

**NEW YORK STATE OFFICE FOR THE AGING**

2 Empire State Plaza, Albany, NY 12223-1251

Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

<b>PROGRAM INSTRUCTION</b>	<b>Number 20-PI-02</b>
<b>Supersedes</b>	
<b>Expiration Date</b>	

**DATE:** March 6, 2020

**TO:** Area Agency on Aging Directors

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

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**ACTION REQUESTED:** Effective April 11, 2020 (not April 1<sup>st</sup> as is typical) Area Agencies on Aging (AAAs) may implement private pay protocols for certain services administered by the New York State Office for the Aging (NYSOFA) for individuals with an income level at or above 400 percent of the federal poverty level (FPL).

**RESPONSE DUE DATE:** N/A.

**PURPOSE:** To authorize AAAs, starting on or after April 11, 2020, to offer a private pay option to individuals with an income level at or above 400 percent of the FPL for certain services administered by AAAs following the private pay protocols implemented by NYSOFA in accordance with Elder Law §203(12).

**BACKGROUND:** Section 203 of the New York State Elder Law was amended as part of the enacted SFY 2019-2020 budget by adding a new subdivision 12 authorizing the director of NYSOFA to implement private pay protocols for certain programs and services it administers. This change and the ability to offer middle- and higher-income earners the option to self-finance is consistent with Governor Cuomo’s priority to make New York the healthiest state in the nation under the umbrella of the state’s Prevention Agenda and as the first certified age-friendly state in the nation and is consistent with Older Americans Act amendments. It also recognizes that federal/state/local funds are not sufficient to meet current demand for services and provides the statutory authorization to offer services in a fee-for-service model for higher income individuals and families.

For the purposes of the private pay protocols, services that may be offered include:

- COMPASS assessment
- Case management
- Personal Care Level I and II
- Consumer Directed Personal Care Level I and II
- Ancillary services (includes a variety of goods/items and services designed to maintain/promote independence, support a safe and adequate living environment and address everyday tasks)
- Home delivered meals
- Social Adult Day Services
- Transportation
- Caregiver supports and respite
- Personal Emergency Response Systems (PERS)
- Financial management/bill paying
- Other/emerging services approved by NYSOFA

For the purposes of the private pay protocols, services that may NOT be offered include:

- Information and Assistance
- Long-Term Care Ombudsman Program
- Elder abuse prevention and mitigation
- Legal assistance
- Congregate meals
- Person centered counseling/options counseling
- Health Insurance Information Counseling and Assistance

Most AAAs are experiencing demand for services that outpace their ability to provide them. This has resulted in documented unmet need for services such as home care, case management, transportation, home delivered meals, PERS, etc. The choice to pay privately is a viable option for some clients and their family members with higher incomes. Also, AAAs are experiencing an increased volume of requests for services due to demographic changes, and policy changes prioritizing community service delivery that focus on addressing the social determinants of health. Further, the NY Connects system reforms and Business Acumen project are highlighting the effective role AAA's and Community Based Organization's play in reducing costs and improving health which has resulted in increased referrals.

Providing a private pay option for older adults, as well as the opportunity to provide private pay services to those under age 60 has many benefits, including assuring that the needs of those individuals will be met at the time need is determined. It is well known that aging network services are preventive in nature, help individuals remain autonomous with coordinated, limited/tailored supports, are cost-effective, allow individuals to remain safely at home, within their community, and address many of the

social determinants of health. 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 Community Living's (ACL) Frequently Asked Questions (<https://acl.gov/about-acl/authorizing-statutes/older-americans-act>) 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 protocols administered under subdivision 12 of the Elder Law §203 may not be applied to services for individuals with an income below 400 percent of the FPL regardless of who is paying for the services (e.g. an adult child or other individual). Also, subdivision 12 provides that the private pay payments be set at a cost to the participant of not more than 20 percent above either:

1. The unit cost to the AAA to provide the program or service directly; or
2. The amount that the AAA pays to its contractor to provide the program or service.

The payments received by the AAAs may not supplant funds by state, federal or county appropriations. AAAs must reinvest any private pay revenue back into their service provision to reduce unmet need for aging programs and services and then to support and enhance new or existing programs provided by the AAAs. AAAs implementing private pay protocols under section 203(12)(b) of the elder law are required to report the following information to NYSOFA:

1. The unmet need, if any, for all programs and services offered;
2. The number of participants that privately paid for each program or service for that year;
3. The rates participants were charged for each program or service provided as well as the total amount of revenue generated via private pay for each program/service for each state fiscal year; and
4. How revenue generated by this program was reinvested back into AAA programs and for what programs and services they supported.

## **PRIVATE PAY PROTOCOLS FOR SERVICES ADMINISTERED UNDER ELDER LAW SECTION 203(12)**

### Requirements

When an AAA is seeking to implement a private pay option under Elder Law §203(12) for aging network service(s), the AAA must consider and achieve compliance with the following requirements:

- AAAs that provide private pay services must ensure that the AAA is reimbursed at least the total cost of the service provided. This cost should include the administrative costs borne by the AAA to provide the private pay service.
- AAAs must ensure that the services provided under these private pay protocols meet all of the programmatic requirements and guidelines for the delivery of each of those services, however, program eligibility requirements, including age, do not apply.
- To the extent federal and state funding is available, AAAs must ensure that all individuals who are eligible to receive federal and state funded aging services are offered those services.
- AAAs may not allow individuals who participate in private pay services preferential waiting list placement.
- AAAs may not subsidize private pay services with state or federal funds. Funds from the services provided under the private pay protocols must be kept separate from state and federal funds and AAAs must be able to account for revenue and expenses of private pay activities.
- AAAs may not use federal or state matching funds to cover the expenses of private pay activities and the revenues received from the private pay services 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 must be maintained in a manner consistent with required fiscal practices for monitoring purposes.
- AAAs may not consider private pay resources as program income. Payments received must be used to reduce unmet need for aging programs and services and then to support and enhance new or existing programs provided by the AAAs.

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.

### Individuals Eligible to Participate

AAAs may offer private pay options to:

1. Individuals with an income of at least 400 percent of the federal poverty level;

#### **And one or both of the following:**

2. Individuals not eligible for service(s), but would like to purchase the service(s) from the AAA;
3. Individuals/their families who choose to access one or more service(s) that may only be available through private pay (e.g., an escort to stay with the client throughout appointments, shopping assistance, PERS, etc.).

### Rates for Private Pay Services

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. An additional 20 percent above market rate is allowable.

Elder Law §203(12) provides that private pay payments shall be set at a cost to the participant of not more than 20 percent above either:

- The unit cost to the AAA to provide the program or service directly, or
- The amount that the AAA pays to its contractor to provide the program or service.

The 20 percent above unit program cost is to be 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.

### Use of Payments Received

Elder Law §203(12) requires the AAA to use the private pay revenue above the cost to provide the service to first reduce any unmet need for programs and services and then to support and enhance services or programs provided by the AAA. Private pay payments received by the AAA directly or indirectly by one of its contractors must be used to supplement, not supplant, funds by state, federal, or county appropriations.

## Monitoring

AAAs that either directly or through a contractor implement private pay options for State/county funded programs must abide by the standards as set forth in these protocols. 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 to individuals who opt to private pay for services in accordance with state statute, regulation, and requirements including participants who would not have been eligible for service(s) but choose to purchase the service from the AAA and/or contractors.

Case files are subject to review by NYSOFA as part of the Annual Evaluation process.

## Reporting

Each AAA implementing private pay protocols under Elder Law §203(12) shall annually report to NYSOFA the following information in the form and format established by NYSOFA:

1. The unmet need, if any, for all programs and services offered;
2. The number of participants that privately paid for each program or service for that year;
3. The rates participants were charged for each program or service provided as well as the total amount of revenue generated via private pay for each program/service for each state fiscal year; and
4. How revenue generated by this program was reinvested back into AAA programs and for what programs and services they supported.

## Intent to Implement

Using the form (New York State Private Pay Model Intent to Implement) attached to this Program Instruction AAAs opting into the private pay model under Section 203(12) of the Elder Law, either directly or indirectly (through a contractor) must submit to NYSOFA certain information, including the following:

1. The name of the AAA participating, the name of any contractors (if applicable) and the date the county plans to begin offering the private pay model;
2. The services that will be offered under the private pay model; and
3. An Attestation regarding the permissible use of private pay funds under the private pay model.

If a AAA later decides to add or discontinue a private pay service at any point after the initial submittal of the New York State Private Pay Model Intent to Implement form the AAA must submit another New York State Private Pay Model Intent to Implement form listing the private pay services the AAA intends to add.

Questions about the Private Pay Model and the New York State Private Pay Model Intent to Implement form(s) should be submitted to [privatepay@aging.ny.gov](mailto:privatepay@aging.ny.gov)

**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   | <input type="checkbox"/> CSE           | <input type="checkbox"/> WIN    | <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 type="checkbox"/> NY Connects | <input type="checkbox"/> Other:        |  |                                 |                                 |

**CONTACT PERSON:** [privatepay@aging.ny.gov](mailto:privatepay@aging.ny.gov)



### New York State Private Pay Model Intent to Implement

AAAs opting into the private pay model under Section 203(12) of the Elder Law, either directly or indirectly (through a contractor) must submit to NYSOFA the following information:

Name of AAA:	
AAA will implement: <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly by Contractor <input type="checkbox"/> Both	
Name of Contractor/s (if applicable): _____ _____	
Proposed Implementation date:	
A designation of the service(s) proposed to be offered or discontinued under the private pay model (check all that apply):	
Add	Discontinue
<input type="checkbox"/>	<input type="checkbox"/> Case management
<input type="checkbox"/>	<input type="checkbox"/> COMPASS assessment
<input type="checkbox"/>	<input type="checkbox"/> Personal Care Level I
<input type="checkbox"/>	<input type="checkbox"/> Personal Care Level II
<input type="checkbox"/>	<input type="checkbox"/> Consumer Directed Personal Care Level I and II
<input type="checkbox"/>	<input type="checkbox"/> Home delivered meals
<input type="checkbox"/>	<input type="checkbox"/> Social Adult Day Services (SADS)
<input type="checkbox"/>	<input type="checkbox"/> Transportation
<input type="checkbox"/>	<input type="checkbox"/> Caregiver supports and respite
<input type="checkbox"/>	<input type="checkbox"/> Personal Emergency Response Systems (PERS)
<input type="checkbox"/>	<input type="checkbox"/> Financial management/bill paying
<input type="checkbox"/>	<input type="checkbox"/> Ancillary services (includes a variety of goods/items and services designed to maintain/promote independence, support a safe and adequate living environment and address everyday tasks)
<input type="checkbox"/>	<input type="checkbox"/> Other/emerging services approved by NYSOFA (please describe): _____ _____

I Certify that \_\_\_\_\_ AAA will use and require its contractors, if applicable, to use the private pay funds received under the private pay model in accordance with the requirements found in Elder Law section 203 (12) and any NYSOFA Issuances, including Program Instructions.

Name	Signature
Title	Date