

NEW YORK STATE OFFICE FOR THE AGING

2 Empire State Plaza, Albany, NY 12223-1251

David A. Paterson, Governor
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Michael Burgess, Director

PROGRAM INSTRUCTION

Number 10-PI-06

Supersedes

Expiration Date

DATE: June 15, 2010

TO: Area Agency on Aging Directors and Commissioners

SUBJECT: Preparing to Implement Regulatory Changes for EISEP or CSE-funded EISEP-like Ancillary Services and Expenditure Requirements for In-home and Ancillary Services

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ACTION REQUESTED: Area Agencies on Aging (AAAs) preparing to move forward in implementing the regulatory changes for EISEP or CSE-funded EISEP-like ancillary services and/or expenditure requirements for in-home and ancillary services must describe the planned changes to their ancillary services and send the information to the Bureau of Long Term Care Services and Caregiver Supports as described below.

PURPOSE: To inform AAAs of the first step that must be taken to implement any of the regulatory changes for ancillary services and/or the expenditure requirements for in-home services and ancillary services. Please note that these are all optional changes.

BACKGROUND: The New York State Office for the Aging, with support and assistance from Area Agencies on Aging, has been working for the last year and a half to revise the EISEP regulations for ancillary services, change the expenditure requirements for in-home services and ancillary services and increase the maximum housing adjustment. These changes were developed to provide EISEP case managers with additional tools to serve their clients. The changes can increase the ability of AAAs to help individuals age successfully in place, meet their long term care needs and support their independence. They also provide additional flexibility during a time of increasing demand on limited resources.

The EISEP regulatory revisions were first published for public comment on February 17, 2010. The final rulemaking was issued on May 26, 2010. A copy of the revised sections of the regulations was transmitted via email from NYSOFA's General Counsel, Jennifer Seehase, to AAA Directors on June 1 under the subject "EISEP Ancillary Services Regulations are Official." They are also available on AAARIN. For your convenience, a copy of the revised regulations is attached.

The following is a summary of the changes to ancillary services:

- These services are now defined;
- The requirement that an individual must be receiving in-home services in order to receive ancillary services has been eliminated;
- The one-time only expenditure requirement has been eliminated;
- Ancillary services have been expanded to include more services, goods and items.
- Certain items or services may not be provided as an ancillary service.

Other aspects of ancillary services remain unchanged, including the following:

- Provision of ancillary services must be based on an assessment/reassessment of the client;
- Ancillary services must be part of the client's care plan;
- An AAA must follow its policies and procedures for justifying and documenting the provision of ancillary services;
- There must be a written agreement with the client regarding any items or alterations to be left in the client's home for an extended period or permanently; and
- Expenditures for ancillary services may only be made if no other payment source is available.

The changes to the expenditure requirements are as follows:

- For in-home services -- the minimum amount that can be spent has been decreased to 33% of the total state and required local matching funds expended; and
- For ancillary services -- the maximum amount that can be spent has been increased to 33% of the total state and required local matching funds expended.

REQUIRED ACTION: The following program information must be provided by any AAA preparing to expand or change the services provided as a result of the new ancillary services regulations, including the related expenditure requirements for in-home or ancillary services:

- 1) A description of the change(s) the AAA is planning, including examples of the types of services/goods/items that may be funded, any key aspects of the service and any key aspects of the clients who may receive it. For example, a laundry service that will pick up dirty laundry one day and return it clean the next day will be available to clients every other week who live in the town of Smallesville;

- 2) The expected time frame(s) for implementing these changes.
- 3) The amount of funding the AAA is now planning to budget for ancillary services during the current year, SFY 2010-11.

This information should be emailed to Sandra Abrams at sandra.abrams@ofa.state.ny.us with a copy to the AAA's ASR and GMBS. The subject line should state "Implementation of Regulatory Changes" so NYSOFA may quickly identify the purpose of the email.

NYSOFA will review the email and inform the AAA if there are any questions or comments.

OTHER INFORMATION: Some of the changes that an AAA plans to incorporate into its EISEP program will require a budget and/or Annual Implementation Plan modification pursuant to 05-PI-09, "Modification Procedures for Grant Applications" or Attachment C of the AIP according to 09-PI-17, "SFY 2010-2011 Annual Implementation Plan (AIP)." Once NYSOFA has issued the SFY 2010-11 Notification of Grant Awards (NGAs) for EISEP, AAAs may submit such modifications. We will inform you when the time is right for submission of a modification.

NYSOFA is currently preparing an additional Program Instruction that will review the revised regulations and provide additional guidance to AAAs. A Program Instruction explaining reporting requirements related to Ancillary Services will also be provided.

CONCLUSION: AAAs are encouraged to carefully consider the opportunities presented by these regulatory changes. We are hopeful that the increased flexibility that these changes offer will support AAAs in meeting the needs of older adults in their communities.

Attachment: EISEP Ancillary Services Final Rule Making

PROGRAMS AFFECTED:

<input type="checkbox"/> Title III-B	<input type="checkbox"/> Title III-C-1	<input type="checkbox"/> Title III-C-2
<input type="checkbox"/> Title III-D	<input type="checkbox"/> Title III-E	X CSE
X EISEP	<input type="checkbox"/> NSIP	<input type="checkbox"/> Title V
<input type="checkbox"/> Other:	<input type="checkbox"/> SNAP	<input type="checkbox"/> HIICAP
	<input type="checkbox"/> Energy	<input type="checkbox"/> LTCOP

CONTACT PERSON: Sandra Abrams
Sandra_abrams@ofa.state.ny.us

TELEPHONE: (518) 473-1948

9 NYCRR Section 6654.6(b)(4)(iii) is amended as follows:

(iii) the housing adjustment is the amount by which the client's average monthly housing expenses exceed 40 percent of the threshold, except that the housing adjustment shall not exceed [20] 40 percent of the threshold [(at the time these regulations were promulgated, 40 percent of the threshold was \$362 for clients living with spouses whose income is available to meet their needs and \$268 for all other clients)];

Section 6654.19 EISEP ancillary services.

- (a) Ancillary services include non-medical services, items and other supports which together with other assistance are intended to provide an individual in need of long term care with the ability to remain safely in the community with an acceptable quality of life.
- (b) Ancillary services shall be provided only to an EISEP client pursuant to a care plan on a per client basis.
- (c) A client will be re-evaluated in accordance with the reassessment process found in §6654.16 of this Part to insure that all ancillary services provided under this section are appropriate and necessary and continue to be in accordance with the client's care plan.
- (d) Expenditures for ancillary services may only be made if no other payment source is available.
- (e) Allowable services, items/goods and other supports which may be provided under ancillary services are as follows:
 - (1) those that maintain or promote the individual's independence such as:
 - (i) purchasing/renting of equipment or assistive devices
 - (ii) purchasing/renting, maintaining and repair of appliances
 - (iii) personal and household items
 - (iv) social adult day services
 - (v) transportation to needed medical appointments, community services and activities
 - (2) those that maintain, repair or modify the individual's home so that it is a safe and adequate living environment, such as:
 - (i) home maintenance and chores
 - (ii) heavy house cleaning
 - (iii) removal of physical barriers
 - (3) those that address everyday tasks, such as:

- (i) house cleaning
- (ii) laundry
- (iii) grocery shopping, shopping for other needed items and other essential errands
- (iv) bill paying and other essential activities
- (iv) providing meals
- (v) escort to appointments and other community activities

(f) The following items or services may not be provided as an ancillary service:

- (1) food, except for meals provided under the nutrition program administered by an area agency or other meals that the area agency has determined meet the nutritional requirements of such program;
- (2) housing expenses which include, but are not limited to, expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewage, garbage collection, cable television and telephone services; and
- (3) items or services that can be obtained only with a prescription or doctor's order

(g) The area agency must have and follow written policies and procedures for ensuring justification and documentation for each ancillary service provided.

(h) Documentation verifying the receipt of the ancillary service must be maintained in the client case record.

(i) For any item or alteration to be left in the client's home for an extended period or permanently, the area agency must have a signed agreement with the client that includes statements regarding ownership of the item or alteration and the responsibilities of the client and agency regarding the item or alteration. Movable durable items remain the property of the area agency until the area agency determines that the item has no appreciable value.

9 NYCRR Section 6655.7(e) is amended as follows:

(e) No more than an amount equal to [10] 33 percent of the total county's State EISEP services allotment and local match under EISEP may be spent on ancillary support services. An amount equal to at least [50] 33 percent of the county's State EISEP services allotment and local match under EISEP must be spent on in-home services, except for the first program year in which a county expends EISEP service dollars under its EISEP program.