§ 367-e. Payment for AIDS home care programs. 1. If an AIDS home 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 or before he authorizes home health services or personal care services 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 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 an AIDS home 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 provision 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 home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in a hospital or residential health care facility, as appropriate for the patient. In developing such plan, the official shall consult with those persons performing the assessment and shall assure that such plan is appropriate to the patient's needs and will result in an efficient use of services. The services shall be provided by a long term home health care program authorized by the commissioner of health under article thirty-six of the public health law to provide an AIDS home care program.

3. The commissioner shall apply for any waivers, including home and community based services waivers pursuant to section nineteen hundred fifteen-c of the social security act, necessary to implement AIDS home care programs. 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 AIDS home 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.

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

6. This section shall be effective if, and as long as, federal financial participation is available.