

/\* Part 2 of New York follows: \*/

2785. Court authorization for disclosure of confidential HIV related information

1. Notwithstanding any other provision of law, no court shall issue an order for the disclosure of confidential HIV related information, except a court of record of competent jurisdiction in accordance with the provisions of this section.

2. A court may grant an order for disclosure of confidential HIV related information upon an application showing: (a) a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding; (b) a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the individual to whom the information pertains; (c) upon application of a state, county or local health officer, a clear and imminent danger to the public health; or (d) that the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.

3. Upon receiving an application for an order authorizing disclosure pursuant to this section, the court shall enter an order directing that all pleadings, papers, affidavits, judgments, orders of the court, briefs and memoranda of law which are part of the application or the decision thereon, be sealed and not made available to any person, except to the extent necessary to conduct any proceedings in connection with the determination of whether to grant or deny the application, including any appeal. Such an order shall further direct that all subsequent proceedings in connection with the application shall be conducted in camera, and, where appropriate to prevent the unauthorized disclosure of confidential HIV related information, that any pleadings, papers, affidavits, judgments, orders of the court, briefs and memoranda of law which are part of the application or the decision thereon not state the name of the individual concerning whom confidential HIV related information is sought.

4. (a) The individual concerning whom confidential HIV related information is sought and any person holding records concerning confidential HIV related information from whom disclosure is sought shall be given adequate notice of such application in a manner which will not disclose to any other person the identity of the individual, and shall be afforded an opportunity to file a written response to the application, or to appear in person for the limited purpose of providing evidence on the statutory criteria for the issuance of an order pursuant to this section.

(b) The court may grant an order' without such notice and opportunity to be heard, where an ex parte application by a public health officer shows that

a clear and imminent danger to an individual whose life or health may unknowingly be at risk requires an immediate order.

(c) Service of a subpoena shall not be subject to this subdivision.

5. In assessing compelling need and clear and imminent danger, the court shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weigh the need for disclosure against the privacy interest of the protected individual and the public interest which may be disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

6. An order authorizing disclosure of confidential HIV related information shall:

(a) limit disclosure to that information which is necessary to fulfill the purpose for which the order is granted; and

(b) limit disclosure to those persons whose need for the information is the basis for the order, and specifically prohibit redisclosure by such persons to any other persons, whether or not they are parties to the action; and

(c) to the extent possible consistent with this section, conform to the provisions of this article; and

(d) include such other measures as the court deems necessary to limit any disclosures not authorized by its order.

#### 2786. Rules and regulations; forms; report

1. The commissioner shall promulgate rules and regulations concerning implementation of this article for health facilities, health care providers and other persons to whom this article is applicable. The commissioner shall also develop forms to be used for informed consent for HIV related testing and for the release of confidential HIV related information and materials for pre-test counseling as required by subdivision three of section twenty-seven hundred eighty-one of this article, and for post-test counseling as required by subdivision five of section twenty-seven hundred eighty-one of this article. Persons, health facilities and health care providers may use forms for informed consent for HIV related testing, and for the release of confidential HIV related information other than those forms developed pursuant to this section, provided that the person, health facility or health care provider doing so receives prior authorization from the commissioner. All forms developed or authorized pursuant to this section shall be written in a clear and coherent manner using words with common, everyday meanings. The commissioner, in consultation with the AIDS institute advisory council, shall

promulgate regulations to identify those circumstances which create a significant risk of contracting or transmitting HIV infection; provided, however, that such regulations shall not be determinative of any significant risk determined pursuant to paragraph (a) of subdivision four of section twenty-seven hundred eighty-two or section twenty-seven hundred eighty-five of this article.

2. (a) Each state agency authorized pursuant to this article to obtain confidential HIV related information shall, in consultation with the department of health, promulgate regulations: (1) to provide safeguards to prevent discrimination, abuse or other adverse actions directed toward protected individuals; (2) to prohibit the disclosure of such information except in accordance with this article; (3) to seek to protect individuals -in contact with the protected individual when such contact creates a significant risk of contracting or transmitting HIV infection through the exchange of body fluids, and (4) to establish criteria for determining when it is reasonably necessary for a provider of a health or social service or the state agency or a local government agency to have or to use confidential HIV related information for supervision, monitoring, investigation, or administration and for determining which employees and agents may, in the ordinary course of business of the agency or provider, be authorized to access confidential HIV related information pursuant to the provisions of paragraphs (1) and (m) of subdivision one and subdivision six of section twenty-seven hundred eighty-two of this article; and provided further that such regulations shall be promulgated by the chairperson of the commission of correction where disclosure is made pursuant to paragraphs (n) and (o) of subdivision one of section twenty-seven hundred eighty-two of this article.

(b) The department of health, in consultation with agencies referred to in paragraph (a) of this subdivision, shall submit a report to the legislature by December first, nineteen hundred eighty-nine, outlining the status and content of such regulations, their effect on the regulated facilities and the protected individuals served by them, the extent to which they conform with current medical and scientific knowledge on the transmissibility of HIV infection, and any recommendations for changes in said regulations.

#### 2787. Separability

If any section, clause or provision of this article shall be deemed by any court of competent jurisdiction to be unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

#### ARTICLE 36-HOME CARE SERVICES

### 3600. Declaration of legislative findings and intent

The legislature hereby finds and declares that the provision of high quality home care services to residents of New York state is a priority concern. Expanding these services to make them available throughout the state as a viable part of the health care system and as an alternative to institutional care should be a primary focus of the state's actions.

Home health care has only recently been recognized legislatively as an integral part of the health care delivery system and has proven to have an important and valuable role in patient care. The certified home health agencies render a coordinated array of services to patients in their homes, thereby avoiding prolonged institutionalization, concomitant high costs and associated adverse social and medical implications.

The legislature intends that there be a public commitment to the appropriate provision and expansion of services rendered to the residents of the state by certified home health agencies, to the maintenance of a consistently high level of services by all home care services agencies, to the central collection and public accessibility of information concerning all organized home care services, and to the adequate regulation and coordination of existing home care services.

### 3602. Definitions

As used in this article, the following words and phrases shall have the following meanings unless the context otherwise requires:

1. "Home care services" means one or more of the following services provided to persons at home: (a) those services provided by a home care services agency; (b) home health aide services; (c) personal care services; (d) homemaker services; (e) housekeeper or chore services.
2. "Home care services agency" means an organization primarily engaged in arranging and/or providing directly or through contract arrangement one or more of the following: Nursing services, home health aide services, and other therapeutic and related services which may include, but shall not be limited to, physical, speech and occupational therapy, nutritional services, medical social services, personal care services, homemaker services, and housekeeper or chore services, which may be of a preventive, therapeutic, rehabilitative, health guidance, and/or supportive nature to persons at home.
3. "Certified home health agency" means a home care services agency which possesses a valid certificate of approval issued pursuant to the provisions of this article, or a residential health care facility or hospital possessing a valid operating certificate issued under article twenty-eight of

this chapter which is authorized under section thirty-six hundred ten of this article to provide a long term home health care program. Such an agency, facility, or hospital must be qualified to participate as a home health agency under the provisions of titles XVIII and XIX of the federal Social Security Act and shall provide, directly or through contract arrangement, a minimum of the following services which are of a preventive, therapeutic, rehabilitative, health guidance and/or supportive nature to persons at home: nursing services; home health aide services; medical supplies, equipment and appliances suitable for use in the home; and at least one additional service which may include, but not limited to, the provisions of physical therapy, occupational therapy, speech pathology, nutritional services and medical social services.

4. "Home health aide services" means simple health care tasks, personal hygiene services, housekeeping tasks essential to the patient's health and other related supportive services. Such services shall be prescribed by a physician in accordance with a plan of treatment for the patient and shall be under the supervision of a registered professional nurse from a certified home health agency or, when appropriate, from a provider of a long term home health care program and of the appropriate professional therapist from such agency or provider when the aide carries out simple procedures as an extension of physical, speech or occupational therapy.

5. "Personal care services" means services to assist with personal hygiene, dressing, feeding and household tasks essential to the patient's health. Such services shall be prescribed by a physician in accordance with a plan of home care supervised by a registered professional nurse.

6. "Homemaker services" means assistance and instruction in managing and maintaining a household, dressing, feeding, and incidental household tasks for persons at home because of illness, incapacity, or the absence of a caretaker relative. Such services shall be provided by persons who meet the standards established by the department of social services.

7. "Housekeeper services" or "chore services" means the provision of light work or household tasks which do not require the services of a trained homemaker. Such services may be provided for persons at home because of illness, incapacity, or the absence of a caretaker relative by persons who meet the standards established by the department of social services.

8. "Long term home health care program" means a coordinated plan of care and services provided at home to invalid, infirm, or disabled persons who are medically eligible for placement in a hospital or residential health care facility for an extended period of time if such program were unavailable.

a. Such program shall be provided in the person's home or in the home of a responsible relative or other responsible adult.

b. Such program shall be provided in adult care facilities, other than shelters for adults, certified pursuant to section four hundred sixty-b of the social services law, provided that the person meets the admission and continued stay criteria for such facility. Services provided by the program shall not duplicate or replace those which the facility is required by law or regulation to provide.

c. Approved long term home health care program providers may include, as part of their long term home health care program, upon approval by the commissioner, a discrete AIDS home care program as defined in this section.

9. "Hospital" means a hospital as defined in section twenty-eight hundred one of this chapter.

10. "Residential health care facility" means a residential health care facility as defined in section twenty-eight hundred one of this chapter.

11. "Government funds" means funds provided under the provisions of title eleven of article five of the social services law.

12. "Construction" means the addition or deletion of services offered; a change in the agency's geographic service area; the erection, building, or substantial acquisition or alteration of a physical structure or equipment; or a substantial change in the method of providing services.

13. "Licensed home care services agency" means a home care services agency, issued a license pursuant to section three thousand six hundred five of this chapter.

14. "AIDS home care program" means a coordinated plan of care and services provided at home to persons who are medically eligible for placement in a hospital or residential health care facility and who (a) are diagnosed by a physician as having acquired immune deficiency syndrome (AIDS), or (b) are deemed by a physician, within his judgment, to be infected with the etiologic agent of acquired immune deficiency syndrome, and who has an illness, infirmity or disability which can be reasonably ascertained to be associated with such infection. Such program shall be provided only by a provider of a long term home health care program specifically authorized pursuant to this article to provide an AIDS home care program or by an AIDS center, as defined in regulations promulgated by the commissioner, specifically authorized pursuant to this article to provide an AIDS home care program. Such program shall be provided in the person's home or in the home of a responsible relative, other responsible adult, adult care facilities specifically approved to admit or retain residents for such program, or in other residential settings as approved by the commissioner in conjunction with the commissioner of social services. Such program shall provide Services including, but not be limited to, the full complement of health, Social and environmental services provided by long term home health care.

programs in accordance with regulations promulgated by the commissioner. Such programs shall also provide such other services as required by the commissioner to assure appropriate care at home for persons eligible under this section.

#### 3604. State council on home care services

1. There is hereby created a state council on home care services, hereinafter known as the "council", to consist of the commissioner, the commissioner of social services, the commissioner of mental health, the commissioner of mental retardation and developmental disabilities, the chairman of the board of social welfare, the director of the office for the aging, the commissioner of housing and community renewal, the superintendent of insurance, the advocate for the disabled, the director of the office of rural affairs, or a permanent designee appointed by each such official to represent him or her in his or her absence, the chairperson of the state hospital review and planning council or his or her designee, and seventeen members appointed by the governor with the advice and consent of the senate, one of whom shall be a member of the statewide health coordinating council, eight of whom shall represent the public and nine of whom shall be currently engaged in the delivery of home care services. At least one member shall be from each health service area. However, a change in the status or employment of a member of the council shall not require his or her resignation or a change in the composition of the council until further appointments are made. Membership on the council shall be reflective of the diversity of the state's population including, but not limited to, the various geographic areas and population densities throughout the state. The governor shall designate one of the seventeen appointed members to serve as chairperson.

2. The term of office of each appointive member of the council shall be for three years. The appointive members shall continue in office until the expiration of their terms and until their successors are appointed and have qualified. Such appointments shall be made by the governor, with the advice and consent of the senate, within one year following the expiration of such terms.

2-a. Vacancies shall be filled by appointment by the governor for the unexpired terms within one year of the date upon which such vacancies occur. Any vacancies existing on the effective date of this subdivision shall be filled by appointment within one year of such effective date.

2-b. In making appointments to the council, the governor shall seek to ensure that membership on the council reflects the diversity of the state's population including, but not limited to, the various geographic areas and population densities throughout the state.

### 3607. Grants for expansion of services

1. The commissioner is hereby authorized, within the amount allocated pursuant to subdivisions one, two and three of section thirty-six hundred fifteen of this article, to make grants to certified public and voluntary non-profit home health agencies for the purpose of increasing the availability of home health care services. Such grants shall be utilized to increase the number of persons provided services, the kind of services provided, including medical, social and environmental services, the sharing of services or to improve or expand the method or frequency of the delivery of home health care services. Grant applications shall include specific plans to provide the following:

- a. an expansion of the types of services made available to persons at home as provided for in subdivision two of section thirty-six hundred two of this chapter;
- b. an increase in the number of persons provided home care services by the certified home health agency, directly or through contractual arrangement, or to provide for the availability of certified home health agency services on a seven-day-a-week basis;
- c. the development of training programs approved by the commissioner to improve the quality of services provided by the certified home health agency;
- d. the development of programs to coordinate the work of the certified home health agency with other community resources, including but not limited to other certified home health agencies, hospitals, and social services agencies;
- e. demonstration projects to provide care in the home by using methods, programs, or arrangements not ordinarily used by certified home health agencies, and that will help to determine the most appropriate means of reducing institutional care and of providing better quality home care services, most cost-effective home care services, and more accessible home care services;
- f. the development of programs to improve home care patients' access to primary health services; or
- g. the development of "home care volunteer programs for maternal and child health" pursuant to subdivision two of this section.

2.a. For purposes of this section, "home care volunteer program for maternal and child health" shall mean a program developed, coordinated and provided by a certified home health agency for purposes of assisting



pregnant women and children. Such assistance shall include but not be limited to: guidance in self care related to prenatal care and post partum care such as information concerning proper nutrition, exercise, hygiene, drug, tobacco and alcohol use, and breast feeding; guidance in infant care; friendly visiting; and telephone reassurance. Such assistance may also include home maintenance, child care and shopping. Additional services which the agency may provide in conjunction with the program shall include nursing, social work, home health aide and other approved agency services necessary to serve this population.

b. In providing such program, a certified home health agency shall utilize volunteers, especially women who have had children and who are willing and able to provide non-medical assistance to women for prenatal care and infant care.

c. The certified home health agency shall recruit, train and supervise volunteers for the program and shall assure that such volunteers are competent to perform the required tasks and are suited to the client. The agency shall designate a person responsible for management of the program.

d. Certified home health agencies which provide home care volunteer programs for maternal and child health shall establish provisions for referral and case coordination with providers of prenatal care assistance services as defined in section twenty-five hundred twenty-one of this chapter.

3. A public or voluntary non-profit certified home health agency may make application for such grant in the manner and form prescribed by the commissioner. Grant applications may be made for up to a three-year period; however, grant awards shall be for one year periods, subject to annual renewal upon approval by the commissioner.

4. A grant amount available under this program shall not exceed the total cost of providing the additional services, as specified in the application, less any income from governmental, third party or any other sources accruing as a result of the provision of such additional services. Grants may not be used for agency capital construction purposes. The initial grant and first year renewal may be no more than one hundred percent of the net cost of providing such additional services. Any grants provided for a third year shall be no more than seventy-five percent of the initial year's grant. No grant shall exceed one hundred thousand dollars per annum.

5. A grantee must certify to the commissioner that all available reimbursement for services has been and will be sought. To be eligible for a renewal grant, the level and amount of services provided during any previous grant period may not be decreased without the prior approval of the commissioner, and the grantee shall identify and certify that sufficient funds are available to maintain previous levels and amounts of service.

6. In awarding grants pursuant to this section, the commissioner and the advisory group established pursuant to subdivision six of section thirty-six hundred fifteen of this article shall take into consideration, in relation to the area served, the following factors: the number of patients awaiting discharge from hospitals or residential health care facilities for whom home care services are appropriate, the proportion of patients inappropriately placed in hospitals and residential health care facilities who could be served by in-home care, the scope, quantity and accessibility of currently available home health services, the ability of the agency to continue the expanded services upon expiration of the grant, and such other factors as the commissioner may determine are relevant to the public need for home health services.

7. In addition to the requirements of this section, the commissioner shall approve grant applications in accordance with the provisions of subdivisions five, six and seven of section thirty-six hundred fifteen of this article.

8. Funds for such grants shall be made available pursuant to the funding formula and allocations provided in subdivisions one, two and three of section thirty-six hundred fifteen of this article.

9. The commissioner, after consultation with the state council on home care services, shall promulgate rules and regulations necessary to administer this section. The state council on home care services shall advise the department of the availability and quality of home care services and on the methods that may be used to enhance the availability, appropriate utilization and coordination of home care services through the implementation of the grant program.

### 3609. Grants for planning an establishment of new certified home health agencies

1. The commissioner is hereby authorized, within the amount allocated pursuant to subdivisions one, two and three of section thirty-six hundred fifteen of this article, to make grants to voluntary not-for-profit organizations in areas of the state determined by the commissioner to be in need of home care services.

2. Such grants shall be awarded for the purposes of planning for establishment as a certified home health agency pursuant to section thirty-six hundred six of this chapter.

3. Such grants shall not exceed twenty thousand dollars per annum and are not renewable.

4. The grant applications shall include such information as required by the commissioner, after consultation with the state council on home care

services.

5. Funds for such grants shall be made available pursuant to the funding formula and allocations as provided in subdivisions one, two and three of section thirty-six hundred fifteen of this article.

6. The commissioner shall approve applications in accordance with the provisions of subdivisions five, six and seven of section thirty-six hundred fifteen of this article.

### 3612. Powers and duties of commissioner and state hospital review and planning council

1. The commissioner shall have the power to conduct periodic inspections of facilities of certified home health agencies, providers of long term home health care programs and of providers of AID home care programs with respect to the fitness and adequacy of equipment, personnel, rules and bylaws, standards of service and medical care, system of accounts, records, and the adequacy of financial resources and sources of future revenues.

2. The commissioner shall have the power to conduct periodic inspections of licensed home care services agencies with respect to the standards of service and care, qualifications of personnel and the clinical records maintained by such agency.

3. Any organization which provides or makes available any home care services to the public in this state, in any organized program developed or rendered under its auspices or provided under contract with any such organization, shall submit annually to the commissioner a complete description of its operation, including name, address, location or principal place of business, ownership, identification of administrative personnel responsible for home care services programs, the nature and extent of such programs, and such other information as the commissioner shall require. The commissioner shall determine the form and content of the information compiled and the annual date for submission of such information. The commissioner shall make such information available to the appropriate governmental agencies of the state, the counties and the city of New York so as to make known the availability of home care services to provide data for planning for health needs of the people of the state. This information shall be available to the public and to the health systems agencies.

4. The commissioner shall establish within the department a unit for home care services to assist him in carrying out the provisions of this article.

5. The state hospital review and planning council, by a majority vote of its members, shall adopt and amend rules and regulations, subject to the

approval of the commissioner, to effectuate the provisions and purposes of this article with respect to certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs, including, but not limited to, (a) the establishment of requirements for a uniform statewide system of reports and audits relating to the quality of services provided and their utilization and costs; (b) establishment by the department of schedules of rates, payments, reimbursements, grants and other charges; (c) standards and procedures relating to certificates of approval and authorization to provide long term home health care programs and AIDS home care programs; (d) uniform standards for quality of care and services to be provided by certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs; (e) requirements for minimum levels of staffing, taking into consideration the size of the agency, provider of a long term home health care program or provider of an AIDS home care program, the type of care and service provided, and the special needs of the persons served; (f) standards and procedures relating to contractual arrangements between home care services agencies; (g) requirements for the establishment of plans for the coordination of home care services and discharge planning for former patients or residents of facilities under the regulatory jurisdiction of the department, the departments of social services or mental hygiene, the board of social welfare, or the office for the aging; (h) requirements for uniform review of the appropriate utilization of services; and (i) requirements for minimum qualifications and standards of training for personnel appropriate. The commissioner and the state council on home care services may propose rules and regulations and amendments thereto for consideration by the council.

6. The commissioner shall adopt and may amend rules and regulations to effectuate the provisions and purposes of this article as to licensed home care services agencies with regard to (a) uniform standards for quality of care and services to be provided and (b) the establishment of a uniform statewide system of reports relating to the quality of services offered.

3614. Payments for certified home health agency services, long term home health care programs and AIDS home care programs

1. No government agency shall purchase, pay for or make reimbursement or grants-in-aid for services provided by a home care services agency, a provider of a long term home health care program or a provider of an AIDS home care program unless, at the time the services were provided, the home care services agency possessed a valid certificate of approval or the provider of a long term home health care program or AIDS home care program had been authorized by the commissioner to provide such program. However, contractual arrangements between a certified home health agency, provider

of a long term home health care program, provider of an AIDS home care program, or government agency and any home care services agency shall not be prohibited, provided that the certified home health agency, provider of a long term home health care program, provider of an AIDS home care program, or government agency maintains full responsibility for the plan of treatment and the care rendered.

2. Payments for certified home health agency services or services provided by long term home health care programs or AIDS home care programs made by government agencies shall be at rates approved by the state director of the budget. No provider of a long term home health care program or AIDS home care program shall establish charges for such program in excess of those established pursuant to the provisions of this section and rules and regulations adopted pursuant to section thirty-six hundred twelve of this article or subchapter XVIII of the federal Social Security Act (Medicare).

3. Prior to the approval of such rates, the commissioner shall determine and certify to the state director of the budget that the proposed rate schedules for payments for certified home health agency services or services provided by long term home health care programs or AIDS home care programs are reasonably related to the costs of the efficient production of such services. In making such certification, the commissioner shall take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the certified home health agency, provider of a long term home health care program or provider of an AIDS home care program is located, costs of certified home health agencies, providers of long term home health care programs or providers of AIDS home care programs of comparable size, and the need for incentives to improve services and institute economies.

4. The commissioner shall notify each certified home health agency, long term home health care program and AIDS home care program of its approved rates of payment which shall be used in reimbursing for services provided to persons eligible for payments made by state governmental agencies at least thirty days prior to the beginning of an established rate period for which the rate is to become effective. Such notification shall be made only after approval of rate schedules by the state director of the budget.

5. (a) During the period July first, nineteen hundred ninety through December thirty-first, nineteen hundred ninety, the period January first, nineteen hundred ninety-one through December thirty-first, nineteen hundred ninety-one and for each calendar year period commencing on January first thereafter, rates of payment by governmental agencies established in accordance with subdivision three of this section applicable for services provided by certified home health agencies to individuals eligible for

medical assistance pursuant to title eleven of article five of the social services law for certified home health agencies which can demonstrate, on forms provided by the commissioner, losses from a disproportionate share of bad debt and charity care during the base year period as used in determining such rates may include an allowance determined in accordance with this subdivision to reflect the needs of the certified home health agency for the financing of losses resulting from bad debt and the cost of charity care. Losses resulting from bad debt and the delivery of charity care shall be determined by the commissioner considering, but not limited to, such factors as the losses resulting from bad debt and the costs of charity care provided by the certified home health agency and the availability of other financial support, including state local assistance public health aid, to meet the losses resulting from bad debt and the costs of charity care of the certified home health agency. The bad debt and charity care allowance for a certified home health agency for a rate period shall be determined by the commissioner in accordance with rules and regulations adopted by the state hospital review and planning council and approved by the commissioner, and shall be consistent with the purposes for which such allowances are authorized for general hospitals pursuant to the provisions of article twenty-eight of this chapter and rules and regulations promulgated by the commissioner. For purposes of distribution of bad debt and charity care allowances to eligible certified home health agencies, the commissioner, in accordance with rules and regulations adopted by the state hospital review and planning council and approved by the commissioner, may limit application of a bad debt and charity care allowance to a particular home care services unit or units of service, such as nursing service. A certified home health agency applying for a bad debt and charity care allowance pursuant to this subdivision shall provide assurances satisfactory to the commissioner that it shall undertake reasonable efforts to maintain financial support from community and public funding sources and reasonable efforts to collect payments for services from third party insurance payors, governmental payors and self-paying patients. To be eligible for an allowance pursuant to this subdivision, a certified home health agency shall have professional assistance available on a seven day per week, twenty-four hour per day basis to all registered clients and must demonstrate compliance with minimum charity care certification obligation levels established pursuant to' rules and regulations adopted by the state hospital review and planning council and approved by the commissioner.

(b) The total amount of funds to be allocated and distributed for bad debt and charity care allowances to eligible certified home health agencies for a rate period in accordance with this subdivision shall be limited to an annual aggregate amount of six million two hundred fifty thousand dollars; provided, however, that the amount of funds allocated for distribution to eligible publicly sponsored certified home health agencies for bad debt and charity care allowances shall not exceed thirty-five percent of total available funds for all eligible certified home health agencies for bad debt and charity care

allowances. In establishing an apportionment of available funds to publicly sponsored certified home health agencies in accordance with this paragraph, the commissioner shall promulgate regulations which may include, but not be limited to, such factors as the ratio of public to nonpublic base year period bad debt and charity care provided by eligible certified home health agencies and differences in costs for delivering such services. Certified home health agencies provided by general hospitals shall not be eligible for any portion of the allocation pursuant to this paragraph for the period of July first, nineteen hundred ninety through December thirty-first, nineteen hundred ninety-two, or for such longer period if extended by law, based on the projected availability of an equitable level of bad debt and charity care coverage for such agencies provided pursuant to chapter two of the laws of nineteen hundred eighty-eight and any future amendments thereto. In order to determine the appropriateness of the exclusion of hospital-based certified home health agencies and the allocation to publicly sponsored certified home health agencies pursuant to this paragraph, the commissioner on or before April thirtieth, nineteen hundred ninety-one and annually thereafter shall report to the governor, the chairmen of the senate finance and assembly ways and means committees and the chairmen of the senate and assembly standing committees on health comparing the levels of bad debt and charity care coverage for all certified home health agencies and indicating whether such coverage is equitable, within a five percent differential, between hospital-based, public, other voluntary non-profit and private proprietary certified home health agencies considering the availability of all other forms of financial support or subsidies for this purpose. Should the differential of the preceding be greater than five percent, the commissioner shall recommend modifications to the provisions of this paragraph, and to any associated regulations, as may be necessary to achieve equitable levels of bad debt and charity care coverage.

(c) No certified home health agency may receive a bad debt and charity care allowance in accordance with this subdivision in an amount which exceeds its need for the financing of losses associated with the delivery of bad debt and charity care.

(d) A nominal payment amount for the financing of losses associated with the delivery of bad debt and charity care will be established for each eligible certified home health agency. The nominal payment amount shall be calculated as the sum of the dollars attributable to the application of an incrementally increasing nominal coverage percentage of base year period losses associated with the delivery of bad debt and charity care for percentage increases in the relationship between base year period losses associated with the delivery of bad debt and charity care and base year period total operating costs according to the following scale:

% of bad debt and charity care losses to    nominal percentage

total operating cost	loss coverage
Up to 3%	50%
% of bad debt and charity care losses to total operating cost	nominal percentage loss coverage
3 - 6%	75%
6% +	100%

If the sum of the nominal payment amounts for all eligible voluntary non-profit and private proprietary certified home health agencies or for all eligible public certified home health agencies is less than the amount allocated for bad debt and charity care allowances pursuant to paragraph (b) of this subdivision for such certified home health agencies respectively, the nominal coverage percentages of base year period losses associated with the delivery of bad debt and charity care pursuant to this scale may be increased to not more than one hundred percent for voluntary non-profit and private proprietary certified home health agencies or for public certified home health agencies in accordance with rules and regulations adopted by the state hospital review and planning council and approved by the commissioner.

(e) The bad debt and charity care allowance for each eligible voluntary non-profit and private proprietary certified home health agency shall be based on the dollar value of the result of the ratio of total funds allocated for bad debt and charity care allowances for certified home health agencies pursuant to paragraph (b) of this subdivision to the total statewide nominal payment amounts for all eligible certified home health agencies determined in accordance with paragraph (d) of this subdivision applied to the nominal payment amount for each such certified home health agency.

(f) The bad debt and charity care allowance for each eligible public certified home health agency shall be based on the dollar value of the result of the ratio of total funds allocated for bad debt and charity care allowances for public certified home health agencies pursuant to paragraph (b) of this subdivision to the total statewide nominal payment amounts for all eligible public certified home health agencies determined in accordance with paragraph (d) of this subdivision applied to the nominal payment amount for each such certified home health agency.

(g) Certified home health agencies shall furnish to the department such



reports and information as may be required by the commissioner to assess the cost, quality, access to, effectiveness and efficiency of bad debt and charity care provided. The state hospital review and planning council shall adopt rules and regulations, subject to the approval of the commissioner, to establish uniform reporting and accounting principles designed to enable certified home health agencies to fairly and accurately determine and report the costs of bad debt and charity care. In order to be eligible for an allowance pursuant to this subdivision, a certified home health agency must be in compliance with bad debt and charity care reporting requirements.

(h) This subdivision shall be effective if, and as long as, federal financial participation is available for expenditures made for beneficiaries eligible for medical assistance under title XIX of the federal social security act based upon the allowances determined in accordance with this subdivision.

6. The commissioner in conjunction with the commissioner of social services shall, subject to the approval of the state director of the budget, establish capitated rates of payment for services provided by assisted living programs as defined by paragraph (a) of subdivision one of section four hundred sixty-one l of the social services law. Such rates of payment shall be related to costs incurred by residential health care facilities. The rates shall reflect the wage equalization factor established by the commissioner for residential health care facilities in the region in which the assisted living program is provided. The rates shall also reflect the efficient provision of a quality and quantity of services to patients in such residential health care facilities, with needs comparable to the needs of residents served in such assisted living programs. Such rates of payment shall be equal to fifty percent of the amounts which otherwise would have been expended to provide the appropriate level of care for such residents in residential health care facilities in the applicable wage equalization factor regions.

6. Subject to the availability of funds, the provisions of clause (B) of subparagraph (iii) of paragraph (e) of subdivision one of section twenty-eight hundred seven -c of this chapter shall apply to certified home health agencies, long term home health care programs and AIDS home care programs.

7. Notwithstanding any inconsistent provision of law or regulation to the contrary, for purposes of establishing rates of payment by governmental agencies for certified home health agencies and long term home health care programs for rate periods beginning on or after January first, nineteen hundred ninety-two, the reimbursable base year administrative and general costs of a provider of services, excluding a provider of services reimbursed on an initial budget basis, shall not exceed thirty percent of total reimbursable base year operational costs of such provider of services, and provided further that for any provider of services the ratio of provider reimbursable base year administrative and general costs divided by total

reimbursable base year operational costs, expressed as a percentage shall be reduced according to the following scale:

administrative and general percentage	percentage point reduction
30+ 34%	4 percentage points
27+ 30%	3 percentage points
24+ 27%	2 percentage points
20+ 24%	1 percentage point but not to be lower than 20%

The limitation on reimbursement for provider administrative and general expenses provided by this subdivision shall be expressed as a percentage reduction for the rate promulgated by the commissioner to each certified home health agency and long term home health care program provider. The amount of such reduction in certified home health agency and long term home health care program provider's rates for payments made during the period ending March thirty-first nineteen hundred ninety-three shall be adjusted in the nineteen hundred ninety-four rate period on a pro rata basis, if it is determined upon post-audit review by June fifteenth, nineteen hundred ninety-three and reconciliation that the savings for the state share, excluding the federal and local government shares, of medical assistance payments pursuant to title eleven f article five of the social services law based on the limitation of such payment pursuant to this subdivision is in excess of three million three hundred thousand dollars to reflect the amount by which such savings exceed three million three hundred thousand dollars or is less than three million three hundred thousand dollars to reflect the amount by which such savings are lower than three million three hundred thousand dollars.

#### 3616. Provision of certified home health agency services, long term home health care Programs and AIDS home care programs

1. A long term home health care program shall be provided only to those patients who are medically eligible for placement in a hospital or residential health care facility. An AIDS home care program shall be provided only to persons who are medically eligible for placement in a hospital or residential health care facility and who (a) are diagnosed by a physician as having acquired immune deficiency syndrome, or (b) are deemed by a physician, within his judgment, to be infected with the etiologic agent of acquired immune deficiency syndrome, and whose illness, infirmity or disability can be reasonably ascertained to be associated with such infection. Provision of certified home health agency services, a long term home health care program or an AIDS home care program paid for by government funds shall

be based upon, but not limited to, a comprehensive assessment that shall include, but not be limited to, an evaluation of the medical, social and environmental needs of each applicant for such services or program. This assessment shall also serve as the basis for the development and provision of an appropriate plan of care for the applicant. In cases in which the applicant is a patient in a hospital or residential health care facility, the assessment shall be completed by persons designated by the commissioner, including, but not limited to, the applicant's physician, the discharge coordinator of the hospital or residential health care facility referring the applicant, a representative of the local department of social services, and a representative of the provider of a long term home health care program, AIDS home care program, or the certified home health agency that will provide services for the patient. In cases in which the applicant is not a patient in a hospital or residential health care facility, the assessment shall be completed by persons designated by the commissioner including, but not limited to, the applicant's physician, a representative of the local department of social services and a representative of the provider of a long term home health care program, AIDS home care program or the certified home health agency that will provide services for the patient. The assessment shall be completed prior to or within thirty days after the provision of services begins. Payment for services provided prior to the completion of the assessment shall be made only if it is determined, based upon such assessment, that the recipient qualifies for such services. The commissioner shall prescribe the forms on which the assessment will be made.

2. Continued provision of a long term home health care program, AIDS home care program or certified home health agency services paid for by government funds shall be based upon a comprehensive assessment of the medical, social and environmental needs of the recipient of the services. Such assessment shall be performed at least every one hundred twenty days by the provider of a long term home health care program, AIDS home care program or the certified home health agency providing services for the patient and the local department of social services, and shall be reviewed by a physician charged with the responsibility by the commissioner. The commissioner shall prescribe the forms on which the assessment will be made.

3. Prior to the initial provision of services, and upon the continued provision of services pursuant to each complete reassessment, the agency shall present the recipient or the recipient's representative with a standardized written statement prepared by the department, in consultation with providers of home care services and consumer representatives, which informs the recipient or representative that the services to be provided are subject to change in accordance with a change in the recipient's needs, a change in information about the recipient's needs and/or about the formal and informal services available to meet such needs. The statement shall

further inform the recipient or representative that such notification and acknowledgment is for purposes of consumer information and education, and to establish and maintain proper understanding and expectations about the possible course of care to be provided by the agency.

### 3616-a. Quality assurance

1. Every certified home health agency, licensed home care services agency, long term home health care program and AIDS home care program is required to establish a quality assurance program which shall objectively and systematically monitor and evaluate the quality and appropriateness of care and services provided by the agency or program.

2. Confidentiality. The information required to be collected and maintained by certified home health agencies, licensed home care services agencies, providers of long term home health care programs and AIDS home care programs pursuant to subdivision one of this section and as required by paragraphs (a) and (d) of subdivision five and subdivision six of section thirty-six hundred twelve of this chapter shall be kept confidential and shall not be released except to the department. Provided, however, that such information shall be released to a law enforcement agency upon a court order based upon probable cause that such information: (a) is relevant to a criminal investigation or proceeding and (b) cannot be obtained through any other means. Nothing in this section shall prohibit a certified home health agency, a licensed home care services agency, a long term home health care program or an AIDS home care program from voluntarily releasing what it reasonably believes to be evidence of criminality to a law enforcement agency.

3. Notwithstanding any other provision of law, none of the records, documentation or committee actions or records required to be maintained by certified home health agencies, licensed home care services agencies, providers of long term care programs or AIDS home care programs pursuant to subdivision one of this section and as required by paragraphs (a) and (d) of subdivision five and subdivision six of section thirty-six hundred twelve of this chapter shall be subject to disclosure under article six of the public officers law or article thirty-one of the civil practice law and rules, except as hereinafter provided or as provided by any other provision of law. No person in attendance at a meeting of any such committee shall be required to testify as to what transpired thereat. The prohibitions of this subdivision shall not apply to statements made by any person in attendance at such a meeting who is a party, or employee or agent of a party to any action or proceeding the subject matter of which was reviewed at such meeting. Nothing contained in this subdivision shall prohibit disclosure of records, documentation or committee actions or records relating to employment

history and recommendations from being transmitted to any certified home health agency, licensed home care services agency, long-term home care program or AIDS home care program which is required by law or regulation to obtain such information.

4. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person, partnership, corporation, firm, society or other entity participating in good faith and with reasonable care in a quality assurance committee or communicating information in the possession of such person or entity, or on account of any recommendation or evaluation, regarding the qualifications, fitness, conduct or practices of any officer, director, employee or agent of such agency or program to any government agency, professional society, licensing or certification board as required by subdivision one of this section and by paragraphs (a) and (d) of subdivision five and subdivision six of section thirty-six hundred twelve of this chapter. The foregoing shall not apply to information which is untrue and communicated with malicious intent.

#### 3617. Respite projects

Certified home health agencies shall be permitted, with the prior approval of the commissioner in consultation with the director of the state office for the aging, to participate in respite projects pursuant to section five hundred thirty-six-f of the executive law. The commissioner, in consultation with the director of the state office for the aging, shall promulgate rules and regulations to implement the provisions of this section.

#### 3620. Authorization to provide an AIDS home care program

1. An AIDS home care program may be provided only by a provider of a long term home health care program possessing a valid operating certificate issued under this article or an AIDS center as defined in accordance with regulations promulgated by the commissioner.
2. No agency or facility shall provide an 'AIDS home care program without the written authorization of the commissioner to provide such a program.
3. A provider of a long term home health care program or AIDS center seeking authorization to provide an AIDS home care program shall transmit to the commissioner an application setting forth the scope of the proposed program. Such application shall be submitted in a format and quantity determined by the commissioner. The application shall include a detailed description of the proposed program including, but not limited to, the following:

- (a) an outline of the applicant's plans for the AIDS home care program;
- (b) the need for the proposed program;
- (c) the number and types of personnel to be employed;
- (d) the ability of the applicant to provide the AIDS home care program;
- (e) the estimated number of visits to be provided;
- (f) the geographic area in which the proposed programs will be provided;
- (g) any special or unusual services, programs, or equipment to be provided;
- (h) a demonstration that the proposed program is feasible and adequate in terms of both short range and long range goals;
- (i) such other information as the commissioner may require.

The commissioner shall not approve the application unless he is satisfied as to:

- (a) the public need for the program at the time and place and under the circumstances proposed;
- (b) the financial resources of the provider of the proposed program and its sources of future revenues;
- (c) the ability of the proposed program to meet those standards established for participation as a home health agency under title XVIII of the federal Social Security Act;
- (d) the ability of the proposed program to meet the needs of AIDS patients; and
- (e) such other matters as he shall deem pertinent.

If the application is approved, the applicant shall be so notified in writing. The commissioner's written approval of the application shall constitute authorization to provide an AIDS home care program. If the commissioner proposes to disapprove the application, he shall notify the applicant in writing, stating his reasons for disapproval, and afford the applicant an opportunity for a public hearing.

4. Authorization to provide an AIDS home care program may be revoked, suspended, limited or annulled by the commissioner on proof that a provider of an AIDS home care program has failed to comply with the provisions of this article or rules and regulations promulgated thereunder.

5. (a) Such authorization shall not be revoked, suspended, limited or

annulled without a hearing. However, such authorization may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the provider of an AIDS home care program following a finding by the department that the public health or safety is in imminent danger.

(b) The commissioner shall fix a time and place for the hearing. A copy of the charges, together with the notice of the time and place of the hearing, shall be served in person or mailed by registered or certified mail to the provider of an AIDS home care program at least twenty-one days before the date fixed for the hearing. Such provider shall file with the department not less than eight days prior to the hearing, a written answer to the charges.

(c) All orders or determinations hereunder shall be subject to review as provided in article seventy-eight of the civil practice law and rules. Application for such review must be made within sixty days after service in person or by registered or certified mail of a copy of the order or determination upon the applicant.

6. (a) Notwithstanding the provisions of subdivision five of this section, the commissioner shall suspend, limit or revoke the authorization of a provider of an AIDS home care program after taking into consideration the public need for the program and the availability of other services which may serve as alternatives or substitutes, and after finding that suspending, limiting, or revoking the authorization of such provider would be within the public interest in order to conserve health resources by restricting the level of services to those which are actually needed.

(b) Whenever any finding as described in paragraph (a) of this subdivision is under consideration with respect to any particular provider of an AIDS home care program, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of such provider, at least thirty days prior to making such a finding an announcement that such a finding is under consideration and an address to which interested persons can write to make their views known. The commissioner shall take all public comments into consideration in making such a finding.

(c) The commissioner shall, upon making any finding described in paragraph (a) of this subdivision with respect to any provider of an AIDS home care program cause such provider and the appropriate health systems agency to be notified of the finding at least thirty days in advance of taking the proposed action. Upon receipt of any such notification and before the expiration of the thirty days or such longer period as may be specified in the notice, the provider or the appropriate health systems agency may request a public hearing to be held in the county in which the provider is located. In no event shall the revocation, suspension or limitation take effect prior to the thirtieth day after the date of the notice, or prior to the effective date

specified in the notice or prior to the date of the hearing decision, whichever is later.

(d) Except as otherwise provided by law, all appeals from a finding of the commissioner made pursuant to paragraph (a) of this subdivision shall be directly to the appellate division of the supreme court in the third department. Except as otherwise expressly provided by law, such appeals shall have preference over all issues in all courts.

### 3621. Separability

If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

### 6505-b. Course work or training in infection control practices.

Every dentist, registered nurse, licensed practical nurse, podiatrist, optometrist and dental hygienist practicing in the state shall, on or before July first, nineteen hundred ninety-four and every four years thereafter, complete course work or training appropriate to the professional's practice approved by the department regarding infection control and barrier precautions, including engineering and work practice controls, in accordance with regulatory standards promulgated by the department, in consultation with the department of health, which shall be consistent, as far as appropriate, with such standards adopted by the department of health pursuant to section two hundred thirty-eight of the public health law to prevent the transmission of HIV/HBV in the course of professional practice. Each such professional shall document to the department at the time of registration commencing with the first registration after July first, nineteen hundred ninety-four that the professional has completed course work or training in accordance with this section, provided, however that a professional subject to the provisions of paragraph (f) of subdivision one of section twenty-eight hundred five-k of the public health law shall not be required to so document. The department shall provide an exemption from this requirement to anyone who requests such an exemption and who (i) clearly demonstrates to the department's satisfaction that there would be no need for him or her to complete such course work or training because of the nature of his or her practice or (ii) that he or she has completed course work or training deemed by the department to be equivalent to the course work or training approved by the department pursuant to this section. The department shall consult



with organizations representative of professions, institutions and those with expertise in infection control and HIV and HBV with respect to the regulatory standards promulgated pursuant to this section.