



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

April 8, 2011

*DAL: HCBS 11-02*  
*Subject: Home Care Admissions*

Dear Administrator:

The purpose of this letter is to advise home care agencies of the actions required when an agency decides to stop accepting patient referrals/admissions, and to provide a reminder of the regulatory requirements governing the discharge of patients and agency closure.

### **Background:**

Public Health Law Section 3600 expresses the intent to ensure the availability of high quality home care services throughout the state as an integral part of the health care system. Title 10 of the New York Codes, Rules and Regulations, Parts 763 and 766, set forth requirements for patient referral, admission and discharge. 10 NYCRR §§ 761.4 and 765-2.3 set forth standards for notice to and approval of the Department for agency closure.

### **Requirements for Agency's Plan to Stop Accepting Referrals/Admissions:**

Regulations governing home care agencies require patient assessment and agency determination that the patient's medical, nursing, and social needs can be met by the agency prior to admission. Regulations for Certified Home Health Agencies and Long Term Home Health Care Programs (CHHA/LTHHCP) prohibit discrimination against patients because of disability, service need intensity, or source of payment. Although federal and state regulations require the acceptance of appropriate referrals and admission of patients without discrimination, these regulations do not require agencies to admit or accept any and all patients under every circumstance. Decisions regarding patient admission must be made on a case by case basis consistent with the requirements set forth in regulation, judgment of the agency's professional staff in collaboration with the physician, discharge planner, the local social service district, and other case managers, if applicable.

Agencies are required to notify the Department of Health Regional Office in the event the agency intends to stop accepting patient referrals and/or admissions. Please also send an e-mail to the following address prior to taking such an action: [homecare@health.state.ny.us](mailto:homecare@health.state.ny.us). This notification must occur as soon as possible and prior to the effective date.

**Requirements for Agency Discharges:**

Federal and state regulations set forth requirements for discharge of patients including a safe and adequate discharge plan. Licensed home care services agencies (LHCSAs) must provide a minimum of 48 hours notice to patient, family and physician. Regulation prohibits CHHA/LTHHCP services to be diminished or discontinued because of a change in the patient's source of payment or the patient's inability to pay for care. A patient may be discharged by a CHHA only after consultation with the patient's doctor (the authorized practitioner who has ordered care and services for the patient), the patient, and any family members or other support involved in the plan of care. The permissible grounds for discharge are set forth in 10 NYCRR 763.5(h)(1)-(5).

If the CHHA seeks to terminate a Medicaid recipient's services, the patient has a right to due process protections in certain circumstances. In particular, if the CHHA seeks to discharge a recipient against doctor's orders because of a determination the patient has met therapeutic goals, noncompliance, or because health and safety can no longer be maintained in the home, the patient is entitled to advance notice from the social services district and has the right to request aid continuing and a fair hearing.

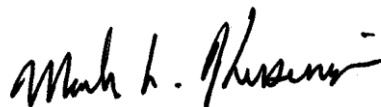
All agencies must collaborate with the patient/family and physician to ensure a timely, safe and appropriate discharge plan prior to discharge from the agency. Agencies will be surveyed and enforced on any violations of regulation or policy.

**Requirements for Agency Closures:**

10 NYCRR §§ 761.4 and 765-2.3 (a) and (b) set forth standards for notice and approval to discontinue agency operations. CHHA/LTHHCPs are required to provide at least 90 days written notice to the Department while LHCSAs must provide a minimum of 30 days. All agencies must receive Department approval of a closure plan ensuring safe transition of patients. Agency Closure Plan Guidelines are attached.

For questions or additional information on this directive, contact Mary Ann Anglin of the New York State Department of Health, Division of Home and Community Based Services at (518) 408-1600.

Sincerely,



Mark Kissinger  
Deputy Commissioner  
Office of Long Term Care

Attachment

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**Division of Home and Community Based Services**

**HOME CARE AGENCY/HOSPICE CLOSURE PLAN GUIDELINES for PROVIDERS**

**GENERAL INFORMATION:**

This information has been prepared for all providers who are seeking approval to close an agency or discontinue services or programs that provide medical care and/or services to individuals in a community-based setting.

Verbal notification must be provided to the Department of Health's (DOH) Regional Office Program Director as soon as any provider contemplates closure/service discontinuance (closure). Written notification of the possibility of closure must be provided to the regional office no later than 48 hours following the verbal notification.

Information on a potential closure may **not** be disclosed to the public, patients/residents or staff prior to notifying the DOH, submitting a closure plan to the DOH, and approval of such plan by the DOH.

**The New York State Department of Health must approve all closure plans in writing prior to issuing any public announcements related to a closure.**

Pursuant to 10 NYCRR the following requirements regarding closures must be met:

- 90 days prior notice of the intent to close must be provided to the DOH by certified home health agencies, long term home health care programs and hospices;
- 30 days prior notice of the intent to close must be provided to the DOH by licensed home care services agencies;
- prior written approval of the closure and the operator's plan must be obtained from the Department prior to any public announcements or notification of patients and contractors;
- for the closure of a licensed home care services agency (LHCSA), the patient, patient's family and physician must be notified at least **30 days** prior to the closure date;
- for the closure of a certified home health agency (CHHA), long term home health care program (LTHHCP) or hospice, each patient, the patient's caregiver, case manager, family or guardian as appropriate, and each patient's physician must be notified immediately upon receipt of the Department's approval;
- for the closure of a long term home health care program (LTHHCP); the appropriate local social services district or the New York City Human Resources Administration must be notified immediately upon receipt of the Department's approval;

- notification of the local social services district or the New York City Human Resources Administration and/or any entities that the closing agency contracts with as a vendor and/or provider of services as well as any vendors the entity may have;
- the operator's closure plan must include, among other things, provision for the maintenance, storage and safekeeping of patient care or clinical records as well as the Home Care Worker Registry and the Criminal History Record Check Registry;
- the provider's operating certificate/license must be promptly surrendered to DOH upon discontinuance of operation.

Providers may utilize their own format for the written closure plan, but the information submitted to the DOH must clearly and succinctly address the 15 items listed on the document "Home Care Agency/Hospice Closure Plan Guidelines" found on the following pages. The plan should address these items in the order in which they are listed. Please note that a full range of appropriate services for all patients must be provided throughout the entire closure process.

Questions about this procedure may be addressed to your Regional Office Home Care Program Director.

**AGENCIES MUST HAVE WRITTEN DEPARTMENT OF HEALTH APPROVAL  
PRIOR TO IMPLEMENTATION OF A CLOSURE PLAN.**

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**Division of Home and Community Based Services**

**HOME CARE AGENCY/HOSPICE CLOSURE PLAN GUIDELINES for PROVIDERS**

**The following information must be included (in order) in the agency closure plan submitted for approval by the NYS Department of Health (DOH):**

**\* Please include the date, name, address and telephone number of the agency/operator on all pages of the closure plan.**

1. Evidence of verbal and written notification to the Regional Office Program Director at the time closure was contemplated.
2. Target closure date, capacity and current census with date.
3. Name, title, telephone # and email address of the individual designated as the provider's contact person throughout the closure process. Please note: this individual may be contacted by the Department immediately upon receipt of the plan.
4. Name, title, telephone # and email address of the individual responsible for coordinating closure, if different from the individual identified in #3. If more than one individual has been assigned to separate closure duties (e.g., discharge coordination, directing clinical care, media contacts, medical record disposition etc.) all names and contact information must be included.
5. A narrative description of the proposed plan to notify patients, next of kin, sponsors, staff and physicians, local department of social services/Human Resources Administration (if appropriate) of the closure plan and drafts of the written documentation of these notifications. Please attach sample form letters.
6. If appropriate, a description of the plan to manage media contacts initially and throughout the process. Media releases should be coordinated with the DOH prior to release.
7. The plan to discontinue admissions including the date to stop admissions.
8. The process to identify appropriate placement for current patients. The process should include making determinations regarding alternate placement at other area providers, and providing sufficient information to allow for patient choice.
9. The plan to ensure that records including current assessments, care plans, medication and treatment records, histories, discharge summaries, identifying information etc. are transferred in a secure manner for patients who are being transferred to another agency. This must include, for CHHAs and LTHHCs, a process to ensure the coordination of the closing agency's discharge assessment including OASIS items with the accepting agency's admission assessment.

10. The plan to ensure that appropriate documentation is available to staff related to payroll information, health insurance, personal care aide/home health aide certification.
11. The plan should include very specific reference to how the agency will establish and maintain ongoing communication with DOH throughout each milestone of the closure process.
12. The plans to ensure adequate staffing throughout the closure process and to ensure staff have information regarding other employment opportunities.
13. At the conclusion of the closure process, a final roster of patients with their discharge locations must be submitted to the regional office.
14. Annual statistical reports must be submitted for the current and previous calendar years. It is the provider's responsibility to maintain HPN/Health Commerce account to permit submission.
15. The plan for appropriate notifications for the Criminal History Record Check Registry and the Home Care Worker Registry. Provider must indicate on the closure plan if they have a Home Health Aide Training Program.