



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGING  
Harrisburg, Pa. 17101

# PENNSYLVANIA DEPARTMENT OF AGING

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## AGING PROGRAM DIRECTIVE

SUBJECT: GENERIC POLICIES AND PROCEDURES FOR THE REQUESTING AND CONSIDERATION OF WAIVERS FROM DISCRETIONARY DEPARTMENT OF AGING POLICIES

TO: EXECUTIVE STAFF  
DIVISION OF FIELD OPERATIONS  
AREA AGENCIES ON AGING

DPW, OFFICE OF POLICY, PLANNING AND EVALUATION  
PENNSYLVANIA COUNCIL ON AGING  
PENNSYLVANIA STATE ASSOCIATION OF COUNTY COMMISSIONERS

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CONTENT: Chapter I - General Provisions

### I.1 Background & Purpose

As the trend toward decentralization of authority to the local level progresses, it has become apparent that the Pennsylvania Aging Network is in many cases comprised of 51 different operational realities rather than only one. It therefore becomes increasingly difficult to establish a single policy which guarantees minimum program standards and yet meets the test of maximum reasonable flexibility in each of 51 situations. In the past, the Department of Aging has attempted to deal with this problem by establishing separate waiver procedures for those individual policies which the Department saw as conducive to a possible waiver. However, the Department now believes that there are so many such "waivable" policies that it would be more efficient to allow waiver requests on all PDA discretionary policies.

The purpose of this APD is to establish a single process through which such waiver requests will be handled.

## I.2 Statement of Departmental Philosophy Regarding Waivers

To the extent possible, the Department has recently moved in the direction of increased flexibility in the discretionary policies that are established. Generally, such policies are meant to ensure acceptable minimum standards of quality in terms of management and/or service delivery. In short, the requirements are meant to guarantee provision of a quality product. However, it is virtually impossible to write policy that is purely product-oriented. Often, it is necessary to indirectly guarantee the product by issuing process-oriented policies, compliance with which will lead to the provision of a quality product.

This relationship between product and process orientation is central to the Department's new philosophy regarding responses to waiver requests. A waiver request which argues that the desired product can be achieved through use of a different process than that prescribed in a discretionary policy merits serious consideration, and--if documented upon investigation--may be approved. However, a waiver request which intentionally or unintentionally violates the standard of product quality which is the purpose of the policy from which relief is sought, will not be approved, for approval would defeat the purpose of the policy.

Historically, the attachment of a waiver provision to a Departmental policy directive meant that waiver requests were routinely approved often without serious investigation into the merits of the case. This practice has already begun to change, and in any event is not appropriate to a system in which all discretionary policies are waivable. Conversely, the integrity of the system requires the serious positive consideration of every responsible waiver request. The determining question will not be "Does the Department agree with the course of action being proposed by the AAA?", but rather "Is the alternative process being proposed by the AAA a reasonable method of achieving the product whose attainment is the purpose of a policy in question?" The Department believes that this standard represents the best way to effectively discharge its stewardship responsibilities while conforming to the current trend toward decentralization of decision making.

## I.3 Definitions

1. DISCRETIONARY PDA POLICY -- Any PDA requirements placed on AAA's which are either:

- A. Not mandated by Federal Law, Federal Regulation, Pennsylvania Law, nor the Pennsylvania Code.
- B. Mandated by Federal Law, Federal Regulations, Pennsylvania Law or the Pa. Code with specific waiver provisions at the discretion of the State Unit on Aging, Department of Aging or the Secretary of Aging.

ALL DISCRETIONARY PDA POLICIES ARE SUBJECT TO THE PROVISIONS OF THIS APD.

- 2. NON-DISCRETIONARY PDA POLICY: Any PDA requirement placed on AAA's which is mandated by Federal Law, Federal Regulations, Pennsylvania Law, or the Pennsylvania Code from which the State Units on Aging, Department of Aging, or Secretary of Aging are not explicitly given authority to grant waivers.

NON-DISCRETIONARY POLICIES ARE NOT SUBJECT TO THE PROVISIONS OF THIS APD.

- 3. PRODUCT: The achievement of a desired end, goal, or state of affairs.
- 4. PROCESS: The prescribed procedural activities designated to obtain "the product."

## Chapter II - General Requirements

### II.1 AAA Responsibilities

Area Agencies on Aging are responsible for complying with Department of Aging Regulations and Program Directives, as well as with all other applicable State and Federal laws and regulations, under the terms of their various funding agreements with the Department of Aging. However, in the case of all discretionary PDA policies, Area Agencies on Aging have the option of applying for a waiver if they feel that following the policy or policies in question would not be in the interest of older persons residing within their PSA's.

The vehicle for requesting waivers from discretionary PDA policies is a formal letter of request for waiver addressed to the Secretary of Aging and signed by the Chairman of the AAA Governing Board. The letter of request and/or its attachments must include at a minimum the following:

- 1. An explanation of how the objective(s) of the policy or policies in question will be achieved through some means other than that or those prescribed in the policy or policies in question. Any supporting

data operational plans, illustrations, flow charts, etc. which will support and/or document this explanation should be included.

2. An explanation of how the senior citizens residing within the PSA in question will benefit from approval of the requested waiver. Again, supporting documentation should be submitted as appropriate.
3. A summary of public input which may have been received on the issue(s) in question from the AAA Advisory Council, or from Public Hearings, and/or from any other source, documented as appropriate. (Public hearings are not required as a prerequisite for waiver requests, although in some cases the AAA may deem it important to hold such hearings or address the issue(s) in question at regularly scheduled public hearings.)
4. Any other information which in the opinion of the AAA will support its case for a waiver.

### III.2 PDA Responsibilities

Within thirty days of receipt of a discretionary waiver request from an Area Agency on Aging, the Secretary or Deputy Secretary will respond in writing to the petitioning AAA in one of four ways:

1. Approving the waiver request based on the written submission.
2. Disapproving the waiver request based on the written submission.
3. Conditionally Approving the waiver request until a site visit can be made and/or additional information obtained.
4. Suspending action on the waiver request until a site visit can be made and/or additional information obtained.

If either Option #3 or #4 is chosen by the Department, a final approval or disapproval will be issued within 30 days after a site visit has been conducted and/or the requisite additional information has been obtained from the AAA. In no case, barring developments outside the control of PDA, will the entire process consume more than 90 days from the date of the original waiver request.

Follow up to ensure that conditions of a waiver approval or denial are being adhered to may be conducted at the discretion of the Department of Aging.