

## SUBCHAPTER C—THE ADMINISTRATION FOR COMMUNITY LIVING

### PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

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AUTHORITY: 42 U.S.C. 3001 *et seq.*

SOURCE: 89 FR 11656, Feb. 14, 2024, unless otherwise noted.

**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

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

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.

**§ 1321.7 Organization and staffing of the State agency.**

(a) The State shall designate a sole State agency to develop and administer the State plan required under this part and part 1324 of this chapter and to serve as the effective and visible advocate for older adults within the State.

(b) The State agency shall have an adequate number of qualified staff to fulfill the functions prescribed in this part.

(c) The State agency shall establish, contract, or otherwise arrange with another agency or organization as permitted by section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), an Office of the State Long-Term Care Ombudsman. Such Office must be headed by a full-time Ombudsman and consist of other staff as appropriate to fulfill responsibilities as set forth in part 1324, subpart A, of this chapter.

(d) If a State statute establishes an Ombudsman program which will perform the functions of section 307(a)(9)(A) of the Act (42 U.S.C. 3027(a)(9)(A)), the State agency continues to be responsible for assuring that the requirements of this program under the Act and as set forth in part 1324, subpart A, of this chapter, are met, notwithstanding any additional requirements or funding related to State law. In such cases where State law may conflict with the Act, the Governor shall confirm understanding of the State agency's continuing obligations under the Act through an assurance in the State plan.

(e) The State agency shall have as set forth in section 307(a)(13) (42 U.S.C. 3027(a)(13)) and section 731 of the Act (42 U.S.C. 3058j) and 45 CFR part 1324, subpart C, a Legal Assistance Developer, and such other personnel as appropriate to provide State leadership in developing legal assistance programs for older individuals throughout the State.

**§ 1321.9 State agency policies and procedures.**

(a) The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in this part and part 1324 of this chapter. These policies and procedures shall be developed in consulta-

tion with area agencies on aging, program participants, and other appropriate parties in the State. Except for the Ombudsman program as set forth in 45 CFR part 1324, subpart A and where otherwise indicated, the State agency policies may allow for such policies and procedures to be developed at the area agency on aging level. The State agency is responsible for implementing, monitoring, and enforcing policies and procedures, where:

(1) The policies and procedures developed by the State agency shall address how the State agency will monitor the programmatic and fiscal performance of all programs and activities initiated under this part for compliance with all requirements, and for quality and effectiveness. As set forth in sections 305(a)(2)(A) and 306(a) of the Act (42 U.S.C. 3025(a)(2)(A) and 3026(a)), and consistent with section 305(a)(1)(C) (42 U.S.C. 3025(a)(1)(C)), the State agency shall be responsible for monitoring the program and financial activities of subrecipients and subgrantees to ensure that grant awards are used for the authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of the grant award, including:

(i) Evaluating each subrecipient's risk of noncompliance to ensure proper accountability and compliance with program requirements and achievement of performance goals;

(ii) Reviewing subrecipient policies and procedures; and

(iii) Ensuring that all subrecipients and subgrantees complete audits as required in 2 CFR part 200, subpart F and 45 CFR part 75, subpart F.

(2) The State agency may not delegate to another agency the authority to award or administer funds under this part.

(3) The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records, and other information maintained by the Ombudsman program, as set forth in part 1324, subpart A. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-

term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in §1324.11(e)(3) of this chapter.

(b) The State agency shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) Policies and procedures developed and implemented by the State agency shall address:

(1) Direct service provision for services as set forth in §§1321.85, 1321.87, 1321.89, 1321.9, and 1321.93, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) A listing and definitions of services that may be provided in the State with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided;

(iv) Definition of those within the State in greatest social need and greatest economic need;

(v) Specific actions the State agency will use or require the area agency to use to target services to meet the needs of those in greatest social need and greatest economic need;

(vi) How area agencies on aging may request to provide direct services under provisions of §1321.65(b)(7), where appropriate;

(vii) Actions to be taken by area agencies and direct service providers to implement requirements as set forth in paragraphs (c)(2)(x) through (xi) of this section; and

(viii) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Intrastate funding formula (IFF)*. Distribution of Title III funds via the intrastate funding formula or funds distribution plan and of Nutrition Services Incentive Program funds as set forth in §1321.49 or §1321.51 shall be maintained by the State agency where funds must be promptly disbursed.

(ii) *Non-Federal share (match)*. As set forth in sections 301(d)(1) (42 U.S.C. 3021(d)(1)), 304(c) (42 U.S.C. 3024(c)), 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)), 304(d)(1)(D) (42 U.S.C. 3024(d)(1)(D)), 304(d)(2) (42 U.S.C. 3024(d)(2)), 309(b) (42 U.S.C. 3029(b)), 316(b)(5) (42 U.S.C. 3030c-3(b)(5)), and 373(h)(2) (42 U.S.C. 3030s-2(h)(2)) of the Act, the State agency shall maintain statewide match requirements, where:

(A) The match may be made by State and/or local public sources except as set forth in paragraph (c)(2)(ii)(C) of this section.

(B) Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be accepted if the funds meet the specified criteria for match. A State agency may not require only cash as a match requirement.

(C) State or local public resources used to fund a program which uses a means test shall not be used to meet the match.

(D) Proceeds from fundraising activities may be used to meet the match as long as no Federal funds were used in the fundraising activity. Fundraising activities are unallowable costs without prior written approval, as set forth in 2 CFR 200.442.

(E) A State agency may use State and local funds expended for a non-Title III funded program to meet the match requirement for Title III expenditures when the non-Title III funded program:

(1) Is directly administered by the State or area agency;

(2) Does not conflict with requirements of the Act;

(3) Is used to match only the Title III program and not any other Federal program; and

(4) Includes procedures to track and account expenditures used as match for a Title III program or service.

(F) Match requirements for area agencies are determined by the State agency.

(G) Match requirements for direct service providers are determined by the State and/or area agency.

(H) A State or area agency may determine a match in excess of required amounts.

## § 1321.9

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(I) Other Federal funds may not be used to meet required match unless there is specific statutory authority.

(J) The required statewide match for grants awarded under Title III of the Act is as follows:

(1) *Administration.* Federal funding for State, Territory, and area plan administration may not account for more than 75 percent of the total funding expended and requires a 25 percent match. As set forth in 2 CFR 200.306(c), prior written approval is hereby granted for unrecovered indirect costs to be used as match.

(2) *Supportive services and nutrition services.* (i) Federal funding for services funded under supportive services as set forth in § 1321.85, less the portion of funds used for the Ombudsman program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(ii) Federal funding for services funded under nutrition services as set forth in § 1321.87, less funds provided under the Nutrition Services Incentive Program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(iii) One-third ( $\frac{1}{3}$ ) of the 15 percent match must be met from State resources, and the remaining two-thirds ( $\frac{2}{3}$ ) match may be met by State or local resources;

(iv) The match for supportive services and nutrition services may be pooled.

(3) *Family caregiver support services.* The Federal funding for services funded under family caregiver support services as set forth in § 1321.91 may not account for more than 75 percent of the total dollars expended and requires a 25 percent match.

(4) *Services not requiring match.* Services for which no match is required include:

(i) Evidence-based disease prevention and health promotion services as set forth in § 1321.89;

(ii) The Nutrition Services Incentive Program; and

(iii) The portion of funds from supportive services used for the Ombudsman program.

(iii) *Transfers.* Transfer of service allotments elected by the State agency

which must meet the following requirements:

(A) A State agency must provide notification of the transfer amounts elected pursuant to guidance as set forth by the Assistant Secretary for Aging;

(B) A State agency shall not delegate to an area agency on aging or any other entity the authority to make a transfer;

(C) A State agency may only elect to transfer between the Title III, part B Supportive Services and Senior Centers, part C–1 Congregate Nutrition Services, and part C–2 Home-Delivered Nutrition Services grant awards;

(1) The State agency may elect to transfer up to 40 percent between the Title III, part C–1 and part C–2 grant awards, per section 308(b)(4)(A) of the Act (42 U.S.C. 3028(b)(4)(A));

(i) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 40 percent transfer limit.

(ii) The State agency may request a waiver up to an additional 10 percent between the Title III part C–1 and part C–2 grant awards, per section 308(b)(4)(B) of the Act (42 U.S.C. 3028(b)(4)(B)).

(2) The State agency may elect to transfer up to 30 percent between Title III, parts B and C, per section 308(b)(5)(A) of the Act (42 U.S.C. 3028(b)(5)(A)); and

(i) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 30 percent limitation between parts B and C, per section 316(b)(4) of the Act (42 U.S.C. 3030c–3(b)(4));

(D) Percentages subject to transfer are calculated based on the total original Title III award allotted;

(E) Transfer limitations apply to the State agency in aggregate;

(F) State agencies, in consultation with area agencies, shall:

(1) Ensure the process used by the State agencies in transferring funds under this section (including requirements relating to the authority and timing of such transfers) is simplified and clarified to reduce administrative barriers; and

(2) With respect to transfers between parts C-1 and C-2, direct limited resources to the greatest nutrition service needs at the community level; and

(G) State agencies do not have to apply equal limitations on transfers to each area agency on aging.

(iv) *State, Territory, and area plan administration.* State and Territory plan administration maximum allocation requirements must align with the approved intrastate funding formula or funds allocation plan as set forth in §1321.49 or §1321.51, as applicable. In addition:

(A) *State and Territory plan administration maximum allocation amounts.* State and Territory plan administration maximum allocation amounts may be taken from any part of the overall allotment to a State agency under Title III of the Act. Maximum allocation amounts are determined by the State agency's status as set forth in this paragraph (c)(2)(iv)(A) and paragraph (c)(2)(iv)(B) of this section:

(1) A State agency which serves a State with multiple planning and service areas may use the greater of \$750,000, per section 308(b)(2)(A) of the Act (42 U.S.C. 3028(b)(2)(A)), or five percent of the total Title III Award.

(2) A State agency which serves a single planning and service area State and is not listed in (3) below may elect to be subject to paragraph (c)(2)(iv)(A)(1) of this section or to the area plan administration limit of ten percent of the overall allotment to a State agency under Title III, as specified in section 308(a)(3) (42 U.S.C. 3028(a)(3)) of the Act.

(3) Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall have available the greater of \$100,000 or five percent of the total final Title III Award, as set forth in section 308(b)(2)(B) (42 U.S.C. 3028(b)(2)(B)) of the Act.

(B) *Area plan administration maximum allocation amounts.* Area plan administration maximum allocation amounts may be allocated to any part of the overall allotment to the State agency under Title III, with the exception of part D, for use by area agencies on aging for activities as set forth in sections 304(d)(1)(A) and 308 of the Act (42 U.S.C. 3024(d)(1)(A) and 3028) and in

§1321.57(b). Single planning and service area States may elect amounts for either State plan administration or area plan administration, as set forth in the Act and paragraph (c)(2)(iv)(A)(2) of this section.

(1) The State agency will determine the maximum amount of funding available for area plan administration from the total Title III allocation after deducting the amount of funding allocated for State plan administration and calculating a maximum of ten percent of this amount;

(2) The State agency may make no more than the amount calculated in paragraph (c)(2)(iv)(B)(1) of this section available to area agencies on aging for distribution in accordance with the intrastate funding formula as set forth in §1321.49; and

(3) Any amounts available to the State agency for State plan administration which the State agency determines are not needed for that purpose may be used to supplement the amount available for area plan administration (42 U.S.C. 3028(a)(2)).

(v) *Minimum adequate proportion.* The State agency will meet expectations for the minimum adequate proportion of funds expended by each area agency on aging and State agency to provide the categories of services of access services, in-home supportive services, and legal assistance, as identified in the approved State plan as set forth in §1321.27(i).

(vi) *Maintenance of effort.* The State agency will meet expectations regarding maintenance of effort, where:

(A) The State agency must expend for both services and administration at least the average amount of State funds reported and certified as expended under the State plan for these activities for the three previous fiscal years for Title III;

(B) The amount certified must at least meet minimum match requirements from State resources;

(C) Any amount of State resources included in the Title III maintenance of effort certification that exceeds the minimum amount mandated becomes part of the permanent maintenance of effort; and

(D) Excess State match reported on the Federal financial report does not

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become part of the maintenance of effort unless the State agency certifies the excess.

(vii) *The State Long-Term Care Ombudsman Program.* The State agency shall maintain State Long-Term Care Ombudsman Program funding requirements, where:

(A) *Minimum Certification of Expenditures.* The State agency must expend annually under Title III and Title VII of the Act, respectively, for the Ombudsman program no less than the minimum amounts that are required to be expended by section 307(a)(9) of the Act (42 U.S.C. 3027(a)(9));

(B) *Expenditure Information.* The State agency must provide the Ombudsman with verifiable expenditure information for the annual certification of minimum expenditures and for completion of annual reports; and

(C) *Fiscal management and determination of resources.* Fiscal management and determination of resources appropriated or otherwise available for the operation of the Office are in compliance as set forth at §1324.13(f) of this chapter.

(viii) *Rural minimum expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where:

(A) The State agency shall establish a process and control for determining the definition of “rural areas” within their State;

(B) For each fiscal year, the State agency must spend on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services, as required by the Act; and

(C) The State agency must project the cost of providing such services for each fiscal year (including the cost of providing access to such services) and must specify a plan for meeting the needs for such services for each fiscal year.

(ix) *Reallotment.* The State agency shall maintain requirements for reallotment of funds, where:

(A) The State agency must annually review and notify the Assistant Secretary for Aging prior to the end of the fiscal year in which grant funds were awarded if there is funding that will not be expended within the grant pe-

riod for Title III or VII that the State agency will release to the Assistant Secretary for Aging.

(B) The State agency must annually review and notify the Assistant Secretary for Aging of the amount of any released Title III or VII funding from other State agencies that the State agency requests to receive and expend within the grant period from the Assistant Secretary for Aging.

(C) The State agency must use its intrastate funding formula or funds distribution plan, as set forth in §1321.49 or §1321.51, to distribute any Title III funds that the Assistant Secretary for Aging reallots pursuant to the State agency’s notification under paragraph (c)(2)(ix)(B) of this section.

(x) *Voluntary contributions.* Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act, consistent with section 315(b) (42 U.S.C. 3030c–2(b)). Policies and procedures related to voluntary contributions shall address these requirements:

(A) Suggested contribution levels. The suggested contribution levels shall be based on the actual cost of services;

(B) Individuals encouraged to contribute. Voluntary contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty level. Assets, savings, or other property owned by an older individual or family caregiver may not be considered when seeking voluntary contributions from any older individual or family caregiver;

(C) Solicitation. The method of solicitation must be noncoercive, and the solicitation:

(1) Must meet all the requirements of this provision; and

(2) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution.

(D) Provisions to all service recipients. All recipients of services shall be provided:

(1) An opportunity to voluntarily contribute to the cost of the service;

(2) Clear information, including information in alternative formats and in languages other than English in compliance with Federal civil rights

laws, explaining there is no obligation to contribute, and the contribution is voluntary;

(3) Protection of privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a voluntary contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all contributions are established; and

(H) Collection of program income. Amounts collected are considered program income and are subject to the requirements in 2 CFR 200.307 and in §1321.9(c)(2)(xii).

(xi) *Cost sharing.* A State agency is permitted under section 315(a) of the Act (42 U.S.C. 3030c-2(a)), to implement cost sharing for services funded by the Act by recipients of the services, except as provided for in paragraph (c)(2)(xi)(D) of this section. If the State agency allows for cost sharing, the State agency shall address these requirements:

(A) *Policies and procedures.* The State agency shall develop policies and procedures to be implemented statewide, including how an area agency on aging may request and receive a waiver of cost sharing policies, if the area agency on aging adequately demonstrates:

(1) A significant proportion of persons receiving services under the Act have incomes below the threshold established in State agency policies and procedures; or

(2) That cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(B) *Sliding contribution scale.* The State agency shall establish a sliding contribution scale and a description of the criteria to participate in cost sharing to be implemented statewide, which shall:

(1) Meet all the requirements of this provision;

(2) Be based solely on individual income and the cost of delivering services;

(3) Be communicated including in written materials and in alternative formats upon request;

(4) Explain there is no obligation to contribute, and the contribution is voluntary;

(5) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(6) Protect the privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(C) Individuals eligible to cost share. Individuals shall be determined eligible to cost share based solely on a confidential declaration of income and with no requirement for verification;

(D) Prohibitions on cost sharing. Cost sharing is prohibited as follows:

(1) By a low-income older individual if the income of such individual is at or below the Federal poverty level;

(2) If State agency policies and procedures specify other low-income individuals within the State excluded from cost sharing;

(3) For the following services:

(i) Information and assistance, outreach, benefits counseling, or case management services;

(ii) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;

(iii) Congregate and home-delivered meals; and

(iv) Any services delivered through Tribal organizations.

(E) Prohibition on means testing. Means testing, as defined in §1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a cost sharing contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all cost sharing contributions are established; and

(H) Collection of program income. All cost sharing contributions collected are considered program income and are subject to the requirements of 2 CFR

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200.307, 45 CFR 75.307, and in § 1321.9(c)(2)(xii).

(xii) *Use of program income.* Program income is subject to the requirements in 2 CFR 200.307 and 45 CFR 75.307 and as follows:

(A) Voluntary contributions and cost sharing payments are considered program income;

(B) Program income collected must be used to expand a service funded under the Title III grant award pursuant to which the income was originally collected;

(C) The State agency must use the addition alternative as set forth in 2 CFR 200.307(e)(2) and 45 CFR 75.307(e)(2) when reporting program income, and prior approval of the addition alternative from the Assistant Secretary for Aging is not required;

(D) Program income must be expended or disbursed prior to requesting additional Federal funds; and

(E) Program income may not be used to match grant awards funded by the Act without prior approval.

(xiii) *Private pay programs.* The State agency shall maintain requirements for private pay programs, where:

(A) State agencies, area agencies on aging, and service providers may provide private pay programs, subject to State and/or area agency policies and procedures;

(B) The State agency requires area agencies and service providers under the Act that establish private pay programs to develop policies and procedures to:

(1) Promote equity, fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements;

(ii) Meeting financial accountability requirements;

(iii) Prohibiting use of funds for direct services under Title III to support provision of service via private pay programs, except as a part of routine information and assistance or case management referrals; and

(2) Require that persons who receive information about private pay programs and who are eligible for services provided with Title III funds in the planning and service area be made aware of Title III-funded and any simi-

lar voluntary contributions-based service options, even if there is a waiting list for those services, on an initial and periodic basis to allow individuals to determine whether they will select voluntary contributions-based services or private pay programs.

(xiv) *Contracts and commercial relationships.* The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

(1) Contracts with health care payers;

(2) Private pay programs; or

(3) Other arrangements with entities or individuals that increase the availability of home-and community-based services and supports.

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(1) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

(i) Meeting conflict of interest requirements; and

(ii) Meeting financial accountability requirements.

(2) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

(i) All requirements for direct services provision are maintained, as set forth in this part and the Act, or

(ii) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and all other applicable Federal requirements.

(C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.

(xv) *Buildings, alterations or renovations, maintenance, and equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, including acquisition and replacement of equipment, may be an allowable use of funds, and the following apply:

(A) Costs are only allowable to the extent not payable by third parties through rental or other agreements;

(B) Costs must be allocated proportionally to the benefiting grant program;

(C) Construction and acquisition activities are only allowable for multipurpose senior centers. In addition to complying with the requirements of the Act, as set forth in section 312 (42 U.S.C. 3030b), as well as with all other applicable Federal laws, the grantee or subrecipient as applicable must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction, as applicable, has been funded with an award under Title III of the Act, that the requirements set forth in section 312 of the Act (42 U.S.C. 3030b) apply to the property, and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging;

(D) Altering and renovating activities are allowable for facilities providing direct services with funds provided as set forth in §§1321.85, 1321.87, 1321.89, and 1321.91 subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75;

(E) Altering and renovating activities are allowable for facilities used to conduct area plan administration activities with funds provided as set forth in paragraph (c)(2)(iv)(B) of this section, subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75; and

(F) Prior approval by the Assistant Secretary for Aging does not apply.

(xvi) *Supplement, not supplant.* Funds awarded under the Act for services provided under sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c-2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s-2), and 705(a)(4) (42 U.S.C. 3058d(a)(4)), must be used to supplement, not supplant existing Federal, State, and local funds expended to support those activities.

(xvii) *Monitoring of State plan assurances.* Monitoring for compliance for assurances identified in the approved State plan as set forth in §1321.27.

(xviii) *Advance funding.* If the State agency permits the advance of funding to meet immediate cash needs of area agencies on aging and service providers, the State agency shall have policies and procedures which comply with all applicable Federal requirements, including timeframes and amount limitations that may apply.

(xix) *Fixed amount subawards.* Fixed amount subawards up to the simplified acquisition threshold are allowed.

(3) The State plan process, including compliance with requirements as set forth in §§1321.27 and 1321.29.

(4) In States with multiple planning and service areas, the area plan process, including compliance with requirements as set forth in §1321.65.

#### § 1321.11 Advocacy responsibilities.

(a) The State agency shall:

(1) Review, monitor, evaluate, and comment on Federal, State, and local plans, budgets, regulations, programs, laws, levies, hearings, policies, and actions which affect or may affect older individuals or family caregivers, and recommend any changes in these which the State agency considers to be aligned with the interests identified in the Act;

(2) Provide technical assistance and training to agencies, organizations, associations, or individuals representing older individuals and family caregivers; and

(3) Review and comment on applications to State and Federal agencies for assistance relating to meeting the needs of older individuals and family caregivers.

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(b) No requirement in this section shall be deemed to supersede a prohibition contained in a Federal appropriation on the use of Federal funds to lobby.

### **§ 1321.13 Designation of and designation changes to planning and service areas.**

(a) The State agency is responsible for designating distinct planning and service areas within the State.

(b) No State agency may designate the entire State as a single planning and service area, except for States designated as such on or before October 1, 1980.

(c) State agencies must have policies and procedures regarding designation of and changes to planning and service areas in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency. Such policies and procedures must address the following:

(1) The application process to change a planning and service area, if initiated outside of the State agency;

(2) How notice to interested parties will be provided;

(3) How need for the action will be documented;

(4) Provisions for conducting a public hearing;

(5) Provisions for involving area agencies on aging, service providers, and older individuals in the action or proceeding, such as offering other opportunities for feedback from interested parties;

(6) The appeals process for affected parties; and

(7) Timeframes that apply to each of the items under this paragraph (c).

(d) State agencies that seek to change one or more planning and service area designations must consider the following:

(1) The geographical distribution of older individuals in the State;

(2) The incidence of the need for services under the Act;

(3) The distribution of older individuals who have greatest economic need and greatest social need (with particular attention to low-income older individuals, including low-income minority older individuals, older individ-

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uals with limited English proficiency, and older individuals residing in rural areas) residing in such areas;

(4) The distribution of older individuals who are Native Americans residing in such areas;

(5) The distribution of resources available to provide such services under the Act;

(6) The boundaries of existing areas within the State which were drawn for the planning or administration of services under the Act;

(7) The location of units of general purpose local government, as defined in section 302(4) of the Act (2 U.S.C. 3022(4)), within the State; and

(8) Any other relevant factors.

(e) When the State agency issues a decision to change planning and service areas, it shall provide an explanation of its consideration of the factors in paragraph (d) of this section. Such explanations must be included in the State plan amendment submitted as set forth in § 1321.31(b) or State plan submitted as set forth in § 1321.33.

### **§ 1321.15 Interstate planning and service area.**

(a) An interstate planning and service area is an agreement between the State agencies that have responsibility for administering the programs within the interstate area, in which the agreement increases the allotment of the State agency or agencies with lead responsibility and decreases the allotment of the State agency or agencies without the lead responsibility. The Governor of any State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Assistant Secretary for Aging to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Assistant Secretary for Aging approves such an application, the Assistant Secretary for Aging shall adjust the State agency allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate

planning and service area not within the State.

(b) Before requesting permission of the Assistant Secretary for Aging to designate an interstate planning and service area, the Governor of each State shall execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State agency, governing the administration of the interstate planning and service area.

(c) The lead State agency shall request permission of the Assistant Secretary for Aging to designate an interstate planning and service area by submitting the request, together with a copy of the agreement as part of its State plan or as an amendment to its State plan.

(d) Prior to the Assistant Secretary for Aging's approval for State agencies to designate an interstate planning and service area, the Assistant Secretary for Aging shall determine that all applicable requirements and procedures in §§ 1321.27 and 1321.29 are met.

(e) If the request is approved, the Assistant Secretary for Aging, based on the agreement between the State agencies, will increase the allocation(s) of the State agency or agencies with lead responsibility for administering the programs within the interstate area and will reduce the allocation(s) of the State agency or agencies without lead responsibility by one of these methods:

(1) Reallocation of funds in proportion to the number of individuals age 60 and over for funding provided under Title III, parts B, C, and D and in proportion to the number of individuals age 70 and over for funding provided under Title III, part E for that portion of the interstate planning and service area located in the State without lead responsibility; or

(2) Reallocation of funds based on the intrastate funding formula of the State agency or agencies without lead responsibility.

(f) Each State agency that is a party to an interstate planning and service area agreement shall review and confirm their agreement as a part of their

State plan on aging as set forth in § 1321.27.

**§ 1321.17 Appeal to the Departmental Appeals Board on planning and service area designation.**

(a) This section sets forth the procedures for providing hearings to applicants for designation as a planning and service area under § 1321.13, whose application is denied by the State agency or § 1321.15, whose application is denied by the Assistant Secretary for Aging.

(b) Any applicant for designation as a planning and service area whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Departmental Appeals Board (DAB) in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency, if appealing subject to § 1321.13, or the Assistant Secretary for Aging, if appealing subject to § 1321.15, and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

**§ 1321.19 Designation of and designation changes to area agencies.**

(a) The State agency is responsible for designating an area agency on aging to serve each planning and service area. Only one area agency on aging shall be designated to serve each planning and service area. An area agency on aging may serve more than one planning and service area. An area agency that serves more than one planning and service area must maintain separate funding, planning, and advocacy responsibilities for each planning and service area. State agencies shall have policies and procedures regarding designation of area agencies on aging and changes to an agency's designation as an area agency on aging in accordance with the Act. Such policies and procedures should provide due process to affected parties, accountability, and transparency and must address the following:

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(1) Provisions for designating an area agency on aging, including:

- (i) The application process;
- (ii) How notice to interested parties will be provided;
- (iii) How views offered by the unit(s) of general purpose local government in such area will be obtained and considered;
- (iv) How the State agency will provide the right of first refusal to a unit of general purpose local government if:
  - (A) Such unit demonstrates ability to meet the requirements as set forth by the State agency, in accordance with the Act; and
  - (B) The boundaries of such a unit and the boundaries of the area are reasonably contiguous.
- (v) How the State agency shall then give preference to an established office on aging if the unit of general purpose local government chooses not to exercise the right of first refusal;
- (vi) How the State agency will assume area agency on aging responsibilities in the event there are no successful applicants in the State agency's application process; and
- (vii) The appeals process for affected parties.

(2) Provisions for an area agency on aging that voluntarily relinquishes their area agency on aging designation, including that the State agency's written acceptance of the voluntary relinquishment of area agency on aging designation will be considered as the State agency's withdrawal of area agency on aging designation, and requirements under § 1321.21(b) will apply;

(3) Provisions for when the State agency takes action to withdraw an area agency on aging's designation, in accordance with § 1321.21;

(4) Provisions for when the State agency administers area agency on aging programs as provided for in section 306(f) (42 U.S.C. 3026(f)), where the Assistant Secretary for Aging may extend the 90-day period if the State agency requests an extension and demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension; and

(5) If a State agency previously designated the entire State as a single planning and service area, provisions for when the State agency designates

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one or more additional planning and service areas.

(b) For any of the actions listed in paragraph (a) of this section, the State agency must submit a State plan amendment as set forth in § 1321.31(b) or State plan as set forth in § 1321.33;

(c) An area agency may be any of the following types of agencies:

(1) An established office on aging which is operating within a planning and service area;

(2) Any office or agency of a unit of general purpose local government, which is designated to function for the purpose of serving as an area agency on aging by the chief elected official of such unit;

(3) Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) Any non-State, local public, or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which is under the supervision or direction for this purpose of the designated State agency, and which demonstrates the ability and willingness to engage in the planning or provision of a broad range of services under the Act within such planning and service area.

(d) A State agency may not designate any regional or local office of the State as an area agency.

### § 1321.21 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act (42 U.S.C. 3025), the State agency shall withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that:

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved;

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act, regulations and other guidance as set forth by the Assistant Secretary for Aging, terms and conditions of Federal grant awards

under the Act, or policies and procedures established and published by the State agency on aging;

(4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act;

(5) The State agency changes one or more planning and service area designations; or

(6) The area agency voluntarily requests the State agency withdraw its designation.

(b) If a State agency withdraws an area agency's designation under this section it shall:

(1) Provide a plan for the continuity of area agency functions and services in the affected planning and service area;

(2) Submit a State plan amendment as set forth in §1321.31(b) or State plan as set forth in §1321.33; and

(3) Designate a new area agency in the planning and service area in a timely manner.

(c) If necessary to ensure continuity of services in a planning and service area, the State agency may, for a period of up to 180 days after its final decision to withdraw designation of an area agency:

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and service area.

(d) The Assistant Secretary for Aging may extend the 180-day period if a State agency:

(1) Notifies the Assistant Secretary for Aging in writing of its action under this section;

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Assistant Secretary for Aging a need for the extension. Need for the extension may include the State agency's reasonable but unsuccessful attempts to procure an applicant to serve as the area agency.

**§1321.23 Appeal to the Departmental Appeals Board on area agency on aging withdrawal of designation.**

(a) This section sets forth hearing procedures afforded to affected parties if the State agency initiates an action or proceeding to withdraw designation of an area agency on aging.

(b) Any area agency on aging that has appealed a State agency's decision to withdraw area agency on aging designation, and that has been provided a hearing and a written decision, may appeal the decision to the Departmental Appeals Board in writing following receipt of the State agency's written decision, in accordance with the procedures set forth in 45 CFR part 16. The applicant must, at the time of filing an appeal with the DAB, mail a copy of the appeal to the State agency and include a certificate of service with its initial filing. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

**§1321.25 Duration, format, and effective date of the State plan.**

(a) A State agency will follow the guidance issued by the Assistant Secretary for Aging regarding duration and formatting of the State plan. Unless otherwise indicated, a State agency may determine the format, how to collect information for the plan, and whether the plan will remain in effect for two, three, or four years.

(b) An approved State plan or amendment identified in §1321.31(a) becomes effective on the date designated by the Assistant Secretary for Aging.

(c) A State agency may not make expenditures under a new plan or amendment requiring approval, as identified in §1321.27 or §1321.31(a), until it is approved.

**§1321.27 Content of State plan.**

To receive a grant under this part, a State agency shall have an approved State plan as prescribed in section 307 of the Act (42 U.S.C. 3027). In addition to meeting the requirements of section 307, a State plan shall include:

(a) Identification of the sole State agency that the State has designated to develop and administer the plan.

(b) Statewide program objectives to implement the requirements under Title III and Title VII of the Act and any objectives established by the Assistant Secretary for Aging.

(c) Evidence that the State plan is informed by and based on area plans, except for single planning and service area States.

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(d) A description of how greatest economic need and greatest social need are determined and addressed by specifying:

(1) How the State agency defines greatest economic need and greatest social need, which shall include the populations as set forth in the §1321.3 definitions of greatest economic need and greatest social need; and

(2) The methods the State agency will use to target services to the populations identified in paragraph (d)(1) of this section, including how funds under the Act may be distributed to serve prioritized populations in accordance with requirements as set forth in §1321.49 or §1321.51, as appropriate.

(e) An intrastate funding formula or funds distribution plan indicating the proposed use of all Title III funds administered by a State agency, and the distribution of Title III funds to each planning and service area, in accordance with §1321.49 or §1321.51, as appropriate.

(f) Identification of the geographic boundaries of each planning and service area and of area agencies on aging designated for each planning and service area, if applicable.

(g) Demonstration that the determination of greatest economic need and greatest social need specific to Native American persons is identified pursuant to communication among the State agency and Tribes, Tribal organizations, and Native communities, and that the services provided under this part will be coordinated, where applicable, with the services provided under Title VI of the Act and that the State agency shall require area agencies to provide outreach where there are older Native Americans in any planning and service area, including those living outside of reservations and other Tribal lands.

(h) Certification that any program development and coordination activities shall meet the following requirements:

(1) The State agency shall not fund program development and coordination activities as a cost of supportive services under area plans until it has first spent 10 percent of the total of its combined allotments under Title III on the administration of area plans;

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(2) Program development and coordination activities must only be expended as a cost of State plan administration, area plan administration, and/or Title III, part B supportive services;

(3) State agencies and area agencies on aging shall, consistent with the area plan and budgeting cycles, submit the details of proposals to pay for program development and coordination as a cost of Title III, part B supportive services to the general public for review and comment; and

(4) Expenditure by the State agency and area agency on program development and coordination activities are intended to have a direct and positive impact on the enhancement of services for older individuals and family caregivers in the planning and service area.

(i) Specification of the minimum proportion of funds that will be expended by each area agency on aging and the State agency to provide each of the following categories of services:

(1) Access to services;

(2) In-home supportive services; and

(3) Legal assistance, as set forth in §1321.93.

(j) If the State agency allows for Title III, part C-1 funds to be used as set forth in §1321.87(a)(1)(i):

(1) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor the impact on congregate meals program participation;

(2) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(3) Description of the eligibility criteria for service provision;

(4) Evidence of consultation with area agencies on aging, nutrition and other direct services providers, other interested parties, and the general public regarding the provision of such meals; and

(5) Description of how provision of such meals will be coordinated with area agencies on aging, nutrition and other direct services providers, and other interested parties.

(k) How the State agency will use funds for prevention of elder abuse, neglect, and exploitation as set forth in 45 CFR part 1324, subpart B.

(l) How the State agency will meet responsibilities for the Legal Assistance Developer, as set forth in 45 CFR part 1324, subpart C.

(m) Description of how the State agency will conduct monitoring that the assurances to which they attest are being met.

#### **§ 1321.29 Public participation.**

The State agency shall:

(a) Have mechanisms and varied methods to obtain the views of older individuals, family caregivers, service providers, and the public on a periodic basis, with a focus on those in greatest economic need and greatest social need;

(b) Consider those views in developing and administering the State plan and policies and procedures regarding services provided under the plan;

(c) Establish and comply with a reasonable minimum time period (at least 30 calendar days) for public review and comment on new State plans as set forth in § 1321.27 and State plan amendments requiring approval of the Assistant Secretary for Aging as set forth in § 1321.31(a). State agencies may request a waiver of the minimum time period from the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary;

(d) Ensure the documents noted in paragraph (c) of this section and final State plans and amendments are available to the public for review, as well as available in alternative formats and other languages if requested.

#### **§ 1321.31 Amendments to the State plan.**

(a) Subject to prior approval by the Assistant Secretary for Aging, a State agency shall amend the State plan whenever necessary to reflect:

(1) New or revised statutes or regulations as determined by the Assistant Secretary for Aging;

(2) An addition, deletion, or change to a State agency's goal, assurance, or information requirement statement;

(3) A change in the State agency's intrastate funding formula or funds

distribution plan for Title III funds, as set forth in § 1321.49 or § 1321.51;

(4) A request to waive State plan requirements as set forth in section 316 of the Act (42 U.S.C. 3030c-3), or as required by guidance as set forth by the Assistant Secretary for Aging; or

(5) Other changes as required by guidance as set forth by the Assistant Secretary for Aging.

(b) A State agency shall amend the State plan and notify the Assistant Secretary for Aging of an amendment not requiring prior approval whenever necessary and within 30 days of the action(s) listed in paragraphs (b)(1) through (6) of this section:

(1) A significant change in a State law, organization, policy, or State agency operation;

(2) A change in the name or organizational placement of the State agency;

(3) Distribution of State plan administration funds for demonstration projects;

(4) A change in planning and service area designation, as set forth in § 1321.13;

(5) A change in area agency on aging designation, as set forth in § 1321.19; or

(6) Exercising of major disaster declaration flexibilities, as set forth in § 1321.101.

(c) Information required by this section shall be submitted according to guidelines prescribed by the Assistant Secretary for Aging.

#### **§ 1321.33 Submission of the State plan or plan amendment to the Assistant Secretary for Aging for approval.**

(a) Each State plan, or plan amendment which requires approval of the Assistant Secretary for Aging as set forth at § 1321.31(a), shall be signed by the Governor, or the Governor's designee, and submitted to the Assistant Secretary for Aging to be considered for approval at least 90 calendar days before the proposed effective date of the plan or plan amendment according to guidance as set forth by the Assistant Secretary for Aging, except in the case of a waiver provided by the Assistant Secretary for Aging. Each State plan amendment which does not require the prior approval of the Assistant Secretary for Aging shall be submitted as set forth at § 1321.31(b).

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(b) In advance of the submission to the Assistant Secretary for Aging to be considered for approval, the State agency shall submit a draft of the plan or amendment to the appropriate ACL Regional Office at least 120 calendar days before the proposed effective date of the plan or plan amendment, except in the case of a waiver request or as otherwise provided in guidance as set forth by the Assistant Secretary for Aging. The State agency shall work with the ACL Regional Office in reviewing the plan or plan amendment for compliance.

### **§ 1321.35 Notification of State plan or State plan amendment approval or disapproval for changes requiring Assistant Secretary for Aging approval.**

(a) The Assistant Secretary for Aging shall approve a State plan or State plan amendment by notifying the Governor or the Governor's designee in writing.

(b) When the Assistant Secretary for Aging proposes to disapprove a State plan or amendment, the Assistant Secretary for Aging shall notify the Governor in writing, giving the reasons for the proposed disapproval, and inform the State agency that it may request a hearing on the proposed disapproval following the procedures described in guidance issued by the Assistant Secretary for Aging.

### **§ 1321.37 Notification of State plan amendment receipt for changes not requiring Assistant Secretary for Aging approval.**

The State agency shall submit an amendment not requiring Assistant Secretary for Aging approval as set forth at § 1321.31(b) to the appropriate ACL Regional Office. The ACL Regional Office shall review the amendment to confirm the contents do not require approval of the Assistant Secretary for Aging and will acknowledge receipt of the State plan amendment by notifying the head of the State agency in writing.

### **§ 1321.39 Appeal to the Departmental Appeals Board regarding State plan on aging.**

If the Assistant Secretary for Aging intends to disapprove a State plan or

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State plan amendment, the Assistant Secretary for Aging shall first afford the State agency notice and an opportunity for a hearing. Administrative reviews of State plan disapprovals, as provided for in sections 307(c) and 307(d) of the Act (42 U.S.C. 3027(c)–(d)) are performed by the Department Appeals Board in accordance with the procedures set forth in 45 CFR part 16. The DAB may refer an appeal to its Alternative Dispute Resolution Division for mediation prior to making a decision.

### **§ 1321.41 When a disapproval decision is effective.**

(a) The Assistant Secretary for Aging shall specify the effective date for reduction and withholding of the State agency's grant upon a disapproval decision from the Departmental Appeals Board. This effective date may not be earlier than the date of the Departmental Appeals Board's decision or later than the first day of the next calendar quarter.

(b) A disapproval decision issued by the DAB represents the final determination of the Assistant Secretary for Aging and shall remain in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Assistant Secretary for Aging may modify or set aside the decision before the record of the proceedings under this subpart is filed in court.

### **§ 1321.43 How the State agency may appeal the Departmental Appeals Board's decision.**

A State agency may appeal the final decision of the Departmental Appeals Board disapproving the State plan or plan amendment, finding of noncompliance, or finding that a State agency does not meet the requirements of this part to the U.S. Court of Appeals for the circuit in which the State is located. The State agency shall file the appeal within 30 days of the Departmental Appeals Board's final decision.

### **§ 1321.45 How the Assistant Secretary for Aging may reallocate the State agency's withheld payments.**

The Assistant Secretary for Aging may disburse funds withheld from the

State agency directly to any public or nonprofit private organization or agency, or political subdivision of the State that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part, and which contains an agreement to meet the non-Federal share requirements.

**§ 1321.47 Conflicts of interest policies and procedures for State agencies.**

(a) State agencies must have policies and procedures regarding conflicts of interest, in accordance with the Act and all other applicable Federal requirements. These policies and procedures must safeguard against conflicts of interest on the part of the State agency, employees, and agents of the State who have responsibilities relating to Title III programs, including area agencies on aging, governing boards, advisory councils, staff, and volunteers. Conflicts of interest policies and procedures must establish mechanisms to identify, avoid, remove, and remedy conflicts of interest in a Title III program at organizational and individual levels, including:

(1) Ensuring that State agency employees and agents administering Title III programs do not have a financial interest in a Title III program;

(2) Removing and remedying actual, perceived, or potential conflicts that arise due to an employee or agent's financial interest in a Title III program;

(3) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in a Title III program;

(4) Ensuring that no individual, or member of the immediate family of an individual, involved in administration or provision of a Title III program has a conflict of interest;

(5) Requiring that other agencies that operate a Title III program have policies in place to prohibit the employment or appointment of Title III program decision-makers, staff, or volunteers with a conflict that cannot be adequately removed or remedied;

(6) Requiring that a Title III program takes reasonable steps to suspend or remove Title III program responsibilities of an individual who has a conflict

of interest, or who has an immediate family member with a conflict of interest, which cannot be adequately removed or remedied;

(7) Ensuring that no organization which provides a Title III service is subject to a conflict of interest;

(8) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or sub-recipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value;

(9) Establishing the actions the State agency will require a Title III program to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and

(10) Documenting conflict of interest mitigation strategies, as necessary and appropriate, when a State agency or Title III program operates an Adult Protective Services or guardianship program.

(b) Individual conflicts include:

(1) An employee, or immediate member of an employee's family, maintaining ownership, employment, consultancy, or fiduciary interest in a Title III program organization or awardee when that employee or immediate family member is in a position to derive personal benefit from actions or decisions made in their official capacity;

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

(3) One or more conflicts between competing duties; and

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

(c) Organizational conflicts include:

(1) One or more conflicts between competing duties, programs, and/or services; and

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

**§ 1321.49 Intrastate funding formula.**

(a) The State agency of a State with multiple planning and service areas, as part of its State plan, in accordance with guidelines issued by the Assistant Secretary for Aging, using the best available data, and after consultation with all area agencies on aging in the State, shall develop and publish for review and comment by older individuals, family caregivers, other appropriate agencies and organizations, and the general public, an intrastate funding formula for the allocation of funds specific to each planning and service area to area agencies on aging under Title III for supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver services prior to taking the steps as set forth in § 1321.33. The intrastate funding formula shall be made available for public review and comment for a reasonable minimum time period (at least 30 calendar days, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary). The formula shall reflect the proportion among the planning and service areas of persons age 60 and over in greatest economic need and greatest social need with particular attention to low-income minority older individuals. A separate formula may be provided for the evidence-based disease prevention and health promotion allocation to target areas that are medically underserved and in which there are large numbers of older individuals who have the greatest economic need and greatest social need for such services. The State agency shall review, update, and submit for approval to the Assistant Secretary for Aging its formula as needed.

(b) The publication for review and comment required by the preceding paragraph shall include:

(1) A descriptive statement of the formula's assumptions and goals, and the application of the definitions of greatest economic need and greatest social need, including addressing the populations identified pursuant to § 1321.27(d)(1), which includes the following components:

(i) A statement that discloses if and how, prior to distribution under the

intrastate funding formula to the area agencies on aging, funds are deducted from Title III funds for State plan administration, disaster set-aside funds as set forth in § 1321.99, and/or Long-Term Care Ombudsman Program allocations;

(ii) A statement that describes if a separate formula will be used for evidence-based disease prevention and health promotion allocation; and

(iii) A statement of how the State agency's Nutrition Services Incentive Program award will be distributed.

(2) A numerical mathematical statement of the actual funding formula to be used for all supportive, nutrition, evidence-based disease prevention and health promotion, and family caregiver allocations of Title III funds, including the separate numerical mathematical statement that may be provided for the evidence-based disease prevention and health promotion allocation, which includes:

(i) A descriptive statement of each factor and the weight or percentage used for each factor; and

(ii) Definitions of the terms used in the numerical mathematical statement.

(3) A listing of the population, economic, and social data to be used for each planning and service area in the State;

(4) A demonstration of the allocation of funds, pursuant to the funding formula, to each planning and service area in the State by part of Title III; and

(5) The source of the best available data used to allocate funding through the intrastate funding formula, which may include:

(i) The most current U.S. Decennial Census results;

(ii) The most current and reliable American Community Survey results; and/or

(iii) Other high-quality data available to the State agency.

(c) In meeting the requirement in paragraph (a) of this section, the intrastate funding formula may not allow for:

(1) The State agency to hold funds at the State level except as outlined in paragraph (b)(1)(i) of this section;

(2) Exceeding the State plan and area plan administration caps set in the Act, as set forth at §1321.9(c)(2)(iv);

(3) Use of Title III, part D funds for area plan administration;

(4) A State agency to directly provide Title III funds to any entity other than a designated area agency on aging, with the exception of State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99; or

(5) Any other use in conflict with the Act.

(d) In meeting the requirement in paragraph (b)(1)(iii) of this section, the following apply:

(1) Cash must be promptly and equitably disbursed to recipients of grants or contracts for nutrition projects under the Act;

(2) The statement of distribution of grant funds and procedures for determining any commodities election amount must be followed;

(3) State agencies have the option to receive grant as cash and/or agricultural commodities; and

(4) State agencies may consult with the area agencies on aging to determine the amount of the commodities election.

(e) In meeting the requirements in this section, the following apply:

(1) Title VII funds are not required to be subject to the intrastate funding formula;

(2) Any funds allocated for the Long-Term Care Ombudsman Program under Title III, part B are not required to be subject to the intrastate funding formula;

(3) The intrastate funding formula may provide for a separate allocation of funds received under Title III, part D for preventive health services. In the award of such funds to selected planning and service areas, the State agency shall give priority to areas of the State:

(i) Which are medically underserved; and

(ii) In which there are large numbers of individuals who have the greatest economic need and greatest social need for such services, including the populations the State agency identifies pursuant to §1321.27(d)(1).

(4) The State agency may determine the amount of funds available for area plan administration prior to deducting Title III, part B Ombudsman program funds and disaster set-aside funds as described in §1321.99;

(5) After deducting any State plan administration funds, Title III, part B Ombudsman program funds, and disaster set-aside funds as described in §1321.99, the State agency must allocate all other Title III funding to area agencies on aging designated to serve each planning and service area;

(6) State agencies may reallocate funding within the State when an area agency on aging voluntarily or otherwise returns funds, subject to the State agency's policies and procedures which must include the following:

(i) If an area agency voluntarily returns funds, the area agency on aging must provide evidence that its governing board or chief elected official approves the return of funds;

(ii) Funds must be made available to all area agencies on aging who request funds available for reallocation;

(iii) The intrastate funding formula shall be proportionally adjusted based on area agencies on aging that request redistributed allocations; and

(iv) Title III funds subject to reallocation may only be reallocated to area agencies on aging via the proportionally adjusted intrastate funding formula described in paragraph (a) of this section.

(f) The State agency shall submit its proposed intrastate funding formula to the Assistant Secretary for Aging for prior approval as part of a State plan or State plan amendment as set forth in §1321.33.

#### **§ 1321.51 Single planning and service area States.**

(a) Unless otherwise specified, the State agency in single planning and service area States must meet the requirements in the Act and subpart C of this part, including maintaining an advisory council as set forth in §1321.63.

(b) As part of their State plan submission, single planning and service area States must provide a funds distribution plan which includes:

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(1) A descriptive statement as to how the State agency determines the geographical distribution of the Title III and Nutrition Services Incentive Program funding;

(2) How the State agency targets the funding to reach individuals with greatest economic need and greatest social need, with particular attention to low-income minority older individuals;

(3) At the option of the State agency, a numerical/mathematical statement as a part of their funds distribution plan; and

(4) Justification if the State agency determines it meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) of the Act (42 U.S.C. 3027(a)(8)(A)), no supportive services, except as set forth in paragraph (b)(4)(i)(B) of this section, nutrition services, disease prevention and health promotion, or family caregiver services will be directly provided by the State agency, unless, in the judgment of the State agency:

(A) Provision of such services by the State agency is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such State agency's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such State agency.

(ii) The State agency may directly provide case management, information and assistance services, and outreach.

(iii) Approval of the State agency to provide direct services may only be granted for a maximum of the State plan period. For each time that approval is granted to a State agency to provide direct services, the State agency must demonstrate the State agency's efforts to identify service providers prior to being granted a subsequent approval.

(c) Single planning and service area States must adhere to use of the funds distribution plan for Title III and Nutrition Services Incentive Program funds within the State. If a single planning and service area State agency revises their Title III funds distribution plan, they may do so by:

(1) Following their policies and procedures to publish the updated funds

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distribution plan for public review and comment for a reasonable minimum time period (30 calendar days or greater, unless a waiver is provided by the Assistant Secretary for Aging during an emergency or when a time sensitive action is otherwise necessary); and

(2) Submitting the revised funds distribution plan for Assistant Secretary for Aging approval prior to implementing the changes as noted at § 1321.33.

**§ 1321.53 State agency Title III and Title VI coordination responsibilities.**

(a) For States where there are Title VI programs, the State agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in § 1322.13(a), must explain how the State's aging network, including area agencies and service providers, will coordinate with Title VI programs to ensure compliance with sections 306(a)(11)(B) and 307(a)(21)(A) of the Act (42 U.S.C. 3026(a)(11)(B) and 3027(a)(21)(A)). State agencies may meet these requirements through a Tribal consultation policy that includes Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the State's aging network, including area agencies on aging and service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III and/or VII;

(2) The communication opportunities the State agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes, including coordinating with area agencies and service providers where applicable;

(4) How Title VI programs may refer individuals who are eligible for Title III and/or VII services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils, as set forth in § 1321.63.

### **Subpart C—Area Agency Responsibilities**

#### **§ 1321.55 Mission of the area agency.**

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

(b) A comprehensive and coordinated community-based system described in of this section shall:

(1) Have a point of contact where anyone may go or contact for help, information, and/or referral on any aging issue;

(2) Provide information on a range of available public and private long-term care services and support options;

(3) Assure that these options are readily accessible to all older individuals and family caregivers, no matter what their income;

(4) Include a commitment of public, private, voluntary, and personal resources committed to supporting the system;

(5) Involve collaborative decision-making among public, private, voluntary, faith-based, civic, and fraternal organizations, including trusted leaders of communities in greatest economic need and greatest social need,

and older individuals and family caregivers in the community;

(6) Offer special help or targeted resources for the most vulnerable older individuals, family caregivers, and those in danger of losing their independence;

(7) Provide effective referral from agency to agency to assure that information and/or assistance is provided, no matter how or where contact is made in the community;

(8) Evidence sufficient flexibility to respond with appropriate individualized assistance, especially for vulnerable older individuals or family caregivers;

(9) Be tailored to the specific nature of the community and the needs of older adults in the community; and

(10) Have a board of directors comprised of leaders in the community, including leaders from groups identified as in greatest economic need and greatest social need, 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.

(c) The resources made available to the area agency on aging under the Act shall be used consistent with the definition of area plan administration as set forth in § 1321.3 to finance those activities necessary to achieve elements of a community-based system set forth in paragraph (b) of this section and consistent with the requirements for provision of direct services as set forth in §§ 1321.85 through 1321.93.

(d) The area agency may not engage in any activity which is inconsistent with its statutory mission prescribed in the Act or policies prescribed by the State agency under § 1321.9.

#### **§ 1321.57 Organization and staffing of the area agency.**

(a) An area agency may be either:

(1) An agency whose single purpose is to administer programs for older individuals and family caregivers; or

(2) A separate organizational unit within a multipurpose agency which functions as the area agency on aging. Where the State agency designates a

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separate organizational unit of a multipurpose agency that has previously been serving as an area agency, the State agency action shall not be subject to section 305(b)(5)(B) of the Act (42 U.S.C. 3025(b)(5)(B)).

(b) The area agency, once designated, is responsible for providing for adequate and qualified staff to facilitate the performance of the functions as set forth in this part. Such functions, except for provision of direct services, are considered to be area plan administration functions.

(c) The designated area agency shall continue to function in that capacity until either:

(1) The State agency withdraws the designation of the area agency as provided in § 1321.21(a)(1) through (5); or

(2) The area agency informs the State agency that it no longer wishes to carry out the responsibilities of an area agency as provided in § 1321.21(a)(6).

## § 1321.59 Area agency policies and procedures.

(a) The area agency on aging shall develop policies and procedures in compliance with State agency policies and procedures, including those required under § 1321.9, governing all aspects of programs operated under this part, including those related to conflict of interest, and be in alignment with the Act and all other applicable Federal requirements. These policies and procedures shall be developed in consultation with other appropriate parties in the planning and service area.

(b) The policies and procedures developed by the area agency shall address the manner in which the area agency will monitor the programmatic and fiscal performance of all programs, direct service providers, and activities initiated under this part for quality and effectiveness. Quality monitoring and measurement results are encouraged to be publicly available in a format that may be understood by older individuals, family caregivers, and their families.

(c) The area agency is responsible for enforcement of these policies and procedures.

(d) The area agency may not delegate to another agency the authority to

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award or administer funds under this part.

## § 1321.61 Advocacy responsibilities of the area agency.

(a) The area agency shall serve as the public advocate for the development or enhancement of comprehensive and coordinated community-based systems of services in each community throughout and specific to each planning and service area.

(b) In carrying out this responsibility, the area agency shall:

(1) Monitor, evaluate, and comment on policies, programs, hearings, levies, and community actions which affect older individuals and family caregivers which the area agency considers to be aligned with the interests identified in the Act;

(2) Solicit comments from the public on the needs of older individuals and family caregivers;

(3) Represent the interests of older individuals and family caregivers 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) Coordinate with public and private organizations, including units of general purpose local government to promote new or expanded benefits and opportunities for older individuals and family caregivers.

(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 individuals and family caregivers with greatest economic need and greatest 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 shall 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 non-profit agencies and organizations contained in OMB Circular A-122.

**§ 1321.63 Area agency advisory council.**

(a) *Functions of council.* The area agency shall establish an advisory council. The council shall carry out advisory functions which further the area agency's mission of developing and coordinating community-based systems of services for all older individuals and family and older relative caregivers specific to each planning and service area. The council shall advise the agency relative to:

- (1) Developing and administering the area plan;
- (2) Ensuring the plan is available to older individuals, family caregivers, service providers, and the general public;
- (3) Conducting public hearings;
- (4) Representing the interests of older individuals and family caregivers; and
- (5) Reviewing and commenting on community policies, programs and actions which affect older individuals and family caregivers with the intent of assuring maximum coordination and responsiveness to older individuals and family caregivers.

(b) *Composition of council.* The council shall include individuals and representatives of community organizations from or serving the planning and service area who will help to enhance the leadership role of the area agency in developing community-based systems of services targeting those in greatest economic need and greatest social need. The advisory council shall be made up of:

- (1) More than 50 percent older individuals, including minority individuals who are participants or who are eligible to participate in programs under this part, with efforts to include individuals identified as in greatest economic need and individuals identified as in greatest social need in § 1321.65(b)(2);

(2) Representatives of older individuals;

(3) Family caregivers, which may include older relative caregivers;

(4) Representatives of health care provider organizations, including providers of veterans' health care (if appropriate);

(5) Representatives of service providers, which may include legal assistance, nutrition, evidence-based disease prevention and health promotion, caregiver, long-term care ombudsman, and other service providers;

(6) Persons with leadership experience in the private and voluntary sectors;

(7) Local elected officials;

(8) The general public; and

(9) As available:

(i) Representatives from Indian Tribes, Pueblos, or Tribal aging programs; and

(ii) Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 to 59 with a disability.

(c) *Review by advisory council.* The area agency shall submit the area plan and amendments for review and comment to the advisory council before it is transmitted to the State agency for approval.

(d) *Conflicts of interest.* The advisory council shall not operate as a board of directors for the area agency. Individuals may not serve on both the advisory council and the board of directors for the same entity.

**§ 1321.65 Submission of an area plan and plan amendments to the State agency for approval.**

(a) The area agency shall submit the area plan on aging and amendments specific to each planning and service area to the State agency for approval following procedures specified by the State agency in the State agency policies prescribed by § 1321.9.

(b) State agency policies and procedures regarding area plan requirements will at a minimum address the following:

(1) Content, duration, and format;

(2) That the area agency shall identify populations within the planning and service area at greatest economic need and greatest social need, which

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shall include the populations as set forth in the §1321.3 definitions of greatest economic need and greatest social need.

(3) Assessment and evaluation of unmet need, such that each area agency shall submit objectively collected, and where possible, statistically valid, data with evaluative conclusions concerning the unmet need for supportive services, nutrition services, evidence-based disease prevention and health promotion services, family caregiver support services, and multipurpose senior centers. The evaluations for each area agency shall consider all services in these categories regardless of the source of funding for the services;

(4) Public participation specifying mechanisms to obtain the periodic views of older individuals, family caregivers, service providers, and the public with a focus on those in greatest economic need and greatest social need, including:

(i) A reasonable minimum time period (at least 30 calendar days, unless a waiver is provided by the State agency during an emergency or when a time sensitive action is otherwise necessary) for public review and comment on area plans and area plan amendments; and

(ii) Ensuring the documents noted in (b)(4)(i) of this section and final area plans and amendments are accessible in a public location, as well as available in print by request.

(5) The services, including a definition of each type of service; the number of individuals to be served; the type and number of units to be provided; and corresponding expenditures proposed to be provided with funds under the Act and related local public sources under the area plan;

(6) Plans for how direct services funds under the Act will be distributed within the planning and service area, in order to address populations identified as in greatest social need and greatest economic need, as identified in §1321.27(d)(1);

(7) Process for determining whether the area agency meets requirements to provide services directly where:

(i) As set forth in section 307(a)(8)(A) of the Act (42 U.S.C. 3027(a)(8)(A)), no supportive services, nutrition services, evidence-based disease prevention and

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health promotion services, or family caregiver support services will be directly provided by an area agency on aging in the State, unless, in the judgment of the State agency:

(A) Provision of such services by the area agency on aging is necessary to assure an adequate supply of such services;

(B) Such services are directly related to such area agency on aging's administrative functions; or

(C) Such services may be provided more economically, and with comparable quality, by such area agency on aging.

(ii) At its discretion, the State agency may waive the conditions set forth in paragraph (b)(7)(i) of this section and allow area agencies on aging to directly provide the supportive services of case management, information and assistance services, and outreach without additional restriction.

(iii) Approval of the area agency to provide direct services shall only be granted for a maximum of the area plan period. For each time approval is granted to an area agency to provide direct services, the area agency must demonstrate the area agency's efforts to identify service providers prior to being granted a subsequent approval.

(8) Minimum adequate proportion requirements, as identified in the approved State plan as set forth in §1321.27;

(9) Requirements for program development and coordination activities as set forth in §1321.27(h), if allowed by the State agency;

(10) If the area agency requests to allow Title III, part C–1 funds to be used as set forth in §1321.87(a)(1)(i) through (iii), it must provide the following information to the State agency:

(i) Evidence, using participation projections based on existing data, that provision of such meals will enhance and not diminish the congregate meals program, and a commitment to monitor impact on congregate meals program participation;

(ii) Description of how provision of such meals will be targeted to reach those populations identified as in greatest economic need and greatest social need;

(iii) Description of the eligibility criteria for service provision;

(iv) Evidence of consultation with nutrition and other direct services providers, other interested parties, and the general public regarding the need for and provision of such meals; and

(v) Description of how provision of such meals will be coordinated with nutrition and other direct services providers and other interested parties.

(11) Initial submission and amendments;

(12) Approval by the State agency; and

(13) Appeals regarding area plans on aging.

(c) Area plans shall incorporate services which address the incidence of hunger, food insecurity and malnutrition; social isolation; and physical and mental health conditions.

(d) Pursuant to section 306(a)(16) of the Act (42 U.S.C. 3026(a)(16)), area plans shall provide, to the extent feasible, for the furnishing of services under this Act, through self-direction.

(e) Area plans on aging shall develop objectives that coordinate with and reflect the State plan goals for services under the Act.

**§ 1321.67 Conflicts of interest policies and procedures for area agencies on aging.**

(a) The area agency must have policies and procedures regarding conflicts of interest in accordance with the Act, guidance as set forth by the Assistant Secretary for Aging, and State agency policies and procedures as set forth at § 1321.47. These policies and procedures must safeguard against conflicts of interest on the part of the area agency, area agency employees, governing board and advisory council members, and awardees who have responsibilities relating to the area agency's grants and contracts. Conflicts of interest policies and procedures must establish mechanisms to avoid both actual and perceived conflicts of interest and to identify, remove, and remedy any existing or potential conflicts of interest at organizational and individual levels, including:

(1) Reviewing service utilization and financial incentives to ensure agency employees, governing board and advisory

council members, grantees, contractors, and other awardees who serve multiple roles, such as assessment and service delivery, are appropriately stewarding Federal resources while fostering services to enhance access to community living;

(2) Ensuring that the area agency on aging employees and agents administering Title III programs do not have a financial interest in Title III programs;

(3) Complying with § 1324.21 of this chapter regarding the Ombudsman program, as appropriate;

(4) Removing and remedying any actual, perceived, or potential conflict between the area agency on aging and the area agency on aging employee or contractor's financial interest in a Title III program;

(5) Establishing robust monitoring and oversight, including periodic reviews, to identify conflicts of interest in the Title III program;

(6) Ensuring that no individual, or member of the immediate family of an individual, involved in Title III programs has a conflict of interest;

(7) Requiring that agencies to which the area agency provides Title III funds have policies in place to prohibit the employment or appointment of Title III program decision makers, staff, or volunteers with conflicts that cannot be adequately removed or remedied;

(8) Requiring that Title III programs take reasonable steps to refuse, suspend or remove Title III program responsibilities of an individual who has a conflict of interest, or who has a member of the immediate family with a conflict of interest, that cannot be adequately removed or remedied;

(9) Complying with the State agency's periodic review and identification of conflicts of the Title III program;

(10) Prohibiting the officers, employees, or agents of the Title III program from soliciting or accepting gratuities, favors, or anything of monetary value from grantees, contractors, and/or sub-recipients, except where policies and procedures allow for situations where the financial interest is not substantial, or the gift is an unsolicited item of nominal value;

(11) Establishing the actions the area agency will require Title III programs

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to take in order to remedy or remove such conflicts, as well as disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Title III program; and

(12) Documentation of conflict of interest mitigation strategies, as necessary and appropriate, when operating an Adult Protective Services or guardianship program.

(b) [Reserved]

## § 1321.69 Area agency on aging Title III and Title VI coordination responsibilities.

(a) For planning and service areas where there are Title VI programs, the area agency's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in §1322.13(a), must explain how the area agency's aging network, including service providers, will coordinate with Title VI programs to ensure compliance with section 306(a)(11)(B) of the Act (42 U.S.C. 3026(a)(11)(B)).

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the area agency's aging network, including service providers, will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(2) The communication opportunities the area agency will make available to Title VI programs, to include Title III and other funding opportunities, technical assistance on how to apply for Title III and other funding opportunities, meetings, email distribution lists, presentations, and public hearings;

(3) The methods for collaboration on and sharing of program information and changes, including coordinating with service providers where applicable;

(4) How Title VI programs may refer individuals who are eligible for Title III services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards, including area agency advisory councils as set forth in §1321.63.

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### Subpart D—Service Requirements

#### § 1321.71 Purpose of services allotments under Title III.

(a) Title III of the Act authorizes the distribution of Federal funds to the State agency on aging for the following services:

(1) Supportive services;

(2) Nutrition services;

(3) Evidence-based disease prevention and health promotion services; and

(4) Family caregiver support services.

(b) Funds authorized are for the purpose of assisting the State agency and its area agencies to develop, provide, or enhance for older individuals and family caregivers comprehensive and coordinated community-based direct services and systems.

(c) Except for ombudsman services, State plan administration, disaster assistance as noted at §§1321.99 through 1321.101, or as otherwise allowed in the Act, State agencies in States with multiple planning and service areas will award the funds made available under this section to designated area agencies on aging according to the approved intrastate funding formula as set forth in §1321.49.

(d) Except for ombudsman services, State plan administration, disaster assistance as noted at §§1321.99 through 1321.101, or as otherwise allowed in the Act, State agencies in States with single planning and service areas shall award funds by grant or contract to community services provider agencies and organizations for direct services to older individuals and family caregivers in, or serving, communities throughout the planning and service area, except as set forth in §1321.51(b)(4).

(e) Except where the State agency approves the area agency to provide direct services, as set forth in §1321.65(b)(7), after subtracting funds for area plan administration as set forth in §1321.9(c)(2)(iv)(B) and program development and coordination activities, if allowed by the State agency, as set forth in §1321.27(h), area agencies shall award these funds by grant or contract to community services provider agencies and organizations for direct services to older individuals and

family caregivers in, or serving, communities throughout the planning and service area.

**§ 1321.73 Policies and procedures.**

(a) The area agency on aging and/or service provider shall ensure the development and implementation of policies and procedures in accordance with State agency policies and procedures, including those required as set forth in § 1321.9. The State agency may allow for policies and procedures to be developed by the subrecipient(s), except as set forth at §§ 1321.9(a) and 1321.9(c)(2)(xi) and where otherwise specified.

(b) The area agency on aging and/or service provider will provide the State agency in a timely manner with statistical and other information which the State agency requires to meet its planning, coordination, evaluation, and reporting requirements established by the State agency under § 1321.9.

(c) The State agency and/or area agencies on aging must develop an independent qualitative and quantitative monitoring process ensuring the quality and effectiveness of services regarding meeting participant needs and preferences, the goals described within the State and/or area plan, and State and local requirements, as well as conflicts of interest policies and procedures. Quality monitoring and measurement results are encouraged to be made available to the public in plain language format designed to support and provide information and choice among persons and families receiving services.

**§ 1321.75 Confidentiality and disclosure of information.**

(a) State agencies and area agencies on aging shall have procedures to protect the confidentiality of information about older individuals and family caregivers collected in the conduct of their responsibilities. The procedures shall ensure that no information about an older person or family caregiver, or obtained from an older person or family caregiver by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of

their legal representative, unless the disclosure is required by law or court order, or for program monitoring and evaluation by authorized Federal, State, or local monitoring agencies.

(b) A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR part 1324, subpart A. State agencies must comply with confidentiality and disclosure of information provisions as directed in 45 CFR part 1324, as appropriate.

(c) A State or area agency on aging shall not require a provider of legal assistance under this part to reveal any information that is protected by attorney client privilege.

(d) State agencies must have policies and procedures that ensure that entities providing services under this title promote the rights of each older individual who receives such services. Such rights include the right to confidentiality of records relating to such individual.

(e) State agencies' policies and procedures must explain that individual information and records may be shared with other State and local agencies, community-based organizations, and health care providers and payers in order to provide services.

(f) State agencies' policies and procedures must comply with all applicable Federal laws as well as guidance as the State determines, for the collection, use, and exchange of both Personal Identifiable Information (PII) and personal health information in the provision of Title III services under the Act. State agencies are encouraged to consult with Tribes regarding any Tribal data sovereignty expectations that may apply.

**§ 1321.77 Purpose of services—person- and family-centered, trauma-informed.**

(a) Services must be provided to older adults and family caregivers in a manner that is person-centered, trauma-informed, and culturally sensitive. Services should be responsive to their interests, physical and mental health, social and cultural needs, available supports,

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and desire to live where and with whom they choose. Person-centered services may include community-centered and family-centered approaches consistent with the traditions, practices, beliefs, and cultural norms and expectations of older adults and family caregivers.

(b) Services should, as appropriate, provide older adults and family caregivers with the opportunity to develop a person-centered plan that is led by the individual or, if applicable, by the individual and the individual's authorized representative. Services should be incorporated into existing person-centered plans, as appropriate.

(c) State and area agencies and service providers should provide training to staff and volunteers on person-centered and trauma-informed service provision.

### § 1321.79 Responsibilities of service providers under State and area plans.

As a condition for receipt of funds under this part, each State agency and/or area agency on aging shall assure that service providers shall:

(a) Specify how the service provider intends to satisfy the service needs of those identified as in greatest economic need and greatest social need, with a focus on low-income minority individuals in the area served, including attempting to provide services to low-income minority individuals at least in proportion to the number of low-income minority older individuals and family caregivers in the population serviced by the provider;

(b) Provide recipients with an opportunity to contribute to the cost of the service as provided in § 1321.9(c)(2)(x) or (xi);

(c) Pursuant to section 306(a)(16) of the Act (42 U.S.C. 3026(a)(16)), provide, to the extent feasible, for the furnishing of services under this Act through self-direction;

(d) Bring conditions or circumstances which place an older person, or the household of an older person, in imminent danger to the attention of adult protective services or other appropriate officials for follow-up, provided that:

(1) The older person or their legal representative consents; or

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(2) Such action is in accordance with local adult protective services requirements, except as set forth at § 1321.93 and part 1324, subpart A, of this chapter;

(e) Where feasible and appropriate, make arrangements for the availability of services to older individuals and family caregivers in weather-related and other emergencies;

(f) Assist participants in taking advantage of benefits under other programs; and

(g) Assure that all services funded under this part are coordinated with other appropriate services in the community, and that these services do not constitute an unnecessary duplication of services provided by other sources.

### § 1321.81 Client eligibility for participation.

(a) An individual must be age 60 or older at the time of service to be eligible to participate in services under the Act, unless the Act otherwise provides an explicit exception. Exceptions are limited to the following specific services:

(1) Nutrition services:

(i) Services shall be available to spouses of any age of older individuals;

(ii) Services may be available to:

(A) A person with a disability who lives with an adult age 60 or older or who resides in a housing facility that is primarily occupied by older adults at which congregate meals are served; and

(B) A volunteer during meal hours.

(2) Family caregiver support services for:

(i) Adults caring for older adults and adults caring for individuals of any age with Alzheimer's or a related disorder;

(ii) Older relative caregivers who are caring for children and are not the biological or adoptive parent of the child, where older relative caregivers shall no longer be eligible for services under this part when the child reaches 18 years of age; or

(iii) Older relative caregivers who are caring for individuals age 18 to 59 with disabilities and who may be of any relationship, including the biological or adoptive parent.

(3) Services such as information and assistance and public education, where recipients of information may not be

age 60 or older, but the information is targeted to those who are age 60 or older and/or benefits those who are age 60 or older.

(4) Ombudsman program services, as provided in 45 CFR part 1324.

(b) State agencies, area agencies on aging, and local service providers may develop further eligibility requirements for implementation of services for older adults and family caregivers, as long as they do not conflict with the Act, this part, or guidance as set forth by the Assistant Secretary for Aging. Such requirements may include:

- (1) Assessment of greatest social need;
- (2) Assessment of greatest economic need;
- (3) Assessment of functional and support need;
- (4) Geographic boundaries;
- (5) Limitations on number of persons that may be served;
- (6) Limitations on number of units of service that may be provided;
- (7) Limitations due to availability of staff/volunteers;
- (8) Limitations to avoid duplication of services; and
- (9) Specification of settings where services shall or may be provided.

#### § 1321.83 Client and service priority.

(a) The State agency and/or area agency shall ensure service to those identified as members of priority groups through assessment of local needs and resources.

(b) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, parts B (except for Ombudsman program services which are subject to provisions in 45 CFR part 1324), C, and D, in accordance with the Act.

(c) The State agency and/or area agency shall establish criteria to prioritize the delivery of services under Title III, part E, in accordance with the Act, to include:

- (1) Caregivers who are older individuals with greatest social need, and older individuals with greatest economic need (with particular attention to low-income older individuals);
- (2) Caregivers who provide care for individuals with Alzheimer's disease

and related disorders with neurological and organic brain dysfunction; and

(3) If serving older relative caregivers, older relative caregivers of children or adults with severe disabilities.

#### § 1321.85 Supportive services.

(a) Supportive services are community-based interventions set forth in the Act under Title III, part B, section 321 (42 U.S.C. 3030d) which meet standards established by the Assistant Secretary for Aging. They include in-home supportive services, access services, which may include multipurpose senior centers, and legal services.

(b) State agencies may allow use of Title III, part B funds for acquiring, altering or renovating, or constructing facilities to serve as multipurpose senior centers, in accordance with guidance as set forth by the Assistant Secretary for Aging.

(c) For those Title III, part B services intended to benefit family caregivers, such as those provided under sections 321(a)(6)(C), 321(a)(19), and 321(a)(21) of the Act (42 U.S.C. 3030d(a)(6)(C), 3030d(a)(19), and 3030d(a)(21)), State and area agencies shall ensure that there is coordination and no inappropriate duplication of such services available under Title III, part E.

(d) All funds provided under Title III, part B of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

#### § 1321.87 Nutrition services.

(a) Nutrition services are community-based interventions as set forth in Title III, part C of the Act, and as further defined by the Assistant Secretary for Aging. Nutrition services include congregate meals, home-delivered meals, nutrition education, nutrition counseling, and other nutrition services.

(1) Congregate meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-1 by a qualified nutrition service provider to eligible individuals and consumed while congregating virtually or in-person, except where:

- (i) If included as part of an approved State plan as set forth in § 1321.27 or

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State plan amendment as set forth in §1321.31(a) and area plan or plan amendment as set forth in §1321.65 and to complement the congregate meals program, shelf-stable, pick-up, carry-out, drive-through, or similar meals may be provided under Title III, part C-1;

(ii) Meals provided as set forth in paragraph (a)(1)(i) of this section shall:

(A) Not exceed 25 percent of the funds expended by the State agency under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in §1321.9(c)(2)(iii) are completed;

(B) Not exceed 25 percent of the funds expended by any area agency on aging under Title III, part C-1, to be calculated based on the amount of Title III, part C-1 funds available after all transfers as set forth in §1321.9(c)(2)(iii) are completed.

(iii) Meals provided as set forth in paragraph (a)(1)(i) of this section may be provided to complement the congregate meal program:

(A) During disaster or emergency situations affecting the provision of nutrition services;

(B) To older individuals who have an occasional need for such meal; and/or

(C) To older individuals who have a regular need for such meal, based on an individualized assessment, when targeting services to those in greatest economic need and greatest social need.

(2) Home-delivered meals are meals meeting the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21) provided under Title III, part C-2 by a qualified nutrition service provider to eligible individuals and consumed at their residence or otherwise outside of a congregate setting, as organized by a service provider under the Act. Meals may be provided via home delivery, pick-up, carry-out, drive-through, or similar meals.

(i) Eligibility criteria for home-delivered meals may include consideration of an individual's ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability, or other relevant factors per-

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taining to their need for the service, including social need and economic need.

(ii) Home-delivered meals service providers may encourage meal participants to attend congregate meal sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.

(3) Nutrition education is information provided under Title III, parts C-1 or 2 which provides individuals with the knowledge and skills to make healthy food and beverage choices. Congregate and home-delivered nutrition services shall provide nutrition education, as appropriate, based on the needs of meal participants.

(4) Nutrition counseling is a service provided under Title III, parts C-1 or 2 which must align with the Academy of Nutrition and Dietetics. Congregate and home-delivered nutrition services shall provide nutrition counseling, as appropriate, based on the needs of meal participants, the availability of resources, and the expertise of a Registered Dietitian Nutritionist.

(5) Other nutrition services include additional services provided under Title III, parts C-1 or 2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements, or groceries.

(b) State agencies shall establish policies and procedures that define a nutrition project and include how a nutrition project will provide meals and nutrition services five or more days per week in accordance with the Act. The definition of nutrition project established by the State agency must consider the availability of resources and the community's need for nutrition services as described in the State and area plans.

(c) All funds provided under Title III, part C of the Act must be distributed within a State pursuant to §1321.49 or §1321.51.

(d) Nutrition Services Incentive Program allocations are available to States and Territories that provide nutrition services where:

(1) Nutrition Services Incentive Program allocation amounts are based on

the number of meals reported by the State agency which meet the following requirements:

(i) The meal is served to an individual who is eligible to receive services under the Act;

(ii) The meal is served to an individual who has not been means-tested to receive the meal;

(iii) The meal is served to an individual who has been provided the opportunity to provide a voluntary contribution to the cost of service;

(iv) The meal meets the other requirements of the Act, including that the meal meets the Dietary Guidelines for Americans and Dietary Reference Intakes as set forth in section 339 of the Act (42 U.S.C. 3030g-21); and

(v) The meal is served by an agency that has a grant or contract with a State agency or area agency.

(2) The State agency may choose to receive their Nutrition Services Incentive Program grant as cash, commodities, or a combination of cash and commodities.

(3) Nutrition Services Incentive Program funds may only be used to purchase domestically produced foods used in a meal as set forth under the Act.

(4) Nutrition Services Incentive Program funds are distributed within a State pursuant to § 1321.49(b)(1)(iii) and (d) or § 1321.51(b)(1).

**§ 1321.89 Evidence-based disease prevention and health promotion services.**

(a) Evidence-based disease prevention and health promotion services programs are community-based interventions as set forth in Title III, part D of the Act, that have been proven to improve health and well-being and/or reduce risk of injury, disease, or disability among older adults. All programs provided using these funds must be evidence-based and must meet the Act's requirements and guidance as set forth by the Assistant Secretary for Aging.

(b) All funds provided under Title III, part D of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

**§ 1321.91 Family caregiver support services.**

(a) Family caregiver support services are community-based interventions set forth in Title III, part E of the Act, which meet standards set forth by the Assistant Secretary for Aging and which may be informed through the use of an evidence-informed or evidence-based caregiver assessment, including:

(1) Information to family caregivers about available services via public education;

(2) Assistance to family caregivers in gaining access to the services through:

(i) Individual information and assistance; or

(ii) Case management or care coordination.

(3) Individual counseling, organization of support groups, and caregiver training to assist family caregivers in those areas in which they provide support, including health, nutrition, complex medical care, and financial literacy, and in making decisions and solving problems relating to their caregiving roles;

(4) Respite care to enable family caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) Supplemental services, on a limited basis, to complement the care provided by family caregivers. State agencies and AAAs shall define "limited basis" for supplemental services and may consider limiting units, episodes or expenditure amounts when making this determination.

(b) State agencies shall ensure that there is a plan to provide each of the services authorized under this part in each planning and service area, or statewide in accordance with a funds distribution plan for single planning and service area States, subject to availability of funds under the Act.

(c) To provide services listed in paragraphs (a)(4) and (5) of this section to family caregivers of adults aged 60 and older or of individuals of any age with Alzheimer's disease or a related disorder, the individual for whom they are caring must be determined to be functionally impaired because the individual:

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(1) Is unable to perform at least two activities of daily living without substantial assistance, including verbal reminding, physical cueing, or supervision;

(2) At the option of the State agency, is unable to perform at least three such activities without such assistance; or

(3) Due to a cognitive or other mental impairment, requires substantial supervision because the individual poses a serious health or safety hazard to himself or others.

(d) All funds provided under Title III, part E of the Act must be distributed within a State pursuant to § 1321.49 or § 1321.51.

### § 1321.93 Legal assistance.

(a) *General—definition.* (1) The provisions and restrictions in this section apply to legal assistance funded by and provided pursuant to the Act.

(2) Legal assistance means legal advice and/or representation provided by an attorney to older individuals with economic or social needs, per section 102(33) of the Act (42 U.S.C. 3002(33)). Legal assistance may include, to the extent feasible, counseling, or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney, and counseling or representation by a non-lawyer as permitted by law.

(b) *State agency on aging requirements.* (1) Under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)), the roles and responsibilities of the State agency shall include assurances for the provision of legal assistance in the State plan as follows:

(i) Legal assistance, to the extent practicable, supplements and does not duplicate or supplant legal services provided with funding from other sources, including grants made by the Legal Services Corporation;

(ii) Legal assistance supplements existing sources of legal services through focusing legal assistance delivery and provider capacity in the specific areas of law affecting older adults with greatest economic need or greatest social need;

(iii) Reasonable efforts will be made to maintain existing levels of legal assistance for older individuals;

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(iv) Advice, training, and technical assistance support for the provision of legal assistance for older adults will be made available to legal assistance providers, as provided in § 1324.303 and section 420(a)(1) of the Act (42 U.S.C. 3032i(a)(1));

(v) The State agency in single planning and service area States or area agencies on aging in States with multiple planning and service areas shall award, through contract funds, only to legal assistance providers that meet the standards and requirements as set forth in this section and section (c); and

(vi) Attorneys and personnel under the supervision of attorneys providing legal assistance shall adhere to the applicable Rules of Professional Conduct including the obligation to preserve the attorney-client privilege.

(2) As set forth in section 307(a)(2)(C) of the Act (42 U.S.C. 3027(a)(2)(C)) and § 1321.27(i)(3), the State agency shall designate the minimum proportion of Title III, part B funds and require the expenditure of at least that sum for each planning and service area for the purpose of procuring contract(s) for legal assistance.

(3) The State agency in States with a single planning and service area shall meet the requirements for area agencies on aging as set forth in paragraph (c) of this section.

(c) *Area Agency on Aging requirements—(1) Adequate proportion funding.* The area agency on aging shall award at a minimum the required adequate proportion of Title III, part B funds designated by the State agency to procure legal assistance for older residents of the planning and service area as set forth in §§ 1321.27 and 1321.65.

(2) *Standards for selection of legal assistance providers.* Area agencies on aging shall adhere to the following standards in selecting legal assistance providers:

(i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and

(ii) The area agency on aging must select the legal assistance provider(s)

that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act and all applicable Federal requirements for provision of legal assistance.

(d) *Standards for legal assistance provider selection.* Selected legal assistance providers shall exhibit the capacity to:

(1) Retain staff with expertise in specific areas of law affecting older individuals with economic or social need, including the priority areas identified in the Act;

(2) Demonstrate expertise in specific areas of law that are given priority in the Act, including income and public entitlement benefits, health care, long-term care, nutrition, consumer law, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship, prioritizing focus from among the areas of law based on the needs of the community served;

(i) Defense of guardianship means advice to and representation of older individuals at risk of guardianship and older individuals subject to guardianship to divert them from guardianship to less restrictive, more person-directed forms of decisional support whenever possible, to oppose appointment of a guardian in favor of such less restrictive decisional supports, to seek limitation of guardianship and to seek revocation of guardianship;

(ii) Defense of guardianship includes:

(A) Representation to maintain the rights of individuals at risk of guardianship, and to advocate for limited guardianship if a court orders guardianship to be imposed; assistance removing or limiting an existing guardianship; or assistance to preserve or restore an individual's rights or autonomy;

(B) Representation to advocate for and assert use of least-restrictive alternatives to guardianship to preserve or restore an individual's rights and or autonomy to support decision-making, or to limit the scope of guardianship orders when such orders have or will be entered by a court; and

(C) A legal assistance provider shall not represent a petitioner for imposition of guardianship except in limited circumstances involving guardianship

proceedings of older individuals who seek to become guardians only if other adequate representation is unavailable in the proceedings, and the provider has exhausted, and documents efforts made to explore less restrictive alternatives to guardianship.

(3) Provide effective administrative and judicial advocacy in the areas of law affecting older individuals with greatest economic need or greatest social need;

(4) Support other advocacy efforts, for example, the Long-Term Care Ombudsman Program, including requiring a memorandum of agreement between the State Long-Term Care Ombudsman and the legal assistance provider(s) as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)); and

(5) Effectively provide legal assistance to older individuals residing in congregate residential long-term settings as defined in the Act in section 102(35) (42 U.S.C. 3002(35)), or who are isolated as defined in the Act in section 102(24)(c) (42 U.S.C. 3002(24)(c)), or who are restricted to the home due to cognitive or physical limitations.

(e) *Standards for contracting between Area Agencies on Aging and legal assistance providers.* (1) The area agency shall enter into a contract(s) with the selected legal assistance provider(s) that demonstrate(s) the capacity to deliver legal assistance.

(2) The contract shall specify that legal assistance provider(s) shall demonstrate capacity to:

(i) Maintain expertise in specific areas of law that are to be given priority, as defined in paragraphs (d)(1) and (2) of this section.

(ii) Prioritize representation and advice that focus on the specific areas of law that give rise to problems that are disparately experienced by older adults with economic or social need.

(iii) Maintain staff with the expertise, knowledge, and skills to deliver legal assistance as described in this section.

(iv) Engage in reasonable efforts to involve the private bar in legal assistance activities authorized under the Act, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis.

(v) Ensure that attorneys and personnel under the supervision of attorneys providing legal assistance will adhere to the applicable Rules of Professional Conduct including, but not limited to, the obligation to preserve the attorney-client privilege.

(3) The contract shall include provisions:

(i) Describing the duty of the area agency to refer older adults to the legal assistance provider(s) with whom the area agency contracts. In fulfilling this duty, the area agency is precluded from requiring a pre-screening of older individuals seeking legal assistance or from acting as the sole and exclusive referral pathway to legal assistance.

(ii) Requiring the contracted legal assistance provider(s) to maintain capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited English proficient (LEP), including in oral and written communication, and to ensure effective communication for individuals with disabilities, including by providing appropriate auxiliary aids and services where necessary.

(A) This includes requiring legal assistance providers take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited-English proficiency, including an individualized assessment of an individual's need to understand and participate in the legal process (as determined by each individual).

(B) This includes stating the responsibility of the legal assistance provider to provide access to interpretation and translation services to meet clients' needs.

(C) This includes taking appropriate steps to ensure communications with persons with disabilities are as effective as communication with others, including by providing appropriate auxiliary aids and services where necessary to afford qualified persons with disabilities an equal opportunity to participate in, and enjoy the benefits of, legal assistance.

(iii) Providing that the area agency will provide outreach activities that will include information about the availability of legal assistance to address problems experienced by older

adults that may have legal solutions, such as those referenced in sections 306(a)(4)(B) and 306(a)(19) of the Act (42 U.S.C. 3026(a)(4)(B) and 3026(a)(19)). This includes outreach to:

(A) Older adults with greatest economic need due to low income and to those with greatest social need, including minority older individuals; and

(B) Older adults of underserved communities, including:

(1) Older adults with limited-English proficiency and/or whose primary language is not English;

(2) Older adults with severe disabilities;

(3) Older adults living in rural areas;

(4) Older adults at risk for institutional placement; and

(5) Older adults with Alzheimer's disease and related disorders with neurological and organic brain dysfunction and their caregivers.

(iv) Providing that legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable State Rules of Professional Conduct.

(v) Requiring that if the legal assistance provider(s) contracted by the area agency is located within a Legal Services Corporation grantee entity, that the legal assistance provider(s) shall adhere to the specific restrictions on activities and client representation in the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*). Exempted from this requirement are:

(A) Restrictions governing eligibility for legal assistance under such Act;

(B) Restrictions for membership of governing boards; and

(C) Any additional provisions as determined appropriate by the Assistant Secretary for Aging.

(f) *Legal assistance provider requirements.* (1) The provisions and restrictions in this section apply to legal assistance provider(s) when they are providing legal assistance under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)).

(2) Legal assistance providers under contract with the State agency in States with single planning and service areas or area agency in States with multiple planning and service areas

shall adhere to the following requirements:

(i) Provide legal assistance to meet complex and evolving legal needs that may arise involving a range of private, public, and governmental entities, programs, and activities that may impact an older adult's independence, choice, or financial security; and

(ii) Maintain the capacity for and provision of effective administrative and judicial representation.

(A) *Effective administrative and judicial representation* means the expertise and ability to provide the range of services necessary to adequately address the needs of older adults through legal assistance in administrative and judicial forums, as required under the Act. This includes providing the full range of legal services, from brief service and advice through representation in administrative and judicial proceedings.

(B) [Reserved]

(iii) Conduct administrative and judicial advocacy as is necessary to meet the legal needs of older adults with economic or social need, focusing on such individuals with the greatest economic need or greatest social need:

(A) *Economic need* means the need for legal assistance resulting from income at or below the Federal poverty level, as defined in section 102(44) of the Act (42 U.S.C. 3002(44)), that is insufficient to meet the legal needs of an older individual or that causes barriers to attaining legal assistance to assert the rights of older individuals as articulated in the Act and in the laws, regulations, and Constitution.

(B) *Social need* means the need for legal assistance resulting from social factors, as defined by in section 102(24) of the Act (42 U.S.C. 3002(24)), that cause barriers to attaining legal assistance to assert the rights of older individuals.

(iv) Maintain the expertise required to capably handle matters related to the priority case type areas specified under the Act, including income and public entitlement benefits, health care, long-term care, nutrition, housing, utilities, protective services, abuse, neglect, age discrimination and defense of guardianship (as defined in paragraph (d)(2)(i) of this section).

(v) Maintain the expertise required to deliver any matters in addition to those specified in paragraph (f)(2)(iv) of this section that are related to preserving, maintaining, and restoring an older adult's independence, choice, or financial security.

(vi) Maintain the expertise and capacity to deliver a full range of legal assistance, from brief service and advice through representation in hearings, trials, and other administrative and judicial proceedings in the areas of law affecting such older individuals with economic or social need.

(vii) Maintain the capacity to provide effective legal assistance and legal support to other advocacy efforts, including, but not limited to, the Long-Term Care Ombudsman Program serving the planning and service area, as required by section 712(h)(8) of the Act (42 U.S.C. 3058g(h)(8)), and maintain the capacity to form, develop and maintain partnerships that support older adults' independence, choice, or financial security.

(viii) Maintain and exercise the capacity to effectively provide legal assistance to older adults regardless of whether they reside in community or congregate settings, and to provide legal assistance to older individuals who are confined to their home, and older adults whose access to legal assistance may be limited by geography or isolation.

(ix) Maintain the capacity to provide legal assistance in the preferred language used by older individuals seeking and/or receiving legal assistance who are limited-English proficient (LEP), including in oral and written communication.

(A) Legal assistance provider(s) shall take reasonable steps to ensure meaningful access to legal assistance by older individuals with limited English-speaking proficiency and other communication needs;

(B) Such reasonable steps require an individualized assessment of the needs of individuals who are seeking legal assistance and legal assistance clients to understand and participate in the legal process (as determined by each individual); and

(C) Legal assistance provider(s) are responsible for providing access to interpretation, translation, and auxiliary aids and services to meet older individuals' legal assistance needs.

(x) Maintain staff with knowledge of the unique experiences of older adults with economic or social need and expertise in areas of law affecting such older adults.

(xi) Meet the following legal assistance provider requirements:

(A) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(B) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling, and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(C) A legal assistance provider and its attorneys may engage in other legal activities to the extent that there is no conflict of interest nor other interference with their professional responsibilities under this Act.

(D) Legal assistance providers that are not housed within Legal Services Corporation grantee entities shall coordinate their services with existing Legal Services Corporation projects to concentrate funds under this Act in providing legal assistance to older adults with the greatest economic need or greatest social need.

(E) Nothing in this section is intended to prohibit any attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(F) Legal assistance provider attorney staff and non-attorney personnel under the supervision of legal assistance attorneys must adhere to the applicable Rules of Professional Conduct.

(3) Restrictions on legal assistance.

(i) No legal assistance provider(s) shall use funds received under the Act to provide legal assistance in a fee generating case unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall estab-

lish procedures for the referral of fee generating cases.

(A) "Fee generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(B) [Reserved]

(ii) Other adequate representation is deemed to be unavailable when:

(A) Recovery of damages is not the principal object of the client; or

(B) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(C) An eligible client is seeking benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*), Supplemental Security Income for Aged, Blind, and Disabled.

(iii) A provider may seek and accept a fee awarded or approved by a court or administrative body or included in a settlement.

(iv) When a case or matter accepted in accordance with this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement for out-of-pocket costs and expenses incurred in connection with the case or matter.

(4) Legal assistance provider prohibited activities.

(i) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(A) No provider or its employees shall contribute or make available funds, personnel, or equipment provided under the Act to any political party or association or to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(B) No provider or its employees shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with

the campaign of any candidate for public or party office; or

(C) While engaged in legal assistance activities supported under the Act, no attorney shall engage in any political activity.

(ii) No funds made available under the Act shall be used for lobbying activities including, but not limited to, any activities intended to influence any decision or activity by a non-judicial Federal, State, or local individual or body.

(A) Nothing in this section is intended to prohibit an employee from:

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation relevant to the client's legal matter;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the composition of a communication for the client's use;

(4) Making direct contact with the area agency for any purpose; or

(5) Testifying before a government agency, legislative body, or committee at the request of the government agency, legislative body, or committee.

(B) [Reserved]

(iii) A provider may use funds provided by private sources to:

(A) Engage in lobbying activities if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities of the provider under the Act;

(B) [Reserved]

(iv) While carrying out legal assistance activities and while using resources provided under the Act, by private entities or by a recipient, directly or through a subrecipient, no provider or its employees shall:

(A) Participate in any public demonstration, picketing, boycott, or strike, whether in person or online, ex-

cept as permitted by law in connection with the employee's own employment situation;

(B) Encourage, direct, or coerce others to engage in such activities; or

(C) At any time engage in or encourage others to engage in:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any illegal activity;

(4) Any intentional identification of programs funded under the Act or recipient with any partisan or non-partisan political activity, or with the campaign of any candidate for public or party office; or

(v) None of the funds made available under the Act may be used to pay dues exceeding a reasonable amount per legal assistance provider per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulations. Such dues may not be used to engage in activities for which Older Americans Act funds cannot be directly used.

**§ 1321.95 Service provider Title III and Title VI coordination responsibilities.**

(a) For locations served by service providers under Title III of the Act where there are Title VI programs, the area agency on aging's and/or service provider's policies and procedures, developed in coordination with the relevant Title VI program director(s), as set forth in §1322.13(a), must explain how the service provider will coordinate with Title VI programs.

(b) The policies and procedures set forth in paragraph (a) of this section must at a minimum address:

(1) How the service provider will provide outreach to Tribal elders and family caregivers regarding services for which they may be eligible under Title III;

(2) The communication opportunities the service provider will make available to Title VI programs, to include meetings email distribution lists, and presentations;

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(3) The methods for collaboration on and sharing of program information and changes;

(4) How Title VI programs may refer individuals who are eligible for Title III services;

(5) How services will be provided in a culturally appropriate and trauma-informed manner; and

(6) Opportunities to serve on advisory councils, workgroups, and boards.

### **Subpart E—Emergency and Disaster Requirements**

#### **§ 1321.97 Coordination with State, Tribal, and local emergency management.**

(a) *State agencies.* (1) State agencies shall establish emergency plans, as set forth in section 307(a)(28) of the Act (42 U.S.C. 3027(a)(28)). Such plans must include, at a minimum:

(i) The State agency's continuity of operations plan and an all-hazards emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A plan to coordinate activities with area agencies on aging, service providers, local emergency response agencies, relief organizations, local governments, State agencies responsible for emergency and disaster preparedness, and any other institutions that have responsibility for disaster relief service delivery;

(iii) Processes for developing and updating long-range emergency and disaster preparedness plans; and

(iv) Other relevant information as determined by the State agency.

(2) The plan shall include information describing the involvement of the head of the State agency in the development, revision, and implementation of emergency and disaster preparedness plans, including the State Public Health Emergency Preparedness and Response Plan.

(3) The plan shall discuss coordination with area agencies on aging and service providers and Tribal and local emergency management.

(b) *Area agencies on aging.* (1) Area agencies on aging shall establish emergency plans. Such plans must include:

(i) The area agency's continuity of operations plan and an all-hazards

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emergency response plan based on completed risk assessments for all hazards and updated annually;

(ii) A description of coordination activities for both development and implementation of long-range emergency and disaster preparedness plans; and

(iii) Other information as deemed appropriate by the area agency on aging.

(2) The area agency on aging shall coordinate with Federal, local, and State emergency response agencies, service providers, relief organizations, local and State governments, and any other entities that have responsibility for disaster relief service delivery, as well as with Tribal emergency management, as appropriate.

#### **§ 1321.99 Setting aside funds to address disasters.**

(a) Section 310 of the Act (42 U.S.C. 3030) authorizes the use of funds during Presidentially declared major disaster declarations under the Stafford Act (42 U.S.C. 5121–5207) without regard to distribution through the State agency's intrastate funding formula or funds distribution plan when the following apply:

(1) Title III services are impacted; and

(2) Flexibility is needed as determined by the State agency.

(b) When implementing this authority, State agencies may set aside funds, up to five percent of their total Title III allocations, if specified as being allowed to be withheld for the purpose in their approved intrastate funding formula or funds distribution plan, or with prior approval from the Assistant Secretary for Aging. The following apply for use of set aside funds:

(1) Set aside funds that are awarded under this provision must comply with the requirements at § 1321.101; and

(2) The State agency must have policies and procedures in place to award funds set aside through the intrastate funding formula, as set forth in § 1321.49, or funds distribution plan, as set forth in § 1321.51(b), if there are no funds awarded subject to this provision within 30 days of the end of the fiscal year in which the funds were received.

**§ 1321.101 Flexibilities under a major disaster declaration.**

(a) If a State or Indian Tribe requests and receives a major disaster declaration under the Stafford Act (42 U.S.C. 5121-5207), the State agency may use disaster relief flexibilities under Title III as set forth in this section to provide disaster relief services for areas of the State where the specific major disaster declaration is authorized and where older adults and family caregivers are affected.

(b) Flexibilities a State agency may exercise under a major disaster declaration include:

(1) Allowing use of any portion of the funds of any open grant awards under Title III of the Act for disaster relief services for older individuals and family caregivers.

(2) Awarding portions of State plan administration, up to a maximum of five percent of the Title III grant award or to a maximum of the amounts set forth at § 1321.9(c)(2)(iv), for use in a planning and service area covered in whole or part under a major disaster declaration without the requirement of allocation through the intrastate funding formula or funds distribution plan to be used for direct service provision.

(3) Awarding of funds set aside to address disasters, as set forth in § 1321.99, or as determined by the Assistant Secretary for Aging, in the following ways:

(i) to an area agency serving a planning and service area covered in whole or part under a major disaster declaration without the requirement of allocation through the intrastate funding formula;

(ii) for single planning and service area States, to a service provider without the requirement of allocation through a funds distribution plan; or

(iii) to be used for direct service provision, direct expenditures, and/or procurement of items on a statewide level, if the State agency adheres to the following:

(A) The State agency judges that provision of services or procurement of supplies by the State agency is necessary to ensure an adequate supply of such services and/or that such services can be provided/supplies procured more economically, and with comparable quality, by the State agency;

(B) The State agency consults with area agencies on aging prior to exercising the flexibility, and includes the Ombudsman as set forth in part 1324, subpart A if funding for the Ombudsman program is affected;

(C) The State agency uses such set aside funding, as provided at § 1321.99, for services provided through area agencies on aging and other aging network partners to the extent reasonably practicable, in the judgment of the State agency; and

(D) The State agency ensures reporting of any clients, units, and services provided through such expenditures.

(c) A State agency must submit a State plan amendment as set forth in § 1321.31(b) if the State agency exercises any of the flexibilities as set forth in paragraph (b) of this section. The State plan amendment must at a minimum include the specific entities receiving funds; the amount, source, and intended use for funds; and other such justification of the use of funds.

(d) Disaster relief services may include any allowable services under the Act to eligible older individuals or family caregivers during the period covered by the major disaster declaration.

(e) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. State agencies may expend funds from any source within open grant awards under Title III and Title VII of the Act but must track the source of all expenditures.

(f) State agencies must have policies and procedures outlining communication with area agencies on aging and/or local service providers regarding State agency expectations for eligibility, use, and reporting of services and funds provided under these flexibilities, and include the Ombudsman as set forth in part 1324, subpart A if funding for the Ombudsman program is affected.

(g) A State agency may only make obligations exercising this flexibility during the major disaster declaration incident period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.

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### § 1321.103 Title III and Title VI coordination for emergency and disaster preparedness.

State agencies, area agencies, and Title VI programs should coordinate in emergency and disaster preparedness planning, response, and recovery. State agencies and area agencies that have Title VI programs in operation within their jurisdictions must have policies and procedures, developed in communication with the relevant Title VI program director(s) as set forth in § 1322.13(c), in place for how they will communicate and coordinate with Title VI programs regarding emergency and disaster preparedness planning, response, and recovery.

### § 1321.105 Modification during major disaster declaration or public health emergency.

The Assistant Secretary for Aging retains the right to modify the requirements described in these regulations pursuant to a major disaster declaration or public health emergency.

## PART 1322—GRANTS TO INDIAN TRIBES AND NATIVE HAWAIIAN GRANTEEES FOR SUPPORTIVE, NUTRITION, AND CAREGIVER SERVICES

### Subpart A—Introduction

Sec.

- 1322.1 Basis and purpose of this part.
- 1322.3 Definitions.

### Subpart B—Application

- 1322.5 Application requirements.
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- 1322.11 Purpose of services allotments under Title VI.
- 1322.13 Policies and procedures.
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- 1322.17 Purpose of services—person- and family-centered, trauma-informed.
- 1322.19 Responsibilities of service providers.
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### Subpart D—Emergency and Disaster Requirements

- 1322.33 Coordination with Tribal, State, and local emergency management.
- 1322.35 Flexibilities under a major disaster declaration.
- 1322.37 Title VI and Title III coordination for emergency and disaster preparedness.
- 1322.39 Modification during major disaster declaration or public health emergency.

AUTHORITY: 42 U.S.C. 3001 *et seq.*

SOURCE: 89 FR 11681, Feb. 14, 2024, unless otherwise noted.

### Subpart A—Introduction

#### § 1322.1 Basis and purpose of this part.

(a) This program is established to meet the unique needs and circumstances of American Indian and Alaskan Native elders and family caregivers and of older Native Hawaiians and family caregivers, on Indian reservations and/or in service areas as approved in § 1322.7. This program honors the sovereign government to government relationship with a Tribal organization serving elders and family caregivers through direct grants to serve the eligible participants and similar considerations, as appropriate, for Hawaiian Native grantees representing elders and family caregivers. This part implements Title VI (parts A, B, and C) of the Older Americans Act, as amended (the Act), by establishing the requirements that an Indian Tribal organization or Hawaiian Native grantee shall meet in order to receive a grant to promote the delivery of services for older Indians, Alaskan Native, Native Hawaiians, and Native American family caregivers that are comparable to services provided under Title III. This part also prescribes application and hearing requirements and procedures for these grants.

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

#### § 1322.3 Definitions.

*Access to services or access services*, as used in this part, means services which may facilitate connection to or receipt of other direct services, including transportation, outreach, information