

STATE OF KANSAS
KANSAS DEPARTMENT ON AGING**NOTICE OF PUBLIC HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS**

A public hearing will be conducted on Tuesday, May 24, 2011 at 9:00 a.m. in the Kansas Department on Aging's Office, 503 S. Kansas Ave., Topeka, to consider the adoption of proposed rules and regulations of the Kansas Department on Aging (KDOA) on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to Patsy Samson, Policy Analyst, Kansas Department on Aging, 500 S. Kansas, Topeka, 66603 or by e-mail to Patsy.Samson@aging.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Patsy Samson at (785) 296-0378 or TTY (785) 291-3167. Handicapped parking is located on the east side of the New England Building's entrance on Kansas Avenue.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website: <http://www.agingkansas.org/index.htm>. A list of the proposed regulations, a brief summary, and the economic impact follows:

K.A.R. 26-1-1 - Definitions. The amendment to this regulation updates the definition of "federal act" to reflect the Older Americans Act (OAA), as amended; revises certain terminology and those individuals that may be served by OAA programs; adds "qualified assessor" and "subcontractor" as defined terms; and removes terminology that is duplicated or no longer applicable to department programs. No economic impact is anticipated.

K.A.R. 26-1-5 - Area plan development. The amendment to this regulation reflects the Older Americans Act ("federal act") currently in effect and a change in federal policy that revises minimum expenditure requirements for rural areas. No economic impact is anticipated.

K.A.R. 26-1-6 - Operating policies and procedures of area agencies. The amendment to this regulation revises area agency requirements for submission of policies and procedures to the department. No economic impact is anticipated.

Revocation of K.A.R. 26-1-7 - Confidentiality; procedures to protect information, sanctions. All issues addressed in this regulation have been moved to K.A.R. 26-1-8.

K.A.R. 26-1-8 - Confidentiality; policies and procedures to protect information; sanctions. This new regulation sets out rules governing confidentiality requirements for department-funded programs, replacing K.A.R. 26-1-7. No economic impact is anticipated.

K.A.R. 26-2-3 - Reporting and unearned funds requirements. The amendment to this regulation revises the department's policy for receiving late reports and clarifies requirements for the return of unearned or disallowed department funds. No economic impact is anticipated.



Revocation of K.A.R. 26-2-9 - Audits. All issues addressed in this regulation have been moved to K.A.R. 26-2-10.

K.A.R. 26-2-10 - Audits. This new regulation sets out rules governing audits for department-funded programs and adopts the 2003 and 2007 revisions to Office of Management and Budget (OMB) Circular A-133, "*Audits of states, local governments, and non-profit organizations.*" The economic impact of this regulation, in combination with the revocation of K.A.R. 26-2-9 which it replaces, may result in a reduction in costs to recipients of department funds that receive less than \$500,000 during the entity's fiscal year. However, the economic impact cannot be measured at this time.

K.A.R. 26-3-1 - Contracting and granting practices and requirements. The amendment to this regulation combines this regulation with certain regulatory requirements in K.A.R. 26-3-4, which is being revoked; adopts federal procurement requirements; defines "conflict of interest"; and clarifies record retention requirements. No economic impact is anticipated.

Revocation of K.A.R. 26-3-4 - Responsibilities when subgranting or contracting services under an area plan. All issues addressed in this regulation have been moved to K.A.R. 26-3-1 or removed from regulatory requirements.

K.A.R. 26-4-1 - Notice of actions; appeals by written requests; time to file written requests. The amendment to this regulation reflects the amendment to K.S.A. 75-37,121 transferring the appeal process for adjudicative proceedings to the Office of Administrative Hearings and clarifies the time frame to file a written request. No economic impact is anticipated.

Revocation of K.A.R. 26-4-6 - Preappeal administrative processes and prehearing review of action or offer of settlement. This regulation is no longer needed. No economic impact is anticipated.

Revocation of K.A.R. 26-4-7 through 26-4-15. Authority for the issues addressed in these regulations has been transferred to the Office of Administrative Hearings.

Revocation of K.A.R. 26-4a-1 - Medicaid services fair hearing program; application of department of social and rehabilitation services fair hearing regulations; requests for fair hearings. All issues addressed in this regulation have been moved to K.A.R. 26-4a-2.

K.A.R. 26-4a-2 - Appeals and fair hearings. This new regulation sets out rules governing appeals for department-administered Medicaid programs and reflects the transfer of the appeal process for adjudicative proceedings to the Office of Administrative Hearings. No economic impact is anticipated.

Revocation of K.A.R. 26-5-2 through 26-5-10. The in-home nutrition program has been discontinued.

K.A.R. 26-8-2 - Eligibility criteria. The amendment to this regulation updates the eligibility criteria for Senior Care Act program recipients to reflect current practice. No economic impact is anticipated.

K.A.R. 26-8-5 - Assessment. The amendment to this regulation updates the frequency of assessment requirements for Senior Care Act program customers to reflect current practice. No economic impact is anticipated.

K.A.R. 26-8-8 - Termination. The amendment to this regulation updates the grounds for termination from the Senior Care Act program and reflects current practice. No economic impact is anticipated.



K.A.R. 26-9-1 - Client assessment, referral, and evaluation (CARE) for nursing facilities. The amendment to this regulation reflects a change in federal policy exempting certain individuals from needing an assessment prior to entering a nursing facility; incorporates regulatory requirements from Kansas Health Policy Authority's K.A.R. 120-1-2 which is being revoked; and clarifies other current regulatory requirements. No economic impact is anticipated.

Revocation of K.A.R. 26-11-1 through 26-11-3. The Kansas Senior Pharmacy Assistance Program has been discontinued.

Revocation of K.A.R. 120-1-2 - Data collection form used by department on aging. The requirements in this regulation have been moved to K.A.R. 26-9-1. No economic impact is anticipated.



26-1-1. Definitions. (a) "Area agency" and "area agency on aging" mean the agency or organization within a planning and service area that has been designated by the secretary to develop, implement, and administer a plan for the delivery of a comprehensive and coordinated system of services to ~~elder persons~~ individuals in the planning and service area.

(b) "Area plan" means the document developed by an area agency that describes the comprehensive and coordinated system of services to be provided to ~~elder persons~~ individuals in a planning and service area.

(c) "Comprehensive and coordinated system of services" means a program of interrelated supportive and nutrition services designed to meet the needs of ~~elder persons~~ individuals in a planning and service area.

(d) "Contract" means a procurement agreement,

(e) "~~Contractee~~" "Contractor" means the party or parties who are under contract with the department or an area agency to provide services to ~~elder persons~~ individuals in a planning and service area.

(f) "Contribution" means a donation of money or vision card units that is given by a customer to pay to the provider a portion or the total cost of services received.

(g) "~~Cost sharing or matching~~" means the value of third party in-kind or cash contributions and the portion of the costs of a federally-assisted or state-assisted project or program not borne by the federal or state government.

(h) "Department" means the Kansas department on aging, created by K.S.A. 75-5903 has the meaning specified in K.S.A. 75-5902(a), and amendments thereto.

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(h) "Federal act" means the older Americans act of 1965, codified at 42 U.S.C. 3001 et seq. on October 17, 2006, as amended ~~in 2000~~.

(i) "Final financial report" means a ~~contractee-prepared~~ contractor-prepared or grantee-prepared document that contains an accurate and complete disclosure of the financial results of the contract, grant, subcontract, or subgrant.

(j) "Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the department.

(k) "Grantee" means any legal entity to which a grant is awarded and that is accountable to the department for the use of the grant. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant.

(l) "Granting agency" means ~~the~~ Kansas department on aging.

(m) "Greatest economic need" means the need for services resulting from an annual income level at or below the poverty threshold established annually by the ~~federal office~~ U.S. department of health and human services.

(n) "Greatest social need" means the need for services caused by noneconomic factors that restricts an individual's ability to perform normal daily tasks or that ~~threaten~~ threatens the capacity to live independently. Noneconomic factors shall include physical and mental disabilities, language barriers, and cultural, ~~or social, or geographic~~ isolation including ~~that~~ isolation caused by racial or ethnic status.

(o) "Indian tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe.

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~~(q) "In home meal provider" means any legal entity to which funds are paid for the purpose of providing home-delivered meals under the in-home nutrition programs.~~

~~(r) (p) "In-home service" means the provision of health, medical, or social services to a private individual in the individual's noninstitutional place of residence.~~

~~(s) (q) "Kansan" means any person individual who currently resides within the state of Kansas.~~

~~(t) (r) "Metropolitan area" means a standard metropolitan statistical area as defined by the census bureau.~~

~~(u) (s) "Modification of a grant or contract" means a change in an area plan or other grants grant or contracts a contract that would result in any of the following:~~

~~(1) Alteration of the program scope, planned objectives, or manner in which services are delivered;~~

~~(2) provision of financial assistance or payments to any entity not authorized by the original grant or contract; or~~

~~(3) alteration of the approved budget of the original grant or contract.~~

~~(v) "Monthly gross income" means the monthly sum of income received by an individual or couple from the following sources:~~

~~(1) Wages or salary;~~

~~(2) income from self-employment;~~

~~(3) social security;~~

~~(4) dividends, interest, income from estate or trusts, rental income, or royalties;~~

~~(5) public assistance or welfare payment;~~

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- ~~(6) pensions and annuities;~~
- ~~(7) unemployment compensation;~~
- ~~(8) workers compensation;~~
- ~~(9) alimony;~~
- ~~(10) veteran's pensions; and~~
- ~~(11) adjusted net farm income.~~

~~(w)~~ (t) "Notification of grant award" and "NGA" mean the document, issued by the department, awarding financial assistance for the provision of services ~~to older persons~~ and specifying the terms of the grant.

~~(x)~~ (u) "Obligation" means the ~~number~~ dollar amount of the orders placed, contracts and subgrants awarded, services received, and similar transactions during the grant period that will require payment within 75 days following the last day in which the grant is active.

~~(y)~~ (v) "Older individual" and "older person" ~~means any person 60 years of age or older.~~ has the meaning specified in K.S.A. 75-5902(d), and amendments thereto, for "aged" and "senior citizen."

~~(z)~~ (w) "Planning and service area" and "PSA" mean a geographic area of the state designated by the department for the purpose of planning, development, delivery, and overall administration of services under an area plan.

~~(aa)~~ (x) "Program income" and "project income" mean gross income received by the grantee or subgrantee and directly generated by a grant-supported activity; or earned only as a result of the grant agreement during the period.

~~(bb) "Purchase of service contract or grant" means an award of financial assistance in~~

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~~which the payment is made on a reimbursement basis at a unit rate of cost of service with an upper limit on the total cost of the grant. Payment shall be made in the form of money, or property in lieu of money.~~

(y) "Qualified assessor" means any individual who meets the department's education, licensure, certification, and training requirements that are required to perform a customer assessment for a program funded by the department.

~~(ee) (z) "Redesignation" means a change in the geographic boundaries of a planning and service area or selection of an area agency that is different from the area agency previously designated for a particular planning and service area.~~

~~(dd) (aa) "Request for proposal" and "RFP" mean the document containing criteria that is used to solicit applications for a contract or ~~subgrant~~ grant from potential service providers.~~

~~(ee) (bb) "Secretary" means the secretary of the Kansas department on aging has the meaning specified in K.S.A. 75-5902(b), and amendments thereto.~~

~~(ff) (cc) "Self-employment" means work for income performed by ~~a person~~ an individual engaged on that ~~person's~~ individual's own account in a business, farm, or other enterprise.~~

~~(gg) (dd) "Service provider" means any legal entity that is obligated to provide services to ~~elder persons~~ in any planning and service area.~~

~~(hh) (ee) "State act" means the Kansas act on aging, K.S.A. 75-5901 through ~~K.S.A. 75-5925, et seq.~~ and amendments thereto.~~

~~(ii) (ff) "State advisory council" means the advisory council on aging created by K.S.A. 75-5911, and amendments thereto.~~

~~(jj) (gg) "State plan" means the document submitted to the U.S. department of health and ATTORNEY GENERAL~~

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human services by the department in order to receive its allotment of funds under the older Americans act.

(hh) "Subcontractor" means any legal entity to which a subcontract has been awarded and that is accountable to the contractor to provide services to individuals in a planning and service area.

~~(kk)~~ (ii) "Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to a subgrantee.

~~(H)~~ (jj) "Subgrantee" means any legal entity to which a subgrant is awarded and that is accountable to the grantee for the use of the grant funds.

~~(mm)~~ (kk) "Unit of local government" means either of the following:

- (1) Any county, city, township, school district, or other similar political subdivision of the state, or any agency, bureau, office, or department thereof; or
- (2) any Indian tribal organization.

~~(nn) "Unused supplies" means supplies that still have a useful life and that have not been put to use in the project or program for which they were acquired when the grant, contract, or subgrant under which they were acquired expires or is terminated. (Authorized by and implementing K.S.A. 2004 2010 Supp. 75-5908; implementing K.S.A. 75-5902 and K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended P-_____.)~~

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26-1-5. Area plan development. (a) ~~Each area agency shall develop and submit an area plan for approval by the department.~~ Each area agency's executive director shall ensure that an area plan is developed and submitted to the department for approval. An area agency shall not receive any funds from the department until the area agency's area plan has been approved by the department.

(b) Each area plan shall be submitted on forms prescribed by the secretary and shall contain all of the assurances required in section 306 of the ~~older Americans act of 1965, as amended in 2000~~ federal act, and all other relevant information requested on the forms.

(c) Each area ~~agency~~ agency's executive director shall ensure that units of local government, local advisory councils, potential service providers, and ~~older persons~~ individuals, family caregivers, and other representatives of these older individuals have an opportunity for involvement in the development of the area plan.

(d) Each area ~~agency, as part of the~~ agency's area plan, shall describe the rationale for the proposed allocation of funds for services in the planning and service area. The rationale shall identify the manner in which the proposed distribution of funds will meet identified, ~~priority~~ nutrition, and supportive service needs.

(e) The area plan ~~developed by the area agency~~ shall provide assurances that the area agency will ~~spend in each fiscal year,~~ expend for services to older individuals residing in rural areas in the area agency's planning and service area; an amount not less than the amount expended for these services in the ~~previous federal fiscal year, which shall include amounts~~

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~~expended under Title V and Title VII of the Older Americans Act of 1965~~ 2000. (Authorized by and implementing K.S.A. ~~2001~~ 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended May 31, 2002; amended P-_____.)

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26-1-6. Operating policies and procedures of area agencies. (a) Each area agency receiving funding under an area plan shall have written policies and procedures to govern the conduct of its operations and functions. These policies and procedures shall meet the following criteria requirements:

(1) Describe the administrative and policy structure of the area agency; and

(2) describe the policies and procedures that are applicable to recipients of services provided with funds from the department; and include any policies and procedures mandated by the department.

(b) Each area agency's written policies and procedures that are applicable to recipients of services provided with funds from the department shall be officially adopted by action of the entity's governing body. Before adoption, the area agency shall provide an opportunity for comment on the proposed operating policies and procedures by units of local government, local advisory councils, potential service providers, and older persons. Notice of the opportunity for comment shall be published in a newspaper or newspapers of general circulation within the planning and service area at least 14 days before the policies and procedures are adopted by the area agency.

(c) ~~Each area agency shall submit the procedures to the department for review before final adoption of the agency's policies and procedures.~~ agency's executive director shall ensure that the area agency's policies and procedures are submitted to the department within 10 days of receipt of the department's written request.

(d) ~~Each area agency shall provide without cost copies of the written policies and~~

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~~procedures to each recipient of funds from the department with whom it has a sub-grant or contract and to the department.~~ agency's executive director shall ensure that each of the area agency's subgrantees and contractors that receive department funds is provided with a copy of the area agency's written policies and procedures, at no cost to the subgrantee or contractor.

Other parties may obtain a copy of the written policies and procedures ~~upon compliance with the Kansas open records act, K.S.A. 45-215 through 45-223, and amendments thereto~~ by submitting a written request to the area agency. The area agency shall provide the requested policies or procedures, or both, within three business days after the date the request is received, subject to prepayment of reasonable costs. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 21, 1999; amended P-_____.)



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Kansas Department on Aging
Revocation

26-1-7. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5945; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Nov. 14, 1997; revoked P-_____.)

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26-1-8. Confidentiality; policies and procedures to protect information; sanctions.

(a) Personal information collected in the application for or delivery of services funded, in whole or in part, by the department shall remain confidential unless the disclosure meets any of the following conditions:

(1) Prior written consent to disclose an individual's personal information is obtained from the individual or the individual's legal representative.

(2) Disclosure is required to enable the delivery of services for which the individual or the individual's representative has requested or applied.

(3) Disclosure is required for program monitoring purposes by authorized federal, state, or local agencies.

(4) Disclosure is required by court order, administrative tribunal, or law.

(b) Personal information shall include any of the following:

(1) Street address, city, county, zip code, or equivalent geocodes;

(2) telephone number, fax number, or electronic mail address;

(3) social security, medical record, health plan beneficiary, and account numbers, and any other unique identifying number, characteristic, or code;

(4) certificate or license number;

(5) web universal resource locators (URLs) and internet protocol (IP) address numbers;

(6) biometric identifiers, including fingerprints and voiceprints;

(7) full-face photographic images and any comparable images;

(8) validation of past and present receipt of any local, state, or federal program services;

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- (9) validation of family, social, and economic circumstances;
- (10) medical data, including diagnoses and history of disease or disability;
- (11) income and other financial information;
- (12) department evaluation of personal or medical information;
- (13) validation of program eligibility; and
- (14) validation of third-party liability for payment for program services to any individual

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or entity.

(c) Each department grantee, subgrantee, contractor, and subcontractor shall adopt and adhere to written policies and procedures to safeguard against the unauthorized disclosure of personal information about individuals collected in the delivery of services and shall identify sanctions to be imposed against an individual or organization that discloses confidential information in violation of the policies and procedures.

(1) Access to confidential information shall be restricted to those individuals who specifically require access in order to perform their assigned duties.

(2) All staff engaged in the collection, handling, and dissemination of personal information shall be informed of the responsibility to safeguard the information in their possession and shall be held accountable for the appropriate use and disclosure of confidential information.

(d) If, after an investigation, notice, and the opportunity for a hearing, the secretary finds that any individual or organization identified in subsection (c) has disclosed or permitted the disclosure of any confidential information the disclosure of which is prohibited by this regulation or by any other state or federal law restricting or prohibiting the disclosure of information about

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individuals requesting or receiving services through any of the department's programs, the individual or organization shall have imposed against that individual or organization those sanctions that the secretary decides are commensurate with the disclosure under all the circumstances. Sanctions may include any of the following:

- (1) Denial, termination, or suspension of performance of any grant, subgrant, contract, subcontract, or other agreement;
 - (2) denial, termination, or suspension of participation in any or all department programs;
 - (3) referral for criminal prosecution or civil penalty assessments when provided for by law;
 - (4) petitioning for temporary or permanent injunctive relief without prior notice;
 - (5) exclusion from department data bases; or
 - (6) any other sanctions permitted by any state or federal law.
- (e) No attorney paid through any program administered by the department to provide legal assistance to an individual shall be required by the department or the area agency to disclose the identity of any individual to whom the attorney provides or has provided legal assistance or any information protected by the attorney-client privilege. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908 and 75-5945; effective P-_____.)



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26-2-3. Reporting and unearned funds requirements. (a) General reporting requirements.

(1) Each grantee and ~~contractee of the department~~ contractor shall submit program and financial reports to comply with federal and state program requirements. Each grantee and each ~~contractee~~ contractor shall be responsible for the following:

- (A) Gathering accurate information necessary to complete its reports;
- (B) completing reports on forms or in a format prescribed by the secretary, including entering data in the management information system; and
- (C) submitting reports or data to the secretary or designee on or before the due dates.

(2) Each grantee and each ~~contractee~~ contractor shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors, and subcontractors with whom the grantee or ~~contractee~~ contractor has subgrants, contracts, or subcontracts.

(3) A waiver of deadline for submitting a report ~~shall not be granted unless a state or federal statute, a regulation other than this regulation, or other authority applicable to the program for which the report is required specifically authorizes the secretary to waive the reporting deadline. A waiver shall be granted only~~ may be authorized by the secretary if the grantee or ~~contractee~~ contractor meets the following requirements:

- (A) Submits a written waiver request that is received by the secretary at least eight business days before the due date for the report for which the waiver is being requested;
- (B) identifies in the written waiver request the ~~statute, the regulation other than this regulation, or other authority pertaining to the program for which the report is required that~~

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~~specifically authorizes the secretary to waive a reporting deadline~~ reason for the reporting delay, which shall be legitimately beyond the grantee's or contractor's control; and

~~(C) certifies and documents that all conditions or prerequisites for the waiver contained in the statute, regulation, or other authority have been met~~ provides an acceptable remedy to rectify the delay; and

~~(D) submits a report acceptable to the secretary on or before the revised due date~~ indicated in the request.

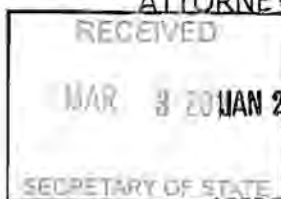
(4) Within five business days after receipt of the written waiver request, a written notice of denial or approval of the request shall be issued by the secretary. The deadline for submitting a program or financial report shall not be deemed changed merely because the grantee or ~~contractee~~ contractor submitted a written waiver request for an extension of the report's due date.

(5) Failure to submit complete and accurate program or financial reports by the due dates, even if a waiver is granted, may be remedied by departmental action, including one or more of the following:

- (A) Termination or suspension of the grant or contract;
- (B) termination or suspension of grant or contract payments;
- (C) withholding of all administrative funds;
- (D) reducing a percentage of administrative funds;
- (E) exclusion from consideration for future grants or contracts; and
- (F) exclusion from participation in the redistribution of the older Americans act carryover or unearned funds, as specified in the state plan on aging.

(b) Final financial report requirements for older Americans act (OAA) title III.

(1) Before submitting the its final financial report, the each area agency shall liquidate all



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obligations for all goods and services purchased for the report period.

(2) ~~The~~ Each area agency shall submit a an accurate consolidated final financial report to the department for each program component and shall include a report for each subgrantee, contractor, and subcontractor that supports the area agency's final financial report no later than December 15 following the end of the grant period.

~~(3) An accurate final financial report shall be due at the department on or before December 15 after the end of the grant period, which ends on September 30.~~

(4) An area agency may submit a revised final financial report if the report is accompanied by the supporting final financial report for each of the area agency's OAA title III subgrantees, contractors, and subcontractors and if either of the following conditions is met:

(A) The revised report is received either on or before December 31 after the end of the grant period.

(B) The revised report is received after December 31 following the end of the grant period, but on or before April 15, and the report is delivered simultaneously with the audit report performed in accordance with K.A.R. ~~26-2-9~~ 26-2-10 confirming that the revised report is an accurate report.

(c) Older Americans act title III unearned funds requirements.

(1) Unearned funds shall be those funds that have been awarded to a grantee or contractor ~~either~~ that have not been expended by the grantee or contractor or that have been expended for an unallowable cost due to the grantee's or contractor's failure to comply with specific policies, regulations, or grant or contract conditions governing the award or contract.

(2) Each area agency's unearned funds calculation shall be based on the area agency's final or revised final financial report submitted on or before December 31. The area agency shall

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be notified by the department of the amount of unearned funds by issuance of a revised notification notifications of grant awards award.

(3) Unearned older Americans act funds that have been calculated and issued shall be adjusted only if the revised final financial report accompanied by an audit report is received by the department on or before April 15 and if the revised calculated unearned funds increased by .5% one-half percent or more. If an area agency has an increase in older Americans act unearned funds of .5% one-half percent or more, the area agency shall perform one of the following adjustments:

(A) Submit a check payable to the Kansas department on aging for the amount of the increased unearned funds;

(B) submit a written request to the department for a reduction in its allocation for the next grant year in an amount equal to the amount of the increased unearned funds; or

(C) make arrangements approved by the secretary, in writing, to pay the increased unearned funds to the department in two or more installments.

(d) Final report requirements for all programs except older Americans act title III programs.

(1) Each recipient of state or federal funds for aging program grants or contracts not identified in subsection (b) shall annually submit an accurate and complete final financial report in the format prescribed by the secretary for each program for which the recipient has received funds.

(2) The complete final financial report shall be received by the department no later than the deadline stated in the notification of grant award or contract.

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(3) (A) ~~If a recipient's unearned funds increase~~ funds advanced by the department to a recipient of a grant award are unearned or disallowed, the recipient shall perform one of the following adjustments upon submission of the grant's final financial report or upon the entity becoming aware of the overpayment following submission of the final financial report:

(A) (i) Submit a check payable to the department for the amount of the unearned or disallowed funds; or

(B) (ii) make arrangements approved by the secretary in writing to pay the unearned or disallowed funds to the department in two or more installments.

(B) If funds advanced by the department to a contractor are unearned or disallowed, the contractor shall return the funds to the department as prescribed by the terms of the contract or as requested by the secretary. (Authorized by and implementing K.S.A. ~~2002~~ 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Aug. 1, 2003; amended P-_____.)



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Kansas Department on Aging
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26-2-9. (Authorized by and implementing K.S.A. 2002 Supp. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; amended Jan. 7, 2000; amended Aug. 1, 2003; revoked P-_____.)

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26-2-10. Audits. (a) Definitions.

(1) "Federal funds" means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from the department, other state agencies, or pass-through entities.

(2) "Limited-scope audit" means agreed-upon procedures conducted in accordance with the American institute of certified public accountants' generally accepted auditing standards or attestation standards that address one or more of the following types of compliance requirements:

- (A) Activities allowed or unallowed;
- (B) allowable costs and cost principles;
- (C) eligibility;
- (D) matching, level of effort, and earmarking; and
- (E) reporting.

(3) "Pass-through entity" and "entity" mean a non-state organization that provides a state award to a subrecipient to carry out a federal or state program.

(4) "Recipient" means an entity that expends a state award received directly from the department to carry out a federal or state program.

(5) "Single audit" means an audit that includes both the entity's financial statements and the funds awarded by the department and expended during the entity's fiscal year.

(6) "State award" means state financial assistance and state cost-reimbursement contracts that entities receive directly from the department or indirectly from pass-through entities. This term shall not include procurement contracts used to buy goods or services from vendors.



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(7) "Subrecipient" means an entity that expends department funds received from a pass-through entity to carry out a federal or state program and shall not include an individual that is a beneficiary of the program.

(8) "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal or state program. These goods or services may be for the entity's own use or for the use of beneficiaries of the federal or state program.

(b) Audit requirements.

(1) Office of management and budget circular no. A-133 (OMB circular A-133), "audits of states, local governments, and non-profit organizations," revised to show changes published in the federal registers of June 27, 2003 and June 26, 2007, excluding the introduction, subparts D and E, and the appendices, is hereby adopted by reference, except that in subpart B, section .200(a), "Federal awards" shall be replaced with "state awards in combination with federal funds received from other sources."

(2) Each recipient, subrecipient, or pass-through entity that expends a state award shall ensure the entity's related financial and program records are available to the secretary or the secretary's designee for audit or review.

(3) Each recipient, subrecipient, or pass-through entity that expends \$500,000 or more in state awards in combination with federal funds received from other sources during the entity's fiscal year shall have a single audit conducted in accordance with generally accepted government auditing standards and OMB circular A-133.

(4) Each area agency on aging that is required to have a single audit in accordance with paragraph (b)(3) shall include all funds received from department grants and contracts in the

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single audit, including payments from medicaid programs.

(5) Each recipient, subrecipient, or pass-through entity that expends less than \$500,000 in state awards in combination with federal funds received from other sources during the entity's fiscal year may be subject to the following:

(A) A limited-scope audit; or

(B) an independent audit, which shall be completed at the department's expense.

(6) Each audit shall be conducted by an independent auditor.

(7) Each audit report shall be submitted to the department within six months after the end of the entity's fiscal year and shall include a reconciliation of the audited financial statements to the financial reports submitted by the entity to the department for programs funded by the department.

(8) Each audit report submitted to the secretary after the audit report's deadline shall be considered late unless the audited entity has received an extension of the deadline, in writing, from the secretary. A written request for an extension may be granted by the secretary if the request meets all of the following conditions:

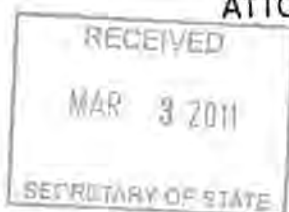
(A) The entity's written request is signed by the entity's chair of the board of directors.

(B) The request is received by the secretary at least seven working days before the date the report is due to the department.

(C) The written request provides the reason for the delay which shall be legitimately beyond the entity's control.

(D) The entity submits an audit report acceptable to the department by the revised due date indicated in the request.

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(9) Penalties for failing to submit an audit report on or before the due date or submitting an audit report that does not meet the requirements specified in this regulation shall be determined by the secretary and may include one or more of the following:

(A) Disallowance of audit costs when audits required by paragraph (b)(3) have not been made or have been made but not in accordance with OMB circular A-133;

(B) withholding a percentage of state awards until the audit is completed satisfactorily;

(C) withholding or disallowing overhead costs;

(D) suspending state awards until the audit is conducted; or

(E) terminating the state award.

(c) Monitoring requirements. Each recipient, subrecipient, pass-through entity, and vendor shall be subject to monitoring performed by the secretary's designee, which shall include one or more of the following:

(1) A review of reports submitted by the recipient, subrecipient, pass-through entity, or vendor to the department;

(2) one or more site visits to the recipient, subrecipient, pass-through entity, or vendor to review financial and program records and observe operations; and

(3) procedures agreed upon by the recipient, subrecipient, pass-through entity, or vendor's executive director or other individual authorized by the entity's board of directors and the secretary or secretary's designee to review activities or documentation related to programs funded by the department, including eligibility determinations. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective P- _____.)

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26-3-1. Contracting and granting practices and requirements. (a) Department approval of funding. No ~~department~~ grantee or contractor shall make a subgrant or contract involving funds made available by the department until an area plan or other document detailing the proposed use or uses of the funds has been approved by the ~~department~~ secretary for a specific time period and the secretary has issued a notification of grant award or contract to the grantee or contractor.

(b) Allowable use of funds. In making a subgrant or contract, each ~~department~~ grantee or contractor shall use the funds awarded under a ~~department-approved~~ secretary-approved area plan for those services that are consistent with service definitions issued and provided by the department and the identified, priority service needs within the PSA.

(c) Competitive bids. ~~Any~~ Each entity that receives funding through a program, ~~except the medicaid program, administered by the secretary, except a medicaid program,~~ shall be selected on a competitive basis, unless a noncompetitive selection basis is permitted by some other provision of law. For purposes of this subsection (c), "entity" shall include any ~~department~~ grantee or contractor, a subgrantee or subcontractor of a ~~department~~ grantee or contractor, and any entity providing services under any arrangement with a subgrantee or subcontractor.

(d) Provider selection standards. The service provider selection process for grants, contracts, subgrants, and subcontracts required by subsection (c) ~~above~~ shall meet the following requirements:

(1) For services provided under a state-funded program, the provider selection process used shall encourage free and open competition among qualified, responsible providers by

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meeting, at a minimum, ~~meeting~~ the following requirements:

(A) Providing potential providers with a notice of service needs describing the required services, the service standards, the minimum vendor qualifications, and the process for submitting a bid or an offer to provide the services; and

(B) identifying and avoiding both potential and actual conflicts of interest. A "conflict of interest" shall mean a situation in which an employee, officer, or agent or any member of the employee, officer, or agent's immediate family or partner, or an organization that employs or is about to employ any of these parties, has a financial or other interest in the firm selected for a grant award or contract.

~~(2) For services provided under a federally funded program, the provider selection process shall satisfy the competition and procurement standards and procedures required by the federal law applicable to the federal program.~~

~~(3) For services provided under a program that is funded with federal and state funds or a combination of federal and state funds, the provider selection process shall satisfy the competition and procurement standards and procedures required by the federal law applicable to the program by meeting, at a minimum, either of the following requirements:~~

(A) For each grantee or contractor that is a part of a local government, the requirements of 45 C.F.R. 92.36(b) through (i), as in effect on October 1, 2009 and hereby adopted by reference; or

(B) for each grantee or contractor that is not a part of a local government, the requirements of 45 C.F.R. 74.40 through 74.48, as in effect on October 1, 2009 and hereby adopted by reference.

(e) Older Americans act ~~service contracts~~ services. When the department ~~makes enters~~ enters into a contract with or awards a grant to an area agency under the older Americans act to provide

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services to older persons within a PSA, the following provisions shall apply:

(1) The area agency shall enter into a subgrant or contract for services within 90 days after the effective date of the notification of grant award issued by the department, unless the area agency requests and receives prior written approval for an extension of time from the secretary.

(2) The area agency may enter into a contract with a unit of local government or with a ~~non-profit~~ nonprofit organization to provide services without the prior, written approval of the secretary. For purposes of this ~~section~~ regulation, a "~~non-profit~~" "nonprofit" organization is an organization that has received a determination letter from the internal revenue service that qualifies it for tax-exempt status under the internal revenue code.

~~(2)~~ (3) The area agency shall not enter into a contract with an individual or a for-profit organization to provide services until the area agency has requested and received written approval from the secretary to enter into the contract. Requests for contract approvals shall be approved if accompanied by a notarized statement from the area agency's executive director that the contract was procured according to competition and procurement standards and procedures required by the older Americans act and does not involve a conflict of interest as defined in paragraph (d)(1)(B). Within 30 days after the date on which the request was received, the area agency shall be notified by the department if the request is approved or disapproved.

~~(3)~~ (4) An area agency whose older Americans act for-profit service provider terminates the service contract before the end of the contract's term for any reason may enter into a replacement contract with a different for-profit provider for the same services without using the area agency's normal competitive process and without requesting the prior approval of the

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secretary required by this regulation; if the area agency, within 30 days after the effective date of the replacement contract, sends the secretary a written notice describing the following:

- (A) The circumstances of the contract termination;
- (B) the efforts made to obtain replacement services; and
- (C) an assurance that the replacement contract does not involve a conflict of interest, as defined in paragraph (d)(1)(B).

(5) An area agency shall not alter a subgrant or contract during the final 60 days of any grant or contract period, unless the area agency requests and receives written approval for the alteration from the secretary.

(f) Record retention. Each area agency shall retain its grants, subgrants, contracts, and subcontracts with service providers in retrievable form for at least six years after the date on which the grant, subgrant, contract, or subcontract ended or at least three calendar years from the date of the area agency's final financial report, whichever date is later, unless otherwise stated in the department's grant or contract.

(1) If any litigation, claim, financial management review, or audit begins before the expiration of the retention period, the area agency shall retain its records pertaining to the litigation, claim, financial management review, or audit until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Upon request made during the ~~six-year~~ retention period, an area agency shall make its grants, contracts, and subcontracts available for review by representatives of the department or its auditors, the division of legislative post audit, or the United States department of health and human services. (Authorized by and implementing K.S.A. 1998 ~~2010~~ Supp. 75-5908; effective,

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T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Jan. 7, 2000; amended P-

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Kansas Department on Aging
Revocation

26-3-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; amended Nov. 14, 1997; revoked P-_____.)

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26-4-1. Notice of actions; appeals by written requests; time to file written requests.

(a) When ~~the~~ an action is taken or proposed by any of the following parties in any program administered by the secretary, other than a medicaid program administered pursuant to K.S.A. ~~1996 Supp.~~ 39-968, 75-5321a, and 75-5945 ~~et seq.~~ and any amendments thereto, the procedures in this article 4 shall apply:

(1) By the secretary or the secretary's designee when ~~it~~ the action affects any area agency on aging, a service provider, a customer, or ~~any~~ an applicant to become a service provider or customer;

(2) by the secretary or the secretary's designee, an area agency on aging, or any of their agents when ~~it~~ the action affects a service provider, a customer, or an applicant to become a service provider or customer; or

(3) by a service provider or its agent when ~~it~~ the action affects a customer or an applicant to become a customer.

(b)(1) If the secretary or other authority described ~~above~~ in subsection (a) proposes to take ~~any of the actions specified in subsection (a) of this regulation~~ action, that authority shall mail written notice of the proposed action and the basis for the proposed action to the affected party or parties at least 10 days before ~~to~~ the effective date of the action identified in the written notice, unless a ~~longer~~ different notice period is specifically required by some other ~~provisions of~~ law provision of federal or state law.

(2) In situations involving an immediate danger to the public health, safety, or welfare, action may be taken by the secretary or other authority without giving prior written notice of

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proposed action described in this subsection. When action is taken without prior written notice of proposed action prescribed ~~above~~ in paragraph (b)(1), written notice of the action shall be mailed by the secretary or other authority to the affected party or parties as soon as practical.

(c) Unless prohibited by some other provision of law, the proposed action may be taken, without any additional notice to the affected party, on the effective date described in the written notice.

(d) Each written notice of proposed action shall identify the reasons for and effective date of the proposed action and include a statement informing the affected party of the right to appeal the action by filing a written request for a hearing with the ~~department on aging~~ office of administrative hearings within time limits described ~~below~~ in subsection (e).

(e) Unless preempted by federal or state law, a party receiving notice of ~~proposed~~ action may appeal the action by filing a written request for a hearing with the ~~department on aging, on or before the date that is 30 days after the effective date of the proposed action identified in the written notice~~ office of administrative hearings within 30 days after the date of the notice of action. An additional three days shall be allowed if the notice of action is mailed. If no written notice of ~~proposed~~ action is given, an affected party may appeal the action by filing a written request for a hearing with the ~~department on aging on a date that is either~~ office of administrative hearings within 30 days after the date on which the affected party knew or reasonably should have known of the action ~~or within 30 days after the date on which the affected party received written notice of the action from any source.~~

(f)(1) ~~A written request for hearing shall be deemed filed with the department on the date it is delivered to the department or on the date of the postmark on the envelope bearing the~~

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~~written request. Written requests that are misdirected to the area agency on aging, a service provider, or the department of social and rehabilitation services, or any agent of any of those organizations shall be forwarded to the department on aging appeals section.~~

~~(2) Delivering a copy of a written request for hearing by telecopier or facsimile machine transmission to the department on aging shall be deemed an effective filing only if the original written request for hearing is mailed to the department within 10 days after the date on which the copy was transmitted.~~

~~(g) Each request for a hearing shall state clearly the proposed action or the action upon which a hearing is requested. The written request for a hearing shall be included in the department's official record of agency action and record of a hearing as evidence received by it.~~

~~(g) Each hearing shall be conducted in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective, T-85-47, Dec. 19, 1984; effective May 1, 1985; amended, T-86-48, Dec. 18, 1985; amended May 1, 1986; amended Nov. 14, 1997; amended P-_____.)~~

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26-4-6. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked P-_____.)



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Kansas Department on Aging
Revocation

26-4-7 through 26-4-15. (Authorized by and implementing K.S.A. 75-5908 and K.S.A. 1996 Supp. 75-5928 and 75-5931; effective Nov. 14, 1997; revoked P-_____.)



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Kansas Department on Aging
Revocation

26-4a-1. (Authorized by and implementing K.S.A. 1996 Supp. 75-5908 and K.S.A. 1996
Supp. 75-5945; effective, T-26-7-1-97, July 1, 1997; effective Nov. 14, 1997; revoked P-
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26-4a-2. Appeals and fair hearings. (a) This regulation shall apply only to the medicaid long-term care programs and services administered by the secretary of aging, in accordance with K.S.A. 39-968, 75-5321a, and 75-5945 and amendments thereto.

(b) A fair hearing program to process and decide appeals involving the medicaid long-term care programs and services and the customers and providers of those services shall be administered through the office of administrative hearings in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto, and K.A.R. 30-7-64 through K.A.R. 30-7-79.

(c) An individual may submit a written request for a fair hearing to appeal a written decision, notice of action, or order made by the secretary of aging or any of the department on aging's employees or agents involving a medicaid program or service. The request shall be received by the office of administrative hearings within 30 days after the date of the written decision, notice of action, or order, except as otherwise provided in applicable federal or state law. An additional three days shall be allowed if the written decision, notice of action, or order is mailed. (Authorized by and implementing K.S.A. 2010 Supp. 75-5908; effective P-
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26-5-2. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended, T-89-14, April 26, 1988; amended Oct. 1, 1988; revoked P-_____.)

26-5-3. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Nov. 14, 1997; revoked P-_____.)

26-5-4. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked P-_____.)

26-5-5. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; amended Sept. 7, 1993; revoked P-_____.)

26-5-6. (Authorized by and implementing K.S.A. 2001 Supp. 75-5908; effective, T-86-48, Dec. 12, 1985; effective May 1, 1986; amended Sept. 7, 1993; amended, T-26-7-1-96, July 1, 1996; amended Nov. 8, 1996; amended Nov. 14, 1997; amended May 31, 2002; revoked P-_____.)

26-5-7. (Authorized by and implementing K.S.A. 75-5908; effective, T-86-48, Dec. 18, 1985; effective May 1, 1986; revoked P-_____.)

26-5-8. (Authorized by and implementing K.S.A. 75-5908; effective, T-89-14, April 26, 1988; effective Oct. 1, 1988; revoked P-_____.)

26-5-9 and 26-5-10. (Authorized by and implementing K.S.A. 75-5908; effective, T-26-7-1-96, July 1, 1996; effective Nov. 8, 1996; revoked P-_____.)



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26-8-2. Eligibility criteria. (a) All customers shall be residents of Kansas who are 60 years of age or older.

(b) ~~Customers who receive only assessment or case management shall not be subject to the eligibility criteria below.~~

(c) ~~Each customer of the senior care act program on June 30, 2002 shall continue to be eligible if the customer meets the following conditions:~~

(1) ~~Has physical or mental limitations that restrict the ability to perform one or more activities of daily living or instrumental activities of daily living; and~~

(2) ~~meets the targeting criteria used by the area agency on aging on June 30, 2002.~~

(d) ~~Each customer of the income eligible program on June 30, 2001 who has remained eligible since July 1, 2001 shall be eligible for the senior care act program if the customer has a level of care score of at least 15, as determined by an assessment.~~

(e) ~~For individuals that do not meet the criteria in subsection (c) or (d) above, an eligible person shall have a level of care score of at least 26, as determined by an assessment. Each applicant shall be assessed using the department's approved uniform assessment instrument and shall meet the department's long-term care threshold requirement for senior care act services. Applicants who receive only an assessment shall not be subject to the department's long-term care threshold requirement.~~

(f) ~~Each applicant who met the criteria in subsection (c) or (d) and whose services were terminated after July 1, 2002 shall meet the criteria specified in subsection (e).~~

(g) (c) Medicaid home- and community-based services customers shall be eligible to

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receive only senior care act services that are not funded through the medicaid program.

(Authorized by and implementing ~~K.S.A. 2001 Supp. 75-5928, as amended by L. 2002, Ch. 65, § 1 and K.S.A. 75-5929, as amended by L. 2002, Ch. 65, § 2~~ 2010 Supp. 75-5931; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended P-_____.)

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26-8-5. Assessment. (a) To determine eligibility for services under the senior care act, ~~the area agency on aging~~ a qualified assessor shall complete an a customer assessment according to the following:

- (1) Before implementation of services;
- (2) upon any significant change in the customer's condition; and
- (3) at least once every 365 days ~~thereafter~~ from the date of the last assessment.

(b) The assessment instrument shall be a form prescribed by the secretary. (Authorized by ~~and~~ K.S.A. 2010 Supp 75-5931; implementing K.S.A. 2010 Supp. 75-5930, ~~as amended by L. 2002, Ch. 65, § 3~~; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended Nov. 7, 1994; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended P-_____.)

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26-8-8. Termination. Services provided under this act shall be terminated by the area agency on aging for any of the following reasons:

- (a) The customer moved to ~~a nursing facility~~ an adult care home.
- (b) The customer died.
- (c) The customer moved out of the service area.
- (d) The customer chose to terminate services.
- (e) The customer no longer meets the eligibility criteria.
- (f) The customer has not paid the fees, and 60 days have passed since the original billing date.
- (g) The customer did not accurately report the customer's income and liquid assets and chooses not to pay the applicable fees.
- (h) The service ~~was provided one-time~~ was a one-time service as defined in K.A.R. 26-8-1.
- (i) The program or service ended or was terminated.
- (j) The service was discontinued due to the lack of service provider or staff.
- (k) The customer is determined to be no longer safe in the customer's own home.
- (l) The customer's whereabouts are unknown.

(m) The customer is a participant in the "program of all-inclusive care for the elderly" (PACE). (Authorized by and implementing K.S.A. 2010 Supp. 75-5931, ~~as amended by L. 2002, Ch. 65, §4~~; effective, T-26-10-17-89, Oct. 17, 1989; effective, T-26-7-30-91, July 30, 1991; effective Aug. 10, 1992; amended July 28, 1995; amended Nov. 14, 1997; amended, T-26-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended P-_____.)

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26-9-1. Client assessment, referral, and evaluation (CARE) for nursing facilities. (a)

Each individual seeking admission to a nursing facility or nursing facility for mental health shall, ~~prior to~~ before admission, receive and complete a preadmission assessment, evaluation, and referral to all available community resources, including nursing facilities, ~~with~~ unless one of the following exceptions conditions is met:

(1) ~~an~~ The individual who has entered an acute care facility from a nursing facility and is returning to a nursing facility;

(2) ~~an~~ The individual transferred is transferring from a one nursing facility to another nursing facility;

(3) ~~an~~ The individual is entering a nursing facility conducted operated by and for the adherents of a recognized church or religious denomination for the purpose of providing care and services for those who depend upon spiritual means, through prayer alone, for healing; ~~or~~

(4) The individual has been diagnosed as having a terminal illness and has obtained a physician's statement documenting that the individual's life expectancy is six months or less.

(5) ~~an~~ The individual, is entering a nursing facility from a hospital and whose the length of stay is expected to be 30 ~~or fewer~~ days or less based on a physician's certification.

(b) ~~An~~ Each individual entering a nursing facility from the community, ~~and~~ whose stay is expected to be 30 days or fewer less, based on a physician's certification, ~~shall be exempt from Sections III through VI of the CARE assessment, as adopted in K.A.R. 120-1-1, but shall have sections I &~~ and II of the CARE assessment completed, ~~prior to~~ before admission, by a qualified assessor.

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(c) Each qualified assessor shall evaluate and refer the individual using the data collection form approved by the secretary.

(d) ~~Unless in the judgment of a qualified assessor, the person's physical, emotional, social or cognitive status has changed to the extent that another assessment is warranted;~~ The preadmission assessment shall be valid for one year from the date of the initial assessment and reimbursement for the assessment shall be limited to one annual assessment per individual unless, in the judgment of a qualified assessor, the individual's physical, emotional, social, or cognitive status has changed to the extent that another assessment is warranted. (Authorized by and implementing K.S.A. 1994 ~~2010~~ Supp. 39-968; effective, T-26-6-28-95, June 28, 1995; effective Aug. 7, 1995; amended P-_____.)

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26-11-1 through 26-11-3. (Authorized by and implementing K.S.A. 2001 Supp. 75-5961; effective, T-26-9-5-01, Oct. 1, 2001; effective, T-26-12-11-01, Dec. 11, 2001; effective Sept. 6, 2002; revoked P-_____.)



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120-1-2. (Authorized by and implementing K.S.A. 39-968 and K.S.A. 65-6804; effective, T-120-8-22-05, Aug. 22, 2005; effective Dec. 2, 2005; revoked P-_____.)



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Kansas Department on Aging
Economic Impact Statement

Pursuant to the requirements of K.S.A. 77-416, the Kansas Department on Aging submits the following Economic Impact Statement:

I. Summary of Proposed Regulation(s), Including Purpose:

K.A.R. 26-1-1 - Definitions. The amendment to this regulation updates the definition of "federal act" to reflect the Older Americans Act (OAA), as amended; revises certain terminology and those individuals that may be served by OAA programs; adds "qualified assessor" and "subcontractor" as defined terms; and removes terminology that is duplicated or no longer applicable to department programs. No economic impact is anticipated.

K.A.R. 26-1-5 - Area plan development. The amendment to this regulation reflects the Older Americans Act ("federal act") currently in effect and a change in federal policy that revises minimum expenditure requirements for rural areas. No economic impact is anticipated.

K.A.R. 26-1-6 - Operating policies and procedures of area agencies. The amendment to this regulation revises area agency requirements for submission of policies and procedures to the department. No economic impact is anticipated.

Revocation of K.A.R. 26-1-7 - Confidentiality; procedures to protect information, sanctions. All issues addressed in this regulation have been moved to K.A.R. 26-1-8.

K.A.R. 26-1-8 - Confidentiality; policies and procedures to protect information; sanctions. This new regulation sets out rules governing confidentiality requirements for department-funded programs, replacing K.A.R. 26-1-7. No economic impact is anticipated.

K.A.R. 26-2-3 - Reporting and unearned funds requirements. The amendment to this regulation revises the department's policy for receiving late reports and clarifies requirements for the return of unearned or disallowed department funds. No economic impact is anticipated.

Revocation of K.A.R. 26-2-9 - Audits. All issues addressed in this regulation have been moved to K.A.R. 26-2-10.

K.A.R. 26-2-10 - Audits. This new regulation sets out rules governing audits for department-funded programs and adopts the 2003 and 2007 revisions to Office of Management and Budget (OMB) Circular A-133, "*Audits of states, local governments, and non-profit organizations.*" The economic impact of this regulation, in combination with the revocation of K.A.R. 26-2-9 which it replaces, may result in a reduction in costs to recipients of department funds that receive less than \$500,000 during the entity's fiscal year. However, the economic impact cannot be measured at this time.

K.A.R. 26-3-1 - Contracting and granting practices and requirements. The amendment to this regulation combines this regulation with certain regulatory requirements in K.A.R. 26-3-4, which is being revoked; adopts federal procurement requirements; defines "conflict of interest"; and clarifies record retention requirements. No economic impact is anticipated.

Revocation of K.A.R. 26-3-4 - Responsibilities when subgranting or contracting services under an area plan. All issues addressed in this regulation have been moved to K.A.R. 26-3-1 or removed from regulatory requirements.

K.A.R. 26-4-1 - Notice of actions; appeals by written requests; time to file written requests. The amendment to this regulation reflects the amendment to K.S.A. 75-37,121



transferring the appeal process for adjudicative proceedings to the Office of Administrative Hearings and clarifies the time frame to file a written request. No economic impact is anticipated.

Revocation of K.A.R. 26-4-6 - Preappeal administrative processes and prehearing review of action or offer of settlement. This regulation is no longer needed. No economic impact is anticipated.

Revocation of K.A.R. 26-4-7 through 26-4-15. Authority for the issues addressed in these regulations has been transferred to the Office of Administrative Hearings.

Revocation of K.A.R. 26-4a-1 - Medicaid services fair hearing program; application of department of social and rehabilitation services fair hearing regulations; requests for fair hearings. All issues addressed in this regulation have been moved to K.A.R. 26-4a-2.

K.A.R. 26-4a-2 - Appeals and fair hearings. This new regulation sets out rules governing appeals for department-administered Medicaid programs and reflects the transfer of the appeal process for adjudicative proceedings to the Office of Administrative Hearings. No economic impact is anticipated.

Revocation of K.A.R. 26-5-2 through 26-5-10. The in-home nutrition program has been discontinued.

K.A.R. 26-8-2 - Eligibility criteria. The amendment to this regulation updates the eligibility criteria for Senior Care Act program recipients to reflect current practice. No economic impact is anticipated.

K.A.R. 26-8-5 - Assessment. The amendment to this regulation updates the frequency of assessment requirements for Senior Care Act program customers to reflect current practice. No economic impact is anticipated.

K.A.R. 26-8-8 - Termination. The amendment to this regulation updates the grounds for termination from the Senior Care Act program and reflects current practice. No economic impact is anticipated.

K.A.R. 26-9-1 - Client assessment, referral, and evaluation (CARE) for nursing facilities. The amendment to this regulation reflects a change in federal policy exempting certain individuals from needing an assessment prior to entering a nursing facility; incorporates regulatory requirements from Kansas Health Policy Authority's K.A.R. 120-1-2 which is being revoked; and clarifies other current regulatory requirements. No economic impact is anticipated.

Revocation of K.A.R. 26-11-1 through 26-11-3. The Kansas Senior Pharmacy Assistance Program has been discontinued.

Revocation of K.A.R. 120-1-2 - Data collection form used by department on aging. The requirements in this regulation have been moved to K.A.R. 26-9-1. No economic impact is anticipated.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or Not the Regulation is Mandated by Federal Law:

The proposed changes to the Kansas Department on Aging's (KDOA) regulations are necessary to achieve consistency with current practice. These regulations are not mandated by federal law; however, certain federal regulatory requirements are adopted by reference. Regulations pertaining to the Older Americans Act programs establish the KDOA's framework for designating area agencies on aging and administering the Kansas State Plan on Aging, which



are required for the state to receive federal funding for Older Americans Act programs and services.

III. Anticipated Economic Impact Upon the Following:

a. Kansas Department on Aging:

Costs to the agency, other than staff time, will include publication in the *Kansas Register* and revision of policy manuals.

b. Other Governmental Agencies:

In addition to KDOA, the Department of Administration, the Attorney General, the Kansas Legislature (through the Joint Committee on Rules and Regulations and the Legislative Research Department), and the Secretary of State shall bear the costs associated with the adoption of these regulations.

c. Private Business or Individuals:

KDOA staff anticipate these regulations will result in a reduction in audit costs for certain private businesses or individuals due to the increase in dollar threshold for audit requirements. However, it is unknown how many, or even if any, recipients of federal and state funds will be impacted.

d. Kansas Association of School Boards:

None

IV. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection:

None

