

651 CMR: DEPARTMENT OF ELDER AFFAIRS

651 CMR 11.00: AREA AGENCIES ON AGING STATUS APPEALS

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11.01: Scope and Purpose

651 CMR 11.00 is promulgated pursuant to M.G.L. c. 19A, § 3, and 42 U.S.C. 3027(a)(5) and its implementing regulations to provide an opportunity for a public hearing to applicants for designation as Area Agencies on Aging (AAA) denied after a proposal process, applicants denied as geographic areas to be served by AAA's under 42 U.S.C. 3025(a) after a proposal process, designated AAA's when EOEA disapproves an Area Plan or terminates Area Agency on Aging (AAA) status as defined in 42 U.S.C. 3026, or affected parties if EOEA designates an additional planning and service area(s), divides the state into different planning and service areas, or otherwise affects the boundaries of the planning and service areas in the state as set forth in 42 U.S.C. 3025(b).

11.02: Definitions

Appellant means an organization or agency set forth in 651 CMR 11.02 which requests a public hearing following an adverse ruling by EOEA concerning its AAA/Area Plan, AAA designation status, or AAA planning and service area status.

Area Agency on Aging (AAA) means a single agency designated by EOEA and charged with the responsibility of developing and implementing an Area Plan for the provision of services to elderly persons in a Planning and Service Area under OAA Title III.

Area Plan means a plan submitted by an AAA and approved by EOEA which enables the AAA to administer activities under Title III.

Assistant Secretary on Aging means the Assistant Secretary of the Administration on Aging of the federal Department of Health and Human Services.

Days means calendar days, unless otherwise specified otherwise.

Elders means residents of the Commonwealth who are 60 years of age or older.

EOEA means the Executive Office of Elder Affairs of the Commonwealth of Massachusetts.

Planning and Service Area means an area designated by EOEA (as SUA) under § 305(a)(1)(E) or § 305(b)(5)(A) of the Older Americans Act, as amended, (42 U.S.C. 3025(a)(1)(E)) or 3025(b)(5)(A)) in which an AAA carries out an Area Plan.

Secretary means the Secretary of the Executive Office of Elder Affairs of the Commonwealth.

SUA means the State Unit on Aging, which for Massachusetts is the Executive Office of Elder Affairs.

Title III means Title III of the Older Americans Act, as amended (42 U.S.C. 3001 *et seq.*) and all regulations and directives implementing it.

11.03: Notice of Action

(1) No fewer than 60 days prior to the proposed date of implementation, EOEAA shall forward a written notice of action to the affected AAA(s) by registered or certified mail, specifying the reasons for the proposed action to be taken in the following situations:

- (a) revocation of the designation of the AAA under 42 U.S.C. 3025(a);
- (b) denial of a request for designation as AAA after a designation proposal process;
- (c) designation of an additional planning and service area in a state;
- (d) division of the state into different planning and service areas; or
- (e) action which otherwise affects the boundaries of the planning and service areas in the state.

(2) No fewer than 21 days prior to the proposed date of implementation, EOEAA shall forward a written notice of action to the affected AAA(s) by registered or certified mail, specifying the need for the proposed action to be taken in the event of a disapproval of an AAA's Area Plan or Area Plan amendment.

11.04: Public Hearing

(1) No fewer than 30 days prior to implementing the actions proposed in 651 CMR 11.03(1), EOEAA shall hold a public hearing on the proposed action in order to receive comments on the proposed action. EOEAA shall provide adequate prior notice of the public hearing and the specifics of the proposed action to the AAA, affected service providers and older individuals in the planning and service area.

(2) If an AAA wishes to seek a public hearing on the proposed action to disapprove the AAA Plan under 651 CMR 11.03(2), such agency or organization shall file a written request for a public hearing to the Legal Unit of the Executive of Elder Affairs, One Ashburton Place, 5th Floor, Boston MA 02108 by hand delivery or registered or certified mail within ten calendar days following receipt of the notice of action. Such request shall stay the implementation of the Area Plan or Area Plan amendment disapproval until after the Secretary's decision.

11.05: Public Hearing Administrative Procedures

The Secretary or his/her designee shall preside over the hearings under either 651 CMR 11.03(1) or (2), shall state and explain the action to be taken and receive comments on same from interested parties. EOEAA shall keep an audio or written record of the public hearing.

11.06: Secretary's Decision

Within 14 calendar days after the hearing, the Secretary shall render a decision on the matter subject to public hearing and shall communicate such decision to the parties in writing.

11.07: Appeals of the Secretary's Decision

(1) A decision of the Secretary after hearing, under 651 CMR 11.03(1) only shall be appealable to the federal Assistant Secretary on Aging under 42 U.S.C. 3025(a)(5)(C)(ii)(V) by filing such request for appeal with the reasons stated with the General Counsel of EOEAA within ten days following receipt by the appellant of such Secretary's decision. The General Counsel of EOEAA shall file such appeal with the Assistant Secretary in accordance with any applicable federal rules.

(2) An adversely affected party involved in an action or proceeding described in 651 CMR 11.07 may bring an appeal on the basis of the facts and merits of the matter or on procedural grounds.

(3) A filing of an appeal of the Secretary's decision shall stay the proposed actions by EOEAA under 651 CMR 11.03(1) as set forth in the Secretary's decision until receipt by both parties of the Assistant Secretary on Aging's decision.

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11.08: Assistant Secretary on Aging's Decision

The Legal Unit of EOEa shall forward the Assistant Secretary on Aging's decision to the Appellant and the Secretary as soon as possible after it is received. The Secretary shall implement this decision as directed and within his or her authority.

REGULATORY AUTHORITY

651 CMR 11.00: M.G.L. c. 19A, § 3.