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Authorized Signature

Number: APD-PT-15-002
Issue date: 2/5/2015

CORRECTED

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 checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children’s Intensive In Home Services |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children’s Residential Services | <input type="checkbox"/> Other (please specify): |
| <input type="checkbox"/> Child Welfare Programs | |

Policy/rule title:	Adult Protective Services, General		
Policy/rule number(s):	ADOPT: 411-020-0002 (9) AMEND: 411-020-0002 (1)(b)(f), (26), (32) 411-020-0020 (1) 411-020-0080 (3)(b) 411-020-0100 (4)(c), (5), (5)(b)(C), (6); 411-020-0110; 411-020-0120 (4) OAR 411-020-0130 (1), (2)(a)	Release no:	
Effective date:	January 1, 2015	Expiration:	until release of new 411-020 rules

References:	<ol style="list-style-type: none"> 1) OAR chapter 411, division 20, effective 2013 and 2015. 2) ORS 124 enacted in Chapter 104, Oregon 2014 (will not be in ORS chapter 124 until after the 2015 session) 3) House Bill 4151 (2014) 4) House Bill 2205 (2012) 5) Transmittal APD-PT-13-015 6) Transmittal APD-AR-14-034
Web address:	<ol style="list-style-type: none"> 1) OAR chapter 411, division 20 http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_020.html 2) ORS 124 enacted in Chapter 104, Oregon 2014 https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2014R1orLaw0104ss.pdf 3) House Bill 4151 (2014) https://olis.leg.state.or.us/liz/2014R1/Downloads/MeasureDocument/HB4151 4) House Bill 2205 (2012) https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/HB2205 5) Transmittal APD-PT-13-015 http://www.dhs.state.or.us/policy/spd/transmit/transmit.htm 6) Transmittal APD-AR-14-034 http://www.dhs.state.or.us/policy/spd/transmit/transmit.htm

Discussion/interpretation: Effective January 1, 2015, amendments to OAR chapter 411, division 20 will come into effect. The amendments implement HB 2205 from the 2013 legislature and HB 4151 from the 2014 legislature.

As part of this transmittal, attached find a more detailed description of the rule changes and how to incorporate them into practice. This transmittal and the attachment successively lists the changes by rule numbers for following along with the new rules.

The list of significant changes by rule is as follows:

All the new APS General rules in OAR chapter 411, division 20, unless noted otherwise below, refer to alleged abuse to older adults, age 65 or older; persons with physical disabilities; and residents in APD licensed care facilities, nursing facilities, and room and board. These changes only apply to incidents that occurred on or after January 1, 2015.

OAR 411-020-0002 (1) The “neglect” definition OAR 411-020-0002 (1)(b) and the “sexual abuse” definition OAR 411-020-0002 (1)(f) were amended. Note: The division

20 abuse definitions only apply to Community APS, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes investigations. Nursing Facilities and Room and Board rules have their different abuse definitions that have not been changed.

OAR 411-020-0002 (9) "Basic Care" is a newly adopted definition that helps clarify the scope of neglect.

OAR 411-020-0002 (26) Mandatory reporters were expanded to include attorneys, dentists, optometrists, chiropractors and members of the legislative assembly. "Public official" was removed as a mandatory reporter category.

OAR 411-020-0002 (32) "Serious risk of harm" was changed to "risk of serious harm".

OAR 411-020-0020 (1) Beginning January 1, 2015, mandatory reporters are responsible 24 hours -7 days a week to report suspected abuse of older adults, age 65 and older and individuals, regardless of age, who reside in a nursing facility. Certain communications with a psychiatrist, psychologist, attorney, or members of the clergy are protected and confidential and these communications may be held back from APS.

OAR 411-020-0080 (3) (b) Facility triage times for all facility types, including nursing facilities, are to commence at the same time from when the complaint is received at the local office.

OAR 411-020-0100 (4) (c). An in-person interview is now clearly required for reported victims and reported perpetrators in community investigations. In addition, whenever reasonable, key witnesses shall be interviewed in-person. Exceptions to interviewing in-person are allowed for the safety of all parties in the case, including the APS Specialist.

OAR 411-020-0100 (5) (b) (C). Data collection for the community report now includes language, race, and ethnicity. Refer to the June 18, 2014 Action Transmittal, APD-AR-14-034.

OAR 411-020-0100 (5) Community abuse investigations are to be completed and closed in 120 days from the day of the receipt of the complaint referral. However, a reasonable delay to the completion is permitted under law in the event of a concurrent criminal investigation.

OAR 411-020-0100 (6) The local office, in addition to the conclusion, may also provide the type of abuse to the complainant, reported victim, and reported perpetrator.

OAR 411-020-0110 The whole section of the rules on intervention now applies to both facility and community cases.

OAR 411-020-0120 (4) Identical to community investigations, the legislature allowed a reasonable delay to the completion may be permitted in the event of a concurrent criminal investigation.

OAR 411-020-0130 (1) "Self-neglect assessment and abuse investigations " was added to make the scope of APS Risk Management clearer.

OAR 411-020-0130 (2) (a) "Serious risk of harm" was changed to "risk of serious harm.

Implementation/transition instructions:

The rules for OAR 411 Division 20, Adult Protective Services may be found at http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_020.html

ORS 124 statute changes are found at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2014R1orLaw0104ss.pdf

After the 2015 legislature bills are enacted, the statute changes can found at https://www.oregonlegislature.gov/bills_laws/ors/ors124.html

Training/communication plan:

OAAPI conducted two teleconferences about the rule changes, one for APS managers and supervisors and the other for the whole APS field. The rule changes will be open for further questions at APS managers bi-monthly meeting in January 2015. The OAAPI training unit will incorporate the rule changes in the APS Core Competency training curriculum.

Local/branch action required:

APS supervisors, screeners, APS specialists, licensers, and other interested local office APD staff should read this transmittal and listen to at least one of the teleconferences. Then, they are required to apply the changes to their work. Send questions about the changes to; OAAPI.APSTechAssistance@dhsosha.state.or.us Inbox. If imminent technical assistance is needed, then contact the covering OAAPI APS team member.

Central office action required:

Outside of the delivery of the training and communications above, the OAAPI APS team is available for on-going technical assistance to the field through the Outlook inbox: OAAPI.APSTechAssistance@dhsosha.state.or.us or by contacting the OAAPI APS analyst of the day (a schedule is sent out bi-weekly).

OAAPI will be updating the OAAPI web-site, DHS abuse and neglect website, and the Adult Abuse Reporting brochure. The general public will be informed through DHS communications efforts such as press releases.

Field/stakeholder review: Yes No

If yes, reviewed by:

Filing instructions:

If you have any questions about this policy, contact:

Contact(s):	Allison Mckenzie or Valerie Eames or Catherine Sandor		
Phone:	503-947-5447 (AM) or 503-945-5884 (VE) or 503-945-2989 (CS)	Fax:	503-945-9493
Email:	OAAPI.APSTechAssistance@dhsaha.state.or.us Allison.MCKENZIE@dhsaha.state.or.us VALERIE.M.EAMES@dhsaha.state.or.u CATHERINE.SANDOR@dhsaha.state.or.us		

**Summary of 2015 Amendments to
Adult Protective Services General
OAR chapter 411, division 20 Rules,
Effective January 1, 2015**

This summary is an attachment to a 2015 Aging and People Disabilities (APD) policy transmittal about the new 2015 Adult Protective Services (APS) rules. While the narrative in the transmittal lists the changes, this summary provides a more detailed description and explanation of the rule changes and how to incorporate them into the operations of Adult Protective Services. This attachment and the transmittal successively list the changes by rule numbers. If you want to review the rules with this attachment or the transmittal, the new rules are found at: http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_020.html

All the new rules, unless noted otherwise below:

- Pertain to alleged abuse to older adults, age 65 or older; persons with physical disabilities; and residents in APD licensed care facilities, nursing facilities, and room and board;
- Affect both facility APS and community APS screening and investigations, and
- Apply only to incidents that occurred on or after January 1, 2015:
 - Incidents that occurred on or before December 31, 2014 are screened in and investigated based upon the previous rules effective in 2014; even if the complaint was made to screening in 2015.
 - When the date of an incident is unclear or the reported abuse may be ongoing, use the date the complaint was received to determine which rules apply.

Note: The rules also had minor wording, grammar, and formatting adjustments that are not covered in this summary. For example, in OAR 411-020-0002, a few new definitions were added to reflect terminology changes within the Department, but do not change APS operations.

OAR 411-020-0002 (1) The following definitions were amended or adopted:

Note: The division 20 abuse definitions only apply to Community APS, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes investigations. Nursing Facilities and Room and Board rules have different abuse definitions that have not been changed.

OAR 411-020-0002 (1) (b) “Neglect” remains similar in meaning and impact, even though it was rewritten. The language was simplified and re-organized to be clearer, especially with the addition a new definition of basic care (see below).

- The following provision was deleted from the previous neglect definition: (B) ~~Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.~~
 - However, if a care provider has knowledge of and fails to take reasonable efforts to protect an adult in his or her care or in the facility that situation may make criteria for passive neglect that may be screened-in and investigated.
 - The protection for facility residents is not expected to be impacted. Largely, the facility rules have provisions that require facility staff to report. In addition, foster home providers are mandatory reporters.
 - The protections for individuals in their own homes may be impacted. Without it being stated, it is less obvious that those caregivers who have knowledge of abuse in private homes, but who are not mandatory reporters such as Home Care Workers, in-home providers, and family care providers, have implicitly assumed a responsibility to protect.

- The exception on neglect being abuse when the reported victim is declining medical care due to spiritual beliefs has been amended by taking out the requirements of “by prayer” and “a duly accredited practitioner” to be inclusive of the diversity of common spiritual practices.

OAR 411-020-0002 (1) (f) “Sexual abuse” remains similar in meaning to the previous definitions with the below noted exceptions:

- The 2014 rule OAR 411-020-0002 (1) (f) (B) was broken down into two sub-rules, (B) one for harassment and (C) for exploitation. Because of this separation, (C) sexual exploitation now stands out as being simply stated. Sexual exploitation has been named this way since 2005 or longer, but more clarification has been requested. Following is further description:
 - Sexual exploitation is understood to capture the obvious cases as well as reasonable wrong-doing when the reported perpetrator unfairly uses, manipulates, or takes advantage of the reported victim for the reported perpetrator’s own sexual gratification. Examples include imposing upon someone to look at pornography, grooming behaviors to set up someone for sexual contact, and taking pictures of someone unclothed for sexual gratification.
 - In addition, with the increasing importance of social media, exploitation may include violation of the reported victim’s sexual privacy without the reported victim’s permission. Does not include sharing images of the unclothed body that have a legitimate medical, care, or treatment purpose. The reported perpetrator’s conduct involves taking advantage by sharing sexual and sexualized actions or private body parts to third parties or the public. A reasonable person would know that the release of sexual and potentially sexual images could have a sensational and potentially sexual impact. The outcome to reported victim may be negative, including, but not limited to sexual humiliation or feeling sexually violated. An example would be texting or e-mailing nude photographs of a facility resident showering to third parties without permission for sensational purposes.

- Exploitation often involves deceit and duplicity and is akin to undue influence. But instead of financial gain, there is sexual gain by the reported perpetrator at the expense of the reported victim.
- The absence of exploitation is when there is a concurrence of wills as OAR 411-020-0002 (1) (b).
- OAR 411-020-0002 (1) (f) (D) is a notable change as it determines that any sexual contact between an employee and an individual residing in a facility is sexual abuse. This is regardless if the employee and resident are married, domestic partners, or have a pre-existing relationship. There is already a legislative concept for the 2015 session to remedy this marital omission. In addition, the amendment also changes sexual abuse screening and investigations with regard to Community APS investigations. The new rule only applies to facilities and thus no longer applies to Home Care Workers or situations in private homes. The way the rule was changed, it is no longer automatic that there is sexual abuse when a Home Care Worker or a paid in-home provider has sexual contact with his or her CEP/consumer/client. For sexual abuse to occur, it has to meet criteria for the conduct in OAR 411-020-0002 (1) (f).

OAR 411-020-0002 (9) “Basic Care” was adopted to explain the range and intent of the care that the neglect definition covers. Supervision in this context means monitoring for safety. The term “supervision” was deleted from neglect to not confuse with supervising care-givers.

OAR 411-020-0002 (26) “Attorney, dentist, optometrist, chiropractor and member of the legislative assembly were added as categories to the list of mandatory abuse reporters. **Public official”** was removed as a mandatory reporter category as it is vague and used two ways in OAR 411-020-020 (1).

OAR 411-020-0002 (32) “Risk of serious harm” was changed from “Serious risk of harm” in the previous rules. Thus, “risk of serious harm” is the standard

throughout the 411, division 20 rules because it really is the harm that is serious, not the risk.

Other definitions in OAR 411-020-0002 had minor wording, grammar, and formatting adjustments. A few new definitions were added to reflect terminology changes within the Department, but do not change APS operations.

OAR 411-020-0020 (1) Mandatory reporters

OAR 411-020-0020 (1) Mandatory reporters are responsible 24 hours -7 days a week to report suspected abuse of older adults, age 65 and older and individuals regardless of age residing in a nursing facility. Older adults now have the same reporting protections as child abuse reporting. The full time responsibility for reporting only extends to older adults and residents of nursing facilities, not to the other protected adult populations.

Certain communications with a psychiatrist, psychologist, attorney, or members of the clergy are protected and confidential and these communications may be held back from APS. If a psychiatrist, psychologist, or attorney evokes client confidentiality or a member of the clergy evokes confessional privacy, accept his or her word at the time. If you have questions or the loss of disclosure seriously hinders the investigation, staff with a supervisor. Technical assistance is available from OAAPI APS.

OAR 411-020-0080 (3) (b) Facility triage times for all facility types, including nursing facilities, are to commence at the same time from receipt of the complaint. The response times for all facility types are at two hours and the next day. This standardizes facility abuse investigations. As consistent with past procedures, the triage time keeping begins when the complaint comes into the local office.

OAR 411-020-0100 Community Investigation Procedures

OAR 411-020-0100 (4) (c) An in-person interview is now clearly mandatory for reported victims and reported perpetrators in community investigations. Due diligence should be taken to interview in-person. Telephone interviews would only be used after the options and reasonable efforts to interview in-person were exhausted. Refer to July, 22, 2013 policy transmittal, APD-PT-13-015 about interviewing reported perpetrators face-to-face.

- In addition, the new rule states that “whenever reasonable, key witnesses shall be interviewed in-person”. Key witnesses means witnesses with critical evidence such as an eye witnesses. The “whenever reasonable” language recognizes that some witnesses, such as professionals, may only accessible over the telephone. The most classic example is medical evidence from a physician.
- Interviewing reported victims and reported perpetrators in-person has been implicit in previous rules in the wording “unannounced” since 2005 (OAR 411-020-0100 (4) (c). In addition, reported victims are to be assessed in-person and “on-site” OAR 411-020-0110(2) (c).
- **An exception is permitted** to deviate from the in-person interview for the **safety of any party**, which includes, but is not limited to the reported victim and the APS Specialist.
 - This exception does not affect other use of reasonable deviations. Examples are situations that the investigator has no control over such as a witness cannot be found, the reported victim did not answer the door after three attempts, or there is a flood for days.
 - Like the OAR 411-020-0040 (3) on deviations from the APS function, the procedure is to staff with a supervisor and then document in the report what was the serious cause and what due diligence was applied.

OAR 411-020-0100 (5) (b) (C) Data collection for the community report now includes language, race, and ethnicity This requirement is a DHS initiative for equity. In addition, the data is more and more in demand by the legislature and Federal Government. Refer to the June 18, 2014 Action Transmittal, APD-AR-14-034 requesting that this data be collected.

- Document the data on the person tab in OR ACCESS. The person tab is available for use in both the screening and the case forms. If you use the screening form to open the investigation umbrella, you do not have to go to the case form to input the demographic data. You can do it in the screening form.

- Other units and programs of DHS have been collecting this data all along. APD services have been collecting this data since the 2000 roll-out of OR ACCESS. If you have questions about the practical aspects such as how to ask, APD case managers and eligibility workers in your local areas may be the best resource.

OAR 411-020-0100 (5) Community abuse investigations are to be completed and closed in 120 days from the day of the receipt of the complaint referral. This is the first time that a number of days has been stated to complete community investigations. The past expectation was sixty days. The legislature demanded the 120 days. **However, a reasonable delay to the completion may be permitted in the event of a concurrent criminal investigation:**

- If a concurrent investigation with law enforcement prevents an investigation and report be completed in 120 days, document it in the report.
- The local office APS supervisor determines what is reasonable. The local office is familiar with local law enforcement agencies, and the safety needs of protected populations in local communities and local facilities.
- If the delay is unreasonable, the local office shall take steps to complete the APS investigation, including, but not limited to contacting the law enforcement agency, establishing deadlines, taking the case to the local MDT, or deciding to commence the APS investigation without waiting for law enforcement.

OAR 411-020-0100 (6) In addition to the conclusion, APD may also provide the type of abuse to the complainant, reported victim, and reported perpetrators. Provision of this information is upon request. The local office may provide the information orally or, if requested, in writing. A simple letter on office letterhead would serve, or an e-mail may work for some requestors. More and more, for employment, reported perpetrators are requesting a letter to prove that an investigation was not substantiated.

OAR 411-020-0110 The whole section of the rules, OAR 411-020-0110, Intervention, now applies to both facility and community cases. This was accomplished by deleting the word, “Community” before Intervention. The rest of the section is not changed and current practice is not changed. This amendment just formally recognizes that intervention occurs in facilities.

OAR 411-020-0120 (4) Identical to Community Investigations, the legislature allowed a **reasonable delay to the completion may be permitted in the event of a concurrent criminal investigation**

- If a concurrent investigation with law enforcement prevents an investigation and report be completed in 60 days (62 for nursing facilities), document it in the report.
- The local office APS supervisor determines what is reasonable. The local office is familiar with local law enforcement agencies and local facilities. In facilities, there may be an imperative to protect other residents that needs to be considered about what is a reasonable delay.
- If the delay is unreasonable, the local office shall take steps to commence and complete the APS investigation, including contacting the law enforcement agency, setting deadlines, taking the case to the local MDT, or deciding to commence the APS investigation and not wait for law enforcement.

OAR 411-020-0130 makes clarifications in APS Risk Management.

OAR 411-020-0130 (1). Both “**Self-neglect assessment and abuse investigations language**” was written into the rule to make it clearer that both apply to APS Risk Management FYI: APS Risk Management may be used in facility cases; it is just rare to do so, because of the facility’s responsibility to keep residents safe.

“Serious risk of harm” was changed to “**risk of serious harm**”, OAR 411-020-0130 (2) (a). This wording was also switched in the section on definitions; see OAR 411-020-0002 (32).

- “Serious harm” means that the injury or loss is of substantial consequence to the health, safety, and well-being of a person. It also can involve losses of money, property, assets, and resources.
- “Risk” means there is the possibility or threat of damage, injury, liability, loss, death or any other negative outcome to the reported victim. Risk implies that a negative outcome is predictable or foreseeable.
- Examples about risk of serious harm include, but are not limited to:
 - Not taking a prescribed medication is a common risk of serious harm because the medications are only given for necessary medical and clinical purposes to prevent negative outcomes.
 - If a person is assessed to need a two-person assist and is dropped during a one person transfer, but does not receive an injury. He or she is considered to have been at risk of serious harm. The expected outcome would be an injury, but it was inadvertent that injury did not occur.
 - If the reported perpetrator continues to drain the reported victim of money each month, so that the reported victim cannot pay the heating bill, then is may be a risk of serious harm in winter, but not in the spring.