

**DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0000 Purpose and Scope of Program

(Amended 7/1/2005)

(1) Responsibility: The Department of Human Services (DHS) Seniors and People with Disabilities (SPD) has responsibility to provide Adult Protective Services to older adults and to adults with disabilities whose situation is within its jurisdiction to investigate.

(2) Intent: The intent of the program is to provide protection and intervention for adults who are unable to protect themselves from harm and neglect.

(3) Scope of Services: The scope of services includes:

- (a) Receiving reports of abuse, neglect or self-neglect;
- (b) Providing and documenting risk assessment of reported victims;
- (c) Conducting and documenting investigations of reported wrongdoing; and
- (d) Providing appropriate resources for victim safety.

(4) Availability: Adult Protective Services are available from the Department to any adult resident of a DHS-licensed facility, to Nursing Facility residents regardless of age, and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) Statutory and Administrative Rule Guidance: Oregon has adopted laws and administrative rules to address different types of abuse or neglect to vulnerable adults. See Section 411-020-0010, Authority and Responsibility.

(6) Intervention Model:

(a) As a human services agency, the Department embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in Adult Protective Services is the obligation to balance the duty to protect older adults and adults with disabilities with the duty to protect their rights to self-determination.

(b) The Department relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with abuse and neglect, and encourages active participation and sharing of appropriate information by Adult Protective Service staff on APS multi-disciplinary teams.

(c) The Department supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0002 Definitions

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) "Abuse" in a non-facility setting for incidents occurring on or before December 31, 2009, means a range of actions or inactions, including abandonment, financial exploitation, neglect, physical abuse, emotional or verbal abuse, self-neglect, and sexual abuse.

(a) "Abandonment" means the desertion or intentional forsaking of an older adult or an adult with a disability for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm.

(b) "Emotional or verbal abuse" means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights.

(c) "Financial exploitation" means the illegal or improper use, by means including, but not limited to, deceit, coercion, fraud, or undue influence, of the resources (including medications) of an older adult or individual with a disability. This includes causing alarm by conveying a threat to wrongfully take or appropriate money or property, which would be expected to cause an older adult to believe the threat shall be carried out.

(d) "Neglect" means the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic necessary care or services when agreed to by legal, contractual, or otherwise assumed responsibility when such failure leads to actual or serious potential for physical or emotional harm. This includes failure of a person who has fiduciary responsibility to assure the continuation of necessary care (for example, failure to pay for necessary care resulting in the withdrawal of services).

(e) "Physical abuse" means the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to:

(A) Such acts of violence as striking (with or without object), hitting, beating, punching, shoving, shaking, slapping, kicking, pinching, and burning;

(B) The intentionally inappropriate use of drugs or physical restraints;

(C) The intentional mis-administration of types or amounts of drugs in order to cause harm to the person receiving them; and

(D) The use of force-feeding or physical punishment.

(f) "Sexual abuse" means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are

considered non-consensual if a person does not make, or is incapable of making, an informed choice.

(2) "Abuse" in a facility setting for incidents occurring on or before December 31, 2009, means abuse or neglect of care, as defined in the applicable licensing or certification rules, that occurs in facilities that are licensed (such as Residential Care Facilities, Assisted Living Facilities, Nursing Facilities, Commercial or Limited License Adult Foster Homes); or Room and Board Facilities that are registered, when the reported perpetrator is the facility itself or is an employee or agent of the facility. Relative Foster Homes are to be treated as non-facility settings.

(3) "Abuse" for incidents that occur on or after January 1, 2010, means any of the following:

(a) Physical abuse, including:

(A) The use of physical force that may result in bodily injury, physical pain, or impairment.

(B) Any physical injury to an adult caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(i) Conduct resulting in a physical injury caused by other than accidental means may include but is not limited to:

(I) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(II) The use of force-feeding or physical punishment.

(ii) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) Neglect, including:

(A) The failure of a person who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse; or

(B) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in, or creates a serious risk of, physical harm or significant emotional harm to the adult.

(i) Such failure may occur whether intentional, careless, or due to inadequate experience, training, or skill, and may include the administration of an incorrect medication or dose of medication by other than accidental means.

(ii) The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where a person has a fiduciary responsibility to assure the continuation of necessary care.

(iii) A failure to maintain the mental health of an adult, for the purposes of this definition, may mean active or passive failure to maintain the emotional well-being of the adult, including but not limited to causing unreasonable discomfort or serious loss of personal dignity, but is not intended to establish an expectation for providing professional mental health services where such services are not expected or intended.

(c) Abandonment, including:

(A) Desertion or willful forsaking of an adult for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm; or

(B) The withdrawal or neglect of duties and obligations owed an adult by a person who is responsible to provide care or services, when that withdrawal or neglect of duties would place the adult at serious risk of harm.

(d) Verbal abuse.

(A) Verbal abuse includes threatening significant physical or emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this definition:

(i) Conduct that may be considered verbal abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend; or

(ii) The emotional harm that may result from verbal abuse may include but is not limited to anguish, distress, or fear.

(e) Financial exploitation, including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult; or

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult;

(i) Effectively, for the purposes of this definition, means in a manner that is for the benefit of the person;

(ii) In a facility, such failure includes but is not limited to:

(I) An owner or employee borrowing from a resident;

(II) If the resident is not capable of consenting, spending resident funds for items or services that the resident cannot benefit from or appreciate; or

(III) Spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(f) Sexual abuse, including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult, or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a paid caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact between an adult and a relative of the adult other than a spouse, where relative means a parent, grandparent, children, brother, sister, uncle, aunt, nieces,

nephews, half brothers, half sisters, stepparents, or stepchildren;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, or 163.467.

(g) Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement of an adult to his or her room;

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals; or

(iii) Placing restrictions on an adult's freedom of movement by restriction to a specific area.

(B) In a facility, emergency or short-term, monitored separation from other residents may not be considered involuntary seclusion and may be permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff may develop a plan of care to meet the resident's needs, or as part of the care plan.

(h) A wrongful use of a physical or chemical restraint of an adult.

(A) A wrongful use of a physical restraint, including the wrongful use of a supportive device with restraining qualities, includes situations where:

(i) The resident has not requested or approved of the device;

(ii) A licensed health professional has not conducted a thorough assessment; or

(iii) Less restrictive alternatives have not been evaluated prior to the use of the device.

(B) A wrongful use of a chemical restraint includes but is not limited to the wrongful use of a medication or controlled substance for the purpose of sedation.

(4) "Adult" means an elderly person, a person with a physical disability who is 18 years of age or older, or a resident of an SPD licensed residential care facility, assisted living facility, or adult foster home.

(5) "APS Risk Management" means the process by which APS continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(6) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(7) "At-risk" means there is reason to believe injury, hazard, damage or loss may occur.

(8) "Community Based Care Facility" means an Assisted Living Facility, Residential Care Facility, Adult Foster Home, or registered Room and Board Facility.

(9) "Conclusion" for the purposes of a facility investigation means a determination by the APS Worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing. "Conclusion" for the purposes of a community investigation or self-neglect assessment, means a determination by the APS worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(10) "Conservatorship" means that a court has issued an order appointing and investing a person with the power and duty of managing the property of another person.

(11) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(12) "Disability" for the purposes of these rules means any physical or cognitive condition that significantly interferes with an adult's ability to protect his or her self from harm or neglect (See section 411-020-0015, Eligibility.)

(13) "Evidence" for the purpose of these rules means material gathered, examined or produced during the course of an APS investigation. This includes, but is not limited to, witness statements, documentation, photographs and relevant physical evidence.

(14) "Guardianship" means a court has issued an order appointing and investing a person with the power and duty of managing the care, comfort or maintenance of an incapacitated adult.

(15) "Imminent danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(16) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(17) "Informed Choice" means the person has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(18) "Law Enforcement Agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;

(d) Any District Attorney;

(e) The Oregon Department of Justice; or

(f) Any federal law enforcement agency having the jurisdiction to investigate or prosecute for abuse defined in these rules. Examples of, but not limited to, are the Federal Bureau of Investigation (FBI), Federal Trade Commission, and the U.S. Post Inspector Office (identity theft).

(19) "Licensed Care Facility" means a facility licensed by the Department, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

(20) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(21) "Mandatory Reporter" for the purpose of these rules means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If a person is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any person living in a nursing facility or an older adult in any setting has suffered abuse or neglect, he or she must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005 and 411-085-0360 to 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the person, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any person living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, and surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health service;

(C) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or a nursing facility, or a person who contracts to provide services to a nursing facility;

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(H) Senior center employee;

(I) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(K) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident;

(L) Firefighter;

(M) Emergency Medical Technician;

(N) Psychologist; and

(O) Licensee of an adult foster home or an employee of the licensee.

(22) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that provides protective services for the allegations of adult abuse and self-neglect. The team may consist of designees of law enforcement, local district attorney office, local AAA/SPD offices, community mental health and developmental disability programs, plus advocates for older adults and persons with disabilities and individuals specially trained in abuse.

(23) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the MDT.

(24) "Older Adult," for the purpose of these rules, means any person 65 years of age or older.

(25) "Relevant" means tending to prove or disprove the allegation at hand.

(26) "Reported Perpetrator" (RP) means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(27) "Reported Victim" (RV) means the individual person whom wrongdoing or self-neglect is reported to have been committed against.

(28) "Risk Assessment" means the process by which a person is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system and other relevant factors are also evaluated to determine their impact on the person's ability to become or remain safe.

(29) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(30) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(31) "Serious Risk of Harm" means that without intervention the person is likely to incur substantial injury or loss.

(32) "Services" as used in the definition of abuse includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(33) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(34) "Undue Influence" means the process by which a person uses his or her role and power to exploit the trust, dependency, and fear of another person and to deceptively gain control over the decision making of the second person.

(35) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(36) "Wrongdoing" for the purposes of a facility investigation means an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim. "Wrongdoing" for the purposes of a community investigation is an action or inaction that meets the definition of abuse as defined in OAR 411-020-0002, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0005

(Renumbered to OAR 411-020-0040 11/15/1994)

411-020-0010 Authority and Responsibility

(Amended 4/1/2006)

The Department is granted statutory authority and responsibility to protect older adults and people who are blind or have a disability and are aged 18 years or older, from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

(a) ORS 410.020 authorizes the Department to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) OAR chapter 411, division 020 details the steps in the adult protective service process.

(2) Reported Abuse in Adult Foster Homes:

(a) ORS 443.767 requires the Department to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that could result in injury, abuse, or neglect of a resident and could place the resident's health or safety in imminent danger.

(b) OAR 411-050-0455 details the steps for filing, investigating and documenting complaints in Adult Foster Homes.

(3) Reported Abuse in Residential Care Facilities or Assisted Living Facilities:

(a) ORS 443.435 allows the Department access to a facility to determine whether it is maintained and operated in accordance with ORS 443.000-443.455 and 443.991(2) and the rules of the director.

(b) OAR 411-055-0230 details methods for conducting inspections and investigations in Residential Care Facilities.

(4) Reported Resident Abuse in Nursing Facilities:

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650-441.695 address the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating and documenting investigations in Nursing

Facilities and the corrective action procedure for substantiated complaints.

(5) Reported Abuse in Room and Board Facilities:

(a) ORS 443.500 allows the Department access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances and regulations. If the Department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, it may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in Room and Board Facilities.

(6) Reported Elder Abuse:

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) OAR 411-021-0000 to 411-021-0025 details the procedures for reporting, investigating and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070 & 411.116

Stats. Implemented: ORS 410.070 & 411.116

411-020-0015 Eligibility Criteria

(Amended 4/1/2006)

(1) Adult protective services as defined in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older;

(b) Adults aged 18 and older who have a disability as defined in these rules; and

(c) Anyone living in a nursing facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to people who are entitled to services from the Department under ORS 430.735-430.765 and OAR 407-045-0250 to 407-045-0360 should be referred for investigation by County Mental Health offices or the Office of Investigations and Training.

(3) Eligibility for protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070 & 411.116

Stats. Implemented: ORS 410.070 & 411.116

411-020-0020 Reporting of Abuse and Neglect

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to a Department designated local office or a local law enforcement agency. A psychiatrist or psychologist does not have to report privileged information covered under ORS 40.225 to 40.295.

(2) Reporting of instances involving abuse or neglect of older adults and adults with disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the person reporting the suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

411-020-0025 Multidisciplinary Team (MDT)

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) The local SPD/AAA office must participate in their county MDT to staff protective services for the abuse and self-neglect of older adults and adults with physical disabilities.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and cannot be further disclosed except by law, authorization by the adult, or by court order.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0030 Confidentiality

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain persons and information obtained as a result of an adult protective service intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the person named except as provided in sub-section (4).

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, and all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected person or otherwise dictated by judicial process.

(4) Where the Department deems it is appropriate, the names of the complainant, reported victim, witnesses and any investigative report may be made available to the following sources:

- (a) Any law enforcement agency;
- (b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the person who practices there;
- (c) The Long Term Care Ombudsman;
- (d) Any governmental or private non-profit agency providing protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090; or
- (e) MDT as defined in these rules for the purpose of protective services for the abuse and self-neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0040 Services Provided
(Amended 7/1/2005)

(1) Local Department designated offices will follow procedural guidelines consistent with Department policies guiding protective service response activities. Although the role of Adult Protective Service is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, and licensing agencies are desirable.

(2) The Department will establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and adult protective service risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations should be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002(15)) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

411-020-0050

(Renumbered to OAR 411-020-0120 7/1/2005)

411-020-0060 Screening

(Adopted 7/1/2005)

(1) All calls or contacts involving the possibility of abuse or neglect should be directed to APS screening.

(2) Screening is the skilled interviewing process used to gather and assess information in order to determine protective services eligibility. This activity includes a determination of whether the complaint meets the definition(s) of abuse as contained in administrative rules.

(3) If the complaint meets the definition(s) of abuse, screening activities may include, but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint;

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition(s) of abuse but requires intervention, response will include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition(s) of abuse or require intervention, but could be addressed by specialized information or assistance, a referral to APS Consultation may be appropriate.

(6) If the complaint involves a client who is currently receiving case management or eligibility services, the worker(s) assigned to the client are to be notified. If the complaint involves a commercial adult foster home, the local licenser is to be notified.

(7) Each local office will develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier will be assigned and shared with the complainant at the time of screening, so that the complainant can re-contact the office and determine the disposition of the report.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0070 Consultation

(Adopted 7/1/2005)

(1) Consultation is the process by which adult protective services provides specialized information or assistance, enhanced referral, or technical assistance via electronic means, including telephone, fax or e-mail, to assist in harm reduction.

(2) Consultation as an alternative to assessment or investigation is only appropriate when the report does not meet eligibility criteria for abuse or neglect or for investigation of licensing violation.

(3) The local office is to maintain a record of reports resolved by consultation.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0080 Triage

(Adopted 7/1/2005)

(1) Triage is the APS process of determining the nature and severity of risk to the client and others and the immediacy of response required.

(2) The Department will provide for a prompt and timely initial response to all protective service referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by the Department are as follows:

(a) Community cases. (Non-Facility, Elder Abuse and Adult Protective Services)

(A) Immediately: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The person is in the process of being harmed due to criminal activity, medical emergency, fire, etc., or is a clear and present danger to self or others; or

(B) Within two hours of receipt of complaint: Initiate investigation within two hours when the reported victim is identified as being in imminent danger; or

(C) By the end of the next Department working day: Initiate investigation by the end of the next working day when the person is identified as being in a hazardous situation that is one that could lead to increased harm or risk; or

(D) Within five Department working days: When screening determines that the situation is problematic, one that is chronic or ongoing, or is a general complaint in which an immediate response is unlikely to change the reported victim's risk level, an investigation should be initiated within five working days.

(b) Facility cases.

(A) Nursing facility cases:

(i) Within two hours:

(I) If the resident's health or safety is in imminent danger; or

(II) The resident has recently died, been hospitalized or been treated in an emergency department as a result of suspected abuse or neglect; or

(ii) Prior to the end of the next working day: If circumstances exist that could result in abuse.

(B) Adult Foster Homes.

(i) Within two hours:

(I) If the complaint alleges the client has been injured, abused or neglected and that any resident's health or safety is in imminent danger; or

(II) That the resident has died or been hospitalized due to abuse or neglect;

(ii) By the end of the next Department working day: If circumstances exist that could result in injury, abuse or neglect.

(C) Assisted Living Facility, Residential Care Facility, Room and Board Facility:

(i) Immediately: If circumstances exist that could result in injury, abuse or neglect and could place the person's health or safety in imminent danger; or

(ii) By the end of the next working day: In all other cases.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0085 Law Enforcement Notification

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) The Department may immediately notify law enforcement if any of the following conditions exist and proceeding collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) There is reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused person is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable; or

(d) Forensic photographic or other evidence is needed.

(2) When the local SPD/AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

411-020-0090 Assessment

(Adopted 7/1/2005)

(1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of

harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.

(2) Assessment in adult protective service cases will be conducted in person with the reported victim, usually in the reported victim's home or the facility where he or she lives.

(3) The assessment may include:

(a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, domestic violence providers, etc. in keeping with Department confidentiality guidelines.

(b) The use of accepted screening tools as well as the worker's professional judgment to determine the person's safety and functional abilities.

(4) If there is evidence that the person's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results will be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.

(5) Upon completion of the initial APS assessment, the complaint will be continued for investigation where there is a reported perpetrator, or will proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim will be offered resource information, and the case will be documented and closed.

(6) Results of the APS Assessment of the victim's cognitive and functional abilities will be recorded in the relevant portions of the Client Assessment and Planning System or other Department-approved system. A summary of the relevant portions will be included in the APS report.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0100 Community Investigation, Documentation, and Notification

(Temporary Effective 1/1/2010 – 6/30/2010)

- (1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.
- (2) An investigation is to be completed and documented when a perpetrator is reported to have abused or neglected a victim.
- (3) Investigations are to be objective, professional and complete.
- (4) In completing the investigation, the adult protective service worker is responsible for carrying out the following steps:
 - (a) Identifying the reported victim(s), the reported perpetrator(s) and any parties reported to have information relevant to proving or disproving the allegation;
 - (b) Conducting unannounced interviews with the above parties to gather all relevant available evidence. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in shall be advised of the confidential nature of the investigation;
 - (c) Obtaining and reviewing any available and relevant documentary or physical evidence;
 - (d) Creating additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;
 - (e) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determining the facts of the case based on a fair and objective review of the available relevant evidence;

(g) Concluding whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determining that the evidence is inconclusive.

(5) The local office must document the investigation in a timely manner and in a standard report format consistent with Department policy.

(a) Documentation of community assessments and investigations must include, but not necessarily be limited to:

(A) A summary of the findings;

(B) Conclusions; and

(C) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Characteristics of the reported victim;

(B) Relationship of the reported victim to the complainant, witnesses and reported perpetrator;

(C) Type of reported mistreatment/abuse;

(D) Conclusion; and

(E) Outcome.

(c) Reports are to be written and closed on a Department-approved system, (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that appropriate action is being taken, and that no abuse was found

(unsubstantiated) or abuse was found (substantiated) or that the investigation was 'inconclusive'.

Stat. Auth.: ORS 124.050-124.095, 410.070, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070, & 411.116

411-020-0110 Community Intervention

(Adopted 7/1/2005)

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed them at risk.

(2) Intervention may include, but is not necessarily limited to:

(a) Arranging for emergency services such as law enforcement, emergency medical care, etc. as needed;

(b) Providing education and counseling to the person at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed;

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis response. Longer term intervention may be made available through APS Risk Management or through non-APS case management.

(4) A person who can make an informed choice may refuse assistance or intervention. In this case the worker is to provide the person with appropriate resource information and a way to re-contact protective services should a threat of harm recur or reach a level unacceptable to the person.

(5) If the person at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention should include medical assessment to determine whether capacity can be improved or restored.

(6) If the person at risk is unable to consent to assessment or treatment, consideration should be given to involuntary intervention, including, as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases the intervention initiated must be the least restrictive available, must respect the values of the person at risk and should be sought only when it has been determined that there is no surrogate decision maker in place, or that such person is not acting responsibly in that role.

(7) If the person lacks appropriate information, the worker should provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the person, and balanced, in order to support the person's right to make an informed choice.

(8) When the assessment or investigation is complete, the case will be either:

(a) Documented and referred to APS Risk Management for further monitoring and intervention if the situation meets the criteria in 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The person at risk, having the ability to do so, decides not to have further protective services.

Stat. Auth.: ORS 410.070, 124.050 - 124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

411-020-0120 Facility Investigation, Documentation, and Notification
(Temporary Effective 1/1/2010 – 6/30/2010)

- (1) Investigations are to be objective, professional, and complete.
- (2) In completing the investigation, the adult protective services worker is responsible for carrying out the following steps:
 - (a) Identifying the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;
 - (b) Conducting interviews with the above parties to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in shall be advised of the confidential nature of the investigation;
 - (c) Obtaining and reviewing any available and relevant documentary or physical evidence;
 - (d) Creating additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;
 - (e) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;
 - (f) Determining the facts of the case based on a fair and objective review of the available relevant evidence;
 - (g) Concluding whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determining that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Department's Central Office.
- (3) In conducting facility abuse investigations, the Department protocols governing activities of investigations further include:

(a) Notifying the Department's Client Care Monitoring Unit (CCMU) if:

(A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU shall conduct the investigation, the field office must provide coordination to assure victim safety;

(B) A situation exists in a residential care facility or an assisted living facility that could cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying persons or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility;

(d) Arranging for immediate protection. The worker is to direct the provider to correct any substantiated problem immediately.

(4) The local office shall submit detailed investigation reports written on the Departments Facility Report Writing System (723) to the Office of Licensing and Quality of Care in Central Office. The local office is to refer these reports to the appropriate office within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

(a) Facility investigations are to be written at the local office on the Departments Facility Report Writing System (723). Documentation of facility investigations must include, for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact;

(E) Conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office retains hard copies of facility investigation reports for a period of ten years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules or policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Department may collect standardized statewide data on all types of Adult Protective Services including, but not limited to, information on the number of cases, types of incidents, person characteristics, and outcomes.

Stat. Auth.: ORS 410.070, 410.610 - 410.700, 411.116, 441.635, 443.500, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

411-020-0130 APS Risk Management

(Adopted 7/1/2005)

(1) APS Risk Management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial assessment or investigation phase has been completed.

(2) Referral to APS Risk Management is appropriate when:

(a) Assessment indicates that the person continues to be vulnerable and at serious risk of harm; and

(b) Continued reassessment and intervention can reduce the risk of harm; and

(c) There is no other source of case management available to the person.

(3) APS Risk Management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the client;

(b) Regular active contact with the client to reassess the risk of harm and the effectiveness of interventions;

(c) Documentation of assessments and interventions.

(4) APS Risk Management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by supervisor or designee will be required to continue a Risk Management case beyond one year.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116