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| POLICY TRANSMITTAL NO. 04-45 | DATE: AUGUST 10, 2004 |
| AGING SERVICES DIVISION | DEPARTMENT OF HUMAN SERVICES OFFICE OF PLANNING, POLICY & RESEARCH |

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:105-10, Table of Contents; 105-10-41; 105-10-43; 105-10-72; 105-10-101; and 105-10-117 through 105-10-122.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

The revisions to Subchapter 10 of Chapter 105 update and clarify guidelines for: (1) advertising availability of funds; (2) grantee staffing of Area Agencies on Aging (AAAs) and Title III projects, according to local need; (3) providing direct services; (4) monitoring the program and fiscal reports of Title III projects; and (5) developing personnel policies and procedures.

340:105-10-41 is revised to clarify that direct services are provided or prohibited based on the Older Americans Act (OAA) and the State Plan on Aging.

340:105-10-43 is revised to clarify that the AAA monitors and evaluates Title III projects except when the State Agency has agreed with the AAA to provide the service.

340:105-10-72 is revised to clarify that: (1) AAAs are the final authority on appropriate staffing patterns in the Title III projects; (2) site visits are limited to one per day per registered dietitian (RD) or nutrition consultant; (3) the RD verifies requirements are met by signing the monthly form; and (4) the RD provides nutrition education and counseling, as appropriate, to meal participants.

340:105-10-101 is revised to clarify: (1) procedures in the request for proposals (RFP) process, including directing the announcement of availability of funds to newspapers and existing and potential service providers known to the AAA in the planning and service area (PSA); and (2) when the AAA has authority to provide a direct service.

340:105-10-117 is revised to clarify the authority of the AAAs in recruiting, selecting, and advancing employees.

340:105-10-118 and 340:110-10-119 are revoked as they are superseded by amendments to other sections.

340:105-10-120 is revised to clarify that AAAs and Title III projects develop, document, and update job descriptions based on local need.

340:105-10-121 is revised to clarify that AAAs and Title III

projects assign job descriptions and salaries according to local market value and state and federal limits.

340:105-10-122 is revised to update cross references and define public agency.

Original signed On 8-2-04

Roy R. Keen, Director
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Marilynn Knott, Administrator
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WF # 04-13 (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following a “DHS” number, such as personnel policy at DHS:2-1 and personnel rules at OAC 340:2-1. The “340” is the Title number that designates DHS as the rulemaking agency; the “2” specifies the Chapter number; and the “1” specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, DHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, DHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at (405) 521-3611.

REMOVE

INSERT

| | |
|-------------------------------|---|
| 340:105-10, Table of Contents | 340:105-10, Table of Contents, pages 1-4, revised 8-15-04 |
| 340:105-10-41 | 340:105-10-41, pages 1-2, revised 8-15-04 |
| 340:105-10-43 | 340:105-10-43, pages 1-2, revised 8-15-04 |
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| 340:105-10-101 | 340:105-10-101, pages 1-4, revised 8-15-04 |
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| 340:105-10-118 | ----- |
| 340:105-10-119 | ----- |
| 340:105-10-120 | 340:105-10-120, 1 page only, revised 8-15-04 |
| 340:105-10-121 | 340:105-10-121, 1 page only, revised 8-15-04 |
| 340:105-10-122 | 340:105-10-122, pages 1-2, revised 8-15-04 |

**SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE
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340:105-10-41. Title III direct services waivers

(a) **Policy.** Provisions under the Older Americans Act (OAA), including subsequent amendments, specify which Title III direct services are authorized as well as prohibited under the law. Direct services otherwise prohibited by OAA may be permitted by the State Agency if, in the judgment of the State Agency, provision of such services is:

- (1) necessary to ensure an adequate supply of such services;
- (2) related to the administrative functions of the Area Agency on Aging (AAA); or
- (3) more economical and of comparable quality. ■ 1

(b) **Authority.** The authority for this Section is Section 307(a)(8) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The State Agency determines that one or more of the criteria listed in (a) of this Section are met for an AAA to provide direct services when the requirement:

(1) necessary to ensure an adequate supply of services is considered met. The AAA can document that it has not received any proposals to deliver a service in all or a portion of the planning and service area, after the AAA has carried out the request for proposals (RFP) process in accordance with OAC 340:105-10-101;

(2) services related to AAA administrative functions is considered met. Services consist of advocacy, assessment and screening, follow-up and evaluation, information and assistance, and placement. The State Plan on Aging:

(A) indicates all AAAs are allowed to directly provide information and assistance (I&A) services and outreach services; and

(B) names the AAAs allowed to directly provide case management services; or

(3) more economical and of comparable quality is considered met. The AAA service grant application substantiates that, according to AAA standard RFP evaluation criteria, it proposes to provide a priority service that is more cost effective and of a comparable quality. The cost is calculated on a per unit of service basis.

(d) **Cross references.** See OAC 340:105-10-40 and 340:105-10-101.

INSTRUCTIONS TO STAFF

1. **The Area Agency on Aging (AAA) requests and documents the justification for the granting of authority to provide a direct service for the duration of the approved area plan, or for all or part of the period of a proposed area plan.**

340:105-10-43. Monitoring and evaluation of Title III projects

(a) **Policy.** The Area Agency on Aging (AAA) monitors and evaluates all funded Title III projects to ensure services are provided in accordance with federal and state policy and objectives of the service grant or contract are met.

(b) **Authority.** The authority for OAC 340:105-10-43 is Part 1321.65 and Section 1321.53(a) of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** Except on specific projects where the State Agency has agreed with the AAA to provide a service, the AAA fulfills its responsibility to monitor and evaluate Title III projects by carrying out the activities described in this subsection. The AAA:

(1) develops a policy and procedures manual for Title III projects that includes all federal and state mandates;

(2) monitors the program and fiscal reports of Title III projects;

(3) conducts quarterly on-site program assessments with each Title III project that include evaluation of the extent to which:

(A) the proposed service output, as outlined in the project grant or contract, is met, such as numbers of persons served, units of each service provided, and expenditures by source and service;

(B) each objective, and related action steps, are completed by the targeted dates as indicated in the grant or contract;

(C) provider responsibilities regarding general Title III service standards, outlined in OAC 340:105-10-51, are met;

(D) service specific standards are being met; and

(E) federal, state, and local laws and regulations, such as Civil Rights Act and Americans with Disabilities Act, are followed;

(4) conducts semi-annual on-site fiscal assessments with each Title III project during the first year of operation, and annually thereafter if funding is continued. OAC 340:105-10-114 through 340:105-10-116 describe rules on financial management, procurement, and property management standards for Title III projects;

(5) forwards written results of all assessments and monitoring visits to projects in a

timely fashion, with remedial actions and due dates for compliance outlined;

(6) follows up with projects on remedial action compliance; and

(7) utilizes termination, suspension of funding, or other appropriate action when a project fails to achieve compliance with outlined requirements.

(d) **Cross references.** See OAC 340:105-10-31(a)(9), 340:105-10-36(c)(5) through (8), 340:105-10-51, and 340:105-10-114 through 340:105-10-116.

340:105-10-72. Congregate meals project staffing requirements

(a) **Policy.** Each congregate meals project maintains sufficient staff to carry out the required service activities.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The congregate meals project is required to:

(1) employ a full-time director who is empowered with the necessary authority to conduct the daily management and administrative functions of the project;

(2) obtain the services of a licensed registered dietitian (RD) to provide nutrition consultation. The RD is an employee or independent consultant hired by the project or the Area Agency on Aging (AAA). A paid caterer is not acceptable in this position. Where feasible, the RD coordinates with a nutrition consultant, such as a dietetic student, person with a bachelor of science degree in nutrition, or certified dietary manager. If the RD coordinates with a nutrition consultant, the RD visits every site a minimum of every other month. The RD verifies by signature on the monthly Form SUOA-S-74, Dietary Consultant's Report, the monthly consultation requirements, including:

(A) limiting site visits to one per day per RD or nutrition consultant;

(B) monitoring food service to include measurement of food temperatures and portion sizes, and assessment of food quality and adherence to contract specifications;

(C) training staff and volunteers in areas of food service management, nutrition, and sanitation;

(D) assessing participant satisfaction and preferences;

(E) reviewing menu and commodity utilization;

(F) coordinating nutrition education programs;

(G) providing nutrition education and counseling, when appropriate, to meal participants;

(H) monitoring perpetual inventory;

(I) documenting site recommendations for improvement;

(J) documenting on the date of the site visit the number of:

(i) reservations;

(ii) meals prepared;

(iii) meals served; and

(iv) leftovers; and

(K) providing participants whose nutritional score is six or more on Form AG-2-A, Part I, Older Americans Act Assessment, page 3, Determine Your Nutritional Health, with individual consultation for:

(i) congregate meal participants, upon participant's approval; and

(ii) homebound meal participants, where feasible and upon participant's approval; ■ 1

(3) provide quarterly nutrition consultation, which includes:

(A) assessing food preferences; and

(B) preparing menus and documenting nutrition analysis to meet one third recommended dietary allowance for each meal; and

(4) determine appropriate staffing patterns for each meal site in the project service area as specified in the AAA policy manual or Request for Proposal Application guide. AAAs are the final authority on appropriate staffing patterns in the Title III projects.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-71, 340:105-10-73 through 340:105-10-80, and 340:105-10-86.

INSTRUCTIONS TO STAFF

1. The nutrition project provides the registered dietitian (RD), at a minimum, a quarterly report of participants whose nutritional score is six or more. The RD documents individual consultation, mailing of educational materials, or denial

of consultation on Form SUOA-S-74, Dietary Consultant's Report, or as an attachment to Form SUOA-S-74.

340:105-10-101. Request for proposal procedures

(a) **Policy.** All Older Americans Act pass through funds are awarded in an open, competitive, and fair manner via the request for proposals (RFP) process. Awards are made to applicants whose proposals include all components of the service(s) outlined in the RFP and who best meet the specifications of the RFP. The Area Agency on Aging (AAA) board of directors is directly responsible for reviewing proposals and awarding funds. This responsibility may not be delegated. The board of directors may not award funds to the AAA or to another subdivision of the sponsoring agency under the auspices of the same board of directors. The board of directors may not award funds to board members or the agencies or organizations they represent. Awarding funds through the RFP process during the plan year is required when:

- (1) funds are allocated to the AAA at the beginning of the fiscal year;
- (2) there is significant expansion of a service(s) already funded;
- (3) funding a new service(s); or
- (4) funding of an existing service is transferred from a defunct or terminated grantee.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

- (1) To initiate RFP, the AAA:
 - (A) develops specifications for each service to be procured which clearly define the service and how units of service are measured. The specifications include the minimum units of services to be provided, the minimum unduplicated number to be served, and geographic service areas as appropriate;
 - (B) develops an RFP guide, grant application package, based on the State Agency standard format;
 - (C) submits a proposal guide to the State Agency for approval at least 30 days prior to the announcement of availability of funds as outlined in (1)(D) of this subsection;
 - (D) announces the availability of funds and documents the announcement in

newspapers in the planning and service area (PSA), and concurrently sends a news release to the editor of at least three newspapers and to existing and potential service providers known to the AAA in the PSA.

(i) The announcement runs at least two times in daily papers or two weeks in weekly papers prior to the closing of the application period and in a sufficient number of papers to ensure complete coverage within the PSA.

(ii) The announcement begins at least 21 calendar days prior to the closing of the application period and is repeated at least once no less than five calendar days prior to the date of the proposers' conference.

(iii) All announcements include:

(I) a listing of services for which funding is available and the geographic areas that must be covered for each service;

(II) the address at which service specifications and proposal guide may be obtained;

(III) the closing date and time for application submittal;

(IV) the name and telephone number of a person to contact for additional information; and

(V) the date, time, and location of the proposers' conference, and notification that attendance at the conference is required in order to be considered for funding;

(E) makes proposal guides available for pick up at the AAA office;

(F) mails copies of the proposal guide upon request;

(G) conducts a conference for proposers prior to the deadline for submitting applications and requires applicants to attend the conference in order to be considered for funding; ■ 1

(H) provides other reasonable technical assistance to applicants who request assistance, in writing, no later than seven calendar days prior to the closing of the application period; and

(I) at the close of the application period, evaluates and rates all proposals

according to standard criteria based on requirements of the proposal guide. The AAA disqualifies incomplete proposals from evaluation and funding.

(2) The AAA advisory council reviews the proposals and makes recommendations on funding to the AAA board of directors. All decisions related to funding recommendations are conducted in accordance with applicable state and federal conflict of interest laws. The advisory council review is conducted during a scheduled meeting with a quorum present.

(3) The AAA board of directors:

(A) or a subcommittee of the board, reviews all proposals and the recommendations of the AAA staff and advisory council;

(B) approves funding of proposals that best meet or exceed the service specifications and the requirements of the proposal guide. All decisions related to granting awards are made in accordance with applicable state and federal conflict of interest laws, and documented through signed resolutions and minutes of meetings. All decisions are acted on as a board with at least a quorum present at a meeting. The AAA board of directors may not delegate its responsibilities related to granting awards;

(C) issues notification of grant awards (NGAs) to applicants who are approved for funding.

(i) The AAA submits to the State Agency for approval all proposed funding awards to for-profit, full-service providers at least 21 days prior to the scheduled issue of NGAs.

(ii) This rule does not apply to public or not-for-profit providers who subgrant or contract with a for-profit entity for a component(s) of the full Title III service, such as a for-profit food service; and

(D) provides an opportunity for appeal to applicants whose proposals for funding are denied, per OAC 340:105-10-102.

(4) If no complete proposals are submitted for a service(s) or if the AAA board of directors determines that no proposals for a service(s) meet the specifications of the RFP, the AAA, with State Agency approval, has the option of:

(A) reprogramming the funds and issuing a new RFP for a different service(s); or

(B) requesting authority to provide a direct service as provided in OAC 340:105-10-41; or

(C) revising the initial specifications for the same service(s) and reissuing a new RFP; and

(D) initiating community development activities to create a potential provider of the service(s) as specified in the RFP and, in the interim, requesting approval from the State Agency to temporarily provide the service as a direct service.

(d) **Cross references.** See OAC 340:105-10-40, 340:105-10-102, and 340:105-10-104(c)(7).

INSTRUCTIONS TO STAFF

1. At a minimum, the information discussed during the conference includes:

(1) the request for proposals (RFP) guide and all requirements pertaining to submitting an application; and

(2) all responsibilities associated with the acceptance of Title III funds, including applicable federal and state statute, policy, certifications, and assurances.

340:105-10-117. Employment policies and procedures

(a) **Policy.** Each Area Agency on Aging (AAA) and Title III project, or grantee, maintains a system of personnel administration approved by the grantor agency, and complies with all state and federal statutes.

(b) **Authority.** The authority for this Section is Sections 2 and 208 of the Inter-governmental Personnel Act of 1970 and Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The procedures for implementing this Section require the grantee agency to:

(1) recruit, select, and advance employees on their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(A) The grantee agency promptly notifies the grantor agency of an AAA director or project director vacancy.

(B) The grantor agency monitors the grantee's ability to sustain the continuity of operation during any transition and ensures the vacancy is filled in a fair and equitable manner.

(C) The grantor agency may participate in the interview process for the AAA director or project director vacancy;

(2) provide equitable and adequate compensation to all employees;

(3) provide training to employees, as needed, to ensure quality performance;

(4) retain employees on the basis of the adequacy of their performance, separating from employment employees whose inadequate performance cannot be corrected;

(5) ensure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religion, age, or disability and with proper regard for their privacy and constitutional rights as citizens. This fair treatment principle includes compliance with all federal equal employment opportunity and non-discrimination laws, such as Civil Rights Act and Americans with Disabilities Act;

(6) protect employees from coercion for partisan political purposes and prohibit employees from using their official authority for the purpose of interfering with or

affecting the result of an election or a nomination for office;

(7) provide reasonable grievance procedures to applicants and employees and post the procedures in a public place; and

(8) develop personnel policies that include:

(A) work schedules;

(B) leave;

(C) compensation for overtime;

(D) employee code of conduct;

(E) disciplinary procedures;

(F) travel and reimbursement;

(G) benefits, such as insurance and retirement;

(H) training;

(I) political activity;

(J) recruitment, appointment, and advancement;

(K) appeal procedures;

(L) lobbying prohibition;

(M) Civil Rights Act requirements;

(N) Rehabilitation Act and Americans with Disabilities Act requirements;

(O) nepotism regarding related employees and grantor or contractor prohibitions;
and

(P) Family and Medical Leave Act of 1993.

(d) **Cross references.** See OAC 340:105-10-120 through 340:105-10-122.

340:105-10-120. Area Agency on Aging and Title III project job descriptions

(a) **Policy.** Area Agencies on Aging (AAAs) and Title III projects utilize job descriptions approved by the grantee agency in the Area Plan or Request for Proposal Guide.

(b) **Authority.** The authority for OAC 340:105-10-120 is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The procedures for implementing this Section are outlined in this subsection.

(1) AAAs and Title III projects develop their own job descriptions relevant to their local needs. Job descriptions meet minimum job descriptions set by the State Agency. Duties may be combined between multiple state job descriptions to meet local needs.

(2) Except as otherwise specifically stated elsewhere for full-time AAA director, full-time nutrition project director, and 20 hours per week information and assistance specialist, AAAs and Title III projects determine the number of positions and types of positions based on local need.

(d) **Cross references.** See OAC 340:105-10-117, 340:105-10-121, and 340:105-10-122.

340:105-10-121. Area Agency on Aging and Title III project salary schedules

(a) **Policy.** Area Agencies on Aging (AAAs) and Title III projects develop competent staff to perform programmatic and financial duties based on local needs and market value, provided persons with comparable job family descriptors (JFDs) may not be paid more than the midpoint of a JFD paid within the salary cap set by the State Agency. The total administration costs charged to the Title III grant may not exceed the maximum provided in federal law.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in (1) through (3) of this subsection.

(1) AAAs and Title III projects determine starting salary for positions based on local needs and market value, provided persons with comparable JFDs may not be paid more than the midpoint of the salary range paid by the State Agency for the JFD most like the job in question being done by the AAAs or Title III projects.

(2) Salary advancements are based on acceptable work performance, as evidenced by continued employment with the AAA or Title III project. The AAA may disapprove salary advances of its grantees due to uncertain funding allocations or funding levels. The State Agency may disapprove salary advances of AAAs that it believes may cause the AAA to exceed the maximum administrative cost allowed in federal law.

(3) Longevity payments may be made to all AAA and Title III employees who have two or more years continuous service and work at least 86 hours per month. Longevity is paid in the month following the employee's annual employment anniversary date, in a lump sum, beginning with anniversary dates of October 1, 1988. Employees who terminate employment before their anniversary date receive the pro rata portion of their budgeted longevity payment for the year. Payment is based upon the number of years of service according to the State Longevity Pay Schedule for AAAs and Title III projects.

(d) **Cross references.** See OAC 340:105-10-117, 340:105-10-120, and 340:105-10-122.

340:105-10-122. Fair labor practices for Area Agencies on Aging and Title III projects

(a) **Policy.** Area Agencies on Aging and Title III projects comply with fair labor practices as outlined in applicable state and federal statutes.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 and Part 553.20 of Title 29 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in (1) through (10) of this subsection.

(1) An employee is compensated for hours worked at the appropriate wage unless the position is an exempt executive, administrative, or professional position.

(2) An employee may not perform volunteer activities for an employer that are the same or similar to the employee's job duties. Such activities are compensated as hours worked.

(3) The employer is responsible for:

(A) assigning employee work hours and supervising employee start and end times; and

(B) compensating the employee for all hours the supervisor assigns to the employee and has reasonable knowledge that the employee works.

(4) A non-exempt employee who is full-time is given at least a 30 minute uninterrupted break from compensated work time for a meal. An employee is offered a 15 minute break during compensated work time for every four hour period worked. Break time is considered compensated work time and may not be used for arriving late, leaving early, or extending the lunch period.

(5) A non-exempt employee of a public agency who works in excess of 40 hours within a seven day work period is compensated with one and one-half hours of compensatory time per hour of overtime or paid at a rate of one and one-half times the hourly wage for each hour of overtime. A public agency is a state, political subdivision of a state, or interstate governmental agency.

(6) A non-exempt employee of a private agency who works in excess of 40 hours within a seven day work period is compensated with one and one-half hours of pay at a rate of one and one-half times the hourly wage for each hour of overtime. A

private agency may not replace overtime in one work week with compensatory time in another week.

(7) All overtime is approved in advance by the employee's supervisor. The supervisor may adjust the employee's regular work schedule to avoid having the employee work in excess of 40 hours in a seven day work period. Employee work shifts may exceed eight hours per day.

(8) Employers of public agencies require the employee to use compensatory time within 180 days, or pay the employee at the appropriate overtime rate.

(9) An employee who fails to adhere to assigned working hours, does not keep accurate time sheets, or claims unauthorized overtime is subject to disciplinary action by the employer, which could result in termination of employment.

(10) Employers who base employees out of their own homes do not give out the employee's home telephone number to the general public. Arrangements are made to have a telephone number at a convenient location for the employee to take calls. An emergency response telephone number and procedure are established to avoid having persons contacting employees during non-working hours. The employee reports to the employer all contacts during non-working hours that are business related.

(d) **Cross references.** See OAC 340:105-10-117, 340:105-10-120, and 340:105-10-121.