

**PROGRAM INSTRUCTION**

NdoA-00-PI-19

May 18, 2000

TO: Directors, Area Agencies on Aging

SUBJECT: Title III-B Minimum Percentages for Access, In-Home, Legal Services and Waiver Requirements

CONTENT: Sec. 306(a)(2) of the Older Americans Act stipulates that area agencies shall expend an adequate proportion of Title III-B allotments for services associated with access to services, in-home services, and legal services. This program instruction will provide additional information as to the method that will be used by the state unit on aging to determine compliance with this section of statute.

In NDOA 89-PI-08, Nebraska established the following percentages as the minimum amount of funding that must be expended on the three categories of service.

Access Services	15%
In-Home Services	15%
Legal Service	2%

Services in the aging network's taxonomy of services that are considered to be access services include transportation, assisted transportation, outreach, information and assistance and care management. In-home services include personal care, homemaker, chore, adult day care, home health aide, emergency response system, durable medical equipment and respite. Legal service is the only service that can be applied to the legal service minimum percentage.

The amount of funds that must be expended to meet the requirements of Sec. 306(a)(2) will be determined by applying the state's minimum percentage to an area agency on aging's Title III-B allotment as listed in the reservation table. The product of that calculation will be the minimum level of funding that must be expended in each of the three categories of service.

The state unit on aging will calculate the total funding expended for all services in each category and compare that amount to the minimum spending requirement. The state unit on aging will not approve an area plan in which the budgeted funding level for any of the three categories of service is less than the minimum expenditure level.

Area agencies on aging may submit a request to waive the minimum funding requirements. The process for seeking a waiver was also outlined in 89-PI-08. That process is incorporated into this program instruction as an attachment.

This program instruction supersedes 89-PI-08.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Intermill', written in a cursive style.

Mark Intermill  
Aging Services Administrator  
Division of Aging & Disability

Enclosure

## MINIMUM PERCENTAGE OPERATING PROCEDURES

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The procedures for Title III-B minimum percentages for the priority services of access, in-home and legal assistance services are as follows:

- 1) Each area agency will be required to expend a minimum percentage of funds for each of the priority services (i.e., access, in-home and legal assistance services) unless a waiver has been granted under Section 306 (b) (1) of the Older Americans Act.
- 2) The minimum percentage will be applied to the total of Title III-B dollars indicated on the reservation table for each area agency. This will occur prior to fund transfers and will exclude special award funds.
- 3) To meet this minimum percentage area agencies may include other dollars for these three service categories as long as total dollars expended meet or exceed the minimum percentage.

The dollars must be budgeted under access, in-home or legal assistance services on the Composite Budget Request Form (formerly AP-16) and the amounts on line 9 (Gross Cost) will be used to determine the total dollars

- 4) The established minimum percentages are:

Access service - 15%  
In-Home service - 15%  
Legal Assistance - 2%

- 5) Specific services which may be budgeted and reported under the priority services are as follows:
  - a. Access Services – include Transportation, Assisted Transportation, Information & Assistance, Outreach and Care Management.
  - b. In-Home Services – include Personal Care, Homemaker, Chore, Emergency Response System, Durable Medical Equipment and Respite Care.
  - c. Legal Services – include Legal Assistance.

## MINIMUM PERCENTAGE WAIVER REQUEST TIME LINE

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### **By January 2**

An Area Agency on Aging gives notice of its intent to seek a waiver of the minimum percentage for any one or all of the three categories (Access, In-Home, Legal Assistance) by publishing a notice of public hearing.

#### A. Notice of public hearing must:

- 1) include a clear explanation of the subject and reasons for requesting a waiver.
- 2) be published in each weekly newspaper and in any daily newspaper located in and serving the Planning and Service Area of the Area Agency on Aging.
- 3) be mailed throughout the planning and service area to elected local public officials, human service agencies and organizations serving and/or representing older persons, current and potential service providers, business, civic and church groups affected by the request.

#### B. The public hearing must be held in a publicly, handicapped-accessible building on a day and at a time convenient to the public.

### **By January 20**

The Area Agency on Aging holds a public hearing on its waiver request and after the public hearing prepares a typed transcript of the entire hearing (along with exhibits) and a waiver request to the State.

### **By February 1**

The Area Agency on Aging submits the waiver request and necessary documentation and public hearing transcript to the Nebraska Department of Health & Human Services Division of Aging & Disability Services.

### **By February 15**

The State makes a determination whether it will grant or deny the waiver request and notifies the Area Agency on Aging of its waiver decision.

If the State denies the waiver, the Area Agency on Aging will need to submit its Annual Plan and Budget reflecting the adopted minimum percentages by the date specified in the Annual Plan and Budget instructions.

If the State proposes to grant a waiver request, it will prepare its intent and justification notice 30 days prior to the effective date of the waiver.

**By February 25**

The State publishes its Notice of Intent to grant a minimum percentage waiver and the justification for the waiver. Publication must occur in weekly newspapers and daily newspapers located in and serving the PSA and in at least one daily newspaper with statewide circulation.

During the 30 day period of Notice of Intent, any individual or service provider may request a hearing before the State on the waiver request.

**By March 30**

If no hearing is requested, the waiver becomes effective 30 days after the Notice of Intent was published (which should occur no later than this date). If the waiver takes effect, the Area Agency must submit its Annual Plan and Budget by the date specified in the Annual Plan and Budget instructions.

The State then forwards materials to the Commissioner of the Administration on Aging as outlined below.

If a waiver hearing is requested, the State sets a hearing date and published notice of the public hearing. The State must permit 30 days between the notice and the actual hearing.

**By May 1**

The State holds a Public Hearing on the waiver request.

**By May 10**

The Administrator of the Division of Aging Services decides on approval or denial of a waiver request based upon the public hearing testimony and exhibits and notifies in writing all interested parties of the decision.

**By May 15**

If the waiver is denied, the Area Agency is notified and it must submit its Annual Plan and Budget based upon the States adopted minimum percentages by June 1.

If the waiver is granted, an Area Agency is notified and it must submit its Annual Plan and Budget based upon the waiver request by June 1.

If the waiver is approved by the State at any point (whether the State holds a public hearing or not), the State must submit to the Commissioner of the Administration on Aging (Regional Office) a report providing:

- 1) Details of the Demonstration made by the Area Agency on Aging to obtain such a waiver
- 2) A copy of the record of the public hearing conducted by the Area Agency on Aging and the State, if one was held.

**After May 15**

The Commissioner of the Administration on Aging (Regional Office) reviews the submitted record.

(Note: Regional Office indicates that a state decision is not likely to be overruled unless there is an obvious violation of the law.)

MINIMUM PERCENTAGE  
WAIVER REQUEST AND PUBLIC HEARING DOCUMENTATION  
REQUIREMENTS

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An Area Agency on Aging request for a waiver of the minimum percentage must document the need for access, in-home, and/or legal assistance services throughout the planning and service area (PSA) and demonstrate that such services are being furnished sufficiently throughout the PSA to meet the need.

The waiver request must include the following:

1. A statement indicating that a waiver of the minimum percentage is requested for access, in-home and/or legal assistance service(s).
2. A valid, reliable assessment of the 60 plus population in the PSA which must include questions designed to elicit pertinent information relating to the waiver request service.
3. A chart (i.e., Attachment A) which lists all providers\* in the PSA providing the service and lists an unduplicated count of the number of persons age 60 years and older receiving the service for the previous state fiscal year.
4. A chart (i.e., Attachment B) which identifies the number of minority, low income, and rural elderly individuals receiving the service and compares the number served to the total number of minority, low income and rural elderly individuals in the PSA.
5. A chart (see sample format: Attachment C) which indicated the number of individuals age 60 and over by county receiving services from any provider and compares that number to the total 60 and over population in the PSA.

\*Note: Providers in this case shall mean all organizations, and individuals regardless of funding source who are providing access, in-home and/or legal services to age 60 and over individuals.

6. A copy of the notice of public hearing and copies of proof of publication in each county and daily newspaper located in and serving the PSA.
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7. A copy of the list of “all interested parties” who were notified of the public hearing and a copy of the notification letter. [See Waiver Request Timeline, Jan. 2 – A. (3) ].
8. Documentation that the public hearing was held in a publicly, handicapped accessible building at a day and time convenient to the public.
9. A typed copy of the transcript of the entire public hearing and a copy of all exhibits submitted to the public hearing.
10. A detailed statement of how the Area Agency justifies the request for a waiver of the minimum percentage and how the public hearing testimony and exhibits, the completed charts, and needs assessment support this justification.



**CHART B**

SERVICE	MINORITY		LOW INCOME		RURAL (LAAA & ENOA ONLY)	
	# Served	% of Minority 60+	# Served	% of Low Income 60+	# Served	% of Rural 60+

**CHART C**

NUMBER OF 60+ PERSONS SERVED						
Counties	I & R	Escort	Shopping	Transportation	Total Persons Served	% of Pop.
<b>Total</b>						

## CRITERIA FOR GRANTING MINIMUM PERCENTAGE

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1. The waiver request is postmarked by February 1 the year of the Annual Plan.
2. All information in NDoA-PI-19 is submitted in full.
3. A valid, reliable assessment indicates that there is no need or that the need is being filled by other service providers throughout the PSA.
4. A clear indication that the waiver service is provided to low income (Title XX), minority and rural elderly (LAAA and ENOA only) individuals in proportions equal to all other 60 and over individuals receiving the waiver service throughout the PSA.
5. A clear showing that the waiver service is provided in 75% of the member counties.
6. A justification statement which clearly and thoroughly supports with documentation the request for a waiver of the minimum percentage.