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November 13, 2023

Alison Barkoff
Acting ACL Administrator and Assistant Secretary for Aging
Administration for Community Living
330 C St. NW
Washington, DC 20201
Submitted electronically via: www.regulations.gov

RE: RIN Number 0985-AA18
Dear Acting Assistant Secretary Barkoff:

On behalf of ADvancing States, I am writing to you in response to the [Adult Protective Services Functions and Grant Programs Notice of Proposed Rulemaking](#) (RIN Number 0985-AA18) (hereinafter proposed rule or proposed regulation). ADvancing States is a nonpartisan association of state government agencies that represents the nation's 56 state and territorial agencies on aging and disabilities and long-term services and supports directors. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services (HCBS) for older adults and persons with disabilities. Our members administer services and supports for older adults and people with disabilities, including overseeing Adult Protective Services (APS) programs and services. Together with our members, we work to design, improve, and sustain state systems delivering long-term services and supports (LTSS) for people who are older or have a disability and their caregivers.

The proposed rule reflects important priorities for state APS systems. ADvancing States strongly supports the intent of the proposed rule to take a comprehensive approach to improving quality and consistency across APS systems nationwide in a person-centered manner. We believe the topics and focus areas addressed in the proposed rule – developing uniform terminology, adopting systemic investigation services policies, remedying and preventing conflicts of interest, codifying reporting measures and data collection – are the most important areas of focus for strengthening APS systems.

However, the broad scope of the proposed rule will place a significant burden on state APS systems to implement given the limited amount of federal funding available. States have also highlighted specific proposed requirements in the rule as particularly challenging, reporting that they may decline federal funding if the following proposed provisions are finalized:

- The limitation in the definition of adult maltreatment to maltreatment that occurs in the context of a trust relationship.
- Requiring APS systems, without assistance from law enforcement entities, to respond to immediate risk reports within 24 hours and accept new reports 24 hours per day, seven days per week.
- Mandating APS systems establish staff-to-client ratios.

In order to successfully implement the proposed rule and achieve the intended outcomes, state APS systems will need sufficient time for planning and implementation, as well as guidance and technical assistance from the Administration for Community Living (ACL). We encourage ACL to consider the need for flexibility for state APS systems to implement these requirements in a way that best fits their unique program structures and processes while abiding with the proposed rule.

General Comments

State APS systems strongly support the overarching goals and objectives of the proposed rule; however, states have expressed concerns related to cost and funding, operational burden to implement the proposed rule, and the limited integration of person-centered principles in the rule.

Please note that, following this General Comments section, we have organized our comments chronologically by section of the rule and specific requests for comment made by ACL.

Cost and Funding

Our members have emphasized that the projected costs to state APS systems included in the proposed rule significantly underestimate the actual costs they would incur to implement these requirements. States identified developing a state plan, establishing staff-to-client ratios, and creating and distributing informative client rights documents in accessible formats as the provisions of the proposed rule with the highest anticipated costs. We recognize annual funding for the formula grants is from recent federal appropriations; however, historically federal appropriations for APS systems have been temporary, causing concerns about long-term funding plans for states. We also have concerns that the anticipated annual federal funding is unlikely to materialize. As of this writing, the House Labor Health and Human Services Subcommittee has proposed to remove federal funding to APS programs for FY 24, cutting the \$15 million that was included in the Consolidated Appropriations Act of 2023. To successfully implement the proposed requirements, state APS systems will likely need to request funding from their legislatures. This is a multi-year process, particularly in states whose legislatures meet biennially. Several states have legislatures that meet biennially, and 19 states have biennial budget processes; for these states, budgets are likely already set for fiscal year (FY) 2025 and new budget development is likely already beginning for FY 2026 and 2027.

States have also raised questions regarding the use of federal funding. State APS systems appreciate ACL's clarification and acknowledgement that the proposed rule requirements would set a minimum floor, allowing states to implement standards that go beyond the minimum requirements proposed in the rule. **States request clarification regarding whether the federal funding is permitted to be used solely to implement provisions of the proposed rule and not on any program functions that go beyond the minimum floor established in the rule.** It is our understanding that states are authorized to use the

federal funding from ACL on any provision included in their state plan and we request confirmation that this interpretation is correct.

Operational Burden

States expressed concerns about the substantial increase in state staff workload that the rule would impose. For example, in addition to developing their state plans, states will have to develop or refine policies and procedures on a host of different issues addressed in the proposed rule.

Furthermore, states are expected to effectively meet the desired outcomes and intent of the proposed rule alongside ongoing work, including implementing requirements of other recently proposed federal regulations (e.g., the Access Rule, OAA Rule, and Discrimination on the Basis of Disability in Health and Human Service Programs or Activities (Section 504) rule). We expect that the operational burden to implement the proposed requirements will exacerbate the strain on state systems that are already stretched thin.

Role of APS Systems

States have expressed concerns that the NPRM mischaracterizes the role of APS systems by focusing heavily on the investigation process. Although APS systems conduct investigations of adult maltreatment allegations, their role is distinct from law enforcement and their investigation process is distinct from the criminal investigation process. APS systems consider themselves social services entities first and foremost, and they are oriented directly to providing person-centered support to the client. APS systems provide support to clients in need throughout the course of an investigation and regardless of the finding(s) of the investigation.

Person-Centered Principles

States overwhelmingly support ACL's efforts to incorporate person-centered principles in the first-ever national regulations for APS. However, states are concerned that the proposed rule does not reflect the person-centered values or practices of APS systems, as the rule (1) primarily focuses on the investigative policies and procedures of APS systems and (2) segments the investigative and service provision roles of APS systems into two distinct, consecutive timeframes in APS cases. In practice, APS systems investigate or provide services according to the best interest of the client, often in a simultaneous or fluctuating manner. **We recommend ACL revise the rule to more clearly reflect the social services and supports functions of APS systems.**

Implementation Timeframe

States will need sufficient time to develop a state plan that satisfies all the prescriptive requirements in the proposed rule. The state policymaking process is complex; it often takes nine months or longer to implement new provider guidance, and well over a year to promulgate new state regulations. After development, the state would require a readiness period before implementation begins. In addition, 30 percent of states rely on counties to operate their programs. Extensive coordination with the county-based systems will be necessary for these states to successfully implement the proposed rule. **We**

recommend ACL finalize an implementation timeframe that goes into effect no sooner than four (4) years after publication of the Final Rule.

Part 1324 – Allotments For Vulnerable Elder Rights Protection Activities

Subpart D – Adult Protective Services Programs

ACL Request for Comment: ACL welcomes comment on the scope and depth of topics proposed for regulatory action and the rationale presented for ACL taking a different approach to the requirements in the regulation than requirements for Child Protective Service (CPS).

ADvancing States agrees with ACL’s rationale to take a different approach for APS systems than for CPS systems, given the differences in size and scope of the programs, as well as the differences in autonomy of the individuals served by the programs. As ACL notes in the preamble of the proposed rule, child welfare programs received approximately \$1.2 billion in federal appropriations for federal fiscal year (FY) 2023, with \$852 million appropriated specifically for child protection. This is in stark contrast to APS, which received its first federal appropriation in FFY23 of only \$15 million for ongoing operations.

As noted above, we believe the scope of the proposed rule extends beyond what is feasible for APS systems to implement. The proposed rule will place a significant burden for state APS systems to implement given the limited amount of federal funding available.

ACL Request for Comment: The proposed standards are a minimum floor. States may impose additional requirements that go beyond these proposed minimum standards. ACL seeks comment on the scope and depth of topics proposed for regulatory action.

ADvancing States appreciates the clarification that the proposed standards are a minimum floor and, as stated above, we believe the topics and focus areas addressed in the proposed rule are the most important areas of focus for strengthening APS systems. **We recommend ACL include explicit language permitting states to implement standards beyond the minimum floor.** Please see our response to ACL’s request for comment on the proposed definition of *adult maltreatment* for our recommended revised language.

ACL Request for Comment: ACL requests comment on deferring to State’s definitions of *adult* for determining eligibility for APS services. ACL aims to mitigate disruptions in other programs and services outside of APS.

ADvancing States supports this approach. We believe deferring to a state’s definition of *adult* for determining eligibility will allow states flexibility to design and operate their APS systems in a manner that best fits the needs of the state’s population and aligns with existing state statutory and eligibility requirements.

§ 1324.401 – Definitions

ADvancing States recognizes the variety of terminology used in APS state statutes across the country and supports efforts to establish consistent foundational terms for APS systems. We understand the proposed rule gives states deference to demonstrate that their existing statutory definitions adequately

cover the requirements in the proposed rule through crosswalks in their state plans. **If our conclusion is inaccurate, and ACL intends to codify uniform definitions nationwide, we recommend ACL provide clarification for states.**

[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.

Adult Maltreatment and Trust Relationship

ADvancing States supports the approach of embedding person-centered principles into the provisions of the proposed rule. To align with this intent, **we recommend *self-neglect* be removed from the definition of *adult maltreatment* if perpetrator remains in the definition**, to avoid the insinuation that there are perpetrators in instances of *self-neglect*. Please see our recommended revisions to the definition of *adult maltreatment* below.

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

However, state APS systems expressed widespread concern regarding the inclusion of a trust relationship condition as a definitional requirement of *adult maltreatment* as it would severely limit case eligibility for APS investigation. States indicated that the proposed definition does not reflect current practices in their systems. In many states, APS is involved in scam and financial exploitation cases, the vast majority of which are perpetrated by strangers via telephone calls or the internet. States have worked diligently with financial institutions to ensure that they recognize and report when financial exploitation is occurring. States are concerned that this new “trust” provision could dampen financial institutions' willingness to partner.

[In FFY 2020, the number of clients who experienced financial exploitation ranked third behind neglect in second and self-neglect in first as the types of maltreatment with the most clients.](#) Across 48 states, the number of clients who experienced neglect only outnumbered those who experienced financial exploitation by 28 clients. States are committed to continuing investigations and service provisions to adults experiencing maltreatment from perpetrators both within and outside of trust relationships. **At least one state expects they will decline federal funding if the trust relationship qualifier is included in the definition of *adult maltreatment* in the final rule.**

We recommend ACL remove trust relationship as a definitional requirement and revise §1324.402 to establish trust relationships as the minimum floor through a programmatic requirement. Application of our recommendation would amend the definition of *adult maltreatment* to read, “self-neglect or abuse, neglect, exploitation, or sexual abuse of an adult...” and the trust relationship requirement would be written into §1324.402 Program Administration by adding a new §1324.402(b):

- “(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.
- (b) The State entity shall ensure APS systems will respond to reports of adult maltreatment of an adult at-risk of harm from a perpetrator with whom they have a trust relationship.”

States have specifically requested ACL add explicit language permitting APS systems to investigate cases where the client and perpetrator are not in a trust relationship. Although ACL acknowledges state APS

systems have discretion to implement standards beyond the minimum floor proposed in the rule, states request definitive permission within the text of the regulation itself. States emphasized that formal permission granted in a provision of the final rule will provide regulatory support in preserving APS funding in future budgetary requests to their state legislatures. In addition to a new §1324.402(b), **we recommend including the explicit permission for states to investigate cases of maltreatment without trust relationships in a new §1324.402(c):**

- “(c) The State entity may develop policies and procedures to respond to reports of adult maltreatment of adults by perpetrators other than those with whom they have a trust relationship, and other such categories of abuse as defined by state law.”
- RE-NUMBER ~~(b)~~ “(d) Such policies and procedures, at a minimum, shall: (continue with the remainder of the section as proposed).”

[ACL Request for Comment: ACL seeks comment on whether the definition of *adult maltreatment* must include vulnerability or another qualifier.](#)

States have expressed concern regarding the inclusion of the *at-risk of harm* or other vulnerability qualifier in the proposed definition of *adult maltreatment*. APS systems note a risk qualifier greatly limits the scope of APS investigations, similar to the aforementioned issues regarding the trust relationship requirement.

States emphasized that the use of *at-risk of harm* or some other vulnerability qualifier implies the adult must face an imminent threat of experiencing maltreatment to be eligible for an APS investigation once they have experienced maltreatment. This qualifier places an additional responsibility on APS systems to determine risk levels of clients prior to their experience of maltreatment or the risk of recurrence after APS intervention. We believe using an *at-risk* qualifier is appropriate when prioritizing APS cases, but not as a determinant for APS eligibility.

Some states believe the proposed definition of *at-risk of harm*, meaning “the possibility that an individual will experience an event, illness, disease, disorder, injury, or other outcome that is adverse or detrimental and undesirable,” does not align with the required elements of *adult maltreatment* and recommend revising the definition in the final rule.

We recommend ACL address state concerns by either removing the definition for *at-risk of harm* entirely or replacing *at-risk of harm* with the term *at-risk of maltreatment*, meaning “the possibility that an individual will experience adult 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.](#)

ADvancing States does not support the proposed trust relationship requirement between a client and perpetrator as a determinant for APS involvement in a case of adult maltreatment. States have significant concerns regarding the limitation a trust relationship condition would place on their APS systems.

As described above, Advancing States recommends revising the definition of *adult maltreatment* to remove this provision and suggests alternative language to be added to §1324.402 Program Administration.

Abuse and Neglect

ACL proposes to define *neglect* as “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.” Several states emphasized the proposed definition does not align with the rule’s intent to establish person-centered principles. Advancing States recommends revising the definition of *neglect* to “the failure of a caregiver or fiduciary to act under their legal responsibility to provide the goods or services that are necessary to maintain the health or safety of an adult.”

We believe this revised definition would respect the autonomy of adult clients by acknowledging caregivers and fiduciaries fulfill an official role. Further, the inclusion of a legal responsibility stipulation aligns the definition of *neglect* with the “legal conventions” language in the proposed definition of *trust relationship*.

States have expressed confusion regarding the proposed definitions of *neglect* and *abuse*, as the proposed definition of *abuse* includes “the knowing deprivation of goods and services.” In order to substantiate an allegation of *abuse*, the perpetrator would have to be knowledgeable of the at-risk adult’s needs and purposefully decide not to meet them. However, knowingly depriving a need for the client also constitutes a failure to provide for that need, so the abuse definition appears to represent a subset of neglect allegations.

States request clarification on whether a perpetrator can be found dually responsible for *abuse* and *neglect* under the same allegation. Further, we believe the proposed definition of *abuse* increases the workload and responsibilities of APS staff to determine the perpetrator’s intentionality. We recommend ACL provide clarification and guidance on how APS staff are expected to differentiate *abuse* and *neglect* and whether perpetrators who knowingly deprive clients of necessary goods and services can be found both abusive and neglectful.

Immediate Risk

Immediate Risk is defined as “the likelihood of death, irreparable harm, or significant loss of income, assets, or resources.” States raised questions specifically regarding the terms *irreparable harm* and *significant loss* used in that definition. States have expressed concerns over the subjectivity of these terms as they are undefined. **We recommend ACL clarify what constitutes *irreparable harm* and *significant loss* to further the intent of the proposed rule to provide consistency across APS systems.**

Terminology

States take issue with use of the term *victim*, which they believe is not person-centered, contradicting the intent of the proposed rule. **We recommend replacing the term *victim* with *adult* or *client*.**

Several terms are used interchangeably throughout the proposed rule, resulting in inconsistency and confusion for states. We noted the following incongruities and request ACL address these in the final rule:

- The term *report* is undefined and is used repeatedly in place of *allegation*, which is defined. States often respond to multiple allegations within a single report. We recommend defining the term *report* as: “a formal account or statement regarding an allegation or multiple allegations of adult maltreatment and the relevant circumstances surrounding the allegation or allegations.”
- The terms *determination*, *finding* and *disposition* are used interchangeably throughout the proposed rule. None of these terms are defined, causing confusion for states regarding how to distinguish between these terms.
- The terms *victim*, *client*, *adult*, and *individual* refer to the same type of person within the rule but are uniquely defined terms.

§ 1324.402 – Program Administration

[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.](#)

ADvancing States supports the proposed mandatory requirement for investigation based on the proposed definitions, if ACL permits investigative responsibilities be divided between APS systems and law enforcement entities. We request ACL provide clarification in the text of the regulation that such a division of investigation would meet the requirement.

While we understand many states already have APS statutes that encompass the five proposed elements of maltreatment included in the proposed rule, the division of responsibilities is particularly important to make the investigation of sexual abuse feasible for states to implement. Some states have distinct policies for instances of sexual abuse wherein APS systems must only fulfill a social service role for clients while law enforcement entities have sole investigative authority. Without specific clarification from ACL, several state APS systems will require both APS and law enforcement statutory changes, prolonging their implementation timelines.

[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.](#)

ADvancing States believes establishing staff-to-client ratios is not feasible for state APS systems. APS systems cannot control the number of adult maltreatment allegations that may be reported or under investigation at a given time. In states where staff-to-client ratios have previously been established, once implemented, APS staff were faced with the challenge of maintaining the target ratio while balancing their open caseload as new cases of alleged maltreatment were accepted.

The ADvancing States 2022 Self-Neglect Survey found that 78 percent of the APS systems surveyed had not conducted client caseload analyses. Before establishing a federal staff-to-client ratio provision, workload studies are necessary but will impose further costs on APS systems.

Beyond financial constraints, several states emphasized that the structure of their APS system presents challenges in the establishment and enforcement of a staff-to-client ratio. Some APS systems are supervised by the state agency but administered at the county level. Often, the staffing responsibilities lie with the local entity, making it extremely challenging, if not impossible, for the state agency to

maintain or enforce a target staff-to-client ratio. States have also raised questions regarding the specific criteria that would comprise the ratios (e.g., number of total reports per investigator or number of open cases per investigator) and whether the ratios themselves would be subject to ACL review and approval.

ADvancing States recommends ACL require state APS systems to submit existing staff-to-client ratios as an element of states' annual case data reported to ACL to inform future requirements related to APS program staffing. This approach would provide ACL with an accurate picture of the current staffing landscape in APS systems to inform future ACL guidance.

§1324.402(a)(4)(i)(A): 24-Hour Initial Response to Reports

ACL proposes to define reports of *immediate risk* as, “risk of death, irreparable harm, or significant loss of income, assets or resources.” Many states emphasized that law enforcement or emergency services would receive immediate risk reports first, as reports that are critical in nature likely fall under the jurisdiction of law enforcement or emergency services. After, APS would receive and accept the report. APS systems are not, and do not want to become, emergency response organizations.

ACL emphasizes a general goal of the rule is to align APS systems more closely with the [ACL's National Voluntary Consensus Guidelines](#) (the Guidelines). The Guidelines advise APS systems to carry out an immediate response with the client in person, whereas the preamble and text of the proposed regulation are absent of a required or suggested method of immediate response.

States indicated a mandated face-to-face response to immediate risk clients within 24 calendar hours of the report would not be feasible to implement, in large part due to limited state staffing resources. For example, in several states large frontier areas that may span several counties are covered by only one investigation staff person, who may need to travel hours to meet with a client. One state employs only six APS staff. **We recommend ACL provide guidance and examples of acceptable immediate response methods in the final rule but refrain from requiring a specific method of response.**

In addition, ADvancing States and our members request guidance on the following questions regarding the proposed 24-hour initial response for immediate risk requirement:

- Is it acceptable for APS systems to rely on another entity, such as law enforcement, to fulfill the initial 24-hour response requirement for cases of immediate risk?
- If another entity, such as law enforcement, accepts an immediate risk report, does the 24-hour response timeline required for APS systems also apply to that entity?
- If APS is not immediately notified of a reported case of immediate risk accepted by another entity, will APS be required to respond within 24 hours from the original time the report was submitted or the time when APS receives the report?
- The expectations of APS workers responding during non-working hours are unclear. Many of the resources or organizations APS systems collaborate with to provide services to clients are not open 24-hours per day (e.g., crisis shelters). Are APS staff responsible for beginning necessary case proceedings after the initial visit without all of the potential resources at their disposal?

§ 1324.403 – 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 implicitly relegates APS service delivery to occurring after an investigation through (1) the proposed definition of *post-investigation services* and (2) by exclusively authorizing the provision of limited emergent APS services during the course of an investigation. The proposed rule does not explicitly authorize the provision of non-emergent APS services during an investigation, creating a potential vacancy in the social service responsibilities of APS systems.

As discussed in our general comments, we believe creating this distinct gap between investigation and the provision of services is in direct conflict with ACL’s goal to ingrain person-centered principles in the proposed rule. **We recommend ACL revise §1324.403(e) to read: “Provision of APS services during the course of and post investigation, as appropriate, that: ...”** (emphasis added to highlight changes). The suggested change grants APS systems discretion to administer service delivery according to state policy while definitively establishing service delivery and investigation as synchronous responsibilities of APS systems.

§ 1324.404 – Conflict of Interest

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.

ADvancing States supports mitigating conflicts of interest and dual relationships in APS systems. However, we expect county-administered APS systems will incur a larger burden in preventing and remedying dual relationships. The ADvancing States 2022 Self-Neglect Survey found that of the APS systems where staff perform non-APS related duties:

- Sixty-four percent are staff in county-administered programs and fill multiple county-level roles.
- Fourteen percent have duties in aging services.
- Seven percent have roles in aging and disability resource centers (ADRCs).
- Fifty percent also reported fulfilling other roles, such as adult services and guardianship monitoring, family and disability programs, homeless or adult residential services, and conservator / substitute decision-making.

APS staff working in guardianship or decision-making positions are more likely to have a dual relationship with a client. Certain state policies contribute to difficulties in preventing conflicts of interest. For example, in one county-administered APS state, existing policy prevents the state from requiring counties to accept cases where a conflict of interest between a staff member and client exists from another county. County-administered APS programs will need increased funding for staffing to effectively reduce conflicts of interest created by dual relationships as required in the proposed rule.

States have concerns regarding the administrative and programmatic burden imposed on APS systems by prescribing monitoring and oversight procedures in §1324.404(e), increasing responsibilities for APS

staff. Costs anticipated to develop the necessary monitoring mechanisms are high, as an information sharing system with staff assignments and inter-agency communication will be necessary. After information sharing systems and processes are implemented, APS systems will likely need extra staff or need to support longer staffing hours to provide oversight.

§ 1324.405 – Accepting Reports

§1324.405(a): Receiving Reports 24/7

ADvancing States supports requiring a reporting mechanism to be available 24 hours per day, seven days per week. Many states have already implemented a report intake system that is always accessible; however, states often share report intake responsibilities with local law enforcement agencies. APS systems cite staffing hours and geographic barriers, articulated in our comment on the proposed 24-hour initial response requirement, as common reasons for relying on law enforcement agencies.

ADvancing States and our members request clarification on whether APS systems are the sole entities responsible for accepting reports of alleged adult maltreatment 24 hours per day, seven days per week.

In addition, we request clarification regarding whether a state’s reporting systems must be operational 24 hours per day, seven days per week, or if they must be staffed by a live staff person 24 hours per day, seven days per week to receive reports.

States will need additional federal funding to support implementation of this provision, as in the past, state legislatures have revoked or denied requests to fund 24-hour APS report intake systems due to low case volume.

Feedback to Mandated Reporters

ACL proposes to require states to share, at a minimum, “whether a case has been opened as a result of a report, and; the disposition or finding of the allegation[s] in the report,” with the mandated reporter who submitted the report. In the preamble, ACL defers to state confidentiality laws to determine the level of information given to mandated reporters, but this stipulation is not included in the regulation itself. **We recommend ACL include explicit language in the regulation to clarify that any information sharing with mandated reporters must comply with state confidentiality laws regardless of the minimum standard in the rule.**

ACL categorizes the general public and mandated reporters as separate reporting classes in the preamble; however, in many states, members of the general public are mandated reporters. States believe the requirement for APS systems to share information with mandated reporters in the general public is too broad a policy. **We request clarification on whether ACL intends to require APS systems to provide feedback to reports made by a member of the general public, in states where the general public are mandated reporters.**

In evaluating the nature of feedback given to reporters, we consider information to be either procedural or substantive in nature. Procedural information is feedback on the APS investigation process, including whether a case has been opened as the result of a report. Substantive information, by contrast, is feedback more closely connected to the facts, allegations, and findings of an investigation, including the

development of plan for service for the APS client. We anticipate state confidentiality laws will be more protective of substantive information than procedural information. We believe limiting the feedback provided to mandated reporters to procedural feedback will evoke fewer confidentiality entanglements.

Several states have existing substantive information sharing exceptions for professional mandated reporters, such as doctors, direct care workers, and other service providers, to deliver services to clients in coordination with APS systems. **We recommend that all reporters, including financial institutions, receive procedural feedback, and that substantive feedback is provided only to mandated reporters who are professionals, but all information shared must comply with state confidentiality laws.**

Client Rights

ADvancing States supports the intent to further person-centered principles by providing clients with information on their rights. However, we raise several issues for which state APS systems request guidance from ACL regarding the unintended consequences and operational challenges of this requirement.

We request guidance for states on the following questions and concerns:

- The preamble implies the right to refrain from speaking with APS is commonly granted to clients, which is inaccurate in many states. Some states have APS statutes that provide for involuntary investigations where client cooperation with their APS investigation is mandated.
- State APS systems emphasized that staff reading a list of client rights at first contact connotes law enforcement reading an individual their Miranda Rights. States are concerned this could potentially disincentivize clients from communicating with APS staff during an investigation and will be challenging for APS staff to approach in a person-centered manner. **States request guidance from ACL on how to best inform clients of their rights in a person-centered, trauma-informed manner as proposed in the rule.**
- APS systems are required to inform a client of their rights is at first contact “in the format and language preferred by the client including those with limited English proficiency and individuals with disabilities.” **How are APS staff expected to comply with the accessibility mandate at the point of first contact, when staff are unsure of the necessary accommodations the client requires?**
- Providing information on client rights in the accessible format requested by each client will be extremely expensive for states. ACL’s cost projections account for states developing and producing only one new pamphlet on client rights, which severely underestimates the potential number and cost of accessible accommodations states will require to provide client rights information. For example, one state reported paying \$1,460.00, not including printing expenses, to translate nine of their existing brochures. Furthermore, ACL fails to account for the cost of potential in-person accessible accommodations, such as translators or interpreters. APS systems will require increased funding to comply with this provision of the proposed rule.

§ 1324.406 – Coordination with Other Entities

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

ADvancing States anticipates potential barriers to coordination with state Medicaid agencies. In April 2023, the Centers for Medicare and Medicaid (CMS) published the proposed [Ensuring Access to Medicaid Services Rule](#) Services Rule (Access Rule). The Access Rule requires Medicaid agencies to share information related to critical incident investigation and reporting, including “the status and resolution of investigations, such as through the use of information sharing agreements, with other entities in the State responsible for investigating critical incidents.” Both the Access Rule and this proposed rule will require significant staffing hours and information technology resources from APS systems to develop inter-agency coordination systems, meaning APS systems will likely incur increased costs to fully comply with this provision.

We are concerned that if ACL does not explicitly acknowledge critical incident reporting in the final rule or include language identical to the information sharing requirement in the Access Rule, states will not understand the level of coordination and information sharing that will be required to successfully implement the requirements in both proposed rules. The proposed Access Rule requires state Medicaid agencies to open critical incident investigations, which APS systems already have open cases on, should APS fail to report the dispositions of those cases within a timeframe determined by the state. **We recommend ACL include explicit language regarding critical incident reporting and investigation to clearly align APS investigation with applicable coordination standards in the Access Rule.**

§ 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.

ADvancing States supports the use of a State plan for APS systems to demonstrate compliance with the requirements in the proposed rule. However, we would emphasize that developing a state plan will be challenging and time intensive for APS systems, especially because this will be the first time any federal APS regulations are implemented. Guidance and technical assistance from ACL will be necessary to ensure state plans successfully meet the proposed requirements.

To reduce burden to states, we recommend ACL limit the number of prescriptive requirements included in the state plan, as well as the amount of narrative information states must provide, and implement a streamlined process for states to develop and submit their state plans. For example, ACL could use a checklist format through which the state can provide assurances of their compliance. ACL may consider following the format of the Medicaid 1915(c) waiver Appendix K template.

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.

ADvancing States strongly disagrees with ACL’s estimated cost of implementation. We believe several cost projections in the proposed rule fail to account for the real implementation costs in an APS system

setting. For example, the projected cost of \$456.40 for development of a state plan only accounts for the cost of estimated staff hours to author the plan. Based on our experience supporting states in the development of state plans, we believe this estimate for authoring the plan is extremely low on its own and note that it does not include the staff hours needed to develop and implement the policies and procedures that will be described in the state plan. ACL also estimates state APS systems will have no costs for provisions which require recurring costs, such as developing and maintaining staff-to-client ratios.

[ACL Request for Comment](#): ACL invites comment on whether their estimates of the potential financial burden of this proposal is accurate.

We believe ACL greatly underestimates the financial burden the proposed rule imposes on state APS systems. As aforementioned, we recommend ACL limit the number of prescriptive requirements in the state plans due to the anticipated cost of implementation. **States are considering declining the funding appropriated as they believe workload to implement and comply with the provisions in the proposed rule is not worth the limited Federal funding they anticipate receiving.**

We encourage ACL to consider these comments as ACL reflects on a proposed effective date for the final rule as well as seeking additional sources of federal funding to support states to implement it.

Final Thoughts

ADvancing States reiterates our support and appreciation of ACL in developing regulatory framework for APS systems. A modern and relevant set of federal rules will ultimately improve consistency across APS services administered by state and county-run programs.

Given that the preponderance of effort related to coming into compliance with the Final Rule will fall on state agencies, we hope ACL will take into special consideration our recommendation to extend the final effective date. Additionally, we recommend ACL provide technical assistance through the APS Technical Assistance Resource Center (APS TARC) to support state agencies implementing the Final Rule.

We appreciate the opportunity to provide comments on this proposed rule. We look forward to continued partnership with ACL and state and territorial agencies as we work to develop consistent standards for APS systems nationwide. If you have any questions regarding this letter, please feel free to contact Rachel Neely at rneely@advancingstates.org.

Sincerely,



Martha Roherty
Executive Director
ADvancing States