

Application for Approval of Section 212 Agreements

Contact Information:

Area Agency on Aging:

Name: _____

Address: _____

AAA Contact for Section 212 Activities:

Name: _____ Email: _____ Phone number: _____

Information Related to Prospective Agreement(s):

Are you seeking approval for: a single agreement or a category of agreements (including private pay)?

Name or type of entity or entities: _____

(If a non-disclosure agreement prevents you from disclosing the name of the entity, please disclose the type of entity).

Specific services OR types of services to be provided:

Will multiple AAAs have contractual obligations under this agreement or these agreements?

NO YES

If YES, please identify the AAAs and describe the obligations of each:

Will Older Americans Act funds or resources (e.g., administrative overhead, data systems, staffing) be used in implementing the agreement(s): NO YES

If YES, estimated OAA costs incurred:

Estimate of total costs incurred:

Approval Criteria:

1. Pre-approved categories of agreements

- Is this proposed agreement/are these proposed agreements (check all that apply):
 - With a local, state, or federal governmental entity or entities?
 - With other AAAs or AAA associations?
 - With an entity or entities with which the AAA has a long-standing existing business relationship (of three years or more)?

If a AAA checked any of the items in #1, skip to #3 to review the assurances and provide a signature. No additional MBA review is required; these categories of agreements are considered approved upon submission of this form.*

*AAAs that have received an audit report with financial findings within the previous twelve months are not eligible for the categorical approval of agreements, including the types of agreements listed above. Instead, AAAs in such situations must complete this entire form for MBA review for each agreement for which they are seeking approval.

2. Risk Assessment

To assess for any potential risks associated with the proposed agreement(s), please check mark any of the potential risks below that are relevant to this application for prior approval. Please provide an attachment describing, for each potential risk that has been checked, either (a) why the AAA does not believe the criteria presents a risk in the case of the proposed agreement(s) or (b) how the AAA intends to mitigate any actual risk. MBA may request further discussion or documentation prior to making a final determination about the agreement(s).

Potential Risks:

- 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 had carryover of OAA funding exceeding MBA's policy and/or reallocation of funds within the last three fiscal years;
- There has been turnover in key AAA leadership (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 monitored the AAA and made findings;
- The AAA is involved in contracts to provide multiple services across multiple jurisdictions/state lines;
- 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 proposed agreements are with an entity that (check all that apply):
 - 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 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 non-compliance with state and/or local law;
- Has recently (within the last five years) lost its status as a Medicaid provider due to non-compliance with Medicaid law or regulation.

If you check-marked any of the items in #2, please complete the rest of this form and submit it to MBA. MBA may contact you to discuss or request additional information on this application prior to issuing a decision.

3. Assurances

By signing below and submitting this form, the AAA attests to the truth of the following assurances:

- a. All conflict of interest requirements under 45 CFR 1321.67 have been met.
 1. Individual conflicts of interest:
 - i. The AAA has performed a screening to identify any actual or perceived conflicts of interest between AAA staff, governing board and advisory council members, and/or awardees who have responsibilities related to this agreement;²³
 - ii. The AAA has performed a screen to identify any actual or perceived conflicts of interest between the immediate family members of the AAA staff, governing board and advisory council members, and/or awardees who have responsibilities related to this agreement;²⁴
 - iii. The AAA has either found that no conflicts of interest exist or has mitigated any actual or perceived conflicts of interest; and
 - iv. The AAA's officers, employees, agents, and their immediate family members have not received any gratuities, favors, or anything of monetary value related to this agreement except where allowed by MBA and/or AAA's policies and procedures in situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value.²⁵
 2. Organizational conflicts of interest:
 - i. The AAA has performed a screening to identify any actual or perceived conflicts of interest between the AAA's functions to advocate and carry out the objectives of the OAA and this agreement; and
 - ii. The AAA has either found that no conflicts of interest exist or has mitigated any actual or perceived conflicts of interest.

²³ Older Americans Act section 307(a)(7)(B); 42 CFR § 1321.47(a); 42 CFR § 1324.67(a)(2); 42 CFR § 1321.7(b)(xiv)(B)(1)(i).

²⁴ Older Americans Act section 307(a)(7); 42 CFR §1321.47(a)(6); 42 CFR § 1321.67(a)(6).

²⁵ 42 CFR § 1321.47(a)(8); 42 CFR § 1321.67(a)(10).

- b. All required assurances and conflict of interest policies required by MBA's policies and procedures will be memorialized in writing as a component of finalizing the proposed contract(s) or commercial relationship(s).
- c. Section 212(a) assurances.
 - 1. If funds provided under the OAA are initially used to pay part or all of a cost incurred by the AAA in developing and carrying out an agreement, the agreement will guarantee that the cost is reimbursed to the AAA;
 - 2. If an agreement provides for the provision of one or more services, of the type provided under the OAA by or on behalf of the AAA, to an individual or entity seeking to receive such services:
 - i. The individuals and entities will only be required to purchase such services at their fair market rate;
 - ii. All costs incurred by the AAA in providing such services (and not otherwise reimbursed), are reimbursed to the AAA;
 - iii. The AAA will report the rates for providing such services under the agreement in accordance with sections 212(b) and 212(c) of the OAA, and the rates will be consistent with the prevailing market rate for provision of such services in the relevant geographic area as determined by MBA or AAA (as applicable); and
 - iv. Any amount of payment to the AAA under the agreement that exceeds reimbursement of the AAA's costs will be used to provide, or support the provision of, OAA services.
- d. Section 212(b) assurances. The prospective contract(s) or commercial relationship(s) for which the AAA is seeking approval will not:
 - 1. Be made without the prior approval of MBA, after timely submission of all relevant documents related to the agreement including information on all costs incurred;²⁶
 - 2. Directly or indirectly provide for, or have the effect of, paying, reimbursing, subsidizing, or otherwise compensating an individual or entity in an amount that exceeds the fair market value of the services subject to such agreement;
 - 3. Result in the displacement of services otherwise available to an older individual with greatest social need, an older individual with greatest economic need, or an older individual who is at risk for institutional placement; or
 - 4. In any other way compromise, undermine, or be inconsistent with the objective of servicing the needs of older individuals, as determined by the Assistant Secretary for Aging, U.S. Department of Health and Human Services.
- e. Section 306(a) assurances. The AAA will:
 - 1. Maintain the integrity and public purpose of services provided, and service providers, under the OAA in all contractual and commercial relationships;
 - 2. Disclose the identity of each nongovernmental entity with which

- they have a contract or commercial relationship relating to providing any service to older individuals and the nature of such contract or such relationship;
3. Demonstrate that a loss or diminution in the quantity or quality of the services provided, or to be provided, under the OAA by such agency has not resulted and will not result from such contract or such relationship;

²⁶ Submission of this form and any subsequent documentation requested by MBA constitutes satisfaction of the obligation to submit all relevant documents related to the agreement, including information on all costs estimated to be incurred.

4. Demonstrate that the quantity or quality of the services to be provided under the OAA by such agency will be enhanced as a result of such contract or such relationship;
 5. If requested, disclose all sources and expenditures of funds such agency receives or expends to provide services to older individuals; and
 6. Avoid giving preference in receiving services under this title to particular older individuals as a result of a contract or commercial relationship that is not carried out to implement this title; and use funds provided under this title to provide benefits and services to older individuals, giving priority to older individuals identified in section 306(a)(4)(A)(i), and in compliance with these assurances and the limitations specified in section 212.
- f. The AAA will annually disclose the information required by section 306(a)(13) to MBA, including:
1. The name and type of entity of any parties to contracts or commercial relationships with the AAA; and
 2. The services the AAA provides as a party to those contracts or commercial relationships.
- g. The AAA attests that it will comply with SUA data use policies, including maintaining confidentiality and compliance with the Health Insurance Portability and Accountability Act (HIPAA) and other state and federal laws related to privacy and confidentiality.

4. Signatures

Submitting AAA Authorized Organizational Representative Name, Title, Date:

Any AAAs included in the agreement(s) described in this form: