

NEW YORK STATE OFFICE FOR THE AGING

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Andrew M. Cuomo, Governor Greg Olsen, Acting Director
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**TECHNICAL ASSISTANCE
MEMORANDUM**

Number: 12-TAM-02

Supersedes

DATE: July 30, 2012

TO: Area Agency on Aging Directors
EISEP Case Management Supervisors
EISEP Case Managers

SUBJECT: Consumer Directed In-home Services under EISEP and CSE

PURPOSE: To provide local Area Agencies on Aging (AAAs) with additional information and answer questions regarding the implementation of Consumer Directed In-home Services under EISEP and CSE. The regulations allowing for Consumer-Directed EISEP were published on September 7, 2011.

BACKGROUND: the New York State Office for the Aging (NYSOFA) provided information in 2008 (08-TAM-02) regarding implementation of Consumer Directed In-home Services under EISEP and EISEP like services under CSE. Providing Consumer Directed In-home Services is not mandatory for AAAs. However, NYSOFA encourages AAAs to explore how Consumer Directed In-home Services may be implemented in their service area. To assist AAAs in implementing Consumer Directed In-home Services under EISEP, this Technical Assistance Memorandum transmits a document developed by NYSOFA based upon a series of questions asked, and comments made by stakeholders and those interested in implementing consumer directed in-home services.

The Questions and Answers are organized to address major program areas including:

- Participating in Consumer Directed In-Home Services;
- Consumer Representatives; In-Home Services Workers;
- Consumer Safety; Appeals and Legal Protections;
- AAA Responsibilities; Worker Tasks; Worker Eligibility;
- Worker Back-Up;
- Worker Assessment, Scheduling,
- Liability, Benefits;

- Training; and,
- Fiscal Intermediary; and Insurance.

PROGRAMS AFFECTED:

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

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CONSUMER DIRECTED IN-HOME SERVICES QUESTIONS AND ANSWERS

Please note that the questions included in this document are inquiries by interested parties and not generated by the New York State Office for the Aging (NYSOFA).

SECTION 6654.15 EISEP ELIGIBILITY AND DEFINITIONS

A. Participating in Consumer Directed In-home Services

A1. What are the criteria for a client to be considered for consumer directed care?

Ans. For an EISEP eligible person to be considered for consumer directed in-home services, the person must:

- Be capable of making choices regarding their activities of daily living and instrumental activities of daily living and the type, quality and management of their in-home services worker:
- Understand the impact of these choices; and
- Assume responsibility for the results of these choices.

Or

The person must be capable of delegating authority to another who can carry out the activities noted above on their behalf and meets the requirements of the consumer representative.

Or

If the person is not able to delegate this authority, has someone who can carry out the activities noted above who meets the requirements of the consumer representative, and that person is either:

- The legally appointed guardian or conservator; or
- Has been previously designated by the consumer as their representative in matters related to coordinating their care and they are currently doing so and are willing to continue to do so; or
- Is currently involved in the person's life, has a strong personal commitment to them and demonstrates knowledge of the consumer's preferences.

A2. Can a client who is not self-directing but has a fully involved caregiver be considered for this program model?

Ans. Yes, as long as the caregiver is willing and able to assume the required responsibilities of the consumer's representative and perform the required tasks.

"Consumer" means an individual who is receiving consumer directed in-home services and who is responsible for specific tasks i.e.: recruiting, interviewing, hiring, training, supervising, and if necessary dismissing their in-home services worker.

A3. Doesn't this put a great deal of stress and responsibility on an already vulnerable client?

Ans. No client would be required to accept consumer directed in-home services. Rather this would be an option offered to the client. In addition, if they were receiving consumer directed in-home services and decided it was too much for them then they could change to traditional home care under EISEP.

A4. Who supervises the consumer directed in-home services program?

Ans. Assuming this question means who is responsible for the oversight of the consumer directed in-home services; Area Agencies on Aging (AAAs) would monitor the consumer directed in-home services as they would any service they fund. This would include any subcontracted or directly provided components of the consumer directed in-home services.

A5. Under the Consumer Directed In-home Services option, are there a maximum number of hours per week of homecare or housekeeping that a client may receive?

Ans. No. The number of hours of in-home services provided to individuals is based upon an assessment of their needs. AAAs may not limit the number of hours provided to consumers by establishing a maximum cap and are required to provide, within their funding limits, the number of hours of in-home care that will safely maintain the individual in their home. This is true whether in-home services are authorized and provided in the traditional or the consumer directed model.

A6. If a consumer has a long-term private homecare worker whom they trust and meets their needs, but can no longer financially afford that arrangement, and the consumer is programmatically eligible, can s(he) transition into Consumer Directed In-home Services?

Ans. Yes, providing that both the consumer and the in-home services worker meet all the eligibility requirements.

A7. If a worker hired by the consumer under the Consumer Directed In-home Services option leaves employment, can the consumer opt out of the Consumer Directed In-home Services option, enter as an EISEP client, and immediately receive EISEP in-home services?

Ans. The client can request a change in service delivery model – from consumer directed to traditional in-home services at any time. This client is not changing programs, so they are not leaving one program and entering another. Rather, the client is changing how they are receiving their in-home services. The change should take place as quickly as the case manager is able to arrange for services from an agency that provides traditional home care.

B. Consumer Representative

B1. Who is the consumer representative?

Ans. Any individual at least 18 years old, who is willing and able to make choices regarding a consumer's functional needs and the type, quality and management of the consumer's in-home services and is not the in-home service worker may be a consumer representative. The consumer

representative must understand the impact of the choices they make and assume responsibility for those choices. A consumer representative may be designated by a consumer who is capable but not willing to take on some or all of these responsibilities. When the consumer is not capable of designating a consumer representative, the role can be taken on by the consumer's legally appointed guardian or conservator; any individual previously designated by the consumer who is currently responsible for coordinating the consumer's care and is willing to continue to do so; or someone who has knowledge of the consumer's preferences and a strong personal commitment to the individual.

B2. In what manner will a consumer representative need to be designated, previously or otherwise, so that a Case Manager can accept their authority or right to claim the role? Can we just go on the say-so of the consumer (what about those with dementia) or the say-so of the person planning to be the consumer representative or is documentation needed?

Ans. The consumer will choose the consumer representative. You would accept the consumer's decision, which can be verbal but then be followed up on and made part of the agreement signed by the consumer, as long as you think that the person understands what the requirements are and the decision they are making. You would base this on your interactions and observations with the person, and perhaps information available from/provided by other sources. If the person is not able to make this decision, the case manager must use his or her professional judgment, based on his/her experience, observations and the information gathered to determine if the person who is volunteering to be the consumer representative is an acceptable choice.

B3. If the consumer is capable of self-directing yet did not previously appoint a consumer representative, then mildly loses cognitive capacity, is his or her appointment of a consumer representative at that time deemed acceptable?

Ans. Yes, as long as the case manager thinks that the consumer is making an informed decision and understands the role and responsibilities of a consumer representative.

B4. If the consumer is no longer able to self-direct and is not capable of designating a consumer representative, who renders that decision, communicates it to the Consumer Directed In-home Services client and must the consumer terminate as a Consumer Directed In-Home Services participant because they are programmatically ineligible?

Ans. Ultimately the case manager will make this decision. If the case manager thinks that the consumer is not capable of self-directing or capable of designating a consumer representative, the case manager would convey this to the consumer and depending on the circumstance, may look to someone who is (or who has been) involved in the consumer's life and determine if that individual is ready, willing and able to become the consumer representative. The case manager, using his or her professional judgment based on past experiences, observations and any information gathered will determine if that person is acceptable to be the consumer representative.

B5. What happens with the Consumer Directed In-home Services client if he/she is no longer able to self-direct and there is no one who can be the consumer representative?

Ans. If it is determined that the consumer is no longer able to self-direct and there is no one who is acceptable to act as the consumer representative, then consumer directed in-home services should be stopped and be replaced with traditional in-home services.

B6. If the Consumer Directed In-home Services client loses the ability to self-direct and previously appointed a consumer representative, but that designee is not a legally appointed guardian or conservator, what then happens to the consumer who is receiving services, i.e., do services continue? If so, what is the frequency and duration?

Ans. We do not require a consumer representative to be the legally appointed guardian or conservator of the consumer. Section 6654.15(d)(3) of the regulations contains criteria for individuals to serve as a consumer representative for a consumer who does not have or who has lost the ability to self-direct. In the situation described above, services would continue as they were before it was determined by the case manager that the client has lost the ability to self-direct.

B7. The proposed regulations do not identify what criterion is used to define and measure, “currently involved” and “strong personal commitment?” Who conducts that evaluation? What credentials and professional experiences, if any, must that evaluator possess to ensure a comprehensive and reliable decision? Who then communicates the findings to the consumer and consumer representative? If the consumer representative does not demonstrate they are “currently involved” with a “strong personal commitment”, is Consumer Directed In-home Services no longer an option?

Ans. The case manager using his or her professional judgment, based on their past experiences, observations and information gathered will determine if the person who is volunteering to be the consumer representative is an acceptable choice. In addition, the case manager may already be familiar with the consumer and the consumer’s relationship with the proposed consumer representative and would use that knowledge to help with the decision. The case manager would then communicate his or her decision to the consumer. If there is no individual who can demonstrate that they are currently involved and have a strong personal commitment to the consumer, then consumer directed in-home services may not be an appropriate option for that consumer.

B8. Is the consumer representative required to sign an agreement with specific responsibilities identified prior to functioning in that capacity?

Ans. Yes. The consumer representative will need to sign an agreement stating that he or she agrees to serve as the consumer representative and sign a document (which may be part of the agreement) that outlines what the consumer representative is expected to do.

B9. Under what circumstances would a consumer representative warrant involuntary termination? Who is responsible for that decision? Is an appeal process available? Is the Case

Manager involved since they are not supposed to supervise the homecare worker, fiscal intermediary (FI), or consumer representative? What role, if any, would the local AAA assume in such a situation?

Ans. It appears that these questions are being raised in the context where the consumer does not want to “undesignate” their consumer representative. If the consumer representative fails to fulfill their responsibilities and perform the required tasks, the consumer representative must be “undesignated.” In the situation where the consumer has designated the consumer representation, hopefully the consumer will see any problems and take action to address the issues. However, if the action taken to address it is unsuccessful, the consumer should then take the necessary step to “undesignate” their representative. Where they refuse to do so, or where the consumer representative was designated by the case manager and all steps that have been taken to resolve the problem have failed, then the case manager should make the decision to terminate the consumer from Consumer Directed In-home Services. The case manager does have the authority to make this decision. To guide and support the case managers, we recommend that the AAAs develop or require their case management entity to develop a set of policies and procedures to address these types of situations. There is no formal appeals process required by the State, but the AAA could include this in their local program and require that it be addressed in the policies and procedures. They also could choose to require that the AAA be involved in the appeals process. NYSOFA would not have a role in these local decisions.

B10. If clients choose relatives as their "delegated authority" making choices on the consumer's behalf, how will we ensure that the relative is a "safe" person – the regulations state that the delegated authority should not have been convicted of Medicaid or other benefits fraud or any form of abuse, neglect or exploitation. We all know that family members and other informal caregivers may not have been convicted of a crime but can still be abusive or neglectful and if they are abusive, the senior is not likely to share his/her concerns if they are fearful that the relative will find out. I assume there will be a need for background checks. Are we checking misdemeanors and felonies?

Ans. This question seems to be confusing some requirements of the in-home services worker with the requirements for the consumer representative. The consumer, assuming they are able, will choose a consumer representative if they want one. Unless there is evidence to the contrary, based on previous experience, observations and/or information that has been provided by other sources, the case manager would assume that the designated consumer representative is an acceptable person for this responsibility.

The regulations prohibit a person that has been convicted of Medicaid or other benefits fraud or any form of abuse, neglect or exploitation from being an in-home services worker. The option to have a criminal background check conducted is also in relation to the in-home services worker. Neither of these requirements applies to the consumer representative. However, if the case manager knew a person selected to be the consumer representative had convictions for benefits fraud or abuse, neglect or exploitation these would be discussed with the consumer and potentially the case manager may determine that the person cannot be the consumer representative. Since the older adult will receive case management services, the case manager will continue to interact with the older adult and his/her informal supports in their usual manner

and carefully observe the situation. If the case manager is concerned with the situation they would be expected to take the same action that they would take under any other circumstance.

C. In-home Services Worker

C1. Can an unemployed daughter be paid to care for her elderly mother irrespective of whether she resides with the client?

Ans. Yes. As long as the daughter is not the designated consumer representative she may be paid to provide in-home services to her mother, whether or not she resides with her.

C2. If a daughter is employed and wants to be paid for her services provided in the evening and/or the weekend is that an option?

Ans. Yes, regardless of whether the daughter is employed or not, if she is able to provide the in-home services to her mother as authorized in the care plan and is not the consumer representative for her mother.

C3. If the worker is not a relative, can s(he) be paid for evening and weekend work?

Ans. Yes. Evening and weekend in-home services may be provided if this is consistent with the care plan regardless of whether the in-home services worker is a relative or not and otherwise meets all the eligibility requirements. Please keep in mind that the worker's schedule is established by the Consumer or Consumer Representative.

C4. What happens if the person's capacity to direct their in-home services worker changes?

Ans. The person's situation will need to be reviewed and necessary action taken. If the person was directing their own care and it appears that they now need help to do so, then this situation would be discussed with the consumer and the needed decisions made and actions taken (i.e., would the consumer be interested in designating a consumer representative or change to traditional). Consumers who are self-directing should be encouraged to think about this situation and discuss and plan for it with the case manager, family members and informal caregivers in advance so that a plan can be easily implemented should it ever be needed. We also direct the reader back to the answer given to question B4.

SECTION 6654.16 EISEP CASE MANAGEMENT

D. Case Management

D1. Are consumers who self-direct required to receive case management?

Ans. Yes. All of the requirements to receive EISEP or CSE EISEP-like funded services, including case management, apply to recipients of consumer directed in-home services funded by EISEP or CSE. There are, however, some specific regulations that are different in consumer direction and these are identified in the EISEP regulations.

D2. What about clients, who manifest poor decision making and poor judgment; how will case managers determine who is the best choice?

Ans. Case managers will determine who is appropriate for Consumer Directed In-Home Services based on their knowledge of and experience with the older person and any other information that is available.

D3. Is confirmation whether the homecare worker received their schedule and that it was appropriate to the consumer's needs the responsibility of the Case Management Agency or Fiscal Intermediary (FI)?

Ans. It would be appropriate for this to be one of the areas that the case manager discusses with the consumer or, if applicable, the consumer representative during ongoing follow-up and monitoring.

D4. Does the "FI " or "consumer representative" act as "surrogate case managers" with all attendant responsibilities and in compliance with all EISEP regulations? What mechanism is in place to confirm compliance?

Ans. No, neither the FI nor the consumer representative is acting as a surrogate case manager when a consumer is receiving consumer directed in-home services. These clients continue to get case management as specified in the EISEP case management regulations.

D5. Who is responsible for attending to other than in-home service needs, e.g., completion, submission, and monitoring of entitlement and benefit applications?

Ans. Case managers will continue to provide all the components of case management for all individuals regardless of whether in-home services are being consumer directed or provided in the traditional manner. Assistance in identifying community resources and applying for services other than, or in addition to, those provided through an AAA is a task routinely done by a case manager.

E. Consumer Safety

E1. Will the Case Management agency be held liable for any abusive or neglectful situations that occur with family members?

Ans. Whether or not a case management agency will be held liable in a specific instance is difficult to answer as liability is determined in a court of law. However, in consumer direction the consumer is responsible for managing his or her own care.

If a case manager has any reason to believe that there is abuse or neglect, then the case manager is expected to take the appropriate action, just as they would under any other situation. Depending on the circumstances, this might mean discussing the situation with the consumer and/or consumer representative as appropriate. NYSOFA would expect that standard operating

procedures would direct a case manager to report any abusive/neglectful relationships to the appropriate authorities.

E2. Will the Case Management agency be expected to contact local Adult Protective Services (APS) on abusive or neglectful family members? Does this create a conflict of interest considering that they are now a part of the Care Plan?

Ans. The answer to the first question is “Yes”. Please see 9 NYCRR 6654.16(t). In terms of the second question, family members, as informal supports have always been included in care plans and thus NYSOFA does not see their inclusion in a care plan under consumer direction as creating a conflict of interest.

E3. If the fiscal intermediary or consumer representative refers the Consumer Directed In-home Services client to APS, then who confirms it, enters documentation of the referral in the client file and communicates with the case manager? Who is responsible for follow-up activity, e.g., should APS send their letter of determination of eligibility to the case manager, fiscal intermediary or consumer representative? If the alleged abuse is sexual and/or physical, who is responsible for ensuring the immediate safety of the consumer receiving services? Who is responsible for contacting elder abuse resources, obtaining an Order of Protection, etc.? Furthermore, if the consumer is at imminent risk, who is responsible for removal and transport to a safe environment?

Ans. The consumer directed in-home services delivery model does not change the procedures and protocols with regard to abuse claims under traditional EISEP. All parties would proceed as they normally would. Since the consumer would be getting case management, NYSOFA would expect that it generally would be the case manager that would make a referral to APS and the operating policies and procedures of the case management agency or the AAA, if the case manager is an employee of an AAA, would prevail and be the basis for the answers to the specific questions raised.

E4. Who will monitor the program against abusive or neglectful situations especially for clients with cognitive issues who are most vulnerable?

Ans. Consumers receiving consumer directed in-home services continue to receive case management. Case managers will conduct ongoing client monitoring.

E5. Who will monitor for family members who are simply using the system for money but are not interested in the overall well being of the client?

Ans. Again, consumers will continue to receive case management services. Case managers will conduct ongoing client monitoring.

F. Appeals and Legal Protections

F1. Do Consumer Directed In-Home Services clients and consumer representatives have the right of appeal, or a similar mechanism? (The proposed regulations do not include any appeal, involuntary termination criterion, or procedure specific to Consumer Directed In-home Services participants.)

Ans. No, neither the consumer nor the consumer representative has the right to appeal a decision to remove the consumer from Consumer Directed In-Home Services. The consumer would still be eligible to receive traditional home care under EISEP. The consumer would have the right to a hearing if they were being involuntarily discharged from EISEP.

F2. How is the Case Management Agency, its Board of Directors and staff legally protected in the Consumer Directed In-home Services option? What is their liability and risk of exposure?

Ans. Given the fact that the consumer or consumer representative is viewed as the employer and the responsible party under the Consumer Directed In-home Services Program option, the liability exposure for case management agencies is limited. In order to minimize the liability risks, the management agencies should develop sound policies and procedures and guidelines for their Consumer Directed In-Home Services Program.

SECTION 6654.17 EISEP IN-HOME SERVICES

G. Responsibilities

G1. How are the responsibilities of the consumer, the case manager and the AAA different from traditional EISEP in-home services?

Ans. The AAA responsibilities for Consumer-Directed In-Home Services related to subcontract management and monitoring remain the same. While the details of these subcontracts will be different (e.g., the provider may be different and the provider's responsibilities and functions will be different), the AAA will still engage in the usual activities related to negotiating, executing and monitoring its subcontracts.

The case manager will continue to perform all of the case management functions (i.e., assessment/reassessment, care plan development, care plan implementation, ongoing follow-up and monitoring and discharge.) Under consumer direction, some of the specific case manager functions within these activities will change. The case manager will not be addressing home care service delivery issues with the provider since these issues will be addressed by the consumer directly with their worker(s). The case manager will be providing consultation and support to the consumer in the consumer's role as manager of their own in-home services. The extent of this consultation and support and the nature of the assistance the case manager will provide will depend on the AAA's decisions regarding local program design.

The most significant changes in responsibilities occur for the consumer. In this Consumer Directed In-Home Services delivery model, the consumer is responsible for implementing the home care service according to their care plan. This means:

- -hiring a home care worker that meets the consumer's requirements;
- -training and supervising the home care worker to perform the needed tasks;
- -managing all necessary paperwork – e.g., signing off on timesheets, and,
- -discharging the worker when necessary.

This model reinforces the important role that the consumer has in terms of identifying new or unresolved needs and wishes and bringing them to the attention of the case manager.

H. Criminal Background Checks

H 1. How will the Case Management agency sign-off on safe care plans without a criminal background check on the individual providing the care?

Ans. Criminal background checks do afford the consumer some protection against hiring a worker who is negligent or dishonest or who is likely to abuse or neglect a consumer. However, criminal background checks cannot guarantee complete protection regardless of whether the consumer is being served under consumer direction or the traditional service delivery model.

* [Sabatino, C.P. & Hughes, S.L. (2004), Addressing liability issues in consumer-directed personal assistance services (CDPAS): The national cash and counseling demonstration and other selected models.]

Unlike in the traditional model of care, in consumer direction the consumer is responsible for managing the care they receive, including the decision to hire a worker. The only prohibitions the consumer must adhere to is that they cannot knowingly hire someone who has been convicted of Medicaid or other benefits fraud, or any form of abuse, neglect or exploitation. The case manager or the FI will be informing the consumer about criminal background checks and will be responsible for ensuring that the consumer understands the local program's policy and procedures regarding them. (While the state is not requiring a criminal background check to be conducted, a local program does have the option to require it.)

There are other things that a consumer can incorporate into their interview and hiring practice to help reduce their risk, including carefully reviewing the application, asking pertinent questions regarding the experience and work history of the in-home services worker candidate during the in-person interview and requiring and following up on references.

H2. I assume there will be a need for background checks for in-home services workers who are providing consumer directed services. Are we checking misdemeanors and felonies?

Ans. Criminal background checks may cover convictions for misdemeanors and felonies. NYSOFA regulations do not require that background checks be done. The regulations do require that the consumer be informed of the options to have a criminal background check conducted.

H3. Are there different standards for criminal background checks that could be used for in-home services workers providing services under consumer direction?

Ans. There are different types of criminal background checks that are different in terms of scope and comprehensiveness. Some examples of those different types of checks are as follows: FBI criminal background check, a DCJS criminal background check or a criminal background check completed by a private firm.

H4. Who is responsible for notifying the consumer about the option for a criminal background check?

Ans. It will be up to each area agency on aging to determine if the case manager or the fiscal intermediary will inform the consumer or consumer representative of the opportunity to require the in-home services worker to submit to a criminal background check.

H5. If the Consumer Directed In-home Services client prefers to conduct a background check, who pays the cost?

Ans. The cost of the criminal background check is a cost that can be covered by either EISEP or CSE, depending on which program is funding the services.

I. Worker Tasks

I 1. Does “administration” in 6654.17 (g) (2)(ix) imply that the worker can help with “administration” of meds? If it is not intended to do so, then this phrase may be unclear. Also does this imply the worker (consumer directed or otherwise) could do a medication set-up?

Ans. The answer to both questions is “no.” The changes in the description were made to be consistent with what is included in the Medicaid personal care regulations. The assistance that can be provided is specified and includes the tasks that are described – e.g., prompting, identifying the medication, bringing it to the client along with any needed supplies, opening the container, positioning the person, disposing of used supplies/materials and storing the medication properly. It does not include removing the medications from the container and thus does not include “medication set-up.” This is applicable under both traditional and consumer directed in-home services.

J. Worker Eligibility

J1. Can a consumer directed in-home services worker be a member of the consumer’s immediate or extended family?

Ans. Yes, providing they meet all of the following requirements. They must:

- be at least 18 years of age
- meet SDOH health requirements for in-home services workers; and,
- be a citizen of the United States or have legal authority to work in the United States.

-AND-

Must **not**:

- be serving as the individual's consumer representative; or,
- have ever been convicted of Medicaid or other benefits fraud or any form of abuse, neglect or exploitation.

J2. What are the qualifications of a home care worker under consumer direction?

Ans. Each consumer decides what qualifications he/she will require of their in-home services worker.

J3. Won't the absence of mandatory training, background checks and health screenings for the consumer directed worker raise liability issues and expose the consumer and the worker to unnecessary risks?

Ans. Consumer directed services gives the responsibility and authority to the consumer, or their representative, to make decisions about the consumer's care. When it comes to in-home services, it means determining who will provide that care. Part of this decision is determining what qualifications the in-home services worker will have, what training the in-home services worker will receive and what background checks the consumer wants.

Note: The health screening requirements for Consumer Directed In-Home Services program workers are the same as for home care workers provided under the traditional model. There continues to be required training under consumer direction, but the specifics of the training are determined and provided by the consumer. By providing information to the consumer regarding criminal background checks, NYSOFA believes that the consumer will make the best decision for himself or herself and thus minimize any unnecessary risk.

J4. Must the Consumer Directed In-home Services client or consumer representative discharge the long-term private homecare worker if s(he) is an undocumented alien? Must the Consumer Directed In-home Services client independently locate an acceptable replacement?

Ans. In order to be employed as an in-home services worker the worker must comply with all Federal and state employment laws and rules. This means that an undocumented alien may not be employed as an in-home services worker under Consumer Directed In-Home Services. Depending on the local program design, some assistance for locating an acceptable worker may be available from the FI.

K. Worker Back-Up Plan

K1. How will a back-up system be implemented for worker substitution when the regular worker is not available?

Ans. Every consumer must have a back-up plan that they developed. They will determine how and when the back-up plan will be implemented. Some consumers may choose to have an informal arrangement with someone that they feel will meet their in-home services needs on a short term basis without pay. Others may have identified an individual they will call as a back

up as needed and that individual has agreed to do so and has met the requirements to be an in-home services worker and is documented as such with the consumer's fiscal intermediary. Still others may choose to go without a service on any given day.

Some FIs maintain a list of available back-up in-home services workers that a consumer may use when their regular in-home services worker is not available. If the consumer's FI has this option, the consumer will decide whether it is a component of their back-up plan.

K2. Will the consumer, especially one with mild dementia, developmental delay, or cognitive impairment, or the consumer representative have the knowledge and resources to establish a stable, consistently available back-up system for worker substitution?

Ans. Consumers with mild dementia, developmental delay, or cognitive impairment may still be capable of developing and implementing their back-up plan. The case manager and/or FI may provide assistance to the consumer or the consumer representative, e.g., some fiscal intermediaries have a list of in-home services workers who are available to serve as a back-up in-home services worker. Consumers who appear not to be able to complete this task, and for whom there is no consumer representative, would not be eligible to participate in consumer directed in-home services.

K3. If the back-up system fails, what protocols are in place to safeguard the client who is receiving consumer directed in-home services?

Ans. There are no required protocols. If a back-up plan fails, the consumer is responsible for seeking assistance if they deem it appropriate. The case manager will work with the consumer, and/or the consumer representative, if applicable, to help them develop a back-up plan that reflects their circumstances. The plan should be appropriate for the consumer's needs. It needs to be recognized that even an adequate plan can fail sometimes.

K4. Who does the Consumer Directed In-home Services client contact to alert them that the back-up plan failed?

Ans. Consumers are under no obligation to alert anyone when their back-up plan has failed.

K5. Who is responsible if the back-up system fails?

Ans. In the Consumer Directed In-home Services option, it is the responsibility of the consumer, or consumer representative, to have in place an adequate back-up plan. If that back-up plan fails, responsibility rests with the consumer or consumer representative.

L. Worker Assessments, Scheduling, Liability, Benefits,

L1. Will consumers be required to conduct an annual assessment of their worker?

Ans. The state regulations do not require this. However, the consumer will be expected to meet the requirements of the FI and if required by her/him, then the consumer would be expected to conduct one annual assessment of a worker.

L2. In the Consumer Directed In-home Services option, who is responsible for revising the schedule of the homecare worker if it includes tasks outside of Consumer Directed In-home Services regulations? What are the procedures, policies, and regulations if the Consumer Directed In-home Services client disagrees with such revision?

Ans. It is the responsibility of the case manager to discuss any issues that come to the case manager's attention regarding the tasks of the in-home services worker. An in-home services worker may not perform tasks outside the care plan and the care plan will not go beyond the scope of the regulations. This is particularly important in terms of the hands-on assistance that can be provided under consumer directed in-home services funded under EISEP and CSE. Hands-on tasks may not go beyond those listed in the regulations under §6654.17(g). If the case manager learns that the consumer is directing their in-home services worker to go beyond these parameters, which may or may not be written in the schedule, this must be discussed with the consumer. This discussion will include a review of the care plan, what the allowable tasks are, what the implications are for continuing this practice (i.e., the consumer directed services would no longer be available) and the procedures that will be followed if this continues. The consumer will be asked to stop doing this. However, the case manager will not "revise" the schedule as this is a task that is performed by the consumer. If the schedule needs to be revised, the consumer will be asked to complete this task. If the consumer refuses or continues having the in-home services worker undertake tasks that are outside the care plan and beyond the scope of the regulations, then consumer directed services should stop and the consumer should be offered traditional home care services.

L3. Section 6654.17 (j) reads "...under consumer directed in-home services, the consumer or consumer representative shall ensure that in-home service workers perform tasks as specified in the client's care plan and service schedule." How will this be confirmed and enforced over time?

Ans. It is the responsibility of the consumer or consumer representative to ensure that all of the tasks in the consumer's care plan are performed, as instructed and according to the schedule established by the consumer. The consumer will be receiving case management services and the satisfactory completion of the in-home services may come up in discussions either as initiated by the case manager or by the consumer/consumer representative during ongoing case management. During any in-home visits the case manager will also be able to use his/her observational skills to engage in this discussion.

L4. Who is liable if injury occurs to either or both the consumer and in-home services worker?

Ans. Depending on the situation, liability will generally rest with the consumer, consumer representative or the worker.

L5. Will the homecare worker receive health insurance? If so, who is responsible for its arrangement and cost?

Ans. Employee benefits, including health insurance, are the responsibility of the fiscal intermediary. They vary among FIs. Each fiscal intermediary's employee benefit package is reflected in their rates.

M. Training

M1. Who pays for the various training?

Ans. The EISEP program can pay for the training. Some of the costs of training may already be included in the rate. Each AAA will decide what other training will be available and how it will be paid for. Because there is local discretion, there will be differences from county to county.

M2. Who is responsible for what training and for whom?

Ans. The consumer, fiscal intermediary and case manager all have responsibilities for different types of training and instruction as follows:

- Consumer – is responsible for training/instructing the in-home services worker regarding the tasks and functions the in-home services worker will perform on behalf of or to assist the consumer. This covers tasks from how they want their hair washed to how they want their floors washed. If the consumer needs assistance in training their in-home services worker, this assistance may be available through the fiscal intermediary or the case manager. What assistance and how much will be part of the design of the local program.
- Fiscal Intermediary – is responsible for training/instructing the consumer on any administrative responsibilities the consumer may have as the managing employer and in relation to the practices of the fiscal intermediary. This would cover things like the pre-employment forms that the consumer must complete and which they must ensure are completed by their in-home services worker, reviewing and approving the worker's timesheet. The fiscal intermediary is also responsible for training/instructing the in-home services worker regarding their responsibilities as an employee of that agency and what the responsibilities and practices are of the fiscal intermediary.
- Case manager – depending on the decisions made by the AAA, and as reflected in local agreements, the role of the case manager in helping the consumer arrange for training and/or instructions will vary and will be delineated in local agreements.

N. Fiscal Intermediary

N1. What are the qualifications for a FI?

Ans. There are no specific state requirements that must be met. As is the case for other AAA services, the AAA will decide what qualifications the subcontractor must have.

N2. What are the specific roles and responsibilities of the FI?

Ans. At a minimum, the FI is required to perform the administrative functions associated with the employment of the consumer directed in-home services worker. This includes:

- Processing the in-home services worker application for employment;
- Ensuring that the worker's health assessment is completed;
- Preparing and distributing payroll, including withholding, filing and depositing of federal and state income tax withholding and employment taxes and, if applicable, local taxes;
- Arranging payment for workers' compensation when appropriate;
- Managing and processing any employee benefits, if applicable; and,
- Maintaining personnel records for each in-home services worker that includes all required documents.

The FI will provide training to the in-home services worker in regard to the above and the consumer and/or consumer representative in terms of their responsibilities as the managing employer.

As is true for any entity under subcontract with an AAA, the FI is required to maintain records, and submit vouchers and reports as specified in the subcontract.

Other roles and responsibilities will be determined by the AAA as needed and specified in the subcontract, e.g., whether the FI will provide training for the consumer and/or consumer representative and in-home services worker in regard to specific activities of daily living if so requested by the consumer, provide a list of workers that a consumer can use when looking for an in-home services worker or developing their back-up plan.

N3. Who is the fiscal intermediary?

Ans. This decision is made on the local level by the AAA. However, it is expected that in many instances it will be an entity with experience in performing the typical tasks performed by an FI as noted above. There are such entities operating in every county in New York State.

N4. What types of requests for FI training is the FI required to keep?

Ans. NYSFOA expects the FI to record all requests that are directed to them by the consumer, consumer representative and in-home services worker. If the request comes from the consumer or consumer representative it would be recorded in the consumer contact log that is maintained in the consumer's record and if the request comes from the in-home services worker it would be recorded in the in-home service worker contact log that is maintained in the worker's record. This is not to imply that the FI would necessarily have the responsibility to meet these training needs as this will be decided upon based on the nature of the request and what is specified in the agreement between the AAA and the FI. However, NYSOFA expects the FI to share this information with the AAA and/or case management as appropriate. This information would then be utilized through ongoing case management with the consumer, and as part of the program monitoring and evaluation.

N5. Will the FI provide training regarding administrative tasks only? What about training for direct care?

Ans. The AAA will decide whether the FI will be required to provide training only in regard to administrative tasks. The extent to which other training, including training on direct care tasks, will be available to the consumer and/or in-home services worker and what entity(ies) will provide it will be determined by the AAA as it designs its local program.

N6. Will the FI be responsible for carrying the liability insurance for a worker or will the consumer?

Ans. Neither entity is required to carry liability insurance. NYSOFA expects the FI to discuss the liability issue with the consumer when they are explaining the consumer's responsibilities. The FI may require a consumer to carry such insurance and/or the FI may carry such insurance.

N7. Who supervises the "fiscal intermediary" and reviews the client file for compliance?

Ans. The AAA, or another entity that has been delegated this responsibility by the AAA, must monitor the FI as it is required to monitor all of its subcontractors. Given that this will likely be a new subcontractor for the AAA and given that the service, consumer directed in-home services, is a new service for the AAA, AAAs are encouraged to go beyond basic monitoring requirements initially in order to identify and address any issues early on.

N8. Is the FI required to sign an agreement with specific responsibilities identified prior to functioning in that capacity?

Ans. Yes, the AAA must have a contract with the FI as it does with all of its subcontractors.

N9. Will the FI and consumer representative be trained to recognize the signs and symptoms of abuse, especially, the more subtle and invisible ones?

Ans. This is not a state requirement. However, this doesn't preclude a program from providing such if they believe this training is needed.

O. Insurance

O1. Is there any insurance requirement for the Consumer Directed In-Home Services program?

Ans. No, there are no specific insurance requirements for Consumer Directed In-Home Services. However, each fiscal intermediary will address this topic with the consumer and the in-home service worker and may have certain requirements or suggestions regarding insurance.