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Authorized Signature

Number: SPD-PT-06-008
Issue Date: 02/10/2006

Topic: Protective Services

Transmitting (check the box that best applies):

New Policy
 Policy Change
 Policy Clarification
 Executive Letter
 Administrative Rule
 Manual Update
 Other: _____

Applies to (check all that apply):

All DHS employees
 County Mental Health Directors
 Area Agencies on Aging
 Health Services
 Children, Adults and Families
 Seniors and People with Disabilities
 County DD Program Managers
 Other (please specify):

Policy/Rule Title:	Protective Services-General Alleged Elderly Abuse		
Policy/Rule Number(s):	Chapter 411, Division 20 Chapter 411, Division 21	Release No:	
Effective Date:	January 1, 2006	Expiration:	
References:	Oregon Revised Statutes 124.005-124.990; SB106; SB 287; SB 907; HB 2291; HB 2415; HB 2416A.		
Web Address:	Links in the DHS web site or http://www.leg.state.or.us/ors/ for the Oregon Revised Statutes.		

Discussion/Interpretation:

The 2005 legislature amended several laws related to elder abuse and adult protective services. A major bill was SB 106, which amended elder abuse definitions, added mandatory reporters, and involuntary move-out criteria for sexual offenders in long term care facilities. This release clarifies all legislative changes relevant to community adult protective services.

The Department of Human Services (DHS) will be revising the following Oregon Administrative Rules to reflect SB106 changes that took effect January 1, 2006:

- OAR Chapter 411, Division 20, Adult Protective Services
- OAR Chapter 411, Division 21, Alleged Elderly Abuse

Electronic notification of the hearing for proposed rule making will be provided. The proposed rule revisions include:

Division 20: Adult Protective Services

- 411-020-0002(1)(c): Addition of language that refers to the “threat of financial exploitation” which means to cause alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person to believe it would be carried out;
- 411-020-0002(19): Addition of firefighters and emergency medical technicians as mandated reporters of elder abuse for persons 65 years of age or older;
- 411-020-0020(2): Addition of language that protects mandatory and non-mandatory reporters of elder abuse from civil liability if the report is made in good faith and on reasonable grounds.

Division 21: Alleged Elderly Abuse

- 411-021-0005: Addition of financial exploitation and sexual abuse as definitions of abuse;
- 411-021-0005(5): Addition of language to the definition of “imminent danger” to include resources;
- 411-021-0005(7): Addition of emergency medical technicians and firefighters as mandated reporters;
- 411-021-0010(1): Addition of language that protects mandatory and non-mandatory reporters of elder abuse from civil liability if the report is made in good faith and on reasonable grounds.

Bills passed which affect adult protective services are as follows:

Changes to the Oregon Revised Statutes (ORS), Chapter 124---Abuse of the Elderly, Disabled and Incapacitated

SB 106

- Elderly Persons and Person with Disabilities Abuse Prevention Act (EPPDAPA) ORS 124.005-ORS 125.050;
 - Adds financial exploitation and sexual abuse to the EPPDAPA temporary restraining order;
 - Adds that an elderly person or a person with disabilities may not file a petition against a guardian or a conservator. Complaints against guardians or conservators are to be addressed in probate court.

- Reporting of Abuse of Elderly Persons: ORS 124.050-ORS 124.095
 - Adds financial exploitation and sexual abuse to the definitions of elder abuse;
 - Adds that any reporter, mandatory or volunteer, that reports elder abuse in good faith has immunity from civil liability. The same immunity applies to participating in any judicial proceeding resulting from such a report;
 - Adds firefighters and emergency medical technicians to the list of mandatory reporters for elder abuse.

Note: Statute changes related to involuntary move-out criteria for sexual offenders in long-term care facilities will be covered in a separate policy transmittal.

HB 2416A

- Civil remedies for abuse of Vulnerable Adults : ORS 124.100
 - Extends the right to bring civil action in court for physical and financial abuse to persons with disabilities;
 - Defines Persons with Disabilities as persons who are susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person's physical or mental impairment;
 - Defines vulnerable adults as:
 - Elderly persons, adults age 65 or older;
 - Financially incapable persons;
 - Incapacitated persons;
 - Persons with disabilities as defined above.

HB 2291

- Civil remedies for abuse of Vulnerable Adults : ORS 124.100
 - Extends to trustees, the right to bring civil action for physical and financial abuse on behalf a vulnerable adult or spouse of vulnerable adult.

Note: Other statutory changes that are relevant to the practice of Community Adult Protective Services are as listed below:

SB 907

- Criminal Mistreatment in the first degree: ORS 163.205
 - Adds if an elderly or dependent person is on the premises where there is manufacture of an unlawful controlled substance or its precursor, than that can be cause to be charged with first-degree criminal mistreatment. Unlawful controlled substances include Methamphetamine, heroin, marijuana, and cocaine and other Class I-IV drugs that are under the Federal Controlled Substances Act.

HB 2415

- ORS 122.455 to 112.555
 - Adds if an abused elderly or incapacitated person dies within 5 years after being physically or financially abused, the abuser cannot inherit from the victim if there was a felony conviction. Establishes rules for governing the passage of property.

SB 287

- Creates a new exception for hearsay rule : ORS 40.465.
 - Adds if a witness in a trial cannot testify because the defendant has criminally done something to prevent the witness from testifying, then there may be grounds to allow hearsay testimony by other witnesses. For example, an APS Specialist may be allowed to testify about reported victim statements, if the defendant has menaced or killed the reported victim, in order to prevent the reported victim from testifying.

Reminder: Only community adult protective services changes are covered in this transmittal. Statutory changes that specifically affect long term care facilities will be released in a separate policy transmittal. Additionally, in response to SB 106 and Reporting of Abuse of Elderly Persons, a mandatory reporting brochure has been developed and is available for distribution after March 1, 2006. Please see Action Request transmittal SPD-AR-06-010 for details and ordering instructions.

Implementation/Transition Instructions:

We have attached a matrix that details the major statutory changes. Please distribute this matrix to APS Specialists for use as a reference tool. When the 2005 edition of the Oregon Revised Statutes become available, you may access the 2005 Oregon Administrative Rules by using the following web address:

<http://www.leg.state.or.us/ors/>

Or you may choose a link from the DHS website.

The forms for the updated Elderly Persons and Person with Disabilities Abuse Prevention Act (EPPDAPA) restraining orders are available at:

- Your local circuit court, either on-line or at the court house;
- State Court Administration, on-line at:

www.ojd.state.or.us/osca/cpsd/courtimprovement/familylaw/ElderlyDisabledPersonsAbusePreventionActForms.htm

Training/Communication Plan:

Statutory changes are being presented in the Fundamentals of Adult Protective Services training and incorporated in other APS trainings as appropriate.

Local/Branch Action Required:

APS Specialists must read and retain the information in this transmittal for future use. Please ensure that all APS Specialists receive this transmittal and the attached matrix.

Central Office Action Required:

We have incorporated the statutory changes into our mandatory training for APS Specialists. In addition, Central Office is available for technical assistance in order to assist the field with understanding the implications of statutory changes in relation to investigations and the people we serve. Central Office will also be organizing distribution of this information to mandated reporters statewide.

Field/Stakeholder review: Yes No

If yes, reviewed by: APS Managers, SPD/AAA Manager, Operations Committee.

Filing Instructions:

When the 2005 edition of the Oregon Revised Statutes become available, you may access the 2005 Oregon Administrative Rules by using the following web address:

<http://www.leg.state.or.us/ors/>

The revised rule and policies for Adult Protective Services can be found at:

http://arcweb.sos.state.or.us/rules/OARS_400/OAR_411/411_tofc.html

- OAR Chapter 411, Division 20, Adult Protective Services
 - OAR Chapter 411, Division 21, Alleged Elderly Abuse
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If you have any questions about this policy, contact:

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Summary of Statutory Changes from 2005 Legislation General and Community Adult Protective Service

ORS 124.005 to 124.040 Restraining Order for Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA). ORS 124.005 to 124.050 only applies to the EPPDAPA restraining order.		SB 106
Note: The new forms for the restraining order can be obtained from <ul style="list-style-type: none"> ✓ Your local circuit court, either on-line or at the courthouse; ✓ State Court Administration, on line at: www.ojd.state.or.us/osca/cpsd/courtimprovement/familylaw/ElderlyDisabledPersonsAbusePreventionActForms.htm 		
Applies to: Older adults, age 65 or older, plus Persons with Disabilities		
ORS 124.005 (1) (g)	Financial exploitation Adds the right for elderly persons and persons with disabilities to petition the court for a temporary restraining order for financial exploitation. The definition of abuse under the EPPDAPA is changed to include wrongfully taking or appropriating or threatening to wrongfully take money or property of an elderly person or a person with disabilities.	
ORS 124.010 (2)	In addition, when granting the restraining order, the court is limited to ordering: <ul style="list-style-type: none"> ✓ Only relief necessary to prevent or remedy the wrongful taking or appropriation of money or property; ✓ The respondent is to: 	

	<ul style="list-style-type: none"> ○ Refrain from exercising control over the money or property; ○ Return custody or control of the money or property; ○ Follow the instructions of the of guardian or conservator; ○ Cease from transferring the money or property to any person but the petitioner. ✓ Only the petitioner to assume responsibility for managing any of the money or property. ✓ The court is not to grant a restraining order when relief is more appropriate through guardianship or conservatorship in the probate court. <p>Note: The EPPDAPA restraining order lists these restrictions on the form.</p>
ORS 124.005 (1) (h)	<p>Sexual Abuse Adds the right for elderly persons and persons with disabilities to petition the court for a temporary restraining order for sexual abuse.</p> <p>The definition of abuse under the EPPDAPA is changed to include sexual contact with a nonconsenting or unable to consent vulnerable adult. Sexual contact has the meaning of any touching of the sexual or other intimate parts of a person or causing the person to touch the sexual or intimate parts of the actor to arouse or gratify sexual desire of either party.</p>
<p>ORS 124.050 to 124.095 Reporting of Abuse of Elderly Persons ORS 124.050 to 124.100 only applies to mandatory reporting and investigations of <u>elder abuse</u>. SB 106</p>	
<p>Applies to: Older adults, age 65 or older</p>	
ORS 124.050 (1) (f)	<p>Financial exploitation Adds financial abuse to the definitions of elder abuse and mandatory reporting:</p> <p>Financial exploitation means wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person to alarm by conveying a threat to wrongfully</p>

	take money or property. The threat reasonably would be expected to cause the elderly person to believe that the threat would be carried out.
ORS 124.050 (1) (e)	<p>Sexual abuse Adds sexual abuse to elder abuse and mandatory reporting Abuse means:</p> <p>An act that constitutes a crime under</p> <ul style="list-style-type: none"> • ORS 163. 375 Rape in the first degree • ORS 163. 405 Sodomy in the first degree • ORS 163. 411 Unlawful penetration in the first degree • ORS 163. 415 Sexual abuse in the third degree • ORS 163. 425 Sexual abuse in the second degree • ORS 163. 427 Sexual abuse in the first degree • ORS 163. 465 Public indecency • ORS 163. 467 Private indecency <p>ORS 124.050 (1) (e) only lists the above statutes. Below is a summary of the contents:</p> <ul style="list-style-type: none"> • The first three statutes involves intercourse, deviate intercourse, and sexual penetration with an object with a person incapable of consent or by force; • The next three sexual abuse statutes involves sexual contact for the purpose of arousal without consent, by force, or with a person incapable of giving consent; • The public indecency statute involves performance of sexual acts or exposure of genitals for sexual arousal in public view; • The private indecency statute comprises exposure of genitals for sexual arousal in a place where the victim had a reasonable expectation of privacy.

	Note: These statutes are encompassed within our definition of sexual abuse in administrative rule. So the criteria for investigating sexual abuse are the same for elder abuse and adult protective services.	
ORS 124.075 (1)	Immunity for reporting elder abuse Anyone making a report of elder abuse in good faith has immunity from any civil liability. The same immunity applies to participating in a judicial proceeding resulting from such report.	
ORS 124.050 (5) (L)	Mandatory reporters Adds firefighters and emergency medical technicians to the list of mandatory reporters of elder abuse.	
ORS 124.100 to 124.100		
Civil Action for Abuse of Vulnerable Adults ORS 124.100 to 124.990 applies only to bringing civil actions for relief and remedy for financial or physical abuse. Physical abuse includes sexual abuse involving penetration and sexual contact.		HB 2416 and HB 2291
Applies to: Older adults, age 65 or older, plus Persons with Disabilities		
ORS 124.100 (1)	Civil Remedies for Physical and Financial Abuse Extends the ability to persons with disabilities, who cannot protect their own interests, the right to file civil action against a person who has caused them physical or financial abuse.	
ORS 124.100 (1) (e)	Defines “vulnerable person” as: <ul style="list-style-type: none"> • Elderly persons, adults age 65 or older; • Financially incapable persons; • Incapacitated persons; • Persons with disabilities who are susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person’s physical or mental impairment. 	

<p>ORS 124.100 (1) (d)</p>	<p>Defines a person with disabilities as:</p> <ul style="list-style-type: none"> • A person with a physical or mental impairment that: <ul style="list-style-type: none"> ○ Is likely to continue without substantial improvement for no fewer than 12 months or to result in death; ○ Prevents performance of substantially all the ordinary duties of occupations in which an individual not having the physical or mental impairment is capable of engaging. <p>Note: There are many different legal definitions for people with disabilities. This definition is specific to ORS 124.100 to 124.990.</p>
<p>ORS 124.100 (3) (d)</p>	<p>Who can bring actions for physical and financial abuse</p> <p>Allows trustee of a trust to bring civil action for physical and financial abuse on behalf of vulnerable adult or spouse of the vulnerable adult.</p> <p>Note: Others that can bring action are the vulnerable adult, guardian, conservator, and personal representative of the estate.</p>

ORS 163.205 Criminal Mistreatment in the First Degree		SB 907
Applies to: All persons		
ORS 163.205	<p>Person commits Criminal Mistreatment in the First Degree</p> <p>Adds to the causes to be charged with Criminal Mistreatment I the following crime:</p> <ul style="list-style-type: none"> • Leaves or causes an vulnerable adult to be on premises where unlawful controlled substances are manufactured; • Controlled substance is defined as: <ul style="list-style-type: none"> ○ Class I-IV drug or precursor as defined in the federal controlled substances ○ Includes Methamphetamine, heroin, marijuana, cocaine; • Class C felony. <p>Note: A dependent person is defined as a person who because of age or physical or mental impairment is dependent upon another to provide physical care.</p>	
ORS 122.455 to ORS 122.555 Abuser cannot inherit if there is a felony conviction		HB 2415
Applies to: Elderly Person or Incapacitated Person		
ORS 122.455 to ORS 122.555	If an abused elderly or incapacitated person dies within 5 years of being physically or financially abused, the abuser cannot inherit if there was a felony conviction. Establishes rules for governing the passage of property from elderly or incapacitated persons who suffer physical or financial abuse that results in a felony conviction of the abuse.	
ORS 40.465 Hearsay exception		SB 287
Applies to: Anyone who testifies		
ORS 40.465	Creates a new hearsay exception for situations where a defendant has engaged in wrongful	

conduct intended to make a declarant become unavailable to testify. It prevents the defendant from profiting from criminal or abusive behaviors.

What this means: If a witness in a trial cannot testify because the defendant has criminally done something to prevent the witness from testifying, there may be grounds to allow certain statements. For example, an APS specialist may be able to testify about the reported victim's statements, if the reported perpetrator menaces or kills the reported victim to keep the reported victim from testifying.

This purpose of SB 287 is to respond to a Federal Supreme Court ruling in Crawford vs. Washington. Constitutionally, any defendant has a right to confront witnesses. Crawford vs. Washington upholds that if a witness cannot testify, then testimonial evidence about that witness is inadmissible. However, if the witness is unavailable due to the defendant's misconduct, then Crawford vs. Washington does not apply.