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| LOCAL COMMISSIONERS MEMORANDUM |  
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Transmittal No: 91 LCM-58

Date: April 12, 1991

Division: Commissioner's  
Office

TO: Local District Commissioners

SUBJECT: Filed Regulation 505.33

ATTACHMENTS: Attachment listed below  
(Attachment available on-line)

The following changes to the Official Regulations of the State Department of Social Services have been filed for adoption with the Secretary of State.

18 NYCRR 505.33 relating to personal emergency response services.

The final rule - Filed: 4/11/91 - Effective: 5/1/91.

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Michael J. McNaughton  
Director, Local District  
Policy Communications

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of Sections 20(3)(d), 34.3(f), 363-a(2) and 367-g of the Social Services Law, I, Cesar A. Perales, Commissioner of Social Services, do hereby add Section 505.33 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective when the Notice of Adoption is published in the New York State Register.

Dated: April 10, 1991

Signed: \_\_\_\_\_

Commissioner

This is to certify that this is the original of an order of the State Department of Social Services, made on April 10, 1991 adding Section 505.33 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on October 24, 1990.

Dated: April 10, 1991

Signed: \_\_\_\_\_

Commissioner

A new Section 505.33 is added to Title 18 to read as follows:

505.33 Personal emergency response services (PERS).

(a) Definitions.

(1) Personal emergency response services mean:

(i) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset; and

(ii) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signals, the immediate notification of such emergency response organizations or persons, if necessary, as the individual has previously specified.

(2) Electronic communication equipment (PERS equipment) means equipment that electronically signals a monitoring agency for help via telephone lines. PERS equipment includes the following:

(i) an emergency response activator, which is a small electronic device that the PERS recipient presses or otherwise activates to send a signal for help to the monitoring agency; and

(ii) an emergency response communicator, which is an electronic unit connected to a PERS recipient's telephone line. The emergency response communicator accepts

a signal for help from the emergency response activator and also has its own device to generate a signal for help. It sends the signal via telephone lines to the monitoring agency.

(3) Monitoring agency means an agency that is capable of receiving signals for help from a recipient's PERS equipment 24 hours per day, seven days per week; determining whether an emergency exists; and notifying an emergency response organization or an emergency responder that the PERS recipient needs emergency help.

(4) Emergency response organization means a police department, a fire department, an ambulance service, a hospital, or other entity that the PERS recipient has designated to respond to specific signals for help when notified by the monitoring agency or an emergency responder.

(5) Emergency responder means a PERS recipient's neighbor, family member, or other person who has agreed, at the recipient's request, to respond to specific signals for help when notified by the monitoring agency.

(6) PERS provider means a certified home health agency, a long term home health care program, an area agency on aging, a police department, a fire department, an ambulance service, a hospital, or any other entity that is capable of providing PERS either directly or through subcontracts. A PERS provider may also be a monitoring agency.

(b) Social services districts' PERS plans. (1) Each social services district must submit a PERS plan to the department on a form the department

requires and must not authorize PERS until the department has approved the district's PERS plan. Each social services district must submit any changes to its approved PERS plan to the department on a form the department requires. The district may include such changes to its approved PERS plan as part of the district's annual plan for the provision of personal care services, as required by section 505.14(j) of this Part.

(2) A social services district's PERS plan must be in a form acceptable to the department and must include descriptions of the following:

(i) the process the social services district will use to authorize PERS;

(ii) the PERS equipment that the social services district will require to be used, including whether the equipment will have a voice-to-voice capability;

(iii) the process by which the social services district will select the PERS providers with which it will contract;

(iv) the coordination among the social services district, the PERS providers with which it will contract, and any entities with which the PERS providers will subcontract; and

(v) the projected cost savings that PERS will achieve.

(3) The department will notify a social services district of its approval or disapproval of the district's PERS plan within 45 business days after it receives the plan. If the department disapproves a social

services district's PERS plan, the district must submit a revised plan to the department within 30 business days after the day the district receives the department's disapproval notice.

(c) PERS assessments, authorizations, and reauthorizations.

(1) As part of its assessment for an authorization of personal care services or home health services, a social services district may also assess whether PERS would be appropriate for a person.

(2) An initial authorization for PERS must be based on a physician's order and a comprehensive assessment of the person.

(i) The comprehensive assessment must be performed by social services district staff, or by staff of the district's designee, on forms that the department approves to be used.

(ii) The comprehensive assessment must evaluate the following factors: the person's physical disability status, the degree to which the person is at risk of an emergency due to a medical or functional impairment or disability, and the degree of the person's social isolation.

(iii) A social services district may authorize PERS only when the comprehensive assessment indicates that PERS would be appropriate for the person because:

(a) the person has a medical condition, disability, or impairment that warrants use of PERS;

(b) PERS would reduce or eliminate the number of hours of personal care services or home health services that the person would need;

(c) the person's safety in the home must be monitored;

(d) the person has insufficient informal caretakers, such as family members and friends, directly and continuously available to monitor his or her health and safety;

(e) the person is alert and self-directing, which means that he or she is capable of making choices about activities of daily living, understanding the impact of the choices, and assuming responsibility for the results of the choices;

(f) the person can communicate in basic English or, if the person is unable to communicate in basic English, the person's emergency responder or responders can communicate in basic English;

(g) the person would be able to use the PERS equipment effectively; and

(h) the person has a functioning telephone that is compatible with the PERS equipment or will have such a telephone when the PERS equipment is installed.

(3) If a social services district authorizes PERS, the PERS authorization and plan of care may be incorporated in the authorization and plan of care for personal care services or home health services.

(4) The duration of an initial PERS authorization must be based upon the person's needs, as

reflected in the comprehensive assessment. No initial authorization may exceed six months.

(5) When a PERS recipient's physical circumstances, mental status, or medical condition significantly change during the authorization period, social services district staff, or staff of the district's designee, must perform a new comprehensive assessment and make any necessary changes in the authorization.

(6) A social services district must not authorize PERS if the person is eligible for the long term home health care program (LTHHCP), can obtain PERS through the LTHHCP, and wishes to obtain PERS through the LTHHCP.

(7) A reauthorization of PERS must follow the procedures set forth in paragraphs (2) through (6) of this subdivision, except that the recipient's physician, the social services district's local professional director, or a physician at the area Office of Health Systems Management must review the comprehensive assessment and be responsible for the final determination to reauthorize PERS. No single reauthorization may exceed six months.

(8) A social services district must notify the person in writing of its decision to authorize, deny, reauthorize, or discontinue PERS on forms required by the department. The notice must meet the notice requirements set forth in Part 358 of this Title. The person will be entitled to a fair hearing in accordance with the requirements of Part 358 of this Title. A PERS recipient for whom the social services district proposes to discontinue PERS will be entitled to aid continuing in

accordance with the requirements of Part 358 of this Title.

(d) Contracting for PERS.

(1) A social services district must have contracts with a sufficient number of PERS providers to provide PERS to all persons for whom the district has authorized PERS.

(2) Before contracting with any PERS provider, a social services district must determine that the provider is qualified to provide PERS either directly or through subcontracts and can meet this section's requirements and any local requirements contained in the district's approved PERS plan described in subdivision (b) of this section.

(3) A social services district's contracts with PERS providers must be on a form that the department has approved to be used. A district may attach local variations to the form. A district must not implement any contract for PERS or any local variations until the department has approved the contract and any local variations.

(4) A PERS provider must maintain appropriate insurance coverage to protect the social services district from liability claims resulting from acts, omissions, or negligence of provider personnel that cause personal injuries to PERS recipients or such personnel.

(e) Responsibilities of social services districts.

(1) A social services district must ensure that the PERS recipient designates an emergency response

organization; one emergency responder or, if possible, two such responders; a representative, who may be the same person as an emergency responder; and a preferred hospital. The district must also ensure that the PERS recipient, or his or her representative, signs a written authorization for emergency response organization personnel and an emergency responder to enter the recipient's home and provide emergency treatment and transportation.

(2) On the day that a social services district authorizes PERS, it must perform the following activities:

(i) telephone the PERS provider and inform the provider:

(a) of the name, telephone number, and address of the person for whom the social services district has authorized PERS;

(b) that the provider must telephone the person or the person's representative that same day to arrange a mutually convenient time for the provider to install the PERS equipment into the person's functioning telephone line; and

(c) that the provider must install the PERS equipment within seven business days after the day the provider receives a written PERS authorization from the social services district and that, if the provider cannot install the equipment within this seven day period, it must immediately notify the district.

(ii) send the PERS provider a written PERS authorization; and

(iii) send the PERS provider the information regarding the person that is described in clauses (f)(3)(i)(a) through (g) of this section.

(3) If a PERS recipient's physical circumstances, medical condition, or mental status change during the authorization period, the social services district must send to the PERS provider the information regarding these changes so that the provider may update the recipient's data record, as described in subparagraph (f)(3)(i) of this section.

(4)(i) Subject to the notice, aid continuing, and fair hearing requirements set forth in subdivision (c)(8) of this section and Part 358 of this Title, a social services district must discontinue PERS when the recipient is continuously hospitalized for more than 60 days or when his or her physical circumstances, mental status, or medical condition has changed significantly so that PERS are no longer appropriate for the person. Whenever a social services district discontinues PERS because PERS are no longer appropriate for the recipient, the district must ensure that personal care services, if appropriate, are provided to the recipient.

(ii) On the day that the social services district discontinues PERS, it must perform the following activities:

(a) telephone the PERS provider and inform the provider that it must telephone the recipient or the recipient's representative that same day to arrange a mutually convenient time for the PERS equipment's

removal, and that the provider must remove the PERS equipment within seven business days after the day the provider receives the district's written notification to remove the equipment; and

(b) send the PERS provider a written notification to remove the PERS equipment.

(5) A social services district must monitor a PERS provider's compliance with this section's requirements. The district must monitor the timeliness of the provider's installation, maintenance, and removal of PERS equipment; the timeliness and efficiency of the monitoring agency's responses to signals for help from recipients' PERS equipment; the timeliness of the provider's reports of emergencies; the reliability of PERS equipment; and all complaints by PERS recipients regarding the PERS provider or the PERS equipment.

(f) Responsibilities of PERS providers.

(1) A PERS provider must properly install all PERS equipment into a PERS recipient's functioning telephone line and must furnish all supplies necessary for installing this equipment.

(i) On the day that the PERS provider receives the district's telephoned PERS authorization, it must telephone the recipient or the recipient's representative to arrange a mutually convenient time for the provider to install the PERS equipment into the recipient's functioning telephone line. The PERS provider must install the PERS equipment within seven business days from the day it receives the district's written PERS authorization. If

the provider is unable to install the PERS equipment within this period, it must notify the district immediately.

(ii) On the day that the PERS provider installs the PERS equipment, it must perform the following activities:

(a) telephone the social services district and notify it that the equipment has been installed;

(b) instruct the PERS recipient regarding the use of the PERS equipment and give the PERS recipient simple written instructions that describe these procedures;

(c) inform the PERS recipient that he or she should immediately notify the provider or the social services district if the equipment malfunctions; and

(d) inform the PERS recipient that he or she may call the monitoring agency when he or she wants to test the PERS equipment or when he or she has questions regarding the PERS equipment.

(iii) At the PERS recipient's or the social services district's request, the PERS provider must give follow-up instructions to the recipient regarding his or her use of the PERS equipment.

(iv) Within seven business days after the day the PERS equipment is installed, the PERS provider must forward to the social services district, by mail or facsimile machine, a written confirmation that the equipment has been installed and that the PERS recipient has been instructed how to use the equipment. The confirmation must be signed by a representative of the provider and by the PERS recipient or the recipient's representative.

(2) A PERS provider must maintain all installed PERS equipment in proper working order.

(i) The PERS provider must monitor all installed PERS equipment to insure that the equipment operates properly at all times. The provider's monitoring of the PERS equipment should be automated and result in the least possible inconvenience to the PERS recipient.

(ii) The PERS provider must replace PERS equipment batteries when necessary, at no additional cost to the social services district, the department, or the recipient.

(iii) Within 24 hours after the PERS provider is notified that any PERS equipment has malfunctioned, the provider must repair or replace the equipment at no additional cost to the social services district, the department, or the recipient. The PERS provider may be notified that the PERS equipment has malfunctioned by the social services district, the PERS recipient, the PERS recipient's representative, or another responsible party. When any PERS equipment is repaired or replaced, the PERS provider must notify the social services district by telephone within 24 hours.

(3) A PERS provider must maintain the following records at no additional cost to the social services district or the department:

(i) a data record for each PERS recipient. The provider must update this record at least every six months by contacting the social services district. The provider must also update the recipient's data record

whenever the social services district notifies the provider that changes should be made to the PERS recipient's data record. Each PERS recipient's data record must contain the following information, which the social services district will send to the provider on the day it authorizes PERS and whenever the social services district is informed that such information has changed:

(a) the PERS recipient's name, telephone number, and address, including his or her apartment number and floor, if applicable;

(b) the PERS recipient's personal medical history, including his or her age, sex, medical condition, diagnosis, and other relevant medical history;

(c) the name, telephone number, and address of the person or persons whom the PERS recipient has designated as the emergency responder or responders;

(d) the name, telephone number, and address of the person whom the PERS recipient has designated as his or her representative, if different from an emergency responder;

(e) the name, telephone number, and address of the police department, fire department, ambulance service, hospital, or other entity that the PERS recipient has designated as an emergency response organization;

(f) the PERS recipient's written authorization for the emergency response organization and an emergency responder to enter his or her home and provide emergency treatment and transportation; and

(g) the name, telephone number, and address of the PERS recipient's physician and the recipient's preferred hospital.

(ii) a record of the PERS provider's instructions to the PERS recipient regarding his or her use of the PERS equipment;

(iii) a record of the PERS equipment's installation and removal;

(iv) a record of the maintenance of PERS equipment and any repairs or replacements of malfunctioning equipment that were necessary;

(v) a record of the monitoring agency's 24-hour monitoring of PERS recipients;

(vi) a record of each signal for help from a recipient's PERS equipment that the monitoring agency receives and the monitoring agency's response to the signal; and

(vii) a record of PERS recipients whom the monitoring agency monitors each month.

(4)(i) The PERS provider must ensure that the monitoring agency performs the following activities when the monitoring agency receives a signal for help from a recipient's PERS equipment:

(a) if the PERS recipient's equipment has voice-to-voice capability, establish immediate verbal contact with the PERS recipient via the incoming signal to determine whether an emergency exists at the PERS recipient's home;

(b) retrieve the PERS recipient's data record;

(c) if unable to establish immediate verbal contact with a PERS recipient whose equipment has voice-to-voice capability, or if the PERS recipient's equipment lacks such capability, immediately notify an emergency responder that the PERS recipient has signaled for help;

(d) if unable to notify an emergency responder, immediately notify an emergency response organization that the PERS recipient has signaled for help;

(e) maintain appropriate contact with the PERS recipient, the emergency responder, or the emergency response organization; and

(f) monitor the provision of emergency services to verify that these services have been provided and that the emergency at the PERS recipient's home has been resolved.

(ii) The PERS provider must telephone the social services district on the first business day after the emergency occurred and inform it of the nature of the emergency and how it was resolved. The provider must forward to the social services district, by mail or facsimile machine, a written report of the emergency within seven business days after the day the emergency occurred. This report must contain at least the information described in paragraphs (3)(v) and (vi) of this subdivision.

(5) The PERS provider must ensure that the monitoring agency can continuously monitor and respond to signals for help from recipients' PERS equipment during

power failures, mechanical malfunctions, or other technical emergencies. The provider must ensure that the monitoring agency has the monitoring capabilities specified in subdivision (g)(2) of this section.

(6) A PERS provider must remove PERS equipment from a recipient's home when notified to do so by the social services district. The provider must not remove PERS equipment unless the district has notified it that the equipment must be removed.

(i) On the day the social services district telephones the PERS provider and notifies it that PERS equipment must be removed, the provider must telephone the recipient or the recipient's representative to arrange a mutually convenient time for the equipment's removal.

(ii) The PERS provider must remove PERS equipment within seven business days after the day the provider receives the social services district's written notification that PERS equipment must be removed.

(iii) On the day the PERS equipment is removed, the PERS provider must notify the social services district by telephone of the equipment's removal.

(iv) Within seven business days after the day the PERS equipment is removed, the PERS provider must forward to the social services district, by mail or facsimile machine, a written confirmation that the equipment has been removed. The confirmation must be signed by a representative of the provider and by the former PERS recipient or his or her representative.

(g) Standards for PERS equipment and monitoring agencies.

(1) All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1637, which is the UL safety standard for home health care signaling equipment. (Standard for Home Health Care Signaling Equipment, UL 1637, First Edition, May 30, 1989, effective January 2, 1991; published by Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois, 60062. Copies are available for public use and inspection at the Department of State, 162 Washington Avenue, Albany, New York, 12231.) The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard.

(i) The emergency response activator must be activated either by breath, by touch, or by some other means and must be usable by persons who are visually or hearing impaired or physically disabled.

(ii) The emergency response communicator must be attached to the PERS recipient's telephone line and must not interfere with normal telephone use. The emergency response communicator must be capable of operating without external power during a power failure at the recipient's home in accordance with UL requirements for home health care signaling equipment with stand-by capability.

(2) The monitoring agency must be capable of simultaneously responding to multiple signals for help from

recipients' PERS equipment. The monitoring agency's equipment must include the following:

(i) a primary receiver and a back-up receiver, which must be independent and interchangeable;

(ii) a back-up information retrieval system;

(iii) a clock printer, which must print out the time and date of the emergency signal, the PERS recipient's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

(iv) a back-up power supply;

(v) a separate telephone service; and

(vi) a telephone line monitor, which must give visual and audible signals when an incoming telephone line is disconnected for more than 10 seconds.

(3) The monitoring agency must maintain detailed technical and operations manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures.

(h) Payment for PERS.

(1) A social services district must negotiate payment rates for PERS at or below rates included in a rate schedule established by the department with the approval of the Director of the Budget. A social services district must not negotiate PERS payment rates that exceed local prevailing PERS rates.

(2) PERS rates must include payment for the rental or lease of PERS equipment; the installation,

maintenance, and removal of PERS equipment; and a monthly service charge for monitoring agency services.

(3) The social services district must submit all negotiated PERS rates to the department for approval.

(4) Payments for PERS will be made only when the PERS provider's claim is supported by documentation required by section 540.7(a)(8) of this Title.

(5) Payments for PERS must end the day the social services district sends the PERS provider written notification that PERS equipment must be removed from the recipient's home.