

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

July 8, 2013

DAL: HCBS 13-15
Subject: Clarification Regarding Regulatory
Requirements of Licensed Home
Care Services Agencies

Dear Administrator:

The purpose of this letter is to provide clarification regarding the regulatory requirements in NYCRR Title 10, §766.10, on Licensed Home Care Services Agencies' (LHCSA) provision of all services when providing these services directly or under contract, specifically the required responsibilities related to MD orders.

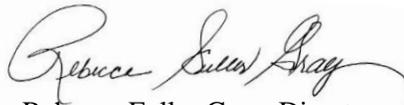
The regulations state that the governing authority or operator may enter into contracts (such as entering into contracts with Managed Care Plans [MCPs]/Managed Long Term Care Plans [MLTCPs]) to obtain or provide patient care services; however, they remain responsible to ensure compliance with all federal, state and local statutes, rules and regulations.

NYCRR Title 10, §766.4, indicates that an order from the patient's authorized practitioner must be obtained and documented at the LHCSA. Further, §766.10 (f), allows that the MD orders and the assessments can be maintained by the local service district pursuant to the contract, provided the LHCSA and the Department of Health have access to the information to assure compliance with applicable statutes, rules and regulations. The specific contract language between the LHCSA and the district must clearly indicate where the information will be maintained and how the LHCSA can be assured access to this information.

We acknowledge that the Managed Care Organizations (MCOs) are now, for the most part, authorizing these services as part of their Medicaid benefit. We want to emphasize that the LHCSA must be in compliance with Title 10, §766.4 – Medical Orders. As such, there must be an order from the patient's authorized practitioner and documentation must exist at the agency for the health services the agency provides to those patients. The contract between the LHCSA and the MCO or MLTCP must clearly indicate where the information will be maintained and how the LHCSA will access. The contract between the LHCSA and the MCO/MLTCP cannot diminish the LHCSA responsibility in this regard. Instances of noncompliance with these standards will be cited on survey and subsequent enforcement action may occur.

For questions or clarification on this directive, contact the New York State Department of Health, Division of Home and Community Based Services at homecare@health.state.ny.us.

Sincerely,



Rebecca Fuller Gray, Director
Division of Home & Community Based Services