

November 13, 2023

Alison Barkoff
Acting ACL Administrator and Assistant Secretary for Aging
Administration for Community Living
330 C St. NW
Washington, DC 20201

RE: RIN Number 0985-AA18

Dear Assistant Secretary Barkoff:

On behalf of the National Adult Protective Services Association (NAPSA), I am writing to you in response to the Adult Protective Services Functions and Grant Programs Notice of Proposed Rulemaking (RIN Number 0985-AA18). As the national professional association representing state and local Adult Protective Services (APS) programs, staff, allied professionals, and the clients they serve, we are grateful for the opportunity to provide feedback on this proposed rule. NAPSA has been the leading voice for strengthening of APS at the federal level. NAPSA's membership reflects all 50 states, DC, the territories, and several tribes (hereinafter states). NAPSA strongly supports efforts to promote an effective, sustainable APS system creating equal support for older adults and persons with disabilities facing maltreatment across the nation.

Since its founding more than thirty years ago, NAPSA has been an integral part of creating standardization including sponsoring the first national APS training conference and remains the host of the only national annual training conference on APS and older adult and persons with disabilities abuse training conference, playing a leadership role in passage of the Elder Justice Act and subsequent appropriations, sponsoring APS research, requesting and contributing to GAO studies through Congressional offices, serving as the first National APS Resource Center, and serving as the first National APS Training Center. Most significant to this proposal, NAPSA developed the first national guidelines, core competencies, and code of ethics for APS. These materials were subsequently the foundation for the initial Administration for Community Living's *Voluntary Consensus Guidelines for State APS Systems*. While this may be the first proposed federal regulation for APS it is by no means the first field-led national collaborative effort to improve programs.

Our comments reflect input directly from APS nationwide, particularly state and local APS administrators. It is particularly important for ACL to heed the comments of APS leaders and those representing them, such as NAPSA, in revisions to the proposed regulations. APS is the frontline and the most directly impacted by these proposed regulations. Any regulations must not pose an undue burden on or pose an unfunded mandate on state and local governments.

NAPSA commends ACL for the thoughtful effort in preparing this NPRM and supports the efforts to strengthen APS everywhere. Nonetheless, we must express our great concern that the scope of the proposed rule places a significant burden on the capacity of state and local APS programs, especially considering the very little federal funding for states and their APS programs. Through numerous forums and other interactions with state APS leaders, there is widespread consensus among the APS field that

ACL cost estimates are a significant underestimate in every area cited. Moreover, states are concerned about being able to meet these proposed regulations in light of the limited current and expected future amount of federal funding for APS. Amid other rising costs and reluctance of state legislatures to increase budgets, a number of state APS programs have indicated the possibility they will not apply for the formula grants.

Implementation Timeframe

Many states are also expressing concern about the implementation timeline, particularly if changes in budget and statute are necessary. The state policymaking process is complex and can take months to years to enact statutory amendments, promulgate new regulations, and implement guidance. Efforts to amend statutes and obtain budgetary increases are even more complex and subject to the vagaries of state legislatures. This can be especially challenging in states with biennial legislative sessions or budget cycles. **NAPSA recommends an implementation timeline that goes into effect no sooner than five years after publication of the Final Rule and makes considerations for these challenges.**

Section 1324.4000 – Eligibility for Funding

The National Adult Protective Services Association (NAPSA) supports efforts to promote consistency and best practice across the nation in order to better serve older adults and persons with disabilities while recognizing that state and local program flexibility is essential to addressing adult maltreatment through state and local APS. NAPSA urges that funding be directed to the appropriate Adult Protective Services administering agency in each state. In a limited number of states that require ACL to make grants to two adult protective services state entities – the aging entity and entity serving non-elderly adults with disabilities. This practice would be in accordance with the Elder Justice Act statute directing funding to the state agency or unit having legal responsibility for APS (42 USC 1397m-1(b)(3)(B)). The current practice not only causes delays for the APS agency responsible for persons with disabilities in obtaining and putting to use federal APS funds but fails to recognize such entities as a state authorized APS entity in their own right.

Section 1324.401 – Definitions

NAPSA acknowledges the varying terms used in APS state statutes and supports continued movement towards consistent foundational terms across the nation's efforts. It is our understanding that the proposed rule gives deference to existing statutory definitions when they adequately meet requirements in the proposed rule. **If this understanding is inaccurate, we recommend ACL provide clarification for states.** APS programs note that changing statute is a significant cost and time burden.

NAPSA would like to note there are terminology inconsistencies in the rule specifically around the interchangeable use of "determination," "finding," and "disposition" which are not defined. "Victim," "client," "adult," and "individual" are defined separately but used interchangeably. For clarity, NAPSA recommends using consistent terms throughout the rule.

ACL Request for Comment: ACL seeks comments as to whether their proposed definition of adult maltreatment reflects current practice in APS programs and will resolve confusion.

NAPSA supports the proposal to establish self-neglect, abuse, neglect, exploitation, and sexual abuse as the standard minimum elements of adult maltreatment states must investigate.

NAPSA recommends ACL remove “trust relationship” as a definitional requirement. This narrow definition does not meet policy and practice in all states. This narrow definition would exclude a significant number of reports APS responds to including most fraud and exploitation-related reports. In many states there are no other entities to respond to these reports. APS administrators also note that proving a trust relationship places an added evidentiary burden on APS workers on such a subjective issue.

ACL Request for Comment: ACL seeks comment on whether the definition of maltreatment must include vulnerability or another qualifier.

NAPSA recommends removing “at-risk of harm.” The term “at-risk of harm” as defined is overly broad for the scope of APS services and could refer to any event detrimental to the adult. Further, the use of “at-risk” implies that the adult must face an imminent threat from the perpetrator to be eligible for APS response and places further burden on intake to determine qualification. If a definition is included in the final rule, NAPSA recommends replacing “at-risk of harm” with “at-risk of maltreatment.”

ACL Request for Comment: ACL seeks comment on whether including the requirement of a trust relationship for the purpose of determining when APS becomes involved furthers consistency of APS interventions in adult maltreatment.

As noted above, NAPSA and the majority of state and local APS programs do not support the proposed trust relationship requirement as a determinant for APS involvement.

NAPSA provides the following commentary and recommendations on the definition’s proposed by ACL.

Citation	Title	Proposed Rule Language	Comment
1324.401	Definitions	As used in this part, the term –	NAPSA supports the development of uniform definitions.
		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.	As a baseline definition, NAPSA recommends removing the term “knowing” as this is subjective and requires additional evidence. NAPSA recommends ensuring clarity between abuse and neglect regarding the inclusion of “deprivation of goods and services.”
		Adult means older adults and adults with	NAPSA supports this definition and the determination to abide by state APS laws.

Citation	Title	Proposed Rule Language	Comment
		disabilities as defined by State APS laws.	
		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.	As noted above, NAPSA supports the maltreatment types listed and recommends removing the “trust relationship” requirement.
		Adult Protective Services (APS) means such services provided to adults as the Assistant Secretary for Aging may specify in guidance and includes such services as:	NAPSA agrees with this proposed definition.
		(1) Receiving reports of adult abuse, neglect, exploitation, sexual abuse, and self-neglect;	NAPSA agrees with this proposed definition.
		(2) Investigating the reports described in paragraph (1) of this definition;	NAPSA agrees with this proposed definition.
		(3) Case planning, monitoring, evaluation, and other case work and services, and;	NAPSA agrees with this proposed definition. NAPSA recommends clarification on the term “monitoring.”
		(4) Providing, arranging for, or facilitating the provision of medical, social services, economic, legal, housing, law enforcement, or other	NAPSA agrees with this proposed definition.

Citation	Title	Proposed Rule Language	Comment
		protective, emergency, or supportive services.	
		Adult Protective Services Program means local Adult Protective Services providers within an Adult Protective Services system	NAPSA agrees with this proposed definition.
		Adult Protective Services (APS) System means the totality of both the State entity and the local APS programs.	NAPSA urges acknowledgement that there may be multiple state APS entities within a state. Definition should read to include "State entity or entities."
		Allegation means an accusation of adult maltreatment associated with each adult in a report made to APS. There may be multiple allegations in an investigation.	NAPSA agrees with this proposed definition.
		At risk of harm means the possibility that an individual will experience an event, illness, condition, disease, disorder, injury, or other outcome that is adverse or detrimental and undesirable.	As noted previously, NAPSA recommends removing the term "at risk of harm" and instead utilize "at risk of maltreatment."
		Assistant Secretary for Aging means the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).	NAPSA agrees with this proposed definition.

Citation	Title	Proposed Rule Language	Comment
		<p>Case means all activities related to an APS investigation of, and response to, an allegation of adult maltreatment.</p>	<p>NAPSA agrees with this proposed definition.</p>
		<p>Client means an adult who is the subject of an investigation by APS regarding a report of alleged adult maltreatment.</p>	<p>NAPSA recommends the definition be expanded to include adults receiving services stemming from an APS investigation. Under the current proposed definition, the term only applies during the investigation and raises concerns that the provision of services post-investigation will not be an allowable usage of APS funds.</p>
		<p>Conflict of Interest means a situation that interferes with a program or program representative's ability to provide objective information or act in the best interests of the adult. A conflict of interest would arise when an employee, officer, or agent of APS, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with APS systems.</p>	<p>NAPSA agrees with this proposed definition.</p>
		<p>Dual relationship means relationships in which an APS worker assumes one or more</p>	<p>NAPSA agrees with this proposed definition.</p>

Citation	Title	Proposed Rule Language	Comment
		<p>professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.</p>	
		<p>Emergency Protective Action means emergency use of APS funds to purchase goods or services, immediate access to petitioning the court for temporary or emergency orders, and emergency out-of-home placement.</p>	<p>NAPSA agrees APS should have the ability to access emergency services and goods. We recommend clarification regarding the emergency out-of-home placement, APS authority, adherence with client self-determination, and least restrictive alternatives. Additionally, any requirement regarding access to the courts should be accompanied by federal regulations requiring those courts to grant APS access.</p>
		<p>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.</p>	<p>NAPSA agrees with this proposed definition. We would like to note that a more accurate term to use may be “financial exploitation.” Many states use the term exploitation that includes exploitation of the adult themselves.</p>
		<p>Inconclusive means a determination that there was not sufficient evidence obtained during an APS investigation for APS to conclude whether adult maltreatment occurred.</p>	<p>NAPSA recommends revising the definition of “inconclusive” to align with the definitions of substantiated and unsubstantiated in regard to meeting state law or agency policy.</p> <p>Recommend: “Inconclusive means APS has made a determination that there was not sufficient evidence obtained during an APS investigation for APS to conclude</p>

Citation	Title	Proposed Rule Language	Comment
			whether adult maltreatment, which meets state law or policy, has occurred.”
		Intake or pre-screening means the APS process of receiving allegations of adult maltreatment and gathering information on the reports, the alleged victim, and the alleged perpetrator.	NAPSA agrees with this proposed definition.
		Investigation means the process by which APS examines and gathers information about an allegation of adult maltreatment to determine if the circumstances of the allegation meet the States’s standards of evidence for a finding of a substantiated, unsubstantiated, or inconclusive allegation.	<p>NAPSA recommends revising the definition to acknowledge that an investigation may cover multiple allegations, may discover further allegations, and includes other information gathering.</p> <p>Recommend: Investigation means the process by which APS examines and gathers information about an allegation of adult maltreatment a report of possible maltreatment to determine if the circumstances of the allegation meet the States’s standards of evidence for a finding of a substantiated, unsubstantiated, or inconclusive allegation.”</p>
		Mandated Reporter means someone who is required by State law to report suspected adult maltreatment to APS.	NAPSA agrees with this proposed definition.
		Neglect means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an adult.	NAPSA recommends providing clarity on the terms “caregiver” and “fiduciary.” States have noted that responsibilities vary, and some forms of fiduciary may only be legally responsible for certain areas of care (e.g., financial, medical).

Citation	Title	Proposed Rule Language	Comment
		Perpetrator means the person determined by APS to be responsible for one or more instances of adult maltreatment for one or more victims.	NAPSA agrees with this proposed definition.
		Post-investigation Services means the activities undertaken by APS in support of a client after a finding on an allegation of adult maltreatment has been made.	NAPSA recommends acknowledgement that services may occur during the investigation as well. Services particularly focused on safety are often offered as early as the opening of the case.
		Quality assurance means the process by which APS programs ensure investigations meet or exceed established standards, and includes:	NAPSA agrees with this proposed definition.
		(1) Thorough documentation of all investigation and case management activities;	NAPSA agrees with this proposed definition.
		(2) Review and approval of case closure; and	NAPSA agrees with this proposed definition.
		(3) Conducting a case review process.	NAPSA agrees with this proposed definition.
		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	NAPSA agrees with this proposed definition.

Citation	Title	Proposed Rule Language	Comment
		by APS, or if the report should be referred to a service or program other than APS.	
		Self-neglect means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:	NAPSA agrees with this proposed definition.
		(1) Obtaining essential food, clothing, shelter, and medical care;	NAPSA agrees with this proposed definition.
		(2) Obtaining goods and services necessary to maintain physical health, mental health, or general safety, or;	NAPSA agrees with this proposed definition.
		(3) Managing one’s own financial affairs.	NAPSA agrees with this proposed definition.
		Sexual abuse means the forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an adult.	NAPSA recommends expanding the definition to encompass situations in which the abuser takes advantage of a victim’s lack of capacity to consent, or the power imbalance present to get the adult to agree to unwanted sexual contact.
		State entity means the unit of State, District of Columbia, or U.S. Territorial Government designated as responsible for APS programs, including through the establishment and enforcement of policies and procedures, and that receives Federal	As noted previously, NAPSA recommends acknowledgement of states where there are two state APS entities – a program serving older adults and a program serving younger adults with disabilities. We recommend inclusion of a process for handling such situations that does not give preference to one over the other.

Citation	Title	Proposed Rule Language	Comment
		grant funding from ACL under section 2042(b) of the EJA, 42 U.S.C. 1397m-1(b).	
		Substantiated means APS has made an investigation disposition that the allegation of maltreatment meets state law or agency policy for concluding that the adult was maltreated.	<p>NAPSA recommends revising to acknowledge that the investigation may have gone further than the allegation and other maltreatment identified.</p> <p>Recommend: “Substantiated means APS has made an investigation disposition that maltreatment, which meets state law or policy, has occurred.”</p>
		Trust relationship means the rational expectation or belief that a relative, friend, caregiver, or other person with whom a relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult’s care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.	<p>As noted previously, NAPSA recommends the removal of the requirement of a trust relationship. A majority of states have noted this would require a change in statute as well.</p> <p>NAPSA recommends against use of “social convention” as it is a subjective belief with no legally recognized or actionable relationship and varies based on the individual served.</p>
		Unsubstantiated means that APS has made an investigation disposition that the allegation of maltreatment does not meet State law or agency policy for	<p>NAPSA recommends revising to acknowledge that the investigation may have gone further than the allegation and other maltreatment identified.</p> <p>Recommend: “Unsubstantiated means that APS has made an investigation disposition that maltreatment does</p>

Citation	Title	Proposed Rule Language	Comment
		concluding that the adult was maltreated.	not meet State law or agency policy for concluding that the adult was maltreated.”
		Victim means an adult who has experienced adult maltreatment.	NAPSA notes that the term victim is moving out of usage in the APS field. Additionally, it is not appropriate for self-neglect cases. NAPSA recommends using the term “client” or “adult” in general awareness efforts.

Section 1324.402 – Program Administration

NAPSA supports efforts to create national consistency and effective administration of programs. However, NAPSA recommends that any APS regulations promulgated recognize the constraints facing APS programs given limited funding. In a survey of members, the majority noted that proposed program administration regulations would require significant effort and often require statutory and other policy changes. NAPSA provides the following comments and recommendations on this section.

ACL Request for Comment: ACL seeks comment on whether there should be a mandatory requirement for investigation based on the definitions of abuse, neglect, exploitation, sexual abuse, and self-neglect.

NAPSA supports the proposed mandatory requirement for investigation based on the proposed definitions with accompanying clarification that division of investigative responsibilities between APS systems and law enforcement is allowable. This division is appropriate for such instances as sexual abuse where APS fulfills a social service role while law enforcement investigates. Avoiding repeat investigation also reduces trauma for the client.

ACL Request for Comment: ACL seeks comments on whether staff to client ratios are feasible for APS programs and whether required workload studies would assist in development of appropriate ratios.

NAPSA recommends removing proposed regulations to require staff to client ratios. Without appropriate research and funding, inclusion of staff to client ratios cannot be implemented in a responsible and beneficial way. NAPSA members noted an appropriate ratio varies based on factors such as geography of the state, complexity of different cases and maltreatment types, and other uncontrollable factors such as personnel. Efforts would require in-depth studies and require a costly undertaking. Further, justification for staff to client ratios in the preamble cites research conducted in hospitals and nursing homes, significantly different environments and contexts from APS. NAPSA recommends regulations be based on APS-based research. NAPSA recommends continued research on workload and ratios by federal resource centers and others for future consideration.

NAPSA provides the following commentary and recommendations on the regulations proposed by ACL around program administration.

Citation	Title	Proposed Rule Language	Comment
1324.402	Program Administration	(a) 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:	NAPs recommend using the term “state entity (entities).”
		(1) Incorporate principles of person directed services and planning and reliance on least restrictive alternatives, as well as other policies identified by the Assistant Secretary for Aging;	NAPSA strongly supports the inclusion of principles of person directed services and reliance on least restrictive alternatives. Client’s right to self-determination to the fullest extent possible is a key guideline for NAPSA and APS programs.
		(2) Define the populations eligible for APS services;	NAPSA agrees with allowing states to use flexibility in definitions of eligibility.
		(3) Define the settings, locations, and types of alleged perpetrator for each adult maltreatment type that are subject to APS investigations in the State;	NAPSA agrees with this proposed regulation.
		(4) Define processes for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment	NAPSA supports the requirement to define processes but notes the proposed two-tiered response system is of significant concern to APS agencies. NAPSA members note that implementing this structure would require a change in statute and that the ACL associated cost estimate is significantly underestimated.

Citation	Title	Proposed Rule Language	Comment
		consistent with §1324.403, including:	
		(i) Creation of at least a two-tiered response system for initial contact with the alleged victim based on risk of death, irreparable harm, or significant loss of income, assets, or resources.	
		(A) For immediate risk, response should occur in person no later than twenty-four hours after receiving a report of adult maltreatment.	<p>NAPSA recommends revising the immediate risk proposal. Members note this would be both time- and cost-prohibitive to conduct an in-person visit within twenty-four hours, particularly in states needing significant travel hours due to large geographic distances, urban travel complexities and other factors.</p> <p>Establishing such a system also requires significant initial and ongoing costs. When surveying its APS membership NAPSA found the majority believes the APS cost estimate provided was lower than what actual costs would be. Without funding support this provision would be difficult to implement and sustain.</p> <p>NAPSA members, as well as the Notice for Proposed Rulemaking, note that APS does not serve as emergency services. Requiring a face-to-face visit within 24 hours may result in a visit with little to offer in the way of promoting safety and meeting needs when the visit happens in non-business hours. In these cases, emergency services are likely to be the more immediate responder. NAPSA recommends revising the proposal with input from the states and considering a one business day response timeline.</p>

Citation	Title	Proposed Rule Language	Comment
		(B) For non-immediate risk, response should occur no more than seven calendar days after report of adult maltreatment is received.	NAPSA recommends including a requirement for a face-to-face visit as noted in the immediate risk category.
		(5) Define investigation and post investigation procedures, as identified in § 1324.403.	NAPSA agrees with this proposed regulation.
		(b) At first contact APS systems shall provide to potential APS clients an explanation of their rights, including:	<p>NAPSA supports clients’ rights to confidentiality and self-determination but the proposed regulation as it stands is problematic . NAPSA members note that requiring notification of rights at the initial contact could harm crucial rapport building and process. Further, as written, the proposal assumes the client has capacity. NAPSA must also emphasis APS programs’ concerns that leaving brochures creates challenges in facilitating the safety of clients and APS workers. Generally, APS attempts to leave no materials or other indications of a visit, particularly if the alleged perpetrator lives in the client’s home.</p> <p>NAPSA agrees with the need to make APS clients aware of their rights.</p>
		(1) The right under State law to confidentiality of personal information;	NAPSA agrees with this proposed regulation.
		(2) The right under State law to refuse to speak to APS;	NAPSA agrees with this proposed regulation.
		(3) The right under State law to refuse APS services, and;	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		(4) Such other explanations of rights as determined by the Assistant Secretary for Aging.	NAPSA agrees with this proposed regulation.
		(c) Information shall be provided in a format and language understandable by the individual, and in alternative formats as needed.	NAPSA strongly agrees with the need to make APS products and services fully accessible.
		(d) The State entity shall establish policies and procedures for the staffing of APS systems that include:	NAPSA agrees with this proposed regulation.
		(1) Staff training and on-going education, including training on conflicts of interest;	NAPSA agrees with the requirement of ongoing training. We note the APS National Adult Protective Services Training Center contains a significant amount of training modules with more in the works. NAPSA recommends continued engagement of this resource.
		(2) Staff supervision, and;	NAPSA agrees with this proposed regulation.
		(3) Staff to client ratios.	As noted above, NAPSA recommends strongly to not include staff to client ratios.
		(e) The State entity shall establish such other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging.	NAPSA agrees with this proposed regulation.

Section 1324.403 – Investigation and Post-Investigation Services

NAPSA supports outlining standards for investigation and post-investigation services.

ACL Request for Comment: ACL seeks comment on whether all necessary activities for investigation and post-investigation services are included in the proposed rules.

The proposed rule implies that APS service delivery occurs after the investigation both through the proposed definition of post-investigation services and exclusively authorizing limited emergency services during the course of the investigation. This implication is often contrary to APS practice and creates a void in social service responsibility to clients who may have immediate needs. Provision of services to meet those immediate needs may prevent emergency needs later. **NAPSA recommends revising Section 1324.403(e) to read: “Provision of APS services during the course of and post investigation, as appropriate ...”** This recommendation grants APS programs necessary discretion.

NAPSA provides the following commentary and recommendations on the regulations proposed by ACL in regard to investigation and post-investigation services. Many of these proposed regulations are already in place in states’ APS systems or would require minimal effort.

Citation	Title	Proposed Rule Language	Comment
1324.403	Investigation and post-investigation services.	The State entity shall adopt standardized and systematic policies and procedures for APS investigation and post-investigation activities across and within the State including, at a minimum:	NAPSA agrees with efforts to promote standardized policies and procedures in this area.
		(a) Screening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment reports for APS investigation, and to report to other authorities;	NAPSA agrees with this proposed regulation.
		(b) Tools and/or decision-making processes for APS to review reports of adult maltreatment for any emergency needs of	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		the adult and for immediate safety and risk factors affecting the adult or APS worker when responding to the report and;	
		(c) Practices during investigations to collect information and evidence to inform allegation disposition and service planning that will:	NAPSA agrees with this proposed regulation.
		(1) Recognize acceptance of APS services is voluntary, except where limited by State law;	NAPSA agrees with this proposed regulation and recommends notice that services are voluntary unless adjudicated otherwise.
		(2) Ensure safety of APS client and worker;	NAPSA agrees with efforts to ensure safety of worker and client and promotes safety training for APS workers.
		(3) Ensure the preservation of an adult's rights;	NAPSA agrees with this proposed regulation.
		(4) Integrate principles of person directedness and trauma-informed approaches;	NAPSA agrees with this proposed regulation.
		(5) Maximize engagement with the APS client, and;	NAPSA agrees with this proposed regulation.
		(6) Permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		wellbeing of the client from self-harm or harm from others.	
		(d) Methods to make determinations on allegations and record case findings, including:	NAPSA agrees with this proposed regulation.
		(1) Ability for APS programs to consult with appropriate experts, other team members, and supervisors;	NAPSA agrees with this proposed regulation.
		(2) Protocols for the standards of evidence APS should apply when making a determination on allegations.	NAPSA agrees with this proposed regulation.
		(e) Provision of APS post investigation services, as appropriate, that:	Per comments above, NAPSA recommends adding “during the course of” to read, “Provision of APS services during the course of and post investigation, as appropriate ...”
		(1) Respect the autonomy and authority of clients to make their own life choices;	NAPSA strongly agrees with these principles.
		(2) Respect the client’s views about safety, quality of life, and success;	NAPSA agrees with this proposed regulation.
		(3) Hold perpetrators accountable for the adult maltreatment and for stopping the abusive behavior;	NAPSA recommends removing this section regarding holding perpetrators accountable. This proposed regulation implies that APS has the law enforcement ability to hold perpetrators accountable and may create unrealistic expectations for APS clients and other

Citation	Title	Proposed Rule Language	Comment
			stakeholders. Additionally, APS clients may make decisions contrary to this provision and that is out of the control of APS. As an example, a client may choose to continue to support an exploitive family member despite APS recommendations.
		(4) Develop any service plan or referrals in consultation and agreement with the client;	NAPSA agrees that the client should be at the center of service planning and other efforts.
		(5) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;	NAPSA agrees with this proposed regulation.
		(6) Monitor the status of client and services, and the impact of services.	NAPSA agrees with this proposed regulation. We recommend clarity and guidance to states on what constitutes monitoring and measuring impact. Impact and outcomes are particularly hard to measure in APS and we recommend building on previous studies.
		(f) Case handling criteria that:	NAPSA agrees with this proposed regulation.
		(1) Establish timeframes for on-going review of open cases;	NAPSA agrees with this proposed regulation.
		(2) Establish length of time by which investigations should be completed, and determinations be made; and	NAPSA agrees with the allowance for extension. Certain cases, particularly financial exploitation, frequently go beyond required timelines. A process of providing extension and ongoing review should be included.
		(3) Documents, at a minimum:	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		(i) The APS interventions and services delivered;	NAPSA agrees with this proposed regulation.
		(ii) Significant changes in client status;	NAPSA agrees with this proposed regulation.
		(iii) Assessment of the outcome and efficacy of intervention and services;	NAPSA agrees with this proposed regulation. As noted previously, we recommend clarity and guidance to states on measuring impact. Impact and outcomes are particularly hard to measure in APS and we recommend building on previous studies.
		(iv) Assessment of safety and risk at case closure; and	NAPSA agrees with this proposed regulation.
		(v) The reason or decision to close the case.	NAPSA agrees with this proposed regulation.

Section 1324.404 – Conflict of Interest

NAPSA agrees that clear regulations and policies addressing conflicts of interest are essential to APS given the sensitivity of cases, program integrity and adults’ wishes.

ACL Request for Comment: ACL seeks input on whether its proposal permitting dual relationships only when unavoidable reflects the universe of actual and potential conflicts of interest and the programmatic or administrative burden placed on APS systems.

NAPSA supports efforts to prevent and address conflicts of interest and dual relationships. NAPSA would like to note that some local agencies may have a challenge with the proposed regulation due to size of the program, ruralness of the location, and APS staff working in multiple programs. While this does not preclude the need to address dual relationships and conflicts of interest it does provide an added burden to consider.

Citation	Title	Proposed Rule Language	Comment
1324.404	Conflict of interest.	The State entity shall establish standardized policies and procedures to avoid both actual and	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		perceived conflicts of interest for APS. Such policies and procedures must include mechanisms to identify, remove, and remedy any existing conflicts of interest at organizational and individual levels, including to:	
		(a) Ensure that employees and agents engaged in any part of an APS investigation do not also provide direct services to, or oversee the direct provision of services, to the client;	NAPSA recommends clarification that this does not apply to APS services which an APS worker may oversee while also conducting an APS investigation.
		(b) Ensure that employees and agents administering APS programs do not have a personal financial interest in an entity to which an APS program they refer clients to services recommended by the APS program;	NAPSA agrees with this proposed regulation.
		(c) Ensure that no APS employee or agent, or member of an employee or agent's immediate family, is subject to conflict of interest;	NAPSA agrees with this proposed regulation.
		(d) Prohibit dual relationships unless unavoidable and ensure appropriate	NAPSA agrees with the proposed regulation but would like to note the burden challenge cited above.

Citation	Title	Proposed Rule Language	Comment
		safeguards are established should such relationships occur;	
		(e) Establish robust monitoring and oversight, to identify conflict of interest, and;	NAPSA agrees with this proposed regulation.
		(f) Remove and remedy actual, perceived, or potential conflicts that arise.	NAPSA agrees with this proposed regulation.

Section 1324.405 – Accepting Reports

Accepting reports is the core first step in APS. NAPSA supports consistency and effectiveness. NAPSA supports a 24-hour system and requests clarity on whether the receiving of reports can be shared with others, such as a late-night call which may be routed to law enforcement.

ACL Request for Comment: ACL welcomes comment on the costs and benefits of requiring a timeline for responding to mandatory reporters. ACL invites comments on the type of information that might be returned to mandatory reporters after a report of maltreatment is submitted. ACL would like comments on the potential administrative burdens to APS programs, client confidentiality, and privacy conflicts that may arise from such requirements.

NAPSA supports the mandatory reporter feedback loop with request for clarifications. NAPSA members note that the implementation costs are significantly higher than what ACL has proposed, particularly depending on how the state defines mandatory reporters. NAPSA members also note concern that the broad language of the proposed regulation will create unintended consequences such as violation of client’s confidentiality, misunderstanding of APS process by non-professional reporters, or dissemination of information to alleged perpetrators. **We recommend ACL include explicit language in the regulation to clarify that any information shared to mandated reporters must comply with state confidentiality laws regardless of the minimum standard in the rule. We recommend feedback be limited to only procedural feedback, such as if a case has been opened.**

While the preamble language categorizes the general public and professionals as separate classes of reporters this is not clear in the proposed regulation and does not align with a number of state statutes. Sixteen states have universal mandatory reporting with no delineation between public and professional reporters. This creates both an additional cost and concern about feedback that unintentionally harms a client. **We ask for clarification on whether ACL intends to require feedback to all mandatory reporters,**

both general public and professionals, or only professional categories of mandated reporting statutes. NAPSA recommends ACL narrow the scope of those authorized to receive feedback on a case to mandated reporters who are professionals and making a report in their professional capacity.

Citation	Title	Proposed Rule Language	Comment
1324.405	Accepting reports.	(a) The State entity shall establish standardized policies and procedures for receiving reports of adult maltreatment 24 hours per day, 7 calendar days per week, using multiple methods of reporting to ensure accessibility.	NAPSA supports recommendations to have an accessible system for reporting to avoid ignoring a significant portion of the population.
		(b) The State entity shall establish standardized policies and procedures for APS to accept reports of alleged adult maltreatment by mandatory reporters that:	NAPSA agrees with establishing standardization. We would like to note that definitions of mandatory reporters differ greatly across states. One state has no mandatory reporters while several states decree that everyone is a mandated reporter.
		(1) Shares information regarding a report to APS with the mandated reporter which shall include, at a minimum:	NAPSA recommends ACL narrow the scope of those authorized to receive feedback on a case to mandated reporters who are professionals. NAPSA recommends ACL include explicit language in the regulation to clarify that any information sharing to mandated reporters must comply with state confidentiality laws regardless of the minimum standard in the rule.
		(i) Whether a case has been opened as a result of the report, and;	NAPSA recommends feedback be limited to only procedural feedback, such as if a case has been opened.
		(ii) The disposition or finding of the	We recommend feedback be limited to only procedural feedback, such as if a case has been opened.

Citation	Title	Proposed Rule Language	Comment
		allegation in the report.	
		(c) The State entity shall establish and adhere to standardized policies and procedures to maintain the confidentiality of reporters and information provided in a report.	NAPSA agrees with this proposed regulation.

Section 1324.406 – Coordination with Other Entities

NAPSA strongly supports coordination with other entities whether in direct partnership or as part of multi-disciplinary teams. We encourage coordination at all levels, from the local to the federal.

ACL Request for Comment: ACL seeks examples of where coordination is working and where barriers to coordination exist.

NAPSA members note that coordination can be a challenge when the non-APS entity is not actively supportive. Additional support from other federal agencies, such as Department of Justice with law enforcement or Housing and Urban Development with housing, would be useful.

Citation	Title	Proposed Rule Language	Comment
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 with other appropriate entities, including but not limited to:	NAPSA agrees with the need to promote coordination in a multitude of areas. We note that coordination can be difficult and time-consuming. Additionally, coordination is not a one-way street and therefore does not rely solely on APS but on other entities as well. NAPSA members noted the cost noted is an underestimate.
		(1) Other APS programs in the state, when authority over	NAPSA agrees and recommends this include tribal APS programs.

Citation	Title	Proposed Rule Language	Comment
		APS is divided between different jurisdictions or agencies;	
		(2) Other governmental agencies that investigate allegations of adult maltreatment, including, but not limited to, the State Medicaid agency, State nursing home licensing and certification, State department of health and licensing and certification, and tribal governments;	NAPSA recommends the addition of financial regulators.
		(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, and Federal law enforcement agencies;	NAPSA agrees with this proposed regulation.
		(4) Organizations with authority to advocate on behalf of individuals who experienced the alleged adult maltreatment, such as the State Long-Term Care Ombudsman Program and/or investigate allegations of adult maltreatment	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		such as the Protection and Advocacy Systems;	
		(5) Emergency management systems, and;	NAPSA agrees with this proposed regulation.
		(6) Banking and financial institutions.	<p>NAPSA recommends clarifying the range of institutions the proposed regulation refers to, to include banks, broker-dealers, investment advisors, commodity traders, credit unions, insurance companies, mutual fund companies, transfer agents, and others.</p> <p>NAPSA recommends including guidance that APS should establish policies and protocols for sharing information with financial institutions who submit reports as part of their professional work.</p>
		(b) Policies and procedures must, at a minimum:	NAPSA agrees with this proposed regulation.
		(1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment during all stages of an adult maltreatment investigation conducted by APS or by other agencies and organizations with authority and jurisdiction to investigate reports of adult maltreatment;	NAPSA agrees with this proposed regulation.
		(2) Address information sharing on the status and resolution of	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		investigations between the APS system and other entities responsible in the state or other jurisdiction for investigation, to the extent permissible under applicable State law, and;	
		(3) Allow for the establishment of memoranda of understanding, where appropriate, to facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency adult maltreatment teams, co-location of staff within appropriate agencies, and other activities as determined by the State entity.	NAPSA agrees with this proposed regulation.

Section 1324.407 – APS Program Performance

NAPSA supports efforts to ensure APS performance and build data collection. NAPSA members note concern over cost and burden particularly if systems must be expanded.

Citation	Title	Proposed Rule Language	Comment
1324.407	APS program performance.	The State entity shall develop policies and procedures for APS for the collection and maintenance of data	NAPSA recommends retaining current systems for ease of use and reduction in burden and cost.

		on investigations conducted by APS systems. They shall:	
		(a) Collect and report annually to ACL such APS system-wide data as required by the Assistant Secretary for Aging.	NAPSA agrees with this proposed regulation.
		(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.	NAPSA agrees with this proposed regulation.

Section 1324.408 – State Plans

ACL Request for Comment: ACL seeks comment on their proposal for the development of State plans and ACL oversight and monitoring of the State plans.

NAPSA has heard significant concern from state APS agencies regarding the state plan process and lack of clarity. ACL’s estimate on the time to write and approve state plans is significantly underestimated. Based on their experience with Older Americans Act state plans, many states do not feel they have this capacity. States have indicated operational plans faced significant burdens and an expanded state plan would be more challenging. **NAPSA recommends ACL limit the number of prescriptive requirements and provide sufficient technical assistance.**

As noted earlier, several states have two state level agencies based on population. Previous federal funding flowed only to the aging component with no requirement to pass on an appropriate amount of funding to the disability component causing delays and difficulties in addressing their population. This decision is not only contrary to statute but relegates disability programs to a lower level in the hierarchy. NAPSA recommends that ACL recognize in regulations that not all states have one APS state level entity and state may have more than one state plan-based structure. NAPSA urges ACL to work across all operating divisions on this issue.

ACL Request for Comment: ACL requests comment on the cost and benefit estimates of the proposed rule, including the impacts that may not be quantified in the rule. ACL estimates the proposed rule would cost \$3,532,916.99 to fully implement.

Reflecting consensus among states’ APS programs, NAPSA strongly disagrees with ACL’s estimated costs of implementation. In all areas where cost is cited members have noted the ACL provided cost is an

underestimate. Costs also exceed the labor to develop plans and policies and go through full state approval processes. ACL also does not provide estimates for ongoing costs such as response system implementation and record retention.

A significant number of states have indicated that they may decline federal formula grant funding as they do not believe the current minimal level of APS formula grant funding is sufficient to warrant the proposed regulations.

We encourage ACL to consider submitted comments, giving the greatest weight to comments submitted by state and local APS programs, and reflect on its timeline and funding availability.

Citation	Title	Proposed Rule Language	Comment
1324.408	State plans.	(a) State entities must develop and submit to the Director of the Office of Elder Justice and Adult Protective Services, the position designated by 42 U.S.C. 3011(e)(1), a State APS plan that meets the requirements set forth by the Deputy Assistant Secretary for Aging.	NAPSA recommends greater clarity regarding what the state plan consists of. Currently the state plan is estimated to be a significant undertaking.
		(b) The State plan shall be developed by the State entity in collaboration with APS programs.	As previously noted, ACL must consider states where there are two state level APS programs. States should be allowed to submit two plans and be granted formula funds in their own right.
		(c) The State plan shall be updated at least every five years but as frequently as every three years.	NAPSA agrees with this proposed regulation.
		(d) The State plan shall contain an assurance that all policies and procedures described	NAPSA agrees with this proposed regulation.

Citation	Title	Proposed Rule Language	Comment
		<p>herein will be developed and adhered to by the State APS system;</p>	
		<p>(e) State plans will be reviewed and approved by the Director of the Office of Elder Justice and Adult Protective Services. Any State dissatisfied with the final decision of the Director of the Office of Elder Justice and Adult Protective Services may appeal to the Deputy Assistant Secretary for Aging within 30 calendar days of 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. If the State is dissatisfied with the final decision of the Deputy Assistant Secretary for Aging, it may appeal to the Assistant Secretary for Aging within 30 calendar days of the date of the Deputy Assistant Secretary for Aging's decision.</p>	<p>NAPSA agrees with this proposed regulation.</p>

Statutory Authority Concerns

NAPSA would like to note a concern raised as to the statutory authority used to promulgate these regulations. ACL notes authority under both the Elder Justice Act (EJA) (42 USC 1397m-1(a)) and the Older Americans Act (OAA) (42 USC 3011(e)(3)) to implement these proposed regulations. We would like to note that the OAA authority is only applicable to those 60 and older and may not legally bind APS systems not serving older adults. We would like any initial regulations for APS to start on the strongest foundation possible and are concerned this approach may create vulnerabilities. Considering the Administration for Community Living contains both the Administration on Aging and the Administration on Disabilities we encourage review and agency wide collaboration to best serve older adults and people with disabilities.

Suggested Re-Proposal of Rulemaking

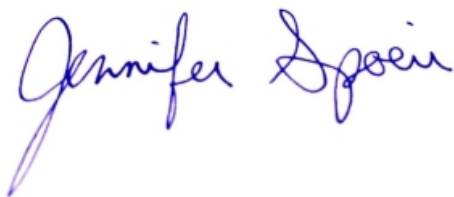
Given the historic nature of this rulemaking, the great variation of APS programs across the country, and the intricacies of the various government structures within these programs operate – as well as the ratio of estimated compliance costs to the limited resources available to be granted to state entities – NAPSA asks ACL to consider re-proposing the rulemaking after the current notice and comment period closes and amendments are made to the proposal.

Final Thoughts

NAPSA reiterates our support and appreciation of ACL's work to support APS both in this regulatory framework and the general work of the administration. We would like to emphasize that any regulatory structure must reflect sufficient federal funding in order to be successful and not pose an undue burden on or pose an unfunded mandate on state and local governments.

We look forward to continued collaboration and discussion with the Administration on Community Living in order to continue to foster a stronger APS system across the country. If you have any questions regarding NAPSA's formal comments in response to the NPRM, please feel free to contact William Benson (bill.benson@napsa-now.org) and Kendra Kuehn (kendra.kuehn@napsa-now.org).

Sincerely,



Jennifer Spoeri
Executive Director
National Adult Protective Services Association