

**NEW YORK STATE OFFICE FOR THE AGING**

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Andrew M. Cuomo, Governor

Greg Olsen, Acting Director

An Equal Opportunity Employer

**PROGRAM INSTRUCTION**

**Number 16-PI-08**

**Supersedes**

**Expiration Date**

**DATE: May 17, 2016**

**TO: Area Agency on Aging Directors**

**SUBJECT: Private Pay Options for Network Services**

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**ACTION REQUESTED:** Effective May 17, 2016 all Area Agencies on Aging (AAAs) may:

- Implement private pay options for services for individuals age 60 and over, upon review and approval from NYSOFA based on a written plan, policies and procedures, and service flow chart/logic model provided by the AAA. The plan must include a draft of the billing processes/billing letter to provide for the collection of fees, as well as instructions to clients on how/when payments will be made and under what circumstances private payment may cease.
  - AAAs choosing this option must develop and implement a plan and policies and procedures to offer consumers the option to pay the full cost of network services, including the development and implementation of billing processes to provide for the collection of fees, a plan for accounting for the full cost of the private pay services, including administrative costs, as well as instructions to the clients on how payments will be made and when and under what circumstances a private pay client's participation in the private pay option will come to an end. The service flow/logic model must be part of the plan.
  - Additionally, the policies and procedures should address client responsibilities, including how services and payments need to be managed/handled by a client when the client is absent from the home.

**RESPONSE DUE DATE:** This is optional, and as such, there is not one specific due date. However, AAAs who currently operate Private Pay Programs must submit an Attachment C within 180 days of the issuance of this PI. AAAs that intend to implement private pay programs must submit a written plan, policies and procedures, and service flow chart/logic model for NYSOFA's approval prior to implementing the program. See approval process and monitor section on page 4 of this PI.

**PURPOSE:**

- AAAs offering federal and state funded aging network services directly or through a contractor may offer the following private pay options to :
  1. Individuals deemed eligible for service(s) and placed on an active waiting list due to funding limitations.
  2. Individuals not eligible for service(s) based on completion of the client assessment, but would like to purchase the service from the AAA; and/or
  3. Individuals/their families who choose to access a service that may only be available through private pay (e.g., an escort to stay with the client throughout appointments, shopping assistance, PERS, etc.).

The AAA may choose whether it is implementing one, two, or all three options for private pay, and must specify the one (s) selected, its approach and implementation details in the written plan, including policies and procedures, and service flow chart/logic model, submitted for NYSOFA review and approval.

**INTRODUCTION:**

NYSOFA is issuing this Program Instruction to AAAs to provide guidance and instruction about the provision of private pay services by AAAs/contractor and the process for review and approval by NYSOFA. This guidance is being provided for the provision of private pay home delivered meals, transportation, case management, in-home services (Personal Care 1 and 2), caregiver supports, social adult day services, PERS, and assessment services.

When an AAA is seeking to implement a private pay option for aging network service(s), the AAA must consider and achieve compliance with the following requirements:

- In accordance with the provisions of section 212 of the Older Americans Act (OAA), AAAs that provide private pay services must ensure that the AAA is reimbursed the total cost of the service provided. This includes the administrative costs borne by the AAA to provide the private pay service.
- AAAs must ensure that the services provided under a private pay program meet all of the programmatic guidelines required for the delivery of each of those services.

- AAAs may not means test or “cherry pick” individuals with higher incomes to participate in private pay programs. All individuals who are eligible to receive federal and state funded aging services must be offered those services and it is only when the funding for those services has been exhausted that the AAA may offer aging services at a private pay rate.
- Additionally, AAAs may not allow individuals who participate in private pay programs preferential waiting list placement.
- AAAs may not subsidize private pay programs with state or federal funds. Funds from the private pay programs must be kept separate from state and federal funds and AAAs must be able to account for expenses of private pay programs.
- AAAs may not use federal or state matching funds to cover the expenses of private pay programs and the revenues received from the private pay programs may not be used to match federal or state program funding.
- AAAs in New York State may implement private pay options when effective accounting methods are maintained for the appropriate segregation of resources and costs. This information needs to be maintained in a manner that is consistent with required fiscal practices for monitoring purposes.
- In order to start a private pay program the AAA, must provide NYSOFA with a detailed written plan, including policies and procedures that have been developed to ensure adherence to regulations governing NYSOFA-funded services, and service flow chart/logic model which must be approved by NYSOFA. Private pay resources may not be considered program income.

It is critical that specific mechanisms are established by the AAA to fully account for all expenditures and funding resources in a manner that clearly and appropriately allocates costs and revenue to each program separately. Additionally, the provision of publicly funded services cannot be compromised to make private pay services available.

## **BACKGROUND**

Most AAAs are experiencing demand for services that outpace their ability to provide services. This has resulted in annual waiting lists for services such as home care, case management, transportation, home delivered meals, PERS, etc. The option to pay privately is an option to consider offering as state and county populations continue to grow older, and AAAs experience increased volume due to state policy and program changes as a result of the Balanced Incentive Program (BIP), Delivery System Reform Incentive Program (DSRIP), and implementing the state’s Olmstead Plan, along with other policy changes prioritizing community service delivery.

Providing a private pay option for older adults who meet all other eligibility criteria for publicly funded programs/services (where applicable) and who are placed on waiting lists has many benefits, including assuring that the needs of those individuals are met at the time need is determined and enabling the individuals to maintain their independence through the provision of service. Further, private pay services can be offered to older adults and families who do not meet program eligibility requirements but who can still benefit from services offered by the AAA/contractors.

The Administration on Aging's (AoA) *Frequently Asked Questions* ([http://www.aoa.gov/AOA\\_programs/OAA/resources/faqs.aspx#Private](http://www.aoa.gov/AOA_programs/OAA/resources/faqs.aspx#Private)) states the following in response to whether the aging network can implement private pay services: "Private pay services can create opportunities to reach a segment of the population not traditionally served by the network, however: such activities are optional for States, AAAs and service providers. In general, private payment for services occurs when individuals pay the full cost of the services they receive. Because there is no public funding involved, private pay services are not subject to the 'cost sharing' provisions under the OAA (Sec. 315(a))."

Private pay services are either delivered directly by the AAA or entities with which the AAA contracts. These services are purchased by individuals at the full cost of the service priced at a competitive market rate.

The OAA (Sec. 212) stipulates that individuals and entities purchasing services provided under the Act must do so at the fair market rate. Nonprofit ventures must not utilize publicly-financed infrastructure or resources to under-cut the market and provide a service at below market rates. To comply with this requirement it is recommended that services be priced on actual cost for those who are eligible for services but are placed on a waiting list and actual cost plus an administrative fee of up to, and not to exceed 20% for individuals who do not meet eligibility for service(s) but who can benefit from the service(s).

The OAA also stipulates that all profits earned by such private pay ventures must be reinvested into providing enhanced or additional services in accordance with the traditional mission of AAAs.

The 20% above unit program cost recommended above is based upon the determination of program costs following generally accepted accounting principles (GAAP). Unit costs should include all fixed costs (plant and equipment) and variable costs (personnel, salary and fringes, travel, other equipment, supplies, rent, phone, utilities, audit, etc.) that are involved in the production and/or delivery of the service.

### **Approval Process and Monitoring**

AAAs who wish to implement private pay options as described in the PI must provide to NYSOFA for review and approval its written plan for offering a private pay option or

options, policies and procedures, a process for accounting for the full cost of the private pay services, including administrative costs and services flow/logic model demonstrating that individuals who are offered the option to pay privately are individuals that are either subject to waiting lists or do not meet program eligibility. If an AAA is currently operating one or more private pay options, the AAA is required to submit an Attachment C with the required information within one hundred and eighty (180) days of the issuance of this PI. The mechanism for seeking approval to implement a private pay option for an aging service is through the Attachment C process. AAAs interested in implementing a private pay option are directed to contact their assigned Aging Services Representative (ASR) for further instruction as to what needs to be included in the Attachment C submission. This must include billing and collections schedules and a process to provide for the collection of fees as well as instructions to the clients on how payments will be made.

AAAs must demonstrate the process that describes how an individual who is offered the private pay option due to being placed on a waiting list is able to stop privately paying when/if they become eligible for federal and state funded service payments.

AAAs that either directly or through a contractor implement private pay options for OAA or State funded programs must abide by the standards as set forth in this PI. The AAA will be responsible for oversight and monitoring of any contractor that the AAA uses to provide services for its private pay option. Services shall be delivered in accordance with federal and state statute, regulation and requirements notwithstanding eligibility requirements for purposes of Private Pay Option 2 for Individuals not eligible for service(s) based on completion of the client assessment, but would like to purchase the service from the AAA; and/or contractors.

- PROGRAMS AFFECTED:**
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| <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   | <input type="checkbox"/> CSE           |
| <input type="checkbox"/> SNAP              | <input type="checkbox"/> Energy        |  |
| <input type="checkbox"/> EISEP             | <input type="checkbox"/> NSIP          | <input type="checkbox"/> Title V       |
| <input type="checkbox"/> HIICAP            | <input type="checkbox"/> LTCOP         |  |
| <input checked="" type="checkbox"/> Other: | Private Pay                            |  |

**CONTACT PERSON:** Aging Services Representatives