

**NEW YORK STATE OFFICE FOR THE AGING**

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Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

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| <b>PROGRAM INSTRUCTION</b> | <b>Number 19-PI-16</b>      |
|                            | <b>Supersedes: 90-PI-51</b> |
|                            | <b>Expiration Date: N/A</b> |

**DATE:** June 13, 2019

**TO:** Area Agency on Aging Directors

**SUBJECT:** EISEP Cost Share Collection Standards

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**ACTION REQUESTED:**

Area Agencies should review their existing cost share collection procedures. If necessary, Area Agencies must modify their procedures to achieve compliance with these Standards.

**RESPONSE DUE DATE:**

No response necessary.

**PURPOSE:**

This Program Instruction serves to communicate the standards that each Area Agency must adhere to in the collection of cost share amounts assessed under the Expanded In-Home Services for the Elderly Program (EISEP) or for EISEP-like services under the Community Services for the Elderly Program (CSE).

**BACKGROUND:**

EISEP regulations require monthly billing for EISEP cost share and that Area Agencies submit their collection procedures to the State Office for the Aging for review to assure that they comply with the State Office for the Aging's Collection Standards.

These Standards are self-explanatory and are geared to assure that a good faith effort is made by Area Agencies to collect past-due cost share in a way that will not cause embarrassment or emotional distress to a client. Area Agencies are also required to include in their collection procedures a brief description of the discharge procedures they will follow to make other community services available to clients terminated from the EISEP program for failure to cost share. These should conform to existing procedures followed by the Area Agency for discharge from EISEP for any other reason as well.

These Collection Standards provide a flexible and fair process to collect the required EISEP cost share which must then be used to expand either the EISEP or CSE programs of the Area Agency.

In accordance with state regulations at 9 NYCRR § 6653.5(f), all EISEP requirements shall apply to EISEP-like services provided under CSE. All references in this Program Instruction to EISEP shall also refer to EISEP-like services provided under CSE.

## **EISEP STANDARDS FOR PAST-DUE COST SHARE COLLECTION**

### **I. AREA AGENCY AND AUTHORIZED COLLECTING AGENTS**

- A. Each Area Agency on Aging (Area Agency) must establish and/or maintain collection procedures for itself and for any collecting agent acting on behalf of the Area Agency to collect EISEP cost share amounts due, but not received.
- B. Area Agencies may collect overdue cost share amounts directly or may authorize a unit of local government to collect them. Area Agencies may also authorize a service provider to collect overdue cost share from clients served by that provider.
- C. If service providers are authorized as the collecting agents for the Area Agency, the Area Agency must require that its collection procedures be followed by service providers.
- D. A commercial collection agency (even one used by other governmental agencies) cannot be used as a collecting agent and past due cost share accounts cannot be assigned to such agencies.

### **II. PROCEDURES AND REQUIREMENTS FOR COLLECTION**

- A. Area Agencies or their authorized collecting agents shall bill EISEP cost sharing clients at least once a month. Cost share amounts not received within thirty-five calendar days of the initial billing date (or mailing date, if later) for the services shall be considered past due.
- B. The past due collection procedures must begin with a late payment notice to be sent to the client when payment has not been received within thirty-five calendar days of the mailing of the initial bill. The late payment notice must inform the client that payment for EISEP services is past due; that the client has thirty calendar days from the receipt of the late payment notice to pay the overdue amount; and, that EISEP services will be terminated if payment isn't made.
- C. The collection procedures must include a follow-up procedure by mail to the client or the client's authorized representative to determine why there is a payment problem. Where possible, personal or phone contacts should also be

made in an effort to resolve any misunderstanding or payment problems the client may have.

D. Follow-up procedures shall not include measures which could cause undue embarrassment or distress to the client.

1. No harassment of any kind is permissible in any written or verbal communications with the client who owes cost share payments or with his/her authorized representative or caregiver.
2. If reminder phone calls to the client or the client's caregiver or authorized representative are to be made, the Area Agency must establish reasonable timeframes during the day in which these calls may be made.
3. These procedures must be carried out in as confidential a manner as possible so that information pertaining to the client is shared only with the Area Agency staff, caregivers and authorized representatives of the client, and, if necessary, the service provider.

E. The Area Agency must consider any special communication needs of a client. This may include, but is not limited to:

1. Allowing for reasonable modifications or exceptions to its cost share collection procedures regarding modes of communication as needed to provide equal and meaningful access or as requested by a client. An example of this is providing for communications via email, rather than by mailed letters, to a client who is blind and has screen reader software that allows for easier access to emails;
2. Adhering to all language access requirements contained in the Area Agency's Standard Assurances;
3. Translation of vital documents as described in 12-PI-08;
4. Compliance with all relevant sections of the Americans with Disabilities Act and the Rehabilitation Act of 1973.

F. Exceptions to Procedures.

These past-due collection standards shall not apply to clients who have been referred for a Medicaid eligibility determination and whose cost share will be subject to payment by Medicaid in accordance with State Department of Social Services regulations if determined eligible. If a client has been referred for a Medicaid eligibility determination and is ultimately determined to be ineligible, no termination of services, as described in Section III below, may be initiated until the determination of Medicaid ineligibility is completed.

### **III. TERMINATION OF SERVICES/CLIENTS' RIGHTS**

#### **A. Specific Requirements.**

1. Termination of services for non-payment of cost share should be made no sooner than two months and no later than three months after the first late payment notice to the client, except as provided in Section II.F above. The Area Agency may extend this time by up to thirty days for good cause, with the reasons documented in the client's case file.
2. A final notice that termination will occur as of a specific date shall be sent at least five business days before the termination is scheduled. It shall include: information as to the client's right to a hearing on the failure-to-cost share issue, including the thirty-day filing deadline for a hearing; the right to be represented by any person of his/her choice, including an attorney; and the right to be assisted by the Area Agency in terms of providing needed assistance for transportation to hearings, interpreters, where needed, and other services the Area Agency finds necessary. It must also describe the right to a Settlement Conference prior to a hearing to informally discuss/resolve the issue of non-payment.
3. A client may continue to receive EISEP services when he/she has requested such a hearing if the client agrees in writing to: pay whatever cost share is ultimately determined to be legally correct by the Hearing Officer or State Office Review or any New York State court judicial decision if an appeal to such court is taken, and; to continue to pay the cost share set by the Area Agency during the hearing proceedings, including payment of any past due amounts which must be made a part of the cost share payments.

- a. A client may be permitted to make lesser payments in this situation and still receive services where the Area Agency determines the client is acting in good faith and may have sudden or temporary personal or family expenses not includable in the cost share formula.
  - b. The Area Agency shall reimburse the client for any overpayment arising as a result of the Decision of the Hearing Officer or State Office Review or judicial decision if an appeal is taken.
4. If a client's continued failure to pay his/her assessed cost share results in the termination of services, the Area Agency shall make every reasonable effort to help the client secure alternative services, including, where reasonably possible, direct provision by the Area Agency of services available under non-EISEP funded programs. In addition, the Area Agency must meet with caregivers, if available, and refer terminated clients to other appropriate governmental and community service agencies which are available to assist them.
5. Where a client's services are terminated for failure to pay his/her cost share and, at a later date, the client again applies for EISEP services, the client may not become an EISEP client unless he/she agrees to pay the past due cost share amount. The client must sign an agreement to do so and must make at least a partial payment on the amount owed to demonstrate the client's good faith. The agreement may contain an adjusted schedule of payment for the past due cost share amount.

#### **IV. REIMBURSEMENT FOR UNCOLLECTED COST SHARE**

- A. The AAA may reimburse the service provider for the full cost of the services it provided if a service provider can show that it made a good faith effort to collect past due cost share payments under its approved procedures, but was unsuccessful. The AAA may also negotiate an agreement with the provider to share the loss of such non-payment amounts.
- B. The State Office's reimbursement to the Area Agency for services provided to a client who refuses to pay the required cost share will not be withheld where the Area Agency can show that a good faith effort to collect overdue payments was made in compliance with these Standards.

## **V. TIME SCHEDULE SUMMARY FOR COLLECTION PROCEDURES**

### A. Specific Time Limits.

1. Routine billing letter - must be sent at least once a month.
2. Late Payment Notice - must be sent no sooner than thirty-five calendar days after the monthly billing letter is mailed (typically, the date of the bill and the mailing date would be the same).
3. Follow-up procedures - as appropriate.
4. A Termination of Services Notice - generally should be sent two months after first late payment notice, but no later than three months after the first late payment notice is sent, provided that the Area Agency may extend this period by up to thirty days based upon a finding of good cause. Additionally, any final notice that termination will occur as of a specific date shall be sent at least five business days before the termination is scheduled.
5. Termination of Services - must not occur until at least five business days after a final Termination of Services Notice has been sent.
6. All terminated clients must be assisted in finding alternative services.

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**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"/> WIN           | <input type="checkbox"/> Energy        |
| <input type="checkbox"/> NY Connects      | <input type="checkbox"/> Other:      | <input type="checkbox"/> Title V        | <input type="checkbox"/> HIICAP        | <input type="checkbox"/> LTCOP         |

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