State of South Carolina
Department on Aging

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PROGRAM INSTRUCTION FOR: CONTRACTS AND COMMERCIAL RELATIONSHIPS

INFORMATION MEMORANDUM FOR: Area Agencies on Aging

SUBJECT: Program Instruction (PI) for CONTRACTS AND COMMERCIAL RELATIONSHIPS

DATE: July 1, 2026

AAA COMPLIANCE DATE: July 1, 2027

CONTRACTS AND COMMERCIAL RELATIONSHIPS	**POLICY NUMBER**
REFERENCE(S): 45 CFR 1321.9(xiv)	
RELEASE DATE: July 1, 2026	**AAA COMPLIANCE DATE: July 1, 2027**

Definitions

Private pay services: a type of contract or commercial relationship, separate and apart from programs funded under the Act, for which the individual consumer agrees to pay to receive services under the program.

Policy Statement

SCDOA encourages South Carolina AAAs to establish comprehensive and coordinated systems for supportive, nutrition, and other services for older adults and family caregivers in our state by leveraging resources beyond OAA funding. In doing so through contracts and commercial relationships (“agreements”), AAAs can use both government and private funding to serve more older adults in need. Through this policy, SCDOA intends to facilitate increased access to aging services in our state while ensuring responsible oversight of federal funds and protecting the integrity of our aging services network.

Consistent with section 212 of the OAA, AAAs who seek to establish agreements to serve individuals or entities not otherwise receiving services under the Act must obtain prior approval from SCDOA. This policy applies to private pay services as well as agreements with any entity (both for-profit and non-profit) for a AAA to provide goods or services in exchange for reimbursement or other financial consideration, with the expectation that the agreement will result in profit and reimbursement of initial costs and/or expanded service capacity.

For agreements involving multiple AAAs, one entity may submit information for prior approval on behalf of the group. The anticipated contractual expectations of each AAA must be clear in the information submitted. Service providers sub-contracted for work to execute an approved agreement are not required to separately seek prior approval. AAAs must incorporate standard language related to conflicts of interest and privacy and security compliance, based on guidance from SCDOA, into each of the prospective agreements for which they are seeking approval.

SCDOA has established this streamlined policy and procedure to expedite the prior approval process as much as possible.

Use of Older Americans Act Funding

Consistent with section 212 of the OAA, AAAs may use OAA funding to develop or initiate section 212 agreements. All section 212 agreements must incorporate a guarantee that any OAA costs used in the development will be reimbursed to the AAA by the third-party entity. In addition, the OAA requires that any amount of payment to the AAA that exceeds this initial reimbursement will be used to provide, or support the provision of, OAA services.

Types of Agreements

Through this policy, SCDOA categorically pre-approves the following types of agreements, contingent on **receipt** of the minimum information outlined in the prior approval form:

- Agreements with local, state, and federal governmental entities;
- Agreements with other AAAs or AAA associations;
- Agreements that have received prior approval from SCDOA:
- If there is a change in the deliverables, and/or a 10% change in the budget to the agreement(s), the AAA must notify SCDOA and the full prior approval documentation will be required; and

- Agreements with entities with which a AAA has a long-standing existing business relationship (of three years or more).

Note: AAAs that have received an audit report with financial findings within the previous twelve months are not eligible for categorical approval of agreements, including the types of agreements listed above. Instead, AAAs in such situations must submit requests for approval of each prospective individual agreement.

SCDOA will also approve the following types of agreements, subject to **review** of the required prior approval forms:

- Private pay services
- A single agreement with an entity (or multiple entities) to provide specific services;
  - For example: an agreement with a health plan for a AAA to provide meals to individuals identified by that plan;
- A category or type of agreement with a specific entity or a type of entity for the AAA to provide specific services (including through private pay arrangements);
  - For example: agreements to provide home-delivered meals to individuals and/or any health plan, generally;
- A category or type of agreement with a type of entity (or multiple entities) for the AAA to provide a broad category of services;
  - For example: agreements to provide a broad category of services to clients of hospitals and hospital systems, generally.

Note: If there are no changes to the AAA agreement in subsequent years, then the agreement is subject to the receipt the minimum information from the prior approval form. SCDOA may request samples of private pay service arrangements as part of ongoing monitoring.

<u>Extensions, Terminations, and Contract Approval Duration</u>

Approval for Section 212 agreements provided by SCDOA lasts the duration of the agreement (as specified on the Approval for Section 212 Agreements Form). Agreements that have already received prior approval from SCDOA (including contract extensions) are subject to the Categorical Prior Approval Process as long as the following conditions are met:

- The AAA has not received an audit report with financial findings within the previous twelve months
- There are no changes in the deliverables, or a 10% change in the budget to the agreement(s)

For those agreements that have gone through the approval process with the SUA, if one of the following occurs, the AAA must notify the SUA, and the full prior approval documentation will be required:

- a change in the scope of work,
- early termination of the agreement,
- a 10% change in the budget to the agreement(s)

SUA Procedure
SCDOA shall review AAA requests for the following types of agreements within 15 days of submission by the AAA to SCDOA:
- Requests that are categorically pre-approved
- Requests that require review before approval

The signature of the authorized SCDOA reviewer on the AAA submission will constitute approval.

SCDOA will consider requests for expedited approval. Expedited review is for emergencies only. While every effort will be made to meet the contract's needed date, there is no guarantee that a request can be accommodated.

AAA Procedure
For AAA agreements that SCDOA has categorically pre-approved, SCDOA must receive the minimum information from the prior approval form.

For AAA agreements that require review by SCDOA in order to receive prior approval, the AAA must complete the full required prior approval form, risk screening, and signed assurances.

AAAs may submit the prior approval form whenever necessary to receive approval prior to establishing an agreement, subject to prior approval under section 212 of the OAA:

1. The name of OR type of the entity (or entities) with which it intends to establish agreement(s);
2. The nature of the agreement(s), including the specific service(s) OR the types of services to be provided under the agreement(s);
3. An estimate of the proposed costs incurred from all sources, including the estimated amount of OAA and state funds that will be used in implementing the agreement (e.g., administrative overhead, data systems, and/or staff time).
4. The duration of the agreement;
5. The completed risk-screening form; and
6. Signed assurances.

Note: If a non-disclosure or other confidentiality agreement prevents the AAA from disclosing required information, the AAA should submit publicly available information and attach a copy of the confidentiality agreement (redacted if necessary) to the submission for prior approval.

Risk-screening

AAAs must assess prospective agreements for risk, according to the criteria identified below. If one or more of the identified risks are present, SCDOA will not approve without discussion with or the provision of further information from the AAA.

Under the following circumstances, the AAA must discuss the prospective agreement(s) with the SUA before prior approval can be obtained:

- The AAA does not have an approved area plan;
- The AAA is on a corrective action plan or has received notice of being out of compliance with its area plan and is in the process of entering into a corrective action plan;
- The AAA has not fully expended its OAA funding allocations, resulting in carryover exceeding the SUA's policy and/or reallotment of funds within the last three fiscal years;
- The AAA has failed to complete a required audit in a timely manner;
- There has been turnover of AAA leadership or vacancies in key positions (defined as CEO/Executive Director, COO/Operations Director, CFO/Fiscal Director, or equivalents) within the last 12 months;
- The state (or other compliance entity) has recently audited the AAA and made significant audit findings;
- The AAA is involved in contracts to provide one or more services outside of their designated planning and service area;
- There is current or pending litigation involving the AAA;
- There are conflicts of interest involving the AAA that have not been removed or remedied;
- The proposed agreement to deliver services represents more than 25% percent of the AAA's total budget;
- The prospective agreements are with an entity that:
    - Lacks sufficient liability insurance;
    - Is not appropriately incorporated, as applicable;
    - Is not in good standing with state and/or local licensing boards, as applicable;
    - Is under investigation by the Internal Revenue Service and/or state and local tax revenue entities;
    - Is under investigation by the State Medicaid agency, Medicaid Fraud Control Unit, State or U.S. Department of Health & Human Services Office of Inspector General (or equivalent), or the U.S. Department of Justice;
    - Has been recently (within the last five years) sanctioned by the Internal Revenue Service, state and/or local tax revenue entities;
    - Has recently (within the last five years) lost its state or local license due to noncompliance with state and/or local law;
    - Has recently (within the last five years) lost its status as a Medicaid provider due to noncompliance with Medicaid law or regulation.

<u>Assurances</u>
AAAs must provide assurances of compliance with certain requirements under the Act, which are listed in the prior approval form. AAAs must also incorporate standard language related to conflicts of interest into each of the prospective agreements for which they are seeking approval.

See also: (related/cross-referenced policies and/or forms – use hyperlinks)

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