

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

15 NAC 2

TITLE 15 AGING SERVICES

CHAPTER 2 DESIGNATION, AREA PLAN, AND BUDGET

001. SCOPE AND AUTHORITY. These rules and regulations implement Nebraska Revised Statute (Neb. Rev. Stat.) §§ 81-2201 to 81-2227 (the Act) and the Older Americans Act of 1965 (OAA).

002. DEFINITIONS. Definitions are located in this Title, Chapter 1.

003. DESIGNATION AND CONTINUED DESIGNATION. A proposed Area Agency on Aging must comply with applicable legal requirements to be designated, and an existing Area Agency on Aging must continue to comply with applicable legal requirements to continue to be designated, according to the Act and the Older Americans Act of 1965 (OAA).

003.01 AUTHORITY. A proposed Area Agency on Aging must demonstrate its authority to be designated to the State Unit on Aging, which includes providing to the State Unit on Aging copies of the following documents:

- (A) An Interlocal Cooperation Act agreement signed by the chief elected officials of participating counties within its Planning and Service Area;
- (B) Authority to accept and utilize funds for aging services as specified by the Act, this Title, and the Older Americans Act of 1965;
- (C) Authority to develop and implement policies and procedures for administration, services and program development, program records, data collection, and planning. Policies and procedures, including the following, are to be in writing and on file:
 - (i) A statement that the Agency is an Equal Opportunity Employer with an Affirmative Action Plan;
 - (ii) By-laws for the Governing Unit;
 - (iii) By-laws for an Advisory Committee;
 - (iv) Use of property;
 - (v) Confidentiality and storage of confidential material; and
 - (vi) Personnel policies which include: job descriptions for each Area Agency employee, code of ethics, leave, travel, discipline, performance evaluation, hiring and termination, grievance procedures, and accounting and financial management;
- (D) Collected and evaluated views of units of general purpose local government gathered in public hearing in the Planning and Service Area prior to seeking designation;
- (E) Evidence that the views of older persons have been considered and evidence of support from older persons in the Planning and Service Area;

- (F) Evidence of support from Units of General Purpose Local Government and human service agencies and community organizations in the Planning and Service Area; and
- (G) Authority to be an advocate for older persons in the Planning and Service Area.

003.02 CAPACITY REVIEW. A proposed Area Agency on Aging must demonstrate its capacity to be designated to the State Unit on Aging, which includes providing to the State Unit on Aging documents demonstrating its capacity to carry out the following:

- (A) The planning, organizing, staffing, directing, and supervision of a comprehensive and coordinated program of services for older Nebraskans;
- (B) Monitoring, evaluating and commenting on policies, programs, hearings, and community actions which affect older persons;
- (C) Conducting public hearings, studies, and assessments of the needs of older persons;
- (D) Representing the interest of older persons;
- (E) Conducting activities in support of the Department's Long-Term Care Ombudsman and Legal Services program as required by the Older Americans Act of 1965;
- (F) Coordinating planning with other agencies and organizations to promote programs and opportunities which benefit older persons;
- (G) Providing technical assistance to providers of services and to multipurpose senior centers in the Planning and Service Area;
- (H) Establishing effective and efficient procedures for the coordination between the programs assisted by the Department and other programs available to older Nebraskans; and
- (I) Carrying out the intention of the Act and these rules and regulations and the Older Americans Act of 1965, and its rules and regulations.

003.03 PUBLIC HEARING. A proposed Area Agency on Aging must conduct a public hearing to consider the views of units of general purpose local governments in its planning and service area.

003.04 PROPOSAL AND SUPPORT. A proposed Area Agency on Aging must obtain within its planning and service area the support of the chief elected officials of the units of general purpose local governments formed under the Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801 – 13-827).

003.05 ON-SITE ASSESSMENT. A proposed or designated Area Agency on Aging must allow the State Unit on Aging to conduct assessments, including on-site assessments, which may include an evaluation of the proposed or designated Area Agency on Aging's performance in carrying out responsibilities and functions, an evaluation of goals and objectives under any approved plan or budget, onsite visits, client interviews, a review of performance and fiscal reports, and a review of any plan.

004. WITHDRAWAL OF DESIGNATION.

004.01 REASONS FOR WITHDRAWAL. The Department may revoke an Area Agency on Aging's designation, and may accordingly withhold all or a portion of a grant award, for any of the following reasons:

- (A) Voluntarily withdrawal;
- (B) Adverse change in authority or capacity to perform;

- (C) Malfeasance in, or failure of, administration;
- (D) Failure to implement an approved plan or budget;
- (E) Refusal to serve older persons in the planning and service area with a program of services as outlined in an approved plan or budget;
- (F) Misappropriation of funds;
- (G) Failure to obtain approval, in advance, for any proposed amendment to an approved plan or budget;
- (H) Failure to meet the conditions of the subaward from the State Unit on Aging; or
- (I) Failure to comply with applicable law, including the Act, this Title, or the Older Americans Act of 1965.

004.02 RECONSIDERATION. If its proposed designation is denied, a proposed Area Agency on Aging may submit a request for reconsideration within 30 days of the date that the State Unit on Aging issued its denial, which shall include sufficient reasons why designation should occur and supporting documentation.

If an existing designation is revoked, an Area Agency on Aging may submit a request for reconsideration within 30 days of the date that the State Unit on Aging issued its revocation, which shall include sufficient reasons why designation should not be revoked, supporting documentation, and a proposed plan of corrective action that indicates an understanding and acknowledgment of the reason(s) for the designation revocation, describes the steps to be taken to remedy the reason(s), indicates the expected outcome(s) for each proposed remediation step, and describes the time frame to which the Area Agency on Aging would expect to be held to remedy the reason(s) for the designation revocation, if the State Unit on Aging were to reconsider revocation and accept the proposed corrective action plan. The Area Agency on Aging must not implement a proposed plan prior to the granting of its request for reconsideration and approval of the proposed corrective plan by the State Unit on Aging.

004.03 FAILURE OF SECOND CHANCE. If an Area Agency on Aging fails to comply with a corrective action plan that was approved by the State Unit on Aging, the Area Agency on Aging will have its designation revoked by the State Unit on Aging.

004.04 APPEAL PROCESS. A decision by the Department to deny or revoke designation may be appealed in writing to the director of the State Unit on Aging within 10 days of the date the denial or revocation notice was sent. Appeal and hearing procedures are governed by the Administrative Procedures Act, Neb. Rev. Stat. Sec. 84-917 and 465 NAC 6.

005. GOVERNANCE.

005.01 SUFFICIENT STAFFING. An Area Agency on Aging must provide for the employment of sufficient staff to carry out its approved plan and budget.

005.02 PLAN AND BUDGET APPROVAL. An Area Agency on Aging must submit a budget to the State Unit on Aging no later than May 1 of each year.

005.03 THIRD-PARTY SERVICES APPROVAL. An Area Agency on Aging must approve appropriate subawards, contracts and agreements that are necessary to carry out its functions

005.04 ADVISORY COUNCIL CONSULTATION. An Area Agency on Aging must establish and consult with an area advisory council on needs, services and policies affecting older persons in the area.

005.05 ADVISORY COUNCIL BYLAWS. The advisory council must establish bylaws specifying its role and function, number and selection of members, and term of membership and frequency of meetings. The council must meet at least quarterly.

005.06 COMPOSITION OF COUNCIL. The advisory council may include a representative of developmental disability organizations within the planning and service area. The council must include individuals and representatives of community organizations to enhance the leadership role of the Area Agency on Aging in developing community-based systems of services. The advisory council must be made up of:

- (A) More than 50 percent older persons, including minority individuals who are participants or who are eligible to participate in programs under this Title;
- (B) Representatives of older persons;
- (C) Representatives of health care provider organizations, including providers of veterans' health care, if appropriate;
- (D) Representatives of supportive services providers' organizations;
- (E) Persons with leadership experience in the private and voluntary sectors;
- (F) Local elected officials; and
- (G) The general public.

006. AREA PLAN. An Area Agency on Aging must submit to the State Unit on Aging for approval an Area Plan that covers a period of two, three, or four years (as indicated by the State Unit on Aging) from the date of approval. The Area Plan, which must outline a comprehensive and coordinated program of community aging services for older persons within the planning and service area, must be in compliance with applicable law, including the Act, this Title, and with the Older Americans Act of 1965. A proposed Area Plan must include the following items:

- (A) A statement of mission;
- (B) A narrative and statement of goals and objectives, including a time frame and plan for implementation;
- (C) A statement indicating an intent to comply with applicable law, including the Act, this Title, and with the Older Americans Act of 1965;
- (D) A statement describing how the Area Agency on Aging develops, administers and supports the comprehensive coordinated program of community aging services in its Planning and Service Area;
- (E) A statement describing how the Area Agency on Aging monitors and evaluates the activities of service providers;
- (F) A statement describing how the Area Agency on Aging provides technical assistance to service providers;
- (G) Procedures to evaluate compliance with the Area Plan and budget;
- (H) Documentation to substantiate the following items:
 - (i) The program is administered in accordance with applicable law and the approved Area Plan;
 - (ii) Policies, procedures and methods that are necessary for the proper and efficient administration of the Area Plan exist in writing and are followed;

- (iii) Uniform administrative requirements and cost principles are in compliance with the relevant provisions of applicable law;
- (iv) Sufficient internal control and accounting procedures are maintained in accordance with generally accepted accounting principles (GAAP) to ensure proper disbursement of and accounting for funds under the approved plan. Fiscal records must be maintained for three years from the date of final payment, except records that fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) must be maintained for six full years from the date of final payment. (Health Insurance Portability and Accountability Act [HIPAA] procedures must be compliant with Code of Federal Regulations (CFR) 45 Sec.160, Sec.162, and Sec.164.) Records must identify adequately the source and application of funds for grant or subaward support activities;
- (v) Providers of service under the Area Plan operate fully in conformance with all applicable federal, state, and local fire, health, safety and sanitation and other standards prescribed in law or regulations. The Area Agency on Aging requires that when the state or local public jurisdictions require licensure for the provision of services, agencies providing the services must be licensed;
- (vi) Standards and procedures that are necessary to meet the requirements provided in Neb. Rev. Stat. § 81-2214.02, regarding safeguarding confidential information exist in writing and are followed;
- (vii) The Area Agency on Aging furnishes reports and evaluations to the State Unit on Aging as requested and as required by law;
- (viii) Each program funded through the Area Agency on Aging operates its program or activity in a manner accessible to persons with disabilities;
- (ix) Benefits and services available under the Area Plan are provided in a non-discriminatory manner;
- (x) A third-party blanket liability coverage is in force, reasonably sufficient to cover an accident on project premises;
- (xi) A statement acknowledging responsibility for: the subgranting and subcontract of Area Agency on Aging funds, the fiscal accountability for these funds, the meeting of all state requirements and the avoidance of any conflicts of interest arising from any grants, contracts, subgrants, or subcontracts under the plan; and
- (xii) A statement that the Area Agency on Aging has a copy of the Interlocal Cooperation Agreement and bylaws under which it operates, maintains it, and that is available on request.

006.01 DISASTERS. An Area Agency on Aging must have a current plan for services, a copy of which is available on request, to the elderly during disasters, including, but not limited to, a tornado (high winds), chemical event, nuclear event, flood, and blizzard. The plan must show the coordination with Civil Defense and Red Cross and its pyramid alert system, including notification of the Department's disaster coordinator.

006.02 PROVIDING SERVICES. An Area Agency on Aging must submit in its plan a description or explanation, or both, of:

- (A) A reasonable and objective method for determining the needs of all eligible residents of all geographic areas in the Planning and Service Area for allocating resources to meet those needs;

- (B) A reasonable and objective method for establishing priorities for service and how the methods are in compliance with the Act;
- (C) A method to ensure that Older Americans Act of 1965 and Community Aging Services Act funds are used to serve only those individuals and groups eligible under these Acts and their rules and regulations;
- (D) How the plan addresses the needs of older individuals with the greatest economic need and the greatest social need;
- (E) A plan to coordinate and utilize as much as possible the services and resources of other appropriate public and private agencies and organizations; and
- (F) A plan that provides that in the operations and programs conducted by the Area Agency on Aging or service providers, any contributions received are to be collected in a manner which provides the client maximum confidentiality.

006.03 COMMUNITY FOCAL POINT. An Area Agency on Aging must designate at least one community focal point within the boundaries of each participating county in its planning and service area.

006.04 COMMUNITY FOCAL POINT LIST. An Area Agency on Aging must maintain an accurate listing of the community focal points, must provide the Department with the listing, and must update that listing as needed.

006.05 AVAILABILITY OF DOCUMENTS. An Area Agency on Aging must make available in its offices during ordinary business hours its Area Plan and budget, all periodic reports, and all policies governing the administration of the program in the area, for review by interested persons.

006.06 CONFIDENTIALITY OF RECORDS AND INFORMATION. An Area Agency on Aging must include written policies and procedures in its plan governing the confidentiality and information of all clients. No client record or information of sensitive or confidential nature is to be disclosed or released to any other party except with the written consent of the client, unless the disclosure is required by applicable law.

006.07 CONTRIBUTION FOR SERVICES. An Area Agency on Agency must include policies and procedures in its plan to ensure that those using services funded in whole, or in part, with Older Americans Act of 1965 funds are provided a free and voluntary opportunity to contribute to the cost of the services and ensure that their privacy is protected with respect to their contribution. Policies and procedures must include, but not be limited to:

- (A) A means of providing contributions with anonymity;
- (B) The availability of envelopes for confidential contributions for services provided in the home; and
- (C) Written listings of total costs of services, suggested contributions, and cost-sharing fee schedules presented in a manner not to be mistaken for a bill or invoice for services rendered.

006.08 EXPANSION. An Area Agency on Aging must include policies and procedures in its plan for expansion of activities in the planning and service area, including services or programs, or both, in unreached areas and new or expanded services or programs, or both, in areas currently receiving services.

006.09 REDUCTION. An Area Agency on Aging must include policies and procedures in its plan for reducing services in the planning and service area if federal, state, or local funding sources are decreased or are no longer adequate to continue the current level of activity.

006.10 ELIGIBILITY. An Area Agency on Aging must describe procedures in its plan for determining eligibility for receiving federal and state funded services. Determination must take into account:

- (A) For congregate activities, the area's community and older citizens' needs, resources, and standards and the recommendations of the area advisory council; and
- (B) For individual services, an assessment of an individual's or family's circumstances and the development of a service plan.

006.11 USE OF SENIOR AND MULTI-PURPOSE CENTERS. An Area Agency on Aging must follow any requirements regarding the length of time a senior center must be used as an aging service center when funds granted by the State Unit on Aging are used in its acquisition, renovation, or construction, pursuant to the Older Americans Act of 1965, Section 312.

006.12 AMENDMENTS TO AREA PLANS AND BUDGETS. Any request for approval of an amendment must be accompanied by:

- (A) Reason(s) for the requested change;
- (B) Proposed amended budget;
- (C) Proposed amended level of service or goals and objectives;
- (D) Any pages of the Area Plan or budget, or both, that are altered as a result of the proposed change(s); and
- (E) Records of public hearings on any changes which are substantial or which adjust scope or direction.

006.13 PLAN DEFICIENCIES. An Area Agency on Aging must revise the proposed Area Plan if the State Unit on Aging finds that the proposed plan fails to comply with the Act, this Title, or the Older Americans Act of 1965, or its rules and regulations.

006.14 NOTICE OF REVISION. The Notice of Revision states the items to be revised.

006.15 PLAN RESUBMISSION. The Area Agency on Aging must resubmit the revised Area Plan to the Department within 45 days from the postmark of the Notice of Revision.

006.16 NON-COMPLIANCE. Failure to have an approved, or conditionally approved, Area Plan constitutes non-compliance with the Act and these rules and regulations and will require withdrawal of designation.

006.17 NEW OR REVISED PLAN. Ninety days prior to the expiration of an Area Plan, the Area Agency on Aging must submit a new or revised Area Plan to cover the next two, three, or four year period. Prior to submission of a new Area Plan, the Area Agency must:

- (A) Hold at least one public hearing within its Planning and Service Area to gather comments on the proposed Area Plan;
- (B) Make available draft copies of the Area Plan to service providers and other agencies and local governments in the Planning and Service Area for comment;

- (C) Revise draft Area Plan responding to comments of the public, service providers, and other agencies and local governments, insofar as they are consistent with the Act and this Title; and
- (D) Obtain approval of the Area Plan by the Governing Unit of the Area Agency on Aging.

007. ANNUAL BUDGET. Each Area Agency on Aging must submit to the Department for approval an annual budget. The budget must detail how the Area Agency on Aging implements goals and objectives during the ensuing fiscal year. The annual budget must:

- (A) Tie service definitions between service unit projections and budgets;
- (B) Provide cost itemization of equipment with cumulative cost of \$5,000 or more and expenditures involving renovation, construction, and data processing equipment;
- (C) Identify any proprietary or for profit contracts;
- (D) Identify all subgrantees and contractors who receive Older Americans Act of 1965 funds, including dollar amounts for each; and
- (E) Provide an indication of planned expansion or reduction activities.

007.01 DEPARTMENT REVIEW. The Department will review the annual budget prior to approval. The review will include, but not be limited to:

- (A) A review of Area Agency objectives and their relationships to the Area Plan and budget;
- (B) A review of the last assessment of the Area Agency on Aging including progress made on any deficiencies found during that assessment;
- (C) Evidence of coordination with other agencies;
- (D) Targeting of resources to socially and economically needy, low-income minority, rural older persons and Native Americans;
- (E) A match of no less than 25% of the approved Area Plan and budget from local sources; and
- (F) Compliance with the Act, these Rules and Regulations and the Older Americans Act of 1965, and its rules and regulations.

007.02 SUBAWARD ISSUANCE. The Governing Unit of the Area Agency on Aging must accept the subaward or grant before the annual budget is effective, once approved and issued by the Department. Acceptance of the subaward or grant is accomplished by the return of an executed subaward or grant.

007.03 NOTICE OF REVISION. An Area Agency on Aging will receive a notice of revision, which states the items to be revised, if, after review, the Department determines revisions to the submitted annual budget are required to be in compliance with the Act, this Title, the Older Americans Act of 1965, or its rules and regulations.

007.04 RESUBMISSION. An Area Agency on Aging must resubmit a revised annual budget within 15 days from the postmark of the rejection by the Department of the annual budget.

007.05 DEPARTMENT OPTIONS. If the Department does not approve an annual budget before the start of a new fiscal year, the Department may do any of the following:

- (A) Issue a subaward or grant providing conditional approval, setting the conditions and date for compliance; or

- (B) Approve the continued operation by the Area Agency on Aging under the previously approved Area Plan or budget, or both until a revised annual budget is approved, but in no case for more than 180 days.

007.06 AMENDMENTS OF ANNUAL BUDGET. Before an Area Agency on Aging can implement its budget, the Area Agency on Aging must obtain the approval of the budget from the Department. Failure to apply for an amendment of the annual budget, or to receive approval for an amendment, constitutes non-compliance and is cause for withdrawal of designation. Any request for approval of amendment must be accompanied by:

- (A) Reason for the requested change;
- (B) Proposed amended budget;
- (C) Proposed amended service or action statement;
- (D) Any pages of the Area Plan and budget that are altered as a result of the changes; and
- (E) Records of public hearings on any changes which are substantial or with a change in scope or direction.

008. REPORTING REQUIREMENTS. Each Area Agency on Aging must submit required program and financial reports to comply with state requirements and federal requirements in 45 CFR Part 74 and 2 CFR 200, respectively.

008.01 SERVICE REPORTING SYSTEM. Each Area Agency on Aging must use the Aging designated Service Reporting System. Service units, activities, and reports must be entered or submitted by the Area Agency on Aging by due dates set by the Department.

008.02 THIRD PARTY REPORTING. Each Area Agency on Aging must obtain and report necessary information from those sub-recipients and service providers with whom they have subawards or contracts.

008.03 AUDITS. Each Area Agency on Aging must obtain and file with the Department an audit report in compliance with the Office of Management and Budget (OMB) CFR 200 Part F. The audit must be conducted in accordance with generally accepted auditing standards.

009. GRANTS AND REIMBURSEMENT. Each Area Agency on Aging is reimbursed, through a subaward, up to 75 percent of the actual cost of providing activities and services as described in its approved Area Plan and budget that are eligible for funding under Neb. Rev. Stat. Sec. 81-2222.

009.01 SOURCES. The reimbursements are made from:

- (A) State funds appropriated to the Department under the Act; and
- (B) Federal funds allocated to the Department, including funds allocated under the Older Americans Act of 1965.

009.02 INSUFFICIENT FUNDING. If appropriated state or federal funds are insufficient to finance the approved budget for each Area Agency on Aging, the reimbursement to each Agency is proportionately reduced.

009.03 EXCEEDING APPROVED BUDGET. If an Area Agency on Aging chooses to exceed the approved budget, the Department cannot reimburse costs in excess of the approved budget.

009.04 REIMBURSEMENT QUALIFICATION. To qualify for reimbursement, an Area Agency on Aging must provide no less than 25 percent of the approved budget from local sources, which must include but not be limited to:

- (A) Local public tax dollars, federal revenue sharing trust funds and local government in-kind donations in the form of rent, building space, utilities, utility repair, paving, sewer fees, equipment, labor materials, and supplies, provided they are program related; and
- (B) Local "other" donations in the form of cash, labor, materials, supplies, acceptable safe food, transportation services, furniture, equipment, provided they are program related.