STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Dennis P. Whalen
Executive Deputy Commissioner

OFFICE OF MEDICAID MANAGEMENT
ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 98 OMM/ADM-2

TO: Commissioners of Social Services

DIVISION: Office of Medicaid Management

DATE: April 1, 1998

SUBJECT: Fiscal Assessment for Private Duty Nursing Services

SUGGESTED DISTRIBUTION:

Medicaid Staff
Long Term Care Staff
Adult Protective Staff
Accounting Staff
Fair Hearing Staff
Legal Staff
Staff Development Coordinators

CONTACT PERSON:

Vincent Martiniano, (518)474-8161
Bureau of Medical Review & Evaluation

ATTACHMENTS:

	Available On-Line
Attachment I-	90 Percent of RHCF Costs by District, CY 1991
Attachment II-	Notice of Decision to Deny Private Duty Nursing Services
Attachment III-	Notice of Decision to Discontinue Private Duty Nursing Services
Attachment IV-	Fiscal Assessment Worksheet
Attachment V-	Notice of Request/Authorization Form
Attachment VI (A)-	Average Monthly General Hospital Costs by Region & District
Attachment VI (B)-	Average Monthly ICF/DD Rates in Region by District
Attachment VI (C1)-	Counties and Regions to be Used for RUGS
Attachment VI (C2)-	Average Monthly Cost for RUGS Category by Region
Attachment VI (D)-	Average Home Health Services Rates
Attachment VI (E)-	Average Hourly Personal Care Rates
Attachment VI (F)-	Average Hourly Private Duty Nursing Fees
Attachment VII-	Agreement for Hospice Referral
Attachment VIII-	Physician's Certification Form

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Legal Ref.	Manual Ref.	Misc. Ref.
92-ADM-49	None	18 NYCRR 505.8	SSL 357-1		
92-ADM-50		10 NYCRR 85.33			

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I. PURPOSE

The purpose of this administrative directive is to inform social services districts of the policies and procedures to be followed when performing fiscal assessment for private duty nursing services applicants and recipients. These policies and procedures relate to the prior approval and prior authorization functions authorized by Section 367-l of Social Services Law and Nursing Service regulations contained at 10 NYCRR 85.33 and 18 NYCRR 505.8.

II. BACKGROUND

On December 1, 1992, administrative directives were issued on the subjects of Fiscal Assessment and Management of Personal Care Services (92 ADM-49) and Fiscal Assessment and Management of Home Health Services (92 ADM-50.) This administrative directive provides the guidelines and criteria for the conduct of fiscal assessment on private duty nursing services. Policies and procedures for cases which receive a combination of private duty nursing services in combination with personal care services are contained in 92 ADM-49.

III. PROGRAM IMPLICATIONS

The fiscal assessment process will determine if the costs associated with private duty nursing services are within acceptable parameters. For social services districts who have been performing the fiscal assessment function for personal care services, the impact of implementing these requirements should be minimal. The Department of Health (the Department) is responsible for conducting prior approval of private duty nursing services. However, counties may apply for a Commissioner's designation to conduct nursing services prior approval. Fiscal assessment information provided by the social services districts will be an integral requirement for the completion of the prior approval process. Districts will provide fiscal assessment input to Department staff conducting private duty nursing prior approval or utilize the information directly under a Commissioner's designation. District staff may perform the fiscal assessment or delegate the process to another entity, such as the certified home health agency doing the nursing assessment.

IV. REQUIRED ACTION

A. When The District Must Conduct Fiscal Assessments

This section discusses when social services districts (or their delegated entity) must conduct initial or subsequent fiscal assessments for private duty nursing services applicants or recipients. The social services district that is fiscally responsible for the recipient must conduct, or arrange for, the fiscal assessment in cases where the recipient lives in one district but is the fiscal responsibility of another district.

1. Initial fiscal assessments:

The social services district must conduct initial fiscal assessments of private duty nursing services applicants at the request of the Department or in accordance with a Commissioner's designation as follows:

(a) Applicants who are expected to require more than 60 continuous days of private duty nursing services:

The social services district must conduct an initial fiscal assessment of each applicant who is not currently receiving private duty nursing services but who is expected to need private duty nursing services for more than 60 days during the initial authorization period, regardless of the number of hours per day or per week that the applicant would need services during the initial authorization period.

(b) Applicants who are expected to require 60 or fewer continuous days of private duty nursing services:

The social services district is not required to conduct a fiscal assessment of a private duty nursing services applicant who is expected to require private duty nursing services for 60 or fewer continuous days. When it is determined by the Department or Commissioner's designee that, based on the physician's order, the social assessment, the nursing assessment, and review of any necessary backup plan, private duty nursing services are medically necessary and the services can maintain the applicant's health and safety in the home, services must be authorized without conducting a fiscal assessment. A fiscal assessment will be required only if it is later determined that the recipient will actually require private duty nursing services for more than 60 continuous days, as explained in (c) below.

(c) Recipients who are expected to require more than 60 continuous days of private duty nursing services:

The social services district must conduct an initial fiscal assessment for each recipient who is receiving private duty nursing services in accordance with an initial authorization of services and who, when services were initially authorized, was not reasonably expected to need services for more than 60 continuous days, but, prior to the 60th continuous day of the initial authorization period, reasonably expects will, in fact, need private duty nursing services for more than 60 continuous days.

An unexpected change in the recipient's social circumstances, mental status or medical condition during the authorization period could be one reason why a recipient will need services for more than 60 continuous days even though, when services were first authorized, it was not reasonably expected that the recipient would need services for more than 60 continuous days. Such a change in the recipient's social circumstances, mental status or medical condition can affect the type, amount, frequency, or average monthly costs of the private duty nursing services, personal care services or home health services that the recipient will need. If it is reasonably expected that the average monthly costs of the services the recipient will need for 12 months will exceed 90 percent of the average monthly costs of Residential Health Care Facility (RHCF) services in the district, an initial fiscal assessment of the recipient must be conducted.

2. Subsequent fiscal assessments:

The social services district must conduct subsequent fiscal assessments of private duty nursing services recipients for whom the district has already conducted initial fiscal assessments at the request of the Department or in accordance with Commissioner's designation, as follows:

(a) Upon reauthorization:

When a social services district has conducted an initial fiscal assessment and private duty nursing services have been authorized, the district must conduct a subsequent fiscal assessment of the recipient before services are reauthorized UNLESS:

it is determined that there has been no change in the recipient's care plan and the cost of services included in that care plan from the previous authorization period; or

it is determined from the social assessment or the nursing assessment that a recipient who was authorized to receive private duty nursing services because he or she met an exception criterion continues to meet that exception criterion or meets another exception criterion (see IV. F.)

(b) Unexpected changes:

The social services district must also conduct a subsequent fiscal assessment when the recipient's social circumstances, mental status or medical condition changes during the authorization period and such change would affect the type, amount, frequency, or average monthly costs of private duty nursing services or private duty nursing services in conjunction with personal care services or home health services, other than medical supplies, equipment and appliances. If it is reasonably expected that the recipient will continue to require private duty nursing services for more than 60 continuous days and that the average monthly costs of the services the recipient will require for 12 months will exceed 90 percent of the average monthly costs of RHCF services in the district, the district must conduct a subsequent fiscal assessment.

B. Cases for Which the District is Not Required to Conduct a Fiscal Assessment

Cases which have already been determined by the Department or Commissioner's designee to be inappropriate for private duty nursing services are not subject to fiscal assessment.

Districts are not required to conduct fiscal assessments on cases receiving only home health services. Certified home health agencies (CHHAs) will be responsible for conducting the fiscal assessment and management activities for cases receiving only home health services. Administrative Directive 92ADM-50, Fiscal Assessment and Management of Home Health Services, identifies the responsibilities of both the certified home health agency and the district as they relate to home health services.

However, social services districts are responsible for the fiscal assessment and coordination of management activities of all cases which receive a combination of personal care services and/or home health services with private duty nursing services. The policies and procedures contained in 92 ADM-49 Fiscal Assessment and Management of Personal Care Services, should be followed for completing fiscal assessments for private duty nursing services cases involving the provision of personal care services. The Department or Commissioner's Designee should be notified if personal care services are discontinued on a combination case with private duty nursing services.

C. Fiscal Assessments

The fiscal assessment is a comparison of the estimated average monthly costs of the home care services a recipient is reasonably expected to require over 12 months to 90 percent of the average monthly costs of RHCF services in the district. The 90 percent target figures have been calculated for each social services district and are listed in Attachment 1.

Fiscal assessment, in effect, means costing out all those services included in the recipient's care plan that can be identified as home care services, i.e., personal care, home health services, nursing assessment and supervision visits, private duty nursing services, or therapies. It does not include: durable medical equipment, drugs, physician visits, Personal Emergency Response Services (PERS), or medical transportation. In cases where a portion of the services can be billed to Medicare or other third-party payors, it is important to note that **only those costs which will be billed to the Medicaid program must be included in the fiscal assessment calculation.**

To determine the estimated average monthly costs of the private duty nursing services needed singly, or in conjunction with home health services, that the district expects a recipient will require over a 12 month period, the district must:

1. Estimate the number of hours or visits of private duty nursing services (PDN) and any needed home health service (HHS), other than medical devices, equipment and supplies, that the recipient is expected to receive for 12 months prospectively from the date services would be authorized or reauthorized;

2. Delete from consideration any of those services that during the course of that 12 month period would be paid for by a third-party payor or by Medicare;

3. Multiply the total number of hours or visits of expected PDN and HHS services that would be reimbursed only by the Medicaid program during that 12 month period, by each services' respective average Medicaid rate, as provided by the Department in Attachment 6, Schedules D, E, and F of this directive;

4. Add together the products obtained as a result of step 3 and divide the sum of the combined products by 12.

5. If applicable, subtract from this total the amount of the recipients' monthly excess income and excess resources;

6. The amount derived after completing step 5 represents the average monthly total cost of all Medicaid reimbursed home care services that is to be compared to 90

percent of the district's average monthly RHCF cost.

Attachment 4 of this directive is the **Fiscal Assessment Worksheet** which was developed to simplify the fiscal assessment process and which must be completed for each recipient with service needs likely to exceed 60 continuous days. District specific rate information used in calculating the fiscal assessments will be periodically updated and transmitted by the Department to the districts.

Attachment 5 of this directive is the **Notice of Request / Authorization Form** which will be sent with the Fiscal Assessment Worksheet to the Department staff or county designee responsible for conducting prior approval of the private duty nursing services.

D. Time-Frame for Fiscal Assessments

When requested, the fiscal assessment must be completed prior to the authorization or reauthorization of services. The district of fiscal responsibility must complete the fiscal assessment within 14 calendar days after the district receives a request for authorization or reauthorization of private duty nursing services from the Department or from the date of receipt of a prior approval request in a designated county.

Implementation of the fiscal assessment process will be phased-in. On the effective date of this directive all new cases will be required to comply with the provisions of this directive. Existing cases will be subject to the fiscal assessment process at the time of reassessment or when a change in the recipient's condition necessitates a change in service delivery.

E. Action Required As A Result of the Fiscal Assessment

1. Cost is Equal to OR Less Than 90 % of RHCF Placement Costs

If the estimated average monthly costs of private duty nursing services that the district reasonably expects a recipient to require for 12 months, combined with the average monthly costs of any home health services and personal care services that the district reasonably expects a recipient will require for 12 months, is equal to or less than 90 percent of the average monthly RHCF placement cost in the district, as defined by the Department, the district must:

Authorize or reauthorize private duty nursing services for the recipient, provided the services are medically necessary, and it is reasonably expected that private duty nursing services can maintain the recipient's health and safety in the home as determined by the Department or designated county.

2. Costs Exceed 90% of RHCF Placement Costs

If the district estimates that the average monthly costs of the private duty nursing

services that the district reasonably expects a recipient will require for 12 months

combined with the average monthly costs of any home health care services that the district reasonably expects a recipient will require for 12 months, will exceed 90 percent of the average monthly costs for 12 months, as determined by the Department, of RHCF services in the social services district, the district must determine in conjunction with the Department or designated county:

- Whether the recipient meets at least one exception criteria and must be authorized or reauthorized for private duty nursing services, provided that private duty nursing services are, or continue to be medically necessary and the district reasonably expects that private duty nursing service can maintain, or continue to maintain, the recipient's health and safety in his or her home; or

- Whether the recipient does not meet at least one exception criteria and must be referred to other appropriate long-term care services.

F. Exception Criteria

When the results of the fiscal assessment indicate that the average monthly costs of the private duty nursing services that the district reasonably expects a recipient will require for 12 months, combined with the average monthly costs of any home health services that the district reasonably expects a recipient will require for 12 months, will exceed 90 percent of the average monthly costs for 12 months, as determined by the Department, of RHCF services in the social services district, the district, in conjunction with the Department or Commissioner's designee, must review the recipient against five exception criteria to determine whether he/she is entitled to receive private duty nursing services. The exception criteria are as follows:

1. the recipient is not medically eligible for RHCF services or other long-term care services;

2. the private duty nursing services are most cost effective when compared to the cost of other long-term care services appropriate to the recipient's individual needs. In determining the cost-effectiveness of private duty nursing services or private duty nursing services provided in conjunction with home health services, recipients that would otherwise be placed in a general hospital shall have the cost of their private duty nursing services or private duty nursing services provided in conjunction with home health services compared to the cost of care in a general hospital for patients requiring extended medical intervention calculated based on the sum of the payments for diagnosis-related groups for such patients in all hospitals in the region as determined by the Department, divided by the sum of the group mean lengths of stay for such diagnosis-related groups for all such hospitals, multiplied by 365 and further divided by 12. In determining the cost-effectiveness of private duty nursing services or private duty nursing services provided in conjunction with home health services, recipients that would

otherwise be placed in an intermediate care facility for the developmentally disabled shall have the cost of their private duty nursing services or private duty nursing services provided in conjunction with home health services compared to the regional rate of payment for care in an intermediate care facility for the developmentally disabled as determined by the Department in consultation with Office of Mental Retardation/Developmental Disabilities (OMRDD.) The figures to be used in this comparison are listed in Attachment 6 , Schedule B of this directive;

3. that the private duty nursing services recipient is employed; enrolled in an educational program approved by the committee on preschool special education, or the state board of regents; the parent of a dependent child; or permanently disabled and, in the absence of private duty nursing services, would remain hospitalized or require hospitalization on a long-term basis;

4. the private duty nursing services are appropriate for the recipient's functional needs and that institutionalization is contraindicated, based on a review of the recipient's medical case history, including a certified statement from the recipient's physician on a form required by the Department describing the potential impact of institutionalization which has been reviewed by a RHCF to determine if institutionalization would result in a diminishing of the recipient's ability to perform the activities of daily living;

5. in the event the recipient lives with someone who would require services in the recipient's absence, the district must determine that the cost for services for both persons, if either or both are institutionalized, would equal or exceed cost for continued private duty nursing services for the recipient and for services to such other person.

G. Results of the Exception Criteria Review

1. Recipient Meets at Least One of the Exception Criteria

   When the district, in conjunction with the Department or as Commissioner's designee, determines that the recipient meets at least one exception criterion, the district must continue to authorize private duty nursing services to the recipient, provided that the private duty nursing services are medically necessary.

2. Recipient Does Not Meet at Least One of the Exception Criteria

   When the district determines that the recipient does not meet at least one exception criterion, the provision of private duty nursing services to the recipient shall be authorized until other appropriate long-term services for which he or she is medically eligible are available. Refer to 92 ADM-49, Fiscal Assessment and Management of

Personal Care Services (IV.L. Page 20) in regards to procedures for "Referral to Other Appropriate Long-Term Care Services."

H. Fair Hearing Rights

1. Denials

The social services district must notify a private duty nursing services applicant and the Department or Commissioner's designee of the district's determination to deny private duty nursing services when the district reasonably expects that the average monthly costs of the private duty nursing services, in addition to any home health services, that the applicant will require for 12 months would exceed 90 percent of the average monthly costs for 12 months of RHCF care and the applicant does not meet any exception criteria. The applicant is entitled to a fair hearing. The district must notify the applicant of its determination to deny services and of the applicant's right to a fair hearing by using the notice attached to this directive as Attachment 2. The district must photocopy this notice and issue it as a two-sided rather than a two-paged notice. The Exception Criteria For Denial of Private Duty Nursing Services should then be appended to the denial notice. A copy of this notice must be provided to the Department or Commissioner's designee.

2. Discontinuances

The social services district must notify a private duty nursing services recipient and the Department or Commissioner's designee of the district's determination to discontinue private duty nursing services when the district reasonably expects that the average monthly costs of the private duty nursing services, in addition to any home health services, that the recipient will require for 12 months would exceed 90 percent of the average monthly costs of RHCF care and the recipient does not meet any exception criteria. At the time the district determines that the recipient does not meet at least one exception criterion and must be referred to other appropriate long-term care services, the district, using the notice attached to this directive as Attachment 3, must notify the recipient of the following:

a) that the district is referring the recipient to other appropriate long-term care services;

b) that the district intends to discontinue the recipient's private duty nursing services authorization when such services become available to the recipient;

c) that the recipient has the right to request a fair hearing to appeal the district's determination that the recipient does not meet any exception criteria and to appeal the appropriateness of the other long-term services; and

d) of the recipient's right to have private duty nursing services continue unchanged until the fair hearing decision is issued (aid continuing), in accordance with Part 358 of the Department's regulations or an alternative placement becomes available.

The district must photocopy the discontinuance notice and issue it as a two-sided rather than a two-paged notice. The Exception Criteria for Discontinuance of Private Duty Nursing Services should then be appended to the discontinuance notice. A copy of this notice must be provided to the Department or Commissioner's designee.

3. Other

If the changing needs of a recipient receiving private duty nursing services require an increase in the amount of private duty nursing services but the subsequent fiscal assessment results in a denial of the request the recipient must be notified as specified in H.1. Denials, above.

If the recipient is being denied or discontinued from private duty nursing services for any reason other than fiscal assessment, the entity making that determination (Department or Commissioner's designee) will be responsible for issuing the notice of intent to discontinue or deny.

I. Record Keeping Requirements

Documentation must be maintained to assure that fiscal assessment procedures contained in Section 367-*l* of the Social Services Law are followed. The record should include the following documentation:

1. Notice of Request/Authorization form(s);
2. Fiscal Assessment worksheet;
3. Notification of Denial or Discontinuance (if applicable;)
4. Fair Hearing notices, decisions, compliance reports (if applicable.)

V. Systems Implications

None.

VI. Effective Date

The effective date for implementation of the requirements identified in this directive is .

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Ann Clemency Kohler
Deputy Commissioner

Office of Medicaid Management