

ATTACHMENT C
FY 2010 STATE PLAN GUIDANCE

**OLDER AMERICANS ACT (OAA) REQUIREMENTS RELATED TO
STATE/AREA PLANS**

Sec. 305. Organization

(a) In order for a State to be eligible to participate in programs of grants to States from allotments under this title—

(1) the State shall, in accordance with regulations of the Assistant Secretary, designate a State agency as the sole State agency to—

(A) develop a State plan to be submitted to the Assistant Secretary for approval under section 307;

(B) administer the State plan within such State;

(C) be primarily responsible for the planning, policy development, administration, coordination, priority setting, and evaluation of all State activities related to the objectives of this Act;

(D) serve as an effective and visible advocate for older individuals by reviewing and commenting upon all State plans, budgets, and policies which affect older individuals and providing technical assistance to any agency, organization, association, or individual representing the needs of older individuals; and

(E) divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5)(A), designate the entire State as a single planning and service area), in accordance with guidelines issued by the Assistant Secretary, after considering the geographical distribution of older individuals in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal assistance, the distribution of older individuals who have greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas residing in such areas, the distribution of older individuals who have greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such areas, the distribution of older individuals who are Indians residing in such areas, the distribution of resources available to provide such services or centers, the

boundaries of existing areas within the State which were drawn for the planning or administration of supportive services programs, the location of units of general purpose local government within the State, and any other relevant factors;

(2) the State agency shall—

(A) except as provided in subsection (b)(5), designate for each such area after consideration of the views offered by the unit or units of general purpose local government in such area, a public or private nonprofit agency or organization as the area agency on aging for such area;

(B) provide assurances, satisfactory to the Assistant Secretary, that the State agency will take into account, in connection with matters of general policy arising in the development and administration of the State plan for any fiscal year, the views of recipients of supportive services or nutrition services, or individuals using multipurpose senior centers provided under such plan;

(C) in consultation with area agencies, in accordance with guidelines issued by the Assistant Secretary, and using the best available data, develop and publish for review and comment a formula for distribution within the State of funds received under this title that takes into account—

(i) the geographical distribution of older individuals in the State; and

(ii) the distribution among planning and service areas of older individuals with greatest economic need and older individuals with greatest social need, with particular attention to low-income minority older individuals;

(D) submit its formula developed under subparagraph (C) to the Assistant Secretary for approval;

(E) provide assurance that preference will be given to providing services to older individuals with greatest economic need and older individuals with greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) and include proposed methods of carrying out the preference in the State plan;

(F) provide assurances that the State agency will require use of outreach efforts described in section 307(a)(16); and

(G)(i) set specific objectives, in consultation with area agencies on aging, for each planning and service area for providing services funded under this title to low-income minority older individuals and older individuals residing in rural areas;

(ii) provide an assurance that the State agency will undertake specific program development, advocacy, and outreach efforts focused on the needs of low-income minority older individuals; and

(iii) provide a description of the efforts described in clause (ii) that will be undertaken by the State agency; and

(3) the State agency shall, consistent with this section, promote the development and implementation of a State system of long-term care that is a comprehensive, coordinated system that enables older individuals to receive long-term care in home

and community-based settings, in a manner responsive to the needs and preferences of the older individuals and their family caregivers, by—

(A) collaborating, coordinating, and consulting with other agencies in such State responsible for formulating, implementing, and administering programs, benefits, and services related to providing long-term care;

(B) participating in any State government activities concerning long-term care, including reviewing and commenting on any State rules, regulations, and policies related to long-term care;

(C) conducting analyses and making recommendations with respect to strategies for modifying the State system of long-term care to better—

(i) respond to the needs and preferences of older individuals and family caregivers;

(ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and

(iii) target services to individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;

(D) implementing (through area agencies on aging, service providers, and such other entities as the State determines to be appropriate) evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and

(E) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, area agencies on aging, and other appropriate means) of information relating to—

(i) the need to plan in advance for long-term care; and

(ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources.

(b)(1) In carrying out the requirement of subsection (a)(1), the State may designate as a planning and service area any unit of general purpose local government which has a population of 100,000 or more. In any case in which a unit of general purpose local government makes application to the State agency under the preceding sentence to be designated as a planning and service area, the State agency shall, upon request, provide an opportunity for a hearing to such unit of general purpose local government. A State may designate as a planning and service area under subsection (a)(1) any region within the State recognized for purposes of area wide planning which includes one or more such units of general purpose local government when the State determines that the designation of such a regional planning and service area is necessary for, and will enhance, the effective administration of the programs authorized by this title. The State may include in any planning and service area designated under subsection (a)(1) such additional areas adjacent to the unit of general purpose local government or regions so designated as the State determines to be necessary for, and will enhance the effective administration of the programs authorized by this title.

(2) The State is encouraged in carrying out the requirement of subsection (a)(1) to include the area covered by the appropriate economic development district involved in any planning and service area designated under subsection (a)(1), and to include all portions of an Indian reservation within a single planning and service area, if feasible.

(3) The chief executive officer of each State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary to request re-designation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary approves such an application, the Assistant Secretary shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

(4) Whenever a unit of general purpose local government, a region, a metropolitan area or an Indian reservation is denied designation under the provisions of subsection (a)(1), such unit of general purpose local government, region, metropolitan area, or Indian reservation may appeal the decision of the State agency to the Assistant Secretary. The Assistant Secretary shall afford such unit, region, metropolitan area, or Indian reservation an opportunity for a hearing. In carrying out the provisions of this paragraph, the Assistant Secretary may approve the decision of the State agency, disapprove the decision of the State agency and require the State agency to designate the unit, region, area, or Indian reservation appealing the decision as a planning and service area, or take such other action as the Assistant Secretary deems appropriate.

(5) (A) A State which on or before October 1, 1980, had designated, with the approval of the Assistant Secretary, a single planning and service area covering all of the older individuals in the State, in which the State agency was administering the area plan, may after that date designate one or more additional planning and service areas within the State to be administered by public or private nonprofit agencies or organizations as area agencies on aging, after considering the factors specified in subsection (a)(1)(E). The State agency shall continue to perform the functions of an area agency on aging for any area of the State not included in a planning and service area for which an area agency on aging has been designated.

(B) Whenever a State agency designates a new area agency on aging after the date of enactment of the Older Americans Act Amendments of 1984, the State agency shall give the right to first refusal to a unit of general purpose local government if

- (i) such unit can meet the requirements of subsection (c), and
- (ii) the boundaries of such a unit and the boundaries of the area are reasonably contiguous.

(C)(i) A State agency shall establish and follow appropriate procedures to provide due process to affected parties, if the State agency initiates an action or proceeding to—

- (I) revoke the designation of the area agency on aging under subsection (a);
- (II) designate an additional planning and service area in a State;

- (III) divide the State into different planning and service areas; or
 - (IV) otherwise affect the boundaries of the planning and service areas in the State.
- (ii) The procedures described in clause (i) shall include procedures for—
 - (I) providing notice of an action or proceeding described in clause (i);
 - (II) documenting the need for the action or proceeding;
 - (III) conducting a public hearing for the action or proceeding;
 - (IV) involving area agencies on aging, service providers, and older individuals in the action or proceeding; and
 - (V) allowing an appeal of the decision of the State agency in the action or proceeding to the Assistant Secretary.
 - (iii) An adversely affected party involved in an action or proceeding described in clause (i) may bring an appeal described in clause (ii)(V) on the basis of—
 - (I) the facts and merits of the matter that is the subject of the action or proceeding; or
 - (II) procedural grounds.
 - (iv) In deciding an appeal described in clause (ii)(V), the Assistant Secretary may affirm or set aside the decision of the State agency. If the Assistant Secretary sets aside the decision, and the State agency has taken an action described in sub-clauses (I) through (III) of clause (i), the State agency shall nullify the action.
- (c) An area agency on aging designated under subsection (a) shall be—
- (1) an established office of aging which is operating within a planning and service area designated under subsection (a);
 - (2) any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit;
 - (3) any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose;
 - (4) any public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency and which can and will engage only in the planning or provision of a broad range of supportive services, or nutrition services within such planning and service area; or
 - (5) in the case of a State specified in subsection (b)(5), the State agency; and shall provide assurance, determined adequate by the State agency, that the area agency on aging will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area or within any unit of general purpose local government designated as a planning and service area the State shall give preference to an

established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to carry out the area plan.

(d) The publication for review and comment required by paragraph (2)(C) of subsection (a) shall include—

(1) a descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic or social need,

(2) a numerical statement of the actual funding formula to be used,

(3) a listing of the population, economic, and social data to be used for each planning and service area in the State, and

(4) a demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State.

(42 U.S.C. 3025)

Sec. 306. Area Plans

(a) Each area agency on aging designated under section 305(a)(2)(A) shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two-, three-, or four-year period determined by the State agency, with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 307(a)(1). Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for supportive services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan, including determining the extent of need for supportive services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area, the number of older individuals who have greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, the number of older individuals who have greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas) residing in such area, the number of older individuals at risk for institutional placement residing in such area, and the number of older individuals who are Indians residing in such area, and the efforts of voluntary organizations in the community, evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that an adequate proportion, as required under section 307(a)(2), of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services—

(A) services associated with access to services (transportation, health services (including mental health services) outreach, information and assistance, (which may include information and assistance to consumers on availability of services under part B and how to receive benefits under and participate in publicly supported programs for which the consumer may be eligible) and case management services);

(B) in-home services, including supportive services for families of older individuals who are victims of Alzheimer’s disease and related disorders with neurological and organic brain dysfunction; and

(C) legal assistance; and assurances that the area agency on aging will report annually to the State agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded;

(3) (A) designate, where feasible, a focal point for comprehensive service delivery in each community, giving special consideration to designating multipurpose senior centers (including multipurpose senior centers operated by organizations referred to in paragraph (6)(C)) as such focal point; and

(B) specify, in grants, contracts, and agreements implementing the plan, the identity of each focal point so designated;

(4)(A)(i) (I) provide assurances that the area agency on aging will—

(aa) set specific objectives, consistent with State policy, for providing services to older individuals with greatest economic need, older individuals with greatest social need, and older individuals at risk for institutional placement;

(bb) include specific objectives for providing services to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas; and

(II) include proposed methods to achieve the objectives described in items (aa) and (bb) of sub-clause (I);

(ii) provide assurances that the area agency on aging will include in each agreement made with a provider of any service under this title, a requirement that such provider will—

(I) specify how the provider intends to satisfy the service needs of low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in the area served by the provider;

(II) to the maximum extent feasible, provide services to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas in accordance with their need for such services; and

(III) meet specific objectives established by the area agency on aging, for providing services to low-income minority individuals, older individuals

with limited English proficiency, and older individuals residing in rural areas within the planning and service area; and

(iii) with respect to the fiscal year preceding the fiscal year for which such plan is prepared—

(I) identify the number of low-income minority older individuals in the planning and service area;

(II) describe the methods used to satisfy the service needs of such minority older individuals; and

(III) provide information on the extent to which the area agency on aging met the objectives described in

clause (i);

(B) provide assurances that the area agency on aging will use outreach efforts that will—

(i) identify individuals eligible for assistance under this Act, with special emphasis on—

(I) older individuals residing in rural areas;

(II) older individuals with greatest economic need (with particular attention to low-income minority individuals and older individuals residing in rural areas);

(III) older individuals with greatest social need (with particular attention to low-income minority individuals and older individuals residing in rural areas);

(IV) older individuals with severe disabilities;

(V) older individuals with limited English proficiency;

(VI) older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(VII) older individuals at risk for institutional placement; and

(ii) inform the older individuals referred to in sub-clauses (I) through (VII) of clause (i), and the caretakers of such individuals, of the availability of such assistance; and

(C) contain an assurance that the area agency on aging will ensure that each activity undertaken by the agency, including planning, advocacy, and systems development, will include a focus on the needs of low-income minority older individuals and older individuals residing in rural areas;

(5) provide assurances that the area agency on aging will coordinate planning, identification, assessment of needs, and provision of services for older individuals with disabilities, with particular attention to individuals with severe disabilities, and individuals at risk for institutional placement with agencies that develop or provide services for individuals with disabilities;

(6) provide that the area agency on aging will—

(A) take into account in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under such plan;

(B) serve as the advocate and focal point for older individuals within the community by (in cooperation with agencies, organizations, and individuals participating in activities under the plan) monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect older individuals;

(C)(i) where possible, enter into arrangements with organizations providing day care services for children, assistance to older individuals caring for relatives who are children, and respite for families, so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children, adults, and families;

(ii) if possible regarding the provision of services under this title, enter into arrangements and coordinate with organizations that have a proven record of providing services to older individuals, that-

(I) were officially designated as community action agencies or community action programs under section 210 of the Economic Opportunity Act of 1964 (42 U.S.C. 2790) for fiscal year 1981, and did not lose the designation as a result of failure to comply with such Act; or

(II) came into existence during fiscal year 1982 as direct successors in interest to such community action agencies or community action programs; and that meet the requirements under section 676B of the Community Services Block Grant Act; and

(iii) make use of trained volunteers in providing direct services delivered to older individuals and individuals with disabilities needing such services and, if possible, work in coordination with organizations that have experience in providing training, placement, and stipends for volunteers or participants (such as organizations carrying out Federal service programs administered by the Corporation for National and Community Service), in community service settings;

(D) establish an advisory council consisting of older individuals (including minority individuals and older individuals residing in rural areas) who are participants or who are eligible to participate in programs assisted under this Act, family caregivers of such individuals, representatives of older individuals, service providers, representatives of the business community, local elected officials, providers of veterans' health care (if appropriate), and the general public, to advise continuously the area agency on aging on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(E) establish effective and efficient procedures for coordination of—

(i) entities conducting programs that receive assistance under this Act within the planning and service area served by the agency; and

- (ii) entities conducting other Federal programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 203(b), within the area;
 - (F) in coordination with the State agency and with the State agency responsible for mental health services, increase public awareness of mental health disorders, remove barriers to diagnosis and treatment, and coordinate mental health services (including mental health screenings) provided with funds expended by the area agency on aging with mental health services provided by community health centers and by other public agencies and nonprofit private organizations;
 - (G) if there is a significant population of older individuals who are Indians in the planning and service area of the area agency on aging, the area agency on aging shall conduct outreach activities to identify such individuals in such area and shall inform such individuals of the availability of assistance under this Act;
- (7) provide that the area agency on aging shall, consistent with this section, facilitate the area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers, by—
- (A) collaborating, coordinating activities, and consulting with other local public and private agencies and organizations responsible for administering programs, benefits, and services related to providing long-term care;
 - (B) conducting analyses and making recommendations with respect to strategies for modifying the local system of long-term care to better—
 - (i) respond to the needs and preferences of older individuals and family caregivers;
 - (ii) facilitate the provision, by service providers, of long-term care in home and community-based settings; and
 - (iii) target services to older individuals at risk for institutional placement, to permit such individuals to remain in home and community-based settings;
 - (C) implementing, through the agency or service providers, evidence-based programs to assist older individuals and their family caregivers in learning about and making behavioral changes intended to reduce the risk of injury, disease, and disability among older individuals; and
 - (D) providing for the availability and distribution (through public education campaigns, Aging and Disability Resource Centers, the area agency on aging itself, and other appropriate means) of information relating to—
 - (i) the need to plan in advance for long-term care; and
 - (ii) the full range of available public and private long-term care (including integrated long-term care) programs, options, service providers, and resources;
- (8) provide that case management services provided under this title through the area agency on aging will—

- (A) not duplicate case management services provided through other Federal and State programs;
 - (B) be coordinated with services described in subparagraph (A); and
 - (C) be provided by a public agency or a nonprofit private agency that—
 - (i) gives each older individual seeking services under this title a list of agencies that provide similar services within the jurisdiction of the area agency on aging;
 - (ii) gives each individual described in clause (i) a statement specifying that the individual has a right to make an independent choice of service providers and documents receipt by such individual of such statement;
 - (iii) has case managers acting as agents for the individuals receiving the services and not as promoters for the agency providing such services; or
 - (iv) is located in a rural area and obtains a waiver of the requirements described in clauses (i) through (iii);
- (9) provide assurances that the area agency on aging, in carrying out the State Long-Term Care Ombudsman program under section 307(a)(9), will expend not less than the total amount of funds appropriated under this Act and expended by the agency in fiscal year 2000 in carrying out such a program under this title;
- (10) provide a grievance procedure for older individuals who are dissatisfied with or denied services under this title;
- (11) provide information and assurances concerning services to older individuals who are Native Americans (referred to in this paragraph as “older Native Americans”), including—
- (A) information concerning whether there is a significant population of older Native Americans in the planning and service area and if so, an assurance that the area agency on aging will pursue activities, including outreach, to increase access of those older Native Americans to programs and benefits provided under this title;
 - (B) an assurance that the area agency on aging will, to the maximum extent practicable, coordinate the services the agency provides under this title with services provided under title VI; and
 - (C) an assurance that the area agency on aging will make services under the area plan available, to the same extent as such services are available to older individuals within the planning and service area, to older Native Americans; and
- (12) provide that the area agency on aging will establish procedures for coordination of services with entities conducting other Federal or federally assisted programs for older individuals at the local level, with particular emphasis on entities conducting programs described in section 203(b) within the planning and service area.
- (13) provide assurances that the area agency on aging will—
- (A) maintain the integrity and public purpose of services provided, and service providers, under this title in all contractual and commercial relationships;
 - (B) disclose to the Assistant Secretary and the State agency—

- (i) the identity of each nongovernmental entity with which such agency has a contract or commercial relationship relating to providing any service to older individuals; and
 - (ii) the nature of such contract or such relationship;
- (C) demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under this title by such agency has not resulted and will not result from such contract or such relationship;
- (D) demonstrate that the quantity or quality of the services to be provided under this title by such agency will be enhanced as a result of such contract or such relationship; and
- (E) on the request of the Assistant Secretary or the State, for the purpose of monitoring compliance with this Act (including conducting an audit), disclose all sources and expenditures of funds such agency receives or expends to provide services to older individuals;
- (14) provide assurances that preference in receiving services under this title will not be given by the area agency on aging to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this title;
- (15) provide assurances that funds received under this title will be used—
- (A) to provide benefits and services to older individuals, giving priority to older individuals identified in paragraph (4)(A)(i); and
 - (B) in compliance with the assurances specified in paragraph (13) and the limitations specified in section 212;
- (16) provide, to the extent feasible, for the furnishing of services under this Act, consistent with self-directed care; and
- (17) include information detailing how the area agency on aging will coordinate activities, and develop long-range emergency preparedness plans, with local and State emergency response agencies, relief organizations, local and State governments, and any other institutions that have responsibility for disaster relief service delivery.
- (b)(1) An area agency on aging may include in the area plan an assessment of how prepared the area agency on aging and service providers in the planning and service area are for any anticipated change in the number of older individuals during the 10-year period following the fiscal year for which the plan is submitted.
- (2) Such assessment may include—
- (A) the projected change in the number of older individuals in the planning and service area;
 - (B) an analysis of how such change may affect such individuals, including individuals with low incomes, individuals with greatest economic need, minority older individuals, older individuals residing in rural areas, and older individuals with limited English proficiency;
 - (C) an analysis of how the programs, policies, and services provided by such area agency can be improved, and how resource levels can be adjusted to meet the needs of the changing population of older individuals in the planning and service area; and

- (D) an analysis of how the change in the number of individuals age 85 and older in the planning and service area is expected to affect the need for supportive services.
- (3) An area agency on aging, in cooperation with government officials, State agencies, tribal organizations, or local entities, may make recommendations to government officials in the planning and service area and the State, on actions determined by the area agency to build the capacity in the planning and service area to meet the needs of older individuals for—
- (A) health and human services;
 - (B) land use;
 - (C) housing;
 - (D) transportation;
 - (E) public safety;
 - (F) workforce and economic development;
 - (G) recreation;
 - (H) education;
 - (I) civic engagement;
 - (J) emergency preparedness; and
 - (K) any other service as determined by such agency.
- (c) Each State, in approving area agency on aging plans under this section, shall waive the requirement described in paragraph (2) of subsection (a) for any category of services described in such paragraph if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area and had conducted a timely public hearing upon request.
- (d) (1) Subject to regulations prescribed by the Assistant Secretary, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreement with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.
- (2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.
- (e) An area agency on aging may not require any provider of legal assistance under this title to reveal any information that is protected by the attorney-client privilege.
- (f) (1) If the head of a State agency finds that an area agency on aging has failed to comply with Federal or State laws, including the area plan requirements of this section, regulations, or policies, the State may withhold a portion of the funds to the area agency on aging available under this title.

- (2)(A) The head of a State agency shall not make a final determination withholding funds under paragraph (1) without first affording the area agency on aging due process in accordance with procedures established by the State agency.
- (B) At a minimum, such procedures shall include procedures for—
- (i) providing notice of an action to withhold funds;
 - (ii) providing documentation of the need for such action; and
 - (iii) at the request of the area agency on aging, conducting a public hearing concerning the action.
- (3) (A) If a State agency withholds the funds, the State agency may use the funds withheld to directly administer programs under this title in the planning and service area served by the area agency on aging for a period not to exceed 180 days, except as provided in subparagraph (B).
- (B) If the State agency determines that the area agency on aging has not taken corrective action, or if the State agency does not approve the corrective action, during the 180-day period described in subparagraph (A), the State agency may extend the period for not more than 90 days.

Sec. 307. State Plans

(a) Except as provided in the succeeding sentence and section 309(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Assistant Secretary a State plan for a two-, three-, or four year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Assistant Secretary may by regulation prescribe. If the Assistant Secretary determines, in the discretion of the Assistant Secretary, that a State failed in 2 successive years to comply with the requirements under this title, then the State shall submit to the Assistant Secretary a State plan for a 1-year period that meets such criteria, for subsequent years until the Assistant Secretary determines that the State is in compliance with such requirements. Each such plan shall comply with all of the following requirements:

- (1) The plan shall—
- (A) require each area agency on aging designated under section 305(a)(2)(A) to develop and submit to the State agency for approval, in accordance with a uniform format developed by the State agency, an area plan meeting the requirements of section 306; and (B) be based on such area plans.
- (2) The plan shall provide that the State agency will—
- (A) evaluate, using uniform procedures described in section 202(a)(29), the need for supportive services (including legal assistance pursuant to 307(a)(11), information and assistance, and transportation services), nutrition services, and multipurpose senior centers within the State;
 - (B) develop a standardized process to determine the extent to which public or private programs and resources (including volunteers and programs and services

- of voluntary organizations) that have the capacity and actually meet such need; and
- (C) specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B that will be expended (in the absence of a waiver under section 306(c) or 316) by such area agency on aging to provide each of the categories of services specified in section 306(a)(2).
- (3) The plan shall—
- (A) include (and may not be approved unless the Assistant Secretary approves) the statement and demonstration required by paragraphs (2) and (4) of section 305(d) (concerning intrastate distribution of funds); and
- (B) with respect to services for older individuals residing in rural areas—
- (i) provide assurances that the State agency will spend for each fiscal year, not less than the amount expended for such services for fiscal year 2000;
- (ii) identify, for each fiscal year to which the plan applies, the projected costs of providing such services (including the cost of providing access to such services); and
- (iii) describe the methods used to meet the needs for such services in the fiscal year preceding the first year to which such plan applies.
- (4) The plan shall provide that the State agency will conduct periodic evaluations of, and public hearings on, activities and projects carried out in the State under this title and title VII, including evaluations of the effectiveness of services provided to individuals with greatest economic need, greatest social need, or disabilities (with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas).
- (5) The plan shall provide that the State agency will—
- (A) afford an opportunity for a hearing upon request, in accordance with published procedures, to any area agency on aging submitting a plan under this title, to any provider of (or applicant to provide) services;
- (B) issue guidelines applicable to grievance procedures required by section 306(a)(10); and
- (C) afford an opportunity for a public hearing, upon request, by any area agency on aging, by any provider of (or applicant to provide) services, or by any recipient of services under this title regarding any waiver request, including those under section 316.
- (6) The plan shall provide that the State agency will make such reports, in such form, and containing such information, as the Assistant Secretary may require, and comply with such requirements as the Assistant Secretary may impose to insure the correctness of such reports.
- (7)(A) The plan shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State, including any such funds paid to the recipients of a grant or contract.
- (B) The plan shall provide assurances that—

- (i) no individual (appointed or otherwise) involved in the designation of the State agency or an area agency on aging, or in the designation of the head of any subdivision of the State agency or of an area agency on aging, is subject to a conflict of interest prohibited under this Act;
 - (ii) no officer, employee, or other representative of the State agency or an area agency on aging is subject to a conflict of interest prohibited under this Act; and
 - (iii) mechanisms are in place to identify and remove conflicts of interest prohibited under this Act.
- (8)(A) 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's or area agency on aging's administrative functions; or
 - (iii) such services can be provided more economically, and with comparable quality, by such State agency or area agency on aging.
- (B) Regarding case management services, if the State agency or area agency on aging is already providing case management services (as of the date of submission of the plan) under a State program, the plan may specify that such agency is allowed to continue to provide case management services.
- (C) The plan may specify that an area agency on aging is allowed to directly provide information and assistance services and outreach.
- (9) The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title, and will expend for such purpose an amount that is not less than an amount expended by the State agency with funds received under this title for fiscal year 2000, and an amount that is not less than the amount expended by the State agency with funds received under title VII for fiscal year 2000.
- (10) The plan shall provide assurances that the special needs of older individuals residing in rural areas will be taken into consideration and shall describe how those needs have been met and describe how funds have been allocated to meet those needs.
- (11) The plan shall provide that with respect to legal assistance—
 - (A) the plan contains assurances that area agencies on aging will
 - (i) enter into contracts with providers of legal assistance which can demonstrate the experience or capacity to deliver legal assistance;
 - (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act (other than restrictions and regulations governing eligibility for legal assistance under such Act and

governing membership of local governing boards) as determined appropriate by the Assistant Secretary; and

(iii) attempt to involve the private bar in legal assistance activities authorized under this title, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal assistance will be furnished unless the grantee administers a program designed to provide legal assistance to older individuals with social or economic need and has agreed, if the grantee is not a Legal Services Corporation project grantee, to coordinate its services with existing Legal Services Corporation projects in the planning and service area in order to concentrate the use of funds provided under this title on individuals with the greatest such need; and the area agency on aging makes a finding, after assessment, pursuant to standards for service promulgated by the Assistant Secretary, that any grantee selected is the entity best able to provide the particular services;

(C) the State agency will provide for the coordination of the furnishing of legal assistance to older individuals within the State, and provide advice and technical assistance in the provision of legal assistance to older individuals within the State and support the furnishing of training and technical assistance for legal assistance for older individuals;

(D) the plan contains assurances, to the extent practicable, that legal assistance furnished under the plan will be in addition to any legal assistance for older individuals being furnished with funds from sources other than this Act and that reasonable efforts will be made to maintain existing levels of legal assistance for older individuals; and

(E) the plan contains assurances that area agencies on aging will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.

(12) The plan shall provide, whenever the State desires to provide for a fiscal year for services for the prevention of abuse of older individuals—

(A) the plan contains assurances that any area agency on aging carrying out such services will conduct a program consistent with relevant State law and coordinated with existing State adult protective service activities for—

(i) public education to identify and prevent abuse of older individuals;

(ii) receipt of reports of abuse of older individuals;

(iii) active participation of older individuals participating in programs under this Act through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance where appropriate and consented to by the parties to be referred; and

(iv) referral of complaints to law enforcement or public protective service agencies where appropriate;

- (B) the State will not permit involuntary or coerced participation in the program of services described in this paragraph by alleged victims, abusers, or their households; and
- (C) all information gathered in the course of receiving reports and making referrals shall remain confidential unless all parties to the complaint consent in writing to the release of such information, except that such information may be released to a law enforcement or public protective service agency.
- (13) The plan shall provide assurances that each State will assign personnel (one of whom shall be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State.
- (14) The plan shall, with respect to the fiscal year preceding the fiscal year for which such plan is prepared—
- (A) identify the number of low-income minority older individuals in the State, including the number of low income minority older individuals with limited English proficiency; and
 - (B) describe the methods used to satisfy the service needs of the low-income minority older individuals described in subparagraph (A), including the plan to meet the needs of low-income minority older individuals with limited English proficiency.
- (15) The plan shall provide assurances that, if a substantial number of the older individuals residing in any planning and service area in the State are of limited English-speaking ability, then the State will require the area agency on aging for each such planning and service area—
- (A) to utilize in the delivery of outreach services under section 306(a)(2)(A), the services of workers who are fluent in the language spoken by a predominant number of such older individuals who are of limited English-speaking ability; and
 - (B) to designate an individual employed by the area agency on aging, or available to such area agency on aging on a full-time basis, whose responsibilities will include—
 - (i) taking such action as may be appropriate to assure that counseling assistance is made available to such older individuals who are of limited English speaking ability in order to assist such older individuals in participating in programs and receiving assistance under this Act; and
 - (ii) providing guidance to individuals engaged in the delivery of supportive services under the area plan involved to enable such individuals to be aware of cultural sensitivities and to take into account effectively linguistic and cultural differences.
- (16) The plan shall provide assurances that the State agency will require outreach efforts that will—
- (A) identify individuals eligible for assistance under this Act, with special emphasis on—
 - (i) older individuals residing in rural areas;

- (ii) older individuals with greatest economic need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas;
- (iii) older individuals with greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas;
- (iv) older individuals with severe disabilities;
- (v) older individuals with limited English-speaking ability; and
- (vi) older individuals with Alzheimer’s disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and

(B) inform the older individuals referred to in clauses (i) through (vi) of subparagraph (A), and the caretakers of such individuals, of the availability of such assistance.

(17) The plan shall provide, with respect to the needs of older individuals with severe disabilities, assurances that the State will coordinate planning, identification, assessment of needs, and service for older individuals with disabilities with particular attention to individuals with severe disabilities with the State agencies with primary responsibility for individuals with disabilities, including severe disabilities, to enhance services and develop collaborative programs, where appropriate, to meet the needs of older individuals with disabilities.

(18) The plan shall provide assurances that area agencies on aging will conduct efforts to facilitate the coordination of community-based, long-term care services, pursuant to section 306(a)(7), for older individuals who—

- (A) reside at home and are at risk of institutionalization because of limitations on their ability to function independently;
- (B) are patients in hospitals and are at risk of prolonged institutionalization; or
- (C) are patients in long-term care facilities, but who can return to their homes if community-based services are provided to them.

(19) The plan shall include the assurances and description required by section 705(a).

(20) The plan shall provide assurances that special efforts will be made to provide technical assistance to minority providers of services.

(21) The plan shall—

- (A) provide an assurance that the State agency will coordinate programs under this title and programs under title VI, if applicable; and
- (B) provide an assurance that the State agency will pursue activities to increase access by older individuals who are Native Americans to all aging programs and benefits provided by the agency, including programs and benefits provided under this title, if applicable, and specify the ways in which the State agency intends to implement the activities.

- (22) If case management services are offered to provide access to supportive services, the plan shall provide that the State agency shall ensure compliance with the requirements specified in section 306(a)(8).
- (23) The plan shall provide assurances that demonstrable efforts will be made—
- (A) to coordinate services provided under this Act with other State services that benefit older individuals; and
 - (B) to provide multigenerational activities, such as opportunities for older individuals to serve as mentors or advisers in child care, youth day care, educational assistance, at-risk youth intervention, juvenile delinquency treatment, and family support programs.
- (24) The plan shall provide assurances that the State will coordinate public services within the State to assist older individuals to obtain transportation services associated with access to services provided under this title, to services under title VI, to comprehensive counseling services, and to legal assistance.
- (25) The plan shall include assurances that the State has in effect a mechanism to provide for quality in the provision of in-home services under this title.
- (26) The plan shall provide assurances that funds received under this title will not be used to pay any part of a cost (including an administrative cost) incurred by the State agency or an area agency on aging to carry out a contract or commercial relationship that is not carried out to implement this title.
- (27) The plan shall provide assurances that area agencies on aging will provide, to the extent feasible, for the furnishing of services under this Act, consistent with self-directed care.
- (28)(A) The plan shall include, at the election of the State, an assessment of how prepared the State is, under the State's statewide service delivery model, for any anticipated change in the number of older individuals during the 10-year period following the fiscal year for which the plan is submitted.
- (B) Such assessment may include—
- (i) the projected change in the number of older individuals in the State;
 - (ii) an analysis of how such change may affect such individuals, including individuals with low incomes, individuals with greatest economic need, minority older individuals, older individuals residing in rural areas, and older individuals with limited English proficiency;
 - (iii) an analysis of how the programs, policies, and services provided by the State can be improved, including coordinating with area agencies on aging, and how resource levels can be adjusted to meet the needs of the changing population of older individuals in the State; and
 - (iv) an analysis of how the change in the number of individuals age 85 and older in the State is expected to affect the need for supportive services.
- (29) The plan shall include information detailing how the State will coordinate activities, and develop long-range emergency preparedness plans, with area agencies on aging, local emergency response agencies, relief organizations, local governments,

State agencies responsible for emergency preparedness, and any other institutions that have responsibility for disaster relief service delivery.

(30) The plan shall include information describing the involvement of the head of the State agency in the development, revision, and implementation of emergency preparedness plans, including the State Public Health Emergency Preparedness and Response Plan.

Sec. 308, Planning, Coordination, Evaluation, and Administration of State Plans

(b)(3)(E) No application by a State under subparagraph (b)(3)(A) shall be approved unless it contains assurances that no amounts received by the State under this paragraph will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this Act in anticipation of filling the vacancy so created by hiring an employee to be supported through use of amounts received under this paragraph.

Sec. 316. Waivers.

(a) IN GENERAL.—The Assistant Secretary may waive any of the provisions specified in subsection (b) with respect to a State, upon receiving an application by the State agency containing or accompanied by documentation sufficient to establish, to the satisfaction of the Assistant Secretary, that—

- (1) approval of the State legislature has been obtained or is not required with respect to the proposal for which waiver is sought;
- (2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which waiver is sought;
- (3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all of the comments received has been included in the application); and
- (4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.

(b) REQUIREMENTS SUBJECT TO WAIVER.—The provisions of this title that may be waived under this section are—

- (1) any provision of sections 305, 306, and 307 requiring statewide uniformity of programs carried out under this title, to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals;

(2) any area plan requirement described in section 306(a) if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this Act;

(3) any State plan requirement described in section 307(a) if granting the waiver will promote innovations or improve service delivery and will not diminish services already provided under this Act;

(4) any restriction under paragraph (5) of section 308(b), on the amount that may be transferred between programs carried out under part B and part C; and

(5) the requirement of section 309(c) that certain amounts of a State allotment be used for the provision of services, with respect to a State that reduces expenditures under the State plan of the State (but only to the extent that the non-Federal share of the expenditures is not reduced below any minimum specified in section 304(d) or any other provision of this title).

(c) DURATION OF WAIVER.—The application by a State agency for a waiver under this section shall include a recommendation as to the duration of the waiver (not to exceed the duration of the State plan of the State). The Assistant Secretary, in granting such a waiver, shall specify the duration of the waiver, which may be the duration recommended by the State agency or such shorter time period as the Assistant Secretary finds to be appropriate.

(d) REPORTS TO SECRETARY.—With respect to each waiver granted under this section, not later than 1 year after the expiration of such waiver, and at any time during the waiver period that the Assistant Secretary may require, the State agency shall prepare and submit to the Assistant Secretary a report evaluating the impact of the waiver on the operation and effectiveness of programs and services provided under this title.

Sec. 705. Additional State Plan Requirements.

(a) ELIGIBILITY.—In order to be eligible to receive an allotment under this subtitle, a State shall include in the State plan submitted under section 307—

(1) an assurance that the State, in carrying out any chapter of this subtitle for which the State receives funding under this subtitle, will establish programs in accordance with the requirements of the chapter and this chapter;

(2) an assurance that the State will hold public hearings, and use other means, to obtain the views of older individuals, area agencies on aging, recipients of grants under title VI, and other interested persons and entities regarding programs carried out under this subtitle;

(3) an assurance that the State, in consultation with area agencies on aging, will identify and prioritize statewide activities aimed at ensuring that older individuals have access to, and assistance in securing and maintaining, benefits and rights;

(4) an assurance that the State will use funds made available under this subtitle for a chapter in addition to, and will not supplant, any funds that are expended under any Federal or State law in existence on the day before the date of the enactment of this

subtitle, to carry out each of the vulnerable elder rights protection activities described in the chapter;

(5) an assurance that the State will place no restrictions, other than the requirements referred to in clauses (i) through (iv) of section 712(a)(5)(C), on the eligibility of entities for designation as local Ombudsman entities under section 712(a)(5);

(6) an assurance that, with respect to programs for the prevention of elder abuse, neglect, and exploitation under

chapter 3—

(A) in carrying out such programs the State agency will conduct a program of services consistent with relevant

State law and coordinated with existing State adult protective service activities for—

(i) public education to identify and prevent elder abuse;

(ii) receipt of reports of elder abuse;

(iii) active participation of older individuals participating in programs under this Act through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance if appropriate and if the individuals to be referred consent; and

(iv) referral of complaints to law enforcement or public protective service agencies if appropriate;

(B) the State will not permit involuntary or coerced participation in the program of services described in subparagraph

(A) by alleged victims, abusers, or their households; and

(C) all information gathered in the course of receiving reports and making referrals shall remain confidential

except—

(i) if all parties to such complaint consent in writing to the release of such information;

(ii) if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or

(iii) upon court order; and

(7) a description of the manner in which the State agency will carry out this title in accordance with the assurances described in paragraphs (1) through (6).

