payment will be authorized. The [local] social services district [will] must provide the operator of the adult care facility with a copy of the completed assessment, the plan of care and the monthly budget.

(i) [For all clients other than those receiving care in an adult care facility] For persons who neither reside in adult care facilities nor receive AHCP services:

(a) The budget [shall] must include all of the services to be provided in accordance with the coordinated [health] plan of health care by the [long term home health care program] LTHHCP.

(b) Total monthly expenditures made for a [long term home health care program] LTHHCP for [an individual] a person who is the sole member of his/her household in the program must not exceed a maximum of 75 percent of the average monthly rates payable for [nursing home services or health-related services in a skilled nursing or health-related facility] RHCF services in the social services district[, whichever is the appropriate level for the individual]. Total monthly expenditures made for a [long term home health care program] LTHHCP for two members of the same household must not exceed a maximum of 75 percent of the average monthly rates payable for both members of the household for nursing [home services or health-related services in a skilled nursing or health-related facility] RHCF services in the social services district[, whichever is the appropriate level for each person].

(c) When the monthly budget prepared for [an individual] a person who is the sole member of his/her household in the program is for an amount less than 75 percent of monthly rates payable for [nursing home services or health-related] RHCF services, a "credit" may be accrued [in] on behalf of the [individual] person. If a continuing assessment of the [individual's] person's needs demonstrates that he/she [required] requires increased services, the [local] social services [department] district may authorize any amount accrued during the past 12 months over the 75-percent maximum. When the monthly budget prepared for two members of the same household is for an amount less than 75 percent of monthly rates payable for [nursing home services or health-related] RHCF services, a "credit" may be accrued [in] on behalf of the household. If a continuing assessment of the household's needs demonstrates that [he/she/they] the household [require] requires increased services, the [local] social

services [department] district may authorize any amount accrued during the past 12 months over the 75-percent maximum.

(d) When the monthly budget prepared for [an individual] a person or a household is for an amount less than 75 percent of monthly rates payable for [nursing home services or related] RHCF services, and the continuing assessment of the person's or household's needs demonstrates that [he/she/they] the person or household [require] requires increased services in an amount less than 10 percent of the prepared monthly budget, but totaling no more than 75 percent of the monthly rates payable for [nursing home services or health-related] RHCF services, [the long term home health care program] LTHHCP may provide such services without prior approval of the [local department of] social services district.

(e) If an assessment of the person's or household's needs demonstrates that [he/she/they] the person or household [require] requires services, the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person or household will not exceed such maximum calculated over a one-year period, the social services official may authorize payment for such services.

(ii) For [clients] persons residing in adult care facilities but not receiving AHCP services:

(a) The budget must include all of the services to be provided in accordance with the coordinated plan of health care by the [long term home health care program] LTHHCP.

(b) Total monthly expenditures made for [long term home health care program] LTHHCP services provided to [an individual] a person residing in an adult care facility must not exceed a maximum of 50 percent of the average monthly rates payable for [nursing home

services or health-related care and services provided in a skilled nursing or health-related facility] RHCF services in the social services district[, whichever is the appropriate level of care for the individual].

(c) When the monthly budget prepared for [an individual] a person residing in an adult care facility is for an amount less than 50 percent of the average of the monthly rates for [nursing home services or health-related care and services provided in a skilled nursing or health-related facility] RHCF services, a "credit" may be accrued on behalf of the [individual] person. If a continuing assessment of the [individual's] person's needs demonstrates that he/she requires increased services, the [local] social services district may authorize the expenditure of any amount accrued during the past 12 months [so long as] provided that such amount, when added to the amount previously expended, does not exceed the 50 percent maximum.

(d) When the monthly budget prepared for [an individual] a person residing in an adult care facility is less than 50 percent of the monthly rates payable for [nursing home services or health-related care and services provided in a skilled nursing or health-related facility] RHCF services, and the continuing assessment of the person's needs demonstrates that he/she requires increased services in an amount less than 10 percent of the prepared monthly budget, but totaling no more than 50 percent of the monthly rates payable for [nursing home services or health-related care and] RHCF services, the [long term home health care program] LTHHCP may provide such services without prior approval of the [local] social services district.

(e) If an assessment of the needs of an adult care

facility resident demonstrates that services are required, the payment for which would exceed the monthly maximum specified in clause (b) of this subparagraph, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one-year period, the social services official may authorize payment for such services.

(iii) For persons receiving AHCP services, total monthly expenditures for such services are not subject to the requirements of subparagraph (i) or (ii) of paragraph (4) of this subdivision.

(5) If a joint assessment by the [local] social services district and the provider of services under this paragraph indicates that the maximum expenditure permitted under paragraph (4) of this subdivision is not sufficient to provide [long-term home health care program (LTHHCP)] LTHHCP services to [individuals] persons with special needs, social services officials may authorize, pursuant to the provisions of section 367-c(3-a) of the Social Services Law, maximum monthly expenditures for such [individuals] persons, not to exceed 100 percent of the average [skilled nursing or health-related facility] RHCF rate established for that district. In addition, if a continuing assessment of a person with special needs demonstrates that he/she requires increased services, a social services official may authorize the expenditure of any amount which has accrued under this section during the past 12 months as a result of the expenditures for a person participating in the LTHHCP not having exceeded such maximum. If an assessment of a person with special needs demonstrates that he/she requires increased services, the payment for which would exceed such monthly maximum, the social

services official may authorize payment for such services if it can reasonably be anticipated that the total expenditures for the required services for such a person will not exceed the maximum calculated over a one-year period.

Subparagraph (vi) of paragraph (5) of subdivision (b) of section 505.21 is amended to read as follows:

(vi) The provisions of this paragraph remain in effect until [June 30, 1989] December 31, 1993.

Paragraphs (6), (7), and (8) of subdivision (b) of section 505.21 are amended to read as follows:

(6) When a person who is in a hospital or [residential health care facility] an RHCF is identified as being medically eligible for [skilled nursing or intermediate] hospital or RHCF care, and who desires to return to his/her own home and is deemed by his/her physician as able to be cared for at home, an assessment [shall] must be completed, and authorization for [long term home health care program] LTHHCP or AHCP services or notification that the person is ineligible for such program [shall] must be timely made timely with respect to ensuring continued Federal reimbursement.

(7) The [local] social service district [shall be] is responsible for the general [casework] case management of the overall needs of the [patient] person. Case management [shall include] includes:

(i) facilitating determination of financial eligibility for medical assistance;

(ii) involvement in the assessment and reassessment of the social and environmental needs of the [individual] person;

(iii) preparation of the monthly budget for persons other than those receiving AHCP services ; and

(iv) coordination of [long term home health care program] LTHHCP or AHCP services and other social services which may be required to keep the [individual] person in his/her own home.

(8) No single authorization for [long term home health care program] LTHHCP or AHCP services [shall] may exceed four months.

(i) A reassessment [shall] must be performed at least every 120 days, and [shall] must include an evaluation of the medical, social and environmental needs of the [individual] person, and [shall] must include a representative of the [long term home health care program] LTHHCP or AHCP, a representative of the [local] social services [department] district, and a physician designated by the Commissioner of Health. If there is a change in the [individual's] person's level of care, he/she [shall] must be notified in writing of such change.

(ii) If a change in the [patient's] person's level of care occurs between assessment periods as recommended by the [long term home health care program] LTHHCP or AHCP, the [local] social services [department] district [shall] must be notified and a new assessment [shall] must be authorized.

Subdivisions (c) and (d) of section 505.21 are amended to read as follows:

(c) Requirements for provision of care. (1) Home health aide services may be provided directly by a [long term home health care program] LTHHCP or by an AHCP, or through contract arrangements between the [long term home health care program] LTHHCP or AHCP and voluntary agencies [and] or proprietary agencies.

(2) Personal care services may be provided directly by a [long term home health care program] LTHHCP or an AHCP, or

through contract arrangements between the [long term home health care program] LTHHCP or AHCP and the [local] social services district or voluntary [and] or proprietary agencies.

(3) In addition to providing nursing services [for] to the [individual] person receiving [long term home health care] LTHHCP or AHCP services, the [long term home health care program's] LTHHCP's or AHCP's registered professional nurse or professional therapist [shall] must also be assigned responsibility for the supervision of the person providing personal care services to evaluate the person's ability to carry out assigned duties, to relate well to [patients] persons receiving LTHHCP or AHCP services, and to work effectively as a member of a team of health workers. This supervision [shall] must be carried out during periodic visits to the home in accordance with policies and standards established by the Department of Health.

(4) Services of a registered professional nurse or professional therapist and supervision of persons providing personal care services may be carried out concurrently. The frequency of periodic visits [shall] must be determined by the coordinated plan of care, but in no case [shall] may they be less frequent than every 120 days.

(d) Payment. (1) Payment for a [long term home health care program] LTHHCP or an AHCP [shall] must be at rates established for each service for each agency authorized to provide the program. Rates [will] must be on a per-visit basis, or, in the case of home health aide services and personal care services, on an hourly basis.

(2)(i) When personal care services are directly provided by a [long term home health care program] LTHHCP or an AHCP,

or when they are provided through contract arrangements with an agency that does not have a rate negotiated with the [local] social services [department] district, the Department of Health [shall] will establish the rate of payment with the approval of the Department of Social Services and the Director of the Budget.

(ii) When personal care services are provided by a [long term home health care program] LTHHCP or an AHCP through contract arrangements with a [local] social services district, computation of the budget [shall] must be based on the [local department's] district's salary schedule, but no payment [will] may be made to the []ong term home health care program] LTHHCP or AHCP.

(iii) When personal care services are provided by a [long term home health care program] LTHHCP or an AHCP through contract arrangements with an agency that has a rate negotiated with the [local] social services district, the [long term home health care program] LTHHCP or AHCP rate must be no higher than that locally negotiated rate.

(3) Payment for assessment for a [long term home health care program] LTHHCP or an AHCP:

(i) is included in the hospital rate for staff participation in discharge planning;

(ii) is included in the physician's visit fee if the physician is not on the hospital staff, and performs the initial assessment while the [patient] person is in the hospital;

(iii) is included in the physician's home visit fee when the initial assessment or reassessment is performed in the [patient's] person's home;

(iv) is included in the physician's office visit fee when the initial assessment or reassessment is performed in a nonfacility-related physician's office; and

(v) is included in the clinic fee when the initial assessment or reassessment is performed in a clinic or outpatient department.

(4) [Long term home health care program] LTHHCP or AHCP participation in initial assessment and reassessment [shall] must be included in the administrative costs of the program.

(5) No social services district [shall] may make payments pursuant to title XIX of the Federal Social Security Act for benefits available under title XVIII (Medicare) of such [act] Act without documentation of the following:

(i) that the [long term home health care program] LTHHCP or AHCP has prepared written justification for not having made application for Medicare because of the [patient's] person's apparent technical ineligibility; or

(ii) that application for Medicare benefits has been rejected by either the [Bureau of Health Insurance] Health Care Financing Administration or its fiscal intermediary.

(6) No social services district [shall] may make payment for a person receiving a [long term home health care program] LTHHCP or AHCP services while payments are being made for that person for inpatient care in [a residential health care facility] an RHCF or a hospital.

A new paragraph (4) is added to subdivision (a) of section 505.3 to read as follows:

(4) The department may, after completing a competitive request for proposal (RFP) process, contract with mail-order pharmacies or their corporate owners to supply prescription and non-prescription drugs and medical/surgical supplies by mail to medical assistance (MA) recipients. The department may elect to offer mail-order pharmacy services in one or more social services districts through a contractor selected after completion of the RFP process. Individuals who are furnished MA by such districts who are not restricted in their access to drugs or medical/surgical supplies and who are not patients in residential health care facilities or any other facilities which have pharmaceuticals included in their medical assistance payments may choose to receive long-term maintenance drugs, excepting drugs written and dispensed on Official New York State Triplicate Prescription forms, non-prescription drugs and medical/surgical supplies by mail from contractors selected through the RFP process to provide such drugs and supplies.

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), and 363-a(2) of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby amend Section 517.3 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective upon publication of the Notice of Adoption in the State Register.

Dated: December 6, 1990

Signed:_____
Executive Deputy Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on December 7, 1990 amending Section 517.3 of the official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on March 14, 1990

Dated: December 6, 1990

Signed:_____
Executive Deputy Commissioner

Subdivision one of paragraph (a) of section 517.3 is hereby amended to read as follows:

(a) Cost-based provider. (1) All fiscal and statistical records and reports of providers which are used for the purpose of establishing rates of payment made in accordance with the medical assistance program and all underlying books, records, documentation and reports which formed the basis for such fiscal and statistical records and reports are subject to audit. All underlying books, records and documentation which formed the basis for the fiscal and statistical reports filed by a provider with any State agency responsible for the establishment of rates of payment or fees must be kept and maintained by the provider for a period of not less than six years from the date of filing of such reports, or the date upon which the fiscal and statistical records were required to be filed, or two years from the end of the last calendar year during any part of which a provider's rate or fee was based on the fiscal or statistical reports, whichever is later. In this respect, any rate of payment certified or established by the commissioner of the Department of Health or other official or agency responsible for establishing such rates will be construed to represent a provisional rate until an audit is performed and completed, or the period within which to conduct an audit has expired without such audit having been begun or notice of such audit having been issued, at which time such rate or adjusted rate will be construed to represent the final rate as to those items audited.