



PROGRAM INSTRUCTION

SUA-25-PI-15

12/23/2024

TO: Sub-recipients of the State Unit on Aging

FROM: Josie Rodriguez, Administrator, State Unit on Aging *Josie Rodriguez*

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SUBJECT: Area Agency on Aging Direct Service Provision

CONTENT: This Program Instruction provides Area Agencies on Aging with guidance on how they may request to provide direct services under provisions of § 1321.65(b)(7), where appropriate.

Direct Service Waiver

The Older Americans Act (OAA) intent is that the State Unit on Aging and Area Agencies on Aging serve as catalysts in their communities for services, and not serve as direct service providers. This is why a Direct Service Waiver is required for an OAA service that uses OAA funds.

Direct Service Waivers are granted by the State Unit on Aging to Area Agencies on Aging who provide services directly to clients.

Unless otherwise permitted or required by law or an exception granted by the State Unit on Aging, the Direct Service Waiver request is submitted with the Area Agency on Aging's two, three, or four-year Area Plan. An approved request remains in effect during the Area Plan time period, unless terminated by either the Area Agency on Aging or the State Unit on Aging.

Per section 307(a)(8)(A) of the Older Americans Act, all state agencies must submit a State plan which meets the following criteria:

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document

The plan shall provide that no supportive services, nutrition services, or in-home services will be directly provided by the State agency or an Area Agency on Aging in the State, unless, in the judgment of the State agency—

- (i) provision of such services by the State agency or the Area Agency on Aging is necessary to assure an adequate supply of such services.
- (ii) such services are directly related to such State agency or Area Agency on Aging administrative functions; or
- (iii) such services can be provided more economically, and with comparable quality, by such State agency or Area Agency on Aging.

In order to ensure that all services provided directly meet the above noted criteria, the Nebraska State Unit on Aging requires a Direct Service Waiver procedure to be completed with each Area Agency on Aging's Area Plan.

Exceptions

There are exemptions to the waiver requirement in OAA section 307.

According to OAA 307(a)(8)(C), OAA Information and Assistance and Outreach services are exceptions, and an AAA may directly provide these two services without a waiver.

In addition, according to OAA 307(a)(8)(B), an AAA currently offering the state funded Care Management program can provide III-B and III-E Case Management without a waiver.

Services that do not use any OAA funds, such as state funded Care Management and ADRC programs, are also exempt from the OAA requirements.

Procedures:

1. All Area Agencies on Aging will submit a Direct Delivery Service form (attached) with all supporting documentation to the State Unit on Aging as part of the Area Plan submission, or separately for certain situations, by the deadline provided by the SUA.
2. The State Unit on Aging Program Coordinator or Program Manager will review the Direct Delivery Service form and documentation utilizing the Direct Service Waiver Review Checklist. If any errors or omissions are noted, corrections will be requested of the agency which submitted the request for waiver. The Direct Service Waiver Review Checklist is comprised of the following Older Americans Act regulations:

The remaining services require specific criteria per regulation (Older Americans Act 307(a)(8)) for direct provision:

- A. To assure the adequate supply of services
- B. They are services related to the Area Agency on Aging's administrative function
- C. The services can be provided more economically, and with comparable quality

The following specific criteria must be submitted along with the Direct Delivery Service form that states the specific reason(s), from the following list, for directly providing the service(s):

A) To assure the adequate supply of services:

A written description, including supporting documentation as necessary to support your conclusion, outlining the reason(s) direct services must be provided by the Area Agency on Aging for the specific county(s), signed by the Director. Examples of supporting documentation should measure the supply of services and can include surveys, Public Notices, RFPs, town hall meetings, discussions with social service organizations, Advisory Councils, and comments from AAA clients.

Approval by the Area Agency on Aging Governing Board, signed by the Chair or Vice Chair, to pursue approval of Direct Service Provision, to implement the services approved, and acknowledgment of the associated costs to be incurred.

B) The services are related to the Area Agency on Aging's Administrative Function – including Education & Training, Public Information, General Information and Publication.

A written description with supporting documentation must be provided by the Area Agency on Aging. Documentation can include newsletters, training agendas, information brochures, public notices, etc. The written description must include information about how the services are actually related to the agency's administrative function and how the administrative function would be affected by contracting the services.

C) Services can be provided more economically, and with comparable quality directly:

Documentation of criteria demonstrating a direct provision of services will provide services more economically and with comparable quality compared against a contractor/subrecipient. Must include the following:

- a) A determination in writing of the Area Agency on Aging, approved by the Governing Board, showing the current, or proposed, service provider is less economical and of comparable, or lesser quality. This includes the AAA rate/cost as well as the contractor/subrecipient rate/cost and metrics used to compare the quality of services.
- b) Submitting the provider's written proposal to the Area Agency on Aging.

In addition to providing justification for providing services directly based upon efficiency or effectiveness, if the waiver request is ongoing from year to year, all waiver requests must include the following information:

- a) Documentation that potential service providers in the area have been notified of the opportunity to provide service(s) for the Area Agency on Aging by issuing a Request for Proposal (RFP), at least once every four years.

If an Area Agency on Aging utilizes public notices and/or public meetings with the above reasons to justify the provision of direct services, evidence of the following must be provided:

Direct Service Deadline met

Public Notice published in multiple newspapers throughout the PSA

The Public Notice required language is included:

- a) A public hearing will be conducted by (name) for the purpose of receiving public comment concerning options in the community for providing delivery of (state direct services requesting waiver for). (Name) provides these services directly to (state justification for providing services directly).
- b) The hearing will be held on (date, time, location) at which time all persons interested may be heard.
- c) Written comment should be sent to (name and address). Comments must be received by (date) to become part of the hearing record.

An Affidavit of publication has been submitted for each publication

Documentation that a public hearing occurred

Interested parties were notified and provided an opportunity to testify at the public hearing

Record of notification process included in the request

Agenda of Public Hearing included

Minutes of the Public Hearing included

During its review of the Direct Service Waiver request, the State Unit on Aging may consider other factors, including:

- a) The demonstrated capacity of the Area Agency on Aging to deliver services consistently and reliably,
 - b) The economic impact of a business model transition from a contract/subaward provider to the Area Agency on Aging as the provider;
 - c) Consideration of any possible disruption of service;
 - d) Input from the Area Agency on Aging advisory council; and
 - e) Comments from the public.
3. A letter notifying the Area Agency on Aging that their Direct Service Waiver request has been approved, or denied, is signed by State Unit on Aging Administrator and sent to the Area Agency on Aging.

If you have questions, please feel free to contact the SUA at 402-471-2307 or via email at DHHS.Aging@nebraska.gov.