

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.