

## SECOND NOTICE OF PROPOSED AMENDMENTS

- 1) Agency: Department on Aging
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Elder Rights, 270.10, 270.200, 270.205, 270.210, 270.215, 270.220, 270.225, 270.230, 270.235, 270.240, 270.241 (new), 270.245, 270.250, 270.255, 270.260, 270.265, 270.270, 270.275, 270.280, 270.285, 270.290, 270.295, and 270.300
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: January 24, 2014, 38 Ill. Reg. 2469
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period:

Table of Contents: In line 40, add “and Relevant Records” at the end of the subheader for Section 270.245. In line 66, update the source notes to reflect the expiration of the emergency amendment at 38 Ill. Reg. 2357. At the end of each rulemaking section, update source notes to reflect the appropriate issue of the *Illinois Register*.

Section 270.210: In lines 153-155, delete “Abuse” in the term “Abuse Fatality Review Team” and delete the second sentence in the definition for this term and move the remaining text to line 315 to maintain alphabetic order. In line 173, add “as defined below” after “disability” for the definition of the term “Adult with disabilities”. In line 207, add “or instrumental activities of daily living” for the definition of the term “Caregiver” before the period. In line 443, add “that is selected by the Department or” after “planning and service area” for the definition of the term “Provider agency”. In line 341, replace “adult protective services” with “APS” before “case worker”. In lines 448-452, replace the text after “planning and service area” with “that provides regional oversight and performs functions as set forth in subsection (b) of Section 3 of this Act. [320 ILCS 20/2(i)]” in the definition of the term “Regional administrative agency”. In line 533, add the following new definition: “Verified” means a determination that there is “clear and convincing evidence” that the specific injury or harm alleged was the result of abuse, neglect, or financial exploitation.”

Section 270.215: In line 561, add the following new second sentence: “The Department reserves the right to provide recommendations and direct action by regional administrative agencies on designation, approval and termination action with respect to APS provider agencies.” In line 562, add “regional administrative agencies and” before “APS provider agencies” in subsection (c). In line 564, add the following provision as the text for subsection (c)(1): “In the event the Area Agency on Aging in that planning and service area is deemed by the Department to be unwilling or unable to provide those functions, the Department may serve as the regional administrative agency or designate another qualified entity to serve”

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*as the regional administrative agency; any such designation shall be subject to terms set forth by the Department.*” In lines 569-571, move the originally proposed language for subsection (c)(1) as new replacement text for subsection (c)(2). The originally proposed language for subsection (c)(2) is to be deleted in its entirety.

Section 270.220: Replace lines 645-647 with the following text in subsection (a): *“The Department shall designate an Area Agency on Aging as the regional administrative agency or, in the event the Area Agency on Aging in that planning and service area is deemed by the Department to be unwilling or unable to provide those functions, the Department may serve as the regional administrative agency or designate another qualified entity to serve as the regional administrative agency; any such designation shall be subject to terms set forth by the Department.”* In line 649, add “procure and” before “*designate*” in subsection (b).

Section 270.225: In line 778, change “adult protective services” to “APS” before “agency” in subsection (c). In line 788, correct misspelled word by substituting “protective” in subsection (g). In line 829 and in line 867, add “and/or webinars” after “training” in subsection (j)(1)(E) and subsection (j)(2)(D), respectively. In line 838 and in line 875, add “and” at the end of subsection (j)(1)(E) and subsection (j)(2)(D), respectively.

Section 270.235: In line 957, add the following new subsection “d” *“The Department on Aging and its employees and agents shall have immunity, except for intentional willful and wanton misconduct, from any liability, civil, criminal, or otherwise, for reporting information to and maintaining the Adult Protective Service Registry established under Section 7.5 of the Act.”*

Section 270.240: In line 969, correct a capitalization error by substituting “regional” for “Regional” in subsection (a)(3). In line 976, change “when” to “in which” in subsection (b)(1). In lines 1048-1049, replace “adult protective services” with “APS” before “case worker” in the first sentence of subsection (g)(2). In line 1050, replace “an appropriate other individual” with “another appropriate other individual” in the first sentence of subsection (g)(2). In line 1051, replace “other” with “~~other~~” to delete this word in the second sentence of subsection (g)(2).

Section 270.241(b)(2): In line 1080-1081, correct a capitalization error by substituting “3(c-5)” in the listed citation. In line 1083, add the following new subsection: “3” *“If the law enforcement agency, coroner, or medical examiner determines the reported death was caused by abuse or neglect by a*

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*caregiver, the law enforcement agency, coroner, or medical examiner shall inform the Department, and the Department shall report the caregiver's identity on the Adult Protective Service Registry as described in Section 7.5 of this Act.*

Section 270.245: In line 1085, add “**and Relevant Records**” at the end of the subheader. In line 1093, add the following new text as a part of subsection (a):  
“1) A representative of the Department or a designated APS provider agency that is actively involved in an abuse, neglect, financial exploitation, or self-neglect investigation under this Act shall be allowed access to the financial records, mental and physical health records, and other relevant evaluative records of the eligible adult which are in the possession of any individual, financial institution, health care provider, mental health provider, educational facility, or other facility if necessary to complete the investigation mandated by this Act.”

“2) The provider or facility shall provide such records to the representative upon receipt of a written request and certification from the Department or designated APS provider agency that an investigation is being conducted under this Act and the records are pertinent to the investigation.”

“3) Any records received by such representative, the confidentiality of which is protected by another law or rule, shall be maintained as confidential, except for such use as may be necessary for any administrative or other legal proceeding.”

In line 1101, add “including the refusal to provide requested records,” after the first comma at the end of the introductory clause in subsection (c).

Section 270.250: In line 1133, add “alleged” after “harm” in subsection (b)(1). In line 1161, add “for services” after “ineligible” in subsection (c)(3).

Section 270.255: In line 1238, replace “alternatives” with “alternative” in subsection (a)(1)(B). In line 1251, add “or” after “family” in subsection (a)(1)(B)(ii).

Section 270.260: In line 1387, correct a typographical error by replacing “alledged” with “alleged” in subsection (b)(1). In line 1404, replace “immediate risk of harm” with “threat of ongoing harm or another emergency that exists” in subsection (d). In line 1416, replace “either” with “have authority to” in subsection (d)(2). In line 1418, correct a capitalization error by substituting the word “contact” in subsection (d)(2)(A). In lines 1428-1429, replace “notify the Illinois Guardianship and Advocacy Commission, the Office of State Guardian, or any other appropriate agency, of the potential need for” with “seek the” in subsection (d)(2). In line 1445, add “, through its attorney,” after “provider

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agency” in subsection (d)(3). ”In lines 1462-1463, replace “a high risk of harm” with “a threat of ongoing harm” and add “that” after “*emergency*” in subsection (e). In line 1501, replace “*If*” at the beginning of the sentence with the following introductory clause “In accordance with subsections (d) and (e), if” in subsection (g).

Section 270.270: In line 1565, add “contingent upon adequate funding” after “APS provider agencies” in subsection (g).

Section 270.275: In line 1614, add “who completes an authorization for release of records” after “self-neglected” in subsection (d)(4). In line 1615, add “who has current authority to act on behalf of the eligible adult” after “*agent*” in subsection (d)(4). In line 1659 and in line 1663, add “and its vendors” after “*staff*” in subsection (d)(13) and (d)(14), respectively. In line 1668, add the following new text as subsections (d)(15) and new subsection (d)(16), respectively: “15)

*Hearing officers in the course of conducting an administrative hearing under this Act;*

16) *A caregiver who challenges placement on the Adult Protective Services Registry shall be given the statement of allegation in the abuse report and the substantiation decision in the final investigative report; and*. In line 1668, renumber the subsection by replacing “15)” as subsection “17)”. In line 1680, add “and the extent of the authority” after “current authority” in subsection (e)(1).

Section 270.285(a): In line 1745, add “to provide public awareness services to that agency or companion-type services to eligible adults” after “volunteers”.

All other changes made to this rulemaking were technical, grammatical and editorial revisions at the recommendation of the Joint Committee on Administrative Rules.

- 5) Final Regulatory Flexibility Analysis:
  - A. Summary of the issues raised by affected small businesses during the First Notice Period: Neither of the individuals submitting a comment identified their company as a small business.
  - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: None
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: See attachment.

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- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply With the Codification Scheme: All changes requested by the Administrative Code Division have been made.
- 8) Evaluation of the comments received by the agency from interested persons during the First Notice Period (but not including any questions raised by the Joint Committee in a preliminary review) including:

- A. Date of any public hearing held during the First Notice Period. Name of the person or group requesting a hearing: None
- B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments:

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President  
Illinois Association of Area Agencies on Aging (I4A)  
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[Note: Ms. Eskildsen is also the Executive Director of the Western Illinois Area Agency on Aging.]

William L. Wheeler  
Executive Director  
Illinois Council of Case Coordination Units  
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- C. A list of all specific criticisms and suggestions raised in the comments:

On behalf of I4A:

Section 270.210 - requests changing the underlying law and then this rule to add a reference to “the instrumental activities of daily living” in the definition for the term “caregiver”.

Section 270.215 - suggests improving internal consistency between the definition for the term “Regional Administrative Agency”, this rule and Section 270.220, as well as Section 3(a) and Section 3(b) of the underlying law by replacing the second sentence in subsection (a) with the following

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provision: “The Department shall contract with or fund or contract with and fund, regional administrative agencies that will procure and designate APS provider agencies with prior approval of the Department for provision of those functions, and contingent on adequate funding, with attorneys or legal services provider agencies for the provision of legal assistance pursuant to the Act.” Also suggests adding a reference to indicate “Regional Administrative Agencies” in both subsection (c) and subsection (c)(2). Recommends replacing the first sentence and adding a new second sentence in subsection (l) which state: “The Department shall contract with regional administrative agencies that shall contract with APS provider agencies at rates established by the Department. APS provider agencies shall be reimbursed uniform rates established by the Department.”

Section 270.220(a) - suggests improving internal consistency between the definition for the term “Regional Administrative Agency”, this rule, and Section 2(i) of the underlying law by replacing subsection (a) with the following provision: “The Department will designate the Area Agency on Aging as the Regional Administrative Agency if the Area Agency on Aging so requests. If the Area Agency on Aging does not request to be the Regional Administrative Agency the Department will hold a competitive procurement for the Planning and Service Area. [320 ILCS 20/2(i)]”.

Section 270.225 - recommends adding a reference to the use of webinars in the training requirements stated for the qualifications of APS supervisors in subsection (j)(1)(F) and of APS case workers in subsection (j)(2)(F).

Section 270.260 - indicates that the actual practice is for the attorney who has been engaged by an APS provider agency to provide the required notice to relatives when appointment of a guardian is sought pursuant to Article Xia of the Probate Act of 1975 so that the language must be revised to provide a clarification to this effect in subsection (d)(3). Also questions whether the specified guardianship agencies are aware of their roles under Section 9 of the underlying law for the APS Program and have adequate staff and funding to be capable of responding in a timely manner when an alleged victim lacks capacity to consent to an assessment or services and there is an immediate risk of harm or some other emergency situation. The APS provider agencies are concerned about no longer being able to act in the best interest of an alleged victim to ameliorate harm in a timely manner.

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Subpart D – asserts that there is no statutory authority for the Adult Protective Services Volunteer Corp and questions the rationale for its inclusion in this rulemaking project. Also requests that language be added in other sections than that for the definitions to clarify the limits on how an APS provider agency may use volunteers.

On behalf of ICCCU:

Section 270.210 - questions how to apply the definitions for the terms “adults with disabilities” and “disability” to determine whether an alleged victim is an “eligible adult”.

Section 270.250(f) - requests that preparation of a final investigative report be funded as its own activity with a special reimbursement due to the work required on the part of APS provider agencies.

Section 270.255(c) - indicates that evidence of crimes against an eligible adult enforcement should be referred to law enforcement based on individual consent because some individuals do not want a report to be made.

Section 270.260(d) - raises concern that APS provider agencies will not be able to initiate the indicated legal activities set forth by the underlying law for alleged victims who reasonably appear to lack decisional capacity at the initial interview due to the high volume of qualifying situations; practical time constraints given the need to complete other work in investigations to avoid exacerbating any existing problems and to reduce the potential for further harm; and consideration about the expensive nature of such actions with the limited funding available for services. Also challenges supporting premise relating to guardianship in the underlying law because the actual experience of the APS provider agencies is that neither the specified guardianship agencies nor individuals in an alleged victim’s life are able or willing to take on the work needed to obtain the appointment of a temporary guardian or the issuance of an ex parte order from a circuit court for the purpose of authorizing consent for an assessment under the APS Program. The APS provider agencies are consequently worried about the prospect of being caught in a catch-22 situation. Requests that “shall” be changed to “may” in subsection (d)(2) so as to allow the professional judgment of staff at the APS provider agency to dictate how and when to intervene if there is no immediate risk of harm and the alleged victim lacks decisional capacity at the initial

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interview due to fears about the possible risks associated with delay in obtaining consent to proceed. Indicates it would be more appropriate for the attorney that has been engaged by an APS provider agency to provide notice to relatives when appointment of a guardian is sought pursuant to Article Xia of the Probate Act of 1975.

Section 270.260(g) - states need for clarification by the Department to determine whether it is possible to petition for an order freezing the assets of the alleged victim prior to obtaining consent to proceed if the APS provider agency has substantiated financial exploitation against an eligible adult and documented a reasonable belief of irreparable harm as a result of such abuse.

Throughout the rules - references to “self-neglect” have not been added in a consistent manner.

D. The agency's evaluation of each of the specific criticisms and suggestions:

Some of the comments by I4A and ICCCU relate to recent changes since enacted by Public Acts 98-49 and 98-1039. The Department believes that the provisions in Section 270.260 as both originally proposed and now updated comply with Section 9 of the underlying law. It addresses how to proceed if an eligible adult is either able or unable to consent to assessment when there is a threat of ongoing harm or another emergency that exists or no such concerns. While the professional judgment of staff at the APS provider agency is important, the law directs that notification be provided to the guardianship agencies of the potential need for a temporary guardian in certain instances. Related thereto, the APS provider agency also has a responsibility to notify relatives of guardianship proceedings and a clarification has been made to note that this function can still be delegated to an attorney or other legal entity providing representation in subsection (d)(3). Such intervention requires a balance between the right of individual autonomy and the responsibility of the State to protect vulnerable adults. Guardianship proceedings may be necessary which could potential drive up costs, increase workloads, or use other limited resources. The Department has reached out to the guardianship agencies as part of its outreach and training functions for purposes of implementation. Further legislative action was undertaken in Public Act 98-1039 to alleviate the concerns expressed by both I4A and ICCCU about the work associated with determining the capacity of an alleged victim to consent to an assessment using support provided by the specified guardianship agencies and to continue to act in the best interest

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of an alleged victim to ameliorate harm in a timely manner.

For I4A:

The Department agrees with I4A on certain points and has amended the definitions of the terms the definition of the term “caregiver” in Section 270.210.

The Department understands the reasons for the requested changes relating to regional administrative agencies, but believes that different wording is necessary to accomplish this result in subsections (c) and (l) of Section 270.225 and in subsection (a) of Section 270.220 based on the subsequent enactment of Public Act 98-1039. To ensure internal consistency on this point, the Department also added a reference to the procurement responsibility/function of the regional administrative agencies in subsection (b) of Section 270.220.

The Department agrees with the suggestions regarding the use of webinars for training purposes and has made these updates in Section 270.225.

To the Department, it appears that I4A only considered the changes made in Public Act 98-49 and not the Adult Protective Services Act in its entirety. The Volunteer Corps is authorized under Section 14 of the Act authorizes and this provision was added as a result of Public Act 94-431, effective August 2, 2005. The Department has added a limitation regarding the functions of volunteers in Section 270.285(a).

For ICCCU:

The Department agrees with ICCCU on certain points and has amended the definitions of the terms “adults with disabilities” and “regional administrative agency” in Section 270.210. Disability issues are also addressed in training that is provided to APS provider agencies.

The Department disagrees with the suggestions for Section 270.250(f). It is not necessary to fund preparation of a final investigative report as its own activity. This work will not be burdensome for the APS provider agencies because much of the information needed is already incorporated in other preexisting forms.

The Department is not able to accommodate the request relating to Section 270.255(c). The provisions of this rule correspond with the language in

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the statute. The Department also offers training to APS provider agencies relating on when a referral must be made to law enforcement agencies.

The Department has added internal cross-references to clarify when consent must be obtained before petitioning for an order freezing the assets of an alleged victim under Section 270.260(g).

No additional changes are needed at this time for self-neglect because its implementation is subject to appropriation. (See 320 ILCS 20/3(d).) The Department intends to address this work in a separate rulemaking project in the future.

- E. A statement that the agency has considered all comments received during the First Notice Period: All comments received during the First Notice Period have been considered by the Department.
- 9) An analysis of the expected effects of the proposed rulemaking, including:
- A. Impact on the public: The State of Illinois has an obligation to protect its most vulnerable citizens from abuse, neglect, and exploitation. These amendments are being filed as a result of the expansion and transfer of authority to the Department for investigating allegations of abuse against adults with disabilities aged 18-59 living in domestic settings previously handled by the Office of the Inspector General for the Department of Human Services as a result of Public Act 98-49. Doing so will also help build a more integrated adult protection and advocacy system for outreach, intake, early intervention, and investigatory services at the local level and thereby improve responsiveness to reported incidents. The Department has also incorporated necessary updates to reflect the more recent enactment of Public Act 98-1039, and intends to follow up with additional rulemaking to address other outstanding programmatic issues in the future.
  - B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: The Department worked with the Office of Inspector General at the Department of Human Services to assure a seamless transition in the reassignment of responsibilities for investigation of reports of abuse about adults with disabilities, including completion of case file reviews, the transfer of physical and electronic file records, and developing a protocol for access to historical data and protection of confidentiality. The Department has prepared necessary updates for the Standards Manual, program forms, contracts and grant applications for APS provider agencies, and public education material,

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including information posted on the Departmental website. The Department has created a new web-based IT system for recordkeeping and billing under this program. The Department has worked on outreach to disability agencies and offered training on the new responsibilities and available disability support functions to staff on the OIG 24-hour Hotline, the Senior HelpLine, and caseworkers at APS provider agencies.

- C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: None

10) A justification and rationale for the proposed rulemaking, including:

- A. Any changes in statutory language requiring the proposed rulemaking: These amendments are being filed as a result of the expansion and transfer of authority to the Department for investigating allegations of abuse against adults with disabilities aged 18-59 living in domestic settings previously handled by the Office of the Inspector General for the Department of Human Services as a result of Public Acts 98-49 and 98-1039.
- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: None
- C. Relationship to other rulemaking activities of the agency including anticipated rulemaking activities: The Department anticipates additional rulemaking activity in the future to complete updates for self-neglect and to implement other aspects of Public Acts 98-49 and 98-1039 relating to the registry in Section 7.5 as well as Fatality Review Teams and its Advisory Council in Section 15 of the underlying law.
- D. Relationship to any relevant federal rules, regulations, or funding requirements: None
- E. Court orders or rulings which related to the rulemaking: None

11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

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