

Cathy Cooper
Authorized Signature

Number: SPD-PT-10-001
Issue Date: 1/13/2010

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):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input checked="" type="checkbox"/> Seniors and People with Disabilities |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Other (please specify): |

Policy/Rule Title:	Adult Protective Services, General		
Policy/Rule Number(s):	OAR 411-020 ADOPT: 411-020-0025, 411-020-0085 AMEND: 411-020-0002, 411-020-0020, 411-020-0030, 411-020-0100, 411-020-0120	Release No:	
Effective Date:	January 1, 2010	Expiration:	
References:	House Bill 2175 (2007), Chapter 444 (2007 Oregon Laws), House Bill 2442 (2009), Chapter 837 (2009 Oregon Laws), Senate Bill 670 (2009), Chapter 708 (2009 Oregon Laws). ORS 124.050-124.095.		

Web Address:	<ol style="list-style-type: none"> 1. House Bill 2175 (2007) <i>Available at:</i> http://www.leg.state.or.us/07reg/measpdf/hb2100.dir/hb2175.en.pdf 2. Chapter 444 (2007 Oregon Laws) <i>Available at:</i> http://www.leg.state.or.us/bills_laws/ 3. House Bill 2442 (2009) <i>Available at:</i> http://www.leg.state.or.us/09reg/measpdf/hb2400.dir/hb2442.en.pdf 4. Chapter 837 (2009 Oregon Laws) <i>Available at:</i> http://www.leg.state.or.us/bills_laws/ 5. Senate Bill 670 (2009) <i>Available at:</i> http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0670.en.pdf 6. Chapter 708 (2009 Oregon Laws) <i>Available at:</i> http://www.leg.state.or.us/bills_laws/
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Discussion/Interpretation:

This transmittal introduces changes to the operations of Adult Protective Services.

The 2009 legislature amended ORS 124.050 to 124.095 and several other statutes related to adult protective services and corrective actions. To implement the 2009 legislative changes from House Bill 2442, Senate Bill 670, and House Bill 2175 (2007), the Seniors and People with Disabilities Division (SPD) is temporarily amending the adult protective services rules in OAR chapter 411, division 020 to:

- Expand the definition of abuse for incidents occurring on or after January 1, 2010;
- Adopt new rules for multidisciplinary teams;
- Allow disclosure of the conclusion on a Community APS report to the reported victim and reported perpetrator.
- Add tracking to capture reports to the local office from law enforcement on the progress of criminal investigations and prosecutions (which currently happens through the Legal Actions Survey); and
- Add reporting to federal agencies with the jurisdiction to investigate and prosecute abuse.

Permanent rule revisions for OAR 411-020 must be filed within six months. Electronic notification of the hearing for permanent rule revision will be provided prior to filing. With the permanent rule revisions for Division 20, OAR 411, Division 21, Alleged Elder Abuse will be repealed due to redundancy with Division 20.

The following revisions have been made to OAR 411, Division 20:

Expansion of Abuse Definitions for HB 2442

The revised abuse definitions in OAR 411, Division 20 apply to both facility APS and community APS. If you have questions, contact the:

- Community APS team for use in community investigations, or
- Facility APS team for use in facility investigations.
- In addition, the definitions will be in the Adult Foster Home, Residential Care Facility, and Assisted Living Facility rules.
- Nursing Facilities definitions of abuse were not changed.

OAR 411-020-0002 (1) (2) Apply these abuse definitions for **incidents** that occurred on or before December 31, 2009-even if the complaint was made in 2010.

OAR 411-020-0002 (3) (4) Apply these abuse definitions for **incidents** that occurred on or after January 1, 2010.

Note: When the date of an incident is unclear or the reported abuse situation may be on-going, use the date the complaint was received to determine which abuse definitions to apply.

OAR 411-020-0002 (4) Adds a definition of “adult” to encompass adults served by SPD in the community and residents in licensed facilities.

“Abuse” means perpetrator-related abuse and neglect. Self-neglect is not changed. The revised rules add:

- Two new abuse categories of “involuntary seclusion” and “wrongful restraints”.
- Under neglect, a paid or unpaid caregiver has the responsibility for maintaining the emotional well-being of an adult. Examples of a failure to maintain emotional well-being include, but are not limited to: not arranging for an adult to attend an outing or go to church the adult desires and is able to attend, unnecessarily getting rid of a much-loved pet, and other activities that unnecessarily restrict the autonomy of an adult.

Until the 723C Community APS Complaint report is updated, fill in the field for type of mistreatments on the allegation page by selecting on the drop down:

- “Physical abuse” for involuntary seclusion and wrongful restraints, and
- “Neglect” for failure to maintain the emotional well-being of an adult by a caregiver. Otherwise choose “verbal abuse” as has been used in Community APS.

OAR 411-020-002 (32) adds a definition for “services” which means care provided for activities of daily living and maintaining the well-being of adults.

Adoption of Multidisciplinary Teams (MDT) for HB 2442

Adoption of a new 0025 section to the APS rules:

OAR 411-020-0025 (1), (2) adds authority for local offices to participate in multidisciplinary teams (MDT). HB 2442 establishes responsibility for the County DA Office to institute MDTs. As available, local offices must participate in existing or newly established MDTs. Local offices determine their participation in accordance with SPD policy and procedures.

OAR 411-020-0030 (4) (e) adds MDTs as an exception for confidentiality. The local office may provide client confidential information in County MDTs as that information will be protected under HB 2442.

Notifying law enforcement

Adding Federal Agencies to Definition of Law Enforcement Agency: OAR 411-020-0002 (18) The local office may report crimes to and share investigation information and reports with the FBI, US Postal Inspector Office (identity theft), and the Federal Trade Commission and other federal agencies having the jurisdiction to investigate and prosecute abuse as defined in the Division 20 rules.

Adoption of new 0085 section to the APS rules:

OAR 411-020-0085 (1) Existing rules about reporting to and asking for assistance from law enforcement were moved to 411-020-0085 and deleted from OAR 4110020-100 and OAR 411-020-0120.

OAR 411-020-0082 (2) adds a new rule for the local office to capture reports made back to APS by law enforcement agencies and District Attorney's (DA) offices on the progress of investigation and prosecution of APS abuse crimes. The local offices currently track and will continue to track criminal investigations and prosecutions on our own APS cases through the Survey of Legal Actions form.

Under HB 2442, section 18, the criminal justice system is responsible for tracking and reporting of criminal investigations and prosecutions of adult abuse. Law enforcement agencies and DA offices are to report their acceptance of criminal investigations and prosecutions to local SPD/AAA offices on adult abuse crimes. In addition, the DA's office is expected to make an annual report to the Department of Justice.

Local offices may continue to advocate for reported victims with the criminal justice system. However, HB 2442 is clear that reporting to the local office and DOJ is the responsibility of the criminal justice system.

Addition of Mandatory Reporters for SB 670 and update from ORS 124.050

OAR 411-020-0002 (21) adds the following mandatory reporters:

- Naturopathic physician, osteopathic physician, chiropractor, podiatric physician, and surgeon plus physician assistant;
- Nurse practitioner;
- Licensed professional counselor, or licensed marriage and family therapist;
- Audiologist, speech language pathologist;
- Psychologist; and
- Licensee of an adult foster home or an employee of the licensee.

For the 723C field for type of complainant, select on the drop-down:

- “Physician” for naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, and surgeon;
- “Health Care Professional” for nurse practitioner; audiologist, speech language pathologist;
- “Mental Health Worker” for licensed professional counselor, or licensed marriage and family therapist and psychologist; and
- “Facility Staff” for licensee of an adult foster home or an employee of the licensee.

Disclosing Conclusions to Reported Victim and Perpetrator

OAR 411-020-0100 (6) allows for disclosure to the reported victim and the reported perpetrator as well as the complainant for Community APS reports.

After January 1, 2010, the local office may inform the reported victim or reported perpetrator only about the conclusion (substantiated, not substantiated, or the investigation was inconclusive). The local office may disclose the conclusion to reported perpetrators for APS cases that began on or after October 1, 2009.

APS Specialists must inform a DHS employee or DHS volunteer that there is an investigation and he or she is a reported perpetrator. APS Specialists are encouraged to inform all reported perpetrators that there is an investigation and he or she is the reported perpetrator.

FYI: As of October 1, 2009, an employee or volunteer with DHS (not AAA) who is a reported perpetrator of an APS investigation must inform Human Resources within five days. In addition, a person applying to work or volunteer for DHS must report any substantiation of abuse. Refer to <http://www.oregon.gov/DHS/chc/abuseneg> for more information on HB 2175 implementation.

Implementation/Transition Instructions:

The temporary rules for OAR 411 Division 20, Adult Protective Services may be found

at <http://www.dhs.state.or.us/policy/spd/numeric.htm>.

When the ORS 124 statute is revised, access 125.050-ORS 125.095 at <http://www.leg.state.or.us/ors/124.html>

The statutes and rules will be automatically updated in the APS tool box as the State publishes them.

For questions: contact the following resource persons in Central Office:

Judy Giggy Community APS Program Manager or Valerie Eames, Analyst for questions regarding Community APS cases, MDTs, and reporting by law enforcement.

Marie Cervantes, Manager, Facility and Adult Foster Home Program Manager or Stephanie Delage and Allison McKenzie, analysts for questions regarding Facility APS cases.

Training/Communication Plan: Please send e-mails with questions about the new rules and rule definitions to the resource persons named above.

Central Office APS will respond to the local offices as appropriate through e-mail, teleconference, list service, transmittals, and trainings.

Local/Branch Action Required: APS supervisors, screeners, APS specialists, licensers, and case managers and eligibility workers should read this transmittal, review the new abuse definitions, and apply the new rules to protective services.

Continue to fill out and provide the Legal Actions Survey to Central Office.

Participate in MDTs.

Central Office Action Required:

Central office will issue transmittals, arrange teleconferences, e-mail information, and prepare trainings for the new Division 20 revisions to the local offices as needed.

Central office is available for technical assistance. Contact Stephanie Delage or Allison McKenzie for facility investigation questions and Valerie Eames for community investigation questions.

Central office will be updating the mandatory reporting and protective service brochure and organizing distribution to mandatory reports through out the state.

Central office will update the Legal Actions Survey to reflect rule changes.

Field/Stakeholder review: Yes No

If yes, reviewed by: Operations

Filing Instructions: The revised rule and policies for Adult protective Services may be found at <http://www.dhs.state.or.us/policy/spd/numeric.htm> .

If you have any questions about this policy, contact:

Contact(s):	Facility APS: Marie Cervantes (manager), Steph Delage or Allsion Mckenzie for technical assistance Community APS: Judy Giggy (manager) or Valerie Eames		
Phone:	SPD reception: 503-945-5811 or 1-800-232-0320	Fax:	503-947-4245
E-mail:	Valerie.m.eames@state.or.us		