



The Wisconsin Aging Advocacy Network (WAAN) is a collaboration of organizations and individuals working with and for Wisconsin's older adults to shape public policy and improve the quality of life for older people.

Core member organizations:

Aging and Disability Professionals Association of Wisconsin (ADPAW)

Alzheimer's Association Wisconsin Chapter

Board on Aging and Long Term Care (BOALTC)

Wisconsin Adult Day Services Association (WADSA)

Wisconsin Association of Area Agencies on Aging (W4A)

Wisconsin Association of Benefit Specialists (WABS)

Wisconsin Association of Nutrition Directors (WAND)

Wisconsin Association of Senior Centers (WASC)

Wisconsin Family and Caregiver Support Alliance (WFACSA)

Wisconsin Institute for Healthy Aging (WIHA)

Wisconsin Senior Advocates

Wisconsin Senior Corps Association (WISCA)

Wisconsin Tribal Aging Unit Association

Contact WAAN

1414 MacArthur Rd., Suite A
Madison, WI 53714
(608) 243-5670
gwaar.org/waan

August 15, 2023

Alison Barkoff
Acting Assistant Secretary for Aging and ACL Administrator
Administration for Community Living
Department of Health and Human Services
Attention: ACL-AA17-P
330 C Street, SW

Submitted electronically via <http://www.regulations.gov>

RE: Notice of Proposed Rulemaking (NPRM) Older Americans Act: Grants to State and Community Programs on Aging; Grants to Indian Tribes for Support and Nutrition Services; Grants for Older Hawaiian Natives; and Allotments for Vulnerable Elder Rights Protection Activities (RIN 0985-AA17)

Dear Acting Secretary Barkoff,

Thank you for the opportunity to respond to the Notice of Proposed Rulemaking (NPRM) on Older Americans Act (OAA) regulations. We commend the Administration for Community Living (ACL), under the leadership of the Department of Health and Human Services (HHS), for your attention to updating and modernizing regulations for programs authorized under Titles III, VI and VII of the OAA. The importance of the OAA in responding to and providing critical services for older Americans for more than 50 years cannot be overstated. Updating the regulations is essential as we prepare for the ongoing demographic shifts within an aging population, the impending reauthorization of the OAA, and the lasting impacts of the COVID-19 pandemic.

We are responding to the NPRM, on behalf of the Wisconsin Aging Advocacy Network (WAAN), a collaboration of organizations and individuals working with and for Wisconsin's older adults to shape public policy and improve the quality of life for older people. The OAA serves as a vital resource for nearly 11 million older adults and an estimated 800,000 caregivers nationwide. In Wisconsin, OAA programs served over 106,000 unduplicated people aged 60 and older (including caregivers and care recipients) in CY 2022 (approx. 7.2% of Wisconsin's population aged 60 and older).

The intent of the OAA to enable older adults to live and age with dignity in their homes and communities has remained consistent since the Act was first signed into law in 1965. The challenges facing older adults, their families and caregivers and the rapidly changing landscape of home and community-based service delivery have significantly changed and necessitate changes in federal policy to ensure alignment with the current realities facing older adults and caregivers and with reauthorizations of the OAA since 1988.

On behalf of WAAN, we are pleased to offer the following comments and recommendations for consideration in the development of a final rule for the updated OAA regulations.

IV. Grants to State and Community Programs on Aging

A. Provisions Revised to Reflect Statutory Changes or Provide Clarity

- **Subpart A-Introduction: Definitions** ([§ 1321.3](#))
 - **Added/New definitions:**
 - Conflicts of interest – We support ACL’s desire to provide clarity for state agencies, area agencies on aging (AAAs), and service providers; however, we would like to see increased focus on identifying, preventing or mitigating (not necessarily removing) conflicts of interest. Funding for OAA programs and services has not kept pace with need and it has become increasingly important for AAAs and service providers to diversify their revenue sources to better meet growing needs. In addition, section (c) “Other conflicts of interest as identified in guidance as set forth by the Assistant Secretary for Aging and/or by **State agency policies**,” could result in some states having more restrictive language than other states and than what is required by ACL.
 - Cost Sharing – We believe the definition does not provide additional clarification and does not seem consistent with cost sharing under the OAA.
 - Family Caregiver – We support ACL’s proposed language which takes an inclusive approach to defining family caregiver to include unmarried partners, friends, and neighbors. This broader definition more accurately reflects the diverse make-up of today’s caregivers.
 - Greatest Economic Need – We support ACL’s proposal permitting State agencies and AAAs to incorporate considerations beyond income and poverty status into the definition of “greatest economic need and agree these entities are in the best position to understand the conditions and factors in their State and local areas that contribute to individuals falling within this category.
 - Greatest Social Need – We support ACL’s proposal permitting State agencies and AAAs to further refine target populations of greatest social need based on additional conditions and factors in their State or local areas that contribute to individuals falling within this category. Given the often personal and sensitive factors considered when determining greatest economic and social need, it is critical to underscore the protection of such information. We believe the regulations could go further to assure that statewide anti-discrimination policies and procedures are in place for older adults who are targeted to participate in OAA programs.
 - Multipurpose Senior Center – Given the creative ideas for engaging older adults that were implemented during the COVID-19 public health emergency, we support the inclusion of “services and activities as provided via virtual facilities” to the definition of multipurpose senior center.

- Program Development and Coordination Activities – We are pleased to see ACL’s new definition reflects the evolving social services, health, and economic climates in which States and AAAs operate.
 - **Minor revisions to definitions:**
 - In-home Supportive Services – We appreciate the greater attention given to issues like social connection, home-safety and other supportive services to support independence and wellbeing for older adults in their homes. We are pleased to see the revised definition was expanded to include virtual reassurance programs and removes funding limits (previously set at \$150 per client) for minor home modifications, as requested in our response to ACL’s initial request for information (RFI).
 - **Deleted terms/definitions:**
 - Frail - We support deletion of the term “frail,” as requested in our response to ACL’s initial RFI.
- **Subpart B—State Agency Responsibilities (§ 1321.9) State agency policies and procedures.**
 - Intrastate Funding Formula (IFF) [§ 1321.9(c)(2)(i)] – ACL’s proposed rule requires States to promptly disburse funds using the IFF. We are concerned the proposed rule does not define “promptly” and would recommend additional definition be provided to ensure funds are distributed in a timely manner to planning and service areas.
 - Non-Federal Share (Match) [§ 1321.9(c)(2)(ii)] – ACL’s proposed language to clarify that State or local public resources used to fund a program which uses a means test shall not be used to meet the non-Federal share matching requirements poses significant concerns for Wisconsin related to the National Family Caregiver Support Program (NFCSP). This proposed regulation, which is new for NFCSP which has not been included in the OAA regulations since its inception in 2000, will have a wide-ranging negative affect on our ability to meet NFCSP match requirements at the state and local levels.

Wisconsin has historically used its state-funded Alzheimer’s Family and Caregiver Support (AFCSP), which is means-tested, as match for NFCSP. AFCSP funding is complementary to NFCSP, serving generally the same population and expanding the reach and effectiveness of the federal caregiver support program. AFCSP helps to ensure we are targeting and serving those with the “greatest economic and social needs” and are reaching those who face greater challenges accessing affordable housing, transportation, internet services, and other community supports. This new provision for NFCSP puts the state and county/tribal aging units in the difficult position of finding a new non-federal source of funding to meet the OAA match requirement.
 - Transfers [§ 1321.9(c)(2)(iii)] – Provided there is input sought from states and AAAs, we support ACL’s proposal to list the requirements and considerations that apply if a State elects to make transfers between allotments, including the parts and subparts of Title III which are subject to transfer of allocations, the maximum percentage of an allocation which may be

transferred between parts and subparts, and a confirmation that such limitations apply in aggregate to the State. States are in the better position than ACL to determine the considerations that indicate the need for transfers between parts and subparts of Title III.

- Rural Minimum Expenditures [§ 1321.9(c)(2)(viii)] – We believe requiring State agencies to expend not less than the amount expended in fiscal year 2000, is arbitrary and may not reflect current needs. Additionally, if state agencies (rather than ACL) define what “rural” means for the purposes of the regulation, state data will not be useful at the federal level in demonstrating the needs of rural communities, as all may be using different definitions.
- Voluntary Contributions and Cost Sharing [§ 1321.9(c)(2)(x) and § 1321.9(c)(2)(xi)] – While we appreciate ACL’s interest in clarifying the differences between voluntary contributions and cost sharing, the proposed policy makes it clear that both methods are optional for the consumer and no consumer can be turned away for inability or unwillingness to pay. This would seem to indicate that all contributions are voluntary whether asking for a suggested contribution or cost share amount; therefore, is the distinction still important?
- Private Pay Programs [§ 1321.9(c)(2)(xiii)] – We are pleased that ACL has made clear that all agencies may, but are not required to, offer private pay programs. AAAs (and in Wisconsin county and tribal aging units) need maximum flexibility and diverse funding sources to meet the needs of older adults and caregivers in their service areas.
- Contracts and Commercial Relationships [§ 1321.9(c)(2)(xiv)] – We are concerned that ACL’s proposed regulation updates in this area are interpreting that the OAA dictates state approval is needed for commercial relationships even when OAA funds are not used. We believe this interpretation conflicts with language in Sec. 306(g) of the statute that states, “nothing in the Act shall restrict AAAs from providing services not provided or authorized by the Act.” Funding for OAA services has not kept pace with the growing population of OAA eligible participants, increasing need, and/or rising inflation costs. Overly restrictive regulation by State Units on Aging (SUAs) could make it difficult, if not impossible, to increase the availability of home and community-based services (HCBS) and supports by engaging in contracts with health care payers, consumer private pay programs or other entities. We urge ACL not to include regulation on this issue in the final rules. In addition, we urge ACL to ensure the SUA’s approval process for any arrangements that do use OAA dollars be non-burdensome and reflect a blanket approach rather than approval of each individual contract or arrangement. Lastly, we encourage ACL to describe any appeal process available to AAAs and providers when SUA do not approve of their outside-of-OAA contracting and the AAA believes the decision is in error with the statute and current regulation.
- Supplement, Not Supplant [§ 1321.9(c)(2)(xvi)] – We support ACL’s proposed change to require State agencies to have policies and procedures on supplementing, not supplanting existing funds for the programs. Programs at the local/regional level face significant funding challenges and we wish to ensure any new funding appropriated to the programs is used to support additional services.

- Advance Funding [§ 1321.9(c)(2)(xviii)] – as requested in our response to ACL’s initial RFI, we support ACL’s proposal to specify that State agencies may advance funding to meet immediate cash needs of AAAs and service providers. Smaller and non-profit service entities at the local level have struggled to make ends meet when funding is delayed.
- Advocacy Responsibilities (§ 1321.11) – we support ACL’s proposal to revise § 1321.11(a)(3) to clarify that the State agency’s obligations to comment on applications to Federal and State agencies for assistance related to the provision of needed services for older adults and family caregivers are not limited to instances in which the State agency receives a request to do so. Older adults and caregivers will benefit from further use of the expertise in SUAs in the advocacy realm.
- Content of State Plan (§ 1321.27) – We support ACL’s proposed change to require State Plans to provide evidence that they are informed by, and based on, area plans. This is consistent with comments we requested in our response to ACL’s initial RFI. Further, we support ACL’s proposals to require states to demonstrate outreach to older Native Americans and coordination with Title VI programs under the Act and explain how the State agency will use its elder abuse prevention funding awarded pursuant to Title VII of the Act. Improved coordination between Title III, VI and VII programs will benefit older adults and caregivers. Lastly, we are very pleased to see ACL’s new requirement for States to provide certain information regarding any permitted use of Title III C1 funds (funds for meals served in a congregate setting) for shelf- stable, pick-up, carry-out, drive-through, or similar meals, as permitted by new proposed § 1321.87(a)(1)(A). The expanded use of C1 funds will allow providers to better meet the diverse needs of older adults in their communities.
- Organization and Staffing of the Area Agency (§ 1321.57) – We support ACL’s proposal to remove the provision that prohibits a separate organizational unit within a multi-purpose agency which functions as the AAA from having any purpose other than serving as an AAA. Elimination of this prohibition will provide more flexibility to AAAs to conduct their operations, subject to State agency policies and procedures, and will further promote AAAs as innovative, collaborative organizations which adapt to ever-evolving social service, health and economic climates.

- **Subpart C—Area Agency Responsibilities**

- Mission of the Area Agency (§ 1321.55) – We support ACL’s proposal to delete the language from this section related to an AAA’s obligations with respect to “focal points.” Today, AAAs operate in a very different social service systems climate than they did in 1988. The existing language confining focal points to bricks and mortar facilities is outdated and could interfere with an AAA’s ability to develop and enhance a comprehensive and coordinated community-based system (such as Aging and Disability Resource Centers [ADRCs] and use of virtual options).
- Conflicts of Interest Policies and Procedures for Area Agencies on Aging (§ 1321.67) – We support ACL’s desire to propose regulations that provide AAAs and service providers clarity and specificity such that they can “confidently engage in business activities that may generate conflicts while remaining in compliance with the law, carrying out the objectives of the Act in the

interest of the older people they serve.” We support ACL’s proposal requiring AAAs to put in place policies and procedures that address individual conflicts on the part of the AAA, employees, and agents of the AAA who have responsibilities relating to Title III programs and provide a mechanism for informing relevant parties of COI responsibilities and identifying and addressing conflicts when they arise.

- **Subpart D—Service Requirements**

- Nutrition Services (§1321.87) – We thank ACL for recognizing the need for more flexibility to meet the nutritional and social needs of older adults and appreciate ACL’s expansion of the regulations to include innovative options for service delivery. Providing states the option to allow Title III C1 congregate meal funding to be used for limited “shelf-stable, pick-up, carry-out, drive-through, and other similar meals has been a desire of Wisconsin’s county and tribal aging units for many years. This change will help them to better meet the nutritional and social needs of an increasingly diverse older adult population. Our specific comments relate to:
 - Grab-and-Go-Style Meals – We request ACL to increase the ceiling from 20 to 25 percent as the appropriate limit as a proportion of all congregate dollars. This recommendation is based on input from AAA survey respondents and reflects the Aging Network’s need for maximum flexibility to respond to local and changing needs.
 - Home-Delivered Meals – We support ACL’s clarification that a home-delivered meal recipient does not need to be entirely homebound to remain eligible and appreciate the language makes clear that eligibility criteria “may include consideration of an individual’s ability to leave home unassisted, ability to shop for and prepare nutritious meals, degree of disability...” We also appreciate the language makes clear that AAAs and providers may “encourage [home-delivered] meal participants to attend congregate sites and other health and wellness activities, as feasible, based on a person-centered approach and local service availability.”
 - Nutrition Education/Nutrition Counseling - We applaud the language that nutrition services shall provide nutrition education and nutrition counseling as appropriate, based on the needs of meal participants. This best allows us to offer a variety of nutrition education options. We further support utilization of the Nutrition Care Process for Nutrition by a Registered Dietician.
 - Additional services - Lastly, we appreciate the clarification and inclusion of additional services provided under Title III C1 or C2 that may be provided to meet nutritional needs or preferences of eligible participants, such as weighted utensils, supplemental foods, oral nutrition supplements or groceries.
- Family caregiver support services (§ 1321.91) – We support all revisions to provisions requiring States, AAAs and providers to take into account the addition of family caregivers as a service population pursuant to the 2000 reauthorization of the Act. We request ACL continue to offer flexibility and innovative, permissible service delivery options in the Title III E National Family Caregiver Support Programs (NFCSP), not just in Title III C1. Specifically, we ask ACL to widen the

"allowable use of funds" in NFCSP to include the ability of primary caregivers to continue to receive payment/ stipends. This flexibility provided during the COVID-19 public health emergency was critical to meeting the needs of caregivers. The crisis level shortage of direct care workers remains a significant challenge for family caregivers making it essential to continue this flexibility in this post- public health emergency time. Additionally, we request a greater use of funds be permitted to be spent on home modifications, allowing older adults to remain in their home longer and/or until end of life. Lastly, we have identified the following key priorities:

- Ensure the final rules align with the 2022 National Strategy to Support Family Caregivers.
 - Ensure caregivers are prioritized as part of the State and AAA planning activities and as mandatory participants on AAA advisory councils.
- Legal Assistance (§ 1321.93) – Legal Assistance (§ 1321.93) – We support ACL’s goal to clarify the role of legal assistance providers to promote self-determination and person-directedness and support older individuals to make their own decisions in the event of future diminished decisional capacity. We agree legal assistance resources are scarce and accordingly, should be preserved to represent older adults at grave risk of being deprived of the basic human right to make their own decisions. We support ACL’s belief that legal assistance should not be used to represent a petitioner for guardianship of an older person except in the rarest of circumstances. We agree, public guardianship programs and private practitioners are generally more available and willing to represent petitioners to establish guardianship over another adult than they are to represent older adults over whom guardianship is sought; therefore, legal resources supported by OAA funding are best used to promote self-determination and protection of the rights of older people.

The newly proposed regulations around legal services do not appear to create any issues for the coordination, contracting or provision of legal assistance in Wisconsin. That said, we know Wisconsin’s legal assistance service delivery system is different than many other states; and therefore, defer to other States and AAAs to respond to the impact the proposed regulatory requirements may have on their ability to find legal providers, especially in rural areas.

- **Subpart E—Emergency and Disaster Requirements**

- Coordination With State, Tribal and Local Emergency Management (§ 1321.97) – We commend ACL for expanding the definition of ‘emergency’ and ‘disaster’ beyond weather-related occurrences and broadening the scope of preparedness that may be required of agencies for the unknown emergencies and disasters of the future. We support ACL’s proposal requiring States and AAAs to establish emergency plans and the inclusion of requirements for continuity of operations planning, taking an all-hazards approach to planning, and coordination with Tribal emergency management and other agencies that have responsibility for disaster relief delivery. These plans are critical to elevating and addressing the needs of older adults and caregivers during disasters.
- Setting Aside Funds to Address Disasters (§ 1321.99) – We support ACL’s clarification indicating State agencies may set aside and use Title III funds during a major disaster declaration (MDD).

Having disaster funding set aside at the State level will allow for a more expeditious process for getting funds to areas and providers when needed.

- Flexibilities Under a Major Disaster Declaration (§ 1321.101) – Regarding ACL’s proposal to allow State agencies up to 90 days after the expiration of a MDD to obligate funds for disaster relief services, we recommend changing “up to 90 days” to “no less than 90 days and no more than 120 days.” We fully support ACL’s proposal to allow a state agency to procure items on a statewide level for distribution to local levels. MDD’s often result in supply shortages and difficulty accessing needed supplies and services. Using a statewide procurement process will help to lower costs, speed up access and offer a more equitable distribution process of goods and services.
- Additionally, we would support requirements to evaluate, review, and consider emergency planning related to the adverse effect of the professional caregiver workforce shortage or “caregiver crisis” that is being experienced nationwide. The federal Bureau of Labor Statistics projects employment for these jobs will grow by about 25 percent by 2031. More than 700,000 openings for such workers are projected each year, on average, over the next decade. Many people who can’t get paid caregivers must rely on family and friends to help them with daily tasks. For this reason, we would support the use of Emergency Preparedness funds to supplement III E funds when paying in-home care providers and/or “informal” or family caregivers.

Thank you for your consideration of WAAN’s comments. We appreciate ACL’s commitment to supporting and expanding comprehensive and coordinated home and community-based services and supports inherent in the mission of the Older Americans Act. We look forward to continuing to work with you and other stakeholders to ensure older adults and family caregivers are valued and supported. Questions related to our comments can be directed to: Janet Zander, Advocacy & Public Policy Coordinator, Greater Wisconsin Agency on Aging Resources, Inc. – janet.zander@gwaar.org.