



November 13, 2023

The Honorable Alison Barkoff  
Acting Assistant Secretary for Aging and Administrator  
Administration for Community Living  
Department of Health and Human Services  
330 C Street SW  
Washington, DC 20201  
Submitted electronically to <http://www.regulations.gov>

Re: RIN Number 0985–AA18, Establishing Adult Protective Services Regulations

Dear Acting Assistant Secretary Barkoff:

AARP, which advocates for the more than 100 million Americans age 50 and older, appreciates the opportunity to comment on the first-ever federal regulations for adult protective services (APS) programs.

We applaud the Administration for Community Living's (ACL) commitment to improve consistency and quality of APS programs across states and support the national network that delivers APS, with the goal of better meeting the needs of older adults who experience, or are at risk of, maltreatment. APS programs are essential to the well-being of older adults. Studies show that about 10 percent of older adults each year experience elder abuse. APS programs help identify, address, and prevent elder abuse. They balance the individual's right to autonomy and self-determination with the obligation to protect those who are unable to protect themselves.

AARP's comments are organized in the order they appear in the proposal.

### **Establishing Common Definitions; Defining Adult Maltreatment**

AARP applauds the goal of establishing common definitions for the national APS system to improve information sharing, data collection, and standardization between and within states. The proposed rules include definitions of terms, including the term "adult maltreatment." In the proposed definition, "adult maltreatment" means "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*." (Italics added.) "Adult" is left to the states to define (other than saying "older adults or adults with disabilities"). "Trust relationship" is defined as "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." (§1324.401).

AARP is concerned that this definition of “adult maltreatment” appears to exclude cases of financial exploitation where the perpetrator is a “stranger,” (e.g., handyperson fraud, other stranger scams) and international fraud. Many of these cases—such as stranger fraud cases—result in huge losses to older adults and adults with disabilities and those losses go beyond the specific financial loss to emotional distress, declining health and even shorter lifespans. The advent of rapidly changing technological advancements has dramatically increased the use of more sophisticated financial exploitation tactics and accessibility to older adults. In addition, the definition may exclude cases in congregate settings where the alleged perpetrator has no direct connection to the adult’s interests or care. The proposed definition also limits adult maltreatment to the five types listed in the definition—omitting, for example, emotional or psychological abuse.

Currently, some states take APS cases that go beyond the proposed new definition of “adult maltreatment.” AARP believes that the emphasis should be on the harm inflicted upon the older adult or adult with disabilities rather than on limiting APS service based on the identity of the perpetrator, where the adult lives or where the harm occurred. **AARP encourages ACL to broaden the proposed definition of adult maltreatment to include any individual who may perpetrate harm by removing the requirement of a trust relationship.**

### **Establishing Common Definitions; Clarifying Use of Proposed Definitions**

AARP notes a contradiction between the definitions in the proposed rules and definitions to be left up to the states (e.g., defining the types of alleged perpetrator subject to APS investigations is left up to the states yet the requirement of a “trust relationship” limits the type of perpetrator).

The proposed rules state (§1324.402) “The state entity shall create and implement policies and procedures for APS systems to receive and respond to reports of adult maltreatment in a standardized fashion. Such policies and procedures, at a minimum, shall....” and then the rule lists various things that must be included in the policies and procedures, including “define the populations eligible for APS service” and “define the settings locations, and types of alleged perpetrator...subject to APS investigations.” ACL’s supplementary information says, “States may impose additional requirements on their APS systems above and beyond these proposed minimum Federal standards” (Fed Reg 62507).

These provisions create ambiguity about whether states can utilize more inclusive definitions of adult maltreatment that do not involve a trust relationship or involve types of maltreatment not included in the definition. The use of the term “at a minimum” gives little guidance on what policies and procedures a state could implement that would go beyond those articulated in the rule. As written, the rule will create confusion that could result in a lack of uniformity—contrary to the stated goal of the regulation. **AARP encourages ACL to provide clarifying language that will permit APS systems to investigate all cases where a perpetrator is alleged to have abused, neglected or exploited an older adult or an adult with disabilities and to arrange services when the allegation is substantiated.**

## **Person-Directed Services and Least Restrictive Alternatives**

AARP is pleased with the proposed rule's establishment of state policies and procedures to "incorporate principles of person-directed services and planning and reliance on least restrictive alternatives...." (§1302.402(a)(1)). This helps provide greater choice and control to the individual, which is important. Adults placed under guardianship may lose their basic civil liberties. These can include making decisions about where to live, how to spend money, and what medical treatment to receive. It may also affect the right to vote or marry. APS agencies may sometimes take steps to have a guardian appointed, and this proposed rule reminds APS that guardianship should be an option of last resort and should only be sought when there is no less restrictive option available. **We commend ACL for including these important provisions.**

## **Long-Term Care Settings**

ACL points out in its supplemental material that currently eleven APS systems report that they do not have authority to conduct investigations in congregate residential facilities, and other APS systems have varying degrees of authority to investigate allegations arising in such settings. **AARP takes the position that APS laws should apply in community and long-term care settings.**

**AARP urges ACL to revise the proposed rules to require that states investigate alleged abuse, neglect, and exploitation in all residential settings, including long-term care facilities and other congregate living arrangements.** As such, the provision at §1324.402(a)(3) requiring that the state define the settings, locations, and types of alleged perpetrator for each adult maltreatment type that are subject to APS investigations in the state should be modified accordingly.

## **Notice of Rights**

AARP applauds ACL for the requirement that, at first contact, APS must provide potential clients with an explanation of their rights and for specifying which rights should be communicated to the individual. ACL specifies that APS programs provide this explanation in a format and language understandable by the individual. **AARP recommends that this explanation be in plain language (both oral and written) and accessible to someone with mild cognitive impairment or mild dementia, as well as to individuals with intellectual disabilities and other conditions impacting communication and cognition.**

## **Training and Education**

The proposed rules (§1324.402(d)(1)) require policies for staff training and on-going education. AARP's experience working with states indicates staff training improves knowledge, confidence, self-perceived skills, and perceived competence in delivering APS. **AARP encourages ACL to make this rule more specific, for example, by incorporating mandatory topics for training and noting the recommended frequency of training.** The inclusion of key training topics will enhance the likelihood of positive outcomes to occur. The requirement of a certain frequency will both refresh the knowledge of long-term employees and address staff turnover.

## Coordination with Other Entities

AARP commends ACL for including the requirement that APS systems coordinate with other state and local government agencies, community-based organizations, and other entities working with older adults and adults with disabilities (§1324.406). AARP agrees that coordination between APS and other agencies (government and otherwise) maximizes resources, improves investigation capacity, and improves post-investigation services.

Coordination is particularly important with non-APS agencies that also have authority to investigate adult maltreatment. AARP concurs that formalizing relationships and operating principles through memoranda of understanding may help clarify the rules of engagement and make cooperation more likely to occur. In addition, AARP commends ACL for specifically requiring coordination with banking and financial institutions. **However, we recommend using the broader term “financial services industry” to include broker-dealers, investment advisers and other financial professionals and services.** AARP’s BankSafe Initiative helps the financial industry better meet consumers’ financial needs and safeguard their financial assets through preventing financial exploitation, empowering family caregivers, helping those with dementia, and making bank tools and environments easier to access. The BankSafe Initiative emphasizes the important role that the financial services industry plays in preventing and responding to both adult maltreatment (as currently defined in the proposed rules) and stranger fraud.

AARP thanks you for the opportunity to comment on the proposed regulations and for your continued work to support older adults and adults with disabilities who experience, or who are at risk of, abuse, neglect, self-neglect, or financial exploitation. We look forward to working with you to better meet the needs of adults who experience, or are at risk of, maltreatment.

If you have any questions, please feel free to contact me or reach out to DeAnza Valencia of our Government Affairs team at [dvalencia@aarp.org](mailto:dvalencia@aarp.org) or (202) 434-6035.

Sincerely,



David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs