

**910 KAR 1:220. General administration, programs for older individuals and persons with disabilities.**

RELATES TO: KRS 205.201, 205.203, 205.455-465.31, 205.900(3), 211.470-211.478, 45 C.F.R. 92.25(g)(2), (3), Part 74, Subpart B, 213, 1321, 5 U.S.C. 552, 7501 et seq., 42 U.S.C. 3001 et seq.

STATUTORY AUTHORITY: KRS 194A.050, 205.204(2)

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq., the Older Americans Act of 1965, as amended, authorizes grants to states to provide assistance in the development of new or improved programs for older persons. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act in Kentucky. This administrative regulation establishes the policies and procedures governing the general administration of the aging and disabilities programs and Older Americans Act in Kentucky.

**Section 1. Definitions.**

- (1) "Administration on Community Living" or "ACL" means the federal agency housed within the Office of the Secretary of Health and Human Services which is responsible for the administration of grant awards to state units on aging under Title III of the Older Americans Act.
- (2) "Area Agency on Aging and Independent Living" or "AAAIL" means an area agency on aging as defined by 42 U.S.C. 3002(6).
- (3) "Area plan" means a plan submitted by an AAAIL to the department that releases funds under contract for the delivery of service within a planning and service area.
- (4) "Corrective action" means the written statement of non-compliance issued to a provider for failure to comply with contractual obligations, federal or state regulations, or department policy.
- (5) "Corrective action plan" means the written response of the provider to eliminate the non-compliance issues addressed in the written corrective action statement and prevent future non-compliance from occurring.
- (6) "Department" or "DAIL" means the Department for Aging and Independent Living.
- (7) "Fidelity bond" means a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty, or fidelity of one (1) or more employees, officers, or other person holding positions of trust.
- (8) "Greatest economic need" is defined by 42 U.S.C. 3002(23).
- (9) "Greatest social need" is defined by 42 U.S.C. 3002(24).
- (10) "In-kind resources" means the value of property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without charge to the grantee.
- (11) "Planning and service area" or "PSA" means that multicounty geographical entity in which a given AAAIL is responsible for the planning of aging services.
- (12) "Program income" means the gross income earned by a provider agency from activities of which part or all of the cost is either borne as a direct cost counted towards meeting a cost sharing or matching requirement of department contracted funds.
- (13) "Provider agency" means an entity that provides for the performance of services or performs a specific service under contract.
- (14) "Service provider" means the agency under contract with DAIL or a provider agency to provide direct services.
- (15) "State plan" means the formal application of the office for federal Title III funds under the Older Americans Act and provides a basis for the expenditures of these funds.

- (16) "Target group" means older individuals:
- (a) Who are low-income, including low-income minority;
  - (b) With limited English proficiency;
  - (c) Residing in rural areas; or
  - (d) At risk for institutional placement.

Section 2. Responsibilities of the DAIL. The DAIL shall:

- (1) Develop the state plan on aging and disability;
- (2) Consider the views of older persons and the general public in developing and administering the state plan by:
  - (a) Receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for approval;
  - (b) Responding to requests of the Institute for Aging for information and submit for its review and comment on proposed plans, budgets, programs, policies, and general initiatives;
  - (c) Eliciting input from appropriate external sources as opportunities present themselves; or
  - (d) Reviewing and considering comments received regarding program plans, budgets, policies, and general initiatives and making changes if feasible and in the best interests of those individuals for whom the programs are designed;
- (3) Coordinate statewide planning and development of activities and provide technical assistance to provider agencies to ensure effective coordination of programs;
- (4) Establish and enforce appropriate procedures for data collection from contract agencies to permit the state to compile and transmit statewide data in a form the commissioner directs on an annual basis;
- (5) Conduct, within budget limitations, activities to implement training and education programs which include the following:
  - (a) Conducting annual assessments to identify training needs and develop correlating plans;
  - (b) Identifying and reviewing resources available to meet training needs;
  - (c) Developing a comprehensive education and training plan;
  - (d) Seeking additional resources to implement the plan;
  - (e) Effecting interagency coordination for the provision of specialized training;
  - (f) Facilitating and assisting the efforts of higher education in statewide forums of a gerontological or disability orientation;
  - (g) Coordinating education programs with private, public, governmental, and educational organizations and institutions;
  - (h) Providing and coordinating training opportunities for personnel of agencies and programs utilizing department funding;
  - (i) Providing training to provider agencies on self-evaluation and monitoring; and
  - (j) Providing training as part of the state training plan including ongoing technical assistance and annual program evaluation;
- (6) Participate in appointments to boards and commissions as required by the cabinet;
- (7) Review, monitor, evaluate, and comment on federal, state, and local area plans which affect or may affect older individuals and those with disabilities;
- (8) Recommend changes in these plans which the department deems appropriate including:
  - (a) Budgets;
  - (b) Regulations;
  - (c) Programs;
  - (d) Laws;
  - (e) Levies;

- (f) Hearings;
- (g) Policies; and
- (h) Actions;
- (9) Monitor the performance of programs and activities for quality and effectiveness and to determine compliance with contract requirements, approved area plans, and applicable federal and state statutory and regulatory requirements;
- (10) Have an adequate number of qualified staff to carry out the functions prescribed in 45 C.F.R. 1321.9 of the Older Americans Act and other program regulations for which the department has administrative responsibility;
- (11) Give preference to individuals aged sixty (60) or older, subject to the requirements of merit employment systems of state and local governments;
- (12) Assure that the provider agency allots an adequate proportion of its funding for the provision of direct services to eligible participants;
- (13) Develop and make known to the provider agency procedures for and conditions under which funding may be suspended;
- (14) Comply with the provisions of the Older Americans Act of 1965, as amended;
- (15) Designate PSAs in accordance with 42 U.S.C. 3025(a)(1)(E);
- (16) Designate the AAAIL in each PSA;
- (17) Develop and use a federally approved intrastate funding formula for Older Americans Act of 1965 funding;
- (18) Provide area-specific information in a statewide summary of the local needs assessment conducted in each PSA;
- (19) Conduct joint meetings with the provider agencies to:
  - (a) Coordinate statewide planning and development of activities; and
  - (b) Provide technical assistance to each provider agency to ensure effective procedures for coordination of programs within the PSA;
- (20) Notify the contract agencies in writing in advance of the date the joint meeting shall take place;
- (21) Solicit input from the contract agency as to the topics to address and discuss at the joint meeting; and
- (22) Issue a waiver of program requirements:
  - (a) In compliance with 42 U.S.C. 3030c-3; or
  - (b) To develop pilot projects as allowed for state funded programs.

Section 3. Distribution of State and Federal Funding for Aging and Disability Programs. Directly or through contract with a provider agency, funding allocations shall be distributed according to program requirements.

- (1) The department shall distribute available state and federal funds to the provider agency according to a funding formula determined by the department.
- (2) Older Americans Act funding shall be allocated based on the funding formula developed by the department and approved by the ACL.
- (3) Funding allocated from funds authorized under the following categories shall be for the purpose of assisting the department to develop or enhance comprehensive and coordinated community-based services throughout the state:
  - (a) State administration;
  - (b) Provider agency administration;
  - (c) Home care;
  - (d) Personal Care Assistant Program;
  - (e) Traumatic Brain Injury Trust Fund;
  - (f) Hart Supported Living Program;
  - (g) Kentucky Family Caregiver Program;
  - (h) Brain Injury Behavioral Program;

- (i) Senior Community Employment Program;
  - (j) State long-term care ombudsman, Title III-B and Title VII;
  - (k) Supportive services, Title III-B;
  - (l) Congregate meals services, Title III C 1;
  - (m) Home-delivered meals services, Title III C 2;
  - (n) Evidence based health promotion services, Title III-D; and
  - (o) Elder abuse services, if funds are available, Title VII.
- (4) Except for the State Long-Term Care Ombudsman and state administration, the department shall award the available Older Americans Act funds according to the federally approved intrastate funding formula:
- (a) Determined by the department after consultation with the AAAILs in the state and publication of the formula by the department for review and comment by older persons and the general public; and
  - (b) Which shall reflect the proportion among the PSA of persons age sixty (60) and over in greatest economic or social need with particular attention to low income minority individuals.
- (5) The department shall follow the procedures for and conditions under which funding may be temporarily suspended or terminated according to Section 10 of this administrative regulation.

#### Section 4. Designation and Withdrawal of Designation of an AAAIL.

- (1) Each PSA shall have designated by DAIL a public or private nonprofit agency or organization as the AAAIL in accordance with 42 U.S.C. 3025(c).
- (2) The department shall withdraw the AAAIL designation if, after reasonable notice and opportunity for a hearing, the department finds that:
  - (a) The AAAIL does not meet the requirements set out in subsection (1) of this section or Section 5 of this administrative regulation;
  - (b) The plan or plan amendment is not approved;
  - (c) There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or
  - (d) There is a request by the AAAIL.
- (3) The department shall initiate the designation withdrawal process of the AAAIL and shall:
  - (a) Notify the AAAIL of its intent to withdraw designation, citing non-compliance issues and outlining steps to be taken to appeal the intent to withdraw designation in accordance with 910 KAR 1:140; and
  - (b) Assist in the facilitation of the hearing as set forth in 910 KAR 1:140 if the AAAIL requests a state hearing.
- (4) Following the appeal process, the cabinet shall notify the AAAIL in writing of the hearing.
- (5) If the department withdraws the AAAIL's designation, it shall:
  - (a) Notify the administrator of the ACL and the cabinet secretary in writing of its action;
  - (b) Provide a plan for the continuity of planning and services in the affected PSA; and
  - (c) Designate a new AAAIL in the PSA.
- (6) To ensure continuity of planning and services in a PSA, the DAIL may, for a period of up to 180 days after its final decision to withdraw designation of a AAAIL:
  - (a) Perform the responsibilities of the AAAIL; or
  - (b) Assign the responsibilities of the AAAIL to another provider agency in the PSA.
- (7) If necessary, the administrator of the ACL may extend for a period of up to an additional 180 days the limit in subsection (6) of this section if the state agency:

- (a) Requests an extension; and
- (b) Demonstrates to the administrator of the ACL a need for the extension.

Section 5. Responsibilities of the AAAIL. The AAAIL shall be designated by the department in each PSA and shall:

- (1) Establish an advisory council as follows:
  - (a) The area advisory council shall carry out functions which further the AAAIL's mission of developing and coordinating community-based systems of services for older persons in the PSA. The council shall advise the AAAIL relative to:
    - 1. Developing, reviewing, and commenting on the area plan prior to submitting to the department for approval;
    - 2. Conducting public hearings;
    - 3. Representing the interest of older persons; and
    - 4. Reviewing and commenting on community policies, programs, and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.
  - (b) The advisory council shall be made up of:
    - 1. More than fifty (50) percent older persons, including minority individuals who are participants or who are eligible to participate in programs under the Older Americans Act;
    - 2. Representatives of older persons;
    - 3. Representatives of health care provider organizations, including providers of veterans' health care if providers of veterans' health care are located in the geographical area served within the PSA;
    - 4. Representatives of supportive services provider organizations;
    - 5. Persons with leadership experience in the private and voluntary sectors;
    - 6. Local elected officials; and
    - 7. The general public;
- (2) Include individuals and representatives of community organizations who shall help to enhance the leadership role of the AAAIL in developing community-based systems of services;
- (3) Serve as the public advocate for the development for enhancement of comprehensive and coordinated community-based systems of services in each community throughout the PSA;
- (4) Monitor, evaluate, and provide comment on policies, programs, hearings, levies, and community actions which affect older persons and persons with disabilities;
- (5) Solicit comments from the public on the needs of older persons, and persons with disabilities having procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 C.F.R. 1321.57(c) and 1321.61(b);
- (6) Represent the interests of older persons and persons with disabilities to local-level and executive branch officials and public and private agencies or organizations;
- (7) Consult with and support the Commonwealth's long-term care ombudsman program;
- (8) Undertake ongoing activities designed to facilitate the coordination of area plans and activities with other public and private organizations;
- (9) Promote new or expanded benefits and opportunities for older persons and persons with disabilities;
- (10) Undertake a leadership role in assisting communities throughout the PSA to target resources from appropriate sources to:
  - (a) Meet the needs of the target group; and
  - (b) Recommend the location of services and specialization in the types of services most needed by the above-referenced group;

(11) Prohibit means testing for services funded through Older Americans Act funds;  
(12) Prepare and develop for a PSA an area plan as determined by the department and in accordance with 42 U.S.C. 3026:

(a) By the annually established deadline;

(b) Which shall include:

1. A mission and vision statement;
2. Planning and service area geographics;
3. A profile of regional demographics;
4. Funding sources for the AAAIL;
5. Services offered within the PSA;
6. Partnerships and associations;
7. A capacity assessment;
8. A capacity building plan;
9. Public hearings;
10. Service usage;
11. Participants of aging programs feedback and satisfaction;
12. Coordination and collaborations;
13. Outreach and expansion;
14. Community opportunities;
15. Intake and referral;
16. Financial management and fund development;
17. AAAIL advisory council membership;
18. AAAIL administrative staffing plan;
19. AAAIL direct staffing plan;
20. A provider agency staffing plan;
21. Long Term Care Ombudsman advisory council membership;
22. A provider site list;
23. Performance plans;
24. Waivers and special program approvals;
25. Provider approvals;
26. Assurances;
27. A financial plan and outputs; and
28. Other information requested in advance by the department; and

(c) Each area plan shall be subject to amendment by the AAAIL upon request of the department;

(13) Provide area-specific information of the local needs assessment conducted in the PSA;

(14) Specify in writing to the department how the AAAIL intends to satisfy the needs of the target group served through the contract in proportion to the population served;

(15) Within budget limitations, implement education and training programs that respond to the needs of older individuals, the disabled, service providers, and other groups which include:

(a) Conducting annual assessments to identify training needs and develop correlating plans;

(b) Identifying, reviewing, and pursuing resources available to meet training needs;

(c) Developing a comprehensive education and training plan;

(d) Coordinating interagency collaboration for the provision of specialized training;

(e) Facilitating and assisting the efforts of higher education in statewide forums related to the aging and disabled populations;

(f) Conducting and coordinating education and training related to the aging and disabled population and programs for area advisory councils and the general community;

- (g) Specifying the training requirements of the service providers; and
- (h) Planning and implementing staff development initiatives; and
- (16) Conduct periodic evaluations of, and public hearings on, activities carried out in the PSA.

#### Section 6. Public Hearings.

- (1) The department shall, if appropriate, utilize public hearings as one (1) method of obtaining both proactive and reactive community and consumer participation in prioritizing and evaluating activities and projects carried out under the state plan.
- (2) If public hearings are utilized, the department shall:
  - (a) Schedule a minimum of one (1) public hearing annually for the purpose of evaluating activities and projects carried out in the state plan;
  - (b) Specify the inclusion of an evaluation of the state plan's effectiveness in reaching the target population;
  - (c) If appropriate, schedule public hearings for the purpose of receiving community and consumer participation in the development and implementation of service activities;
  - (d) Require of the AAAIL a timely conducted public hearing prior to the consideration of a request of the department for a waiver from a service provision responsibility required in the area plan; and
  - (e) Schedule, advertise, and conduct public hearings it deems appropriate in a manner designed to encourage, enhance, and facilitate community and consumer participation.
- (3) The department shall consider the views of older persons and the general public in developing and administering the state plan and shall:
  - (a) Utilize methods which include public hearings in receiving public and consumer participation in identifying service needs and establishing funding priorities prior to the submission of the state plan for federal approval;
  - (b) Advertise the date, time, location, and purpose of each public hearing with the local media in the PSA in and for which the hearing is being held;
  - (c) Elicit input from appropriate external sources as opportunities present themselves;
  - (d) Require AAAILs to develop procedures for receiving community and consumer participation in the planning and service delivery process in conformance with 45 C.F.R. 1321.57(c) and 1321.61(b); and
  - (e) Review and consider comments received regarding program plans, budgets, policies, and general initiatives and make changes if feasible and in the best interests of those individuals for whom the programs are designed.

#### Section 7. Responsibilities of a Provider Agency.

- (1) A provider agency shall:
  - (a) Adhere to the contractual agreement, state and federal regulations, and department policy;
  - (b) Provide for each employee providing services funded through the department a comprehensive training course that shall be:
    - 1. Monitored by the provider agency through record review; and
    - 2. Reviewed or monitored by the DAIL through records maintained by the provider agency; and
  - (c) Verify participant or applicant eligibility for DAIL funded programs only once even though the participant may receive multiple services through state or federal funding sources.
- (2) Participant records shall include the following information:
  - (a) The participant's age or birth date if age is an eligibility requirement;
  - (b) Documentation of the method used to verify the reported age;
  - (c) The staff involved in the verification process;

- (d) Other eligibility determinants; and
  - (e) Verification of other eligibility determinants.
- (3) The provider agency shall conduct monitoring and evaluation of services and shall:
- (a) Permit staff of the Cabinet for Health and Family Services, persons acting for the cabinet, and staff designated by appropriate federal agencies to monitor and evaluate programs and activities performed and administered by the provider agency and subcontractors for which the department has administrative responsibility;
  - (b) Respond to monitoring reports including submission of a corrective action plan;
  - (c) Be responsible for fiscal or program exceptions established by evaluation, monitoring, or audit and promptly settle monitoring, fiscal, and program audit exceptions by:
    - 1. Making direct payment;
    - 2. Accepting reduction of future reimbursement; or
    - 3. Other methods approved by the Cabinet for Health and Family Services;
  - (d) Furnish appropriate technical assistance to, and conduct an annual evaluation of, the effectiveness of program outcomes;
  - (e) Assess services to determine compliance with contractual agreement and with applicable federal and state requirements;
  - (f) Submit written corrective action or recommendations regarding on-site monitoring visits and reports to the service providers as applicable;
  - (g) Require the service provider to have provision for the interview of clients by persons and agencies listed in paragraph (a) of this subsection and the provider agency, except if confidentiality requirements are applicable; and
  - (h) Review subcontractors' forms and procedures and forward a copy of the information to the DAIL prior to the implementation of the contract for final approval, if applicable.
- (4) Each provider agency shall have a policy for denial, suspension, or reduction of services to eligible persons, which shall:
- (a) Be maintained on file at the provider agency and be accessible for monitoring purposes;
  - (b) Specify, at a minimum, that if services for a client or participant are denied, suspended, or reduced, one (1) of the following situations shall be present and documented:
    - 1. Funds are no longer available or are reduced;
    - 2. The service level is no longer needed;
    - 3. Prioritization and needs determination indicate that the client no longer meets the criteria established for receiving services;
    - 4. The client refuses to follow the service plan or plan of care; or
    - 5. The client or family member has exhibited abusive, intimidating, or threatening behavior and the client or representative is unable or unwilling to comply with a corrective action plan; and
  - (c) Include notification to a client of the right to request an appeal based on the denial, suspension, or reduction of services to an eligible person as listed in paragraph (b)2. through 5. of this subsection in accordance with 910 KAR 1:140.
- (5) A provider agency shall adhere to the procurement requirements as follows:
- (a) Promote open and free competition among qualified competitors;
  - (b) Not restrict or eliminate competition by placing unreasonable or unnecessary requirements on potential bidders;
  - (c) Establish procurement procedures which take into account the federal, state, and local requirements and include:
    - 1. A method for resolving protests, disputes, and claims;
    - 2. A written code or standards of conduct;



3. A review process to avoid unnecessary purchases or duplicative items;
  4. Affirmative action standards that encourage contracting with minority-owned small businesses;
  5. A method for procurement; and
  6. Evaluation and selection criteria; and
  - (d) Formally advertise programs and services.
- (6) If the provider agency chooses to utilize noncompetitive negotiations, it shall:
- (a) Clearly document and maintain on file that:
    1. Only one (1) responsible provider is available, capable, and qualified to provide the service; and
    2. By using noncompetitive negotiations, open and free competition shall not be restricted;
  - (b) Maintain records sufficient to detail the significant history of the procurement; and
  - (c) Provide, upon request and prior to subcontracting, copies to the department supporting noncompetitive negotiations.
- (7) A provider agency shall comply with the program reporting requirements of the contractual agreement or the following as applicable:
- (a) A quarterly program performance report shall be submitted to the department fifteen (15) calendar days after each quarter;
  - (b) An annual program performance report shall be submitted to the department for the federal fiscal year October 1 - September 30;
  - (c) Homecare reporting and entry into the statewide data system shall be in accordance with 910 KAR 1:180;
  - (d) A monthly meal count report for Title III and Homecare shall be submitted to the department by the contractual deadline; and
  - (e) Title V reporting and entering into the statewide data system shall be in accordance with 910 KAR 1:200.
- (8) The provider agency conducting assessments shall complete an assessment within seven (7) calendar days of referral unless:
- (a) Funding is not available to provide a service; and
  - (b) The individual is placed on the waiting list.
- (9) The provider agency shall assure that a written uniform system is in place for maintenance of waiting lists and shall follow these guidelines:
- (a) Each waiting list for services shall be reported to the department as part of the quarterly program performance report;
  - (b) The waiting list shall be updated monthly and a new DAIL-GA-01 Priority Screening Tool completed if there is a change in needs;
  - (c) The system shall be based on a method to prioritize applicants;
  - (d) An applicant shall be advised of the procedures and method of facilitating the waiting list and provided with the written procedures upon request;
  - (e) An applicant who is determined to be potentially eligible based on screening information gathered by the designated agency staff may be placed on a waiting list; and
  - (f) Once funding is available for a service, the individual on the waiting list with the highest priority screening score on the DAIL-GA-01 Priority Screening Tool shall be assessed within seven (7) calendar days.
- (10) Each provider agency may use its own definition of equipment as long as it includes tangible personal property having a useful life of at least one (1) year and a unit cost of \$500 or more.
- (a) Equipment records shall be current and shall contain at least the following information:
    1. Description of the item;

2. Serial number;
  3. Source of funds used to purchase the item;
  4. Percentage per source and program of the cost;
  5. Acquisition cost and date;
  6. Unit cost;
  7. Location, use, and condition of the equipment;
  8. Information on the disposition of the item; and
  9. The replacement schedule of the equipment being replaced, if applicable.
- (b) There shall be a system to prevent loss, damage, or theft.
- (c) There shall be adequate maintenance procedures to keep equipment in good condition.
- (d) Purchase of equipment with a unit cost of \$500 or more shall require prior approval from the DAIL.
- (e) Replaced equipment may be:
1. Traded in; or
  2. Sold and the proceeds applied to the acquisition cost.
- (f) Equipment with a unit cost of \$1,000 or more shall be disposed of, not replaced, and the granting agency may require transfer of the equipment and title to an eligible party.
- (g) Equipment may be sold if approved by the granting agency.
- (h) If equipment is sold, the federal share of the proceeds may be applied to the program as program income but if the federal share is not applied to the program as program income, the federal share, less selling expenses, shall be returned to the federal government or an eligible nonfederal party named by the DAIL.
- (i) The provider agency shall agree to the transfer of equipment and supplies with a value of less than \$1,000 to a new provider if:
1. A new provider is selected:
    - a. As a result of competition; or
    - b. Due to a contract being terminated; and
  2. The transfer is made within thirty (30) days from the date of receipt of notice from the department made by:
    - a. Certified mail; or
    - b. Return receipt requested.
- (j) Equipment and supplies shall be transferred to the DAIL if no new provider has been secured.

#### Section 8. Record Check.

- (1) An applicant for employment or a volunteer with direct client contact shall authorize the provider agency to conduct a records check through the following:
- (a) A criminal record check through the Kentucky Justice Cabinet, Administrative Office of the Courts, or a national criminal record check;
  - (b) The Central Registry;
  - (c) The Adult Protective Services Caregiver Misconduct Registry; and
  - (d) The Nurse Aid Abuse Registry.
- (2) An applicant or volunteer with a criminal record may be employed only with the approval of the executive director of the provider agency if the individual has not been found guilty of the following:
- (a) A violent crime as defined by KRS 439.3401;
  - (b) Abuse, neglect, or exploitation of another person, including assault;
  - (c) Felony theft offense; or
  - (d) Felony drug offense.

#### Section 9. Corrective Action.

(1) The department shall issue corrective action if a provider agency is not fulfilling its contract or is non-compliant with program requirements. Upon identification of the deficiency, the department shall:

(a) Notify the provider agency of the requirement to submit a written corrective action plan within the time frame specified by the department;

(b) Review for approval or revision the corrective action plan submitted by the provider agency which shall include:

1. How the deficiency will be corrected;

2. Steps to ensure the deficiency will not reoccur; and

3. The timeline for full compliance;

(c) Monitor to ensure the corrective action plan was initiated and completed to resolve the deficiency; and

(d) Notify other licensing or regulatory agencies if the deficiency exists within their jurisdiction.

(2) A provider agency shall submit documentation to confirm the deficiency was resolved.

(3) If the provider agency continues to be in noncompliance, the department staff shall:

(a) Notify the provider agency of the continuing problem or deficiency;

(b) Advise the commissioner of the DAIL of the problem and make a recommendation for action; and

(c) Notify the provider agency of the action that shall be taken by the department based on continued non-compliance.

#### Section 10. Suspension of Funding or Termination of Contract.

(1) The department may temporarily suspend operations or terminate the contract award in whole or in part if the provider agency or service provider fails to adhere to the following:

(a) Contract award stipulations;

(b) Federal and state laws and regulations;

(c) Department policies and procedures;

(d) A department approved corrective action plan; or

(e) Performance goals and deliverables.

(2) To suspend operations or terminate a contract, the department shall, thirty (30) days prior to the effective date:

(a) Notify the provider agency in writing of the action being taken;

(b) Provide the provider agency with the reason for the action;

(c) Specify the conditions of the suspension;

(d) Inform of the effective date of the suspension; and

(e) Inform the provider agency of the right to appeal the decision.

(3) The department shall grant to a provider agency whose funding has been suspended in whole or in part or whose contract has been terminated as a result, an opportunity for a hearing in accordance with the provision set forth in 910 KAR 1:140.

(4) The department may:

(a) Temporarily withhold cash payments pending an approved corrective action plan by the provider agency or pending a decision by the department to terminate the contract;

(b) Disallow both the use of funds and any applicable matching funds for all or part of the cost not in compliance;

(c) Wholly or partly suspend or terminate the contract award;

(d) Withhold future awards; or

(e) Exercise any other remedies that may be legally available.

- (5) The department may impose additional requirements for provider agencies for the following:
- (a) History of poor performance;
  - (b) Financial instability;
  - (c) A management system that does not meet the prescribed standards; or
  - (d) Not conforming to the terms and conditions of previous contract awards.
- (6) Costs to a provider agency resulting from obligations incurred during the suspension or after termination of a contract award shall not be allowable unless the department:
- (a) Expressly authorizes them in the notice of suspension or termination of contract award; or
  - (b) Subsequently determines the expenses:
    - 1. Are necessary and not reasonably avoidable;
    - 2. Result from obligations which were properly incurred by the provider agency before the effective date of the suspension or termination;
    - 3. Are not in anticipation of the suspension or termination and in the case of a termination are non-cancellable; and
    - 4. Would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (7) In suspending operations or terminating a contract, the department shall:
- (a) Determine the amount of unearned state and federal funds the provider agency has on hand and interest earned, if any;
  - (b) Request a return of funds for all unearned or unallowable funds received by the provider agency from the department; and
  - (c) Designate a new provider agency to ensure there is no break in the provision of services to consumers.
- (8) Upon suspension or termination, the provider agency shall be required to submit all financial, programmatic, and other reports pursuant to the terms and conditions of the contract.
- (9) If the suspension of operations continues for three (3) consecutive months in a budget year:
- (a) Funding of operations shall be terminated;
  - (b) Monetary assistance from the department shall cease in whole or in part under a contract at a time prior to the date of completion; and
  - (c) The department shall follow the requirements of subsection (4) of this section.
- (10) The department may, at its discretion, reinstate the suspended operations if it determines that the provider agency has come into compliance with the contract, federal and state regulations, and department policies.
- (11) The department shall reimburse the provider agency according to the terms and conditions of the contract for allowable program activities and cost upon reinstatement of operations.
- (12) Operations may resume:
- (a) Immediately upon notification; or
  - (b) Within the time period as designated by the department.
- (13) Costs accrued for program operations while a program is suspended shall not be reimbursed.
- (14) The obligational authority unearned at suspension shall become available for earning by the project at the previously established matching ratio.
- (15) Termination of operational obligation or authority shall result in:
- (a) Withdrawal of AAAIL designation that shall comply with subsection (13) of this section; or
  - (b) Withdrawal of a contract for services.

(16) The department shall withdraw the AAAIL designation or contract if, after reasonable notice and opportunity for a hearing, the department finds that:

- (a) The AAAIL or provider agency does not meet the requirements set out in Section 5 or Section 7 of this administrative regulation;
- (b) The plan or plan amendment is not approved;
- (c) There is substantial failure in the provision or administration of an approved area plan to comply with provisions of the area plan requirements under the Older Americans Act; or
- (d) There is a request by the provider agency.

(17) If the department withdraws the AAAILs designation or contract, it shall:

- (a) Notify the administrator of the ACL and the CHFS secretary in writing of its action;
- (b) Provide a plan for the continuity of planning and services in the affected PSA; and
- (c) Designate a new AAAIL or provider agency in the PSA.

(18) To ensure continuity of planning and services in a PSA, the DAIL may, for a period of up to 180 days after its final decision to withdraw designation of an AAAIL or contract with a provider agency:

- (a) Perform the responsibilities of the AAAIL or provider agency; or
- (b) Assign the responsibilities of the AAAIL or provider to another agency in the PSA.

(19) If necessary, the administrator of the ACL may extend an additional 180 days if the state agency:

- (a) Requests an extension; and
- (b) Demonstrates to the administrator of the ACL a need for the extension.

#### Section 11. Incorporation by Reference.

(1) The "DAIL-GA-01 Priority Screening Tool", November 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(18 Ky.R. 1763; Am. 2291; eff. 1-10-1992; Recodified from 905 KAR 8:220, 10-30-1998; Recodified from 923 KAR 1:220, 7-8-1999; TAm eff. 6-14-2013; 41 Ky.R. 2157; 2583; eff. 6-17-2015; Cert. eff. 4-11-2022.)