

# California Commission on Aging

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GAVIN NEWSOM, Governor

**Executive Director**  
Karol Swartzlander

August 15, 2023

Alison Barkhoff, Assistant Secretary for Aging  
Administration on Aging, Administration for Community Living  
Administration for Community Living, Department of Health and Human Services,  
Attention: ACL-AA17-P, 330 C Street SW, Washington, DC 20201.

RE: RIN Number 0985-AA17

Dear Assistant Secretary Barkhoff,

I am writing you on behalf of the California Commission on Aging (CCoA), established in the Older Californians Act as an independent advisory body and principal advocate before the Governor, the Legislature, and State and federal agencies on behalf of California's older adults. Commission members represent the State's cultural and geographic diversity. Commissioners are consumers and providers of aging services, as well as researchers and academicians with decades of professional expertise within and outside the field of aging. CCoA is the trusted source for comprehensive knowledge and unbiased resources on policy issues impacting older adults. CCoA appreciates the opportunity to comment on the proposed Older Americans Act regulations update.

In understanding that individuals age differently, the Commission's goal is to support the independence of older adults through policies that provide person-centered services while promoting the right of self-determination of the individual. The Commission makes recommendations that preserve personal dignity, enhance community awareness, and promote safe, healthy living in collaboration with public and private organizations.

We applaud the Administration for Community Living's ongoing efforts to enhance the lives of older Americans through various programs and initiatives. We recognize and support ACL's emphasis on the advocacy roles of the area agency on aging (AAA) network and the state units on aging as being critical to the delivery of essential services.

CCoA believes that specific regulatory updates within the Older Americans Act are required to comprehensively tackle the myriad of critical issues impacting the quality of life facing older adults, the people that love and care for them, and the local programs that provide them services. Included with our recommendations, CCoA has several requests for clarifying language for specific sections of the proposed legislation as well as highlighting some of the proposed regulations we are in particular support.

1. § 1321.5 Proposed Elimination of the Term "Frail" We support the elimination of the term "frail" from the regulations. This change eliminates the use of what we see as an outdated pejorative term.

2. § 1321.63 Clarification of Local Advisory Council Membership: we suggest that ACL provide clear guidance to states regarding the composition of local Advisory Councils. This clarification will promote inclusion and best outcomes, ensuring that these councils reflect diversity, are more closely aligned to represent the demographics of those receiving program services and better advocate for the interests of older adults in their communities. Additionally, we suggest clarifying language addressing decision-making authority and recommended activities performed by the local advisory council.
3. § 1321.73 Monitoring Mechanism for Core Services: We believe ACL should establish a monitoring mechanism that enables states to collaborate with AAAs for effective oversight of core services. This partnership would enhance consistency and continuity in service delivery, maintaining a high standard of care for older adults across various localities.
4. § 1321.77 Trauma Services and Training: The inclusion of training for staff and volunteers in trauma-informed care is critical. To ensure effective implementation, we recommend ACL provide clear guidelines on the subject content, trainer requirements, and an explanation of proof of completed training. Considering the increased cost to create, implement, and monitor, we recommend growing funding to promote excellence. Trauma-informed care is crucial for fostering person-centered and compassionate support for older adults.
5. § 1321.87 Expansion of "To-Go Meals" during Emergencies: Based on the feedback from local providers, we propose an increase from the current 20% limit to 40% for "to-go meals" during federal and state-declared emergencies. This adjustment will enhance the readiness and capacity of OAA programs to provide essential nutrition services to older adults when conventional service models are disrupted.
6. § 1321.93 Guardianship Activities and Self-Determination: we encourage ACL to provide specific clarifications and guidance on guardianship activities that align with promoting self-determination while safeguarding against abuse. Monitoring the success of guardianship activities by AAAs will enhance accountability and ensure that older adults' rights and interests are protected.
7. § 1321.3 Inclusion of Additional Criteria in "Greatest Social Need," we urge ACL to consider expanding the criteria for defining "greatest social need" to include sexual orientation, HIV status, gender identity, and sex characteristics. This revision is aligned with equity and inclusion initiatives introduced in January 2022 by President Biden and included in Governor Newsom's Executive Order, reinforcing the commitment to addressing the unique challenges faced by marginalized older adults.
8. § 1321.9(c)(2)(x) and (xi) & §1321.27: Clarification of Targeting and Economic Need: we recommend that ACL provide more detailed guidance on targeting strategies and measurement methods for reaching populations with the "greatest economic need." Additionally, clearer guardrails around the definition of "greatest economic need" will prevent unintended consequences and ensure that vulnerable seniors receive essential services.
9. § 1321.91 Inclusion of Mental Health in Caregiver Support: We thank ACL's work to expand the definition of and support for "caregivers" as they play a significant role in the health and well-being of our nation's older adults. In deference to the physical and mental impact that caregiving can have on those who are caregivers for older adults, ACL should include access to behavioral health services and training in mental health services for caregivers, enhancing their capacity to provide appropriate care.

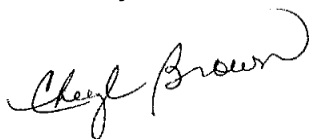
Additionally, in light of the tremendous need, ACL should promote training and resources specifically called out for caregivers who assist clients with dementia.

10. §1321.99 Granting state units' flexibility in utilizing Title III funding for President-declared disasters: In light of the changing landscape of disaster occurrences, we recommend a similar level of flexibility for situations where Governors declare disasters. The capacity to allocate resources swiftly and effectively during such events is essential for safeguarding the older adult population's safety and well-being.
11. §1321. Disaster Response: In times of crises, such as natural disasters, it is crucial that services adapt rapidly to our communities' changing circumstances and needs. We fully support the emphasis on flexibility, which can play a pivotal role in ensuring swift and efficient responses. However, we urge careful consideration when implementing any paperwork requirements associated with plan amendments. While it is important to maintain documentation and accountability, we must strike a balance that prevents administrative burdens from hindering rapid response times. Excessive paperwork should not compromise the ability to offer timely and flexible services during emergencies.
12. §1321.21 Eligibility Requirements for Indian Tribes. We encourage ACL to consider widening the scope of eligibility criteria for service grants. Specifically, we propose the inclusion of Elders residing on federally recognized reservations in addition to eligible individuals who seek grants based on their membership status within federally or state-recognized tribes regardless of having a residence on federally recognized reservations. This inclusion would extend the reach of support to these often-marginalized communities and ensure their access to essential services.
13. §1321.93 Legal Assistance Addressing legal assistance for older adults, we emphasize the significance of the Legal Assistance programs funded under Title III-B. Given the increasing number of older adults and their distinct legal needs, we recommend the identification of existing gaps in legal services and the subsequent expansion and diversification of legal assistance. We propose the strategies outlined in the California Elder Justice Coalition's 2023 Elder Justice Blueprint, *Reinforcing California's Elder Justice Infrastructure: Committing to Equity and Inclusion*.
  1. Incorporate legal assistance for older homeowners and landlords, restitution and loss recovery, and estate planning/advance directives.
  2. Develop strategies for engaging private attorneys in representing elders who are victims of elder mistreatment or rights violations.
  3. Enhance access to legal services for underserved populations, including home-bound, rural, formerly incarcerated, and homeless older adults.
  4. Expand the scope of "Greatest economic and Greatest social needs" to include legal services for eligible caregivers of older adults.
14. §1324.11 Long-Term Care Ombudsman Program
  1. Long-Term Care Ombudsman Program: Access to enter LTC facilities. We suggest revising the language pertaining to Ombudsman access to LTC facilities. By replacing the phrase "access to enter an LTC facility at any time during a facility's normal business or regular visiting hours" with "access to enter all LTC facilities at any time to ensure residents have access to the Ombudsman representative," we can prevent LTC facilities from using visiting hours as a means to restrict Ombudsman access. This modification would strengthen residents' access to advocacy and support.

2. Long-Term Care Ombudsman Program Monitoring: We encourage ACL to require state Ombudsman to develop monitoring forms for AAAs to use when monitoring local Ombudsman programs, with the stipulation that AAAs must utilize these monitoring forms for assessing local Ombudsman programs. Standardization of service requirements is a commendable step towards achieving consistency in the evaluation of and ensuring that local Ombudsman programs meet the necessary benchmarks and provide high-quality services. AAAs utilizing standardized monitoring forms not only ensures accountability but also streamlines the assessment process, allowing for more accurate data and reliable evaluations.
15. §1321.9 Commercial Relationship Activities and Conflict of Interest: We support ACL in its recommendation to provide clarity regarding AAAs contracting with health plans or other entities. These modifications underscore the importance of AAA's ability to engage in contractual relationships while maintaining a clear separation between OAA-funded and commercially contracted services. The suggestion to establish financial firewalls for commercial contracts is a necessary safeguard to ensure the integrity of OAA-funded programs.
16. §1321.47 Conflict of Interest: We support the establishment of clear guidance to clarify potential conflict of interest challenges especially related to the variety of contractors AAAs contracts with and those that contract with AAAs. The proposed policy and procedure updates to address these challenges are crucial. Given the diverse contractors and entities involved, comprehensive guidelines for managing conflicts of interest will strengthen the accountability and transparency of the network.

In conclusion, we are grateful for ACL's work to enhance the Older Americans Act regulations. Your commitment to addressing the evolving needs of older adults and promoting equity and inclusion is evident. With these proposed changes and further clarification, the OAA will continue to be a robust and vital resource for older Americans. If you have any questions about these comments, please contact Karol Swartzlander, CCoA Executive Director at (916-419-7591) or [Karol.swartzlander@cco.ca.gov](mailto:Karol.swartzlander@cco.ca.gov).

Sincerely,



Cheryl Brown, Chair  
California Commission on Aging