

2024 Older Americans Act Regulations—Advisory Councils

Language in the law about Advisory Councils:

§1321.63 Area agency advisory council.

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older individuals and family and older relative caregivers specific to each planning and service area. The council shall advise the agency relative to:

- (1) Developing and administering the area plan;
- (2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public;
- (3) Conducting public hearings;
- (4) Representing the interests of older individuals and family caregivers; and
- (5) Reviewing and commenting on community policies, programs and actions which affect older individuals and family caregivers with the intent of assuring maximum coordination and responsiveness to older individuals and family caregivers.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of:

- (1) More than 50 percent older individuals, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include individuals identified as in greatest economic need and individuals identified as in greatest social need in §1321.65(b)(2);
- (2) Representatives of older individuals;
- (3) Family caregivers, which may include older relative caregivers;
- (4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);
- (5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers;
- (6) Persons with leadership experience in the private and voluntary sectors;
- (7) Local elected officials;
- (8) The general public; and
- (9) As available:
 - (i) Representatives from Indian Tribes, Pueblos, or Tribal aging programs; and
 - (ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

(d) *Conflicts of interest.* The advisory council shall not operate as a board of directors for the area agency. Individuals may not serve on both the advisory council and the board of directors for the same entity.

Discussion in the regulations about Advisory Councils:

Comment: Commenters shared concerns that service providers on a council may inappropriately influence decisions related to awarding OAA funds, even if they abstain from voting on funding

decisions. ACL received many comments on §1321.63(b), §1321.63(b)(4), and §1321.63(b)(5) regarding the inclusion of Title III service delivery representatives and representatives of health care provider organizations as members of an area agency advisory council. Most commenters expressed concern about the participation of service providers or representatives of health care provider organizations on an area agency advisory council due to the potential for COI and the perception that participation may benefit one service provider over a different potential service provider. Some commenters expressed support for the inclusion of Title III service delivery representatives, including volunteer service delivery providers, on an area agency advisory council.

Response: ACL appreciates the comments regarding the inclusion of Title III service delivery representatives and health care representatives as members of an area agency advisory council. We decline to revise the regulatory text at §1321.63(b) introductory text and (b)(4) and (5) because the primary focus of the council should be to assist the area agency in developing and coordinating community-based systems of services, including targeting individuals of the greatest economic and greatest social need. Service providers and health care provider representatives are fundamental to developing community-based systems of services that reach these populations. **To clarify, the advisory council is required to function as a separate body from the AAA's governing body. The governing body is responsible for making funding decisions and other matters related AAA leadership. In contrast, the advisory council is responsible for providing local feedback from the community to assist the governing body's leadership in developing, administering, and operating the area plan on aging.** The OAA requires that service providers be among the members of the AAA's advisory council. ACL recognizes the concerns regarding COI and has established COI requirements at §1321.47 (Conflicts of interest policies and procedures for State agencies) and §1321.67 (Conflicts of interest policies and procedures for area agencies on aging). These provisions specifically list advisory council members among the individuals to whom these provisions apply. Further, §1321.67 of this rule requires area agencies to develop and maintain COI policies, including related to governing boards and advisory councils, to avoid actual, perceived, or potential COI. We believe the COI policy requirement serves as an adequate guardrail against the concern raised by commenters related to service providers and health care provider organizations serving on area agency advisory councils.

Comment: Several commenters requested revisions to clarify the role of an area agency advisory council and the distinction between an advisory council and a board of directors. Specifically, commenters recommended adding language restricting an advisory council from also operating as a board of directors and prohibiting members from serving on both the area agency advisory council and the board of directors. Some commenters requested guidance on the decision-making authority of advisory councils, especially regarding the development and submission of the area plan. Other commenters questioned whether an AAA that is designated to serve multiple PSAs as allowed by §1321.19(a) is required to have an advisory council for each PSA or may have an advisory council subcommittee for each PSA.

Response: ACL appreciates the requests for clarity related to the role of an area agency advisory council. **The primary focus of the area agency advisory council should be to assist the area agency in developing community-based systems of services targeting individuals with the greatest social need and greatest economic need.** Section 1321.63(a)(1) through (5) details how the advisory council can assist an area agency in ensuring that individuals with the greatest social need and greatest economic need are prioritized in an advisory capacity. Except for the change noted below, we are maintaining the language as is in §1321.63(a)(1) through (5) because it details the primary functions of an advisory council as advisors to an area agency. In light of the comments received regarding both the role of an

advisory council and the role of a board of directors, ACL will provide technical assistance regarding the functions of an advisory council, the functions of a board of directors or governing body, corresponding best practices regarding AAAs serving multiple PSAs, and COI policies and procedures for advisory and governing bodies. **In response to comments, we have added new §1321.63(d), clarifying that an advisory council may not operate as a board of directors, and prohibiting members from serving on both the advisory council and the board of directors.**