

Alison Barkoff, ACL Administrator and Assistant Secretary for Aging
Administration for Community Living
Administration on Aging
Department of Health and Human Services
330 C Street SW
Washington, DC 20201

August 15, 2023

Re: Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Supportive and Nutritional Services to Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities

Administrator Barkoff:

On behalf of the Better Medicare Alliance and the 31 million beneficiaries in Medicare Advantage, we are pleased to submit the following comments on the Older Americans Act (OAA) Proposed Rule ("Proposed Rule").

Better Medicare Alliance is a diverse coalition of 200 Ally organizations and more than one million beneficiaries who value Medicare Advantage. Together, our Alliance of community organizations, providers, health plans, aging service organizations, and beneficiary advocates share a deep commitment to ensuring Medicare Advantage remains a high-quality, cost-effective option for current and future Medicare beneficiaries.

We appreciate ACL's commitment to modernizing the OAA implementing regulations, as they have not been substantially changed since first promulgated in 1988 and the delivery of health care and social services has evolved significantly since. Better Medicare Alliance responds today to comment specifically on sections 212 and 306 of the OAA and the corresponding proposed regulatory language regarding contracts and commercial relationships at 45 C.F.R. § 1321.9(c)(2)(xiv).

In recent years, Congress and the Centers for Medicare & Medicaid Services (CMS) have granted Medicare Advantage Organizations (MAOs) additional flexibilities and the authority to offer supplemental benefits to Medicare Advantage beneficiaries that are not primarily health related.¹ As such, health plans have developed local partnerships with community-based organizations (CBOs), including Area Agencies on Aging (AAA), to deliver social benefits such as food and nutrition services to local Medicare Advantage beneficiaries enrolled in a specific Medicare Advantage plan. A recent survey found that between 2018 and 2020, contracts between Medicare Advantage plans and CBOs doubled, increasing to 20 percent.² As Medicare Advantage plans expand their offerings year over year to include more social needs related

¹ Bipartisan Budget Act, Pub. L. No. 115-123, div. E, tit. III (2018); Centers for Medicare & Medicaid Services, Memo to MAOs "Reinterpretation of 'Primarily Health Related' for Supplemental Benefits." April 27, 2018; Centers for Medicare & Medicaid Services, Memo to MAOs "Implementing Supplemental Benefits for Chronically Ill Enrollees." April 24, 2019.

² Kunkel, SR, Lackmeyer, AE, Graham, RJ, & Straker, JK. Advancing Partnerships: Contracting Between Community-Based Organizations and Health Care Entities. January 2022. Available [here](#).

supplemental benefits, it follows that partnerships and contracts with CBOs will also continue to grow as CBOs become a key partner in care delivery.

Under these contracts, CBOs are paid by the health plans to deliver the Medicare Advantage supplemental benefits, meaning OAA funding is not expended under these particular contracts and relationships. Further, the OAA permits these arrangements with AAAs as the CBO partner and Medicare Advantage health plans under the authority in sections 212 and 306(g). First and foremost, we appreciate the flexibility for AAAs to engage with partners outside the scope of OAA services and activities to meet the needs of a growing aging population.

Better Medicare Alliance is encouraged by the comprehensive aging network of partners, diverse funding sources, infrastructure, and resources AAAs and other CBOs have established to meet the needs of older adults and people with disabilities, and actions to reduce or mitigate burden in further building this network must be a priority in modernization efforts. We also share ACL's goal of promoting fairness, inclusion, and adherence to OAA requirements.

Nevertheless, it is our understanding that sections 212(b)(1) and 306(g) of the OAA and the Proposed Rule are potentially inconsistent as it relates to the level of oversight and authority State agencies may exercise over contracts and commercial relationships. While the proposal and approach in the Proposed Rule seeks to balance clear policies and procedures with a workable approval process, we are concerned subjecting contracts between a Medicare Advantage plan, or any other health care partner, and AAAs to State approval may negatively impact the communities served and the very people the contract intends to support. The innovative efforts developed in response to recent policy actions, for example, supplemental benefit flexibilities in Medicare Advantage, and the recognition that the AAAs and other CBOs are well positioned to work alongside health plans to deliver care and services to beneficiaries may be impeded if the contracts fall under the purview of State approval. The potential impact, including slowing or even stopping these contracts due to extensive and/or varying and changing processes established by the State agencies, is counter to the extensive efforts the communities have pursued and built in recent years and the general spirit and goals of the OAA.

We acknowledge State agencies have a critical role as it relates to OAA-funded services and activities and ensuring accountability. However, contracts and commercial relationships fall outside the scope of OAA and should therefore not be subject to State approval so long as accountability measures as already required are maintained and measures ensuring OAA funds and non-OAA funds are separately maintained.

Accordingly, Better Medicare Alliance urges ACL to reconsider its proposal to subject contracts that fall outside the scope of OAA funds and activities to State approval, or if finalized, delay implementation of the contract proposal in the Proposed Rule until after the next OAA reauthorization so Congress can revisit and clarify its view on the State's oversight on contracts and relationships that are outside the scope of OAA funds.

We ask that ACL continue its engagement with stakeholders and other policymakers to further coordinate the efforts aimed at ensuring the aging population has the resources to live independently in their homes and communities. Better Medicare Alliance shares ACL's goal of

better serving older adults and believe coordinating the extensive local networks and supporting those partners with minimal burden enables achieving this goal.

Better Medicare Alliance appreciates your consideration of these comments and recommendations and look forward to continued engagement and partnership to ensure Medicare Advantage continues offering high-quality and affordable care to meet the needs of current and future Medicare beneficiaries.

Sincerely,

A handwritten signature in black ink, appearing to read 'MB Donahue', with a stylized flourish at the end.

Mary Beth Donahue
President & CEO
Better Medicare Alliance