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governments, other State agencies responsible for emergency and disaster preparedness, and any other institutions that have responsibility for disaster relief service delivery;

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

(d) Other relevant information as determined by the Tribal organization or Hawaiian Native grantee.

§ 1322.35 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 Tribal organization or Hawaiian Native grantee may use disaster relief flexibilities as set forth in this section to provide disaster relief services within its approved service area for areas of the State or Indian Tribe where the specific major disaster declaration is authorized and where older Native Americans and family caregivers are affected.

(b) Flexibilities a Tribal organization or Hawaiian Native grantee may exercise under a major disaster declaration include allowing use of any portion of the funds of any open grant awards under Title VI of the Act for disaster relief services for older individuals and family caregivers.

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

(d) Expenditures of funds under disaster relief flexibilities must be reported separately from the grant where funding was expended. A Tribal organization or Hawaiian Native grantee may expend funds from any source within open grant awards under Title VI of the Act but must track the source of all expenditures.

(e) A Tribal organization or Hawaiian Native grantee must have policies and procedures outlining eligibility, use, and reporting of services and funds provided under these flexibilities.

(f) A Tribal organization or Hawaiian Native grantee may only make obligations exercising this flexibility during the major disaster declaration incident

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period or 90 days thereafter or with prior approval from the Assistant Secretary for Aging.

§ 1322.37 Title VI and Title III coordination for emergency and disaster preparedness.

A Tribal organization or Hawaiian Native grantee under Title VI of the Act and State and area agencies funded under Title III of the Act should coordinate in emergency and disaster preparedness planning, response, and recovery. A Tribal organization or Hawaiian Native grantee must have policies and procedures in place for how they will communicate and coordinate with State agencies and area agencies regarding emergency and disaster preparedness planning, response, and recovery.

§ 1322.39 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 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subpart A—State Long-Term Care Ombudsman Program

Sec.

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AUTHORITY: 2 U.S.C. 3001 *et seq.* and 42 U.S.C. 1394m.

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Subpart A—State Long-Term Care Ombudsman Program

§ 1324.1 Definitions.

The following definitions apply to this part:

Immediate family, pertaining to conflicts of interest as used in section 712 of the Older Americans Act (the Act) (42 U.S.C. 3058g), means a member of the household or a relative with whom there is a close personal or significant financial relationship.

Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the organizational unit in a State or Territory which is headed by a State Long-Term Care Ombudsman.

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, subpart A of this part, 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.

Representatives of the Office of the State Long-Term Care Ombudsman, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the employees or volunteers designated by the Ombudsman to fulfill the duties set forth in § 1324.19(a), whether personnel supervision is provided by the Ombuds-

man or their designees or by an agency hosting a local Ombudsman entity designated by the Ombudsman pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)).

Resident representative means any of the following:

(1) An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access the resident's medical, social, or other personal information; manage the resident's financial matters; or receive notifications pertaining to the resident;

(2) A person authorized by State or Federal law (including but not limited to agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access the resident's medical, social or other personal information; manage the resident's financial matters; or receive notifications pertaining to the resident;

(3) Legal representative, as used in section 712 of the Act (42 U.S.C. 3058g);

(4) The court-appointed guardian or conservator of a resident;

(5) Nothing in this rule is intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, State or Federal law, or a court of competent jurisdiction.

State Long-Term Care Ombudsman, or *Ombudsman*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the individual who heads the Office and is responsible to personally, or through representatives of the Office, fulfill the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19.

State Long-Term Care Ombudsman program, *Ombudsman program*, or *program*, as used in sections 711 and 712 of the Act (42 U.S.C. 3058f and 3058g), means the program through which the functions and duties of the Office are carried out, consisting of the Ombudsman, the Office headed by the Ombudsman, and the representatives of the Office.

Willful interference means actions or inactions taken by an individual in an attempt to intentionally prevent, interfere with, or attempt to impede the Ombudsman from performing any

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of the functions or responsibilities set forth in §1324.13, or the Ombudsman or a representative of the Office from performing any of the duties set forth in §1324.19.

§ 1324.11 Establishment of the Office of the State Long-Term Care Ombudsman.

(a) The Office of the State Long-Term Care Ombudsman shall be an entity headed by the State Long-Term Care Ombudsman, who shall carry out all of the functions and responsibilities set forth in §1324.13 and, directly and/or through local Ombudsman entities, the duties set forth in §1324.19.

(b) The State agency shall establish the Office and thereby carry out the Long-Term Care Ombudsman Program in either of the following ways:

(1) The Office is a distinct entity, separately identifiable, and located within or connected to the State agency; or

(2) The State agency enters into a contract or other arrangement with any public agency or nonprofit organization which shall establish a separately identifiable, distinct entity as the Office.

(c) The State agency shall require that the Ombudsman serve on a full-time basis. In providing leadership and management of the Office, the functions, responsibilities, and duties, as set forth in §§1324.13 and 1324.19 are to constitute the entirety of the Ombudsman's work. The State agency or other agency carrying out the Office shall not require or request the Ombudsman to be responsible for leading, managing or performing the work of non-ombudsman services or programs except on a time-limited, intermittent basis.

(1) This provision does not limit the authority of the Ombudsman program to provide ombudsman services to populations other than residents of long-term care facilities so long as the appropriations under the Act are utilized to serve residents of long-term care facilities, as authorized by the Act.

(2) [Reserved]

(d) The State agency, and other entity selecting the Ombudsman, if applicable, shall ensure that the Ombudsman meets minimum qualifications

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which shall include, but not be limited to, demonstrated expertise in:

(1) Long-term services and supports or other direct services for older individuals or individuals with disabilities;

(2) Consumer-oriented public policy advocacy;

(3) Leadership and program management skills; and

(4) Negotiation and problem resolution skills.

(e) Where the Ombudsman has the legal authority to do so, they shall establish policies and procedures, in consultation with the State agency, to carry out the Ombudsman program in accordance with the Act. Where State law does not provide the Ombudsman with legal authority to establish policies and procedures, the Ombudsman shall recommend policies and procedures to the State agency or other agency in which the Office is organizationally located, and such agency shall establish Ombudsman program policies and procedures as recommended by the Ombudsman. Where local Ombudsman entities are designated within area agencies on aging or other entities, the Ombudsman and/or appropriate agency shall develop such policies and procedures in consultation with the agencies hosting local Ombudsman entities, area agencies on aging, and representatives of the Office. The policies and procedures must address the following:

(1) *Program administration.* Policies and procedures regarding program administration must include, but not be limited to:

(i) A requirement that the agency in which the Office is organizationally located must not have personnel policies or practices that prohibit the Ombudsman from performing the functions and responsibilities of the Ombudsman, as set forth in §1324.13, or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that the Ombudsman, or other employees or volunteers of the Office, adhere to the personnel policies and procedures of the entity which are otherwise lawful.

(ii) A requirement that an agency hosting a local Ombudsman entity must not have personnel policies or

practices which prohibit a representative of the Office from performing the duties of the Ombudsman program or from adhering to the requirements of section 712 of the Act (42 U.S.C. 3058g). Nothing in this provision shall prohibit such agency from requiring that representatives of the Office adhere to the personnel policies and procedures of the host agency which are otherwise lawful.

(iii) A requirement that the Ombudsman shall, on a regular basis, monitor the performance of local Ombudsman entities which the Ombudsman has designated to carry out the duties of the Office.

(iv) A description of the process by which the agencies hosting local Ombudsman entities will coordinate with the Ombudsman in the employment or appointment of representatives of the Office.

(v) Standards to ensure that the Office and/or local Ombudsman entities provide prompt response to complaints, with priority given to complaints regarding abuse, neglect, exploitation, and complaints that are time sensitive. At a minimum, the standards shall require consideration of the severity of the risk to the resident, the imminence of the threat of or potential harm to the resident, and the opportunity for mitigating harm to the resident through provision of Ombudsman program services.

(vi) Procedures that clarify appropriate fiscal responsibilities of the local Ombudsman entity, including but not limited to clarifications regarding access to programmatic fiscal information by appropriate representatives of the Office.

(vii) Procedures that establish standard retention periods for files, records, and other information maintained by the Ombudsman program and allowable methods of storage and destruction.

(2) *Procedures for access.* Policies and procedures regarding timely access to facilities, residents, and appropriate records (regardless of format and including, upon request, copies of such records) by the Ombudsman and representatives of the Office must include, but not be limited to:

(i) Access to enter all long-term care facilities at any time during a facili-

ty's regular business hours or regular visiting hours, and at any other time when access may be required by the circumstances to be investigated;

(ii) Access to all residents to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iii) Access to the name and contact information of the resident representative, if any, where needed to perform the functions and duties set forth in §§1324.13 and 1324.19;

(iv) Access to review the medical, social, and other records relating to a resident, if:

(A) The resident or resident representative communicates informed consent to the access and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services, and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures;

(C) The resident is unable to communicate consent to the review and has no legal representative, and the representative of the Office obtains the approval of the Ombudsman; or

(D) Access is necessary in order to investigate a complaint, the resident representative refuses to consent to the access, a representative of the Office has reasonable cause to believe that the resident representative is not acting in the best interests of the resident, and the representative of the Office obtains the approval of the Ombudsman.

(v) Access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long-term care facilities;

(vi) Access of the Ombudsman to, and, upon request, copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(vii) Reaffirmation that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (42 U.S.C. 1301 *et seq.*), 45 CFR part 160 and 45 CFR part 164, subparts A and E, does not preclude release by covered

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entities of resident private health information or other resident identifying information to the Ombudsman program, including but not limited to residents' medical, social, or other records, a list of resident names and room numbers, or information collected in the course of a State or Federal survey or inspection process.

(3) *Disclosure.* Policies and procedures regarding disclosure of files, records, and other information maintained by the Ombudsman program must include, but not be limited to:

(i) Provision that the files, records, and information maintained by the Ombudsman program may be disclosed only at the discretion of the Ombudsman or designee of the Ombudsman for such purpose and in accordance with the criteria developed by the Ombudsman, as required by § 1324.13(e);

(ii) Prohibition of the disclosure of identifying information of any resident with respect to whom the Ombudsman program maintains files, records, or information, except as otherwise provided by § 1324.19(b)(5) through (8), unless:

(A) The resident or the resident representative communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The resident or resident representative communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order.

(iii) Prohibition of the disclosure of identifying information of any complainant with respect to whom the Ombudsman program maintains files, records, or information, unless:

(A) The complainant communicates informed consent to the disclosure and the consent is given in writing or through the use of auxiliary aids and services;

(B) The complainant communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented contemporaneously by a rep-

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resentative of the Office in accordance with such procedures; or

(C) The disclosure is required by court order.

(iv) Standard criteria for making determinations about disclosure of resident information when the resident is unable to provide consent and there is no resident representative or the resident representative refuses consent as set forth in § 1324.19(b)(5) through (8);

(v) Prohibition on requirements for mandatory reporting abuse, neglect, or exploitation to adult protective services or any other entity, long-term care facility, or other concerned person, including when such reporting would disclose identifying information of a complainant or resident without appropriate consent or court order, except as otherwise provided in § 1324.19(b)(5) through (8); and

(vi) Adherence to the provisions of paragraph (e)(3) of this section, regardless of the source of the request for information or the source of funding for the services of the Ombudsman program, notwithstanding section 705(a)(6)(C) of the Act (42 U.S.C. 3058d(a)(6)(C)).

(4) *Conflicts of interest.* Policies and procedures regarding conflicts of interest must establish mechanisms to identify and remove or remedy conflicts of interest as provided in § 1324.21, including:

(i) Ensuring that no individual, or member of the immediate family of an individual, involved in the employment or appointment of the Ombudsman has or may have a conflict of interest;

(ii) Requiring that other agencies in which the Office or local Ombudsman entities are organizationally located have policies in place to prohibit the employment or appointment of an Ombudsman or a representative of the Office who has or may have a conflict that cannot be adequately removed or remedied;

(iii) Requiring that the Ombudsman take reasonable steps to refuse, suspend, or remove designation of an individual who has a conflict of interest, or who has a member of the immediate family who has or may have a conflict of interest, which cannot be removed or remedied;

(iv) Establishing the methods by which the Office and/or State agency will periodically review and identify conflicts of the Ombudsman and representatives of the Office; and

(v) Establishing the actions the Office and/or State agency will require the Ombudsman or representatives of the Office to take in order to remedy or remove such conflicts.

(5) *Systems advocacy.* Policies and procedures related to systems advocacy must assure that the Office is required and has sufficient authority to carry out its responsibility to analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services and to the health, safety, welfare, and rights of residents, and to recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate.

(i) Such procedures must exclude the Ombudsman and representatives of the Office from any State lobbying prohibitions to the extent that such requirements are inconsistent with section 712 of the Act (42 U.S.C. 3058g).

(ii) Nothing in this part shall prohibit the Ombudsman or the State agency or other agency in which the Office is organizationally located from establishing policies which promote consultation regarding the determinations of the Office related to recommended changes in laws, regulations, and policies. However, such a policy shall not require a right to review or pre-approve positions or communications of the Office.

(6) *Designation.* Policies and procedures related to designation must establish the criteria and process by which the Ombudsman shall designate and/or refuse, suspend, or remove designation of local Ombudsman entities and representatives of the Office.

(i) Such criteria should include, but not be limited to, the authority to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office in situations in which an identified conflict of interest cannot be removed or remedied as set forth in § 1324.21.

(ii) [Reserved]

(7) *Grievance process.* Policies and procedures related to grievances must establish a grievance process for the receipt and review of grievances regarding the determinations or actions of the Ombudsman and representatives of the Office.

(i) Such process shall include an opportunity for reconsideration of the Ombudsman decision to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office. Notwithstanding the grievance process, the Ombudsman shall make the final determination to designate or to refuse, suspend, or remove designation of a local Ombudsman entity or representative of the Office.

(ii) [Reserved]

(8) *Determinations of the Office.* Policies and procedures related to the determinations of the Office must ensure that the Ombudsman, as head of the Office, shall be able to independently make determinations and establish positions of the Office, and carry out the functions and responsibilities authorized by § 1324.13 without interference and shall not be constrained by or necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located.

(9) *Emergency planning.* Policies and procedures related to emergency planning must include continuity of operations procedures using an all-hazards approach, and coordination with emergency management agencies.

§ 1324.13 Functions and responsibilities of the State Long-Term Care Ombudsman.

The Ombudsman, as head of the Office, shall have responsibility and authority for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program, as follows.

(a) *Functions.* The Ombudsman shall, personally or through representatives of the Office:

(1) Identify, investigate, and resolve complaints that:

(i) Are made by, or on behalf of, residents; and

(ii) Relate to action, inaction, or decisions, that may adversely affect the

health, safety, welfare, or rights of residents (including the welfare and rights of residents with respect to the appointment and activities of resident representatives) of:

(A) Providers, or representatives of providers, of long-term care;

(B) Public agencies; or

(C) Health and social service agencies.

(2) Provide services to protect the health, safety, welfare, and rights of the residents;

(3) Inform residents about means of obtaining services provided by the Ombudsman program;

(4) Ensure that residents have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses from representatives of the Office to requests for information and complaints;

(5) Represent the interests of residents before governmental agencies, assure that individual residents have access to, and pursue (as the Ombudsman determines as necessary and consistent with resident interests) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of residents;

(6) Provide administrative and technical assistance to representatives of the Office and agencies hosting local Ombudsman entities;

(7)(i) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long-term care facilities and services in the State;

(ii) Recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate;

(iii) Facilitate public comment on the laws, regulations, policies, and actions;

(iv) Provide leadership to statewide systems advocacy efforts of the Office on behalf of long-term care facility residents, including coordination of systems advocacy efforts carried out by representatives of the Office;

(v) Provide information to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of residents and recommendations related to the problems and concerns;

(vi) Such determinations and positions shall be those of the Office and shall not necessarily represent the determinations or positions of the State agency or other agency in which the Office is organizationally located;

(vii) In carrying out systems advocacy efforts of the Office on behalf of long-term care facility residents and pursuant to the receipt of grant funds under the Act, the provision of information, recommendations of changes of laws to legislators, and recommendations of changes to government agency regulations and policies by the Ombudsman or representatives of the Office do not constitute lobbying activities as defined by 45 CFR part 93.

(8) Coordinate with and promote the development of citizen organizations consistent with the interests of residents; and

(9) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils to protect the well-being and rights of residents.

(b) *Responsibilities.* The Ombudsman shall be the head of a unified statewide Long-Term Care Ombudsman Program and shall:

(1) Establish or recommend policies, procedures, and standards for administration of the Ombudsman program pursuant to §1324.11(e);

(2) Require representatives of the Office to fulfill the duties set forth in §1324.19 in accordance with Ombudsman program policies and procedures.

(c) *Designation.* The Ombudsman shall determine designation and refusal, suspension, or removal of designation, of local Ombudsman entities and representatives of the Office pursuant to section 712(a)(5) of the Act (42 U.S.C. 3058g(a)(5)) and the policies and procedures set forth in §1324.11(e)(6).

(1) If an Ombudsman chooses to designate local Ombudsman entities, the Ombudsman shall:

(i) Designate local Ombudsman entities to be organizationally located

within public or non-profit private entities;

(ii) Review and approve plans or contracts governing local Ombudsman entity operations, including, where applicable, through area agency on aging plans, in coordination with the State agency; and

(iii) Monitor, on a regular basis, the Ombudsman program performance of local Ombudsman entities.

(2) The Ombudsman shall establish procedures for training for certification and continuing education of the representatives of the Office, based on and consistent with standards established by the Director of the Office of Long-Term Care Ombudsman Programs as described in section 201(d) of the Act (42 U.S.C. 3011(d)) and set forth by the Assistant Secretary for Aging, in consultation with residents, resident representatives, citizen organizations, long-term care providers, and the State agency, that:

(i) Specify a minimum number of hours of initial training;

(ii) Specify the content of the training, including training relating to Federal, State, and local laws, regulations, and policies, with respect to long-term care facilities in the State; investigative and resolution techniques; and such other matters as the Office determines to be appropriate;

(iii) Specify that all program staff or volunteers who have access to residents, files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office; and

(iv) Specify an annual number of hours of in-service training for all representatives of the Office.

(3) Prohibit any representative of the Office from carrying out the duties described in § 1324.19 unless the representative:

(i) Has received the training required under paragraph (c)(2) of this section or is performing such duties under supervision of the Ombudsman or a designated representative of the Office as part of certification training requirements; and

(ii) Has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office.

(4) The Ombudsman shall investigate allegations of misconduct by representatives of the Office in the performance of Ombudsman program duties and, as applicable, coordinate such investigations with the State agency in which the Office is organizationally located, agency hosting the local Ombudsman entity and/or the local Ombudsman entity.

(5) Policies, procedures, or practices which the Ombudsman determines to be in conflict with the laws, policies, or procedures governing the Ombudsman program shall be sufficient grounds for refusal, suspension, or removal of designation of the representative of the Office and/or the local Ombudsman entity.

(d) *Ombudsman program information.* The Ombudsman shall manage the files, records, and other information of the Ombudsman program, whether in physical, electronic, or other formats, including information maintained by representatives of the Office and local Ombudsman entities pertaining to the cases and activities of the Ombudsman program. Such files, records, and other information are the property of the Office. Nothing in this provision shall prohibit a representative of the Office or a local Ombudsman entity from maintaining such information in accordance with Ombudsman program requirements. All program staff or volunteers who access the files, records, and other information of the Ombudsman program subject to disclosure requirements shall undergo training and certification to be designated as representatives of the Office.

(e) *Disclosure.* In making determinations regarding the disclosure of files, records, and other information maintained by the Ombudsman program, the Ombudsman shall:

(1) Have the sole authority to make or delegate determinations concerning the disclosure of the files, records, and other information maintained by the Ombudsman program. The Ombudsman shall comply with section 712(d) of the Act (42 U.S.C. 3058g(d)) in responding to requests for disclosure of files, records, and other information, regardless of

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the format of such file, record, or other information, the source of the request, and the sources of funding to the Ombudsman program;

(2) Develop and adhere to criteria to guide the Ombudsman's discretion in determining whether to disclose the files, records, or other information of the Office. Criteria for disclosure of records shall consider if the disclosure has the potential to:

(i) Cause retaliation against residents, complainants, or witnesses;

(ii) Undermine the working relationships between the Ombudsman program, facilities, and/or other agencies; or

(iii) Undermine other official duties of the program.

(3) Develop and adhere to a process for the appropriate disclosure of information maintained by the Office, including:

(i) Classification of at least the following types of files, records, and information: medical, social, and other records of residents; administrative records, policies, and documents of long-term care facilities; licensing and certification records maintained by the State with respect to long-term care facilities; and data collected in the Ombudsman program reporting system;

(ii) Identification of the appropriate individual designee or category of designee, if other than the Ombudsman, authorized to determine the disclosure of specific categories of information in accordance with the criteria described in this paragraph (e).

(f) *Fiscal management.* The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(g) *Annual report.* In addition to the annual submission of the National Ombudsman Reporting System report, the Ombudsman shall independently de-

velop, provide final approval of, and disseminate an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and as otherwise required by the Assistant Secretary for Aging.

(1) Such report shall:

(i) Describe the activities carried out by the Office in the year for which the report is prepared;

(ii) Contain analysis of Ombudsman program data;

(iii) Describe evaluation of the problems experienced by, and the complaints made by or on behalf of, residents;

(iv) Contain policy, regulatory, and/or legislative recommendations for improving quality of the care and life of the residents; protecting the health, safety, welfare, and rights of the residents; and resolving resident complaints and identified problems or barriers;

(v) Contain analysis of the success of the Ombudsman program, including success in providing services to residents of assisted living, board and care facilities, and other similar adult care facilities; and

(vi) Describe barriers that prevent the optimal operation of the Ombudsman program.

(2) The Ombudsman shall make such report available to the public and submit it to the Assistant Secretary for Aging, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long-term care facilities, and other appropriate governmental entities.

(h) *Memoranda of understanding.* Through adoption of memoranda of understanding or other means, the Ombudsman shall lead State-level coordination and support appropriate local Ombudsman entity coordination, between the Ombudsman program and other entities with responsibilities relevant to the health, safety, well-being, or rights of residents of long-term care facilities, including:

(1) The required adoption of memoranda of understanding between the Ombudsman program and:

(i) Legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), addressing

at a minimum referral processes and strategies to be used when the Ombudsman program and a legal assistance program are both providing program services to a resident;

(ii) Facility and long-term care provider licensure and certification programs, addressing at minimum communication protocols and procedures to share information including procedures for access to copies of licensing and certification records maintained by the State with respect to long-term care facilities.

(2) The recommended adoption of memoranda of understanding or other means between the Ombudsman program and:

- (i) Area agency on aging programs;
- (ii) Aging and disability resource centers;
- (iii) Adult protective services programs;
- (iv) Protection and advocacy systems, as designated by the State, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 *et seq.*);
- (v) The State Medicaid fraud control unit, as defined in section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q));
- (vi) Victim assistance programs;
- (vii) State and local law enforcement agencies;
- (viii) Courts of competent jurisdiction;
- (ix) The State Legal Assistance Developer as provided under section 731 of the Act (42 U.S.C. 3058j) and as set forth in subpart C to this part; and
- (x) The State mental health authority.

(i) *Other activities.* The Ombudsman shall carry out such other activities as the Assistant Secretary for Aging determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.

§ 1324.15 State agency responsibilities related to the Ombudsman program.

(a) *Compliance.* In addition to the responsibilities set forth in part 1321 of this chapter, the State agency shall ensure that the Ombudsman complies

with the relevant provisions of the Act and of this rule.

(b) *Authority and access.* The State agency shall ensure, through the development of policies, procedures, and other means, consistent with § 1324.11(e)(2), that the Ombudsman program has sufficient authority and access to facilities, residents, and information needed to fully perform all of the functions, responsibilities, and duties of the Office.

(c) *Training.* The State agency shall provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. The State agency may utilize funds appropriated under Title III and/or Title VII of the Act designated for direct services in order to provide access to such training opportunities.

(d) *Personnel supervision and management.* The State agency shall provide personnel supervision and management for the Ombudsman and representatives of the Office who are employees of the State agency. Such management shall include an assessment of whether the Office is performing all of its functions under the Act.

(e) *State agency monitoring.* The State agency shall provide monitoring, as required by § 1321.9(b) of this chapter, including but not limited to fiscal monitoring, where the Office and/or local Ombudsman entity is organizationally located within an agency under contract or other arrangement with the State agency. Such monitoring shall include an assessment of whether the Ombudsman program is performing all of the functions, responsibilities and duties set forth in §§ 1324.13 and 1324.19. The State agency may make reasonable requests for reports, including aggregated data regarding Ombudsman program activities, to meet the requirements of this provision.

(f) *Disclosure limitations.* The State agency shall ensure that any review of files, records, or other information maintained by the Ombudsman program is consistent with the disclosure limitations set forth in §§ 1324.11(e)(3) and 1324.13(e).

(g) *State and area plans on aging.* The State agency shall integrate the goals and objectives of the Office into the

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State plan and coordinate the goals and objectives of the Office with those of other programs established under Title VII of the Act and other State elder rights, disability rights, and elder justice programs, including, but not limited to, legal assistance programs provided under section 306(a)(2)(C) of the Act (42 U.S.C. 3026(a)(2)(C)), to promote collaborative efforts and diminish duplicative efforts. Where applicable, the State agency shall require inclusion of goals and objectives of local Ombudsman entities into area plans on aging.

(h) *Elder rights leadership.* The State agency shall provide elder rights leadership. In so doing, it shall require the coordination of Ombudsman program services with the activities of other programs authorized by Title VII of the Act, as well as other State and local entities with responsibilities relevant to the health, safety, well-being, or rights of older adults, including residents of long-term care facilities as set forth in § 1324.13(h).

(i) *Interference, retaliation, and reprisals.* The State agency shall:

(1) Ensure that it has mechanisms to prohibit and investigate allegations of interference, retaliation, and reprisals:

(i) By a long-term care facility, other entity, or individual with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office; or

(ii) By a long-term care facility, other entity or individual against the Ombudsman or representatives of the Office for fulfillment of the functions, responsibilities, or duties enumerated at §§ 1324.13 and 1324.19; and

(2) Provide for appropriate sanctions with respect to interference, retaliation, and reprisals.

(j) *Legal counsel.* (1) The State agency shall ensure that:

(i) Legal counsel for the Ombudsman program is adequate, available, is without conflict of interest (as defined by the State ethical standards governing the legal profession), and has competencies relevant to the legal needs of:

(A) The program, in order to provide consultation and/or representation as

needed to assist the Ombudsman and representatives of the Office in the performance of their official functions, responsibilities, and duties, including complaint resolution and systems advocacy. Legal representation, arranged by or with the approval of the Ombudsman, is provided to the Ombudsman or any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties.

(B) Residents, in order to provide consultation and representation as needed for the Ombudsman program to protect the health, safety, welfare, and rights of residents.

(ii) The Ombudsman and representatives of the Office assist residents in seeking administrative, legal, and other appropriate remedies. In so doing, the Ombudsman shall coordinate with the Legal Assistance Developer, legal services providers, and victim assistance services to promote the availability of legal counsel to residents.

(2) Such legal counsel may be provided by one or more entities, depending on the nature of the competencies and services needed and as necessary to avoid conflicts of interest (as defined by the State ethical standards governing the legal profession). At a minimum, the Office shall have access to an attorney knowledgeable about the Federal and State laws protecting the rights of residents and governing long-term care facilities.

(3) Legal representation of the Ombudsman program by the Ombudsman or representative of the Office who is a licensed attorney shall not by itself constitute sufficiently adequate legal counsel.

(4) The communications between the Ombudsman and their legal counsel are subject to attorney-client privilege.

(k) *Fiscal management.* The State agency shall ensure that:

(1) The Ombudsman receives notification of all sources of funds received by the State agency that are allocated or appropriated to the Ombudsman program and provides information on any requirements of the funds, and the Ombudsman is supported in their determination of the use of funds;

(2) The Ombudsman has full authority to determine the use of fiscal resources appropriated or otherwise available for the operation of the Office;

(3) Where local Ombudsman entities are designated, the Ombudsman approves the allocations of Federal and State funds to such entities, prior to any distribution of such funds, subject to applicable Federal and State laws and policies; and

(4) The Ombudsman determines that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies, and procedures governing the Ombudsman program.

(1) *State agency requirements of the Office.* The State agency shall require the Office to:

(1) Develop and provide final approval of an annual report as set forth in section 712(h)(1) of the Act (42 U.S.C. 3058g(h)(1)) and § 1324.13(g) and as otherwise required by the Assistant Secretary for Aging;

(2) Analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulations, and policies as the Office determines to be appropriate;

(3) Provide such information as the Office determines to be necessary to public and private agencies, legislators, the media, and other persons, regarding the problems and concerns of individuals residing in long-term care facilities; and recommendations related to such problems and concerns;

(4) Establish procedures for the training of the representatives of the Office, as set forth in § 1324.13(c)(2); and

(5) Coordinate Ombudsman program services with entities with responsibilities relevant to the health, safety, welfare, and rights of residents of long-term care facilities, as set forth in § 1324.13(h).

§ 1324.17 Responsibilities of agencies hosting local Ombudsman entities.

(a) The agency in which a local Ombudsman entity is organizationally located shall be responsible for the personnel management, but not the programmatic oversight, of representatives, including employee and volunteer representatives, of the Office.

(b) The agency in which a local Ombudsman entity is organizationally located shall not have personnel policies or practices which prohibit the representatives of the Office from performing the duties, or from adhering to the access, confidentiality, and disclosure requirements of section 712 of the Act (42 U.S.C. 3058g), as implemented through this rule and the policies and procedures of the Office.

(1) Policies, procedures, and practices, including personnel management practices of the host agency, which the Ombudsman determines conflict with the laws or policies governing the Ombudsman program shall be sufficient grounds for the refusal, suspension, or removal of the designation of local Ombudsman entity by the Ombudsman.

(2) Nothing in this provision shall prohibit the host agency from requiring that the representatives of the Office adhere to the personnel policies and procedures of the agency which are otherwise lawful.

§ 1324.19 Duties of the representatives of the Office.

In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity and may designate an employee or volunteer of the local Ombudsman entity as a representative of the Office. Representatives of the Office may also be designated employees or volunteers within the Office.

(a) *Duties.* An individual so designated as a representative of the Office shall, in accordance with the policies and procedures established by the Office and the State agency:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;

(2) Provide services to protect the health, safety, welfare, and rights of residents;

(3) Ensure that residents in the service area of the local Ombudsman entity have regular and timely access to the services provided through the Ombudsman program and that residents and complainants receive timely responses to requests for information and complaints;

(4) Represent the interests of residents before government agencies and assure that individual residents have access to, and pursue (as the representative of the Office determines necessary and consistent with resident interest) administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(5)(i) Review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents;

(ii) Facilitate the ability of the public to comment on the laws, regulations, policies, and actions.

(6) Promote, provide technical support for the development of, and provide ongoing support as requested by resident and family councils; and

(7) Carry out other activities that the Ombudsman determines to be appropriate and are consistent with the functions of the State Long-Term Care Ombudsman Program as authorized by the Older Americans Act.

(b) *Complaint processing.* (1) With respect to identifying, investigating, and resolving complaints, and regardless of the source of the complaint (*i.e.*, complainant), the Ombudsman and the representatives of the Office serve the resident of a long-term care facility. The Ombudsman or representative of the Office shall investigate a complaint, including but not limited to a complaint related to abuse, neglect, or exploitation, for the purposes of resolving the complaint to the resident's satisfaction and of protecting the health, welfare, and rights of the resident. The Ombudsman or representative of the Office may identify, investigate, and resolve a complaint impacting multiple residents or all residents of a facility.

(2) Regardless of the source of the complaint (*i.e.*, the complainant), including when the source is the Ombudsman or representative of the Office, the Ombudsman or representative of the Office must support and maximize resident participation in the process of resolving the complaint as follows:

(i) The Ombudsman or representative of the Office shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating, and resolving complaints.

(ii) The Ombudsman or representative of the Office shall discuss the complaint with the resident (and, if the resident is unable to communicate informed consent, the resident's representative) in order to:

(A) Determine the perspective of the resident (or resident representative, where applicable) of the complaint;

(B) Request the resident (or resident representative, where applicable) to communicate informed consent in order to investigate the complaint;

(C) Determine the wishes of the resident (or resident representative, where applicable) with respect to resolution of the complaint, including whether the allegations are to be reported and, if so, whether the Ombudsman or representative of the Office may disclose resident identifying information or other relevant information to the facility and/or appropriate agencies. Such report and disclosure shall be consistent with paragraph (b)(3) of this section;

(D) Advise the resident (and resident representative, where applicable) of the resident's rights;

(E) Work with the resident (or resident representative, where applicable) to develop a plan of action for resolution of the complaint;

(F) Investigate the complaint to determine whether the complaint can be verified; and

(G) Determine whether the complaint is resolved to the satisfaction of the resident (or resident representative, where applicable).

(iii) Where the resident is unable to communicate informed consent, and has no resident representative, the Ombudsman or representative of the Office shall:

(A) Take appropriate steps to investigate and work to resolve the complaint in order to protect the health, safety, welfare and rights of the resident; and

(B) Determine whether the complaint was resolved to the satisfaction of the complainant.

(iv) In determining whether to rely upon a resident representative to communicate or make determinations on behalf of the resident related to complaint processing, the Ombudsman or representative of the Office shall ascertain the extent of the authority that has been granted to the resident representative under court order (in the case of a guardian or conservator), by power of attorney or other document by which the resident has granted authority to the representative, or under other applicable State or Federal law.

(3) The Ombudsman or representative of the Office may provide information regarding the complaint to another agency in order for such agency to substantiate the facts for regulatory, protective services, law enforcement, or other purposes so long as the Ombudsman or representative of the Office adheres to the disclosure requirements of section 712(d) of the Act (42 U.S.C. 3058g(d)) and the procedures set forth in §1324.11(e)(3).

(i) Where the goals of a resident or resident representative are for regulatory, protective services or law enforcement action, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Office, the Office must assist the resident or resident representative in contacting the appropriate agency and/or disclose the information for which the resident has provided consent to the appropriate agency for such purposes.

(ii) Where the goals of a resident or resident representative can be served by disclosing information to a facility representative and/or referrals to an entity other than those referenced in paragraph (b)(3)(i) of this section, and the Ombudsman or representative of the Office determines that the resident or resident representative has communicated informed consent to the Ombudsman program, the Ombudsman or

representative of the Office may assist the resident or resident representative in contacting the appropriate facility representative or the entity, provide information on how a resident or representative may obtain contact information of such facility representatives or entities, and/or disclose the information for which the resident has provided consent to an appropriate facility representative or entity, consistent with Ombudsman program procedures.

(iii) In order to comply with the wishes of the resident, (or, in the case where the resident is unable to communicate informed consent, the wishes of the resident representative), the Ombudsman and representatives of the Office shall not report suspected abuse, neglect or exploitation of a resident when a resident or resident representative has not communicated informed consent to such report except as set forth in paragraphs (b)(5) through (7) of this section, notwithstanding State laws to the contrary.

(4) For purposes of paragraphs (b)(1) through (3) of this section, communication of informed consent may be made in writing, including through the use of auxiliary aids and services. Alternatively, communication may be made orally or visually, including through the use of auxiliary aids and services, and such consent must be documented contemporaneously by the Ombudsman or a representative of the Office, in accordance with the procedures of the Office.

(5) For purposes of paragraphs (b)(1) through (3) of this section, if a resident is unable to communicate their informed consent, or perspective on the extent to which the matter has been satisfactorily resolved, the Ombudsman or representative of the Office may rely on the communication by a resident representative of informed consent and/or perspective regarding the resolution of the complaint if the Ombudsman or representative of the Office has no reasonable cause to believe that the resident representative is not acting in the best interests of the resident.

(6) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1324.11(e)(3), shall provide that the

Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office;

(ii) The resident has no resident representative;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that an action, inaction, or decision may adversely affect the health, safety, welfare, or rights of the resident;

(iv) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(v) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(vi) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(7) For purposes of paragraphs (b)(1) through (3) of this section, the procedures for disclosure, as required by §1324.11(e)(3), shall provide that, the Ombudsman or representative of the Office may refer the matter and disclose resident-identifying information to the appropriate agency or agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action in the following circumstances:

(i) The resident is unable to communicate informed consent to the Ombudsman or representative of the Office and the Ombudsman or representative of the Office has reasonable cause to believe that the resident representative has taken an action, inaction or decision that may adversely affect the health, safety, welfare, or rights of the resident;

(ii) The Ombudsman or representative of the Office has no evidence indi-

cating that the resident would not wish a referral to be made;

(iii) The Ombudsman or representative of the Office has reasonable cause to believe that it is in the best interest of the resident to make a referral; and

(iv) The representative of the Office obtains the approval of the Ombudsman.

(8) The procedures for disclosure, as required by §1324.11(e)(3), shall provide that, if the Ombudsman or representative of the Office personally witnesses suspected abuse, gross neglect, or exploitation of a resident, the Ombudsman or representative of the Office shall seek communication of informed consent from such resident to disclose resident-identifying information to appropriate agencies.

(i) Where such resident is able to communicate informed consent, or has a resident representative available to provide informed consent, the Ombudsman or representative of the Office shall follow the direction of the resident or resident representative as set forth in paragraphs (b)(1) through (3) of this section; and

(ii) Where the resident is unable to communicate informed consent, and has no resident representative available to provide informed consent, the Ombudsman or representative of the Office shall open a case with the Ombudsman or representative of the Office as the complainant, follow the Ombudsman program's complaint resolution procedures, and shall refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides and/or to the appropriate agency or agencies for substantiation of abuse, gross neglect or exploitation in the following circumstances:

(A) The Ombudsman or representative of the Office has no evidence indicating that the resident would not wish a referral to be made;

(B) The Ombudsman or representative of the Office has reasonable cause to believe that disclosure would be in the best interest of the resident; and

(C) The representative of the Office obtains the approval of the Ombudsman or otherwise follows the policies and procedures of the Office described in paragraph (b)(9) of this section.

(iii) In addition, the Ombudsman or representative of the Office, following the policies and procedures of the Office described in paragraph (b)(9) of this section, may report the suspected abuse, gross neglect, or exploitation to other appropriate agencies for regulatory oversight; protective services; access to administrative, legal, or other remedies; and/or law enforcement action.

(9) Prior to disclosing resident-identifying information pursuant to paragraph (b)(6) or (8) of this section, a representative of the Office must obtain approval by the Ombudsman or, alternatively, follow policies and procedures of the Office which provide for such disclosure.

(i) Where the policies and procedures require Ombudsman approval, they shall include a time frame in which the Ombudsman is required to communicate approval or disapproval in order to assure that the representative of the Office has the ability to promptly take actions to protect the health, safety, welfare or rights of residents.

(ii) Where the policies and procedures do not require Ombudsman approval prior to disclosure, they shall require that the representative of the Office promptly notify the Ombudsman of any disclosure of resident-identifying information under the circumstances set forth in paragraph (b)(6) or (8) of this section.

(iii) Disclosure of resident-identifying information under paragraph (b)(7) of this section shall require Ombudsman approval.

§ 1324.21 Conflicts of interest.

The State agency and the Ombudsman shall consider both the organizational and individual conflicts of interest that may impact the effectiveness and credibility of the work of the Office. In so doing, both the State agency and the Ombudsman shall be responsible to identify actual and potential conflicts and, where a conflict has been identified, to remove or remedy such conflict as set forth in paragraphs (b) and (d) of this section.

(a) *Identification of organizational conflicts.* In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency

and the Ombudsman shall consider the organizational conflicts that may impact the effectiveness and credibility of the work of the Office. Organizational conflicts of interest include, but are not limited to, placement of the Office, or requiring that an Ombudsman or representative of the Office perform conflicting activities, in an organization that:

(1) Is responsible for licensing, surveying, or certifying long-term care services, including facilities;

(2) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities;

(3) Has any ownership or investment interest (represented by equity, debt, or other financial relationship) in, or receives grants or donations from, a long-term care facility;

(4) Has governing board members with any ownership, investment, or employment interest in long-term care facilities;

(5) Provides long-term care to residents of long-term care facilities, including the provision of personnel for long-term care facilities or the operation of programs which control access to or services for long-term care facilities;

(6) Provides long-term care services, including programs carried out under a Medicaid waiver approved under section 1115 of the Social Security Act (42 U.S.C. 1315) or under subsection (b) or (c) of section 1915 of the Social Security Act (42 U.S.C. 1396n), or under a Medicaid State plan under section 1905(a) or subsection (i), (j), or (k) of section 1915 of the Social Security Act (42 U.S.C. 1396d(a); 42 U.S.C. 1396n(i)-(k));

(7) Provides long-term care coordination or case management, including for residents of long-term care facilities;

(8) Sets reimbursement rates for long-term care facilities;

(9) Sets reimbursement rates for long-term care services;

(10) Provides adult protective services;

(11) Is responsible for eligibility determinations for the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396-1396v);

(12) Is responsible for eligibility determinations regarding Medicaid or other public benefits for residents of long-term care facilities;

(13) Conducts preadmission screening for long-term care facility admission;

(14) Makes decisions regarding admission or discharge of individuals to or from long-term care facilities; or

(15) Provides guardianship, conservatorship or other fiduciary or surrogate decision-making services for residents of long-term care facilities.

(b) *Removing or remedying organizational conflicts.* The State agency and the Ombudsman shall identify and take steps to remove or remedy conflicts of interest between the Office and the State agency or other agency carrying out the Ombudsman program.

(1) The Ombudsman shall identify organizational conflicts of interest in the Ombudsman program and describe steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.

(2) Where the Office is located within or otherwise organizationally attached to the State agency, the State agency shall:

(i) Take reasonable steps to avoid internal conflicts of interest;

(ii) Establish a process for review and identification of internal conflicts;

(iii) Take steps to remove or remedy conflicts;

(iv) Ensure that no individual, or member of the immediate family of an individual, involved in designating, appointing, otherwise selecting, or terminating the Ombudsman is subject to a conflict of interest; and

(v) Assure that the Ombudsman has disclosed such conflicts and described steps taken to remove or remedy conflicts within the annual report submitted to the Assistant Secretary for Aging through the National Ombudsman Reporting System.

(3) Where a State agency is unable to adequately remove or remedy a conflict, it shall carry out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)). The State agency may not

enter into a contract or other arrangement to carry out the Ombudsman program if the other entity, and may not operate the Office directly if it:

(i) Is responsible for licensing, surveying, or certifying long-term care facilities;

(ii) Is an association (or an affiliate of such an association) of long-term care facilities, or of any other residential facilities for older individuals or individuals with disabilities; or

(iii) Has any ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility.

(4) Where the State agency carries out the Ombudsman program by contract or other arrangement with a public agency or nonprofit private organization, pursuant to section 712(a)(4) of the Act (42 U.S.C. 3058g(a)(4)), the State agency shall:

(i) Prior to contracting or making another arrangement, take reasonable steps to avoid conflicts of interest in such agency or organization which is to carry out the Ombudsman program and to avoid conflicts of interest in the State agency's oversight of the contract or arrangement;

(ii) Establish a process for periodic review and identification of conflicts;

(iii) Establish criteria for approval of steps taken by the agency or organization to remedy or remove conflicts;

(iv) Require that such agency or organization have a process in place to:

(A) Take reasonable steps to avoid conflicts of interest; and

(B) Disclose identified conflicts and steps taken to remove or remedy conflicts to the State agency for review and approval.

(5) Where an agency or organization carrying out the Ombudsman program by contract or other arrangement develops a conflict and is unable to adequately remove or remedy a conflict, the State agency shall either operate the Ombudsman program directly or by contract or other arrangement with another public agency or nonprofit private organization.

(6) Where local Ombudsman entities provide ombudsman services, the Ombudsman shall:

(i) Prior to designating or renewing designation, take reasonable steps to

avoid conflicts of interest in any agency which may host a local Ombudsman entity;

(ii) Establish a process for periodic review and identification of conflicts of interest with the local Ombudsman entity in any agencies hosting a local Ombudsman entity;

(iii) Require that such agencies disclose identified conflicts of interest with the local Ombudsman entity and steps taken to remove or remedy conflicts within such agency to the Ombudsman;

(iv) Establish criteria for approval of steps taken to remedy or remove conflicts in such agencies; and

(v) Establish a process for review of and criteria for approval of plans to remove or remedy conflicts with the local Ombudsman entity in such agencies.

(7) Failure of an agency hosting a local Ombudsman entity to disclose a conflict to the Office or inability to adequately remove or remedy a conflict shall constitute grounds for refusal, suspension, or removal of designation of the local Ombudsman entity by the Ombudsman.

(c) *Identifying individual conflicts of interest.* (1) In identifying conflicts of interest pursuant to section 712(f) of the Act (42 U.S.C. 3058g(f)), the State agency and the Ombudsman shall consider individual conflicts that may impact the effectiveness and credibility of the work of the Office.

(2) Individual conflicts of interest for an Ombudsman, representatives of the Office, and members of their immediate family include, but are not limited to:

(i) Direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(ii) Ownership, operational, or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or a long-term care service;

(iii) Employment of an individual by, or participation in the management of, a long-term care facility or a related organization, in the service area or by the owner or operator of any long-term care facility in the service area;

(iv) Receipt of, or right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility;

(v) Accepting gifts or gratuities of significant value from a long-term care facility or its management, a resident, or a resident representative of a long-term care facility in which the Ombudsman or representative of the Office provides services (except where there is a personal relationship with a resident or resident representative which is separate from the individual's role as Ombudsman or representative of the Office);

(vi) Accepting money or any other consideration from anyone other than the Office, or an entity approved by the Ombudsman, for the performance of an act in the regular course of the duties of the Ombudsman or the representatives of the Office without Ombudsman approval;

(vii) Serving as guardian, conservator or in another fiduciary or surrogate decision-making capacity for a resident of a long-term care facility in which the Ombudsman or representative of the Office provides services;

(viii) Serving residents of a facility in which an immediate family member resides;

(ix) Management responsibility for, or operating under the supervision of, an individual with management responsibility for, adult protective services; and

(x) Serving as a guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity (as opposed to serving as a guardian or fiduciary for a family member, in a personal capacity).

(d) *Removing or remedying individual conflicts.* (1) The State agency or Ombudsman shall develop and implement policies and procedures, pursuant to §1324.11(e)(4), to ensure that no Ombudsman or representatives of the Office are required or permitted to hold positions or perform duties that would constitute a conflict of interest as set forth in §1324.21(c). This rule does not prohibit a State agency or Ombudsman from having policies or procedures that exceed these requirements.

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(2) When considering the employment or appointment of an individual as the Ombudsman or as a representative of the Office, the State agency or other employing or appointing entity shall:

(i) Take reasonable steps to avoid employing or appointing an individual who has an unremedied conflict of interest or who has a member of the immediate family with an unremedied conflict of interest;

(ii) Take reasonable steps to avoid assigning an individual to perform duties which would constitute an unremedied conflict of interest;

(iii) Establish a process for periodic review and identification of conflicts of the Ombudsman and representatives of the Office; and

(iv) Take steps to remove or remedy conflicts.

(3) In no circumstance shall the entity, which appoints or employs the Ombudsman, appoint or employ an individual as the Ombudsman who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Has been employed by or participated in the management of a long-term care facility within the previous twelve months; and

(iv) Receives, or has the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility.

(4) In no circumstance shall the State agency, other agency which carries out the Office, or an agency hosting a local Ombudsman entity appoint or employ an individual, nor shall the Ombudsman designate an individual, as a representative of the Office who:

(i) Has direct involvement in the licensing or certification of a long-term care facility;

(ii) Has an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long-term care facility. Divestment

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within a reasonable period may be considered an adequate remedy to this conflict;

(iii) Receives, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility; or

(iv) Is employed by, or participating in the management of, a long-term care facility.

(A) An agency which appoints or employs representatives of the Office shall make efforts to avoid appointing or employing an individual as a representative of the Office who has been employed by or participated in the management of a long-term care facility within the previous twelve months.

(B) Where such individual is appointed or employed, the agency shall take steps to remedy the conflict.

Subpart B—Programs for Prevention of Elder Abuse, Neglect, and Exploitation

§ 1324.201 State agency responsibilities for the prevention of elder abuse, neglect, and exploitation.

(a) In accordance with Title VII, chapter 3 of the Act, the distribution of Federal funds to the State agency on aging by formula is authorized to carry out activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation.

(b) All programs using these funds must meet requirements as set forth in the Act, including those of section 721(c), (d), (e) (42 U.S.C. 3058i(c)–(e)) and guidance as set forth by the Assistant Secretary for Aging.

Subpart C—State Legal Assistance Development

§ 1324.301 Definitions.

(a) Definitions as set forth in § 1321.3 of this chapter apply to this part.

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

§ 1324.303 Legal Assistance Developer.

(a) *State Legal Assistance Developer.* In accordance with section 731 of the Act (42 U.S.C. 3058j), the State agency shall designate an individual who shall be known as a State Legal Assistance Developer, and other personnel, sufficient to ensure:

(1) State leadership in securing and maintaining the legal rights of older individuals;

(2) State capacity for coordinating the provision of legal assistance, in accordance with section 102(23) and (24) and consistent with section 102(33) of the Act (42 U.S.C. 3002(23), (24), (33)), to include prioritizing such services provided to individuals with greatest economic need, or greatest social need;

(3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, Long-Term Care Ombudsman programs, adult protective services, and other service providers under the Act;

(i) The Legal Assistance Developer shall utilize the trainings, case consultations, and technical assistance provided by the support and technical assistance entity established pursuant to section 420(c) of the Act (42 U.S.C. 3032i(c)).

(ii) [Reserved]

(4) State capacity to promote financial management services to older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration promotion of activities to increase awareness of and access to self-directed financial management services and legal assistance and;

(ii) The Legal Assistance Developer shall also take into consideration promotion of activities that proactively enable older adults and those they designate as decisional supporters through powers of attorney, health care proxies, supported decision making and similar instruments or approaches to be connected to resources and education to manage their finances and the decisions they make about their lives so as to limit their risk for guardianship, conservatorship, or more restrictive fiduciary proceedings.

(5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship, conservatorship, or other fiduciary proceedings;

(i) In so doing, the Legal Assistance Developer shall take into consideration engaging in activities aimed at preserving an individual's rights or autonomy, including, but not limited to, increasing awareness of and access to least-restrictive alternatives to guardianship, conservatorship, or more restrictive fiduciary proceedings, such as supported decision making, and legal assistance;

(ii) In so doing, the Legal Assistance Developer shall adhere to the restrictions contained in section 321(a)(6)(B)(i) of the Act (42 U.S.C. 3030d(a)(6)(B)(i)) regarding the involvement of legal assistance providers in guardianship proceedings, and shall apply these restrictions to conservatorship and other fiduciary proceedings;

(iii) In undertaking this activity, the Legal Assistance Developer shall take into consideration coordination of efforts with legal assistance providers funded under the Act contracted by area agencies on aging, any Bar Association Elder Law section, and other elder rights or entities active in the State.

(6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(b) *State plan.* The activities designated by the State agency for the Legal Assistance Developer, in accordance with paragraphs (a)(1) through (6) of this section, shall be contained in the State plan, per section 307 of the Act (42 U.S.C. 3027) and as set forth in § 1321.27 of this chapter.

(c) *Knowledge, resources, and capacity.* The State agency shall ensure that the Legal Assistance Developer has the knowledge, resources, and capacity to conduct the activities outlined in paragraph (a) of this section.

(d) *Conflicts of interest.* (1) In designating a Legal Assistance Developer, the State agency shall consider any potential conflicts of interest posed by any candidate for the role, and take

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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

Sec.

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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