

## § 1324.400

steps to prevent, remedy, or remove such conflicts of interest.

(2) In designating a Legal Assistance Developer, the State agency shall consider both organizational and individual interests that may impact the effectiveness and credibility of the work of the Legal Assistance Developer to coordinate legal assistance and work to secure, protect, and promote the legal rights of older adults in the State.

(i) This includes holding a position or performing duties that could lead to decisions that are or have the appearance of being contrary to the Legal Assistance Developer's duties as defined in this section and contained in the State plan as set forth in §1321.27 of this chapter.

(ii) [Reserved]

(3) The State agency shall not designate as Legal Assistance Developer any individual who is:

(i) Serving as a director of adult protective services, or as legal counsel to adult protective services;

(ii) Serving as a State Long-Term Care Ombudsman, or as legal counsel to a State Long-Term Care Ombudsman Program;

(iii) Serving as a hearing officer, administrative law judge, trier of fact or counsel to these positions in an administrative proceeding related to the legal rights of older adults, such as one in which a legal assistance provider might appear;

(iv) Serving as legal counsel or a party to an administrative proceeding related to long-term care settings, including residential settings;

(v) Conducting surveys of and licensure certifications for long-term care settings, including residential settings, or serving as counsel or advisor to such positions;

(vi) Serving as a public or private guardian, conservator, or fiduciary or operating such a program, or serving as counsel to these positions or programs.

(4) The State agency and the Legal Assistance Developer shall be responsible for identifying any other actual and potential conflicts of interest and circumstances that may lead to the appearance of a conflict of interest; identifying processes for preventing conflicts of interest and, where a conflict

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of interest has been identified, for removing or remedying the conflict.

(5) The State agency shall develop and implement policies and procedures to ensure that the Legal Assistance Developer is not required or permitted to hold positions or perform duties that would constitute a conflict of interest.

### Subpart D—Adult Protective Services Programs

AUTHORITY: 42 U.S.C. 3011(e)(3); 42 U.S.C. 1397m-1.

SOURCE: 89 FR 39528, May 8, 2024, unless otherwise noted.

#### § 1324.400 Eligibility for funding.

State entities are required to adhere to all provisions contained herein to be eligible for funding under 42 U.S.C. 1397m-1(b).

#### § 1324.401 Definitions.

As used in this part, the term—

*Abuse* means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

*Adult* means older adults and adults with disabilities as defined by State APS laws.

*Adult maltreatment* means the abuse, neglect, financial exploitation, or sexual abuse of an adult at-risk of harm.

*Adult Protective Services (APS)* means such activities and services the Assistant Secretary for Aging may specify in guidance and includes:

(1) Receiving reports of adult abuse, neglect, financial exploitation, sexual abuse, and/or self-neglect;

(2) Investigating the reports described in paragraph (1) of this definition;

(3) Case planning, monitoring, evaluation, and other case work and services, and;

(4) Providing, arranging for, or facilitating the provision of medical, social services, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

*Adult Protective Services Program* means local Adult Protective Services

providers within an Adult Protective Services system.

*Adult Protective Services Systems* means the totality of the State entities and the local APS programs.

*Allegation* means an accusation of adult maltreatment and/or self-neglect about each adult in a report made to APS.

*At risk of harm* means the strong likelihood that an adult will imminently experience an event, condition, injury, or other outcome that is adverse or detrimental.

*Assistant Secretary for Aging* means the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).

*Case* means all activities related to an APS investigation of, and response to, an allegation of adult maltreatment and/or self-neglect.

*Client* means an adult who is the subject of an APS response regarding a report of alleged adult maltreatment and/or self-neglect.

*Conflict of interest* means a situation that interferes with a program or program employee or representative's ability to provide objective information or act in the best interests of the adult.

*Dual relationship* means a relationship in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

*Emergency Protective Action* means immediate access to petition the court for temporary or emergency orders or emergency out-of-home placement.

*Financial exploitation* means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an adult for monetary or personal benefit, profit, or gain, or that results in depriving an adult of rightful access to, or use of, their benefits, resources, belongings, or assets.

*Finding* means the decision made by APS after investigation that evidence is or is not sufficient under State law to determine adult maltreatment and/or self-neglect has occurred.

*Intake* or *Pre-Screening* means the APS process of receiving allegations of

adult maltreatment or self-neglect and gathering information on the reports, the alleged victim, and the alleged perpetrator.

*Investigation* means the process by which APS examines and gathers information about a possible allegation of adult maltreatment and/or self-neglect to determine if the circumstances of the allegation meet the State's standards of evidence for a finding.

*Mandated reporter* means someone who works with an adult in the course of their professional duties and who is required by State law to report suspected adult maltreatment or self-neglect to APS.

*Neglect* means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health and/or safety of an adult.

*Perpetrator* means the person determined by APS to be responsible for one or more instances of adult maltreatment.

*Quality assurance* means the process by which APS programs ensure investigations meet or exceed established standards, and includes:

(1) Thorough documentation of all investigation and case management activities;

(2) Review and approval of case closure; and

(3) Conducting a case review process.

*Report* means a formal account or statement made to APS regarding an allegation or multiple allegations of adult maltreatment and/or self-neglect and the relevant circumstances concerning the allegation or allegations.

*Response* means the range of actions and activities undertaken as the result of a report received by APS.

*Screening* means a process whereby APS carefully reviews the intake information to determine if the report of adult maltreatment meets the minimum requirements to be opened for investigation by APS, or if the report should be referred to a service or program other than APS.

*Self-neglect* means a serious risk of imminent harm to oneself or other created by an adult's inability, due to a

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physical or mental impairment or diminished capacity, to perform essential self-care tasks, including at least one of the following:

- (1) Obtaining essential food, clothing, shelter, and medical care;
- (2) Obtaining goods and services necessary to maintain physical health, mental health, or general safety; or,
- (3) Managing one's own financial affairs.

*Sexual abuse* means the non-consensual sexual interaction (touching and non-touching acts) of any kind with an adult.

*State entity* means the unit or units of State, District of Columbia, or U.S. Territorial government designated as responsible for APS programs, including through the establishment and enforcement of policies and procedures, and that receive(s) Federal grant funding under section 2042(b) of the EJA, 42 U.S.C. 1397m-1(b).

*Victim* means an adult who has experienced adult maltreatment.

### § 1324.402 Program administration.

(a) The State entity shall establish definitions for APS systems that:

- (1) Define the populations eligible for APS;
- (2) Define the specific elements of adult maltreatment and self-neglect that render an adult eligible for APS;
- (3) Define the alleged perpetrators who are subject to APS investigations in the State; and
- (4) Define the settings and locations in which adults may experience adult maltreatment and self-neglect and be eligible for APS in the State.

(5) State entities are not required to uniformly adopt the regulatory definitions in §1324.401, but State definitions may not narrow the scope of adults eligible for APS or services provided.

(b) The State entity shall create, publish, and implement policies and procedures for APS systems to receive and respond to reports of adult maltreatment and self-neglect in a standardized fashion. Such policies and procedures, at a minimum, shall:

- (1) Incorporate principles of person-directed services and planning and reliance upon least restrictive alternatives; and

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(2) Define processes for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment and self-neglect consistent with §1324.403, including:

- (i) Creation of at least a two-tiered response system for initial contact with the alleged victim based on immediate risk of death, irreparable harm, or significant loss of income, assets, or resources.

(A) For immediate risk, the response should occur in person and no later than 24-four hours after receiving a report of adult maltreatment and/or self-neglect.

(B) For non-immediate risk, response should occur no more than 7 calendar days after receiving a report of adult maltreatment and/or self-neglect.

(c) Upon first contact, APS systems shall provide to potential APS clients an explanation of their APS-related rights to the extent they exist under State law, including:

- (1) The right to confidentiality of personal information;
- (2) The right to refuse to speak to APS; and
- (3) The right to refuse APS services;
- (d) Information shall be provided in a format and language understandable by the adult, and in alternative formats as needed.

(e) The State entity shall establish policies and procedures for the staffing of APS systems that include:

- (1) Staff training and on-going education, including training on conflicts of interest; and
- (2) Staff supervision.

### § 1324.403 APS response.

The State entity shall adopt standardized and systematic policies and procedures for APS response across and within the State including, at a minimum:

- (a) Screening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment and self-neglect reports for APS investigation and/or to report to other authorities;
- (b) Tools and/or decision-making processes for APS to review reports of adult maltreatment and self-neglect for any emergency needs of the adult

and for immediate safety and risk factors affecting the adult or APS worker when responding to the report and;

(c) Practices during investigations to collect information and evidence to support findings on allegations, and service planning that will:

(1) Recognize that acceptance of APS services is voluntary, except where mandated by State law;

(2) Ensure the safety of APS client and worker;

(3) Ensure the preservation of a client's rights;

(4) Integrate principles of person-directedness and trauma-informed approaches;

(5) Maximize engagement with the APS client, and;

(6) Permit APS the emergency use of APS funds to buy goods and services;

(7) Permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and safety of the client.

(d) Methods to make findings on allegations and record case findings, including:

(1) Ability for APS programs to consult with appropriate experts, other team members, and supervisors;

(2) Protocols for the standards of evidence APS should apply when making a finding on allegations.

(e) Provision of and/or referral to services, as appropriate, that:

(1) Respect the autonomy and authority of clients to make their own life choices;

(2) Respect the client's views about safety, quality of life, and success;

(3) Develop any service plan or referrals in consultation with the client;

(4) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;

(f) Case handling criteria that:

(1) Establish timeframes for on-going review of open cases;

(2) Establish a reasonable length of time by which investigations should be completed and findings be made; and

(3) Document, at a minimum:

(i) The APS response;

(ii) Significant changes in client status;

(iii) Assessment of safety and risk at case closure; and

(iv) The reason to close the case.

#### § 1324.404 Conflict of interest.

The State entity shall establish standardized policies and procedures to avoid both actual and perceived conflicts of interest for APS. Such policies and procedures must include mechanisms to identify, remove, and remedy any actual or perceived conflicts of interest at organizational and individual levels, including to:

(a) Ensure that employees and individuals administering or representing APS programs, and members of an employee or individual's immediate family or household, do not have a conflict of interest;

(b) Ensure that employees and individuals administering or representing APS programs, and members of an employee or individual's immediate family or household, do not have a personal financial interest in an entity to which an APS program may refer adults for services;

(c) Establish monitoring and oversight procedures to identify conflicts of interest; and

(d) Prohibit avoidable dual relationships and ensure that appropriate safeguards are established should a dual relationship be unavoidable;

(1) In the case of an APS program petitioning for or serving as guardian, it is an unavoidable dual relationship only if all less restrictive alternatives to guardianship have been considered and either:

(i) A Court has instructed the APS program to petition for or serve as guardian; or

(ii) There is no other qualified individual or entity available to petition for or serve as guardian;

(2) For all dual relationships, the APS program must document the dual relationship in the case record and describe the mitigation strategies it will take to address the conflict of interest.

#### § 1324.405 Accepting reports.

(a) The State entity shall establish standardized policies and procedures for receiving reports of adult maltreatment and self-neglect 24 hours per day,

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7 calendar days per week, using multiple methods of reporting, including at least one online method, to ensure accessibility.

(b) The State entity shall establish standardized policies and procedures for APS to accept reports of alleged adult maltreatment and self-neglect by mandated reporters as defined in § 1324.401 that:

(1) Share with the mandated reporter who made such report to APS whether a case has been opened as a result of the report at the request of the mandated reporter; and

(2) Obtain the consent of the adult to share such information prior to its release.

(c) The State entity shall comply with all applicable State and Federal confidentiality laws and establish and adhere to standardized policies and procedures to maintain the confidentiality of adults, reporters, and information provided in a report.

#### **§ 1324.406 Coordination with other entities.**

(a) State entities shall establish policies and procedures, consistent with State law, to ensure coordination and to detect, prevent, address, and remedy adult maltreatment and self-neglect with other appropriate entities, including but not limited to:

(1) Other APS programs in the State, including Tribal APS programs, when authority over APS is divided between different jurisdictions or agencies;

(2) Other governmental agencies that investigate allegations of adult maltreatment, including, but not limited to:

(i) The State Medicaid agency, for the purposes of coordination with respect to critical incidents and other issues;

(ii) State nursing home licensing and certification;

(iii) State department of health and licensing and certification; and

(iv) Tribal governments;

(3) Law enforcement agencies with jurisdiction to investigate suspected crimes related to adult maltreatment: State or local police agencies, Tribal law enforcement, State Medicaid Fraud Control Units, State securities and financial regulators, Federal financial

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and securities enforcement agencies, and Federal law enforcement agencies;

(4) Organizations with authority to advocate on behalf of adults who experience alleged adult maltreatment, such as the State Long-Term Care Ombudsman Program, and/or investigate allegations of adult maltreatment, such as the Protection and Advocacy Systems;

(5) Emergency management systems, and;

(6) Banking and financial institutions.

(b) Policies and procedures must:

(1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment and self-neglect during all stages of a response conducted by APS or by other agencies and organizations with authority and jurisdiction to respond to reports of adult maltreatment and/or self-neglect;

(2) Address information sharing on the status and resolution of response between the APS system and other entities responsible in the State or other jurisdiction for response, to the extent permissible under applicable State law;

(3) Facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency teams, co-location of staff within appropriate agencies through memoranda of understanding, data sharing agreements, or other less formal arrangements; and

(4) Address other activities as determined by the State entity.

#### **§ 1324.407 APS program performance.**

The State entity shall develop policies and procedures for the collection and maintenance of data on APS system response. The State entity shall:

(a) Collect and report annually to ACL such APS system-wide data as required by the Assistant Secretary for Aging; and

(b) Develop policies and procedures to ensure that the APS system retains individual case data obtained from APS investigations for a minimum of 5 years.

#### **§ 1324.408 State plans.**

(a) State entities must develop and submit to the Director of the Office of Elder Justice and Adult Protective

Services, the position designated by 42 U.S.C. 3011(e)(1), a State APS plan that meets the requirements set forth by the Assistant Secretary for Aging.

(b) The State plan shall be developed by the State entity receiving the Federal award under 42 U.S.C. 1397m-1 in collaboration with APS programs and other State APS entities, if applicable.

(c) The State plan shall be updated at least every 5 years but may be updated more frequently as determined by the State entity.

(d) The State plan shall contain an assurance that all policies and procedures required herein will be developed and adhered to by the State APS system.

(e) State plans will be reviewed and approved by the Director of the Office of Elder Justice and Adult Protective Services. Any State dissatisfied with the final decision of the Director of the Office of Elder Justice and Adult Protective Services may appeal to the Deputy Assistant Secretary for Aging not later than 30 calendar days after the date of the Director of the Office of Elder Justice and Adult Protective Services' final decision and will be afforded the opportunity for a hearing before the Deputy Assistant Secretary. If the State is dissatisfied with the final decision of the Deputy Assistant Secretary for Aging, it may appeal to the Assistant Secretary for Aging not later than 30 calendar days after the date of the Deputy Assistant Secretary for Aging's decision.

## PART 1325—REQUIREMENTS APPLICABLE TO THE DEVELOPMENTAL DISABILITIES PROGRAM

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AUTHORITY: 42 U.S.C. 15001 *et seq.*

SOURCE: 80 FR 44807, July 27, 2015, unless otherwise noted. Redesignated at 81 FR 35645, June 3, 2016.

### § 1325.1 General.

Except as specified in § 1325.4, the requirements in this part are applicable to the following programs and projects:

(a) Federal Assistance to State Councils on Developmental Disabilities;

(b) Protection and Advocacy for Individuals with Developmental Disabilities;

(c) Projects of National Significance; and

(d) National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

[80 FR 44807, July 27, 2015, as amended at 81 FR 35647, June 3, 2016]

### § 1325.2 Purpose of the regulations.

These regulations implement the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*).

### § 1325.3 Definitions.

For the purposes of parts 1325 through 1328 of this chapter, the following definitions apply:

**ACL.** The term “ACL” means the Administration for Community Living within the U.S. Department of Health and Human Services.

**Act.** The term “Act” means the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) (42 U.S.C. 15001 *et seq.*).

**Accessibility.** The term “Accessibility” means that programs funded under the DD Act of 2000 and facilities which are used in those programs meet applicable requirements of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), its implementing regulation, 45 CFR part 84, the Americans with Disabilities Act of 1990, as amended, Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and its implementing regulation, 45 CFR part 80.

(1) For programs funded under the DD Act of 2000, information shall be provided to applicants and program participants in plain language and in a manner that is accessible and timely to:

(i) Individuals with disabilities, including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual; and