

Subsec. (h)(6)(A). Pub. L. 106-402 substituted “subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000” for “part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.)”.

Subsec. (h)(8), (9). Pub. L. 106-501, §704(2)(B)–(D), added par. (8) and redesignated former par. (8) as (9).

1993—Subsecs. (a)(3)(I), (c)(2)(C), (h)(3)(B). Pub. L. 103-171, §3(a)(9)(B), substituted “Assistant Secretary” for “Commissioner”.

Subsec. (h)(4)(A). Pub. L. 103-171, §3(a)(9)(A), substituted “Director of the Office of Long-Term Care Ombudsman Programs” for “Associate Commissioner for Ombudsman Programs”.

Subsec. (j)(1). Pub. L. 103-171, §3(a)(9)(B), substituted “Assistant Secretary” for “Commissioner”.

§ 3058h. Regulations

The Assistant Secretary shall issue and periodically update regulations respecting—

(1) conflicts of interest by persons described in paragraphs (1) and (2) of section 3058g(f) of this title; and

(2) the relationships described in subparagraphs (A) through (D) of section 3058g(f)(3) of this title.

(Pub. L. 89-73, title VII, §713, as added Pub. L. 102-375, title VII, §702, Sept. 30, 1992, 106 Stat. 1282; amended Pub. L. 103-171, §3(a)(13), Dec. 2, 1993, 107 Stat. 1990.)

AMENDMENTS

1993—Pub. L. 103-171 substituted “Assistant Secretary” for “Commissioner”.

SUBPART III—PROGRAMS FOR PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION

§ 3058i. Prevention of elder abuse, neglect, and exploitation

(a) Establishment

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a of this title and made available to carry out this subpart, a State agency shall, in accordance with this section, and in consultation with area agencies on aging, develop and enhance programs to address elder abuse, neglect, and exploitation.

(b) Use of allotments

The State agency shall use an allotment made under subsection (a) of this section to carry out, through the programs described in subsection (a) of this section, activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation), including—

(1) providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation;

(2) providing for public education and outreach to promote financial literacy and prevent identity theft and financial exploitation of older individuals;

(3) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program, State and local law enforcement systems, and courts of competent jurisdiction;

(4) promoting the development of information and data systems, including elder abuse reporting systems, to quantify the extent of elder abuse, neglect, and exploitation in the State;

(5) conducting analyses of State information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs;

(6) conducting training for individuals, including caregivers described in part E of subchapter III of this chapter, professionals, and paraprofessionals, in relevant fields on the identification, prevention, and treatment of elder abuse, neglect, and exploitation, with particular focus on prevention and enhancement of self-determination and autonomy;

(7) providing technical assistance to programs that provide or have the potential to provide services for victims of elder abuse, neglect, and exploitation and for family members of the victims;

(8) conducting special and on-going training, for individuals involved in serving victims of elder abuse, neglect, and exploitation, on the topics of self-determination, individual rights, State and Federal requirements concerning confidentiality, and other topics determined by a State agency to be appropriate;

(9) promoting the development of an elder abuse, neglect, and exploitation system—

(A) that includes a State elder abuse, neglect, and exploitation law that includes provisions for immunity, for persons reporting instances of elder abuse, neglect, and exploitation, from prosecution arising out of such reporting, under any State or local law;

(B) under which a State agency—

(i) on receipt of a report of known or suspected instances of elder abuse, neglect, or exploitation, shall promptly initiate an investigation to substantiate the accuracy of the report; and

(ii) on a finding of elder abuse, neglect, or exploitation, shall take steps, including appropriate referral, to protect the health and welfare of the abused, neglected, or exploited older individual;

(C) that includes, throughout the State, in connection with the enforcement of elder abuse, neglect, and exploitation laws and with the reporting of suspected instances of elder abuse, neglect, and exploitation—

(i) such administrative procedures;

(ii) such personnel trained in the special problems of elder abuse, neglect, and exploitation prevention and treatment;

(iii) such training procedures;

(iv) such institutional and other facilities (public and private); and

(v) such related multidisciplinary programs and services,

as may be necessary or appropriate to ensure that the State will deal effectively with elder abuse, neglect, and exploitation cases in the State;

(D) that preserves the confidentiality of records in order to protect the rights of older individuals;

(E) that provides for the cooperation of law enforcement officials, courts of com-

petent jurisdiction, and State agencies providing human services with respect to special problems of elder abuse, neglect, and exploitation;

(F) that enables an older individual to participate in decisions regarding the welfare of the older individual, and makes the least restrictive alternatives available to an older individual who is abused, neglected, or exploited; and

(G) that includes a State clearinghouse for dissemination of information to the general public with respect to—

(i) the problems of elder abuse, neglect, and exploitation;

(ii) the facilities described in subparagraph (C)(iv); and

(iii) prevention and treatment methods available to combat instances of elder abuse, neglect, and exploitation;

(10) examining various types of shelters serving older individuals (in this paragraph referred to as “safe havens”), and testing various safe haven models for establishing safe havens (at home or elsewhere), that recognize autonomy and self-determination, and fully protect the due process rights of older individuals;

(11) supporting multidisciplinary elder justice activities, such as—

(A) supporting and studying team approaches for bringing a coordinated multidisciplinary or interdisciplinary response to elder abuse, neglect, and exploitation, including a response from individuals in social service, health care, public safety, and legal disciplines;

(B) establishing a State coordinating council, which shall identify the individual State’s needs and provide the Assistant Secretary with information and recommendations relating to efforts by the State to combat elder abuse, neglect, and exploitation;

(C) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts at the State (referred to in some States as “State Working Groups”);

(D) broadening and studying various models for elder fatality and serious injury review teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of States and communities (other than the ones in which the review teams were used); and

(E) developing best practices, for use in long-term care facilities, that reduce the risk of elder abuse for residents, including the risk of resident-to-resident abuse; and

(12) addressing underserved populations of older individuals, such as—

(A) older individuals living in rural locations;

(B) older individuals in minority populations; or

(C) low-income older individuals.

(c) Approach

In developing and enhancing programs under subsection (a) of this section, the State agency shall use a comprehensive approach, in consultation with area agencies on aging, to identify and assist older individuals who are subject to abuse, neglect, and exploitation, including older individuals who live in State licensed facilities, unlicensed facilities, or domestic or community-based settings.

(d) Coordination

In developing and enhancing programs under subsection (a) of this section, the State agency shall coordinate the programs with other State and local programs and services for the protection of vulnerable adults, particularly vulnerable older individuals, including programs and services such as—

(1) area agency on aging programs;

(2) adult protective service programs;

(3) the State Long-Term Care Ombudsman program established in subpart II of this part;

(4) protection and advocacy programs;

(5) facility and long-term care provider licensure and certification programs;

(6) medicaid fraud and abuse services, including services provided by a State medicaid fraud control unit, as defined in section 1396b(q) of this title;

(7) victim assistance programs; and

(8) consumer protection and State and local law enforcement programs, as well as other State and local programs that identify and assist vulnerable older individuals, and services provided by agencies and courts of competent jurisdiction.

(e) Requirements

In developing and enhancing programs under subsection (a) of this section, the State agency shall—

(1) not permit involuntary or coerced participation in such programs by alleged victims, abusers, or members of their households;

(2) require that all information gathered in the course of receiving a report described in subsection (b)(9)(B)(i) of this section, and making a referral described in subsection (b)(9)(B)(ii) of this section, shall remain confidential except—

(A) if all parties to such complaint or report consent in writing to the release of such information;

(B) 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

(C) upon court order; and

(3) make all reasonable efforts to resolve any conflicts with other public agencies with respect to confidentiality of the information described in paragraph (2) by entering into memoranda of understanding that narrowly limit disclosure of information, consistent with the requirement described in paragraph (2).

(f) Designation

The State agency may designate a State entity to carry out the programs and activities described in this subpart.

(g) Study and report**(1) Study**

The Secretary, in consultation with the Department of the Treasury and the Attorney General of the United States, State attorneys general, and tribal and local prosecutors, shall conduct a study of the nature and extent of financial exploitation of older individuals. The purpose of this study would be to define and describe the scope of the problem of financial exploitation of the elderly and to provide an estimate of the number and type of financial transactions considered to constitute financial exploitation faced by older individuals. The study shall also examine the adequacy of current Federal and State legal protections to prevent such exploitation.

(2) Report

Not later than 18 months after November 13, 2000, the Secretary shall submit to Congress a report, which shall include—

- (A) the results of the study conducted under this subsection; and
- (B) recommendations for future actions to combat the financial exploitation of older individuals.

(h) Accountability measures

The Assistant Secretary shall develop accountability measures to ensure the effectiveness of the activities carried out under this section.

(i) Evaluating programs

The Assistant Secretary shall evaluate the activities carried out under this section, using funds made available under section 3017(g) of this title.

(j) Compliance with applicable laws

In order to receive funds made available to carry out this section, an entity shall comply with all applicable laws, regulations, and guidelines.

(Pub. L. 89-73, title VII, §721, as added Pub. L. 102-375, title VII, §703(b), Sept. 30, 1992, 106 Stat. 1282; amended Pub. L. 106-501, title VII, §705, title VIII, §801(e)(3), Nov. 13, 2000, 114 Stat. 2290, 2293; Pub. L. 109-365, title VII, §702, Oct. 17, 2006, 120 Stat. 2591.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-365, §702(1), substituted “programs to address” for “programs for the prevention of”.

Subsec. (b). Pub. L. 109-365, §702(2)(A), substituted “programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation), including—” for “programs for the prevention and treatment of elder abuse, neglect, and exploitation (including financial exploitation), including—” in introductory provisions.

Subsec. (b)(2) to (9). Pub. L. 109-365, §702(2)(B), (C), added par. (2) and redesignated former pars. (2) to (8) as (3) to (9), respectively.

Subsec. (b)(10) to (12). Pub. L. 109-365, §702(2)(D)–(F), added pars. (10) to (12).

Subsec. (e)(2). Pub. L. 109-365, §702(3), substituted “subsection (b)(9)(B)(i)” for “subsection (b)(8)(B)(i)” and “subsection (b)(9)(B)(ii)” for “subsection (b)(8)(B)(ii)”.

Subsecs. (h) to (j). Pub. L. 109-365, §702(4), added subsecs. (h) to (j).

2000—Subsec. (a). Pub. L. 106-501, §801(e)(3), substituted “section 3058a of this title and made available to carry out this subpart” for “section 3058a(b) of this title”.

Subsec. (b). Pub. L. 106-501, §705(1)(A), in introductory provisions, inserted “(including financial exploitation)” after “exploitation”.

Subsec. (b)(2). Pub. L. 106-501, §705(1)(B), inserted “, State and local law enforcement systems, and courts of competent jurisdiction” after “service program”.

Subsec. (b)(5). Pub. L. 106-501, §705(1)(C), inserted “including caregivers described in part E of subchapter III of this chapter,” after “individuals”.

Subsec. (d)(8). Pub. L. 106-501, §705(2), inserted “State and local” before “law enforcement programs” and “, and services provided by agencies and courts of competent jurisdiction” before period at end.

Subsec. (g). Pub. L. 106-501, §705(3), added subsec. (g).

DECLARATION OF PURPOSE

Pub. L. 102-375, title VII, §703(a), Sept. 30, 1992, 106 Stat. 1282, provided that: “The purpose of this section [enacting this subpart] is to assist States in the design, development, and coordination of comprehensive services of the State and local levels to prevent, treat, and remedy elder abuse, neglect, and exploitation.”

SUBPART IV—STATE LEGAL ASSISTANCE
DEVELOPMENT PROGRAM**§ 3058j. State legal assistance development**

A State agency shall provide the services of an individual who shall be known as a State legal assistance developer, and the services of other personnel, sufficient to ensure—

- (1) State leadership in securing and maintaining the legal rights of older individuals;
- (2) State capacity for coordinating the provision of legal assistance;
- (3) State capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate;
- (4) State capacity to promote financial management services to older individuals at risk of conservatorship;
- (5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and
- (6) State capacity to improve the quality and quantity of legal services provided to older individuals.

(Pub. L. 89-73, title VII, §731, as added Pub. L. 106-501, title VII, §706, Nov. 13, 2000, 114 Stat. 2291.)

PRIOR PROVISIONS

A prior section 3058j, Pub. L. 89-73, title VII, §731, as added Pub. L. 102-375, title VII, §704, Sept. 30, 1992, 106 Stat. 1285, related to State elder rights and legal assistance development, prior to repeal by Pub. L. 106-501, title VII, §706, Nov. 13, 2000, 114 Stat. 2291.

SUBPART V—OUTREACH, COUNSELING, AND
ASSISTANCE PROGRAM**§ 3058k. Repealed. Pub. L. 106-501, title VII, § 706, Nov. 13, 2000, 114 Stat. 2291**

Section, Pub. L. 89-73, title VII, §741, as added Pub. L. 102-375, title VII, §705(b), Sept. 30, 1992, 106 Stat. 1287;