This rulemaking proposes to amend 40 TAC Chapter 85, Subchapter A, §85.2, Definitions, and Subchapter D, §85.302, Older Americans Act Services. 40 TAC Chapter 85 is scheduled to be administratively transferred to 26 TAC Chapter 213 to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the legacy Department of Aging and Disability Services to the Texas Health and Human Services Commission. The administrative transfer is scheduled to be completed before this rulemaking is proposed. In 26 TAC Chapter 213, §85.2 will be renumbered as §213.101, Definitions, and §85.302 will be renumbered as §213.203, Nutrition Services. The crosswalk for the remaining sections of 40 TAC Chapter 85 will be available when the administrative transfer is posted in the *Texas Register*.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE

PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 85 IMPLEMENTATION OF THE OLDER AMERICANS ACT

SUBCHAPTER A DEFINITIONS

§85.2. Definitions.

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

(1) AAA--An area agency on aging (commonly referred to as a "triple A"). A public or private nonprofit agency or organization, designated by HHSC in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan.

(2) Adult--A person who is 18 years of age or older.

(3) Alarm call--A signal transmitted from an electronic monitoring system to a service provider's response center indicating a program participant needs immediate assistance.

(4) Area plan--A plan developed and implemented by a AAA for its planning and service area that establishes a comprehensive and coordinated system of services in accordance with the Older Americans Act, §306(a).

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(6) Contract--A binding agreement between a AAA and a subcontractor obligating the subcontractor to take responsibility for the complete implementation and administration of a service described in this chapter, including determining which individuals are eligible to receive such a service and providing the service to such individuals.

(7) Child--A person who is under 18 years of age.

(8) Cost reimbursement--Payment of actual costs incurred for goods or services.

(9) DADS--HHSC.

(10) Day--A calendar day, unless otherwise specified.

(11) Direct purchase--When items or services are obtained from a vendor.

(12) Disability (except when such term is used in the phrase "severe disability")--A disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living;

(G) economic self-sufficiency;

(H) cognitive functioning; and

(I) emotional adjustment.

(13) Electric monitoring system--The equipment used to allow a program participant to call an ERS vendor for assistance in the event of an emergency. Such equipment includes an alert bracelet or necklace that can be activated by the program participant and the signal box to receive the call from the program participant.

(14) ERS--Emergency response services.

(15) Federal fiscal year--A 12-month period of time beginning the 1st of October through the 30th of September.

(16) Fixed unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement, that remains the same until the contract or vendor agreement is renegotiated, regardless of the amount of services provided, the number of program participants served, or the number of events that occur.

(17) HHSC--Health and Human Services Commission. HHSC is the sole state agency (also referred to as the "state unit on aging") designated in accordance with the Older Americans Act, §305(a)(1).

(18) Meal provider--A service provider that provides a congregate or home delivered meal.

(19) Means testing--Using a person's income and resource data.

(20) Older Americans Act--A federal law enacted to establish and fund a comprehensive service system for persons 60 years of age or older.

(21) Planning and service area--A geographical area, consisting of one or more counties, for which HHSC designates one AAA to develop and implement an area plan.

(22) Program participant--A person receiving a service described in this chapter.

(23) Responder--A person identified by the program participant or designated by the AAA who will respond to an alarm call by a program participant.

(24) Service provider--A subcontractor or a vendor.

(25) Severe disability--A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities specified in paragraph (15)(A) - (I) of this section.

(26) Staff person--Personnel, including a full-time and part-time employee or contractor, and intern but excluding a volunteer.

(27) Statewide carryover pool--An account established and managed by HHSC that contains award funds not spent by a AAA at the end of a federal fiscal year as described in §85.502(c)(1)(B) of this chapter (relating to Unspent Award Funds).

(28) Subcontractor--The party with whom a AAA enters into a contract.

(29) System check--Activating the call button of an electronic monitoring system to test the system.

(30) Variable unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement that may change depending on the criteria and conditions set forth in the contract or vendor agreement.

(31) Vendor agreement--A binding agreement between a AAA and a vendor obligating the vendor to provide goods or services to individuals determined eligible by the AAA for such goods or services as part of the AAA's implementation and administration of a service described in this chapter.

(32) Vendor--The party with whom a AAA enters into a vendor agreement.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE

PART 1 DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 85 IMPLEMENTATION OF THE OLDER AMERICANS ACT

SUBCHAPTER D OLDER AMERICANS ACT SERVICES

§85.302. Nutrition Services.

(a) Purpose. This section establishes the requirements for nutrition services, a service provided under the Older Americans Act of 1965, as amended, and funded, in whole or in part, by HHSC.

(b) Policy . Nutrition services must be provided in compliance with all HHSC policies established by authority of the Older Americans Act §305(a)(1)(C) relating to organization and responsibilities of the State.

(c) Eligibility and assessment. A AAA must ensure that a person who receives a nutrition service is:

(1) 60 years of age or older;

(2) eligible in accordance with the Older Americans Act §339(2)(H) and §339(2)(I)*;* and

(3) assessed for eligibility as required by the Older Americans Act §339(2)(J) and HHSC policy.

(d) Nutrition screening. A AAA must ensure a meal provider conducts nutrition screening for a person receiving a nutrition service as required by the Older Americans Act §339(2)(J).

(e) Meal requirements. A AAA must ensure that a meal provider serves meals that comply with the Older Americans Act §339(2)(A), relating to Dietary Guidelines for Americans, dietary reference intakes, adjustments to meet special dietary needs of persons receiving nutrition services, and with HHSC polices related to menus, standard recipes, and approval of menus.

(f) Service days. A AAA must ensure that meals are provided in accordance with the Older Americans Act §331 and §336, and with HHSC policies, related to serving fewer than five meals a week.

(g) Delivery of multiple meals. A AAA must ensure that a meal provider who delivers other than hot meals or delivers multiple meals at one time, completes an assessment to determine that the person can safely manage the type of meals to be delivered in compliance with HHSC policies.

(h) Facilities and food service. A AAA must ensure that a meal provider:

(1) complies with 25 TAC Chapter 228 (relating to Retail Food) and 25 TAC Chapter 229 (relating to Food and Drug) in training staff, and the preparation, handling, and delivery of food; and

(2) provides a copy of all facility inspection results required by state law or rule to the AAA.

(i) Nutrition Services Incentive Program . A AAA must ensure that a meal provider:

(1) complies with the Older Americans Act §311, relating to the Nutrition Services Incentive Program and HHSC policies regarding the Nutrition Services Incentive Program; and

(2) includes eligible meals in reports to HHSC through which Nutrition Services Incentive Program cash is calculated as earned for distribution to AAAs.

(j) Voluntary contributions. A AAA must ensure that a meal provider complies with the Older Americans Act §315(b), §85.202(l) of this chapter (relating to AAA Fiscal Responsibilities), and HHSC policies relating to voluntary contributions.

(k) Meal cost recovery. A AAA must ensure that a meal provider:

(1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;

(2) recovers, at a minimum, the cost of a meal that is served to a person who is not eligible for a meal funded by the Older Americans Act;*;* and

(3) keeps payments for a meal served to an ineligible person separate from voluntary contributions from an eligible person.

(l) Holding time. A AAA must ensure that a meal provider complies with state or local laws for the safe and sanitary handling of food.

(1) A AAA must ensure that a congregate meal provider does not allow more than four hours to expire from the time the provider:

(A) removes hot food from temperature control and the time the provider serves the hot food; or

(B) removes cold food from temperature control and the time the provider serves the cold food.

(2) A AAA must ensure that a home delivered meals provider limits the amount of time meals are in transit and does not allow more than four hours to expire from the time the provider:

(A) removes hot food from temperature control and the time the provider delivers the hot food; or

(B) removes cold food from temperature control and the time the provider delivers the cold food.

(m) Nutrition outreach. A AAA must ensure that a meal provider develops and maintains a written outreach plan giving priority to persons described in the Older Americans Act §306(a)(1).

(n) Nutrition education. In accordance with the Older Americans Act §339(2)(J), a AAA must ensure that an eligible person is provided with nutrition education annually, and if appropriate, nutrition counseling.

(o) Political activity. A AAA must ensure that a meal provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(p) Religious activities and prayer. A AAA must ensure that a meal provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a staff person of a congregate meal site; or

(2) prohibit a person from praying silently or audibly at a congregate meal site if the person so chooses.

(q) Monitoring.

(1) A AAA must monitor meal providers in compliance with §§83.19(f) of this title (relating to Direct Purchase of Services (DPS)), 85.201(e) of this chapter (relating to AAA Administrative Responsibilities), and HHSC policies.

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, monitors a food preparation site, at least annually.

(3) A AAA must ensure that the meal provider submits the written report of the food preparation site monitoring to the AAA.

(r) Emergencies and disasters. A AAA must ensure that a meal provider develops a plan and written procedures for emergencies and disasters to keep food,

facilities, and equipment available to the extent possible, for people participating in the nutrition program in accordance with HHSC policies giving priority to people 60 years of age or older;

(s) Subcontracting by a meal provider. A AAA must require a meal provider to obtain written approval from the AAA before the meal provider contracts with any entity for meal preparation or service delivery.