

86 INF-032 (Divisions of Adult
Services and Medical Assistance)

The Expanded In-Home Services for
the Elderly Program (EISEP)



NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001
 CESAR A. PERALES
 Commissioner



(An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest.)

INFORMATIONAL LETTER

TRANSMITTAL NO: 86 INF-032
 (Divisions of Adult Services and
 Medical Assistance)

TO: Commissioners of Social Services

SUBJECT: The Expanded In-Home Services for
 the Elderly Program (EISEP)

DATE: November 14, 1986

SUGGESTED
 DISTRIBUTION: Adult Services Staff
 Medical Assistance Staff
 County Attorneys
 CASA Coordinators

CONTACT PERSON: All questions regarding the home care portions of this letter should be directed to Don Dwyer or Marcia Anderson at 1-800342-3715, extensions 3-5616 or 3-5618 respectively. Questions regarding Medicaid Eligibility should be addressed to your county representative at 3-7581. Questions regarding CASA responsibilities should be directed to Al Roberts, extension 3-5534. Questions concerning the Title XX portions of this release should be directed to your district's Protective Services for Adults Program Representative in the Division of Adult Services by calling 1-800-M2-3715; Sharon Lane, ext. 3-8728, Regina Driscoll, ext. 3-1713; Kathleen Crowe, ext. 4-6607; or Irv Abelman, ext. 4-8934 or (212) 488-5097.

I. PURPOSE

The purpose of this release is to advise the local districts of the State Office for Aging's Expanded In-Home Services for the Elderly Program (EISEP) and to inform the local districts of their role in the implementation of this program. This new program is expected to complement local district and other county initiatives toward developing a comprehensive local community based chronic care delivery system.

FILING REFERENCES

Previous ADMs/INFs	Department Regs.	Soc. Serv. Law & Other Legal Ref.	Bulletin/Chapter Ref.	Misc. Ref.
	Part 360 Part 403 Part 457 Part 505, 14	Section 365-a.2 (e) SSL Section 366 SSL Section 473 SSL Section 541 Executive Law		Consolidated Services Plan

II. BACKGROUND

In response to the growing number of frail elderly persons residing in the community, Chapter 894 Laws of 1986 was enacted which established the Expanded In-Home Services for the Elderly Program (EISEP). A copy of this law is attached to this release as Appendix I. Under this program, state funds will be available at a 75% matching rate to counties through area agencies on aging, within the amounts appropriated in the state budget, to provide expanded non-medical in-home services, case management, non-institutional respite services and ancillary services to the functionally impaired elderly.

The State Office for the Aging's draft regulations limit non-medical in-home services solely to housekeeper/chore and homemaker services. EISEP participants will be required to share in the cost of the services with the exception of case management services. Eligible persons with incomes above 250% of poverty will pay the full cost of service, while persons below 150% will not be required to pay a fee for service. Persons with incomes between 150% and 250% of the poverty level will pay based on a sliding scale.

In order to receive funding under this program, the law requires local jurisdictions i.e. counties and the City of New York to submit a county home care plan for the functionally impaired elderly to the State Office for Aging which contains:

- a comprehensive description of all aspects of home care, non-institutional respite, case management and ancillary services available to the functionally impaired elderly;
- a description of the intended actions to coordinate the provision of these services to the functionally impaired elderly;
- a proposal for expanded non-medical home care services, case management services, non-institutional respite and ancillary services to functionally impaired elderly persons with unmet needs; and
- how these services will be delivered to unserved or underserved populations.

According to §541.2(h) of the Executive Law, these plans are to be prepared by the Area Agency on Aging after consultation with the local social services district and the public health agency. The area agencies must also consult with any CASA or CASA like agencies during the plan development process, if such an agency exists in their county. The law further requires that county home care plans be approved by the chief executive officer or the governing board of the county.

Local governments electing to participate in the Expended In-Home Services for the Elderly Program may choose to fit their initial program plan, within one of the following time frames:

1. A fifteen month program period -- January 1, 1987 through March 31, 1988; or
2. A twelve month program period -- April 1, 1987 through March 31, 1988; or any subsequent state fiscal year (SFY).

The State Office for Aging is using many of the same standards for the provision of the EISEP non-medical in-home services as are used by the State Department of Social Services for the provision of personal care services and homemaker and housekeeper/chore services. Therefore, the area agencies on aging have been advised by the State Office for Aging that they may not provide reimbursed services at rates higher than those approved for personal care services under Medical Assistance.

III. PROGRAM IMPLICATIONS

The development of The Expanded In-Home Services For the Elderly Program will have several indications for the local districts which are discussed below.

Development and Completion of the County Home Care Plan

As discussed above, the area agencies on aging must consult with the local social services districts prior to the preparation of the county home care plan. It is, therefore, incumbent on the local district to provide input as is needed. This input can be provided in a number of ways depending on the suitability of the method for a particular district. Among these are: consultation, review and comment, joint planning and/or committee discussions.

In order to complete the county home care plan, the area agencies on aging will need access to certain data that can best be provided by the local district. Examples of this data are provider names; number of clients receiving personal care services, homemaker and other Title XX funded services annually, rates for homemaker and personal care services and the total number of units of services provided annually. It is expected that the local district will supply this information whenever it is necessary. The Focal district should contact the State Department of Social Services if technical assistance with the provision of data to area agencies on aging is needed.

The area agencies on aging must submit their county home care plans in accordance with the following schedule:

1. No later than November 30, 1986 in order to qualify for the fifteen month program; or

2. No later than January I, 1987 in order to qualify for the twelve month program.

Local districts should consider the above time frames when consulting with or providing assistance to the area agencies on aging.

Establishment of Cooperative Procedures

The local districts and the area agencies on aging should work out mutually acceptable procedures to deal with common concerns such as client referral, establishment of eligibility for Title XIX and Title XX services, and authorization of appropriate services. In those districts where certain home care responsibilities have been transferred to CASA, CASA Coordinators should also participate in this process. As indicated by the legislation, only those functionally impaired elderly persons who have been determined to be ineligible for Title XIX or Title XX reimbursed services should be referred to the area agency on aging. The methods of referral should be developed and shared with all staff involved in the authorization of personal care, homemaker services and other Title XX supportive services. Discussed below are provisions which specifically relate to the relationship between EISEP and Title XIX and Title XX respectively.

Title XIX MEDICAL ASSISTANCE

1. Financial Eligibility -- Clients who are fully eligible for Title XIX based on income and resources or who are expected to attain eligibility based on incurred medical expenses shall continue to receive these services under Title XIX subsequent to proper utilization of their excess income. After the excess is offset, any remaining medical expenses will be met thru Title XIX. Local districts may anticipate some increase in the number of applications based on referrals made by area agencies on aging. It is particularly important that local districts and area agencies establish procedures to address sporadic Medicaid eligibility, e.g. eligibility for a short period of time due to a large unexpected medical expense.

2. Assessment of Clients -- The State Department of Social Services and the State Office for Aging have agreed that assessments performed by either the local social services district or the area agency on aging may be used interchangeably for either the Personal Care Program or the Expanded In-Home services for the Elderly Program, providing the assessments meet local standards.

Written consent from the local social services client is required before sharing information with the area agency. When giving such consent the client should understand what information will be shared and the purpose for which the information will be used. The individual should also understand that consent or nonconsent to the release of information does not affect his/her entitlement to Medical Assistance in any way.

Attached to this letter as Appendix I is the document "EISEP Coordination with Medicaid". This represents the agreements which have been reached between the State Office for Aging and the State Department of Social Services.

An Additional Option for Community Alternative Systems Agencies (CASAs)

Those CASAs which have elected to serve privately paying individuals should be aware of the scope of service and conditions of participation contained in their local EISEP plan. Referral of clients deemed appropriate to EISEP, and information exchanged on their behalf, must be done in accordance with applicable sections of this release.

TITLE XX: SOCIAL SERVICES

Presented below is information which clarifies the relationship of Title XX and EISEP. These clarifications represent the position of the State Department of Social Services and the State Office for the Aging.

One of the potential impacts of the EISEP is that local districts may receive additional referrals from area agencies on aging. Likewise, the availability of additional services under EISEP may also result in an increase in referrals from the districts to the area agencies on aging. The referral procedures to be established between the districts and the area agencies should, to the furthest extent possible, encourage the sharing of client specific information regarding a person's living situation and services needs. The sharing of client specific information will help assure that both the districts and the area agencies are able to promptly assess a person's services needs and develop appropriate services plans, regardless of whether the person is eligible for services under Title XX or EISEP.

With regard to the provision of case management services, the districts are reminded that, in accordance with section 403.4 of the Department's regulations, the following activities are the sole responsibility of the district for all clients referred to and eligible for services provided by the local district and cannot be purchased or delegated:

- determining financial and programmatic eligibility for services;
- developing a plan of services based on an evaluation or reevaluation of the client's situation for the purpose of achieving an identified service goal;
- authorizing the scope, type and duration of services to be provided;
- assessing the quality and appropriateness of services provided;

- maintaining such recipient and services information as required by the Department; and
- reporting information as required by the Department.

Therefore, any person receiving a Title XX service from a district is not eligible to receive case management services from EISEP.

Presented below is information on the relationship between specific Title XX services and EISEP.

PROTECTIVE SERVICES FOR ADULTS (PSA):

In accordance with section 473 of the Social Services Law (SSL) and Part 457 of the Department's regulations, PSA is a mandated service which is available without regard to income to persons who meet the programmatic eligibility criteria as set forth in the law and regulations. If a person is determined to be eligible for PSA, responsibility for assuring that the person's needs are met by providing the services specified in Part 457 of the regulations and arranging for, and coordinating the provision of necessary services available from other agencies rests with the local district. This means that an impaired elderly person who is eligible for PSA is not eligible for case management under the Expanded In-Home Services for the Elderly program. Also, to the extent that the other services needs of a PSA client can be met by the services activities set forth in section 457.1(c) of the Department's regulations or by other Title XX or Title MIX funded services, a client would not be eligible to receive other services under the Expanded In-Home Services for The Elderly program. However, if a PSA client has specific services needs which cannot be met through social services funded programs, these specific services may be provided under EISEP although case management must remain the responsibility of the local district. State Office for the Aging requirements for service authorization, assessment and cost sharing would apply for EISEP services delivered to such PSA clients.

If a PSA client is eligible for services under EFSEP, or if the district determines that a person is no longer eligible for PSA, or other services provided by the district, relevant client specific information should be made available to the area agency on aging to help assure continuity in the delivery of necessary services. Information sharing on behalf of PSA clients should occur in accordance with 84 INF-2 "Confidentiality Information Sharing regarding PSA clients".

PREVENTIVE SERVICES FOR ADULTS

This service is provided at local district option in accordance with the definition set forth in the Consolidated Services Plan (CSP). A district may provide this service to persons receiving SSI, ADC, or to Income Eligibles. If a district provides the service to income eligibles, it can set the financial eligibility standard at any level up to 80% of the State's median income. A district which provides Preventive Services, must assess a person's need for service, provide or arrange for the provision of services to meet the individual's need and evaluate the effectiveness of these services. Therefore, persons who are receiving Preventive Services for Adults from a local district are not eligible for a case management services pursuant to EISEP. However, as is true for PSA, preventive services clients may receive other EISEP services within the requirements established for that program.

In addition to the case management part of Preventive Services for Adults, districts which offer this service may also provide one or more optional components of this service to eligible individuals as defined in the district's CSP. If a district provides one or more of these optional components as defined in the State Consolidated Services Plan, then a person receiving these services would not be eligible for similar services under EISEP.

Since Preventive Services for Adults is an optional service, there is no state funding available to support this service once a district exhausts its Title XX allocation. Therefore, in accordance with Part 403 of the Department's regulations, if a district which provides preventive services exhausts its Title XX allocation, it is no longer responsible for the delivery of this service. In situations in which an elderly person ceases to be eligible for Preventive Services because of the exhaustion of a district's Title XX allocation or for programmatic or financial eligibility reasons, a referral should be made to the area agency on aging for a determination of eligibility for services under EISEP.

OTHER TITLE XX SERVICES

In accordance with section 403.1(d)C2)(iv) and (v) of the Department's regulations, local districts must provide health related, homemaker, housekeeper/chore, housing improvement and homemanagement services to SSI recipients who meet the programmatic eligibility standards in accordance with the definitions set forth in the CSP, to the extent the state reimbursement is available for these services. Districts may also provide these services to other individuals whose income does not exceed 62% of the State's median income. Therefore, those person's who are eligible for one of these services pursuant to a district's CSP would not be eligible for a similar service available under the EISEP.

As previously stated, persons who cease to be eligible for Title XX services should be referred to the area agency on aging.

Development of Memorandum of Understanding


It is recommended that the local social services district and the area agency develop a written letter or memorandum of understanding outlining the responsibilities of each. Such memorandum should specify procedures for exchange of client-specific information. It should be clearly understood that client-specific information regarding individuals receiving services under Title XIX or XX can be used only for purposes directly related to the provision of services under EISEP.

For PSA, the existing Memorandum of Understanding between the Department and the State Office For Aging continues to govern the relationship between the districts and the area agencies on aging regarding this service. Therefore, any Memorandum of Understanding specifically related to EISEP must be consistent with the provisions of this agreement to the extent that they pertain to PSA.

IV. ADDITIONAL INFORMATION

As discussed above, one of the key purposes of the EISEP is targeting the delivery of services to those functionally impaired elderly who are not eligible for the same or similar services under other programs such as Title XX and Title XIX. This approach is consistent with the Department's efforts to strengthen the services provided to the dependent adult population by the local districts under Title XX.

Local districts, in accordance with EISEP legislative requirements on consultation, will be actively engaged in the Home Care Plan development and implementation process. We encourage your full cooperation in this mutually beneficial process to ensure that the respective resources of the district (including both Titles XIX and XX) and the Area Agency on Aging are linked in complementary fashion to enhance service delivery


Robert C. Osborne
Deputy Commissioner
Division of Medical Assistance


Corinne Plummer
Deputy Commissioner
Division of Adult Services

STATE OF NEW YORK

Cal. No. 1425

7949--B

IN SENATE

March 17, 1986

Introduced by Sens. SKELOS, TULLY -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Aging -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee and committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the executive law, in relation to a program of expanded in-home, non-institutional respite, case management and ancillary services for the elderly, to create a community services for the elderly advisory council and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision two of section five hundred forty-one of the
2 executive law is amended by adding four new paragraphs (e), (f), (g) and
3 (h) to read as follows:
4 (e) Counties with a designated agency may submit to the director a
5 letter of intent, in the form and by the date prescribed by the director
6 with the approval of the director of the budget, evidencing the commit-
7 ment of the county to develop a county home care plan for functionally
8 impaired elderly.
9 (f) Within the amounts appropriated therefor, counties submitting an
10 approved letter of intent pursuant to paragraph (e) of this subdivision
11 shall be eligible for reimbursement of one hundred per centum of the ap-
12 proved expenditures for preparing a county home care plan for function-
13 ally impaired elderly. Such a grant-in-aid shall be available to a
14 county only once and shall be limited to one-half the amount available
15 to such county pursuant to subparagraph one of paragraph (a) of subdivi-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD13779-04-6

1 sion four of this section; provided however that in either of the two
2 years immediately following its first submission of a home care plan for
3 functionally impaired elderly, a county which does not receive state aid
4 during such year for expanded non-medical in-home services, non-
5 institutional respite services, case management services, and ancillary
6 services pursuant to paragraph (j) of subdivision four of this section,
7 may apply for reimbursement of one hundred per centum of the approved
8 expenditures for revising such home care plan, limited to one-quarter
9 the amount available to such county pursuant to subparagraph one of
10 paragraph (a) of subdivision four of this section.

11 (g) County home care plans for functionally impaired elderly prepared
12 pursuant to this subdivision shall include a comprehensive description
13 of all aspects of home care, non-institutional respite, case management,
14 and ancillary services available to elderly persons in the county; a
15 description of intended actions to coordinate such home care, non-
16 institutional respite, case management, and ancillary services to func-
17 tionally impaired elderly persons in their county provided under this
18 section with other services to elderly persons; a proposal for expanded
19 non-medical in-home services, non-institutional respite services, case
20 management services, and ancillary services for functionally impaired
21 elderly persons with unmet needs to support such persons' continued
22 residence in their homes; and such other components as may be required
23 pursuant to regulations promulgated by the director, including how the
24 proposed expanded non-medical in-home services, non-institutional
25 respite services, case management services, and ancillary services will
26 be delivered to unserved or underserved populations.

27 (h) Such county home care plan for functionally impaired elderly shall
28 be prepared by the designated agency after consultation with the social
29 services district and the local public health agency, and shall be ap-
30 proved by the chief executive officer of the county, if there be one, or
31 otherwise the governing board of the county, or the chief executive of
32 the city of New York, and submitted to the director for approval by such
33 date as may be specified by regulation. The director shall not approve
34 such county home care plan for functionally impaired elderly unless it
35 complies with the standards and regulations issued pursuant to this
36 section.

37 § 2. Paragraphs (b), (d), (e) and (h) of subdivision four of section
38 five hundred forty-one of such law, as added by chapter one hundred
39 thirty-two of the laws of nineteen hundred seventy-nine, subparagraph
40 one of paragraph (b) as amended by chapter nine hundred eighty-nine of
41 the laws of nineteen hundred eighty-three and paragraph (h) as amended
42 by chapter three hundred fifty-nine of the laws of nineteen hundred
43 seventy-nine, are amended to read as follows:

44 (b) Community service projects:

45 (1) within the amounts appropriated therefor, counties having an ap-
46 proved county plan shall be eligible for reimbursement by the state for
47 expenditures for approved community service projects pursuant to this
48 section. Such state reimbursement shall not exceed thirty-two thousand
49 dollars or four dollars for each elderly person residing in the county,
50 whichever is greater. The initial twenty-four thousand dollars or three
51 dollars per elderly person of such annual state reimbursement eligibil-
52 ity shall be at a rate of seventy-five percent of the total annual ex-
53 penditures for such approved programs. The remainder of such reimburse-
54 ment eligibility shall be at a rate of fifty percent for such
55 expenditures.

1 (2) the director shall provide by regulation that certain non-county
2 moneys and in-kind equivalents may be used to comprise the county share
3 of such total annual approved expenditures, provided that such county
4 share shall not include cost-sharing received from elderly persons
5 receiving expanded non-medical in-home services, non-institutional
6 respite services, case management services, and ancillary services pur-
7 suant to paragraph (k) of this subdivision or moneys received from the
8 federal government for services for the elderly allocated to the states
9 or local governments according to population or other such non-
10 competitive basis.

11 (3) the director shall provide by regulation the requirements for any
12 participant contributions and fee schedules used for community service
13 projects and the manner for the accounting and use of any such revenue.

14 (d) Reimbursement shall not be available to community services
15 projects funded pursuant to paragraph (b) of this subdivision or to ex-
16 panded non-medical in-home services, non-institutional respite services,
17 case management services, and ancillary services funded pursuant to
18 paragraph (j) of this subdivision for services provided to elderly per-
19 sons who are eligible for or are receiving services to meet their needs
20 pursuant to titles eighteen, nineteen or twenty of the federal social
21 security act or any other governmental programs or for services provided
22 to residents in adult residential care facilities which had previously
23 been provided by the facility or which are required by law to be
24 provided by such facility.

25 (e) For the purpose of determining the amount of state reimbursement
26 for which a county is eligible, pursuant to this section, the last
27 preceding federal census or other census data approved by the comp-
28 troller shall be used. Funds appropriated by the state for the purpose
29 of reimbursement for community services pursuant to this section shall
30 be apportioned among the counties pursuant to the formula set forth in
31 paragraph (b) of this subdivision by the director. Funds appropriated by
32 the state for the purpose of reimbursement for expanded non-medical in-
33 home services, non-institutional respite services, case management ser-
34 vices, and ancillary services pursuant to this section shall be apportion-
35 ed among the counties by the director pursuant to the formula set
36 forth in paragraph (j) of this subdivision :

37 (h) Reimbursement pursuant to subparagraph one of paragraph (b) of
38 this subdivision or pursuant to paragraph (j) of this subdivision shall
39 not be available for expenditures for community or expanded non-medical
40 in-home services, non-institutional respite services, case management
41 services, and ancillary services to elderly persons in the city of New
42 York unless expenditures for such services are apportioned for services
43 in each of the counties contained within such city in a manner which the
44 director has determined by regulation substantially reflects the propor-
45 tion that the number of elderly persons in that county bears to the
46 total number of elderly persons in the city as a whole. In determining
47 whether reimbursement shall be available under paragraph (g) thereof,
48 the director shall ensure that expenditures were apportioned in accord-
49 ance with the provisions of this paragraph.

50 § 3. Subdivision four of section five hundred forty-one of such law is
51 amended by adding six new paragraphs (i), (j), (k), (l), (m) and (n) to
52 read as follows:

53 (i) The director, within the amounts appropriated therefor and with
54 the approval of the director of the budget, may authorize a county which
55 has an approved home care plan for functionally impaired elderly to

1 provide expanded non-medical in-home services, non-institutional respite
2 services, case management services, and ancillary services pursuant to
3 such plan. Such services shall be limited to those services necessary to
4 meet otherwise unmet needs and which support such elderly persons' con-
5 tinued residence in their homes. Needs will be determined pursuant to a
6 standardized evaluation of functional impairment, available resources
7 and such other relevant factors specified pursuant to regulations
8 promulgated by the director. No expanded non-medical in-home services,
9 non-institutional respite services, or ancillary services shall be
10 provided to any individual pursuant to this section unless such expanded
11 non-medical in-home services, non-institutional respite services, or an-
12 cillary services are accompanied by ongoing case management services in
13 accordance with regulations promulgated by the director. The director
14 shall not approve any expanded non-medical in-home services, non-
15 institutional respite services, case management services, or ancillary
16 services pursuant to this section which would replace similar services
17 which were provided pursuant to paragraph (b) of this subdivision during
18 the program year beginning on the first day of April, nineteen hundred
19 eighty-five.

20 (j) Within the amounts appropriated therefor, counties authorized to
21 provided expanded non-medical in-home services, non-institutional
22 respite services, case management services, and ancillary services pur-
23 suant to paragraph (i) of this subdivision shall be eligible for reim-
24 bursement by the state of up to seventy-five per centum of allowable ex-
25 penditures for approved services pursuant to this section up to the
26 level authorized by the director. The director shall not authorize a
27 level of state reimbursement pursuant to this paragraph which exceeds
28 the sum of fifty thousand dollars or four dollars for each elderly per-
29 son residing in the county, whichever is greater, and shall proportion-
30 ately reduce such sum for each county in any years for which appropri-
31 ations are not sufficient to fully fund approved expanded non-medical in-
32 home services, non-institutional respite services, case management ser-
33 vices, and ancillary services for functionally impaired elderly in all
34 counties with approved home care plans; provided however that in state
35 fiscal years beginning on or after the first day of April, nineteen hun-
36 dred eighty-eight, the director, with the approval of the director of
37 the budget, may authorize state reimbursement in excess of these levels
38 to the extent appropriations are available therefor.

39 (k) The director, with the approval of the director of the budget,
40 shall provide by regulation the extent of cost-sharing to be required of
41 elderly persons receiving expanded non-medical in-home services, non-
42 institutional respite services, case management services, and ancillary
43 services pursuant to this section, which shall reflect such recipients'
44 means to pay for such services and which will not affect their ability
45 to remain in their homes; provided however that the director shall not
46 authorize or direct the withholding of state aid pursuant to paragraph
47 (f) of this subdivision prior to the first day of April, nineteen hun-
48 dred eighty-eight, based on any county's failure or inability to comply
49 with regulations promulgated pursuant to this paragraph. The full amount
50 of cost-sharing actually received by any county from elderly persons
51 receiving expanded non-medical in-home services, non-institutional
52 respite services, case management services, and ancillary services shall
53 be used by such county to expand either such county's program of commu-
54 nity services or such county's program of expanded non-medical in-home

1 services, non-institutional respite services, case management services,
2 and ancillary services pursuant to this section.

3 (l) Reimbursement pursuant to paragraph (i) of this subdivision shall
4 not be available for expenditures for base year services otherwise
5 provided without cost, or to replace base year expenditures made by the
6 county or any other service provider irrespective of the source of
7 funds, or to replace community services expenditures pursuant to para-
8 graph (b) of this subdivision.

9 (m) Counties shall submit claims for reimbursement for expanded in-
10 home services, non-institutional respite services, case management ser-
11 vices, and ancillary services to functionally impaired elderly as
12 required by and in accordance with procedures prescribed by the
13 director. Reimbursement shall be available for approved expenditures in-
14 curred in accordance with an approved county home care plan for func-
15 tionally impaired elderly to the extent the director has authorized
16 state aid for such services pursuant to paragraph (i) of this
17 subdivision.

18 (n) The director shall provide by regulation that certain non-county
19 moneys and in-kind equivalents may be used in part to compose the county
20 share of total allowable expenditures pursuant to paragraph (j) of this
21 subdivision, provided that such county share shall not include cost-
22 sharing received from elderly persons receiving expanded non-medical in-
23 home services, non-institutional respite services, case management ser-
24 vices, and ancillary services pursuant to paragraph (k) of this subdivi-
25 sion or moneys received from the federal government for services for the
26 elderly allocated to the states or local governments according to popu-
27 lation or other such non-competitive basis.

28 § 4. Section five hundred forty-one of such law is amended by adding a
29 new subdivision six to read as follows:

30 6. Implementation of home care plans. Within the amounts appropriated
31 therefor, counties authorized to provide expanded non-medical in-home
32 services, non-institutional respite services, case management services,
33 and ancillary services pursuant to paragraph (i) of subdivision four of
34 this section shall be eligible for reimbursement by the state of one
35 hundred per centum of allowable expenditures for implementing the ap-
36 proved county home care plan for functionally impaired elderly, limited
37 to a sum equivalent to one-half the amount available to such county pur-
38 suant to subparagraph one of paragraph (a) of subdivision four of this
39 section.

40 § 5. Such law is amended by adding a new section five hundred forty-
41 one-a to read as follows:

42 § 541-a. Community services for the elderly advisory council. 1. There
43 is hereby created a community services for the elderly advisory council.
44 The advisory council shall consist of nine members to be appointed by
45 the governor as follows: three shall be appointed upon the recommenda-
46 tion of the temporary president of the senate, two of whom shall be a
47 director or a commissioner of a designated agency as defined in para-
48 graph (b) of subdivision one of section five hundred forty-one of this
49 article; three shall be appointed upon the recommendation of the speaker
50 of the assembly, two of whom shall be a director or a commissioner of a
51 designated agency as defined in paragraph (b) of subdivision one of sec-
52 tion five hundred forty-one of this article; and of the remaining three
53 members appointed, at least one shall be a director or a commissioner of
54 a designated agency as defined in paragraph (b) of subdivision one of
55 section five hundred forty-one of this article. The chairman of the ad-

1 visory council shall be appointed by the governor and be one of the
2 members. Members in general shall be selected for their expertise in
3 matters pertaining to non-medical in-home services, non-institutional
4 respite services, case management services, and ancillary services for
5 functionally impaired elderly. Five members of the advisory council
6 shall constitute a quorum for the purposes of organizing the advisory
7 council and conducting the business thereof. Any vacancy on the advisory
8 council shall be filled in the same manner in which the original ap-
9 pointment was made. Members of the advisory council shall serve without
10 salary but shall be allowed their necessary and actual expenses incurred
11 in the performance of their duties as defined herein, provided, however,
12 that persons who are directors or commissioners of a designated agency
13 as defined in paragraph (b) of subdivision one of section five hundred
14 forty-one of this article shall be reimbursed for their expenses by such
15 designated agency.

16 2. The advisory council, with respect to the implementation of para-
17 graphs (i), (k) and (n) of subdivision four of section five hundred
18 forty-one of this article, shall:

19 (a) Serve as a working forum for the exchange of views, concerns,
20 ideas, and information and recommendations relating to expanded non-
21 medical in-home services, non-institutional respite services, case
22 management services, and ancillary services for the elderly.

23 (b) Advise the state office for the aging on the proposal, prepara-
24 tion, and establishment of the expanded non-medical in-home services,
25 non-institutional respite services, case management services, and ancil-
26 lary services for the elderly programs, and any rules and regulations
27 necessary to carry out the provisions of this article.

28 (c) Request and receive from the office for the aging at each meeting
29 of the advisory council any portions of the rules and regulations then
30 available for review, whether in final or draft form, and any supporting
31 documents or other pertinent data.

32 3. Before promulgation of any rules and regulations required by para-
33 graphs (i), (k) and (n) of subdivision four of section five hundred
34 forty-one of this article or any other rules and regulations promulgated
35 pursuant to the establishment of expanded non-medical in-home services,
36 non-institutional respite services, case management services, and ancil-
37 lary services, the director shall first submit such rules and regula-
38 tions to the advisory council for review. The advisory council shall
39 within thirty days of such submission, recommend in writing to the
40 director any suggested modifications to such rules and regulations.

41 § 6. Of the sums appropriated for a program of expanded in-home, case
42 management, and ancillary services for the elderly pursuant to chapter
43 fifty-three of the laws of nineteen hundred eighty-six, no more than
44 fifty thousand dollars (\$50,000), shall be transferred for the purpose
45 of technical assistance and training as authorized by such chapter.

46 § 7. This act shall take effect immediately, provided that the provi-
47 sions of section five hundred forty-one-a of the executive law, as added
48 by section five of this act shall expire and be deemed to be repealed
49 six months after the effective date of the initial rules and regulations
50 promulgated by the state office for the aging pursuant to the provisions
51 of paragraphs (i), (k) and (n) of subdivision four of section five hun-
52 dred forty-one of the executive law, as added by section three of this
53 act.

Appendix II

JOINT STATEMENT OF THE NYS DEPARTMENT OF SOCIAL SERVICES AND THE NYS OFFICE FOR AGING ON EISEP COORDINATION WITH MEDICAID

Although funds flow through Area Agencies on Aging (MA's), the Expanded In-home Services for the Elderly Program (EISEP) provides State aid to counties that agree to meet program requirements, as evidenced by consultation with other county agencies including the Local Social Services District (LDSS) and by the approval of the chief executive officer of the county. Some of the requirements cannot be met unilaterally by an AAA, but require cooperation and coordination between county-level agencies.

For example, the EISEP statute provides that:

Reimbursement shall not be available . . . to expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services ... for services provided to elderly persons who are eligible for or are receiving services to meet their needs pursuant to title [j] nineteen of the federal social security act [Medicaid] . . . [Section 541 (4) (d) of the Executive Law.]

EISEP cannot finance any in-home service for Medicaid recipients, since Medicaid must by law cover the need for such services. Persons who have already been certified as Medicaid (MA) eligible may receive non-medical ancillary services and out-of-home non-institutional respite services not covered by Medicaid based on an assessment that identifies the need for such services; ongoing case management funded by EISEP can not be provided to a Medicaid-eligible client.

For applicants who have not been certified for Medicaid but who appear to be eligible for it, EISEP case managers must assure:

- 1) That they receive services to meet their needs at least as rapidly as applicants who do not appear to be Medicaid eligible;
- 2) That they apply for Medicaid immediately; and
- 3) That if applicants are subsequently found to be Medicaid eligible, MA funds and not EISEP funds are used to pay for all covered services delivered after the date of application for EISEP.

Clearly, no EISEP case manager and no AAA has the unilateral authority to assure that Medicaid payments will be made. Thus the County Home Care Plan for Functionally Impaired Elderly must describe and document the commitment of the county, including its LDSS, to comply with these requirements.

The State Department of Social Services suggests that the following procedures be shared with Area Agencies on Aging:

- 1) If client appears to be MA eligible, a physicians order be obtained.
- 2) A social assessment including all information usually obtained by DSS be completed. This supports the concept of a single assessment tool.

- 3) When the MA eligibility is established, retroactive payment would be made under the following conditions:
 - a) The client must have been eligible for MA at the time service was provided.
 - b) The district is only responsible for those services which are medically necessary. This includes number of hours of service.
 - c) The district pays at the MA rate for services. If the agency is not a MA provider on MMIS, arrangements can be made for the payment.

There are two basic ways to arrange for reimbursement from Medicaid for services delivered to applicants between the time they apply and the time they are determined to be eligible or ineligible for Medicaid (which by law, must be completed within 30 days but in practice may take longer). Either:

- A) Have the EISEP provider* serve the client, but withhold reimbursement until Medicaid status is determined. If Medicaid eligible, have the LOSS reimburse the provider with MA funds. (Local agreements to implement this procedure will have to address prior approval, medical-need certification, provider reimbursement levels, and related MA issues.) If not Medicaid eligible, have the AAA reimburse the provider with EISEP funds.

OR

- B) Have the Medicaid provider* serve the client, subject to an "interim agreement" by which the AAA and client agree to pay the costs of service (in accordance with the EISEP cost-sharing schedule, which includes complete subsidization for those just above Medicaid) if the client is found not to be Medicaid eligible.

These provisions apply to persons who are MA eligible without spend down, and persons whose spend down is expected to be met, either through Medicaid-eligible EISEP covered services alone, or in combination with other recurring medical bills.

Both these alternatives require consultation and agreement between the AAA and the LOSS before services are delivered, and for that matter before the County Home Care Plan for Functionally Impaired Elderly is submitted. If a county is unable to document an enforceable interagency agreement that meets this requirement, its Home Care Plan will not be approved.

* In some cases, a single provider may participate in both EISEP and Medicaid, so either option achieves the same result.