

Comparison of ACL's proposed APS rule (with 9/12/2023) with finalized APS rule (5/8/2024)
Final Rule Available at: <https://www.federalregister.gov/d/2024-07654>

As we hope you know, the anticipated federal rule for state APS programs receiving federal APS funding was formally released May 8, 2024, and takes effect June 7, 2024. NAPSA created this document at the request of members to aid in the consideration of the final federal rule on APS regulations promulgated by the Administration for Community Living (ACL). We encourage members to consider this document in conjunction with the preamble to the final rule to understand the changes made.

Please notify NAPSA (Kendra Kuehn, kendra.kuehn@napsa-now.org), if you note that we have overlooked any other changes, questions, or feedback.

Red – Item removed in final rule;

Blue – Item added in final rule;

Green – Item present in proposed rule but now in different place

ART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subpart D—Adult Protective Services Programs

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

§ 1324.400 Eligibility for funding.

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

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 ~~self-neglect or~~ abuse, neglect, financial exploitation, or sexual abuse of an adult at-risk of harm. ~~from a perpetrator with whom they have a trust relationship.~~

Adult Protective Services (APS) means such activities and services ~~provided to adults as~~ the Assistant Secretary for Aging may specify in guidance and includes ~~such services as~~:

- (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 (APS) System means the totality of both the State ~~entity~~ entities and the local APS programs.

Allegation means an accusation of adult maltreatment and/or self-neglect about associated with each adult in a report made to APS. ~~There may be multiple allegations in an investigation.~~

At risk of harm means the strong likelihood possibility that an individual will imminently experience an event, illness, condition, ~~disease, disorder,~~ injury, or other outcome that is adverse or detrimental and undesirable.

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 investigation by 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. ~~A conflict of interest would arise when an employee, officer, or agent of APS, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with APS systems.~~

Dual relationship means relationships 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 ~~emergency use of APS funds to purchase goods or services,~~ immediate access to petitioning the court for temporary or emergency orders, and 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.

~~*Inconclusive* means a determination that there was not sufficient evidence obtained during an APS investigation for APS to conclude whether adult maltreatment 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 ~~an~~ a possible allegation of adult maltreatment and/or self-neglect to determine if the circumstances of the allegation meet the States' standards of evidence for a finding. ~~of a substantiated, unsubstantiated, or inconclusive allegation.~~

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 or safety of an adult.

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

~~*Post-investigation Services* means the activities undertaken by APS in support of a client after a finding on an allegation of adult maltreatment has been made.~~

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 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 forced and/or unwanted 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 receives Federal grant funding from ACL under section 2042(b) of the EJA, 42 U.S.C. 1397m-1(b).

~~*Substantiated* means APS has made an investigation disposition that the allegation of maltreatment meets state law or agency policy for concluding that the adult was maltreated.~~

~~*Trust relationship* means the rational expectation or belief that a relative, friend, caregiver, or other person with whom a relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult's care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.~~

~~*Unsubstantiated* means that APS has made an investigation disposition that the allegation of maltreatment does not meet State law or agency policy for concluding that the adult was maltreated.~~

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 ~~on~~ upon least restrictive alternatives, ~~as well as other policies identified by the Assistant Secretary for Aging;~~ and
- (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 allege victim based on immediate risk of death, irreparable harm, or significant loss of income, assets, or resources.
 - (A) For immediate risk, response should occur in person no later than 24 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.~~ ~~is received.~~
- (c) ~~At~~ 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 ~~under State law~~ to confidentiality of personal information;
 - (2) The right ~~under State law~~ to refuse to speak to APS; and
 - (3) The right ~~under State law~~ to refuse APS services; ~~and;~~
 - ~~(4) Such other explanations of rights as determined by the Assistant Secretary for Aging.~~
- (d) Information shall be provided in a format and language understandable by the ~~individual 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
 - ~~(3) Staff to client ratios~~
- ~~(f) The State entity shall establish such other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging.~~

§ 1324.403 ~~Investigation and post-investigation services.~~ APS Response

The State entity shall adopt standardized and systematic policies and procedures for APS ~~investigation and post-investigation activities~~ 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 ~~inform support findings on~~ allegations ~~disposition~~ and service planning that will:
 - (1) Recognize acceptance of APS services is voluntary, except where ~~limited~~ mandated by State law;
 - (2) Ensure the safety of APS client and worker;
 - (3) Ensure the preservation of ~~an adult's~~ 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 ~~wellbeing of the client from self-harm or harm from others.~~
- (d) Methods to make ~~determinations~~ 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 **determination finding** on allegations.
- (e) Provision of **and/or referral to services** ~~APS post-investigation 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) Hold perpetrators accountable for the adult maltreatment and for stopping the abusive behavior;~~
 - (3) Develop any service plan or referrals in consultation **and agreement** with the client;
 - (4) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;
 - ~~(5) Monitor the status of client and services, and the impact of services.~~
- (f) Case handling criteria that:
 - (1) Establish timeframes for on-going review of open cases;
 - (2) Establish length of time by which investigations should be completed, and determinations be made; and
 - (3) Documents, at a minimum:
 - (i) **The APS response** ~~The APS interventions and services delivered;~~
 - (ii) Significant changes in client status;
 - ~~(iii) Assessment of the outcome and efficacy of intervention and services;~~
 - (iii) Assessment of safety and risk at case closure; and
 - (iv) The reason **or decision** 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 existing** conflicts of interest at organizational and individual levels, including to:

- (a) Ensure that employees and **agents individuals engaged in any part of an administering or representing APS programs, and members of an employee or individual's immediate family or household, do not have a conflict of interest** ~~APS investigation do not also provide direct services to, or oversee the direct provision of services, to the client;~~
- (b) Ensure that employees and **agents 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 they refer clients to services recommended by the APS program;**
- ~~(c) Ensure that no APS employee or agent, or member of an employee or agent's immediate family, is subject to conflict of interest;~~
- (c) **Establish monitoring and oversight procedures to identify conflicts of interest; and**
- (d) Prohibit **avoidable** dual relationships ~~unless unavoidable~~ and ensure appropriate safeguards are established should such relationships ~~occur~~ **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.

~~(e) Remove and remedy actual, perceived, or potential conflicts that arise.~~

§ 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, 7 calendar days per week, using multiple methods of reporting 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) hares information regarding a report to APS with the mandated reporter which shall include, at a minimum:~~

- (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.

~~(c) The disposition or finding of the allegation in the report.~~

~~(d) The State entity shall establish and adhere to standardized policies and procedures to maintain the confidentiality of 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 and securities enforcement agencies](#), and Federal law enforcement agencies;
 - (4) Organizations with authority to advocate on behalf of individuals who experienced the 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 ~~at a minimum~~:
- (1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment [and self-neglect](#) during all stages of ~~an adult maltreatment investigation response~~ conducted by APS or by other agencies and organizations with authority and jurisdiction to investigate reports of adult maltreatment [and/or self-neglect](#);
 - (2) Address information sharing on the status and resolution of investigations between the APS system and other entities responsible in the state or other jurisdiction for investigation, to the extent permissible under applicable State law, and;
 - (3) ~~Allow for the establishment of memoranda of understanding, where appropriate, to~~ Facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency ~~adult maltreatment teams~~, co-location of staff within appropriate agencies [through memoranda of understanding, data sharing agreements, or other less formal arrangements](#); and
 - (4) Other activities as determined by the State entity.

§ 1324.407 APS program performance.

The State entity shall develop policies and procedures for APS for the collection and maintenance of data on investigations conducted by APS systems. ~~They shall~~ [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 ~~Deputy~~-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** ~~as frequently as every three years.~~
- (d) The State plan shall contain an assurance that all policies and procedures ~~described~~ **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 ~~within~~ **not later than** 30 calendar days ~~of~~ **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 ~~within~~ **not later than** 30 calendar days ~~of~~ **after** the date of the Deputy Assistant Secretary for Aging's decision.