*** § 4403-c. Comprehensive HIV special needs plan certification.** 1. No person or group of persons may operate a comprehensive HIV special needs plan without first obtaining a certificate of authority from the commissioner. Any person may apply for a comprehensive HIV special needs certificate of authority, provided, however, that a shared health facility, as defined in article forty-seven of this chapter, shall not be eligible for such a certificate.

2. An applicant for certification shall submit the following information and documentation to the satisfaction of the commissioner:

(a) a copy of the applicant's basic organizational documents and agreements of the applicant and all network members, including all contracts and agreements relating to the provision of HIV services;

(b) a copy of any current licensure or certification maintained by the applicant;

(c) a description of any experience the applicant may have had in providing HIV services which are licensed, certified, funded or approved by the department, including identification of any disciplinary, administrative or criminal proceedings related to such services in the past ten years, the resolution thereof, and any other proceedings currently pending;

(d) full disclosure of the financial condition of the applicant and of members of the board, officers, controlling persons, owners and partners, including, but not limited to, a statement of the applicant's assets, resources, accounts receivable, liabilities and proposed sources and uses of funds and the most recent certified income statement and balance sheet;

(e) a demonstration of the applicant's ability to provide or continue to provide quality HIV services;

(f) a description of the geographic area served and to be served by the applicant;

(g) a description of the applicant's current capacity, and proposed capacity, to provide or arrange for the provision of comprehensive HIV services for a defined geographic area to a defined population; and

(h) such other information as the commissioner shall require.

3. The commissioner shall not issue a comprehensive HIV special needs

plan certificate of authority to an applicant therefor unless the applicant demonstrates that:

(a) it has defined an enrolled population to which the comprehensive HIV special needs plan proposes to provide comprehensive HIV health services, has demonstrated a willingness to enroll any person who is eligible for enrollment within its defined catchment area and has established a mechanism by which the enrolled population may participate in determining the policies of the organization;

(b) it has defined a specific network of providers and facilities that are capable of providing comprehensive HIV special needs services to the enrolled population described in paragraph (a) of this subdivision;

(c) it has the capability of organizing, marketing, managing, promoting and operating a comprehensive HIV special needs plan;

(d) it is financially responsible and sound and may be expected to meet its obligations to its enrolled members. For the purposes of this paragraph, "financially responsible" means that the applicant is capable of assuming full financial risk on a prospective basis for the provision of comprehensive HIV special needs services within the geographic catchment area defined by the applicant except that it may allow providers to share financial risk under the terms of their contract, or it may obtain insurance or make other arrangements for the cost of providing comprehensive HIV special needs health services to enrollees; any insurance or other arrangements proposed to meet this requirement shall be approved as to adequacy as a prerequisite to the issuance of any comprehensive HIV special needs certificate of authority by the commissioner. In making a determination of financial soundness, the commissioner shall consider financial information, contracts and agreements required as part of the application for a certificate of authority and any other information that the commissioner shall deem necessary to make that determination. For purposes of this section, any grants awarded to an applicant contingent upon its approval as a HIV special needs plan certified pursuant to this section, shall be considered when making a determination of fiscal soundness;

(e) it has established a system which appropriately accounts for costs and a uniform system of reports and audits meeting the requirements of the commissioner;

(f) the character, competence and standing in the community of the

proposed incorporators, directors, sponsors, or stockholders of the plan, and its network providers, are satisfactory to the commissioner;

(g) it is willing and able to assure that necessary HIV services will be provided in a timely manner to assure the availability and accessibility of adequate personnel and facilities; to assure continuity of care for enrollees; and to implement procedures for referrals, as requested, to appropriate care for affected family members of the enrolled population;

(h) the prepayment mechanism of its comprehensive HIV special needs plan, the bases upon which the providers of health care are compensated, and the anticipated use of allied health personnel are conducive to the use of ambulatory care and the efficient use of hospital services;

(i) acceptable procedures have been established for the conduct of outreach and enrollment of persons with HIV infection including persons who are homeless, substance users and other vulnerable populations;

(j) acceptable procedures have been developed to communicate with participants in a linguistically and culturally competent manner;

(k) acceptable procedures have been established to monitor the quality of care provided by the plan and to assure that all care rendered meets clinical standards of HIV care as established and maintained by the AIDS Institute of the New York state department of health;

(l) approved mechanisms exist to resolve complaints and grievances initiated by any enrolled member; and

(m) the requirements of this article and any regulations promulgated pursuant thereto have been met and will continue to be met.

4. The commissioner shall not issue a comprehensive HIV special needs certificate of authority unless the applicant has demonstrated to the commissioner's satisfaction that the requirements of this article and any regulations promulgated pursuant thereto have been met and will continue to be met, provided, however, that the commissioner may impose alternative requirements, or portions thereof, particularly those related to capitalization, if he or she determines that such alternative requirements will serve to promote the high quality, efficient provision of comprehensive health services or services required by HIV positive persons, will promote the development of HIV special needs plans and that the proposed plan will provide an appropriate and cost-effective

alternative method for the delivery of such services in a manner which will meet the needs of the population to be served.

5. The commissioner shall make a determination on an application after receipt of all required and requested information and documentation.

6. The commissioner shall review and approve any current or proposed contracts or agreements with current or prospective network members, and provided further, that the commissioner shall specifically review and approve any proposed provisions in such contracts or agreements with the prospective or existing network members which specify any risk sharing arrangements.

7. The commissioner may revoke, limit or annul a comprehensive HIV special needs plan certificate of authority in accordance with the provisions of section forty-four hundred four of this article.

8. A comprehensive HIV special needs plan, certified pursuant to this section, shall be responsible for providing or arranging for all medical assistance services defined under section three hundred sixty-five-a of the social services law, including delivery of a comprehensive benefit package, which shall include early and periodic screening; adolescent health; diagnosis and treatment and child/teen health screenings; referrals for necessary services; linkages to HIV counseling and testing; and HIV prevention and education activities. A comprehensive HIV special needs plan provider shall be responsible for assisting enrollees in the prudent selection of such services including but not limited to:

(a) referral, coordination, monitoring and follow-up with regard to other medical services providers, as appropriate for diagnosis and treatment, or direct provision of all medical assistance services;

(b) methods of assuring enrollees' access to specialty services outside the comprehensive HIV special needs plan's network or panel when the plan does not have a provider with the appropriate training and experience in its network to meet the particular health care needs of the participant;

(c) the establishment of appropriate utilization and referral

requirements for physicians, hospitals, and other medical services providers, including emergency room visits and inpatient admissions;

(d) the creation of mechanisms to ensure the participation of HIV centers of excellence and community-based HIV care providers;

(e) implementation of procedures for managing the care of all participants, including the use of facility and community-based case managers with expertise in the care needs of persons with HIV infection, and the designation of a specialist as a primary care practitioner;

(f) development of appropriate methods of managing the HIV care needs of homeless, substance users and other vulnerable populations, who are enrolled in the comprehensive HIV special needs plan, to assure that all necessary services are made available in a timely manner, in accordance with prevailing standards of professional medical practice, and that all appropriate referrals and follow-up treatments are provided;

(g) provision of all early periodic screening, diagnosis and treatment services, as well as periodic screening and referral, to each participant under the age of twenty-one, at regular intervals and as medically appropriate;

(h) direct provision of or arrangement for the provision of comprehensive prenatal care services to all pregnant participants in accordance with standards adopted by the department of health and with statute and regulations governing HIV testing of pregnant women and newborns;

(i) implementation of procedures for written agreements, which may include contractual agreements, with community-based social service providers to ensure access to the full continuum of services needed by HIV infected persons; and

(j) permit the use of standing referrals to specialists and subspecialists for participants who require the care of such practitioners on a regular basis.

9. Notwithstanding any other provision of law, a comprehensive HIV special needs plan certified pursuant to this section shall limit enrollment to HIV positive persons, except for the following persons who may be enrolled regardless of their HIV status:

(a) related children up to the age of twenty-one; and

(b) individuals who are homeless or who are members of other high need

populations which, in the discretion of the commissioner, would benefit from receiving services through a plan certified pursuant to this section; provided however, that rates paid to special needs plans for such populations shall be comparable to rates paid for the same populations in other managed care plans.

10. Enrollment and disenrollment. (a) Enrollment in a comprehensive HIV special needs plan shall be voluntary and persons eligible for enrollment in such plans shall be afforded the opportunity to choose among such plans, to the extent available in the locality where the person currently resides; provided however that enrollment may be automatic after federal approval of a waiver or waivers or other federal action required to institute automatic enrollment, pursuant to applicable provisions of the federal social security act, and that persons automatically enrolled in a comprehensive HIV special needs plan shall have the opportunity to withdraw from such plan in accordance with paragraph (g) of subdivision four, paragragh (b) of subdivision three and subdivision twelve of section three hundred sixty-four-j of the social services law. The department shall ensure to the maximum extent practicable that individuals are provided with a choice of comprehensive HIV special needs plans.

(b) The commissioner shall promulgate regulations establishing criteria which relate to enrollment and disenrollment of enrollees in comprehensive HIV special needs plans. Comprehensive HIV special needs plans shall not request disenrollment of an enrollee based on any diagnosis, condition, or perceived diagnosis or condition, or an enrollee's efforts to exercise his or her rights under a grievance process.

(c) Prior to enrollment in a comprehensive HIV special needs plan individuals are to be provided with a full written explanation of all fee-for-service and other options and given a reasonable opportunity to choose between the comprehensive HIV special needs plan and the other options. In addition, enrollees shall be provided notice of their right to disenroll from the plan, except as otherwise provided in this subdivision.

(d) If an enrollee requests to change a provider or disenroll from a comprehensive HIV special needs plan pursuant to this subdivision, the

social services district and the plan shall implement such change in a timely manner in accordance with standards established by the commissioner. When an enrollee changes comprehensive HIV special needs plan providers the plan must effectuate the timely transfer of all necessary medical records.

(e) Plans shall ensure that any new enrollee whose health care provider is not a member of the plan's provider network, who enrolls in the plan, can continue with an ongoing course of treatment with the enrollee's current health care provider during a transitional period of up to sixty days from the effective date of enrollment. If an enrollee elects to continue to receive care from such health care provider pursuant to this paragraph, such care shall be authorized by the comprehensive HIV special needs plan for the transitional period only if the health care provider agrees: (1) to accept reimbursement from the comprehensive HIV special needs plan at rates established by the plan as payment in full, which rates shall be no more than the level of reimbursement applicable to similar providers within the plan's network for such services; (2) to adhere to the plan's quality assurance requirements and agrees to provide to the plan any necessary medical information related to such care; and (3) to otherwise adhere to the plan's policies and procedures including, but not limited to procedures regarding referrals and obtaining pre-authorization and a treatment plan approved by the comprehensive HIV special needs plan. In no event shall this paragraph be construed to require a comprehensive HIV special needs plan to provide coverage for benefits not otherwise covered;

(f) Comprehensive HIV special needs plans shall ensure that for those enrollees whose health care provider leaves the comprehensive HIV special needs plan's network of providers, the enrollee shall be permitted to continue an ongoing course of treatment with such current health care provider during a transitional period of up to ninety days from the date of notice to the enrollee of the provider's disaffiliation from the plan's network. If an enrollee elects to continue to receive care from such health care provider pursuant to this paragraph, such care shall be authorized by the comprehensive HIV special needs plan for the transitional period only if the health care provider agrees: (1) to accept reimbursement from the comprehensive HIV special needs plan at rates established by the plan as payment in full, which rates shall be

no more than the level of reimbursement applicable to similar providers within the plan's network for such services; (2) to adhere to the organization's quality assurance requirements and agrees to provide to the plan any necessary medical information related to such care; and (3) to otherwise adhere to the plan's policies and procedures including, but not limited to procedures regarding referrals and obtaining pre-authorization and a treatment plan approved by the comprehensive HIV special needs plan. In no event shall this paragraph be construed to require a comprehensive HIV special needs plan to provide coverage for benefits not otherwise covered;

11. The commissioner shall develop and certify capitated payment rates for comprehensive HIV special needs plans, subject to the approval of the director of the division of the budget. In developing capitation rates the commissioner shall be authorized to consider, at a minimum, the age, eligibility category, historic cost and utilization of covered enrollees and covered services, anticipated costs of emerging HIV treatment modalities and the expected impact of delivering services in a managed care environment.

12. Plans certified under this section must submit financial reports in a manner and frequency established by the commissioner.

13. The department shall establish a stop-loss reinsurance program for comprehensive HIV special needs plans. The stop-loss reinsurance program shall be designed in a manner which promotes the development and ongoing financial viability of the comprehensive HIV special needs plan by providing reasonable protection for catastrophic cases and adverse selection.

14. Quality assurance. (a) The department shall be responsible for establishing a comprehensive quality assurance program for comprehensive HIV special needs plans. This quality assurance program shall reflect clinical standards of HIV care established and maintained by the AIDS Institute in the department. The department shall monitor the performance, quality and utilization of such plans on at least an annual basis. Such plans must describe and document the existence of a formal,

organized quality assurance program with the capacity to identify, address and follow-up on issues which concern the care and services delivered to enrollees. Such reviews are to include, but not be limited to, the following:

(1) compliance with performance and outcome-based quality standards promulgated by the department;

(2) appropriateness, accessibility, timeliness, and quality of care delivered by such providers;

(3) referrals, coordination, monitoring and follow-up with regard to other medical service providers;

(4) methods of ensuring enrollees access to specialty services outside the plan's network or panel when the plan does not have a provider with the appropriate training and experience in the network or panel to meet the particular HIV care needs of the participant;

(5) delivery of a comprehensive benefit package, including early and periodic screening; adolescent health; diagnosis and treatment and child/teen health screenings; referrals for necessary services, and linkages to HIV counseling and testing; HIV prevention and education activities;

(6) mechanisms for the provision of all information to enrollees in clear and coherent terms that are commonly used in a culturally and linguistically appropriate and understandable manner;

(7) existence of a management information system to support quality assurance activities, which system shall provide for the collection and utilization of data including but not limited to enrollment, complaints, encounters and specific performance indicators; and

(b) the commissioner shall have access to patient specific medical information and enrollee medical records, including encounter data, maintained by a comprehensive HIV special needs plan for the purposes of quality assurance and oversight.

(c) The department shall be responsible for establishing and maintaining a uniform system of reports relating to the quality of care and services furnished by comprehensive HIV special needs plans.

15. The commissioner may revoke, limit or annul a comprehensive HIV special needs certificate of authority in accordance with the provisions of section forty-four hundred four of this article.

16. Confidentiality. Except as provided in paragraph (c) of subdivision fourteen of this section, any enrollee information maintained by a comprehensive HIV special needs plan shall be kept confidential in accordance with section forty-four hundred eight-a of this article and where applicable section 33.13 of the mental hygiene law and any other applicable state or federal law.

17. Utilization review. A comprehensive HIV special needs plan authorized under this section is required to meet requirements set forth in article forty-nine of this chapter.

18. Disclosure. Each enrollee and prospective enrollee prior to enrollment in a comprehensive HIV special needs plan shall be provided with written disclosure information related to enrollee benefits, rights and obligations pursuant to section forty-four hundred eight of this article.

19. Grievance procedure. Comprehensive HIV special needs plans authorized under this section shall be required to meet grievance procedures requirements pursuant to section forty-four hundred eight-a of this article.

20. Prohibitions. A comprehensive HIV special needs plan authorized under this section shall be required to meet the requirements set forth in section forty-four hundred six-c of this article.

21. The commissioner is authorized, subject to the approval of the director of the division of the budget, and within amounts appropriated, to make grants to those entities seeking certification to operate a comprehensive HIV special needs plan to aid in the development of the systems, organizational structures and networks necessary to operate a managed care program. The commissioner is authorized to develop criteria for distribution of the grants. The grants may also be used to meet the capitalization standards and the reserve and escrow deposit requirements established for comprehensive HIV special needs plans.

22. Comprehensive HIV special needs plans shall function distinctly from other comprehensive or non-comprehensive health plans operated by the same organization, corporation, persons, county or municipality and shall be clearly distinguished from any other functions through the maintenance of separate records, reports and accounts for the comprehensive HIV special needs plan function.

23. The commissioner shall establish reserve and escrow deposit requirements for HIV special needs plans.

24. Nothing in this section shall be construed to require that a health maintenance organization, certified pursuant to the provisions of this article, apply for a comprehensive HIV special needs plan certificate of authority pursuant to this section; provided, however, that a health maintenance organization, certified pursuant to the provisions of this article, which proposes to operate a comprehensive HIV special needs plan shall be required to comply with all the provisions of this section.

* NB Repealed March 31, 2030