

Division B—Elder Justice

§ 1397j. Definitions

In this division:

(1) Abuse

The term “abuse” means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

(2) Adult protective services

The term “adult protective services” means such services provided to adults as the Secretary may specify and includes services such as—

(A) receiving reports of adult abuse, neglect, or exploitation;

(B) investigating the reports described in subparagraph (A);

(C) case planning, monitoring, evaluation, and other case work and services; and

(D) providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

(3) Caregiver

The term “caregiver” means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder who needs supportive services in any setting.

(4) Direct care

The term “direct care” means care by an employee or contractor who provides assistance or long-term care services to a recipient.

(5) Elder

The term “elder” means an individual age 60 or older.

(6) Elder justice

The term “elder justice” means—

(A) from a societal perspective, efforts to—

(i) prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and

(ii) protect elders with diminished capacity while maximizing their autonomy; and

(B) from an individual perspective, the recognition of an elder’s rights, including the right to be free of abuse, neglect, and exploitation.

(7) Eligible entity

The term “eligible entity” means a State or local government agency, Indian tribe or tribal organization, or any other public or private entity that is engaged in and has expertise in issues relating to elder justice or in a field necessary to promote elder justice efforts.

(8) Exploitation

The term “exploitation” means the fraudulent or otherwise illegal, unauthorized, or im-

proper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.

(9) Fiduciary

The term “fiduciary”—

(A) means a person or entity with the legal responsibility—

(i) to make decisions on behalf of and for the benefit of another person; and

(ii) to act in good faith and with fairness; and

(B) includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

(10) Grant

The term “grant” includes a contract, cooperative agreement, or other mechanism for providing financial assistance.

(11) Guardianship

The term “guardianship” means—

(A) the process by which a State court determines that an adult individual lacks capacity to make decisions about self-care or property, and appoints another individual or entity known as a guardian, as a conservator, or by a similar term, as a surrogate decisionmaker;

(B) the manner in which the court-appointed surrogate decisionmaker carries out duties to the individual and the court; or

(C) the manner in which the court exercises oversight of the surrogate decisionmaker.

(12) Indian tribe**(A) In general**

The term “Indian tribe” has the meaning given such term in section 450b of title 25.

(B) Inclusion of Pueblo and Rancheria

The term “Indian tribe” includes any Pueblo or Rancheria.

(13) Law enforcement

The term “law enforcement” means the full range of potential responders to elder abuse, neglect, and exploitation including—

(A) police, sheriffs, detectives, public safety officers, and corrections personnel;

(B) prosecutors;

(C) medical examiners;

(D) investigators; and

(E) coroners.

(14) Long-term care**(A) In general**

The term “long-term care” means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability.

(B) Loss of capacity for self-care

For purposes of subparagraph (A), the term “loss of capacity for self-care” means an in-

ability to engage in 1 or more activities of daily living, including eating, dressing, bathing, management of one's financial affairs, and other activities the Secretary determines appropriate.

(15) Long-term care facility

The term “long-term care facility” means a residential care provider that arranges for, or directly provides, long-term care.

(16) Neglect

The term “neglect” means—

(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or

(B) self-neglect.

(17) Nursing facility

(A) In general

The term “nursing facility” has the meaning given such term under section 1396r(a) of this title.

(B) Inclusion of skilled nursing facility

The term “nursing facility” includes a skilled nursing facility (as defined in section 1395i-3(a) of this title).

(18) Self-neglect

The term “self-neglect” means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—

(A) obtaining essential food, clothing, shelter, and medical care;

(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(C) managing one's own financial affairs.

(19) Serious bodily injury

(A) In general

The term “serious bodily injury” means an injury—

(i) involving extreme physical pain;

(ii) involving substantial risk of death;

(iii) involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or

(iv) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

(B) Criminal sexual abuse

Serious bodily injury shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or 2242 (relating to sexual abuse) of title 18 or any similar offense under State law.

(20) Social

The term “social”, when used with respect to a service, includes adult protective services.

(21) State legal assistance developer

The term “State legal assistance developer” means an individual described in section 3058j of this title.

(22) State Long-Term Care Ombudsman

The term “State Long-Term Care Ombudsman” means the State Long-Term Care Om-

budsman described in section 3058g(a)(2) of this title.

(Aug. 14, 1935, ch. 531, title XX, § 2011, as added Pub. L. 111-148, title VI, § 6703(a)(1)(C), Mar. 23, 2010, 124 Stat. 782.)

§ 1397j-1. General provisions

(a) Protection of privacy

In pursuing activities under this division, the Secretary shall ensure the protection of individual health privacy consistent with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and applicable State and local privacy regulations.

(b) Rule of construction

Nothing in this division shall be construed to interfere with or abridge an elder's right to practice his or her religion through reliance on prayer alone for healing when this choice—

(1) is contemporaneously expressed, either orally or in writing, with respect to a specific illness or injury which the elder has at the time of the decision by an elder who is competent at the time of the decision;

(2) is previously set forth in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or

(3) may be unambiguously deduced from the elder's life history.

(Aug. 14, 1935, ch. 531, title XX, § 2012, as added Pub. L. 111-148, title VI, § 6703(a)(1)(C), Mar. 23, 2010, 124 Stat. 785.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a), is section 264(c) of Pub. L. 104-191, which is set out as a note under section 1320d-2 of this title.

PART I—NATIONAL COORDINATION OF ELDER JUSTICE ACTIVITIES AND RESEARCH

SUBPART A—ELDER JUSTICE COORDINATING COUNCIL AND ADVISORY BOARD ON ELDER ABUSE, NEGLECT, AND EXPLOITATION

§ 1397k. Elder Justice Coordinating Council

(a) Establishment

There is established within the Office of the Secretary an Elder Justice Coordinating Council (in this section referred to as the “Council”).

(b) Membership

(1) In general

The Council shall be composed of the following members:

(A) The Secretary (or the Secretary's designee).

(B) The Attorney General (or the Attorney General's designee).

(C) The head of each Federal department or agency or other governmental entity identified by the Chair referred to in subsection (d) as having responsibilities, or administering programs, relating to elder abuse, neglect, and exploitation.

(2) Requirement

Each member of the Council shall be an officer or employee of the Federal Government.