

Effective 5/3/2023

Part 1
Aging and Adult Services

26B-6-101 Chapter definitions.

As used in this chapter:

- (1) "Adult" or "high risk adult" means a person 18 years old or older who experiences a condition:
 - (a) that places the person at a high risk of being unable to care for themselves:
 - (i) as determined by assessment; and
 - (ii) due to the onset of a physical or cognitive impairment or frailty; and
 - (b) for which the person is not eligible to receive services under:
 - (i) Part 4, Division of Services for People with Disabilities; or
 - (ii) Chapter 5, Health Care - Substance Use and Mental Health.
- (2) "Aging" and "aged" means a person 60 years old or older.
- (3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.
- (4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).
- (5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement services for high risk adults in the area described in Subsection (5)(a).
- (6) "Board" means the Board of Aging and Adult Services created in Section 26B-1-426.
- (7) "Director" means the director of the division.
- (8) "Division" means the Division of Aging and Adult Services within the department.
- (9) "Personal care attendant" means a person who:
 - (a) is selected by:
 - (i) an aged person;
 - (ii) an agent of an aged person;
 - (iii) a high risk adult; or
 - (iv) an agent of a high risk adult; and
 - (b) provides personal services to the:
 - (i) aged person described in Subsection (9)(a)(i); or
 - (ii) high risk adult described in Subsection (9)(a)(iii).
- (10) "Personal services" means nonmedical care and support, including assisting a person with:
 - (a) meal preparation;
 - (b) eating;
 - (c) bathing;
 - (d) dressing;
 - (e) personal hygiene; or
 - (f) daily living activities.

(11) "Planning and service area" means a geographical area of the state designated by the division for purposes of planning, development, delivery, and overall administration of services for the aged or high risk adults.

(12)

(a) "Public funds" means state or federal funds that are disbursed by:

- (i) the department;
- (ii) the division;
- (iii) an area agency; or
- (iv) an area agency on aging.

(b) "Public funds" includes:

- (i) Medicaid funds; and
- (ii) Medicaid waiver funds.

Amended by Chapter 308, 2023 General Session

26B-6-102 Division created.

There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-103 Director of division -- Appointment -- Qualifications.

- (1) The director of the division shall be appointed by the executive director with the concurrence of the board.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning the aging and adult populations.
- (3) The director is the administrative head of the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-104 Authority of division.

- (1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:
 - (a) serve as an effective and visible advocate for the aging and adult population of this state;
 - (b) develop and administer a state plan under the policy direction of the board; and
 - (c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.
- (2)
 - (a) The division has authority to designate:
 - (i) planning and service areas for the state; and
 - (ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.
 - (b) Designation as an area agency on aging may be withdrawn:
 - (i) upon request of the area agency on aging; or
 - (ii) upon noncompliance with the provisions of the:
 - (A) Older Americans Act of 1965, 42 U.S.C. Sec. 3001 et seq.;

- (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. Sec. 3001 et seq.;
 - (C) provisions of this chapter; or
 - (D) rules, policies, or procedures established by the division.
- (3)
- (a) The division has the authority to designate:
 - (i) planning and service areas for the state; and
 - (ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning and service area to design and implement a comprehensive and coordinated system of case management and programs for high risk adults within appropriations from the Legislature.
 - (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall designate as the area agency on high risk adults in a planning and service area:
 - (i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the division to include the responsibility of:
 - (A) being the area agency on high risk adults; or
 - (B) operating the area agency on high risk adults:
 - (I) through joint cooperation with one or more existing area agencies on aging; and
 - (II) without reducing geographical coverage in any service area; or
 - (ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).
 - (c)
 - (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
 - (ii) The division's efforts to establish area agencies on high risk adults shall start with counties with a population of more than 150,000 people.
 - (d) Designation as an area agency on high risk adults may be withdrawn:
 - (i) upon request by the area agency; or
 - (ii) upon noncompliance with:
 - (A) state law;
 - (B) federal law; or
 - (C) rules, policies, or procedures established by the division.
- (4)
- (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act:
 - (i) seek federal grants, loans, or participation in federal programs; and
 - (ii) receive and distribute state and federal funds for the division's programs and services to the aging and adult populations of the state.
 - (b) The division may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 26B-6-107.
- (5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.
- (6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:
- (a) the governing body of an area agency to provide a comprehensive program of services; or
 - (b) public and private entities for special services.

- (7) The division has authority to provide for collection, compilation, and dissemination of information, statistics, and reports relating to issues facing aging and adult citizens.
- (8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.
- (9) The division shall:
 - (a) implement and enforce policies established by the board governing all aspects of the division's programs for aging and adult persons in the state;
 - (b) in order to ensure compliance with all applicable state and federal statutes, policies, and procedures, monitor and evaluate programs provided by or under contract with:
 - (i) the division;
 - (ii) area agencies; and
 - (iii) an entity that receives funds from an area agency;
 - (c) examine expenditures of public funds;
 - (d) withhold funds from programs based on contract noncompliance;
 - (e) review and approve plans of area agencies in order to ensure:
 - (i) compliance with division policies; and
 - (ii) a statewide comprehensive program;
 - (f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:
 - (i) state and federal agencies;
 - (ii) social and health agencies;
 - (iii) education and research organizations; and
 - (iv) other related groups;
 - (g) advocate for the aging and adult populations;
 - (h) promote and conduct research on the problems and needs of aging and adult persons;
 - (i) submit recommendations for changes in policies, programs, and funding to the:
 - (i) governor; and
 - (ii) Legislature; and
 - (j)
 - (i) accept contributions to and administer the funds contained in the Out and About Homebound Transportation Assistance Fund created in Section 26B-1-323; and
 - (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the Out and About Homebound Transportation Assistance Fund in accordance with Section 26B-1-323.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-105 Powers and duties of area agencies -- Registration as a limited purpose entity.

- (1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:
 - (a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);
 - (b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;
 - (c) conduct periodic reviews and evaluations of needs and services;
 - (d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;

- (e) establish, either directly or by contract, programs licensed under Chapter 2, Part 1, Human Services Programs and Facilities;
- (f)
 - (i) appoint an area director;
 - (ii) prescribe the area director's duties; and
 - (iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)(d);
- (g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;
- (h) operate other services and programs funded by sources other than those administered by the division;
- (i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;
- (j) establish fee schedules; and
- (k) comply with the requirements and procedures of:
 - (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.
- (2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:
 - (a) the division may examine the entity's program and financial records; and
 - (b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.
- (3) An area agency on aging may not disburse public funds to a personal care attendant as payment for personal services rendered to an aged person or high risk adult, except as provided in Section 26B-6-107.
- (4)
 - (a) For the purpose of providing services pursuant to this part, a local area agency may receive:
 - (i) property;
 - (ii) grants;
 - (iii) gifts;
 - (iv) supplies;
 - (v) materials;
 - (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and
 - (vii) contributions.
 - (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift shall be used for the specific service or program.
- (5)
 - (a) Area agencies shall award all public funds in compliance with:
 - (i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or
 - (ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).
 - (b)
 - (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.
 - (ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.

- (c)
 - (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.
 - (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.
- (d)
 - (i) Contracts awarded by an area agency shall be for a:
 - (A) fixed amount; and
 - (B) limited period.
 - (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.
- (6) Local area agencies shall comply with:
 - (a) applicable state and federal:
 - (i) statutes;
 - (ii) policies; and
 - (iii) audit requirements; and
 - (b) directives resulting from an audit described in Subsection (6)(a)(iii).
- (7)
 - (a) Each area agency shall register and maintain the area agency's registration as a limited purpose entity, in accordance with Section 67-1a-15.
 - (b) An area agency that fails to comply with Subsection (7)(a) or Section 67-1a-15 is subject to enforcement by the state auditor, in accordance with Section 67-3-1.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-106 Contracts for services.

When an area agency has established a plan to provide services authorized by this chapter, and those services meet standards fixed by rules of the board, the area agency may enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-107 Disbursal of public funds -- Background check of a personal care attendant.

- (1) As used in this section, "office" means Office of Licensing within the department.
- (2) Public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high risk adult unless the office approves the personal care attendant to have direct access and provide services to children or vulnerable adults pursuant to Section 26B-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:
 - (a) who desires to receive public funds as payment for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 26B-2-120.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-108 Matching requirements for state and federal Older American funds.

- (1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:
 - (a) 15% of service dollars; and
 - (b) 25% of administrative dollars.
- (2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.
- (3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-109 Eligibility criteria.

Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-110 Agency responsible to investigate and provide services.

- (1) As used in this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).
- (2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:
 - (a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and
 - (b) determine whether, and under what circumstances, the agency described in Subsection (2) (a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.
- (3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 26B-6-205.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-111 Requirements for establishing division policy.

- (1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 26B-6-105 and 26B-6-106. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.
- (2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also

provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.

- (3) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-112 Allocation of funds to acquire facilities.

- (1)
- (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.
 - (b) Acquisition of a facility may include acquisition of real property, construction of a new facility, acquisition of an existing facility, or alteration, renovation, or improvement of an existing facility.
 - (c) The local area agency may allocate grants received under this section to a local nonprofit or governmental agency that owns or operates a facility to provide community-based services for aged persons.
- (2) A local area agency on aging or the local nonprofit or governmental agency that owns or operates the facility and receives grant money from the area agency shall provide a matching contribution of at least 25% of the grant funds it receives under this section. A matching contribution may include funds, services, property, or other in-kind contributions.
- (3) In making grants under this section, the board may consider:
- (a) the extent and availability of public and private funding to operate programs in the facility to be acquired and to provide for maintenance of that facility;
 - (b) the need for community-based services in the geographical area served by the area agency on aging;
 - (c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and
 - (d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.
- (4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection 26B-6-104(8).
- (5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-113 Allocation of funds to local area agencies -- Formulas.

- (1)
- (a) The board shall establish by rule formulas for allocating funds to local area agencies through contracts to provide programs and services in accordance with this part based on need.

- (b) Determination of need shall be based on the number of eligible persons located in the local area which the division is authorized to serve, unless federal regulations require otherwise or the board establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need.
 - (c) Formulas established by the board shall include a differential to compensate for additional costs of providing services in rural areas.
- (2) Formulas established under Subsection (1) shall be in effect on or before July 1, 1998, and apply to all state and federal funds appropriated by the Legislature to the division for local area agencies, but does not apply to:
- (a) funds that local area agencies receive from sources other than the division;
 - (b) funds that local area agencies receive from the division to operate a specific program within its jurisdiction which is available to all residents of the state;
 - (c) funds that a local area agency receives from the division to meet a need that exists only within that local area; and
 - (d) funds that a local area agency receives from the division for research projects.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-114 Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 308, 2023 General Session