STATE OF NEW YORK
DEPARTMENT OF HEALTH

Office of Continuing Care 161 Delaware Avenue Delmar, New York 12054-1393

Antonia C. Novello, M.D., M.P.H.,Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

JAN 1 9 2001

Dear Interested Party:

Enclosed please find a copy of recently asked questions and answers concerning the Assisted Living Program (ALP). The questions arose from ALP operators and other interested parties. We expect that questions will continue to arise as the program further develops. Please forward them to my attention in the Bureau of Surveillance and Quality Assurance, Office of Continuing Care.

Sincerely,

Anna Colello, Director
Bureau of Surveillance and Quality Assurance

Enclosure

ASSISTED LIVING PROGRAM
QUESTIONS AND ANSWERS

1. Q. Does the plan of care, as described in the LHCSA Policy and Procedure Manual and approved by the Department of Health during the pre-opening survey process, meet the requirements for the plan of care in the ALP?

   A. Yes. Policy and Procedure Manuals approved by the Department of Health during the pre-opening survey meet Department of Health requirements.

2. Q. Is the ALP Nursing Assessment (DSS 4449-D) acceptable as the nursing assessment for both the LHCSA and ALP requirements?

   Yes, it is acceptable with conditions since the ALP Nursing Assessment (DSS 4449-D) is not a comprehensive assessment tool for all patients. Although the form may provide an adequate assessment for some patients, it lacks information that establishes a baseline from which deviations can be determined at a later date. The form lacks elements of a health assessment such as height, pulse, respiratory rate, sleep patterns and past medical history, and does not provide for a review of body systems. A review of the medications taken by a LHCSA patient may point to the possibility of a problem with a particular body system which should be assessed, e.g. a patient who is taking multiple cardiac medication should have a cardio-pulmonary nursing assessment, or an issue of past medical history such as a history of decubitus ulcer (bedsore) has relevancy in developing a plan of care since that patient has a significantly higher risk of future development of a pressure sore over the healed site. Assessments and plans of care are individualized to meet patient needs. When additional assessment information is pertinent to developing a plan of care, it should be included in the last portion of the DSS 4449-D form in the area defined as "Narrative" with additional pages added as necessary.

3. Q. Is there a conflict regarding the requirement for medical orders between 18NYCRR 494.4(f) and 10 NYCRR 766.4(d)?
   (Further clarification to 3/28/97 revision to 4/26/94 #20.)

   A. No. There is not a conflict between Adult Home and LHCSA regulations regarding medical orders. Both regulations require a medical order prior to the provision of services. The medical evaluation required for the provision of ALP services must be signed at, or prior to, the patient's admission or readmission to the program.

   The LHCSA regulation [766.4(d)] requires that a verbal order that had been obtained and documented by the nurse, be signed by the authorized practitioner within 30 days, or prior to billing. This type of order would be obtained for minor revisions to plan of care that would not be indicative of a need to reassess the patient/resident, e.g. changing the time of administration of a medication from morning to bedtime.

4. Q. Do Department of Health approved LHCSA policies and procedures addressing clinical supervision meet ALP requirements?
(Further clarification of the 3/27/97 revision to 4/25/96 #13.)

   A. Yes. Policy and Procedure Manuals approved by the Department of Health during the pre-opening survey meet ALP requirements. Surveillance activities conducted at the agency focus on the implementation of these policies including documentation which must meet the standards of 766.6. There are two components to supervision. The first is the supervision of the caregiver. Aides must be supervised when they are oriented to the care of the LHCSA patient, when changes in the plan of care occur and at least every 90 days. Documentation of this supervision must appear in the patient's record. The second component is supervision of the plan of care. All activities addressed in the plan must be documented as done or documentation explaining the omission of the activity must appear in the patient's record. If an activity is frequently omitted, this is most likely a cue that the plan of care should be reviewed and possibly revised.

5. Q. Is it permissible to deviate from the terms used in Parts 487 and 766 in naming both the record and its components?

   A. Yes. Patient specific record keeping requirements are addressed in 10 NYCRR Part 766.6. There is no requirement for a specific name to be given the record and its individual components. It is recommended that the LHCSA define in its Policy and Procedure Manual what names the agency is utilizing for the record and its individual components.

6. Q. Does the emergency and disaster plan submitted during the ALP application process meet the requirements of 10 NYCRR 766.9?
(Further clarification of 4/26/94 #32.)

   A. Yes. The plan submitted and accepted during the ALP application process meets the requirements found in 766.9. **However**, the ALP may be required by local regulations to participation in any local county or municipality emergency planning, e.g. hurricane preparedness in coastal regions, radiation disaster plans in areas around nuclear power plants. Additionally, ALP affiliated LHCSA's that provide services to patients in the community must have an emergency and disaster plan addressing the needs of their community based patients for events such as power failure and excessive snowfall.

7. Q. Is the certified home health agency (CHHA) or long term home health care program (LTHHCP) held responsible for its own actions and compliance with Department of Health regulations when an ALP contracts with a certified home health agency or a long term home health care program?

   A. Yes. The CHHA or LTHHCP is held responsible to maintain compliance with Department of Health regulations. The ALP's LHCSA is also responsible since both regulations require a "Notwithstanding..." clause in their contracts that states the agency (CHHA or LHCSA) is responsible for maintaining compliance with all pertinent regulations. If the ALP LHCSA perceives there is a problem with the CHHA's care of a patient, documentation of the ALP's efforts to address the situation including, if necessary, filing a complaint with the Department against the CHHA must be documented.

8. Q. What guidelines are used to determine the compliance of a CHHA or LTHHCP that contracts with an ALP during Department of Health surveillance activities?

   A. CHHA's are surveyed to determine compliance with the Federal Conditions of Participation, CFR 42 Part 484, as well as State regulations found in 10 NYCRR Parts 760 through 763. Any ALP resident who is receiving services from the CHHA is a CHHA patient. The CHHA must meet all regulatory requirements.

9. Q. Which ALP employees must meet the rubella immunization requirements found in 10 NYCRR 766.11(d)?

   A. The requirement for which LHCSA or CHHA employees must provide proof of immunity to rubella is described in DOH Memorandum 88-1, Health Assessment Requirements for Home Care Employees, as: "All employees having direct patient contact either in the patient's home or at other locations must meet these health requirements. Also covered are those individuals having an independent contract with the agency to render services on a per visit or per diem basis, as well as students and volunteers." Employees such as clerical staff who do not have direct patient contact do not require the immunization. Employees having direct patient contact, such as employees sitting at a reception desk where patients/residents may stop to chat, require immunization.

10. Q. Are chest x-rays mandated for employees with a positive ppd-Mantoux test?

   A. An employee that has a positive ppd-Mantoux test is required to have appropriate clinical follow-up with an authorized medical practitioner. The medical practitioner evaluating the employee's health status determines if a chest x-ray is required.

11. Q. What are the retention standards for ALP LHCSA records? (Further clarification of 4/26/94 #19.)

    A. Consistent with general business law standards, program records, business records, and records related to applications or renewal of certification must be retained for seven years. The maintenance of patient care records for six years or until age of majority is reached is a retention standard for medical records across all provider types. ALP resident/patient records are considered to be medical records.

12. Q. Is it permissible for the LHCSA registered professional nurse to provide skilled services in an emergent situation when the CHHA nurse is not available?

    A. Yes. If an emergent situation occurs, the ALP LHCSA nurse may provide service to a patient until the CHHA nurse is available. The CHHA, however, must be notified and provide any necessary follow up.

13. Q. Must residents of an ALP be referred to as "clients" rather than "patients?"

    A. No. This may be an issue that each ALP decide for itself and may want to make its determination after consulting with the Resident Council. The Department, however, will continue to use the term "patient" when it is speaking of an ALP resident's health care according to CHHA or LHCSA regulations.