

Submitted electronically via regulations.gov

November 13, 2023

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

RE: Notice of Proposed Rule Making RIN Number 0985-AA18  
Modification of the Implementing Regulations of the Older Americans Act of 1965 (“the Act” or OAA) to add a new subpart (Subpart D) related to Adult Protective Services (APS)

Dear Ms. Whittier Eliason:

The Michigan Long Term Care Ombudsman Program advocates for over 104,000 residents living in long term care facilities across the state. Through a network of twenty paid ombudsmen and ten volunteers, we strive to improve the quality of care and quality of life for these residents. We work to educate residents, their chosen family members, facility staff, and the public to identify, report, and most importantly, prevent abuse, neglect, and exploitation (A/N/E). Reports of suspected or alleged A/N/E receive top priority for investigation and case resolution by our ombudsmen. We often coordinate with local Adult Protective Services staff in our A/N/E work and collaborate on abuse prevention opportunities at the state and local levels.

We appreciate the extensive research, stakeholder input, and careful consideration given to the proposed Adult Protective Services regulations by the Administration on Community Living. They are comprehensive and will provide a way for states to better unify their APS systems in a more consistent manner. Ensuring that there is consistency and quality of services at both the federal and state level is appreciated.

We fully support the proposal that the definition of “adult” be determined at the state level. Given the diverse ways states identify their residents who may be served by APS, it is critical that this new proposal ensures maximum state level flexibility of applicability. Without this flexibility, many states may be faced with conflicts between existing state law or statute and the new federal regulation and could experience delayed implementation due to needed legislative changes or service capacity concerns due to staffing and/or funding limitations.

We strongly recommend removing “trust relationship” within the definition for Adult Maltreatment. This definition leaves out individuals who may be experiencing A/N/E at the hands of someone with whom they are not in a trusted relationship. These individuals would also need and be entitled to services provided by APS staff.

We support the requirement that policies and procedures for receiving and responding to reports be “person directed.” Long Term Care Ombudsman services are driven by the resident and action is only taken with consent from the resident or the resident’s responsible party, if necessary. Based on our experience, we appreciate the language to allow the individual subject to the alleged A/N/E to maintain control to have more impact on the outcomes. Respecting and prioritizing the individual at the heart of APS work is paramount and will better ensure the best outcomes for the individual are reached.

As an advocacy program, we appreciate the limited role of APS staff which is not that of an emergency response agency. We support an intake system that would allow for 24/7/365 day online intake with indication that response time from APS staff is limited to general operating hours specific to each state APS program. Emergent situations involving A/N/E should be reported to local law enforcement as any other alleged criminal activity.

We recommend updating the requirement for informing of rights. The timing of this requirement interferes with establishing rapport at a critical time when trust needs to be developed between the APS staff and the individual subject to A/N/E. Rather, we recommend a more general standard that APS staff are trained in client rights and how to explain them in simple language at an appropriate reading level, and that a brochure can be left at the end of the initial visit.

We recommend that the rule identify standards that allow each state to customize how they reach implementation of each goal. State plan assurances could be used to describe how the state meets each standard based on their unique culture and circumstances. For example, we would suggest that ACL accept the state’s definition of abuse so long as it meets ACL’s minimum requirements. States would provide assurances via the State Plan to meet the definition.

We support the requirement for the development of policies and procedures to address coordination and sharing of information to facilitate investigations with other entities, such as state long-term care ombudsman. We understand that these policies and procedures must be consistent with state law, and we would also recommend that they be developed consistent with federal ombudsman program regulations found at 45 CFR 1324.11(e)(3) to address long term care ombudsman program requirements for confidentiality and disclosure. This will help ensure consistency across the nation for information sharing and coordination.

We share ACL's desire to see more effective and holistic coordination and response that will maximize the resources of APS systems, improve investigation capacity, ensure post-investigation services are effective, and help prevent future A/N/E. We hope the comments we have provided are helpful to ACL as you work to finalize the APS regulations. Thank you for the opportunity to comment on these important and needed proposed rules.

Sincerely,

*Salli A. Pung*

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State Long Term Care Ombudsman