

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i-3, 1396r, 3002, 3011, 3018, 3021, 3027, 3030l, 3035o, 3058d, 3058f, 3058h of this title; title 29 section 2212.

§ 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

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3030d, 3058a, 3058d, 3058j, 3058k, 3058bb of this title.

§ 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(b) of this title, a State agency shall, in accordance with this section, and in consultation with area agencies on aging, develop and enhance programs for the prevention of 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 and treatment of elder abuse, neglect, and exploitation, including—

- (1) providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation;
- (2) ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protection service program;
- (3) 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;
- (4) conducting analyses of State information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs;
- (5) conducting training for individuals, 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;

(6) 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;

(7) 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; and

(8) 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 competent 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.

(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 law enforcement programs, as well as other State and local programs that identify and assist vulnerable older individuals.

(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)(8)(B)(i) of this section, and making a referral described in subsection (b)(8)(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.

(Pub. L. 89-73, title VII, §721, as added Pub. L. 102-375, title VII, §703(b), Sept. 30, 1992, 106 Stat. 1282.)

DECLARATION OF PURPOSE

Section 703(a) of Pub. L. 102-375 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 ELDER RIGHTS AND LEGAL ASSISTANCE DEVELOPMENT PROGRAM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3035o, 3058a, 3058k, 3058bb of this title.

§ 3058j. State elder rights and legal assistance development**(a) Establishment****(1) In general**

In order to be eligible to receive an allotment under section 3058b of this title from funds appropriated under section 3058a(c) of this title, a State agency shall, in accordance with this section and in consultation with area agencies on aging, establish a program to provide leadership for improving the quality and quantity of legal and advocacy assistance as a means for ensuring a comprehensive elder rights system.

(2) Coordination and assistance

In carrying out the program established under this subpart, the State agency shall coordinate, and provide assistance to, area agencies on aging and other entities in the State that assist older individuals in—

- (A) understanding the rights of the older individuals;
- (B) exercising choice;
- (C) benefiting from services and opportunities authorized by law;
- (D) maintaining the rights of the older individuals and, in particular, of the older individuals with reduced capacity; and
- (E) solving disputes.

(b) Functions

In carrying out this subpart, the State agency shall—

- (1) establish a focal point for elder rights policy review, analysis, and advocacy at the State level, including such issues as guardianship, age discrimination, pension and health benefits, insurance, consumer protection, surrogate decisionmaking, protective services, public benefits, and dispute resolution;
- (2) provide an individual who shall be known as a State legal assistance developer, and other personnel, sufficient to ensure—
 - (A) State leadership in securing and maintaining legal rights of older individuals;