

November 8, 2023

Administration on Aging
Administration for Community Living
Department of Health and Human Services
Attn: Stephanie Whittier Eliason
300 C Street SW
Washington, DC 20201

Submitted Electronically: [Federal Register : Adult Protective Services Functions and Grant Programs](#)

Dear Ms. Whittier Eliason,

On behalf of the Minnesota Department of Human Services (DHS), I am submitting comment to the Health and Human Services Department in response to the Administration for Community Living's (ACL's) proposed regulation for state's adult protective services functions and grants. DHS is the agency of state government legally responsible for supervision of adult protective services in Minnesota under [MN Statutes Chapter 256](#) and [MN Statutes Sec. 626.557](#).

DHS welcomes the prospective of federal guidance to improve uniformity in person-centered service delivery for adults who experienced maltreatment and to support clarity for service systems and the public on what to expect from adult protective services (APS) across the United States and territories. We appreciate the opportunity to provide comment.

In response to ACL's request for comment on if the appropriate balance has been struck between a prescriptive minimal floor and State discretion, Minnesota's response is that this balance was met in some areas, and not in others. Proposed regulation would benefit from additional guidance to states with locally administered APS programs on requirements to assure local program compliance.

Minnesota supports federal guidance and desires to follow the rule. We request ACL allow waivers for additional time to fully implement regulations and that waivers be allowed when statutory changes, or resources necessary to implement the regulation are outside the control of state and local agencies responsible for APS.

We ask that federal regulation and resource allocation better align with regulation. We believe costs to DHS and local APS programs to implement the regulation are

underestimated. Cost estimates in the proposed regulation for training, data systems, record retention and state plan development underestimate and do not accurately reflect implementation costs to DHS and local APS programs.

Minnesota requests consideration be made to exclude relatives, unpaid caregivers and those lacking legal duties from definitions of “neglect” and “trust relationships”. Proposed definitions risk inequity by race and ethnicity in APS neglect investigation and risk outcomes that are inconsistent with Minnesota’s vision of an equitable, inclusive and anti-racist state where all thrive. National data [Family Caregiver Alliance](#) shows African American and Hispanic families are more likely than whites to be caregivers, support adults with higher care needs and face greater burden and economic challenge than caregivers who are white. Minnesota strives to support the relatives, friends and family caregivers who provide 80% of the care of older adults in Minnesota. When neglect is alleged by an informal caregiver, APS in Minnesota engages with the adult and their supporter for assessment and interventions to stop the neglect without investigation of the informal supporter to ascribe responsibility for neglect.

We request the “self-neglect” definition includes adults whose relatives or informal caregivers are not able to meet the adult’s needs for the care, goods or services necessary to maintain health or safety and also includes adults whose fiduciary lacks legal responsibility for goods, care, or services. In addition, we request that self-neglect be separated from other forms of maltreatment for APS non-determination response. Using self-neglect with no determination of responsibility by a relative or informal caregiver lacking legal duty for goods, care, or services, focuses APS resources on engagements to stop neglect instead of investigating the adult, their relatives and informal supports. NAMRS data is that 16% of caregiver neglect is substantiated, while 45% of self neglect is substantiated. There is no evidence that investigation to determine responsibility for neglect by relative or informal caregivers improves outcomes for the adult and it risks unnecessary trauma and harm to relationships.

Additional guidance from ACL is requested to address conformity with CMS incident management systems, maltreatment/incident definitions and health and safety assurances when the adult referred to APS is participating in a Medicaid program.

Areas of support for proposed regulation:

- Inclusion of program definitions, processes, and timelines;
- Coordination with the State Medicaid Agency;
- Multi-disciplinary data sharing and coordination;
- Incorporation of principles of person-centered services and planning;
- Reliance on maximized client engagement and least restrictive alternatives;
- Client notification of rights using person-centered plain language;

- Requirement for state plan updates. Minnesota found engagement with stakeholders in developing the state's Adult Protection Operational Plan critical to identification of APS goals and outcomes;
- Support omission of mandatory requirement for investigation without additional federal resources. Implementation estimate in Minnesota for mandatory investigation is 42M.

Additional comments by section:

1324.01 Definition

DHS requests ACL guidance on if definition requirements must be met under each specific definition, or if requirements may be met under a different definition that that identified by ACL; for example, ACL's abuse definition is met under the state's neglect definition.

Areas of specific concern:

Definitions do not reflect Minnesota's practice or statute.

Abuse – Suggested: 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

- Request deletion or clarification for the definition of "knowing" for the purpose of determining if an incident is "abuse". Defining abuse as "knowing" by the person alleged responsible is inconsistent with MN statutes and is a subjective criterion which requires definitional support for APS findings.
- As an alternative to deleting "knowing", provide guidance on when deprivation of the adult's goods or services and infliction of harm is "knowing".

Adult Maltreatment -Suggested: self-neglect or abuse, neglect, exploitation, or sexual abuse of an adult ~~at risk of harm~~

- Definition of adult covers APS eligibility without requirement for risk of harm.
- "Risk of harm" adds an additional requirement for risk of continuing harm that creates a barrier to APS eligibility (additional comments under 1324.402 program administration).

Caregiver -Suggested: add guidance on definition of a caregiver that is consistent with public policy goals of encouraging informal caregiving and supporting caregivers, by not associating relatives, friends and volunteers as caregivers subject to an APS

investigation for neglect without meeting additional criteria for legal duty or responsibility for care of another adult.

Neglect - Suggested: means the failure of a caregiver or fiduciary with legal responsibility to provide the goods or services that are necessary to maintain the health or safety of an adult.

- Adults are responsible for themselves. Exclude relatives, friends and informal supports as having a responsibility for good and services absent a legal duty.
- Minnesota encourages relatives, family and friends to identify as caregivers and provide informal supports. This definition associates them with neglect and investigation for offering supports conflicts with state policy.
- There is no evidence that APS investigation of relatives, friends and informal supports for neglect improves outcomes for the adult.
- Neglect definition risks inequity in APS investigations as relative caregivers are disproportionate by race. <https://www.caregiver.org/resource/caregiver-statistics-demographics/> .
- Identifying trusted persons and relative caregivers as responsible for neglect places responsibility for gaps and failures of the service system on those who lack legal responsibility for the adult's care.
- Defining "neglect" of services to include fiduciaries is inconsistent with Minnesota statutes. Conservators of an adult may have court authority to pay for care from the adult's resources but are not responsible to arrange or provide for goods or services. Fiduciaries, such a power of attorney, may have authority, but are not required to act and are not responsible to arrange goods or services. Trustee's duties are dependent on the trust agreement and may not include responsibilities to arrange care or services.
- Guardians may have the duty to make decisions and arrange care, but are not responsible to provide care or goods and are not responsible for neglect when necessary services for the adult are not available.

Self Neglect – Suggested definition: add guidance to self-neglect to include adults whose caregiver or trusted relationship lacks legal responsibility for goods, care or services and the adult's health and safety needs are not met. This guidance supports equity and person-centered, trauma informed, culturally appropriate APS engagement for assessment, planning and interventions to stop neglect and improve outcomes for the adult.

Trust Relationship – Suggested: remove trust relationship from definitions and program eligibility. Requiring a trust relationship for APS eligibility is inconsistent with Minnesota's policy and practice.

- Trust relationship for APS eligibility is inconsistent with ACL’s funding for APS response to scams and financial fraud under COVID and ARPA funding.
- APS eligibility in Minnesota is based on a person-centered definition of adult vulnerability and suspected maltreatment and is not relationship based.
- Requirement for a trust agreement leaves adults who are vulnerable at risk for ongoing maltreatment as there is no entity other than APS responsible to assess and offer protective services.
- This definition creates a national gap in protective services to stop and remediate maltreatment impacts for adults who experienced a scam, or when the person alleged responsible for maltreatment is not known.
- Assuming relatives and friends are responsible for care does not consider the choice of the adult, or the choice of the relative or friend for what can be a 24/7 duty, and subjects those meeting this definition to government investigation of neglect for which they lack a legal duty in Minnesota.
- Fiduciaries may not have a legal duty to meet needs for goods, care, or services.

1324.402 Program Administration

Suggested: CDC definition for “at risk” is used as criteria for Prioritization of response time but is not used for program eligibility or referral acceptance criteria. At risk refers to possibility an individual will experience a detrimental outcome, thus “at risk” is an inappropriate eligibility criterion. At risk for detrimental future outcomes is an appropriate standard for prioritization of APS response time to prevent future harm. Minnesota uses standard tools to guide APS response priority related to risk.

Specific concerns:

- Request waivers to requirements for mandated reporter notification. Minnesota does not have authority to notify mandated reporters of maltreatment findings. This would take legislative change and will have systems costs to the state. Mandated reporters in Minnesota include health care professionals, medical assistance enrolled providers, licensed service providers, educators, law enforcement, medical examiners and any professional engaged in the care of an adult vulnerable to maltreatment. Systems changes and training costs for this requirement are more extensive than the email notification assumed by ACL.
- Request removing requirement for states to establish a minimum staff to client ratio. Minnesota has 87 counties responsible for adult protective service programs. The state does not have access to the data necessary to establish ratios and has no authority to implement or methods to monitor a staff ratio requirement for locally administered programs. Compliance will have significant resource implications for Minnesota.
- APS training requirements are supported, but additional ACL resources through enhanced NATC training modules are requested. NATC training enhancement will

also meet ACL's goal to improve national consistency in APS. The state's burden to meet training requirements will far exceed ACL's cost estimate.

- The state intends to follow requirements to notify adults of their rights, but requests waivers to assurances for local compliance due to the systems changes and costs in a county administered system.

1324.403 Investigation and post-investigation services

Services dependent on completion of the investigation is inconsistent with Minnesota policy and practice.

Suggested: ACL maintain two-tiered response time frames, but not require face to face response within those time frames. Flexibility on the time frame to initiate face to face response is allowed based on assessment. ACL's requirement to initiate face-to-face visits are not consistent with Minnesota statute or practice. Current state authority for compliance in county administered programs does not exist.

Suggested: Allow casework, service assessment and non-restrictive interventions concurrently with fact-finding/investigation on if maltreatment occurred to support person-centered assessment and response for adults to stop and reduce risk of maltreatment. The approach to workflow proposed is inconsistent with Minnesota's policy and practice.

Suggested: Voluntary service interventions to prevent maltreatment should be allowed regardless of the assessment/investigation finding. Person-centered, trauma-informed, culturally appropriate service interventions to prevent maltreatment/reoccurrence is consistent with a social service program. Engagement in service interventions being dependent on completion of findings, does not benefit the adult's safety or dignity. This approach is inconsistent with Minnesota's policy and practice.

Suggested: Modify definitions for post-investigation services to recognize APS is a social service, not a criminal justice response, and lacks ability to hold perpetrators accountable or control perpetrator behavior.

Specific concerns:

- Eliminate or reduce use of investigation terminology, especially for neglect. Investigation is a term that promotes fear, has cultural bias, is based in the criminal justice system and connotes power over adults that APS does not have.
- Investigation of relative caregivers and adults for neglect does not support APS engagement for assessment and service interventions. Request ACL use

terminology for APS's role in neglect consistent with a trauma informed, person-centered human services system.

1324.404 Accepting Reports

Requirement for 2 methods of reporting does not bring benefit to reporters and is costly to the state.

Suggested: Require accessible reporting method. Eliminate requirement for 2 methods of 24/7 reporting.

1324.406 Coordination with other entities

Suggested: adding informal supports to this section. Coordination with informal supports, cultural and spiritual communities of the adult are critical to stopping, reducing risk and preventing maltreatment reoccurrence. Offer guidance for coordination in consideration of the adult's choice and in balance with protection from serious harm from maltreatment.

Specific concerns:

- The proposed CMS Access Rule includes provisions related to critical incident reporting and incident management systems, which will require significant involvement from APS to implement. However, this proposed APS rule is silent on APS' role in meeting these CMS requirements. Additional guidance related to alignment of APS requirements with the CMS Access Rule is requested.
- Request additional guidance on coordination across states for states with locally administered programs. States with locally administered programs may lack authority to contract on behalf of local programs.

1324.407 APS program performance

Suggested: Eliminate 5-year data retention requirement in favor of state determined retention. Minnesota statute requires retention of 3, 4, or 7 years based on APS outcomes. This requirement necessitates modifications to Minnesota statute and data systems which will be cost burdensome to the state.

Comment:

- As states report annually for NAMRS, the benefit for a 5 year-retention is not clear.

1324.408 State plans

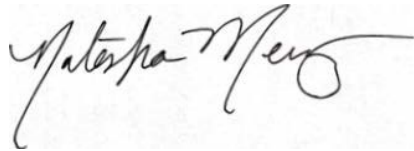
Suggested modification: Limit the number of prescriptive plan requirements and offer technical assistance to states.

Comment:

- Ongoing evaluation, stakeholder engagement requirements and updates to state Adult Protection operational plans are supported. County administered states have many local agency stakeholders in addition to the community and other partners. Stakeholder engagement is resource intensive.
- This requirement is estimated to cost the state \$9,000 annually which exceed ACL's estimate.

Thank you for your consideration.

Sincerely,



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