

IOWA DEPARTMENT ON AGING [17]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 231.14, 231.23 and 2011 Iowa Acts, House File 45, Section 20, the Iowa Department on Aging hereby rescinds Chapter 4, “Department Planning Responsibilities,” Iowa administrative Code, and adopts a new Chapter 4 with the same title.

The proposed rules in the new Chapter 4 are necessary to correct errors within Chapter 4 and to comply with 2011 Iowa Acts, House File 45, Section 20.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the immediate need to comply with 2011 Iowa Acts, House File 45, Section 20. Pursuant to House File 45, the Department is mandated to implement a reduction in the number of area agencies on aging in the state to be effective beginning July 1, 2012, with a plan for the reduction due to the standing committees on human resources of the senate and house of representatives and the joint appropriations subcommittee on health and human services on or before December 15, 2011. The plan for the reduction of area agencies on aging must be guided by the Older Americans Act, Iowa Code and administrative rules. Accurate and appropriate administrative rules must be enacted on an emergency basis to comply with the legislatively mandated timelines.

The Department further finds that the normal effective date of new Chapter 4 should be waived and these rules should be made effective upon filing. The Department’s finding is based upon the fact that these rules are statutorily necessary based upon 2011 Iowa Acts, House File 45, Section 20. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(1).

The Department adopted these rules on November 1, 2011.

These rules are also published herein under Notice of Intended Action as ARC XXXXX to allow public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code Chapter 231 and 2011 Iowa Acts, House File 45.

These rules became effective on November 1, 2011.

The following amendment is adopted.

Rescind 17—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4

DEPARTMENT PLANNING RESPONSIBILITIES

17—4.1 Definitions. Words and phrases as used in this chapter are as defined in chapter 17-1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Days*” means calendar days unless otherwise indicated. If a term refers to a date on which a document or response is due to the Department and the due date occurs on a holiday or weekend, then the due date shall be the next business day.

“*Entity*” means any public or private nonprofit agency or organization or a unit of general purpose local government.

“*Indian*” means a person who is a member of an Indian Tribal Organization or recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“*Indian Tribal Organization*” means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such

governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

“*State Plan on Aging*” means a document developed in accordance with the Older Americans Act that is submitted to the Administration on Aging every two, three or four years with updates as necessary, in order to receive Older Americans Act grants.

“*Unit of General Purpose Local Government*” means either the government of a county, municipality, township, metropolitan area, or region within the state recognized for area wide planning that functions as a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions, and has a population of 100,000 or more or an Indian tribal organization.

17—4.2 State Plan on Aging.

4.2(1) Authority. The Iowa Department on Aging is designated as the sole state unit on aging in Iowa for developing and administering a state plan on aging or state plan amendment pursuant to the federal Older Americans Act. The Iowa Commission on Aging is designated as the policymaking body of the sole state unit on aging in Iowa and is authorized to approve or disapprove a state plan or state plan amendment developed by the Department.

4.2(2) State Plan on Aging. The Department shall develop for Commission consideration a two, three, or four-year state plan on aging in compliance with the Older Americans Act and Iowa Code chapter 231. The Department shall develop the state plan on aging in accordance with the procedures and associated instructions, guidance, and direction specified by the Administration on Aging.

4.2(3) *State Plan on Aging Amendment.* The Department may, in its discretion, develop and submit to the Commission for consideration an amendment to the state plan on aging at any time.

4.2(4) *State Plan on Aging and State Plan Amendment Review Process.* Once the Department develops the state plan on aging or state plan amendment, it shall comply with the following chronological review and comment process:

- a.* The Department shall hold at least one public hearing on the proposed state plan or state plan amendment; and
- b.* The Department shall submit the state plan or state plan amendment to the Commission for consideration. The Commission shall approve or disapprove the state plan or state plan amendment after reviewing the plan and public comments; and
- c.* The Department shall submit a state plan or state plan amendment approved by the Commission to the Governor for approval and signature; and
- d.* The Department shall submit a state plan or state plan amendment approved by the Governor to the Administration on Aging for approval at least 45 days before the effective date of the state plan or state plan amendment.

4.2(5) *State Plan on Aging Not Approved.* If a state plan or state plan amendment is not approved by the Commission, the Governor, or the Administration on Aging, the Department may, in its discretion, table or revise the proposed state plan or state plan amendment. If the

Department revises the proposed state plan or state plan amendment, the Department shall follow the comment and approval process outlined in rule 17-4.2(4).

4.2(6) *Technical Changes to State Plan on Aging.* The Commission or the Governor may, in their discretion, make technical corrections to a submitted state plan or state plan amendment prior to approving it.

17—4.3 Planning and Service Areas.

4.3(1) *Designation.* The Older Americans Act requires the Department to develop a plan dividing the State into distinct planning and service areas and submit the plan to the Commission for consideration.

4.3(2) *Change in Designation.* The Department may, in its discretion, submit a plan to the Commission changing existing planning and service area designations for any the following reasons:

- a.* A change or reduction in the number of planning and service areas is mandated by state or federal law;
- b.* A change occurs in the geographical distribution of older individuals in the state;
- c.* A change occurs in the incidence of the need for, or distribution of, resources and services outlined in the Older Americans Act;
- d.* A change occurs in the distribution of older individuals who have greatest economic or social need or who are Indians residing in such areas;
- e.* A change occurs in the location of units of general purpose local government within the State;

- f. A change occurs in the boundaries of existing areas within the State which were drawn for the planning or administration of supportive service programs; or
- g. Any other relevant factors as determined by the Department.

4.3(3) *Designation Requirements for Units of General Purpose Local Government.* The Department may, in its discretion, recommend to the Commission for its consideration designation of any unit of general purpose local government as a planning and service area.

4.3(4) *Process to Designate or Change Planning and Service Areas.* The Department's submission to the Commission of a plan to divide the State into distinct planning and service areas or change an existing plan shall be acted upon by the Commission only after affected parties have been provided notice and an opportunity to be heard as required by the Older Americans Act.

a. Notice.

- i. The Department shall send by certified mail, return receipt requested, a written notice of intent to designate planning and service area boundaries or change existing planning and service area boundaries by mailing said notice to all area agency on aging executive directors and board chairs. The Department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government.

Notice shall also be provided by posting the notice on the Department website, www.aging.iowa.gov.

- ii. The notice shall document the need to designate planning and service area boundaries or change existing planning and service area boundaries and provide a process for submitting written comments to the Department for consideration by the Commission.

b. Public Hearing.

- i. The Department shall hold at least one public hearing to obtain comments and provide information on the plan to designate planning and service area boundaries or change existing planning and service area boundaries within 90 days of providing notice pursuant to rule 17-4.3(4)(a).
- ii. Information provided by the Department at the public hearing shall include, but not be limited to, the proposed planning and service area boundary designations or changes, the reason(s) for the designations or changes, legal authority to designate or change planning and service area boundaries, identification of affected individuals or groups of individuals, and procedures for appealing the proposed planning and service area designations or changes.
- iii. Instructions for providing written comments to the Department regarding the proposed planning and service area designations or changes shall be provided at the public hearing and shall be posted on the Department's website, www.aging.iowa.gov.

4.3(5) *Review of Comments.* The Department shall review all public comments received and provide a summary for the Commission's review.

4.3(6) *Department Submission of Proposed Recommendation to the Commission.* The Department shall submit to the Commission for consideration a proposed recommendation regarding the designation or change of planning and service areas.

4.3(7) *Commission Approval or Disapproval of Proposed Designation of or Change to Planning and Service Areas.* The Commission may, in its discretion, approve or disapprove the Department's proposed recommendation to divide the state into distinct planning and services areas or change existing designations. If the Commission disapproves the Department's proposed recommendation, the Department shall develop an alternate recommendation for Commission consideration after notice and an opportunity for public comment as provided in rule 17-4.3(4). The Commission's final decision shall be posted on the Department's website, www.aging.iowa.gov. The Commission's final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.3(8) *State Appeal of Commission Decision.* A party aggrieved or adversely affected by the Commission's final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.3(9) *Federal Appeal of Commission's Decision.* An adversely affected party may appeal, in writing, the Commission's decision regarding a planning and service area designation or change to the Assistant Secretary for Aging of the Administration on Aging, Washington, DC 20201 on the basis of the facts and merits of the matter that is the subject of the action or proceeding, or on procedural grounds within 30 days of the Commission's final decision. Written

requests shall state: (i) the decision for which an appeal is being made, and (ii) the legal name(s), address(es), telephone number(s), and email address(es) of the individual or entity requesting the appeal. A copy of this request shall also be mailed to the Director, Department on Aging, 510 E. 12th Street, Suite 2, Des Moines, IA 50319. All questions regarding the federal appeal process should be addressed to the Assistant Secretary for Aging at the address provided above.

4.3(10) *Official Designation.* Official designation shall not occur until the final disposition of all appeals.

17—4.4 Area Agencies on Aging.

4.4(1) *Designation.* The Department shall designate for each planning and service area an entity to serve as the area agency on aging in accordance with Older Americans Act requirements. The Department may, in its discretion, designate one area agency on aging to serve more than one planning and service area.

4.4(2) *Designation Requirements for Units of General Purpose Local Government.*

Whenever the Department designates a new area agency on aging after the date of enactment of the Older Americans Act Amendments of 1984 or dedesignates an existing area agency on aging, the Department shall give the right of first refusal to a unit of general purpose local government if:

- a.* The unit of general purpose local government can meet the requirements established to serve as an area agency on aging pursuant to state and federal law; and
- b.* The unit of general purpose local government's geographical boundaries and the geographical boundaries of the planning and service area are reasonably contiguous.

4.4(3) *Qualifications to serve.* Any entity applying for designation as an area agency on aging must have the capacity to perform all functions of an area agency on aging as outlined in the Older Americans Act and Iowa Code chapter 231. An area agency on aging shall be any one of the following:

- a.* an established office of aging operating within a planning and service area;
- b.* any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit;
- c.* any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose;
- d.* any public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which for designation purposes is under the supervision or direction of the Department and which can and will engage only in the planning or provision of a broad range of supportive services, or nutrition services within such planning and service area; or
- e.* any other entity authorized by the Older Americans Act.

4.4(4) *Process to Designate Area Agency on Aging.*

- a.* The Department shall send by certified mail, return receipt requested, a written notice of intent to designate an area agency on aging by mailing said notice to all area agency on aging executive directors and board

chairs. The Department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government. Notice shall also be provided by posting the notice on the Department website, www.aging.iowa.gov.

- b.* The notice shall provide information regarding the Department's intent to designate an area agency on aging and to accept requests for applications to serve as an area agency on aging in the affected planning and service area(s). The notice shall be posted and published at least 60 days prior to the request for application submission deadline.
- c.* The Department shall hold at least one public hearing pursuant to the process provided in rule 17-4.6(2)(b).
- d.* Any entity meeting the qualification requirements outlined in rule 17-4.4(3) may submit an application to serve as an area agency on aging.
- e.* If an area agency on aging is dedesignated pursuant to rule 17-4.6, the Department shall use a request for application process to designate a new area agency on aging for the affected planning and service area.
- f.* The Department may, in its discretion, require applicants to submit to an on-site assessment as part of the request for application review process.

4.4(5) *Department Submission of Proposed Recommendation for Designation of Area Agency on Aging to the Commission.* Following the review of the application(s), the Department

shall develop and submit to the Commission for consideration a proposed recommendation regarding the designation of an area agency on aging for each planning and service area.

4.4(6) *Commission Approval or Disapproval of Proposed Designation of Area Agency on Aging.* The Commission may, in its discretion, approve or disapprove the Department's proposed recommendation to designate an area agency on aging. If the Commission disapproves the Department's proposed recommendation, the Department shall develop an alternate recommendation for Commission consideration after notice and an opportunity for public comment as provided in rule 17-4.4(4). The final decision shall be made available on the Department's website, www.aging.iowa.gov. The Commission's final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.4(7) *Official Designation.* An entity shall be designated the area agency on aging upon the Commission's acceptance of the Department's proposed recommendation for designation, the Commission's approval of the area agency on aging area plan, and execution of the associated contract between the Department and the area agency on aging.

4.4(8) *State Appeal of Commission Decision.* A party aggrieved or adversely affected by the Commission's final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.4(9) *Official Designation.* Official designation shall not occur until final disposition of all appeals.

17—4.5 Continuity of Services in the Event of Appeal of Designation. To ensure continuity of services in the affected planning and service area(s) while the Commission's final decision regarding designation of an area agency on aging is on appeal, the existing area agency on aging

shall provide services unless the Department, in its discretion, elects any of the following individually or in combination:

- a.* Temporarily perform the responsibilities of the area agency on aging;
- b.* Assign the responsibilities of the area agency on aging to any other area agency on aging;
- c.* Assign the responsibilities of the area agency on aging to another entity in the planning and service area which is competent to provide area agency on aging services; and
- d.* Submit a written request to the Administration on Aging for an extension of the continuity of services plan pursuant to rule 17-4.5. The request shall document the need for an extension to provide continuity of services in the affected planning and service area(s) until a successor area agency on aging is designated after appeal.

17—4.6 Dedesignation of Area Agency on Aging.

4.6(1) *Dedesignation.* The Department may, in its discretion, initiate action to dedesignate an area agency on aging for the following reasons:

- a.* Substantial violation of grant terms and conditions or requirements and standards set forth in federal and state law or rules promulgated by the Department or other agencies having jurisdiction;
- b.* Inadequate performance of the responsibilities outlined in the Older Americans Act, Iowa Code chapter 231 or Department rules or any other law or regulation governing administration, operation and reporting for area agencies on aging;

- c. The area agency on aging has been unable or is unwilling to take timely remedial action to correct cited deficiencies within the given time frame established by the Department.
- d. A change or reduction in the number of area agencies on aging is mandated by state or federal law.
- e. A change occurs in the designation of the planning and service area served by the area agency on aging.

4.6(2) Process to Dedeignate an Area Agency on Aging. The Department's submission to the Commission of a plan to dedesignate an existing area agency on aging shall be acted upon by the Commission only after affected parties have been provided notice and an opportunity to be heard as required by the Older Americans Act.

a. Notice.

i. *Notice to existing Area Agency on Aging.* The Department shall send by certified mail, return receipt requested, a written notice of intent to dedesignate an area agency on aging by mailing said notice to the affected area agency on aging's executive director and board chair. The written notice shall contain the reasons for the proposed dedesignation, the applicable state or federal law(s) or administrative rule(s), and the dedesignation process.

ii. *Notice to other affected parties.* The Department shall provide notice of intent to dedesignate an existing area agency on aging to all other area agencies on aging by mailing notice to their executive directors and board chairs. The Department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and

service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government. Notice shall be provided through the Department website, www.aging.iowa.gov. The notice shall document the need to dedesignate an existing area agency on aging and provide a process for submitting written comments to the Department for consideration by the Commission.

b. Public Hearing.

i. The Department shall hold at least one public hearing to obtain comments and provide information on the plan to dedesignate an existing area agency on aging within 90 days of providing notice pursuant to rule 17-4.6(2)(a).

ii. Information provided by the Department at the public hearing shall include, but not be limited to, the proposed plan to dedesignate, the reasons for dedesignation, legal authority to dedesignate, identification of affected individuals or groups of individuals, and procedures for appealing.

iii. Instructions for providing written comments to the Department regarding the proposed plan to dedesignate an existing area agency on aging shall be provided at the public hearing and shall be posted on the Department's website, www.aging.iowa.gov.

4.6(3) Review of Comments. The Department shall review all public comments received and provide a summary for the Commission's review.

4.6(4) *Department Submission of Proposed Recommendation to the Commission.* The Department shall submit to the Commission for consideration a proposed recommendation regarding the dedesignation of an existing area agency on aging.

4.6(5) *Commission Approval or Disapproval of Proposed Recommendation to Dedesignate an Area Agency on Aging.* The Commission may, in its discretion, approve or disapprove the Department's proposed recommendation to dedesignate an existing area agency on aging. If the Commission disapproves the Department's proposed recommendation, the Department shall develop an alternate recommendation for Commission consideration after notice and an opportunity for public comment as provided in rule 17-4.6(2). The Commission's final decision shall be posted on the Department's website, www.aging.iowa.gov. The Commission's final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.6(6) *Department Action Subsequent to Dedesignation.* When an area agency on aging is dedesignated pursuant to this chapter, the Department shall:

- a.* Notify the area agency on aging in writing that it has been dedesignated pursuant to this chapter;
- b.* Provide a written explanation of the grounds for dedesignation;
- c.* Provide written notice of the right to appeal dedesignation and the procedure to be used for appeal;
- d.* Notify the Administration on Aging in writing of the dedesignation; and
- e.* If necessary, implement a plan for continuity of services in the affected planning and service area(s).

4.6(7) State Appeal of Commission Decision. A party aggrieved or adversely affected by the Commission's final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.6(8) Federal Appeal of Commission Decision. An adversely affected party may appeal, in writing, the Commission's decision regarding dedesignation of an existing area agency on aging to the Assistant Secretary for Aging of the Administration on Aging, Washington, D.C. 20201 on the basis of the facts and merits of the matter that is the subject of the action or proceeding, or on procedural grounds within 30 days of the Commission's final decision. Written requests shall state: (i) the decision for which an appeal is being made, and (ii) the legal name(s), address (es), telephone number(s), and email address (es) of the individual or entity requesting the appeal. A copy of this request shall also be mailed to the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. All questions regarding the federal appeal process should be addressed to the Assistant Secretary for Aging at the address provided above.

4.6(9) Official Designation. Official designation shall not occur until the final disposition of all appeals.

17—4.7 Continuity of Services in the Event of Dedesignation or Appeal of Dedesignation.

To ensure continuity of services in the affected planning and service area(s) regarding dedesignation of an area agency on aging, the Department may, in its discretion, elect any of the following individually or in combination:

- a. Temporarily perform the responsibilities of the area agency on aging;
- b. Assign the responsibilities of the area agency on aging to the existing area agency on aging;

- c.* Assign the responsibilities of the area agency on aging to any other area agency on aging;
- d.* Assign the responsibilities of the area agency on aging to another entity in the planning and service area which is competent to provide area agency on aging services; and
- e.* Submit a written request to the Administration on Aging for an extension of the continuity of services plan pursuant to rule 17-4.7. The request shall document the need for an extension to provide continuity of services in the affected planning and service area(s) until a successor area agency on aging is designated after appeal.

17—4.8 Severability Clause. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.