§ 367-c. Payment for long term home health care programs. 1. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, the local social services official, before he authorizes care in a nursing home or intermediate care facility for a person eligible to receive services under this title, shall notify the person in writing of the provisions of this section.

2. If a person eligible to receive services under the provisions of this title who requires care, treatment, maintenance, nursing or other services in a nursing home desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provisions of section thirty-six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in a nursing home. In developing such plan, the official shall consult with those persons performing the assessment. The services shall be provided by a certified home health agency, hospital, or residential health care facility authorized by the commissioner of health under article thirty-six of the public health law to provide a long term home health care program. At the time of the initial assessment, and at the time of each subsequent assessment performed under the provisions of section thirty-six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize payment for the services provided under such plan. Total monthly expenditures made under this title for such person shall not exceed a maximum of seventy-five per cent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates payable under this title for nursing home services within the social services district for

which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he requires services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

3. If a person eligible to receive services under the provisions of this title who requires health related care and services in an intermediate care facility desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provisions of section thirty-six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in an intermediate care facility. In developing such plan, the official shall consult with those persons performing the assessment. The services shall be provided by a certified home health agency, hospital, or residential health care facility authorized by the commissioner of health under article thirty-six of the public health law to provide a long term home health care program. At the time of the initial assessment and at the time of each subsequent assessment performed under the provisions of section thirty-six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize payment for the services provided under that plan. Total monthly expenditures made

under this title for such person shall not exceed a maximum of seventy-five per cent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates paid under this title for the provision of health related care and services in intermediate care facilities within the social services district for which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he requires services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

3-a. (a) Notwithstanding any inconsistent provision of this section, the commissioner is authorized and directed to establish a demonstration program for the purpose of determining the impact of raising the limitation on expenditures for the delivery of long term home health care services to persons with special needs as defined in this subdivision. Pursuant to such program, the commissioner shall permit local social services officials to authorize, at their discretion, and only after a determination that the maximum expenditure available pursuant to subdivisions two and three of this section is not sufficient to provide or continue to provide long term home health care services to persons with special needs, maximum monthly expenditures for services under this title to such persons, not to exceed one hundred percent of the average of the monthly rates payable under this title for services in a nursing home or intermediate care facility within the social services district for which the social services official has authority. However, if a continuing assessment of a person with special needs demonstrates that he requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not having exceeded such maximum. If an assessment of a

person with special needs demonstrates that he requires increased services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

(b) As used in this subdivision, the term "person with special needs" shall mean a person for whom a plan of care has been developed pursuant to subdivision two or three of this section who (1) needs care including but not limited to respiratory therapy, tube feeding, decubitus care or insulin therapy which cannot be appropriately provided by a personal care aide as defined in regulations issued by the commissioner, or (2) has one or more of the following conditions: mental disability as defined in section 1.03 of the mental hygiene law, acquired immune deficiency syndrome, or dementias, including Alzheimer's disease.

(c) The number of persons with special needs for whom a local social services official may authorize payment for services pursuant to paragraph (a) of this subdivision shall be limited to twenty-five percent of the total number of persons, all long term home health care programs, within a social services district are authorized to serve; provided, however, in any district containing a city having a population of one million or more, such limit shall be fifteen percent.

(d) In the event that a district reaches the limitation specified in paragraph (c) of this subdivision, the local social services official may, upon the approval of the commissioner, authorize payment for services, pursuant to paragraph (a) of this subdivision, for additional persons with special needs.

4. Notwithstanding any inconsistent provision of this section, if two members of this same household, eligible to receive services under this title, require care and services in either a nursing home or an intermediate care facility, and assessments conducted pursuant to the provisions of this section indicate that such persons can receive the appropriate level of care at home, then such care may be provided at home where total monthly expenditures made under this title for such persons shall not exceed a maximum of seventy-five percent, or such lesser percentage as may be determined by the commissioner, of the

monthly rates which would be payable under this title for both members of the household for nursing home and/or intermediate care facility services within the social services district. If assessments of such persons' needs demonstrate that they require services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such persons will not exceed the maximum calculated over a one year period, a social services official may authorize payment for such services.

5. If a person eligible to receive services under the provisions of this title who is medically eligible for care, treatment, maintenance, nursing or other services in a nursing home or is medically eligible for health related care and services in an intermediate care facility desires to and is deemed by his or her physician able to remain in an adult care facility, other than a shelter for adults, which is able and willing to retain such person if the necessary services are provided, such person or his or her representatives shall so inform the local social services official. If a long term home health care program is provided in a social services district, an official of such district shall authorize an assessment under the provisions of section three thousand six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at such location, and meets the appropriate standards for continued stay for such facility as are established by law and regulation, such official shall prepare for that person a plan for the provision of services. In developing such plan, the official shall consult with those persons performing the assessment and with the operator of the adult care facility. The services shall be provided by a long term home health care program authorized pursuant to article thirty-six of the public health law, provided, however that notwithstanding the provisions of section three thousand six hundred sixteen of such law, services shall not be provided prior to the completion of the assessment. At the time of the initial assessment and at the time of each subsequent assessment performed under the provisions of section three thousand six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize

payment for the services provided under that plan, provided, however that no services shall be authorized in the plan which the operator of the facility is required by law and regulation to provide. The long term home health care program providing services authorized in such plan shall be solely responsible for managing and providing or arranging for such authorized services. The operator of the adult care facility shall be solely responsible for managing and providing those services which the facility is required by law or regulation to provide. However, the two entities shall collaborate to assure coordination. Total monthly expenditures made under this title for such person shall not exceed a maximum of fifty percent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates paid under this title for the provision of nursing home services or health related care and services in intermediate care facilities, whichever is appropriate, within the social services district for which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he or she requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he or she requires services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services. The provisions of this subdivision shall not be deemed to alter standards for admission to an adult care facility nor shall the admission of a person into such facility be contingent on such person's enrollment in a long term home health care program.

6. Notwithstanding any inconsistent provision of law but subject to expenditure limitations of this section, the commissioner, subject to the approval of the state director of the budget, may authorize the utilization of medical assistance funds to pay for services provided by specified long term home health care programs in addition to those services included in the medical assistance program under section three hundred sixty-five-a of this chapter, so long as federal financial

participation is available for such services. Expenditures made under this subdivision shall be deemed payments for medical assistance for needy persons and shall be subject to reimbursement by the state in accordance with the provisions of section three hundred sixty-eight-a of this chapter.

7. No social services district shall make payments pursuant to title XIX of the federal Social Security Act for benefits available under title XVIII of such act without documentation that title XVIII claims have been filed and denied.

8. No social services district shall make payment for a person receiving a long term home health care program while payments are being made for that person for inpatient care in a residential health care facility or hospital.

9. The commissioner, together with the commissioner of health, shall submit a report to the governor, president pro tem of the senate and speaker of the assembly by the first day of February, nineteen hundred eighty, on the implementation of this section. Such report shall include a statement of the scope and status of long term home health care programs, the extent to which such programs have affected institutionalization, the costs associated with such programs, any recommendations for legislative action, and such other matters as may be pertinent.

10. This section shall be effective if, and as long as, federal aid is available therefor.