| Subject | **Idaho Commission on Aging Policy and Agreement for Prior Approval of Section 212 Agreements** | No. | Draft |
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| Version | Revision Date | Description of Change | Author |
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**Acronyms:**

AAA – Area Agency on Aging
ICOA – Idaho Commission on Aging
OAA – Older Americans Act
SUA – State Unit on Aging

**Purpose:**

This policy establishes the standards, procedures, and oversight requirements for Area Agencies on Aging (AAAs) entering contracts or commercial relationships ("agreements") as required by the Older Americans Act (OAA), Section 212, and 45 CFR 1321.9(c)(2)(xiv). With external entities to generate additional revenue or create a return to investment.

**Scope:**

This policy applies to the Idaho Area Agencies on Aging as the entities designated to plan, develop, and implement OAA programs.

**Policy Statement:**

The Idaho Commission on Aging, Idaho's designated State Unit on Aging (SUA), encourages AAAs to establish comprehensive and coordinated systems for home and community-based services beyond what OAA funding can support. This policy is to ensure that all such relationships align with the goals and intent of the OAA, protect OAA clients and services, maintain fiscal integrity, and support appropriate expansion of aging network partnerships.

**Definitions:**

- **Contract or Commercial Relationship** - A contract or commercial relationship includes any agreement, arrangement, business transaction, or any other term that might be used to describe the activity (formal or informal) between an AAA and another entity involving payment, reimbursement, exchange of value, or provision of services. These types of services are known as Agreements.

- **Categorical Approval** - A streamlined mechanism that pre-authorizes certain classes of agreements, so AAAs do not have to seek individual approval for each arrangement. This approach is designed to reduce administrative burden while ensuring compliance and accountability.
- **OAA Funding** - Federal funds awarded to states to deliver a wide range of health, nutrition, and social services for older adults aged 60 and older under the OAA.
- **Non-OAA Funding** - Refers to the support for older adult services provided by sources outside the federal OAA and the SUA, such as local hospitals, health plans, other governmental organizations including state agencies, or community organizations.

**Procedures:**

1. **Prior Approval Requirement**

AAA must obtain written prior approval from ICOA to enter into contract or agreements covered by section 212 of the OAA:

- With any entity (both for-profit and non-profit);
- Regardless of whether OAA funding is or is not used;
- Involves reimbursement or other financial considerations, with the expectation that the agreement will result in a return on the investment and reimbursement of initial costs; and
- For the AAA to provide goods or services included under the OAA to individuals that are not receiving those services under the Act.

2. **Reimbursement of OAA Costs**

- In exchange for reimbursement or other financial consideration, with the expectation that the agreement will result in a return on the investment and reimbursement of initial costs; and
- Regardless of whether OAA funding is or is not used.

All section 212 agreements must incorporate a guarantee that any OAA costs used in the development and implementation of the contract 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.

**Categorical Approvals:**

Through this policy, the SUA grants categorical pre-approval of the following type of agreements, with the AAA submission of the Section 212 Prior Approval Form and all required information:

- Agreements with other AAAs or AAA associations
- Agreements with US Department of Health and Human Services
- Agreements with State of Idaho Agencies, Departments, and Commissions
- Agreements with local units of government

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- Donations or funding from Health Provider organizations including insurance and hospitals to support OAA eligible clients not currently receiving services or to provide additional/enhanced services

AAAs that are currently under an ICOA corrective action are not eligible for the categorical approval of any agreements, including those listed above. These AAAs must instead submit individual requests for each prospective agreement.

**Submission Process:**

The AAA must request approval for any new potential agreements before finalizing or entering into a contract. The AAA can request approval when necessary and allow the ICOA 30 days to review the submitted materials. The request for approval is submitted on the ICOA Section 212 Prior Approval Form.

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) with the Section 212 Prior Approval Form.

For agreements involving multiple AAAs, only one entity is required to submit the Section 212 Prior Approval Form for prior approval on behalf of the group. The anticipated contractual expectations of each AAA must be clear in the information submitted.

AAAs must also incorporate standard language related to conflicts of interest. Any agreement that requires data sharing must be explicitly defined and comply with ICOA data use policies.

**Assurances:**

The AAA must provide assurances of compliance with certain requirements under the OAA, which are listed in Section 2 of the Section 212 Prior Approval Form.

**Notice of Changes to the Approved Agreement:**

For those agreements that have gone through the approval process with the ICOA, if one of the following occurs, the AAA must notify the ICOA, and re-submit the revised full prior approval documentation:

- A change in the scope of work,
- Early termination of the agreement, and/or
- A 10% change in the budget to the agreement(s).

**Periodic Review:**

Ongoing Agreements must be resubmitted every two years.

- This Form must be completed in full for all agreements.

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While the ICOA will have the information available through the initial Section 212 Prior Approval Form submissions and the aggregate agreement list, it is the responsibility of the AAA to track the 2-year period from the date of execution of their agreements.

**References:**

45 CFR 1321.9(c)(2)(xiv)

45 CFR Parts 1321, 1322, 1323, and 1324

Administration on Aging Informational Bulletin November 2024

Older Americans Act (OAA)

**Examples:**

These examples are taken from the Administration on Aging's November 2024 informational bulletin, "Older Americans Act: Understanding Section 212."

***Determining which Agreements Require Prior Approval***

Section 212 of the OAA permits AAAs to enter into agreements "to provide services to individuals or entities not otherwise receiving services under this Act," subject to a number of conditions. One of those conditions is the requirement that the AAA receive prior approval from the SUA before entering into the agreement. Section 212 applies equally to contracts and commercial relationships executed with and without OAA resources.

***Understanding What it Means to Provide "services to individuals or entities not otherwise receiving services under this Act."***

AAAs serve many individuals under the OAA. However, the OAA is not intended to fund all services to meet all the needs of older individuals and family caregivers. Through section 212, the OAA encourages AAAs to expand their services beyond the needs that OAA funding can meet, as part of their responsibility to facilitate the provision of services in their planning and service area.

SUAs are ultimately responsible for determining whether a contract or commercial relationship is an agreement that requires prior approval under section 212. However, below are a few guiding questions to help SUAs and AAAs better understand when an agreement is "to provide services to individuals or entities not otherwise receiving services" under the OAA. Section 212 only requires prior approval for those kinds of agreements.

***Questions 1: What is the funding source?***

Non-OAA Funding

- An agreement is subject to prior approval under section 212 if an AAA is receiving a non-OAA source of funding to provide or facilitate the provision of services.
    - Example: An AAA seeks to provide home-delivered meals through a contact with funding from a local hospital system or health plan.

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- Example: An AAA seeks to provide direct services under private pay arrangements
    - In both of these examples, the AAA is seeking to provide direct services in return for reimbursement from non-OAA funding. Therefore, the agreements require prior approval.

OAA Funding

- An agreement is not subject to prior approval under section 212 if an AAA is using OAA funding to pay another entity (i.e., service provider) to provide OAA services to OAA clients, in accordance with its area plan.
    - Example: An AAA provides transportation services with OAA and other matching funding to its clients in its planning and service area by contracting with a transportation service provider.
    - Example: An AAA is a direct service provider of home delivered meals using OAA funding. The AAA establishes agreements with service providers to help support its home delivered meals program. The SUA approves this arrangement as part of the area plan process.
        - In this example, the AAA sought and received approval from the SUA to provide direct services using OAA funding. Any contracts necessary to support that program are not subject to prior approval under section 212.
            - In both of these examples, the AAA's activities are already approved under the area plan. These are not section 212 agreements.
- An agreement is not subject to prior approval under section 212 if an AAA is using OAA funding to pay an entity to meet the administrative needs necessary to enable the AAA to fulfill its obligations under the OAA.
    - Example: The AAA has contracts for utility, janitorial, and other services for the AAA's primary office building.
        - These agreements are required for an AAA to fulfill its responsibilities under the area plan. They are not section 212 agreements and do not require prior approval.

***Question 2: Who are the clients that will be serviced through the agreement? How is the AAA determining who is eligible for these services?***

Clients are identified by another entity

- If the AAA is arranging for services to be provided to a group of clients identified by another entity, the agreement is subject to prior approval under section 212. This is true even if the clients would be eligible for the AAA's Title III OAA services under the act.
    - Example: An AAA makes home delivered meals available to older adults through Title III funding. They have enough capacity to make additional home delivered meals available to participants in a Medicare Advantage plan who need time-limited

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assistance. The plan seeks to contract with the AAA to provide home delivered meals for clients identified by the plan.
    - In this example, the AAA must receive prior approval before entering the contract.
- If the AAA is arranging to provide specific services to subset of existing OAA clients, but a third-party entity establishes the criteria for determining who among the clients will receive services, the agreement is subject to prior approval under section 212.
    - Example: The AAA provides caregiver support services to eligible individuals under the Act. Some clients who receive home delivered meals under the Act are seeking caregiver support. Several of these clients are members of a health plan. The health plan arranges to pay the AAA to provide caregiver support to those clients.
        - In this example, the AAA must receive prior approval before entering the contract. Even though the same clients could have received the same services through the use of OAA funding, in this example the clients "jump" to the front of the line and receive services immediately, regardless of any potential waitlist, because the health plan is paying for the service.

***Question 3: What are the services being provided?***

Non-OAA Funded Services

- If the services are only available to private paid clients or entities, the agreement is subject to prior approval under section 212.
    - Example: An AAA seeks to expand its congregate meals program and make medically tailored meals available to private paid clients with diabetes, cardiovascular conditions, and other health needs (or entities on their behalf).
        - In this example, the private pay program requires prior approval under section 212, because these medically tailored meals would not otherwise be available as part of the congregate meals program due to funding constraints, and individuals would not otherwise be able to receive these services. However, the AAA would seek approval for the whole private pay program, and not for each individual arrangement.
- If the AAA is providing (or facilitating the provision of) allowable OAA services to individuals who do not meet the eligibility requirements under the Act, the agreement is subject to prior approval under section 212.
    - Example: An AAA provides care coordination to eligible adults age 60 and older and family caregivers use OAA funding, consistent with its approved area plan. The AAA wants to provide this service for a fee to individuals seeking services who do not meet OAA eligibility requirements (i.e., individuals under age 60).
        - In this example, the AAA would seek prior approval under section 212 for this private pay program.

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OAA Funded Services

- If the AAA is providing (or facilitating the provision of) allowable OAA services and making them available through OAA funds to individuals that meet the eligibility requirements under the Act, the agreement is not subject to prior approval under section 212.
    - Example: An AAA provides physical activity classes to adults age 60 and older using OAA funding, consistent with its approved area plan.
        - In this example, section 212 does not require prior approval for any arrangement to provide new or different physical activity classes with the same attendee criteria; other SUA policies and procedures regarding OAA-funded activities would apply.

| | Section 212 Requirements | Area Plan Process |
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| **Prior Approval** | If AAAs want to enter into section 212 agreements, they must receive prior approval. Through section 212, AAA may support a single activity or a category of activities through contracts with other entities.<br><br>OAA funding may or may not be involved in these agreements. | AAAs must receive prior approval through the area plan to use OAA funding to support a category of activities through contracts with service providers. |
| **Providing Direct Services** | After receiving prior approval for section 212 agreements, AAAs may directly provide services. | For AAAs to directly provide certain Title III services using OAA funding, prior approval is required from the SUA, consistent with sections 307(a)(8)(A) of the OAA and 45 CFR 1321.65(b)(7). |
| **Frequency of Approval** | Prior approval process should be available at any time. | Occurs every 2-4 years, as determined by the SUA, with annual updates and adjustments as needed. |
| **Public Input** | Does not require public input or advisory council review. | Requires public input and advisory council review. |
| **Disclosure of Specific Information** | Prior to approval, requires disclosure of certain minimum information, but **not necessarily the identity of an entity**. | After approval of the area plan, requires the **annual** disclosure of the **identity of all entities** with which AAA has contracts or commercial relationships to provide services to older adults. This disclosure requirement applies to section 212 agreements as well. |

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| **Minimum Information Required for Approval** | **Disclosure of specific minimum information** is required before an agreement can be established:<br>• Name of type of entity or entities with which AAA intends to contract<br>• Nature of the agreement(s) (including specific services or types of services to be provided)<br>• Estimate of the proposed costs to be incurred<br>This information would need to be incorporated into the area plan process in order to use that process to approve of section 212 agreements. | Typically, SUAs approve **general activities** in the area plan, rather than approving of specific agreements to facilitate the provision of Title III services.<br><br>Disclosure of specific information about agreements to conduct area plan activities generally occurs **after** an agreement has been established. |

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