

**CHAPTER 35. AREA AGENCY ON AGING
ADVISORY COUNCILS**

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Authority

The provisions of this Chapter 35 issued under section 2208-A of The Administrative Code of 1929 (71 P. S. § 581-8), unless otherwise noted.

Source

The provisions of this Chapter 35 adopted November 13, 1981, effective November 14, 1981, 11 Pa.B. 4035, unless otherwise noted.

GENERAL PROVISIONS**§ 35.1. Purpose and authority.**

(a) The purpose of this chapter is to set forth the responsibilities and composition of Area Agency Advisory Councils. In addition, this chapter sets forth the corresponding responsibilities of Area Agencies and of the Department.

(b) This chapter is issued pursuant to the authority contained in § 2208-A of the act (71 P. S. § 581-8), and in conformity with the Older Americans Act of 1965 and Federal regulations issued pursuant to the Federal Act.

§ 35.2. Effective date, exemption of present Advisory Council members, and request for waiver.

(a) The provisions of this chapter shall be effective on January 1, 1982.

(b) All persons serving terms on Advisory Councils as of January 1, 1982, shall be exempt from the provisions of this chapter until their terms expire.

(c) In the event an Area Agency finds that compliance with one or more of the provisions of this chapter will not be feasible or would be counterproductive, it shall apply in writing to the Director of the Bureau requesting a waiver, along with the reasons therefor. The Director of the Bureau shall forward a recommendation on the waiver request, based upon the reasons given by the Area Agency and any other information in its possession, to the Secretary. The Secretary will promptly render a decision as to the granting of a waiver. This decision will be transmitted in writing to the Advisory Council chairpersons, to the appointing authority, and to the Area Agency Director. The decision will state the reasons therefor and it will be considered final.

Cross References

This section cited in 6 Pa. Code § 35.41 (relating to responsibilities of the Department).

§ 35.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The act of June 20, 1978 (P. L. 477, No. 70) (71 P. S. §§ 61, 63, 66, 67.1(d)(1), 158(1), first paragraph, 581-1—581-12 and 611.8).

Advisory Council—The Area Agency Advisory Board required by both section 2208-A of The Administrative Code of 1929 (71 P. S. § 581-8) and by the Older Americans Act of 1965 42 U.S.C.A. § 3026(a)(6)(G), and Federal regulations issued pursuant thereto at 45 CFR 1321.97 (1980).

Appointing authority—Chief elected officials of the county for public Area Agencies; the board of directors or its equivalent for nonprofit Area Agencies.

Area agency—The single local agency designated within each PSA to develop and administer the Area Plan.

Area plan—The plan submitted to the Department by an Area Agency describing the methods by which it will ensure a coordinated and comprehensive system of social and other services and activities for older persons in the planning and service area.

Bureau—The Bureau of Program and Field Operations.

Department—The Pennsylvania Department of Aging.

Greatest economic need—The need resulting from an income level at or below the poverty threshold established by the United States Bureau of the Census.

Greatest social need—The need caused by noneconomic factors which include physical and mental disabilities; language barriers; and cultural or social isolation including that caused by racial or ethnic status—for example: Black, Hispanic, American, Indian, and Asian American—which restrict an individual's ability to perform normal daily tasks or which threaten his capacity to live independently.

Local elected officials—All officials holding elective public office within a PSA except those public officials who are also appointing authorities.

Older persons—Those persons residing within this Commonwealth who are 60 years of age or older.

PSA or Planning and Service Area—The geographic unit within this Commonwealth, as authorized by the Federal Older Americans Act of 1965, that is designated for purposes of planning, development, delivery, and overall administration of services under an area plan.

Secretary—The Secretary of Aging of the Commonwealth.

COMPOSITION OF THE ADVISORY COUNCIL

§ 35.11. Advisory Council composition.

- (a) The Advisory Council shall consist of a minimum of 15 voting members.
- (b) In order to assure that the Advisory Council constitutes a maximally representative citizen body, the Advisory Council shall be composed of the following:
 - (1) More than 50% older persons and include:
 - (i) older persons with greatest economic or social need; and
 - (ii) Area Agency service recipients.
 - (2) One or more representatives of older persons.
 - (3) One or more local elected officials.
 - (4) The general public.
- (c) Appointing authorities and their employees may serve as members of the Advisory Council, but only in ex officio, nonvoting capacity, and are not eligible to serve as officers of the Advisory Council.
- (d) Subcontractors under the area plan, their employees, and members of their boards of directors and advisory councils may, at the discretion of the Advisory

Council, serve either as regular voting members or in an ex officio, nonvoting capacity. The Advisory Council's decision in this regard shall:

- (1) be universally applied—that is, the basic decision, once reached by the Advisory Council, must thereafter apply to all subcontractors under the area plan, their employes, and members of their boards of directors and advisory councils who serve on the Advisory Council;
 - (2) be included as a statement of policy in the Advisory Council's bylaws;
 - (3) require—where the Advisory Council has decided to allow subcontractors under the area plan, their employes, and members of their boards of directors and advisory councils to serve as regular voting members—that such persons comply with those provisions of the Advisory Council's bylaws explicitly designed to avoid the possibility of conflicts-of-interest, as set forth in § 35.21(a)(6) (relating to Advisory Council organization responsibilities).
- (e) Advisory Councils may, at their discretion, establish further membership requirements in accordance with other demographic features within the PSA. Such additional requirements may be established in order to guarantee equitable geographic distribution of membership, particularly in bicounty or multicounty PSA's, and shall not conflict with the membership requirements established in this chapter.
- (f) The Advisory Council shall not establish any membership requirement based on religion.

Cross References

This section cited in 6 Pa. Code § 35.12 (relating to filling vacancies on advisory councils).

§ 35.12. Filling vacancies on Advisory Councils.

- (a) Advisory Council members shall play an active, coordinating role in the recruitment and selection of new members to serve on the Advisory Council. Whenever a vacancy in the Advisory Council occurs, the Advisory Council shall solicit capable representatives of the population of older persons within the PSA, in accordance with the composition requirements in § 35.11(b)—(f) (relating to advisory council composition), by utilizing procedures which they find to be adequate, appropriate, and feasible. Such procedures may, for example, include the placing of an announcement of the vacancy to be filled in newspapers or in other appropriate media outlets.
- (b) The Advisory Council's procedure for filling vacancies shall:
- (1) be adequately documented; documentation may include, for example, copies of letters to prospective nominees or copies of announcements placed in newspapers or in other appropriate media outlets;
 - (2) be specified in the Advisory Council's bylaws, as stated in § 35.21(a)(3) (relating to advisory council organization responsibilities);
 - (3) result in the nomination of a person to serve on the Advisory Council;
- and

(4) be presented to the appointing authority, who reserves the right to accept or reject any nomination so presented.

(c) The appointing authority shall act either to accept or reject the nomination of a person to serve on the Advisory Council within 60 days of the date the nomination is presented to it under subsection (b)(4).

(d) Where the appointing authority has delegated responsibility for selection of Advisory Council members to the Advisory Council, new members may be selected by the Advisory Council itself, following a procedure which assures that its membership is truly representative of older persons within the PSA. Such procedures may include, for example, selection by older persons themselves in a democratic fashion.

RESPONSIBILITIES OF THE ADVISORY COUNCIL

§ 35.21. Advisory Council organization responsibilities.

(a) The Advisory Council shall assist the Area Agency to develop and make public bylaws specifying the following:

- (1) The role and function of the Advisory Council.
- (2) The number of members.
- (3) Procedures for selection of members.
- (4) Term of membership.
- (5) Frequency of meetings.

(6) Provisions explicitly designed to avoid the possibility of conflicts-of-interest, by including at least the following language: "An Advisory Council member must absent himself/herself from all deliberations concerning programs or funding for projects with which his/her organization is directly involved. Any voting member of the Advisory Council who is directly involved with the development and/or implementation of a proposal or contract to be funded by the area agency will declare a potential conflict of interest at each Advisory Council meeting on the subject. This declaration will be stated and recorded as part of the minutes and will include refraining from any discussion, comments, or voting on matters pertaining to the program or contract."

(b) The Advisory Council may, in addition to the requirements of subsection (a), assist the Area Agency to develop, and make public, bylaws specifying:

- (1) standing committees, as well as procedures for the establishment of special committees and task forces; and
- (2) other matters, as deemed appropriate.

(c) The Advisory Council shall keep minutes of each meeting. The minutes shall be approved by the membership and shall be available to the general public upon request. A copy of all minutes shall be maintained at the office of the Area Agency.

Cross References

This section cited in 6 Pa. Code § 35.11 (relating to advisory council composition); 6 Pa. Code § 35.12 (relating to filling vacancies on advisory councils); and 6 Pa. Code § 35.31 (relating to responsibilities of the area agency).

§ 35.22. Advisory Council responsibility to provide informed and regular counsel.

(a) In order to fulfill its responsibility to provide the Area Agency with informed and regular counsel, the Advisory Council will:

- (1) Meet at least quarterly.
- (2) Conduct all meetings in conformity with the act of July 19, 1974 (P. L. 486, No. 175) (65 P. S. §§ 261—269).
- (3) Review documents or summaries thereof pertaining to the substance and scope of the area plan and area plan contract, in sufficient detail to enable it to carry out its responsibilities.
- (4) Participate in such training and technical assistance as will enable it to carry out its responsibilities.
- (5) Utilize appropriate Area Agency staff and assistance in order to carry out its responsibilities.
- (6) Review, at least quarterly, documents or summaries thereof detailing the progress achieved to date by the Area Agency toward the accomplishment of the objectives set forth in the area plan. Such documents may include, for example, the Financial Expenditure Report, the Quarterly Progress Report, Annual Self-Evaluation Report, and Monitoring Reports.
- (7) Advise the appointing authority concerning selection of a new Area Agency Director whenever there is an actual or impending vacancy.
- (8) In cooperation with the Area Agency, plan, publicize, and hold public hearings on the area plan.

(b) The Advisory Council may, in cooperation with the Area Agency:

- (1) Plan, publicize, and hold public hearings on specific issues affecting older persons which receive Council attention.
- (2) Form task forces or special committees in order to deepen Council understanding of specific issues. Such task forces or special committees must include one Advisory Council member and may include: Area Agency personnel, service provider staff, representatives of local government, and members of the larger community; activities of such task forces or special committees, including any reports they produce, are not official, and their draft reports should not be widely disseminated without approval by the Advisory Council.
- (3) Conduct surveys of the needs and attitudes of consumers or potential consumers of services under the area plan.

Cross References

This section cited in 6 Pa. Code § 35.31 (relating to responsibilities of the area agency).

§ 35.23. Advisory Council responsibility to advise the Area Agency to develop and administer the area plan.

(a) In order to fulfill its responsibility to advise the Area Agency in the development and administration of the area plan, the Advisory Council will:

(1) confer with the Area Agency Director regarding the area plan and contract and any revision to the area plan or contract prior to their submission by the Director to the appointing authority and to the Department; and

(2) certify that it has participated in the development of the area plan, that it has reviewed the area plan as submitted to the Department, and that it recommends either approval or disapproval, by signature of the Chief Officer of the Advisory Council on the area plan application form submitted to the Department.

(b) The Advisory Council may, in cooperation with the appointing authority:

(1) review and discuss with the Area Agency Director any subcontracts for services entered into by the agency before such contracts are let and at such other times as indicated by the appearance of problems with or questions about such contracts; and

(2) ensure that the Department's appeal procedures for service providers, as set forth in Chapter 3 (relating to hearing and appeals procedure) proposed at 10 Pa.B. 3922 (October 4, 1980), are available and, when necessary, utilized within the PSA.

§ 35.24. Advisory Council responsibility to act as advocate for older persons.

In order to fulfill its responsibility to act as advocate for all older persons in the PSA, the Advisory Council shall do the following:

(1) Ensure that the public is informed, whether by the Area Agency staff or by the Advisory Council, concerning the needs of the PSA's elderly.

(2) Ensure that the Department's appeal procedures for applicants for services funded under the Federal Older Americans Act, as set forth in Chapter 3 (relating to hearing and appeals procedure) proposed at 10 Pa.B. 3922 (October 4, 1980), are available and, when necessary, utilized within the PSA.

(3) Advise the Area Agency regarding its mandated responsibilities to review and comment on all community policies, programs, and actions affecting older persons.

RESPONSIBILITIES OF THE AREA AGENCY

§ 35.31. Responsibilities of the Area Agency.

(a) In order to assist the Advisory Council to fulfill its responsibilities, the Area Agency shall do the following:

- (1) Establish an Area Agency Advisory Council in conformity with regulations issued by the Administration on Aging and with the provisions of this chapter.
 - (2) Afford the Advisory Council ready access to all documents or summaries thereof pertaining to the substance and scope of the area plan and contract.
 - (3) Facilitate the provision of appropriate training and technical assistance—whether provided by the Area Agency, the Department, or by others—to Advisory Council members.
 - (4) Provide the Advisory Council with staff support and assistance.
 - (5) Provide the Advisory Council, at least quarterly, with documents or summaries thereof detailing the progress achieved to date by the Area Agency toward the accomplishment of the objectives set forth in the Area Plan, in sufficient detail to enable the Advisory Council to carry out its responsibilities. Examples of documents or summaries thereof which may be provided are referenced in § 35.22(a)(6) (relating to advisory council responsibility to provide informed and regular counsel).
 - (6) In cooperation with the Advisory Council, develop and make public Advisory Council bylaws in accordance with the provisions of § 35.21(a) and (b) (relating to advisory council organization responsibilities).
- (b) The Area Agency Director or his designee shall attend all meetings of the Advisory Council and shall serve as a resource person.

RESPONSIBILITIES OF THE DEPARTMENT

§ 35.41. Responsibilities of the Department.

In order to assist Advisory Councils to carry out their mandated responsibilities, the Department will:

- (1) Make every effort, consistent with the amount of available funding, to provide Advisory Council members with appropriate training and technical assistance.
- (2) Render decisions as to the granting of waivers to one or more of the provisions of this chapter, following the procedures specified in § 35.2(c) (relating to effective date, exemption of present advisory council members, and request for waiver), as promptly as possible.