



Illinois' Adult Protective Services Program Updates

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Key Areas of Program Changes

- **Adult Protective Services (APS) Registry**
- **Services to Individuals who self-neglect**
- **Public Act 100-0641**

APS Registry - Purpose

- **Protects eligible adults** who reside in a domestic living situation & receive in-home or community-based services from caregivers (*formal or informal*) against whom a verified & substantiated decision of abuse, neglect, or financial exploitation (ANE) was made by an Adult Protective Services (APS) Provider Agency
- **Places the identity of the caregiver** with a verified & substantiated decision on the APS Registry

Note

APS Registry - 320 ILCS 20/7.5 and 89 IAC 270, Subpart E

The APS Registry Rule (Part 270) was adopted on June 8, 2018 and was effective July 1, 2018

Twenty-five (25) states have already developed & implemented an APS Registry

Illinois is now the 26th state to implement an APS Registry

Key Definitions

➤ Caregiver

Person who either as a result of a family relationship, voluntarily, or in exchange for compensation has assumed responsibility for all or a portion of the care of an eligible adult who needs assistance with activities of daily living or instrumental activities of daily living

➤ Clear and Convincing Evidence

Standard of proof that must be met to reach a “verified” substantiation decision in the APS Program *(This standard of proof is met when the credible evidence, weighed in its entirety, creates a substantiated certainty that the abuse, neglect, or financial exploitation is occurring or had occurred.)*

Key Definitions (continued)

➤ **Direct Care**

Direct access to an eligible adult, his/her living quarters, or his/her personal, financial, or medical records for the purpose of providing nursing care, assistance with ADLs, or assistance with financial transactions.

➤ **Eligible Adult**

Adult with a disability age 18 through 59 or a person age 60 or older who resides in a domestic living situation and is, or alleged to be, abused, neglected, or financially exploited by another individual.

Key Definitions

➤ Verified & Substantiated

Determination by “clear and convincing” evidence by an APS PA, after assessment, that injury or harm has occurred as the result of abuse, neglect, or financial exploitation (ANE) in a reported case

➤ Victim

Eligible adult age 60 years or older or an adult with a disability age 18 through 59 who is the subject of a verified & substantiated finding of abuse, neglect, or financial exploitation

Overview of APS Registry Process

✓ Step 1

APS Provider Agency (PA) gives *Know Your Rights* notice to the victim (guardian or agent) that his/her caregiver's identity may be placed on the APS Registry based on a Verified & Substantiated finding of ANE by the APS PA.

Overview of APS Registry Process

(continued)

✓ Step 2

APS PA forwards name of victim to the Illinois Department on Aging (IDoA) after a Verified & Substantiated finding

- 24-hours (Imminent Risk)
 - If victim is in imminent risk of danger or misuse of his/her personal, medical, or financial information
- 5 business days (Non-imminent Risk)
 - If victim is not in imminent risk

Overview of APS Registry Process

(continued)

✓ Step 3

IDoA APS reviews case record as a quality assurance measure to ensure correct interpretation & application of the following *(30 calendar days)*

- Adult Protective Services Act, administrative rules, and standards
- Sufficient documented evidence of abuse, neglect, or financial exploitation

Overview of APS Registry Process

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(continued)

✓ Step 4

IDoA reviews APS PA's Finding to recommend Concurrence or Non-Concurrence

- Concurrence – Caregiver's identity is recommended for placement on APS Registry *(APS Registry process begins)*
 - ❖ Office of APS sends Caregiver a Notice of concurrence & recommends placement on APS Registry pending any challenge/appeal
 - ❖ Notice includes information about the Caregiver's right to contest placement on APS Registry including grounds for appeal & applicable legal burden
- Non-Concurrence - Caregiver's identity is not recommended for placement on APS Registry
 - ❖ Office of APS sends Caregiver a Notice of non-concurrence with placement on APS Registry with copies to state agency or direct care provider and APS PA

Overview of APS Registry Process

(continued)

✓ Step 5

Appeal Process Initiated by Caregiver

- Caregiver has a right to appeal placement of his/her identity on APS Registry
- IDoA shall not place a caregiver's identity on the APS Registry pending challenges or appeal from caregiver

Overview of APS Registry Process

(continued)

✓ Step 5

Appeal Process Initiated by Caregiver

➤ Caregiver Files Request for Appeal with IDoA

(30 calendar days after date of IDoA notice)

- ❖ Administrative Law Judge, CMS-Bureau of Administrative Hearings, facilitates the hearing process

➤ Caregiver Does not File Request for Appeal

- ❖ The Office of APS will place the Caregiver's identity on the APS Registry within 45 calendar days after the Notice if the Request for Appeal form is not filed by Caregiver
- ❖ The Office of APS will send a Notice to the Caregiver's employer (state agency or direct care provider) regarding placement on APS Registry

Overview of APS Registry Process

(continue)

✓ Step 5

Appeal Process Initiated by Caregiver

- Hearing participants may include
 - ❑ Caregiver (*attorney or representative*)
 - ❑ Victim
 - ❑ Administrative Law Judge (*ALJ*)
 - ❑ Witnesses
 - ❑ IDoA Director (*or Designee*)
 - ❑ Representative(s) from caregiver's employer (*state agency or direct care provider*)

Note

An appeal hearing & APS Provider Agency's casework and follow-up can occur at the same time

Overview of APS Registry Process

(continued)

✓ Step 6

Administrative Law Judge (ALJ) sends Hearing Notice to all involved Participants and . . .

- Facilitates hearing process, &
- Sends recommendation(s) to IDoA Director for Final Administrative Decision

Overview of APS Registry Process

(continued)

✓ Step 7

Appeal – Public Interest

- Sole issue on appeal is whether placement of caregiver's identity on APS Registry is in the public interest
- These are the public interest factors considered
 - ❖ Length of time caregiver has been providing care to victim
 - ❖ Relationship between caregiver and victim
 - ❖ Whether placement on APS Registry is in the victim's best interest or that of other participants
 - ❖ As it relates to financial exploitation, whether restitution has been made
 - ❖ Whether additional training for caregiver could remediate the ANE
 - ❖ Whether criminal charges were filed (and outcome)

Overview of APS Registry Process

(continued)

✓ Step 8

Removal from APS Registry *(single placement decision)*

- Caregiver may request removal of his/her identity from APS Registry at any time after a single placement report to the APS Registry by submitting a written request to IDoA Office of APS
- Removal request from APS Registry is not to be made more than once in each successive 3-year period after placement, with a maximum of 3 such requests
- IDoA shall grant or deny the caregiver's request to remove his/her identity from APS Registry

Note

Caregiver must prove by a preponderance of the evidence that removal of his/her name from APS Registry is in the public interest. The review will not include in-person testimony.

Adult Protective Services Registry Impact on State Agencies & Direct Care Providers

(licensed, certified, or regulated by or paid with public funds from any of these state agencies)

APS Registry Access (continued)

➤ **Access to the APS Registry is limited to:**

- ✓ Department on Aging (DoA)
- ✓ Department of Public Health (DPH)
- ✓ Department of Human Services (DHS)
- ✓ Department of Healthcare & Family Services (HFS)
- ✓ Direct Care Providers

➤ **State agency or direct care provider shall not retain, hire, compensate (directly or on behalf of a participant), or use the services of any person seeking to provide direct care without first conducting an on-line check of the APS Registry**

- ❖ State agency or direct care provider must check the APS Registry at hire & annually thereafter to maintain a copy of the results
- ❖ Failure to comply with this requirement may subject such a provider to corrective action by the appropriate regulatory agency or other lawful remedies provided under applicable licensure, certification, or regulatory laws and rules

Confidentiality

- No information/documents in the victim's case record or appeal process (including IDoA's Final Administrative Decision) will be subject to the Freedom of Information Act *(5 ILCS 140)*
- Under the APS Act, APS records are confidential with limited statutory exemptions allowing for disclosure (e.g., court order)
- **IDoA & ALJ have a duty to protect the confidentiality of records involving** *(See APS Act 320 ILCS 20/8)*
 - ❖ Verified and substantiated decision of ANE of an eligible adult by a caregiver
 - ❖ All records concerning reports of ANE & all case notes & records generated as a result of such reports
 - ❖ Name of & personal information about the Victim & Reporter(s)

Self-Neglect

Implementation of Services

Required Steps to Implement Self-Neglect as APS Program Component

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- Sufficient appropriation to implement a statewide program
- Amendments to part 270 of Title 89 of the Illinois Administrative Code

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http://www.cyberdriveillinois.com/departments/index/register/volume42/register_volume42_issue23.pdf

Effective Date: July 1, 2018

Defining Self-Neglect

A condition that results from an individual's inability to perform essential self-care tasks that **substantially threaten his or her own health**, and includes:

- Providing essential food, clothing or shelter and health care; and
- Obtaining goods and services needed to maintain physical health, mental health, emotional well-being and general safety

Defining Self-Neglect

Includes “Compulsive Hoarding”

- *Characterized by the acquisition and retention of large quantities of items (includes animals) and materials that produce an extensively cluttered living space, which **significantly impairs the performance of essential self-care tasks, or otherwise substantially threatens life or safety.***

Guiding Principles of Adult Protective Services (APS)

- Illinois' Adult Protective Services Program operates under an Advocacy Intervention Model:
- The Program assists the individual through interventions on his or her behalf; and
- The Program serves as an advocate

Guiding Principles of APS

Illinois' Adult Protective Services Program adopted the concept of Self-Determination:

- Competent adults have the right to:
 - ❖ Decide where and how they will live;
 - ❖ Choose whether to accept social services or other community assistance; and
 - ❖ Make decisions different from those a reasonable adult would make, including "bad" decisions, which are not harmful to others.

Guiding Principles of APS

➤ Intervention Principles

- ❖ Involve the individual in the development of the intervention or case plan.
- ❖ Assist the individual to live in the most independent setting.
- ❖ Be direct in discussing the situation, the alternative, and the consequences

Guiding Principles of APS

➤ Intervention Principles:

- ❖ **Confidentiality** – Respect the individual's' right to confidentiality. The individual has a right to privacy.
- ❖ **DO NO HARM** – Recognize that inadequate or inappropriate intervention may be more harmful than none at all. APS has a responsibility to take no action that places the individual at greater risk of harm.
- ❖ **Primacy of the Adult** - The individual's interest are to be the first concern of the program, before that of family members or citizens of the community. Safety of the individual is foremost when she or he is unable to decide or act on her or his own behalf.

Mandatory Reporting Requirement vs. Voluntary Reporting of Self-Neglect

- Professionals who are mandated to report suspicions of abuse, neglect or financial exploitation (if they have reason to believe that an eligible adult, who because of a disability or other condition or impairment is unable to seek assistance for himself or herself) are not mandated to report self-neglect. Reporting is voluntary.

Priority Response

- All self-neglect reports will be assigned either a **Priority I or Priority II** response because:
- Self-neglect reports included indicators that an individual is unable to perform essential self-care tasks that **substantially threaten his or her own health**, including:
 - ❖ Providing essential food, clothing or shelter and health care; and
 - ❖ Obtaining goods and services needed to maintain physical health, mental health, emotional well-being and general safety

Assessment & Casework

➤ How Assessment is Defined:

- ❖ Obtaining and documenting information about an individual to determine if there is reason to believe that self-neglect is occurring and to determine level of risk.
- ❖ Required to occur within 30 days* from the date of intake.
- ❖ Consent to services minimally includes the individual's consent to continued contact with the caseworker.

*Exceptions outlined in Standards section 509:A.10 do apply for self-neglect

Assessment & Casework

➤ How Casework is Defined:

- ✓ Developing and implementing a service plan for the individual, within 90 days from date of intake, which includes:
 - ❖ Identification of the needs, problems, limitation and capacities of the client;
 - ❖ Interventions to protect the health, welfare and safety of the client;
 - ❖ Assisting the client in obtaining needed services; and
 - ❖ Respecting the self-determination and independence of the client.

Assessment & Casework

➤ How Intervention is Defined:

- ❖ Intervention means an action initiated by the APS provider to provide medical, social, economic, legal, housing, law enforcement, or other protective, emergency or supportive services to, or on behalf of the individuals.

Casework

- The APS Act requires the following of the provider agency in developing a case plan:
 - ❖ *The plan shall include alternative suggested or recommended services which are appropriate to the needs of the eligible adult and which involve the least restriction of the eligible adult's activities commensurate with his or her needs.* [320 ILCS 20/5(a)]

Follow Up & Case Closure

- Follow-up services must minimally include monthly contact, with one of those contacts being a face-to-face every 90 days for purposes of:
- Monitoring to assure services and interventions are being provided as intended.
- Assisting the individual in continuing to receive services intervention to which she or he has consented
- Counseling
- Closure after 12 months of continuous follow up unless waiver is in place

Public Act 100-0641

Eligible adult" also includes an adult who resides in any of the facilities that are excluded from the definition of "domestic living situation" under paragraphs (1) through (9) of subsection (d), if either: (i) the alleged abuse or neglect occurs outside of the facility and not under facility supervision and the alleged abuser is a family member, caregiver, or another person who has a continuing relationship with the adult; or (ii) the alleged financial exploitation is perpetrated by a family member, caregiver, or another person who has a continuing relationship with the adult, but who is not an employee of the facility where the adult resides

Background

✓ Why Legislation Was Needed

- Adult Protective Services Program
 - ❖ Gap in the law
 - ❖ Definition of an “eligible adult”
 - ❖ APS jurisdiction
- Illinois Department of Public Health (IDPH)
- Healthcare and Family Services (HFS)
- Illinois Department of Human Services Office of Inspector General

Illinois Department of Public Health

- Regulatory agency for nursing homes and assisted living
- Investigates abuse, neglect and exploitation if the abuse is occurring in the facility or by a staff member of the facility
- Investigates what the facility failed to do to protect the resident from the alleged abuse
- Does not investigate to determine whether illegal actions were committed

Department on Aging's Long Term Care Ombudsman Program

- Ombudsman advocacy is limited to the permission granted by the resident or resident's representative (when the resident is unable to make decisions)
- Ombudsman investigate by
 - Gathering information
 - Requesting records, including an accounting of records from the agent under a POA for property
 - Interviewing all parties with whom resident grants permission to speak to
- Ombudsman gather all information and share it with the resident to assist with making an informed decision

Healthcare and Family Services (HFS)

- The regulatory agency for Supportive Living Facilities
- Investigates abuse, neglect and exploitation if the abuse is occurring in the facility or by a staff member of the facility
- Investigates what the facility failed to do to protect the resident from the alleged abuse
- Does not investigate to determine whether illegal actions were committed

Department of Human Services Office of Inspector General

- Jurisdiction in Community Integrated Living Arrangements (CILAs) covers allegations against staff of facility and while individual is under supervision of facility

What does this Mean for APS?

- APS will respond to reports of allegations of abuse and neglect of residents of facilities if the allegations are against someone in the community who has an on-going relationship with the resident
- APS will follow its program standards for assessment, casework and follow-up
- APS will close the case when it determines that the resident is no longer at risk of further injury or harm



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Questions?

