

# Overview of the Administration for Community Living (ACL) and the Older Americans Act (OAA)

Rick Nicholls, Chief of Staff

Administration for Community Living

August 26, 2019

# About ACL

The Administration for Community Living was created around the fundamental principle that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and with the ability to participate fully in their communities.

By funding services and supports provided by networks of community-based organizations, and with investments in research, education, and innovation, ACL helps make this principle a reality for millions of Americans.

# Administration for Community Living

- Created in 2012, bringing together:
  - Administration on Aging
  - HHS Office on Disability
  - ACF Administration for Developmental Disabilities
- Principal agency in HHS to lead aging and disability programs
- Reduce fragmentation and promote consistency in federal programs and policy addressing community living
- Enhance access to quality health care and long-term services and supports for older adults and people with disabilities
- Complement community infrastructure as supported by Medicaid and other federal programs

# ACL Growth in 2013 to 2015

- FY 2014 and FY 2015 appropriations transfers:
  - State Health Insurance Program (SHIP)
  - Paralysis Resource Center
  - Limb Loss Resource Center
- The Workforce Innovation and Opportunity Act of 2014, transferred the following programs to ACL from Department of Education:
  - Independent Living Programs
  - Assistive Technology Program
  - National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)
- HHS Secretary transferred HRSA's Traumatic Brain Injury programs to ACL in October 2015

# Operational and Strategic Integration

A fire hose of opportunity



# ACL – Program Areas by Statute

## **Older Americans Act:**

- Grants for State and Community Programs on Aging
- Activities for Health, Independence and Longevity
- Grants for Native Americans
- Vulnerable Elder Rights Protection

## **Elder Justice Act:**

- Adult Protective Services

## **Public Health Services Act (PHSA):**

- Alzheimer's Disease Supportive Services
- Lifespan Respite Care
- Chronic Disease Self-Management Education
- Paralysis Resource Center
- Limb Loss Resource Center
- Traumatic Brain Injury

## **Medicare Improvements for Patients and Providers Act (MIPPA):**

- Grants to Aging and Disability Resource Centers
- Grants to Area Agencies on Aging
- Grants to State Health Insurance Assistance Programs
- National Center for Benefits Outreach and Enrollment

## **Developmental Disabilities Assistance and Bill of Rights Act (Developmental Disabilities Act):**

- State Councils on Developmental Disabilities
- Developmental Disabilities Protection & Advocacy
- University Centers for Excellence in Developmental Disabilities
- Projects of National Significance

## **Rehabilitation Act:**

- Independent Living State Grants
- Centers for Independent Living
- National Institute on Disability, Independent Living, and Rehabilitation Research

## **Assistive Technology Act (AT Act):**

- Assistive Technology State Grants
- Protection & Advocacy for Assistive Technology
- Assistive Technology National Activities

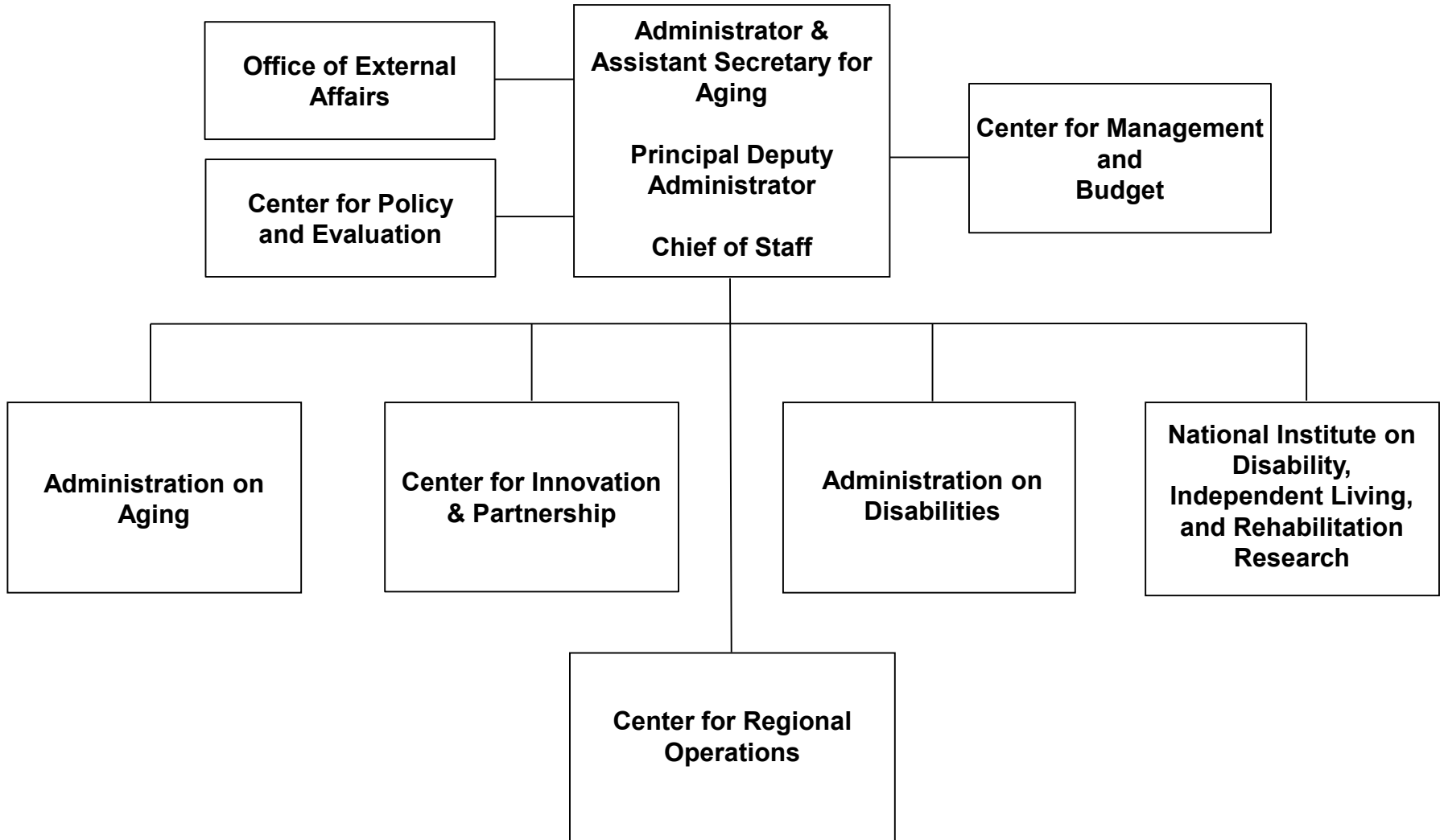
## **Help America Vote Act:**

- Protection & Advocacy Systems

## **Omnibus Budget and Reconciliation Act (OBRA):**

- State Health Insurance Assistance Programs

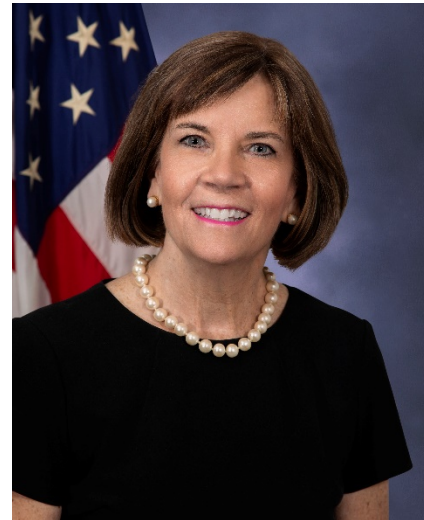
# ACL Organizational Chart



# Office of the Administrator



**Lance Robertson**



**Mary Lazare**

## **ACL Administrator and Principal Deputy Administrator**

- Serve as members of Secretary's senior leadership team
- Provide leadership and executive supervision to ACL
- Establish national policies and priorities



# Lance's 5 Pillars

1. Connecting People to Resources
2. Protecting Rights and Preventing Abuse
3. Expanding Employment Opportunities
4. Supporting Families & Caregivers
5. Strengthening the Network

# Office of the Administrator (Cont.)



**Rick Nicholls**  
Chief of Staff

- Chief of Staff and Executive Secretary
  - Policy Clearance
  - Controlled Correspondence
  - Legislative Affairs and Oversight
  - Freedom of Information Act



**Christine Phillips**  
Director, Office of  
External Affairs

- Office of External Affairs
  - Communications Products and Website ([www.acl.gov](http://www.acl.gov))
  - Media Inquiries and Outreach
  - Public Education Activities

# Administration on Aging

- Administers programs operated under: the Older Americans Act; Public Health Service Act; and Elder Justice Act
- Four Program Offices
  - Supportive and Caregiver Services
  - Nutrition and Health Promotion Programs
  - Elder Justice and Adult Protective Services
  - American Indian, Alaskan Native, and Native Hawaiian Programs



**Edwin Walker**  
Deputy Assistant  
Secretary for Aging

# Administration on Disabilities

- Administers programs operated under: the Developmental Disabilities Act; Rehabilitation Act; Help America Vote Act; Assistive Technology Act; and Public Health Service Act



**Julie Hocker**  
Commissioner on  
Disabilities

- Three Offices
  - Office of Intellectual & Developmental Disabilities Programs
  - Office of Independent Living Programs
  - Office of Disability Services Innovation

# Center for Innovation and Partnership

- Administers programs operated under: the Older Americans Act; Public Health Service Act; MIPPA; OBRA; and AT Act



**Kelly Cronin**  
Deputy Administrator  
for Integrated  
Programs

- Three Offices
  - Office of Healthcare Information and Counseling
  - Office of Network Advancement
  - Office of Interagency Innovation

# National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR)



**Kristi Hill**  
Acting Director  
NIDLRR

- Administers research grant programs authorized under Sections 202 and 204 of the Rehabilitation Act
- Sponsors grantees to generate new disability and rehabilitation knowledge and promote its use and adoption
  - Improve ability of people with disabilities to perform activities of their choice in the community
  - Expand society's capacity to provide full opportunities and accommodations for its citizens with disabilities
- Two Offices:
  - Research Sciences
  - Research Administration

# Center for Management and Budget

- Direct and coordinate all ACL administrative and resource management activities, and improve the efficiency and effectiveness of ACL's operations
- Executive Officer, CFO, CIO, Grants Management Officer, and Human Capital Officer
- Four Offices:
  - Administration and Personnel
  - Budget and Finance
  - Grants Management
  - Information Resources Management



**Rasheed Williams**  
Deputy Administrator  
for Management and  
Budget

# Center for Policy and Evaluation

- Advises and supports the Immediate Office of the Administrator in developing effective federal policies to address the needs of older adults and people with disabilities
- Collects and analyzes data on populations and services, and evaluates the effectiveness of programs
- Strategic Planning
- Two Offices:
  - Policy Analysis and Development
  - Performance and Evaluation



**Vicki Gottlich**  
Director, Center for  
Policy and  
Evaluation



# Center for Regional Operations

- ACL's 'eyes and ears,' advocates, and liaisons at the regional level
- Works closely with federal, state, tribal and local organizations
- Represents ACL's mission, goals, objectives and initiatives to the Aging and Disability Networks, other federal agencies, and the public



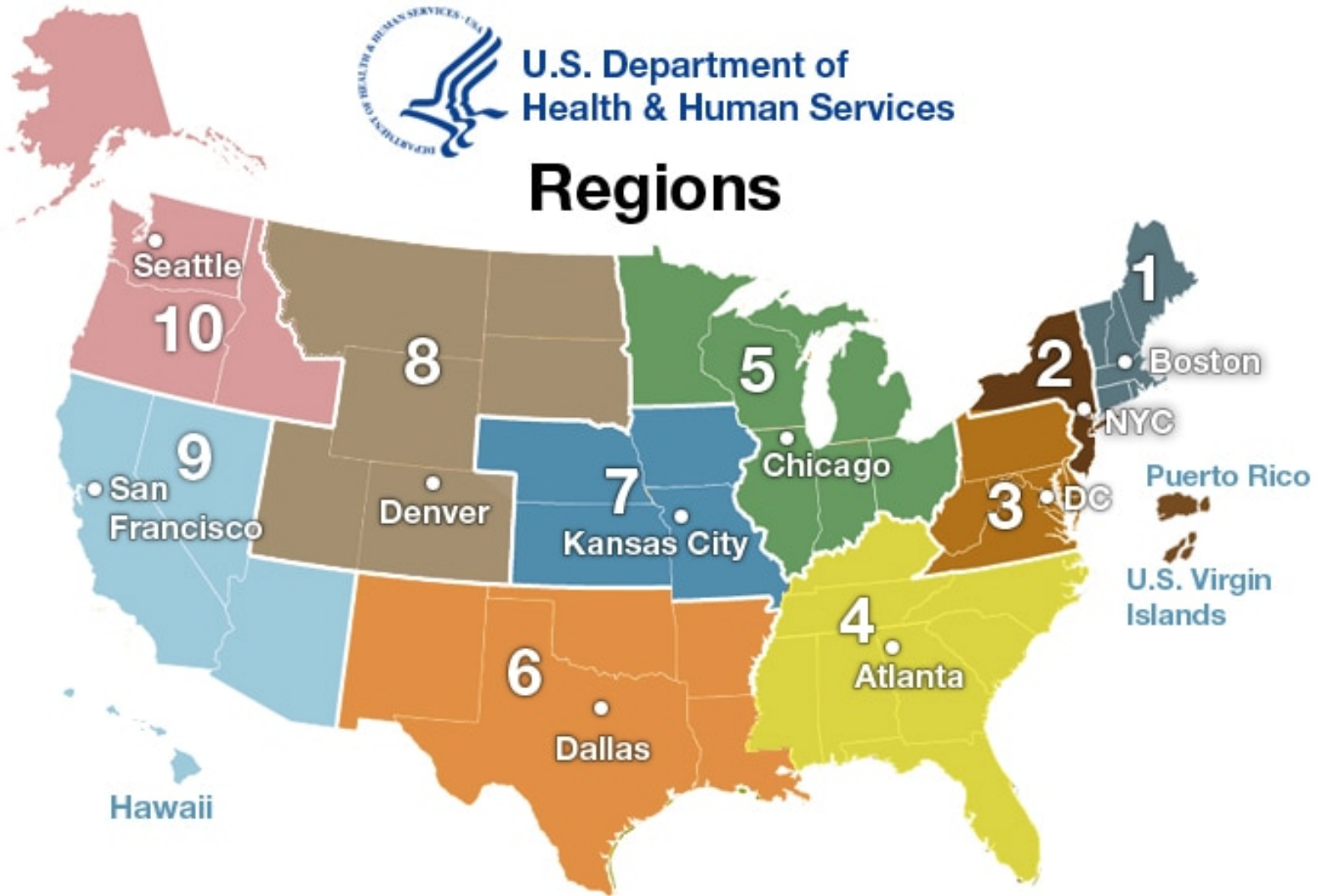
**Tom Moran**  
Deputy Administrator  
for Regional  
Operations and  
Partnership  
Development

# 10 ACL Regional Administrators



U.S. Department of  
Health & Human Services

## Regions



# Regional Administrators by Region

I – Jennifer Throwe

II – Kathleen Otte

III – Rhonda Schwartz

IV – Costas Miskas

V – Amy Wiatr-Rodriguez

VI – Derek Lee

VII – Lacey Boven

VIII – Percy Devine

IX – Percy Devine (acting)

X – Shelly Zylstra

# Administration on Aging (AoA)

1965: Three Important Programs Enacted

- Medicare
- Medicaid
- Older Americans Act (OAA)



***“Every State and every community can now move toward a coordinated program of services and opportunities for our older citizens.”***

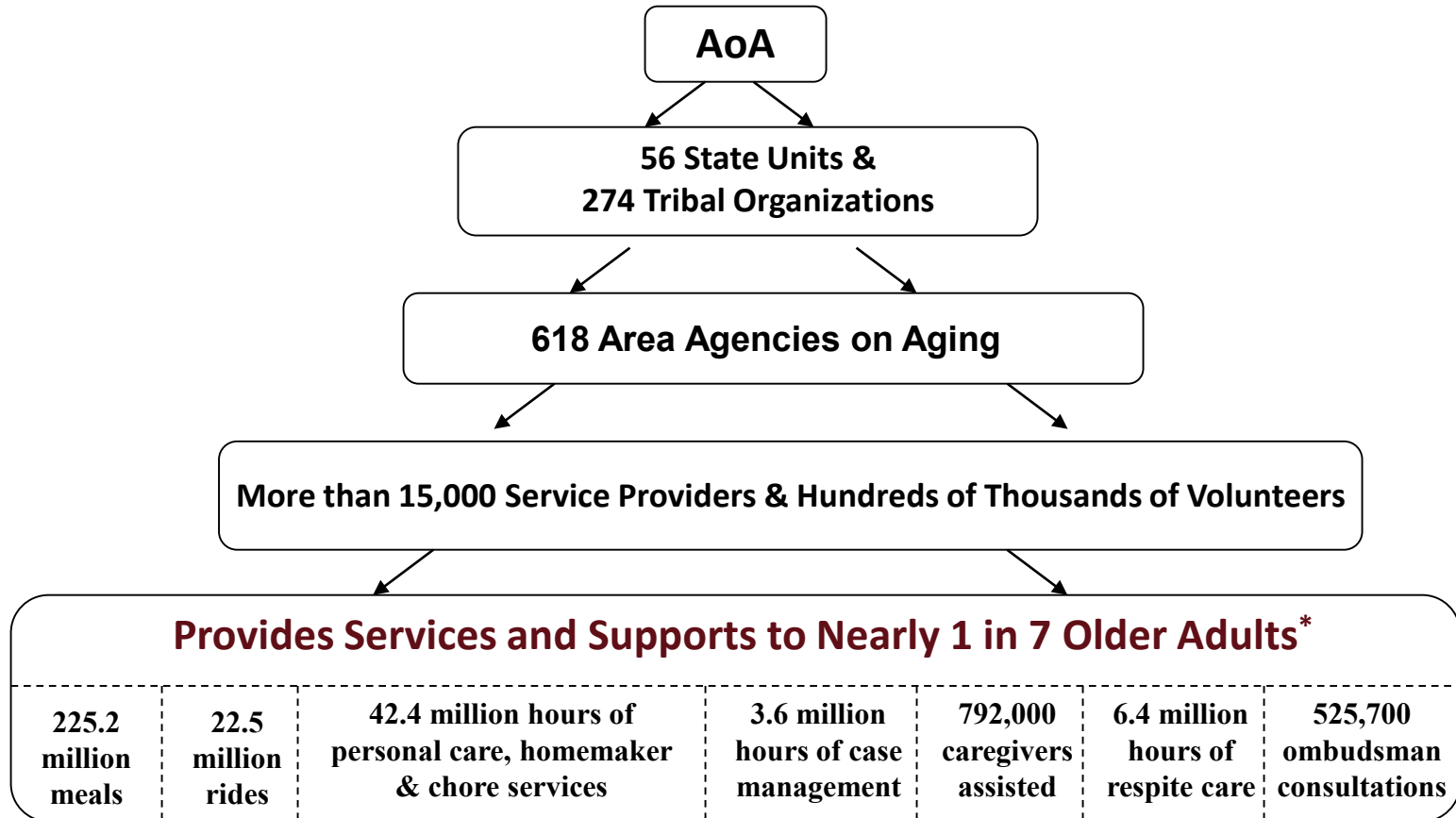
*President Lyndon B. Johnson, July 1965*

# OAA Declaration Of Objectives - Title I

## To Assure Older Americans:

1. An adequate income in retirement
2. Best possible physical and mental health
3. Suitable housing
4. Comprehensive long term care services
5. Employment opportunities
6. Retirement in health, honor & dignity
7. Civic, cultural, educational and recreational opportunities
8. Continuum of care for vulnerable elderly
9. Benefits from research
10. Freedom & independence to manage their own lives

**The Older Americans Act, Administered by the Administration on Aging (AoA),  
Helps Over 10 Million Older Adults (1 in 7)  
Remain at Home through Low-Cost, Community-Based Services  
(*\$3 to \$1 Return on Federal Investment*)**



\*Data Source: FY 2017 SPR and Title VI PPR

# The Older Americans Act

*...assures that preference will be given to providing services to older individuals with **greatest economic need** and older individuals with **greatest social need** with **particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.***

# Who We Serve:

- Poor and Near Poor (*below 150% Poverty*)
- Frail and Vulnerable
  - Lives Alone; Diabetes; Heart Condition; Minority; Rural
- At Risk for ER visits & Hospitalization:
  - Over 90% of OAA Clients have Multiple Chronic Conditions
    - Compared to 68% of general older adult population (age = 65+)
  - 66% of Case Management Clients take 5 or more medications daily
- At Risk for Nursing Home Admission:
  - 42% of Home-Delivered Nutrition Clients have 3+ Activities of Daily Living (ADL) Impairments
  - 75% of Home-Delivered Nutrition Clients have 3+ Instrumental Activities of Daily Living (IADL) Impairments

Data Sources: 2017 SPR; 2018 NSOAAP, 2017 CMS Multiple Chronic Conditions Prevalence;



# Key Challenges

- Rapidly increasing demographics
- Increasing complexity of needs of individuals and families
- More people are aging with disabilities
- Referrals by the healthcare sector without sharing in the costs of care
- Funding has not kept pace with inflation

# Health & Independence: Home & Community-Based Supportive Services

## Key Service Data

- 10.4 million hours of adult day care
- More than 3.6 million hours of case management
- 12.5 million calls answered for information about and assistance obtaining services
  - Augmented by National Eldercare Locator & Support Center
- Complemented by Evidence-Based Interventions:
  - Falls Prevention
  - Chronic Disease Self Management Education
  - Diabetes Self Management Training
  - Alzheimer's Disease Supportive Services
- Collaborating with Business Acumen Initiative to transform aging & disability grant recipients into strategic business partners with the healthcare sector

## Targeting: Transportation Service Example

- Nearly half (49%) of seniors using transportation services rely on them for the majority of their transportation needs and would otherwise be homebound.
- Nationally, 24% of individuals 60 and older live alone. Nearly two-thirds (64%) of OAA transportation users lived alone.
- 14% of transportation riders take 10 to 20 daily prescriptions, increasing their safety risk of driving
- About two-thirds of transportation clients have annual incomes at or below \$20,000

Data Sources: FY 2017 SPR and 2018 NSOAP

# Health & Independence: Nutrition Services

Congregate (Formula Grant): Meals at Group Sites, Such as Senior Centers

Home-Delivered (Formula Grant): Delivery of Meals & Related Services to Frail Seniors Who Are Homebound

Nutrition Services Incentives Program: Funds Awarded Based on # Meals Served in Previous Year

- Adequate nutrition is necessary for health, functionality and the ability to remain at home in the community.
- Provide Nutrition Services, Education and Counseling
- 66% of Home-Delivered & 54% of Congregate Nutrition Clients report the meal is half or more of their food for the day.
- OAA meals are nutritious and meet the needs of seniors with nutrition ameliorated chronic illnesses (diabetes, hypertension, congestive heart failure)
  - Provide 33% of Dietary Reference Intake
  - Adhere to the Dietary Guidelines for Americans.
- In FY 2017, Home-Delivered Nutrition Services provided 144 million meals to over 862,000 seniors.
- In FY 2017, Congregate Nutrition Services provided 76.2 million meals to more than 1.5 million seniors in a variety of community settings.
- In FY 2017, nine out of ten (94%) home-delivered meal clients reported that receiving meals helped them to continue to live in their own home.
- Researchers estimate that food insecure older adults are so functionally impaired it is as if they are chronologically 14 years older; a 65 year-old food insecure individual is like a 79 year-old person chronologically.

# Caregivers: National Family Caregiver Support Program

## Serving Over 790,000 Caregivers Annually

- Respite Care Services provided caregivers with nearly 6.2 million hours of temporary relief from their caregiving responsibilities.
    - Coordinated with Lifespan Respite Care Program for systems development
  - Access Assistance Services provided 1.3 million contacts to caregivers assisting them in locating services from a variety of private and voluntary agencies.
  - 26% of caregiver clients indicate that without OAA services the care recipient would most likely be living in a nursing home or assisted living.
- 80% of all community-based long-term care is provided by family and friends.
  - In 2014, approximately 34.2 million adult caregivers, or approximately 15 percent of all adults, provided uncompensated care to those 50 years of age and older.
  - A 2014 study by the Rand Corporation estimates the economic value of replacing unpaid caregiving to be about \$522 billion annually (cost if that care had to be replaced with paid services).

Data Sources: FY 2017 SPR, 2018 NSOAAP; Research Report: Caregiving in the U.S. 2015. National Alliance for Caregiving and AARP Public Policy Institute

# American Indian, Alaska Native, Native Hawaiian Programs

## **Purpose**

- Promote home and community-based supportive services to Native American, Alaskan Native and Native Hawaiian elders.
  - Help to reduce the need for costly institutional care and medical interventions;
  - Responsive to the cultural diversity of Native American communities; and
  - Represent an important part of the communities' comprehensive services.

## **Native American Nutrition and Supportive Services**

- Congregate and Home-Delivered Meals; Information and Referral; Transportation; Personal care; Chores; Health Promotion and Disease Prevention; and other Supportive Services.

## **Native American Caregiver Support Services**

- Assist families and grandparents caring for grandchildren.
- Services that meet a range of caregivers' needs, including information and outreach, access assistance, individual counseling, support groups and training, respite care, and other supplemental services.

# Protection of Vulnerable Elders

## Long-Term Care Ombudsman

- Over 1,300 professional ombudsman and 6,625 volunteers:
  - monitor conditions,
  - investigate complaints,
  - represent resident interests;
  - made quarterly visits to 68% of nursing homes;
  - 30% of assisted living, board and care, and other facilities.
- Ombudsman handled 201,460 resident complaints, 73% were partially or fully resolved.
- Improved consistency with implementation of
  - Regulation (2015);
  - Reauthorization (2016);
  - Data System (2017)

## Prevention of Abuse, Neglect & Exploitation

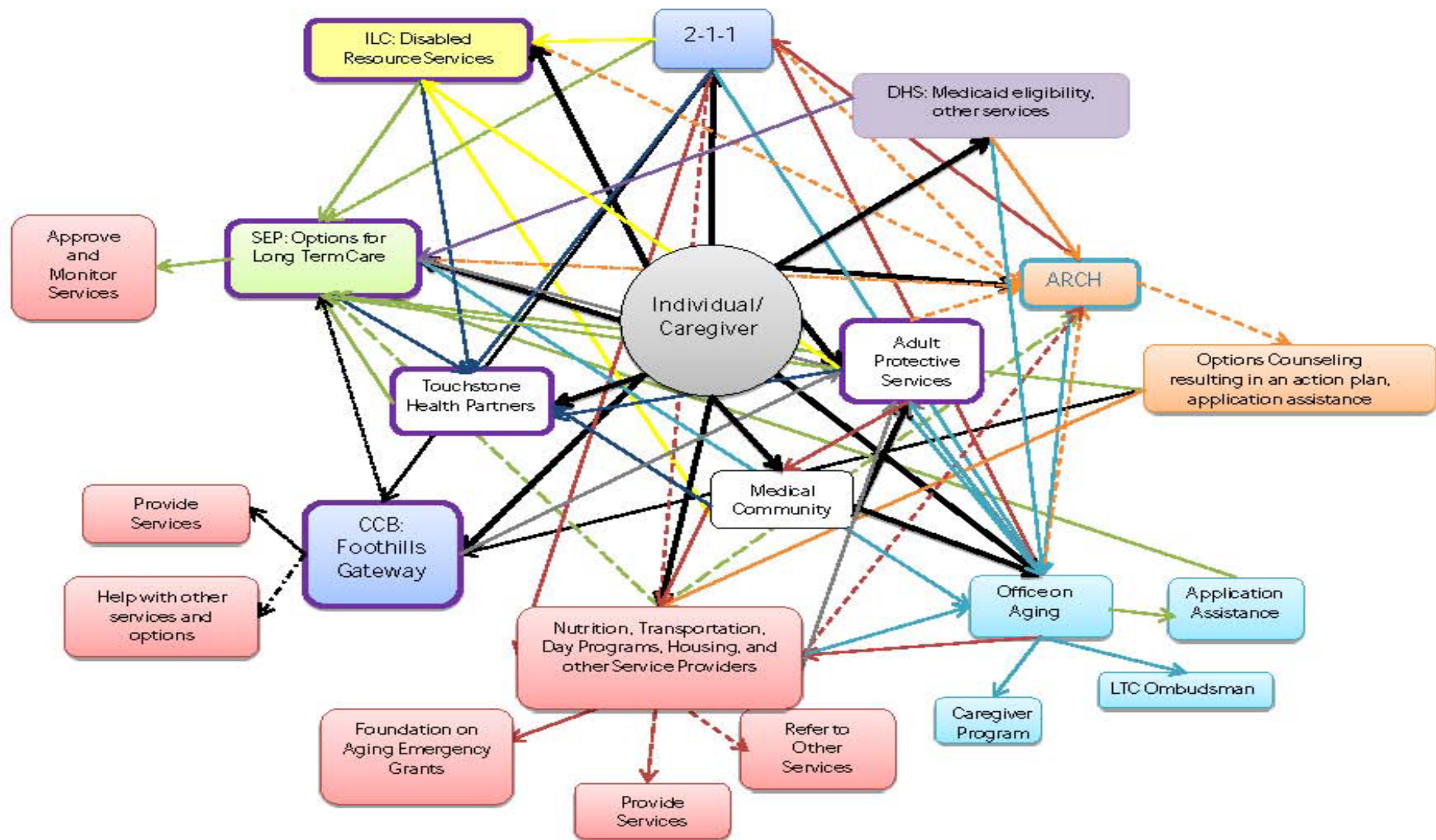
- A minimum 5 million elders are abused, neglected and/or exploited annually.
- Older victims of even modest forms of abuse have a dramatically higher (300%) morbidity and mortality rates.
- OAA focuses on training, education, and coordination with local law enforcement officials, community coalitions, and multidisciplinary teams.
- Elder Justice Act Implementation
  - EJ Coordinating Council
  - National Framework
  - National Center on Elder Abuse
  - National Adult Maltreatment Reporting System
  - APS Guidelines

## Legal Services

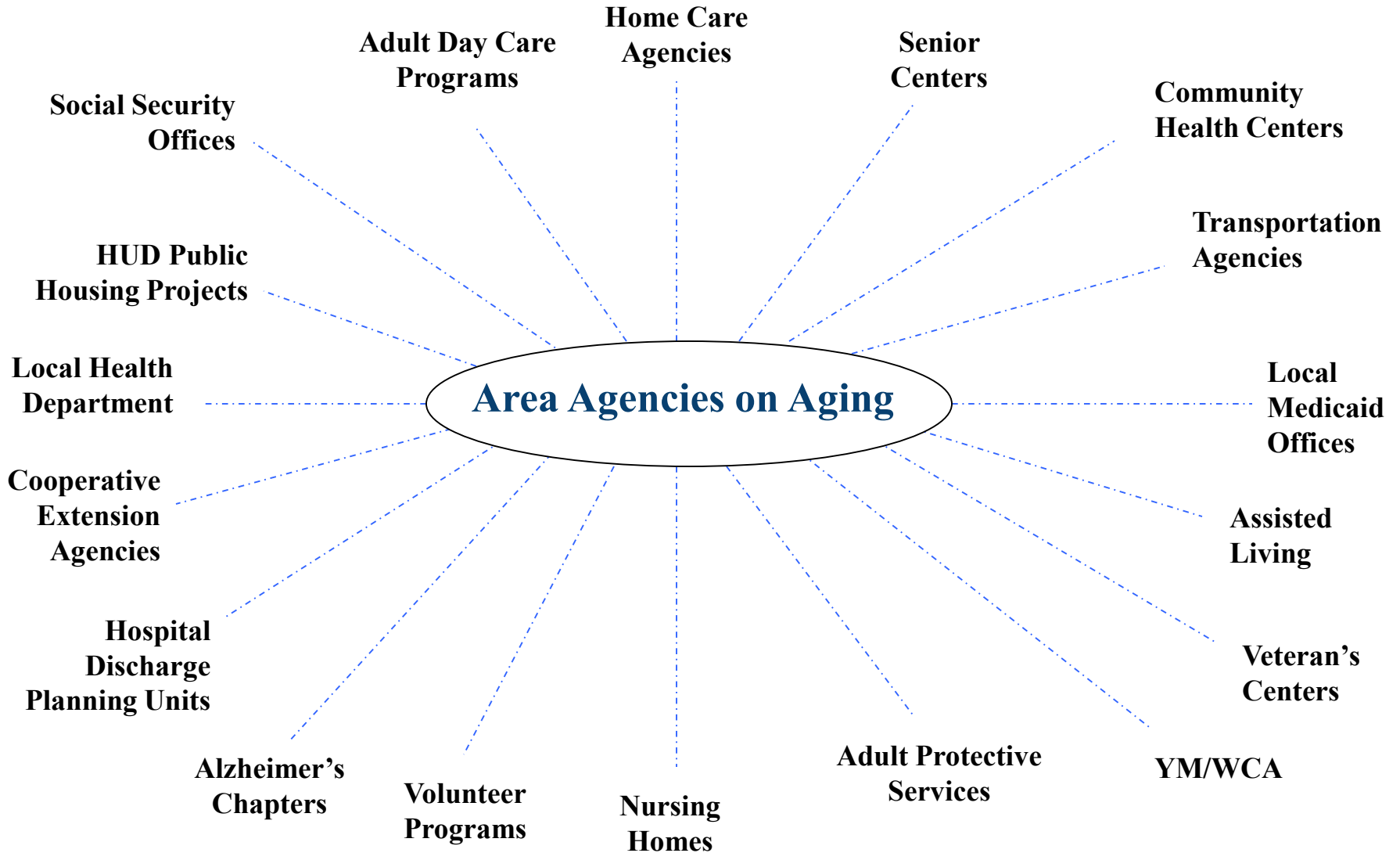
- Provided more than 933,000 hours of legal assistance.
- Top Areas of Legal Assistance:
  - Income Security
  - Health Care Financing
  - Housing
  - Consumer Protection
  - Elder Abuse
- Enhanced Training and Technical Assistance
- Enhanced Data Collection

Data Sources: FY 2017 NORS; FY 2017 SPR

# The LTSS Puzzle: The Need for a Coordinated NWD System



# Comprehensive & Coordinated Service Delivery Systems





# Our Priority -- Aging In Place

**Helping Older Adults  
Age In Place Through  
Three Key Strategies**

```
graph TD; A[Helping Older Adults Age In Place Through Three Key Strategies] --> B[Invest in Core Home & Community-Based Services that Help Older Adults Stay at Home]; A --> C[Build Partnerships that Leverage Additional Public & Private Resources]; A --> D[Promote Innovations to Ensure Continued Effective Outcomes in the Future];
```

**Invest in Core Home &  
Community-Based  
Services that Help  
Older Adults Stay at  
Home**

**Build Partnerships  
that Leverage  
Additional Public &  
Private Resources**

**Promote Innovations  
to Ensure Continued  
Effective Outcomes  
in the Future**

# A Person-Centered Approach

**Personal Care**

**Access/Services/  
Information**

**Transportation**

**Home Health Aide**

**Chore/  
Housekeeping**

**Meal Preparation**

**Congregate Meals**

**Adult Day Care**

**Grocery Shopping**

**Home Delivered  
Meals**

**Benefits  
Counseling**

**“What will I need to stay healthy  
in my own home as I get older?”**

**Financial Plan/  
Management**

**Legal Assistance**

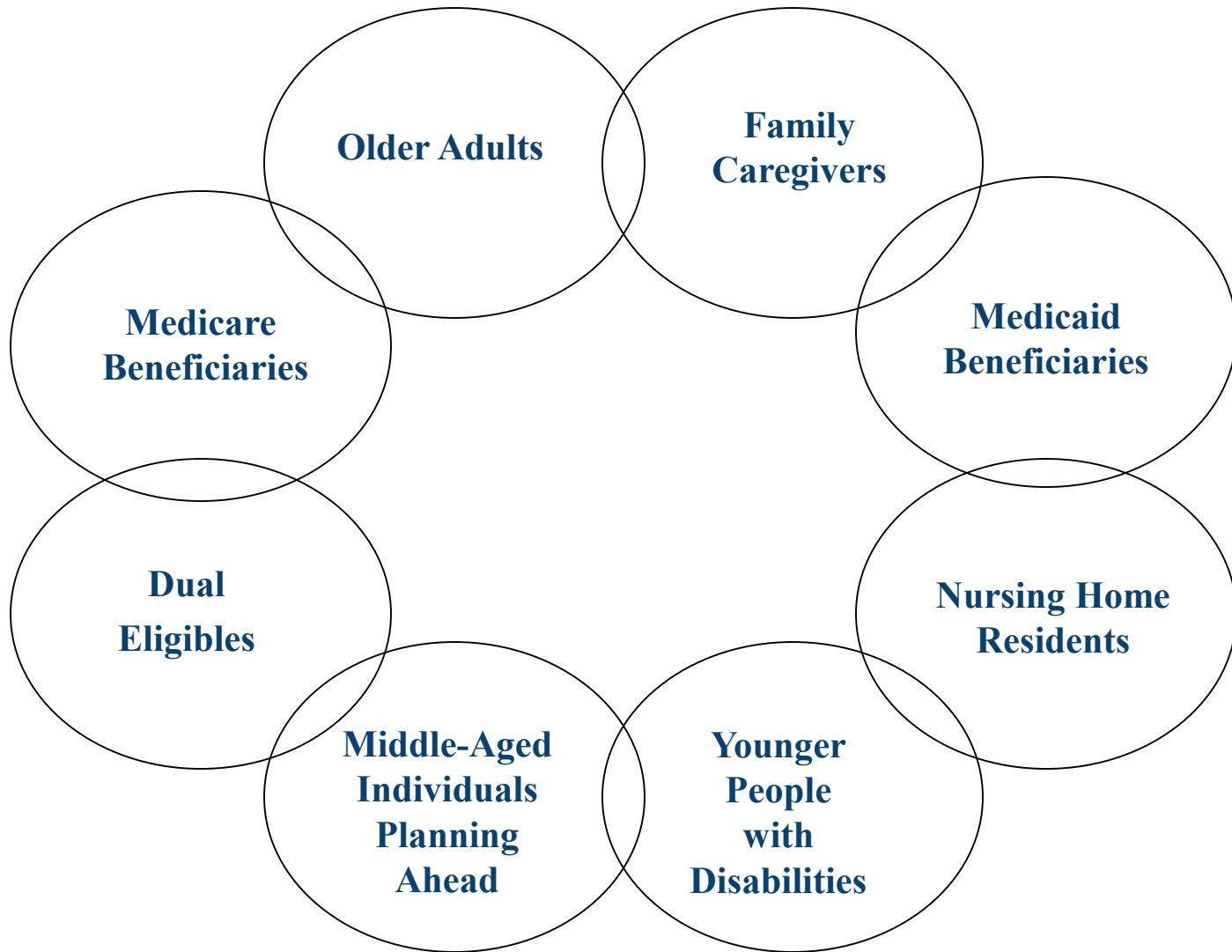
**Socialization/  
Senior Center**

**Home  
Modification**

**Medication  
Management**



# The People We Serve



# The National Eldercare Locator

Secure | https://eldercare.acl.gov/Public/Index.aspx

Apps For quick access, place your bookmarks here on the bookmarks bar. Import bookmarks now...



Home About Resources

1-800-677-1116

Find help in your community by entering your zip code OR city and state.

Zip Code

City/State

Enter zip code

Search



Welcome to the **Eldercare Locator**, a public service of the U.S. Administration on Aging connecting you to services for older adults and their families. You can also reach us at 1-800-677-1116.

## Have A Question?



Speak with an  
Information Specialist  
Monday - Friday  
9am - 8pm ET

- Start an Online Chat
- Call us at 1-800-677-1116
- Email Us

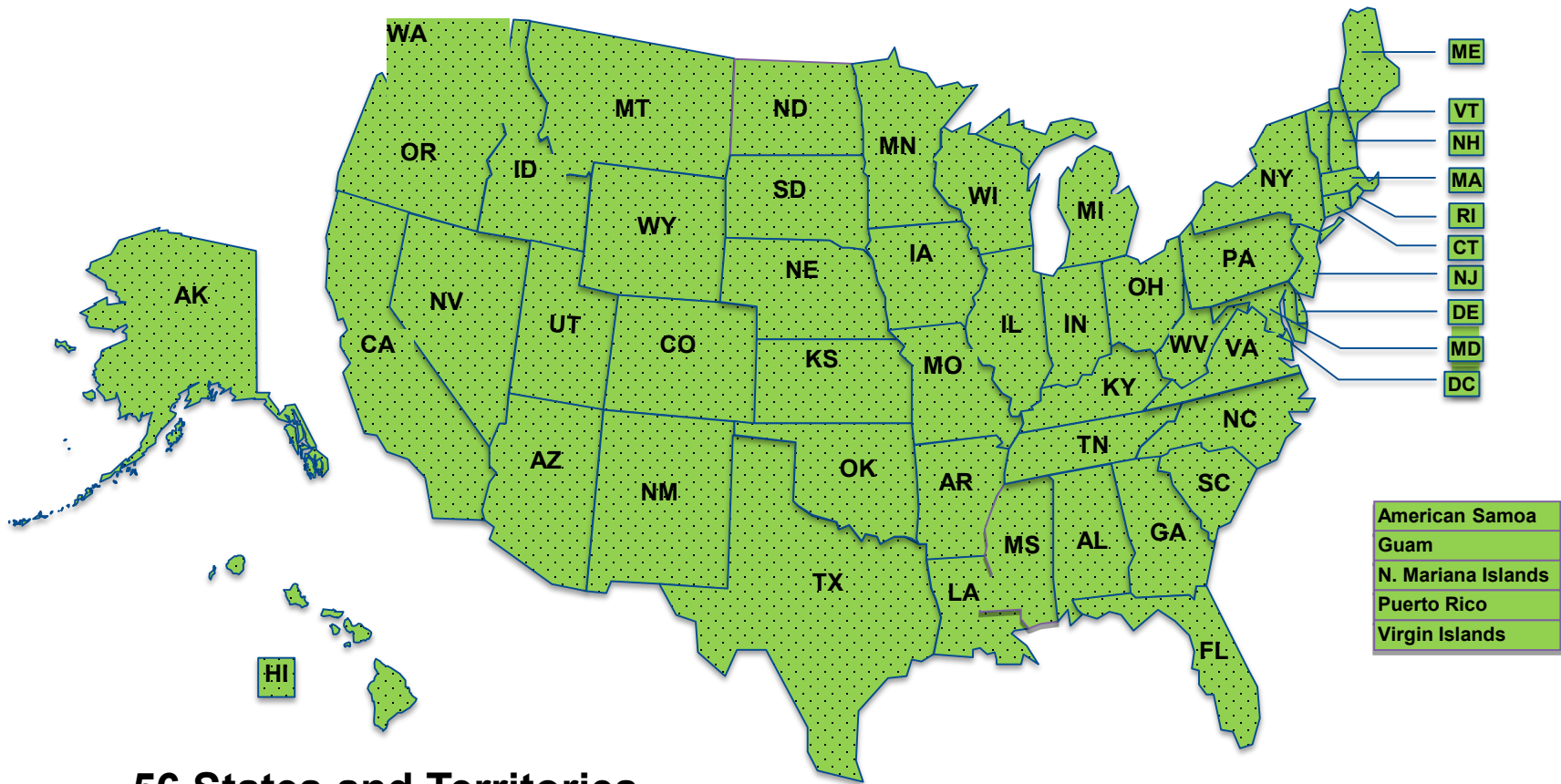
## Caregiver Corner



Visit our Caregiver Corner for information and resources for caregivers.

# Nationwide Aging & Disability Networks

## “America’s Long Term Services & Support Access System”



**56 States and Territories**  
**1,222+ Access Points**

# ACL Funded Resource Centers

- To provide training, technical assistance and to serve as national repositories of best practices, research, program enhancements and policies –
  - See [www.acl.gov](http://www.acl.gov)
  - Search for *National Resource Centers*
    - Found at: <https://www.acl.gov/node/495>

# For More Information – ACL.gov



## Advancing independence, integration, and inclusion throughout life

The Administration for Community Living was created around the fundamental principle that older adults and people of all ages with disabilities should be able to live where they choose, with the people they choose, and with the ability to participate fully in their communities.

By funding services and supports provided by networks of community-based organizations, and with investments in research, education, and innovation, ACL helps make this principle a reality for millions of Americans.



Administration for Community Living: Strengthening Communities Video

### Need Help?

Find help for yourself or a loved one

I NEED HELP WITH



### For Partners, Professionals, and Researchers

Connect to programs, services, and more

START HERE

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GovDelivery) to send news  
and information to  
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U.S. Department of Health and Human Services

March 15 at 2:30 PM

In honor National Nutrition Month, Deputy Secretary Eric Hargan and The Administration for Community Living Administrator Lance Robertson visited the Walter Reed Community and Senior Center in Arlington, VA, just before lunch time, and the center was full of activity.



Administration for Community Living

Published by Rohmteem Mokhtari [?] · March 15 at 12:11 PM

"We know that the lonely and sedentary lifestyle is harmful," said Cheng Ping Feng, who participates in the center's congregate meals program. The center allow older adults "to connect with others and stay active."



Administration for Community Living

Program Areas Grants Aging & Disability in America Newsroom About ACL

I NEED HELP WITH

Home / Top Stories / ACL Blog / At Senior Centers, Meals Become Gateways to Activities, Services, and Connections

## At Senior Centers, Meals Become Gateways to Activities, Services, and Connections

### NEWSROOM

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In the News

Events and Observances

Speeches and Testimony

March 15, 2019  
ACL Staff



HHS Deputy Secretary Eric Hargan and ACL Administrator Lance Robertson arrived at the Walter Reed Community and Senior Center in Arlington, VA, just before lunch time, and the center was full of activity.

"Let's do this," a man said as he prepared to take a shot at the pool table. In the gym, the 55-and-over basketball game was gearing up. Down the hall, the intermediate line dancing class practiced a dance choreographed to Aiee Benjamin's "Let Me Down Slowly." Next door, Blanche Kirchner led a painting class, as she has for 40 years. At 97 years old, Kirchner is Arlington County's longest-serving employee.

Hargan and Robertson were visiting the center to help kick off National Nutrition Month. The center is one of thousands



ACL.GOV

At Senior Centers, Meals Become Gateways to Activities, Services, and Connections



Questions?



# Aging and Disability 101: Adult Protective Services and the Elder Justice Act

August 28, 2019

# TODAY'S DISCUSSION

- 1. Introduction***
- 2. Overview of Adult Protective Services***
- 3. Role of APS in a Critical Incident Management System***
- 4. Elder Justice Act***
- 5. OAA Assurances***
- 6. 1915c Assurances***

# INTRODUCTION

## Dr. Jay Bulot

Vice President for State Markets  
WellSky Corporation

## Brief Biography

- PhD Gerontology, UMASS Boston
  - Public Policy, Research Methods and Statistics
- Tenured Professor, Department Head, Associate Dean
  - Developed one of the first graduate courses on Elder Abuse
  - Research Agenda ANE and Technology and Aging
  - Academic Research Institute Director
- Certified Elderly Service Officer
- Executive Director of LA Governor's Office of Elderly Affairs
  - Administered Elder Protective Services
- Director, Georgia Division of Aging Services
  - Administered Public Guardianship and Adult Protective Services
- National LTSS Consultant
- NASUAD President, Vice President, Secretary and Treasurer
- NASUAD Board Member since 2008

# Adult Protective Services

# ADULT PROTECTIVE SERVICES: HISTORY

- **1974:** Title XX of the Social Security Act allows States to expand use of block grant funds to expand from abuse of children, to abuse of children and adults.<sup>(1)</sup>
- **1981:** All States report having extended protective services to at least a segment of the adult population.<sup>(1)</sup>
- **Late 1980s-1990s:** Cuts in social service block grant resources result in widespread cuts to APS funding.<sup>(1)</sup>
- **SSBG:** Periodic discussions of eliminating as ineffective; duplicative.
- **2010:** The Elder Justice Act provides federal resources to “*prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation.*”<sup>(2)</sup>
  - Authorized \$100M federal funding for state and local APS programs; however, no money has been appropriated by Congress<sup>(2)</sup>
- **2013** National Adult Maltreatment Reporting System (NAMRS)
- **2016:** Administration on Community Living (ACL) developed voluntary guidelines intended to assist states in developing efficient and effective APS systems<sup>(3)</sup>

## Sources:

(1) <http://www.napsa-now.org/about-napsa/history/history-of-adult-protective-services/>

(2) <http://www.napsa-now.org/policy-advocacy/eja-implementation/>

(3) <https://www.acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf>

# ADULT PROTECTIVE SERVICES

Adult Protective Services (APS) are primarily state funded programs providing protective services to elder/older adults over the age of 60 or adults between 18 and 59 years of age who have a physical or mental impairment that substantially limits one or more major life activities.

- Because there is no federal funding, each state structure varies. Some have a single agency for all adults, others, have separate adult and elder protective services. A few programs are administered as part of the Child Protective Services/Child Welfare.
  - Adult Protective Services is typically for individuals 18 years of age or older but under 60 years of age
  - Elder/Older Adult Protective Services is typically for individuals 60 years of age and older

## Purpose:

- Provide short-term crisis intervention to stabilize and safeguard an elder or an adult with a disability, who is experiencing abuse, neglect or exploitation (A/N/E).
- Interventions can include services to support the long-term safety of the individual.

## Services may include:

- Investigation and follow-up;
- Referral to outside agencies
- Homemaking, nursing, meals, etc.

# ADULT PROTECTIVE SERVICES: SCOPE OF THE PROBLEM

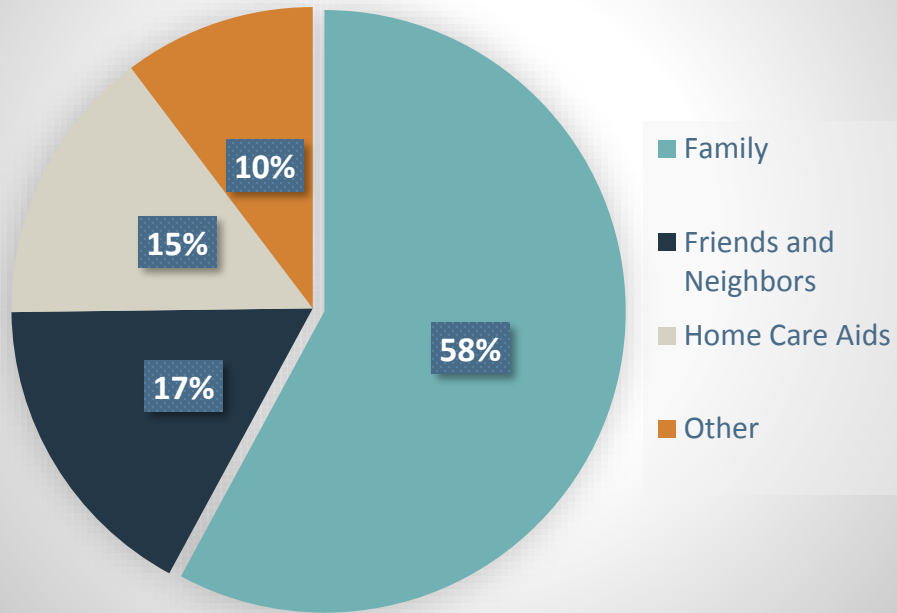
One of the most challenging areas facing state long-term services and supports directors is the abuse and neglect of seniors and people with disabilities. ANE is challenging because:

- Lack of federal funding
  - Unclear guidance
  - Lack of support & follow up from law enforcement
  - **Comparisons/Expectations Based on Child Welfare System**
- At least one in ten seniors have experienced some type of abuse.
    - **Elders who have experienced some type of abuse have a 300 percent higher risk of death as compared to those who have not suffered from mistreatment.**
    - Elders are defrauded out of billions of dollars annually, often times becoming impoverished and needing to rely on state assistance as a result.
    - This session will first describe what elder abuse is, and then provide attendees with proactive actions they can pursue within their agencies to combat this abuse.



# ADULT PROTECTIVE SERVICES: SCOPE OF THE PROBLEM

## Most Elder Financial Exploitation Comes from the Family<sup>(1)</sup>



Elder abuse is **DRAMATICALLY UNDERREPORTED**. Only **1 IN EVERY 23 CASES** gets reported to Adult Protective Services.

APS shows an increasing trend in reporting<sup>(2)</sup>



Most APS clients are “vulnerable adults” or adults 18+ with a significant physical and/or mental impairment.<sup>(3)</sup>

Sources:

- (1) Peterson, J., Burnes, D., Caccamise, P., Mason, A., Henderson, C., Wells, M., & Lachs, M. (2014). Financial exploitation of older adults: a population-based prevalence study. *Journal of General Internal Medicine*, 29(12), 1615–23. doi: 10.1007/s11606-014-2946-2
- (2) Quinn, K., & Benson, W. (2012). The states’ elder abuse victim services: a system in search of support. *Generations* 36(3), 66–71.
- (3) <https://ncea.acl.gov/resources/docs/archive/APS-FactSheet.pdf>

# ADULT PROTECTIVE SERVICES: CORE PRINCIPLES

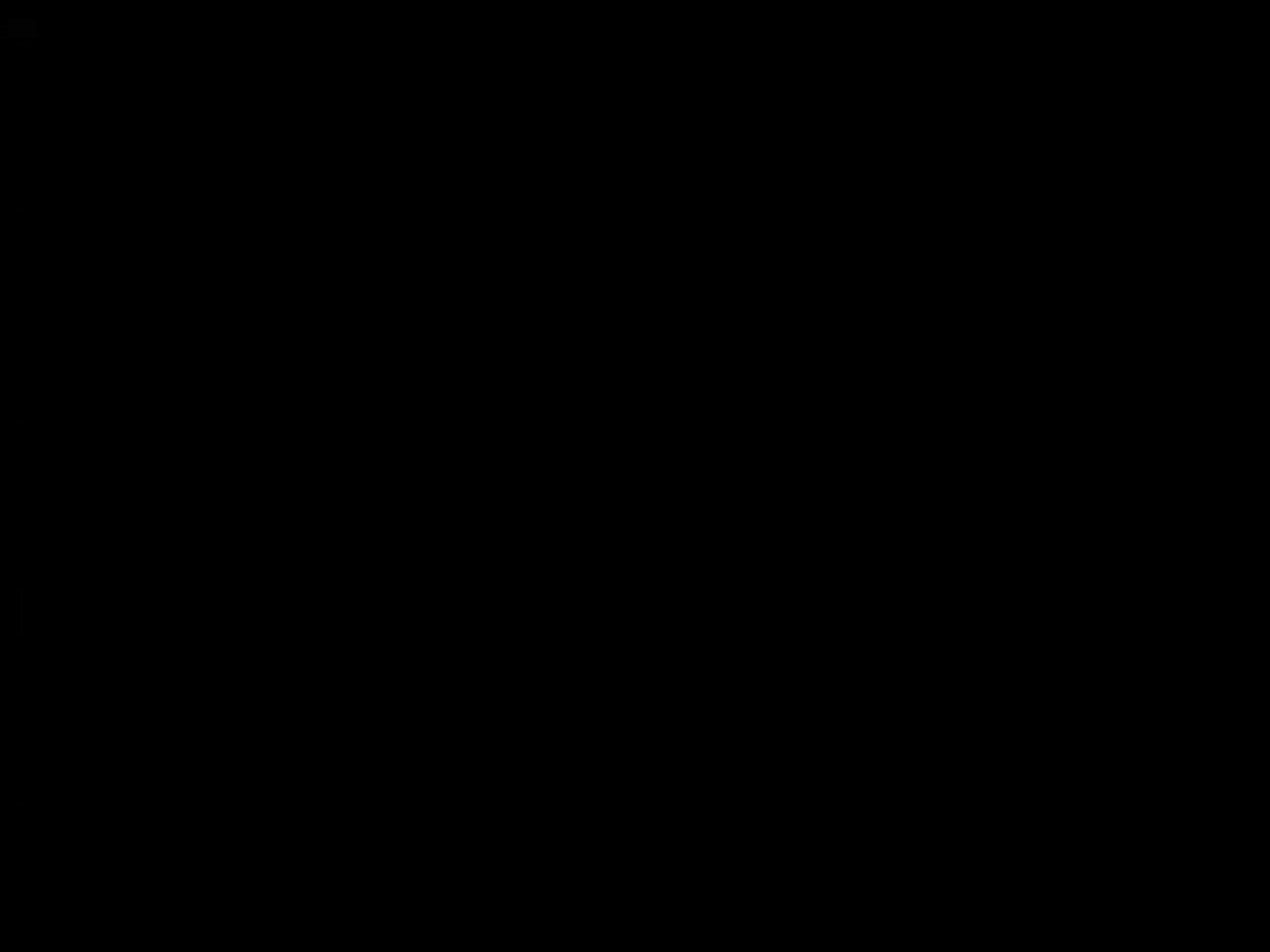
1. **Freedom and self-determination over safety:** If an adult understands the consequences of his/her choices, they have the right to make their choices and risk negative consequences, including safety risks.
2. **Participation in decision-making:** Adults have the right to make informed decisions and should drive the choices that affect them.
3. **Least restrictive alternative:** APS services and interventions should be provided with as little disruption to the individual's life as possible.
4. **Alleged victim is the primary consumer:** The main focus of APS efforts is to benefit the victim, all other impacted parties are secondary to the victim.
5. **Protection is a shared community responsibility:** It is essential that APS leverage all appropriate community resources to improve the lives of adults who have been abused, neglected or exploited.
6. **Confidentiality:** Adults have a right to privacy and all legal and policy requirements for confidentiality must be consistently upheld.

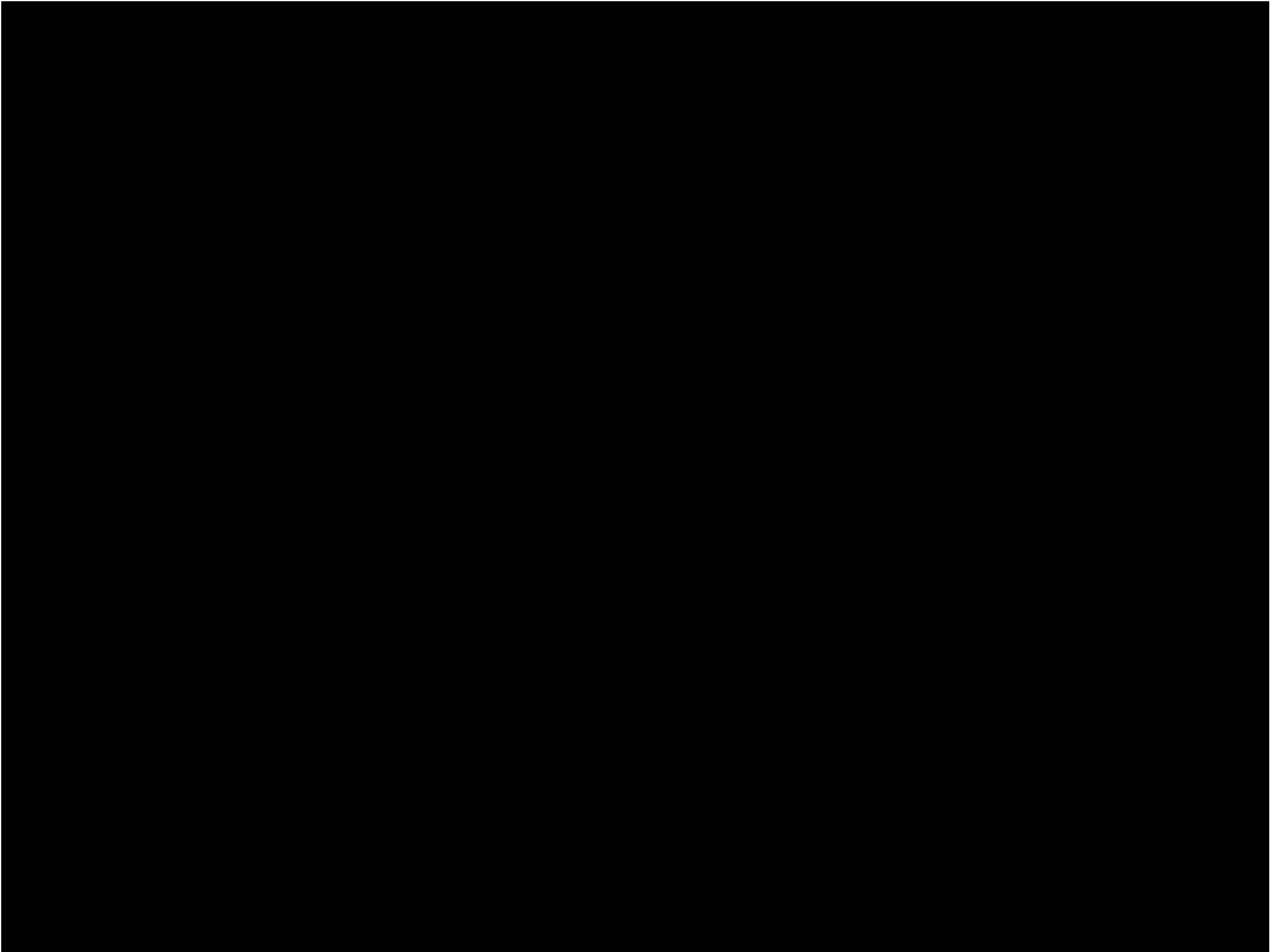
Note: Varies by state, based on state laws.

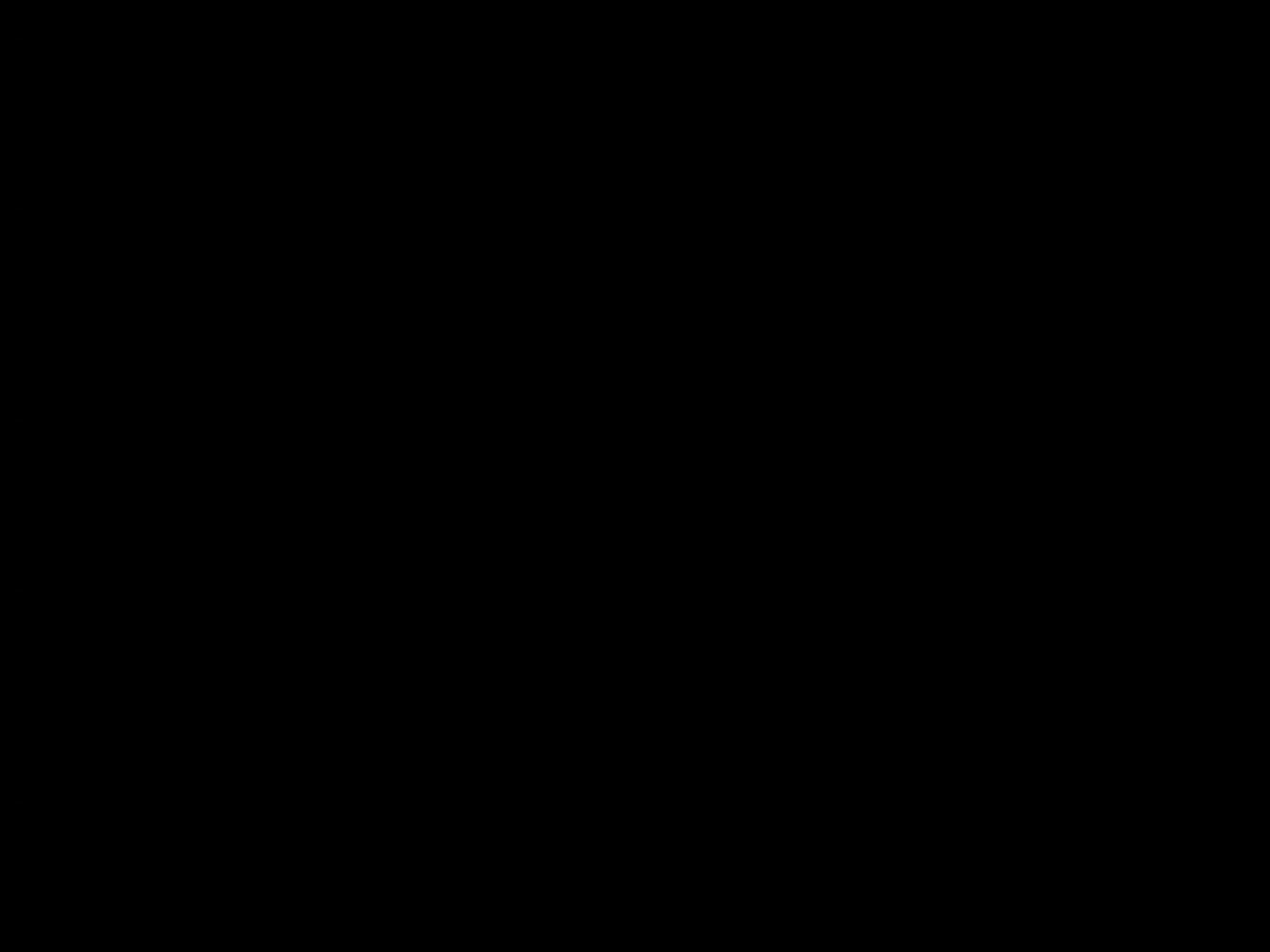
## ADULT PROTECTIVE SERVICES: SCOPE OF THE PROBLEM

- National Studies suggest **ANE Prevalence Rate is 10%** (including physical abuse, psychological or verbal abuse, sexual abuse, financial exploitation, and neglect)
- One comprehensive state study found that **7% of elders were victims of ANE** in the past year.
- **1 in 23 case are ever reported.....**

WHY IS ANE SO UNDER  
REPORTED?







ANSWER:

It's just recognized as abuse or even a crime.



# Types of Abuse, Neglect and Exploitation

# TYPES OF ABUSE, NEGLECT AND EXPLOITATION

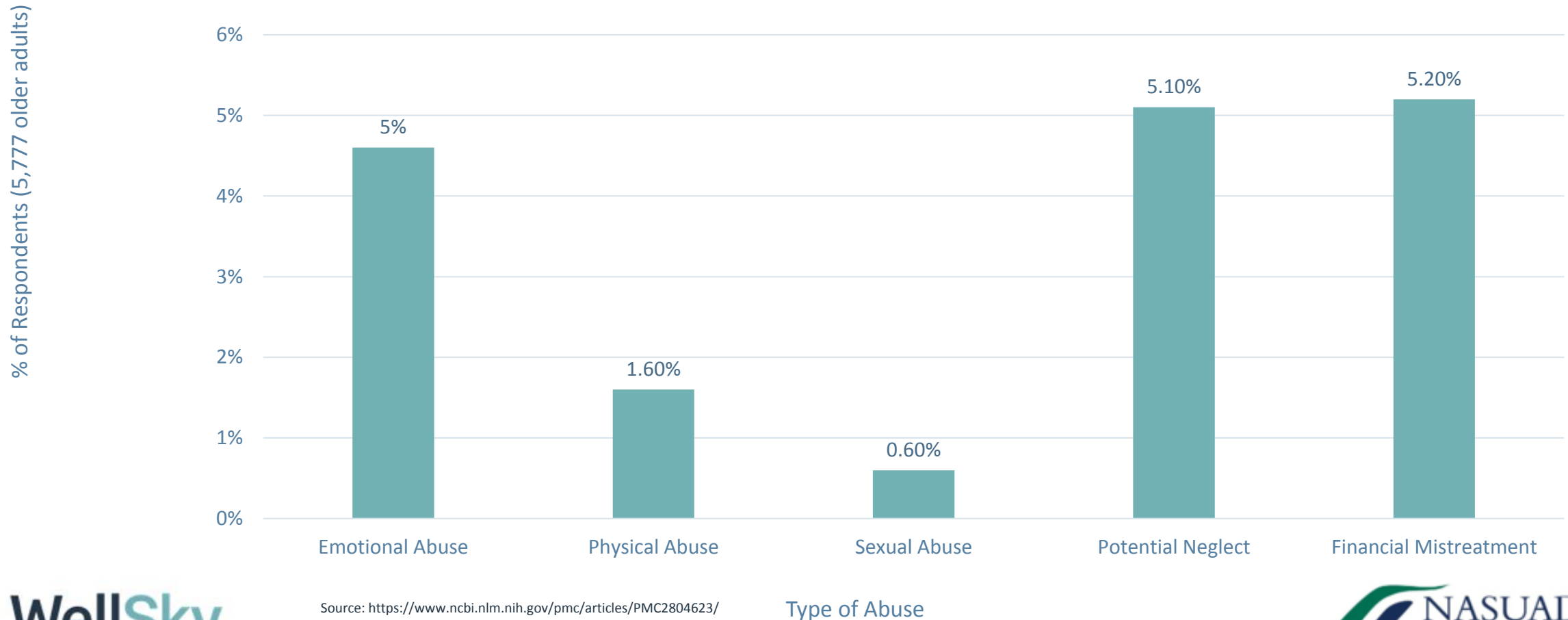
Type of ANE	Definition
<b>Abandonment</b>	The desertion of an elderly person or adult with disabilities by an individual who has assumed responsibility for providing care for an elder or adult with disabilities, or by a person with physical custody of an elder or adult with disabilities.
<b>Abuse</b>	Physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or adult with disabilities.
<b>Material or financial abuse/exploitation</b>	The wrongful taking or exercising of control over property of an elder or adult with disabilities with intent to defraud the elder or adult with disabilities.
<b>Neglect</b>	Harm to an elder's or adult with disabilities' health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the elder's or adult with disabilities' health or welfare, within the means available for the elder or adult with disabilities, including the failure to provide adequate food, clothing, shelter or medical care.

# TYPES OF ABUSE, NEGLECT AND EXPLOITATION

Type of ANE	Definition
<b>Psychological/emotional abuse</b>	Threats, harassment, intimidation, humiliation or ridicule that adversely impacts another's emotional well-being or is characterized by behavioral change or physical symptoms.
<b>Self-abuse</b>	Conduct which threatens or endangers a person's own welfare, health or safety.
<b>Self-neglect</b>	An act or failure that substantially endangers a person's health, safety, welfare or life by not seeking or obtaining services necessary to meet the person's essential human needs. Choices of lifestyle or living arrangement are not by themselves evidence of self-neglect.
<b>Sexual abuse</b>	Unwanted sexual activity, with perpetrators using force, making threats or taking advantage of victims unable to give consent.

# ABUSE, NEGLECT, EXPLOITATION: APS DATA IN THE UNITED STATES

Prevalence by Abuse Type for Elderly Adults  
(2008 Study)



Source: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/>

# ABUSE, NEGLECT, EXPLOITATION: GENERAL INDICATORS

- **Signs of physical injury** such as bruises, welts, burns, lacerations, scars, broken bones or serious internal injuries.
- **Lack of necessities** such as heat, food, water, medical care and/or unsafe conditions in the home.
- **Multiple injuries**, repeated or untreated injuries, or injuries not consistent with history.
- **Behavioral signs** such as agitation, anxiety, resignation, hesitation to reply, anger, depression or fear.
- **Social isolation** or inappropriately leaving an older person alone for long periods of time.
- **Caregiver shows aggressive behavior** such as threats, insults or other verbal harassment towards the care receiver.
- **Misuse of money or property** for another person's monetary or personal gain.
- **Unauthorized sale of real or personal property.**

# ANE INVESTIGATION: INTERVENTIONS

Depending on the outcome of the case, the following interventions may be available through the State or outside resources:

- Resources, such as home health services, adult day care services, adult foster care or caregiver services
- Legal assistance for a power of attorney, durable power of attorney or other legal advice
- Counseling, support groups or medical/mental health providers.
- Nutritional assistance
- Placement assistance
- Case Management
- Guardianship of the person
- Conservatorship for property
- Appointment of a representative payee
- Further investigation by law enforcement

# ANE INVESTIGATION: COMMON TYPES OF COMMUNITY REFERRALS

Medical services

Mental health services

Domestic abuse resources

Legal aid

Banks and other financial entities

Clergy and religious entities

Charitable organizations

Social services

Senior centers

**BUILDING BRIDGES TO/WITH THE  
CRIMINAL JUSTICE SYSTEM**

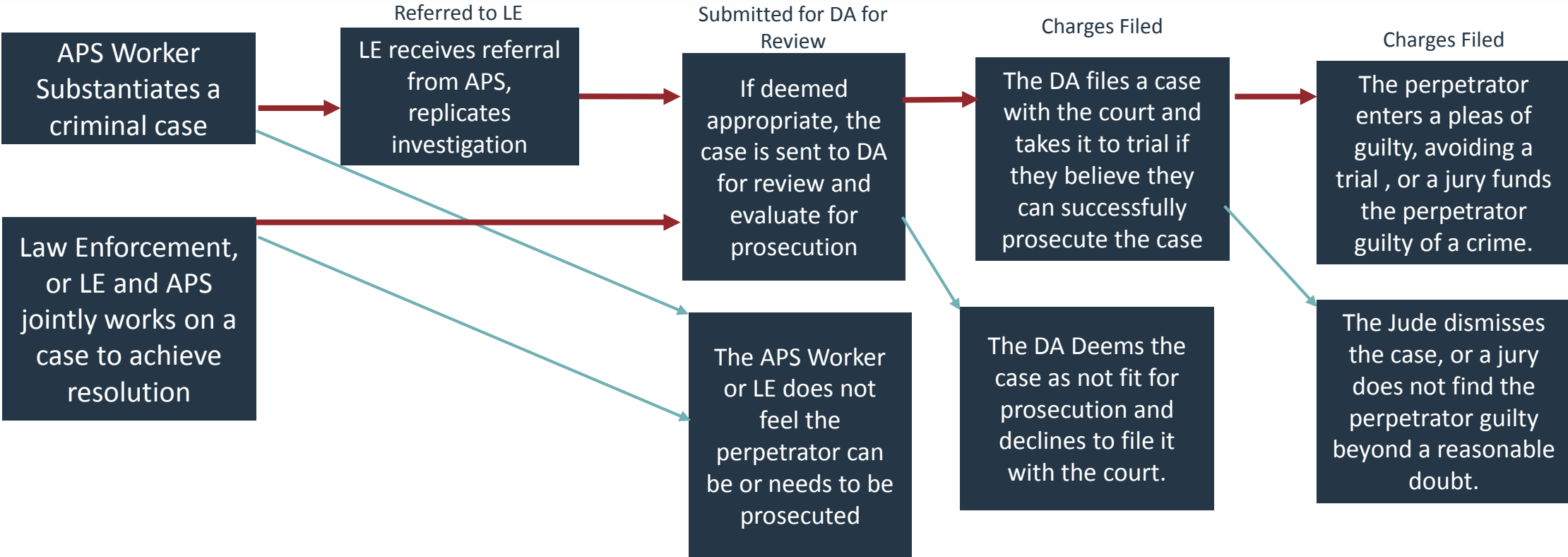


# INVESTIGATION: INVOLVEMENT OF LAW ENFORCEMENT

APS Case Workers/Specialist/Investigators may work with law enforcement in varying situations.

- APS may refer a case to law enforcement almost immediately, if it involves:
  - Life or health threatening conditions
  - Criminal activity
- APS Workers often request law enforcement's assistance with home visits if:
  - They feel uncomfortable visiting alone or suspect that weapons are involved
  - They are unable to locate or contact the victim (law enforcement can conduct a welfare check)
- APS may also refer a case to law enforcement if they have completed their investigation and substantiated criminal ANE.

# PROTECTIVE SERVICES AND LAW ENFORCEMENT



# ROLE OF LAW ENFORCEMENT: AT RISK ADULTS

- Many states have criminal codes available to ensure LE can adequately respond to criminal ANE.
- Generally, At Risk Adult abuse or neglect involves one or more of the following:
  - An intentional act or attempt to inflict physical or psychological harm
  - Non-consensual sexual contact
  - Illegal or inappropriate use or taking of an individual's assets or properties; or
  - Failure to provide for satisfying a person's basic life needs, i.e., food, care, housing, medical attention, or other necessity

Training is absolutely critical for the proper recognition of crimes against At Risk Adults, as it will ensure a thorough investigation that ultimately leads to a successful prosecution.

**In addition to APS having proper training, we need to reach out to law enforcement offices to ensure they too have the proper training.**

# ROLE OF LAW ENFORCEMENT: TRAINING

The patrol function is the backbone of every law enforcement agency.

- It is critical that first responders receive training in recognizing and investigating At Risk Adult abuse, neglect and exploitation.
- Patrol officers require training that enables them to immediately recognize the signs and indicators of At Risk Adult situations.
- 911/Communication center call-takers who serve as the initial point of contact in such cases should also receive training, which should be conducted by the individual law enforcement agency's training staff or at a regional training facility (to ensure consistency and that it adheres to policy).
- Training for first responders and call-takers is essential. Best practice encourage the production/use of a roll call training video identifying the At Risk Adult indicators. See <https://www.theiacp.org/elder-abuse>
- It is imperative that law enforcement investigative personnel receive training so that investigators understand the complexities of At Risk Adult abuse and neglect investigations.

# ROLE OF LAW ENFORCEMENT: RECOGNITION

## At-risk Adult Abuse Investigation Worksheet (Page 1)

Case Number: \_\_\_\_\_ Today's Date: \_\_\_\_\_ Date of Incident: \_\_\_\_\_

Victim's Name: \_\_\_\_\_

Victim's Street Address: \_\_\_\_\_ City, State Zip: \_\_\_\_\_

Known Medical Conditions? \_\_\_\_\_

Known Medications? \_\_\_\_\_

### Abuse, Neglect and Exploitation Checklist (Include: No, Yes, Unknown. Be sure to describe location, size, odor, etc. of injury)

Victim's Self Report	
Bruises	
Black Eyes	
Lacerations	
Ligature/Restraint Marks	
Open Wounds	
Untreated Injuries	
Injuries (in various stages of healing)	
Broken Bones	
Burns	
Neck Injuries	
Bite Marks	
Over/Under Medicated	
Broken Eye Glasses	
Hair Pulled Out	
Uncooperative Caretaker	
Weapons	

<b>Sexual Abuse</b>	
Victim's Self Report	
Bruises-Breasts/Genital Area	
Torn/Bloody Underclothes	
Difficulty Walking/Sitting	
Sexually Transmitted Disease	

<b>Neglect/Cruelty</b>	
Victim's Self Report	
Dehydration/Malnutrition	
Untreated Health Conditions	
Failure to Get Medical Care	
Failure to Provide Medications	
Failure to Provide Essential Services	
Lack of Assistive Devices	
Abandonment	
Inappropriate Clothing	
Inadequate Heating/Cooling	
Bed Sores	
Unsafe Environment	
Fleas/Lice/Roaches/Rodents	
Fecal/Urine Stained Bedding	
Scalded Skin (from urine)	
Lock/Chains on interior doors	

## At-risk Adult Abuse Investigation Worksheet (Page 2)

### Abuse, Neglect and Exploitation Checklist (CONTINUED) (Include: No, Yes, Unknown. Be sure to describe location, size, odor, etc. of injury)

#### Emotional Abuse

Victim's Self Report	
Upset/Agitated	
Withdrawn/Non-responsive	
Unusual Behavior	

#### Financial Exploitation

Unemployed Adult(s)	
- resides in home	
Victim's Self Report	
Sudden Changes in Banking Habits	
New Names on Signature Card(s)	
Unauthorized Withdrawal(s)	
Abrupt Changes in Will	
Disappearance of Funds/Possessions	
Unpaid Bills/Adequate Funds	
Forged Signature for Transactions	
Appearance of Uninvolved Relative	
Sudden Transfer of Assets	
Unlicensed Personal Care Home	

#### Self Neglect

Dehydration/Malnutrition	
Lack of Medical Attention	
Unsafe Living Conditions	
Unsanitary Living Conditions	
Inappropriate Clothing	
Lack of Assistive Devices	
Inadequate Housing	

All the items listed above are RED FLAGS and could indicate abuse. If any are encountered, investigate.

**GET PHOTOGRAPHS! GET PHOTOGRAPHS! GET PHOTOGRAPHS!  
GET PHOTOGRAPHS**

## At-Risk Adult Physical Abuse/Neglect Investigation Checklist

Detective: \_\_\_\_\_ LPD Case Number: \_\_\_\_\_

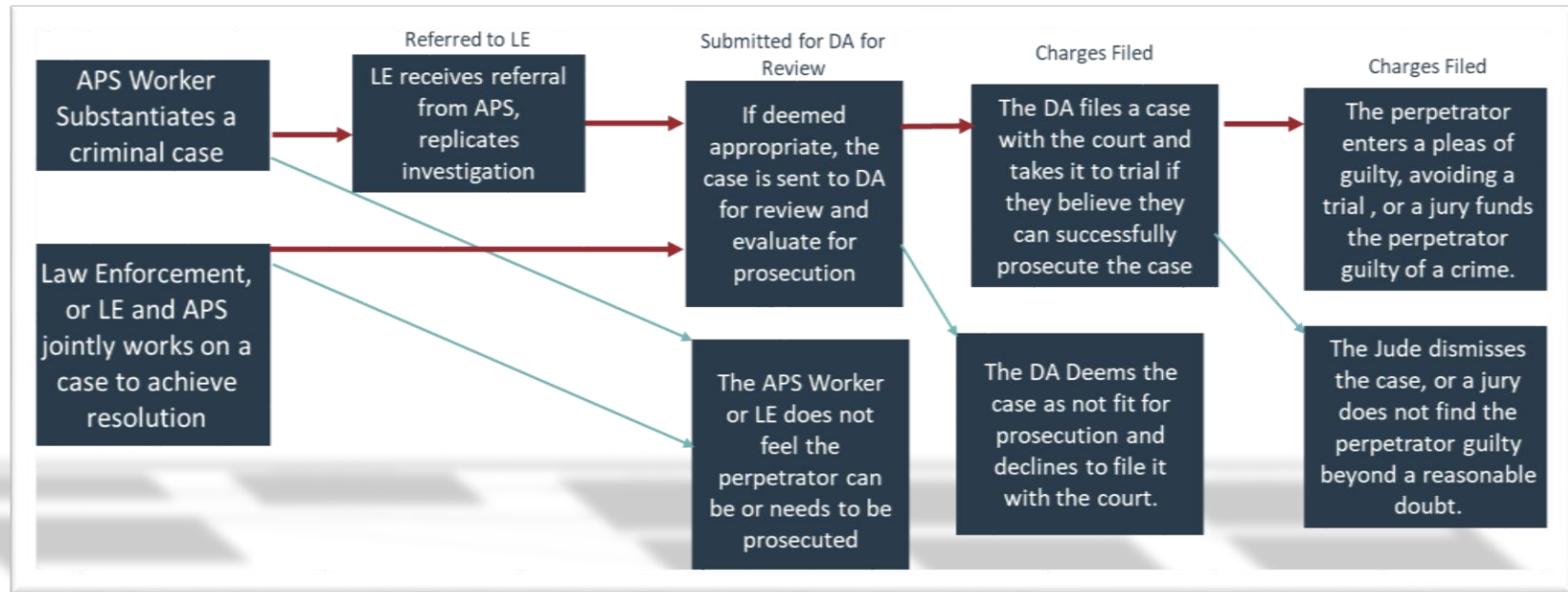
- \_\_\_\_\_ Ensure that victim has received medical attention if needed.
- \_\_\_\_\_ Complete DHR Elder Abuse Investigation Checklist.
- \_\_\_\_\_ Identify and interview officer(s) who have conducted the preliminary investigation for pertinent information.
- \_\_\_\_\_ Ensure supervisor page has been completed with information about the incident.
- \_\_\_\_\_ Ensure that you have identified and interviewed the following people if applicable:
  - \_\_\_\_\_ Complainant
  - \_\_\_\_\_ Victim
  - \_\_\_\_\_ Caregiver and/or Guardian
  - \_\_\_\_\_ Potential Witnesses (family members, neighbors, etc.)
  - \_\_\_\_\_ Any in-home health care professional
  - \_\_\_\_\_ All other applicable personnel (fire, EMS, etc.)
- \_\_\_\_\_ Identify victim's normal daily activities.
- \_\_\_\_\_ Obtain a 24 hour timeline.
- \_\_\_\_\_ Attempt to identify patterns of abuse over an extended period.
- \_\_\_\_\_ If power of attorney exists, obtain a copy of this document.
- \_\_\_\_\_ Obtain written consent from legal occupant/owner or obtain search warrant prior to searching any private property scene.
- \_\_\_\_\_ Obtain list of medications, prescribing physicians, and distributing pharmacies.
- \_\_\_\_\_ Obtain signed medical release form or search warrant for medical records for past five (5) years.
- \_\_\_\_\_ Complete photos of victim(s) and document injuries utilizing body maps form.
- \_\_\_\_\_ Complete scene photos.
- \_\_\_\_\_ Collect evidence if applicable.
- \_\_\_\_\_ Complete investigative canvass within 24 hours.
- \_\_\_\_\_ Check criminal histories of all persons 17 years of age or older who live in the household.
- \_\_\_\_\_ Notify Adult Protective Services while on scene by calling 1-866-552-4464.
- \_\_\_\_\_ Obtain operator name and extension: \_\_\_\_\_

# APS AND CRIMINAL JUSTICE SYSTEM: SECRET SAUCE TO SUCCESS



- Law Enforcement
- Medicaid Agency
- Ombudsman
- Facilities
- Human Services

- APS/Aging Services
- Medicaid Agency
- Ombudsman
- Facilities /Survey
- Human Services

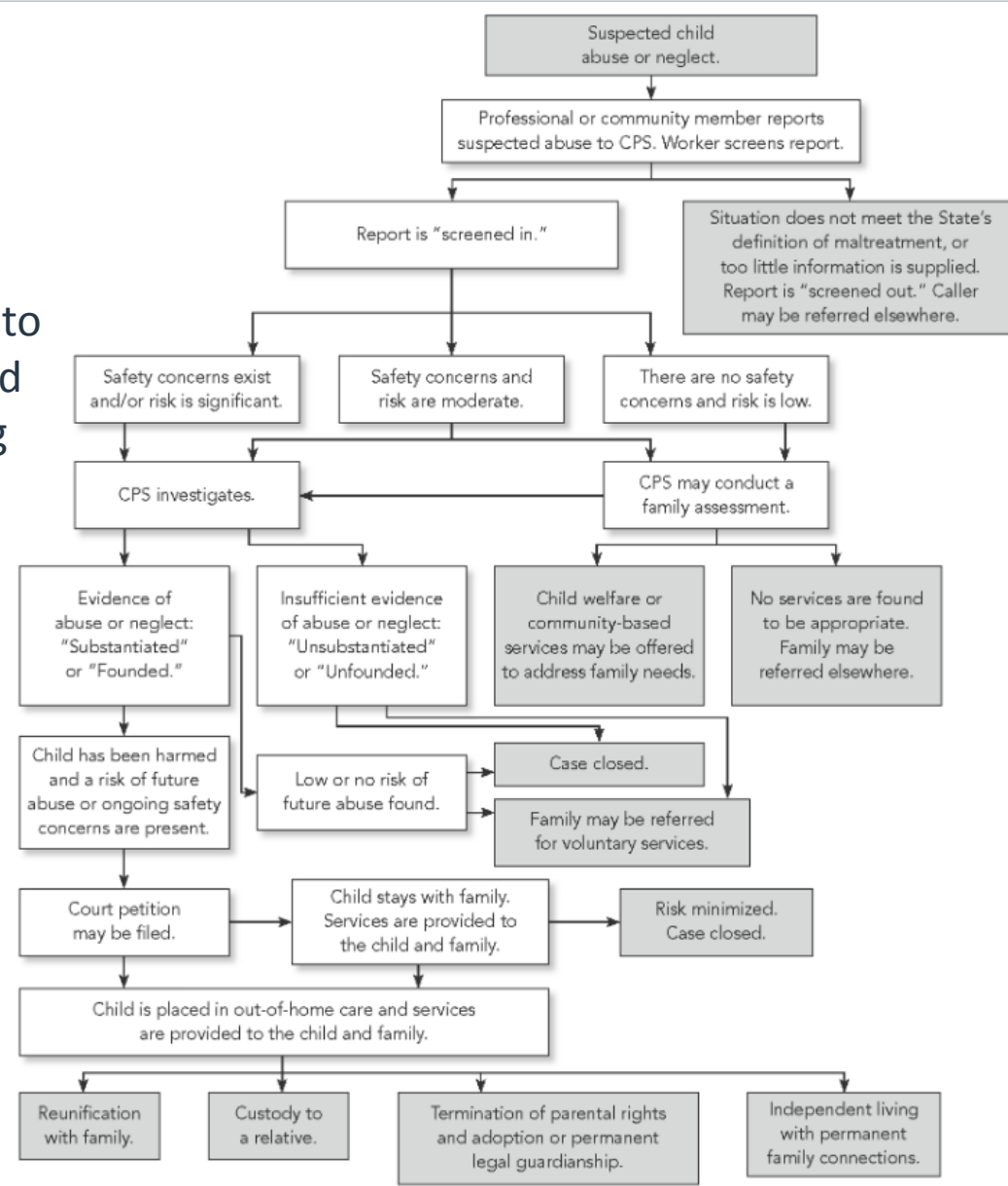


# THE CHILD WELFARE SYSTEM

Must meet Legal, Professional, and Regulatory Requirements and adhere to Federal laws and regulations, licensing requirements, and professional and practice standards. Funded by a combination of state and federal funding

## Federal Funding for CPS:

- Temporary Assistance for Needy Families
- Foster Care Title IV-E
- Adoption Assistance Title IV-E
- Promoting Safe and Stable Families
- Child Welfare Services - State Grants
- Medicaid
- Social Services Block Grant/Title XX
- Child Care Development Fund Block Grant
- Child Abuse and Neglect State Grants
- Community-Based Child Abuse Prevention Grants
- Children’s Justice Grants
- Adoption Incentive Payments
- State Court Improvement Program
- Adoption Opportunities



U.S. Department of Health and Human Services  
Administration for Children and Families  
Administration on Children, Youth and Families  
Children’s Bureau



# THE APS SYSTEM

Standards set by state law. Funded primarily by state general fund.

## Federal Funds Available for APS:

- Social Services Block Grant/Title XX
  - Thirty-seven states use part of their SSBG funds to support Adult Protective Services. This is currently the only federal money available to support Adult Protective Services, the decisions to use it for this purpose are made at the state level.
- Medicaid
  - Some State Medicaid program provide funding to APS programs under Administrative Claiming. Certain activities performed on behalf of Medicaid clients are reimbursable under the Medicaid Administrative Claiming if:
    1. the APS program is included in the state’s federal cost allocation plan and if
    2. the APS program has the infrastructure and processes in place to collect the information necessary to meet federal requirements for reimbursement.

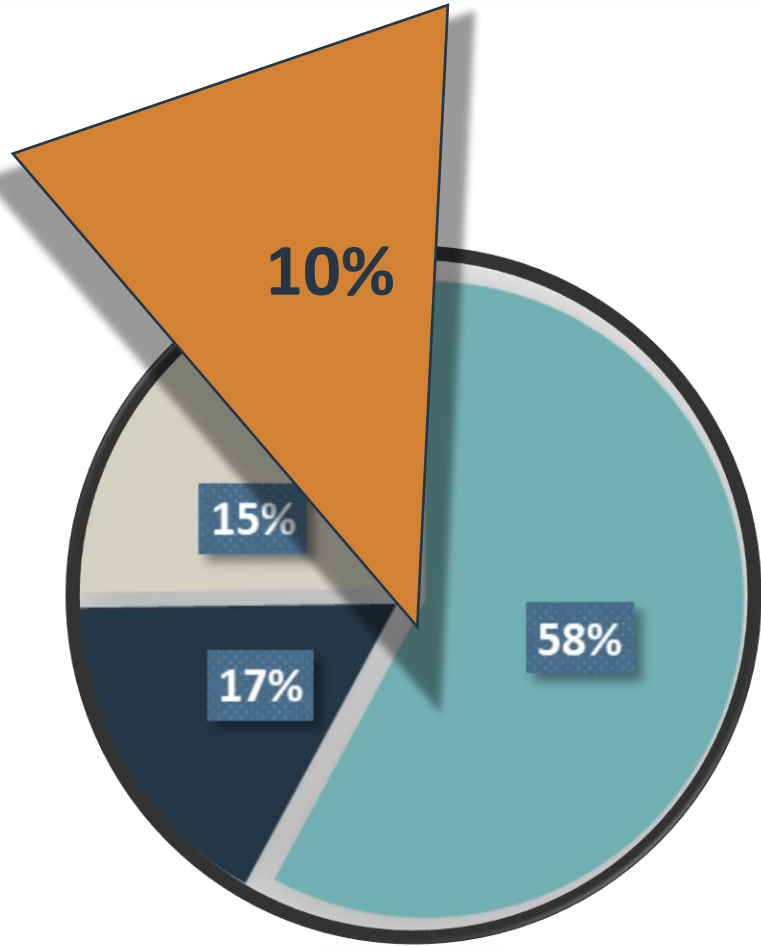
- 32 APS programs administered at state level
- 16 APS programs State supervised, locally administered
- 22 SUAs administer APS
- AAAs provide APS in 12 states
- Non-Profits provide APS in 6 states
- 37 States have centralized intake
- 3 States don’t recognize Emotional or psychological abuse

Age for APS	18	55	60	62	65
# States	18	1	18	1	4



WHY IS IT SO IMPORTANT TO  
INCLUDE LAW ENFORCEMENT?

# WHAT ABOUT THE OTHER 10% OF ANE CASES



Lottery scams



Grandparent scams



Internal Revenue Service imposter scams



Health care fraud



Securities fraud



Tech support scams



Romance scams

# BUILDING BRIDGES WITH LAW ENFORCEMENT



Lottery scams

Lottery scam is a type fraud which begins with an unexpected email notification, phone call, or mailing explaining that "You have won!" a large sum of money in a lottery. The recipient of the message—the target of the scam—is usually told to keep the notice secret. After contacting the agent, the target of the scam will be asked to pay "processing fees" or "transfer charges" so that the winnings can be distributed, but will never receive any lottery payment



Health care fraud

Health care fraud involves the filing of dishonest health care claims in order to turn a profit. Practitioner schemes include: individuals obtaining subsidized or fully-covered prescription pills that are; billing by practitioners for care that they never rendered; filing duplicate claims for the same service rendered; billing for a non-covered service as a covered service; modifying medical records; intentional incorrect reporting of diagnoses or procedures to maximize payment; use of unlicensed staff



Tech support scams

A **technical support scam** refers to any of class a telephone fraud activities in which a scammer claims to offer a legitimate technical support service, often via cold calls to unsuspecting users.

# BUILDING BRIDGES WITH LAW ENFORCEMENT



Securities fraud

Securities fraud, is a type of serious white-collar crime that can be committed in a variety of forms but primarily involves misrepresenting information investors use to make decisions. The perpetrator of the fraud can be an individual, such as a stockbroker. Elderly investors are frequently targeted for securities fraud, including Ponzi schemes. Common red flags of an investment or securities fraud include: Guarantees of Principal and Interest; Unregistered Investments; Difficult to Understand Investments; Advisor Insists “His Family Members” Invested; Contact by Phone or Email By Stranger; and Sense of Urgency From Advisor.



Internal Revenue Service impostor scams

IRS scams involve scammers targeting elder taxpayers by pretending to be Internal Revenue Service (IRS) collection officers. The scammers operate by placing disturbing official-sounding calls to unsuspecting citizens, threatening them with arrest and frozen assets if thousands of dollars are not paid immediately. According to the IRS, over 1,029,601 Americans have received threatening calls. The scammers often request payment in the form of gift cards such as Google Pay or iTunes cards, wire transfer, MoneyGram, or credit card.

# BUILDING BRIDGES WITH LAW ENFORCEMENT



Grandparent scams

The supposed grandchild claims to be involved in some type of trouble while traveling in Canada or overseas, such as being arrested or in a car accident or needing emergency car repairs, and asks the grandparent to immediately wire money to post bail or pay for medical treatment or car repairs. The scammer typically asks for several thousand dollars, and may even call back again several hours or days later asking for more money. He or she may claim embarrassment about the alleged trouble and ask the grandparent to keep it a secret.



Romance scams

A **romance scam** is a confidence trick involving feigning romantic intentions towards a victim, gaining their affection, and then using that goodwill to commit fraud. Fraudulent acts may involve access to the victim's money, bank accounts, credit cards, passports, e-mail accounts, or national identification numbers; or forcing the victims to commit financial fraud on their behalf.

# BUILDING BRIDGES WITH LAW ENFORCEMENT

- These types of crimes are incredibly difficult for Adult Protective Services to address alone, and often LE are notified first.
- Largely involves recovery of assets.
- Often crosses state and international boundaries.
- Requires close coordination with law enforcement, may be able to use both federal and state criminal codes.
- LE has limited knowledge of resources available for older adults, or the harm that can come from Financial Exploitation.
- **SOMETIMES GRANT FUNDS TO MEET NEEDS ARE ONLY AVAILABLE WHEN LE IS INVOLVED.**



Lottery scams



Grandparent scams



Internal Revenue Service imposter scams



Health care fraud



Securities fraud



Romance scams



Tech support scams

# THE ELDER JUSTICE ACT

# THE ELDER JUSTICE ACT

Passed in 2010, the Elder Justice Act is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the federal level. The law authorized a variety of programs and initiatives to better coordinate federal responses to elder abuse, promote elder justice research and innovation, support Adult Protective Services systems, and provide additional protections for residents of long-term care facilities.

The Elder Justice Act also established the Elder Justice Coordinating Committee to coordinate activities related to elder abuse, neglect, and exploitation across the federal government.

The EJA provided authority for ACL to take more of a leadership role in addressing Elder Abuse

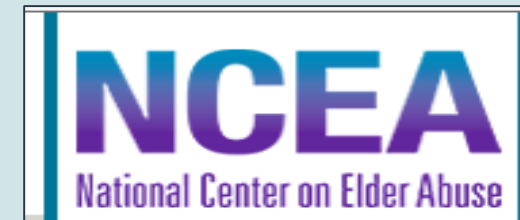


# APS OVERVIEW: FEDERAL PROGRAMS & ASSOCIATIONS INVOLVED

## Federal Programs:



## Other Associations/Organizations:



# DEPARTMENT OF JUSTICE: ELDER JUSTICE INITIATIVE

## BUILDING FEDERAL, STATE & LOCAL CAPACITY TO FIGHT ELDER ABUSE



Providing targeted training and resources to elder justice professionals including: prosecutors, law enforcement, judges, victim specialists, first responders, civil legal aid employees and multi-disciplinary teams to enhance their ability to respond to elder abuse efficiently and effectively.

## SUPPORTING RESEARCH TO IMPROVE ELDER ABUSE POLICY AND PRACTICE



Promoting foundational research into elder abuse and financial exploitation to transform the practice of professionals in ways that positively impact the lives of older adults.

## PROMOTING JUSTICE FOR OLDER AMERICANS



Investigating and prosecuting financial scams targeting older adults. Promoting greater federal, state, and local coordination to resolve cases where long-term care entities provide grossly substandard care to their residents or patients.

## HELPING OLDER VICTIMS & THEIR FAMILIES



Connecting older adults and their families or caregivers with appropriate investigative agencies, as well as empowering them with information about abuse and recovering from its effects.

# DEPARTMENT OF JUSTICE: ELDER ABUSE PREVENTION AND PROSECUTION ACT

**Elder Abuse Prevention and Prosecution Act (EAPPA)—enacted in October 2017—designated an elder justice coordinator in each of its 94 U.S. Attorneys’ Offices. In addition, DOJ provides training and educational materials on elder justice topics for its own staff, as well as state and local officials, and also offers grants to state and local entities that can be used to address elder abuse.**

Elder Justice Coordinator will be responsible for—

- serving as the legal counsel for the Federal judicial district on matters relating to elder abuse;
- Prosecuting, or assisting in the prosecution of, elder abuse cases
- Conducting public outreach and awareness activities relating to elder abuse; and
- Ensuring the collection of data required to be collected under section 202

The DOJ, consultation with the Director of the FBI, shall with respect to crimes relating to elder abuse:

- ensure the implementation of a regular and comprehensive training program to train FBI agents for the investigation and prosecution of such crimes and the enforcement of laws related to elder abuse, which shall include
  - specialized strategies for communicating with and assisting elder abuse victims
  - relevant forensic training relating to elder abuse

<https://www.gao.gov/assets/700/699560.pdf>

# DEPARTMENT OF JUSTICE: ELDER JUSTICE INITIATIVE

- DOJ offers grants to state and local entities **THAT CAN BE USED** to address elder abuse.
- DOJ administers some grants **that are specifically designed to fund programs that address elder abuse**
- DOJ also administers grants **that may be used to address elder abuse** because it falls under a broader category of issues that the grant program supports.
- DOJ's Office for **Victims of Crime**, which administers Victims of Crime Act funding, has issued guidance that **these funds may be used to support programs that provide services to victims of elder abuse.**

# DEPARTMENT OF JUSTICE - GRANTS



**Office for Victims of Crime**



**National Institute of Justice**



**Office on Violence Against Women**

**Example of grant program**

Field-Generated Innovations in Addressing Elder Abuse and Financial Exploitation

Research and Evaluation on the Abuse, Neglect and Exploitation of Elderly Individuals

Enhanced Training and Services to End Abuse in Later Life Program

**Example of use of grant funds**

Recruitment and training of 50 elder justice advocates from district attorneys' offices, law enforcement, and domestic violence prevention services providers to assess and treat abuse victims in Rochester, New York.

Develop abuse screening instruments for elders arriving at emergency rooms, North Carolina.

Train law enforcement, prosecutors, and other professionals to address elder abuse. Provide victim services to victims age 50 and over. Support a coordinated community response to elder abuse.

Source: GAO analysis of DOJ information. | GAO-19-365

# ADMINISTRATION ON COMMUNITY LIVING

- In FY 2016, ACL established the Elder Justice Innovation Grants program to support the development and advancement of emerging practices to prevent and respond to the abuse of older adults and adults with disabilities.
- These two-year grants seek to improve the well-being of abuse survivors, study outcomes of Adult Protective Services (APS) interventions, and test promising practices related to APS work.
- **A rigorous evaluation component is built into every grants.**
- ACL also works to support state and local Adult Protective Services programs, coordinate federal elder justice efforts through the Elder Justice Coordinating Council, support the Long-Term Care Ombudsman Program, and provide pension counseling.

# ADMINISTRATION ON COMMUNITY LIVING: OTHER RESOURCES

- State Grants to Enhance Adult Protective Services
- Voluntary Consensus Guidelines for State APS Systems
- National Adult Maltreatment Reporting System (NAMRS)
- National APS Resource Center
- Inventory and Assessment of Screening and Assessment Tools for Elder Abuse, Neglect, and Exploitation

# ROLE OF APS IN CRITICAL INCIDENT MANAGEMENT\*

\* CAUTION: VARIES BY STATE



# CRITICAL INCIDENT DEFINITION

## What is a Critical Incident?

- “Critical incidents” are situations that put the health, safety or welfare of participants at risk. Some states also use the term “adverse”, “serious” or “sentinel events”.
  - This may include medical (e.g., serious medication error, death, serious injury, etc.) and safety concerns (e.g., missing person, restrictive interventions, etc.).
- There is no standard federally defined term for “critical incident” that outlines the scope of reportable incidents, leading to variation across states <sup>(1)</sup>

(1) <https://www.hhs.gov/sites/default/files/cmcs-informational-bulletin-062818.pdf>

## Common Critical Incident Types Tracked by State Medicaid Agencies:

- Abuse, Neglect, and Exploitation
- Unexpected Deaths
- Unexpected Hospitalization
- Serious Injury
- Criminal Activity/Legal Involvement
- Loss of Contact/Elopement
- Suicidal Behavior
- Medication Errors
- Use of Restraints/Seclusion

# CMS AND OIG GUIDANCE REGARDING INCIDENT TYPES

## CMS Requirements: 7 Incident Types: <sup>(1)</sup>

- Abuse (including physical, sexual, verbal and psychological abuse)
- Mistreatment or neglect
- Exploitation
- Serious injury
- Death other than by natural causes
- Other events that cause harm to an individual
- Events that serve as indicators of risk to participant health and welfare (e.g., hospitalizations, medication errors, use of restraints or behavioral interventions)

## Additional Incident Types Recommended by OIG: 9 Incident Types: <sup>(2)</sup>

- Events leading to adverse outcomes for participants due to staff misconduct / error
- Events resulting in injury or illness requiring medical treatment beyond first aid
- Choking incidents
- Hospital emergency room visits where the injury or the medical condition could indicate abuse or neglect
- Elopements whereby the individual is removed from staff supervision or placed at risk of serious harm
- Behavioral incidents that result in employee physical intervention, serious risk of harm, or property damage valued at more than \$150
- Emergency situations (e.g., fires, flooding, serious property damage)
- Criminal conduct by participants
- Incidents involving law enforcement

# CMS REQUIREMENTS: WAIVERS (1915c)

- States operating HCBS waivers are required to provide assurances to CMS that necessary safeguards are in place to protect the health, safety, and welfare of participants receiving services. For critical incidents this includes:
  - The state must demonstrate on an ongoing basis that it **identifies, addresses and seeks to prevent instances of abuse, neglect, exploitation and unexplained death.**
  - The state must demonstrate that an **incident management system is in place** that effectively resolves those incidents and prevents further similar incidents to the extent possible.
- **Critical Incident Management not only protects the health and safety of the participants, it also provides data on the state and networks ability and effectiveness to address and mitigate incidents.**
- Incident data is used to:
  - **Identify and resolve incidents to support waiver participant safety**
  - Mitigate preventable incidents
  - Provide insights into trends and problems to reduce risks and improve quality of services
  - Demonstrate that the state has met or exceeded its waiver assurance performance measures

# PARTIES INVOLVED IN CRITICAL INCIDENTS

## Consumers and Other Parties



Participants / Family Members / Neighbors / Friends / Guardian

## Medicaid Waiver Providers



Direct Service Providers / Case Managers / Support Brokers

## State Agencies



1915(c) Operating Agency

Law Enforcement

State Medicaid Agencies

Attorney General

Office of Inspector General

Adult/Child Protective Services

## Federal Agencies



Centers for Medicare & Medicaid Services (CMS)

Office of Inspector General

# PROTECTIVE SERVICES DATA TO FACILITATE INTERDEPARTMENTAL COMMUNICATION

- **Determine when to contact protective services.**
  - Severe Incidents may require immediate referral to protective services.
  - Early identification helps set expectations for the investigation
- **Data sharing may happen:**
  - Through creation of reports and triggers
  - Posted in centralized system
  - Weekly meetings
- **All protective service calls are critical incidents, but not all critical incidents will rise to the level of a protective services investigation.**

Protective Services Data	
Intake Number	94994994
Age at Time of Intake	45
Allegation and Finding 1	
Maltreatment 1	Exploitation
Finding 1	Verified
Caregiver Responsible 1	Rita Jones
Add Another 2	<input type="checkbox"/>
Intake Information	
Date Received	07/11/2017
Date Complete	07/11/2017
Provider Name	Helping Hands Supported Living
Provider Street Address	123 Main Street
Provider City	GAINESVILLE
Facility Type	Supported Living
Child?	<input type="checkbox"/>
Regional Office Follow Up Actions:	
Follow Up Actions:	Perpetrator no longer has access to the victim and/or other corrective actions made to prevent recurrence
Location Type:	<input type="radio"/> ADT <input type="radio"/> APD Licensed Facility <input checked="" type="radio"/> Supported Living
Site Visit:	<input checked="" type="radio"/> Completed within 24 hours <input type="radio"/> Completed - not within 24 hours <input type="radio"/> Not Completed
Site Visit Completion Date:	07/10/2017
State Office Follow-up Actions:	
Living Setting at time of ANE:	Supported living
Relationship of AP:	Staff member
Type of Physical Injury:	N/A
Type of Medical Neglect:	N/A

# OLDER AMERICANS ACT: ASSURANCES RELATED TO ANE

# OLDER AMERICANS ACT: STATE PLAN ASSURANCES

- The plan contains assurances that area agencies on aging **will give priority to legal assistance** related to income, health care, long-term care, nutrition, housing, utilities, **protective services, defense of guardianship, abuse, neglect**, and age discrimination.
- **The plan shall provide, whenever the State desires to provide for a fiscal year for services for the prevention of abuse of older individuals**, the plan contains assurances that any area agency on aging carrying out such services will conduct a program consistent with relevant State law **and coordinated with existing State adult protective service activities** for:
  - public education to **identify and prevent abuse of older individuals**;
  - **receipt of reports of abuse of older individuals**;
  - active participation of older individuals participating in programs under this Act through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance where appropriate and consented to by the parties to be referred; and
  - **referral of complaints to law enforcement or public protective service agencies where appropriate.**

# OLDER AMERICANS ACT: STATE PLAN ASSURANCES

- The State plan shall provide an assurance that, **with respect to programs for the prevention of elder abuse, neglect, and exploitation** under chapter 3-
  - in carrying out such programs **the State agency will conduct a program of services consistent with relevant State law and coordinated with existing State adult protective service activities** for--
    - **public education to identify and prevent elder abuse;**
    - **receipt of reports of elder abuse;**
    - active participation of older individuals participating in programs under this Act through outreach, conferences, and referral of such individuals to other social service agencies or sources of assistance if appropriate and if the individuals to be referred consent; and
    - **referral of complaints to law enforcement or public protective service agencies if appropriate;**
    - the State will not permit involuntary or coerced participation in the program of services described in subparagraph (A) by alleged victims, abusers, or their households; and
    - **all information gathered in the course of receiving reports and making referrals shall remain confidential except**
      - if all parties to such complaint consent in writing to the release of such information;
      - if the release of such information is to a law enforcement agency, public protective service agency, licensing or certification agency, ombudsman program, or protection or advocacy system; or
      - upon court order.



# RECOMMENDATION #1: PUBLIC EDUCATION

- RAISE AWARENESS ACROSS STATE ON RECOGNIZING ANE

- Public Service Announcements
- State Agency and CBO Partnerships
- Conferences
- Legislators

Leverage OAA and 1915c Assurances to increase visibility

- Work with AAAs, Protective Services and Medicaid to address systemic issues
- Consider extending priority access to Waivers for victims of ANE
- Consider creating policy around prioritizing services for victims of ANE who qualify for OAA services

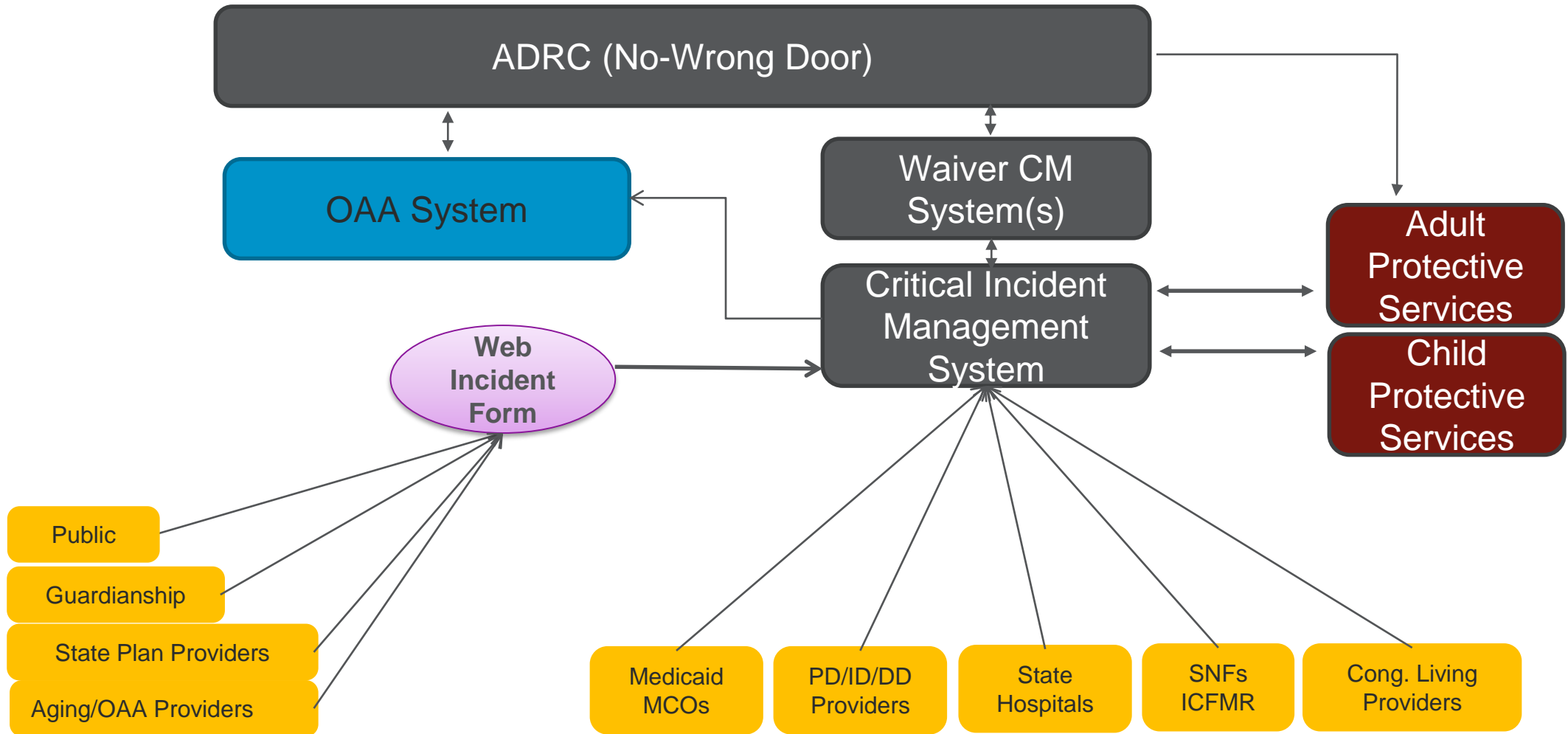
# RECOMMENDATION #2: FUNDING

- EVALUATE FUNDING SOURCES AVAILABLE TO APS
  - Many states utilize some SSBG, ensure SSBG plan allows funding of APS, as well as resources for victims of ANE.
  - Evaluate possibilities of leveraging Medicaid administrative match for activities associated with Medicaid/potential Medicaid clients.
  - Evaluate effectiveness of OAA Elder Abuse Prevention funds – these can be administered at state level for statewide initiatives.
  - Reach out to State OVC program to access funding available to meet needs of victims of crime.

# RECOMMENDATION #3: TRAINING

- PROVIDE MULTIDISCIPLINARY TRAINING TO ALL ASPECTS OF PROTECTIVE SERVICES AND CRIMINAL JUSTICE SYSTEM
  - APS training should include language that Law Enforcement Recognizes
  - LE needs specialized training on how to recognize ANE and the role/function of protective services
  - Joint training is encouraged (APS and LE receiving training together in the regions they work)
  - DAs need training to understand and prosecute ANE cases
  - Judges hearing cases need training to understand the nuances between civil and criminal codes addressing ANE.
  - Role call videos for patrol officers; leverage APS local/regional or AAA regional staff, to F2F training for patrol officers/detectives/investigators.

# RECOMMENDATION #4: CRITICAL INCIDENT MANAGEMENT



# RECOMMENDATION #6: EXTEND CIM TO NON-MEDICAID PARTICIPANTS

- CONSIDER EXPANDING THE CIM SYSTEM TO NON-MEDICAID POPULATIONS
  - Recipients who receive OAA funded services are just as vulnerable (if not more so in some instances) as those who receive Medicaid Waiver Services; expand monitoring, oversight and prevention efforts to these populations.
  - Vocational rehabilitation clients may overlap with Medicaid programs; VR agencies have similar responsibilities to protect their clients from adverse events.
  - Centers for Independent Living, which have a designated State Unit on Disability, which provides oversight, are also at risk.
  - Each of these programs receive federal funding, and when participants in these programs are victims of ANE, the case manager/case worker/ counselor may need to be notified to reevaluate their need for services.
  - Use CIM system/process to expand monitoring, oversight and prevention efforts to these populations.

# RECOMMENDATION #5: LEVERAGE FEDERAL INITIATIVES

- CONSIDER ADOPTING ACL GUIDANCE AND DATA COLLECTION STANDARDS
  - Pursue grant opportunities through ACL and DOJ to Enhance Adult Protective Services
  - Adopt the voluntary Consensus Guidelines for State APS Systems
  - Begin collecting data which aligns with the National Adult Maltreatment Reporting System (NAMRS)
  - Report instances of substantiated ANE to Legislators, LE agencies, and CBOs.

# CONTACT INFORMATION

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@jbulot

# If Time Permits: OMBUDSMAN - OVERVIEW

- What is the Long-Term Care Ombudsman Program (LTCO)?
  - LTCO work to resolve issues and concerns related to the health, safety, welfare, and rights of individuals who live in LTC facilities (i.e. nursing homes, board and care, assisted living, and other residential care communities)
  - The LTCO is bound by strict confidentiality and unable to share any information or talk with anyone outside of the Ombudsman Program without express permission of the resident (with some exceptions)
- Objectives:
  - Advocate: work on behalf of residents, investigate complaints, work with facility to resolve concerns
  - Educate: inform residents of their rights and provide information
  - Mediate: serve as a spokesperson for resident in mediating disputes
  - Investigate: ensure complaints are handled fairly and timely



# OMBUDSMAN - COMPARISON TO APS

Ombudsman	APS
Established under federal law	Established under state law
To empower residents and advocate for the protection of residents' health, safety, welfare and rights	To protect vulnerable adults of any age, living in any setting and gather information
To represent the interests of residents before governmental agencies	To prevent maltreatment from reoccurring through the provision of protective services
Long-term ombudsman presence in facilities helps to improve the quality of life	Intervention prompted by crisis and is often short-term
Restrained by federal law from reporting or otherwise breaching resident's confidentiality without the consent of resident (with some exceptions)	Typically mandated to report abuse, neglect and exploitation to other agencies or officials and/or take action under conditions set forth in law
Serves as an agent of and advocate for residents	Serves as an agent of the State to act in the best interest of the consumer

# OMBUDSMAN - OVERVIEW

- What does an Ombudsman do when they receive a report of abuse, neglect or exploitation of an individual in an ombudsman covered facility?
  - The Ombudsman makes contact with the resident and the resident guides the Ombudsman's advocacy
  - If allowed, the Ombudsman refers the concern to APS or other appropriate agency
  - If the resident does not want the Ombudsman to report the concern, the Ombudsman will continue to work with the resident to ensure their safety and work for resolution of the concern
  - If the Ombudsman receives the report from someone other than the resident, the reporter is directed to call Law Enforcement, along with the appropriate state agency.
  - The ombudsman will not abandon a resident who refuses to report or have the case reported and will continue to work to resolve the issue.
- **Ombudsmen can be a unique resource for LE, as many officers indicate they feel uncomfortable visiting/investigating crimes in Nursing Facilities.**



# THE STATE LONG-TERM CARE OMBUDSMAN PROGRAM (SLTCOP)

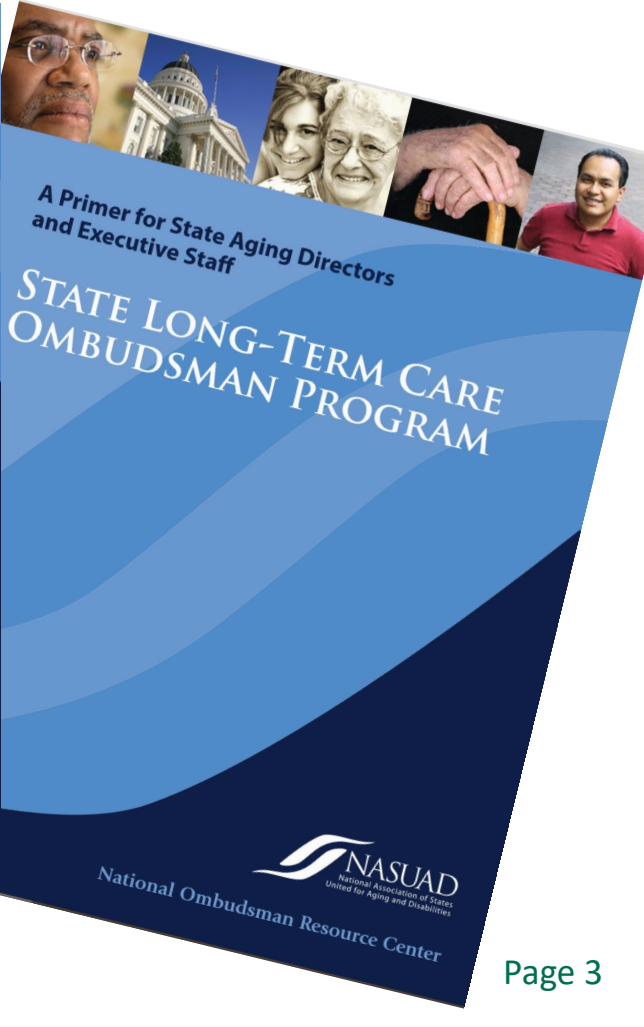
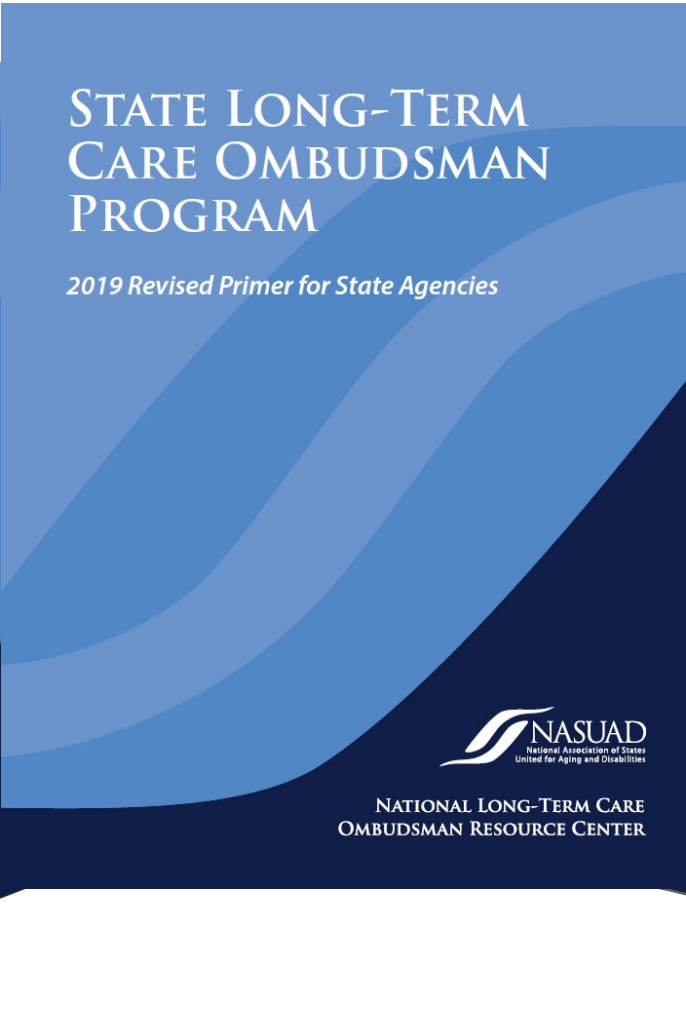
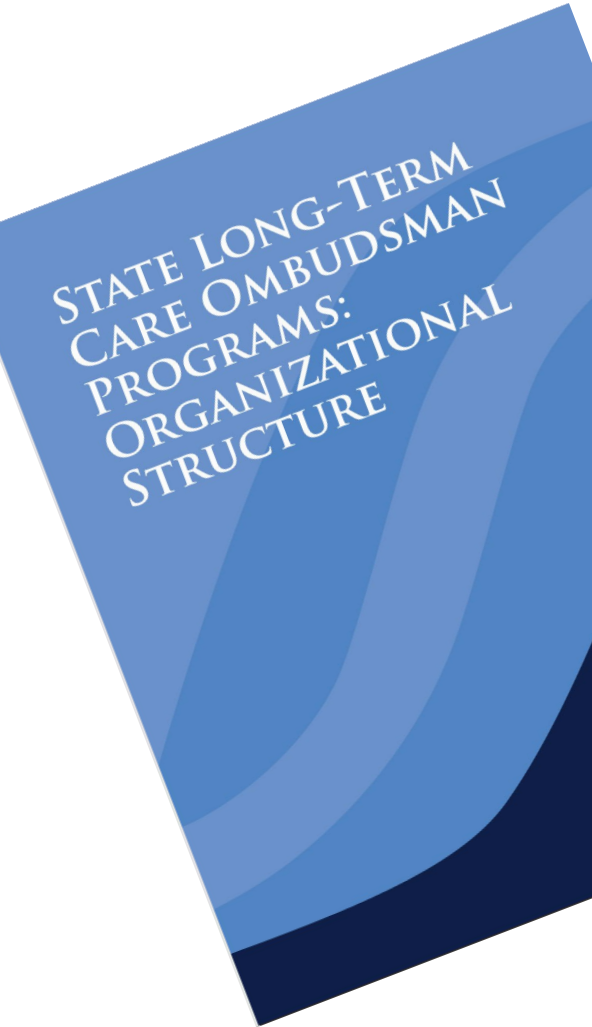
An Overview for New State Directors

# Presentation Overview

2

- Brief History and Overview of the SLTCOP under the Older Americans Act (OAA).
- The unique role of the SLTCO, as well as its interaction with the state agency.
- Frequently Asked Questions of the STLCOP from the State Agency.

# Resources



# The Purpose, Responsibilities, Goals and Requirements of the SLTCOP



4

- In the 1970s, the federal government created the SLTCOP in order to address problems of abuse, neglect and substandard care in nursing homes. The OAA has since expanded the scope of the program to reflect changing needs of the consumer.
- The Older Adults Act has seven titles that declare objects, with being Title VII- Vulnerable Elder Rights Protection.
- Title VII is where Long-Term Care Ombudsman Program requirements can be found.
- The State Long-Term Care Ombudsman Program (LTCOP) Final Rule (2015) 45 CFR 1321 and 1327 were published February 2015 and became effective July 1, 2016.

# Timeline of the State LTCOP

5

State LTCOP  
demos start  
in 5 states



Changed name from  
Nursing Home  
Ombudsman  
Program to SLTCOP  
to reflect expanded  
scope



Created Title VII of the  
OAA act- the Vulnerable  
Elder Rights title, where  
the program's  
requirements are now  
found.



1965

1972

1975

1978

1981

1987

1992

2016



Creation of  
Medicaid  
increases  
access to Nursing  
Homes



All but 2  
states have  
State LTCOP



Nationwide  
Ombudsman  
program  
raised to  
statutory  
level



Good faith immunity  
created and states  
required to allow  
ombudsman access to  
residents and their  
records



The State LTCOP  
Final Rule (2015)  
45 CFR 1321 and  
1327 became  
effective July 1,  
2016.

# Program Description

6

■ The Older Americans Act (OAA) establishes the Long-Term Care Ombudsman Program (LTCOP) as a person –centered consumer protection service.

■ The program **resolves problems** and **advocates for the rights** of individuals in order to maximize the independence, well-being, and health of individuals residing in:

- Nursing facilities
- Assisted living
- Board and care
- Other similar adult care facilities.



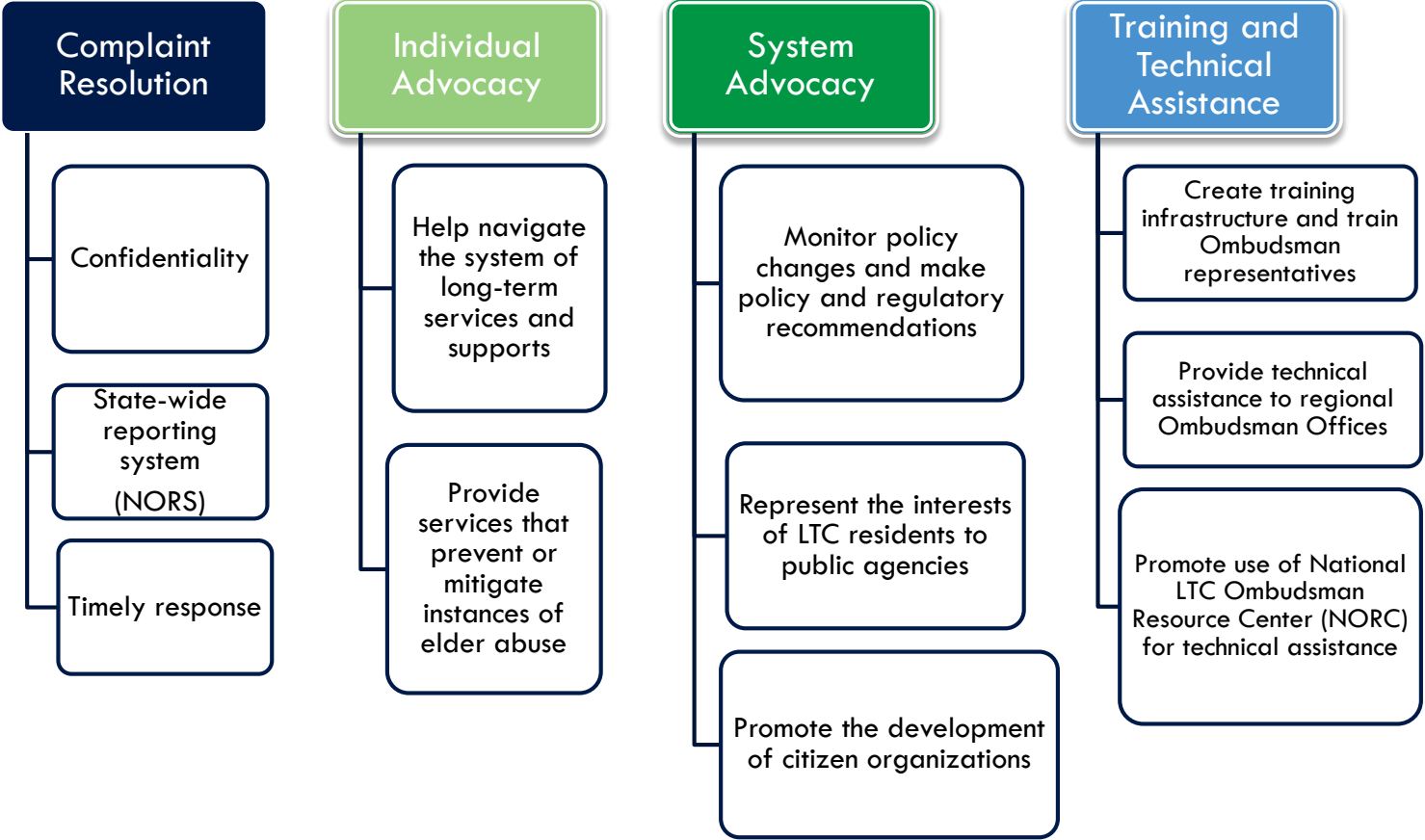
# What did the STLCO Program Final Rule change or clarify?



7

- Provided more consistent delivery of services to residents of long-term care facilities
- Reduced variation in quality, efficiency and consistency in service delivery from state to state.
- Operationalized OAA provisions which are uncharacteristic of ways state units on aging (SUAs) and area agencies on aging (AAAs) operate other OAA programs. Examples:
  - Ombudsman responsibility to designate representatives and local Ombudsman entities,
  - Stringent disclosure limitations,
  - Conflict of interest requirements,
  - Ombudsman responsibility to perform systems advocacy functions.

# Roles of SLTCO



# Complaint Resolution

**One of the original purposes of SLTCOPs was to investigate complaints about long-term care facilities. Confidentiality, timely response and a state-wide reporting system are just some key elements for effective complaint resolution.**

Effective complaint resolution is promoted with:

- Confidentiality
- Volunteers investigating complaints
- Consistent, statewide data collection
- Timely response

# Individual Advocacy

**By assisting individuals with the navigation of services and informing them of the services for which they are entitled, SLTCO and representatives promote the health, safety, welfare and rights of residents.**

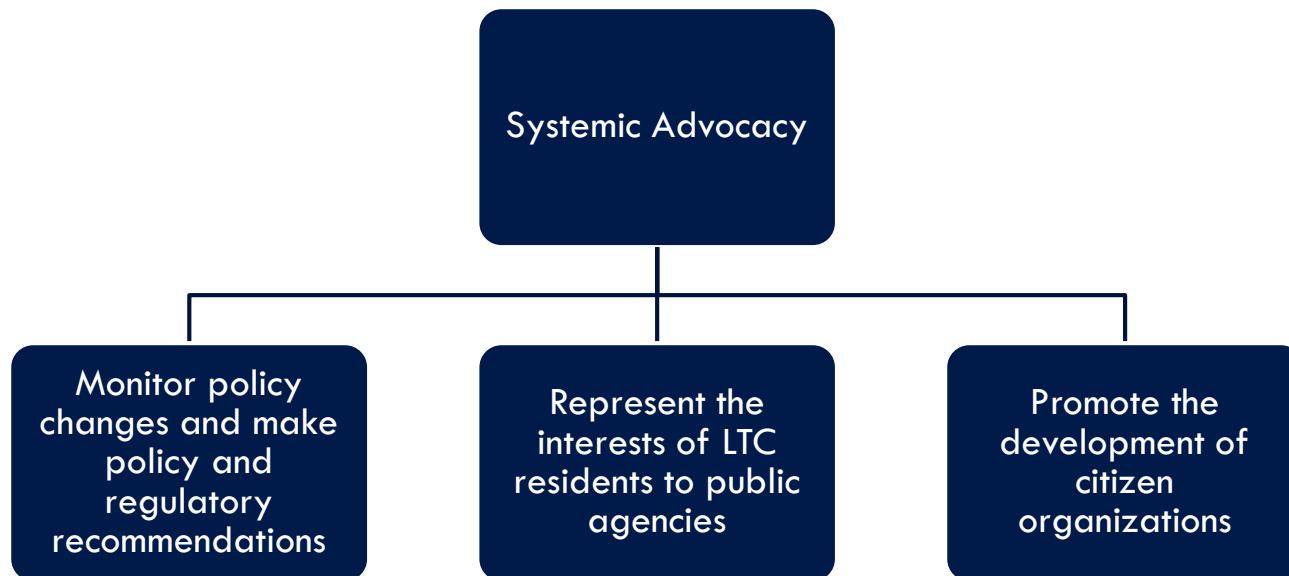
## Strategies for Individual Advocacy

1. Inform about quality services or commonly used services
2. Evaluate the resident's needs and status and inform of the services for which they entitled
3. Inform how to obtain services from various agencies
4. Provide legal counsel when needed



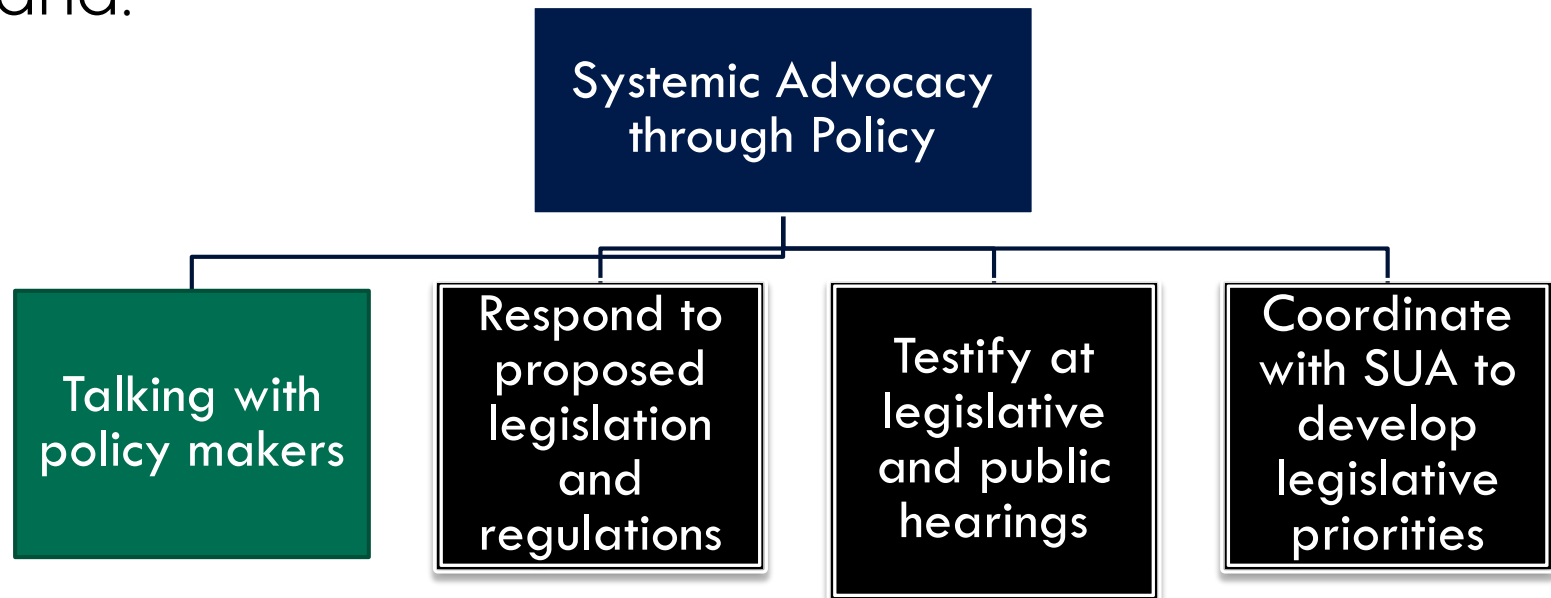
# Systems Advocacy through Policy

The SLTCO and representatives participate in systemic advocacy through policy, representing the interests of LTC residents to public agencies and promoting the development of citizen organizations.



# Systemic Advocacy in Legislative and Regulatory response

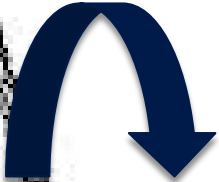
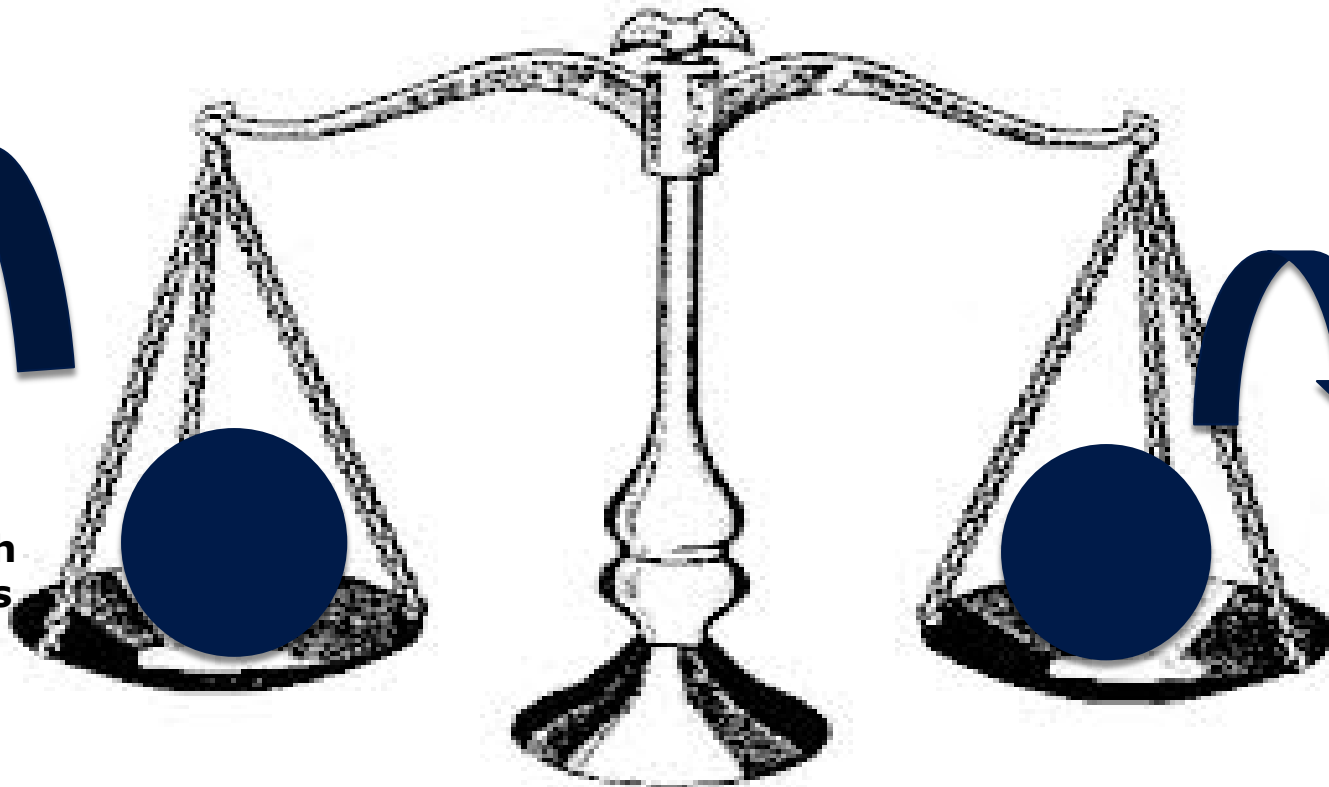
The broad guidelines for systemic advocacy allow the SLTCOP the opportunity to be innovative with systems advocacy and to respond to the political climate and issues at hand.



# The Challenge of Balancing Relationships



**Managing  
interests and  
creating  
programs with  
state agencies**



**Advocating  
on Behalf  
of  
Residents**

# Training and Technical Assistance

Federal training requirements ensure that SLTCOP representatives are prepared to handle the responsibilities required of the program.



The National Long-Term Care Ombudsman Resource Center (NORC) provides training, technical assistance and information to Ombudsman programs and the public.



# Standards of Practice



Exemplary Practices	Essential Practices	Unacceptable Practices
All representatives have no prohibited ties to LTC facilities or services, but they maintain a knowledge of these entities and LTC consumers.	Representatives have no prohibited ties to LTC facilities or services.	Representatives have prohibited ties to LTC facilities or services.
Representatives have no prohibited ties to any regulatory agency, but they have knowledge of the various regulatory functions.	Representatives have no prohibited ties to any regulatory agency.	Representatives have prohibited ties to any regulatory agency.
The program maintains a reputation for staffing those who stay abreast of the latest developments and trends and have time to focus on SLTCOP.	Representatives have no responsibilities for APS and they don't serve as a guardian for an unrelated resident for a LTC facility within service area.	Representatives have APS responsibilities or are guardians for an unrelated resident in a LTC facility within service area.
Training facilitates ongoing improvement and skills of every representative.	Representatives receive in-depth initial training and are assessed for competence before direct service. They receive ongoing training.	Representatives have little or no initial training or ongoing training, so they are ill-equipped to provide the full range of ombudsman services.

## An Overview of how the SLTCOP Functions in Relation to the Broader System of Services and Policies.

State Units on Aging (SUAs) are tasked with deciding where the State LTC Ombudsman Program will be located in their state.

States have some degree of freedom in determining where the SLTCOP will be located within the larger system of aging services, as long as there is no conflict of interest and services can be delivered effectively.

# Frequently Asked Questions

- Q: Regarding full-time State Ombudsman – Can a State Ombudsman be a full time employee that is the SLTCO but also oversees another function in the state like the Elder Rights Division?

*A: The SLTCO is to be full time - meaning a full time employee devoting 100% of their time to the SLTCO program. The intent of the OAA was for the SLTC Ombudsman to be focused on statewide Ombudsman activities full time. They can be assigned other duties if those duties are of a temporary nature and for only a brief period of time.*

- Q: In screening for Conflict of Interest for Legal Counsel- Can an attorney represent both the Ombudsman program and the State Unit on Aging?

*A: Each state has ethical standards for attorneys in their state. For a lot of issues there would probably be no conflict, it would only arise if the SUA program was the topic of a legal action represented by the Ombudsman for or with a resident.*

# Frequently Asked Questions cont'd

- Q: Regarding Organizational structure – If you could design a program for the perfect Ombudsman program, what would it look like?

*A: Just as all state units on aging have different organizational structures, so does all Ombudsman programs. Three ACL staff have worked in SLTCO programs as State Ombudsman and each feel that their program worked for their states. (Note: NASUAD, in coordination with the National Ombudsman Resource Center, published a white paper showing the organizational structure of each state which could provide assistance when states are looking at options.)*

- Q: Regarding conflict of interest – Where can the SLTCO program be housed?

*A: It is important to house the program and have policies in place that assure a resident and their family know that the ombudsman does not represent another entity. To residents, a perceived conflict is a real conflict.*

# Frequently Asked Questions cont'd

- *Q: Regarding Legal Counsel – Can the Legal Services Developer provide the legal services to the Ombudsman program?*

*A: Generally it would be that the legal services developer could be part of a team of legal services. The purpose of the legal council is to provide residents with legal council, address victim rights issues, provide general legal services and likely be an attorney. The Legal Services Developer may be able to address issues depending on the state's individual needs.*

- *Q: How can the SUA have a mechanism in place to prevent reprisals against a resident or ombudsman? What would this look like?*

*A: Under the OAA grant to the state, the SUA has a duty to make sure that procedures and policies are in place to prevent reprisals. The SUA needs to ensure but not necessarily do the enforcement themselves.*

# Resources

- State Long-Term Care Ombudsman Program 2019 Revised Primer for State Agencies. <http://www.nasuad.org/sites/nasuad/files/State%20Long-Term%20Care%20Ombudsman%20Program%202019%20Revised%20Primer%20for%20State%20Agencies.pdf> (2019).
- State Long-Term Care Ombudsman Programs: Organizational Structure Report. <http://www.nasuad.org/sites/nasuad/files/NASUAD%202016%20Ombudsman%20Rpt%20%2812%29.pdf> (2016).
- NASUAD's PowerPoint on the State Long-Term Care Ombudsman Program Final Rule. <http://www.nasuad.org/sites/nasuad/files/Ombudsman%20rule%20powerpoint%2010142.pptx> (2015).
- Merrill, D. Presentation about the long-term care ombudsman program.
- The National Long-Term Care Ombudsman Resource Center. About NORC. <http://www.ltcombudsman.org/> (Accessed on August, 13, 2013).
- The National Long-Term Care Ombudsman Resource Center. Ombudsmen Program History. <http://www.ltcombudsman.org/about-ombudsmen/program-history> (Accessed on August, 13, 2013).
- National Association of States United for Aging and Disabilities (NASUAD) and the National Ombudsman Resource Center. A primer for state aging directors and executive staff: State long-term care ombudsman program. [http://www.nasuad.org/documentation/nasuad\\_materials/NASUAD%20Ombudsman%20Report%20final.pdf](http://www.nasuad.org/documentation/nasuad_materials/NASUAD%20Ombudsman%20Report%20final.pdf) (2012).



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# INTRODUCTION TO MEDICAID

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# Agenda

- What is Medicaid?
- How is the Medicaid Program Administered?
- How is Medicaid Financed?
- The Medicaid State Plan and Role of the Single State Agency
- Who can get coverage under Medicaid?
- The Impact of the ACA on Medicaid
- What services does Medicaid cover?
- Medicaid's Role in Long Term Care
- Authorities that Support HCBS
- How are payment rates established?
- Why is Medicaid an entitlement?
- What will Medicaid look like in the future?

# What is Medicaid?

- Medicaid was enacted on July 30, 1965 under Title XIX of the Social Security Act.
- Designed originally to provide health insurance coverage primarily to individuals receiving cash assistance including:
  - *Very low-income children and parents;*
  - *Pregnant women; and*
  - *Individuals who are aged, blind or disabled.*
- Today, Medicaid is the largest health care program in the US, with approximately 73 million enrolled and receiving comprehensive benefits as of May 2019\*
- Medicaid represents one-sixths of the national health care economy.
- From 2016 through 2025, total Medicaid expenditures are projected to increase at an average annual rate of 5.7 percent to reach \$957.5 billion, while enrollment is projected to increase to 81.6 million.\*\*

\*Includes CHIP enrollment. Source: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, Medicaid & CHIP Total Enrollment Highlights: May 2019. Accessed at <https://www.medicare.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html> on August 15, 2019.

\*\*CMS, Department of Health and Human Services, 2015 Actuarial Report on the Financial Outlook for Medicaid, July 2016. Accessed at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2016.pdf> on July 31, 2018.

# HOW IS MEDICAID ADMINISTERED?

- Medicaid is jointly financed by the federal government and states.
- Medicaid is administered at the federal level by the **Centers for Medicare and Medicaid services (CMS)**, an agency within the US Department of Health and Human Services (HHS).
- At the state level, Medicaid is administered by the **Single State Agency (SSA)**.
- Title XIX (federal law) establishes broad standards for eligibility and coverage:
  - *Some are mandatory while others are optional;*
  - *Within these parameters, states have flexibility to design their own programs.*
- States must obtain approval from CMS to “draw down” the federal share of Medicaid spending (Medicaid match or FFP) through **State Plan Amendments (SPAs)** or **Waivers**.
- CMS provides oversight (as do other federal and state authorities).
- *No State Medicaid program looks exactly like any other State Medicaid program.*

# Core Federal Medicaid Requirements

- Statewideness\* – The Medicaid program must be in operation statewide.
- Comparability\* – Services available to a beneficiary in one eligibility category are not less in amount duration and scope than those in a different category.
- Freedom of Choice\* – A beneficiary may obtain services from any qualified Medicaid provider that undertakes to provide the services to them.
- Sufficiency - Each Medicaid service must be sufficient in amount, duration and scope to reasonably achieve its purpose and State cannot arbitrarily deny or reduce the amount, duration or scope solely because of diagnosis, illness or condition.
- Access – Payments to providers must be consistent with efficiency, economy and quality of care and be sufficient to enlist enough provider so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

\*May be Waived

# CMS Operates Through 10 Regions

Region 1 Boston  
ROBOSFM@cms.hhs.gov

Region 2 New York  
RONYcfm@cms.hhs.gov

Region 3 Philadelphia  
ROPHICFM@cms.hhs.gov

Region 4 Atlanta  
ROATLfm@cms.hhs.gov

Region 5 Chicago  
ROCHlfm@cms.hhs.gov

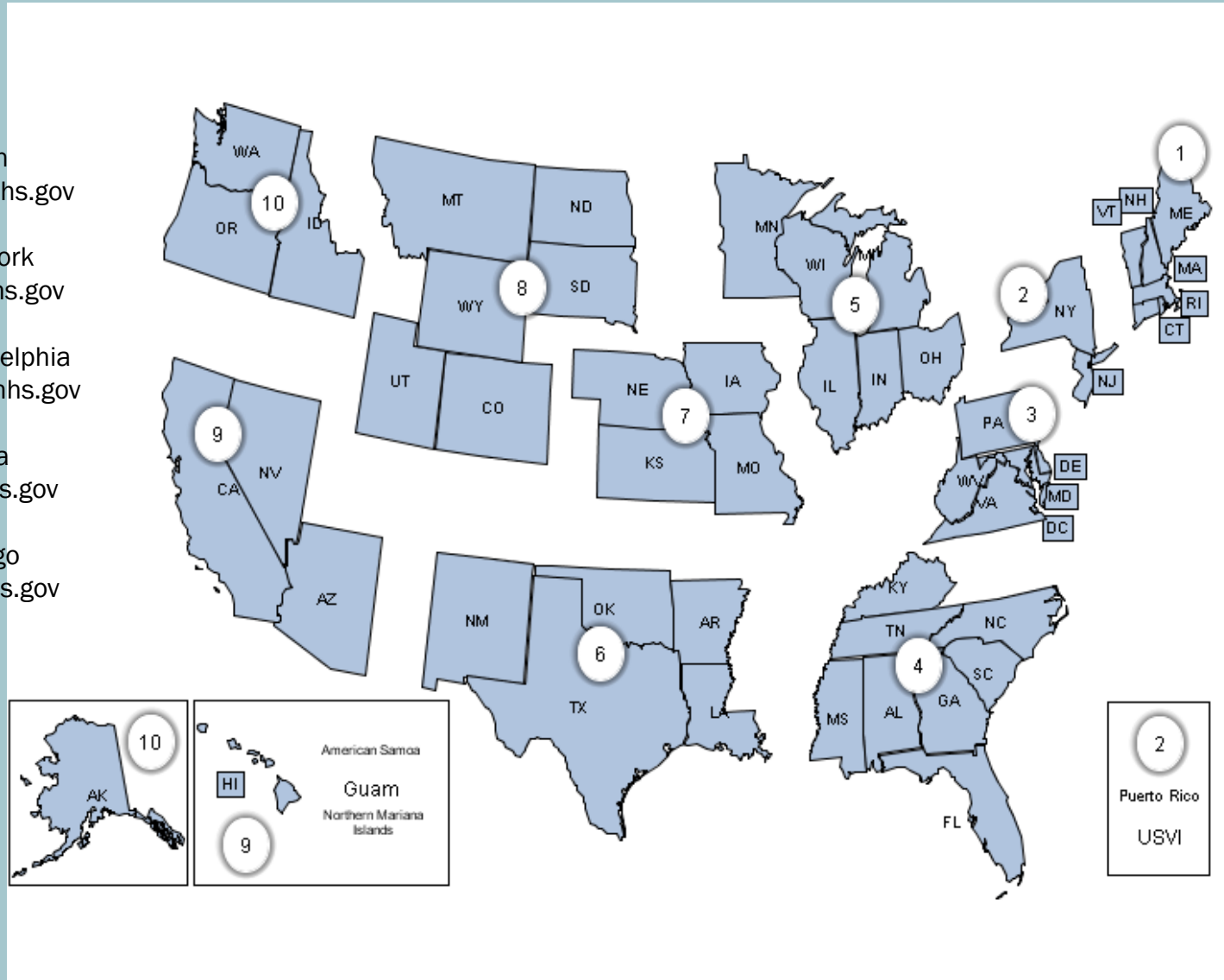
Region 6 Dallas  
RODALFM@cms.hhs.gov

Region 7 Kansas City  
rokcmfm@cms.hhs.gov

Region 8 Denver  
rodenmmfm@cms.hhs.gov

Region 9. San Francisco  
ROSFOFM@cms.hhs.gov

Region 10 Seattle  
ROSEA\_DFMFFS02@cms.hhs.gov



# The Role of **Single State Agency - SSA**

- Every State participating in Medicaid must designate a single state agency to administer and supervise the State Plan.
- The SSA may not delegate, to other than its own officials, the authority to supervise the State Plan or to develop or issue policies, rules, and regulations on program matters.
- Certain functions may be delegated to other agencies (such as the determination of eligibility) but only if such delegation is approved in the State Plan, certain standards are met, and the SSA continues to exercise appropriate oversight.

Social Security Act, 42 USC §1396a(a)(5); 42 C.F.R. §431.10.

# The Medicaid State Plan

- The **Medicaid State Plan** is a written document that embodies the agreement between a State and the Federal government describing how the State administers its Medicaid and CHIP programs. It:
  - *Provides assurances that the State will abide by Federal rules.*
  - *Sets forth the groups of individuals who are covered, services to be provided, limitations on coverage, the methodologies for reimbursing providers and the State's administrative activities.*
- The State Plan and any change to it must be approved by CMS. States propose changes by submitting **State Plan Amendments (SPAs)** to CMS.
- If the eligibility group, service or activity is not identified in the State's approved Medicaid State Plan, the State may not claim Federal Medicaid match.

Social Security Act, 42 USC § 1396a(a); 42 CFR §430.12

# Federal/State Financing

- The federal share of Medicaid spending is called **Federal Financial Participation or FFP**.
- The amount of FFP received by a States is based on the State's **Federal Medical Assistance Percentage or FMAP**. The FMAP formula is based upon the average per capital income for each State relative to the national average:
  - *FMAP is for Medicaid services;*
  - *Medicaid administration is matched at 50%.*
- FMAP cannot be lower the 50%.
- In FY 2019, eight states will have FMAP rates above 70%. The highest FMAP rate is 76.39% (Mississippi).
- For every State dollar spent on an allowable service, the federal government will match it at the State's FMAP rate.
- Some programs and services are eligible for **enhanced FMAP** rates.



# Federal Match Rate For Services - Examples

State	FMAP Rate	State Spends \$100 on Services	Federal Reimbursement	State Share	Total computable
California	50%	\$100	\$50	\$50	\$100
Guam	55%	\$100	\$55	\$45	\$100
Michigan	64.45%	\$100	\$64.45	\$35.55	\$100
Washington, DC	70%	\$100	\$70	\$30.	\$100
Kentucky	71.67%	\$100	\$71.67	\$28.33	\$100
Mississippi	76.39%	\$100	\$76.39	\$23.61	\$100

# Other Medicaid **FMAP** Rates

Type	FMAP Rate	State Spends 100	Federal Reimbursement	State Share	Total Computable
EVV &IT DDI	90%	\$100	\$90	\$10	\$100
IT M&O	75%	\$100	\$75	\$25	\$100
ADMIN	50%	\$100	\$50	\$50	\$100

# Medicaid Administrative Match Available to Support Access to LTSS

- Medicaid Administrative match is available for activities that support access to LTSS including: outreach, referral, assessment, training, functional and financial eligibility.
- Activities may be performed either directly by the state Medicaid agency or through contract or interagency agreement by another entity, include the State Unit on Aging or its affiliates such as ADRCs:
  - *The state and its partners must develop a **Cost Allocation Plan**.*
  - *The state also must execute an interagency agreement (IAA), memorandum of understanding (MOU) or other contractual arrangement, which describes and defines the relationship between the state Medicaid agency and the entities which perform identified Medicaid Administrative functions.*
  - *All claims must be submitted by the Single State Agency (State Medicaid Agency).*

# Who can get coverage under Medicaid?

- States participating in Medicaid are required to cover certain mandated groups, but have the option to increase eligibility levels and/or cover “optional” groups.
- Mandatory groups include: Low income children, children in foster care or with Title IV(e) adoption assistance, parents/caretakers, pregnant women, individuals receiving SSI, individuals who are aged, blind or disabled, certain low-income Medicare beneficiaries.
- Optional groups include: Low-income childless adults, individuals receiving LTSS HCBS services, certain women with breast or cervical cancer, individuals in certain work incentive programs.

# How is Eligibility Determined?

- Medicaid eligibility rules are extremely complex.
- As a general rule, eligibility is determined based upon **residency, citizenship/immigration status, age, household size and income, and in some cases, disability status, level of need (for LTSS) and resources**. Within federal parameters, States establish income limits expressed as a percentage of the **Federal Poverty Level (FPL)** or, for certain categories of coverage, as a percentage of SSI.
- Different rules apply to different coverage groups and an individual's eligibility status can change multiple times based upon life events.
- States must allow individuals wishing to apply for benefits to do so and must furnish benefits “with **reasonable promptness** to all eligible individuals.”
- States must provide for a **fair hearing** before the State agency to any individual whose claim for medical assistance is denied or is not acted upon with reasonable promptness.
- States must re-determine Medicaid eligibility at least annually or whenever there is a change in circumstance.
- For certain populations, States must use “**passive renewal**” processes to re-determine eligibility.

# Impact of the ACA on Health Insurance Coverage

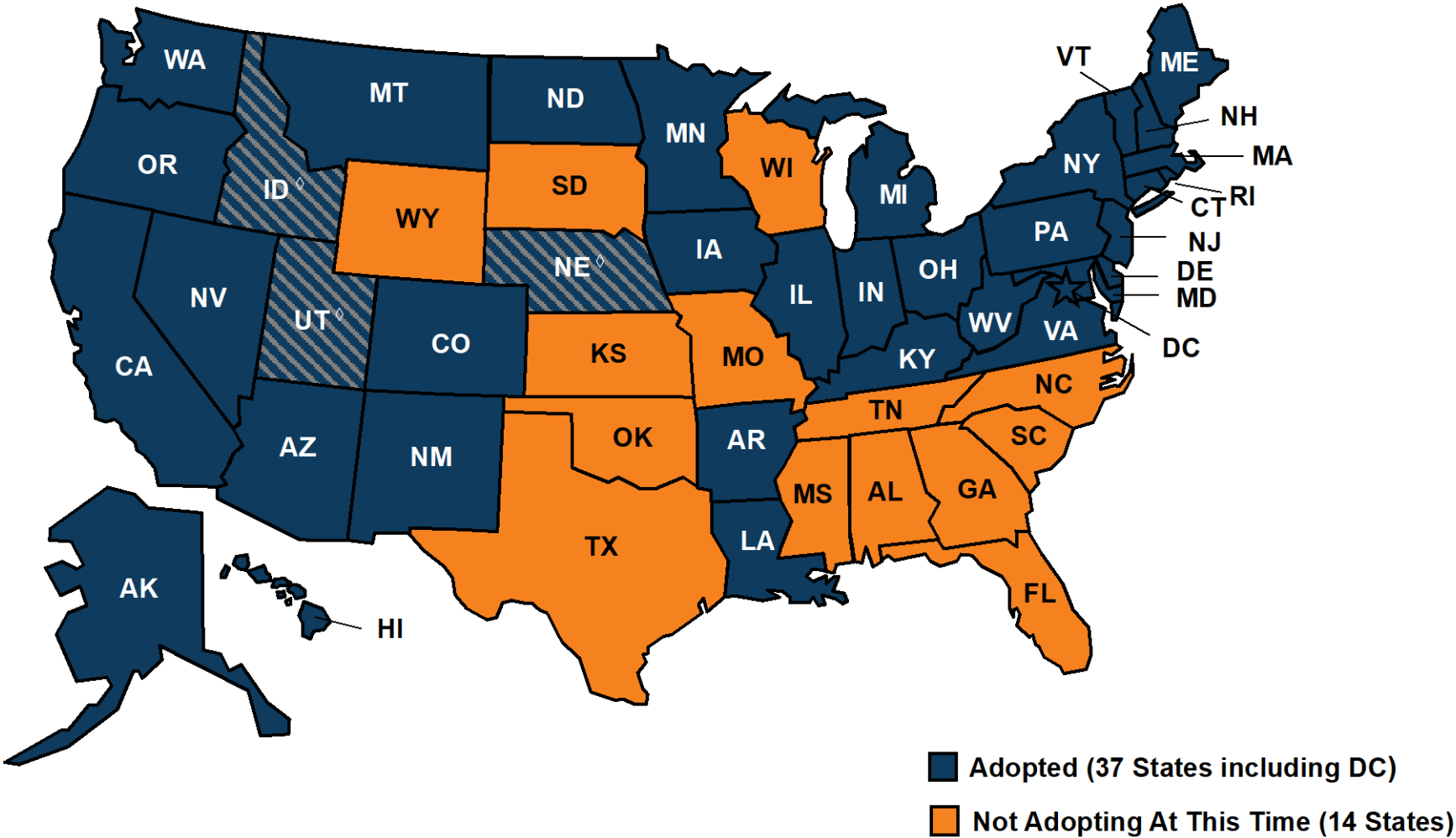
- ACA created option to provide coverage to “**childless adults**” and created a new financial eligibility standard based upon “**Modified Adjusted Gross Income**” or “**MAGI**” tax rules for certain populations:
  - *Individuals must be under age 65, not be eligible for or enrolled in Medicare part A or B, not be eligible for another mandatory Medicaid eligibility category, and have income below 138% FPL;*
  - *This expansion is often referred to as “childless adults group” because this is the population who most commonly meets the criteria discussed above;*
  - *Other individuals may also be included in this group, such as individuals in the Medicare waiting period, parents whose income exceeds the eligibility category for parents/caretakers, or people with disabilities who don’t qualify for a SSI-based eligibility category.*

Source: Kaiser Family Foundation, The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review, March 28, 2018, accessed at <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-march-2018> on July 31, 2018.

# More on **MAGI** Methodologies

- The **MAGI** methodology differs significantly from prior ways of counting income, which were based on AFDC (welfare) standards:
  - *Additionally, individuals who enter Medicaid via a MAGI-based income calculation do not have an **asset test**.*
  - *Eligibility categories for older adults and people with disabilities do not use MAGI, and continue to include asset tests; however, some of these individuals may also qualify for a MAGI group.*
- Expansion States saw significant growth in Medicaid enrollment and corresponding declines in the uninsured rate.
- In rural areas, the declines in uninsured rates have exceeded those in metropolitan areas.

# Status of State Medicaid Expansion Decisions



NOTES: Current status for each state is based on KFF tracking and analysis of state activity. ◊Expansion is adopted but not yet implemented in ID, NE, and UT. (See link below for additional state-specific notes).

SOURCE: "Status of State Action on the Medicaid Expansion Decision," KFF State Health Facts, updated August 1, 2019.

<https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/>

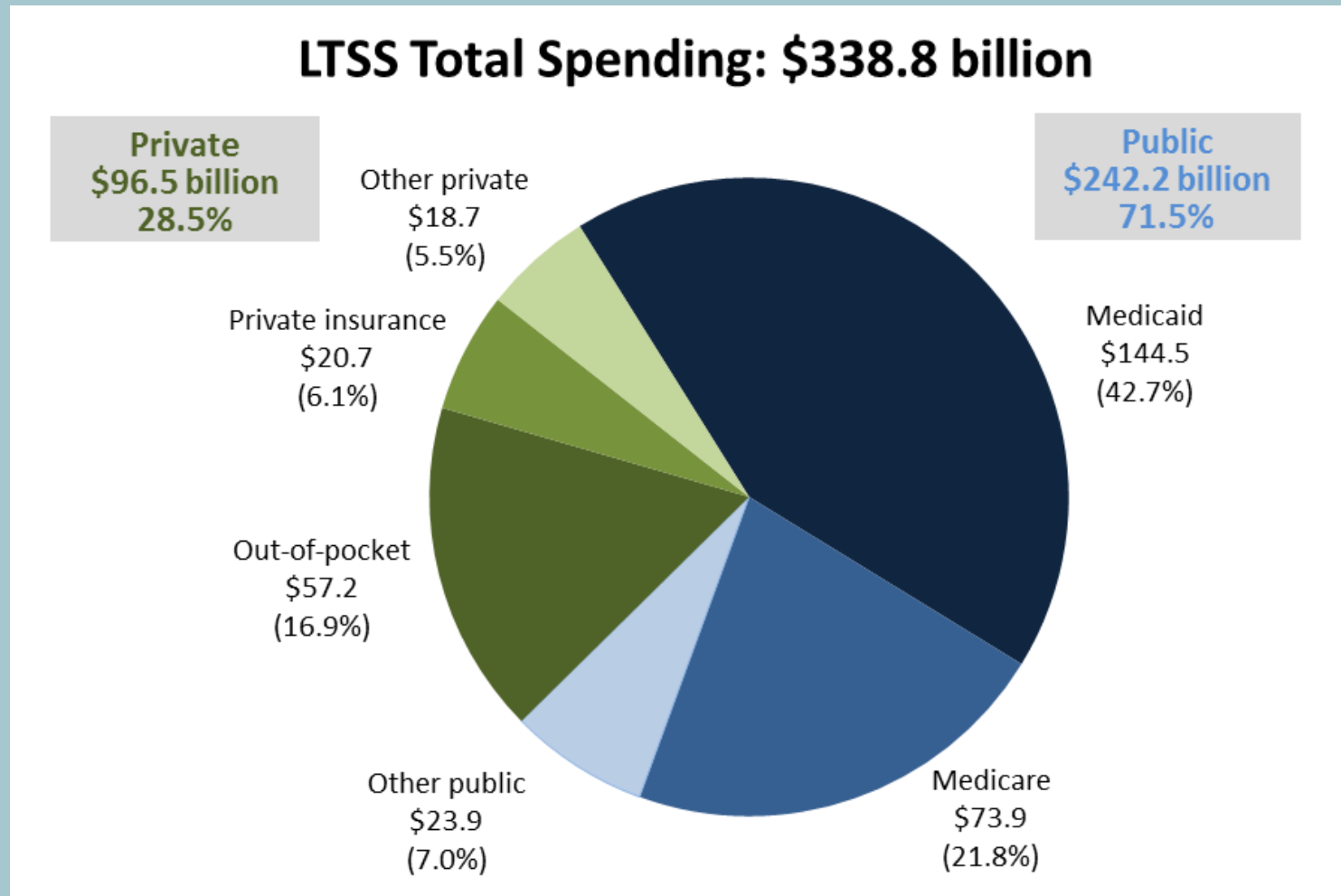




# What Services does Medicaid Cover?

- States participating in Medicaid must cover certain mandatory services including: inpatient and outpatient hospital services, nursing facility services, home health services, physician services, FQHC and Rural Health clinic services, EPSDT and certified Pediatric and Family Nurse Practitioner Services, lab and x-ray services, family planning services, freestanding birth centers, tobacco cessation for pregnant women and non-ER transportation to medical appointments.
- States may cover additional optional services including: prescription drugs, dental services, eyeglasses, PCA and HCBS services (including self-directed PCA), private duty nursing, hospice, case management, ICF/ID, OT, PT and speech therapies, clinic and rehabilitation services, and health home services.

# Medicaid's Role in Long Term Care



Source: CRS analysis of National Health Expenditure Account (NHEA) data obtained from the Centers for Medicare & Medicaid Services (CMS), Office of the Actuary, prepared December, 2014. Accessed at: <https://fas.org/sgp/crs/misc/R43483.pdf> on July 26, 2018.

# Authorities that Support HCBS Services

- **Medicaid State Plan** – Operational Agreement between Federal Government and State that gives State authority to draw down federal match for approved services.
- **Waivers** – Allows Federal Government to exempt States from specific Medicaid statutory requirements:
  - *Section 1115 – Research and Demonstration Waivers*
  - *Section 1915(b) Freedom of Choice*
  - *Section 1915(c) Home and Community Based Services (1981)*  
(Title 42 of Social Security Act (SSA))
- **New(er) State Plan Options**
  - *1915(i) HCBS State Plan Option (2005)*
  - *1915(j) Self-Directed PCA (2005)*
  - *1915(k) Community First Choice (2010)*

# How are Services Delivered?

Fee for Service (FFS) – Services are unbundled and paid for separately, usually based upon a fee schedule. Payment to the provider increases in proportion to the quantity of the services provided.

Managed Care – Managed care delivery systems vary:

*Comprehensive-risk based managed care* – A managed care organization (MCO) is paid a fixed or capitated amount per enrolled member per month. The MCO is at financial risk if costs exceed the capitated rate. Some services may be “carved out.” Rates are set within an actuarially sound range.

*Primary Care Case Management (PCCM)* – Enrollees have a primary provider who is paid a monthly case management fee to manage and coordinate basis medical care. PCP is not at risk.

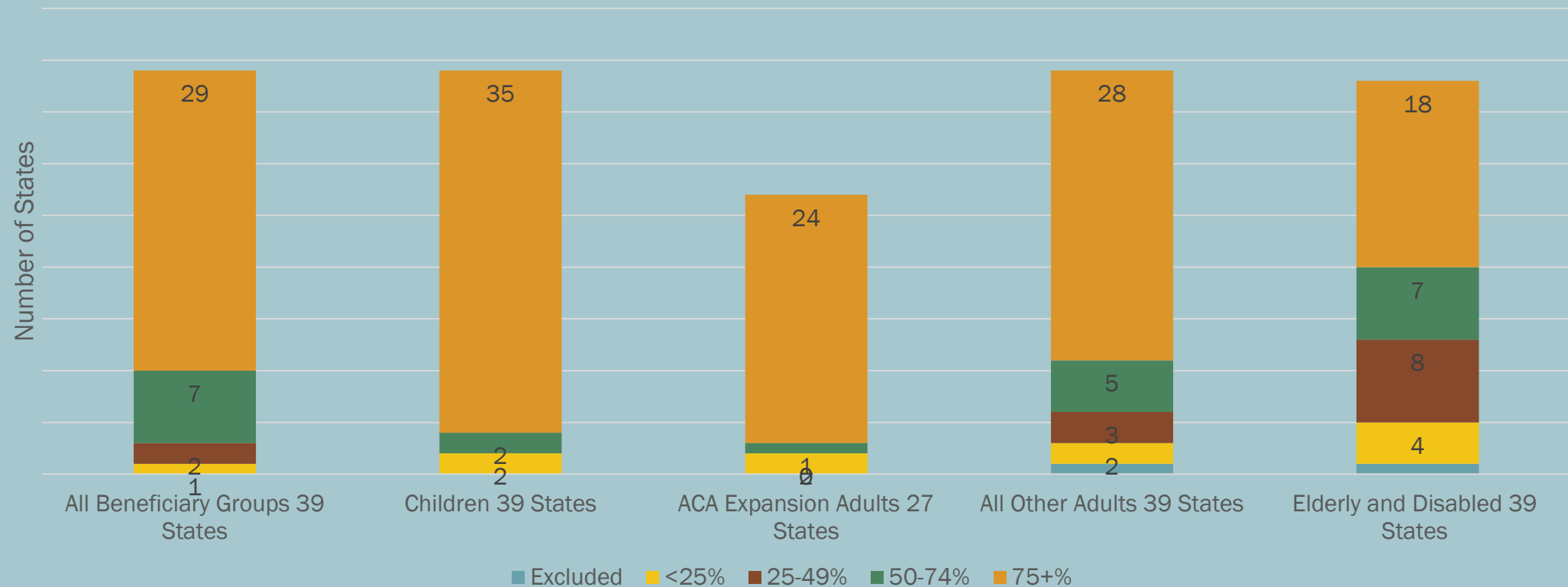
*Limited-benefit plans* – Plans that manage a limited set of benefits. May share risk with the State.

Health Homes – A new CMS State Plan Benefit that pays primary care providers for care coordination and may include a pay for performance element.

Accountable Care Organizations (ACOS) – Groups of doctors, hospitals and other health care organizations that come together voluntarily to provide coordinated, high-quality care to their patients.

# Prevalence of Managed Care Arrangements

MCO Managed Care Penetration Rates for Select Medicaid Groups as of 2017



Source: Statista, MCO Managed Care Penetration Rates for Select Medicaid Groups in 2017, accessed at <https://www.statista.com/statistics/380099/states-with-medicaid-managed-care-expansion-and-quality-initiatives/> on July 31, 2018

# How are Medicaid Payment Rates Established?

State Medicaid provider payments must be:

“consistent with efficiency, economy, and quality of care and . . . sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.”

Social Security Act, 42 U.S.C. §1396a(a)(30)(A).

# FFS Rate Methodologies Vary

- Methodology set by Single State Agency and approved by CMS in State Plan
- Can be cost-based, prospective or an **alternative payment methodology (APM)**.
- Per service, per day or per bundle
- Per service rates often set as a percentage of the Medicare Fee Schedule
- **Federal Upper Payment Limit (UPL)** – Federal limit on FFS reimbursement; varies by provider type.

# Medicaid Managed Care Rates

**Capitation rates** paid by States to MCOs must be **actuarially sound**, meaning:

*The projected rates must provide for all reasonable, appropriate and attainable costs that are required under State's contract and for the operation of the Plan for the time period and populations to be served.*

*States must submit proposed rates and the documentation underlying the rate development process to CMS for review and approval.*

*Rates paid by MCOs to providers generally are negotiated. Provider payment rates can be fee-for-service, capitated or use an alternative payment methodology (APM).*



# Move Toward Integration and Value Based Payment Methods

**Figure 1. APM Framework (At-A-Glance)**



Source: Health Care Payment & Learning Action Network, APM Framework, accessed at <https://hcp-lan.org/workproducts/apm-whitepaper.pdf> on July 31, 2018.

# Why is Medicaid an **Entitlement**?

- Federal law requires states to provide Medicaid coverage to all individuals who meet eligibility requirements and to furnish services with reasonable promptness.
- In *Goldberg v. Kelly*, 397 US 254 (1970), the US Supreme Court ruled that welfare benefits are a matter of statutory entitlement for persons qualified to receive them. Individuals receiving such benefits are entitled to **DUE PROCESS** OF LAW.
- DUE PROCESS requires that prior to any action to deny, reduce or terminate benefits, an applicant or recipient must be given notice and a meaningful opportunity to be heard.

# Fair Hearing Requirements

- Adequate Notice
  - *In advance of intended action*
  - *Must state reasons for intended action and include citation to law that supports action*
  - *Explain right to hearing and how to request one*
  - *Right to represent oneself or be represented*
  - *Explanation of of circumstances under which benefits must continue if hearing is requested – AID PAID PENDING*
  - *Available in alternative formats and in prevalent non-English languages*
- Hearings
  - *Must be conducted at a reasonable time, date and place.*
  - *Hearing decisions must be in writing.*
- Requirements applicable to both FFS and MCO actions; MCOs must have internal grievance process and appeals process.

# What Does Medicaid Look Like in the Future?

- Major change to historic funding formula including block grants or per-capita caps?
- Incremental changes that impose new requirements as a condition of eligibility – work requirements, healthy behaviors, premiums and co-payments.
- Penalties for non-compliance such as lock-out periods.
- Imposition of new benefit limitations – life time limits, caps on services.
- Reduction or elimination of benefits such as retroactive coverage.
- Requiring more frequent re-certifications of eligibility
- Increased use of 1115 waivers to address integration of physical, behavioral and LTSS services and payment reform.
- Increased use of managed care and alternative payment methods to pay for value not volume.
- Increased coordination between Medicaid and Medicare
- Increased State flexibility and greater accountability

# Additional resources

- No Wrong Door Medicaid Administrative Claiming Guidance - <https://www.medicaid.gov/medicaid/finance/downloads/no-wrong-door-guidance.pdf>
- List of mandatory and optional Medicaid eligibility groups - <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/1115/downloads/list-of-eligibility-groups.pdf>
- List of mandatory and optional Medicaid benefits - <https://www.medicaid.gov/medicaid/benefits/list-of-benefits/index.html>

QUESTIONS?