

Subpart A—Introduction**§ 1321.1 Basis and purpose of this part.**

(a) The purpose of this part is to implement Title III of the Older Americans Act, as amended (the Act) (42 U.S.C. 3001 *et seq.*). This part prescribes requirements State agencies shall meet to receive grants to develop comprehensive and coordinated systems for the delivery of the following services: supportive, nutrition, evidence-based disease prevention and health promotion, caregiver, legal, and, where appropriate, other services. These services are provided via State agencies, area agencies on aging, and local service providers under the Act. These requirements include:

- (1) Responsibilities of State agencies;
- (2) Responsibilities of area agencies on aging;
- (3) Service requirements; and
- (4) Emergency and disaster requirements.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging, under approved State plans described in §1321.27, to develop or enhance comprehensive and coordinated community-based systems resulting in a continuum of person-centered services to older persons and family caregivers, with special emphasis on older individuals with the greatest economic need and greatest social need, with particular attention to low-income minority older individuals. A responsive community-based system of services shall include collaboration in planning, resource allocation, and delivery of a comprehensive array of services and opportunities for all older adults in the community. Title III funds are intended to be used as a catalyst to bring together public and private resources in the community to assure the provision of a full range of efficient, well-coordinated, and accessible person-centered services for older persons and family caregivers.

(c) Each State designates one State agency to:

- (1) Develop and submit a State plan on aging, as set forth in §1321.33;
- (2) Administer Title III and VII funds under the State plan and the Act;

(3) Be responsible for planning, policy development, administration, coordination, priority setting, monitoring, and evaluation of all State activities related to the Act;

(4) Serve as an advocate for older individuals and family caregivers;

(5) Designate planning and service areas;

(6) Designate an area agency on aging to serve each planning and service area, except in single planning and service area States; and

(7) Provide funds as set forth in the Act to either:

(i) Area agencies on aging under approved area plans on aging, in States with multiple planning and service areas, for their use in fulfilling requirements under the Act and distribution to service providers to provide direct services,

(ii) Service providers, in single planning and service area States, to provide direct services, or

(iii) The Ombudsman program, as set forth in part 1324 of this chapter.

(d) Terms used, but not otherwise defined, in this part will have the meanings ascribed to them in the Act.

§ 1321.3 Definitions.

Access to services or access services, as used in this part and sections 306 and 307 of the Act (42 U.S.C. 3026 and 3027), means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information and assistance, options counseling, and case management services.

Acquiring, as used in the Act, means obtaining ownership of an existing facility.

Act, means the Older Americans Act of 1965, as amended.

Altering or renovating, as used in this part, means making modifications to or in connection with an existing facility which are necessary for its effective use. Such modifications may include alterations, improvements, replacements, rearrangements, installations, renovations, repairs, expansions, upgrades, or additions, which are not in excess of double the square footage of the original facility and all physical improvements.

Area agency on aging, as used in this part, means a single agency designated by the State agency to perform the functions specified in the Act for a planning and service area.

Area plan administration, as used in this part, means funds used to carry out activities as set forth in section 306 of the Act (42 U.S.C. 3026) and other activities to fulfill the mission of the area agency as set forth in §1321.55, including development of private pay programs or other contracts and commercial relationships.

Best available data, as used in section 305(a)(2)(C) of the Act (42 U.S.C. 3025(a)(2)(C)), with respect to the development of the intrastate funding formula, means the most current reliable data or population estimates available from the U.S. Decennial Census, American Community Survey, or other high-quality, representative data available to the State agency.

Constructing, as used in this part, means building a new facility, including the costs of land acquisition and architectural and engineering fees, or making modifications to or in connection with an existing facility which are in excess of double the square footage of the original facility and all physical improvements.

Conflicts of interest, as used in this part, means:

(1) One or more conflicts between the private interests and the official responsibilities of a person in a position of trust;

(2) One or more conflicts between competing duties of an individual, or between the competing duties, services, or programs of an organization, and/or portion of an organization; and

(3) Other conflicts of interest identified in guidance issued by the Assistant Secretary for Aging and/or by State agency policies.

Cost sharing, as used in section 315(a) of the Act (42 U.S.C. 3030c–2(a)), means requesting payment using a sliding scale, based only on an individual's income and the cost of delivering the service, in a manner consistent with the exceptions, prohibitions, and other conditions laid out in the Act.

Department, means the U.S. Department of Health and Human Services.

Direct services, as used in this part, means any activity performed to provide services directly to an older person or family caregiver, groups of older persons or family caregivers, or to the general public by the staff or volunteers of a service provider, an area agency on aging, or a State agency whether provided in-person or virtually. Direct services exclude State or area plan administration and program development and coordination activities.

Domestically produced foods, as used in this part, means Agricultural foods, beverages and other food ingredients which are a product of the United States, its Territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territories of the Pacific Islands (hereinafter referred to as “the United States”), except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to minor ingredients. Ingredients from nondomestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

Family caregiver, as used in this part, means an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual; an adult family member, or another individual, who is an informal provider of in-home and community care to an individual of any age with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or an older relative caregiver. For purposes of this part, family caregiver does not include individuals whose primary relationship with the older adult is based on a financial or professional agreement.

Fiscal year, as used in this part, means the Federal fiscal year.

Governor, as used in this part, means the chief elected officer of each State and the mayor of the District of Columbia.

Greatest economic need, as used in this part, means the need resulting from an income level at or below the Federal poverty level and as further defined by State and area plans based on local and individual factors, including geography and expenses.

Greatest social need, as used in this part, means the need caused by non-economic factors, which include:

- (1) Physical and mental disabilities;
- (2) Language barriers;
- (3) Cultural, social, or geographical isolation, including due to:
 - (i) Racial or ethnic status;
 - (ii) Native American identity;
 - (iii) Religious affiliation;
 - (iv) Sexual orientation, gender identity, or sex characteristics;
 - (v) HIV status;
 - (vi) Chronic conditions;
 - (vii) Housing instability, food insecurity, lack of access to reliable and clean water supply, lack of transportation, or utility assistance needs;
 - (viii) Interpersonal safety concerns;
 - (ix) Rural location; or
 - (x) Any other status that:
 - (A) Restricts the ability of an individual to perform normal or routine daily tasks; or
 - (B) Threatens the capacity of the individual to live independently; or
- (4) Other needs as further defined by State and area plans based on local and individual factors.

Immediate family, as used in this part pertaining to conflicts of interest, means a member of the household or a relative with whom there is a close personal or significant financial relationship.

In-home supportive services, as used in this part, references those supportive services provided in the home as set forth in the Act, to include:

- (1) Homemaker, personal care, home care, home health, and other aides;
- (2) Visiting and telephone or virtual reassurance;
- (3) Chore maintenance;
- (4) Respite care for families, including adult day care; and
- (5) Minor modification of homes that is necessary to facilitate the independence and health of older individuals and that is not readily available under another program.

Local sources, as used in the Act and *local public sources*, as used in section 309(b)(1) of the Act (42 U.S.C. 3029(b)(1)), means tax-levy money or any other non-Federal resource, such as State or local public funding, funds from fundraising activities, reserve funds, bequests, or cash or third-party in-kind contributions from non-client community members or organizations.

Major disaster declaration, as used in this part and section 310 of the Act (42 U.S.C. 3030), means a Presidentially declared disaster under the Robert T. Stafford Relief and Emergency Assistance Act (42 U.S.C. 5121-5207).

Means test, as used in the Act, means the use of the income, assets, or other resources of an older person, family caregiver, or the households thereof to deny or limit that person's eligibility to receive services under this part.

Multipurpose senior center, as used in the Act, means a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental and behavioral health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals, as practicable, including as provided via virtual facilities; as used in § 1321.85, facilitation of services in such a facility.

Native American, as used in the Act, means a person who is a member of any Indian Tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) who:

- (1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or
- (2) Is located on, or in proximity to, a Federal or State reservation or rancheria; or is a person who is a Native Hawaiian, who is any individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Nutrition Services Incentive Program, as used in the Act, means grant funding to State agencies, eligible Tribal organizations, and Native Hawaiian

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grantees to support congregate and home-delivered nutrition programs by providing an incentive to serve more meals.

Official duties, as used in section 712 of the Act (42 U.S.C. 3058g) with respect to representatives of the Long-Term Care Ombudsman Program, means work pursuant to the Long-Term Care Ombudsman Program authorized by the Act, 45 CFR part 1324, subpart A, and/or State law and carried out under the auspices and general direction of, or by direct delegation from, the State Long-Term Care Ombudsman.

Older relative caregiver, as used in section 372(a)(4) of the Act (42 U.S.C. 3030s(a)(4)), means a caregiver who is age 55 or older and lives with, is the informal provider of in-home and community care to, and is the primary caregiver for, a child or an individual with a disability;

(1) In the case of a caregiver for a child is:

(i) The grandparent, step-grandparent, or other relative (other than the parent) by blood, marriage, or adoption, of the child;

(ii) Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers of the child; and

(iii) Has a legal relationship to the child, such as legal custody, adoption, or guardianship, or is raising the child informally; and

(2) In the case of a caregiver for an individual with a disability, is the parent, grandparent, step-grandparent, or other relative by blood, marriage, or adoption of the individual with a disability.

Periodic, as used in this part to refer to the frequency of client assessment and data collection, means, at a minimum, once each fiscal year, and as used in section 307(a)(4) of the Act (42 U.S.C. 3027(a)(4)) to refer to the frequency of evaluations of, and public hearings on, activities and projects carried out under State and area plans, means, at a minimum once each State or area plan cycle.

Planning and service area, as used in section 305 of the Act (42 U.S.C. 3025), means an area designated by a State agency under section 305(a)(1)(E) (42

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U.S.C. 3025(a)(1)(E)), for the purposes of local planning and coordination and awarding of funds under Title III of the Act, including a single planning and service area.

Private pay programs, as used in section 306(g) of the Act (42 U.S.C. 3026(g)), are a type of contract or commercial relationship and are programs, separate and apart from programs funded under the Act, for which the individual consumer agrees to pay to receive services under the programs.

Program development and coordination activities, as used in this part, means those actions to plan, develop, provide training, and coordinate at a systemic level those programs and activities which primarily benefit and target older adult and family caregiver populations who have the greatest social needs and greatest economic needs, including development of contracts, commercial relationships, or private pay programs.

Program income, means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as otherwise provided under Federal grantmaking authorities. Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. *See also* 35 U.S.C. 200–212 (which applies to inventions made under Federal awards).

Reservation, as used in section 305(b)(2) of the Act (42 U.S.C. 3025(b)(2)) with respect to the designation of planning and service areas, means any Federally or State recognized American Indian Tribe's reservation, pueblo, or colony, including former reservations

in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments.

Service provider, means an entity that is awarded funds, including via a grant, subgrant, contract, or subcontract, to provide direct services under the State or area plan.

Severe disability, as used to carry out the provisions of the Act, means a severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

(1) Is likely to continue indefinitely; and

(2) Results in substantial functional limitation in three or more of the following major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

Single planning and service area State, means a State which was approved on or before October 1, 1980, as such and continues to operate as a single planning and service area.

State, as used in this part, means one or more of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State agency, as used in this part, means the designated State unit on aging for each of the 50 States, the District of Columbia, and the Territories of Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, unless otherwise specified.

State plan administration, as used in this part, means funds used to carry out activities as set forth in section 307 of the Act (42 U.S.C. 3027) and other activities to fulfill the mission of the State agency as set forth in § 1321.5.

Supplemental foods, as used in this part, means foods that assist with maintaining health, but do not alone constitute a meal. Supplemental foods include liquid nutrition supplements or enhancements to a meal, such as addi-

tional beverage or food items, and may be specified by State agency policies and procedures. Supplemental foods may be provided with a meal, or separately, to older adults who participate in either congregate or home-delivered meal services.

Voluntary contributions, as used in section 315(b) of the Act (42 U.S.C. 3030c-2(b)), means donations of money or other personal resources given freely, without pressure or coercion, by individuals receiving services under the Act.

Subpart B—State Agency Responsibilities

§ 1321.5 Mission of the State agency.

(a) The Act intends that the State agency shall be a leader on all aging issues on behalf of all older individuals and family caregivers in the State. The State agency shall proactively carry out a wide range of functions, including advocacy, planning, coordination, inter-agency collaboration, information sharing, training, monitoring, and evaluation. The State agency shall lead the development or enhancement of comprehensive and coordinated community-based systems in, or serving, communities throughout the State. These systems shall be designed to assist older individuals and family caregivers in leading independent, meaningful, and dignified lives in their own homes and communities.

(b) In States with multiple planning and service areas, the State agency shall designate area agencies on aging to assist in carrying out the mission described above for the State agency at the sub-State level. The State agency shall designate as area agencies on aging only those non-State agencies having the capacity and making the commitment to fully carry out the mission described for area agencies in § 1321.55.

(c) The State agency shall assure that the resources made available to area agencies on aging under the Act are used to carry out the mission described for area agencies in § 1321.55.