

Dear Senators MARTIN, Riggs, Stennett, and
Representatives WOOD, Vander Woude, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Office of the Governor - Commission on Aging:
IDAPA 15.01.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 15-0100-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 01/03/2022. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 01/31/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the memorandum attached below.



Terri Kondeff
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee
FROM: Principal Legislative Drafting Attorney - Elizabeth Bowen
DATE: December 15, 2021
SUBJECT: Office of the Governor - Commission on Aging

IDAPA 15.01.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 15-0100-2100)

Summary and Stated Reasons for the Rule

This proposed omnibus rulemaking re-promulgates rules that have already been reviewed by the Legislature as follows:

- 15.01.01, Rules Governing Senior Services and Older Americans Act Programs;
- 15.01.02, Rules Governing Adult Protective Services Programs;
- 15.01.03, Rules Governing the Ombudsman for the Elderly Program; and
- 15.01.20, Rules Governing Area Agency on Aging (AAA) Operations.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted, as this is a re-promulgation of existing rules. There is no anticipated negative fiscal impact on the state general fund.

Statutory Authority

The Commission appears to have statutory authority to promulgate these rules.

cc: Office of the Governor - Commission on Aging
Judy Taylor

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

DOCKET NO. 15-0100-2100

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.01, rules of the Idaho Commission on Aging:

IDAPA 15.01

- 15.01.01, *Rules Governing Senior Services and Older Americans Act Programs*;
- 15.01.02, *Rules Governing Adult Protective Services Programs*;
- 15.01.03, *Rules Governing the Ombudsman for the Elderly Program*; and
- 15.01.20, *Rules Governing Area Agency on Aging (AAA) Operations*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Vicki Yanzuk, 208-577-2847.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Judy B. Taylor, Director
Idaho Commission on Aging
P.O. Box 83720
Boise, ID 83720
Phone: 208-334-3800
Email: ICOA@aging.idaho.gov

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.01 – RULES GOVERNING SENIOR SERVICES AND OLDER AMERICANS ACT PROGRAMS

000. LEGAL AUTHORITY.

Under authority of Section 67-5003, Idaho Code, the Idaho Commission on Aging adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 15.01.01, “Rules Governing Senior Services and Older Americans Act Programs.” ()

02. Scope. These rules constitute minimum requirements for aging services funded under authority of Sections 67-5005 through 5008, Idaho Code, and the Older Americans Act as Amended and include a list of common terms and definitions related to Idaho’s aging programs. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Senior Services Act. Programs and services established in Sections 67-5001 through 67-5011, Idaho Code. ()

02. Aging Network. The ICOA, the AAAs, Focal Points and other providers of direct service to older individuals. ()

03. Area Agency on Aging (AAA). Separate organizational unit within a unit of general purpose local government or public or private non-profit agency or organization agency that functions only for purposes of serving as the area agency on aging that plans, develops, and implements services for older persons within a specified geographic area. ()

04. Assessment. An instrument utilizing uniform criteria to assess eligibility. ()

05. Caregiver. An adult family member or another individual, who is an “informal” provider of in-home and community care to an older individual. “Informal” means that the care is not provided as part of a public or private formal service program. ()

06. Client. Person who has met service eligibility requirements addressed in this chapter. ()

07. Cost Sharing Payment. An established payment required from individuals receiving services under this chapter. The cost sharing payment varies by regulation and according to client's current annual household or individual income. ()

08. Department. Idaho Department of Health and Welfare. ()

09. Focal Point. A facility established to encourage the maximum collocation and coordination of services for older individuals. ()

10. Formal Supports. Services provided to clients by a formally organized entity, including, but not limited to, Medicaid HCBS. ()

11. Household. For sliding fee purposes, a “household” includes a client and any other person permanently resident in the same dwelling who share accommodations and expenses with the client. ()

12. ICOA. Idaho Commission on Aging. ()

13. ICOA Program Manual. Operational guidance for services and programs. ()

14. Impairment in Activities of Daily Living (ADL). The inability to perform one or more of the following six activities of daily living without personal assistance, stand-by assistance, supervision or cues: eating, dressing, bathing, toileting, transferring in and out of bed/chair, and walking. ()

15. Impairment in Instrumental Activities of Daily Living (IADL). The inability to perform one or more of the following eight instrumental activities of daily living without personal assistance, or stand-by assistance, supervision or cues: preparing meals, shopping for personal items, medication management, managing money, using telephone, doing heavy housework, doing light housework, and transportation ability (transportation ability refers to the individual's ability to make use of available transportation without assistance). ()

16. Informal Supports. Supports provided by church, family, friends, and neighbors, usually at no cost to the client. ()

17. Medicaid HCBS. Services approved under the Medicaid Waiver for the aged and disabled. ()

18. Older Americans Act (OAA). Federal law which authorizes funding to states to provide home and community-based services for older persons. ()

19. Program. The Idaho Senior Services and Older Americans Act programs as administered by the ICOA. ()

20. Program Regulations. Applicable Federal statutes and regulations, the act, and these rules. ()

21. Provider. An AAA or a person or entity capable of providing services to clients under a formal contractual arrangement including duly authorized agents and employees. ()

22. Services. Long-term services and supports that assist clients to remain in their home and community including but not limited to: Transportation, congregate meals, in-home services, adult day care and information and assistance. ()

011. DEMONSTRATION PROJECTS.

The Administrator has authority to operate demonstration projects under the authority of section 67-5010, Idaho Code, which may be exempt from these rules at the Administrators discretion. ()

012. PROGRAM PURPOSE.

The Idaho Senior Services Act and Older Americans Act Services are designed to provide older individuals with the assistance they need to compensate for functional or cognitive limitations with the goal of living safe, dignified, and healthy lives within the community of their choice. ()

013. PROGRAM POLICY.

01. ICOA Program Manual. The manual is developed, modified, and updated with input from the appropriate stakeholder groups and approved by the Administrator. At the Administrator's discretion, the manual may be modified to adhere to state or federal law or regulations. ()

02. Contracts. The ICOA may contract with Providers to deliver home and community-based services in accordance with the regulations. ()

03. Home and Community Based Services. Services may include: ()

a. Adult Day Care. Personal care for clients in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care/adult day health typically include social and recreational activities, training, counseling, and services such as rehabilitation, medications assistance and home health aide services for adult day health. ()

b. Case Management. Case management is a service provided to clients, at the direction of the individual or a family member of the individual, to assess the needs of the person and to arrange, coordinate, and monitor an optimum package of services to meet those needs. Activities of case management include: comprehensive assessment of the individual; development and implementation of a service plan with the individual to mobilize formal and informal resources and services; coordination and monitoring of formal and informal service delivery; and periodic reassessment. ()

c. Chore Services. Providing assistance to clients who have functional limitations that prohibit them from performing tasks such as routine yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance. ()

d. Congregate Meals. A meal provided to an eligible individual in a congregate or group setting. The meal served must meet program requirements. ()

e. Health Promotion and Disease Prevention. Services that include health screenings and assessments; organized physical fitness activities; evidence-based health promotion programs; medication management; home injury control services; and/or information, education, and prevention strategies for chronic disease and other health conditions that would reduce the length or quality of life of the person sixty (60) or older. ()

f. Home-Delivered Meals. Meals delivered to clients in private homes. ()

g. Homemaker Service. Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair. ()

h. Information and Assistance Services. Provides current information about services available within the community, conducts intake and assessment, determines the appropriate available service, and makes a referral and to the extent practicable, establishes adequate follow-up procedures. ()

i. Legal Assistance. Advice, counseling, or representation by an attorney or by a paralegal under the supervision of an attorney. ()

j. National Family Caregiver Program. ()

i. Counseling. Assist caregivers in making decisions and solving problems relating to their caregiver roles. This includes counseling to individuals, support groups, and caregiver training (of individual caregivers and families). ()

ii. Respite Care. Services which offer temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. ()

iii. Supplemental services. Services provided on a limited basis to complement the care provided by caregivers. Examples of supplemental services include, but are not limited to, home modifications, assistive technologies, emergency response systems, and incontinence supplies. ()

iv. Information Services. A service for caregivers that provides the public and individuals with information on resources and services available to the individuals within their communities. ()

v. Access Assistance. A service that assists caregivers in obtaining access to the services and resources that are available within their communities. To the maximum extent practicable, it ensures that the individuals receive the services needed by establishing adequate follow-up procedures. ()

k. Outreach Services. A service which actively seeks out older individuals with greatest social and economic needs with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas. ()

l. Transportation Services. Services designed to transport clients to and from community facilities/resources for the purposes of applying for and receiving services, reducing isolation, or otherwise promoting independence. ()

m. Respite. Short-term, intermittent relief provided to caregivers of an ADL or IADL impaired care recipient. ()

014. PROGRAM ELIGIBILITY.

Individuals are eligible for specific Services as established by the Older Americans Act and Idaho Senior Services Act. ()

015. SERVICE PRIORITY.

Highest priority is given to clients in immediate jeopardy then those with the greatest degree of ADL or IADL deficits and who are lacking formal and informal supports other than a caregiver. Caregiver services are prioritized by the Administrator in accordance with the Program Regulations. ()

016. SERVICE LIMITATIONS.

01. Cost Sharing Payments. Payments are required based on the sliding fee scale established by the Administrator in accordance with the Program Regulations. ()

02. Service. Eligibility, denial, or termination are determined through the applicable ICOA Assessment. ()

03. Medicaid HCBS. Clients or individuals determined by the Department to be eligible for Medicaid or Medicaid HCBS, are not eligible for Services unless the Services are determined by the Provider to be needed on an interim, emergency basis until Medicaid or Medicaid HCBS is initiated. ()

017. -- 999. (RESERVED)

15.01.02 – RULES GOVERNING ADULT PROTECTIVE SERVICES PROGRAMS

000. AUTHORITY.

Under authority of Sections 67-5003 and 39-5312, Idaho Code, the ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 15.01.02, “Rules Governing Adult Protective Services Programs.” ()

02. Scope. These rules relate to the authority and responsibilities of Providers to administer adult protective services. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Any item not specifically defined below has the same meaning as those defined in Idaho Code or IDAPA 15.01.01, “15.01.01, “Rules Governing Senior Services and Older Americans Act Programs.” ()

01. Adult Protective Services (APS). Statutory protections safeguarding vulnerable adults through investigations of reports alleging abuse, neglect, self-neglect or exploitation, and arrangements for the provision of emergency or supportive services necessary to reduce or eliminate risk of harm. ()

02. Legal Representative. A person with documented legal authority to act on behalf of another individual. ()

03. Protective Action Plan (PAP). An individual plan addressing the remedial, social, legal, medical, educational, mental health or other services available to reduce or eliminate the risk of harm to a vulnerable adult. ()

04. Provider. An Area Agency on Aging or a person or entity capable of providing APS under a formal contractual arrangement including duly authorized agents and employees. ()

011. -- 019. (RESERVED)

020. POLICY STATEMENT.

The ICOA is charged by statute to provide APS services to ensure the vulnerable adult population in Idaho is protected from abuse, neglect, and exploitation. Protective services will be provided that are the least restrictive to personal freedom and ensure the maximum independence of individuals served. In protecting the vulnerable adult population, APS is also intended to provide assistance to care giving families experiencing difficulties in maintaining functionally impaired relatives in the household. ()

021. ADMINISTRATIVE REQUIREMENTS.

In accordance with Section 67-5011, Idaho Code, the ICOA will administer APS through contracts with Area Agencies on Aging. ()

022. PROVISION OF SERVICE REQUIREMENTS.

In accordance with Section 67-5011, Idaho Code, each Provider assumes all responsibilities cited in Title 39, Chapter 53, Idaho Code. ()

01. Direct Provision of Service. Area Agencies on Aging will administer APS as a direct service or may subcontract the service to another Provider at the sole discretion of the Administrator. ()

02. Contracts. Each Provider must administer APS pursuant to contracts delineating the duties and obligations of each APS program. ()

03. Court Visitors. APS staff shall not serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an APS investigation. ()

023. -- 030. (RESERVED)

031. INVESTIGATIVE REQUIREMENTS.

01. Review of Allegations. Upon receipt of a report of abuse, neglect, or exploitation the Provider shall conduct a review of the allegations of such report to determine whether: ()

a. The report was required to be made to ICOA or its contractors pursuant to Section 39-5303, Idaho Code; ()

b. An emergency exists; and ()

c. In cases involving resident-to-resident contact reported pursuant to Section 39-5303(A), Idaho Code, determine whether the case involves the sexual abuse, death, or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult, or involves repeated physical or verbal altercations between residents, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff is unable to remedy through reasonable efforts. ()

02. Need for Investigation. If, based on its review, the Provider determines that a report involves a nursing facility defined in Section 39-1301(b), Idaho Code, and was required to be made to the Department pursuant to Section 39-5303, Idaho Code, the Provider shall immediately refer the report to the Department. If, based on its review, the Provider determines that a report involving resident-to-resident contact was exempted from reporting by Section 39-5303A, Idaho Code, no further investigation need be conducted on such report. The Provider shall investigate all other reports. ()

03. Vulnerability Determination. Upon investigating a report, the Provider shall determine whether an alleged victim is vulnerable as defined in Section 39-5302, Idaho Code. If the alleged victim is determined to be vulnerable as defined in Section 39-5302, Idaho Code, the Provider shall continue the investigation. If the alleged victim is not vulnerable as defined in Section 39-5302, Idaho Code, the case shall be closed; however, the Provider may refer the complaint to Information and Assistance, Case Management, the Ombudsman, law enforcement or other appropriate entity for investigation and resolution. ()

04. Assessment of Alleged Victim. An alleged victim's vulnerability and associated risk factors shall be determined through the ICOA-approved standardized assessment forms. Initial interviews and assessments of an alleged victim shall be conducted by the Provider. ()

05. Investigative Determinations. The Provider shall make one (1) of two (2) investigative determinations upon completion of an APS investigation: ()

a. Substantiated. A report of abuse, neglect, or exploitation of a vulnerable adult by another individual is deemed substantiated when, based upon limited investigation and review, the Provider perceives the report to be credible. A substantiated report shall be referred immediately to law enforcement for further investigation and action. Additionally, the name of the individual against whom a substantiated report was filed shall be forwarded to the Department pursuant to Sections 39-5304(5) and 39-5308(2), Idaho Code, for further investigation. In substantiated cases of self-neglect, the Provider shall initiate appropriate referrals for supportive services with the consent of the vulnerable adult or his legal representative. ()

b. Unsubstantiated. The Provider shall close the case if a report of abuse, neglect, or exploitation is not substantiated. If a report is unsubstantiated, but the Provider determines that the vulnerable adult has unmet service needs, the Provider shall initiate appropriate referrals for supportive services with consent of the vulnerable adult or their legal representative. ()

06. Protective Action Plan. Upon substantiating a report of abuse, neglect, or exploitation of a vulnerable adult, the Provider shall develop and implement a Protective Action Plan. ()

07. Caretaker Neglect. In investigating a report of caretaker neglect, the Provider shall take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult. In such cases, the Provider shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the

risk to the vulnerable adult. In APS cases, in which family members are experiencing difficulties in providing twenty-four (24) hour care for a functionally impaired relative, the Provider shall make appropriate referrals to available community services to provide needed assistance. ()

08. Adult Protective Services and Ombudsman Coordination. Providers shall ensure that APS and the Ombudsman program maintain a written agreement establishing local cooperative protocols in the investigation of complaints. ()

09. Confidentiality. All records relating to a vulnerable adult and held by a Provider are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304(5), and 39-5308, Idaho Code. ()

032. CASE CLOSURE.

01. Case Closure. The Provider shall close a case under the following circumstances: ()

a. The Provider shall close a substantiated case upon a determination that an initiated PAP or law enforcement involvement has successfully reduced the risk to the vulnerable adult. ()

b. The Provider may close a substantiated case when the vulnerable adult refuses to consent to receive services, or upon a determination that the Provider has implemented all measures available to reduce risk but has been unable to reduce risk. ()

c. A case will be closed if the Provider determines that an allegation has been made in bad faith or for a malicious purpose. ()

02. Suspense File. Closed cases will be maintained in a suspense file until formal action is completed by law enforcement and/or the courts in the following instances: ()

a. Cases referred by the Provider to law enforcement for criminal investigation and prosecution as determined necessary by the law enforcement agency. ()

b. Cases referred by the Provider for guardianship/conservatorship proceedings. ()

033. -- 999. (RESERVED)

15.01.03 – RULES GOVERNING THE OMBUDSMAN FOR THE ELDERLY PROGRAM

000. LEGAL AUTHORITY.

Under authority set forth in the OAA and Title 67, Chapter 50, Idaho Code, Section 67-5009, ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 15.01.03, “Rules Governing the Ombudsman for the Elderly Program.” ()

02. Scope. These rules relate to the authority, responsibility, and designation of the ombudsman program. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Any item not specifically defined below has the same meaning as those defined in IDAPA 15.01.01, “Rules Governing Senior Services Program,” and the [Older Americans Act \(OAA\), Section 711](#), and Title 67, Chapter 50, Idaho Code. ()

01. Access. Right to enter long-term care facility upon notification of person in charge. ()

02. Affected Parties. Long-term care facilities, state or county departments or agencies, or others against whom a complaint has been lodged. ()

03. Area III. Planning and service area made up of: Canyon, Valley, Boise, Gem, Elmore, Washington, Ada, Adams, Payette, and Owyhee counties. ()

04. Complainant. The local ombudsman or any individual or organization who registers a complaint with the local ombudsman. ()

05. Complaint Investigation/Resolution. Activities related to receiving, analyzing, researching, observing, interviewing, verifying or resolving a complaint through advocacy, facilitation, conciliation, mediation, negotiation, representation, referral, follow-up, or education. ()

06. Complaints. Allegations made by or on behalf of eligible clients, whether living in long-term care facilities or in the community. ()

07. Designation. Process by which the Office approves the location of local ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program. ()

08. Local Ombudsman. An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman. ()

09. Long-Term Care Facility. Skilled nursing facilities as defined in IDAPA 16.03.02, Subsection 002.33, “Rules and Minimum Standards for Skilled Nursing and Intermediate Care Facilities,” and residential care facilities as defined in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” ()

10. Non-Jurisdictional Complaints. Complaints made by or on behalf of residents of long-term care facilities who are under the age of sixty (60) or complaints concerning persons outside the statutory jurisdiction of an ombudsman. ()

11. Office. Office of the State Ombudsman for the Elderly pursuant to Title 67, Chapter 50, Idaho Code, Section 67-5009. ()

12. Resident. Resident as defined in IDAPA 16.03.22, “Residential Care or Assisted Living Facilities in Idaho.” ()

011. -- 019. (RESERVED)

020. ADMINISTRATIVE REQUIREMENTS.

Each AAA local ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a),

and Title 67, Chapter 50, Idaho Code, Section 67-5009, unless granted a waiver by the Office. ()

01. Procedures. All local ombudsmen shall follow procedures outlined in the Office Procedures Manual. ()

02. Space. Each AAA shall provide space assuring privacy for local ombudsmen to hold confidential meetings. ()

03. Supervision. Local ombudsmen shall operate under the direct supervision of the Office for all complaint handling activities and are considered subdivisions of the Office. ()

04. Forms. All local ombudsmen shall utilize standardized forms provided by the Office. ()

05. Conflict of Interest. AAAs shall ensure that the local ombudsmen are not part of an organization that: ()

a. Is responsible for licensing and certifying skilled nursing or residential care facilities under IDAPA 16.03.22, “Rules for Licensed Residential and Assisted Living Facilities in Idaho”; ()

b. Provides skilled nursing or living care or is an association of such a provider; or ()

c. May impair the ability of the local ombudsmen to investigate and resolve complaints objectively and independently. ()

06. Travel Funds. Each AAA shall provide travel funds for the local ombudsman program to carry out activities related to complaint investigations. ()

07. Program Report. All local ombudsman programs shall comply with the Office’s reporting requirements. ()

08. Program Reviews. Each AAA shall submit to a program review of local ombudsman programs at reasonable intervals deemed necessary by the Office. ()

09. Adult Protection and Ombudsman Coordination. Each AAA shall ensure that Adult Protection staff and the local ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. ()

10. State Agreements. All local programs shall honor and carry out state-level agreements between the Office and other agencies of government. ()

021. STAFFING.

Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of local ombudsman, each AAA shall seek applicants having the following qualifications. ()

01. Minimum Qualifications. Any person hired to fill the position of local ombudsman on or after July 1, 1998, shall have: ()

a. A Bachelor’s degree or equivalent; ()

b. Minimum of one (1) year’s experience working with the elderly; ()

c. Ability to effectively communicate verbally and in writing; ()

d. Knowledge of long-term care issues and resources; ()

e. Demonstrated ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines; ()

- f. Demonstrated ability to work independently; ()
- g. Demonstrated skill in interviewing techniques; and ()
- h. Demonstrated ability to collect data, conduct interviews and to form conclusions. ()

02. Hiring. The Office shall be included in the process of interviewing and selecting applicants for the local ombudsman position. The AAA shall make the final selection from the top three (3) applicants. ()

022. -- 030. (RESERVED)

031. DESIGNATION OF AUTHORITY OF AAA.

The Office shall designate an entity as a local ombudsman. ()

01. Designation of Authority. Each AAA shall directly provide, through a contract agreement with the ICOA, a local ombudsman program employing at least one (1) full-time local ombudsman whose function is to carry out the duties of the Office. AAAs I, II, IV, V and VI shall employ one (1) full-time local ombudsman; AAA III shall employ two (2) full-time local ombudsmen. An AAA may petition the Office in writing for a waiver of this requirement. ()

02. Grounds for Revocation or Termination. In revoking a designated local ombudsman program, the Office shall provide due process in accordance with applicable law and IDAPA 04.11.01, Section 000, et seq., “Idaho Rules of Administrative Procedure of the Attorney General.” ()

a. Following termination of a local ombudsman program, the Office shall perform the duties of the local program and withdraw funding for the local program for the remainder of the funding period. ()

b. An AAA’s appeal of the Office’s termination of its local ombudsman program shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded under Title III, OAA. ()

032. HANDLING OF COMPLAINTS.

The Office has jurisdiction to accept, identify, investigate, and resolve complaints made by, or on behalf of, persons aged sixty (60) or older, living in the community or in long-term care facilities. The Office and the local ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The Office shall represent the interests of older persons before governmental agencies and seek to protect the health, safety, welfare and rights of older persons. ()

01. Non-Jurisdictional Complaints. Local ombudsmen may respond to complaints made by or on behalf of under age sixty (60) long-term care residents where such action will: ()

- a. Benefit other residents; or ()
- b. Provide the only viable avenue of assistance available to the complainant. ()

02. Conflict of Interest. Local ombudsmen shall refer to the Office any complaint involving AAA staff or contractors. ()

03. Complaints. Complaints concerning local ombudsmen, or relative to a local ombudsman’s official duties, shall be directly referred to the Office. The Office, upon completing an investigation of such complaint, shall provide findings and recommendations to the AAA. ()

04. Guardianship. The local ombudsmen shall not serve as an ex-officio or appointed member of any Board of Community Guardian, nor file an affidavit to the court for guardianship. ()

05. Court Visitor. The local ombudsmen shall not act as court visitor in any guardianship/

conservatorship proceeding concerning a past or current client. ()

06. Legal Documents. Local ombudsmen shall not, in their capacity as ombudsmen, act as a notary or a witness of signatures for legal documents. ()

033. ACCESS.

The Office shall ensure that representatives of the Office have access to long-term care facilities and residents as well as appropriate access to medical and social records, and resident representative contact information needed to investigate complaints. ()

01. Visitation. For visitation purposes, local ombudsmen shall have access to long-term care facilities during regular business hours. Visiting local ombudsmen shall: ()

a. Notify the person in charge upon entering the facility; ()

b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; and ()

c. Communicate privately and without restriction with any resident who consents to the communication. ()

02. Investigation. Local ombudsmen shall have access to long-term care facilities at any time for the purpose of conducting investigations. A local ombudsman conducting an investigation shall: ()

a. Notify the person in charge upon entering the facility; ()

b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; ()

c. Seek out residents who consent to communicate privately; ()

d. Communicate privately and without restriction with any resident who consents to the communication; and ()

e. Inspect a resident's records under conditions set forth in the OAA, Section 712. ()

f. Inspect facility administrative records, policies, and documents that are accessible to the resident and general public. ()

03. Privacy. Local ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code. ()

04. HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, 45 CFR 164, subparts A and E, does not preclude release by the facility of resident private health information or other resident identifying information to the Office. ()

034. -- 040. (RESERVED)

041. WRITTEN CONSENT.

The Office shall ensure appropriate access to review medical and social records of a resident. (See OAA, Section 712) ()

01. Resident Written Consent. Access to confidential records requires the written consent of the resident or legal representative. ()

02. Lack of Consent. If the client is unable to provide written or oral consent, or the legal representative is unavailable to provide consent, the local ombudsman, with approval of the Office may inspect

available client records, including medical records that are necessary for investigation of a complaint. ()

03. Consent Refused. If a local ombudsman has been refused access to records by legal representative but has reasonable cause to believe that the legal representative is not acting in the best interest of the client, the local ombudsman may, with the approval of the Office, inspect client records, including medical records. ()

04. Requirements for Informing Client or Resident. The local ombudsman shall inform the complainant or resident regarding: ()

- a. Who will receive the information; ()
- b. What information will be disclosed; and ()
- c. The purpose for which the information is being disclosed. ()

042. CONFIDENTIALITY.

The Office shall be the custodian of all local ombudsman program records including, but not limited to, records and files containing personal information relative to complainants and residents of long-term care facilities. Requests for release of confidential information shall be submitted to the Office for approval or denial. Release of information shall be granted pursuant to OAA, Section 721(e). ()

01. Storage of Records. Client records shall be maintained in locked storage. Case records inactive for two (2) years or longer may be expunged. As required by law, release of these records shall be limited to persons authorized by the Office. ()

02. Performance Evaluations. For performance evaluation purposes, direct supervisors shall have access to client files maintained by local ombudsmen. ()

03. Confidential Records. Records to be safeguarded include, but are not limited to, long-term care and community-based complaint files including: ()

- a. Notes of interviews with complainants and clients or collateral contacts; ()
- b. All copies of residents' medical records or diagnoses; ()
- c. All records relevant to complaint investigations; ()
- d. All memoranda generated by the Office or by another agency office during the evaluation and resolution of a complaint; ()
- e. All photographs, video tapes, tape recordings, etc. pertaining to complaint investigation; ()
- f. All memoranda or letters generated during evaluation or resolution of a complaint; ()
- g. Written documentation that parties affected by ombudsman opinions or recommendations have been notified; and ()
- h. Information containing unverified complaints about long-term care facility owners, administrators, staff or other persons involved in the long-term care system or in other service programs. ()

04. Request for Anonymity. The ombudsman shall honor a resident's or complainant's request to remain anonymous. If investigation of a complaint requires that a resident's or complainant's name be divulged in order for the investigation to proceed, the ombudsman shall so inform the resident or complainant. If the resident or complainant insists on maintaining anonymity, the ombudsman may terminate the investigation. ()

043. DISCLOSURE.

The Office is the only entity authorized to disclose ombudsmen program files, records, or information. Identifying

information of any resident or complainant shall be disclosed only with proper consent or in response to a court order. The Office, in its sole discretion, may delegate the disclosure of ombudsman program files, records, or information to a local ombudsman. ()

01. Court Order. Identifying information of a resident, complainant, or both may be disclosed, with or without the consent of the resident, complainant, or both, pursuant to a court order issued by a court of competent jurisdiction. ()

02. Resident Consent. Without a court order, identifying information of a resident shall be disclosed only if the resident or his representative communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. ()

03. Complainant Consent. Without a court order, identifying information of a complainant shall be disclosed only if the complainant communicates informed consent to the disclosure and the consent is given in writing, orally, visually or through the use of auxiliary aids and services; and such consent is documented by a representative of the Office in accordance with procedures. ()

044. -- 999. (RESERVED)

15.01.20 – RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS

000. AUTHORITY.

Under authority of Section 67-5003, Idaho Code, the ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 15.01.20, “Rules Governing Area Agency on Aging (AAA) Operations.” ()

02. Scope. These rules relate to the authority, responsibilities, and designation of AAAs. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Any item not specifically defined below has the same meaning as those defined in IDAPA 15.01.01, “Rules Governing Senior Services and Older Americans Act Programs.” ()

01. Area Plan. Plan describing aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding. ()

02. Contract. A legally binding, written agreement between two (2) or more parties which outlines the terms and provisions to which both parties agree. ()

03. Planning and Service Area (PSA). ICOA designated geographical area within Idaho for which an AAA is responsible. ()

011. -- 019. (RESERVED)

020. PLANNING AND SERVICE AREA (PSA) DESIGNATION.

The ICOA has divided the state into PSAs in accordance with Section 305 of the OAA, as amended. ()

021. AAA.

01. AAA Designation. The ICOA shall accept applications for AAA designation in accordance with Section 305 of the OAA. ()

02. Revocation of AAA Designation. The ICOA may revoke the designation of an AAA as specified in OAA and the federal regulations thereunder. ()

03. Denial of AAA Designation. Any organization denied AAA designation through a competitive bidding process may appeal the decision to the Administrator of ICOA. ()

04. Limit on the Number of Area Agencies and PSA’s. In order to maximize funding for services that directly benefit the elderly, the number of PSAs and AAAs is limited to no more than six (6). ()

022. AAA BUDGET FORMS AND REVISIONS.

01. Budget Forms. Each AAA shall submit, on forms provided by the ICOA, a budget for agency operations. The AAA shall maintain sufficiently detailed budget and expenditure records to respond to requests for information from the ICOA, U.S. Administration for Community Living, legislators, or the general public. ()

02. Budget Revisions. Requests for approval of budget revisions shall be made in writing to the ICOA: ()

a. In order to process transfers between Title III programs; ()

b. To reflect holdbacks or midyear increases in state or federal spending; or ()

c. If there is a change in spending which exceeds ten percent (10%) of any line item in the comprehensive budget summary. ()

023. -- 040. (RESERVED)

041. AAA RESPONSIBILITIES.

On behalf of all older persons in the PSA, the AAA shall assume the lead role relative to aging issues. In accordance with the OAA and all pertinent federal regulations, the AAA shall serve as the public advocate for the development and enhancement of comprehensive, coordinated community-based service systems within each community throughout the PSA. ()

042. CONTRACT MANAGEMENT REQUIREMENTS.

AAAs shall adhere to all applicable federal contracting and procurement requirements in awarding subcontracts. ()

01. Non-Profit Agency Contractors. AAAs may subcontract with private, non-profit agencies that are incorporated as 501(c)(3) organizations. ()

02. AAA Provider Subcontracts. All subcontracts between the AAA and service providers shall contain sufficient program and financial information to ensure all activities comply with the Area Plan, the OAA, federal regulations, the SS Act, and the rules of the ICOA. ()

03. Contracts Term. Each AAA may award multi-year subcontracts not to exceed four (4) years. ()

a. Each AAA shall maintain documentation satisfactory to ICOA that justifies the reason(s) a multi-year subcontract was awarded. Justification for a multi-year subcontract may include, but is not limited to, the following: ()

i. More than one (1) year is necessary to complete the project or service; ()

ii. More than one (1) year is necessary to justify substantial cost savings; or ()

iii. A multi-year subcontract award is necessary to allow a provider the opportunity to increase and demonstrate capacity to operate a particular service. ()

b. No AAA shall continue a multi-year subcontract unless the results of evaluation justify continuance of the subcontract. ()

04. AAA Provider Appeals. AAAs shall develop fair and impartial hearing procedures and provide an opportunity for a hearing for any organization denied a subcontract with the AAA. ()

043. -- 050. (RESERVED)

051. AREA ADVISORY COUNCILS ON AGING.

01. Establishment of Council. The AAA shall establish an advisory council in accordance with the requirements of the OAA, as amended, and all pertinent federal regulations. ()

02. Council Meetings. Each advisory council shall meet at least two (2) times each year. ()

03. Conflict of Interest. AAA employees, or members of the immediate families of AAA employees, shall not serve on the advisory council. ()

04. By-Laws. The advisory council shall adopt and operate according to by-laws. ()

052. AREA PLANS.

Each AAA shall submit a four (4) year area plan to the ICOA by close of business January 1, 2002, and by October 15 every four (4) years thereafter. Annual updates shall be submitted by October 15 of each year. The area plan and annual updates shall be submitted in a uniform format prescribed by the ICOA to meet the requirements of the OAA and all pertinent federal regulations. ()

053. SERVICE PRIORITY AND APPEALS.

01. Service Priority. Pursuant to the OAA, each AAA shall ensure that all service providers prioritize service delivery to those older individuals having the greatest economic and social need, with particular attention to low-income minority individuals and individuals residing in rural areas. ()

02. Denial or Termination of Service. AAAs shall develop fair and impartial hearing procedures and provide an opportunity for a hearing for any individual who is denied or terminated from a service. ()

054. ELIGIBILITY.

Individuals are eligible for services as established by the Older Americans Act and the Idaho Senior Services Act. ()

055. AAA ASSESSMENTS OF PROVIDERS.

Every other year each AAA shall conduct, at a minimum, one (1) on-site assessment of each of its providers that receives fifty thousand dollars (\$50,000) or more in combined federal and state funds during a contract year. Such assessments shall comply with the terms of the AAA contract with the ICOA and be on file for ICOA review. ()

056. REPORTING REQUIREMENTS.

01. Reporting Forms. Each AAA shall submit to the ICOA such reports as are specified by the ICOA, in such format and on such schedule as is established by the ICOA, in fulfillment of all federal and state requirements. ()

02. Verification of Service Provider Reports. The AAAs shall conduct ongoing verification of service provider reports. ()

03. Reporting Deficiencies. If reports are late, incorrect, or incomplete, the ICOA shall withhold funds from the AAA, in accordance with terms of the contract between the ICOA and the AAA, until a correct report is received by the ICOA. ()

057. CIVIL RIGHTS.

Neither the AAAs nor their providers shall violate any state or federal law regarding civil rights and shall provide all services and functions funded by the ICOA, affected by rule of the ICOA or provided for by contract with the ICOA without discrimination on the basis of race, color, national origin, age, gender, physical or mental impairment, or on any other basis prohibited by law. ()

058. -- 065. (RESERVED)

066. FINANCIAL MANAGEMENT.

01. Regulations. Area agencies and service providers shall meet the financial management requirements of 45 CFR, 74 and 92. ()

02. Allowable Costs. Allowable costs are delineated in the OAA, and 45 CFR, Part 75. These cost principles shall apply to the expenditure of federal funds, as well as any state or local funds which are reported as match for federal funds. In-kind contributions shall benefit the program for which they are reported as match. No expenditure may be used as match if it has been or will be counted as match for another award of federal or state funds. ()

03. Audits. All AAAs and service providers shall be audited in accordance with the Single Audit Act of 1996 and OMB Circular A-133 as amended. ()

067. -- 999. (RESERVED)