

**Board & Advisory Council Handbook  
for Virginia's  
Area Agencies on Aging**

**Provided by the:  
Department for Aging and Rehabilitative Services (DARS)  
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## **SECTION I. INTRODUCTION**

Congratulations on being appointed to the Governing Board or Advisory Council of your Area Agency on Aging (AAA)! Your time is valuable and the work you will be undertaking will be a great service to your community.

This *Handbook* provides an overview of the Area Agencies on Aging in Virginia, the organizational structures, information on aging services and your role and responsibilities on the Governing Board or Advisory Council. This *Handbook* is intended to augment the organizational-specific information that your Area Agency on Aging's Executive Director provides you as part of your New Board Member Orientation. Other information provided during the orientation could include the Agency's Bylaws, Articles of Incorporation, organizational chart, brief bios of key staff, history of the organization, and dates and times of board meetings.

You should review your agency's bylaws and articles of incorporation. Reading through them within the first two meetings of your appointment will help you to become acquainted to the activities you will be undertaking.

At the end of this *Handbook* there is a listing of other additional resources that you may find useful.

## SECTION II. BACKGROUND ON AREA AGENCIES ON AGING AND SOME OF THEIR SERVICES

### TYPES OF AREA AGENCIES ON AGING IN VIRGINIA

Virginia has 25 Area Agencies on Aging (AAAs). Each AAA can be described as fitting one of the four types of organizational structures. They are private-nonstock, nonprofit-corporations; joint-exercise-of-power; part of a government unit; or a community service board.

Fourteen AAAs are private-nonstock, nonprofit, 501(c)3 corporations with a Governing Board that makes decisions about services and programs within the parameters of the Older Americans Act. In Virginia, the AAAs are numbered according to the state Planning and Service Areas (PSA).

The fourteen AAAs are:

- 1 – Mountain Empire Older Citizens, Inc.
- 2 – Appalachian Agency for Senior Citizens, Inc.
- 5 – LOA - Area Agency on Aging, Inc.
- 6 – Valley Program for Aging Services, Inc.
- 7 – Shenandoah Area Agency on Aging, Inc.
- 11 – Central Virginia Alliance for Community Living, Inc.
- 12 – Southern Area Agency on Aging, Inc.
- 14 – Piedmont Senior Resources Area Agency on Aging, Inc.
- 15 – Senior Connections, The Capital Area Agency on Aging, Inc.
- 16 – Rappahannock Area Agency on Aging, Inc.
- 17/18 – Bay Aging
- 20 – Senior Services of Southeastern Virginia
- 21 – Peninsula Agency on Aging, Inc.
- 22 – Eastern Shore Area Agency on Aging Community Action Agency, Inc.

Five AAAs are Joint Exercise of Powers. Section 15.2-1300 et seq. of the *Code of Virginia* defines a joint exercise of powers as an agreement for the creation of a Governing Board, commission, authority or body empowered to have and exercise, on behalf of the several political subdivisions...the powers, rights and authority conferred. In the case of AAAs, a joint exercise of powers is the legal entity (not a state entity) created by an agreement of the localities to provide services to the older Virginians.

Typically, each County Supervisor, City or Town Manager of the localities appoints representation to the agency's Governing Board. The five AAAs are:

- 3 – District Three Senior Services
- 4 – New River Valley Agency on Aging
- 10 – Jefferson Area Board for Aging
- 13 – Lake Country Area Agency on Aging
- 19 – Crater District Area Agency on Aging

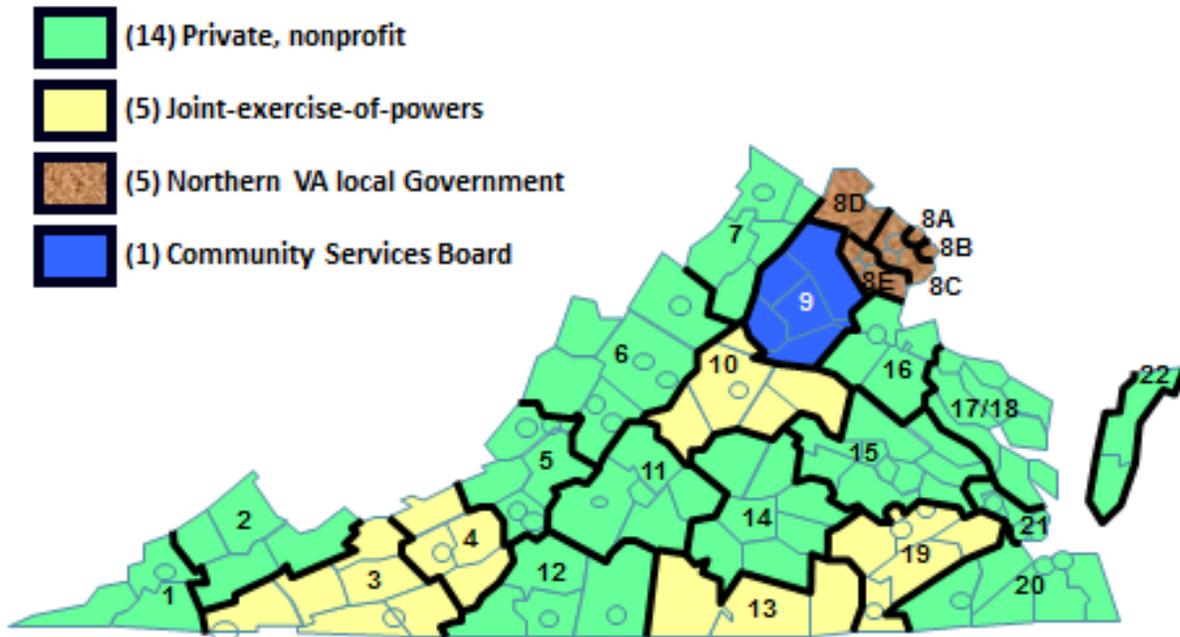
The five Northern AAAs are each a branch of their county or city government.

- 8A – Alexandria Agency on Aging
- 8B – Arlington Agency on Aging
- 8C – Fairfax Area Agency on Aging (which serves Falls Church, Fairfax City and Fairfax County)
- 8D – Loudoun County Area Agency on Aging
- 8E – Prince William Area Agency on Aging (which serves Manassas, Manassas Park and Prince William)

On AAA, Rappahannock-Rapidan is a Community Service Board with designation in the *Code of Virginia* as a governmental entity.

The map of Virginia below indicates the AAA organization type by color.

## Virginia's 25 Agencies on Aging By Organizational Structure



### AAA Program Descriptions

The following descriptions are brief definitions of the services provided by Virginia's AAAs. Each AAA may have slightly different definitions.

Adult day care provides supervised activities in a community center or other location for older adults who cannot remain alone at home during the day.

Care Transitions involves coordination of services to promote and ensure the coordination and continuity of health care as individuals transfer between different locations, such as hospital and home.

Care coordination (Care Coordination for Elderly Virginians Program – CCEVP) provides assistance to older adults or their family members with locating, applying for, receiving, and coordinating needed community services.

Case management assesses the individual's needs and assists them and/or their family members with locating, applying for, receiving, and coordinating needed services.

Checking (telephone reassurance) is a phone call to check on the older individual to make sure they are well and safe in their residence.

Chronic Disease Self-Management Education (CDSME) helps individuals with chronic diseases, such as arthritis, high blood pressure and diabetes, to take steps to improve their overall health and maintain an active and fulfilling lifestyle through a series of six free 2½ hour weekly workshops. Participants are given tools and information about exercise, healthy eating and appropriate use of medications to help them manage their chronic illnesses.

Chore is the performing of tasks such as heavy cleaning, yard work, minor home repairs, removal of ice and snow, etc. for individuals who are unable to do it themselves.

Communication, Information and Referral Assistance (CRIA) provides information about local resources to help older adults, individuals with disabilities, caregivers, and/or families understand their choices and access long-term care services to meet their needs.

Disease prevention and health promotion provides older adults with counseling and educational materials which help them adjust their lifestyles and physical activities in order to prevent many of the physical losses commonly experienced in old age.

Elder abuse prevention assists adults who, because of advanced age, impaired health, or physical disability, are unable to care for themselves or their affairs and are at risk of abuse, neglect, or exploitation.

Emergency services provide limited funds and other resources, including referral to other public and private agencies, for assistance to individuals who have an emergency need.

Employment assists older adults 55 and over seeking part-time or full-time employment.

Guardianship provides guardian services for those who require the same, but for whom no alternative guardian may be found. A guardian or conservator legally acts on the individual's behalf, determines an individual's appropriate care and placement, and seeks eligibility for public assistance. To qualify for guardian/conservator services the individual must be unable to care for themselves physically and emotionally (incapacitated), not have any financial resources (indigent), and not have any willing and responsible relative or friend to care for them.

Health education and health screening determines current health status, including counseling, follow-up, and referral, as needed. Information and materials designed to address a particular health-related issue are provided. The activity may be preventive in nature and may promote self-care and independence.

Homemaker services provide assistance with household tasks, essential shopping, meal preparation, and other household activities which enable an older adult to remain at home.

Identification/discount provides older adults with a card which can be used as identification to cash checks and to obtain discounts for goods and services from participating merchants.

Legal assistance provides legal advice, assistance, and representation in areas of public benefits, wills, long-term care planning, protective services and age discrimination.

Long-term care coordinating activity is the active participation of staff to plan and implement a coordinated service delivery system to insure the development and delivery of an adequate supply of home and community-based services.

Meals and nutrition services provide hot and cold meals, as well as nutrition education, to older adults. These meals may be served at a community center or other central [group] location or delivered to the homes of those individuals who cannot leave their homes.

Medication management provides information and education that helps older citizens understand how to take prescription, over-the-counter (OTC), and herbal medications in a safe and proper manner, including following the directions provided by their physician or pharmacist.

Money management provides assistance in making decisions and completing tasks necessary to manage day-to-day financial matters.

No Wrong Door (NWD) is a statewide initiative, designed to help people navigate a complex system of long-term care services, avoid unnecessary trips to the hospital and/or nursing home, and support individual choice.

Ombudsman serves as an advocate for individuals who receive long-term care services. The program investigates and resolves complaints made by, or on behalf of, older individuals in long-term care facilities (nursing homes and licensed adult homes) or who are receiving community-based long-term care services.

Options Counseling is an interactive decision-support process where individuals, with support from family members, caregivers, and /or significant others, are supported in their deliberations to make informed long-term support choices based on their individual preferences, strengths, needs, values, and circumstances.

Personal care services provide assistance with critical activities of daily living such as bathing, dressing, eating, and toileting.

Public information and education informs older adults and the general public about the programs, services, and resources available to older adults and their caregivers.

Residential repair and renovation programs assist older adults to maintain their homes or to adapt their homes to accommodate a wheelchair or walker.

Respite care initiative provides temporary relief (respite) to the caregiver from the 24-hour care they provide to a frail senior. The Respite Care Initiative is a state program for older individuals and adults suffering from Alzheimer's Disease or related disorders.

Socialization and recreation provides the individual with an opportunity to get out of the house and participate in a variety of activities which help the older adults to stay mentally alert and physically active.

Transportation transports older adults to and from needed community facilities and resources. Unassisted transportation is typically curb-to-curb while assisted transportation is door to door.

Virginia Insurance Counseling and Assistance Program (VICAP) assist Medicare eligible individuals to evaluate their insurance needs, choose a Medicare Plan, choose a Medicare supplemental policy, if needed, review long-term care insurance policies, and apply for low income subsidies and Medicare Savings Plans.

Virginia Lifespan Respite Voucher Program provides reimbursement vouchers to home-based family caregivers for the cost of temporary, short-term respite care provided to their family members with disabilities. Virginia families who care for a loved one of any age with disabilities or chronic conditions can apply for up to \$400 reimbursement for respite care under this limited voucher program.

Volunteer programs develop opportunities and recruit and supervise the individuals to do volunteer work in aging programs and services.

### **Additional Title III-E Caregiver Services include:**

Counseling services such as Individual Counseling, Support Groups, Caregiver Training. Individual Counseling – Counseling to caregivers to assist them in making decisions and solving problems related to their caregiving roles. Support Groups – Counseling to caregivers in a group setting to assist them in making decisions and solving problems related to their caregiving roles. Caregiver Training – Training to assist caregivers in making decisions and solving problems related to their caregiving roles.

Institutional respite is provided by placing the care recipient in an institutional setting such as a nursing home for a short period of time as a respite service to the caregiver.

Supplemental services are provided on a limited basis to complement the care provided by caregivers. This includes Chore, Congregate Meals, Home Delivered Meals, Direct Payments such as cash or by voucher, and Other Supplemental Services that include gap-filling services.

### **Other Programs**

Most Area Agencies on Aging operate a host of other programs. Some of the more common include serving as the area Community Action Agency and operating other programs such as Foster Grandparent, Senior Companion; Housing and Urban Development (HUD) low income housing; Federal Transit Administration (FTA) transportation programs; Senior Farmers' Market Nutrition Program, (SFMNP); Supplemental Nutrition Assistance Program (SNAP) education, and senior centers.

## **BACKGROUND ON THE OLDER AMERICANS ACT**

The month of May first received its designation “Senior Citizens Month” in 1963 by President John F. Kennedy. President Jimmy Carter in 1980 changed the name to “Older Americans Month.” Every President since JFK has issued a formal proclamation during or before the month of May asking that the entire nation to pay tribute in some way to older persons in their communities.

The Older Americans Act (OAA) was originally signed into law by President Lyndon B. Johnson on July 14, 1965.

The original 1965 version of the Older Americans Act was 8 pages long.

- The Great Society Legislation

## **OLDER AMERICANS ACT HISTORY**

- 1965 Created Administration on Aging (AoA)
- 1969 Created nine national model demonstration projects – such as Senior Services of Southeastern Virginia
- 1972 Established national nutrition program (meals)
- 1974 Added transportation
- 1978 Mandated Long-Term Care Ombudsman Program to serve as a visible advocate for the elderly
- 1981 Emphasized supportive services to help older persons remain independent in the community
- 1992 Added "Vulnerable Elder Rights Activities"
- 2000 Created the National Family Caregiver Support Program

## **THE OLDER AMERICANS ACT (OAA)**

The federal law that comprises the Older Americans Act has several Titles. The full text of the Older Americans Act can be found on the Administration on Aging website at [www.aoa.gov](http://www.aoa.gov).

### **Title I: Objectives / Definitions**

This Title identifies some of the objectives of the act.

- Adequate Income
- Best Possible Physical and Mental Health
- Suitable Housing
- Institutional & Community-Based Long-Term Care
- Employment Without Age Discrimination
- Retirement in Health, Honor, Dignity
- Participation in Civic, Cultural, Educational Activities
- Community Services such as Transportation
- Education About Sustaining and Improving Health
- Protection From Abuse, Neglect, and Exploitation

### **Title II: Administration on Aging**

- Authorizes, organizes, and finances the federal Administration on Aging agency.

### **Title III: State and Community Programs**

#### **Part A:**

#### **Defines the Purpose**

- Maximize Independence and Dignity
- Remove Individual and Social Barriers
- Continuum of Care
- Managed In-home and Community-Based Long-Term Care Services

**Creates State Units on Aging (SUA).** In Virginia, the Department for Aging and Rehabilitative Services (DARS) is the State Unit on Aging.

- Develop and Administer State Aging Plan
- Advocate for Older Individuals
- Designate Area Agencies on Aging (AAAs)

- Establish Policies, Procedures, Service Standards
- Provide Technical Assistance

**Creates Area Agencies on Aging (AAAs)**

- Develop and Administrator Local Aging Plan
- Establish *Advisory Councils*
- Provide Services
- Establish Focal Points to Provide Services
- Facilitate Coordination of Community Long-Term Care Services

**Part B: Creates Support Services & Senior Centers**

- Community-Based Services and In-Home Services: includes services such as adult day care, checking (reassuring contact), chore, homemaker, personal care, residential repair and renovation.
- Access Services: includes services such as care coordination, information and assistance, transportation.

**Part C: Creates Nutrition / Meals**

- Subpart 1: Congregate (Group)
- Subpart 2: Home Delivered

**Part D: Creates Disease Prevention and Health Promotion Program**

**Part E: Creates the National Family Caregiver Support Program**

- National Family Caregiver Support Program provides a multifaceted support system that helps families sustain their efforts to care for an older individual or child or a relative with severe disabilities.

**Title IV: Creates Activities for Health, Independence and Longevity**

- Demonstration Grants / Programs
  - Aging & Disability Resource Center Grant
  - Alzheimer's Disease and Respite Grants
  - Evidence Based Programs (Chronic Disease Self-Management Program)

**Title V: Creates the Community Service Senior Opportunities Act**

- Older American Community Service Employment Program
  - States
  - National Contractors (such as Goodwill, AARP, National Council on Aging)

**Title VI: Grants for Native Americans**

- Federally recognized American Indian Tribes
- Native Hawaiian Program

**Title VII: Creates Vulnerable Elder Rights Protection Activities**

- Ombudsman
- Elder Abuse, Neglect and Exploitation
- State Legal Assistance Development

## **ELIGIBILITY FOR OLDER AMERICANS ACT SERVICES**

In general, the following apply to services provided with Older Americans Act funds:

- Age 60 and over (except Title III-E Grandparents and Title V is 55);
- The program is ***not*** an entitlement like social security, Medicare or Medicaid. It does not guarantee access to benefits;
- Services can be curtailed due to lack of funding;
- Self-declaration of income – not means tested. There is no verification of ability to pay, but programs target poverty; and
- Income information may be asked to determine fee-for-service/cost sharing

## **TARGETING OLDER AMERICANS ACT SERVICES**

Although the Older Americans Act provides services to all older individuals, it targets individuals with the following needs:

Greatest Economic Need – income at or below the poverty line.

Greatest Social Need – noneconomic factors, physical and mental disabilities; language barriers; and cultural, social, or geographical isolation (rural), including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks; or threatens the capacity of the individual to live independently.

Particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.

Older individuals at risk for institutional placement.

Frail – functionally impaired unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision. Activities of Daily Living (ADL) involve needs with bathing, bladder, bowel, dressing, eating, toileting, and transferring.

## **SECTION III. GOVERNING BOARDS AND ADVISORY COUNCILS IN GENERAL**

### **INTRODUCTION**

Millions of Americans serve on boards of voluntary agencies. They work without pay, and govern the expenditure of billions of dollars annually. Directly or indirectly, they influence the lives, future and welfare of millions of other Americans.

Never before has there been such a demand for citizen involvement as in today's decision making processes. Virtually all federally-assisted programs require local citizen boards, and all nonprofit corporations must by law be governed by a Governing Board.

At the same time, never have the stakes been higher! Board Members are increasingly being held accountable for their actions by the courts. Competition for scarce resources makes board decisions on budgeting and program planning increasingly critical.

But effective boards do not just happen. They are the result of hard work by Board Members and staff. However, there must be ground rules so that their efforts will be productive. These materials are designed to provide you with those basic ground rules and some tools to help you fulfill your board responsibilities.

### **TYPES OF BOARDS**

Governing Boards: responsible for policy making, program determination and oversight, assuring the availability of funds and accountability for their expenditure.

- Administrative: involved in implementation of programs and day-to-day work of the organization (little or no paid staff)
- Policy Making: primarily concerned with setting policy, leaving daily operations to staff

Advisory Bodies: (advisory councils, task forces, committees): provide advice and assistance, making recommendations to organizational staff and/or the Governing Board on programmatic and policy matters related to particular areas of concern.

### **DEFINITIONS OF TYPES OF BOARDS**

#### **Governing Board or Governing Body**

any governing body, board of trustees, board of supervisors, council, commission or committee with ultimate policy and decision-making control and responsibility for the voluntary organization or public agency. Their powers are legally sanctioned through the organization's articles of incorporation (charter) and bylaws of private organizations, by statute and regulations for public agencies.

Advisory Council	any council, committee, board constituted by a governing body, chief administrator (or both) to provide assistance and make recommendations on policies and decisions affecting the organization's direction. An Advisory Council serves as a formal liaison between the Area Agency on Aging and the public to ensure that the agency understands public concerns and that the activities of the agency are communicated to the public. Although an Advisory Council generally does not serve in a policy or rule-making capacity, it may have other decision-making powers if legally delegated by the governing authority. It may participate in the development of public policy by providing comment and advice.
Committee	the subunit of a Governing Board or Advisory Council; that is, standing, special or ad hoc committees or subcommittees.

## **COMPENSATION FOR MEMBERS OF GOVERNING BOARDS AND ADVISORY COUNCIL MEMBERS**

The Commonwealth of Virginia has a tradition of volunteer governance. Board Members are encouraged to continue the tradition by donating their time to nonprofit, 501(c)3 organizations. Normally, AAAs do not offer compensation to members of Boards of Directors and Advisory Council Members when these individuals are acting in their capacity as officers or members of the Governing Board or Advisory Council.

AAAs may, through an approved policy, reimburse Board or Advisory Council members for reasonable and necessary costs associated with travel to attend official meetings. The rate of reimbursement should be consistent with the Area Agency on Aging’s policy on travel reimbursement for employees.

## **PARLIAMENTARY PROCEDURE**

Parliamentary procedures are the rules, ethics, and customs governing meetings. It originates in common law from the practices of parliament in Great Britain. Its purpose is to provide a uniform process to conduct business in a fair, orderly, and expeditious manner.

Section 13.1-844.2 of the *Code of Virginia* of the Virginia Nonstock Corporation Act states that “Unless the articles of incorporation or bylaws provide otherwise, the chairman shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.”

Instead of leaving it to the chairman, generally Boards and Advisory Councils state in their bylaws the parliamentary procedures that will be followed. Although most meetings are kept informal, most adopt Robert’s Rules of Order. Reliance on a formalized process comes into play when there is board action such as a vote, memorializing a decision, or deciding who can speak on a topic representing the board. Appendix D. Robert’s Rules of Order – Simplified is a two page simplified guide to Robert’s Rules of Order that can be used as a reference.

## **BOARD AND COUNCIL MEMBERS AND THE POLITICAL PROCESS**

It is essential for Board and Council Members to be knowledgeable about the political process and to learn ways to affect decision making. It is equally important for Board and Council to understand the layers of the political process. In Virginia, these layers include town, county or city, and state officials who have certain powers through which Area Agencies on Aging gain support. On the national level, Congress makes broad decisions that filter directly down to affect states and localities. Board and Council Members need to cultivate frank, open relationships with all of these officials, working with them to produce the best possible climate for Area Agencies on Aging.

It is important to be aware of the difference between advocacy and lobbying. There are federal laws which requires agencies to advocate for the needs of older individuals. On the other hand there are federal laws that prohibit lobbying. Appendix E. Advocacy and Lobbying provides an overview of the distinction between the two while effectively advocating for the needs of your agency.

## SECTION IV. ADVISORY COUNCILS

### ADVISORY COUNCIL MEMBERSHIP

Section 1321.57(a) *Code of Federal Regulations* requires each Area Agency on Aging to establish an Advisory Council. The Advisory Council shall carry out advisory functions that further the Area Agency on Aging's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area.

The Advisory Council shall include individuals and representatives of community organizations who will help to enhance the leadership role of the Area Agency on Aging in developing community-based systems of services. Section 306.(a)(6)(D)) of the Older Americans Act requires the Advisory Council to consist of:

- older individuals (including minority individuals and older individuals residing in rural areas) who are participants or who are eligible to participate in programs assisted under this Act;
- family caregivers of such individuals;
- representatives of older individuals;
- supportive service provider organizations;
- representatives of the business community;
- local elected officials;
- providers of veterans' health care (if appropriate), and;
- the general public.

Section 1321.57(b) *Code of Federal Regulations* further requires that the Advisory Council shall be made up of more than 50 percent older persons. Additional representatives include:

- health care provider organizations, including providers of veterans' health care (if appropriate); and
- persons with leadership experience in the private and voluntary sectors.

Paid agency staff should *not* be members of the Advisory Council. Individuals who volunteer for the agency are allowed to serve.

### PURPOSE

The Advisory Council shall advise continuously the Area Agency on Aging on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan. Specifically, Section 1321.57(a) *Code of Federal Regulations*, the Advisory Council shall advise the Area Agency on Aging relative to:

- (1) developing and administering the area plan;
- (2) conducting public hearings;
- (3) representing the interest of older persons; and
- (4) reviewing and commenting on all community policies, programs and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

In addition, the Advisory Council should assist the Area Agency on Aging with its mandate to advocate for all older individuals.

## **ADVISORY COUNCIL BYLAWS**

The Advisory Council shall meet at least quarterly. All meetings and public hearings are to be held in compliance with the Virginia Freedom of Information Act (FOIA). In addition, minutes of all meetings are to be kept in accordance with FOIA.

All Advisory Councils established for the purpose of complying with the requirements of the Older Americans Act must function according to written bylaws. Sometimes the Advisory Council bylaws are found within the agency's Governing Board Bylaws. At a minimum, the Advisory Council bylaws must set-forth:

- (1) The function and responsibilities of the Advisory Council;
- (2) The election of officers and establishment of standing committees with a clear statement of the authority and responsibilities of each officer and committee;
- (3) The process of appointment and removal of members;
- (4) The relationship of the Advisory Council to the Governing Board and the procedures to be followed to express the views of Council to the Board;
- (5) Procedures for amending bylaws by more than a simple majority;
- (6) Regular, at least quarterly, meeting requirements; and
- (7) Procedures for conducting a meeting to public participation in accordance with the Virginia Freedom of Information Act.

Minutes of the Advisory Council are to be kept in accordance with the agency's Document Retention and Destruction Policy / Records Management Policy.

## **SECTION V. GOVERNING BOARDS**

### **AUTHORITY OF THE GOVERNING BOARD**

The Older Americans Act and the implementing Regulations issued by the U.S. Department of Health and Human Services to administer that Act allow considerable flexibility in the structure of an Area Agency on Aging. The State Agency (the Department for Aging and Rehabilitative Services) may designate as an Area Agency on Aging any one of the following types of agencies that has the authority and the capacity to perform the functions of an Area Agency on Aging:

- (1) An established office on aging which operates within the planning and service area;
- (2) Any office or agency of a unit of general purpose local government that is proposed by the chief elected officials of the unit;
- (3) Any office or agency proposed by the chief elected officials of a combination of units of general purpose local government; or
- (4) Any other public or private nonprofit agency, except any regional or local agency of the State.

Where the Area Agency on Aging is a private nonprofit or a joint exercise of powers, it will have a Governing Board. Each member of the Board may be referred to as a Director, not to be confused with the Executive Director who is an employee of the organization and may not be a member of the Board. The Board may have other responsibilities in addition to aging services or it may be a legal entity created specifically to administer an area-wide aging program.

The Board is a legal body deriving its authority by charter from the State or, in the case of a public corporation, from the joint exercise of powers agreement between the local political subdivisions. The charter is a legal document and should be prepared with the assistance of an attorney.

The Older Americans Act regulations requires the Area Agency on Aging to be directed *“by leaders in the community who have the respect, capacity and authority necessary to convene all interested persons, assess needs, design solutions, track overall success, stimulate change and plan community responses for the present and for the future”* [45 CFR 1321.53(10)].

In the 1970’s and the 1980’s the Virginia Department for the Aging required the initial approval of the governing body to assist in identifying the entity that will serve as the Area Agency on Aging in the planning and service area.

Because local governments played an important role in identifying the nonprofit that serves as the Area Agency on Aging, many local governments continue to appoint members to the current governing Boards.

### **GOVERNING BOARD MEMBERSHIP**

The membership of the Board should be identified in the bylaws. Most Area Agencies on Aging (AAA) have one or more appointments made by the local City or County Board of Supervisors in which they serve. This provides a good opportunity for the AAA to have representation at future City or County meetings when community organizational budget requests are received. It is incumbent upon the Board to be sure it works with the local City or County to ensure appointments are kept current and that terms are maintained in accordance with the bylaws.

It is also a good practice to have one representative on the Governing Board that is a member of the Advisory Council. Generally the Board representation is the Chair of the Advisory Council.

## **GOVERNING BOARD ASSESSMENT**

The Governing Board should periodically assess the oversight that it provides the agency. It is helpful develop a tool similar to the one in Appendix F. Governing Board Self-Assessment. Periodically DARS may require the Governing Board to complete a similar self-assessment.

## **GOVERNING BOARD MEMBER LEGAL RESPONSIBILITY**

The Board is the principal policy making unit of the AAA. The AAA Board is autonomous, bound only by its legal responsibilities under its charter and bylaws and its contractual agreements with State and local agencies.

The AAA Board has an obligation to fulfill the purposes stated in its charter and to accomplish the goals and objectives outlined in the annual area-wide plan for services. In doing these things, it should adhere to two basic concepts. First, the Board has primarily and fundamentally a policy-making role, as distinguished from an implementation and administration role that is carried out by the Executive Director through the staff of the AAA and its subcontractors. Second, the authority of the Board is derived from its group action. No individual Board Member has authority to act on its own or over the AAA, unless the Board has granted the authority.

The AAA Board should not be confused with the AAA Advisory Council and the governing bodies of its contract agencies. The AAA Board may delegate authority for certain major policy decisions to subcontractors or advisory groups but it is ultimately responsible for the total program it administers.

The following legal responsibilities and legal liabilities are excerpts and adaptation of “*Responsibility and Liability of Nonprofit Board Members*” by the Virginia Society of Certified Public Accountants.

Serving on an Area Agency on Aging Board can be rewarding, but in today’s litigious society, Board Members must know their responsibilities and what could expose them to litigation. The following is a brief discussion on the duties and liabilities of nonprofit Board Members of non-stock corporations.

Courts have generally held that the following duties are owed to organizations by Board Members:

### **Duty of Loyalty**

Board Members of organizations owe a duty of loyalty prohibiting secret profits and requiring full disclosure of personal financial interests in transactions where the organization is a party.

- Corporate opportunity — A corporate opportunity is any present or prospective business opportunity belonging to the corporation.
- Use of inside information — Confidential information cannot be used by a Board Member for personal gain or to the detriment of the corporation or organization or its members.
- Conflicts of interest — Board Members may not enter into contracts with the organization without full disclosure and approval, nor should organizations enter into contracts with past Board Members without disclosing such arrangements in the financial footnotes.

The contract the Area Agency on Aging has with the Department for Aging and Rehabilitative Services has specific Conflict of Interest requirement. In addition, the IRS also encourages the adoption a Conflict of Interest Policy.

### **Duty of Obedience**

Board Members should not exceed their delegated authority or direct the agency beyond its exempt purpose or mission as set forth by the articles, bylaws or constitution. Such actions violate the trust invested by those who hold memberships or support the organization and can imperil the organization's tax-exempt status.

### **Duty of Care**

Generally, the duty of care requires Board Members to exercise reasonable care in the exercise of their responsibilities.

## **GOVERNING BOARD MEMBER LEGAL LIABILITY**

### **Liability to the Agency**

Statutory and common-law immunities provide protection against liability for acts of Board Members in the conduct of business on behalf of the organization.

In Virginia, with respect to Board Members of non-stock, nonprofit corporations, *Code of Virginia* statute 13.1-870 adheres to the general rule that a Board Member will not be found liable for his/her actions as a Board Member as long as he/she follows what is called the "business judgment rule."

This rule affords Board Members complete protection from liability for taking actions they believe, in exercising their business judgment, are in the best interests of the agency, so long as there is some rational basis for their decisions, no conflicting interest is involved and a reasonably informed decision is made. As a practical matter, this provides a subjective test. When in doubt, board members should seek approval from their entire board of directors and have the secretary document the approval process in the agency's minutes.

The *Code of Virginia* also provides that the Board Member can rely upon information, opinions, reports or statements, prepared by officers, employees, legal counsel and committees, provided that the Board Member acts in good faith — that is, he/she has no knowledge that his/her actions are inappropriate. This is, essentially, a gross negligence standard.

### **Liability to Others**

**Contract Liability:** In accordance with the law of agency, which governs corporations, Board Members are normally deemed to be merely agents of the organization and therefore not personally liable on the contracts made on behalf of the organization. Personal liability can arise when the officer intentionally agrees to contract liability (guaranty co-signing, intentional co-signature) or unintentionally agrees because of inadequate disclosure. An example of this might be an officer who signs a document or debt instrument and fails to identify him/herself as an officer acting on behalf of the organization. Officers should only sign contracts using both their names and their positions (e.g., Mary K. Smith, President of XYZ Charity).

Tort Liability: Board Members of corporations normally are not liable for conduct of the corporation that causes harm or injury.

Board Members can have personal liability for their own conduct or criminal acts, but this liability does not arise from the status of merely being a Board Member. For example, conduct such as physical violence or embezzlement could result in felony charges against a specific officer.

Limitations of Liability: Because Board Members are frequently named as additional defendants in litigation arising from an act of a nonprofit organization, the Virginia Code has specified many statutory immunities. Board Members of non-stock, nonprofit corporations will have no liability for acts of the corporation if they are uncompensated. If they are compensated, liability is limited to one year's prior compensation.

NOTE: This immunity statute does not limit liability for (a) willful misconduct; (b) knowingly violating criminal law; (c) operation of a motor vehicle; or (d) violation of a fiduciary duty (see **Duties Owed by Nonprofit Board Members to Their Organizations**). Further information on the Virginia standards of conduct for Board Members can be found under the *Code of Virginia* statute 13.1-870. Additional information on the limitation of liability for Board Members can be found under the *Code of Virginia* statute 13.1-870.1.

### **Federal and State Regulation Exposure**

Employment and Discrimination Litigation: Except for very small organizations, nonprofit organizations are also subject to federal and state discrimination law. Certain exemptions apply for small entities and religious organizations.

Generally, plaintiffs have not been successful in naming Board Members as defendants in employment litigation, although there are some instances where liability has been imposed. Further, Virginia law governing wrongful discharge can apply to Board Members.

Federal Taxation: In general, nonprofit organizations report their revenue to the IRS with Form 990, but they do not pay taxes on such revenue. However, some revenue may be taxable if it is not directly related to the nonprofit's mission. Virtually all payrolls are taxable.

The Internal Revenue Code makes the "responsible person" liable for failure to withhold and remit applicable income and payroll taxes.

While special provisions may apply to limit most liability for outside directors, this personal liability for taxation can result in criminal consequences for the nonprofit's responsible party. For more information on responsible persons and the scope of liability, visit the Internal Revenue Service (IRS) website, [www.irs.gov](http://www.irs.gov).

State Taxation: Nonprofit entities are not automatically exempt from sales and use tax. Virginia state sales and use tax code requires that an exemption certificate be obtained by the organization, maintained and not misused.

To find out more and apply for the retail sales and use tax exemption for nonprofit organizations at the Virginia Department of Taxation (TAX) website, [www.tax.virginia.gov](http://www.tax.virginia.gov).

Other federal regulations: Board Members may be subject to potential individual liability under additional federal statutes that include:

- Antitrust laws (government laws to regulate or break up monopolies in order to promote free competition)
- Bankruptcy
- Environmental statutes (as set forth by the Comprehensive Environmental Response, Compensation and Liability Act to control hazardous substances, pollutants and contaminants)

### **Avoid Exposure**

Although Board Members of nonprofit organizations by state law have been provided immunities, they continue to be named as defendants in lawsuits for acts of their organizations. Board Members are encouraged to pay special attention to the authority granted them by the organization and not deviate from it without the permission required by the organization's operating documents.

Under general agency law, Board Members owe a duty of loyalty to the organization and must refrain from self-dealing, conflicts of interest and receipt of corporate opportunities without consent.

Board Members are required to exercise good business judgment and always operate in good faith. Board Members are encouraged to use best efforts to attend all meetings, familiarize themselves with the operating documents to determine the scope of their authority and make notation at meetings of any position with which they disagree. At the same time, Board Members should avoid the pitfalls of exceeding organization authority, ignoring formalities and self-dealing by themselves or any others on the board.

With these general notions in mind, service as an Area on Aging Board Member can be most rewarding, both for the Board Member and the communities the agency serves.

## **GOVERNING BOARD FUNCTIONS**

1. Managing the Organization:
  - Attend to legal requirements
  - Direct the process of planning
  - Approve long range strategic goals
  - Approve annual objectives
  - Monitor achievement of goals and objectives
  - Establish and reviewing high level policy
2. Program Planning and Budgeting:
  - Establish service goals and objectives in order of priority
  - Define specific needs to be addressed and target populations to be served
  - Oversee evaluation of products, services, and programs
3. Evaluation of Organizational Effectiveness:
  - Measure progress toward specific goals and objectives
  - Assess responsiveness to new situations
  - Evaluate the degree and effectiveness of volunteer leadership
4. Retention, Supervision and Evaluation of Top Management:

- Hire the Executive Director
  - Establish the salary and conditions of employment for the Executive Director
  - Maintain clear communication with the Executive Director and avoiding confusing or conflicting requests
  - Evaluate the Executive Director's performance regularly
  - Offer advice as part of an open, collaborative relationship
5. Financial Stewardship:
- Finalize and approve budget
  - Reviewing monthly financial statements
  - Approving the firm hired to audit the agency and receive the annual audit
  - Approve expenditures outside authorized budget
  - Solicit contributions in fundraising campaigns
  - Have a policy on the signing legal documents
  - Develop financial resources
  - Set conditions and standards for all funds solicited in the organization's name
  - Exercise fiduciary care
  - Conduct sound long-range financial planning
6. Maintain the Community Connection:
- Represent the public interest
  - Represent the full range of community views and values
  - Represent the organization to the community
7. Board Growth and Development:
- Establish procedures for the orientation and training of new Board Members.
  - Appoint committee members
  - Promote attendance at Board/Committee meetings
  - Recruit new Board members
  - Plan agenda for Board meetings
  - Take minutes at Board meetings
  - Sign legal documents

### **Role of the Governing Board Chair**

More than any other member of the Board, the Chair has a unique role and a very special relationship with respect to the Area Agency on Aging. The Chair is usually a community leader with strong interests in the problems of older individuals. Their primary function is to preside at meetings of the Board and Executive Committee, and to provide the leadership for the organization. As the principal representative of the Board, however, they frequently will have a need to communicate with the Executive Director. They will want to be advised on the status of program applications, program implementation, operating problems, and other factors relating to AAA operations. The Board Chair may suggest alternative solutions to operating problems, and may serve in an advisory capacity to the Executive Director. In most AAAs, the Board Chair and their Executive Directors enjoy a high degree of rapport. They communicate with each other freely and cordially. The relationship is informal and productive. The Executive Director generally welcomes the advice and suggestions of the Board Chair.

Nevertheless, it should be remembered that the Board Chair is still an individual (although an influential) Board Member. He or she does not have the authority to determine AAA policy by themselves or to issue operating directives to the Executive Director. The Board Chair must be

extremely careful in presenting suggestions so as not to imply a directive. In short, the Chair should not assume the duties and/or responsibilities of the Executive Director.

Any power exercised by the Board Chair must be granted first by the full board in policy, or in the commonly accepted and understood practice of the board. In other words, the Board Chair does not speak for the board unless the full board has delegated that privilege to the chair.

### **Authority and Responsibility of the Executive Director**

The Executive Director is the chief executive and top manager of the Area Agency on Aging. He or she derives authority from the Board and the Board is responsible for assessing performance. The role is similar to that of the president of a company in which the company Board sets policy, and the president executes it. A fundamental point then is that the Executive Director is an employee of the Governing Board.

The Executive Director is responsible for the administrative leadership of the AAA to include hiring, firing, and supervising the staff; planning how projects will be run; obtaining equipment and supplies; scheduling activities; evaluating staff performance; and monitoring projects. Within the AAA the Executive Director should organize staff to most effectively subdivide the work, assign responsibilities, and delegate authority to second echelon managers. He or she should insure that no organizational faults occur; no overlapping of authority exists; well defined systems and procedures are instituted; individual staff members know their jobs, know their responsibility and authority, and know to whom they are to report and from whom they are to receive instructions.

The Executive Director must have basically the same relationship with any committee of the Board as with the Board Chair and the Board itself; should make all information requested available and treat all Board Members with tact and respect. He or she should not allow any Board Member, acting as an individual, to direct any member of the staff, for this may establish a precedent that will be very difficult to correct later. Neither should he or she accept any directive from any Board committee, unless that committee has been specifically empowered by the full Board to issue such directives.

### **Use of Committees**

In order to execute specific tasks, accomplish in-depth research, and increase the capacity of the Board, it is often useful to delegate work to committees. The Board may have standing committees which are described in the bylaws; other committees may be appointed by the Chair. If the Board is large, it may wish to appoint an Executive Committee. If this is done, the authority of this committee should be carefully agreed upon and the conditions upon which it can make decisions should be clearly defined in the bylaws. Such a committee should fairly reflect the composition of the full Board in terms of representation of older persons, public officials, consumers, minority individuals, and low income persons.

Personnel Committees are also utilized quite frequently. Many communities have persons with valuable experience in either the public or private sector (e.g., the local Employment Agency Director) who can be quite helpful to such a committee. Ideally, the Personnel Committee's role should be limited to recommending general personnel policy to the Board, but it may, as noted above, exercise a concurrent responsibility with the Executive Director with regard to hiring and firing. The major point to be remembered is that Board committees, like their parent bodies, are policy making (or policy advisory) and should not participate in the internal management of the Area Agency on Aging.

## DEFINING GOVERNING BOARD AND STAFF ROLES

### Governing Board of Area Agencies on Aging

#### A. Responsibilities

The Governing Board is the principal policy-making unit of the Area Agency on Aging. The Board is autonomous, bound only by its legal responsibilities under its charter and bylaws and by its contractual agreements with State and local agencies. The Board has primarily and fundamentally a policy-making role.

In its policy-making role, the Board has the following responsibilities:

- Approve the Area Plan after it has been reviewed by the Advisory Board;
- Identifying the needs of older individuals in the community;
- Establishing long-range goals for meeting the needs of older individuals;
- Formulating short-range objectives for programs to be conducted in the community;
- Approving overall plans for carrying out the objectives;
- Assuring compliance with the conditions of financial assistance (e.g., contract with the Virginia Department for Aging and Rehabilitative Services - must have written fiscal policies and procedures, knowledge of spending levels, etc.);
- Approving proposals for financial assistance;
- Assuring adherence to legal constraints and sound financial management procedures (e.g., review yearly audit, etc.);
- Adopting a written personnel policy manual that includes hiring procedures compliant with affirmative action and equal employment opportunity; and establishing uniform benefits for leave accrual, health insurance, and retirement; and
- Hiring and evaluating no less than annually as well as giving general supervision to the Executive Director.

The Board may delegate authority for certain major policy decisions to subcontractors or advisory groups, but it is ultimately responsible for the total program it administers.

#### B. Membership

- (1) Nonprofit Corporations; Joint Exercise of Power; Part of Multi-Purpose Agency

The composition of the governing body of the Area Agency on Aging will be based on the Articles of Incorporation (or Joint Exercise of Powers Agreement) and the Bylaws.

(2) Local Government (Northern Virginia Area Agencies on Aging)

The governing body of the local government designated as the Area Agency on Aging is the Governing Board of the Area Agency on Aging. Usually this is the County's or City's Board of Supervisors. Membership shall be determined according to local and State election laws.

C. Bylaws

All Governing Boards of non-governmental Area Agencies must establish written bylaws in accordance with applicants State law. At a minimum, these bylaws must address:

- (1) the duties and responsibilities of the Governing Board;
- (2) the process for appointment and removal of members of the Board, with provision for:
  - (a) representation of the political jurisdictions served by the Area Agency on Aging;
  - (b) time-limited periods for appointment;
  - (c) renewal of appointments;
  - (d) rotation of the Board Officers such as the Chair, Vice Chair, Treasurer and Secretary; and
  - (e) replacement of members who are unable or unwilling to serve.
- (3) the election of officers, with a clear statement of the authority and responsibilities of each officer;
- (4) the establishment of standing committees, with a clear statement of the authority and responsibilities of each committee;
- (5) the relationship between the Governing Board and the Executive Director;
- (6) the relationship between the Governing Board and the Advisory Council, with procedures for how the Governing Board will consider the views of the Advisory Council in the execution of its responsibilities;
- (7) frequency of meetings; quorum;
- (8) procedures for amending the bylaws by more than a simple majority; and
- (9) procedures for closing a meeting to the public in accordance with the Virginia Freedom of Information Act.

## **PRINCIPLES FOR GOOD GOVERNANCE AND ETHICAL PRACTICE**

The following is a list of other principles that boards should consider, although they are not included in the 990 form. A few that may be new to some boards are listed below:

11. The board of a charitable organization should include members with the diverse background (including, but not limited to, ethnic, racial, and gender perspectives), experience, and organizational and financial skills necessary to advance the organization's mission.
16. Board Members should evaluate their performance as a group and as individuals no less frequently than every three years, and should have clear procedures for removing Board Members who are unable to fulfill their responsibilities.
17. The board should establish clear policies and procedures setting the length of terms and the number of consecutive terms a Board Member may serve.
18. The board should review organizational and governing instruments no less frequently than every five years.
19. The board should establish and review regularly the organization's mission and goals and should evaluate, no less frequently than every five years, the organization's programs, goals and activities to be sure they advance its mission and make prudent use of its resources.
25. A charitable organization should establish clear, written policies for paying or reimbursing expenses incurred by anyone conducting business or traveling on behalf of the organization, including types of expenses that can be paid for or reimbursed and the documentation required. Such policies should require that travel on behalf of the organization is to be undertaken in a cost-effective manner.
32. A charitable organization should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

## **GOLDEN RULES FOR BOARD MEMBERS**

1. Leave the actual management of the agency to the Executive Director. It is the Executive Director's responsibility to employ the staff and supervise day-to-day operations.
2. After a policy or rule is adopted by the majority vote of the Governing Board, do not criticize or revoice your opposition publicly.
3. Respect confidential information. Do not divulge information regarding future board actions or plans until such action is officially taken.
4. Observe publicity and information policies of the Governing Board and the agency. Do not give information individually but refer requests to the Executive Director or appropriate representative to interpret policies.
5. Treat staff members and the Executive Director in an objective manner. Under no circumstances listen to grievances of staff members or treat individual problems on your own. The Executive Director is in charge of the staff and has administrative control up to the point where a grievance is presented to the Governing Board as a whole.
6. Do not suggest hiring a relative as an agency employee or two members of the same family.
7. All rules and policies directed to the Executive Director must be approved by a quorum of the board at a regular meeting. Even the chair should abide by this rule.
8. Do not hold board meetings without the Executive Director.

9. Complaints from the public are the Executive Director's responsibility. Continued dissatisfaction and problems should be taken up at the board meeting only if policy revision is necessary or legal ramifications are involved.
10. Assume your full responsibility as a Board Member. If you are unable to attend meetings regularly and complete work delegated to you, resign so that an active member can be appointed.

Adapted from *Virginia Public Library Trustee Handbook*

## **SECTION VI. GOVERNING BOARD STATE AND CORPORATE CONTRACTS**

The Area Agency on Aging must follow many requirements. It is important for Governing Board Members to be aware of some of them. Generally, these requirements are required by the *Code of Virginia*, the Department for Aging and Rehabilitative Services regulations or contract, or the Internal Revenue Service.

### **STATE CORPORATION COMMISSION (SCC) FILINGS**

The following filings are required by the State Corporation Commission.

#### **Corporate Name**

The certificate of incorporation shows the exact name of the corporation as set forth in its articles of incorporation. If the corporation intends to conduct business in Virginia under a name other than its exact name, it must make the required filings under Virginia's fictitious name statutes. See §59.1-69 *et seq.* of the *Code of Virginia*.

#### **Registered Agent and Registered Office**

Each corporation is required to maintain in Virginia a registered agent and a registered office at which the registered agent may be found during normal business hours. See §§13.1-833 and 13.1-836 of the Code for nonstock corporations. *Court papers served on and notices mailed or delivered to the registered agent at the registered office address are deemed to have been received by the corporation as a matter of law.* Official notices and correspondence from the Commission to the corporation will be mailed to the registered agent. The corporation may change its registered agent or registered office address on record with the Commission at any time at no cost. Such change can be accomplished only by filing form SCC635/834, a pre-printed form that must be obtained from and filed in the Clerk's Office of the Commission. The corporation must promptly file form SCC635/834 if its registered agent (i) moves his business office, (ii) resigns, dies or ceases to be a resident of Virginia, (iii) ceases to be an officer or director of the corporation (when that was the basis for his qualification as registered agent), or (iv) is a business entity that has its existence canceled or terminated or its authority to transact business in Virginia canceled or revoked.

#### **Annual Report**

Each active nonstock corporation is required to file an annual report with the Commission by the last day of the month in which it was incorporated or authorized to transact business in Virginia (the "due date"). There is no fee for filing this form. Sections 13.1-775 and 13.1-936 of the *Code of Virginia*.

#### **Annual Registration Fee – Nonstock Corporations**

(Not to be confused with charter/entrance fee) The Commission assesses each active domestic and foreign nonstock corporation an annual registration fee of \$25.00 on the first day of the second month next preceding the month the corporation was incorporated or authorized to transact business in Virginia. Notice of the assessment and an annual report form will be mailed to the corporation's registered agent at the registered office address approximately 15 days after the assessment. Payment of the annual registration fee must be received by the Commission by the last day of the preceding month the corporation was incorporated to avoid imposition of a penalty. Section 13.1-936.1 of the *Code of Virginia*.

### **Fraud**

Upon the discovery of circumstances suggesting a *reasonable possibility* that a fraudulent transaction has occurred involving funds or property under the control of the Area Agency on Aging, the agency shall *promptly* report such information to the Department for Aging and Rehabilitative Services. Failure to make the report could result in immediate suspension of all contracts with the Commonwealth of Virginia.

Note: A common problem with applying this requirement is the assessment of whether something is fraudulent and when to report it. Another way to interpret *reasonable possibility* is something that a rational individual *believes* – not that it has been determined - could have or did occur. Prompt reporting means within a work day. It is far better to report the potential fraudulent activity to the Department for Aging and Rehabilitative Services than not.

## **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES REQUIREMENTS**

### **Standards of Conduct – Financial Interest, Gifts, Gratuities, Favors, Nepotism, Political Participation and Bribery**

The HHS Grants and Policy Statement dated January 1, 2007, requires recipients to establish safeguards to prevent employees, consultants, members of governing bodies, and others who may be involved in grant-supported activities from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties. These safeguards must be reflected in written standards of conduct. The standards of conduct, consistent with State, law shall include expected conduct in regard to financial interests, gifts, gratuities and favors, nepotism, and such other areas for governmental organizations as political participation and bribery.

The *Code of Virginia* (§2.2-3106) prohibits (as a conflict of interests) supervision by an employee of a member of his or her immediate family. Immediate family includes the spouse and any other person residing in the same household as the employee who is a dependent of the employee or of whom the employee is a dependent. For more information see Appendix B. Sample Conflict of Interest and disclosure Policy and Form.

## **DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES AREA PLAN CONTRACT REQUIREMENTS**

### **Organization**

When the Area Agency on Aging is part of a multipurpose agency, the state agency shall designate a separate organizational unit that functions only for purposes of serving as the Area Agency on Aging. Delegation of authority and responsibility as the Area Agency on Aging to a separate organization unit does not relieve the governing board or governing body of the multipurpose agency of accountability for performance of the Area Plan Contract.

### **Personnel Changes (Including Governing Board)**

The Area Agency on Aging shall notify the State Agency of changes in program name, key personnel, addresses, telephone numbers, e-mail addresses, website URLs and other significant administrative changes within fourteen (14) days of the change. The Area Agency on Aging will notify the State Agency by submitting a new Contractor Information Form. The Chair of the Board (Presiding Officer)

and the Treasurer are required to provide the Department for Aging and Rehabilitative Services with their name, non-agency telephone number and an e-mail address.

**Personnel (Executive Director or Agency and Policies)**

The Executive Director is employed as an agent of the Board of Directors. The Executive Director has been delegated administrative responsibilities by the Board of Directors for the AAA activities. As such, Executive Director should be able to communicate with the Board, local governments, community partners and others in the planning and implementation of programs and policies that have an impact on older Virginians.

The Area Agency on Aging shall be headed by an individual qualified by education or experience and assigned full-time solely to overall administration and management of the Area Agency on Aging, including development and implementation of the Area Plan. See Appendix A. Sample Executive Director Position Description.

The Area Agency on Aging shall have written policies and procedures, approved by the Governing Board, for personnel administration. The Area Agency on Aging agrees to be fully responsible for the acts and omissions of its agents and/or employees committed within the scope of their employment.

If the Area Agency on Aging is a public agency, it shall develop and implement methods of personnel administration which are consistent with the standards for a Merit System of Personnel Administration and any standards prescribed by the U.S. Civil Service Commission pursuant to the most recent applicable provisions of the Intergovernmental Personnel Act of 1970, (5 CFR Part 900, Subpart F) including all modifications or superseding amendments of such standards, or standards required under Virginia statutes and policies. If the Area Agency on Aging is a private agency, it shall develop and implement methods of personnel administration that are reasonably consistent with the above standards.

Documentation of methods used to comply with this section shall be maintained in the files of the Area Agency on Aging and shall be made available to the State Agency upon request.

**Background Checks**

It is important for agency and its contractors protect their vulnerable older clients by conducting criminal background checks. It is recommended that the Governing Board understands the agency's exposure to providing in-home services and establishes appropriate policies and procedures. DARS requires all Area Agencies on Aging to conduct criminal background checks on all employees. The minimum background check shall include the Central Criminal Records Exchange (CCRE) through the Virginia State Police on all AAA employees. Employees of AAA contractors who enter client homes shall also be held to the same requirement unless the contractor is required to conduct criminal background checks as part of its own licensure requirements. Please refer to DARS policy for additional guidance.

In addition to this, prior to transporting clients, the Transportation Service Standard requires Driver Testing and a specific Driver Record Check.

**Client Appeal Process**

Section 306(a)(10) of the Older Americans Act, as amended, requires Area Agencies to provide a grievance procedure for older individuals who are dissatisfied or denied services. The Area Agency on Aging shall follow the guidelines issued by the State Agency pursuant to Section 307(a)(5),(B). The Area Agency on Aging shall have such a written policy and procedure, approved by the Governing

Board, for client appeals. Section 307(a)(5)(B) of the Older Americans Act requires the state to issue guidelines applicable to client grievance procedures. These guidelines are available on the Virginia Division for the Aging website.

#### **Waiting List for Services**

If an Area Agency has a waiting list for any service, the Area Agency on Aging shall have a written Waiting List policy approved by the governing board or governing body. The policy shall identify the services, the procedure the agency follows to inform the individual he is on a waiting list and the circumstances where he is removed from the list and/or provided services, and how often the Governing Board or Governing Body is informed about the services and number of individuals on the waiting list. The AAA must follow these established procedures in the event of a waiting list for service.

#### **Cost Sharing / Fee for Service Policy**

The Area Agency on Aging shall have written Cost Sharing / Fee for Service policies and procedures, approved by the Governing Board or Governing Body.

#### **Continuity of Operations Plan**

The Area Agency on Aging shall develop a Continuity of Operations Plan (COOP) detailing how the agency plans to maintain its operations during an emergency or other situation that would disrupt normal operations. This plan must be approved by the Governing Board or Governing Body.

#### **Travel Policy**

The Governing Board shall review and approve the AAA's written travel policy every four (4) years. The rate of reimbursement shall not exceed the federal allowance for meals and lodging. The policy should identify the documentation required and the approval process. The Executive Director's travel should be reviewed by someone. Normally it is approved by the agency's Chief Financial Officer or a Board Member.

#### **Virginia Procurement Act and Minimum Procurement Guidelines**

The Virginia Public Procurement Act (VPPA) governs the procurement of purchases over \$50,000. The Department for Aging and Rehabilitative Services requires Area Agencies on Aging to establish Minimum Procurement Guidelines. The Department for Aging and Rehabilitative Services has issued Minimum Procurement Guidelines. They are available on the Virginia Division for the Aging website at [www.vda.virginia.gov](http://www.vda.virginia.gov).

The AAA procurement policy *must* include the following:

- State all procurement will be conducted competitively to the extent possible.
- Identify by dollar threshold the manner and minimum number of competitive bids that must be obtained such as telephone quote, written/fax quote, request for proposal.
- For Requests For Proposals (RFPs) and Invitation For Bid (IFB) how the solicitation will be advertised, the minimum length of time it must be made available for vendors to respond, and how it is reviewed by the agency.
- The required documentation to show evidence open procurement.

The AAA procurement policy must be reviewed and approved by the Governing Board or Governing Body policy every 4 years.

### **Conflict of Interests**

If the Area Agency on Aging is a unit of a local governing body or a group of such bodies in a joint exercise of powers, the provisions of the State and Local Government Conflict of Interests Act, §§2.2-3100 through 2.2-3131 of the *Code of Virginia*, and the *Virginia Freedom of Information Act*, §2.2-3700 et seq. of the *Code of Virginia*, shall apply.

If the Area Agency on Aging is not a unit of a local governing body or a joint exercise of powers, no officer or member of the Governing Board or Board of Directors or employee of the Area Agency on Aging shall:

Be a subcontractor, grantee, or subgrantee of the Area Agency on Aging other than in his contract of employment, or be an employee, officer, or Board Member of a subcontractor, grantee, or subgrantee of the Area Agency on Aging. The fact any such subcontract, grant, or subgrant is awarded after competitive bidding or by negotiation shall be irrelevant; or

Have a material financial interest in a subcontract, grant or subgrant of the Area Agency on Aging, other than his contract of employment. "Material financial interest" shall include a personal and pecuniary interest accruing to the officer or member of the Area Agency on Aging Governing Board or Board of Directors, or employee, to his spouse or to any other person who resides in the same household. For purposes of this Contract, the ownership of an interest of three (3%) percent or more in a firm, partnership or other business, or aggregate annual income, exclusive of dividend income and interest income, of Ten Thousand (\$10,000.00) Dollars or more, from a firm, partnership or other business shall be deemed to be a material financial interest in such firm, partnership or other business; or

Be a purchaser of any sale made by the Area Agency on Aging; or

Solicit or accept money or any other thing of value, except compensation, expenses, or other remuneration paid directly to him or approved for him by the Area Agency on Aging for services performed within the scope of his official duties.

The specified restrictions, however, shall not be interpreted to prohibit members of City Councils or County Boards of Supervisors from being selected officially to represent their governments as a member of the Governing Board, or Board of Directors, of the Area Agency on Aging. For more information see Appendix B. Sample Conflict of Interest and disclosure Policy and Form.

### **The Virginia Freedom of Information Act**

The Virginia Freedom of Information Act or FOIA is a lengthy law that is often modified by the General Assembly. For an overview of FOIA please see Appendix C. Virginia Freedom of Information Act.

## **INTERNAL REVENUE SERVICE (IRS) REQUIREMENTS**

*Applicable to nonprofit AAAs only*

### **IRS Determination of Tax Exempt Status**

To be tax exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action

organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. The IRS will issue a determination letter of tax exempt status. This letter will cite the code section which the determination is applicable to. It may be quite old dating back to when the agency began operations.

Part VI of the new Internal Revenue Service Form 990, *Return of Organization Exempt from Income Tax*, has established a new set of requirements for agencies and their Governing Boards to follow. The following are the more important ones.

### **Board Review of IRS Form 990**

Part VI, Section A, question 10 asks: Did your board review the 990 before it was filed? What process did the board use to review the form? The process has to be described in Schedule O.

### **Conflict of Interest and Disclosure Policy**

Nonprofits are encouraged to develop and adopt a policy that avoids the appearance of conflicts of interest. The Council of Nonprofits offers these guidelines for boards on remaining free from conflicts of interest:

1. Have a policy.  
The Council of Nonprofits calls this perhaps the “most important” policy a board can put in place. To have the most impact, the policy should be in writing and the board (and staff) should review the policy regularly.
2. Review conflict situations at meetings.  
The Council of Nonprofits recommends annually, at a board meeting to discuss situations that can create board conflicts of interest.
3. Remember the IRS is watching.  
Part VI, Section B, question 12 of the IRS 990 FORM asks not if your organization has a written conflict of interest policy, but also about the process that a nonprofit uses to manage conflicts and how the nonprofit determines whether board members have a conflict of interest.
4. Note conflicts in meeting minutes.  
The Council of Nonprofits recommends that minutes of board meetings reflect when a board member discloses that s/he has a conflict of interest and how the conflict was managed.
5. Ask board members for disclosure.  
One process many nonprofits use to determine whether any board member (or staff member) has a conflict of interest is to circulate an annual “conflict disclosure questionnaire” in which board members can put into writing any existing conflicts. This is a good reminder to board members to disclose any potential future conflicts as well.

See Appendix B. Sample Conflict of Interest and disclosure Policy and Form.

### **Whistleblower Policy**

Part VI, Section B, question 13 asks: Does your organization have a whistleblower policy—in other words, policies and procedures that enable individuals to come forward with information on illegal practices or violations of organizational policies? This policy should specify that the organization will not retaliate against, and will protect the confidentiality of, individuals who make good-faith reports.

In general an employee of a contractor, subcontractor, or grantee **may not be discharged, demoted, or otherwise discriminated against as a reprisal** for disclosing to a person or contractor, subcontractor, or grantee information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal

contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. Additional information is available at [National Defense Authorization Act](#), Public Law 112-239, on “Pilot Program for Enhancement of Contractor Whistleblower Protections”.

A person who believes that the person has been subjected to a reprisal may submit a complaint to the Inspector General of the executive agency involved. More information is available at <http://oig.hhs.gov/fraud/whistleblower>.

### **Document Retention and Destruction Policy**

Part VI, Section B, question 14 asks: Does your organization have a written document retention and destruction policy?

The AAA probably will not be penalized by the IRS if your agency does not have a whistleblower or a document retention and destruction policy, but it is a good idea to have one. However, the Department for Aging and Rehabilitative Services requires a Records Management policy on page 33.

### **Public Information About Agency Operations**

Part VI, Section C, question 18 asks: The IRS wants charitable organizations to make information about its operations, including its governance, finances, programs, and activities, widely available to the public. Area Agencies on Aging with a strong Advisory Council have an added advantage in making information about the agency available to the public.

## **DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES REGULATION OR CONTRACT REQUIREMENTS**

### **Area Plans For Aging Services**

Emergency services. Provision of money and other resources, including referral to other public and private agencies, for assistance to persons 60 and older who have an emergency need for help. Area agencies must have approved policies established by their Governing Board for administration of this service. (Virginia Administrative Code 22VAC30-60-80.C.5)

### **Confidentiality**

The Area Agency shall comply with all applicable state and federal confidentiality laws. This includes, but is not limited to, the Government Data Collection and Dissemination Practices Act, §§2.2-3800-3809 of the *Code of Virginia*; 45 CFR §1321.51; and the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 and the regulations enacted thereunder, to the extent determined applicable.

The Area Agency shall comply with the Virginia Freedom of Information Act, §2.2-3700 et seq. of the *Code of Virginia*, to the extent required by federal and state law, consistent with the confidentiality requirements of the Older Americans Act and §51.5-141 of the *Code of Virginia*.

### **Contract and Competitive Grants Appeals Process**

Each Area Agency on Aging shall establish an appeals and hearing process to resolve disputes and claims involving contracts and competitively awarded grants, if such are authorized. At a minimum, this process shall describe:

1. Applicable procurement rules to be used in the appeals process;

2. Designation of an impartial officer to hear and pass on the dispute or claim;
  3. Form and timing of the claim to be filed;
  4. Right of the claimant to counsel;
  5. Hearing procedures;
  6. Manner and timing of the hearing officer's opinion;
  7. Right to appeal to the Virginia Department for Aging and Rehabilitative Services (It is DARS's protocol to refer the claimant to the Area Agency on Aging Executive Director. If they have done so, DARS will refer the claimant to the Board of Directors and notify the Executive Director of the Referral); and
  8. Retention and disposal of the hearing's record.
- (Virginia Administrative Code 22VAC30-60-550)

**Monitoring of Subcontractors of Area Agencies on Aging**

Each Area Agency on Aging shall adopt formal written policies and procedures, approved by the Governing Board, for monitoring their subcontractors and subgrantees under the approved area plan and for follow-up on any findings. (Virginia Administrative Code 22VAC30-60-430)

**Property Control**

An Area Agency on Aging shall have written policies and procedures, approved by the Governing Board, for managing equipment purchased in whole or part with federal, state, or matching funds, to include: (i) accurate and complete property records, (ii) regular physical inventory of equipment, (iii) adequate maintenance procedures, and (iv) disposal of property and equipment. (Virginia Administrative Code 22VAC30-60-280)

**Financial Policy Manual (Fiscal Manual)**

An Area Agency on Aging shall abide by all principles and standards for financial management and accounting found in Virginia Administrative Code 22VAC30-60-130 through 22VAC30-60-570, Administration of Grants and Contracts.

An Area Agency on Aging shall develop and maintain a complete, accurate, and up-to-date set of written financial policies in the form of an officially adopted manual, as referenced in Virginia Administrative Code 22VAC30-60-190. This manual shall cover the area agency's own financial policies and fiscal policies applicable to its subcontractors.

At a minimum, the manual shall provide for a description of each of the following accounting applications and the internal controls in place to safeguard the agency's assets: billings, receivables, cash receipts, purchasing, accounts payable, cash disbursements, payroll, inventory control, property and equipment, and general ledger. Each of the agency's fiscal activities for revenue/receipts, disbursements and financial reporting shall also be described.

**Records Management**

An Area Agency on Aging shall have written policies and procedures approved by the Governing Board regarding the retention and access to all financial and programmatic records, supporting documents, statistical records, and other records. (Virginia Administrative Code 22VAC30-60-550)

**OTHER REQUIREMENTS**

### **Check/Wire Transfer Signing Authority Policy**

A standard check/wire transfer signing safeguard is to require 2 signatures on all checks/wire transfers with at least one of them being a Board Member. In many organizations 3 or 4 persons will be authorized to provide the 2 signatures so that the organization always has at least 2 people to sign. The signatories are normally the board chair, treasurer, other board member, and the Executive Director.

This procedure is ineffective if one of the officers signs a quantity of blank checks in advance. While probably well intentioned, this person has abdicated their duty as an officer and director and has put the organization's funds at risk. Signing officers and the entire board should always insist on all checks/wire transfers being completely filled in and supporting documentation available before anyone signs. No one should be allowed to sign a check/wire transfer payable to oneself, either as a sole or a secondary signature.

The Check/Wire Transfer Signing Authority policy establishes controls on the handling of disbursements. The following are sample thresholds. The Board may want to establish lower thresholds. Still many organizations require two signatures for every payment.

1. Check/Wire Transfers up to \$5,000 for each vendor/individual require one signature.
2. Check/Wire Transfers over \$5,000 for each vendor/individual requires two signatures.
3. Board pre-approval for individual expenses in excess of \$15,000 is required in addition to two signatures.

### **Affirmative Action Program**

Executive Order 11246 requires Federal contractors and subcontractors with 50 or more employees to develop a written Affirmative Action Program (AAP) if it receives federal funds of \$50,000 or more.

### **Sexual Harassment Policy**

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. Employers should clearly communicate to employees that sexual harassment will not be tolerated. Sexual harassment training should be provided to employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

### **Virginia Solicitation of Contributions Law**

*This is applicable to nonprofit AAAs only.* Virginia state law §57-49 requires every charitable organization which intends to solicit contributions within the Commonwealth, or have funds solicited on its behalf, shall, prior to any solicitation, file an initial registration statement and annually thereafter with the Commissioner of the Virginia Department of Agriculture and Consumer Services. Area Agencies on Aging are exempt from this requirement (§57-60); however, if your agency has filed for an exemption from annual registration you must maintain a copy of the letter confirming the exemption on file. This letter may be from the mid 1990s. If the letter cannot be located, contact the Department of Agriculture and Consumer Services.

### **Virginia Charitable Gaming Requirements**

*This is applicable to nonprofit AAAs only.* The Area Agency on Aging may be subject to the Charitable Gaming Statute, §18.2-340.23 of the *Code of Virginia*. In general, the law applies to organizations where charitable gaming proceeds exceed \$40,000 in any 12-month period for all "charitable gaming"

activities, including all raffle activities. There are additional requirements. Agencies are advised to seek legal counsel before conducting a large charitable gaming program subject to this section of the code.

### **Agency Audit**

The Area Agency on Aging shall submit to the Department for Aging and Rehabilitative Services an audit. The audit shall be submitted no later than December 15<sup>th</sup> of each year. If, for reasons within the control of the Area Agency on Aging, this report cannot be submitted by this time, the Area Agency on Aging shall make a written request for an extension of time for justifiable reasons to the State Agency before December 15<sup>th</sup>. Such request shall be submitted with sufficient time for State Agency review and approval.

A justifiable extension for an audit or agency-wide financial review shall be granted for no more than thirty (30) days. The request for an extension must be received by December 15<sup>th</sup>. Submission of an audit report beyond a granted thirty (30) day extension or an audit report that does not meet specific state and federal requirements *may result in withholding of payments until the audit is received and found to be consistent with all requirements.*

### **Department for Aging and Rehabilitative Services Monitoring Reports**

DARS monitors each Area Agency on Aging. This process is called Program and Financial Compliance Reviews (PFCRs). The purpose of the review is to provide technical assistance. That is it identifies areas that can be improved and shares best practice information. Very rarely does the review result in something punitive.

At the beginning of the review, the DARS external auditor will contact the Chair of the Board to see if they have any concerns they would like to express or areas to focus on. The onsite audit is normally one to three days. At the conclusion, the monitoring team will provide the opportunity for an exit interview which goes over the findings, observations, and recommendations. A copy of the final report will be e-mailed to the Executive Director and Board Chair. This report should be presented to the Finance Committee of the Board.

## **SECTION VI. BOARD MEETING MINUTES**

Board meeting minutes are an important but often undervalued form of recordkeeping. Meeting minutes are generally among the first documents requested by a Certified Public Accountant (CPA), the Internal Revenue Service (IRS), or the Department for Aging and Rehabilitative Services (DARS) monitor during a review. They chronicle key information such as board actions, elections of officers, and review of committee and staff reports. In court, the minutes serve as evidence if, for example, someone challenges the validity of certain actions or positions.

In Virginia, Board Members of nonprofit corporations, as a general rule will not be found liable for his/her actions as long as he/she follows the “business judgment rule.” When in doubt, board members should seek approval from their entire board of directors and have the secretary document the approval process in the agency’s minutes.

### **In general, the Board Minutes should:**

- Indicate the kind of meeting; e.g: Board Meeting, Executive Committee, other Committee;
- Report the date, time and place of the meeting;
- Names of board members in attendance and members not in attendance;
- Names of other guests in attendance (and their titles or associations, if relevant);
- Document a quorum was present;
- Record the fact that the Chair and secretary were present or, in their absence, the names of the persons who substituted for them;
- Report whether the minutes of the previous meeting were read and approved, or corrected;
- Record discussion of items;
- Record votes. When a count has been ordered or the vote is by ballot, the number of votes on each side should be entered; and when the voting is by roll call, the names of those voting on each side should be entered;
- Record recusals from discussions and abstentions from voting;
- Include votes against a motion;
- Record board actions such as approvals, delegations of authority, directives;
- The name and subject of a guest speaker can be given. It is not required that the speaker’s remarks be summarized;
- The last paragraph should state the hour of adjournment; and
- Minutes should be signed by the Secretary and can also be signed by the Chair.

### **Style of Minutes:**

- Include only facts. State the issues. Be objective.
- Notes on debate should be impersonal. Do not convey a bad image of anyone.
- Do not include any derogatory language or statements unless stated specifically by the person as “for the record”.

### **Format of Minutes:**

- Be consistent from meeting to meeting;
- The minutes should be easy to follow;
- Important recurring items are recorded consistently and easy to identify;
- Limit special formatting (underlines, bold, etc.);
- Keep paragraphs short;

- Separate paragraphs for each speaker when recording discussion;
- Verbatim notes are not necessary; and
- Meet the preference of the Board's discretion.

#### **Common Mistakes:**

- Failing to document or provide a clear description about a board action taken;
- Drafting and distributing minutes after a lengthy period of time has passed; waiting to approve minutes from past meetings until a substantial period of time has passed decreases the likelihood that mistakes will be caught and corrected; and
- Failing to maintain a reasonable document management system, resulting in the loss of minutes from past meetings.

#### **Suggestions:**

- Include alternatives considered for important decisions to show diligence and reasonable care;
- Attach and briefly summarize key points from any reports given to the board (so long as they may not be misconstrued to be prejudicial to the organization or to the board);
- Include action items, what people commit to do;
- Set apart important information such as "action items" (actions that board members have committed to doing);
- Adopt and use a meeting "minute template"; and
- Use plain language that is easily understood.

#### **Format**

Format is really a question about how to best organize the content. There is no right answer. There are however a few guiding principles. Ideally, nonprofits should maintain consistency from one meeting to the next. This does not mean the format should not be improved to be more readable, clear, and useful to the organizations and others. Unexplainable changes in format can make minutes more difficult to understand and raise suspicion for outsiders. For example, if the organization's January minutes provide detailed accounts of board discussion over a minor issue, it can raise flags if the organization's February minutes barely account for any discussion.

Attached is a template adapted from *Nonprofit Governance and Management* which covers many of these points.

## TEMPLATES FOR MINUTES

Adapted from: *Nonprofit Governance and Management, Third Edition*

**Minutes of the Regular Meeting of the Board of Directors of  
[Insert Name of Organization]  
Held [Insert Date]  
At [Insert Location]**

The following members were present/absent (\* indicates absence) [List all members. Place \* after the names of those not present]

The following members of management were present:

The following guests were present:

### **Call to Order and Introductions**

[Insert name of Chair], Chair called the meeting to order at \_\_\_\_\_ [am or pm] and introduced the members of staff and guests in attendance.

### **Approval of the Agenda**

On motion made, seconded, and carried, the board approved the agenda.

### **Approval of Minutes**

On motion made, seconded, and carried, the board approved the previously distributed minutes of the meeting of the board held [insert date].

### **Old Business / New Business**

Each item is brought forward. If action is necessary, a motion is made, seconded, and discussion occurs. If necessary, voting occurs

### **Financial Report**

[Insert name and title] reviewed and responded to member's questions on the previously distributed financial statements [including the [insert date] income statement and the balance sheet. He/She also reviewed and responded to questions on the status of the organization's performance in comparison to the budget approved on \_\_\_\_\_. It was the consensus of the board that management [e.g., needed to take steps to reduce expenses in connection with \_\_\_\_\_. The Executive Officer indicated that he/she would discuss potential options for [e.g., expense reduction] with the Executive Committee at its next meeting.

### **Presentation on Programming**

The Executive Director introduced [Insert name and, if applicable, title], who manages the organization's community outreach programs. Mr./Ms. [insert name] reported on recent efforts to [e.g., expand/revamp] certain programs, including [name of programs]. He/she responded to a member's questions on [e.g., costs and effectiveness of] the various programs, [e.g., actions being taken to train staff and plans to make constituents aware of changes to programming].

### **Presentation on Banking/Brokerage Relationships**

The Executive Director and the Treasurer reviewed the organization's banking and brokerage relationships and requested board approval of a resolution to open a new brokerage account at [insert name of institution] to facilitate handling of donations of stock by individuals through that institution. Following discussion, on motion made, seconded, and carried, the board adopted the following resolution in the format requested by [name of brokerage institution]:

[insert or attach text of resolution]

### **Committee Reports**

The board acknowledged receipt of the following previously distributed committee reports

Report of the [Insert Date] Meeting of the Committee on Governance

Report of the [Insert Date] Meeting of the Nominating Committee

Report of the [insert Date] Meeting of the Executive Committee.

For each committee, [Insert Member Name], Chair of the [Insert Committee Name] reviewed the committee's minutes and responded to a member's questions on [insert as appropriate, e.g., the process that committee was using to survey other nonprofit organizations].

### **Report of the Executive Officer**

[insert name of Executive Officer], Executive Officer, reviewed and responded to a member's questions on the following matters:

[list matters discussed and brief summary of what presented]

### **Announcements**

The Chair reminded members of the [insert date] board offsite planning meeting and requested members who had not already done so to confirm their attendance at the meeting.

The meeting adjourned at \_\_\_\_\_[am or pm].

## **APPENDIX A. SAMPLE EXECUTIVE DIRECTOR POSITION DESCRIPTION**

GENERAL STATEMENT OF DUTIES: The AAA Executive Director position is a demanding executive level management position involving all aspects of planning, administering, promoting, coordinating, and implementing programs for older citizens in the \_\_\_\_\_ Planning and Service Area. The Executive Director oversees the overall agency operations. The Executive Director reports to the agency's Governing Board.

The Executive Director's duties and responsibilities include, but are not limited to, formulating policies, managing daily operations as well as seeking, planning, and coordinating the use of resources for sustainability of agency operations.

The Executive Director must have the ability to build and maintain effective working relationship among state and local governments and with the private proprietary and nonprofit sectors in the planning and implementation of programs and policies that have an impact on older Virginians. Requires the ability to monitor, report, and comment on policies and programs that address, or fail to address, the needs of older individuals.

The Executive Director must have the ability to articulate the mission, goals, and activities of the agency and be able to effectively speak before diverse groups, civic and community associations, faith groups, and governing bodies of local governments. The Executive Director will need to be a comfortable, if not accomplished, public speaker who can move throughout the community to raise the visibility of the agency, raise public and private funding support, and assure the expansion of the agency's programs and services. The DARS contract requires the position to be fulltime.

The Executive Director must have skills related to the development of financial resources to further the activities of the agency including the ability to write grants and to initiate and pursue various fund raising activities.

### SUGGESTED DUTIES:

1. Performs executive level administrative work to accomplish the goals of the agency. Prepares or oversees the development of budgets and work plans. Monitors the ongoing activities related to the budget and work plans.
2. Directs the preparation and implementation of the agency's annual Area Plan for Aging Services.
3. Oversees and is responsible for the receipt, safekeeping, and maintenance of auditable accounts of all agency funds and disbursing those funds as directed by the Governing Board.
4. Oversees the hiring and firing of personnel. Oversees personnel administration as authorized by the Governing Board.
5. Oversees the negotiation of contracts and other agreements with approval of the Governing Board as may be necessary to administer the agency's programs and achieve stated objectives.
6. Establishes close working relationships with local governments, local human service agencies, other Area Agencies on Aging, the Virginia Department for Aging and Rehabilitative Services, and other state and federal agencies.

7. Oversees the preparation of the Governing Board and Advisory Council's meeting agendas and minutes.
8. Reviews staff work for objectives, methods and results. Assigns time priorities for the completion of staff assignments.
9. Oversees the provision of public information. Handles public speaking engagements. Serves on various city, county, and regional boards and councils. Becomes a visible advocate for the agency and the older individuals it serves.
10. Articulates the agency's mission and goals, speaks to community groups, attends board of supervisors meetings, and represents the agency as a visible advocate for older citizens.
11. Performs related work as required.

SUGGESTED REQUIRED KNOWLEDGE, SKILLS AND ABILITIES: Knowledge of the basic principles and professional practices of planning and public administration as they relate to the provision of human service. Knowledge of recent developments and sources of information in the field of public administration. Knowledge of governmental finance including budget preparation and administration. Five (5) years of demonstrated management experience in non-profit or business management position(s).

Ability to direct and effectively supervise agency personnel in a manner conducive to full performance and high morale. Ability to establish and maintain effective working relationships with other employees, government/agency officials and the general public; ability to exercise sound, independent judgment and tact. Some knowledge of the issues impacting an aging population.

Ability to speak in public, to articulate the agency's vision, and to become a community leader who is recognized for their role in serving older individuals.

SUGGESTED EDUCATION, TRAINING AND EXPERIENCE: Graduation from an accredited college or university with a degree in Public Administration, Business Administration, Gerontology, Social Work, or Nursing. A graduate degree would be preferred. A comparable amount of training and experience may be substituted at the board's discretion. Experience in aging or human services at the management level and experience with resource development is preferred.

*This job profile in no way states or implies that these are the only duties to be performed by the job holder. He/she will be required to follow any other instructions or perform any other duties as requested by his/her supervisor or manager. This is not meant to be an exhaustive list of job duties. Essential elements may change when necessary.*

## **APPENDIX B. SAMPLE CONFLICT OF INTEREST AND DISCLOSURE POLICY AND FORM**

### **Article I Purpose**

The purpose of the Conflict of Interest and Disclosure policy is to protect the tax-exempt interest of (Organization), (hereinafter referred to as “Organization”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a board or advisory council member, Executive Director or senior employee of the Organization or might result in a possible excess benefit transaction.

Section 13.1-871 of the *Code of Virginia* states that transactions with a conflict of interest are voidable and may result in damages or other sanctions against the individual with the conflict in interest if information about the conflict of interest is not fully disclosed prior to the contemplated transaction.

This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest and disclosure applicable to nonprofit and charitable organizations.

### **Article II Definitions**

#### 1. Interested Person

Any board or advisory member, Executive Director, senior employee, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

#### 2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family relationship:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

## **Article III Procedures**

### 1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the board or advisory members, Executive Director, senior employees, and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

### 2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

### 3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

### 4. Violations of the Conflict of Interest and Disclosure Policy

- a. If the governing board or committee has reasonable cause to believe a board or advisory member, Executive Director, senior employee, has failed to disclose actual or possible conflict of interest, it shall inform the member of the basis for such belief and afford the individual an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the individual's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the individual has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**Article IV**  
**Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

- a. The names of the individuals who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the individuals who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

**Article V**  
**Compensation**

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.
- d. Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.

**Article VI**  
**Annual Statements**

Each board or advisory member, Executive Director, senior employee, and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the Conflict of Interest and Disclosure policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **Article VII Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

## **Article VIII Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

**Board/Advisory Council Member or Senior Employee  
Annual Conflict of Interest and Disclosure Statement**

1. Name: \_\_\_\_\_ Date: \_\_\_\_\_

2. Position:

Are you a Member of the Board of Director? Yes No

Are you a Member of the Advisory Council? Yes No

Are you a Senior Employee of the Agency? Yes No

If you are an employee, which position do you hold: \_\_\_\_\_

3. I affirm the following:

I have received a copy of the agency's Conflict of Interest Policy. \_\_\_\_\_ (initial)

I have read and understand the policy. \_\_\_\_\_ (initial)

I agree to comply with the policy. \_\_\_\_\_ (initial)

I understand the agency is a charitable organization and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of tax-exempt purposes. \_\_\_\_\_ (initial)

4. Disclosures:

a. Do you have a financial interest (current or potential), including a compensation arrangement, as defined in this Conflict of Interest and Disclosure policy? Yes No

i. If yes, please describe situation:

ii. \_\_\_\_\_  
If yes, has the financial interest been disclosed, as provided in the Conflict of Interest and Disclosure policy? Yes No

b. In the past, have you had a financial interest, including a compensation arrangement, as defined in the Conflict of Interest policy with the agency? Yes No

i. If yes, please describe it, including when (approximately):

ii. \_\_\_\_\_  
If yes, has the financial interest been disclosed, as provided in the Conflict of Interest and Disclosure policy? Yes No

\_\_\_\_\_  
Signature of Board/Advisory Council Member or Senior Employee Date: \_\_\_\_\_

Date of Review by Executive Committee: \_\_\_\_\_

## APPENDIX C. VIRGINIA FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Advisory Council has a wealth of material on its website to provide guidance. The website is <http://foiacouncil.dls.virginia.gov/>. The following is a quick overview of the nature of the Freedom of Information Act.

*By enacting [The Virginia Freedom of Information Act], the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.*

### Enforcement

The Virginia Freedom of Information Act is enforced by the filing of a Petition for Mandamus or injunction in a circuit court.

If the court finds a violation of the Act, costs and attorney's fees from the public body shall be awarded if the petitioner substantially prevails, unless special circumstances make the award of costs and attorney's fees unjust. The reliance on an Attorney General's Opinion or a court opinion may be considered. Sanctions also may be imposed in favor of the public body.

The willful and knowing violation of the Act results in a civil fine of not less than \$500 nor more than \$2,000, paid into the State Literary Fund. For a second or subsequent violation, the civil penalty shall be not less than \$2,000 nor more than \$5,000.

### Public Records

*"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.*

### Disclosure Principles

- All official records generally are open for inspection and copying during the regular office hours of the records custodian.
- Precaution must be taken by the records custodian for the preservation and safekeeping of all official records.

### Requests for Records

#### The Request

- The request must be made with reasonable specificity.
- Specific reference to The Virginia Freedom of Information Act or a particular statute is not necessary.

## The Response

A response by the records custodian for a request for official records must be made within five work days after the receipt of the request. The *Code of Virginia*, §2.2-3704, states that one of the following four responses must be made.

1. The requested records shall be provided to the requester.
2. If a statutory exemption applies to ALL of the requested records, a written explanation must be given to the requester why the records are not being produced. Specific reference to a statutory exemption must be made.
3. If a statutory exemption applies to SOME, but not all, of the requested records, the exempted portions of the records may be deleted and the remainder of the records disclosed. A written explanation must be given to the requester as to why the deleted portions of the records are not available, with specific reference to the statutory exemption claimed.
4. If the records custodian determines that it is practically impossible either (a) to provide the records within the five-work-day period or (b) to determine whether the records are available within the five-work-day period, the requester should be so notified. When this response is made to the requester, the records custodian then has an additional seven work days to provide one of the preceding responses.

## Billing the Requester

Reasonable charges, not exceeding the actual cost to the public body, may be made to the requester for copying, search time, and computer time in supplying the records. If the requester asks for an estimate of these charges, the charges must be estimated in advance. Advance payment of these charges may be required by the public body.

If the charges are likely to exceed \$200, the requester may be required to agree to pay the charges prior to the records custodian processing the request. (In this case, charges may not exceed the estimate by more than 5%). Time limits are suspended until the requester responds. (*Code of Virginia*, §2.2-3704)

## Exemptions to Disclosure

The Freedom of Information Act does not prohibit the disclosure of any official record. The “Act exempts [certain] records of public bodies from required disclosure... The fact that such records are not subject to required public disclosure does not prohibit their disclosure”. Specific exemptions to the disclosure requirements of the Act are detailed in the *Code of Virginia*, §2.2-3705. Other statutes also provide for the confidentiality or the exemption of specific documents from the Act. Some exemptions to the required disclosure of records pursuant to the Act include:

1. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege;
2. Legal memoranda and other work products compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under §2.2-3711;
3. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to §2.2-3711;
4. Records of active investigations being conducted by the Department of Medical Assistance Services;
5. Reports and court documents required to be kept confidential; and
6. Personal information, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail

recipient has requested that the public body not disclose such information.

### Board Meetings

The *Code of Virginia*, §2.2-3701, states that:

*“Meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to §2.2-3708, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a “meeting” subject to the provisions of this chapter.*

*“Public body” means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body.*

### General Principles

The *Code of Virginia*, §2.2-3701 et seq. states that:

- Except for closed meetings...all meetings shall be public meetings, including work sessions where no votes are taken or decisions made.
- Notice of the time, date and place of a meeting is required to be furnished to any citizen requesting it. Requests for continuing notification should be made at least annually.
- At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection.
- The photography, filming, recording, or other reproduction of an open meeting is permitted. A public body may adopt rules to regulate this activity.
- Voting by secret or written ballot is prohibited.

Minutes are required to be taken at all public meetings, except by standing and other committees of the General Assembly; legislative interim study commissions and committees, including the Virginia Code Commission; study committees or commissions appointed by the Governor, or subcommittees appointed by the governing bodies or school boards or counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board. Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter. Audio or audio/visual records of open meetings shall be public records that shall be produced in accordance with §2.2-3704.

### Local Board Meetings

#### Agenda

- Give advance notice of board meeting to the public;
- Distribute agenda to Board Members and designated senior staff;
- Maintain a public file copy (on a website if available);
- Upon request, provide the agenda to individuals, media, etc.; and
- Include as a handout at the board meeting

## Usual order of business

- Reading and approval of minutes
- Reports of Officers, Boards and Standing Committees
- Reports of Special Committees
- Special Orders
- Unfinished business and general orders
- New business

## Minutes

- Indicate the kind of meeting;
- Provide the name of the board;
- Record the roll call and quorum;
- Report the date, time and place of the meeting;
- Include all legally required supporting items;
- Record votes and discussion of items;
- Record the fact that the Chair and secretary were present or, in their absence, the names of the persons who substituted for them;
- Report whether the minutes of the previous meeting were read and approved, as read, or as corrected and the date of that meeting if it was other than a regular meeting. If any correction is made in the text of the minutes being approved, the minutes of the meeting making the correction merely state that the minutes were approved “as corrected”.
- The last paragraph should state the hour of adjournment.
- Additional rules and practices relating to the content of the minutes are:
  - The name of the person who seconded the motion should not be entered in the minutes unless ordered by the assembly.
  - When a count has been ordered or the vote is by ballot, the number of votes on each side should be entered; and when the voting is by roll call, the names of those voting on each side and those answering “present” should be entered.
  - When a question is considered informally, the same information should be recorded as under the regular rules, since the only informality in the proceedings is in the debate.
  - The name and subject of a guest speaker can be given, but no effort should be made to summarize their remarks.
  - Minutes should be signed by the Secretary and can also be signed by the Chair.
- Commonly included items:
  - Motions
  - Votes
  - Directives to staff
  - Attachments
  - Points of order
  - Local government attorney’s opinions
  - Summary of concerns for individuals addressing the Board
  - Matters requested for inclusion

## Style of Minutes

- Include only facts
- Objectivity versus tone
- Notes on debate should be impersonal

- Do not convey a bad image of anyone
- Do not include any derogatory language or statements unless stated specifically by the person as “for the record”

#### Format of Minutes

- Be consistent from meeting to meeting
- Easy to follow
- Important recurring items are recorded consistently and easy to identify
- Limit special formatting (underlines, bold, etc.)
- Short paragraphs
- Separate paragraphs for each speaker when recording discussion
- Verbatim notes are not necessary
- Meet the preference of the Board’s discretion

#### Closed Meetings

It is recommended that the Governing Board have Legal Counsel present to guide the Board when meeting goes into Closed Session.

Closed meetings are permitted by the *Code of Virginia*, §2.2-3712. They may be held to discuss the following:

- Discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, disciplining or resignation of public officers, appointees or employees of any public body, and evaluation of performance of departments. The reference to salaries has been interpreted to mean salary of an individual employee, i.e., whether or not a merit raise is or isn’t appropriate.
- Discussion or consideration of the condition, acquisition or use of real estate for public purpose or of the disposition of publicly held property. This would include the discussion of possible sites for location of new office space.
- The protection of privacy of individuals in personal matters not related to public business unless the affected individual requests that the meeting not be closed. This has been interpreted to include individual case actions.
- Consultation with legal counsel and briefings by staff members, consultants, or attorneys pertaining to actual or potential litigation or other legal matters within the jurisdiction of the public body.

#### Motion for Closed Meetings

- A motion that a public body meets in a closed meeting must specifically state the purpose for the meeting and reasonably identify the substance of the matter to be discussed. Specific reference also should be made to the statutory authority for the executive meeting. A general reference to the statutory authority alone is not sufficient. Nothing may be discussed in the closed meeting except matters included in the motion.
- Minutes of a closed meeting may be taken, but are not required. Any minutes taken are not subject to public disclosure.

#### Reconvening in Open Session

- When the closed meeting is completed, the public body must reconvene and take a recorded vote of members present that the members in the closed meeting discussed only:
  1. Public business matters lawfully exempted from statutory open meeting requirements; and
  2. Public business matters identified in the motion to convene the closed meeting.

- Any member who cannot certify these items shall so indicate prior to the vote, with specific details on the unauthorized discussion. All this must be recorded in the minutes.

#### Certification of Closed Meeting

WHEREAS, the [public body] has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, §2.2-3712 of the *Code of Virginia* requires a certification by the [public body] that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the [public body] hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the [public body].

Adapted from the "*Department of Social Services Local Board Member Handbook*"

## **APPENDIX D. ROBERT’S RULES OF ORDER – SIMPLIFIED**

### **Guiding Principle:**

Everyone has the right to participate in discussion if they wish, before anyone may speak a second time.

Everyone has the right to know what is going on at all times.

Only urgent matters may interrupt a speaker.

Only one thing (motion) can be discussed at a time.

A **motion** is the topic under discussion (e.g., “I move that we add a coffee break to this meeting”). After being recognized by the president of the board, any member can introduce a motion when no other motion is on the table. A motion requires a second to be considered. Each motion must be disposed of (passed, defeated, tabled, referred to committee, or postponed indefinitely).

### **How to do things:**

#### **You want to bring up a new idea before the group.**

After recognition by the president of the board, present your motion. A second is required for the motion to go to the floor for discussion, or consideration.

#### **You want to change some of the wording in a motion under discussion.**

After recognition by the president of the board, move to amend by adding words, striking words or striking and inserting words.

#### **You like the idea of a motion being discussed, but you need to reword it beyond simple word changes.**

Move to substitute your motion for the original motion. If it is seconded, discussion will continue on both motions and eventually the body will vote on which motion they prefer.

#### **You want more study and/or investigation given to the idea being discussed.**

Move to refer to a committee. Try to be specific as to the charge to the committee.

#### **You want more time personally to study the proposal being discussed.**

Move to postpone to a definite time or date.

#### **You are tired of the current discussion.**

Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3<sup>rd</sup>s vote.

#### **You have heard enough discussion.**

Move to close the debate. Requires a 2/3<sup>rd</sup>s vote. Or move to previous question. This cuts off discussion and brings the assembly to a vote on the pending question only. Requires a 2/3<sup>rd</sup>s vote.

#### **You want to postpone a motion until some later time.**

Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3<sup>rd</sup>s vote. A majority is required to table a motion without killing it.

**You believe the discussion has drifted away from the agenda and want to bring it back.**

Call for orders of the day.

**You want to take a short break.**

Move to recess for a set period of time.

**You want to end the meeting.**

Move to adjourn.

**You are unsure that the president of the board has announced the results of a vote correctly.**

Without being recognized, call for a "division of the house." At this point a roll call vote will be taken.

**You are confused about a procedure being used and want clarification.**

Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry." The president of the board will ask you to state your question and will attempt to clarify the situation.

**You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.**

Move to reconsider. If the majority agrees, the motion comes back on the floor as though the vote had not occurred.

**You want to change an action voted on at an earlier meeting.**

Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, a 2/3<sup>rds</sup> vote is required.

**You may INTERRUPT a speaker for these reasons only:**

to get information about business – **point of information**

to get information about rules – **parliamentary inquiry**

if you can't hear, safety reasons, comfort, etc. – **question of privilege**

if you see a breach of the rules – **point of order**

if you disagree with the president of the board's ruling – **appeal**

<b>Quick Reference</b>					
	<b>Must Be Seconded</b>	<b>Open for Discussion</b>	<b>Can be Amended</b>	<b>Vote Count Required to Pass</b>	<b>May Be Reconsidered or Rescinded</b>
Main Motion	√	√	√	Majority	√
Amend Motion	√	√		Majority	√
Kill a Motion	√			Majority	√
Limit Debate	√		√	2/3 <sup>rds</sup>	√
Close Discussion	√			2/3 <sup>rds</sup>	√
Recess	√		√	Majority	
Adjourn (End meeting)	√			Majority	
Refer to Committee	√	√	√	Majority	√
Postpone to a later time	√	√	√	Majority	√
Table	√			Majority	
Postpone Indefinitely	√	√	√	Majority	√

## **APPENDIX E. ADVOCACY AND LOBBYING**

### **LOBBYING**

Lobbying is normally the practice of trying to persuade legislators to propose, pass, or defeat legislation or to change existing laws. The Area Agency on Aging may not use any federal funds to be paid, to any person for influencing or attempting to influence an officer or employee of an agency (as defined at 29 CFR Section 93.105), a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Examples of lobbying include:

- Asking your member of Congress to vote for or against, or amend, introduced legislation.
- Emailing a “call to action” to your members urging them to contact their member of Congress in support of action on introduced legislation or pending regulations.

### **ADVOCACY**

Advocacy is a much broader range of activities designed to change public opinion. Advocacy is most effective when done on an ongoing basis over a period of time.

For example, suppose your nonprofit organization was in danger of closing its doors because of a series of budget cuts from the federal and state government over the past few years. This would mean that clients would no longer be able to receive your services. Your organization decides that it must build community support for its services so that the public views the agency's programs as a valuable, indispensable part of the community. If the organization doesn't start this process until six months before the doors close, the likelihood of obtaining public support of sufficient magnitude to save the program is minimal. However, if advocacy activities have been an ongoing part of the organization's strategic plan, the public will already know, understand, and support the agency's services.

Examples of advocacy include:

- Telling your member of Congress how a federal grant your organization received has helped your constituents.
- Educating a member of Congress about the effects of a policy on your constituency.
- Inviting a member of Congress to visit your organization so that he/she may see firsthand how federal funding or a policy affects day-to-day operations and the difference it makes.

The previous is adapted from *eBasedTreatment.org*, The Ohio Resource Network for Safe & Drug Free Schools & Communities

Advocacy responsibilities of the Area Agency on Aging (OAA Regulations, Section 1321.61)

- (a) The Area Agency on Aging shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout the planning and service area.
- (b) In carrying out this responsibility, the Area Agency on Aging shall;

- (1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;
  - (2) Solicit comments from the public on the needs of older persons;
  - (3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;
  - (4) Consult with and support the State's long-term care ombudsman program; and
  - (5) Undertake on a regular basis activities designed to facilitate the coordination of plans and activities with all other public and private organizations, including units of general purpose local government, with responsibilities affecting older persons in the planning and service area to promote new or expanded benefits and opportunities for older persons; and
- (c) Each area agency on aging shall undertake a leadership role in assisting communities throughout the planning and service area to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. Such activities may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, the Area Agency on Aging may not permit a grantee or contractor under this part to employ a means test for services funded under this part.
- (d) No requirement in this section shall be deemed to supersede a prohibition contained in the Federal appropriation on the use of Federal funds to lobby the Congress; or the lobbying provision applicable to private nonprofit agencies and organizations contained in OMB Circular A-122.

Advocacy provides an excellent opportunity for Board and Council Members to speak out with knowledge and experience, to present facts, figures, and evidence, and to help legislators understand your Area Agency on Aging and what it means to their constituents. Board and Council Members should get to know their elected officials on the local, state, and national levels and to communicate with them about the issues affecting Area Agencies on Aging.

Advocating is the job of everyone especially Board and Council Members. You represent the community and are advocates of the Area Agency on Aging. Board and Council Members can make a difference because:

- You see the Area Agency on Aging from the user's viewpoint;
- You have a perspective on the full range of public services;
- You represent a broad base of consumers;
- You are volunteer participants in government; and
- You are voters.

Remember, you do not have to do it alone. Others in the community will be willing to support you if you provide them with the facts and let them know you need their help. In any advocacy effort, participants need to understand the legislative process and to proceed under a coordinated plan of action.

Although there are a variety of ways to advocate, there is no substitute for personal contact. Remember to always thank elected officials for listening to you and for helping you.

Keep up with proposed legislation on the local, state, and national levels that may have an impact on Area Agencies on Aging service in your community.

## 10 TIPS TO HARNESS THE POWER OF STORIES

Does your organization have a great story to tell? One of the best ways to tell it is through a personal story of an older adult you serve.

Putting a face on your work helps people connect with your organization and quickly grasp the impact you have. Stories can be a powerful way to gain the attention of potential participants, funders, legislators, and partners.

But what makes a good story and how do you use them? Here are 10 tips to help you get started:

**1. Decide what you want to accomplish.**

What is your goal and who is your audience? Do you want to attract more participants? Get noticed by local politicians? Obtain or protect funding? Answering this question first will help shape the stories you seek.

**2. Develop a set of questions in advance.**

Let your interview subjects read them in advance, so they can collect their thoughts. Sample questions might include:

- Where did you first hear about (Name of Organization)?
- Why and how often do you attend (Name of Organization)?
- What are your favorite activities?
- If funding for (Name of Organization) went away, what would you do?
- What would you tell a friend who is considering joining (Name of Organization)?

**3. Ask a diverse set of people.**

Old, young, male, female, black, white, Asian, Hispanic. Show the breadth of the people you serve. The more the merrier.

**4. Take photos.**

People see themselves in photos, and they add greatly to the overall narrative. The media loves using photos, as well. Make sure the photo is print/web quality—300 dpi or better.

**5. See if the participant is willing to speak to the media once their story goes live.**

Media love stories in first-person format and often want to follow up with their own interview. If possible, have each interviewee sign a release form, so your center is covered legally.

**6. Keep your stories short and to the point.**

Answer the main questions of: who, what, when, where, and why—then edit as much as you can. No one likes to read a rambling narrative.

**7. Be transparent.**

Tell readers that the older adult attends your organization and how you obtained the information. This adds credence and authenticity to your story.

**8. Plan how to use the stories.**

Sometimes it's great to use the whole story at once, or one per month. Sometimes you can chop a story in half and leave people hungry for more!

**9. Capture video of your interviewee.**

Video is hot. Let older adults tell their story in their own voice if possible! See [OneAway.org](http://OneAway.org) for good examples of video stories.

**10. Make the pitch.**

Send your story and photo to your local newspapers, online news sites, city officials, and the local offices of your state and federal legislators. A well-packaged story that hits on a hot topic is likely to get noticed.

Remember—don't be shy! The work you do in the community is incredibly valuable. Telling your story shows why.

## APPENDIX F. GOVERNING BOARD SELF-ASSESSMENT

Below is a useful short 40 question self-assessment that should be completed by every new Governing Board Chairperson when they take office.

### Area Agency on Aging Board of Directors Self-Assessment

**Area Agency on Aging:** \_\_\_\_\_

**Purpose:** This tool should help the Board of Directors (Board) of the AAA assess whether or not adequate internal control processes are in place to ensure that assets are safeguarded, financial and operating information is accurately reported, and compliance with external laws and regulations is maintained. A "Yes" answer indicates that a desired control is in place. A "Needs Work" answer indicates that a control weakness may be present, and corrective action may be necessary. A "No or N/A" answer indicates that the question may not be applicable to your particular work environment; however, careful consideration of the question's intent should be made.

**Note:** Where Board approval is required, it should be documented in the board minutes at least once in a four year period.

#### Board Operations

Does the Board set the overall direction of the agency through a strategic planning process?

Are strategic goals developed or reviewed periodically?

Are all Board Members aware they are responsible for the overall stewardship of the agency?

Are new Board members provided an opportunity to be oriented to their responsibilities which includes copies of the Bylaws and the functions of the agency?

Does the Board receive and review financial and operating reports (e.g. revenue & expense statement, balance sheet, etc.) on a timely basis?

Does the Board question financial and management reports that appear unusual or inconsistent?

Does the Board review the independent audit, the IRS 990 and the DARS monitoring report?

Does the Board comply with Commonwealth of Virginia's Freedom of Information Act including providing adequate notification of meetings?

Do the current Bylaws reflect the duties and responsibilities of the officers and directors?

Do the Bylaws provide for rotation of officers, especially the Chairman and Treasurer?

Is the Board made aware of pending litigation or any settlement offers?

Does the Board have access to legal counsel to assist in complex issues?

Is the Area Agency Advisory Council a separate entity from the Governing Board?

	Yes	Needs Work	No or N/A
Does the Board set the overall direction of the agency through a strategic planning process?			
Are strategic goals developed or reviewed periodically?			
Are all Board Members aware they are responsible for the overall stewardship of the agency?			
Are new Board members provided an opportunity to be oriented to their responsibilities which includes copies of the Bylaws and the functions of the agency?			
Does the Board receive and review financial and operating reports (e.g. revenue & expense statement, balance sheet, etc.) on a timely basis?			
Does the Board question financial and management reports that appear unusual or inconsistent?			
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Do the current Bylaws reflect the duties and responsibilities of the officers and directors?			
Do the Bylaws provide for rotation of officers, especially the Chairman and Treasurer?			
Is the Board made aware of pending litigation or any settlement offers?			
Does the Board have access to legal counsel to assist in complex issues?			
Is the Area Agency Advisory Council a separate entity from the Governing Board?			

**Personnel**

Is there an accurate and up-to-date position description or contract for the Executive Director/CEO?  
 Does the Board annually evaluate the Executive Director/CEO?  
 When the Executive Director/CEO's salary is changed is it done with documentation of comparable positions in the regions? Is the documentation kept on file?  
 Is the Board aware of the salary of top management?  
 Is the Board aware of plans for general salary increases and special increases for top management?  
 Does the Board review the agency's overall employee benefit package?  
 Does the Board appropriately enter "Closed Session" when discussing employment issues?  
 Has the Board approved the agency's *Whistleblower or Fraud and Abuse Policy* required by the IRS 990? Is there an opportunity to appeal to the Board?  
 Is staff aware of the agency's *Whistleblower or Fraud and Abuse Policy*?

Yes	Needs Work	No or N/A

**Finances**

Has the Board approved through policy who can sign checks? Some Boards establish a threshold where two signatures are required.  
 Has the Board approved all lines of credit available to the agency?  
 If the agency has a line of credit, has the Board approved through policy when and what purpose the line of credit can be used?  
 Does the Board or an appropriate committee solicit bids from CPA firms for the annual audit at least every 5 years?  
 Has the agency changed auditing firms at least once every 5 years even if they were the lowest bid?  
 In addition to the annual audit, does the CPA prepare a management letter containing recommendations for improvements in the financial operations of the AAA?  
 Does the AAA file its annual audit with DARS by December 15<sup>th</sup> of each year?  
 Is the Board made aware of the agency's fundraising efforts?

Yes	Needs Work	No or N/A

**Contracts**

Has the Board assigned authorization and responsibility for entering into binding contracts?

Yes	Needs Work	No or N/A

**Travel**

Has the Board approved the agency's Travel Policy in the last four years with documentation in the Board minutes?  
 Does the policy include everyone including the Executive Director/CEO?

Yes	Needs Work	No or N/A

**Purchasing, Receiving, and Expenditures**

Yes	Needs Work	No or



## **APPENDIX G. ADDITIONAL RESOURCES**

There are many resources available on the web. Listed below are some of them.

BoardSource  
1828 L Street NW, Suite 900  
Washington, DC 20036  
Phone: (202) 452-6262  
<http://www.boardsource.org>

National Council of Nonprofits  
1200 New York Avenue NW, Suite 700  
Washington, DC 20005  
Phone: (202) 962-0322  
<http://www.councilofnonprofits.org/>

Nonprofit Resource Center  
1331 Garden Highway  
Sacramento, CA 95833  
Phone: 916.285.1840  
<http://www.nprcenter.org/boards>

Nonprofit Risk Management  
15 N. King St., Suite 203  
Leesburg, VA 20176  
Phone: (202) 785-3891  
<http://www.nonprofitrisk.org/>

Society of Corporate Secretaries and Governance Professionals  
240 West 35<sup>th</sup> Street, Suite 400  
New York, NY 10001-2506  
<http://www.governanceprofessionals.org>

Virginia Society of Certified Public Accountants  
4309 Cox Road  
Glen Allen, VA 23060  
[http://www.vscpa.com/Content/visitors/nonprofit\\_resources/default.aspx](http://www.vscpa.com/Content/visitors/nonprofit_resources/default.aspx)

501 Commons: A Resource for Nonprofits  
510 Second Avenue West  
Seattle, WA 98119  
<http://501commons.org/resources/tools-and-best-practices>