

Explanation of the “Threshold Eligibility Criteria for Adult Protective Services” Chart Series

(Laws current as of 12/31/06)

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The charts address the adult protective services (APS) laws for each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This explanation and the charts refer to these jurisdictions generically as “state” or “states.”

Unless otherwise indicated, this explanation (1) uses the term “abuse” generally to include abuse, neglect, and exploitation, and (2) uses “elder abuse” to include elder abuse and adult abuse.

CAUTION: These charts are based only on the state APS laws; APS regulations were not reviewed. It is important to recognize that there may be other state laws or regulations or federal laws or regulations that address the issues covered by these charts.

NOTE: A few states have multiple laws. Some of those states have separate elder protective services (EPS) laws and APS laws, and those laws are designated in the charts by following the state abbreviation with “EPS” or “APS”. Some states have more than one APS law, and those laws are designated in the charts by following the state abbreviation with #1 or #2. Unless otherwise indicated in this explanation or the charts, both APS and EPS laws will generally be referred to as APS laws.

I. Why We Developed These Charts

To understand what APS agencies do and when a situation should be reported to an APS agency, one must first understand what types of abuse are covered by a state’s APS statute (see the “Types of Abuse Defined in State Adult Protective Services Statutes”). But that information is not sufficient; it is equally important to understand if a state’s law authorizes an APS agency to take a report, investigate, and provide services to the person suspected to have been abused, neglected, or exploited (hereafter referred to generically as “abuse” or “abused” unless otherwise indicated). In other words, is the allegedly abused person eligible for APS?

Determining eligibility for APS generally takes two steps. First, someone reports suspected abuse to an APS worker, who then uses the information provided to determine whether state law authorizes the APS program to investigate the suspicions of the person making the report. Second, after an investigation is made, APS program staff determines whether abuse has occurred or is occurring and whether the victim needs and wants any of the case management or services that APS can offer. The first step requires APS staff to assess whether the alleged victim meets the state’s threshold eligibility criteria for APS. The charts in this series focus on those criteria. The second step requires APS staff to address other criteria and other issues,

including decision-making capacity; guidance for those other criteria and issues are generally found in regulations or policy rather than in state statutes and are not the subject of these charts.

The statutory provisions providing the threshold eligibility criteria for APS are very complex and diverse in content and structure, and thus are challenging to categorize and explain. Nonetheless, knowledge of who is eligible for APS is critical for victims, individuals who are mandated or who wish to report suspected abuse, and members of professions and disciplines that collaborate with APS. Additionally, state and federal legislative staff, other policy makers, educators, researchers, and reporters often want to know what persons are eligible for protective services. This question has proved among the most challenging in the elder abuse field. The diversity in the threshold eligibility criteria for protective services has affected the collection and analysis of national and interstate APS data, the national measurement or interstate comparison of incidence and prevalence of elder abuse, and the ability of APS and other professionals to articulate the national scope and purpose of the program.

II. Overview of the “Threshold Eligibility Criteria for Adult Protective Services” Chart Series

These charts are based on the definitions provided in the state APS law. A few states have separate elder protective services (EPS) laws and information about those laws is also provided. There are seven charts in this series:

1. Threshold Eligibility for Adult Protective Services: Criteria, Provisions and Citations in Adult Protective Services Laws, by State
2. Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State
3. Age - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State
4. Condition - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State
5. Function - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State
6. Living Situation - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State
7. Receiving Services - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State

These charts present the results of statutory analysis that led to the formulation of seven general threshold criteria for protective services. Detailed explanations of those criteria follow:

- *Age.* As all APS statutes define or reference “adult,” the most common criterion in the definitions is “age.” Commonality ends there, however. Some states define adult as persons age 18 and over, others as persons age 60 and older, and yet some others as persons age 65 and older. Some states also define emancipated or married minors as adults, and in a few situations minors who are not emancipated or married are included.

There are some categories of persons eligible for which there is no age criterion; usually those are situations in which an individual resides in some type of facility.

- *Condition.* In some states, simply meeting the age criterion (i.e. over the age of 65) may make an individual eligible for APS. Generally, however, an individual must also have some sort of condition, such as “mental or physical impairment,” “mental or physical illness,” “mental retardation,” “developmental disability,” “dementia,” or “substance abuse.”
- *Function.* In some states, to be eligible for APS one must also have impaired ability to function in certain ways. The statutes usually refer to impaired ability to: provide self-care, manage finances, protect oneself, perform or obtain services, or to make, communicate, or implement decisions. Many statutes that contain a function criterion also contain a condition criterion and specify that the condition must cause or relate to the functional impairment.
- *Lacks Assistance.* A few states add the criterion that an individual have no able and willing person available to provide assistance.
- *Living Situation.* In some states, the setting (domestic/community vs. institutional) in which an individual resides is another criterion. This criterion generally is applied in one of the following ways: (a) individuals in certain living situations are eligible if other criteria are met; (b) individuals in certain living situations are deemed eligible solely by virtue of their living situation; or (c) individuals in certain living situations are not eligible because an agency other than APS is responsible for investigating allegations that those individuals have been abused, neglected, or exploited.
- *Receiving Services.* A few states include the receipt of certain services as a criterion. Most statutes that contain the receiving services criterion also contain other criteria such as age or function. In other words, receipt of these services alone is usually not sufficient to make a person eligible for APS.
- *Has Guardian or Conservator.* In some states, an individual who has had a guardian or conservator appointed by a court or who has been judged by a court to be incapacitated is deemed to be eligible.

A few states (e.g., District of Columbia, Indiana and Kansas) also provide that the person must be experiencing or must have recently experienced abuse, neglect, exploitation, harm, or threats of harm. We declined to include such a criterion as we believe it is assumed in other states’ laws and denoting only those states that mention it specifically would inaccurately portray the states’ laws.

After developing the seven criteria, we assigned them to each statutory definition of eligible persons. We then analyzed those provisions, identified similarities and differences, and developed more specific criteria for five of the seven criteria. An analysis of “Lacks Assistance”

and “Has Guardian or Conservator” did not result in the development of more specific criteria. As a result, there are no charts for those criteria.

III. Detailed Explanation of the “Threshold Eligibility Criteria for Adult Protective Services” Charts

Each of the seven charts is explained below. A brief general description of each chart is followed by a detailed explanation of how to read the chart.

A. Detailed Explanation of the “Threshold Eligibility for Adult Protective Services: Criteria, Provisions and Citations in Adult Protective Services Laws, by State” Chart

1. Design and Purpose of Chart

This chart provides, by state, the statutory authority of APS to protect eligible persons and the definitions of who is eligible. It also provides our determination of which of the seven threshold criteria are contained in these definitions. This chart enables readers to compare statutory provisions in one state with those in another state and to cultivate a national picture of the similarities and differences in the statutes and their criteria from state to state.

2. How to Read the Chart

(a) The “Authorization” column offers the APS law provision that indicates who is eligible for APS. In most states, these provisions clearly identify who is eligible; however, some states do not have such provisions or the provisions do not clearly indicate who is eligible. For those states the most relevant provision showing who is eligible or the purpose of the APS program is provided. Key terminology in the Authorization column is typed in **boldface** to link it to the information provided in the “Persons Eligible” column.

(b) The “Persons Eligible” column generally provides the statutory definition(s) of persons eligible for APS. The definitions provided fall into one of the four categories described next. (The colors used in the column are described in the following explanation about the “Criteria” column.)

(i) The key terminology typed in **boldface** in the Authorization column is used and defined in the Persons Eligible column. The key terminology is also typed in **boldface** in the definition(s) provided in the Persons Eligible column. The definition(s) provide(s) all necessary information to determine who is an eligible person. See, for example, Alaska and Arkansas.

(ii) The key terminology typed in **boldface** in the Authorization column is used and defined in the Persons Eligible column. The key terminology is also typed in **boldface** in the definition(s) provided in the Persons Eligible column. The definition(s), however, *do(es) not* provide(s) all information necessary to

determine who is an eligible person so one or more additional definitions are included. The terms that require additional definition are underlined to signify that an additional definition is provided; the term is also underlined in the additional definition. See, for example, Louisiana and Maine.

(iii) The key terminology typed in **boldface** in the Authorization column is *not* precisely the same as the key terminology typed in **boldface** that is used and defined in the Persons Eligible column. See, for example, Alabama, Arizona, and Connecticut.

(iv) In four states (Illinois, New York, Puerto Rico, and Wisconsin (APS law only)), the provision in the Authorization column is general and does not contain any key terminology typed in **boldface** for use and definition in the Persons Eligible column. That column, therefore, instead contains the most relevant provision of the statute indicating who is eligible for APS.

CAUTION: In some states, there is only one category of person eligible (for example, Alaska and Florida). In other states, the definitions in the Persons Eligible column clearly indicate that multiple categories of persons are eligible (for example, Arizona, Arkansas, and Georgia). For numerous states, however, careful reading of the definitions is necessary to reveal that multiple categories of persons are eligible. These states include: Alabama, California, Guam, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Carolina, Tennessee, Utah, Vermont, Virginia, and Washington. The formatting, words, and colors on this chart indicate, to the extent possible, the additional categories of persons eligible. Nevertheless, readers should pay careful attention to the definitions and rely on the information in the second chart, Threshold Eligibility Criteria for Adult Protective Services, by State, to get a complete picture of persons eligible.

(c) The “Criteria” column denotes with words and color the criteria assigned to each statutory definition of persons eligible. The seven criteria (age, condition, function, lacks assistance, living situation, receiving services, and has guardian or conservator) were discussed previously. To enable readers to link the assigned criteria to the pertinent words in the statutory definition(s), we assigned a color to each criterion (see the chart for the color code) and highlighted the pertinent words of the definition(s) in the appropriate color. As cautioned in the previous section, many of the definitions are complex and may indicate that multiple categories of persons are eligible. Therefore, readers will be better able to interpret the Criteria column if they know that the definitions have the following structures:

(i) The Persons Eligible column contains one or more definitions and those definitions *do not* have multiple or alternative provisions (Alaska, Arizona, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts - EPS and APS laws, Michigan, Montana, Nevada, New Jersey, New York, Ohio, Oregon - EPS and

APS laws, Pennsylvania, Puerto Rico, Rhode Island, Texas, Virgin Islands, West Virginia, Wisconsin – EPS and APS laws, Wyoming).

(ii) The Persons Eligible column contains one or more definitions and those definitions *do* have multiple or alternative provisions (Alabama, Arkansas, California, Guam, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, South Carolina, Utah, Vermont, Washington).

(iii) The Persons Eligible column contains multiple definitions that must be read together to see the complete picture of who is eligible for APS (Connecticut, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Tennessee, Utah, and Virginia).

NOTE: Nebraska, Oklahoma, and Utah are listed in both the second and third categories because they have multiple or alternative provisions that must be read together for a complete picture of who is eligible.

CAUTION: Again, readers should rely on the information in the second chart, Threshold Eligibility Criteria for Adult Protective Services, by State, to get a complete picture of the categories of persons eligible.

B. Detailed Explanation of the “Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart provides, by state, the seven general threshold criteria for APS eligibility for each category of persons eligible for APS. The chart enables readers to quickly identify which of the seven criteria is used for each category in each state. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their general threshold criteria from state to state.

2. How to Read the Chart

This chart indicates with a large “X” which of the seven general criteria for APS eligibility (age, condition, function, lacks assistance, living situation, receiving services, has guardian or conservator) are used in each state’s law for each category of persons eligible. Some states have one category of persons eligible (for example, Alabama and Alaska), but others have multiple categories (see Arizona and Arkansas). As noted in the description of the first chart, in numerous states the definitions in the Persons Eligible column encompass multiple categories of persons. Each of those categories of persons eligible is included in this chart. Finally, several caveats, clarifications, exclusions, expansions, and explanations are indicated with footnotes.

C. Detailed Explanation of the “Age - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart provides, by state, the specific age criteria for each category of persons eligible for APS. The chart enables readers to quickly identify which of the seven criteria is used in each state. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their age criteria from state to state.

2. How to Read the Chart

Analysis of the APS statutes uncovered seven specific age criteria for APS eligibility: 65+, 60+, 18-64, 18-59, 18+, emancipated minor, and minor. This chart indicates with a large “X” which of the seven specific age criteria for APS eligibility is used in each state’s law for each category of persons eligible. See Section B for an explanation of the categories of persons eligible. This chart also provides, in its second column, the statutory provisions establishing the specific age criteria.

D. Detailed Explanation of the “Condition - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart provides, by state, the specific condition criteria for each category of persons eligible for APS. The chart enables readers to quickly identify which of the 14 criteria is used in each state. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their condition criteria from state to state.

2. How to Read the Chart

Analysis of the APS statutes revealed 14 specific condition criteria for APS eligibility (in alphabetical order): accident, advanced age, brain damage, dementia, developmental disability, emotional impairment, imminent risk of death or harm, impairment/disability (used for statutes that don’t indicate whether the impairment or disability is emotional, mental, or physical), mental illness, mental impairment, physical illness, physical impairment, and substance abuse. This chart indicates with a large “X” which of the 14 specific condition criteria is used in each state’s law for each category of persons eligible. See Section B for an explanation of the categories of persons eligible. This chart also provides, in its second column, the statutory provisions establishing the specific condition criteria. The wording of the statutory provisions may not always match the specific condition criteria. For example, the “substance abuse” criterion incorporates the concepts of “chronic use of drugs” and “chronic intoxication” that are used in the Arizona statute.

E. Detailed Explanation of the “Function - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart provides, by state, the specific function criteria for each category of persons eligible for APS. The chart enables readers to quickly identify which of the nine criteria is used in each state. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their function criteria from state to state.

2. How to Read the Chart

Analysis of the APS statutes disclosed nine specific function criteria for APS eligibility (in alphabetical order): dependent upon others; lack of capacity or understanding to make, communicate, or implement decisions; lack of capacity to understand risks and consequences of behavior; requires care, treatment, or custody for own welfare or welfare of others; restricted ability to carry out activities of daily living; unable to care for or manage one’s self or property; unable to delegate responsibility; unable to perform or obtain services; and unable to protect self. This chart indicates with a large “X” which of the nine specific function criteria is included in each state’s law for each category of persons eligible. See Section B for an explanation of the categories of persons eligible. This chart also provides, in its second column, the statutory provisions establishing the specific function criteria. The wording of the statutory provisions may not always match the specific function criteria. For example, the “unable to care for or manage one’s self or property” criterion incorporates the concepts of “adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others” and “is unable to meet the person’s own needs or to seek help without assistance” that are used in the Alabama and Alaska statutes, respectively.

F. Detailed Explanation of the “Living Situation - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart is more limited than the others. As few states apply living situation criteria, the chart provides the specific living situation criteria ONLY in the states that use those criteria and ONLY for the categories of persons eligible for APS to which those criteria apply. The chart enables readers to quickly identify which of the nine criteria is used in those states. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their living situation criteria from state to state.

2. How to Read the Chart

Analysis of the APS statutes exposed nine specific living situation criteria for APS eligibility (in alphabetical order): 24-hour health facility, adult family home, domestic/community, facility providing assisted living services, facility/care facility, home of family member, home of friend, independent living arrangement, long term care facility, not a

resident of a long term care facility, and psychiatric hospital/unit. This chart indicates with a large “X” which of the nine specific living situation criteria is used in the relevant states’ law for the applicable category of persons eligible. See Section B for an explanation of the categories of persons eligible. This chart also provides, in its second column, the statutory provisions establishing the specific living situation criteria.

G. Detailed Explanation of the “Receiving Services - Threshold Eligibility for Adult Protective Services: Comparison Chart of Criteria, by State” Chart

1. Design and Purpose of Chart

This chart also is more limited than the others. As few states apply receiving services criteria, the chart provides the specific receiving services criteria ONLY in the states that use those criteria and ONLY for the categories of persons eligible for APS to which those criteria apply. The chart enables readers to quickly identify which of the eight criteria is used in those states. It also allows readers to develop a national picture of the similarities and differences in the categories of persons eligible and their receiving services criteria from state to state.

2. How to Read the Chart

Analysis of the APS statutes uncovered eight specific receiving services criteria for APS eligibility: community services provider, facility (at or from), home care agency, home health agency, hospice, individual provider, personal aide, and personal care assistant. This chart indicates with a large “X” which of the eight specific receiving services criteria is used in the relevant states’ law for the applicable category of persons eligible. See Section B for an explanation of the categories of persons eligible. This chart also provides, in its second column, the statutory provisions establishing the specific receiving services criteria.

IV. If You Find an Error

Despite our best efforts, we may have made errors. It is also possible that APS or other professionals interpret a statute differently than we did or there are state regulations or policies that lead to a different interpretation or your law may have changed. If you think we erred or your state has a regulation or policy that leads to a different interpretation, or your law has changed, please contact Lori Stiegel of the American Bar Association Commission on Law and Aging at lstiegel@staff.abanet.org or 202-662-8692.

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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