

§ 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

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,