

Older Americans Act 2024 Final Regulations

An Analysis for USAging Members

On February 6, 2024, the U.S. Administration for Community Living (ACL) released their [final Older Americans Act \(OAA\) regulations](#), updating regulatory policies for implementing OAA programs for the first time since 1988. The final OAA regulations are intended to align with the current statute, address issues that have emerged since the last update and clarify several requirements. The effective date is March 15, 2024, and states must comply by October 1, 2025.

The release of the final regulations is a result of years of ACL engagement with the national Aging Network and reflects input received through USAging's responses to ACL's OAA regulations [request for information](#) and [notice of proposed rulemaking](#). Additionally, ACL incorporated comments and recommendations from more than 750 organizations and individuals representing State Units on Aging (SUAs), AAA state associations and individual AAAs, Title VI Native American Aging Programs, service providers and other advocates.

To support our members in understanding the opportunities and implications within the final regulations, USAging is highlighting several of the key regulatory provision changes here. We have also developed a [detailed crosswalk](#) to provide a deeper dive into and analysis of the provisions we commented on in the proposed regulations.

What's Next

The OAA regulations are now final. Therefore, there are no more opportunities to change or influence the current regulations until the next time ACL initiates an update. This typically follows significant updates to the law after a reauthorization by Congress. **This means that AAAs must actively engage with their SUAs to ensure that the AAA perspective is incorporated into any state policies and procedures the SUA decides to update in response to the new federal regulations.**

To assist with the state and local implementation of these regulations, ACL has launched a new technical assistance webinar series aimed at both new professionals in the Aging Network and those who are experienced in OAA program management. Upcoming sessions will focus on nutrition; legal assistance and guardianship; state and area plans on aging; contracts and commercial relationships; emergency and disaster requirements; Title III and VI coordination; and more. For webinar registration and all other resources for the final regulations, visit acl.gov/OAArule.

The following highlights reflect the areas of greatest impact to our members that USAging commented on in the proposed regulations and the outcomes in the final regulation. For exact regulatory language and ACL's justification, see our [crosswalk](#) on these and many other sections, and the [entire regulations](#) for any other areas. (Note: The version of the final regulations cited here is identical to the more formal version published on February 15; we believe the earlier version is easier for advocates to read and navigate, so our crosswalk citations are based on that version.)

Key Sections

[§ 1321.9\(c\)\(2\)\(xiv\) State Agency Policies and Procedures \(Contracts and Commercial Relationships\)](#)

USAgging recommended ACL amend 1321.9(c)(2)(xiv) in the final rule by clarifying the contracting language in 1321.9 to ensure it only pertains to approval of contracting activities that leverage OAA funding and are with a profitmaking entity, and that other approvals for OAA-funded activities should be non-burdensome on states and AAAs.

Final Rule: As we expected, ACL declined to accept our proposed changes. ACL interprets the statute to mean that SUAs have specific oversight responsibilities related to AAA contracting activity even when OAA funding is not used. We note that ACL removed a few words from their original language that referenced aligning with guidance from the Assistant Secretary on Aging. USAgging will be discussing this with ACL to better understand the rationale behind this change and any implications for AAAs.

USAgging Perspective and Guidance: Since this regulation is now final, it's important for AAAs to focus on what ACL stated in both the regulatory language and their commentary. In their commentary, ACL made clear the intention for the states' contracting approval processes to be "flexible and streamlined," "transparent and not overly burdensome" and not at odds with promoting and expanding the ability of the Aging Network to engage in business activities. It's also important to note that ACL is *not* saying that the SUA *must* sign off or approve a AAA or provider's individual contracts. Rather, ACL notes that SUAs must establish policies and procedures for AAAs/providers "to receive approval to establish contracts and commercial relationships and participate in [related] activities." We read this as a higher level of review that assures the SUA that such activities do not conflict with the Act's requirements. We are also pleased that ACL's commentary includes a reference to the importance of involving AAAs in the development of the SUA's policies and procedures around this review of contracting activities.

Next Steps: USAging anticipated our recommendations for changes to the contracting and commercial language would not be taken in full by ACL and will be pushing Congress for changes to the law to correct what we believe is an overreach of state authority. See our [OAA reauthorization recommendations](#) for more details on our position and join us in advocating for this correction in the 2024 OAA reauthorization.

In addition to engaging Congress, USAging will continue our work with ACL and ADVancing States to inform any subregulatory guidance or training and technical assistance provided to states and AAAs. It's also critical that AAAs advocate with their SUAs as such policies and procedures are amended or developed based on the new regulations. (See [page 1](#) of USAging's [crosswalk](#) for more details.)

§ 1321.47, § 1321.67 Conflicts of Interest (COI) Policies and Procedures for States, AAAs

In response to the proposed OAA regulations, USAging recommended the final regulations exclude any language stating or suggesting that potential organizational COIs can be prevented or remedied. This was a recommendation made following feedback from USAging members indicating concerns about COI potentially preventing a state of AAA from operating multiple programs and that subsequent state policies and procedures could treat potential conflicts as irremediable rather than focusing on conflict prevention with well-proven tools such as firewalls and clear policies.

Final Rule: ACL clarified that it is not an inherent COI to co-locate certain programs in one state or AAA, but that all mitigation processes must be in place. In the case of guardianship or Adult Protective Services functions, ACL added language to the regulation to specifically document those COI mitigation strategies, a reasonable compromise and protection that will allow AAAs serving as guardians of last resort or co-

located with APS programs to continue their critical work. We applaud this approach by ACL. (See [page 11](#) of USAging's [crosswalk](#) for more details.)

§ 1321.87 Nutrition Services

USAging strongly supported ACL's recommendation to allow for "grab-and-go"-style meal delivery under the OAA Title III C1 congregate meals program, as it allows AAAs more flexibility to meet the nutritional and social needs of older adults in a person-centered way. However, we requested that ACL alter this C1 improvement to: 1) allow AAAs to offer this service regardless of the SUA's interest in mandating or offering it statewide; 2) increase the percentage of funding allowed to be spent on this alternative format to 25 percent; and 3) ease the use this new flexibility by reducing the required documentation the SUA, AAA and providers need to manage. We also called for ACL to clarify whether the proposed 20 percent of C1 funding is calculated based on the total allocation to the state or AAA, or the allocation *after* any transfers have been made (i.e., C1-C2 transfers, as well as C-B).

Final Rule: ACL accepted our recommendation to increase the percentage of funding allowed to be spent on this alternative format (grab and go, etc.) to 25 percent (after all transfers). They retained language clarifying that an individual does not need to be homebound to receive OAA Title III C2 home-delivered meals. Additionally, they maintained language that makes explicit that a SUA does not have to apply equal limitations on transfers to each AAA if their overall amount statewide remains under the transfer limit, both of these provisions USAging supported. However, ACL did not accept our recommendation to allow AAAs to offer grab-and-go meal delivery regardless of the SUA's interest in mandating or offering it statewide, citing the state's authority in the Act to make such decisions. (See [page 29](#) of USAging's [crosswalk](#) for more details.)

§ 1321.93 Legal Assistance and Guardianship

USAgings suggested that all the new additions to the regulations regarding legal assistance and guardianship be softened to better accommodate the range of state, AAA and provider experiences in different parts of the country. We expressed concerns about language in the proposed rule that did not reflect the important role of AAAs in providing Information and Referral (I&R) and other screening or assessment roles and emphasized that legal assistance should not be siloed or negatively impacted by regulations. On the matter of COI, USAgings agreed that it is reasonable for ACL to regulate that the vast majority of OAA legal assistance dollars being spent on guardianship issues be limited to “defense of guardianship.” However, we did not agree that a state or AAA’s role in providing OAA legal assistance presents an irremediable COI with playing a role in the state or local guardianship system, assuming the proper firewalls and COI policies are in place.

Final Rule: ACL did not apply USAgings’s recommendations to the final rule and no further flexibility will be available to AAAs in the selection of legal assistance providers. Additionally, the rule states that AAAs may not pre-screen potential legal services clients remains unchanged. While USAgings’s suggestions were not accepted, ACL did add language that allows AAAs some flexibility on the types of expertise required for legal providers. USAgings has no objection to ACL’s additional clarification about the very narrow instances where OAA legal services dollars may be used to support an older adult who is seeking guardianship over another person. (See [page 21](#) of USAgings’s [crosswalk](#) for more details.)

A few additional areas of note include:

§ 1321.9(c)(ii) Non-Federal Share Match: ACL did not alter the language in this section as USAgings requested, citing the Act’s prohibition on means testing as the rationale for the

regulation limiting match sources to non-means-tested programs. AAAs should confirm that they are not currently using any means-tested-program dollars as OAA match. ([Page 37](#) of USAging's [crosswalk](#).)

§ 1321.9(c)(2)(xiii) Private Pay Programs: We are pleased that ACL did not modify their proposed language, which makes clear that SUAs must establish requirements for private pay programs, so that AAAs that wish to leverage OAA funding to create additional options for older adults via private pay will receive appropriate guidance from their state. ([Page 46](#))

§ 1321.21 Withdrawal of Area Agency Designation: ACL accepted our suggested change here and struck the final sentence in this section, which read "Reasonable attempts include conducting a procurement for an applicant to serve as an area agency no less than once per State plan on aging period." ([Page 52](#))

§ 1321.55 Mission of the Area Agency, Board of Directors, Focal Points: ACL declined to incorporate our requested change to a reference to the board of directors in this section. They provided commentary on why the language as written is broad enough to ensure all AAAs can meet this requirement regardless of their structure and promised to provide technical assistance should questions arise from the field. ([Page 58](#))

§ 1321.59 Area Agency Policies and Procedures: USAging is pleased that ACL kept the emphasis on a AAA's authority to set its own policies and procedures as long as they align with the state's policies and procedures. This language may prove helpful in SUA-AAA discussions on the states' policies and procedures, so we are flagging it here for members to note. ([Page 65](#))

§ 1321.69, § 1322.31 Title III and Title VI Coordination: ACL made several wording changes designed to involve the

Title VI director(s) in a AAA's PSA in the development of the Title III–Title VI coordination plan; to make clear that training and technical assistance is one of the communication opportunities that should be reflected in the policy and procedures on coordination; and to add language around services deployed as a result of coordination required to be culturally appropriate and trauma-informed. ([Page 72](#))

§ 1321.99 Setting Aside Funds to Address Disasters: ACL declined to increase to 45 days the time allowed AAAs to spend undistributed disaster funds at the end of a year, per our recommendation. ACL argues in their commentary that given typical state funding cycles, AAAs would have much longer than 30 days to expend the funding. ([Page 83](#))

For USAging's full analysis for members, please consult our [crosswalk](#). Send any questions or concerns to policy@usaging.org.