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Section I - General Provisions

Background

Presently, thirty-seven (37) of the fifty-two (52) Area Agencies on Aging (AAAs) across Pennsylvania are parts of county governments, promoting built-in accountability to local elected officials, who in turn are accountable to the public at-large. The remaining fifteen (15) AAAs are non-profit corporations. In the cases of these NPAAAs, the Department's need to exercise oversight of local accountability is magnified. Out of the \$183,670,422 state and federal aging social services dollars allocated to AAAs in FY 1990-91, \$71,022,362 (39%) were allocated to these non-profit AAAs. Both corporate structure and management practices of corporations that receive designation as non-profit AAAs must be designed and maintained to ensure an overall accountability and responsiveness to the community, as well as effective and efficient utilization of public funds. Establishment of effective and representative Governing Boards, operating under by-laws which assure due process, is a major key to achieving these objectives.

Scope and Intent

This Aging Program Directive applies to all Area Agencies on Aging governed by non-profit corporations existing in Pennsylvania as of the issuance of this directive. It also applies to any private, non-profit corporations that may be designated as Area Agencies on Aging after this directive is issued, but while it is still in force.

Section II - Minimum Requirements

a. By-laws

Each NPAAA must be governed under a set of by-laws which clearly articulate the processes by which the Governing Board of Directors of the NPAAA will operate.

b. Board Composition

1. Each NPAAA must have a governing board ("board") consisting of a minimum of nine (9) voting members, at least two-thirds of whom must reside within the planning and service area (PSA), or represent organizations located within the PSA.
2. Procedures for membership recruitment, selection and rotation as well as for election and rotation of officers must be clearly specified in the by-laws. The procedures must assure a reasonable frequency in rotation of positions on the board as well as in rotation of leadership positions. With the exception of publicly elected officials, the average length of potential consecutive service for members appointed or elected to the board may not exceed six years. No leadership position on the board may be held for more than four consecutive years.

At least one year of absence from the board or leadership position is required to break a chain of consecutive service.

The above membership rotation requirements are not intended to interrupt the orderly progression of active rotation systems that are already in place, nor to severely disrupt the continuity of boards that have not been actively rotating membership. Accordingly, for boards which already utilize staggered membership terms, members who are in the middle of terms not exceeding three years when this APD takes effect on July 1, 1993 may complete those terms regardless of their consecutive length of service. Boards which have not implemented staggered membership terms of three years or less as of July 1, 1993, will not be required to rotate more than one-third of their membership in any given year in order to achieve compliance, but will instead be required to rotate at least one-third of their membership per year until full compliance is achieved.

3. Board membership must be constructed in a way which assures representation of a cross-section of interested parties in the community.

Following are examples of the types of diversified representation which could be recruited for Governing Board membership:

- Governmental representatives such as local, state legislators or county commissioners.
 - Individuals with experience and/or expertise in the delivery of human services including health care.
 - Resource and planning representatives.
 - Business community representatives such as banking leaders, legal professionals, insurance industry, Chambers of Commerce and labor leaders.
 - Minority representation.
 - Consumer representatives who are age 60 or older and very knowledgeable about the way in which the aging network operates in the community. Such individuals should represent designed geographic sub-areas of the PSA as well as prominent advocacy groups. Older persons with low and moderate income should receive particular consideration for inclusion under this category.
4. The by-laws must require that each member, including publicly elected officials, provide disclosure to the full board of any interest which could potentially conflict with the interest of the AAA. This disclosure must be made as of July 1, 1993 and

at the beginning of any subsequent term of membership. Any such disclosure must be documented in the board meeting minutes.

5. No AAA staff person (including the Director) may serve on the board. Staff may, however, attend meetings in a non-voting capacity at the request of the board.
6. No individual who receives direct payment from the non-profit corporation pursuant to an individual service contract may serve on the board.
7. The by-laws should provide for a set of standing committees which may be tailored to the size and needs of the agency. Roles and responsibilities of each committee must be clearly spelled out in the by-laws.

Examples of the types of committees which are appropriate for a board of this nature include:

- Executive
- Nominating
- Finance
- Planning
- Personnel
- By-laws
- Administration
- Program Evaluation

Smaller governing boards may wish to combine several of the above-itemized functions into the missions of a smaller number of committees. Ad hoc committees may also be established and disbanded as special needs arise and subside. There should be a written record of committee proceedings.

c. Board Meetings

1. The by-laws must provide, at a minimum, for meetings of the full governing board to take place at least six times per year, preferably with at least one meeting held in each calendar quarter. The board must also be available on an ongoing basis to perform decision-making functions which do not conform to the standard meeting schedule.
2. Each full governing board meeting must be in compliance with Attachment A of this document, entitled "Non-Profit Board Standards Open Meeting Requirements."
3. Full board meetings must be readily accessible to the entire planning and service area. This may require rotation of meeting sites. To further increase exposure, it is encouraged that aging services facilities (such as senior centers) be at least occasionally selected as meeting sites.

4. The by-laws must provide that all board meetings be conducted in such a manner that any board member (including elected officials) be excluded from voting on any issue which presents a professional, financial or personal conflict of interest for that member.
5. Minutes must be kept for all full governing board meetings. There should be a written record of committee proceedings.

d. Board Authority/Responsibilities

1. The by-laws must provide that the board has full authority to set policy for--and oversee the operation of--the NPAAA. NPAAAs which are a part of multi-purpose, non-profit organizations must set forth in the by-laws how it will achieve compliance with this directive.
2. The by-laws must specify that the board will hold itself responsible for and oversee the following areas:
 - Hiring the Executive Director of the AAA.
 - Approving the Executive Director's compensation package.
 - Establishing annual written performance standards and objectives for the Executive Director.
 - Evaluating in writing the Director's performance annually.
3. The remainder of Section II of this directive consists of best practices that the Department expects all NPAAAs to adopt. If for any reason an agency considers one or more of these best practices to be burdensome when applied to its particular situation, it may propose in writing to the Department alternative means of achieving the objective(s) of the best practice(s) in question.

BEST PRACTICE RESPONSIBILITIES FOR THE GOVERNING BOARD

Personnel Issues

- Developing and amending AAA personnel policies.
- Approving salary and wage scales and benefits.

Program Oversight

- Providing oversight for the initiation of new programs and the operation of existing services to assure high quality as well as fairness for all consumers.

Contract Decisions

- Actively overseeing at least those procurement processes resulting in contracts comprising a significant percentage of the agency's total budget. The definition of a "significant percentage" must be established in the by-laws.
- Formally approving all Department of Aging grants and contracts, including revisions and amendments.
- Tracking all appeals from contractors or prospective contractors.

Financial Issues

- Establishing control over purchases, i.e., insurance, capital equipment.
- Reviewing the budgetary and programmatic standing of the agency on a quarterly basis, to include staff briefings on any problems that may exist with the performance of sub-contractors.

Client Issues

- Approving the process for local resolution of client complaints and appeals.

Public Input

- Ensuring that the Board has a mechanism to receive public input.

Complete and Timely Briefings

- Ensuring that where votes are to be taken on a policy or issue, board members receive advance information, so that to the extent feasible the board has adequate time to contemplate and discuss issues prior to being required to render a decision.
- Ensuring disclosure to the board of all pertinent information related to the issue before the board.
- Ensuring that formal action is taken by the board (in the form of voting) prior to any action being taken by staff (on issues that require Board approval).

Participation and Absenteeism

- Establishing mechanisms to evaluate the participation of board members and to address absenteeism. At a minimum,

standards for meeting attendance must be established, in proportion to the meeting schedule of the board.

Orientation and Training

- Establishing mechanisms for orientation and training of new board members. It also must take whatever steps are necessary to facilitate access to training for board members which may be made available by the Department of Aging.

Section III: Implementation Protocol

- a. All NPAAAs must achieve full compliance with the provisions of this directive by July 1, 1993.
- b. All NPAAA by-laws must be received by the appropriate Department of Aging Field Representative by March 1, 1993, in order to facilitate review for compliance with this directive and revision (if necessary).
- c. All changes in the by-laws subsequent to initial Departmental approval must be re-submitted to the Department for review prior to implementation.

NON-PROFIT BOARD STANDARDSOPEN MEETING REQUIREMENTS

- (1) All executive board meetings at which the Area Agency on Aging establishes policy, makes recommendations regarding its duties under the Older Americans Act or the Department of Aging's authorization statute or pursuant to any other statute or regulations, renders decisions on agency business or votes on any proposal, motion, report, resolution, shall take place at a meeting open to the public. The only exceptions to this rule shall be those contained in 65 P.S. §278 (attached hereto).
- (2) All votes taken pursuant to paragraph (1) shall be publicly cast and recorded.
- (3) Written minutes of all open meetings shall be kept and shall include the following:
 - (a) The date, time and place of the meeting.
 - (b) The names of those members of the board present at the meeting.
 - (c) The substance of all official actions and a record by individual member of the board of the roll call votes taken.
 - (d) The names of all citizens who appeared officially and the subject of their testimony.
- (4)
 - (a) The Area Agency on Aging shall assure that it provides the public with notice of its first regular meeting of each calendar or fiscal year not less than three (3) days in advance of the meeting and give public notice of the schedule of its remaining regular meetings.
 - (b) Public notice shall consist of publication of the place, date and time of a meeting in a newspaper published and circulated in the Agency's planning and service area or in a newspaper which has a paid circulation equal to or greater than any newspaper published in the PSA. The agency shall also post a notice of the place, date and time of a meeting prominently at the meeting site.
 - (c) Any meeting scheduled after the regular schedule has been established or any rescheduled regular or special meeting shall be published at least 48 hours in advance of the time of the convening of the meeting except for emergency meetings, i.e., those involving clear and present danger to life or property.

- (d) All public notices must be published in time to allow it to be circulated within the above timeframe in the planning and service area where the Area Agency on Aging is located. The Agency shall supply, upon request, copies of the public notice to any newspaper of general circulation, any radio or television station and to any interested parties.
- (5) Any person attending a meeting open to the public shall have the right to use reasonable recording devices to record the proceedings.
- (6) The Area Agency on Aging may adopt, by official action, rules and regulations necessary for the conduct of its meetings and the maintenance of order.

PUBLIC OFFICERS

65 P.S. § 278
Note 1

§ 278. Executive sessions

(a) **Purpose.**—An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(b) **Procedure.**—The executive session may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting, specifying the date, time, location and purpose of the executive session.

(c) **Limitation.**—Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 7¹ shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 4.²

1986, July 3, P.L. 388, No. 84, § 8, effective in six months.

¹ Section 277 of this title.

² Section 274 of this title.