

Adult Protective Services (APS) Notice of Proposed Rulemaking

On September 12, 2023, the US Administration for Community Living issued the first Notice of Proposed Rulemaking for Adult Protective Services (more info available at <https://acl.gov/APSRule>). This proposed rule would establish the first-ever federal regulations for APS programs. ACL's goal is to promote consistency and quality across the country.

If implemented, this regulation would have a significant impact across the country including access to APS formula grant funding. We strongly encourage all APS programs to review the rule and submit comments. NAPSA is available for both group and individual brainstorming and discussions.

NAPSA strongly believes ACL should hear from all APS programs to ensure the regulation is effective. We urge you to submit your own comments. Please note the survey sent out to membership only goes to NAPSA. It does not replace the need for you to submit your own comments to ACL.

How to submit a comment:

1. Open the commenting webpage: <https://www.regulations.gov/document/ACL-2023-0002-0001>
2. Click on the comment button.
3. Submit a comment in the text box or by attaching a file.
4. Optional: Enter your email to receive confirmation of submission.
5. Identify how you would like to identify – this information will be available as part of the comment.
6. Submit! **All comments are due by November 13, 2023.**

Tips for Commenting

- Before commenting, read and understand the regulation and background information and its impact on your program and workers. Consider the costs discussed and if they are accurate.
- In your comment:
 - Identify your relevant credentials and experience – be sure to note your relationship and knowledge on APS.
 - Be specific about which sections you are commenting on. If you are commenting on specific sections or language, be sure to cite where that is located. NAPSA has a template table you may wish to consider.
 - Provide details on your reasoning – data and/or personal experience.
 - Highlight any financial impact and if the costs given are accurate. The majority of the costs cited by ACL are one-time costs, consider sharing the ongoing costs. Build the case for why continued and increased funding is needed to fulfill the rule.
 - Discuss the implications of the rule and impact on APS both intended and unintended.
 - Constructive comments – both positive and negative – are most effective.
 - State your willingness to work on mutually achievable and beneficial regulations that correspond to current levels of funding.
- Submit your comment!
- Share your comment with NAPSA (Kendra – kendra.kuehn@napsa-now.org and Bill – bill.benson@napsa-now.org).
- Stay tuned for further developments.

Comment Areas

In the background of the Notice of Proposed Rule Making ACL requests comments on a variety of issues that may inform current or future regulatory guidance. Commentators should consider responses to these areas.

But you are not limited to these areas and questions. NAPSA encourages members to make comments in any area they feel is needed.

The identified comment questions as stated by ACL are listed below.

- II. Statutory and Regulatory History and Reasons for the Proposed Rulemaking
 - ACL invites comment on both the scope and depth of topics proposed for regulatory action and the rationale presented.
 - We ultimately decided to leave such disclosure *[of policies and procedures]* to State discretion. We welcome comment on the costs and benefits of mandating such disclosure.
- III. Adult Protective Services Programs
 - B. Section 1324.401 Definitions
 - We recognize that our current proposal narrows the universe of required APS investigations under proposed § 1324.402(a) and in developing our proposal, we considered a more expansive definition of adult maltreatment. We invite comment on our definition and whether it reflects current practice in APS programs and whether it will resolve confusion.
 - We propose to define "at risk" 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 individual will experience an event, illness, condition, disease, disorder, injury or other outcome that is adverse or detrimental and undesirable." We recognize the considerable variation among States in determining whether maltreatment must include "vulnerability" or other qualifier, and we seek comment on this definition.
 - Including the requirement of a trust relationship for purposes of determining when APS becomes involved furthers consistency of APS interventions in adult maltreatment. Furthermore, most APS systems apply a standard of "trust relationship" in their definition of maltreatment. We seek comments on this approach.
 - C. Section 1324.402 Program Administration
 - In addition to our request for comment on the definition of adult maltreatment, we seek comment as to whether a mandatory requirement for investigation based on the definitions of abuse, neglect, exploitation, sexual abuse, and self-neglect is appropriate, adequately reflects the needs and experiences of APS systems, as well as any potential State and local burden associated with such a requirement.
 - We request comment on whether staff to client ratios are feasible for APS programs and whether required workload studies would assist in development of appropriate ratios.
 - D. Section 1324.403 Investigation and Post-Investigation Services
 - Proposed § 1324.403 draws heavily from the Consensus Guidelines. We seek comment on whether this approach includes all necessary activities for investigation and post-investigation services as well as examples of investigation and post-investigation services we have not proposed for inclusion.
 - E. Section 1324.404 Conflict of Interest

- We seek comment on whether our proposal reflects the universe of actual and potential conflicts of interest, those who may be a party to a conflict, and ways in which we may strengthen these requirements while not placing undue programmatic or administrative burden on APS systems.
- F. Section 1324.405 Accepting Reports
 - In the interests of accessibility, we considered mandating that APS systems establish an online reporting mechanism (for example, accepting reports of adult maltreatment through a website), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such an online reporting mechanism.
 - We welcome comment on the costs and benefits of mandating such a mandatory response timeframe. Additionally, we invite comment on the type of information that might be returned to mandatory reporters after a report of maltreatment is submitted to an APS program, including potential administrative burdens to APS programs and client confidentiality and privacy conflicts that may arise from such requirements.
 - We considered mandating that States provide such status information to such mandatory reporters within a certain timeframe (for example, within 30 calendar days of the report), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such a mandatory response timeframe.
 - Additionally, we invite comment on the type of information that might be returned to mandatory reporters after a report of maltreatment is submitted to an APS program, including potential administrative burdens to APS programs and client confidentiality and privacy conflicts that may arise from such requirements.
- G. Section 1324.406
 - We seek comment as to whether we have accurately captured the scope of appropriate entities with which APS should collaborate, and whether our proposal would create unintended consequences for APS programs. We also seek examples of where coordination is working and where barriers to coordination exist.
 - Such agreements will allow one program to share with the other information about alleged maltreatment by someone who works with, or who has a relationship of trust with, individuals being served by both organizations. Additionally, such agreements will allow the sharing of information 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 the maltreatment. We seek comment on our proposals.
 - We request comments and examples of best practices on how coordination and collaboration with other States and local jurisdictions may be effectively achieved, minimizing administrative burden.
- H. Section 1324.407 APS Program Performance
 - We will provide future guidance on data elements to be collected and seek comment on what these data elements should be.
 - We seek comment on whether five years is an appropriate timeframe or whether a greater or lesser duration is optimal.
- I. Section 1324.408 State Plans

- We seek comment on our proposals for the development of State plans as well as ACL oversight and monitoring of State plan objectives.
- J. Regulatory Approach
 - These proscriptive requirements have been drawn from the evidence-informed Consensus Guidelines and represent promising practices for APS service delivery. We invite comment as to whether we have struck the appropriate balance between setting a proscriptive minimum floor for essential policies and procedures and leaving general implementation of the policies and procedures to State discretion.
- K. Effective Date
- L. Request for Comment
- IV. Required Regulatory Analyses
 - 1. Introduction
 - Summary of Costs and Benefits
 - The analysis also includes a discussion of the potential benefits under the rule that we do not quantify. We request comments on our estimates of the cost and benefits of this proposed rule, including the impacts that are may not be quantified in this analysis.
 - 2. Training on New Requirements
 - 3. Implementing New Policies and Procedures
 - We do not anticipate that States would commit to increasing staffing ratios without a commensurate increase in Federal or other funding. Consequently, we anticipate that this provision will not result in increased cost to APS programs. We invite comment as to whether our analysis of the potential financial burden of this proposal is accurate.