

## § 1324.400

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

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

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

(ii) [Reserved]

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

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

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

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

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

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

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

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

## 45 CFR Ch. XIII (10–1–24 Edition)

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

## § 1324.402

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

## 45 CFR Ch. XIII (10–1–24 Edition)

(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