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**DIVISION:** Office of Medicaid Management

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**GIS 01 MA/044**

**TO:** Local District Commissioners, Medicaid Directors, Home Care Staff

**FROM:** Betty Rice, Director, Division of Consumer and Local District  
Relations, Office of Medicaid Management

**SUBJECT:** Personal Care Services Regulations and Mayer v. Wing

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Kathleen Sherry or Margaret Willard (518)474-5271

The purpose of this GIS message is to advise social services districts of new personal care services regulations that the Department has adopted to comply with Court rulings in Mayer v. Wing and to remind districts of State requirements affecting client notices and districts' assessments of recipients whom districts determine require 24 hour care.

In accordance with Mayer, the Department adopted regulations effective November 1, 2001, that apply to social services districts' client notices and use of task based assessment plans. A copy of these regulations is attached to this GIS message. These are not new requirements. These regulations generally reflect prior instructions that the Department has issued with respect to the Mayer case (See GIS 96 MA/019 and GIS 97 MA/033).

Among other things, the new regulations provide that the district's "determination to reduce, discontinue or deny a client's prior authorization must be stated in the client notice." The regulations set forth several examples of appropriate reasons and notice language to be used when reducing, discontinuing or denying services.

[18 NYCRR 505.14(b)(5)(v)(c)(1)-(10)].

For example, the new regulations provide that one reason for reducing or discontinuing personal care services is "the client's medical, mental, economic or social circumstances have changed and the district determines that the personal care services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours than they were previously" [18 NYCRR 505.14 (b)(5)(v)(c)(1)]. Consistent with the Court ruling in Mayer, the State requires that client notices citing this reason for reducing or discontinuing services must identify the specific medical, mental, social or economic change in the client's circumstances that justifies the proposed reduction or discontinuation in services. The client notice must explain why the change in the client's circumstances results in the need for fewer hours of services.

Districts are reminded that State policy, as reflected in the new regulations, requires that when districts determine to reduce, discontinue or deny personal care services, the client notice must identify the specific reason (whether a prior mistake in the authorization, the client's refusal to cooperate with the required assessment or other specific reason set forth in the regulations) that justifies the action. The client notice must also explain why the cited circumstance or event necessitates the reduction, discontinuance or denial of services.

In addition to clarifying requirements for client notices under Mayer, the Department's new regulations also reflect a Court ruling in Mayer regarding the use of task based assessments [18 NYCRR 505.14(b)(5)(v)(d)]. Specifically, social services districts are prohibited from using task-based assessments when authorizing or reauthorizing personal care services for any recipient whom the district has determined needs 24 hour care, including continuous 24 hour services (split-shift), 24 hour live-in services or the equivalent provided by a combination of formal and informal supports or caregivers. In addition, the district's determination whether the recipient needs such 24 hour personal care must be made without regard to the availability of formal or informal supports or caregivers to assist in the provision of such care. For a further explanation of this requirement, districts should consult GIS message 97 MA/033, issued on November 26, 1997.

Questions regarding this GIS message or personal care services in general may be addressed to the identified contact persons at (518) 474-5271.

Pursuant to the authority vested in the New York State Department of Health by sections 363-a(2) and 365-a(2)(e) of the Social Services Law, Section 505.14 of Part 505 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of New York State is hereby amended, as hereinafter indicated, to be effective upon publication of a Notice of Adoption in the New York State Register as follows:

Clauses (a) and (b) of subparagraph (v) of paragraph (5) of subdivision (b) of section 505.14 are amended, to read as follows:

(a) The social services district must deny or discontinue personal care services when such services are not medically necessary or are no longer medically necessary or when the social services district reasonably expects that such services cannot maintain or continue to maintain the [patient~~s~~] client~~s~~ health and safety in his or her home.

(b) The social services district must notify the [patient] client in writing of its decision to authorize, reauthorize, increase, decrease, discontinue or deny personal care services on forms required by the department. The [patient] client is entitled to a fair hearing and to have such services continued unchanged until the fair hearing decision is issued (aid-continuing) in accordance with the requirements outlined in Part 358 of this Title.

New clauses (c) and (d) of subparagraph (v) of paragraph (5) of subdivision (b) of section 505.14 are added, to read as follows:

(c) The social services district's determination to reduce, discontinue or deny a client's prior authorization must be stated in the client notice. Appropriate reasons and notice language to be used when reducing, discontinuing or denying personal care services include, but are not limited to:

(1) the client's medical, mental, economic or social circumstances have changed and the district determines that the personal care services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours than they were previously;

(2) a mistake occurred in the previous personal care services authorization;

(3) the client refused to cooperate with the required assessment of services;

(4) a technological development renders certain services unnecessary or less time consuming;

(5) the client can be more appropriately and cost-effectively served through other Medicaid programs and services;

(6) the client's health and safety cannot be assured with the provision of personal care services;

(7) the client's medical condition is not stable;

(8) the client is not self-directing and has no one to assume those responsibilities;

(9) the services the client needs exceed the personal care aide's scope of practice; and

(10) the client resides in a facility or participates in another program or receives other services which are responsible for the provision of needed personal care services.

(d) The social services district may not authorize or reauthorize personal care services based upon a task-based assessment when the applicant or recipient of personal care services has been determined by the social services district or the State to be in need of 24 hour personal care, including continuous (split-shift or multi-shift) care, 24 hour sleep-in care or the equivalent provided by formal or informal caregivers. The determination of the need for such 24 hour personal care, including continuous (split-shift or multi-shift) care, shall be made without regard to the availability of formal or informal caregivers to assist in the provision of such care.