§ 1321.9 State agency policies and procedures. Link to an amendment published at 89 FR 80073, Oct. 2, 2024.

(a) The State agency on aging shall develop policies and procedures governing all aspects of programs operated as set forth in this part and part 1324 of this chapter. These policies and procedures shall be developed in consultation with area agencies on aging, program participants, and other appropriate parties in the State. Except for the Ombudsman program as set forth in 45 CFR part 1324, subpart A and where otherwise indicated, the State agency policies may allow for such policies and procedures to be developed at the area agency on aging level. The State agency is responsible for implementing, monitoring, and enforcing policies and procedures, where:

(1) The policies and procedures developed by the State agency shall address how the State agency will monitor the programmatic and fiscal performance of all programs and activities initiated under this part for compliance with all requirements, and for quality and effectiveness. As set forth in sections 305(a)(2)(A) and 306(a) of the Act (42 U.S.C. 3025(a)(2)(A) and 3026(a)), and consistent with section 305(a)(1)(C) (42 U.S.C. 3025(a)(1)(C)), the State agency shall be responsible for monitoring the program and financial activities of subrecipients and subgrantees to ensure that grant awards are used for the authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of the grant award, including:

(i) Evaluating each subrecipient's risk of noncompliance to ensure proper accountability and compliance with program requirements and achievement of performance goals;

(ii) Reviewing subrecipient policies and procedures; and

(iii) Ensuring that all subrecipients and subgrantees complete audits as required in 2 CFR part 200, subpart F and 45 CFR part 75, subpart F.

(2) The State agency may not delegate to another agency the authority to award or administer funds under this part.

(3) The State Long-Term Care Ombudsman shall be responsible for monitoring the files, records, and other information maintained by the Ombudsman program, as set forth in part 1324, subpart A. Such monitoring may be conducted by a designee of the Ombudsman. Neither the Ombudsman nor a designee shall disclose identifying information of any complainant or long-term care facility resident to individuals outside of the Ombudsman program, except as otherwise specifically provided in § 1324.11(e)(3) of this chapter.

(b) The State agency shall ensure policies and procedures are aligned with periodic data collection and reporting requirements, including ensuring service and unit definitions are consistent with definitions set forth in these regulations, policy guidance, and other information developed by the Assistant Secretary for Aging.

(c) Policies and procedures developed and implemented by the State agency shall address:

(1) Direct service provision for services as set forth in §§ 1321.85, 1321.87, 1321.89, 1321.9, and 1321.93, including:

(i) Requirements for client eligibility, periodic assessment, and person-centered planning, where appropriate;

(ii) A listing and definitions of services that may be provided in the State with funds received under the Act;

(iii) Limitations on the frequency, amount, or type of service provided;

(iv) Definition of those within the State in greatest social need and greatest economic need;

(v) Specific actions the State agency will use or require the area agency to use to target services to meet the needs of those in greatest social need and greatest economic need;

(vi) How area agencies on aging may request to provide direct services under provisions of § 1321.65(b)(7), where appropriate;

(vii) Actions to be taken by area agencies and direct service providers to implement requirements as set forth in paragraphs (c)(2)(x) through (xi) of this section; and

(viii) The grievance process for older individuals and family caregivers who are dissatisfied with or denied services under the Act.

(2) Fiscal requirements including:

(i) *Intrastate funding formula (IFF).* Distribution of Title III funds via the intrastate funding formula or funds distribution plan and of Nutrition Services Incentive Program funds as set forth in § 1321.49 or § 1321.51 shall be maintained by the State agency where funds must be promptly disbursed.

(ii) *Non-Federal share (match).* As set forth in sections 301(d)(1) (42 U.S.C. 3021(d)(1)), 304(c) (42 U.S.C. 3024(c)), 304(d)(1)(A) (42 U.S.C. 3024(d)(1)(A)), 304(d)(1)(D) (42 U.S.C. 3024(d)(1)(D)), 304(d)(2) (42 U.S.C. 3024(d)(2)), 309(b) (42 U.S.C. 3029(b)), 316(b)(5) (42 U.S.C. 3030c-3(b)(5)), and 373(h)(2) (42 U.S.C. 3030s-2(h)(2)) of the Act, the State agency shall maintain statewide match requirements, where:

(A) The match may be made by State and/or local public sources except as set forth in paragraph (c)(2)(ii)(C) of this section.

(B) Non-Federal shared costs or match funds and all contributions, including cash and third-party in-kind contributions must be accepted if the funds meet the specified criteria for match. A State agency may not require only cash as a match requirement.

(C) State or local public resources used to fund a program which uses a means test shall not be used to meet the match.

(D) Proceeds from fundraising activities may be used to meet the match as long as no Federal funds were used in the fundraising activity. Fundraising activities are unallowable costs without prior written approval, as set forth in 2 CFR 200.442.

(E) A State agency may use State and local funds expended for a non-Title III funded program to meet the match requirement for Title III expenditures when the non-Title III funded program:

(*1*) Is directly administered by the State or area agency;

(*2*) Does not conflict with requirements of the Act;

(*3*) Is used to match only the Title III program and not any other Federal program; and

(*4*) Includes procedures to track and account expenditures used as match for a Title III program or service.

(F) Match requirements for area agencies are determined by the State agency.

(G) Match requirements for direct service providers are determined by the State and/or area agency.

(H) A State or area agency may determine a match in excess of required amounts.

(I) Other Federal funds may not be used to meet required match unless there is specific statutory authority.

(J) The required statewide match for grants awarded under Title III of the Act is as follows:

(*1*) *Administration.* Federal funding for State, Territory, and area plan administration may not account for more than 75 percent of the total funding expended and requires a 25 percent match. As set forth in 2 CFR 200.306(c), prior written approval is hereby granted for unrecovered indirect costs to be used as match.

(*2*) *Supportive services and nutrition services.* (*i*) Federal funding for services funded under supportive services as set forth in § 1321.85, less the portion of funds used for the Ombudsman program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(*ii*) Federal funding for services funded under nutrition services as set forth in § 1321.87, less funds provided under the Nutrition Services Incentive Program, may not account for more than 85 percent of the total funding expended, and requires a 15 percent match;

(*iii*) One-third ( 1/3) of the 15 percent match must be met from State resources, and the remaining two-thirds ( 2/3) match may be met by State or local resources;

(*iv*) The match for supportive services and nutrition services may be pooled.

(*3*) *Family caregiver support services.* The Federal funding for services funded under family caregiver support services as set forth in § 1321.91 may not account for more than 75 percent of the total dollars expended and requires a 25 percent match.

(*4*) *Services not requiring match.* Services for which no match is required include:

(*i*) Evidence-based disease prevention and health promotion services as set forth in § 1321.89;

(*ii*) The Nutrition Services Incentive Program; and

(*iii*) The portion of funds from supportive services used for the Ombudsman program.

(iii) *Transfers.* Transfer of service allotments elected by the State agency which must meet the following requirements:

(A) A State agency must provide notification of the transfer amounts elected pursuant to guidance as set forth by the Assistant Secretary for Aging;

(B) A State agency shall not delegate to an area agency on aging or any other entity the authority to make a transfer;

(C) A State agency may only elect to transfer between the Title III, part B Supportive Services and Senior Centers, part C-1 Congregate Nutrition Services, and part C-2 Home-Delivered Nutrition Services grant awards;

(*1*) The State agency may elect to transfer up to 40 percent between the Title III, part C-1 and part C-2 grant awards, per section 308(b)(4)(A) of the Act (42 U.S.C. 3028(b)(4)(A));

(*i*) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 40 percent transfer limit.

(*ii*) The State agency may request a waiver up to an additional 10 percent between the Title III part C-1 and part C-2 grant awards, per section 308(b)(4)(B) of the Act (42 U.S.C. 3028(b)(4)(B)).

(*2*) The State agency may elect to transfer up to 30 percent between Title III, parts B and C, per section 308(b)(5)(A) of the Act (42 U.S.C. 3028(b)(5)(A)); and

(*i*) The State agency must request and receive approval of a waiver from the Assistant Secretary for Aging to exceed the 30 percent limitation between parts B and C, per section 316(b)(4) of the Act (42 U.S.C. 3030c-3(b)(4));

(D) Percentages subject to transfer are calculated based on the total original Title III award allotted;

(E) Transfer limitations apply to the State agency in aggregate;

(F) State agencies, in consultation with area agencies, shall:

(*1*) Ensure the process used by the State agencies in transferring funds under this section (including requirements relating to the authority and timing of such transfers) is simplified and clarified to reduce administrative barriers; and

(*2*) With respect to transfers between parts C-1 and C-2, direct limited resources to the greatest nutrition service needs at the community level; and

(G) State agencies do not have to apply equal limitations on transfers to each area agency on aging.

(iv) *State, Territory, and area plan administration.* State and Territory plan administration maximum allocation requirements must align with the approved intrastate funding formula or funds allocation plan as set forth in § 1321.49 or § 1321.51, as applicable. In addition:

(A) *State and Territory plan administration maximum allocation amounts.* State and Territory plan administration maximum allocation amounts may be taken from any part of the overall allotment to a State agency under Title III of the Act. Maximum allocation amounts are determined by the State agency's status as set forth in this paragraph (c)(2)(iv)(A) and paragraph (c)(2)(iv)(B) of this section:

(*1*) A State agency which serves a State with multiple planning and service areas may use the greater of $750,000, per section 308(b)(2)(A) of the Act (42 U.S.C. 3028(b)(2)(A)), or five percent of the total Title III Award.

(*2*) A State agency which serves a single planning and service area State and is not listed in (*3*) below may elect to be subject to paragraph (c)(2)(iv)(A)(*1*) of this section or to the area plan administration limit of ten percent of the overall allotment to a State agency under Title III, as specified in section 308(a)(3) (42 U.S.C. 3028(a)(3)) of the Act.

(*3*) Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands shall have available the greater of $100,000 or five percent of the total final Title III Award, as set forth in section 308(b)(2)(B) (42 U.S.C. 3028(b)(2)(B)) of the Act.

(B) *Area plan administration maximum allocation amounts.* Area plan administration maximum allocation amounts may be allocated to any part of the overall allotment to the State agency under Title III, with the exception of part D, for use by area agencies on aging for activities as set forth in sections 304(d)(1)(A) and 308 of the Act (42 U.S.C. 3024(d)(1)(A) and 3028) and in § 1321.57(b). Single planning and service area States may elect amounts for either State plan administration or area plan administration, as set forth in the Act and paragraph (c)(2)(iv)(A)(*2*) of this section.

(*1*) The State agency will determine the maximum amount of funding available for area plan administration from the total Title III allocation after deducting the amount of funding allocated for State plan administration and calculating a maximum of ten percent of this amount;

(*2*) The State agency may make no more than the amount calculated in paragraph (c)(2)(iv)(B)(*1*) of this section available to area agencies on aging for distribution in accordance with the intrastate funding formula as set forth in § 1321.49; and

(*3*) Any amounts available to the State agency for State plan administration which the State agency determines are not needed for that purpose may be used to supplement the amount available for area plan administration (42 U.S.C. 3028(a)(2)).

(v) *Minimum adequate proportion.* The State agency will meet expectations for the minimum adequate proportion of funds expended by each area agency on aging and State agency to provide the categories of services of access services, in-home supportive services, and legal assistance, as identified in the approved State plan as set forth in § 1321.27(i).

(vi) *Maintenance of effort.* The State agency will meet expectations regarding maintenance of effort, where:

(A) The State agency must expend for both services and administration at least the average amount of State funds reported and certified as expended under the State plan for these activities for the three previous fiscal years for Title III;

(B) The amount certified must at least meet minimum match requirements from State resources;

(C) Any amount of State resources included in the Title III maintenance of effort certification that exceeds the minimum amount mandated becomes part of the permanent maintenance of effort; and

(D) Excess State match reported on the Federal financial report does not become part of the maintenance of effort unless the State agency certifies the excess.

(vii) *The State Long-Term Care Ombudsman Program.* The State agency shall maintain State Long-Term Care Ombudsman Program funding requirements, where:

(A) *Minimum Certification of Expenditures.* The State agency must expend annually under Title III and Title VII of the Act, respectively, for the Ombudsman program no less than the minimum amounts that are required to be expended by section 307(a)(9) of the Act (42 U.S.C. 3027(a)(9));

(B) *Expenditure Information.* The State agency must provide the Ombudsman with verifiable expenditure information for the annual certification of minimum expenditures and for completion of annual reports; and

(C) *Fiscal management and determination of resources.* Fiscal management and determination of resources appropriated or otherwise available for the operation of the Office are in compliance as set forth at § 1324.13(f) of this chapter.

(viii) *Rural minimum expenditures.* The State agency shall maintain minimum expenditures for services for older individuals residing in rural areas, where:

(A) The State agency shall establish a process and control for determining the definition of “rural areas” within their State;

(B) For each fiscal year, the State agency must spend on services for older individuals residing in rural areas the minimum annual amount that is not less than the amount expended for such services, as required by the Act; and

(C) The State agency must project the cost of providing such services for each fiscal year (including the cost of providing access to such services) and must specify a plan for meeting the needs for such services for each fiscal year.

(ix) *Reallotment.* The State agency shall maintain requirements for reallotment of funds, where:

(A) The State agency must annually review and notify the Assistant Secretary for Aging prior to the end of the fiscal year in which grant funds were awarded if there is funding that will not be expended within the grant period for Title III or VII that the State agency will release to the Assistant Secretary for Aging.

(B) The State agency must annually review and notify the Assistant Secretary for Aging of the amount of any released Title III or VII funding from other State agencies that the State agency requests to receive and expend within the grant period from the Assistant Secretary for Aging.

(C) The State agency must use its intrastate funding formula or funds distribution plan, as set forth in § 1321.49 or § 1321.51, to distribute any Title III funds that the Assistant Secretary for Aging reallots pursuant to the State agency's notification under paragraph (c)(2)(ix)(B) of this section.

(x) *Voluntary contributions.* Voluntary contributions shall be allowed and may be solicited for all services for which funds are received under this Act, consistent with section 315(b) (42 U.S.C. 3030c-2(b)). Policies and procedures related to voluntary contributions shall address these requirements:

(A) Suggested contribution levels. The suggested contribution levels shall be based on the actual cost of services;

(B) Individuals encouraged to contribute. Voluntary contributions shall be encouraged for individuals whose self-declared income is at or above 185 percent of the Federal poverty level. Assets, savings, or other property owned by an older individual or family caregiver may not be considered when seeking voluntary contributions from any older individual or family caregiver;

(C) Solicitation. The method of solicitation must be noncoercive, and the solicitation:

(*1*) Must meet all the requirements of this provision; and

(*2*) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution.

(D) Provisions to all service recipients. All recipients of services shall be provided:

(*1*) An opportunity to voluntarily contribute to the cost of the service;

(*2*) Clear information, including information in alternative formats and in languages other than English in compliance with Federal civil rights laws, explaining there is no obligation to contribute, and the contribution is voluntary;

(*3*) Protection of privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(E) Prohibition on means testing. Means testing, as defined in § 1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a voluntary contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all contributions are established; and

(H) Collection of program income. Amounts collected are considered program income and are subject to the requirements in 2 CFR 200.307 and in § 1321.9(c)(2)(xii).

(xi) *Cost sharing.* A State agency is permitted under section 315(a) of the Act (42 U.S.C. 3030c-2(a)), to implement cost sharing for services funded by the Act by recipients of the services, except as provided for in paragraph (c)(2)(xi)(D) of this section. If the State agency allows for cost sharing, the State agency shall address these requirements:

(A) *Policies and procedures.* The State agency shall develop policies and procedures to be implemented statewide, including how an area agency on aging may request and receive a waiver of cost sharing policies, if the area agency on aging adequately demonstrates:

(*1*) A significant proportion of persons receiving services under the Act have incomes below the threshold established in State agency policies and procedures; or

(*2*) That cost sharing would be an unreasonable administrative or financial burden upon the area agency on aging.

(B) *Sliding contribution scale.* The State agency shall establish a sliding contribution scale and a description of the criteria to participate in cost sharing to be implemented statewide, which shall:

(*1*) Meet all the requirements of this provision;

(*2*) Be based solely on individual income and the cost of delivering services;

(*3*) Be communicated including in written materials and in alternative formats upon request;

(*4*) Explain there is no obligation to contribute, and the contribution is voluntary;

(*5*) Be conducted in such a manner so as not to cause a service recipient to feel intimidated, or otherwise feel pressured into making a contribution;

(*6*) Protect the privacy and confidentiality of each recipient with respect to the recipient's income and contribution or lack of contribution.

(C) Individuals eligible to cost share. Individuals shall be determined eligible to cost share based solely on a confidential declaration of income and with no requirement for verification;

(D) Prohibitions on cost sharing. Cost sharing is prohibited as follows:

(*1*) By a low-income older individual if the income of such individual is at or below the Federal poverty level;

(*2*) If State agency policies and procedures specify other low-income individuals within the State excluded from cost sharing;

(*3*) For the following services:

(*i*) Information and assistance, outreach, benefits counseling, or case management services;

(*ii*) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services;

(*iii*) Congregate and home-delivered meals; and

(*iv*) Any services delivered through Tribal organizations.

(E) Prohibition on means testing. Means testing, as defined in § 1321.3, is prohibited;

(F) Prohibition on denial of services. Services shall not be denied because the older individual or family caregiver will not or cannot make a cost sharing contribution;

(G) Procedures to be established. Appropriate procedures to safeguard and account for all cost sharing contributions are established; and

(H) Collection of program income. All cost sharing contributions collected are considered program income and are subject to the requirements of 2 CFR 200.307, 45 CFR 75.307, and in § 1321.9(c)(2)(xii).

(xii) *Use of program income.* Program income is subject to the requirements in 2 CFR 200.307 and 45 CFR 75.307 and as follows:

(A) Voluntary contributions and cost sharing payments are considered program income;

(B) Program income collected must be used to expand a service funded under the Title III grant award pursuant to which the income was originally collected;

(C) The State agency must use the addition alternative as set forth in 2 CFR 200.307(e)(2) and 45 CFR 75.307(e)(2) when reporting program income, and prior approval of the addition alternative from the Assistant Secretary for Aging is not required;

(D) Program income must be expended or disbursed prior to requesting additional Federal funds; and

(E) Program income may not be used to match grant awards funded by the Act without prior approval.

(xiii) *Private pay programs.* The State agency shall maintain requirements for private pay programs, where:

(A) State agencies, area agencies on aging, and service providers may provide private pay programs, subject to State and/or area agency policies and procedures;

(B) The State agency requires area agencies and service providers under the Act that establish private pay programs to develop policies and procedures to:

(*1*) Promote equity, fairness, inclusion, and adherence to the requirements of the Act, including:

(*i*) Meeting conflict of interest requirements;

(*ii*) Meeting financial accountability requirements;

(*iii*) Prohibiting use of funds for direct services under Title III to support provision of service via private pay programs, except as a part of routine information and assistance or case management referrals; and

(*2*) Require that persons who receive information about private pay programs and who are eligible for services provided with Title III funds in the planning and service area be made aware of Title III-funded and any similar voluntary contributions-based service options, even if there is a waiting list for those services, on an initial and periodic basis to allow individuals to determine whether they will select voluntary contributions-based services or private pay programs.

(xiv) *Contracts and commercial relationships.* The State agency shall maintain requirements for contracts and commercial relationships, where:

(A) State agencies, area agencies on aging, and service providers may enter into contracts and commercial relationships, subject to State and/or area agency policies and procedures and guidance as set forth by the Assistant Secretary for Aging, including through:

(*1*) Contracts with health care payers;

(*2*) Private pay programs; or

(*3*) Other arrangements with entities or individuals that increase the availability of home-and community-based services and supports.

(B) The State agency shall require area agencies and service providers under the Act that establish contracts and commercial relationships to develop policies and procedures to:

(*1*) Promote fairness, inclusion, and adherence to the requirements of the Act, including:

(*i*) Meeting conflict of interest requirements; and

(*ii*) Meeting financial accountability requirements.

(*2*) With the approval of the State and/or area agency, allow use of funds for direct services under Title III to support provision of service via contracts and commercial relationships when:

(*i*) All requirements for direct services provision are maintained, as set forth in this part and the Act, or

(*ii*) In compliance with the requirements of the Act, as set forth in section 212 (42 U.S.C. 3020c), and all other applicable Federal requirements.

(C) The State agency shall, through the area plan or other process, develop policies and procedures for area agencies on aging and service providers to receive approval to establish contracts and commercial relationships and participate in activities related to contracts and commercial relationships.

(xv) *Buildings, alterations or renovations, maintenance, and equipment.* Buildings and equipment, where costs incurred for altering or renovating, utilities, insurance, security, necessary maintenance, janitorial services, repair, and upkeep (including Federal property unless otherwise provided for) to keep buildings and equipment in an efficient operating condition, including acquisition and replacement of equipment, may be an allowable use of funds, and the following apply:

(A) Costs are only allowable to the extent not payable by third parties through rental or other agreements;

(B) Costs must be allocated proportionally to the benefiting grant program;

(C) Construction and acquisition activities are only allowable for multipurpose senior centers. In addition to complying with the requirements of the Act, as set forth in section 312 (42 U.S.C. 3030b), as well as with all other applicable Federal laws, the grantee or subrecipient as applicable must file a Notice of Federal Interest in the appropriate official records of the jurisdiction where the property is located at the time of acquisition or prior to commencement of construction, as applicable. The Notice of Federal Interest must indicate that the acquisition or construction, as applicable, has been funded with an award under Title III of the Act, that the requirements set forth in section 312 of the Act (42 U.S.C. 3030b) apply to the property, and that inquiries regarding the Federal Government's interest in the property should be directed in writing to the Assistant Secretary for Aging;

(D) Altering and renovating activities are allowable for facilities providing direct services with funds provided as set forth in §§ 1321.85, 1321.87, 1321.89, and 1321.91 subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75;

(E) Altering and renovating activities are allowable for facilities used to conduct area plan administration activities with funds provided as set forth in paragraph (c)(2)(iv)(B) of this section, subject to Federal grant requirements under 2 CFR part 200 and 45 CFR part 75; and

(F) Prior approval by the Assistant Secretary for Aging does not apply.

(xvi) *Supplement, not supplant.* Funds awarded under the Act for services provided under sections 306(a)(9)(B) (42 U.S.C. 3026(a)(9)(B)), 315(b)(4)(E) (42 U.S.C. 3030c-2(b)(4)(E)), 321(d) (42 U.S.C. 3030d(d)), 374 (42 U.S.C. 3030s-2), and 705(a)(4) (42 U.S.C. 3058d(a)(4)), must be used to supplement, not supplant existing Federal, State, and local funds expended to support those activities.

(xvii) *Monitoring of State plan assurances.* Monitoring for compliance for assurances identified in the approved State plan as set forth in § 1321.27.

(xviii) *Advance funding.* If the State agency permits the advance of funding to meet immediate cash needs of area agencies on aging and service providers, the State agency shall have policies and procedures which comply with all applicable Federal requirements, including timeframes and amount limitations that may apply.

(xix) *Fixed amount subawards.* Fixed amount subawards up to the simplified acquisition threshold are allowed.

(3) The State plan process, including compliance with requirements as set forth in §§ 1321.27 and 1321.29.

(4) In States with multiple planning and service areas, the area plan process, including compliance with requirements as set forth in § 1321.65.