

Section 6654.10 and Section 6654.11 of Title 9 NYCRR are REPEALED and REPLACED with a new Section 6654.10 to read as follows:

Section 6654.10 OAA, WIN, CSI and CSE-funded nutrition services

a. Area agency responsibilities. These responsibilities are in addition to requirements specified in this Chapter.

(1) The area agency must use funds received from this office for the establishment and operation of congregate and home delivered nutrition services programs that serve to:

(i) reduce hunger and food insecurity;

(ii) promote socialization of older individuals; and

(iii) promote the health and well-being of older individuals by assisting such individuals to gain access to nutrition and other disease prevention and health promotion services to delay the onset of adverse health conditions resulting from poor nutritional health or sedentary behavior.

(2) Congregate nutrition services.

(i) The area agency shall ensure that the nutrition program:

(a) provides at least one hot or other appropriate meal per day, 5 or more days a week (except in a rural area where such frequency is not feasible and a lesser frequency is approved by the office) and any additional meals that the area agency may elect to offer;

(b) is provided in congregate settings, including adult day care facilities and multigenerational meal sites and may include restaurant-based sites;

(c) locate congregate sites in as close proximity to the majority of eligible older individuals' residences as feasible;

(d) open all congregate sites at least one hour before and remain open for one hour after meal service to permit all

participants to eat a leisurely meal, enjoy social contact, and take advantage of other services at the site;

(e) to the maximum extent possible make space available at congregate sites for supportive, educational and/or recreational services and activities; and

(f) provides nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal participants.

ii. Eligibility

(a) Any person age 60 or older and the spouse of such a person is eligible to participate in congregate nutrition services.

(b) For Older Americans Act (OAA) funded programs, individuals with disabilities under the age of 60 who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided may also be served.

(c) In accordance with procedures established by the area agency:

(1) individuals with disabilities under the age of 60 who reside at home with an eligible older individual may be offered congregate nutrition services; and

(2) individuals under the age of 60 who provide volunteer services to the meal program during meal hours may be offered a meal on the same basis as meals are provided to eligible participants.

iii. The area agency shall ensure that nutrition services providers register participants in accordance with the office's reporting requirements.

(3) Home delivered nutrition services.

(i) The area agency shall ensure that the nutrition program:

(a) provides at least one home delivered meal per day, 5 or more days a week (except in a rural area where such frequency is not feasible and a lesser frequency is approved by the office),

which may consist of hot, cold, frozen, dried, canned, fresh, or supplemental foods and any additional meals that the area agency elects to provide);

(b) when feasible and appropriate, make arrangements for the availability of meals to participants in weather-related emergencies;

(c) provides nutrition education, nutrition counseling, and other nutrition services, as appropriate, based on the needs of meal recipients; and

(d) to the extent possible, makes available medical information approved by health care professionals, such as informational brochures and information on how to get vaccines, including vaccines for influenza, pneumonia, and shingles, in the individuals' communities.

ii. Eligibility.

(a) Any person age 60 or older is eligible to receive home delivered meals provided that such person:

(1) is incapacitated due to accident, illness, or frailty;

(2) lacks the support of family, friends, or neighbors; and

(3) is unable to prepare meals due to a lack of or inadequacy of facilities, an inability to shop, cook, or prepare meals safely, or a lack of appropriate knowledge or skill.

(b) The spouse of such a person, regardless of age, may receive home delivered meals if, according to criteria established by the area agency, receipt of such meals is in the best interest of the eligible participant.

(c) In accordance with procedures established by the area agency:

(1) individuals with disabilities under the age of 60 who reside at home with an eligible participant may receive home delivered meals if, according to criteria established by the area agency, receipt of such meals is in the best interest of the eligible participant; and

(2) individuals under the age of 60 who provide volunteer services to the meal program during meal hours may be offered a meal on the same basis as meals are provided to eligible participants.

(d) The area agency shall ensure that each person referred for or requesting home delivered meals is assessed to determine the need for such services as follows:

(1) a standardized client assessment procedure that is consistent with the office's requirements must be used;

(2) client assessments must be completed prior to or within ten business days of initiating meal service;

(3) client assessments must be conducted by a person who has the same qualifications as staff who perform assessments for other community-based long-term care services;

(4) adequate follow up and periodic reassessments must be completed and documented for all participants consistent with the office's requirements; and

(5) appropriate referrals, with the consent of the participant or their representative, must be made to other programs and services that are identified through the assessment process.

(4) The area agency shall ensure that the congregate and home delivered nutrition services programs provide meals that meet the most current Dietary Guidelines for Americans and that:

(i) provide each participating older individual with a minimum of 33 1/3 percent of the dietary reference intakes (DRIs) established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the program provides one meal per day;

(ii) provide each participating older individual with a minimum of 66 2/3 percent of the DRIs if the program provides two meals per day;

(iii) provide each participating older individual with 100 percent of the DRIs if the program provides three meals per day; and

(iv) to the maximum extent practicable, are adjusted to meet any special dietary needs of program participants. Nutrition services providers have flexibility in designing meals that are appealing to program participants.

(5) The area agency shall ensure that nutrition services providers plan menus based on the most current dietary guidelines and follow a minimum of a four-week cycle. Any deviation from the planned menu must be noted and approved by a registered dietitian.

(6) The area agency shall ensure that menus are reviewed and approved by a registered dietitian and certified with signature and date to indicate that the menus meet the requirements for the dietary reference intakes (DRI) and most current Dietary Guidelines.

(7) Nutrition supplements (canned formulas, powdered mixes, food bars, etc.) may be made available to participants based on documented, assessed need as determined by a registered dietitian. Such products cannot replace conventional meals unless a physical disability warrants their sole use. Program funds may not be used to purchase vitamin and mineral supplements.

(8) Area agencies must contract with providers that have a demonstrated ability to provide services efficiently and reasonably. To the maximum extent possible contracts with nutrition services providers must limit the amount of time meals spend in transit before they are consumed. Nutrition funds awarded by the office shall not supplant funds from other sources. Furthermore, funds awarded under other programs, such as the Wellness in Nutrition program (WIN), shall not supplant Title III-C funds.

(9) The area agency must assess the level of need for congregate and home-delivered nutrition services in the planning and service area.

(10) The area agency must have written policies and procedures covering all aspects of the provision of nutrition services including congregate and home delivered meals, nutrition education, nutrition counseling, and nutrition screening and assessments.

(11) The area agency must ensure that nutrition services providers that are under contract with an area agency to provide nutrition services seek appropriate reimbursement from third-party payers (public and private) to pay for congregate and home delivered nutrition services provided to covered participants when such participants' nutrition services are or may be covered by another funding source. This would include community-based residential care facilities, community-based service providers, and other public or private third-party payers. Nutrition services providers must have written agreements concerning reimbursement of meal cost (based on actual costs per meal), participation of covered individuals, and other policies, procedures, and conditions in accordance with the office's standards.

(12) The area agency must complete monitoring and service assessments of nutrition services providers on a scheduled basis consistent with the office's requirements. The area agency must use a system that provides a qualitative and quantitative measure of provider performance and should be conducted by qualified staff. The area agency must provide documentation to the office of all monitoring, service assessment, and technical assistance related to the provision of nutrition services.

(13) The area agency shall have a full-time staff person who directs all activities related to the nutrition program which may include the planning, preparation, and delivery of nutritious meals and supportive services. This person is responsible for nutrition oversight and operations, including supervision of contractors providing food service and other nutrition services. This person must have requisite knowledge and experience in nutrition and food service and may work under the general supervision of the director.

(14) The area agency shall have a registered dietitian on the staff of, or under contract as a consultant for, the area agency for an adequate number of hours, but in no case less than sixteen hours per week, as determined in consultation with the office. Job responsibilities may include but are not limited to monitoring meal preparation sites, congregate sites, and home delivered meal delivery, menu planning and approval, development of nutrition information and education programs, providing nutrition counseling, diet prescription reviews, participation in case management and participant team reviews, providing technical assistance and training, and administrative activities. A registered dietitian on the staff or working as a consultant for a nutrition services provider that is a subcontractor to the area agency may fulfill the responsibilities of menu planning and approval, development of nutrition information and education programs, providing nutrition counseling,

diet prescription reviews, participation in case management and participant team reviews, and the hours of the registered dietitian employed by the subcontractor will count toward fulfillment of the minimum hours required.

(15) The area agency shall ensure that nutrition programs seek advice and expertise of a dietitian or other individual with equivalent education and training in nutrition science, from program participants, and from other individuals knowledgeable with regards to the needs of older individuals.

(16) The area agency shall ensure that all facilities used for meal preparation and/or service delivery meet all applicable Federal and State requirements, including the State Sanitary Code Part 14-1 requirements, and all local health, sanitation, building, fire, and safety regulations.

(17) The area agency must notify the office and receive approval before a nutrition site including a restaurant-based site is opened, closed, or relocated. All sites, centers, and food preparation facilities must be inspected at least annually or as frequently as required by the local code enforcement agency having jurisdiction and have a current valid operating certificate from the New York State or County Department of Health. Operating certificates must be kept on file at the area agency for the office to review.

(18) The area agency shall ensure that all food used for the nutrition program meets those standards of quality, sanitation, and safety that apply to food sold commercially. The area agency shall ensure that service providers report outbreaks of food-borne illness in accordance with state health code to appropriate local officials. Area agencies must immediately report such outbreaks to the office.

(19) The area agency shall ensure that each nutrition provider has a sufficient number of staff that are properly trained and oriented, in accordance with the office's regulations and standards and the State sanitary code.

(20) The area agency shall ensure that nutrition information and education programs are planned by a registered dietitian and made available to participants of the congregate and home delivered nutrition services on a regularly scheduled basis. Such programs must be planned by a registered dietitian, and must include information about nutrition, physical activity, and

disease prevention and health promotion. Planned programs must provide group or class presentations at each congregate site consistent with the office's standards and provide nutrition information to individual participants of congregate and home delivered nutrition services monthly. To the extent possible the area agency must determine the effectiveness of the service.

(21) The area agency shall ensure that nutrition counseling is provided as appropriate based on the needs of meal participants. The area agency must have procedures to adequately screen and refer congregate and home delivered meal participants to a registered dietitian for nutrition counseling. The nutrition professional evaluates the participants' nutritional needs, develops and implements a care plan, and maintains appropriate documentation. To the extent possible, the area agency must determine the effectiveness of the service.

(22) The requirements and duties detailed in paragraphs (5), (6), (7), (14), (20), and (21) of this section must be carried out by a registered dietitian. However, if an area agency is unable to hire or contract with a registered dietitian to carry out the tasks enumerated in paragraphs (5), (6), (7), (14), (20), and (21) of this section, an area agency, with the approval of the office, may hire or contract with a New York State certified dietitian/nutritionist to carry out those tasks.

(23) The area agency shall participate in the federal Nutrition Services Incentive Program (NSIP) which provides cash, commodities, or a combination of commodities and cash as incentives to serve more meals and improve the quality of meals served in the congregate and home delivered nutrition services programs.

(i) Such funding is based on the provider's proportion of the total number of qualifying meals served statewide and shall be used to reimburse nutrition services providers for qualifying meals reported to the area agency and the office. Qualifying meals are meals that meet the established nutrient requirements and are served to eligible participants.

(ii) Cash funding shall only be used to purchase domestically produced foods for nutrition services programs.

(24) The area agency shall ensure that efforts are made to assist participants in applying for or enrolling in federal Supplemental Nutrition Assistance Program (SNAP) and other appropriate benefit programs. To the extent possible, the area agency will assist certifying agencies and other organizations that help eligible older individuals access benefits.

(25) The area agency shall have a policy concerning the certification of nutrition services providers to accept SNAP benefits as suggested contributions for meals.

(26) The area agency shall ensure that all providers, including services providers that distribute program benefits to eligible older individuals through the USDA Senior Farmers Market Nutrition Program (SFMNP), comply with requirements of the state Department of Agriculture and Markets and of the office.

b. Nutrition services provider responsibilities: These responsibilities apply to area agencies that directly provide nutrition services and to providers under contract to an area agency for nutrition services. These requirements are in addition to general requirements of providers specified in this Chapter. Providers are responsible for assuring that all sites they operate fulfill these requirements.

(1) Each congregate nutrition services provider must:

(i) provide hot or other appropriate meals in a congregate setting at least once a day, five or more days a week (except in a rural area where such frequency is not feasible and a lesser frequency is approved by the office);

(ii) have written site agreements between the provider and each site serving meals, including restaurant-based sites;

(iii) have an individual designated as responsible for the operation of each site, and when appropriate, home delivered meal service;

(iv) display evacuation procedures in a convenient and accessible location and conduct drills on a regularly scheduled basis in accordance with the office's requirements;

(v) maintain and have available at each site a written plan describing procedures to be followed in the event a participant becomes ill or is injured, and ensure that all staff and volunteer personnel are familiar with and follow the prescribed procedures;

(vi) to the maximum extent feasible, have space available for supportive services which protects the privacy of individual participants; and

(vii) monitor participants at congregate sites for the possible need for home delivered meals instead of congregate meals and make referrals as necessary.

(2) Each home delivered nutrition services provider must:

(i) provide meals to participants whose need for such service has been assessed or reassessed based on criteria established by the office;

(ii) provide for home delivered meals at least once a day, five or more days a week, as needed by participants (except in a rural area where such frequency is not feasible and a lesser frequency is approved by the office). Meals may, according to criteria prescribed by the office, be hot, cold, frozen, dried, canned, fresh, or supplemental foods;

(iii) where feasible and appropriate, make arrangements for the availability of meals to participants in weather-related emergencies; and

(iv) provide participants with appropriate instructions on the use and handling of the meals served.

(3) Each nutrition services provider shall alert the area agency to conditions or circumstances which may endanger the participant, other participants, workers, volunteers, meal site or household.

(4) Each nutrition services provider must follow appropriate procedures to preserve nutritional value and food safety, including compliance with all State and local health laws and ordinances, and standards of the office concerning the purchase, preparation, handling, serving, and service delivery of food. The preparation and storage of frozen meals must be consistent with State and local health guidelines and those of the office.

(5) Where feasible and appropriate, each nutrition services provider must provide special menus to meet particular dietary needs arising from health requirements, religious requirements, or ethnic backgrounds of eligible individuals. In determining whether special menus are feasible and appropriate, the nutrition services provider must consider:

(i) whether there are sufficient people needing the special menus to make their preparation practical; and

(ii) whether the foods and skills necessary to provide the special menus are available in the area.

(6) Each nutrition services provider must plan menus that are based on a minimum of a four-week cycle.

(7) Each nutrition services provider must assure that foods are portioned for service as indicated on approved menus.

(8) Each nutrition services provider must make adequate provision to accommodate the needs of older individuals with disabilities or limited mobility, and have available for use upon request appropriate food containers, utensils, and other assistive devices.

(9) Each nutrition services provider must report cases of suspected food borne illness to the local Health Department, the area agency, and the office immediately.

(10) Each nutrition services provider must maintain an adequate number of qualified and trained staff to meet the needs of the participants and the nutrition program purposes.

(11) Each nutrition services provider must develop an annual training plan based on the roles and responsibilities of staff and volunteers working with the program. General orientation and training must be held on a scheduled basis. Training plans, schedules, and attendance must be documented.

(12) Each nutrition services provider must provide safety training to site staff, volunteers, and participants at least annually. Such training must include evacuation procedures, the handling of emergency situations, fire safety, and reporting procedures. Safety training must be documented. Fire drills must be conducted at least annually at all sites and documented.

(13) To the maximum extent possible, nutrition services provider must evaluate the quality of the meals provided to participants and their satisfaction with meals served.

(14) Each nutrition services provider shall provide meals (congregate and home delivered) that:

(i) meet the most current Dietary Guidelines for Americans; and

(ii) provide to each participating older individual the following:

(a) a minimum of 33 1/3 percent of the dietary reference intakes (DRIs) if the provider provides one meal per day;

(b) a minimum of 66 2/3 percent of the DRIs if the provider provides two meals per day; and

(c) 100 percent of the DRIs if the provider provides three meals per day.

(15) Each nutrition services provider must have written policies and procedures concerning all aspects of the program including but not limited to:

(i) personnel, organizational structure and staff functions, orientation, and training;

(ii) program monitoring, assessment, and reporting;

(iii) meal service, delivery, and other operational/management components, food and equipment security, and site agreements; and

(iv) client eligibility and targeting, collection of contributions, and participant input on service design and provision.

(16) Records.

(i) All nutrition services providers must maintain records related to:

(a) a registry of participants and information concerning any special needs;

(b) the number and cost of home delivered and congregate meals served; and

(c) any other records that may be required by the office.

(ii) all records must be retained for a period of six years.

(iii) records must be available for inspection by Federal, State, and local officials as well as area agency staff at all reasonable hours at a location agreed upon by the provider and the agency.

(17) All nutrition services providers must obtain and keep in effect such insurance coverage as may be required by the area agency and the office.