
45 C.F.R. § 234.70

Protective payments for the aged, blind, or disabled.

(a) *State plan requirements.* If a State plan for OAA, AB, APTD, or AABD under the Social Security Act includes provisions for protective payments, the State plan must provide that:

- (1) Methods will be in effect to determine that needy individuals have, by reason of physical or mental condition, such inability to manage funds that making payment to them would be contrary to their welfare; such methods to include medical or psychological evaluations, or other reports of physical or mental conditions including observation of gross conditions such as extensive paralysis, serious mental retardation, continued disorientation, or severe memory loss.
- (2) There will be responsibility to assure referral to social services for appropriate action to protect recipients where problems and needs for services and care of the recipients are manifestly beyond the ability of the protective payee to handle. (See paragraph (a)(5) of this section.)
- (3) Standards will be established for selection of protective payees who are interested in or concerned with the individual's welfare, to act for the individual in receiving and managing assistance, with the selection of a protective payee being made by the individual, or with his participation and consent, to the extent possible. If it is in the best interest of the individual for a staff member of a private agency, of the public welfare department, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families or for the disabled or aged group of which the recipient is a member; and such staff of the public welfare department will be utilized only to the extent that the department has adequate staff for this purpose. The selection will not include: The executive head of the agency administering public assistance; the person determining financial eligibility for the individual; special investigative or resource staff, or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods or services dealing directly with the recipient—such as the proprietor, administrator or fiscal agent of a nursing home, or social care, medical or nonmedical institution, except for the superintendent of a public institution for mental diseases or a public institution for the mentally retarded, or the designee of such superintendent, when no other suitable protective payee can be found and there are appropriate staff available to assist the superintendent in carrying out the protective payment function.

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