

CHAPTER 05 – AGING: GENERAL PROVISIONS

SUBCHAPTER 05A - INTRODUCTION

SECTION .0100 – GENERAL PROVISIONS

10A NCAC 05A .0101 DEFINITIONS

In addition to the definitions found in 45 C.F.R. 1321 (Grants for State and Community Programs on Aging), the following terms shall have the meanings specified, unless the context clearly requires otherwise:

- (1) "Area Agency on Aging (AAA)" means the agency designated by the Division of Aging to be responsible for the aging program described in the division "Manual of Policies and Procedures" within a planning and service area.
- (2) "Area Agency Advisory Council" is the council organized to advise the area agency on development and administration of its area plan, conduct of its public hearings and to otherwise represent the interests of older persons.
- (3) "Area Plan" is the official area planning document supported by Title III resources which is submitted every three years by a designated area agency on aging to the Division of Aging for approval. The area plan may be updated annually, or as is required by the Division of Aging. The area plan sets forth measurable objectives, identifies the planning, coordination, administration, social services, evaluation and other related activities to be undertaken for the project year.
- (4) "Coordination" is the formal or informal process through which the Division of Aging and Area Agencies on Aging bring together the planning and services resources (public and private) of a given geographic area for the purpose of initiating, expanding or strengthening services for older persons. This purpose is accomplished through cooperative efforts in support of common objectives, and may utilize funds, manpower, services and other elements of existing programs and organizations related to aging operations.
- (5) "Donated Foods or Cash" is food or cash made available by the United States Department of Agriculture (USDA) through the Food Distribution Program for use by nutrition services.
- (6) "Eligible Individuals" are persons who are 60 years of age or older and their spouses. Preference must be given to older persons with the greatest economic or social need in the delivery of services under the State and area plans.
- (7) "Minority Individuals" are persons who identify themselves as American Indian, Negro, Oriental, Spanish language speaking, and members of any additional limited-English-speaking groups designated as minority within the State by the Division of Aging.
- (8) "Nutrition Services" are those services, whether provided by a public or private non-profit agency or organization, which provide meals and other nutrition services, including nutrition education and outreach to older persons. Such services may be provided in:
 - (a) a congregate setting in which a range of social and supporting services are available; or
 - (b) in the home of an eligible older person if that individual is homebound by reason of illness, incapacitating disability or is otherwise isolated.
- (9) "Resource Development" means the development of new and existing resources for the purpose of creating new or expanding existing programs and services for older persons. This process includes those activities which result in the utilization of previously untapped resources of public, private and other agencies for older persons.
- (10) "Single Organizational Unit" is the division, within the Department of Human Resources, which carries out the functions and responsibilities of the State agency.
- (11) "State Agency" is the Department of Human Resources, which has legal responsibility for conduct of the Older Americans Act Program in North Carolina.
- (12) "Target Groups" are eligible individuals identified by the Division of Aging or the Administration on Aging to be in greatest economic or social need of services.
- (13) "Community Focal Point" is a facility which is so designated by an area agency for the purpose of facilitating ready access to services provided under an area plan and to encourage the maximum co-location and coordination of services for older persons.
- (14) "Program Development" is a social service that includes those activities directly related to either the establishment of a new service(s); or the improvement in expansion or integration of an existing service.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. September 1, 1978;
Amended Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 – GOVERNOR'S ADVISORY COUNCIL ON AGING

10A NCAC 05A .0201 EXECUTIVE COMMITTEE

There shall be an executive committee of the advisory council to the Division of Aging. The executive committee will be composed of the chairman and the vice-chairman and secretary of the council and the chairman of each standing committee. The executive committee may represent the council on matters assigned to it by the council.

History Note: Authority G.S. 143B-10; 143B-138;
Eff. September 1, 1978;
Amended Eff. April 1, 1990; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05A .0202 ORIENTATION AND TRAINING

There shall be a program of orientation and training for advisory council members. Orientation shall include an introduction to the Older Americans Act, state program initiatives, and the scope and purpose of the Division of Aging and the Governor's Advisory Council. This orientation shall occur within 60 days of appointment.

History Note: Authority G.S. 143B-10; 143B-138; 143B-180; 143B-181;
Eff. September 1, 1978;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05B - ADOPTION BY REFERENCE

SECTION .0100 - OLDER AMERICANS PROGRAMS REGULATIONS

10A NCAC 05B .0101 TITLE

10A NCAC 05B .0102 COPIES

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14;
Eff. September 1, 1978;
Amended Eff. October 1, 1988; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05B .0103 APPLICABLE DOL REGULATIONS

History Note: Authority G.S. 143B-10; 143B-138;
Eff. October 1, 1980;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

SECTION .0200 - ADMINISTRATION OF GRANTS

10A NCAC 05B .0201 TITLE

The following regulations are adopted by reference pursuant to G.S. 150B-14(c):

- (1) 45 C.F.R., Subtitle A--Department of Health, Education and Welfare, General Administration; Part 74 - Administration of Grants;

- (2) Part 80 - Nondiscrimination under programs receiving federal assistance through the Department of Health, Education and Welfare: Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) Part 81 - Practice and Procedures for Hearings under Part 80;
- (4) Part 84 Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial participation;
- (5) Part 90 - Nondiscrimination on the basis of age; and
- (6) 5 C.F.R., Part 900, Subpart F - standards for a Merit System of Personnel Administration.

History Note: *Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14;*
Eff. September 1, 1978;
Amended Eff. October 1, 1988; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05B .0202 COPIES

History Note: *Authority G.S. 143B-10; 143B-138;*
Eff. September 1, 1978;
Amended Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 05C – ADMINISTRATIVE PROVISIONS

SECTION .0100 - NON-PLAN AREAS

10A NCAC 05C .0101 STAFFING

10A NCAC 05C .0102 APPLICATION SUBMISSION: REVIEW AND APPROVAL

History Note: *Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;*
Eff. September 1, 1978;
Amended Eff. May 1, 1990;
Pursuant to G.S. 150B-21.3A, rules Expired June 1, 2015.

SECTION .0200 – DIVISION OF AGING

10A NCAC 05C .0201 PUBLIC HEARINGS

History Note: *Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321;*
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule Expired June 1, 2015.

10A NCAC 05C .0202 PUBLIC INFORMATION

History Note: *Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;*
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05C .0203 DESIGNATION OF PLANNING AND SERVICE AREAS

(a) Federal regulations mandate that the Division of Aging shall divide the entire State into distinct planning and service areas (PSAs) in accordance with prescribed regulations. In North Carolina, the Governor has designated, through Executive Order, 18 multi-county planning regions to coordinate and plan activities throughout North Carolina. The Division of Aging is utilizing areas with coterminous boundaries for North Carolina's aging planning and service areas. Thus, planning and service areas coincide with other multi-county planning efforts.

(b) Other units of general purpose local governments, region metropolitan area, Indian reservations, may apply to be designated as a planning and service area. Requests for PSA designation shall be received at least twelve months prior to the proposed effective date the organization wishes to begin serving as an area agency on aging.

*History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05C .0204 DESIGNATION OF AGENCIES ON AGING

(a) The Division of Aging, in compliance with federal regulations, shall designate an area agency on aging in each planning and service area in which it decides to allocate funds under Title III of the Older Americans Act. In carrying out this process, the Division shall adhere to federal requirements for considering the types of organizations eligible to be an AAA and appeal procedures available to all eligible applicants.

(b) Currently, the Division of Aging has designated 18 area agencies, covering all PSAs in North Carolina. Such designation shall remain in effect unless Division assessments indicate that a designated organization is not in compliance with the requirements of the "Manual of Policies and Procedures" or does not submit an acceptable area plan or plan update.

*History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. October 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05C .0205 ALLOCATION OF FUNDS

(a) The Division of Aging shall allocate all appropriate funds received under the Older Americans Act, from the State, other federal agencies and any other source in accordance with criteria established by the Division. The criteria will include such factors as needs of the state's elderly, socioeconomic factors and other conditions which might impact on North Carolina's older population.

(b) The formula for allocation of federal funds shall be revised periodically. Information on the current formula may be obtained from: The Division of Aging, 693 Palmer Drive, 2101 Mail Service Center, Raleigh, North Carolina 27699-2101.

*History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05C .0206 APPLICATIONS FOR SUPPORT

10A NCAC 05C .0207 DIVISION OF AGING REVIEW OF APPLICATIONS

*History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. October 1, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.*

10A NCAC 05C .0208 ADMINISTRATION

The Division of Aging requires all grantees and contractors to establish acceptable methods for administering Older Americans Act and related programs. The Division shall periodically monitor, assess and evaluate the administrative systems being utilized by grantees in order to assure that they meet minimal standards of operation.

*History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05C .0209 STANDARDS OF PERSONNEL ADMINISTRATION

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321; 5 C.F.R., Part 900; Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05C .0210 AFFIRMATIVE ACTION

(a) The Division of Aging has developed (and revises as necessary) an affirmative action plan for equal employment opportunity. The affirmative action plan addresses minorities, women, physical handicapped and older persons in quantitative and qualitative terms.

(b) The Division of Aging requires that all Older Americans Act grantees have acceptable affirmative action plans consistent with criteria established by the Division, as a condition for approval of grant awards.

(c) Any area agency which is a public agency shall have an affirmative action program which complies with the requirements of Section 900.607 of Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards for a Merit System of Personnel Administration.

(d) Older Americans Act project grantees shall, as a minimum, obtain a statement of assurance from subgrantees and subcontractors to providing equal opportunities in carrying out the activities funded under the Older Americans Act.

- (1) The statement of assurance shall be on file with the award document.
- (2) Project grantees must monitor subgrantees' and subcontractors' compliance with the equal employment opportunity requirements.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321; 5 C.F.R., Part 900, Subpart F; Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05C .0211 PUBLICATIONS

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Amended Eff. April 1, 1990; Pursuant to G.S. 150B-21.3A, rule Expired June 1, 2015.

10A NCAC 05C .0212 CONFIDENTIALITY AND DISCLOSURE

10A NCAC 05C .0213 CODE OF CONDUCT

10A NCAC 05C .0214 504 HANDICAPPED PROVISIONS

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R. Part 84; 45 C.F.R. 1321.9; Eff. October 1, 1980; Amended Eff. April 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05C .0215 DUTIES REGARDING DISCRIMINATION

10A NCAC 05C .0216 EMPLOYMENT DISCRIMINATION: PROCEDURES

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 45 C.F.R., Parts 80, 84, 91 and 1321; Eff. October 1, 1988; Amended Eff. April 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

SECTION .0300 – AREA AGENCIES ON AGING

10A NCAC 05C .0301 AREA PLAN CONTENT

The Division shall periodically set forth the format, criteria for approval, and instructions for the development and submission of the area plan and for development and submission of annual updates to the area plan.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05C .0303 DIRECT SERVICE DELIVERY BY AN AAA

An area agency shall not deliver services directly unless it receives approval from the Division of Aging. An area agency proposing to deliver services for the aging directly shall notify the Division of Aging of its desire to do so by letter before submission of the area plan. The Division shall notify the area agency of its approval or disapproval by letter. The area plan subsequently submitted shall reflect the Division of Aging decision, including a description of how the area agency will deliver services directly if the division decides favorably on the request. If Division of Aging approval for direct delivery of services is granted, the AAA shall maintain such approval on file.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05C .0304 PUBLIC HEARINGS ON AAA PLANS

(a) An AAA shall follow the area plan public hearing procedures required by the Division and the Older Americans Act federal regulations.

(b) In addition, the AAA shall apply the following standards in the conduct of its public hearing.

- (1) Public notice shall be given at least two weeks before the hearing.
- (2) The public hearing shall be scheduled to allow sufficient time for review of the area plan by the advisory council prior to the date of the public hearing.
- (3) Notice of the public hearing shall be publicized through widely circulated newspapers or other forms of public media.
- (4) Notice of the public hearing shall be published in a language other than English, when deemed appropriate by the AAA or the Division of Aging.
- (5) Notice of the public hearing shall be provided to appropriate services providers, nutrition providers, organizations of older persons, and other public and private agencies in the planning and service area.
- (6) The public hearing shall be scheduled at a convenient time and location to ensure maximum attendance by interested parties, including representatives of advisory councils to the area agency and to the local nutrition projects and older persons.
- (7) A complete copy of the area plan shall be available for review by the general public at the office of the area agency prior to and after the public hearing.
- (8) Summaries of major components of the area plan, including a program description, objectives, action plans, and resource allocation plans, shall be available prior to and during the public hearing.
- (9) The formula or other methods used to distribute aging funds, within Division of Aging guidelines, among service providers shall be available at the public hearing.
- (10) Procedures for review and analysis of comments received at the public hearing shall be established and described in writing.
- (11) Summaries of the comments made at the public hearing shall be available at the office of the area agency after the public hearing.
- (12) All records of the public hearing shall be on file at the area agency as a part of the official area plan file.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Amended Eff. May 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05C .0305 AREA PLAN SUBMISSION: REVIEW AND APPROVAL

(a) The area plan, or annual updates, shall be submitted to the Division of Aging in accordance with the schedule and procedures established by the Division. In developing the area plan, the AAA shall allow sufficient time for the completion of the A-95 review process.

(b) The following schedule outlines the process for review and approval of area plans or annual updates:

- (1) The Division of Aging shall notify all AAAs at least 90 days before the area plan is due into the Division of Aging office. This notice shall include the transmittal of the required area plan format, the Division of Aging criteria for area plan approval and instructions for developing the area plan.
- (2) Area plans, whether for initial or continuation funding, are due into the Division of Aging 90 days prior to the beginning date of the planned funding period.
- (3) Division of Aging staff reviews, and requests for revisions in area plans when necessary, shall be completed 60 days before the beginning date of the planned funding period.
- (4) Final area plan revisions shall be submitted to the Division of Aging at least 40 days prior to the beginning date of the planned funding period.
- (5) A notification of grant award (NGA) shall be completed by the Division of Aging 15 to 20 days prior to the beginning date of the funding period.

(c) The Division of Aging shall assign a fiscal and program representative to serve as the contact within the Division for Area Agency on Aging communications and interrelationships. Any questions (or assistance needed) on the area plan format, criteria for approval, instructions, review comments or other aspects of area plan development and review should be directed to the AAA's designated program representative.

(d) If substantive questions concerning an area plan arise during the division's review process, the appropriate program representative shall refer the question to the section chief and to the deputy director or the Assistant Secretary for a policy decision.

(e) Division of Aging Actions on Area Plans. The Division of Aging shall provide notification in writing to the AAA of the final actions taken in either approving, approving with conditions, or disapproving on area plan (or plan amendments).

- (1) Approval
 - (A) The Division of Aging shall approve an area plan when the plan is in substantial conformity with the Older Americans Act, related Title III regulations, and division policies.
 - (B) The Assistant Secretary for aging shall provide the area agency with a formal notice of approval of the area plan and the amount of approved funds on a standard notification of grant award (NGA) form. The NGA will be signed by the Assistant Secretary.
- (2) Approval with Conditions
 - (A) The Division of Aging may approve an area plan with conditions when necessary.
 - (B) The conditions shall be in writing and shall be clearly noted on the notification of grant award form.
 - (C) All conditions placed on an approved area plan shall be consistent with the authority delegated to the Division of Aging.
 - (D) When an area plan is approved with conditions, it shall be incumbent upon the grantee to meet these conditions within the specified time frame. As the conditions are met by the grantee, the Division of Aging shall remove the conditions from the grant, and shall officially notify the grantee of the condition removal. Program representatives shall be responsible for periodically updating all NGA conditions.
- (3) Disapproval
 - (A) Any area plan which is not in substantial conformity with the Older Americans Act, the federal regulations and the Division of Aging policies shall be disapproved.
 - (B) When the Division of Aging proposes to disapprove an area plan, it shall notify the area agency in writing of its intention and set forth the reasons for the proposed disapproval. The Division of Aging shall:
 - (i) issue a letter of intent to disapprove the area plan to the area agency indicating the reasons therefor within 30 days of receipt of the area plan;
 - (ii) inform the area agency of the opportunity for a hearing on the area plan under the provisions of Section 206.8 of the Division's "Manual of Policies and Procedures" and shall carry out those procedures.
 - (C) The Division of Aging may authorize an established area agency to operate under the previous year's approved area plan until a final determination is made relative to the current area plan.

- (D) If, after providing the area agency proper opportunity for a hearing, the Division of Aging still finds the area plan unacceptable, the Division shall disapprove the plan, using the procedures prescribed by the federal regulations and reprinted in Section 400 of the Division's "Manual of Policies and Procedures."
- (4) Notification of Grant Awards
 - (A) The fiscal section shall prepare the notification of grant award, with any conditions to be attached being prepared by the appropriate program representatives.
 - (B) All special section conditions to be attached to the NGA shall be cleared with the Chief of the Plans and Policy Section.
 - (C) All fiscal conditions to be attached to the NGA shall be cleared with the Chief of the Fiscal Section.
 - (D) All program conditions to be attached to the NGA shall be cleared with the Chief of the Program Section.
 - (E) The NGA shall be signed by the Assistant Secretary for aging.
 - (F) NGAs shall be forwarded to the AAA for proper execution and agreement on the terms and conditions of the area plan approval (by signature of NGA). The NGA shall be signed in ink by the director of the AAA, and the legal executive officer of the AAA when the two are different.
 - (i) The Division of Aging shall not require prior approval of contracts proposed for funding under an area plan when the contract will be executed with non-profit public or private organization.
 - (ii) The Division of Aging shall require prior approval of contracts proposed for funding under an area plan when the contract will be executed with a profit making organization. The Division may approve such contracts only if the area agency demonstrates that the profit making organizations would provide services in a manner clearly superior to other available public or private non-profit providers. If potential problems with such proposed contracts are identified, the Division of Aging will provide the AAA with a written explanation of the problems and necessary corrections.
 - (iii) The Division of Aging may request, as part of the area plan approval process, information from the area agency concerning its plans for making awards to minority organizations.
 - (iv) Once a contract has been executed by an area agency to carry out a service or an activity under an approved area plan, an implementation plan for the services to be provided under the contract shall be submitted to the Division within 30 days after the effective date of the contract.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Amended Eff. May 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05C .0306 STAFFING

- (a) An area agency shall employ an individual qualified by education and experience to administer the areawide program. The area administrator shall devote full-time solely to activities on aging.
- (b) No AAA shall be allowed to operate without an area administrator (even if an acting area administrator is appointed) for an extended period of time. If an AAA does operate without an area administrator for more than 90 days, the project shall be subject to suspension or termination.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321; Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0400 - ALLOCATIONS

10A NCAC 05C .0401 COUNTY ORGANIZATION ON AGING FUNDS

*History Note: Authority G.S. 143B-10; 143B-138;
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule Expired June 1, 2015.*

10A NCAC 05C .0402 PROJECT INCOME FROM STATE FUNDED PROGRAMS

*History Note: Authority G.S. 143B-10; 143B-138;
Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule Expired June 1, 2015.*

10A NCAC 05C .0403 RESPITE CARE

The respite care service funded with Social Services Block Grant funds and administered by the Division of Aging shall be operated in accordance with requirements contained in Chapter 738, Section 101 of the 1987 Session Laws of the North Carolina General Assembly.

*History Note: Authority G.S. 143B-153; Chapter 738, 1987 Session Laws;
Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05C .0404 INTRASTATE FUNDING FORMULA

- (a) The intrastate funding formula shall apply to funding allocated to Area Agencies on Aging under the Older Americans Act, 20 U.S.C. 1008a et seq and 45 C.F.R. 1321.37, which are adopted by reference pursuant to G.S. 150B-14(c), and through state appropriations for aging services, where use of the formula is specified.
- (b) The Director of the Division of Aging shall determine the portion of the award that shall be designated as base funding and an equal share of this funding shall be allocated to each Area Agency.
- (c) Of remaining federal and state funds, a proportional share for each Area Agency will be determined as follows:
 - (1) Fifty percent of the funds will be distributed to areas based on the area's proportion of the state's population 60 years of age and older.
 - (2) Thirty percent of the funds will be distributed to areas based on the area's proportion of the state's population 60 years of age and older who live at or below the federally defined poverty level.
 - (3) Ten percent of the funds will be distributed to areas based on the area's proportion of the state's minority population 60 years of age and older.
 - (4) Ten percent of the funds will be distributed to areas based on the area's proportion of the state's rural population 60 years of age and older as defined by the Bureau of the Census.

*History Note: Authority G.S. 143B-10(e); 143B-137; 20 U.S.C. 1008a et seq; 45 C.F.R. 1321.57;
Eff. July 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

SUBCHAPTER 05D - GRANTS ADMINISTRATION

SECTION .0100 - GRANT/CONTRACT IMPLEMENTATION

10A NCAC 05D .0101 GRANT AWARD NOTIFICATION

The division shall establish forms and instructions needed to ensure that all state and federal grant award notification and budget requirements are met.

*History Note: Authority G.S. 143B-10; 143B-138;
Eff. September 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05D .0102 CONTRACTS

The division shall carry out all contractual agreements in accordance with department and other state requirements.

History Note: Authority G.S. 143B-10; 143B-138;
Eff. September 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0103 BUDGET REVISIONS

(a) The following policies and procedures shall govern all proposed budget revisions of Older Americans Act programs and other grantees or contractors under the Division of Aging.
(b) Conditions Requiring Budget Revisions. During the operation of Older Americans Act or other assisted projects, various aspects of program operation shall require flexibility to adapt to changes. For example, fluctuations in the anticipated rate of expenditures may occur or additional funds may be received from various sources. These types of changes may require an approved budget revision. The requirements for approval of a budget revision depend on the title under which funds are provided and the type of grantee or contractor involved. The following conditions shall apply:

- (1) Title III
 - (A) Revisions in a contractor's individual service budget under an approved area plan shall be approved by the AAA. This approval is sufficient if the change does not modify the total budgeted amount of each specific service, i.e., the change only modifies categories within the service budget but not the total amount of the service budget. However, if the total amount of the service budget will be changed, the AAA shall submit a budget change request to the Division of Aging for its approval.
 - (B) If the AAA has been granted approval to provide direct service, a proposed change in the total budget for that service component shall require Division of Aging approval while a change that is only internal and does not affect the total may be approved by the AAA. In addition, such approval is subject to G.S. Chapter 159, North Carolina's Local Government Fiscal Control Act which requires that all budget revisions shall be approved by the AAA's board of directors. Auditors and Division of Aging monitors shall check board meeting minutes to verify compliance with this requirement.
 - (C) Any proposed change in the use of funds provided for planning and administration functions shall be approved by the Division of Aging. This provision applies to both internal or total budget changes.
- (2) Title V, and State Funds. Any proposed change in the use of Title V or state provided funds shall require Division of Aging approval. This provision applies to both internal and total budget changes.
- (c) Budget Revision Request Submission and Approval Procedures
 - (1) Submission. Budget revision requests shall be submitted to the Division on the prescribed form.
 - (2) Review. The Division of Aging shall review allowable budget revision requests and respond to the grantee submitting the request within 30 calendar days after receipt of the request. In reaching a decision on whether to approve a request, the request shall be reviewed by appropriate staff. During review of the request, additional information may be required from the project grantee.
 - (3) Approval
 - (A) If a budget revision request is approved which changes an award document program activities total, a revised award document shall be issued. The grantee must sign this new award document before the request is officially approved.
 - (B) If a budget revision request is approved which does not change an NGA program activity only a copy of the budget request form shall be returned to the grantee.
 - (C) If the request is not approved, the grantee shall be notified by letter.
 - (4) Timing. Budget revision requests shall be received by the Division of Aging at any time except during the last 60 days of the budget year. Funds to be affected by a budget revision shall not be expended according to the provisions of the request until it is approved.

History Note: Authority G.S. 143B-10; 143B-138;
Eff. September 1, 1978;
Amended Eff. May 1, 1990; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0104 PROGRAM AMENDMENTS

(a) The following policies and procedures apply to all OAA and other program grantees of the Division of Aging with regard to the need for and submission of program amendments or program changes to approved area plans or related project applications, which are covered under Section 204 of the Division's "Manual of Policies and Procedures."

(b) Program Amendments

(1) Conditions Requiring Program Amendments

- (A) Whenever a "substantive" change in the content or administration of an area plan is proposed, the area plan shall be amended according to the provisions of this Section.
- (B) A "substantive" change is one in which:
 - (i) a new or amended state or federal statute or regulation requires a new provision, or conflicts with any existing plan revision;
 - (ii) a U.S. Supreme Court decision changes the interpretation of a statute or regulation;
 - (iii) the area agency proposes to change the designation of the single organizational unit or component unit;
 - (iv) the area agency proposes to add, substantially modify, or delete any area plan objective(s); or
 - (v) the Division of Aging requires further annual amendments.

(2) Review and Approval of Program Amendments. An Area Agency proposing to make a program amendment shall follow the procedures outlined in Section 405.5 of Volume I of the Division's "Manual of Policies and Procedures," which reprints federal regulations.

(c) Program Changes

(1) Conditions Requiring "Program Changes." A "program change" occurs with any one of the following:

- (A) Transfer to a third party, by contract or other means, of the actual performance activities which are central to carrying out the basic purpose or purposes of the award and not merely incidental. It does not include purchases of supplies, materials or equipment, general or incidental support services, or activities whose cost is treated as an indirect cost;
- (B) A change in the project director or any other key people named in the award document or the desire to permit any such people to devote substantially less effort to the project than was indicated in the approved project application;
- (C) A change in recipient of award.

(2) Procedures for Submitting Proposed Program Changes. Grantees who wish to make "program changes" shall submit a request for approval of the proposed program change to the Division of Aging. The request shall be in the form of a letter from the grantee agency director specifying the following:

- (A) that the grantee desires Division approval for the program change described in the request letter;
- (B) the specific nature of the proposed change;
- (C) why the change is needed; and
- (D) any impact that the change will have on the project's operation or its budget.

(3) Division Review of Proposed Program Changes

- (A) The Division shall accept and review proposed program changes at any time during a project year. The Division shall normally notify the grantee within 30 calendar days from the receipt of the request regarding its approval or disapproval of the request. If a decision cannot be reached within 30 days, the Division shall notify the grantee as to the date by which it expects to reach a decision.
- (B) Division of Aging approval of a program change request shall be the form of a letter authorizing the grantee to initiate the change. No changes in program operation shall be made until the written approval is received by the grantee.

(C) Division of Aging Determination of Amendments or Changes

- (i) Grantees shall provide written notice of proposed revisions to the Division of Aging in order for the Division to determine whether a revision is in fact a program amendment or program change and subject to the provisions of this Section. Such notice shall be in the form of a letter briefly outlining the proposed revision.
- (ii) Within 15 calendar days after receipt of the grantee letter, the Division shall inform the grantee in writing as to whether it concurs that the proposed revision is a program amendment or a program change. If the Division finds that the proposed revision is not a program amendment or a program change, the grantee may proceed to implement the proposed revision. If the Division determines that the proposed

revision is a program amendment or a program change, the grantee shall go through the procedures outlined in this Section.

History Note: *Authority G.S. 143B-10; 143B-138;*
Eff. September 1, 1978;
Amended Eff. May 1, 1990; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - OBTAINING FUNDS

10A NCAC 05D .0201 REQUESTS FOR FUNDS

Federal funds under the Older Americans Act are awarded by the administration on aging to the state. The Division of Aging, the single unit on aging for the State of North Carolina, distributes all payments to grantees. The Division of Aging has established a system for disbursing Older Americans Act funds to grantees which is based upon requests from each grantee. Requests must be based on actual cash needs. The Division of Aging's request and payment system is described below:

- (1) Requests may be made on a reimbursement or an advance basis, except for USDA cash reimbursement which is made only as a monthly reimbursement. Normally, requests are made monthly. Advances may be made for only one month at a time.
- (2) To request funds, a grantee must complete a "Request for Payment of Federal Funds" form.
- (3) In completing the appropriate "request for payment" form, each grantee shall carefully evaluate its cash needs. Both its cash requirements and cash balance on hand should be considered in analyzing the amount of funds actually necessary, as opposed to requesting 12 equal payments during the year. If a request appears inconsistent with the need for funds, the Division of Aging may require an adjustment in the amount of the request.
- (4) Requests for payment shall be completed and sent to the Division of Aging by the tenth working day of each month. If a request is late in arriving at the Division of Aging, payment may be delayed until the following month unless the delay was due to circumstances beyond the control of the grantee.
- (5) The Division of Aging shall examine each grantee's performance and fiscal reports prior to payment of funds. If significant differences from the approved area plan are noted, payment will be delayed until the differences are resolved.
- (6) Funds disbursed to grantees by the Division of Aging shall be deposited and handled according to the accounting procedures and standards specified by the Division.

History Note: *Authority G.S. 143B-10; 143B-138; 143B-181.1(c);*
Eff. September 1, 1978;
Amended Eff. May 1, 1990; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0202 MATCHING FUNDS

- (a) When a grantee requests Older Americans Act funds, or other Division administered funds, the grantee shall have on deposit the non-federal cash amount required to match the federal or state funds being specifically requested at the time the request is received, less any matching funds or in-kind provided by the State. In-kind used by the grantee as match shall also be documented at the time the requested funds are received.
- (b) The matching requirements for state funded programs is at least 50 percent cash, with the remainder as eligible in-kind or cash or any combination thereof.

History Note: *Authority G.S. 143B-10; 143B-138; 143B-181.1(c);*
Eff. September 1, 1978;
Amended Eff. April 1, 1990; October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0300 - EXPENDING PROJECT FUNDS

10A NCAC 05D .0301 GENERAL POLICIES

The following general policies and procedures for expenditure of Older Americans Act funds will apply:

- (1) Approved notification of grant awards will specify the maximum amount of Older Americans Act assistance which a grantee is eligible to receive. No additional grant funds beyond the amount specified on the notification of grant award will be available to the grantee unless additional funds are available to the Division of Aging, a budget revision request is submitted to the division and subsequent notification of grant award is executed by the division and the grantee.
- (2) If at any time during the year the Division of Aging determines that Older Americans Act funds are being expended improperly, the division may require the grantee to cease incurring costs under the Older Americans Act. Ineligible or other improper expenditures must be reimbursed to the Division of Aging. Under such conditions, the division will notify the grantee regarding the action being taken, the reasons for the division's actions, and the conditions and time framework for corrective procedures to be made.
- (3) Funds shall be committed by a project only during the approved budget year, as specified on the approved notification of grant award. All funds shall be disbursed within 90 days after the end of the budget year. In addition, all grantees and contractors of grantees shall meet the Local Government Fiscal Control Act, G.S. Chapter 159.

History Note: Authority G.S. 143B-10; 143B-138;
Eff. September 1, 1978;
Amended Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0302 TRAVEL

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c);
Eff. September 1, 1978;
Amended Eff. October 1, 1980;
Pursuant to G.S. 150B-21.3A, rule Expired June 1, 2015.

10A NCAC 05D .0303 VOLUNTEER IN-KIND

Volunteer time provided by employees of a grantee or a contractor are not allowable as in-kind contribution toward the matching share of grant or contract.

History Note: Authority G.S. 143B-10; 143B-138;
Eff. November 14, 1980;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0400 - REPORTING

10A NCAC 05D .0401 REQUIRED REPORTS

The Division will develop and implement forms and instructions which grantees must utilize in reporting program and financial information.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c);
Eff. September 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0402 FREQUENCY OF REPORTS

The division will require all grantees to submit financial and programmatic reports in a timely manner. Schedules for grantee report submissions must provide the Division with ample time to compile and transmit all appropriate report data to the administration on aging or other interested parties.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c);
Eff. September 1, 1978;
Amended Eff. April 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0500 - MONITORING/ASSESSMENT/EVALUATION

10A NCAC 05D .0501 PURPOSE

The Division will carry out all required monitoring, assessment and evaluation activities in order to ensure grantee adherence to all applicable laws, regulations, and operating procedures.

History Note: Authority G.S. 143B-10; 143B-138;

Eff. September 1, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0502 SCHEDULE

The Division of Aging will assess grantee agency operations on an annual basis.

History Note: Authority G.S. 143B-10; 143B-138;

Eff. September 1, 1978;

Amended Eff. April 1, 1990;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0600 - GENERAL REQUIREMENTS

10A NCAC 05D .0601 AUDITS

(a) Division of Aging Audits

- (1) The Department of Health and Human Services (DHHS) shall generally conduct an audit of area agencies and grantees and contractors who are recipients of Titles III-B and III-C funds. Beginning in Fiscal Year 1980, DHHS shall conduct audits of Title IV-A, Title V, and state funds grantees.
- (2) DHHS shall establish a schedule for conducting its audits as early as possible after the start of each fiscal year and will notify grantees of proposed audit dates. Special instructions, where appropriate, will be issued at this time.
- (3) The DHHS audit shall comply with the federal and state standards as reprinted in the "Manual of Policies and Procedures", and will fulfill all requirements of grantees receiving Division of Aging assistance.
- (4) Because of time and financial constraints, DHHS may not be able to audit all of the Division of Aging grantees cited above. If it appears that DHHS is not able to audit a particular grantee, the grantee will be instructed to obtain an independent audit using a CPA firm or other approved audit organization.
- (5) A grantee who wishes to use an independent auditor (i.e., not use the DHHS audit) shall obtain prior approval from the Division of Aging.

(b) Audit Reports

- (1) Audits conducted by the DHHS shall result in an audit report, a copy of which shall be provided to the grantee in a timely manner, normally within 30 days after completion of the audit.
- (2) A copy of all independent audits shall be submitted to the Division of Aging within 30 days after the report is complete and provided to the grantee or contractor.
- (3) If any deficiencies or recommendations are included in audit reports, the grantee or contractor shall indicate how it proposes to take corrective action.
- (4) State Agency Actions
 - (A) The Division of Aging may subsequently monitor a grantee or contractor to verify that appropriate actions are being taken to fulfill audit recommendations.
 - (B) If audit findings of a grantee or contractor are deemed sufficiently serious, the Division of Aging may immediately begin suspension or termination procedures, as outlined in Section 1100 of the "Manual of Policies and Procedures."

History Note: Authority G.S. 143B-10; 143B-138;

Eff. September 1, 1978;

Amended Eff. May 1, 1990; October 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05D .0602 SUSPENSION/TERMINATION

(a) The Division may for reasonable cause suspend or terminate the use of Title III or other Division administered funds by a grantee. Reasonable cause shall be related to the lack of grantee compliance with the terms of the grant award, as well as related rules, regulations, policies and procedures.

(b) Any request for a hearing regarding suspension or termination of funds shall follow the hearing process required by federal regulations and state statute and reprinted in Section 200 of the Division's "Manual of Policies and Procedures".

History Note: Authority G.S. 143B-10; 143B-138; 150A-27-37; 45 C.F.R. 1321.51; Eff. September 1, 1978; Amended Eff. October 1, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05E - DIVISION HEARINGS**SECTION .0100 - GENERAL****10A NCAC 05E .0101 DIVISION HEARINGS IN GENERAL**

(a) The state Division of Aging has established a decision review process whereby certain persons aggrieved by an Area Agency on Aging final decision, who have exhausted local administrative remedies, who can demonstrate injury in fact, and whose petition contains the necessary facts to establish subject matter jurisdiction, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules and other recognized common law principles of judicial economy and restraint.

(b) Pursuant to federal statutes and regulations, the state Division of Aging has also established a decision review process whereby aggrieved Area Agencies on Aging, and eligible applicants denied designation as planning and service areas, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules.

(c) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by the state Division of Aging unless another specific statute or rule provides otherwise. Division of Aging hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at all stages of the hearing process.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0102 DEFINITIONS

Unless otherwise redefined by this Section, the definitions contained in G.S. 150B-2 are incorporated herein by reference pursuant to G.S. 150B-14(c). The following definitions shall apply:

- (1) "Agency" means an Area Agency on Aging as defined in the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.
- (2) "Division" means the North Carolina Division of Aging of the North Carolina Department of Human Resources.
- (3) "File or Filing" means personal delivery, delivery by certified mail, or delivery by licensed overnight express mail of a document or paper to the current acting Assistant Secretary of the North Carolina Division of Aging at 693 Palmer Drive, 2101 Mail Service Center, Raleigh, NC 27699-2101. A document or paper is deemed filed as of the date it is delivered to the Assistant Secretary, or when properly addressed, officially postmarked and accepted for delivery by the United States Postal Service or other licensed express mail service, whichever is earlier. Filings addressed to a person other than the Assistant Secretary, or which fail to be filed within the time periods established by the respective Area Agency, by these Rules, or by the hearing officer, or which otherwise fail to be filed in conformity with these Rules (i.e., no certificate of service) may be considered as improper filings and

denied, taken as an admission, or dismissed accordingly. Except for excusable clerical error, good cause and a showing of irreparable harm, an improper filing shall not extend the deadline for filing of documents. All filings shall be submitted on 8 1/2" by 11" paper.

(4) "Hearing" means an administrative proceeding, requested by written petition, whereby a person aggrieved is given an opportunity to be heard regarding his or her rights, duties or privileges. All hearings shall be electronically recorded by the hearing officer. Costs of certified transcripts or electronic reproductions shall be borne by the parties requesting same, and shall be paid prior to delivery of same to the parties. Costs shall be determined by the Chief DoA Fiscal Officer at the time of the request.

(5) "Hearing Officer" means a person designated to preside over a decision review hearing. In the absence of contrary designation, the Division attorney shall be the Hearing Officer for all such hearings.

(6) "Respondent" means an agency, or in case of discrimination, an agency or service provider, whom a petition has been filed against and who has been served with a copy of same.

(7) "Serve or Service" means personal delivery, delivery by first class or certified United States Postal Service mail or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service. For purposes of service on the Division, the Assistant Secretary of the Division shall be the designated agent.

(8) "Service Provider" means a contractor or subgrantee receiving federal funds to provide service under the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.

History Note: Authority G.S. 132-6; 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0103 COMMENCEMENT OF A DIVISION HEARING: PETITIONS

(a) In order to commence an administrative decision review hearing with the Division, a petition must be filed in accordance with these Rules. The petition must be in writing, and must be signed by the aggrieved person submitting the petition or by the person's designated representative. A petition must contain the name, address and phone number of the petitioner, as well as his representative if one is designated. If a representative is designated, notice of meeting dates, requests for information, hearings decisions, etc. will be sent to the representative rather than the aggrieved person, unless the petition otherwise requests. The party who files a petition shall simultaneously serve a copy of the petition on all other parties and shall file a certificate of service together with the petition. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state specific facts which tend to establish that the respondent has substantially prejudiced the petitioner's rights and has failed to act as required by law, rule or procedure.

(b) In addition to any pertinent requirements stated elsewhere in these Rules, a petition filed with the state Division of Aging must contain specific factual allegations which tend to establish that the petitioner is:

- (1) a service provider whose contract or subgrant under an area plan has been terminated by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (2) an eligible applicant who seeks to provide service under an area plan and whose application has been denied or rejected by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (3) an applicant eligible for designation as a planning and service area in the state whose application has been denied by the state Division of Aging; or
- (4) an Area Agency on Aging whose area plan or plan amendment intends to be disapproved or whose designation intends to be withdrawn by the state Division of Aging; or
- (5) a service recipient who has been discriminated against in violation of federal or state law on the basis of age, race, color, national origin, sex, religion or handicap in regard to delivery of Older Americans Act services by a contractor or subgrantee, or in regard to administration of such services by an Area Agency on Aging.

(c) All petitions shall contain a statement of the relief sought by the petitioner. Petitioners who seek an administrative decision review hearing with the state Division of Aging must so state in their petition. However, the formal hearing process may be waived and informal disposition may be made at any time by the parties regarding any issues in the petition. Issues not addressed in the petition shall not be considered in the state hearing process and shall not be the subject of relief. Issues and facts may be dealt with by stipulation, agreement or consent order at any time by the parties. Petitions which are improperly filed, or which fail to contain proper subject matter, may be subject to denial of formal review.

(d) Only those persons listed in Paragraph (b) of this Rule may petition for an administrative decision review hearing with the state Division of Aging. Petitioners under Subparagraphs (b)(1), (2) and (5) of this Rule shall file their respective petitions within 60 days following the date on which a final adverse decision has been rendered against them by an Area Agency on Aging. If no petition is filed within the respective 60 day period, the Area Agency's action shall become final. Eligible applicants under Subparagraph (b)(3) and agencies under Subparagraphs (b)(4) of this Rule shall file their petitions within 60 days after notification of denial or intention, respectively. If no petition is filed within the 60 day period, then the Division's action shall become final. Petitioners shall exhaust all available administrative remedies before petitioning the Division of Aging for a decision review hearing.

(e) Decisions or actions taken by the Division which substantially prejudice a person's rights, duties or privileges, but which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and should be submitted in a separate petition to the Office of Administrative Hearings in accordance with 10A NCAC 01 and 26 NCAC 03 .0103. Decisions or actions taken by an Area Agency on Aging which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and, subject to the expression or implication of private rights of action by state or federal law, should be contested in a court of law. Subject to the discretion of the Division hearing officer, improper subject matter in a petition may either be deleted or form the basis for dismissal of the entire petition.

(f) After service of a final written decision upon the parties, if a party, other than an "applicant" in Rule .0103(b)(3), disagrees with the Division review hearing decision, the party may request a contested case hearing in accordance with 26 NCAC 03 .0103 and 10A NCAC 01 within 60 days of said service. For purposes of notice, 26 NCAC 3 .0103 and 10A NCAC 01 are incorporated herein by reference pursuant to G.S. 150B-14(c).

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14; 42 U.S.C., Sec. 3025 (b)(1) and 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Parts 80, 84 and 91; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Amended Eff. August 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0104 NOTICE OF FILING: NOTICE OF HEARING

Upon receipt of a timely petition for an administrative decision review hearing, the Division Hearing Officer shall promptly notify all parties of receipt of such filing, and shall arrange with the parties a time, date and place of hearing. Notice of the time, date and place of hearing shall be served on all parties not less than 15 days prior to the date of hearing.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0105 ANSWERS TO THE PETITION

(a) A respondent who is served notice of filing of a petition shall file a written response to the petition and shall serve a copy of such response with certificate of service upon all other parties within 15 days after service of notice. The written answer may be submitted in lieu of a personal appearance at the hearing. If the respondent desires to file an answer in lieu of appearance, he must designate such on the face of the answer.

(b) Answers shall respond to each allegation of the petition, and may contain defenses, assertions of fact, and citations to applicable laws, rules and procedures. Failure to respond thoroughly to a timely and valid petition shall be grounds for admission of facts contained in the petition. The validity and timeliness of the petition may be contested in the answer.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;

Eff. October 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0106 DOCUMENTS

All documents required to be filed pursuant to these Rules shall likewise be served on all other parties by the filing party. The original of every document filed shall be endorsed with a certificate of service signed by the party making the service or by his designated representative, stating that such service has been made, the date of service, and the manner of service.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0107 VENUE

10A NCAC 05E .0108 DISCOVERY

10A NCAC 05E .0109 EVIDENCE

10A NCAC 05E .0110 TESTIMONY: WITNESSES

10A NCAC 05E .0111 SUBPOENAS

10A NCAC 05E .0112 PREHEARING STATEMENTS

10A NCAC 05E .0113 PREHEARING: SETTLEMENT CONFERENCE

10A NCAC 05E .0114 FAILURE TO APPEAR AT HEARING

10A NCAC 05E .0115 MISCONDUCT AT HEARING

10A NCAC 05E .0116 SANCTIONS

10A NCAC 05E .0117 MOTIONS

10A NCAC 05E .0118 CONTINUANCES AND EXTENSIONS OF TIME

10A NCAC 05E .0119 TIME

10A NCAC 05E .0120 AUTHORITY OF PRESIDING OFFICER

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Expired Eff. June 1, 2025 pursuant to G.S. 150B-21.3A.

10A NCAC 05E .0121 FINAL DECISION

If the Division conducts a hearing as requested by petition, and the matters in dispute are not dispensed with through agreement, dismissal or otherwise prior to the conclusion of the hearing, then the Hearing Officer shall prepare a final written decision within 30 days of the date of hearing and serve copies of the final decision upon the parties.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05E .0122 APPEALS TO COMMISSIONER ON AGING

If an applicant under Rule .0103 (b)(3) makes a timely request for hearing with the state Division of Aging, and the Division hears the case and issues a written decision denying the applicant's designation as a planning and service area; then the applicant may appeal the denial to the Commissioner on Aging in Washington, D.C. The appeal must be in writing and must be made within 30 days following receipt of the state's hearing decision.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5);
45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - BIDDING AND CONTRACTING

10A NCAC 05E .0201 BIDDING AND CONTRACTING PROCEDURES

Service bid, contract, and grant procedures shall be governed by G.S. Chapter 143, Art. 8, where applicable, as well as 42 U.S.C., Sec. 3001, et. seq., 45 C.F.R. Part 1321, and the procedures contained in 45 C.F.R., Part 74, as well as Appendix G of the same Part, more particularly described as OMB Circular A-102. The aforesaid regulations are incorporated herein by reference pursuant to G.S. 150B-14(c).

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3021, 3022(1), 3025(c) and 3027(a)(7); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05F -PLANNING AND SERVICE AREA AND AREA AGENCY DESIGNATION

SECTION .0100 - DIVISION OF AGING DESIGNATION AUTHORITY

10A NCAC 05F .0101 PLANNING AND SERVICE AREA AND AREA AGENCIES ON AGING

The Division of Aging shall divide the state into distinct planning and service areas and designate an area agency on aging within each planning and service area.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0102 WITHDRAWAL OF AREA ON AGING DESIGNATION

Area agency designation may be withdrawn whenever, after reasonable notice and opportunity for a hearing, it is determined that:

- (1) An area agency fails to perform mandated functions; or
- (2) An area plan or plan amendment is not approved; or
- (3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Older Americans Act, federal regulations, or state rules outlined by the Division; or
- (4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or conflict with the requirement in the Act that it function only as an area agency on aging.

History Note: Authority G.S. 143B-181.1(c); 45 C.F.R. Part 132; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - PLANNING AND SERVICE AREA AND AREA AGENCY ON AGING REQUIREMENTS

10A NCAC 05F .0201 PLANNING AND SERVICE AREA REQUIREMENTS

- (a) A PSA designated after March 1, 1993 shall have a general population of at least 100,000.
- (b) PSAs shall contain more than one county and shall be inclusive of all municipalities within the proposed PSA boundary.
- (c) PSA designation shall be effective on July 1.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0202 AREA AGENCY ON AGING REQUIREMENTS

- (a) A public or private nonprofit agency or organization shall be designated as an area agency on aging by the Division of Aging to serve each planning and service area in the state.
- (b) Area agencies on aging shall provide planning and administrative activities and a regional ombudsman program as specified through the Older Americans Act, North Carolina Statutes, and Division of Aging state rules.
- (c) Area agency on aging designation shall be effective July 1.

History Note: Authority G.S. 143B-181.1(c); 143B, Article 3, Part 14D; 45 C.F.R. Part 1321; 42 U.S.C. 3001; Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0300 - APPLICATION FOR PLANNING SERVICE AREA DESIGNATION AND PRE-HEARING REVIEW

10A NCAC 05F .0301 APPLICATION DUE DATE FOR PLANNING AND SERVICE AREA DESIGNATION

The application for planning and service area designation shall be received by the Division of Aging no later than August 1 for designation to become effective on July 1 of the following year.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0302 APPLICATION CONTENT FOR PLANNING AND SERVICE AREA DESIGNATION

The application shall provide the following:

- (1) Listing of proposed PSA counties and a signed resolution from the Chairman of the Board of Commissioners in each county endorsing the proposed PSA, supporting the proposed area agency on aging arrangement and certifying the availability of local match for AAA federal/state funding.
- (2) Identification of the unit of local government, regional planning authority, or Indian reservations responsible for developing the application and individual responsible for coordinating application with the Division.
- (3) Narrative discussion which states the necessity of the designation and describes benefits to identified counties.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0303 PRE-HEARING REVIEW ON PLANNING AND SERVICE AREA DESIGNATION

- (a) The Division shall provide a copy of the designation application, relevant demographic and funding data and other pertinent information to area agencies whose PSA boundaries would be affected within 10 working days of receipt of the application. Area agencies shall have the opportunity to comment on the application prior to public hearings on PSA designation.
- (b) Prior to conducting public hearings on PSA designation the Division shall provide aging interests in each county of PSAs affected by the application with a copy of the application, other information, and data deemed appropriate by the Division. Local aging interests shall have the opportunity to provide written comments to the Division prior to public hearings. Local aging interests shall include the following:

- (1) boards of county commissioners;
- (2) county managers;
- (3) area agency advisory councils;
- (4) funded and non-funded aging service providers;
- (5) long term care providers and advocacy groups;
- (6) senior centers;
- (7) local Alzheimer's support organizations and other advocates for older persons and caregivers;
- (8) Lead Regional Organization directors;
- (9) Joint Regional Forum.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0400 - DIVISION OF AGING PUBLIC HEARINGS ON PLANNING AND SERVICE AREA DESIGNATION

10A NCAC 05F .0401 SCHEDULING OF PUBLIC HEARINGS ON PLANNING/SERVICE AREA DESIGNATION

Prior to designating PSAs, public hearings shall be held for affected parties. The Division shall schedule hearings in locations which are convenient to each county in affected PSAs so as to encourage full participation by county and regional aging interests. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time and location of the public hearing.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order Number 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0402 PREHEARING REVIEW COMMENTS

The Division shall provide a written summary of comments received through the pre-hearing review at the public hearing.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0403 NOTIFICATION OF DECISION ON PLANNING AND SERVICE AREA DESIGNATION

Comments received through the pre-hearing review and public hearings shall be considered in reaching a PSA designation decision. Upon consultation with the Department of Health and Human Services, the Division will issue a decision and notify affected area agencies and aging interests specified in Rule .0303 of this Subchapter in writing. The Division will provide the Administration on Aging with written notification of designation decisions.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0404 PLANNING/SERVICE AREA DESIGNATION INITIATED BY THE DIVISION OF AGING

If PSA designation is initiated by the Division, the Division shall provide for pre-hearing reviews and public hearings by distributing a plan for proposed PSA designation and other pertinent information and data to affected area agencies and local aging interests specified in Rule .0303 of this Subchapter and scheduling public hearings as specified in Rule .0401 of this Subchapter. PSA designation will be initiated by the Division if:

- (1) With input from the Department of Health and Human Services and others, the Division determines that reconfiguration of PSAs is necessary for the State and area agencies to effectively carry out responsibilities mandated through the Older Americans Act.
- (2) A county or counties in a PSA affected by withdrawal of AAA designation propose to join another PSA, as discussed in Rule .0706 of this Subchapter.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986; Eff. November 1, 1993; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0500 - APPLICATION FOR AREA AGENCY ON AGING DESIGNATION AND PRE-HEARING REVIEW

10A NCAC 05F .0501 AREA AGENCY ON AGING DESIGNATION CRITERIA

(a) Area agency on aging designation shall occur after the Division has issued a decision on PSA designation, as specified in Rule .0403 of this Subchapter.

(b) The unit of general purpose local government, regional planning authority or Indian reservation responsible for development of the PSA designation application shall be responsible for completing the application for area agency on aging structure and submitting it to the Division.

(c) If PSA designation is initiated by the Division of Aging, the Division shall receive input from the chairman of the board of commissioners in each county of the PSA prior to designating an area agency on aging.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0502 APPLICATION CONTENT FOR AREA AGENCY ON AGING DESIGNATION

The Division of Aging will provide a format which addresses the following:

- (1) Name of proposed area agency organization, if possible.
- (2) Description of area agency methodology, including staffing responsibilities, to meet federal and state requirements which include the following:
 - (a) Working with elected officials to establish one or more focal points on aging in each county.
 - (b) Establishing an area agency advisory council for the purpose of carrying out advisory functions which further the area agency's mission of developing and coordinating a community-based services system for all older adults in the PSA.
 - (c) Developing an area plan following procedures specified by the Division of Aging and conducting a public hearing(s) on the plan prior to submission to the Division.
 - (d) Serving as a public advocate for the development or enhancement of community based service systems through the coordination of plans and activities with public and private agencies and organizations and providing leadership in assisting counties in the targeting of resources to meet the needs of older adults with the greatest economic or social needs, with particular attention to low income minorities.
 - (e) Monitoring community service providers as specified in the Home and Community Care Block Grant County agreement assessment format.
 - (f) Providing Home and Community Care Block Grant management information system and services reimbursement functions as specified in the Home and Community Care Block Grant Manual for Community Service Providers.
 - (g) Administering a regional ombudsman program, as required in G.S. 143B, Part 14D. The proposal shall describe how functions specified in G.S. 143B-181.19 will be carried out.
- (3) Organization chart indicating that the area agency shall function only to administer programs for older persons.
- (4) Proposed line item or total project budget for the area agency which includes identification of funding sources to support the budget.

History Note: Authority G.S. 143B-181.1(c); 45 C.F.R. Part 1321; 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0503 PRE-HEARING REVIEW ON AREA AGENCY ON AGING DESIGNATION

Within no less than 15 days prior to conducting public hearing on AAA designation, the Division shall provide area agencies on aging and local aging interests who are affected by the PSA designation decision with a copy of the proposed area agency structure format. These area agencies and local aging interests shall have the opportunity to comment on the proposed structure prior to public hearings. Local aging interests are identified in Rule .0303 of this Subchapter.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0600 - DIVISION OF AGING PUBLIC HEARINGS ON AREA AGENCY ON AGING DESIGNATION

10A NCAC 05F .0601 SCHEDULING OF PUBLIC HEARINGS ON AREA AGENCY ON AGING DESIGNATION

Prior to designating AAAs, the Division shall conduct public hearings. The Division shall schedule hearings which are convenient to each county in affected PSAs. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time and location of the public hearing.

*History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;
Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05F .0602 PREHEARING REVIEW COMMENTS

The Division shall provide a written summary of comments received through the pre-hearing review at the public hearings.

*History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;
Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05F .0603 NOTIFICATION OF DECISION ON AREA AGENCY ON AGING DESIGNATION

Comments received through the pre-hearing review and public hearings shall be considered in reaching an AAA designation decision. Upon consultation with the Department of Health and Human Services, the Division will issue a decision and notify affected area agencies and aging interests listed in Rule .0303 of this Subchapter.

*History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;
Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

SECTION .0700 - WITHHOLDING AREA FUNDS OR WITHDRAWING AREA AGENCY ON AGING DESIGNATION

10A NCAC 05F .0701 NOTIFICATION OF IMPENDING ACTION TO WITHHOLD AREA FUNDS

Within no less than 15 days prior to withholding funds the Division of Aging shall provide the area agency notification of the impending action via certified mail. The notification shall contain the following:

- (1) Reasons for initiating the withholding of funds.
- (2) Date that funds will be withheld, pending request for public hearing.
- (3) Opportunity for requesting, in writing, a public hearing concerning the impending action. Such request shall be within five days of receiving the notice.

*History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;
Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05F .0702 PUBLIC HEARING/WITHHOLDING AREA FUNDS

If the area agency requests a hearing, the Division shall, within 10 days of receipt of the request, schedule a public hearing in the affected PSA and notify the area agency on aging and local aging interests specified in Rule .0303 of this Subchapter.

*History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;
Eff. November 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.*

10A NCAC 05F .0703 DECISION ON WITHHOLDING AREA FUNDS

Comments received through any public hearing shall be considered by the Division in reaching a final decision. An area agency may appeal the Division's decision to withhold funding as specified in Rule .0801 of this Subchapter.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0704 NOTICE/IMPENDING ACTION/WITHDRAW AREA AGENCY ON AGING DESIGNATION

An area agency shall be notified via certified mail no less than 30 days prior to withdrawing area agency designation.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0705 PUBLIC HEARING/WITHDRAWAL OF AREA AGENCY ON AGING DESIGNATION

Upon determination of cause for withdrawing area agency on aging designation, as specified in Rule .0102 of this Subchapter, a public hearing shall be scheduled and conducted within the planning and service area of the area agency on aging. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time, and place of the public hearing.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0706 NOTIFICATION OF DECISION TO WITHDRAW AREA AGENCY DESIGNATION

(a) Comments received through the public hearing shall be considered in reaching a decision. Upon consultation with the Department of Health and Human Services, the Division will issue a decision as to whether or not to withdraw AAA designation. The area agency on aging and local aging interests, as specified in Rule .0303 in this Subchapter, shall be notified in writing of the Division's decision. An area agency may appeal the Division's decision to withdraw area agency on aging designation, as specified in Rule .0801 of this Subchapter.

(b) If AAA designation is withdrawn, the Division shall meet with the chairman of the board of commissioners in each county of the PSA. Based upon the decision of the counties, the Division will initiate the designation of one or more PSAs or initiate the designation of an area agency on aging.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0800 - APPEAL OF DIVISION OF AGING DECISION**10A NCAC 05F .0801 CONTESTED CASE**

Area agencies whose funding has been withheld; area agencies whose designation has been withdrawn; area agencies on aging and other parties adversely affected by a Division of Aging PSA designation decision; or a public agency or private non-profit organization whose application for AAA designation is disapproved by the Division of Aging may petition the Office of Administrative Hearings for a contested case hearing. Provisions for contested case hearings are specified in G.S. 150B, Article 3.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0802 APPEAL TO COMMISSIONER ON AGING

An area agency on aging whose designation has been withdrawn or parties who are adversely affected by a Division of Aging PSA designation decision and who are aggrieved by the final decision in a contested case may appeal the decision to the Commissioner on Aging within 30 days following the receipt of the state's decision in lieu of filing a petition for judicial review in state superior court.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05F .0803 JUDICIAL REVIEW

Area agencies whose funding has been withheld or a public agency or private non-profit organization whose application for AAA designation is disapproved by the Division of Aging and are aggrieved by the final decision in a contested case may file a petition for judicial review, as provided in G.S. 150B, Article 4.

History Note: Authority G.S. 143B-181.1(c); 42 U.S.C. 3001;

Eff. November 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05G - HOME AND COMMUNITY CARE BLOCK GRANT FOR OLDER ADULTS

SECTION .0100 - ALLOCATION OF BLOCK GRANT FUNDS

10A NCAC 05G .0101 ALLOCATION/BLOCK GRANT FUNDING/AREA AGENCIES ON AGING

The Division of Aging shall annually allocate Block Grant funding to Area Agencies on Aging as specified in Subchapter 22C Rule .0404 of this Chapter and Chapter 1095, Section 4, 1988 Session Laws.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); 42 U.S.C. 3000 et seg;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - BASIS FOR GRANTING BLOCK GRANT FUNDS TO COUNTIES

10A NCAC 05G .0201 DEFINITIONS

(a) "County Block Grant Advisory Committee" means a committee, appointed annually by the Board of County Commissioners, that represents a broad range of aging interest in the county. The committee serves to build local consensus for the County Funding Plan and to function as a resource for the County Lead Agency for Planning and Coordination by obtaining input from service provider interests, and older consumers and their families. A representative of the Area Agency on Aging shall be appointed to the committee when the Area Agency on Aging is not designated as the County Lead Agency for Planning and Coordination, as specified in 10A NCAC 05G .0201(c).

(b) "County Funding Plan" means the format developed by the Division of Aging in which counties identify the County Lead Agency for Planning and Coordination, service providers, services, and budgetary data for the provision of Home and Community Care Block Grant for Older Adults services in the county during the State Fiscal Year.

(c) "County Lead Agency for Planning and Coordination" means a public or private non-private agency or office which is designated annually by the Board of County Commissioners for the purpose of developing the County Funding Plan for the provision of services through the Block Grant. County Funding Plan development responsibilities include directing the work of the County Block Grant Advisory Committee, facilitating a public hearing for the County Funding Plan prior to submission to the Chairman of the Board of Commissioners, and ensuring that the approved County Funding Plan meets all requirements as specified by the Division of Aging prior to submission for approval to the Area Agency on Aging.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c);

Eff. August 3, 1992;

Amended Eff. May 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05G .0202 COUNTY FUNDING PLANS

(a) The County Lead Agency for Planning and Coordination shall provide the County Budget Officer with a preliminary County Funding Plan which, at a minimum, specifies Home and Community Care Block Grant for Older Adults services, funding levels, and required local matching amounts by April 30 of each year.

(b) Area Agencies on Aging shall grant Home and Community Care Block Grant for Older Adults funding to Counties on the basis of the recommended County Funding Plan that has been submitted by the Chairman of the Board of Commissioners. Area Agencies on Aging shall receive the County Funding Plan and upon approval shall grant funding to County on the basis of the Plan. Area Agency on Aging approval shall be based on the following criteria:

- (1) Allocated minimum budget amounts have been met or agree with minimum budget amounts negotiated by the Area Agency on Aging or authorized by the Division of Aging.
- (2) The total county Block Grant allocation is utilized and not exceeded.
- (3) Funding Plan documents are accurate and complete, including signatures and dates.

(c) The County Funding Plan, as approved by the Area Agency on Aging, shall be wholly a part of the Grant Agreement between the County and the Area Agency on Aging for the provision of aging services through the Home and Community Care Block Grant for Older Adults.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c);

Eff. August 3, 1992;

Amended Eff. May 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05G .0203 PUBLIC HEARING FOR COUNTY FUNDING PLAN

(a) With the participation of the County Block Grant Advisory Committee, the County Lead Agency for Planning and Coordination shall hold a public hearing on the proposed County Funding Plan prior to approval by the Chairman of the County Board of Commissioners.

(b) The hearing shall be publicized in a manner that encourages public participation and comments received at the hearing will be given consideration in finalizing the County Funding Plan.

(c) Minutes of the public hearing shall be provided with the County Funding Plan.

(d) The public hearing shall be conducted prior to June 30 of each year.

History Note: Authority G.S. 143B-181.1(a)(11); 143B-181.1(c);

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0300 - PRIORITY FOR THE RECEIPT OF BLOCK GRANT SERVICES

10A NCAC 05G .0301 DEFINITIONS

As used in this Subchapter, the following terms shall have the meaning specified:

- (1) "Activities of daily living" means functions which include: eating; dressing; bathing; toileting; bowel and bladder control; transfers; ambulation; and communication; such as speaking; writing; signing and communication devices.
- (2) "Abuse" means:
 - (a) The willful: infliction of injury; unreasonable confinement; or intimidation; or
 - (b) Punishment with resulting harm, pain, or mental anguish; or
 - (c) Deprivation by a caregiver of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.
- (3) "Exploitation" means the commission of a crime by a caretaker by using the resources of an older adult for monetary or personal benefit, profit, or gain.
- (4) "Instrumental activities of daily living" means functions which include: meal preparation, medication intake, cleaning, money management, laundering, reading, shopping and going to necessary activities.
- (5) "Neglect" means the failure to provide for oneself the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.
- (6) "Older adult" means an individual 60 years of age or older.

History Note: Authority G.S. 143B-181.1;

Eff. September 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05G .0302 CLIENT PRIORITIES FOR RECEIPT OF SERVICES

(a) Once service providers have determined that individuals meet eligibility criteria for a given Home and Community Care Block Grant for Older Adults service, individuals shall be served in the following priority order:

- (1) Older adults for whom the need for Adult Protective Services has been substantiated by the local department of social services and the service is needed as part of the adult protective service plan.
- (2) Older adults who are at risk of abuse, neglect, or exploitation.
- (3) Older adults with three or more impairments in activities of daily living (ADL's), or instrumental activities of daily living (IADL's), who are at risk of institutionalization substitute care.
- (4) Older adults with three or more ADL or IADL impairments.
- (5) Older adults with no more than two ADL or IADL impairments.
- (6) Well older adults.

(b) Service providers must establish a process to screen prospective clients for the purpose of determining priority for receipt of service(s) in accordance with the criteria specified in 10A NCAC 05G .0302(a).

(c) Agencies providing Home and Community Care Block Grant services will address targeting preferences specified in the Older Americans Act as a part of outreach activities to older adults.

History Note: Authority G.S. 143B-181.1;

Eff. August 3, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05H – RESERVE FOR FUTURE CODIFICATION

SECTION .0100 - RESERVE FOR FUTURE CODIFICATION

10A NCAC 05H .0101 RESERVE FOR FUTURE CODIFICATION

SUBCHAPTER 05I – CONSUMER CONTRIBUTIONS

SECTION .0100 – PURPOSE AND DEFINITIONS

10A NCAC 05I .0101 PURPOSE AND DEFINITIONS

(a) As used in this Subchapter, the following definitions shall apply:

- (1) Consumer Contributions – a monetary amount voluntarily given to the service provider by the service recipient or the designated representative toward the cost of the service received.
- (2) Recommended Contribution Schedule – a listing of income ranges and corresponding recommended contribution percentages for use with clients at or above the federal poverty level. The Recommended Contribution Schedule is available at <http://www.dhhs.state.nc.us/aging/arms/csupdat2.htm> and is determined as follows:

Percent of Poverty	Suggested Percentage of the Cost of Service
100%	10%
125%	20%
150%	30%
175%	40%
200%	50%
225%	60%
250%	70%
275%	80%

300%	90%
350%	100%

(b) The purpose of consumer contributions is to extend the availability of services which are subject to consumer contributions administered by the Division of Aging and Adult Service by providing the opportunity for each service recipient to voluntarily contribute toward the cost of the service(s) received. The service provider shall retain the revenue collected from clients.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67; Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 – REQUIREMENTS

10A NCAC 05I .0201 SERVICES SUBJECT TO CONSUMER CONTRIBUTIONS

(a) Consumer contributions may be accepted for all services administered by the Division of Aging and Adult Services.

(b) The use of a Recommended Contribution Schedule is prohibited for individuals receiving:

- (1) Information and Assistance, Outreach, Benefits Counseling, Case Management Services;
- (2) Congregate Nutrition and Home Delivered Meals, Senior Companion;
- (3) Ombudsman, Elder Abuse Prevention, Legal Assistance or other consumer protection services or
- (4) Any services delivered through tribal organizations.

(c) When any of the services specified in Paragraph (a) of this Rule are provided to adults or children as part of a Protective Services Plan, these individuals shall be excluded from consumer contributions, from the beginning of the provision of services until protective services are no longer needed or for 12 months, whichever comes first. Consumer contributions shall not apply to children in foster care, children who have been approved to receive adoption assistance, persons receiving Work First assistance, or federally administered Supplemental Security Income (SSI) applicants or recipients.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67; Older Americans Act, Section 315(a)(3) (as amended, 2000);

Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05I .0202 INITIAL AND ANNUAL REVIEWS

(a) Upon initiation of the provision of the service(s) subject to consumer contributions and at least annually thereafter, the service providing agency shall review with each client determined eligible to receive services subject to consumer contributions the following information:

- (1) that the contribution is entirely voluntary and that there is no obligation to contribute;
- (2) that all contributions collected shall be used to expand the service(s);
- (3) that information about the client's participation in consumer contributions shall be confidential;
- (4) who should be contacted, including the telephone number, if the client has questions regarding consumer contributions;
- (5) the total cost of the service (actual or per unit); and
- (6) that services shall not be reduced or terminated for failure to contribute.

(b) The agency shall provide a copy of the Recommended Contribution Schedule from the North Carolina Division of Aging and Adult Services to a client whose income is above the Federal poverty level. The agency shall not provide the Recommended Contribution Schedule to clients whose incomes are at or below the Federal poverty level.

(c) The agency shall document in the client's file that the above information has been shared with the client or the designated representative.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 3001; 45 C.F.R. 1321.67; Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05I .0203 COLLECTION OF CONSUMER CONTRIBUTION REVENUE

Service providers shall have written procedures to collect, account for, and safeguard all contributions.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 300I; 45 C.F.R. 1321.67; Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05I .0204 TERMINATION

Service(s) to a client shall not be terminated or reduced for failure to contribute to the cost of the service(s) rendered.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 300I; 45 C.F.R. 1321.67; Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05I .0205 DEDUCTING CONSUMER CONTRIBUTION REVENUES FROM MONTHLY SERVICE REIMBURSEMENT

The North Carolina Division of Aging and Adult Services shall deduct the amount of Consumer Contribution revenues reported from the amount of monthly reimbursement due to each service provider for each service subject to consumer contributions as specified in Rule .0201 of this Section.

History Note: Authority G.S. 143B-181.1 (a) (10); 143B-181.1 (c); 42 U.S.C. 300I; 45 C.F.R. 92.25; Eff. July 1, 1992;

Amended Eff. September 1, 2005;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05J - CONFIDENTIALITY OF CLIENT DATA**SECTION .0100 - DEFINITIONS FOR CONFIDENTIALITY OF CLIENT DATA****10A NCAC 05J .0101 DEFINITIONS FOR CONFIDENTIALITY OF CLIENT DATA**

Unless the context clearly specifies otherwise, the following terms are defined as follows:

- (1) "Agency" means Division of Aging, Area Agencies on Aging, or service provider.
- (2) "Client" means any applicant for, or recipient of, services administered under the auspices of the Division of Aging.
- (3) "Client information" or "client record" means any information, whether recorded or not, including information stored in computer data banks or files, relating to a client which was received in connection with the performance of any function of the agency.
- (4) "Court order" means any written order from a judge which directs explicitly the release of client information.
- (5) "Service provider" means any public or private agency from whom Division of Aging funded services are purchased or authorized.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. December 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SECTION .0200 - REQUIREMENTS**10A NCAC 05J .0201 CONFIDENTIALITY OF CLIENT DATA**

(a) Client information obtained by the Division of Aging, Area Agencies on Aging or service providers from an older person or their designated representative shall not be disclosed in a form that identifies the person without the informed consent of the person or legal representative unless the disclosure is required by court order, or for program monitoring by authorized federal, state, or other designated monitoring agencies.

(b) The agency shall assure that all authorized individuals are informed of the confidential nature of client information and shall disseminate written policy to and provide training for all persons with access to client information.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0202 INFORMATION FROM OTHER COMMUNITY SERVICE ORGANIZATIONS

If the agency receives information from another community service organization or individual, then such information shall be treated as any other information generated by the State Division of Aging, Area Agency on Aging or service provider and disclosure thereof will be governed by any condition imposed by the furnishing community service organization or individual.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0203 DISCLOSURE PURSUANT TO OTHER LAWS

Whenever federal or state statutes or regulations specifically address confidentiality issues, the agency shall disclose or keep confidential client information in accordance with those federal or state statutes or regulations.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0204 OWNERSHIP OF RECORDS

All client information contained in any records of the agency is the property of the agency. Employees of the agency shall protect and preserve such information from dissemination except as indicated by the policies established.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0205 SECURITY OF RECORDS

- (a) The agency shall provide a secure place with controlled access for the storage of client records or reports, or both, which contain client specific information.
- (b) Only employees, students, volunteers or other individuals who must access client information in order to carry out duties assigned or approved by the agency shall be authorized to have access to such information.
- (c) Only authorized individuals may remove a record or report, or both, from the storage area and that individual shall be responsible for the security of the record until it is returned to the storage area.
- (d) The agency shall be allowed to destroy records in accordance with Record Retention Schedules promulgated by the Division of Archives and History, and state and federal statutes and regulations.
- (e) Area Agencies on Aging and service providers shall establish written procedures to prevent accidental disclosure of client information from automated data processing systems.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. December 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0206 RELEASE OF CLIENT INFORMATION

(a) No client identifying information, except as referenced in Rule .0205 of this Section, which is maintained by the Division of Aging, Area Agency on Aging or service provider shall be released to other individuals or community service organizations without obtaining a signed consent for release of information from the client or legal guardian.

(b) The consent for release of information shall include, at a minimum, the following items:

- (1) Name of the provider and recipient of the information;
- (2) The extent of information to be released;

- (3) The name and dated signature of the client or client representative;
- (4) A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent;
- (5) Length of time the consent is valid.

(c) The client may alter the form to contain other information which may include but is not limited to:

- (1) A statement specifying the date, event or condition upon which the consent may expire even if the client does not expressly revoke the consent;
- (2) Specific purpose for the release.

(d) A copy of the signed consent for release of information shall be maintained in the client record.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0207 INFORMED CONSENT

Prior to obtaining a consent for release of information, the delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- (1) Contents to be released;
- (2) That there is a definite need for the information;
- (3) That the client can give or withhold the consent and the consent is voluntary;
- (4) That there are statutes and regulations protecting the confidentiality of the information.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0208 CLIENT ACCESS TO RECORDS

(a) Access to information about himself is the right of the client. Upon written or verbal request, the client shall have access to review or obtain without charge a copy of the information in his records with the following exceptions:

- (1) Information that the agency is required to keep confidential by state or federal statutes or regulations;
- (2) Confidential information originating from another community service organization;
- (3) Information that would breach another individual's right to confidentiality.

(b) Client's requesting access to the information contained in his record as promptly as feasible but no more than five working days after receipt of the request.

(c) The Director or his delegated representative shall be present when the client reviews the record.

(d) The Director or his delegated representative must document in the client record the review of the record by the client.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. December 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0209 CONTESTED INFORMATION

(a) A client may contest the accuracy, completeness or relevancy of the information in his record.

(b) A correction of the contested information, but not the deletion of the original information if it is required to support receipt of state or federal financial participation, shall be inserted in the record when the Director or his designee concurs that such correction is justified.

(c) When the Director or his delegated representative does not concur, the client shall be allowed to enter a statement in the record.

(d) Such corrections and statements shall be made permanent part of the record and shall be disclosed to any recipient of the disputed information.

(e) If a delegated representative decides not to correct contested information, the decision not to correct shall be reviewed by the supervisor of the person making the initial decision.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0210 WITHHOLDING OF INFORMATION FROM THE CLIENT

(a) When the Director or delegated representative determines on the basis of the exceptions outlined in Rule .0208 of this Section to withhold information from the client record, this reason shall be documented in the client record.

(b) The Director or delegated representative must inform the client that information is being withheld, and upon which of the exceptions specified in Rule .0208 of this Section the decision to withhold the information is based.

(c) If confidential information originating from another community service organization is being withheld, the client shall be referred to that community service organization for access to the information.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0211 DISCLOSURE OF CLIENT INFORMATION WITHOUT CLIENT CONSENT

Client information included in the client record may be disclosed without the consent of the client under the following circumstances:

- (1) To other employees of the agency for the purpose of making referrals, supervision, consultation or determination of eligibility.
- (2) Between the service provider, Area Agency on Aging and Division of Aging for the purposes of reporting.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05J .0212 INFORMATION NEEDS OF SERVICE PROVIDERS

(a) Client information may be disseminated to service providers in accordance with the release of information statement included on the client registration form.

(b) Any further disclosure will require a signed release of information form from the client.

History Note: Authority G.S. 143B-181.1(c); 143B-181.10;

Eff. November 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05K – RESERVE FOR FUTURE CODIFICATION

SECTION .0100 - RESERVE FOR FUTURE CODIFICATION

10A NCAC 05K .0101 RESERVE FOR FUTURE CODIFICATION

SUBCHAPTER 05L - ADVOCACY ASSISTANCE

SECTION .0100 – GENERAL PROVISIONS

10A NCAC 05L .0101 GENERAL ADVOCACY RESPONSIBILITIES

As a part of state agency general advocacy responsibilities the Division of Aging will:

- (1) review and comment on all state plans, budgets and policies which affect older persons;
- (2) conduct public hearings on the needs of older persons;
- (3) coordinate statewide planning and development of activities related to the purposes of the Act and assure that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

- (4) represent the interests of older persons before legislative executive and regulatory bodies in North Carolina;
- (5) provide technical assistance to any public or private non-profit agency, organization, or association, or individual representing older persons;
- (6) establish and operate the long-term care ombudsman program required by federal regulations; and
- (7) review and comment, on request, on applications to state and federal agencies for assistance relating to meeting the needs of older persons.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321;

Eff. October 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05L .0102 LONG-TERM CARE OMBUDSMAN PROGRAM

The Division shall provide a long-term care ombudsman program subject to the following:

- (1) If the regional ombudsman receives a complaint directly and plans to utilize any community advisory committee members for complaint resolution, written permission must be obtained from the resident or resident's legal representative to utilize the community advisory committee members for this purpose.
- (2) When the regional ombudsman receives a complaint directly, she or he retains jurisdiction and oversight over the complaint throughout the complaint resolution process.
- (3) If the community advisory committee chairman discloses the identity of the resident who files a complaint or on whose behalf a complaint is filed to the regional ombudsman, the regional ombudsman assumes jurisdiction and oversight over the complaint.
- (4) If the regional ombudsman believes the resident on whose behalf a complaint has been filed is not competent, she or he shall consult with the attorney designated to provide legal representation regarding procedures for pursuing appointment of a legal representative for the resident.

History Note: Authority G.S. 143B-181.1(c); 143B-181.15 through 143B-181.25; 45 C.F.R., Part 1321.9;

Eff. October 1, 1980;

Amended Eff. January 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05L .0103 LEGAL SERVICES PROGRAM

The Division of Aging shall encourage and assist the development of legal services designed to provide legal advice and representation for older North Carolinians. The purpose of awards under this program is to increase the availability of legal services with a priority on older persons with the greatest economic or social need in order to assist them to secure their rights, benefits, and entitlements, and to assist them in achieving the objectives of the Act. Legal services provided with funds under the Act shall be in addition to any legal services already being provided to older persons in the planning and service area.

History Note: Authority G.S. 143B-10; 143B-138; 45 C.F.R., Chapter XIII, Part 1321.51;

Eff. October 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

SUBCHAPTER 05M – SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

SECTION .0100 – GENERAL PROVISIONS

10A NCAC 05M .0101 POLICIES MANUAL

Detailed policies and procedures for administering a Title V project under a subgrant from the Division of Aging are provided in a special Title V manual available from the Division. Subgrantees must comply with the federal requirements reprinted in the Title V manual and the Division's overall "Manual and Policies and Procedures" for Title III and related programs.

History Note: Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 29 C.F.R. Part 89;

Eff. October 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.

10A NCAC 05M .0102 APPLICATION PROCEDURES

(a) The Division of Aging shall allocate a certain number of job slots to each PSA annually based on the total number of slots available to the State, an assessment of need, and an assessment of employment resources for the aging currently available in each PSA.

(b) Job slots which are not utilized in a PSA shall be reallocated to other PSAs.

(c) Applicants shall complete a four-part application to be considered for assistance under Title V:

- (1) Part I consists of preprinted conditions and provisions to which the subgrantee must assure adherence.
- (2) Part II consists of a subgrantee narrative which must provide a full description of the proposed project activities.
- (3) Part III is the budget of the subgrant agreement.
- (4) Part IV is an appendix, which consists of a listing of work sites and job titles, job descriptions, work site agreements or letters of commitment and all subagreements with organizations designed to conduct project activities.

History Note: Authority G.S. 143B-10; 143B-138; 20 C.F.R., Part 674;

Eff. October 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015.