

New York State - State Plan Amendment to Permit for Cost Sharing for Allowable Older Americans Act Services under the Nursing Home Diversion Modernization (NHDM) and Community Living Program (CLP) Grants

Background:

On September 29, 2008, the Administration on Aging (AoA) announced that the New York State Office for the Aging (NYSOFA) was one of 14 states to receive a 2008 Nursing Home Diversion Modernization (NHDM) grant. The grant began on September 30, 2008 and is funded for 18 months with a no-cost extension for six months ending September 30, 2010. On September 29, 2009, NYSOFA was one of 16 states to receive a 2009 Community Living Programs (CLP) grant, the successor to the prior-year NHDM grants. The grant began on September 30, 2009 and is funded for two years ending on September 29, 2011.

The AoA funding is specifically designed to reach individuals not eligible for Medicaid, but who are at high risk of nursing home placement and spending down their income and assets to the Medicaid level. The goal of the grants is to help these individuals maintain their independence and remain in their communities by offering consumer directed models of care, which allows individuals more involvement and control over the types of services, supports, and benefits they receive, and the manner in which these services are delivered.

The NHDM grant is being implemented in three pilot counties -- Onondaga, Broome and Oneida -- with the Area Agency on Aging (AAA) serving as lead agency under the pilot. The three counties each have a well-established NY Connects program, which can provide all the core functions required for this grant, such as the provision of information and assistance on long term care options and assessment for services. Based on data provided by AoA, there are 16,583 seniors eligible for nursing home diversion in New York State. Of this population, the project is projected to serve 100 participants, or 12% of the eligibles in the counties. By March 31, 2010, 100 clients had been enrolled in the program.

The CLP grant allows NYSOFA to expand the NHDM to seven additional AAAs (Orange, Dutchess, Albany, Otsego, Washington, Tompkins and Cayuga) over a 2 year period beginning September 30, 2009. This new CLP grant will allow us to utilize the current three AAAs as peer mentors to the seven new AAAs and serve approximately 200 seniors (19% of the eligible population) in these counties. Based on the CLP grant application, enrollment will begin in the 12th month, September 2010.

Per our grant applications to AoA, our NHDM and CLP projects included the use of Titles III-B, III-C-2 and/or III-E funds in the demonstrations in addition to State funds for programs (Expanded In-home Services for the Elderly {EISEP}, Community Services for the Elderly {CSE}, Supplemental Nutrition Assistance Program {SNAP}) that provided similar or the same services.

During the implementation phase of the NHDMP, our partner counties were very concerned about the program implication of establishing a new demonstration program using both federal and state funding streams with different requirements for cost sharing. Based on this concern, NYSOFA contacted AoA project management staff to determine what was needed to allow our partner Area Agencies on Aging to use cost share for allowable services under the Older Americans Act (OAA).

After receiving guidance from AoA regarding cost sharing as an added component to our NHDMP, we needed to reach a consensus with each county regarding cost share guidelines for OAA funds under the demonstration. We used a Decision Document to reach consensus with our local partners.

Based on a consensus of our local partners and equity considerations, we determined that we wanted to implement cost sharing for federal funds under these demonstrations since we are currently cost sharing under the state-funded EISEP and for EISEP-like services under CSE. We are using our current EISEP cost sharing regulations for purposes of the demonstration with some modifications. In keeping with the OAA provisions, we do not allow any individual to be discharged if they fail to pay their cost share and only allow cost share for those services allowed under the OAA.

This final agreement with our local partners is incorporated in the Cost Share discussions included in Module 4 (see attachment), a section of which is noted below.

Module 4 - Section 4.7: Calculating Cost Share

“The care coordinator will use the following guidelines for cost sharing, based on what funding their county uses for the particular service/item.

- **EISEP FUNDED SERVICES:** Apply existing EISEP cost sharing requirements for consumer payments (in-home personal care services, ancillary services and non-institutional respite) funded by EISEP.
- **Community Services for the Elderly (CSE) FUNDED SERVICES:** Apply EISEP cost sharing requirements except for social adult day and EISEP-like ancillary services.
- **CLP and/or OAA FUNDED SERVICES:** For services for which cost sharing is permitted under the Older Americans Act (OAA), apply existing EISEP cost sharing requirements. *Cost share cannot be applied to congregate and home delivered meals, information and assistance, outreach, benefit counseling, and case management services. Local programs may exclude additional services from applying cost sharing.*

(Note: Since ombudsman, elder abuse prevention, legal assistance and other consumer protection services are not offered under the grants, they were not included in this section of the Module.)

When CLP or OAA funding is being used for a service, a consumer cannot be discharged from that service for non-payment of cost share under this program.

- One Time Purchases (e.g., durable medical equipment, assistive devices /assistive technology, appliances), Home Modifications and Repairs, repairs to equipment, using CSE, OAA or CLP FUNDS:
 - Less than \$101, pre-sales tax: No cost share is applied.
 - Greater than \$101, pre-sales tax: Cost share is based on 50 percent of the EISEP rate paid for in one or in two installments. **The maximum monthly fee does not apply.**

Based on the care plan, the care coordinator will explain to the consumer (and/or consumer representative) how cost share is determined, the amount of cost share required and how the consumer is billed for each of the care plan items.

The method for calculating the cost share differs depending on whether it is a recurring monthly, recurring other than monthly or one time only cost paid in one or two installments. Because the amount may differ from month to month, it may be helpful for the care coordinator to lay out a schedule of monthly cost shares for the duration of the care plan and provide a copy to the consumer (and/or consumer representative).”

Proposed Scope of Requested Amendment:

The above guidelines governs cost sharing in the three NHDMP counties -- Oneida, Broome and Onondaga -- that became operational on June 1, July 1 and August 1, 2009, respectively. At this time, the three NHDMP counties have not used cost share for any Title III services. They have, however, used cost share for services funded by the NHDMP grant. These guidelines will also apply to the seven new CLP counties that are currently not operational and are scheduled to begin to enroll clients in the 12th, 14th and 16th months of the CLP grant. These CLP counties will need to use a combination of federal and state funds to provide services to participants.

We intend that these cost share guidelines will continue to be used by the three NHDMP and seven new CLP counties both during and after the grants have ended. The ability to cost share will enhance the sustainability of the project in all counties.

During our next State Plan cycle, we intend to review cost sharing for OAA services under Title III based on the collective experience in both the NHDMP and CLP demonstrations and will consider whether or not cost share provisions would be extended statewide.

Assurances:

For purposes of complying with Section 315 of the Older Americans Act, NYSOFA provides the following assurances:

- (1) NYSOFA does not permit cost sharing by a low-income older individual if the income of such individual is at or below the Federal poverty line.

- (2) The participation of low income individuals will not decrease with the implementation of cost sharing under the NHDMP and CLP demonstrations that target those individuals who are at risk of nursing home placement and spend down to Medicaid.
- (3) NYSOFA does not include assets, savings, or other property owned by older individuals when defining low-income individuals who are exempt from cost sharing, when creating our sliding scale for the cost sharing, or when seeking contributions from any older individual. The sliding scale for cost share is based solely on an individual's income and the cost of delivering services.
- (4) NYSOFA will require each AAA participating the NHDMP and CLP demonstrations and their associated service contractors to assure that they will:
 - (A) protect the privacy and confidentiality of each older individual with respect to the declaration or non-declaration of individual income and to any share of costs paid or unpaid by an individual;
 - (B) establish appropriate procedures to safeguard and account for cost share payments;
 - (C) use each collected cost share payment to expand the service for which such payment was given;
 - (D) not consider assets, savings, or other property owned by an older individual in determining whether cost sharing is permitted;
 - (E) not deny any service for which funds are received under the Older Americans Act for an older individual due to the income of such individual or such individual's failure to make a cost sharing payment;
 - (F) determine the eligibility of older individuals to cost share solely by a confidential declaration of income and with no requirement for verification; and
 - (G) widely distribute State created written materials in languages reflecting the reading abilities of older individuals that describe the criteria for cost sharing, the State's sliding scale, and the mandate described under (E).
- (5) The above assurances will be included in the official NYSOFA Manual for the NHDMP and CLP grants, entitled: "Community Living Programs - Modules for Program Implementation and Operations -- Policies, Procedures, Forms and Resources, 2009 - 2011." Such assurances will also be included in the ten participating AAA's policies and procedures for their programs.
- (6) New York State Office for the Aging and our partner Area Agencies on Aging will address cost sharing during our next state/area plan hearings.