DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Part 1324

RIN 0985–AA18

Adult Protective Services Functions and Grants Programs

AGENCY: Administration for Community Living (ACL), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: ACL is issuing this Final Rule to modify the implementing regulations of the Older Americans Act of 1965 (''the Act'' or OAA) to add a new subpart (Subpart D) related to Adult Protective Services (APS).

DATES:

Effective date: This final rule is effective on June 7, 2024.

Compliance date: May 8, 2028.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason, Team Lead, Office of Elder Justice and Adult Protective Services, Administration on Aging, Administration for Community Living, Department of Health and Human Services, 330 C Street SW, Washington, DC 20201. Email: *Stephanie.WhittierEliason@acl.hhs.gov,* Telephone: (202) 795–7467 or (TDD).

SUPPLEMENTARY INFORMATION:

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I. Background

ACL is issuing this final rule modifying 45 CFR part 1324 of the implementing regulations of the Older Americans Act of 1965 (OAA or ''the Act'') to add a new subpart (subpart D). The rule exercises ACL's authority to regulate Adult Protective Services (APS) systems under section 201(e)(3) of the Act, 42 U.S.C. 3011(e)(3) and section 2042(a) and (b) of the Elder Justice Act (EJA), 42 U.S.C. 1397m–1(a) and (b).

Adult maltreatment is associated with significant harm to physical and mental health, as well as financial losses. Older adults and adults with disabilities may also experience deteriorated family relationships, diminished autonomy, and institutionalization, all of which can impact quality of life.[1] Studies have found that at least one in ten community-dwelling older adults experienced some form of abuse or potential neglect in the prior year.[2] A recent study of intimate partner violence among older adults found past 12-month prevalence of intimate partner psychological aggression, physical violence, and sexual violence by any perpetrator was 2.1%, 0.8%, and 1.7%, respectively.[3]

APS plays a critical role in the lives of older adults and adults with disabilities that may be subject to adult maltreatment. APS programs receive and respond to reports of adult maltreatment and self-neglect and work closely with adults and a wide variety of allied professionals to maximize safety and independence and provide a range of services to those they serve. APS programs often link adults subject to maltreatment to community social, physical health, behavioral health, and legal services to help them maintain independence and remain in the settings in which they prefer to live. APS programs are also often the avenue through which adult maltreatment is reported to law enforcement or other agencies of the criminal justice system.

APS is a social and human services program. Working collaboratively and with the consent of the client, APS caseworkers develop service plans and connect the client to social, health, and human services. As a social services program, the ''findings'' in an APS case are not legal determinations, either civil or criminal. If APS suspects that an act of maltreatment falls under a State's criminal statutes, APS will refer the case to law enforcement. APS systems work in close collaboration with law enforcement and emergency management systems to address the needs of older adults and adults with disabilities who are the victim of criminal acts, including but not limited to assault and sexual assault.

As discussed in greater detail in the *Statutory and Regulatory History,* until 2021, APS systems were funded primarily through a variety of local and State resources. All States now accept Federal funding, including EJA funding, for their APS systems in addition to their State and local funding. This final rule creates the first mandatory Federal standards to govern APS policies, procedures, and practices. State APS systems and programs will be required to comply with the final rule to receive Federal EJA funding. Thus far, the absence of Federal standards has resulted in significant program variation across and within States and, in some cases, sub-standard quality according to APS staff and other community members.

In 2021, ACL fielded a survey (OMB Control No. 0985–0071) of 51 APS systems (the 50 States and the District

[1] Mengting Li & XinQi Dong, *Association Between Different Forms of Elder Mistreatment and Cognitive Change, 33 J. of Aging and Health,* 249 (2020), *https://pubmed.ncbi.nlm.nih.gov/33249977/;* Russ Neuhart, Elder Abuse: Forensic, Legal and Medical Aspects, 163 (Amy Carney ed., 2019); Rosemary B. Hughes et al, *The Relation of Abuse to Physical and Psychological Health in Adults with Developmental Disabilities,* 12 Disability and Health J., 227 (2019), *https://doi.org/10.1016/j.dhjo.2018.09.007;* Joy S. Ernst & Tina Maschi, *Trauma-Informed Care and Elder Abuse: A Synergistic Alliance.* 30 J. of Elder Abuse & Neglect, 354 (2018), *https://pubmed.ncbi.nlm.nih.gov/30132733/.*

[2] Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study,* 100 Amer. J. of Pub. Health 292 (2010), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/;* Andre Rosay & Carrie Mulford, *Prevalence Estimates & Correlates of Elder Abuse in the United States: The National Intimate Partner and Sexual Violence Survey,* 29(1) J. of Elder Abuse and Neglect, 1 (2017); E-Shien Chang & Becca R Levy, *High Prevalence of Elder Abuse During the COVID–19 Pandemic: Risk and Resilience Factors,* 29(11) Amer. J. of Geriatric Psychiatry (2021), *doi.org/10.1016/j.jagp.2021.01.007.https://pubmed.ncbi.nlm.nih.gov/27782784/#:~:text=More%20than%201%20in%2010,both%20intimate%20and%20nonintimate%20partners;* Yongjie Yon et al., *Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-analysis,* 5(2) Lancet Global Health 147 (2017); Furthermore, it is estimated that for every incident of abuse reported to authorities, nearly 24 additional cases remain undetected. *See* Jennifer Storey, *Risk Factors for Abuse and Neglect: A Review of the Literature,* 50 Aggression and Violent Behavior 101339 (2020), *https://www.sciencedirect.com/science/article/abs/pii/S1359178918303471.*

[3] Zhang Kudon H, Herbst JH, Richardson LC, Smith SG, Demissie Z, Siordia C. Prevalence estimates and factors associated with violence among older adults: National Intimate Partner and Sexual Violence (NISVS) Survey, 2016/2017. J Elder Abuse Negl. 2023 Dec 21:1–17. doi: 10.1080/08946566.2023.2297227. Online ahead of print. PMID: 38129823.

of Columbia).[4] Results from that survey, which included State policy profiles, along with an analysis of the 2020 National Adult Maltreatment Reporting System (NAMRS) [5] data, illustrate the wide variability across APS programs.[6]

As discussed in the *Definitions* section, an APS system is made up of both the State entity (*e.g.,* the department of health and human services) or entities that receive State and Federal funding for APS, including EJA funding, and the local APS programs that provide adult protective services.[7] While the State entities establish APS policy, conduct training, administer funding, and provide information technology infrastructure support to local APS programs in almost all APS systems,[8] 27 States have indicated the need for greater consistency in practice.[9] States identified specific obstacles that included: a lack of resources for oversight in general or quality assurance processes specifically, differing policy interpretations across local programs, and not enough supervisors.[10]

To elevate uniform, evidence-informed practices across APS programs, ACL issued Voluntary Consensus Guidelines for State APS Systems (Consensus Guidelines) in 2016, which were subsequently updated in 2020.[11] In developing the Consensus Guidelines, ACL applied Office of Management and Budget (OMB) and National Institutes of Standards and Technology (NIST) standards and processes for creating field-developed, consensus-driven guidelines.[12] The Consensus Guidelines represent recommendations from the field based on their experience and expertise serving adults and communities and provide a core set of principles and common expectations to encourage consistency in practice, ensure adults are afforded similar protections and APS services regardless of locale, and support interdisciplinary and interagency coordination.

This final rule is informed by the input of commenters; the extensive research, analysis, community input in the development of our Consensus Guidelines and recommendations borne out of that process; experience and information from our NAMRS data; and the 2021 51 State National Process Evaluation Report.[13]

A. Statutory and Regulatory History and Reasons for the Proposed Rulemaking

APS programs have historically been primarily funded by States and administered by States and localities. They have been recognized in Federal law since 1974, when the Social Security Act was amended by the Social Services Amendments of 1974 (Pub. L. 93–647), 42 U.S.C. 1397a(a)(2)(A), to permit States to use Social Services Block Grant (SSBG) funding under Title XX for APS programming. However, while most States currently use SSBG funding for their APS programs, the amount of SSBG funding allocated to APS varies, and the allocations are limited.[14]

Through a series of legislative actions, Congress designated ACL as the Federal entity with primary responsibility for providing Federal policy leadership and program oversight for APS. This includes authority granted by the OAA to promulgate regulations, to oversee formula grants to State and Tribal APS programs, to enhance APS programs, to collect data to increase APS effectiveness, and to directly link the authorities of the EJA with those contained in the OAA.

Title VII of the OAA (Vulnerable Elder Rights Protection Activities), enacted in 1992, authorizes funding to States to address protections for vulnerable adults. Some activities are specifically identified to be conducted with Title VII funding. Section 201(e) of the OAA, 42 U.S.C. 3011(e), added in 2006, vests responsibility for a coordinated Federal and national response to elder justice issues broadly with the Assistant Secretary for Aging. ACL has rulemaking authority for elder justice activities by virtue of section 201(e)(3), 42 U.S.C. 3011(e)(3), which states, ''the Secretary, acting through the Assistant Secretary, may issue such regulations as may be necessary to carry out this subsection . . .'' and specifically references the responsibility of the Assistant Secretary for elder abuse prevention and services, detection, treatment, and response in coordination with heads of State APS programs. Section 2042(b) of the EJA, 42 U.S.C. 1397m–1, establishes an APS grant program under which the Secretary annually awards grants to States. The Secretary of HHS has designated ACL as the grant-making agency for APS. Therefore, the EJA and the OAA provide the Assistant Secretary with broad authority to coordinate, regulate, and fund State APS systems.

Through the enactment of the EJA in 2010, Congress again recognized the need for a more coordinated national elder justice and APS system. The EJA creates a national structure to promote research and technical assistance to

[4] Adult Protective Services Technical Assistance Resource Center (2023). National Process Evaluation of the Adult Protective Services System. Submitted to the Administration for Community Living, U.S. Department of Health and Human Services. The U.S. Territories are not included in the analysis. Extant policy information was not available from the Territories, thus were not included in the APS Policy Review or APS Systems Outcomes Analysis. They were able to participate in the APS Practice Survey, and their data are included in internal survey results reported to ACL.

[5] NAMRS is a data reporting system established and operated by ACL for the purpose of better understanding of adult maltreatment in the United States. The data collected is submitted by all APS programs in all states, the District of Columbia, and the Territories. NAMRS annually collects data on APS investigations of abuse, neglect and exploitation of older adults and adults with disabilities, as well as information on the administration of APS programs. The data provide an understanding of key program policies, characteristics of those experiencing and perpetrating maltreatment, information on the types of maltreatment investigated, and information on services to address the maltreatment. For more information, visit: The Admin. For Cmty. Living, *National Adult Maltreatment Reporting System, www.namrs.acl.gov* (last visited April 18, 2023).

[6] We refer to ''States'' in this rule to encompass all fifty States, the District of Columbia, and the five Territories (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and U.S. Virgin Islands).

[7] *See infra* note 24. In addition to ACL formula grants, States may receive Title XX Social Services Block Grant (SSBG) funding. However, States have discretion for whether and how much of their SSBG funding they choose to allocate to APS. Not all States use SSBG funding for their APS systems.

[8] For example, 76 percent of APS programs indicate that their State exerts ''significant'' control over local APS operations. *See supra* note 4 at 20.

[9] *See supra* note 4 at 21.

[10] *Id.*

[11] For detailed information on the development process for the 2016 and subsequent 2020 Consensus Guidelines, *see* The Admin. For Cmty. Living, Final National Voluntary Guidelines for State Adult Protective Services Systems (2016), *https://acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf* (last visited May 16, 2023); The Admin. For Cmty. Living, Voluntary Consensus Guidelines for State APS Systems (2020), *https://acl.gov/programs/elder-justice/final-voluntary-consensus-guidelines-state-aps-systems* (last visited Apr. 18, 2023).

[12] Off. of Mgmt. & Budget, Exec. Off. of the President, OMB Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, *https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf*); National Technology Transfer and Advancement Act of 1995, Public Law No. 104–113, including amendment Utilization of consensus technical standards by Federal agencies, Public Law No. 107–107, § 1115 (2001), *https://www.nist.gov/standardsgov/national-technology-transfer-and-advancement-act-1995;* The Admin. For Cmty. Living, *Report on the Updates to the Voluntary Consensus Guidelines for APS Systems* (2020) *https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf* (last visited May 9, 2023).

[13] *See supra* note 4.

[14] For example, South Carolina had the highest SSBG expenditure for *Vulnerable and Elderly Adults* in FY 2020 at $14,311,707 representing 58 percent of their entire block grant. The Dep't. of Health and Hum. Servs., Social Services Block Grant: Fiscal Year 2020. Ann. Rep. (2020). *https://www.acf.hhs.gov/sites/default/files/documents/ocs/RPT_SSBG_Annual%20Report_FY2020.pdf* (last visited May 11, 2023).

support Federal, State, and local elder justice efforts, as well as authorization for dedicated APS funding. A component of the EJA is specifically designed to address the need for better Federal leadership. The Federal Elder Justice Coordinating Council (EJCC) is established by the EJA [15] to coordinate activities across the Federal government that are related to elder abuse, neglect, and exploitation. The EJA designates the Secretary of HHS to chair the EJCC, and continually since the establishment of the EJCC in 2012, the HHS Secretary has designated that responsibility to the Assistant Secretary for Aging. Under the chairmanship of the Assistant Secretary for Aging, and since its establishment, the EJCC has met regularly, soliciting input from the APS community—ranging from individual citizens to expert practitioners and industry associations—on identifying and proposing solutions to the problems surrounding elder abuse, neglect, and financial exploitation, and for strengthening national support for APS.[16]

On numerous occasions, the APS community has stressed the need for more Federal guidance, leadership, stewardship, resources, and support for State and local APS programs and for victims of adult maltreatment. Advocates have requested greater funding and Federal regulatory guidance for APS systems in their testimony before Congress,[17] in their statements to the EJCC,[18] and in peer-reviewed journals.[19]

The Government Accountability Office (GAO) conducted three studies between 2010 and 2013 on the topics of abuse, neglect, and exploitation to shed light on the need for Federal leadership. The studies' findings repeatedly recommend a coordinated, Federal response to address the gaps in public awareness, prevention, intervention, coordination, and research of elder maltreatment, as well as a Federal ''home'' for APS.[20]

Since Fiscal Year (FY) 2015, Congress has appropriated funds to ACL in support of APS through section 2042(a) and 2401(c) of the EJA, 42 U.S.C. 1397m–1(a) and 42 U.S.C. 1397m(c). This funding is used to collect data, disseminate best practices, and provide discretionary elder justice demonstration grants.[21] In FY 2021, Congress provided the first dedicated appropriation to implement the EJA section 2042(b), 42 U.S.C. 1397m–1(b), formula grants to all States, the District of Columbia, and the Territories to enhance APS with one–time funding in response to the COVID–19 pandemic, totaling $188 million, and another $188 million in FY 2022.[22] The recent Consolidated Appropriations Act of 2023 included the first ongoing annual appropriation of $15 million to ACL to continue providing formula grants to APS programs under the EJA section 2042(b), 42 U.S.C. 1397m–1(b).[23]

This rule represents the first exercise of ACL's regulatory authority over APS under the OAA and the EJA. While we have issued sub-regulatory guidance, including comprehensive Consensus Guidelines in 2016 and 2020 that include APS evidence-informed practices, we believe it is necessary to codify and clarify a set of mandatory minimum national standards to ensure uniformity across APS programs and to promote high quality service delivery that thus far has not been achieved under the current Consensus Guidelines.

This final rule requires the State entity to establish written policies and procedures in areas of significant APS practice and establishes minimum Federal standards above and beyond which States may impose additional requirements on their APS systems, as discussed in greater depth herein.

B. Overview of the Final Rule

This final rule adopts the same structure and framework as the proposed rule. Section II provides a discussion of the Final Rule and response to comments, including general comments received on the NPRM and on individual provisions of the rule. Our Final Rule is a direct response to feedback from interested parties and reflects input about the evolving needs of APS systems.

We have made changes to the proposed rule's provisions based on the comments we received, including making changes to requirements commenters asserted would create significant burden or be difficult to implement. We have also provided clarification on several provisions in the preamble. Among the notable changes and significant clarifications are the following:

We have lengthened the implementation timeline by delaying the compliance date from 3 years after the publication of this rule to 4 years, and we discuss how States can work with ACL to address specific requirements that may need additional time through corrective actions plans.

Section 1324.401 addresses definitions used in the final rule. The definitions are foundational terms used in APS practices. In response to commenter feedback, ACL added definitions for ''finding,'' ''report'' and ''response.'' We also revised the terms ''abuse,'' ''adult maltreatment,'' ''at risk of harm,'' ''emergency protective action,'' ''exploitation,'' ''investigation,'' ''mandated reporter,'' ''self-neglect,'' and ''sexual abuse.'' We removed the terms ''inconclusive,'' ''post-investigative services,'' ''substantiated,'' ''trust relationship,'' and ''unsubstantiated.''

To clarify expectations around State adoption of the definitions in § 1324.401, we added new § 1324.402(a)(5) (Program Administration) explaining that State entities are not required to uniformly adopt the regulatory definitions, but State definitions may not narrow the scope of adults eligible for APS or services provided. The final rule requires States to establish definitions for APS systems that collectively incorporate every defined term and all of the elements of the definitions contained in § 1324.401. States must then provide assurances in their State plans that their definitions meet or exceed the minimum standard established by this Final Rule.

We clarified in § 1324.402(b)(2)(i)(A) that the requirement for a 24-hour

[15] 42 U.S.C. 1397k.

[16] The Admin. for Cmty. Living, *Federal Elder Justice Coordinating Council, https://ejcc.acl.gov/* (last visited Apr. 18, 2023).

[17] *Public and Outside Witness, Hearing Before the Subcomm. on Lab., Health and Hum. Servs. Educ. & Related Agencies of the House Appropriations Comm.,* 113th Cong. (2014) (statement of Kathleen M. Quinn, Exec. Dir. of the Nat'l. Adult Protective Servs. Ass'n.) *https://www.napsa-now.org/wp-content/uploads/2014/03/Appropriations-Testimony-NAPSA.pdf.*

[18] *Enhancing Response to Elder Abuse, Neglect, and Exploitation: Elder Justice Coordinating Council, Testimony of William Benson* (Oct. 10, 2012), *http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/EJCC/Meetings/2012_10_11.aspx.*

[19] Kathleen Quinn & William Benson, *The States' Elder Abuse Victim Services: A System in Search of Support,* 36 Generations 66 (2012).

[20] U.S. Gen. Acct. Off., *GAO–11–208, Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (2011) *https://www.gao.gov/products/gao-11-208;* U.S. Gen. Acct. Off., *GAO–13–110, Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation* (2012) *https://www.gao.gov/products/gao-13-110;* U.S. Gen. Acct. Off., *GAO–13–498, Elder Justice: More Federal Coordination and Public Awareness Needed* (2013) *https://www.gao.gov/products/gao-13-498.*

[21] 42 U.S.C. 1397m–1.

[22] Coronavirus Response and Relief Supplemental Appropriations Act of 2021, Public Law 116–260, 134 Stat. 1182; American Rescue Plan Act of 2021, Public Law 117–2, 135 Stat. 4.

[23] Consolidated Appropriations Act, 2023, Public Law 117–328. FY 21 and 22 funding was one-time funding to help with start-up costs and infrastructure and the surge of needs during the COVID–19 Public Health Emergency. FY 23 funding was the first ongoing formula grant funding to State grantees.

immediate need response can be fulfilled through a partnership with Emergency Management Systems, Law Enforcement, or other appropriate community resource with 24-hour response capability.

We clarified in § 1324.402(c) State APS-related client rights *do not* need to be provided in very first moment of first contact and that client rights *do not* need to be provided in writing (APS programs may choose how they wish to provide clients notice of their rights).

We modified proposed § 1324.402(d) to remove the requirement that State APS entities set staff-to-client ratios.

We modified proposed § 1324.403 (Investigation and Post-Investigation Services) by renaming it ''APS Response'' in response to commenter feedback.

We amended proposed § 1324.403(c)(6) by dividing it into § 132.403(c)(6): ''permit APS the emergency use of APS funds to buy goods and services'' and § 1324.403(c)(7) ''permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and wellbeing of the client from harm from others or self-harm'' in conformity with revised definition of ''emergency protective services'' and to better reflect APS practice and ACL policy around emergency protective action.

We removed § 1324.403(e)(6), which required APS systems to monitor the status of clients and the impact of services. Similarly, we removed § 1324.403(f)(3)(iii), which required APS programs to assess the outcome and efficacy of intervention and services. We believe this data can be adequately captured by our Program Performance requirements at § 1324.407.

In § 1324.404 (Conflict of Interest), we removed proposed § 1324.404(a) that required APS systems to ensure that APS employees and agents did not simultaneously provide or oversee direct services to clients during the course of an investigation.

We added to new § 1324.404(a) and § 1324.404(b) (formerly proposed § 404(b) and § 404(c) respectively) and amended to include ''member of immediate family *or household*'' [emphasis added] to widen scope of who is captured by COI provisions.

We moved proposed § 1324.404(e) to new § 1324.404(c) requiring APS establish monitoring and oversight protocol.

We expanded and finalized at § 1324.404(d)(1)–(2) to prohibit dual relationships unless unavoidable and when APS petitions for or serves as guardian, the dual relationship is unavoidable only if less restrictive alternatives to guardianship have been considered and either (i) a court has instructed the APS program to petition for or serve as a guardian or; (ii) there is no other qualified individual/entity available to petition for or serve as guardians. For all dual relationships APS must describe and document mitigation strategies in the case record to address conflicts of interest.

We added § 1324.405(a) (Accepting Reports) that 24 hour per day seven calendar day per week requirement for accepting reports does not mean a live APS worker must field reports—rather, it refers to 24 hour per day, seven calendar day per week reporting portal. We likewise clarified that APS programs must maintain at least two methods of reporting and one method of reporting must be an online portal, secured email address, or other online method.

We removed proposed § 1324.405(b)(ii), which required APS to share with a mandated reporter the finding of an allegation in a report made by the mandated reporter. New § 1324.405(b)(1)–(2) adds the requirement that a mandated reporter only be notified upon their request. APS must only inform the reporter if a case has been opened because of their report, with the prior consent of the adult on whose behalf the case was opened. Relatedly, we have modified to definition of ''mandated reporter'' to apply only to mandated reporters reporting in their professional capacity.

We modified proposed § 1324.406 (Coordination with Other Entities) to add Tribal APS programs to § 1324.406(a)(1). We modified proposed § 1324.406(a)(2) to reference coordination with State Medicaid agencies ''for the purposes of coordination with respect to critical incidents.''

We modified § 1324.406(a)(3) to add State securities and financial regulators, and Federal financial and securities enforcement agencies.

We have made clarifying edits and preamble text proposed § 1324.406(b)(3) that APS Systems should facilitate (but are not required) to enter into formal data sharing agreements or MOUs. Informal arrangements may also be appropriate.

We modified proposed § 1324.408 (State Plans) to clarify that the State APS entity receiving the Federal award of funding under 42 U.S.C. 1397m–1 must develop the State plan in collaboration with other State APS entities, as applicable, and other APS programs.

C. Severability

To the extent that any portion of the requirements arising from the final rule is declared invalid by a court, ACL intends for all other parts of the final rule that can operate in the absence of the specific portion that has been invalidated to remain in effect. While our expectation is that all parts of the final rule that are operable in such an environment would remain in effect, ACL will assess at that time whether further rulemaking is necessary to amend any provisions subsequent to any holding that ACL exceeded its discretion, or the provisions are inconsistent with the OAA or EJA or are vacated or enjoined on any other basis.

II. Provisions of the Final Rule and Responses to Public Comments

We received 172 public comments from individuals and organizations, including State APS entities, Tribes and Tribal organizations, APS programs, Area Agencies on Aging (AAAs), Ombudsman programs, State governmental entities, State and national organizations and advocacy groups, and private citizens. We thank commenters for their consideration of the proposed rule and appreciate all comments received. In the subsequent sections, we summarize the rule's provisions and the public comments received, and we provide our response.

General Comments on the NPRM

General Support

Comment: We received many comments in support of the proposed rule. Commenters expressed general support for the national baseline created by the regulations. A significant number of commenters requested additional funds for APS programs, particularly in light of requirements in the new regulations.

Response: ACL appreciates these comments. We encourage collaboration at the State and local levels to identify solutions that are responsive to the needs and resources in local communities. Requests for additional funding are outside the scope of this rule.

Technical Corrections; Recommendations for Sub-Regulatory Guidance

Comment: Several commenters identified technical corrections, including inconsistency in terminology and grammatical errors. Commenters also provided suggestions and raised questions that could be addressed in future sub-regulatory guidance on a variety of topics.

Response: We appreciate these comments and have made the recommended technical corrections. We look forward to providing technical assistance and guidance subsequent to promulgation of the final rule.

Minimum Federal Standards

As discussed in the proposed rule, our requirements establish minimum Federal standards for all States receiving EJA funding pursuant to 42 U.S.C. 1397m–1. These standards will promote uniformity across APS programs and high-quality service delivery. However, as discussed in the preamble, the regulation allows significant flexibility for State APS systems as they respond to the unique needs of their communities. Accordingly, we allow and encourage State APS systems to include services, practices, and processes that exceed these minimum Federal standards. As State entities develop their State plans, they should, in addition to assurances related provided pursuant to § 1324.408, detail APS functions performed above the minimum Federal standards set out in this regulation. We emphasize that EJA funding is available for all approved APS functions as defined in section 2402 of the EJA, 42 U.S.C. 1397m–1, including those not explicitly detailed in this regulation, provided they are included in an approved State plan.

We will provide technical assistance as States develop their State plans to determine whether their policies and procedures and program functions meet these minimum standards.

Comment: One commenter requested that ACL clarify in regulation text that EJA funds may be expended on activities not specified in the regulation.

Response: We have declined to revise the regulation text as requested. Our regulation establishes a minimum Federal standards for APS functions, and we require that EJA funding must be used consistent with the activities described in the approved State plan; under 42 U.S.C. 1397m–1(b)(3)(A), ''funds made available pursuant to this subsection may only be used by States and local units of government to provide adult protective services and may not be used for any other purpose.'' EJA funding may be used for all activities in an approved State plan, including those not specifically enumerated in this regulation. However, EJA funding is only allowable for APS activities under the EJA and in an approved State plan. Under 42 U.S.C. 1397m–1(b)(3)(C), EJA funding must be used to supplement, and not supplant, other sources of funding that support the same or similar activities.

Tribal Considerations

Comment: We received comments regarding the applicability of this rule to Tribes, Tribal governments, and Tribal APS programs. Commenters encouraged ACL to finalize regulations that allow Tribes the flexibility to adapt Tribal APS programs to their own cultures. Commenters further stressed that our regulations should consider and reflect Tribal practices and perspectives—requiring State APS systems to coordinate with Tribal governments and APS programs, and to address APS jurisdiction over events that occur on Tribal lands or to members of tribes who may not be on Tribal land. Commenters sought greater explanation and clarification.

Response: Tribal governments do not receive funding through EJA APS formula grants (42 U.S.C. 1397m–1), thus this rule does not apply to Tribal governments. However, we recognize that many State and local APS programs collaborate with Tribes and Tribal APS programs during their work. We have amended § 1324.406(a)(1) ''Coordination with Other Entities'' to reflect this.

ACL is committed to honoring Tribal sovereignty and works to maintain a strong government-to-government relationship by providing opportunities for meaningful and timely input on areas that have a direct impact to Tribal programs. This rule anticipates that State entities will seek input from interested parties when they develop State APS plans, and we encourage collaboration with all interested parties, including Tribes, Tribal governments, and Tribal members. ACL will provide technical assistance to States regarding the preparation of State APS plans, including engaging with Tribes. Additionally, ACL will solicit input from and conduct Tribal consultation meetings with affected Federally recognized Tribes per Federal requirements as this rule is implemented.

Compliance

Comment: We received comment requesting more information on compliance requirements and penalties for non-compliance.

Response: As with all grant-funded programs, grantees must comply with applicable Federal requirements to receive funding. If a State APS program accepts funding made available under 42 U.S.C. 1397m–1(b), it is required to adhere to all provisions contained in this final rule, in addition to the uniform administrative requirements, cost principles, and audit requirements for HHS awards codified in 45 CFR part 75. Among other requirements, State entity recipients of funding must provide fiscal and performance reporting that documents that they are expending funds in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. Further, 45 CFR part 75, subpart D requires recipients of Federal awards to have a financial management system in place to account for the Federal award. ACL leaves it to the State entity's discretion to determine how they will ensure that funds are expended in a manner that meets the requirements of this regulation and consistent with the State's internal fiscal controls.

Upon learning of compliance concerns, ACL provides technical assistance to enable grantees to come into compliance (as is true of all compliance concerns related to our grantee's actions). ACL may also work with grantees on a corrective action plan. Consequences for non-compliance may include withholding of funds until the grantee achieves compliance.

Effect on County-Administered Systems

Comment: One commenter in a county-based system commented in support of the proposed rule, suggesting that it will help to standardize services, place the State in a position of greater oversight, and effectively support adults with disabilities. Other commenters stressed that, in county-based systems, it would be difficult to implement the rule because the State does not have sufficient authority over counties to ensure compliance. A few commenters suggested that the proposed rule would detract from the strengths of a county-administered system that promotes autonomy and system responsiveness based on local needs and abilities and would be challenging or impossible to implement based on the structure of their programs.

Commenters raised concerns that our conflict of interest provisions in § 1324.404 would be challenging to implement in counties where many APS workers have dual relationships. A few commenters suggested that our proposal would require additional funding and staff to mitigate conflicts surrounding dual relationships. One commenter wrote that creation of a centralized State intake system in their county-administered system would be challenging and burdensome and may be less effective than the current localized process. They sought clarification as to whether State-centralized systems were required.

A few commenters in a county-administered State requested specific

guidance on the rule's application and implementation to their APS systems.

Response: We appreciate commenters' comments related to implementation of this regulation in States that have county-administered systems, and we acknowledge unique challenges such APS systems may face as they implement this regulation. The regulations set minimum Federal standards with a significant amount of latitude provided for State implementation. We believe the flexibility will allow all States, including those with county-based system, to continue provide APS services tailored to the unique needs of their communities. We discuss dual relationships in more detail in our preamble discussion for § 1324.404. We clarify nothing in this regulation requires a State centralized intake system.

Funding made available under 42 U.S.C. 1397m–1(b) is intended to enable State APS programs to implement an APS program as described in this regulation. As the recipient of Federal funding, the State entity is responsible for compliance with this regulation and 45 CFR part 75, which sets out requirements for all recipients of this type of Federal funding. We leave it to the discretion to the State entity to determine how to best ensure that all Federal funds are expended in a manner that meets the requirements of this regulation and consistent with the State's internal fiscal controls. We will provide ongoing technical assistance as necessary to county-administered systems throughout the initial implementation period, now extended to 4 years, and beyond. State APS entities may also request a corrective action plan to assist in addressing provisions of the rule that prove uniquely challenging for county-administered systems.

Administrative Burden, Implementation Costs, Implementation Timeframe

Comment: A significant number of commenters raised concerns about the burden, cost, and amount of time regulated entities would need to implement the final rule (*e.g.,* costs and time needed to change State statute, to create or update State regulations, to review and update existing policies and procedures, to create new policies and procedures, and to train staff), as well as concerns about the ongoing costs of monitoring compliance with the final rule. Some State agencies commented that they anticipate that consultants and/or additional staff will need to be hired and/or that changes will need to be made to information technology systems. Some State agencies asserted that ACL had greatly underestimated both the cost, and the amount of time, needed to come into compliance with the rule.

Response: We appreciate that the implementation of this rule may require statutory changes, create administrative burden, and require increased funding and/or increased staff. We have carefully considered commenter feedback and made substantial revisions to our proposals where we believed burden could be reduced while still maintaining the integrity and efficacy of these requirements.[24] For example, we have removed requirements for States entities to set staff to client ratios, streamlined monitoring requirements, clarified the ability of APS systems to share responsibility for immediate risk cases with first responders and other community partners, and clarified requirements around 24 hour per day, 7 calendar day per week intake methods. We have also lengthened the implementation timeline by extending the compliance date from 3 to 4 years.

If State APS entities encounter challenges implementing specific provisions of the rule, they should engage with ACL for technical assistance and support. In addition, State APS entities that need additional time to comply with one or more provisions of the rule may submit a request to proceed under a corrective action plan. A request should include the reason the State needs additional time, the steps the State will take to reach full compliance, and how much additional time the State anticipates needing. The corrective action plan process is intended to be highly collaborative and flexible. Under a corrective action plan, States agencies and ACL will jointly identify progress milestones and a feasible timeline for the State agency to come into compliance with the provision(s) of the rule incorporated into the corrective action plan. State agencies must make a good faith effort at compliance to continue operating under a corrective action plan. ACL will provide guidance on this process after this rule takes effect, including a timeline for making requests for corrective action plans.

Our rule will improve APS program efficiency, enhance APS for older adults and adults with disabilities, and further the intent of the OAA and the EJA. We anticipate upon full implementation that any burden incurred will be far outweighed by the benefit of this rulemaking.

[24] See a further discussion of projected burden and benefit in our Regulatory Impact Analysis on p. 124.

III. Adult Protective Services Systems

A. Section 1324.400 Eligibility for Funding

In proposed § 1324.400, we clarified that annual funding from ACL through section 2042(b) of the EJA, 42 U.S.C. 1397m–1(b) is predicated on compliance with this rule.

Comment: We received comment from States with bifurcated APS systems. These States have two APS entities, one charged with investigating allegations of adult maltreatment and self-neglect for people aged 60 and over, and the other charged with investigating allegations of adult maltreatment and self-neglect for younger adults with disabilities. Commenters requested clarification on the application of the proposed rule to the programs that serve younger adults with disabilities.

Response: The final rule applies to any program that uses EJA funding to provide Adult Protective Services, whether those funds are used for older or younger adults. ACL bases our authority to issue APS regulations on elder abuse prevention and services on section 201(e)(3) of the OAA, 42 U.S.C. 3011(e)(3). With respect to APS for younger adults, section 2042(b) of the EJA authorizes grants to enhance the provision of APS, defined broadly as ''services provided to adults as specified by the Secretary.'' 42 U.S.C. 1397m–1. Given that Congress has appropriated funding for APS programs under the EJA, ACL intends for this regulation to set forth the conditions of participation for recipients of APS grants to States under the EJA, as well as elder abuse prevention and services under the OAA.

ACL has previously taken the position that funding to APS programs provided through the EJA should serve all adults eligible for APS services.[25] For purposes of this regulation, we defer to States' definition of ''adult'' to determine eligibility for APS. Therefore, this regulation applies to all APS programs that serve adults eligible for APS services, regardless of whether an APS entity serves only adults under age 60.

As detailed in § 1324.408, each State that accepts APS funding must submit a single State plan for ACL approval that describes which populations will be served, which services will be provided, and which entities will oversee the provision of those services.

[25] See, CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT OF 2021 (CRRSA): GRANTS TO ENHANCE ADULT PROTECTIVE SERVICES TO RESPOND TO COVID–19, Frequently Asked Questions (*Updated March 23, 2023*).

States with bifurcated APS systems may designate more than one entity as responsible for different populations within their State plan. In such States, the State plan should also describe the allocation plan for the distribution of funds between State entities, as well as processes for coordination on cases and on the development of policies and procedures.

B. Section 1324.401 Definitions

The final rule updates the definitions of significant terms in § 1324.401 by adding several new definitions and revising several existing definitions. The additions and revisions are intended to reflect terms foundational to APS practice and feedback that we have received from a range of interested parties.

We add definitions of the following terms to the final rule: ''finding,'' ''report,'' and ''response.''

We retain the following terms from the proposed rule and make revisions: ''adult maltreatment,'' ''Adult Protective Services System,'' ''at risk of harm,'' ''client,'' ''emergency protective action,'' ''exploitation,'' ''investigation,'' ''mandated reporter,'' ''self-neglect,'' ''sexual abuse,'' and ''State entity.''

We removed the following terms used in the proposed rule: ''inconclusive,'' ''post-investigative services,'' ''substantiated,'' ''trust relationship,'' and ''unsubstantiated.''

Comment: We received comment encouraging more systematic use of strengths-based language throughout our definitions.

Response: Throughout the definitions and the rule, we have worked to incorporate more person-directed (also sometimes referred to as ''person-centered'') and strengths-based language. According to the National Center on Elder Abuse, ''[p]erson-centered, trauma-informed care is a holistic approach to service provision that fosters dignity and resilience among survivors of trauma. This approach recognizes the impact of trauma and incorporates that knowledge into service delivery and provider practices. Person-centered, trauma informed care provides a framework that advances safety, culturally respectful and responsive programming, and empowering environments for survivors.'' [26] We agree with commenters that the systematic use of strengths-based language that reflects the principles of person-centeredness and trauma-informed care is critical to effective APS services for adults and thank commenters for their feedback.

Comment: We received comment from many State APS entities and other interested parties that several of our definitions, most notably ''adult maltreatment,'' conflict with State definitions, were confusing or duplicative, or did not reflect APS practice in their State. Many States commented, providing their own State definitions. Many State entities and APS programs commented that changes to their State statute, regulation, and/or policy would be necessary to come into compliance and that to make these changes would be onerous and time-consuming. Some commenters requested that ACL provide waivers for States where compliance would be overly burdensome.

Response: We thank commenters for sharing their State experience and expertise. We have incorporated many of these suggestions and comments in our revised definitions, and into our incorporation of the definitions into the regulatory requirements in § 1324.402.

We include the definitions in this regulation, some of which are drawn directly from the OAA and EJA, as a baseline, and we encourage States without robust existing definitions to adopt these statutory definitions. However, we clarify in this final rule in § 1324.402 that this this regulation does not require States to adopt these definitions verbatim. Under § 1324.402, the final rule requires States to establish definitions for APS systems that collectively incorporate every defined term and all of the elements of the definitions contained in § 1324.401. Under § 1324.408, States must provide assurances that their definitions meet or exceed the minimum standard we have established in § 1324.401.

To assess whether States have met the minimum standard, we will evaluate all State definitions in their totality as opposed to individually. States must ensure that all definitions specified by this rule and their elements are incorporated into a State plan and that their definitions capture the full intent and purpose of the definitions in this regulation. For example, some States may define the ''knowing deprivation of goods or services necessary to meet the essential needs of an adult'' as ''willful negligence,'' rather than as an element of ''abuse.'' So long as the State's APS definitions address such ''knowing deprivation'' in *some* definition, the State will have satisfied this requirement.

We recognize that some States may nevertheless need to change statutes (including criminal statutes), regulations, or policies to satisfy this requirement if their APS program definitions do not yet fully incorporate all required adult maltreatment and self-neglect elements. We are establishing a 4-year implementation timeline to provide States ample opportunity to cross-walk their current definitions and those contained in this rule and make any statutory, program, or policy changes that may be necessary. States may also request to proceed under a corrective action plan if they are unable to meet this requirement within 4 years.

''Abuse''

Consistent with the definitions set forth in section 102(1) of the OAA, 42 U.S.C. 3002(1), and section 2011 of the EJA, 42 U.S.C. 1397j(1), we proposed to define abuse as an element of *adult maltreatment* to encompass the knowing psychological, emotional, and/or physical harm or the knowing deprivation of goods or services necessary to meet the essential needs or avoid such harm.

Comment: A significant number of commenters, including many State APS entities and national associations representing the interests of APS programs, requested we remove ''knowing'' from the definition of abuse. Some commenters offered examples from their State, to include ''reckless'' in addition to ''knowing'' in defining the mindset of a perpetrator of abuse.

Commenters suggested that it was too difficult and burdensome to determine whether a person knowingly or unknowingly harmed or deprived an adult of necessary goods or services. For example, a commenter pointed out that an APS program may be put in the position of deciding whether a mental health condition, cultural practice, or other subjective factor affected a perpetrator's mindset. Relatedly, another commenter asked how ''unknowing'' psychological, emotional, and/or physical harm of an adult would be treated by APS systems under our definitions.

A significant number of other commenters raised questions about the interaction between the definitions of ''abuse'' and ''neglect.'' They suggested that, as proposed, the definition of abuse could be conflated with neglect. Commenters sought clarity as to whether an allegation of abuse and neglect could be substantiated against the same alleged perpetrator for the same act.

[26] The National Center on Elder Abuse, *Tips and Tools for Person-Centered, Trauma-Informed Care of Older People at the Intersection of Trauma, Aging, and Abuse, https://eldermistreatment.usc.edu/wp-content/uploads/2023/07/NCEA_TT_PCTICare_web.pdf. See also,* Ernst, J.S., & Maschi, T. (2018). Trauma-informed care and elder abuse: a synergistic alliance. Journal of Elder Abuse & Neglect, 30(5), 354–367. *https://doi.org/10.1080/08946566.20* 18.1510353.

Response: We appreciate these comments and understand that the statutory definition of ''abuse'' differs from the definition that many States have adopted. As we have clarified above, State APS entities are not obligated to adopt these statutory definitions verbatim, so long as the elements of each defined term are all incorporated into State definitions.

In response to commenter concerns, we are clarifying the distinction between ''abuse'' and ''neglect'' (further discussed below) as defined by the OAA and the EJA. Neglect is defined as ''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.'' 42 U.S.C. 3002(38), 42 U.S.C. 1397j(16). Abuse is defined as ''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*'' [emphasis added]. 42 U.S.C. 3002(1), 42 U.S.C. 1397j(1). A number of commenters interpreted the ''knowing deprivation of goods or services'' (abuse) as a ''failure . . . to provide the goods or services'' (neglect) and argued that the definitions are redundant. Moreover, commenters noted that overlapping definitions could make it difficult for States to effectively report out on case types.

The rules of statutory construction require that we interpret the entire statute as a whole, with the assumption that Congress intended each provision to work together harmoniously.[27] Here, the key distinction between abuse and neglect is the mindset—abuse requires the intent (the ''knowing deprivation'') to cause harm. For these two definitions to be read as distinct, the ''failure'' to provide goods or services under the definition of neglect must be interpreted as being unintentional. We understand from commenters that many State APS systems may approach abuse and neglect differently; namely, their definitions assess whether a harm was active (as in physical abuse) or caused by deprivation (as in either willful or unintentional neglect). In this way, State APS systems are set up to look at the functional outcome, regardless of the intentionality associated with it. As stated above, State APS systems are in compliance with this regulation so long as the totality of their definitions incorporate all of the elements of adult maltreatment and self-neglect contained in the regulatory definitions.

[27] *United Savings Assn. of Tex.* v. *Timbers of Inwood Forest Assoc., Ltd.,* 484 U.S. 365 (1988).

Commenter concerns related to the difficulty of assessing mindset are well taken. However, we note that many APS investigative functions rely on contextual clues to understand state of mind or decisional capability. We reiterate that States have the discretion to distinguish between the ''knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm'' and other actions that are defined as abuse by statute. Factors such as cultural practices and mental health conditions should be considered during an APS response. We defer to the expertise, sensitivity, and judgement of APS workers when evaluating such elements. In all cases, APS workers should undertake a person-centered, culturally competent approach to investigation and service delivery, and we reiterate our requirements surrounding person-directedness and trauma informed responses at § 1324.402(b)(1) and § 1324.403(c)(1) as well as ongoing education and training requirements for APS workers at § 1324.402 (e)(1).

Comment: One commenter suggested we add that no adult will be found to be abused solely on the grounds of environmental factors that are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing, or medical care.

Response: We recognize the commenter's concern related to environmental factors and understand that individuals will experience different outcomes based on the resources available to them. The deprivation of goods or services for reasons beyond the control of the older adult or caretaker (as described by the commenter above) does not constitute abuse if it is not intentional. In all cases, we stress the importance of APS systems' discretion with respect to when and how to move forward in person-directed investigations and service delivery.

Comment: We received comment from Tribal commenters suggesting we define ''abuse'' to include ''spiritual abuse.''

Response: We thank commenters for their suggestion but decline to revise the definition. States have the discretion to determine whether to include ''spiritual abuse'' in their definition. We will provide ongoing technical assistance to States as they implement the final rule.

Comment: We received comment requesting we define ''psychological harm,'' ''emotional harm,'' and ''physical harm.''

Response: We thank commenters for their suggestions and decline to adopt these definitions. We will leave these definitions to State discretion.

''Adult''

Comment: ACL received comment that some States include a vulnerability qualifier in their definition of adult and asked how this would comport with our definition of ''at risk of harm.''

Response: Please see the discussion in our definition of ''at risk of harm.''

Comment: We received a few comments supporting a national definition for ''adult,'' with one commenter suggesting we let States apply for exceptions if the national definition is overly burdensome. We received one comment asking that we specify ''eligible adults'' for improved clarity. However, we received many comments, including from State APS entities and national associations representing them, supporting our decision to defer to States when defining ''adult'' for the purposes of ''adult maltreatment.''

Response: We concur with commenters that our approach will allow States flexibility to design and operate their APS systems in a manner that best fits the needs of the State's population and aligns with existing State statutory eligibility requirements. We have decided not to permit exceptions because we believe our definition as written will accommodate all States adequately as written. We are finalizing this definition as proposed.

''Adult Maltreatment''

In this final rule, we define ''adult maltreatment'' to bring uniformity and specificity to a foundational term used throughout APS systems and this regulation. Our definition establishes a comprehensive and uniform approach to investigations of adult maltreatment while still allowing for State flexibility and discretion. We proposed that ''adult maltreatment'' encompass five elements: abuse, neglect, exploitation, sexual abuse, and self-neglect. We also proposed to require that the adult must have a relationship of trust with the perpetrator of abuse, neglect, exploitation, or sexual abuse and be at risk of harm from the perpetrator.

Comment: We received several comments in support of a national definition for ''adult maltreatment.'' We also received comments opposed to a unified national definition of adult maltreatment, with one commenter suggesting that our definition overextends the reach of APS. Other commenters stated that adherence to our definition would conflict with their State definitions and others suggested additional elements to our definition.

Response: ACL thanks commenters for their support. We believe a standard baseline definition upon which States may build will advance APS practice and is crucial to the success of this rulemaking. We are therefore retaining this definition in the final rule. We note that we have extended the implementation timeline to 4 years to provide State entities more time to revise definitions.

Comment: We received comment that the formulation of our ''adult maltreatment'' definition was confusing and would be challenging to implement. Under our proposed rule, ''adult maltreatment'' was defined as ''self-neglect or abuse, neglect, exploitation, or sexual abuse of an adult at-risk of harm from a perpetrator with whom they have a trust relationship.'' States noted that there was no perpetrator involved in cases of self-neglect, that the presence of the term ''adult'' when coupled with definitions of the five elements of maltreatment may be duplicative, and the presence of ''trust relationship'' may be duplicative of ''caregiver'' and ''fiduciary'' in ''neglect''.

Response: We appreciate commenters' thoughtful responses and suggestions. We have revised the definition of adult maltreatment as follows: *Adult maltreatment means the abuse, neglect, financial exploitation, or sexual abuse of an adult at-risk of harm.* Please see our definitions of ''abuse,'' ''neglect,'' ''financial exploitation,'' ''sexual abuse,'' and ''self-neglect'' as well as our further discussion of ''trust relationship'' and ''risk of harm'' contained herein.

''Adult Protective Services (APS)''

Consistent with the definitions set forth in section 102(3) of the OAA, 42 U.S.C. 3002(3), and section 2011 of the EJA, 42 U.S.C. 1397j(2), we proposed to define Adult Protective Services as such services provided to adults as the Assistant Secretary may specify and includes services such as—

(A) receiving reports of adult abuse, neglect, or exploitation;

(B) investigating the reports described in subparagraph (A);

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

(D) providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

Comment: Several commenters generally requested that the final rule remove the requirement that APS include providing services. One commenter noted high costs of hiring enough staff to comply with the definition, as well as training costs. Some commenters noted that some APS programs only provide referrals to other entities or provide limited services to ''stabilize the situation'' and noted that more lengthy case management or provision of services would be very costly. A commenter believes our definition gives APS the ability to designate a legal, social service, or medical provider as an APS provider and disagrees with this decision.

Response: Service provision is memorialized in Federal statute and is the core of APS' mission in most States. We emphasize this in our definition. However, our definition does not mandate that APS systems provide any specific service. Rather, it describes the general types of services that APS encompasses. We affirm that APS may provide referrals or otherwise facilitate the provision of legal, medical, or social services. However, APS does not have the authority to designate those referral entities as APS providers.

Comment: Other commenters suggested that APS cannot provide emergency services, and that the proposed definition as written is vague and could potentially open the State to legal liability.

Response: We believe our definition, which defines APS services as ''providing for, *or* facilitating the provision of [. . .] emergency, and supportive services'' [emphasis added], does not require that APS provide emergency services. Rather, APS may refer to other entities for emergency protective services, as needed. For example, APS could facilitate the provision of community-based services by referring an adult to another program to receive urgently needed home repairs, for nutrition assistance, or transportation.

Comment: Several commenters voiced support for APS offering a wide array of services.

Response: We agree and likewise believe that APS does, and should, provide a wide array of services. We believe the statutory definition appropriately describes the array of services provided by APS and decline to further expand upon it.

Comment: A commenter asked that the investigative role of APS be de-emphasized, and the social service role should be emphasized.

Response: We agree and thank the commenter for their suggestion. We have made changes throughout the final rule to more accurately emphasize the critical role of service delivery in APS practice.

Comment: One commenter requested clarity on the expectations related to APS monitoring responsibilities.

Response: ACL will provide ongoing technical assistance to APS State entities and programs related to monitoring. We refer commenters to our discussion at proposed § 1324.403(e)(6) (removed) and proposed § 1324.403(f)(3)(iii) (removed) as well as finalized § 1324.407. We finalize our definition as proposed.

''Adult Protective Services Program''

Comment: We received one comment in support of our proposed definition and one that suggested the definition include reference to administrative and technical staff.

Response: We thank commenters for their input. We believe our definition which refers to ''providers'' may be interpreted to include administrative and technical staff. We have finalized the definition as proposed.

''Adult Protective Services System''

Comment: We proposed to define ''Adult Protective Services (APS) System'' as the totality of both the State entity and the local APS programs.'' A commenter suggested modifying the language to ''the totality of the State entity or entities and the local APS programs'' to account for States with multiple APS entities.

Response: We thank the commenter and are revising our definition accordingly.

''At Risk of Harm''

We proposed to define ''at risk of harm'' in accordance with Centers for Disease Control and Prevention (CDC) Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements (CDC Uniform Definitions) as ''the possibility that an adult will experience an event, illness, condition, disease, disorder, injury or other outcome that is adverse or detrimental and undesirable.'' [28]

Comment: We received comment that our definition of ''at risk of harm'' was too broad and that some States used a narrower standard. A commenter noted that our proposed definition, which refers to ''the possibility that an adult will experience an event, illness, condition, disease, disorder, injury or other outcome that is adverse or detrimental and undesirable,'' could encompass any possible scenario,

[28] U.S. Dep't of Health & Hum. Servs., Ctrs. For Disease Control and Prevention, Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements, *https://www.cdc.gov/violenceprevention/pdf/ea_book_revised_2016.pdf.* (Feb. 29, 2016).

illness, or condition. Commenters suggested that the proposed definition would increase caseloads, with some commenters suggesting instead we use ''serious harm,'' ''at risk of maltreatment,'' or ''vulnerable'' in place of ''at risk of harm.''

Response: We appreciate commenters' feedback and have revised the definition to more narrowly describe the risk of harm potentially faced by an adult. We have revised the definition to ''the strong likelihood that an adult will experience an event, condition, injury or other outcome that is adverse or detrimental and will occur imminently.'' We believe ''strong likelihood'' better represents the degree to which an adult may be at risk of harm to qualify for APS.

Comment: We received comment that an ''at-risk'' qualifier may be appropriate when prioritizing APS cases but not as a determinant for APS eligibility.

Response: We appreciate commenters' suggestion and concur that triaging a case based on risk is an important part of APS intake and case prioritization. However, given finite resources, we believe that a Federal definition should premise eligibility for APS on a strong likelihood of harm while those for whom risk is less immediate can be referred to other community resources. We remind commenters that our definitions are minimum standards. State entities are required to provide assurances that they are investigating abuse, neglect, financial exploitation, sexual abuse, and self-neglect of adults at risk of harm to create an approvable State plan and receive Federal funding, but States may also choose to accept *all* cases irrespective of risk.

Comment: We received comment that including ''at risk of harm'' in the definition of adult maltreatment would be redundant for States where ''vulnerable'' was included in the definition of adult and that some commenters preferred ''vulnerable'' to ''at risk'' as defined.

Response: We appreciate that, for some States, a strict reading of ''at risk of harm'' in the context of our definition of ''adult maltreatment'' may appear to create redundancy. We remind States they need only provide an assurance in their State plan that their vulnerability qualifier meets or exceeds our minimum standard of ''at risk of harm'' to fulfill the requirements of the rule.

Comment: We received comment that our definition of ''at risk of harm'' should include a specific timeframe for the adverse or detrimental event, condition, injury, or outcome.

Response: We thank commenters for their suggestion and have added that the adverse or detrimental event, condition, injury, or outcome will occur ''imminently.''

Comment: We received comment that ''adverse'' and ''detrimental'' were always undesirable and the clause was thus redundant.

Response: We have edited the definition accordingly by removing ''undesirable'' and thank the commenter.

''Allegation''

Comment: We received support for our definition as proposed as well as suggestions for improvement. One commenter noted that not every reporter knows or suspects a specific alleged perpetrator and suggests removing the term ''accusation'' from the definition. Relatedly, another commenter suggested we define ''report.''

Response: We appreciate commenters' input. Used in this context, ''accusation'' represents a reporter's suspicion of adult maltreatment and does not require a reporter to accuse a specific perpetrator. We are finalizing this definition as proposed. We have added a definition of ''report'' which contains reference to ''allegation or allegations.''

''Assistant Secretary for Aging''

We proposed to define ''Assistant Secretary for Aging'' as the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).

Comment: We received comment in support of our proposal.

Response: We thank the commenter and are finalizing the definition as proposed.

''Case''

Comment: We received comment in support of our proposed definition.

Response: We thank the commenter and are finalizing the definition as proposed.

''Client''

Comment: Several commenters noted that the proposed definition appears to exclude adults who receive services after an investigation is complete and suggested changing the definition to include ''current or former'' subjects of an investigation.

Response: We decline to include ''current or former'' in the final rule, as we believe that could require APS systems to provide services to all former clients. However, we have amended our definition of ''client'' from proposed ''the subject of an *investigation by APS*'' to ''the subject of an *APS response*'' to reflect changes made throughout the final rule, including to § 1324.403, regarding APS response to allegations of adult maltreatment or self-neglect. We believe this better captures the holistic range of services APS provides, both during and after an investigation. Furthermore, our definition of client is a minimum standard. The definition would not prohibit APS from providing services to former clients in their response to adult maltreatment and self-neglect.

''Conflict of Interest''

We proposed ''conflict of interest'' to mean 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.

Comment: We received several comments on our proposed definition, one in support, another State entity that offered its own definition, and a few that suggested we amend the definition to include or exclude certain situations as conflicts of interest.

Response: We thank commenters for their input. We believe our current definition appropriately captures the universe of potential conflicts of interest. Individual instances of conflicts of interest are addressed in depth at § 1324.404 of this rule and discussed in the preamble. We have made minor amendments to the definition to conform with changes to § 1324.404.

''Dual Relationship''

Comment: Several commenters agreed with our proposed definition, while one commenter suggested we use a definition provided by the National Adult Protective Services Association or the National Association of Social Workers. Another commenter noted that to adopt our definition would require a change in State statute.

Response: We thank commenters for their suggestion. Our definition was based upon the National Association of Social Workers' Code of Ethics, and the definition used in our 2020 Consensus Guidelines.[29] We are finalizing the definition as proposed.

''Emergency Protective Action''

Comment: We received several comments opposed to our definition, stating it reinforces a pipeline from APS to undesired guardianship. Commenters

[29] *Code of Ethics,* National Association of Social Workers (NASW), *https://www.socialworkers.org/About/Ethics/Code-of-Ethics/Code-of-Ethics-English/Social-Workers-Ethical-Responsibilities-to-Clients* (last visited Jan. 22, 2024).

sought clarification regarding emergency out-of-home placement, APS authority, adherence with client self-determination, and least restrictive alternatives.

Response: ACL agrees that client self-determination is of primary importance, and that guardianship and conservatorship should be a last resort. The principles of self-determination and reliance on least restrictive alternatives are foundational to this rule, *see* § 1324.402(b)(1). APS uses a person-directed, trauma-informed approach, considering the unique needs, strengths, preferences, experiences, and goals of each adult. In relying on least-restrictive alternatives, APS maximizes adults' independence and community integration through holistic case planning and service provision, either directly or in coordination with community partners. This type of service provision, support, and collaboration is at the heart of effective APS practice and is relied upon in lieu more restrictive options such as out-of-home placements or petitions for guardianship whenever possible.

Accordingly, we have modified our definition of emergency protective action to ''immediate access to petition the court for temporary or emergency orders or emergency out-of-home placement.'' We have amended § 1324.403(c) to permit emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and safety of the client from harm from others or self-harm. Finally, we have amended the definition of emergency protective action to remove the reference to the emergency use of APS funds to purchase goods and service and revised § 1324.403(c) to permit such activity as an appropriate response. Our modification of the definition, coupled with amendments to § 1324.403(c), more clearly and accurately describes the nature of an ''emergency protective action'' and when APS may appropriately pursue it. Finally, we also clarify there are statutory and regulatory authorities with which APS systems must comply, including Federal and State laws that require administration of programs, including APS, in the most integrated and least restrictive setting appropriate to meet the needs of individuals with disabilities and that prohibit discrimination on the basis of disability. These include Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Compliance with this rule does not address these obligations. The Department of Health and Human Services' Office for Civil Rights offers technical assistance on these antidiscrimination requirements for covered entities, and we will likewise provide ongoing technical assistance on these anti-discrimination requirements.

Comment: We received a comment requesting that any requirement regarding access to the courts be accompanied by Federal regulations requiring those courts to grant APS access.

Response: We appreciate commenters' suggestion. It is outside the scope of this rule to require that State courts grant APS access.

Comment: One commenter requests clarity on ''placement'' (*i.e.,* involuntary), and whether lack of ''immediate access'' would affect funding eligibility.

Response: Per § 1324.403(c)(7), APS is required to have policies and procedures that permit emergency protective action when appropriate. ACL is not mandating a particular type of placement or strict definition of immediate action. We leave such decisions to State entities as they develop their policies and procedures under § 1324.403 and State plans under § 1324.408.

Comment: One commenter suggests the definition also include referral to conservatorship/guardianship, assessment for involuntary hold, and working with law enforcement and district attorneys to freeze bank accounts.

Response: ACL appreciates commenters' suggestions; however, we decline to incorporate commenters suggestions in the definition. This Final Rule sets Federal minimum standards. State entities may include greater detail into their own definitions of ''emergency protective action.''

''Financial Exploitation''

Consistent with definitions in section 102 of the OAA, 42 U.S.C. 3002(18)(A), and section 2011 of the EJA, 42 U.S.C. 1397j(8), we proposed to define ''exploitation'' as 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.

Comment: We received comments suggesting we change the definition to ''financial exploitation'' to clarify the definition encompasses only exploitation that is financial in nature.

Response: ''Financial exploitation'' and ''exploitation'' are used interchangeably in the OAA. We agree that the addition of ''financial'' to the definition increases clarity, we thank commenters for their input, and have revised the definition accordingly.

Comment: We received comments that our proposed definition of ''exploitation'' be broadened to include other forms of exploitation, for example, labor exploitation or the exploitation of a person.

Response: We appreciate commenters' suggestions and decline to make such a revision. ''Exploitation,'' as we have defined it, is financial in nature. Financial exploitation is among the most reported forms of adult maltreatment and as such we require in this regulation that State APS systems intervene. However, consistent with the rule's structure as a minimum Federal standard for definitions and practice, nothing in our definition of exploitation would limit a State from broadening its own to be inclusive of, and more expansive than, ACL's promulgated definition. to encompass non-financial exploitation.

Comment: We received comments seeking clarification for whether this definition will also apply outside of a family or caregiver relationship.

Response: Financial exploitation may occur between an adult and a fiduciary or caregiver but is not limited to such relationships. For example, an internet scammer may be the perpetrator of financial exploitation.

Comment: A commenter suggested we change ''improper'' to ''unauthorized.''

Response: We decline the commenter's suggestion and instead retain both ''improper'' and ''unauthorized'' to ensure both types of financial exploitation are appropriately addressed.

Comment: ACL received a comment requesting that ''misrepresentation, coercion, and threat of force'' be included in our definition, as well as ''deception.''

Response: We appreciate these suggestions and reiterate our encouragement for States that wish to adopt definitions that go beyond the minimum Federal standard in the regulatory definition.

Comment: A State entity commented that it does not investigate scams, frauds, and thefts where an alleged perpetrator has no personal relationship with the adult. Rather, these cases are referred to law enforcement, and our proposed regulation, absent the presence of a trust relationship, would expand the universe of cases that they are required to take.

Response: We appreciate the comment and recognize that our rule

may, in some cases, increase the types of reports to which a State APS system may need to respond. We note that in some circumstances, referral to State securities and financial regulators, Federal financial and securities enforcement agencies for investigation or other entities with investigatory jurisdiction may be appropriate. *See* §§ 1324.403(a) and 1324.406(a)(3). This rule requires that APS systems have policies and procedures to *respond* to reports of financial exploitation, with ''response'' defined broadly per § 1324.401, and a referral to appropriate entities would constitute a ''response'' under this definition.

We believe the benefit of our rule outweighs any burden incurred and will support States in their ongoing implementation of the rule. Please see our discussion of ''trust relationship.''

''Finding''

Comment: We received comments requesting we define ''finding'' and, relatedly, ''disposition'' and ''determination.'' Commenters also requested we use terms consistently.

Response: ''Finding,'' ''disposition,'' and ''determination'' are often used interchangeably, depending on the State. For the purpose of this regulation, ''finding'' means the decision made by APS after investigation to determine that evidence is or is not sufficient under State law that adult maltreatment and/or self-neglect has occurred.

''Inconclusive''

Comment: A commenter recommended revising the definition of ''inconclusive'' to align with the definitions of ''substantiated'' and ''unsubstantiated'' meeting State law or agency policy, while a couple of commenters suggested striking this definition entirely because their State APS system did not include it. One commenter questioned whether ''inconclusive'' remains open to acquire additional information, or whether this applies to specific situations (*i.e.,* unable to locate).

Response: In response to commenter feedback and to improve clarity, we have updated the definition of ''investigation'' and removed the use of ''substantiated,'' ''unsubstantiated,'' and ''inconclusive.''

''Intake or Pre-Screening''

Comment: We received comment in support of our proposal.

Response: We thank commenters and are finalizing as proposed.

''Investigation''

Comment: We received numerous suggestions for modifying our proposed definition of ''investigation.'' According to one commenter, the proposed definition was too restrictive, as APS should be able to perform both investigation and service delivery. One commenter indicated State law requires investigators to look beyond the allegation to whether there are additional risks to the victim that require services. This commenter suggested the definition be changed to ''gather information about possible maltreatment.''

One commenter explained that its State uses findings of ''verified, some indication, or no indication'' instead of ''substantiated, unsubstantiated, or inconclusive.'' Another commenter recommended revising the definition to acknowledge that an investigation may be more expansive than simply investigation of a single allegation. For example, an investigation of one allegation may unearth evidence of other maltreatment or self-neglect. A commenter offered, ''[i]nvestigation means the process by which APS examines and gathers information about a report of *possible* maltreatment to determine if the circumstances of the allegation meet the State's standards of evidence for a finding of a substantiated, unsubstantiated, or inconclusive allegation.''

Response: We appreciate the comments about our definition. We have accepted language proposed by commenters. Our final definition of investigation is ''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.'' We believe these revisions adequately address commenters' concerns.

''Mandated Reporter''

Comment: We received comments in support of our proposal, as well as several comments suggesting we offer a list of who should be a mandated reporter in each State. These suggestions were often based on State law definitions of a mandated reporter.

We also received comment on § 1324.405(b) that, for the purposes of this rule, mandated reporters should be limited to professionals who are required to report adult maltreatment to APS. A commenter noted that in 16 States all persons are mandated reporters, and in one State, no one is a mandated reporter.

Response: Consistent with changes made to § 1324.405(b), we are amending our definition of mandated reporter to clarify that our rule applies only to a professional encountering an adult in the course of their professional duties who is required by State law to report adult maltreatment or self-neglect to APS.

''Neglect''

We proposed, consistent with the definitions in section 102 of the OAA, 42 U.S.C. 3002(38) and section 2011 of the EJA, 42 U.S.C. 1397j(16), to define ''neglect'' as 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.

Comment: One commenter suggested our definition may be too narrow, and that because health and safety may be jeopardized simultaneously, that we instead write ''health and/or safety.''

Response: We thank commenter for their suggestion and have amended our definition accordingly.

Comment: Some commenters pointed out that our definition does not address a caregiver or fiduciary's state of mind, which is a necessary element of the definition. It was suggested by one commenter that a caregiver not be penalized if they were not aware of the needs of an adult or the threat to safety or health.

Response: We appreciate these comments. As discussed above, the definition of ''abuse'' incorporates the intent and mindset of a potential perpetrator and appropriately captures cases where a caregiver or fiduciary knowingly deprives an adult goods or services necessary to maintain health and/or safety. We refer readers to our preamble discussion of the definition of ''abuse'' for a more detailed explanation of the interaction between cases of ''abuse'' and ''neglect.''

Comment: We received comment asking us to define ''fiduciary'' and ''caregiver.''

Response: We thank commenters for their request. We decline to define the terms ''caregiver'' and ''fiduciary'' and instead leave definitions to State discretion. We believe allowing States leeway to determine what constitutes a ''caregiver'' or ''fiduciary'' as it pertains to this rule provides valuable flexibility to meet State needs.

Comment: A commenter suggested that our proposed definition does not align with States' efforts to establish person-directed principles. The commenter recommended revising the definition of neglect to clarify that caregivers and fiduciaries fulfill an official role and that neglect exists only

within the bounds of this legal relationship by amending the definition to read ''the failure of a caregiver or fiduciary *to act under their legal responsibility*[.]''

Response: We thank commenters for their suggestions; however, we believe confining neglect to a legal relationship between a caregiver and fiduciary is overly narrow and unnecessarily limiting. Research shows that most caregiving in the United States is performed by informal caregivers.[30]

Comment: A few commenters noted there should be reference to actual injury or serious harm.

Response: We thank commenters for their response. We believe reports of neglect can and should be responded to before there is actual injury or harm. We note that to be eligible for APS services under this rule, an adult must already be at risk of serious harm occurring imminently.

Comment: A commenter asked that we include ''abandonment'' in our definition.

Response: We decline to include ''abandonment'' in our definition. Our regulatory definition mirrors Federal statute. State entities that wish to go above our minimum standard to incorporate abandonment in their definition of neglect may do so.

Comment: ACL received comment suggesting we include a narrow definition of ''physical and mental health'' in our definition of ''neglect.''

Response: We decline to include ''physical and mental health'' in our definition. Our regulatory definition mirrors Federal statute. We are available to provide ongoing technical assistance to implement the definitions in this rule.

''Perpetrator''

Comment: We received comment in support of our definitions, as well as several comments suggesting we more clearly articulate the difference between an ''alleged perpetrator'' and a ''perpetrator.'' Another commenter offered that perpetrator tends to suggest criminal intent and sparks confusion, and one State entity noted that they do not use the term ''perpetrator.''

Response: We thank commenters for their input and are finalizing the definition as proposed. We have taken care throughout the rule to precisely denote alleged versus substantiated perpetrator. We intend for these definitions to be guides. We will not require States to adopt the definitions word for word. Instead, we will evaluate State definitions together to assess whether statutory intent is reflected. Please see our discussion above for more detail regarding our expectations of State APS entities' evaluation of their current definitions, and the potential amendment of current definitions and/or adoption of new definitions. We will be available to provide technical assistance as necessary.

''Post-Investigation Services''

Comment: A few commenters opposed the inclusion of a definition for post-investigation services in the final rule, and a few commenters recommended changes or requested clarification about the definition. One commenter indicated that their State does not have a definition for post-investigation services in statute, so defining the term in their State would require legislative action.

Some commenters indicated that APS services should not be reliant upon or limited to a timeframe that is implied by the term ''post.'' A few commenters opposed including this definition in the rule because the lifespan of an APS case continues beyond the initiation of an investigation and may include services that mitigate the risk of future adult maltreatment. Another commenter noted that the State handles cases from beginning to end, and that adding additional services would require more staff.

One commenter proposed that the definition include the ''principles of restorative justice.''

Response: We thank commenters for their suggestions. Throughout the regulation in response to commenter feedback we have emphasized holistic APS response and replaced ''investigation'' with ''response'' when appropriate. ''Response'' is inclusive of activities and actions undertaken as the result of a report received by APS. These activities and actions include, but are not limited to, post-investigation services. Given the new definition of ''response,'' our proposed definition of ''post-investigation services'' is redundant. We have amended § 1324.403 to reflect this change.

''Quality Assurance''

Comment: One commenter reported that their State does not review all case closures or ongoing cases, so including a quality assurance review process in the APS program would require potentially burdensome changes. One commenter suggested the final rule include more specificity on quality assurance programs.

Response: This rule does not require that State entities establish quality assurance programs, as most already have such processes. We encourage APS systems at § 1324.406(b)(3) to coordinate their quality assurance activities. We have finalized this definition as proposed.

''Report''

Comment: We received comment requesting that we add the definition of ''report'' as ''a formal account or statement regarding an allegation or multiple allegations of adult maltreatment and the relevant circumstances surrounding the allegation or allegations.''

Response: We thank commenters for their suggestion and agree a definition of ''report'' will improve regulatory clarity and consistency and have accepted this suggested definition. We have also added ''self-neglect'' to the definition of ''report'' to reflect our revisions to the definition of ''adult maltreatment.''

''Response''

Based on comments we received and changes we have made to other sections of the rule, we are adding a definition for ''response.'' We define ''response'' as ''the range of actions and activities undertaken as the result of a report received by APS.''

''Screening''

Comment: One commenter noted that denied referrals are not referred for services in their State. The commenter requested clarification on whether all calls would have to be referred for services.

Response: Under §§ 1324.402 and § 1324.403, APS State entities must develop policies and procedures to receive and respond to reports of adult maltreatment and self-neglect, which include a process for screening and referring adults for services. Not all cases will necessarily be accepted or referred for services. We have finalized this definition as proposed.

''Self-Neglect''

Consistent with the definitions in section 102(48) of the OAA, 42 U.S.C. 3002(48), and section 2011 of the EJA 42 U.S.C. 1397j(18), we proposed to define self-neglect as: ''an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

(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;

[30] U.S. Dep't of Health & Hum. Servs., Admin. For Cmty. Living, 2022 National Strategy to Support Family Caregivers (Sept. 21, 2022), *https://acl.gov/sites/default/files/RAISE_SGRG/NatlStrategyToSupportFamilyCaregivers-2.pdf.*

(3) Managing one's own financial affairs.

Comment: We received a significant number of comments on this proposed definition. Specifically, commenters requested that we remove ''self-neglect'' from the definition of ''adult maltreatment.'' Commenters noted that there is no perpetrator in self-neglect and that APS programs' responses to cases of self-neglect differ significantly from investigation and substantiation in cases of abuse, neglect, exploitation, and sexual abuse.

Response: We thank commenters for this suggestion and agree. We have accepted these comments and separately define ''self-neglect'' and ''adult maltreatment'' in this final rule. Please see our discussion in the definition of ''adult maltreatment.''

Comment: We received comments that our definition of self-neglect did not adequately account for personal, informed, and voluntary lifestyle choices, such as the decision not to access medical care or to live in clean surroundings. Furthermore, commenters pointed out that some people with disabilities may not be able to perform self-care tasks without assistance from services and supports, but that does not mean there is a role for APS in such cases.

Response: We thank commenters for their input. An adult is presumed to have capacity until found to lack capacity by a court of law. Provided they are not determined by a court of law to be lacking capacity, APS programs should start from the presumption that an adult has the capability to choose to live how they desire. Distinctions between an adult making a personal, informed, and voluntary choice about how they wish to live and the inability to care for oneself are critical to a person-directed definition of self-neglect. This distinction is also central to supporting the dignity of risk of older adults and adults with disabilities to make decisions to support their autonomy. As discussed below, the regulatory definition of self-neglect is intended to be person-directed, while recognizing that self-neglect may at times create a serious risk of imminent harm to oneself or others, at which point intervention will likely be warranted. We note commenters' concerns and confirm that an adult's status as a person with a disability who may require services and supports to perform essential self-care tasks is not, in and of itself, a justification for APS intervention.

Comment: We received comment that our definition of self-neglect was overly broad and would increase investigations. One commenter noted that their State required ''significant risk to health or safety'' as a component of self-neglect.

Response: We thank commenters for their input. We agree that in assessing self-neglect it is important to focus on the existence or potential for harm to the adult as well as to others, rather than on the abilities or decisions of the adult. We have revised the definition to clarify that states must, at a minimum, define self-neglect to include situations in which there is serious risk of imminent harm to oneself or to others. Again, our standards are a minimum floor, and States may use a broader definition of self-neglect, expanding the types of situations that they investigate. However, in defining self-neglect, we encourage States to look at the level of risk posed by specific situations. Such an approach not only focuses resources on the cases with highest need, but it also advances the goal of APS in promoting self-determination and person-directedness and supporting adults in making their own decisions in line with their values and wishes.

Comment: A few commenters requested we strike ''diminished capacity'' from our definition, as it places unnecessary burden on APS to make a capacity determination. One commenter suggested we replace ''diminished capacity'' with ''diminished ability'' to encompass physical and mental function. Relatedly, another commenter requested we more clearly define and delineate concepts of diminished capacity and diminished capability.

Response: Section 102(48) of the OAA, 42 U.S.C. 3002(48), and section 2011 of the EJA 42 U.S.C. 1397j(18) use the language ''diminished capacity'' in the definition of self-neglect. We note here and elsewhere, however, that ''diminished capacity'' is a legal determination that APS Programs do not have the authority to make. Because courts, not APS programs, make all capacity determinations we disagree with commenters that discerning diminished capacity will add burden.

Comment: Several commenters sought guidance surrounding the interaction of self-neglect with neglect from a caregiver or fiduciary with whom there is a trust relationship.

Response: We thank commenters for their question. Nothing in this regulation prohibits an APS program from substantiating multiple findings for multiple allegations in a report. This is common in APS practice, and we leave these decisions to the discretion of APS programs. Whether responding to an allegation of neglect or self-neglect, APS provides person-directed, trauma-informed assessment, investigation, and service planning, including recommendations or referrals to other entities, such as social services programs.

Comment: ACL received comment suggesting that we explicitly include ''financial self-neglect'' in our definition.

Response: We believe the inclusion of ''(3) managing one's own financial affairs'' is sufficient to capture ''financial self-neglect,'' and we decline to include a separate definition of ''financial self-neglect.''

Comment: A commenter asked whether ''general safety'' includes hoarding, failure to engage in proper home maintenance, or maintaining utility services, to ensure the safety and livability of the home.

Response: We appreciate the commenter's request for greater specificity; however, we decline to provide further detail in this regulation. APS systems have the discretion to provide this level of detail in their definition of self-neglect, and in their policies and procedures for responding to reports of self-neglect. We remind States that the definition of self-neglect in the final rule sets the minimum Federal standard. In this case, APS must at least accept cases based on self-neglect where there is a serious risk of imminent harm to oneself or others but may choose to adopt a more expansive definition. We will provide ongoing technical assistance to State entities and APS programs as they implement this rule, including related to the definition of self-neglect.

''Sexual Abuse''

The OAA does not define ''sexual abuse'' but defines ''sexual assault'' at section 102(50), 42 U.S.C. 3002(50), to have the meaning given in section 2003 of the Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. 12291(a)(35).

Comment: We received several comments suggesting our definition explicitly consider a victim's ability or inability to consent to a sexual interaction. A commenter suggested ''unwanted'' interaction was too subjective to determine and a determination of consent was more appropriate. Several other commenters maintained that our definition should acknowledge situations involving a power imbalance where a victim may be coerced into agreeing to sexual interaction.

Response: We appreciate commenters' thoughtful suggestions and have amended our definition to replace

''unwanted'' with ''non-consensual.'' This change brings our definition into greater conformity with the statutory definition at 34 U.S.C. 13391.

We acknowledge the potential difficulty of defining and making fact-specific determinations of what constitutes consensual and non-consensual contact. We defer to the expertise of APS workers as they respond to reports of sexual abuse in collaboration with law enforcement (when appropriate) and perform person-centered screening, intake, triage, investigation, and service planning. We will provide ongoing technical assistance to States as they implement this rule.

Comment: One commenter noted that their State APS system does not investigate sexual abuse and instead leaves this matter to law enforcement, while only providing services to victims.

Response: Our rule does not prohibit APS from allowing law enforcement to perform investigative functions for cases of alleged sexual abuse while APS performs service delivery. As discussed in §§ 1324.402 and 1324.403 and elsewhere in this rule, the rule requires that APS systems have policies and procedures to *respond* to reports of sexual abuse, with ''response'' defined broadly per § 1324.401 to include referrals to appropriate entities. In cases of alleged sexual abuse, the APS response may be to refer the case to a more appropriate entity for investigation, and law enforcement can be an appropriate entity to investigate such cases.

Comment: We received comment suggesting our definition include ''sexual harassment'' ''sexual exploitation,'' ''shaming acts,'' and ''sex trafficking.''

Response: We thank commenters for their suggestions, which we believe were adequately captured by our proposed definition, which we have retained in the final rule. We remind State APS systems that they may adopt definitions that go above our minimum Federal standard and encourage them to include greater detail in their policies and procedures.

Commenter: A commenter requested we define ''non-touching acts'' and ''sexual interaction.''

Response: We appreciate this comment and defer to State interpretation. We will provide ongoing technical assistance to States as they develop and implement this rule, including as they develop State-specific definitions as desired.

''State Entity''

Comment: A commenter agrees that there should be APS regulations and standardization but does not believe that the requirements of the proposed rule should apply to Tribal governments. Another commenter reported that its State APS program is bifurcated, so the definition of ''State entity'' requires clarification.

Response: Tribal governments do not receive funding through EJA APS formula grants (42 U.S.C. 1397m–1), thus this rule does not apply to Tribal governments. We discuss this in greater detail in our background section on Tribal considerations. We encourage APS collaboration with Tribal governments per § 1324.406(a)(2)(iv). As noted in § 1324.400 and its preamble discussion, however, we have determined that the rule applies to bifurcated systems. We are therefore amending the definition of ''State entity'' to ''the unit or *units* of State, District of Columbia, or U.S. Territorial government[.]''

''Trust Relationship''

We proposed that ''trust relationship'' mean ''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.''

Comment: We received a few comments in support of the inclusion of a ''trust relationship'' in the definition of adult maltreatment. However, a significant majority of commenters, including nearly all State APS entities that commented, opposed to the inclusion of ''trust relationship'' in the definition of adult maltreatment.

Some commenters asserted that the definition was confusing and contradictory. Many commenters stated that requiring a ''trust relationship'' between the adult and the other person may preclude APS programs from investigating maltreatment such as online or phone scams committed by a stranger. Some commenters asserted that referral to other entities for situations of adult maltreatment that fell outside a trust relationship may allow adult maltreatment to fall through the cracks where referral sources or services are scarce or unavailable.

A number of commenters noted that the definition of ''trust relationship'' is unclear and would be difficult to operationalize. For example, ''social convention'' may vary across cultural practices. Furthermore, requiring a trust relationship would create an evidentiary burden that would be challenging for APS workers to screen for, particularly during an initial intake.

We received comments suggesting that if we retain ''trust relationship,'' then we should remove it as a condition of eligibility for APS and instead move it to new § 1324.402(b), requiring States to investigate cases involving a trust relationship, as well as § 1324.402(c) clarifying that APS may also investigate cases where there is *not* a trust relationship between alleged perpetrator and alleged victim.

Response: We are removing the requirement of a trust relationship from the definition of ''adult maltreatment'' and from the definitions section of this rule in response to feedback from commenters.

In developing our proposal to require APS systems investigate allegations of abuse, neglect, sexual abuse, and financial exploitation in the context of a trust relationship, we sought to ensure we did not inadvertently expand the scope of APS programs' work. Such expansion could increase intakes and corresponding caseloads, potentially requiring more staffing and funding. We did not intend to limit States' investigations *only* to abuse, neglect, financial exploitation, and sexual abuse perpetrated in the context of a trust relationship.

For example, under our proposal, we would not prohibit States from investigating fraud and scams perpetrated by a stranger. Rather, we had sought to ensure that *at a minimum* and as a condition of receiving EJA formula grants (42 U.S.C. 1397m–1) under § 1324.400 of our proposed rule, all States investigated abuse, neglect, financial exploitation, and sexual abuse perpetrated by a person with whom an adult had a trust relationship. This is commensurate with CDC recommendations and in recognition of the particularly egregious nature of the power and control dynamic that exists in cases of abuse, neglect, financial exploitation, and sexual abuse committed when a trust relationship exists.[31]

However, we concur with commenters that determining the presence of a trust relationship and implementing and operationalizing this

[31] U.S. Dep't of Health & Hum. Servs., Ctrs. For Disease Control and Prevention, Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements, *https://www.cdc.gov/violenceprevention/pdf/ea_book_revised_2016.pdf* (Feb. 29, 2016).

provision, particularly during initial intake, may be burdensome, and its application may result in unintended consequences. We likewise recognize APS programs are experts in the types and nature of the adult maltreatment occurring in their local communities and have ensured our rule allows State systems the flexibility to prioritize and respond to cases based on their expertise.

We continue to stress to State APS systems the importance of investigations where the adult is in a relationship of trust with the alleged perpetrator, and we encourage States to prioritize APS program responses to such reports.

''Unsubstantiated''

We have updated the definition of ''investigation'' and removed the use of ''substantiated,'' ''unsubstantiated,'' and ''inconclusive.''

''Victim''

Comment: Some commenters opposed using the term ''victim'' and recommend the use of the terms ''client'' or ''adult'' in the final APS rule. Another commenter suggested the use of ''survivor'' which is more strengths-based. One commenter reported that its State program uses the terms ''victim'' and ''client'' interchangeably within State statutes, but APS programs generally prefer the term ''client.'' Another commenter recommended that the definition be changed to ''alleged victim'' because most reports to APS programs are not substantiated. A commenter stated there would need to be State legislative action to include the definition for ''victim'' in their State APS statutes.

Response: We thank commenters for their suggestions and note that ''victim'' is a subset of ''client'' where there is a finding of adult maltreatment. ''Adults,'' as defined in this rule, become clients when they are screened in by APS. If APS makes a finding that an allegation of maltreatment has occurred, or is likely to have occurred, as defined by State statute, the client is a victim. ''Victim'' is currently the terminology used by NAMRS and the majority of APS systems. We are finalizing our definition as proposed but have consistently replaced ''victim'' with ''adult'' or ''client'' where alternate terminology is more appropriate.

C. Section 1324.402 Program Administration

We have revised § 1324.402 to more clearly articulate requirements related to incorporation of the regulatory definitions. Section § 1324.402(a) requires State entities to establish definitions for APS systems that incorporate every defined term and all of the elements of the definitions in § 1324.401, which establish a minimum standard, as discussed above. State definitions may not narrow the scope of adults eligible for APS or services provided. However, State entities are not required to uniformly adopt the regulatory definitions. Section 1324.402(a)(1)–(4) requires the State entity to establish definitions for: the populations eligible for APS; the specific elements of adult maltreatment and self-neglect that render an adult eligible for APS; the alleged perpetrators who are subject to APS investigations in the State; and the settings and locations in which adults may experience maltreatment or self-neglect and be eligible for APS in the State.

Section 1324.402(b) requires APS systems to respond to reports of adult maltreatment, which include allegations of abuse, neglect, financial exploitation, and sexual abuse, as well as reports of self-neglect, and requires the State entity to create, publish, and implement certain policies and procedures for receiving and responding to reports of adult maltreatment and self-neglect. Section 1324.402(b)(1) requires the policies and procedures to be person-directed and rely on the concept of the least restrictive alternative.

Under § 1324.402(b)(2), State APS entities must define in their policies and procedures processes for receiving, screening, prioritizing, and referring cases based on risk and the nature of the adult maltreatment and self-neglect in a standardized fashion across their State. Per § 1324.402(b)(2)(i), these policies and procedures include a tiered, risk-based assessment system, differentiating response requirements for cases that represent immediate and non-immediate risks. Immediate risk is assessed via the likelihood of death, irreparable harm, or significant loss of income, assets, or resources. Responses must occur no later than 24 hours after receiving the report for cases representing an immediate risk and no later than seven calendar days for cases of non-immediate risk.

We have made revisions throughout § 1324.402, and added ''self-neglect'' throughout to reflect changes to our definition of ''adult maltreatment'' in § 1324.401. We retain § 1324.402(b)(2)(i) (formerly § 1324.402(a)(4)(i)) as proposed with the clarification that our requirements may be met by referral to emergency management systems or other entities with the capability of responding within 24 hours.

Under § 1324.402(c), State entities must establish policies and procedures to inform potential APS clients of their APS-related rights under State law at first contact with the potential client. APS programs are required to inform potential APS clients of their rights in the format and language preferred by the adult, including those with limited English proficiency and adults with disabilities. We have renumbered § 1324.402(b) as § 1324.42(c), but otherwise are finalizing it as proposed.

We proposed in § 1324.402(d) that State entities create policies and procedures for the establishment of minimum staff to client ratios for APS systems. In response to comments by APS State entities, national associations representing APS systems, and others, we are not finalizing proposed § 1324.402(d)(3).

Our proposal at § 1324.402(e) required that State entities establish such other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging. We have decided not to finalize proposed § 1324.402(e).

We received many comments from interested parties with detailed suggestions for improvements to our proposals and many seeking clarity on policies contained in our proposed rule. We discuss comments and responses below.

Comment: We received comments from State APS entities, a disability stakeholder, and a research group addressing public disclosure of State policies and procedures. Most commenters were either neutral or in support of leaving disclosure of policies and procedures to State discretion. One commenter suggested that States not be required to make policies and procedures public, but that they be made available upon request. Another commented that it would be helpful in their advocacy and investigations if States were required to disclose policies and procedures publicly.

Response: Based upon the comments we received, the final rule requires States to publish APS policies and procedures. State entities should make their policies and procedures public through publishing them online, or via similar publication method.

Comment: We received general comments in support of our proposal to standardize policies and procedures for receiving and responding to reports of adult maltreatment and self-neglect.

Response: We appreciate commenters' support.

Comment: Many commenters wrote in support of our provision requiring APS to respond to adult maltreatment and self-neglect, with a few stressing the

importance of flexibility and State discretion. Many APS systems and national stakeholder associations also commented that it is essential that our rule does not impede APS systems' ability to divide and share investigative responsibilities with law enforcement entities and other entities with jurisdiction over investigative functions. One commenter noted that APS should not duplicate the work of other entities, and other commenters emphasized the importance of referral relationships in APS response to abuse, neglect, financial exploitation, sexual abuse, and self-neglect.

Response: We appreciate commenters' responses. The regulation at § 1324.408 requires APS entities to provide assurances in their State plans that they have developed policies and procedures outlining their response to reports of abuse, neglect, financial exploitation, sexual abuse, and self-neglect. Our rule permits State systems significant latitude in the development and application of these policies and procedures, and the regulation does not prohibit referral or collaboration to meet the investigatory requirements of § 1324.402 and § 1324.403. For example, we specifically include law enforcement and State licensing and certification bodies as key partners in § 1324.406. We acknowledge that, in certain cases, particularly in circumstances such as reports of sexual abuse, referral and investigation by law enforcement with case planning and service delivery by APS is the appropriate response for both the alleged victim and the APS program.

Comment: We received a question as to whether States would be permitted to place income restrictions on qualification for APS services.

Response: APS is a social services program serving older adults and adults with disabilities who need assistance because of abuse, neglect, financial exploitation, sexual abuse (adult maltreatment), and self-neglect. In all States, APS is charged with receiving and responding to reports of adult maltreatment and self-neglect. Adult maltreatment and self-neglect affect people of all income levels: accrued wealth is not protector against maltreatment nor is it a remedy. It is contrary to the intent of the EJA and OAA to impose income restrictions for eligibility or receipt of APS services.

Comment: We received comment in support of our proposal at § 1324.402(a)(1) (now § 1324.402(b)(1)), with several commenters noting that their APS systems already incorporate principles of person-directedness. Some commenters specifically noted that guardianship should be used only as a last resort, and one commenter noted the importance of decisional supports for those with diminished capacity. Other commenters suggested that sometimes APS programs must seek guardianship and that APS must act against the wishes of the adult per State law.

Response: The principles of person-directed services and planning and reliance on least restrictive alternatives are foundational to the protection of the rights of adults. They are set forth in the OAA,[32] Rehabilitation Act of 1973,[33] the Americans with Disabilities Act,[34] the EJA,[35] the Affordable Care Act,[36] among other laws, as well as in the Supreme Court decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999). These laws establish separate and independent legal obligations for covered entities; while this final rule is intended to ensure APS policies and practices are consistent with the principles of person-directedness, self-determination, and integration that are foundational to the statutes listed above, the approval of a State APS plan under this regulation does not mean that the State or APS is in compliance with other statutory obligations, including the obligation to avoid discrimination based on disability.

Under this final rule, therefore, a primary goal of APS in responding to reports of adult maltreatment and self-neglect is to promote self-determination and person-directedness, and to support adults in making their own decisions in line with their values and wishes. APS programs should start from the presumption that an adult has the capability to make all decisions, where a court has not already rendered a legal decision about the adult's decision-making capacity. Decisional capability can vary from situation to situation, from day to day, and at different times within the same day. Capability to make decisions may be affected by economic resources, fear, health status, medication, or by maltreatment. Adults with memory loss or intellectual and cognitive disabilities may have the capability to make decisions, including with the assistance of a trusted supporter. Refusal to accept APS services or refusal to participate in an APS investigation, as well as insistence upon taking action that APS considers not in the person's best interest, is not necessarily (and should not be presumed to be) an indication of lack of decisional capability or diminished capacity.

In promoting decisional capability and least restrictive alternatives, APS programs should recommend guardianship, whether they themselves are petitioning for guardianship, accepting a court appointment to serve as a guardian, or referring to another entity to petition for or serve as guardian, only as a last resort if lesser-restrictive measures have been exhausted or determined not feasible. APS programs already work with their clients to provide or connect them with the services and supports that enable them to direct their care and life choices. Among these are Medicaid home and community-based services (HCBS); OAA-funded programs such as congregate and home-delivered meals, homemaker and chore services, and transportation; and the Supplemental Nutrition Assistance Program (SNAP), among others. APS programs can assist clients to arrange for less restrictive decisional supports, both formal and informal, such as powers of attorney, and health care advanced directives. Guardianship is rarely needed where services and less restrictive decisional supports are appropriately used.

As we further explain in our discussion of § 1324.404, Conflicts of Interest, we have clarified in this final rule that an APS program petitioning for or serving as guardian constitutes a dual relationship that will only be considered unavoidable if all less restrictive alternatives to guardianship have been considered.

Comment: We received comment on proposed § 1324.402(a)(3) requiring State APS entities to define the settings,

[32] An objective of the OAA is ''Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect, and exploitation.'' OAA section 101(10), 42 U.S.C. 3001(10).

[33] The Rehabilitation Act of 1973, as amended Title VII, chapter 1 states the current purpose of the program is to ''promote a philosophy of independent living including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society.'' 29 U.S.C. 796.

[34] Congress stated in the ADA's statutory findings that ''the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency.'' 42 U.S.C. 12101(a)(7).

[35] The EJA defines elder justice to mean ''efforts to [. . .] protect elders with diminished capacity while maximizing their autonomy, and [. . .] the recognition of an elder's rights[.]'' EJA section 2011, 42 U.S.C. 1397(5).

[36] Section 2402(a) requires removal of barriers to providing home and community-based services through strategies to maximize the independence of individuals, including through support and coordination for an individual to design an self-directed, community-supported life.

locations, types of maltreatment, and alleged perpetrator(s) that APS will investigate. We also received comment suggesting that APS be required to investigate maltreatment in long-term care settings. Another commenter noted that our proposal may require a change in State statute if the rule requires investigation in long-term care settings. One commenter asked that we clarify the meaning of ''types of alleged perpetrator.'' Another commenter suggested APS often ''splits jurisdictions'' with another entity, with relationships memorialized both formally and informally.

Response: We have revised § 1324.402 to incorporate and clarify the requirements proposed at § 1324.402(a)(2)–(3). In this final rule, § 1324.402(a) requires State entities to 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 or self-neglect and be eligible for APS in the State. Consistent with our proposal, the final rule does not enumerate the types of settings where APS systems must perform investigations—whether a congregate care setting, community-based setting, or other type of setting. Rather, it requires that States establish a definition to standardize the settings the State chooses, or is required by State law to, investigate.

APS entities must also establish definitions to standardize the types of relationships they choose or that they are required by State law to investigate. ''Type of perpetrator'' as used in proposed § 1324.402(a)(3) refers to the relationship between the alleged victim and perpetrator. For example, a type of perpetrator may be a family member, nursing facility staff member, or relative caregiver (paid or unpaid). Our rule does not enumerate specific types of alleged perpetrators that a State must investigate; it requires that the State establish definitions to standardize which types of perpetrators they choose to, or are required by State law to, investigate.

Comment: We received comments on our proposal at § 1324.402(a)(4)(i) from several State entities noting that they currently maintain a tiered risk system (indicating their priority response levels) that is three tiers or more. A few commenters sought confirmation that these systems would satisfy the requirements of proposed § 1324.402(a)(4)(i).

Response: We recognize there is diversity across State systems' priority response levels. A system with three or more tiers is compliant with our requirements at § 1324.402(b)(2)(i) (proposed § 1324.402(a)(4)(i)) provided it meets, at a minimum, the immediate and non-immediate timeliness requirements of § 1324.402(b)(2)(i)(A) and (B). State APS entities must develop a process for screening, prioritizing, and referring reports based on risk. This system should include *at least two tiers* for initial contact with an alleged victim. These tiers are based on assessment of the immediate risk of death, irreparable harm, or significant loss of income, assets, or resources. However, our regulation is a minimum standard. A State is permitted to employ a three-tiered system (or greater) provided cases are screened, prioritized, and referred based on immediate and non-immediate risk and the initial contact requirements of § 1324.403(b)(2)(i) and (ii) are adhered to. We discuss the two-tiered system requirements in greater detail below.

Comment: We received many comments on our proposal at § 1324.402(a)(4)(i)(A) (now at § 1324.402(b)(2)(i)(A)) opposed to a required response time of 24 hours in the case of immediate risk. Commenters noted that many State systems do not currently have the necessary infrastructure to meet our proposal and that compliance would require significantly increased staffing and attendant expense. Commenters suggested using law enforcement and emergency response systems to satisfy the 24-hour immediate risk response requirement, with many suggesting that they already have such collaborative referral systems in place. One commenter noted that requiring APS to respond to emergency situations may put an APS workers' safety at risk. Others suggested we amend our proposal to one business day to better account for staffing restrictions. A few commenters sought guidance on how to calculate risk and examples of immediate and non-immediate responses.

Response: We thank commenters for their suggestions and questions. First, it is important to distinguish between the requirement to *accept* a report (further discussed under § 1324.405), and the requirement to respond within 24 hours in cases of immediate risk. As we discuss in further depth below, APS programs must respond within 24 hours of retrieving a report from the system that accepts reports 24 hours per day, seven days per week (24/7) (for example, retrieving an email from a 24/7 inbox), and then screening-in the case.

To satisfy the ''in-person contact within 24 hours'' requirement for immediate risk cases, APS programs may refer adults to emergency response systems, law enforcement, or other appropriate community resources (*e.g.,* homeless outreach, veteran's affairs, services for victims of sexual assault). It is not our expectation that a case or service plan will be complete (or necessarily even have begun, depending on the situation) within 24 hours. Our requirement is that States have policies and procedures to ensure that APS *responds* within 24 hours of retrieving and screening-in an immediate risk report. This response may be an in-person visit by APS or by APS accompanied by another entity. APS may also refer the report to another appropriate entity that is able to make an in-person visit within the designated 24 hours. If a reporter files a report outside business hours, the 24-hour time limit for APS response will not begin until APS retrieves the report, and the case is screened-in. For immediate risk reports, APS programs should establish mechanisms to refer reporters to emergency response systems, police, or other 24-hour response resources, particularly for reports that come in after business hours. This may be accomplished, for example, through an away message on a hotline or email. We discuss expectations around 24/7 methods of accepting reports in § 1324.405.

We defer to States in determining what meets the threshold of immediate need or ''risk of death, irreparable harm, or significant loss of income, assets, or resources.'' We will provide technical assistance to States as they draft or amend their policies and procedures to implement this final rule. We have renumbered § 1324.402(a)(4)(i)(A) as § 1324.402(b)(2)(i)(A) and are otherwise finalizing it as proposed.

Comment: A few commenters suggested we remove ''significant loss of income, assets, or resources'' from our proposal at § 1324.402(a)(4)(i), noting that a response to financial exploitation cases is often not an immediate need, and another commenter noted that financial exploitation cases may require a nuanced approach with advance research.

Response: The financial exploitation of an adult can progress swiftly in scope and scale, and while a nuanced approach may be necessary, we likewise believe an expeditious response is critical in some cases of financial exploitation. For example, financial

exploitation may rob victims of a significant portion of their retirement savings, endangering their current and future financial security.[37] Furthermore, restitution from such crimes may be difficult or impossible.[38] Financial exploitation also adversely impacts its victims' mental health, their sense of security, and their dignity. We have renumbered this section as § 1324.402(b)(2)(i), but otherwise finalize this provision as proposed.

We underscore the importance of referral relationships and collaborative partnerships in responding to reports of potential financial exploitation. Accordingly, we have added ''State securities and financial regulators, Federal financial and securities enforcement agencies'' to § 1324.406(a)(3) in response to commenter feedback.

Comment: While some commenters supported proposed § 1324.402(a)(4)(i)(B) requiring APS response to non-immediate risk reports within no more than seven calendar days, others suggested that a seven calendar-day timeframe was too lenient and gave examples of their State systems. One commenter noted that seven days permitted adequate preparation, planning, and case assignment. Other commenters suggested a shorter timeframe, for example, 72 hours. Still other commenters suggested that seven calendar days was too restrictive and requested a longer timeframe, such as ten calendar days or seven business days. One commenter noted that ACL did not provide adequate justification for a seven-day timeframe.

Response: Based on commenter feedback, we are finalizing § 1324.402(a)(4)(i)(B) (renumbered as § 1324.402(b)(2)(i)(B)) as proposed. We chose a seven-day timeframe because most State APS systems respond to reports within seven calendar days, and we believe this timeframe will ensure timely response to reports while minimizing burden for APS systems.[39] We remind State entities that they are permitted to set shorter timeframes for response (*e.g.,* 72 hours), but not longer timeframes (*e.g.,* more than seven calendar days).

As discussed earlier, it is not our expectation that investigations or case plans will be complete (or potentially even started) within seven calendar days, although data indicates three quarters of States currently perform case-initiation within seven calendar days.[40] Rather, APS must provide some response to a non-immediate risk report of maltreatment within seven calendar days. We define response broadly in § 1324.401 to include referral and other collaborative interventions. This policy aligns with standards set out in our Consensus Guidelines which suggest 24-hour response for immediate-risk cases and five business day response for non-immediate risk cases. State entities will have 4 years to come into full compliance with these provisions, and we will offer the option of a corrective action plan for States that require more than 4 years to come into compliance with this provision.

Comment: We received a comment suggesting that we revise proposed § 1324.402(a)(5) to read ''define investigation and post-determination (or disposition) procedures.''

Response: We thank the commenter for their suggestion. We have removed proposed § 1324.405(a)(5) consistent with our revisions to § 1324.403.

Comment: We received comments in support of our proposal to inform adults of their rights at first contact, as well as comments expressing concern. Some commenters requested clarity or made suggestions for improvement, including what is meant by ''first contact'' and whether they would be required to give adults pamphlets or brochures. Commenters also requested guidance on how to address situations where adults lack the ability to consent to APS services. Commenters suggested that adults should be informed of their rights in an accessible manner, noting the importance of communication preferences and accessibility needs.

Many commenters wrote in opposition to informing an adult of their rights at first contact, as this may set an adversarial tone. Commenters noted it was important to build trust and rapport early in a relationship with a potential client. One commenter offered that proposed § 1324.402(b) (renumbered as § 1324.402(c) in the final rule) be edited to read ''inform clients of their rights at first contact to the extent possible.''

Several commenters were opposed to giving adults pamphlets or brochures with information on their rights, out of the concern that this could prove a safety risk if a perpetrator were to find the information and retaliate or coach a victim. Several commenters requested information and examples of person-directed, culturally competent, accessible methods for informing adults of their rights, as well as best practices.

Response: We thank commenters for their comments and suggestions. For the purposes of our rule, ''first contact'' is the first touch point with the potential client, whether that be by telephone or in-person. This is sometimes, but not always, the initial intake. We note that nothing in our rule requires APS programs to leave brochures or to inform potential clients of their rights as the very first words of an interaction. Informing a potential client of their rights can be woven into an APS worker's first meeting or discussion with a potential client in whatever manner the APS worker deems most appropriate to the situation to build trust and rapport. APS programs must inform potential clients of their APS-related rights under State law. Under the regulation, APS workers are required to provide information about the rights to confidentiality of personal information, to refuse to speak to APS, and to refuse APS, to the extent such rights exist under State law.

We will be providing ongoing technical assistance to implement this final rule, including best practices for informing potential clients (including those with disabilities and impaired decisional capability) of their rights.

Comment: We received a few comments from APS State entities on proposed § 1324.402(b)(2) (renumbered as § 1324.402(c)(2) in the final rule) noting that informing adults of their rights may disincentivize them from talking to APS and may prevent a case from being opened when there is maltreatment or self-neglect present. For example, commenters offered that in cases of self-harm, an adult should not be informed of their rights and that this could be dangerous if they are dissuaded from speaking to APS and accepting services. One APS program opined that if an adult did not want APS services, they should appeal a finding after the fact.

Response: We thank commenters for their responses. As we said regarding comments about self-determination,

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[37] Financial Crimes Enforcement Network (FinCEN), Advisory on Elder Financial Exploitation, June 15, 2022, *https://www.fincen.gov/sites/default/files/advisory/2022-06-15/FinCEN%20Advisory%20Elder%20Financial%20Exploitation%20FINAL%20508.pdf.* 3 Stanford Center on Longevity and Finra Investor Education Foundation, The State of Financial Fraud in America: Post Conference Report, 2016, *https://longevity.stanford.edu/financial-fraud-research-center/wp-content/uploads/2017/02/Fraud-Post-ConfereceReport-2-15-17-2.pdf.*

[38] Consumer Financial Protection Bureau, Recovering from Elder Financial Exploitation: A framework for policy and research, (Office for Older Americans, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_recovering-from-elder-financial-exploitation_report_09-2022.pdf.*

[39] *Supra* note 4. For non-immediate response, there are ten programs that have a ten day, there are 2 that have a 14 day, there is one that has a 20 day. The rest are 7 days or sooner.

[40] *Id.*

adults must be presumed to have decisional capability. Most State laws establish the right to refuse services, to decline participation in an investigation, and to make decisions which others may disagree with about their lives. We decline to include in the regulations prescriptive descriptions of what would constitute an extreme circumstance warranting non-consensual intervention. In supporting the dignity of risk of older adults and adults with disabilities to make decisions to support their autonomy, APS programs should balance the risk with ensuring the person's health and welfare. Such circumstances are fact-specific and are best assessed carefully by individual programs. We encourage State entities to include in their policies and procedures and in their State plan standards for such intervention, taking into consideration the requirements of person-directed and least restrictive services. We note, however, that a policy of providing an adult with appeal rights after providing non-consensual services, as suggested by one commenter, does not meet the standard of least restrictive intervention. For example, an adult who loses their living arrangement because they were removed from their home without consent cannot be made whole through an appeals process.

We will provide technical assistance as requested regarding approaches to inform potential clients of their rights.

Comment: We received a comment on proposed § 1324.402(b)(3) (renumbered as § 1324.402(c)(3) in the final rule) that in one State, a potential APS client does not have the right to decline services.

Response: Our proposal requires that potential clients must be informed of their APS-related rights *under State law.* Such rights may include the right to decline to participate in an investigation, to decline services, and/or to refuse entry to their home. Thus, if State law does not offer a potential client the right to decline services, APS must still inform the client of any rights they do have under State law. Furthermore, APS programs are required to abide by all other provisions in this rule, including those related to person-directed case planning and services.

Comment: Commenters fully supported proposed § 1324.402(c) (renumbered as § 1324.402(d) in the final rule), which requires that information be provided in a format and language understandable by the adult, and in alternative formats as needed.

Response: We thank commenters for their support and are finalizing as proposed.

Comment: We received broad support for our proposals at § 1324.402(d)(1) (renumbered as § 1324.402(e)(1) in the final rule) for APS training, with several APS entities indicating that they already provide training on core competencies. Some commenters suggested that trainings may be burdensome, particularly with reference to training on our regulations. A few commenters suggested disability-specific education.

Response: We thank commenters for their input and are finalizing as proposed. We will provide ongoing technical assistance and training resources through our technical assistance resource center.

Comment: We received overwhelming opposition to our proposal at § 1324.402(d)(3) for State entities to establish staff-to-client ratios. Commenters believed it would be extremely difficult to develop ratios due to a lack of research and evidence in the area. Many commenters likewise stated that too many variables are beyond their control when determining appropriate ratios, including the complexity of cases, State appropriations for APS staffing, staff attrition and turnover, difference in geography (rural versus urban areas), regulatory changes, and other variables. A commenter noted that tying ratios to current staffing levels may perpetuate understaffing. Many commenters responded to our request for information with support for workload studies.

Response: We thank commenters for their thoughtful input. In response to these comments, we have decided not to finalize proposed § 1324.402(d)(3). We encourage States to conduct ongoing workload studies and will provide ongoing technical assistance as they conduct them.

Comment: We received comment that proposed § 1324.402(e), which requires the State entity to establish other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging, is overly vague and injects undesirable uncertainty.

Response: We thank commenters for their input. We have decided not to finalize this provision.

D. Section 1324.403 APS Response

Section 1324.403 requires the State entity to adopt standardized and systematic policies and procedures for essential APS functions throughout the lifecycle of a case. The purpose of an APS response, including through investigation and service planning, is to collect information about the allegations of adult maltreatment or self-neglect; determine if the alleged victim is eligible for APS services; assess the immediate risk of the situation; and refer to, arrange for, and/or provide services to stabilize the situation. APS identifies the service needs of the client and develops a plan, including recommendations or referrals to other entities, such as social services programs. Service planning and referral often occurs concurrently to investigation as well as post-investigation in many, but not all, systems.

Section 1324.403 sets forth requirements for the development of standardized policies and procedures governing APS response. Initiation of an investigation encompasses screening and triaging reports and decision-making processes for determining immediate safety and risk factors affecting the adult. The investigation includes the collection of relevant information and evidence. Policies and procedures must also detail methods to make findings on allegations and record case findings, including consultation with outside experts when appropriate. Professional fields for such experts include medicine, social work, law enforcement, legal services, behavioral health, finance/accounting, and long-term care. We likewise require the APS worker to provide referrals to other agencies and programs, as appropriate under State law, such as referrals to AAAs, State Medicaid programs, or Centers for Independent Living for services. For example, the APS program may make a referral to the State Medicaid agency for HCBS to mitigate harm and assist the victim in recovery from the abuse. During a response, APS may, in limited and warranted circumstances, take emergency protective action, which we define in § 1324.401. Such action should be person-directed and taken as a last resort after exploring all other viable options, and prioritize community integration, autonomy, and individual choice.

Many APS clients require services, which APS provides or arranges for through a variety of mechanisms and funding sources. APS staff may provide services directly (*e.g.,* assistance with housing relocation), pay third parties for services (*e.g.,* pay for medications or utility bills), or make referrals to community-based services (*e.g.,* home-delivered meals). The rule offers a framework for the provision of services that promotes the dignity and autonomy of the client, leverages community resources, and aims to prevent future adult maltreatment and/or self-neglect.

We received comment on our proposals from an array of different commenters, including State APS entities, national associations, researchers, APS programs, AAAs, and others. We received many comments critiquing our proposal for inaccurately characterizing APS investigation and service delivery as running separate from and consecutive to each other and for over-emphasizing the role of APS investigatory functions. We have revised the section's title and proposed § 1324.403(e) in response to feedback and offer clarification on individual subsections. We have likewise removed § 1324.403(e)(3) in response to comments stating that it was beyond APS authority to hold perpetrators accountable. We have removed proposed § 1324.403(e)(6) and proposed § 1324.403(f)(3)(iii); we agree with commenters that it would be extremely challenging for APS to monitor a client and measure efficacy and outcomes and believe that the performance data collection required by § 1324.407 and NAMRS is a less burdensome way to monitor and evaluate efficacy and outcomes and achieve the goals of these proposed provisions. In response to comment, we struck ''or decision'' from proposed § 1324.403(f)(3)(v) as duplicative. Below is a summary of and response to the public comments we received regarding this section.

Comment: We received comment from State APS entities, national associations, researchers, APS programs, and others stating that proposed § 1324.403 ''Investigation and Post-Investigation Services'' focused too heavily on APS's investigatory function and underrepresented the critical role of service planning and delivery in person-directed APS practice. Commenters also suggested changes throughout proposed § 1324.403 to definitively establish service delivery and investigation as concurrent responsibilities of APS systems.

Response: We thank commenters for their suggestions and feedback and have revised the title of § 1324.403 from ''Investigation and Post-Investigation Services'' to ''APS Response.'' We have defined ''response'' in § 1324.401 as ''the range of actions and activities undertaken as the result of a report received by APS.'' We likewise have amended § 1324.403(e) from ''[p]rovision of APS post-investigation services [. . .]'' to ''[p]rovision of and/or referral to services [. . .]''

Comment: We received comment that proposed § 1324.403 was confusing and that proposed §§ 1324.403(a) and 1324.403(b) would be more appropriately included in § 1324.405, which addresses accepting reports.

Response: Sections 1324.402(a) and 1324.402(b) detail different aspects of APS program administration than § 1324.403 does. Section 1324.402 sets overarching principles for administering the APS program at all phases of the response. Likewise, § 1324.405 addresses the process by which the APS program accepts reports. Section 1324.403, on the other hand, addresses the process for responding to reports. We believe that the significance of response procedures warrants a separate section of the regulation and decline to combine the referenced regulatory sections.

Comment: One commenter requested that we clarify the term ''screening'' and whether ''screened-out'' cases must comply with the regulation.

Response: Section 1324.403(a) requires ''[s]creening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment and self-neglect reports[.]'' Screened-in reports are those that meet the threshold criteria for APS involvement as defined by State statute, regulation, or policy. Screened-out reports are those that do not meet the threshold criteria for APS involvement as defined by State statute, regulation, or policy.

Comment: One commenter recommends that ACL add measures to protect the safety and confidentiality of reporter identity and institution affiliation to ensure safety for all involved.

Response: We thank the commenter for the suggestion. APS systems must comply with State privacy and confidentiality laws. We do not believe we need to include additional privacy and confidentiality standards in this section, but we reiterate that this final rule establishes minimum standards, and States have the discretion to establish stricter privacy and confidentiality standards for reporters if they choose to do so.

Comment: A commenter suggested that collection of relevant information under proposed § 1324.403(c) may not always be directed by the person and, in this case, we should clarify that in cases where a client does not direct evidence collection, APS should act in a client's best interests.

Response: Our final rule at § 1324.403(c)(4) and § 1324.402(b)(1) states that APS should incorporate principles of person-directedness when responding to reports, including during the collection of evidence. We discuss person-directedness in more detail in the discussion of § 1324.402(b)(1).

Comment: A few commenters agreed with our inclusion of proposed § 1324.403(c)(2) and stressed the importance of APS workers' safety. Two commenters pointed out the role of law enforcement when responding to APS reports in ensuring client and worker safety.

Response: We thank commenters for their support and likewise agree law enforcement is a critical APS partner, as discussed in § 1324.406.

Comment: We received one comment from a State APS entity in strong support of our proposals at § 1324.403(c)(3)–(6). The State entity noted that it was already in compliance with these principles and believes they are a national best practice.

Response: We thank the commenter for their support.

Comment: We received comments on proposed § 1324.403(c)(4) requesting that we define trauma-informed and give specific examples of person-directedness. Specifically, we received comments requesting we give examples of how to triage cases in a trauma-informed way.

Response: We thank commenters for their suggestions and questions. As discussed earlier, trauma-informed approaches to adult maltreatment and self-neglect recognize the impact of trauma and incorporate that knowledge into service delivery and provider practices.[41] Trauma-informed intake, triaging, investigation, and service delivery identify how traumatic events and circumstances may affect an adult's immediate and ongoing physical and emotional safety and wellbeing. APS workers trained in trauma-informed practices can identify trauma responses in potential and current clients and adjust their practice approach as informed by the individual client's experience to ensure adults are not re-traumatized and feel safe and empowered.

Person-directedness, like trauma informed approaches, centers the experiences, values, and preferences of the adult.[42] Person-directed approaches involve the adult in all aspects of intake, investigation, service planning and

[41] Center for Health Care Strategies, The Trauma Informed Care Resource Center, *https://www.traumainformedcare.chcs.org/about-the-trauma-informed-care-implementation-resource-center/* (last visited Feb. 5, 2024).

[42] Kumar R, Chattu VK. *What is in the name? Understanding terminologies of patient-centered, person-centered, and patient-directed care,* J Family Med Prim Care. 2018 May–Jun;7(3):487–488 *https://www.cms.gov/priorities/innovation/key-concepts/person-centered-care;* The Admin. For Comm. Living, Person-centered Planning, *https://acl.gov/programs/consumer-control/person-centered-planning* (last visited Feb. 5, 2024).

delivery, to the greatest extent possible. A person-directed APS response respects the adult's right to self-determination. The adult takes an active role and determines the goals. Examples of person-directed strategies include empowering and assisting the adult to identify and access the desired interventions and services, and emphasizing to the adult that they have a voice—this is their case.

We will provide ongoing technical assistance to State APS systems as they implement the rule. Technical assistance may be provided in webinars, conference sessions, tip sheets, practice guides, and customized presentations or consultations with State APS systems. Topics may include addressing general concepts and may delve into how these concepts are applied to specific components of APS practice, and how best practices are being advanced by APS professionals. We are finalizing § 1324.403(c)(4) as proposed and will include more examples and best-practices of trauma-informed and person-directed services, as defined above, in technical assistance.

Comment: We received comment on proposed § 1324.403(c)(5) requesting that we clarify expected minimum frequency and type of contact with a client.

Response: We leave specifics related to frequency and type of contact to the discretion of the APS State entity to incorporate into their policies and procedures. This rule only requires that the State entity have consistent evidence and information collection practices to inform findings on allegations and service planning that maximize engagement with the APS client.

Comment: We received comments on proposed § 1324.403(d) suggesting we require consultation with organizations and providers that have an ongoing relationship with a client. Another commenter suggested consultation with animal service organizations as a part of multidisciplinary teams.

Response: Commensurate with our requirements at § 1324.406, State APS entities should develop policies and procedures that include consultation and collaboration with a variety of experts. We note our list of community partners is not exhaustive and States may choose to add additional entities. We decline to specify organizations for consultation in § 1324.403(d)(1) and are finalizing the section as proposed.

Comment: We received comment on 1324.403(c)(6) requesting that ''emergency protective action'' be revised for consistency with our definition at § 1324.401. We also received comment that APS often does not have control over State law governing law enforcement involvement and policies related to emergency protective action. Another commenter noted that our proposal sets a higher standard than the law in their State and may hinder cases where guardianship is sought due to a client's lack of capacity and decision-making ability. Finally, a few commenters sought clarity on types of emergency protective actions that are appropriate, and one commenter noted that its APS system did not accept out-of-home placements.

Response: We thank commenters for their suggestions and have amended proposed § 1324.403(c)(6) for clarity and to conform with our revised definition at § 1324.401. Specifically, we have amended § 1324.403(c)(6) to permit the emergency use of APS funds to buy goods and services. We have created a new § 1324.403(c)(7) to 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 from harm from others or self-harm.

We believe that the emergency use of APS funds to buy goods and services should not be subject to the stricter standards for seeking emergency protective actions. We apply the stricter standards for seeking emergency protective actions in keeping with our focus on person-directed services and least restrictive alternatives. As stated previously, we require that APS State entities develop policies and procedures that define and limit the use of emergency protective action, including guardianship and conservatorship, as a last resort after all other alternatives have been exhausted. This practice is supported by research and literature on APS practice.[43] We will provide ongoing technical assistance and guidance to States about the implementation of emergency protective action and best practices to promote autonomy and incorporate person-directedness.

Comment: We received comment on proposed § 1324.403(e) suggesting we strike ''post-investigation services'' and replace ''during the course of'' to read, ''services during the course of and post investigation [. . .]'' to more accurately and clearly represent person-directed APS service provision during the course of an investigation, as opposed to only once an investigation has closed.

Response: We appreciate these suggestions. Based on various comments on this proposed section, we have revised proposed § 1324.403(e) to read ''[p]rovision of and/or referral to services, as appropriate.'' We believe this change is responsive to commenter feedback on proposed § 1324.403(e) and § 1324.403 more broadly and aligns with the retitling of § 1324.403 to ''APS Response.''

Comment: We received many comments, including from APS State entities, on our proposal at § 1324.403(e)(3) requiring APS systems hold perpetrators accountable. A number of commenters noted that law enforcement and the legal system, not APS, are tasked with holding perpetrators accountable. A commenter noted that APS instead provides protective services to a victim to enhance safety and in accordance with their wishes and informed choice. According to comment, it is outside APS programs' jurisdiction to ''stop abusive behavior'' and sometimes impossible to accomplish if a victim chooses to remain with their abuser. One commenter suggested amending proposed § 1324.403(e)(3) to read: ''Refer perpetrator to the appropriate law enforcement entity or entities to address accountability for the adult maltreatment.'' Another commenter suggested replacing ''abusive'' with ''maltreatment'' to better reflect our definitions in § 1324.401.

Response: We appreciate and agree with these comments. We have decided not to finalize § 1324.403(e)(3) in response to feedback.

Comment: We received comment in support of our proposal at § 1324.403(e)(4) noting that clients should be at the center of all service planning and other efforts. Another commenter suggested that consultation with clients is not always possible, and that we should amend our proposal to reflect this.

Response: We appreciate commenters' responses. APS should make every attempt to involve a client in service planning and referrals throughout the lifecycle of the case. We believe this is adequately accounted for in §§ 1324.403(c)(4) and (5), §§ 1324.403(e)(1) and (2) and in § 1324.402(b)(1).

Comment: We received comments from State APS entities and other interested parties suggesting that our

[43] *Supra* at 12; Most APS programs routinely encourage alternatives to guardianship. More programs (50) provide substitute decision-making (in which someone assumes responsibility to make decisions for a person who has been deemed unable to make his or her own financial or health care decisions) than supported decision making (a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions without impeding the self-determination of the adult) (37 programs). More programs (49) indicated they encourage power of attorney than advanced directives (36 programs).

proposal at § 1324.403(e)(6) may be difficult to implement and is administratively burdensome and cost prohibitive. Commenters noted that they do not follow cases after closure and sought clarity around expectations for what constitutes monitoring and impact. A commenter suggested that there are ways to monitor effectiveness of APS services (such as tracking recidivism or reoccurrence) that are less burdensome.

Response: We have reassessed our proposal in light of commenters' feedback and suggestions, and we are not finalizing proposed § 1324.403(e)(6). We believe data on service effectiveness and client outcomes can be measured through existing NAMRS data collection and through the program performance data to be reported under § 1324.407.

Comment: We received one comment on proposed § 1323.403(f)(1) from a State APS entity stating that it did not have established timeframes for ongoing review of cases and that proposed § 1324.403(f)(1) would be burdensome. Conversely, we received comments in support of creating timeframes for review.

Response: Ongoing review of open cases ensures that APS addresses adult maltreatment and self-neglect in a timely manner and that cases do not languish, potentially allowing for preventable adult maltreatment or self-neglect. We are not mandating exact timeframes for case review, only that a State APS system have policies and procedures in place to provide for such review. We are finalizing this provision as proposed.

Comment: A commenter suggested that our proposed § 1324.403(f)(2) be removed because our proposal at § 1324.403(e)(4) to create service plans accounted for this and the provision was thus duplicative. Another State offered that each case was unique, and there should be no timeframe set. A commenter offered that timeframes should not be hard and fast, and that extensions were necessary, especially for cases such as financial exploitation. One commenter suggested including an exceptions and ongoing review process.

Response: We are amending our proposal at § 1324.403(f)(2) to read ''[e]stablish a *reasonable* length of time by which investigations should be completed and findings be made[. . .]'' [emphasis added]. We note that this rule does not set a specific timeframe for investigation completion. Rather, we require State entities to set such quantifiable and reasonable timeframes in policies and procedures, understanding that what is reasonable for one case type may be different from another.

Comment: We received comments in support of our proposal at § 1324.403(f)(3)(iii) requiring State entities to establish policies and procedures to measure the outcome and efficacy of interventions and services. However, we received many comments suggesting that impact and outcomes are difficult to measure. Some stated that our proposal was vague and would be challenging to operationalize, with commenters suggesting it was unclear how to measure outcomes and efficacy after case closure. One commenter argued that the Federal Government needed to set national outcome standards for practice and intervention. Another suggested we amend § 1324.403(f)(3)(ii) to read ''[a]ssessment of the outcome and perceived success of intervention and services.''

Response: We agree with commenters and are declining to finalize § 1324.403(f)(3)(iii). Similar to our proposal at § 1324.403(e)(6), we believe outcomes and efficacy of interventions and services can be measured by performance data submitted under § 1324.407 and existing NAMRS data collection, alleviating any potential additional burden on APS systems.

Comment: We received comments suggesting we strike ''or decision'' in proposed § 1324.403(f)(3)(v), as it could allow for recording whether the case was closed but not necessarily the reason behind the closure. We also received comments questioning whether our rule requires case closure information to be transmitted to the client. One commenter advocated that case closure transmittal to the client be optional and not mandatory, and one commenter suggested that it was not person-centered to transmit self-neglect decisions to a client.

Response: We have renumbered §§ 1324.403(f)(3)(v) to 1324.403(f)(3)(iv) to reflect other changes in this subsection. We are removing ''or decision'' per commenter feedback. We also clarify that § 1324.403(f) only requires documentation of the information and not transmission of the information to the client. We leave to State discretion whether to transmit the reason for case closure to the client.

E. Section 1324.404 Conflict of Interest

Section 1324.404 requires the State entity to establish policies and procedures to prevent, recognize, and promptly address both actual and perceived conflicts of interest at the organizational and individual level. As discussed in the preamble to the rule, trust in APS by clients receiving services and the broader community is essential to the ability of APS programs to perform their functions effectively and appropriately. APS programs form partnerships and referral relationships with allied organizations and professionals to provide necessary services and supports to adults before, during, and after intake and investigation. Conflicts of interest may arise when a State employee, APS worker, or APS system's financial or personal interests influence or are at odds with the interests of a client or cohort of clients. Many APS programs that provide services for victims of adult maltreatment and adults experiencing self-neglect have close relationships and shared locations and data systems with AAAs, State Units on Aging, and other health and human services agencies.

Additionally, individual APS workers may face conflicts of interest if they are in a ''dual relationship'' serving multiple roles for a single client. We proposed dual relationships be permitted only when unavoidable and conflicts of interest should be appropriately mitigated and concluded as soon as feasible. Further, our proposed rule required that APS programs have policies and procedures that ensure conflicts of interests are avoided and, if found, remedied. We proposed that APS have policies and procedures to identify both organizational and individual conflicts of interest. Policies must establish actions and procedures that APS will require employees, contractors, grantees, volunteers, and others in a position of trust or authority to take to remedy or remove such conflicts. Over time, APS has expanded its working relationships, thus necessitating additional guidance on preventing and mitigating conflicts of interest.

Commenters were generally supportive of our proposals, with significant feedback offered on proposed § 1324.404(a) regarding APS serving as direct service providers and § 1324.404(d) regarding dual relationships. We also received a few clarifying comments.

We proposed in § 1324.404(a) to prohibit employees and agents of APS from simultaneously serving as direct service providers, such as case managers, to clients. We received several comments opposed to our proposal. As discussed below, in response to commenter feedback, we have removed § 1324.404(a). We have also made clarifying edits to proposed § 1324.404(b) and proposed § 1324.404(c). In addition, we have added new § 1324.404(d) in response to commenter feedback on guardianship and dual relationships. Below is a summary of the public comments we

received regarding this section and our responses.

Comment: We received a number of comments stressing the need for robust conflict of interest protections and in support of our proposal.

Response: We concur and thank commenters for their support.

Comment: We received comment that our proposal was too broad and would create significant burden and expense for APS programs. For example, a commenter suggested that applying the rule to ''all professionals involved in an APS investigation'' would be difficult to administer and monitor.

Response: We believe that with appropriate legal and policy guidance, APS systems will be able to identify, monitor, remedy, and remove actual and potential conflicts of interest as necessary. ACL maintains that the benefit to APS clients of ethical practice far outweighs the burden incurred.

Commenter: One commenter raised concerns that our proposals might adversely affect the work of multidisciplinary teams.

Response: We believe that our rule will help multidisciplinary teams fulfill their mission and will not adversely impact the work of multidisciplinary teams. Better awareness of, and a standardized approach to remedying conflicts of interest will enable multidisciplinary teams to efficiently address any conflicts of interest among its participants. For example, if a team member has a direct conflict of interest, they may recuse themselves from working on a specific case or cases. Other recommendations include presenting cases without personally identifiable information, strengthening confidentiality agreements, and strengthening working relationships with other local area teams should a conflict arise.

Comment: One commenter suggested the rule be less specific about areas where a conflict of interest may arise and allow States flexibility in identifying and addressing this in State policy.

Response: How an actual or potential conflict of interest may be identified and remedied is often case specific. This rule requires State APS entities to establish appropriate policies and procedures that will guide them if or when a conflict of interest situation arises. State APS entities may seek technical assistance from ACL if questions occur.

Comment: We received a comment suggesting we base our regulations on NAPSA or NASW ethics guidelines on conflicts of interest.

Response: We agree that excellent, reputable guidance is already available through many sources. We encourage State APS entities to seek technical assistance from ACL.

Comment: We received several comments, including from State APS entities, that our proposed regulations might adversely affect county-based systems, particularly smaller counties in these systems. One commenter noted that county-based systems will incur a higher burden in preventing and addressing dual relationships.

Response: We recognize that in smaller communities the possibility for individual and organizational conflict of interest may be more likely to arise due to the nature of a community's size and structure and may be more burdensome to address. Strategies to remedy conflicts of interest may differ in smaller and rural communities from those strategies used in larger areas. How actual or potential conflicts of interest may be remedied through appropriate policies and procedures is often case specific. Factors to consider include whether the individual in question is a decision maker, whether firewalls or other safeguards can be erected between organizations and individuals, and what monitoring protocols are in place for a potentially conflicted situation. ACL is available to provide technical assistance when such situations arise. We also note that the extended compliance deadline of 4 years and the availability of corrective action plans to address specific areas should benefit any State that needs additional time to come into compliance. This may be particularly helpful in States with county-based systems.

Comment: We received several comments suggesting that our proposal at § 1324.404(a) prohibiting APS workers from serving as direct service providers simultaneously may be unduly burdensome and harmful. One APS State entity noted it would not be able to comply with the provision, as APS staff may be the only resource available in their State. A State entity noted that in small counties, APS workers wear many hats, including as HCBS case managers. Another State commented that it is currently in the process of having all APS workers certified as options counselors. One State APS entity opined that service provision can and should be fluid during the case, and that completely separating investigation from service provision could harm the client. The commenter requested we remove or revise this requirement to allow States latitude.

Response: Based on commenter feedback, we are removing § 1324.404(a). We thank commenters for their input.

Comment: We received comment asking us to define ''agent'' as used in proposed § 1324.404(b) and (c).

Response: In response to commenter feedback, we have edited newly redesignated § 1324.404(a) and (b) to remove reference to APS agents. We believe our edits alleviate confusion and better align with the definition of ''conflict of interest'' in § 1324.401.

Comment: One commenter suggested that we clarify proposed § 1324.404(b) by revising it to read ''[e]nsure that employees and agents administering APS programs do not have a personal financial interest in an entity to which an APA program *may* refer clients *for* services recommended by the APS program.''

Response: We appreciate and have accepted the commenter's suggestion. In keeping with the deletion of proposed § 1324.404(a), we are redesignating proposed § 1324.404(c) as § 1324.404(a) in the final rule.

Comment: We received a comment suggesting that we define ''immediate family'' in proposed § 1324.404(c) to mean ''same household.''

Response: We thank the commenter for their suggestion. An immediate family member with a potential or real conflict of interest may not be a member of the same household. Similarly, a member of the household, for example someone who rents a room, may not be a family member but could also have a potential or conflict of interest. We therefore are amending proposed § 1324.404(c), now § 1324.404(a) in the final rule, to clarify. We have also revised § 1324.404(b) to incorporate an individual's immediate family or household, for consistency with redesignated § 1324.404(a).

Comment: We received a comment requesting that proposed § 1324.404(c) align with the definition of conflict of interest in § 1324.401.

Response: We thank the commenter for their suggestion. We have made edits to proposed § 1324.404(b). We are redesignating proposed § 1324.404(c) as § 1324.404(a) in the final rule.

Comment: We received a significant number of comments from the disability community on our proposals at § 1324.404(d) suggesting that APS and AAAs be prohibited from serving as public guardians in dual relationships. Some also suggested that people at risk of guardianship be appointed an advocate from the local Center for Independent Living. One commenter offered that their State APS system

already prohibited AAAs and APS from serving as guardians or powers of attorney for the same person. We also received comments from APS entities, APS programs, and advocacy organizations noting that these dual relationships, including those involving APS workers serving as public guardians, are a reality of APS practice. This is particularly true in rural areas with limited staffing and county-administered systems. APS systems requested more information and guidance on how to operationalize our proposal.

Response: We appreciate the realities of APS practice, as well as the concerns related to the conflicts of interest associated with APS programs being appointed the guardian for an adult served by the APS program. We are revising this section to balance these concerns. While we recognize and are sensitive to the gravity of such situations, we decline to completely prohibit APS entities and programs from petitioning for or serving as guardians to adults in all circumstances. As noted by some commenters, these appointments often occur because no other alternative is available or qualified.

At the same time, we agree that policies and procedures, including firewalls and other safeguards, are necessary to protect against conflicts of interest for APS programs that serve as guardians. The general requirement in § 1324.404 to establish such policies and procedures includes establishment of policies and procedures that address conflicts and appearances of conflict in guardianship situations. To respond to the serious concerns raised by commenters about APS involvement in guardianship, we further clarify the application of this requirement to guardianship., We have revised § 1324.404(d) to describe the circumstances under which petitioning for or serving as guardian is an unavoidable dual relationship. Specifically, it is unavoidable 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. We also clarify that 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.

Finally, there are other statutory and regulatory authorities with which APS systems must comply, including Federal and State laws that require administration of programs, including APS, in the most integrated and least restrictive setting appropriate to meet the needs of individuals with disabilities and that prohibit discrimination on the basis of disability. These include Section 504 of the Rehabilitation Act [44] and the Americans with Disabilities Act.[45] Compliance with this rule does not address these obligations. The Department of Health and Human Services' Office for Civil Rights offers technical assistance on these antidiscrimination requirements for covered entities, and we will likewise provide ongoing technical assistance on these anti-discrimination requirements.

We received comments from Centers for Independent Living noting that they are available to serve as an advocate for a person at risk of guardianship. We encourage Centers for Independent Living interested in serving persons subject to or proposed for guardianship to coordinate with APS programs to aid such adults who may request such help before a guardianship petition is filed. Once a guardianship petition is filed, however, State guardianship law determines how the rights and interests of the person subject to the guardianship petition will be represented, including through the appointment of an attorney to defend against the imposition of guardianship.

Comment: We received comment asking for clarification of what ''appropriate safeguards'' might entail. Another commenter offered that firewalls and disclosures might serve as appropriate safeguards under proposed § 1324.404(d).

Response: We thank commenters for their suggestions. We agree that firewalls and disclosures are among the appropriate safeguards under proposed § 1324.404(d). ACL will provide technical assistance to State APS entities as they develop their policies and procedures that describe safeguards.

Comment: ACL received a comment that our proposal at § 1324.404(e) regarding monitoring and oversight would be expensive and burdensome to implement. One commenter noted that it may be particularly challenging for county-administered systems to monitor dual relationships, where such relationships may occur with more regularity than in other systems. Other commenters requested clarification about ACL's expectations around monitoring and oversight. Another commenter suggested we remove ''robust'' to describe our monitoring and oversight proposal at proposed § 1324.404(e).

Response: We thank commenters and recognize that monitoring and oversight might create an increased burden. However, monitoring and oversight are an essential component of ensuring that APS programs operate appropriately with respect to conflicts of interest. We defer to State APS entities' own conflict of interest policies and procedures about monitoring and will provide technical assistance as requested related to expectations and examples. We agree, however, that ''robust'' is unnecessary, as by its nature monitoring will be robust. We amend accordingly and redesignate § 1324.404(e) to § 1324.404(c).

Comment: Several State APS entities commented that they have their own conflict of interest policies and procedures in place, including informal guidelines, desk audits, and self-reporting. Another inquired whether its current system of desk audits would meet the requirements of our proposed rule.

Response: As mentioned in the response above, we defer to State APS entities' own conflict of interest policies and procedures and will provide technical assistance as requested.

Comment: We received a comment suggesting our proposal would be expensive and burdensome for APS systems to implement. One commenter suggested that removing a conflict of interest is not always feasible and suggested proposed 1324.404(f) be amended to ''remedy, and where practicable, remove.''

Response: We have decided not to finalize § 1324.404(f) because it was duplicative of introductory language to the section, requiring the State entity to establish standardized policies and procedures to avoid both actual and perceived conflicts of interest, including mechanisms to identify, remove, and remedy them. The final rule accords State APS entities great flexibility in developing policies and procedures to address conflicts of interest. This includes the flexibility to determine how to remedy conflicts of interest when they occur. There are many third-party resources available to APS systems as they develop protocols to address conflicts of interest. Technical assistance is available from ACL.

F. Section 1324.405 Accepting Reports

Section 1324.405(a) requires the State entity to have policies and procedures for accepting reports of adult maltreatment and self-neglect. Such policies and procedures require prompt receipt of reports of alleged

[44] 29 U.S.C. 796.

[45] 42 U.S.C. 12101.

maltreatment and self-neglect, using multiple methods for receiving reports 24/7 in ways that are fully accessible (*e.g.,* using augmentative communication devices or translation services). Receiving reports 24/7 is paramount to the safety of clients and aligns with the recommendations of our Consensus guidelines.

APS receives reports from both the general public and individuals mandated by the State to report suspected adult maltreatment and self-neglect. Mandated reporting is an essential tool in combating adult maltreatment and self-neglect. However, most APS programs are not required to contact mandated reporters with information about the case after a report is made. Mandated reporters have stated that the absence of a reporting feedback loop creates a disincentive for reporting. The most common complaint ACL receives from community providers that work with APS is that while they may be required under State law to report, they do not receive information back on the status of their report. In § 1324.405(b), we proposed to require States to implement a ''feedback loop'' to provide mandated reporters information on the status of a report in certain circumstances.

We received many comments generally supportive of our proposal at § 1324.405(a) requiring APS programs to receive reports 24/7. Several commenters also had clarifying questions, particularly about whether our proposal required reports to be fielded by a live APS worker. We address comments below and are finalizing § 1324.405(a) as proposed.

We received comment on our proposal at § 1324.405(b) suggesting significant modification, notably to better clarify the role of professional mandated reporters, emphasize client confidentiality and principals of person-directedness, and minimize burden on APS systems. We appreciate commenters' suggestions and have incorporated many of them into our revisions to § 1324.405(b).

We have amended our definition of ''mandated reporter'' at § 1324.401 to specify that ''mandated reporter'' refers only to a person who encounters an adult in the course of their professional duties and is required by State law to report suspected adult maltreatment or self-neglect to APS. This is in direct response to feedback we received from commenters, particularly States where all persons are mandated reporters. We have amended § 1324.405(b) providing that information about a report must only be released to a mandated reporter who made such report upon request of the reporter and with the consent of the adult. We have removed § 1324.405(b)(1)(ii) in response to commenter feedback, limiting information that must be shared with mandated reporters to procedural information about case opening and not substantive information about case findings. We have added § 1324.405(b)(2) requiring APS systems to obtain the consent of the adult prior to releasing any information. Finally, we have amended § 1324.405(c) in direct response to commenter feedback requesting that we specify that the State entity must comply with all applicable State and Federal confidentiality laws.

Comment: We received several comments in support of our proposal to promptly accept reports of adult maltreatment and self-neglect, with a few State entities reporting they are already in compliance with this provision.

Response: We thank commenters for their support.

Comment: We received several comments opposed to our proposal to require two methods of reporting 24/7, with some commenters arguing that it would be unduly burdensome.

Response: ACL believes it is important that at least two methods of reporting be available to reporters to accommodate people who may be unable to access a State's single method of reporting. For example, if a State only provides a website as its method of 24-hour reporting, a person who lacks internet access may be unable to file a report. It is critical that APS be able to receive reports 24 hours per day. When an adult experiencing maltreatment reaches out for APS assistance, they may only have the courage or ability to do so in that moment.

Comment: We received comment suggesting we replace ''multiple methods'' with ''more than one method'' in proposed § 1324.405(a).

Response: The word ''multiple'' means ''more than one.'' We believe the regulation is clear as drafted and we are finalizing this term as proposed.

Comment: We received questions from a few State entities seeking clarity that two methods of intake were sufficient to meet the requirements of proposed § 1324.405(a).

Response: Two methods of intake are sufficient to meet the requirements of § 1324.405(a), and an online intake system is acceptable as one of these methods. States have the flexibility to provide more than two methods if desired.

Comment: We received comment asking whether online reporting methods were mandatory or optional intake methods for APS programs. Some commenters suggested that requiring an online intake method would be unduly burdensome. A few other commenters questioned whether an online intake system would satisfy the requirements to have multiple methods of intake. One commenter noted an online reporting system could be easily added to APS program websites at little cost and that any potential burden would be outweighed by the benefit.

Response: We require that one of the methods of reporting be an online reporting method. Online reporting methods are a best practice and are successfully in use in a number of States. An online reporting method may be a website portal, a secure email address that is regularly monitored, or another comparable method. States may also continue to use other methods, including voicemail inboxes. The requirement of § 1324.405(a) is that there are multiple (more than one) methods of reporting and one of those is an online method. Again, we want to ensure that States have flexibility to implement the requirement of multiple reporting systems with the greatest efficiency and least amount of burden. Other APS systems may wish to use a dedicated phone intake line (with live personnel and/or a recorded message) fax, or office walk-in.

Comment: One commenter suggested we require an accessible reporting method.

Response: We remind State APS systems that as recipients of Federal financial assistance from the Department of Health and Human Services, they are covered by applicable civil rights laws including sections 504 and 508 of the Rehabilitation Act. These laws prohibit discrimination against qualified individuals with disabilities and require accessibility. Thus, reporting methods are already required to be accessible. A variety of technical assistance currently exists from the Department of Health and Human Service's Office for Civil Rights. ACL will also be providing ongoing technical assistance for State APS systems.

Comment: We received clarifying questions from several commenters, including State entities and associations representing them, asking whether accepting reports 24/7 meant APS programs were required to have live staffing 24/7 to field reports. Specifically, commenters asked whether having intake methods operational but unstaffed 24/7 would be sufficient to fulfill the regulations requirements. They also asked if reports that were received off business hours could be returned the next business day.

Commenters noted that if accepting reports requires live staff at all times, implementation of § 1324.405(a) would be extremely expensive and burdensome and require union negotiations, increased staffing, and funding. One commenter stated that their program investigations commence within 72 hours for immediate risk, with a face-to-face contact within 7 days.

Response: We clarify that ''receiving reports'' means that a reporter may submit a report with APS at all times, whether with a live person or a message to be retrieved during business hours. It is not required that this message be received and acted on by an APS worker immediately upon receipt.

We also agree that it is outside APS programs' ability or mission to respond face-to-face to reports 24/7. We clarify that our requirements at § 1324.405(a) and relatedly § 1324.402(b)(2), require State entities to establish policies and procedures for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment or self-neglect. For reports received outside business hours, an APS worker should retrieve the message and contact the reporter on the next business day. We encourage, but do not require, APS programs to retrieve messages and contact reporters within 72 hours after the report is made. For § 1324.402(b)(2)(i), requiring a 24-hour response to immediate risk cases, the required 24-hour response time does not begin until a case is ''screened-in'' by an APS worker.

Comment: We received a comment suggesting that intake outside business hours was often shared with law enforcement and other emergency responders. The commenter sought to clarify that § 1324.405(a) would not make APS solely responsible for off-business hours response or otherwise disrupt shared response arrangements with law enforcement and emergency responders.

Response: We emphasize the important role law enforcement and other first responders play in receiving and responding to reports of adult maltreatment and self-neglect. They are a vital partner to APS systems, and we encourage ongoing collaboration as discussed at § 1324.406(a)(3). Our proposal does not affect shared arrangements for immediate response outside business hours. We will provide technical assistance to APS systems on best practices for working with law enforcement, including training, while receiving reports 24 hours per day.

Comment: We received a few comments in support of proposed § 1324.405(b), with some commenters agreeing that lack of feedback for mandated reporters was an issue in APS practice that should be addressed. A few States noted that they currently had some method of notifying mandated reporters. Many commenters offered qualified support but included recommendations for improvement.

Response: We thank commenters for their support and thoughtful recommendations. We have incorporated many into revised § 1324.405(b) as discussed below.

Comment: We received comments that proposed § 1324.405(b) would be costly and burdensome to implement.

Response: We appreciate that implementation of a new system to inform mandated reporters may create an administrative burden for some State systems. However, we have significantly narrowed our original proposal in response to commenter feedback. Furthermore, research indicates that communication with reporters improves outcomes for adults and APS systems.[46] We believe the benefit of our proposal outweighs the burden. We have also extended the compliance date of the final rule to give States additional time to put new systems in place.

Comment: We requested comment whether minimum timeframes to respond to mandated reporters should be explicitly included in the rule, and a few commenters variously responded both in support of, and opposed to, minimum timeframes to inform mandatory reporters of report information.

Response: Based on comment responses, we decline to include a minimum timeframe for response to mandated reporters. We allow States to retain flexibility and minimize burden commensurate with commenters' feedback.

Comment: We received significant comment from a wide array of interested parties in opposition to requiring APS programs to provide information to mandated reporters about an APS report and investigation. Some commenters voiced complete opposition to providing mandated reporters with any information, while others requested clarity, and some offered suggestions to improve our proposal and strengthen confidentiality, safety, and person-directedness.

For example, many commenters pointed out that their State had universal mandated reporter statutes with no delineation between the public and professionals. A national association noted that 16 States currently have such laws. Commenters noted that implementation of our proposals in these States would be extremely burdensome to operationalize, could potentially confuse reporters, and may put adults' safety in jeopardy. A few commenters suggested we only require sharing information with mandatory reporters who are professionals reporting in their official capacity.

Some commenters noted that our proposal may have safety implications for adults, pointing out that a reporter—even a professional—may be untrustworthy, abusive, or otherwise be acting outside of an adult's best interest. Several commenters also pointed out that releasing client information without an adult's consent was not person-centered and may conflict with other provisions of this regulation prioritizing the adult's rights. Some suggested that such information only be released if it directly benefits the adult, for example, if it was being released to a medical provider treating a client or to further case coordination. A few commenters suggested that our proposal be amended to allow the release of information only with the consent of the adult.

Many commenters stressed the importance of confidentiality, noting that our proposal may violate their States' confidentiality laws. Some commenters requested we provide explicit language in regulation text about compliance with State confidentiality laws.

We received a number of suggestions from State entities and other commenters, often based on their own State experience, for improvements to our proposal. One commenter offered that information on reports should be limited to whether a case has been screened in or out. Another commenter suggested we only provide information on whether a report has been received. One APS program noted that it shares the screening decision of a case but only at the request of the reporting party. Another commenter noted that their State APS system does not currently share information on the finding of a case. One commenter suggested that feedback can be separated into two categories: procedural and substantive. The commenter noted that in their State, confidentiality laws protect substantiative feedback, but procedural feedback is optional, and many counties provide a standardized response to the

[46] Lees Haggerty, K., Ojelabi, O., Campetti, R., & Greenlee, K., Education Development Center, Adult Protective Services and Reporter Communication: Recommendations for Improving Practice, (2023), *https://www.edc.org/adult-protective-services-and-reporter-communication-recommendations-improving-practice.*

mandated reporter. The commenter suggested that our regulations focus on procedural feedback only.

Response: We thank commenters for their detailed responses and suggestions and have amended 1324.405(b) to address these comments. We have amended § 1324.405(b)(1) to require that information about a report only be released upon request of the mandated reporter (per § 1324.401, a person encountering an adult in the course of their professional duties required by State law to report adult maltreatment or self-neglect) who made such report. We have removed § 1324.405(b)(1)(ii), limiting information that must be shared with mandated reporters to procedural information about case opening and not substantive information about case findings. We have added § 1324.405(b)(2), requiring APS systems to obtain the consent of the adult prior to releasing any information.

G. Section 1324.406 Coordination With Other Entities

We proposed in § 1324.406(a) to require that State entities develop policies and procedures to ensure coordination with other State and local governmental agencies, community-based organizations, and other entities engaged in activities to promote the health and well-being of older people and adults with disabilities for the purposes of addressing the needs of the adult experiencing the maltreatment and/or self-neglect. The policies and procedures are an opportunity for State APS systems to assess their relationships with other entities and to ensure State APS systems are working with the right partners in the right way.

These partners include, but are not limited to, State offices that handle scams and frauds, State and local law enforcement, State Medicaid agencies and other State agencies responsible for HCBS programs, the Long-Term Care Ombudsman Program, Protection and Advocacy Systems, financial services providers, State securities and financial regulators, and Federal financial and securities enforcement agencies. Such coordination maximizes the resources of APS systems, improves investigation capacity, and ensures APS response is effective. The mix of partners working together on a specific case will vary based on the facts, and whether the adult is experiencing maltreatment or self-neglect.

We have specifically included the State Medicaid agency as a partner for APS coordination in § 1324.406(a)(2)(i). As discussed below, we recognize the important role of APS in Medicaid critical incident management systems and have developed our rule to facilitate alignment and coordination between Medicaid agencies and APS and to better align with the Centers for Medicare & Medicaid Service's proposed rule ''Ensuring Access to Medicaid Services'' (Access Rule's) critical incident requirements, which CMS anticipates will be finalized in Spring 2024.[47]

We require that States establish policies and procedures to ensure coordination with these specific entities as they represent critical partners in the investigation of abuse, neglect, financial exploitation, and sexual abuse. Various non-APS entities have authority to investigate adult maltreatment and self-neglect based on who the alleged victim and perpetrator of the maltreatment are, and where the maltreatment took place. An effective, evidence-based, and holistic response to adult maltreatment must include all enumerated entities working in coordination with APS.

We proposed in § 1324.406(b) to require the State APS system to develop policies and procedures to address coordination and information sharing with several governmental and private entities both within a State and across State lines for the purpose of carrying out investigations. Coordination can include development of memoranda of understanding (MOU) (*e.g.,* for referrals and information sharing), establishment of multidisciplinary teams across and among governmental and non-governmental entities (with appropriate safeguards for confidentiality to protect client privacy and the integrity of APS investigations), and collaboration on training and best practices. While the development of policies and procedures around coordination and information sharing are required, States have flexibility to determine which methods of coordination are appropriate for their APS system and ACL is not requiring any specific method of coordination.

We recognize that State laws may preclude sharing of certain information related to individual cases, but at a minimum, all APS systems can work with other entities around prevention and best practices to address adult maltreatment and self-neglect. State law may allow or require different agencies to investigate alleged maltreatment. Therefore, it is imperative for the State APS system to have a clear understanding of which entities are responsible for which types of investigations and other types of responses. There are various factors that determine which entity is responsible for investigating adult maltreatment. For example, the location or setting of the adult maltreatment; the type of adult maltreatment; the relationship between an alleged perpetrator and an alleged victim; and the characteristics of the alleged victim. The policies and procedures required by § 1324.406(b) may, but are not required to, include information and data sharing agreements to ensure coordination of response and that appropriate referrals are made when APS receives a report that is outside their jurisdiction to investigate, including with law enforcement, the State Medicaid office, and State licensing and certification agencies. Coordination between entities reduces the imposition of multiple investigations on adults who have been harmed and strengthens responses by public safety and justice system entities and parties, including law enforcement and judges.

Policies and procedures that outline steps for coordination also help to prevent future maltreatment. For example, if APS has an information sharing agreement with other entities, it will be able to share information about alleged maltreatment against adults being served by the respective organizations. Additionally, such agreements allow information sharing between these entities on the outcome of individual investigations, as permissible under State law. For example, this could include communication of the results to State Medicaid agencies in instances in which a Medicaid provider or direct care worker is determined by APS to be a perpetrator of maltreatment, if such sharing is permitted by State law. We also believe it is critical to address coordination across States given that perpetrators may move themselves or their victim to another jurisdiction where the perpetrator will continue to engage in adult maltreatment.

We received a number of comments from interested parties. We discuss comments and responses below.

Comment: We received broad support for our proposals in § 1324.406, including policies and procedures that allow for the use of MOUs and data sharing agreements, and for the proposed rule's focus on coordination with other entities to detect, prevent, address, and remedy adult maltreatment. Several commenters, including State APS entities, commented that they already coordinate with other entities when permitted by law. In particular, commenters

[47] 88 FR 27960, (May 3, 2023); Office of Information and Regulatory Affairs, Unified Agenda, RIN: 0938–AU68. *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU68.*

highlighted the importance of multidisciplinary teams. Commenters also noted that coordination can be difficult and time-consuming and does not rely solely on APS.

Response: We thank commenters for their support and insights and acknowledge the difficulties around collaboration. We are pleased, however, that many States are already in compliance with the provisions of the rule.

Comment: Several commenters who expressed support for § 1324.406 strongly encouraged alignment of its provisions and language across the Department of Health and Human Services' proposed regulations. In particular, commenters recommended that the final rule align language surrounding critical incidents with language in the Centers for Medicare & Medicaid's proposed Access Rule.[48]

Response: We agree with commenters. Our intent in proposed § 1324.406(a)(2)(i) was to reflect the language in the proposed Medicaid Access rule. We have edited § 1324.406(a)(2)(i) to include explicit reference to ''critical incidents'' to more explicitly align this regulation with the proposed Access Rule and foster a clearer understanding of the level of coordination and information sharing that will be required to successfully implement the requirements. Additionally, we have extended the deadline for compliance with this rule to 4 years after publication to better align with the implementation deadline of the proposed Access rule critical incident management requirements.

Comment: Commenters recommended that we include in § 1324.406(a)(1) Tribal APS programs among other APS programs in the State with which to coordinate.

Response: We accept the comment and have amended § 1324.406(a)(1) accordingly.

Comment: We received many comments, including from APS systems, national associations, and organizations requesting that our rule include a more robust and explicit discussion of coordination with financial institutions. Some commenters noted that it was often difficult to compel financial institutions to release records or otherwise obtain information from them. One commenter said this was true even after the institution filed a report. Two commenters recommended adding language to encourage APS programs to share general case status information with financial institutions, with one commenter highlighting that this inclusion would support APS coordination with State securities regulators, law enforcement, and other investigators to fight elder financial exploitation. A commenter suggested we broaden proposed § 1324.405(a)(6) ''financial institutions'' to the broader ''financial services industry'' and another commenter suggested clarifying the range of institutions. A commenter suggested including guidance that APS should establish policies and protocols for sharing information with financial institutions who submit reports as part of their professional work.

Response: Based on these comments, we have revised § 1324.406(a)(3) to include ''State securities and financial regulators, Federal financial and securities enforcement agencies.'' We decline, however, to expand our definition to ''financial services industry'' as ''financial institution'' encompasses investment advisors, broker-dealers, and other entities.[49] Whether and how to compel financial institutions to release information is outside the scope of this rule.

Comment: We received many comments about coordination with other entities. Some commenters specifically approved of coordination with programs such as the State Long-Term Care Ombudsman Programs and Protection and Advocacy Systems, and some suggested APS coordination with these entities be mandatory. Others suggested additional entities with which APS should coordinate, including other Federal and State governmental agencies, legal services providers, disability organizations, and medical providers such as behavioral health specialists. One State asked for clarification as to whether ''emergency management systems'' in § 1324.405(a)(5) meant first responders such as emergency medical services and firefighters, or State and local disaster/emergency preparedness and response systems.

Response: We thank commenters for their responses. Many of the entities identified are already included in the regulation or fall into the broad categories in the regulation, such as organizations that advocate on behalf of adults who experience maltreatment. They, therefore, do not need further identification. As the State commenter suggested, emergency management systems could include both first responders and entities responsible for disaster/emergency preparedness and response systems. Our intent is to ensure that States APS systems have the broadest flexibility possible to coordinate with organizations whose mission is aligned with theirs. These include organizations and entities from which they receive referrals, organizations with which they coordinate to provide services and otherwise respond to adult maltreatment, and organizations that represent older people and people with disabilities. Other than the additions discussed above, we have decided not to revise the regulatory language.

Comment: We received some comments that developing and maintaining relationships with other entities pursuant to § 1324.406(b) could be burdensome and expensive, including where other organizations have different jurisdictions or timeframes for taking action. In particular, the commenters stated that the cost to manage MOUs may be prohibitive and would require increased staff and funding. Some comments suggested that informal coordination was more feasible and reflected current practice. Many State APS entities noted that they are but one party to MOUs and data sharing agreements and cannot mandate that other entities enter into agreements, either intra-State or inter-State.

Response: We believe that building relationships with other entities who investigate and respond to adult maltreatment and self-neglect is an essential part of APS practice and that the benefit of such relationships far outweighs the potential burden. We understand that formal data sharing agreements and/or MOUs are not always the most appropriate or feasible option, and for this reason do not require their use. ACL also recognizes that other entities may be reluctant to enter into agreements or have their own policies and procedures that make entering into agreements difficult. However, we strongly encourage States, when developing or updating their policies and procedures, to assess when such a formalized relationship may be appropriate and, in those cases, establish such relationships.

We seek to clarify the language of the proposed rule. By requiring in proposed § 1324.406(b) that State entities' ''[p]olicies and procedures must, at a minimum [. . .] (3) allow for the establishment of memoranda of understanding, where appropriate [. . .]'' we may have unintentionally given the impression that States must establish MOUs. The use of the phrase ''at a minimum'' was intended to convey that policies and procedures

[48] *Id.*

[49] U.S. Treasury, Financial Crimes Enforcement Network, Financial Institution Definition, *https://www.fincen.gov/financial-institution-definition* (last visited January 22, 2024).

could incorporate MOUs as well as other options, not that policies and procedures must incorporate MOUs. We are amending § 1324.406(b) to remove the phrase ''at a minimum.'' We are amending § 1324.406(b)(3) to indicate that the policies and procedures must facilitate information exchanges through MOUs, data sharing agreements, and/or other less formal arrangements.

Comment: Commenters also requested that ACL provide technical assistance regarding MOUs and data sharing agreements.

Response: ACL will provide technical assistance regarding MOUs and data sharing agreements as part of the implementation of the final rule.

Comment: We received comments asking that State entities be required to have policies and procedures that address such issues as coordination across States, including record-sharing and reporting requirements.

Response: State entities should develop policies and procedures for coordination that address the needs of their jurisdiction and the people they serve. For example, they may want a policy regarding adults who spend only part of the year in their State or who receive medical services in a jurisdiction they do not serve. To ensure that State entities understand their obligations and their discretion in developing policies and procedures, we are adding a new subsection (4) to § 1324.406(b) for policies and procedures that address other activities as determined by the State entity.

Comment: Many commenters noted that coordination between APS systems and other entities may raise privacy and confidentiality concerns. For example, one commenter noted an APS program may be a covered entity under Health Insurance Portability and Accountability Act of 1996 (HIPAA) while the other party to a data sharing agreement is not. Commenters offered that any automatic information sharing that did not offer a client the opportunity to opt-out would violate principles of self-determination and rights to confidentiality and that any data sharing should be limited to case information necessary for assisting a client-directed action on a specific issue. A commenter warned that inappropriate data sharing could damage the trust built between a client and APS program. Some commenters suggested that all data sharing require client consent first. A commenter suggested we edit our regulation text to explicitly provide for applicable State privacy laws.

Response: As our rule provides, State policies and procedures should prioritize person-directed responses to reports of maltreatment (§ 1324.402(b)(1)), including in coordinating with other entities. Section 1324.406(a) requires ''State entities [to] establish policies and procedures, consistent with State law[.]'' This includes compliance with all applicable State privacy laws. Compliance with HIPAA is beyond the scope of this regulation.

H. Section 1324.407 APS Program Performance

We proposed requirements in § 1324.407 for APS State entities' annual data collection and reporting specific to program performance. Section 1324.407 requires that State entities develop policies and procedures for the maintenance of individual APS case data. We proposed that State entities maintain data for at least 5 years and are finalizing our requirements as proposed. We sought comment on whether our timeframe was adequate or whether a greater or lesser duration was optimal and received comments both in support of and in opposition to our proposal. Commenters also provided suggestions and requested explanation regarding the interaction of new data reporting requirements with existing voluntary NAMRS data submission. We discuss comments and responses below.

Comment: We received several comments voicing general support for setting minimum standards for program performance data collection. One commenter agreed with setting these standards, but suggested organizations should be able to maintain their current systems to reduce burden on States.

Response: We thank commenters for their support and agree that setting minimum program performance data standards is crucial to standardizing APS systems across the country. We believe many States may be able to maintain, or adapt, their current systems to meet the requirements of our regulation. We are finalizing the provision as proposed.

Comment: We received several comments in support of our proposal to maintain records for 5 years. A few commenters proposed alternative time periods, some longer and some shorter. Several State APS entities described their own record retention systems, with some arguing that the rule would require a change that might require increased funding.

Response: ACL appreciates commenters' input and will maintain the regulatory text of § 1324.407(b) requiring individual case data retention for a minimum of 5 years. We believe that 5 years is the minimum appropriate timeframe to allow APS programs to assess clients across time to determine whether repeated abuse or recidivism is occurring.

Comment: Many commenters suggested that our proposal was duplicative of NAMRS, with a few commenters suggesting that we should improve NAMRS rather than create a new system of reporting, particularly with respect to equity issues. Some commenters requested clarification on what data will need to be reported, stating that the burden will be lessened if it is the same data as is entered in NAMRS or if ACL provides technical assistance and additional funding. Several commenters noted that statutory changes will be necessary to comply with reporting requirements and that ACL underestimated the costs of this proposal, particularly for States that would need to change their data reporting system. Other commenters requested ongoing financial and technical assistance to make the new reporting requirements more feasible.

Response: ACL appreciates the comments and concerns regarding the development of proposed data collection and maintenance procedures. NAMRS is a voluntary, public health surveillance system and does not collect data about APS performance. NAMRS collects information about the characteristics of those experiencing and perpetrating maltreatment, information on the types of maltreatment investigated, and information on services to address the maltreatment. In contrast, our rule mandates that, in order to receive Federal funding, State entities have policies and procedures in place for the collection and maintenance of performance data on APS investigations. This newly required data collection will allow ACL and States to measure how APS programs are meeting the goals and objectives proposed for this funding. In addition, any information required to be collected as part of required performance data will be made available for public comment, consistent with requirements under the PRA, which govern how Federal agencies collect information from the public. The public will be able to review and comment on any additional data collection proposals related to grant performance, including about the potential burden associated with the data collection, before any specific data collection or reporting is required. Once data collection requirements are finalized, ACL will provide technical assistance to States, and to the extent possible we will work with States to ensure that existing data collection systems can be used for

reporting. For that reason, we are maintaining the required data collection and maintenance procedures as proposed.

Comment: Several commenters provided suggestions on additional program performance and NAMRS data to be collected. One commenter asked ACL to require collection of client demographic data through NAMRS to improve and ensure equitable services for marginalized groups, including racial and ethnic minorities. We received a comment suggesting that ACL collect client outcomes data.

Another commenter requested that we require collection of the reason for investigation and service delivery. One commenter suggested the submission of existing staff-client ratios. A few commenters suggested that APS annual reports to ACL and disaggregated data should be required to be released publicly. Another commenter recommended more data reporting than may be included in annual reports to the State Unit on Aging.

Response: ACL appreciates commenters' suggestions and agrees that granular data, particularly on underserved populations at high risk of adult maltreatment, is critical. Nevertheless, we decline to specify such data collection in this rulemaking. Regarding NAMRS data collection, we encourage public comment on the PRA notice for NAMRS when it is renewed in 2026 (OMB Control number 0985–0054). Additionally, we will be working with States to implement § 1324.407 and establish data collection parameters, and we will consider commenters suggestions in that process. The public will have a 30- and 60-day period to comment on our proposal under the requirements of the Paperwork Reduction Act. Furthermore, we encourage States to collect data beyond our minimum requirements for their own evaluative purposes.

Comment: ACL received comment that the regulation should include a quality assurance program, research, and discussion about specific information describing data collected.

Response: We agree that quality assurance and ongoing research and evaluation of State APS systems is essential, and we encourage these activities and coordination with other entities per § 1324.406(b)(3) as APS systems pursue them. However, we believe that mandating such activities is beyond the scope of this rule.

I. Section 1324.408 State Plans

Section 1324.408(a) of the rule requires each APS State entity to develop a State plan consistent with 45 CFR 75.206(d) and requirements set forth in the EJA and by the Assistant Secretary for Aging.[50] Funding provided to State APS entities through the EJA is contingent on compliance with our regulations, and the State plan is the mechanism through which States demonstrate, and ACL evaluates, this compliance. State plans can also be used to demonstrate how States' activities, data, and outcomes can inform best practices, which can be used to leverage additional resources. These plans promote coordination and collaboration to better serve the people of a State by providing a blueprint that describes what actions the State will undertake to meet the needs of the population it serves.

Section 1324.408(b) of the rule requires the State entity receiving the Federal award of funding under the EJA (42 U.S.C. 1395m–1) to develop a State plan in conjunction with other State entities (if applicable) and APS programs. Section 1324.408(c) requires the State entity to update the plan at least every 5 years.

ACL has administrative oversight responsibility with respect to the expenditures of Federal funds pursuant to the EJA. Therefore, under § 1324.408(d), as a condition of approval and receipt of Federal funding, APS systems must include assurances in their State plans that they will develop and adhere to policies and procedures as set forth in this regulation. ACL will provide technical assistance to States regarding the preparation of State plans and is responsible for reviewing those that are submitted for compliance. Annual State program performance data collected and submitted to ACL pursuant to § 1324.407 is used to measure performance and assess the extent to which State systems are meeting State plan objectives.

Finally, § 1324.408(e) sets forth a process for plan review. State plans are reviewed and approved by the Director of the Office for Elder Justice and Adult Protective Services (OEJAPS), the position designated by section 201(e)(1) of the OAA, 42 U.S.C. 3011(e)(1). A State entity dissatisfied with the Director of OEJAPS' final determination may appeal to the Deputy Assistant Secretary for review not later than 30 calendar days after the date of the determination. The State entity will then be afforded an opportunity for a hearing before the Deputy Assistant Secretary. If the State disagrees with the determination of the Deputy Assistant Secretary, it may appeal to the Assistant Secretary not later than 30 calendar days after the date of the Deputy Assistant Secretary's decision.

ACL invited interested parties to submit comments about the requirements for State APS program plans, their requirements, and their development. Many commenters were in favor of this regulation, whereas others commented that these provisions of the rule are too burdensome and will require substantial resources for APS programs to implement. ACL appreciates the comments that we received and discusses them below.

Comment: Several commenters welcomed the proposal that each State APS entity must develop a State plan, stating that this will standardize APS programs nationally. Some commenters anticipate that Federal standards and guidelines will help eliminate problems with State practices. A commenter proposed that the State plans should be published online for transparency.

Response: We thank commenters for their support. We strongly encourage State entities to make their State plan public through publishing the plan online, by identifying a point of contact who can share that information, or through other mechanisms, but are not requiring them to do so. ACL will publish State plans on its website.

Comment: Many commenters requested clarification on the required contents of the State plan and on its creation. Some commenters observed that States will require technical assistance from ACL to develop State plans. A commenter recommended that State plans consist of a checklist format that is compliant with the new regulations and that States should not be required to provide extensive narratives in their plans. Prescriptive requirements should be limited, according to a commenter. A commenter suggested that ACL develop a template for State entities to use to develop their plans and another raised concerns that Tribal plans will be subject to State entity input and review.

A few commenters noted that there are some States with bifurcated APS systems—one for adults 60 and over and the other for younger adults with disabilities. Commenters recommended that, in these circumstances, the States should be permitted to submit multiple State plans and Federal funding should

[50] 45 CFR 75.206(d) allows the option for State entities to submit State plans instead of applications for funding, thereby reducing burden. The Older Americans Act of 1965 § 201(1)(e)(A)(ii), 201(1)(e)(A)(iv)–(B), 42 U.S.C. 3011(e)(1)(A)(ii), 3011(e)(1)(A)(iv) and 42 U.S.C. 3011(e)(1)(B) directs the Assistant Secretary for Aging to collect data and information, and strategic plans from States. The EJA § 2042(b)(4), 42 U.S.C. 1397m–1(b)(4) authorizes State reports from each entity receiving funding.

be separately directed to the distinct State entities.

Response: ACL appreciates comments regarding the need for clarification about State plan creation, content, format, and development. ACL will provide technical assistance to the States related to plan development. We will review best practices and applicable regulations and policy and communicate further information about plan development and requirements to State entities before new State plans are due for submission and review.

We have amended the rule to provide more clarity for States with bifurcated APS systems in response to their comments. Rather than having those States submit multiple plans, we are revising § 1324.408(b) to require the State entity that receives EJA funds directly from ACL to work with any other applicable State entities, as well as APS programs, to develop the State plan. We expect such States to submit one State plan for both APS programs that is developed collaboratively.

Our funding is distributed to only one State entity—the unit or agency that serves older adults. We expect the State entity to disperse funding to the agency that serves other populations, consistent with the allocation plan in the State plan.

Comment: Many commenters recommended that plan implementation should be delayed beyond 3 years after the effective date of the APS rule, with several recommending that plan implementation occur no sooner than 4 years after the rule becomes effective, including an association representing State entities, and other commenters recommending 5 years.

Response: In response to commenter input ACL has extended the deadline for compliance with this rule to 4 years after publication. Therefore, State plans will be due 4 years after our regulations are final. We believe this allots sufficient time for State systems to develop State plans. States that require additional time may request a corrective action plan.

Comments: We received comments opposing our State plan requirements in the proposed rule. Several commenters anticipated that plan development would be challenging, time intensive, and require additional staff and money. Commenters suggested that we had underestimated the cost of writing and receiving approval for the plan. A few commenters predicted that the creation of a new State plan would be burdensome to the States.

Response: As commenters have noted, the drafting and implementation of new State APS plans is expected to require staffing, time, and resources. However, ACL believes the State plan requirement is reasonable and the least burdensome option available to comply with Federal regulations for Federal grants awards. Federal regulations (45 CFR 75.202) require that HHS provide public notice of Federal financial assistance programs. To indicate interest in receiving funding, entities must abide by standard application requirements outlined in 45 CFR 75.206. To reduce burden on State applicants, 45 CFR 75.206(d) specifically allows for State plans to be submitted rather than applications for funding on a period of performance basis.

ACL has accounted for the factors raised by commenters in the projected costs of rule implementation. Every State, the District of Columbia, and the Territories have already created a State APS operational plan as a requirement of receiving funding under the American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117–2).[51] ACL's estimate of burden is based on the expectation that the States, the District of Columbia, and the Territories will review and update their existing operational plans and not engage in creating a new State APS plan. In addition to meeting regulatory requirements for grant making, we anticipate that State plans will be used to support data collection, to develop promising practices for State and local APS programs, and to improve coordination between APS programs and their partners. State plans will be a useful tool to State entities for establishing quality assurance parameters and monitoring program performance. Most importantly, State plans will provide a standardized platform to facilitate and measure essential outcomes for APS clients.

Moreover, we note again that we have amended the compliance date to 4 years after publication of the final rule. We believe that 4 years provides sufficient time for States to review their State APS operation plan and develop a State plan pursuant to these requirements. States that require additional time may request a corrective action plan.

Comments: A few commenters contend that the State plan is duplicative of the OAA requirements for a State plan. Conversely, one commenter asserted that the APS plan is not like the OAA plan. However, another commenter suggested States could use the OAA State plan as a template for the APS plan and another that the APS plans could be absorbed into a State's OAA State plan. Some commenters sought clarity regarding the APS State plans interaction with OAA State plans.

Response: ACL appreciates commenters' input. At this time, APS State plans cannot be combined with OAA State plans because current APS funding is provided through the EJA, not the OAA formula grants. As a separate grant award, it is subject to separate Federal grant requirements. However, we agree with commenters that the structure and format may be similar. For example, both the APS and the OAA State plans require State entities to provide assurances that they will abide by Federal laws and regulations. States may choose to synchronize their OAA State plan and APS plan and submit them concurrently. However, they are distinct, and ACL will evaluate each separately.

Comment: We also received comments indicating that the APS State plans required under this rule duplicated or complemented the operational plans required for receipt of ARPA funding, and that that State plans should build on rather than replace ARPA operational plans. A few commenters requested clarification for how APS State plans differed from the operational plans.

Response: ACL does not believe that State plans are duplicative of those plans required by ARPA. Rather, we believe States' ARPA operational plans can and should be the foundation of a more comprehensive and detailed State plan. In ARPA operational plans, State entities described where they sought to make investments to strengthen their APS programs. APS State plans required by § 1324.408 require States to provide further assurances related to APS practices to receive Federal funding. For this reason and the reasons set forth above describing the value and uses of the APS State plans, we are maintaining the regulatory language at § 1324.408(a) as proposed.

Comment: We received comment that State plans are duplicative of our reporting requirements in § 1324.407.

Response: Our reporting requirements in § 1324.407 complement State plan requirements but do not duplicate them. The State plan sets out how the State entity intends to comply with the requirements of this regulation. Performance data reported by States is used to assess the extent to which State APS systems are meeting State plan objectives.

[51] *Elder Justice Act Mandatory Grants,* Admin. For Cmty. Living, *https://acl.gov/grants/elder-justice-mandatory-grants* (last modified on Oct. 18, 2023).

Comments: Many commenters supported a requirement for ongoing input from interested parties in the development of State plans, including feedback from APS workers, prior clients, and from individuals meeting the definition of ''adult.'' A commenter recommended that the State plan set minimum standards for collaboration. Another commenter wanted to ensure that State plans solicit input from Tribes before State plan implementation.

Response: As commenters have noted, the development of State plans will require a comprehensive planning process that ensures States collaborate with APS programs. The rule anticipates, but does not require, that State entities will seek input from other interested parties when they develop State plans. Section 1324.408(b) sets minimum requirements for collaboration with APS programs regarding plan development. However, we strongly encourage collaboration with all interested parties, including adults with personal experience interacting with APS programs. We are therefore finalizing this proposal.

Comments: Several commenters addressed the frequency of updating State plans under § 1324.408(c). Some commenters found the language requiring an update at least every 5 years or as frequently as every 3 years confusing. A few commenters wrote in support of a 3 to 5 year State plan renewal cycle. Another suggested a longer timeframe based on resource and workload concerns.

Response: ACL has considered these comments and concerns about resources and workload. The intent of the State plan is to ensure that the APS programs are consistently maintaining the services they have committed to and are providing services that meet the needs of the adults receiving APS services. Moreover, the plan updates enable States to review current practices and policies that may need to be revised or abandoned and to adopt new practices based on the adult populations they serve. We believe that the requirement to update State plans every 5 years is a reasonable timeframe. We agree, however, that the language of § 1324.408(c), which allows a State entity to update the State plan as frequently as every 3 years, is confusing. We therefore are amending the language to require that a State plan be updated every 5 years or more frequently as a State entity determines. The first State plan will be due 4 years after the implementation of this regulation, with each subsequent plan due at least every 5 years after that.

We thank commenters for their clarifying suggestions and have incorporated them into the text of § 1324.408(c).

Comments: We received comment in support of our proposal to require APS State plans to contain assurances that APS systems will develop and adhere to policies and procedures as set forth in this regulation. A number of commenters requested information on what the consequences would be should an APS system fail to meet State plan assurances. A commenter stated that the submission of annual data is sufficient for demonstrating compliance with APS policies and procedures and a State plan is not necessary.

Response: We appreciate these responses from commenters. We are requiring State entities to assure us that they have created and adhered to certain policies and procedures set forth in the rule. As stated previously, submission of a State plan satisfies HHS grant requirements under 45 CFR part 75. Failure to provide or adhere to such assurances in the State plan jeopardizes a State's eligibility for funding under § 1324.400. Please see our discussion in the Background section of this rule for more information on compliance, technical assistance, and corrective action plans for States who need additional time to come into compliance. We decline to change the language of the regulation at § 1324.408(d).

Comments: Many commenters support Federal review of the State APS plans before their implementation. One commenter stated that the appeals process appears inflexible. Another commenter recommended that the rule contain a clearly defined timeline and process for correcting plans found to be defective upon review.

Response: ACL believes that it is essential to issue a clearly defined appeals process to maintain the integrity of the plan review system. Therefore, we are maintaining the language of this section. However, we will be providing technical assistance to the States as they develop their plans and anticipate that most concerns will be resolved through technical assistance consultation and other guidance. For example, if a State submits a State plan that is found to be defective, ACL will work with the State on a corrective action plan to address deficiencies in a timely manner through a collaborative and flexible process.

IV. Required Regulatory Analyses

Of the 172 public comments we received, nine State and four county APS programs submitted comments specifically regarding the Required Regulatory Analyses. These comments were taken into serious consideration when assessing the costs and benefits of the final rule. Other commenters offered broad commentary on our burden estimates. In the subsequent section, we summarize the comments received and provide our response, followed by an update to the original Regulatory Impact Analysis (RIA).

Comment: ACL received several comments indicating concerns with implementation costs and administrative burden in implementing the final rule, as well as concerns regarding ongoing costs to monitor compliance with the final rule. Some commenters stated they anticipate increased costs associated with personnel issues, including the need to hire consultants and/or additional staff which may incur additional new employee onboarding and training costs. We received comments suggesting that changes will need to be made to State information technology systems. Some commenters asserted that ACL has greatly underestimated both the cost and the amount of time needed to come into compliance with the rule.

Response: As noted above, ACL has made changes to the proposed rule's provisions based on the public comments we received. Among the revisions and clarifications are the following which reduce burden on and costs to the states:

- ACL added and clarified in § 1324.401 that we have sought to minimize State burden by requiring only an assurance that a State's definitions as a whole meet the minimum standards of the regulatory definitions. States are not required to adopt each of the individual regulatory definitions exactly as written. We will defer to States' definitions as long as the concepts and elements set forth in the definitions in this is regulation are reflected in a State's definitions as a whole. This will alleviate perceived burden related to changes in State statute and policy as States will often not need to alter their statutory definitions to conform with those in § 1324.401.
- ACL modified proposed § 1324.402(b) to clarify that APS programs may refer to emergency response systems, law enforcement, or another appropriate community resource (*e.g.,* homeless outreach, veteran's affairs, services for victims of sexual assault) to meet the requirements of an in-person contact within 24 hours of APS screening and safety and risk assessment.
- We clarify in § 1324.402(c) notice of rights does not require leaving a

brochure, but the notice could be provided verbally or through other means. The costs for printing a pamphlet were illustrative.

- We removed the requirement at proposed § 1324.402(d)(3) that State APS entities set staff-to-client ratios.
- We removed proposed § 1324.403(e)(6) requiring APS systems to monitor the status of clients and the impact of services. Similarly, we removed proposed § 1324.403(f)(3)(iii) that required APS programs assess the outcome and efficacy of intervention and services.
- ACL modified proposed § 1324.405 (Accepting Reports) by removing § 1324.405(b)(1)(ii) requiring APS to share with a mandated reporter the finding of an allegation in a report made by the mandated reporter. New § 1324.405 adds a more limited requirement that a mandated reporter reporting in their professional capacity be notified upon their request, consistent with State privacy law, with the consent of client, and only requires the provision of procedural information (such as whether a case has been opened or closed as a result of their report).
- We have clarified § 1324.406(b) requires that APS programs develop policies and procedures that allow for, but do not require, the implementation of information and data sharing agreements. Rather, policies and procedures must facilitate information exchanges, but States have flexibility in the approaches they use. States may enter into memoranda of understanding (MOU), data sharing agreements, or other less formal arrangements. Formal MOUs and data sharing agreements are not a requirement.
- We have clarified in § 1324.408 that ACL's estimate of burden is based on the expectation that States, the District of Columbia, and Territories will review and update the existing operational plans developed as a requirement of receiving funding under the American Rescue Plan Act and not the creation of new State APS plans.
- We have extended the implementation timeframe from 3 years to 4 years to allow States more time and resources to come into full compliance with the regulation. Many of the costs associated with implementation of the regulation are ''one-time'' costs which can now be spread across an additional year. We have also clarified that if States need additional time to implement specific provisions beyond the 4 year implementation timeframe, they can request additional time through a corrective action plan.

Many of the burden and cost concerns raised by commenters appear rooted in misperceptions of the scope of the proposed regulations. In the final rule, we have clarified the appropriate scope of applicability and made revisions and clarifications that reduce burden, as outlined above. As a result, we retain the burden estimate as proposed with a few adjustments based on commenter feedback. While State APS programs will need to review and possibly update current practices, policies, and procedures to ensure they comply with the final rule, we note again that a majority of this rule conforms to longstanding APS practice. We also note that public comments that provided State-specific cost estimates to implement and administer the final rule did not clearly differentiate between costs attributable to the incremental costs of implementing the final rule and existing practice, which makes it difficult to incorporate this information in the final RIA. In addition, the final rule grants significant discretion to the State in how to implement many provisions.

In consideration of comments related to the time required for implementation of the rule, we have decided to delay the compliance date of until 4 years after the date of publication. This should give all regulated entities sufficient time to come into compliance with these regulations. If State APS entities encounter challenges implementing specific provisions of the rule, they should engage with ACL for technical assistance and support. In addition, State APS entities that need additional time to comply with one or more provisions of the rule may submit a request to proceed under a corrective action plan. A request should include the reason the State needs additional time, the steps the State will take to reach full compliance, and how much additional time the State anticipates it will need to come into compliance. The corrective action plan process is intended to be highly collaborative and flexible. ACL will provide guidance on this process after this rule takes effect.

A. Regulatory Impact Analysis (Executive Orders 12866 and 13563)

1. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). As amended by Executive Order 14094 entitled ''Modernizing Regulatory Review'' section 3(f) of the Executive order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Territorial, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

It has been determined that this rule is significant. Therefore, OMB has reviewed this rule.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before finalizing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in impacts that exceed this threshold. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the

Congressional Review Act, 5 U.S.C 801 *et seq.*) OIRA has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Summary of Costs and Benefits

Compared to the baseline scenario wherein APS systems continue to operate under State law with no Federal regulation, we identify several impacts of this rule. We anticipate that the rule will: require the revision of State policies and procedures, require training on new rules for APS staff, require the submission of new State plans, require APS systems create a feedback loop to provide information to mandated reporters, require data reporting to ACL, inform potential APS clients of their APS-related rights under State law, and require new or updated record retention systems for certain States. We anticipate that the final rule will result in improved consistency in implementation of APS systems within and across States, clarity of obligations associated with Federal funding for administrators of APS systems, and better and more effective service delivery within and across States with better quality investigations in turn leading to more person-directed outcomes.

This analysis describes costs associated with issuing APS regulations and quantifies several categories of costs to grantees (State entities) and sub-grantees (APS programs), collectively referred to as APS systems, and to ACL under the proposed rule. Specifically, we quantify costs associated with APS systems (1) revising policies and procedures, (2) conducting trainings on updates to policies and procedures, (3) implementing policies and procedures (3) reporting data to ACL (4) maintaining records retention system (5) developing State plans. The proposed effective date of this rule is for 4 years from the date of final publication. This is to allow for variation in the timing of State legislative sessions, in recognition of limited Federal funding, to allow States with more substantial changes increased time to come into compliance, and to better align with the Medicaid Access Rule's critical incident requirements. We anticipate that all States will have fully implemented the rule by its effective date and impacts will be measurable by that time. We conclude the final rule will result in a total State and Federal cost of $5,223,664.65 to fully implement.

A detailed discussion of costs and benefits associated with the rule follows. The cost of this rule will be offset by improved APS investigation and services and better outcomes for the victims of adult maltreatment. This represents significant value, particularly given the widespread and egregious nature of adult maltreatment in the United States, which we explain in greater dept in our ''Discussion of Benefits.''

The analysis also includes a discussion of the potential benefits under the rule that we do not quantify.

a. Costs of the Final Rule

1. Revising and Publishing Policies and Procedures

This analysis anticipates that the rule would result in one-time costs to State entities and APS programs to revise policies and procedures. All APS systems currently maintain policies and procedures, often based on State statute. Findings from our National Process Evaluation Report of Adult Protective Services (OMB Control Number 0985–0054) [52] and State experiences incorporating concepts from the Consensus Guidelines underscore the importance of the final rule. The final rule establishes a minimum standard broadly reflective of current practice in many States and establishes a benchmark for consistent standards to be implemented uniformly across and within States, where we know variability exists in current practice. For example, while all States currently require a screening process for intake, there is no uniformity or standardization in this process across or within States and detailed documentation in policies and procedures (if present) varies widely. Therefore, in requiring standard policies and procedures for APS systems, ACL anticipates that all APS programs may create new or revise their current policies and procedures under the proposed rule; however, the level of revision will vary by State. There is currently no data on the total number of APS programs. Our estimates reflect our understanding of the structure of State APS systems and the assumption that there is one program per county in local-level systems, totaling 928 APS programs nationwide.[53]

We estimate that roughly twenty-five percent (25%) of these entities will require more extensive revisions, with the majority requiring limited revisions to their current policies and procedures. We estimate that programs with more extensive revisions will spend forty (40) total hours on revisions per entity. Of these, thirty-five (35) would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.70 unadjusted hourly wage, $61.40 per hour adjusted for non-wage benefits and indirect costs ($35 \times \$61.40$), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 per hour unadjusted hourly wage, $103.08 per hour adjusted for non-wage benefits and indirect costs ($5 \times \$103.08$).[54] For programs with less extensive revisions, we assume twenty-five (25) total hours spent on revisions per entity. Of these, twenty (20) hours would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 per hour adjusted for non-wage benefits and indirect costs ($20 \times \$61.40$), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 unadjusted hourly wage, $103.08 adjusted for non-wage benefits and indirect costs ($5 \times \$103.08$).

We monetize the time that would be spent by APS programs on revising policies and procedures by estimating a total cost per entity of $2,664.40 or $1,743.40, depending on the extent of the revisions. For the approximately 696 programs with more extensive revisions, we estimate a cost of approximately $1,854,422.40. For the 232 programs with less extensive revisions, we estimate a cost of approximately $404,468.80. We estimate the total cost associated with revisions with respect to the final rule for APS systems of $2,258,891.20.

The above estimates of time and number of State entities or APS programs that would revise their policies under the regulation are approximate estimates based on ACL's extensive experience working with APS systems, including providing technical assistance, and feedback and inquiries that we have received from State entities and APS programs.

In addition to the revisions to the State policies and procedures, the final

[52] *Supra Note 4.*

[53] The structure and administration of APS in the United States is variable and we lack data on the number of local APS programs. Some States have a single entity that controls and administers the program, others have a State entity and local programs. There is a staffed APS office in every State government, the District of Columbia and three Territories which receives ACL grant funding. Fifteen States have local level APS programs, the others are State-administered and have a single APS entity for the entire State. We have used counties as a proxy for the 15 with local programs.

[54] Wages are derived from 2022 Department of Labor, Bureau of Labor and Statistics Data are multiplied by a factor of two for non-wage benefits and indirect costs.

rule requires each State to publish the policies and procedures related to this rule. We base the estimated burden of this requirement on the assumption that a State APS agency has the following administrative structure: a State APS office located within a larger state agency or division (such as a Division on Aging) under the umbrella of a State Department (such as Department of Human Services).

After the policies and procedures have been developed, we estimate that a mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011) will spend four (4) hours, at a cost of $30.70 unadjusted hourly wage, $61.40 per hour adjusted for non-wage benefits and indirect costs (4 × $61.40), to convert the policies and procedures documents into a simplified and plain language version for public release. We estimate that this version will require six (6) hours of review and approval by executive staff within the APS office and State agency, equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 per hour unadjusted hourly wage, $103.08 per hour adjusted for non-wage benefits and indirect costs (6 × $103.08), and two (2) hours legal review by attorneys equivalent to a State government lawyer (Occupation code 23–1011), at a cost of $49.71 per hour unadjusted hourly wage, $99.42 per hour adjusted for non-wage benefits and indirect costs (2 × $99.42).

We estimate an additional eight (8) hours will be spent by executive staff within the umbrella Department to review and approve the policy document, equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 per hour unadjusted hourly wage, $103.08 per hour adjusted for non-wage benefits and indirect costs (8 × $103.08), and four (4) hours legal review for compliance with State laws and provisions regarding publicly posting policy documents by attorneys equivalent to a State government lawyer (Occupation code 23–1011), at a cost of $49.71 per hour unadjusted hourly wage, $99.42 per hour adjusted for non-wage benefits and indirect costs (4 × $99.42).

When the document has completed the review and approval process, it will need to be prepared for publication and posting. We estimate ten (10) hours will be spent to format the document for online posting, adding graphics and design, remediating any accessibility issues, equivalent to a state government desktop publisher (Occupation Code 43–9031) at a cost of $29.42 per hour unadjusted hourly wage, $58.84 per hour adjusted for non-wage benefits and indirect costs (10 × $58.84), and three (3) hours will be spent creating the web page and posting the document, equivalent to a State government web developer (Occupation Code 15–1254) at a cost of $36.68 per hour unadjusted hourly wage, $73.36 per hour adjusted for non-wage benefits and indirect costs (3 × $73.36).

We monetize the time that would be spent by APS programs to make their policies and procedures ready for public dissemination by estimating a total cost per entity of $3,093.72. As this applies to only the 56 APS systems, we estimate the total cost associated with making their policies and procedures publicly available with respect to the final rule to be $173,248.32.

We estimate the total cost for revisions of policies and procedures as well as costs associated with making such policies and procedures available for public dissemination to be $2,432,139.52.

2. Trainings on New Requirements

Cost to conduct trainings (ACL staff and contractors): ACL estimates that the Federal Government will incur a one-time expense with respect to training or re-training State entities under the final rule. Senior ACL staff will train State entities by the ten (10) HHS regions assisted by its technical assistance provider the APS Technical Assistance Resource Center (TARC). We assume for each of the ten (10) regions that trainings will take three (3) hours of staff time for one Federal GS–14 equivalent [55] at a cost of $63.43 unadjusted hourly wage, $126.85 adjusted for non-wage benefits and indirect costs (3 × $126.85), three (3) hours of staff time for one GS–13 equivalent at a cost of $53.67 per unadjusted hourly wage, $107.35 per hour adjusted for non-wage benefits and indirect costs (3 × $107.35), and (3) and three hours of staff time for five (5) contractors equivalent to training and development managers (U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS) Occupation code 11–3131) at a cost of $63.51 per hour unadjusted for non-wage benefits, $127.02 per hour adjusted for non-wage benefits and indirect costs (3 × 5 × $127.02). This is inclusive of time to prepare and conduct the trainings.

We monetize the time spent by Federal employees and contractors to prepare and conduct trainings for State entities by estimating a total cost per regional training of $2,607.90. For ten trainings a total of $26,079.00.

Cost to conduct training (State entity to local APS program): We further anticipate in each of the 15 local-level systems the State entity would incur a one-time expense to conduct a training on the new policies and procedures for the State's local APS programs. For each State entity to prepare and conduct a training (15 trainings total) we anticipate two (2) employees per State entity each equivalent to a first-line supervisor (BLS Occupation code 43–1011), would spend four (4) total hours (two (2) hours per employee) at a cost of $30.70 per hour unadjusted hourly wage, $61.40 per hour adjusting for non-wage benefits and indirect costs (4 × $61.40).

We monetize the time spent by State entities to prepare and conduct trainings for local APS programs at $245.60 per training. For 15 State entities we anticipate a total of $3,684.00.

Cost to conduct training (APS programs to APS workers): We anticipate each of the 928 local APS programs will incur a one-time expense to conduct a training for APS workers on new policies and procedures. For each program to prepare and conduct a training we anticipate nine (9) hours to prepare and conduct a training of one mid-level manager equivalent to a first-line supervisor (BLS Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 after adjusting for non-wage benefits and indirect costs (9 × $61.40). We monetize the time spent by each APS program to prepare and conduct trainings at $552.60. We monetize the time spent by APS programs to train their workers at $512,812.80 (928 × $552.60).

Cost to receive training: There is no data on individual local APS program staffing. However, NAMRS does track an aggregate number of APS staff at the State and local level, from State supervisors to local APS workers: 8,287. We assume 5 percent of these workers are executive staff equivalent to a general and operations manager (BLS Occupation code 11–1021), at a cost of $51.54 unadjusted hourly wage, $103.08 per hour adjusted for non-wage benefits and indirect costs (414 × $103.08), 15 precent are first-line supervisor (Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 per hour adjusting for non-wage benefits and indirect costs (1,243 × $61.40) and 80 percent are Social and Human Service Assistants (Occupation code 21–1093) at a cost of $21.33 per hour unadjusted hourly wage, and $42.66 adjusted for non-wage benefits and indirect costs. (6,629 × $42.66).

[55] *Salaries & Wages,* U.S. Office of Personnel Management, *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2024/general-schedule* (last visited Jan. 21, 2024); Represents adjusted Federal salary in DC-VA-MD area.

We monetize the time spent by APS staff to receive a two-hour training as follows:

Executive Staff: 414 staff × 2 hours @ $103.08: $85,350.24

Supervisory Staff: 1,243 staff × 2 hours @$61.40: $152,640.40

Social and Human Services Assistants: 6,629 staff × 2 hours @ $42.66: $565,586.28

We estimate the total cost associated with the receipt of training under the final rule to be $803,576.92.

We monetize the total amount of time spent to give and receive trainings at $1,316,389.72. Of this, $1,290,370.72 is State expense and $26,019.00 is Federal expense.

3. Implementing New Policies and Procedures

The final rule requires several changes in APS practice which may represent a cost to States.

Cost to implement a two-tiered, immediate vs. non immediate risk, response system: Forty-nine States currently have a two-tiered (or higher) system. Forty-nine States currently respond to immediate need intakes within 24 hours. After consulting former APS administrators, we have determined that we cannot fully quantify how much it would cost a State to develop and implement a new two-tiered system. However, given that most States currently already maintain such a system, and the clarification that APS programs may refer to emergency response systems, law enforcement, or another appropriate community resource (*e.g.,* homeless outreach, veteran's affairs, services for victims of sexual assault) to meet the requirements of an in-person contact within 24 hours, we anticipate it would be a very minor on-going cost in total above current baseline.

Cost to implement a mandatory reporter feedback loop: According to the 2021 ACL Evaluation survey and NAMRS data, of all reports nationally which resulted in an investigation, 255,395 (59 percent) were made by professionals. For example, a home and community-based service provider or other social service provider would be considered a professional but may not be a mandated reporter. For this reason, we assume 75 percent of reports resulting in an investigation made by professionals were made by mandated reporters (191,546) reporting their processional capacity. Of these, we believe roughly one half (50%) would generate a response to the mandated reporter (95,773). For the other fifty percent, the reporter either would not request a response or the client would not consent to a reporter's request. One such response an APS program could make to a mandated reporter is to send an email. (We note however we are not requiring APS programs to send emails to mandated reporters reporting in their professional capacity who request a response. We leave the method of response to the discretion of APS systems). If for each report leading to an investigation received by a mandatory reporter where the reporter requests a response and the client consents, an APS program sends an email in response, we anticipate a Social and Human Service Assistants (Occupation code 21–1093) at a cost of $21.33 per hour unadjusted hourly wage, and $42.66 adjusted for non-wage benefits and indirect costs would spend ten (10) minutes sending the email ($42.66 ÷ 0.6). We monetize the on-going cost for all 56 systems to send an email for each report of maltreatment from a mandatory reporter to be $680,946.03 annually (95,773 × $7.11).

81 percent APS programs do not currently require a feedback loop for mandatory reporters.[56] To bring all States into compliance (.81 × $680,946.03) with the final rule will amount to $551,566.28 annually.

Cost to implement data sharing agreements: Anecdotally we know very few States currently have data sharing agreements with other maltreatment investigatory entities in place. We have estimated 50 APS systems currently have no data use agreements in place while six may have one or more. For illustrative purposes we assume each State without a data sharing agreement will establish three (3) formal MOUs (with, for example, the Medicaid agency, the Long-term care ombudsman, and the Protection and Advocacy System). Each formal MOU will take one mid-level manager equivalent to a first-line supervisor (Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 after adjusting for non-wage benefits and indirect costs four (4) hours to draft (4 × $61.40). It will take a privacy officer equivalent to a lawyer (Occupation code 23–1011) at a cost of $49.71 unadjusted hourly wage, $99.42 per hour adjusted for non-wage benefits and indirect costs three (3) hours to review and approve (3 × $99.42). It will take an executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 unadjusted hourly wage, $103.08 per hour adjusted for non-wage benefits and indirect costs three (3) hours (3 × $103.08) to review and approve. We monetize the cost for one (1) State APS system to develop one (1) formal MOU to be $853.10. For a State APS system to establish three (3) formal MOUs, we monetize the cost to be $2,559.30. For fifty (50) State APS systems to develop one MOU, we monetize the cost to be $42,655.00 We likewise assume that each of the three (3) entities the APS entity is entering into an MOU with will incur substantially similar costs. We monetize the expense of three (3) entities in fifty (50) states to enter into MOUs with the APS system in their State at $127,965.00. We monetize the one-time total cost of establishing data sharing agreements to be $255,930.00.

Cost to inform adults of their APS-related rights under State law: We do not currently have data on the number of States informing adults of their APS-related rights under State law. We know anecdotally some States offer potential clients a paper brochure informing them of their rights. Thus while it is not a requirement that States provide potential clients a pamphlet, we use the example to illustrate a potential cost should States choose to provide a pamphlet (as opposed to verbally informing potential clients of their rights). We anticipate costs of producing and distributing such brochures to be one new pamphlet per State system or 56 pamphlets total. It will require four (4) hours of staff time by a Social and Human Service Assistants (Occupation code 21–1093) at a cost of $21.33 per hour unadjusted hourly wage, and $42.66 adjusted for non-wage benefits and indirect costs (4 × $42.66) and two (2) hours for a first-line supervisor (Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 to review and approve (2 × $61.40) for a total of $293.44 per State in staff time to develop each pamphlet. We monetize the one-time staff cost for 56 State systems to develop a pamphlet (56 × $293.44) at $16,432.64. According to our NAMRS data, 806,219 client investigations were performed in FFY 2022. Each pamphlet will cost 23 cents to print and produce. Assuming a pamphlet is provided for every new client at the initiation of an investigation (806,219 × $0.23) it would cost $185,430.37 annually to produce and distribute pamphlets nationwide. In total, to develop a new pamphlet in all 56 States and distribute them at the beginning of all investigations would cost $201,863.01 in staff time and materials the first year the policy is in place. Subsequently, States would incur $185,430.37 in materials annually to implement this provision by distributing a pamphlet.

[56] *See supra* note 53.

3. Data Reporting to ACL

In our final regulations, we require States to collect and report specific data to ACL. As in our NAMRS data collection system, this data collection uses existing State administrative information systems. Therefore, States will incur very limited new data collection costs as the result of this rule. Most of the data collected are standard data used by the agency. Operating costs of the information systems are part of State agency operations and would not be maintained solely for the purpose of submitting data in compliance with the final rule.

For data reporting from the State to ACL under the final regulation, we anticipate a similar system as NAMRS case component data currently reported voluntarily by States. We performed a burden estimate prior to launching this reporting system. We estimated for 35 States staff cost would be a total annual burden of 675 hours at $46.00 per hour (675 × $46.00) for a total of $31,050.00. IT staff total annual burden was estimated at 3,075 hours at $69.00 (3,075 × $69.00) per hour for a total of $212,175.00. Using this measure as a proxy, we estimate the final rule's data reporting requirements will cost a total of $389,160.00 annually for all 56 State entities.

4. Record Retention

The rule imposes a new requirement that APS programs retain case data for 5 years. Many, but not all, programs currently retain case data for a number of years, but comprehensive information does not exist on State retention policies. We can extrapolate from data reporting in the NAMRS that most States retain case data for an average of 2 years.[57] NAMRS is a comprehensive, voluntary, national reporting system for APS programs. It collects quantitative and qualitative data on APS practices and policies, and the outcomes of investigations into the maltreatment of older adults and adults with disabilities from every State and Territory. All but one State currently maintains an IT infrastructure that supports the retention of electronic APS data and maintains it for 1 year. For this reason, the cost to further store it for 5 years will create a de minimis cost for APS.

5. State Plans and NAMRS

This will be the first time State entities are required to develop and submit State plans under Section 2042(b) of the EJA, 42 U.S.C. 1397m–1(b). However, States develop operational and spending plans under 45 CFR 75.206(d) every three to 5 years, and we anticipate State plans will build upon existing these operational and spending plans. Based on this existing framework and our extensive experience working with APS systems and OAA grantees on their State plans, we anticipate for each State the equivalent of four (4) hour of executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $51.54 per hour unadjusted adjusted hourly wage, $103.08 adjusted for non-wage benefits and indirect costs (4 × $103.08), and eight (8) hours of a first-line supervisor (Occupation code 43–1011), at a cost of $30.70 per hour unadjusted hourly wage, $61.40 adjusting for non-wage benefits and indirect costs (8 × $61.40). State plans will be updated every three to 5 years. We monetize the cost of drafting one State plan at $903.52. We monetize 56 State plans at $50,597.12.

1. Total Quantified Costs

a. One-Time Costs

Item		
Policies and Procedures Update and Publication	$2,432,139.52	
	State	Federal
Policies and Procedures Implementation: Training	$1,316,389.72	$26,019.00
Policies and Procedures Implementation: Data Sharing Agreements	$255,930.00	
Policies and Procedures: Informing Adults of Their APS-Related Rights Under State Law	$16,432.64	
Total	$4,046,910.88	

b. Ongoing Costs (Annual)

Item of cost	
Policies and Procedures Implementation: Two-Tiered Response System	$0.
Policies and Procedures Implementation: Mandated Reporter Feedback Loop	$551,566.28.
Policies and Procedures Implementation: Informing Adults of Their APS-Related Rights Under State Law.	$185,430.37.
Data reporting to ACL	$389,160.00.
Record Retention	$0.
State plan	$50,597.12 (renewed every 3 to 5 years).
Total	$1,176,753.77.

d. Discussion of Benefits

Older adults who experience maltreatment are three times more likely to experience adverse consequences to health, living arrangements, or financial arrangements than their counterparts who do not experience maltreatment.[58] According to 2022 NAMRS data, four percent or approximately 36,000 APS clients died during the course of an APS investigation. According to the Consumer Financial Protection Bureau, financial institutions reported $1.7 billion in in losses due to elder financial

[57] The Admin. for Cmty. Living, *Adult Maltreatment Report 2020* (2021) *https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final_Update2.pdf.*

[58] M.S. Lachs et al. *The Mortality of Elder Mistreatment,* 280(5) JAMA 428–432 (Aug. 1998) *https://pubmed.ncbi.nlm.nih.gov/9701077/.*

abuse in 2017.[59] However, in 2016 three States projected the cost could be over $1 billion in their State alone.[60]

While this final rule does not directly affect the underlying causes of maltreatment, which are complex and multifactorial, it does establish a national baseline of quality in APS practice to intervene in maltreatment as it is occurring, as well as to reduce its long-term effects. We anticipate that improvements in overall quality of practice could significantly reduce the number of losses and deaths that may occur during the course of an APS investigation. Earlier and better intervention by APS stands to reduce unnecessary health care costs, decrease financial losses due to elder financial abuse, maintain living arrangements in the least restrictive alternative possible, and promote the highest quality of life for older adults and adults with disabilities. Improved case interventions impact not only the older adult and adults with disabilities, but also their families who often assume the costs and losses of maltreatment that an older adult or an adult with disabilities experiences.

Generally speaking, the benefits of the rule are difficult to quantify. The minimum standards proposed by the NPRM were in direct response to requests from APS systems for more guidance and uniformity in policy within and among States. We anticipate that when implemented, the rule will elevate evidence-informed practices, bring clarity and consistency to programs, and improve the quality of service delivery for adult maltreatment victims and potential victims. For example, if all States implemented 24/7 reporting acceptance protocols, an adult experiencing maltreatment may be identified earlier, and an investigation could commence and intervene sooner. Earlier intervention could lead to better case outcomes, including earlier access to resources. Training requirements allow caseworkers to better handle and resolve cases. Greater skills and knowledge may also decrease repeat abuse through more appropriate investigation and response services.

Similarly, requirements related to APS coordination with other entities maximize the resources of APS systems, improve investigation capacity, ensure post-investigation services are effective, reduce the imposition of multiple investigations on adults who have been harmed, and help prevent future maltreatment. Furthermore, coordination with other entities promotes greater flexibility in case investigation, intervention, and response.

Another example of a difficult to quantify benefit is a standardized timeframe for case record retention. Currently, there are no minimum requirements for States to retain their records. The final rule's 5-year minimum retention period facilitates States' ability to track victims and perpetrators across time to deter abuse and identify recidivism while minimizing administrative burden. In the case of both victims and perpetrators, a better understanding of patterns and trends will help APS staff target interventions that are more appropriate to the presenting case, as well as decrease the recurrence of victim maltreatment.

The final rule was informed by expert-developed evidence-informed practices as articulated in our Consensus Guidelines. These evidence-informed practices, when implemented, will result in higher quality investigations, thus allowing APS to identify perpetrators and risk factors of adult maltreatment with greater frequency and accuracy, and, in turn, protecting the health and wellbeing of older adults and adults with disabilities.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 *et seq.*), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. The 2023 NPRM noted that ACL ''examined the economic implications of the proposed rule and find that if finalized, it will not have a significant economic impact on a substantial number of small entities.'' [61] Public comments raised issues with the cost estimates, discussed and addressed elsewhere in preamble and regulatory impact analysis; however, public comments did not take issue with ACL's certification of the proposed rule or raise issues that would cause ACL to not certify the final rule.

Alternatively, the agency head may certify that the rule will not have a significant economic impact on a substantial number of small entities. This analysis concludes, and ACL certifies, that this rule will not have a significant economic impact on a substantial number of small businesses.

APS is a State-based social services program controlled centrally by a State office. Thirty-nine APS systems are State-administered, meaning State staff operate programs out of locally placed State offices.[62] Fifteen States are county-administered and controlled or a hybrid of State and county-administered and controlled. In county-administered systems, the State entity grants funding to local entities, including counties and non-profits, but does not perform investigatory functions. In hybrid systems, the State maintains a more active oversight and investigatory role, but delegates to local entities. Nationally, State employees perform 70 percent of APS investigations. County and non-profit employees perform the remainder.[63]

In State-administered systems, no small entities are implicated. State government employees and offices are not small entities as defined by 5 U.S.C. 601. In the 15 county and hybrid administered systems, there are 459 counties of less than 50,000 people.[64] The administrative structure of APS is complex, and data is incomplete. However, for illustrative purposes we assume that in these 459 counties there is one APS program that is a small entity under 5 U.S.C. 601, either a small government jurisdiction or non-profit. For the purposes of this analysis, we assume these entities would fall under NAICS code 624120, Services for the Elderly and Persons with Disabilities.

Much of the cost of implementation will be borne by State entities in both State-administered and county and hybrid-administered States. In both such systems, the State entity exercises significant control; the State entity receives and distributes Federal funding and is responsible for revising policies and procedures, training local entities, and reporting data to ACL. We monetize the average cost per State APS system to be $93,279.72. As an example, Colorado has an estimated 48 counties under 50,000 people. Assuming the State entity absorbs the 25 percent of the cost of implementation, each entity will incur $1,457.49 in implementation expenses per year. Much of this will be a one-time expense. North Carolina has ten counties under 50,000 people. On average, assuming the State entity absorbs 25 percent of the cost burden of

[59] U.S. Consumer. Fin. Protection. Bur., *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* (2019); *https://www.gao.gov/assets/gao-21-90.pdf.*

[60] U.S. Gen. Acct. Off., *GAO–21–90, HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation* (2020) *https://www.gao.gov/assets/gao-21-90.pdf.*

[61] 88 FR 62517.

[62] The Northern Mariana Islands and American Samoa currently have no staffed program; they are in the process of developing one.

[63] *See supra* note 4, at 20.

[64] We have made our calculations based on 2022 Census Bureau Data.

the rule, each small entity will incur $2,798.39 in expense per year, the majority of this representing a one-time expense.

Furthermore, many small entities may already be in compliance with significant portions of these proposed regulations whether as written in policies and procedures or as informal practice.

Consequently, we have examined the economic implications of the final rule and find that it will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement describing the agency's considerations. Policies that have federalism implications include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule requires State APS systems to implement policies and procedures reflecting evidence-based practices. Receipt of Federal funding for APS systems under the EJA Sec. 2042(b), 42 U.S.C. 1397m-1(b) is contingent upon compliance with this rule. Many States are already in substantial compliance with this rule; however, some may need to revise or update their current APS policies, develop new policies or, in some cases, pass new laws or amend existing State statutes.

Consultations With State and Local Officials

Executive Order 13132 requires meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. As detailed in the preamble, the final regulations closely mirror the *2020 Voluntary Consensus Guidelines for State Adult Protective Services Systems* (Consensus Guidelines). All specific mandates (for example, day and time requirements for case response) contained in the proposed regulation reflect the Consensus Guidelines.

The Consensus Guidelines were developed with extensive input from the APS community, including State and local officials. Interested parties were invited to provide feedback for the proposed updates to the Consensus Guidelines through a public comment period and five webinars. A Request for Information was posted on ACL's website and the comment period ran from March until May 2019. Five webinars were held during April and May 2019 hosting approximately 190 participants, representing 39 States and the District of Columbia. Participants represented ten fields, with most participants representing the APS network (66 percent). The vast majority of these APS programs are administered and staffed by State and local government entities.

The goals of the outreach and engagement process were to hear from all interested entities, including State and local officials, the public, and professional fields about their experiences with APS. The engagement process ensured affected parties understood why and how ACL was leading the development of the Consensus Guidelines and provided an opportunity to give input into the process and content of the Consensus Guidelines. ACL also reviewed comments on the proposed rule from State and local officials and considered any additional concerns in developing the final rule.

Nature of Concerns and the Need to Issue This Rule

Community members welcomed the Consensus Guidelines and were generally in support of the process by which they were created and updated as well as the substantive content, noting that they ''help set the standard and support future planning and State legislative advocacy.'' [65]

We received comments that the Consensus Guidelines were ''aspirational'' and would be challenging to implement absent additional funding. We seriously considered these views in developing this rule. We also completed a regulatory impact analysis to fully assess costs and benefits of the new requirements. We recognize that some of the new proposed regulatory provisions will create administrative and monetary burden in updating policies and procedures, as well as potential changes to State law. However, much of this burden will be a one-time expense and States will have significant discretion to implement the provisions in the manner best suited to State needs.

[65] *Report on the Updates to the Voluntary Consensus Guidelines for APS Systems,* Appendix 3: 19, *https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf.*

Extent To Which We Meet Those Concerns

In FY 2021, in response to the COVID–19 pandemic, Congress provided the first dedicated appropriation to implement the EJA section 2042(b), 42 U.S.C. 1397m–1(b), one-time funding for formula grants to all States, the District of Columbia, and the Territories to enhance APS, totaling $188 million, and another $188 million in FY 2022. The recent Consolidated Appropriations Act of 2023 included the first ongoing annual appropriation of $15 million to ACL to continue providing formula grants to APS programs under EJA section 2042(b), 42 U.S.C. 1397m-1(b). This funding is available to States for the implementation of the regulation and meets the concerns commenters raised in 2019 around dedicated funding for APS systems. Additionally, the regulatory changes have already been implemented by many States, and we believe the benefit of the requirements will be significant.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

ACL will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with Tribal officials in the development of Federal policies that have Tribal implications. ACL solicited input from affected Federally recognized Tribes on October 12, 2023.

E. Plain Language in Government Writing

Pursuant to Executive Order 13563 of January 18, 2011, and Executive Order 12866 of September 30, 1993, Executive Departments and Agencies are directed to use plain language in all proposed and final rules. ACL believes it has used plain language in drafting the proposed and final rule.

F. Paperwork Reduction Act (PRA)

The final rule contains new information collection requirements under 5 CFR part 1320. These new burdens include: new State plans, new program performance data collection and reporting, a requirement that States generate, maintain, and retain written policies and procedures, a requirement that State APS systems disclose information to clients regarding their APS-related rights under State law, and a requirement that States generate, maintain, and retain information and

data sharing agreements (while also disclosing data through such agreements).

As detailed in the regulatory impact analysis, we estimate the following total burden across all States and Territories for such requirements:

(1) State plans: $50,597.12 (renewed every 3 to 5 years);

(2) Program performance data collection: $389,160.00 (annually);

(3) Creation and publication of written policies and procedures: $2,432,139.52 (one-time expense);

(4) Disclosure to potential clients their APS-related rights under State law: $201,863.01 ($16,432.64 in one-time expense and $185,430.37 annually);

(5) Creation and maintenance of data sharing agreements: $255,930.00 (one-time expense).

ACL will submit information to the OMB for review, as appropriate. The State plans, program performance data, written policies and procedures, disclosure to potential clients of their APS-related rights under State law, and the creation and maintenance of data sharing agreements will be submitted for approval as part of a generic clearance package for information collections related to ACL Administration on Aging programs. ACL intends to update applicable guidance as needed.

List of Subjects in 45 CFR Part 1324

Adult protective services, Elder rights, Grant programs to States, Older adults.

For the reasons discussed in the preamble, ACL amends 45 CFR part 1324 as follows:

PART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

■ 1. The authority for part 1324 is revised to read as follows:

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

■ 2. Add subpart D to part 1324 to read as follows:

Subpart D—Adult Protective Services Programs

Sec.

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

§ 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 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

(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, 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 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.

Dated: April 8, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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