



INFORMATION MEMORANDUM

SUA-24-IM-01

April 18, 2024

TO: Sub-recipients of the State Unit on Aging

FROM: Penny Clark, Interim Administrator, State Unit on Aging

BY: Ben Stromberg, Program Manager, State Unit on Aging *BSS*

Gene Hogam, Fiscal Program Manager *GH*

Erik White, Program Coordinator, State Unit on Aging *Erik White*

Cheryl Kirby, Program Coordinator, State Unit on Aging *CK*

SUBJECT: Older Americans Act Regulations Update

CONTENT: On February 6, 2024, ACL released a final rule to update the regulations for implementing its Older Americans Act (OAA) programs. The new regulations took effect on March 15, 2024. However, agencies have until October 1, 2025, to update policies and practices to ensure compliance.

This information Memorandum provides guidance on how these new regulations will affect OAA programs, including Title III-B, III-C, Title III-D, III-E, and disaster plans that agencies are required to create and maintain. Please utilize this document in conjunction with the new Older Americans Act Regulations and other resources, which can be found at <https://acl.gov/OAArule>, as this document does not include all changes. SUA policies, such as program instructions, will be provided following this information memorandum.

Definitions:

Domestically produced foods, as used in this part, means Agricultural foods, beverages and other food ingredients which are a product of the United States, its Territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

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

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

SUA Notes: This new definition was not previously defined in the OAA.

Family caregiver, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver. For purposes of this part, family caregiver does not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

SUA Notes: Please note that this definition has been expanded to specify that family caregivers do not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

Greatest social need, as used in this part, means the need caused by noneconomic factors, which include:

- (1) Physical and mental disabilities;
- (2) Language barriers;
- (3) Cultural, social, or geographical isolation, including due to:
 - (i) Racial or ethnic status;
 - (ii) Native American identity;
 - (iii) Religious affiliation;
 - (iv) Sexual orientation, gender identity, or sex characteristics;
 - (v) HIV status;
 - (vi) Chronic conditions;
 - (vii) Housing instability, food insecurity, lack of access to reliable and clean water supply, lack of transportation, or utility assistance needs;
 - (viii) Interpersonal safety concerns;
 - (ix) Rural location; or
 - (x) Any other status that:
 - (A) Restricts the ability of an individual to perform normal or routine daily tasks; or
 - (B) Threatens the capacity of the individual to live independently; or
- (4) Other needs as further defined by State and area plans based on local and individual factors.

SUA Notes: Please note that the definition of greatest social need has been expanded.

Means test, as used in the Act, means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

SUA Notes: This new definition was not previously defined in the OAA.

Periodic, as used in this part to refer to the frequency of client assessment and data collection, means, at a minimum, once each fiscal year, and as used in section 307(a)(4) of the Act ([42 U.S.C. 3027\(a\)\(4\)](#)) to

refer to the frequency of evaluations of, and public hearings on, activities and projects carried out under State and area plans, means, at a minimum once each State or area plan cycle.

SUA Notes: This new definition was not previously defined in the OAA.

Program development and coordination activities, as used in this part, means those actions to plan, develop, provide training, and coordinate at a systemic level those programs and activities which primarily benefit and target older adult and family caregiver populations who have the greatest social needs and greatest economic needs, including development of contracts, commercial relationships, or private pay programs.

SUA Notes: This new definition was not previously defined in the OAA.

Service provider, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the State or area plan.

SUA Notes: This new definition was not previously defined in the OAA.

Supplemental foods, as used in this part, means foods that assist with maintaining health, but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as additional beverage or food items, and may be specified by State agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home-delivered meal services.

SUA Notes: This new definition was not previously defined in the OAA.

Voluntary contributions, as used in section 315(b) of the Act ([42 U.S.C. 3030c-2\(b\)](#)), means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Act.

SUA Notes: This new definition was not previously defined in the OAA. (Per ACL Personal Resources Means)

Area Agency on Aging Responsibilities:

§ 1321.67 Conflicts of interest policies and procedures for area agencies on aging. (a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the Assistant Secretary for Aging, and State agency policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, and awardees who have responsibilities relating to the area agency's grants and contracts. Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels, including: (1) Reviewing service utilization and financial incentives to ensure agency employees, governing board and advisory council members, grantees, contractors, and other awardees who serve multiple roles, such as assessment and service delivery, are appropriately stewarding Federal resources while fostering services to enhance access to community living

SUA Notes: Please note AAAs must have policies and procedures regarding conflicts of interest. Please see § 1321.67(a)(1-12).

§ 1321.69 Area agency on aging Title III and Title VI coordination responsibilities. (a) For planning and service areas where there are Title VI programs, the area agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in § 1322.13(a), must explain how the area agency's aging network, including service providers, will coordinate with Title VI programs to ensure compliance with section 306(a)(11)(B) of the Act (42 U.S.C. 3026(a)(11)(B)).

SUA Notes: Please note AAAs must have policies and procedures that will coordinate with Title VI programs. Please see § 1321.69(a-b).

Service Requirements:

§ 1321.77 Purpose of services—person and family-centered, trauma-informed. (a) Services must be provided to older adults and family caregivers in a manner that is person-centered, trauma informed, and culturally sensitive. Services should be responsive to their interests, physical and mental health, social and cultural needs, available supports, and desire to live where and with whom they choose. Person-centered services may include community-centered and family-centered approaches consistent with the traditions, practices, beliefs, and cultural norms and expectations of older adults and family caregivers. (b) Services should, as appropriate, provide older adults and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate. (c) State and area agencies and service providers should provide training to staff and volunteers on person-centered and trauma-informed service provision.

SUA Notes: § 1321.77 elaborates on and provides details on personand family-centered, trauma-informed serices.

§ 1321.83 Client and service priority. (a) The State agency and/or area agency shall ensure service to those identified as members of priority groups through assessment of local needs and resources. (b) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, parts B (except for Ombudsman program services which are subject to provisions in 45 CFR part 1324), C, and D, in accordance with the Act. (c) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, part E, in accordance with the Act, to include: (1) Caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals); (2) Caregivers who provide care for individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and 3) If serving older relative caregivers, older relative caregivers of children or adults with severe disabilities.

SUA Notes: Please update criteria to prioritize the deliver of services provided under part B, C, D and E with special attention to updated definitions of greatest social and economic need.

III-B:

1321.85 (c) For those Title III, part B services intended to benefit family caregivers, such as those provided under sections 321(a)(6)(C), 321(a)(19), and 321(a)(21) of the Act ([42 U.S.C. 3030d\(a\)\(6\)\(C\)](#)),

3030d(a)(19), and 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III, part E.

SUA Notes: This was added to provide clarity on duplication of services.

III-C:

§ 1321.87 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title III, part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in-person, except where:

(i) If included as part of an approved State plan as set forth in § 1321.27 or State plan amendment as set forth in § 1321.31(a) and area plan or plan amendment as set forth in § 1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carry-out, drive-through, or similar meals may be provided under Title III, part C-1;

SUA Notes: Please note under § 1321.87, Nutrition Services (a)(1)(i) individuals may be considered eligible if they are congregating virtually in addition to congregating in person. The addition of congregating virtually via online applications is new. (a)(1)(i) states that under C-1 eligible individuals may participate in a shelf-stable, pick-up, carry-out, or drive-through.

(ii) Meals provided as set forth in paragraph (a)(1)(i) of this section shall:

(A) Not exceed 25 percent of the funds expended by the State agency under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed;

(B) Not exceed 25 percent of the funds expended by any area agency on aging under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in § 1321.9(c)(2)(iii) are completed.

SUA Notes: Note that funding for these additional services (shelf-stable, pick-up, carry-out, drive-through, or similar meals provided under Title III, part C-1) is not to exceed 25 percent of III-C1 funding under (a)(1)(ii). This differs from the previous funding under C-2 and the consideration of to-go meals as a part of home-delivered meals only. The use of C-1 funding for to-go meals is pursuant to a State plan amendment.

(iii) Meals provided as set forth in paragraph (a)(1)(i) of this section may be provided to complement the congregate meal program:

(A) During disaster or emergency situations affecting the provision of nutrition services;

(B) To older individuals who have an occasional need for such meal; and/or

(C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need.

SUA Notes: (a)(1)(iii) allows for the use of (shelf-stable, pick-up, carry-out, drive-through, or similar meals provided under Title III, part C-1) to complement C-1 meals especially during disasters, and to individuals who may have occasional or regular need based on assessment for such a meal or those with the greatest economic or social need. This varies greatly from the past in that these types of meals are encouraged to complement congregate meals in situations as stated above and in consideration of individualized assessment. This also pays specific attention to individuals with the greatest social and economic needs. Note the newly expanded definition of the Greatest Social Need.

(2) Home-delivered meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out, drive-through, or similar meals.

SUA Notes: (a)(2) Home-delivered meals, or C-2 meals, may be provided in the home as usual but also include pick-up, carry-out, drive-through, or similar meals. The important distinction set aside for C-1 pick-up, carry-out, drive-through, or similar meals is noted under (a)(1)(ii)(iii), including no more than 25 percent of budgeted funds. This is not the case for C-2 funding, which can include these meals as a part of its annual budget.

(i) Eligibility criteria for home-delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors pertaining to their need for the service, including social need and economic need.

(ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

SUA Notes: (a)(2)(i) Note the eligibility of Home-Delivered Meals contains some of the same criteria but includes both social and economic needs tied specifically together. (a)(2)(ii) allows providers to encourage congregate meal participation and to join in on health and wellness activities. This encourages individuals to attend congregate meal sites more specifically and also may be out of necessity based on service availability. This may be more significant in areas where home-delivered meals may not be sustainable or feasible due to staffing or volunteers.

(3) Nutrition education is information provided under Title III, parts C-1 or 2, which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a service provided under Title III, parts C-1 or 2, which must align with the Academy of Nutrition and Dietetics. Congregate and home-delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, the availability of resources, and the expertise of a Registered Dietitian Nutritionist.

SUA Notes: (a)(3) and(4) The word “shall”, in reference to providing nutrition education in congregate and home-delivered meal settings, and nutrition counseling is now included. Regarding nutrition education, these services shall be provided as appropriate, based on the needs of the participants. In regard to nutrition counseling, those services shall be provided, as appropriate, based on the needs of

meal participants, the availability of resources, and the expertise of a Registered Dietitian Nutritionist. The difference between the two is the availability of resources for an RDN.

(5) Other nutrition services include additional services provided under Title III, parts C-1 or 2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries.

SUA Notes: (a)(5) This now includes the approval of services to be provided by either C-1 or C-2 that could provide weighted utensils, supplemental foods, oral nutrition supplements (such as Ensure), or even groceries. Although this would not count as a meal, this would be allowed under Title III C-1 or C-2 as an additional service.

(b) State agencies shall establish policies and procedures that define a nutrition project and include how a nutrition project will provide meals and nutrition services five or more days per week in accordance with the Act. The definition of nutrition project established by the State agency must consider the availability of resources and the community's need for nutrition services as described in the State and area plans.

SUA Notes: (b) This regulation continues to establish the provision of meals and nutrition services five or more days per week in accordance with the OAA. However, this regulation does not specifically detail rural areas as the exception, but rather considers the availability of resources and the community's need for nutrition services.

(c) All funds provided under Title III, part C of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

SUA Notes: (c) This references the distribution of Title III part C funds with either the Intrastate Funding Formula or the Single Planning and Service Area States. The Intrastate Funding Formula is Nebraska's means of fund distribution.

(d) Nutrition Services Incentive Program allocations are available to States and Territories that provide nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on the number of meals reported by the State agency which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21); and

(v) The meal is served by an agency that has a grant or contract with a State agency or area agency.

SUA Notes: (d) Nutrition Services Incentive Program (NSIP) includes specific language under (1)(i)(ii) and (iii) that refers to requirements. This helps to tie NSIP services directly to eligible individuals. Please note the newest definition of Means Test and Voluntary Contributions. (d)(iv) continues to include the language on providing meals that meet the minimum nutritional requirements, but with the reference to (42 U.S.C. 3030g-21); which includes meals adjusted for cultural considerations and preferences and medically tailored meals. (d)(v) assures that any meals provided by entity or group has a grant or contract

with the agency itself. This assurance is vital in conducting nutrition programming in accordance with the Act.

(2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal as set forth under the Act.

(4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).

SUA Notes: (d)(2)(3)(4) These regulations continue to define the use of NSIP; however, the new definition of Domestically Produced Foods is included under (d)(3).

III-D:

§ 1321.89 Evidence-based disease prevention and health promotion services.

(a) Evidence-based disease prevention and health promotion services programs are community-based interventions as set forth in Title III, part D of the Act, that have been proven to improve health and well-being and/or reduce risk of injury, disease, or disability among older adults. All programs provided using these funds must be evidence-based and must meet the Act's requirements and guidance as set forth by the Assistant Secretary for Aging.

(b) All funds provided under Title III, part D of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

SUA Notes: It is cited under (a) that all programs provided must be evidence-based and must meet requirements and guidance set forth by the act. The insertion of the word “must” is new to this regulation.

III-E:

1321.91 Family caregiver support services.

(a)(5) Supplemental services, on a limited basis, to complement the care provided by family caregivers. State agencies and AAAs shall define “limited basis” for supplemental services and may consider limiting units, episodes or expenditure amounts when making this determination

SUA Notes: Please note this definition has been expanded to specify that State agencies and AAAs shall define limited basis for supplemental services.

Disaster Plans:

§ 1321.97 (b) Area agencies on aging. (1) Area agencies on aging shall establish emergency plans. Such plans must include:

(i) The area agency’s continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A description of coordination activities for both development and implementation of long-range emergency and disaster preparedness plans; and

(iii) Other information as deemed appropriate by the area agency on aging.

(2) The area agency on aging shall coordinate with Federal, local, and State emergency response agencies, service providers, relief organizations, local and State governments, and any other entities that have responsibility for disaster relief service delivery, as well as with Tribal emergency management, as appropriate.

SUA Notes: Please note that the emergency plan must be based on completed risk assessments and updated annually. There are no specifications about the type of assessment, however, the emergency plan should be updated to reflect this procedure. Please also note that the emergency plan should describe how the area agency on aging will coordinate with Tribal emergency management, as appropriate. Please see § 1321.101 for information on flexibilities under a major disaster declaration.

Contractor and Commercial Relationships:

§ 1321.9(c)(2)(xiv) The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

- (1) Contracts with health care payers;
- (2) Private pay programs; or
- (3) Other arrangements with entities or individuals that increase the availability of home- and community-based services and supports.

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(1) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

- (i) Meeting conflict of interest requirements; and
- (ii) Meeting financial accountability requirements.

(2) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

- (i) All requirements for direct services provision are maintained, as set forth in this part and the Act, or
 - (ii) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and all other applicable Federal requirements.
- (C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.

SUA Notes: Please note that while the State Unit on Aging currently has a methodology for reviewing and approving contractual relationships during the Area Plan and Area Plan update submission process, the ACL will be providing additional technical assistance on this particular update to the Final Rule, and the SUA will disseminate information on an ongoing basis.