

Area Agency on Aging of Pasco-Pinellas, Inc. 2021 Training

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F.S. 20.41

■ Creation of Area Agencies on Aging

- (6) In accordance with the federal Older Americans Act of 1965, as amended, the department shall designate and contract with area agencies on aging in each of the department's planning and service areas. Area agencies on aging, as nongovernmental, independent, not-for-profit corporations under s. 501(c)(3) of the Internal Revenue Code, shall ensure a coordinated and integrated provision of long-term care services to the elderly and shall ensure the provision of prevention and early intervention services. The department shall have overall responsibility for information system planning. The department shall ensure, through the development of equipment, software, data, and connectivity standards, the ability to share and integrate information collected and reported by the area agencies in support of their contracted obligations to the state. The department shall contract with area agencies on aging to fulfill programmatic and funding requirements.



F.S. 20.41

■ Cont.

- (7) The area agency on aging shall, in consultation with the secretary, appoint a chief executive officer, hereafter referred to as the “executive director,” who shall be accountable for the agency’s performance.

- (8) Area agencies on aging are subject to chapter 119, relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings.



AAAPP- Legal Entity

■ AAAPP

- Not-for-profit incorporated entity created pursuant to F.S. 617 and is not created as a local government entity.
- However, even though not created as a government entity, treated as a government entity in certain aspects per F.S. 20.41.
- AAAPP is subject to chapter 119, relating to public records, and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings
- AAAPP must operate within its bylaws and statutory authority.



Bylaws

■ Article IV – Section 4 -6 Conflict of Interest

Section 4 – No person who is a member of a governing board, advisory committee or council, or staff, of a service provider, under contract with the Agency or family member thereof (defined as ascendants, descendants, spouse, siblings, uncles, aunts), will be elected to board membership. An elected director who attains one of the prohibited statuses shall be deemed to have resigned from the Board effective upon the Board becoming aware of such prohibited status. Each director shall immediately inform the Executive Director of the Agency of any changes which may result in his/her prohibited position status.

Section 5- NO Board member or employee of the Board shall have or hold any employment or contractual relationships with any person or entity which is subject to regulations of and/or receives funds through the AAAPP.

Section 6. Prohibitions set forth in Sections 4 and 5 of this Article IV shall not apply to elected official acting in their official capacity only.



Bylaws

■ Article V – Section 2 Board Members' Responsibilities

- (a) be responsible and accountable for the authorization of the execution of material contractual obligations per the policies of the Board;
- (b) Be responsible for financial management oversight of the Agency;
- (c) Approve the annual budget and variances thereof and personnel policies;
- (d) Provide for an annual evaluation by the Executive Committee of the Agency's activities;
- (e) Issuance of an annual report each calendar year;
- (f) Employ a qualified full-time Executive Director;



Bylaws

■ Cont...

- (g) Establish policies and procedures for conduct of certain Agency functions, in keeping with prevailing rules, regulations and operating manuals from the Department of Elder Affairs and other funding agencies. However, the Board specifically delegates to the Executive Director the approval of personnel policies and procedures and hiring, training, discipline, and firing of personnel and all personnel related matters;
- (h) Assure the development, approval and oversight of administration of the annual Area Plan;
- (i) Assure the proper expenditures of all funds made available to the Agency;



Bylaws

■ Cont...

(j) Determine the allocation of state and federal funds for entering into contracts with applicant organizations; and

(k) Accomplish the oversight necessary for the proper programmatic and fiscal performance of organizations under contract to deliver services to older persons in the Planning and Service Area.



Bylaws

- Article V – Section 3
 - The Agency shall adhere to the State of Florida Government in the Sunshine Law and The Florida Public Records Act. All directors and other personnel of the Agency will strictly comply with said laws.



Bylaws

- Article VII – Section 5

- Quorum. A quorum shall consist of a simple majority of the total voting membership of the Board of Directors. When a quorum is physically present, a majority of those present may take action on matters properly present at the meeting. Business shall be transacted only at regular or specially called meetings and shall be duly recorded in the minutes thereof.



Bylaws

- Article VII – Section 6
 - Telephone Participation in Meetings. In certain circumstances, to be determined on an individual basis, members of the Board of Directors may participate in a meeting by telephone if a conference telephone, or similar communications equipment, by means of which all persons participating in the meeting can hear each other at the same time, is used and only if a quorum is physically present.



Emergency Bylaws

- Adopted January 11, 2021
 - Allows implementation of the Emergency Bylaws during an “emergency”
 - Board can take action to implement Emergency Bylaws or the President of the Board in conjunction with the ED are delegated authority to declare an emergency and set the time for the “emergency”
 - Emergency Bylaws suspend the requirement that a quorum be physically present, that the meeting be held at the principal place or somewhere in PSA 5 and allows Board to hold meetings virtually



Emergency Bylaws

- Can be used for any type of emergency such as COVID, hurricane etc.,
- Emergency Bylaws authorized by F.S. 617.0207
- An emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event (F.S. 617.0207(5))
- Emergency Bylaws currently in effect due to COVID. Implemented 1-11-21 indefinitely.



Government in the Sunshine

- F.S. 286.011
 - Meetings must be open to the public.
 - Reasonable notice of the meetings must be given.
 - Meeting must be held in a facility that does not restrict access or discriminate based on sex, age, race, creed, color, origin, or economic status.
 - Minutes of the meetings must be taken and promptly recorded.



Government in the Sunshine

- Covers any gathering, whether formal or casual, of two or more members of the same board to discuss some matter on which foreseeable action will be taken by the board.
 - Applies to all communications - oral, written, telephone, email, Facebook, twitter, instant messaging, text messaging
 - No one can serve as a liaison between board members to avoid sunshine law
 - Can we socialize with each other? Yes, provided matters that may come before the board are not discussed
 - Are there exceptions? Yes - but very narrow - security litigation, risk management, collective bargaining and then must follow strict rules



Government in the Sunshine

- What happens if we violate the law? Criminal Penalties: Anyone who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. They may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500 (F.S. 286.011(3)(b))
 - Removal from office
 - Non-criminal penalties: Fine up to \$500 for violation (F.S. 286.011(3)(a))
 - Civil action for injunctive relief



Government in the Sunshine

- Do we have to let public participate in our meetings?
YES!!!

- General public comment at meeting pertaining to anything at all!
- In addition, a 2013 law requires, subject to listed exemptions, that board provide a reasonable opportunity to be heard on a proposition before the board takes action. It does not have to occur at the same meeting at which the board takes official action if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board takes official action.



Government in the Sunshine

- The 2013 law does not prohibit the board from “maintaining orderly conduct or proper decorum at a meeting.” Boards can adopt rules that limit the time a person has to address the board, provide procedures for allowing representatives of a group to address the board, and provide procedures or forms for an individual to use in order to inform the board of a desire to be heard, the position on the proposition and designation of a representative to speak for him or her.



Public Records Act F.S. 119

■ What is covered?

- Everything! All government records (unless confidential and exempt by law or exempt by law). Applies to all media - email, Facebook, Twitter, instant messaging. Notes for personal use to remember certain things do not fall within the definition of a public record. However, personal notes are public records if they are intended to communicate, perpetuate or formalize knowledge.



Public Records Act F.S. 119

■ What is not a public record?

- In addition to the notes discussed on the prior slide, the Florida Supreme Court has held that personal emails do not fall within the definition of public records subject to disclosure by virtue of their placement on a government owned computer system. Although a personnel file is a public record, certain info in there is exempt - social security numbers, retirement information, medical information etc.



Public Records Act F.S. 119

■ Exemptions from disclosure

- Although virtually all documents (as is broadly defined above) that AAAPP has are public records, there are certain exemptions in the law that allow AAAPP to not produce those records or redact the portion of the information that is exempt from disclosure.
- There are hundreds of exemptions from disclosure under Florida law. There is a difference in the law for information that is “exempt” from the Public Records Act and records which the law has deemed exempt from the Act and confidential. If information is confidential by law, the information is not subject to inspection by the public and may only be released to those persons and entities designated in the statute and there may be criminal sanctions for disclosing.



Public Records Act F.S. 119

■ Exemptions that might apply to AAAPP

- F.S. 430.105- Personal identifying information in a record by the department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care, or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected individual or his or her legal representative provides written consent.
- F.S. 430.207 - Information about functionally impaired elderly persons received services under the Community Care for the Elderly Act which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to functionally impaired elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt.



Public Records Act F.S. 119

■ Exemptions that might apply to AAAPP

- F.S. 430.504 – Information about clients of programs created or funded under 430.502 or 430.503 (relating to Alzheimer’s Disease) which is received by the Department of Elderly Affairs or its authorized employees, or by person who provide services to clients of programs created or funded under these sections as volunteers or pursuant to contracts with the department is confidential and exempt.
- F.S. 430.608 - Identifying information about elderly persons receiving services under 430.601-606 which is collected and held by the Department of Elderly Affairs or its employees, by volunteers, or by persons who provided services to elderly persons under 430.601-606 through contracts with the department, is confidential and exempt.



Public Records Act F.S. 119

■ Exemptions that might apply to AAAPP

- Social Security numbers are exempt per F.S. 119.071 (If document itself is not exempt from disclosure then you would merely redact the social security number).
- Information relating to investigations and findings of abuse neglect.
- Personally identifiable health information is protected under HIPAA.
- Substance Abuse records – 42 CFR – heightened protection and HIPAA.
- Exemption on timing for responses to competitive solicitations
- Information regarding Level II background screening results is exempt under Florida Statute
- Central client records of persons with developmental disabilities are confidential and exempt (393.13(4)(i)1)



Public Records Act F.S. 119

■ Retaining/Producing documents

- Must be retained in accordance with time table set by law by Florida Department of State.
- Time for retention determined by content not type of document.
- Must respond to public records request – no required form of request, may not ask name, purpose, etc. Must produce all records unless legally exempt or confidential and exempt from disclosure.
- If certain information on a document is exempt-redact but produce remaining document.
- May charge cost as set forth in statute only.



Public Records Act F.S. 119

■ Exemptions that might apply to AAPP

- Home address, telephone numbers, social security numbers, dates of birth, photos of law enforcement personnel. Firefighters, Judges, Guardian Ad Litem, Code Enforcement Officers, Juvenile probation officers, state's attorney, public defenders etc. and of their spouses and children is exempt. The location of their children's schools/day care is also exempt. (This exemption gets broadened fairly often and this session there is a pending bill to protect County Attorney information)
- Bank account numbers and debit, charge, and credit card numbers and social security numbers are exempt from disclosure per Florida Statute 119.071(5).



Public Records Act F.S. 119

■ Penalties

- Civil Actions - attorney's fees and costs (typically for not responding to a public records request).
- Criminal penalties: 119.10(1)(b) a public officer who knowingly violates the provisions of 119.07(1) is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison or a \$1,000 fine.
- Non-criminal penalties: 119.10(1)(a) violation of 119 by a public officer is a non-criminal infraction, punishable by fine not exceeding \$500.



Compliance with all Applicable Laws

- AAAPP operationally has to comply with MANY laws on a day-to-day basis (in addition to all contractual requirements by DOE/A)
- Sunshine Law and Public Records Law are the most frequent laws faced by Board members
- For example on day-to-day basis, AAAPP E.D. and HR staff deal with myriad of other legal compliance issues such as ADA, Title VII, ADEA, FCRA, FLSA, AHCA, unemployment benefits, workers compensation etc.
- Board is responsible for hiring E.D only and all applicable laws would apply to the Board in that capacity. Thereafter, E.D. is responsible for personnel matters of Agency.



Any Questions?

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