

COMMENT DUE DATE: December 12, 2021

Date: December 2, 2021

Dawn Leemon, Foster Care Ombudsman	405-760-8560
Holli Kyker, Policy Specialist	405-885-7805
Brandi Smith, Legal Secretary III	405-982-2703

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org. The proposed policy is **EMERGENCY**.

SUBJECT:

CHAPTER 2. ADMINISTRATIVE COMPONENTS

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2 [AMENDED]

Part 3. Investigations

340:2-3-39 [AMENDED]

(WF 21-06)

SUMMARY:

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) ensure rules conform with recently-passed legislation; and (2) ensure rules conform with federal statutes and regulations.

Oklahoma Administrative Code (OAC) 340:2-3-2 is amended, in response to recently passed legislation to (1) add definitions and (2) update language in existing definitions, as they relate to vulnerable adult investigations.

OAC 340:2-3-39 is amended, in response to recently passed legislation, to add language relevant to the program review process for substantiated child abuse or neglect findings in OCA investigations.

The proposed amendments to the OCA rules update the rules to incorporate requirements per Section 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 405.3), 43A O.S. § 10-103, and 56 O.S. § 1025.1. If the proposed amendments are not implemented, OCA rules will not be in compliance with these statutes.

EMERGENCY APPROVAL:

Emergency rulemaking approval is requested. Per 75 O.S. §253(A), emergency approval is appropriate when a rule is necessary to, among other conditions "comply with deadlines in amendments to an agency's governing law or federal programs" or "avoid violation of federal law or regulation or other state law." These provisions apply to the present circumstance. House Bill 2327, passed in the most recent legislative

session, amended 10 O.S. § 405.3 to provide certain rights to individuals subject to the Restricted Registry who had substantiated findings in a child abuse or neglect investigation. Senate Bill 433, passed in the most recent legislative session, amended 56 O.S. § 1025.1 to add rights for individuals subject to the Community Services Worker Registry who were investigated by OKDHS. The Statute changes become effective November 1, 2021. Rule promulgation is necessary to ensure conformity with these is completed before that time. The emergency rulemaking would not have been avoided through permanent rulemaking as OKDHS could not promulgate rules in reaction to the bills until they were passed into law. Therefore, emergency rulemaking approval is appropriate.

LEGAL AUTHORITY:

Director of Human Services; O.S. 56 § 162; 10A O.S. § 1-1-101 et seq.; 10A O.S. § 162; 43A § 10-102 et seq.; and Section 5101 et seq. of Title 42 of the United States Code.

CHAPTER 2. ADMINISTRATIVE COMPONENTS

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

Revised ~~9-15-17~~ 11-1-21

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise:

"Abandonment" means the willful intent by words, actions, or omissions of the person responsible for the child's (PRFC) health, safety, or welfare not to return for a child per Oklahoma Administrative Code (OAC) 340:75-3-120 and Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105).

"Abuse" means, with regard to:

(A) children, harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a PRFC including, but not limited to: ■ 1

(i) non-accidental ■ 2 physical ■ 3 & 4 or mental injury; or ■ 5
~~or mental injury; or~~

(ii) sexual abuse; or

(iii) sexual exploitation; or

(B) vulnerable adults, causing or permitting the:

(i) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

(ii) deprivation of nutrition, clothing, shelter, health care, or other care or services by a caretaker or other person providing services to a vulnerable adult without which serious physical or mental injury is likely to occur.

"Administrative information" means information reported to or obtained by Oklahoma Human Services (OKDHS) regarding the community services provider during the investigative process that may be appropriate for internal administrative action but does not have the potential to impact the immediate health, safety, or welfare of recipients of community services, has not been verified as true and is for informational purposes only per 56 O.S. § 1025.1.

"Administrator" or "administrator's designee" means, with regard to:

(A) ~~children in Oklahoma Department of Human Services (DHS)~~ OKDHS custody living in a private, residential facility; the facility's chief administrative officer;

(B) ~~children in DHS~~ OKDHS custody living in a ~~DHS-operated~~ an OKDHS-operated shelter or group home; the shelter or group home director;

(C) ~~children in DHS~~ OKDHS custody living in any other setting, including any type of out-of-home placement; the applicable ~~DHS~~ OKDHS district director;

(D) foster care parents; the applicable ~~DHS~~ OKDHS district director or deputy director;

(E) children in residential care facilities operated by the Oklahoma Department of Rehabilitation Services (ODRS), facilities that contract with, or are licensed

by the Oklahoma Office of Juvenile Affairs (OJA), with the exception of OJA-operated secure facilities, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center or ~~DHS~~ OKDHS and other residential care facilities; the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs; the person charged with responsibility for program administration;

(G) adults and children who are in Developmental Disabilities Services (DDS) specialized foster care and DDS specialized foster care parents; the applicable DDS area manager;

(H) ~~residents of the Robert M. Greer Center (Greer)~~ residents: the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community; the provider's chief executive officer; and

(J) residents of group homes for persons with developmental disabilities; the group home director.

"Advocate" means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve their problems, helping protect their rights, and seeking to improve the quality of their lives and care.

"Advocate general" means the OCA chief administrative officer designated in 10A O.S. § 1-9-112(A)(2).

"Age-appropriate" or "developmentally-appropriate" means:

(A) activities or items that are generally accepted as suitable for children of the same age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age group; and

(B) in the case of a specific child, activities or items that are suitable for that child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the specific child per 10A O.S. § 1-1-105.

"Area(s) Areas of Concern" or "(AOC)" means:

(A) with regard to children: issues that do not rise to the level of a confirmed finding abuse or neglect, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices. AOCs are brought to the provider's attention of the provider for informational purposes or for appropriate corrective action, if when applicable;

(B) with regard to individuals served by a community services worker: an issue that does not rise to the level of abuse or neglect, but may constitute possible deficiencies, irregularities, or deviations from policies and best practices by the community services provider, which has the potential to impact the health, safety, or welfare of recipients of community-based services, and OKDHS has conducted

sufficient inquiry into the issue to meet the probable cause investigative standard, per 56 O.S. § 1025.1

"Behavioral health" means mental health, substance use or abuse, or co-occurring mental health and substance use or abuse diagnoses, and the continuum of mental health, substance use or abuse, or co-occurring mental health and substance use or abuse treatment.

"Caretaker" means, with regard to vulnerable adults, a person who:

(A) has the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(B) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(C) was appointed a guardian, limited guardian, or conservator per the Oklahoma Guardianship and Conservatorship Act.

"Caretaker misconduct" means, per 10A O.S. § 1-9-112, an act or omission ~~that by a PRFC that does not rise to the level of abuse, neglect, sexual abuse, or sexual exploitation with regard to any child or resident:~~

~~(A) violates a statute, regulation, written rule, policy, procedure, directive, or accepted professional standards and practices residing outside their own homes other than children in foster care or children in the custody of OJA and placed in an OJA secure facility;~~

~~(B) is not found to be abuse or neglect; and in a day treatment program as defined in 10 O.S. § 175.20;~~

~~(C) results in, or creates the risk of harm to, a child, or to a vulnerable adult residing at Greer; and includes, but is not limited to: receiving services from a community services worker as that term is defined in 56 O.S. § 1025.1; and~~

~~(i) acts or omissions that contribute to the delinquency of a child;~~

~~(ii) unintentionally excessive or unauthorized use of force not rising to the level of abuse or neglect;~~

~~(iii) unintentionally causing mental anguish;~~

~~(iv) other acts exposing a vulnerable adult residing at Greer or a child to harm or threatened harm to his or her health, safety, or welfare; or~~

~~(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse~~

~~(D) residing in a state institution listed in 10 O.S. § 1406. ■ 6~~

"Case manager" means the DDS assigned person assigned by DDS who has responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child" means any unmarried person younger than 18 years of age, ~~except any person convicted of a crime specified in 10A O.S. § 2-5-101 or any person certified as an adult per 10A O.S. § 2-2-403 and convicted of a felony.~~

"Child Care Restricted Registry" also known as **"Joshua's List"** means the Registry created in accordance with per 10 O.S. § 405.3, for the purpose of recording individuals who have a:

~~(A) substantiated finding of abuse or neglect, per 10A O.S. § 1-1-105, by an individual when the abuse or neglect occurred to a child while in the care of a child care program licensed by DHS OKDHS or by an adult in a family child care home when the adult's presence is incidental to the operation of the family child care home;~~

~~(B) denial or revocation of a child care program license; and~~

~~(C) specified criminal history of an individual, per OAC 340:110-1-10.1.~~

"Child care facility" means any public or private child care residential facility, child-placing agency, foster family home, child care center, part-day program, out-of-school time program, day camp, drop-in program, program for sick children, family child care home, or large family child care home providing either full-time or part-time care for children away from their own homes, per 10 O.S. § 402.

"Child-placing agency" means an agency that arranges for, or places a child in, a foster family home, family-style living program, group home, adoptive home, or a successful adulthood program, per 10 O.S. § 402 10A O.S. § 1-1-105.

"Child with a disability" means any child who has a physical or mental impairment that substantially limits one or more of the major life activities of the child or who is regarded as having such impairment by a competent medical professional.

"Client" means, with regard to OCA:

(A) investigative services: individuals listed in OAC 340:2-3-32(a)(2);

(B) grievance services: individuals listed in OAC 340:2-3-45(a)(2); and

(C) advocacy program: individuals listed in OAC 340:2-3-71(b).

"Community-based services" or **"community-based programs"** mean services or programs that maintain community participation or supervision in planning, operation, and evaluation. Community-based services and community-based programs may include, but are not limited to:

(A) case supervision;

(B) consultation;

(C) counseling;

(D) crisis intervention;

(E) early intervention and diversionary substance abuse treatment;

(F) educational;

(G) emergency shelters;

(H) group work;

(I) home-based services;

(J) job placement;

(K) medical;

(L) sexual abuse treatment;

(M) training;

(N) transition to successful adulthood;

(O) transitional living;

(P) vocational, social, preventive, and psychological guidance;

(Q) volunteer recruitment and training; and

(R) other related services and programs.

"Community services worker" or **"CSW"** means any person:

(A) other than a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance per 56 O.S. § 1025.1, to persons with developmental disabilities; or

(B) who contracts with the Oklahoma Health Care Authority (OHCA) to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities.

"Community Services Worker Registry" or "CSW Registry" means the Registry established by ~~DHS~~ OKDHS per 56 O.S. § 1025.3.

"Complaint" means a report communicating a grievance, concern, or perceived harm, ~~that the foster parent submitted~~ submits by phone, email, or in writing ~~by the foster parent~~ to the Office of Juvenile System Oversight (OJSO) of the Oklahoma Commission of on Children and Youth (OCCY). If not submitted in writing, the complaint is entered into the written format established by OCA and OJSO.

"Contractor's employee" means ~~an a contractor, provider, or facility~~ a contractor, provider, or facility employee ~~of a contractor, provider, or facility~~ when the employee is the accused person responsible for the child of interest (PRFCI) or the vulnerable adult caretaker (VAC) in an OCA investigation ~~opened by OCA~~.

"Custodian" means an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child was awarded by the court. The term "custodian" does not mean ~~DHS~~ OKDHS.

"Day treatment program" means a non-residential, partial hospitalization program, or day hospital program where children are provided intensive services, such as psychiatric or psychological treatment.

~~"DHS" means the Oklahoma Department of Human Services.~~

"Discrimination" means differential treatment, such as conduct, actions, or decisions based on race, color, national origin, sex, religion, age, or disability, unless authorized by law per OAC 340:1-11-1.1.

"Disposition" means, with regard to OCA intake processes, the OCA intake unit action taken in response to a referral received, per OAC 340:2-3-35.

"DMHSAS" or "ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"DRS" means the Oklahoma Department of Rehabilitation Services.

"Educational employee" means ~~an a school district~~ a school district employee ~~of a school district, providing contract~~ who provides contractual educational services on-site at a facility, and who is either a witness or the accused PRFCI or VAC in an OCA investigation.

"Emergency" means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"Emergency custody" means court-ordered custody of a child prior to the child's adjudication ~~of the child~~.

"Exploit" or "exploitation" with regard to vulnerable adults means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Facility" means:

- (A) a public or private agency, corporation, partnership, or other entity that:
 - (i) operates a residential child care center; or
 - (ii) contracts with, or is licensed or funded by DHS, the Oklahoma Office of Juvenile Affairs (OJA), or ODMHSAS for the physical custody, detention, or treatment of children;
- (B) a DHS-operated shelter;
- (C) a DHS, ODMHSAS, or DRS-operated residential child care program;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for children;
- (H) sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program; or
- (I) Greer.

"Financial neglect" with regard to vulnerable adults, means repeated instances by a caretaker or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

- (A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
- (B) refusing to pay for necessities or utilities in a timely manner; or
- (C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Force" as used by a PRFC with regard to a child residing outside of his or her home, other than in foster care, means:

(A) "authorized use of physical force" by a PRFC with regard to a child residing outside of his or her home, other than a child in foster care means:

(+) is the use of physical contact to control or contain a child when the PRFC reasonably considers him or her to:

- (+) (i) pose a risk of inflicting harm to himself or herself or others; or
- (+) (ii) be in the process of leaving a facility without authorization; and
- (ii) (iii) when the use of physical force is authorized, the least force necessary under the circumstances is employed;

(B) "excessive use of force" by a PRFC with regard to a child residing outside of his or her home, other than a child in foster care, means is the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:

- (i) grounds for belief that force was necessary;
- (ii) ages, genders, and strengths of the parties involved;
- (iii) nature of the force employed;
- (iv) availability of alternative means of force or control;
- (v) extent of the inflicted harm; and

(vi) provider's established method(s) of restraint and intervention for use with the child against whom the force was used, consistent with the child's individualized plan, protective intervention plan, or treatment plan; and
(C) "~~unauthorized use of force~~" ~~by a PRFCI with regard to a child residing outside of his or her home, other than a child in foster care,~~ means is the a use of force that is not an authorized use of physical force per this Section. Unauthorized use of force includes unacceptable physical handling of and contact with a child including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a chokehold, smothering, spitting, head butting, and tugging.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for an individual in a foster placement including, but not limited to, the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means any person maintaining a therapeutic, emergency, specialized community, tribal, kinship, or foster family home, responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"GARC" means the Grievance and Abuse Review Committee per OAC 340:2-3-61.

"Group home for persons with developmental or physical disabilities" means a facility:

(A) for not more than 12 residents who:

- (i) are 18 years of age or older; and
- (ii) have developmental or physical disabilities;

(B) that offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to residents' increased independence and supportive assistance to residents requiring supportive assistance; and

(C) that is not:

- (i) a residential care home;
- (ii) a nursing facility;
- (iii) an assisted living facility;
- (iv) a home where agency companion services or specialized foster care is provided; or
- (v) a home owned or leased by the service recipient or his or her legal guardian.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or "GAL" means a court-appointed person ~~appointed by a court, per 10A O.S. § 1-1-105, to represent~~ who represents the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" means, with regard to a child, any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency. ■ 2 & 6 7

"Heinous and shocking abuse" means abuse that includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, ~~but is not limited to,~~ injury that involves:

- (A) substantial risk of death;
- (B) extreme physical pain;
- (C) protracted disfigurement;
- (D) loss or impairment of a function of a body member, organ, or mental faculty;
- (E) an injury to an internal or external organ or the body;
- (F) bone fracture;
- (G) sexual abuse or sexual exploitation;
- (H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation that is repeated or continuing;
- (I) torture including, but not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or
- (J) any other similar aggravated circumstance. ■ 8

"Heinous and shocking neglect" means neglect that includes, but is not limited to:

- (A) chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child that results in harm to the child;
- (B) neglect that has resulted in a diagnosis of the child as ~~an inorganic~~ failure to thrive;
- (C) an act or failure to act by a parent that results in:
 - (i) serious physical or emotional harm;
 - (ii) sexual abuse or sexual exploitation;
 - (iii) death or near death of a child or sibling; or
 - (iv) presents an imminent risk of serious harm to a child; or
- (D) any other similar aggravating circumstance.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al., Case No. 85-CV-437-GKF.

"Hotline" means the statewide Oklahoma Abuse and Neglect Hotline, toll free phone number, maintained by DHS OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and vulnerable adults. The Hotline operates 24 hours a day, seven days a week, 365 days a year.

"Incapacitated person" means, per 43 O.S. § 10-103:

- (A) any person 18 years of age or older
 - (i) who is impaired by reason of mental or physical illness or disability, dementia, or related disease, intellectual disability, developmental disability, or other cause, and
 - (ii) whose ability to receive and evaluate information effectively or to make and communicate responsible decisions is impaired to such an extent ~~the~~ that such person lacks the capacity to manage his or her financial resources or meet essential requirements for his or her mental or physical health or safety without assistance from others; or
- (B) a person for whom a guardian, limited guardian, or ~~caretaker~~ conservator has been appointed ~~per~~ pursuant to the Oklahoma Guardianship and Conservatorship Act ~~per O.S. 30 § 1-111.~~

"Indecent exposure" means forcing or requiring a vulnerable adult to:

- (A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or
- (B) touch or feel the body or private parts of another.

~~"Infant" means a child who is 12 months of age or younger, per 10A O.S. § 1-1-105(36).~~

"In-home supports" or **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) per Section 1915(c) of the Social Security Act and administered by ~~DHS~~ OKDHS DDS; Services are provided in the service recipient's home, and are not residential services, per OAC 340:100-5-22.1, or group home services, per 10 O.S. § 1430.2.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Intermediate Care Facility for the Intellectually Disabled" or **"ICF/ID"** also known as a **"specialized facility for the intellectually disabled,"** means a private or public residential facility, licensed per state law and certified by the federal government as a Medicaid services provider ~~of Medicaid services~~, for intellectually disabled persons as defined in Title XIX rules and regulations of the Social Security Act.

"Investigation" means, regarding a:

- (A) child, per 10A O.S. § 1-1-105(38), a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of a child, making it necessary to determine:
 - (i) the current safety of the child and the risk of subsequent abuse or neglect; and
 - (ii) if abuse or neglect of the child occurred; or
- (B) vulnerable adult, a response to an allegation of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult, making it necessary to determine if maltreatment of the vulnerable adult occurred.

"Investigative results" means a written response stating one of the following findings:

- (A) regarding a child:

- (i) "substantiated" means OCA determined, after an investigation of a report of child abuse or neglect and based upon some credible evidence, that child abuse or neglect occurred;
 - (ii) "unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect, that insufficient evidence exists to fully determine if child abuse or neglect occurred; or
 - (iii) "ruled out" means OCA determined, after an investigation of a report of child abuse or neglect that no child abuse or neglect occurred; or
- (B) regarding a vulnerable adult:
- (i) "substantiated" means that the preponderance of the available evidence establishes the alleged maltreatment occurred;
 - (ii) "not substantiated" means the preponderance of the available evidence indicates the alleged maltreatment did not occur; or
 - (iii) "ruled out" means no evidence was discovered indicating the alleged maltreatment occurred.

"Maltreatment" means, per 56 O.S. §1025.1, abuse, verbal abuse, sexual abuse, neglect, financial neglect, ~~or~~ exploitation, or sexual exploitation of vulnerable adults per as those terms are defined in 43A O.S. § 10-103; or abuse, neglect, sexual abuse, or sexual exploitation of children, per 10A O.S. § 1-1-105.

"Medicaid personal care assistant" or "MPCA" means a person who provides Medicaid services funded under Oklahoma's personal care program and is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward one's self or others.

"Mental health facility" means a mental health or substance abuse treatment facility per the Inpatient Mental Health and Substance Abuse Treatment of Minors Act per 43A O.S. § 5-502(10).

"Minor physical injury" means a demonstrable injury reasonably expected to be treated ~~with the administration of~~ by administering first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, a new or an increased physical or cognitive functioning impairment ~~of physical or cognitive functioning~~, or evidence of a physical injury, such as a laceration, bruise, or burn, or an injury confirmed by a licensed health care professional.

"Multidisciplinary child abuse team" means any team established per 10A O.S. § 1-9-102 of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services related to child abuse.

"Near death" means a child is in serious or critical condition as ~~verified~~ certified by a ~~licensed health care professional~~ physician, as a result of abuse or neglect, per 10A O.S. § 1-1-105. ~~Verification may be given in person or by phone, mail, email, or fax.~~

"Neglect" means in regard to:

- (A) children: ■ 7 9

- (i) the failure or omission to provide any of the following:
 - (I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;
 - (II) medical, dental, or behavioral health care; ■ § 10
 - (III) supervision or appropriate caretakers; or ■ 9 11
 - (IV) special care made necessary by the physical or mental condition of the child;
- (ii) the failure or omission to protect a child from exposure to any of the following:
 - (I) the use, possession, sale, or manufacture of illegal drugs;
 - (II) illegal activities;
 - (III) sexual acts or materials that are not age-appropriate; or
- (iii) abandonment; or
- (B) vulnerable adults:
 - (i) the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest; ■ 40 12 & 44 13
 - (ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or
 - (iii) negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

"OCA" means the DHS OKDHS Office of Client Advocacy.

"OCA intake" means the OCA-maintained, centralized intake system that receives alleged abuse, neglect, verbal abuse, financial neglect, and financial exploitation referrals of alleged abuse, neglect, verbal abuse, financial neglect, and financial exploitation involving vulnerable adults.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" or "ombuds" means an advocate.

"Person responsible for the child's (PFRC) (PRFC) health, safety, or welfare" means an agent or employee of:

- (A) a public or private residential home, institution, or facility above the level of foster family care;
- (B) a day treatment program per 10 O.S. § 175.20;
- (C) an owner, operator, or employee of a child care program per 10 O.S. § 402; or
- (D) any other adult residing in the home of the child.

"Person responsible for the child of interest (PRFCI)" means a person responsible for the child who is the subject of an investigation involving allegations of abuse or neglect.

"Personal degradation" means, per 43A O.S. § 10-103, a willful act by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display of an electronic image of a vulnerable adult by a caretaker, where the caretaker's

actions constitute a willful act intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation does not include:

(A) the taking, transmission, or display of an electronic image of a vulnerable adult for the purpose of reporting vulnerable adult abuse to law enforcement, OKDHS, or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules,

(B) the taking, transmission, or display of an electronic image of a vulnerable adult for the purpose of treatment or diagnosis, or

(C) the taking, transmission, or display of an electronic image of a vulnerable adult as part of an ongoing investigation.

"Personal support team" or "team," formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, per OAC 340:100-5-52.

"Plan for Immediate Safety" means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a child or vulnerable adult.

"Preponderance of the evidence" means information or evidence is of a greater weight or is more convincing than the information or evidence offered in opposition. The degree of proof that is more probable than not.

"Problem resolution" means verbal or written communications that seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, volunteer advocate for the client, ~~and/or~~ or other persons interested in the client's welfare.

"Protective custody" means custody of a child taken by law enforcement or designated employee of the court, without a court order.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with or is licensed or funded by ~~DHS~~ OKDHS to provide community-based residential or vocational services to persons with intellectual or developmental disabilities; or contracts with the ~~Oklahoma Health Care Authority~~ OHCA to provide residential or vocational services or in-home supports to individuals with intellectual or developmental disabilities through ~~HBCW~~ a Home and Community-Based Waiver.

"Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. This standard is used by the child's caregiver when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities per 10A O.S. § 1-1-105. For purposes of this definition, the term "caregiver" means a foster parent with whom a child in foster care has been placed, a representative of a group home where a child in foster care has been placed,

or a designated official for a residential child care ~~program~~ facility where a child in foster care has been placed.

"Referring party" means the individual who informs OCA, calls the Hotline, or reports in writing that an incident occurred.

"Reportable incident" means an incident that must be reported because the person reporting knows, or has reasonable cause to believe or suspect, that a child or vulnerable adult was subjected to abuse or neglect.

"Reporting party" means the individual who initially tells someone verbally or in writing that an incident occurred.

"Residential child care facility" means, per 10A O.S. § 1-1-105, a ~~24-hour-a-day 24-hour residential group care facility where a specified number of children, normally unrelated, reside with live together with or are supervised by adults other than who are not their parents or relatives.~~

"Restricted registry" also known as **"Joshua's List"** means the registry created per 10 O.S. § 405.3, for the purpose of recording individuals who have:

(A) a substantiated finding of abuse or neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, by an individual when the abuse or neglect occurred to a child while in the care of a facility licensed, certified, operated, or contracted by or with OKDHS or OJA. The provisions of this subparagraph shall apply to:

(i) the Central Oklahoma Juvenile Center, the Oklahoma Juvenile Center for Girls, and the Southwest Oklahoma Juvenile Center upon the effective date of this act; and

(ii) facilities licensed by, certified by, or contracting with the Office of Juvenile Affairs after November 1, 2018.

(B) revocation or denial of a child care facility license; and

(C) a specified criminal history of an individual, as defined by OAC 340:110-1-10.1.

"Risk" means the likelihood that an incident of child abuse or neglect will occur in the future.

"Safety analysis" means ~~a DHS~~ an OKDHS action taken in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to ~~DHS~~ OKDHS adopted, priority guidelines and other criteria.

"Safety evaluation" means ~~a DHS~~ an OKDHS evaluation of a child's situation using a structured, evidence-based tool to determine if the child is subject to a safety threat.

"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

"Secure facility" means a facility that is designed and operated to ensure all entrances and exits from the facility are subject to the exclusive control of facility staff, whether the child being detained has freedom of movement within the perimeter of the facility, or a facility that relies on locked rooms and buildings, fences, or physical

restraint in order to control resident behavior. This definition excludes OJA-operated secure facilities.

"Self-neglect" means the action or inaction of a vulnerable adult that causes the person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a licensed health care professional. It ~~excludes~~ includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful, near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, an eye injury, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, or second or third degree burns and other burns for which complications are present. Also included are multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks without a clear, known explanation.

"Sexual abuse" means, with regard to:

(A) children, conduct, which includes, but is not limited to, rape, incest, and lewd or indecent acts or proposals made to a child as defined by law, by a PRFC; or
■ 42 14

(B) vulnerable adults:

(i) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object;

(ii) for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(iii) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means with regard to:

(A) children, per 10A O.S. § 1-1-105, conduct that includes, but is not limited to, allowing, permitting, ~~or~~ encouraging, or forcing a child to engage in: ■ 42 14

(i) prostitution, per state as defined by law, by any person 18 years of age or older or by a PRFC; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a PRFC ~~per state law~~; or

(B) vulnerable adults, per 43A O.S. § 10-103, conduct that includes, but is not limited to, a caretaker's causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult, ~~per state law~~ as those acts are defined by state law.

"Specialized foster care" means foster care provided to a child or adult in a DDS certified and monitored specialized foster or agency-contracted home, funded through the DDS-administered HCBW Program program per OAC 317:30-3-39.

"State Office" means ~~the DHS OKDHS~~ administrative offices in Oklahoma City, Oklahoma.

"State Office administrator" means, with regard to grievances filed by a:

(A) foster parent, ~~by a child in DHS OKDHS custody, or by an individual filing on behalf of a child in DHS OKDHS custody;~~ the ~~DHS OKDHS~~ CWS director, or his or her designee;

(B) DDS client or ~~by an individual filing on behalf of a DDS client;~~ the DDS director, or the director's designee.

"Subpoena" means a request to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a request for records or other designated items to be delivered.

"Suspicious injury" means an injury that:

(A) includes, but is not limited to, an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living; ■ 2

(iv) is a minor injury located on or near a bodily private part ~~of the body~~ or on a body part ~~of the body~~ that makes it unlikely to have been the result of self-injury or an accident during daily living activities; or

(v) involves multiple abrasions, bruises, and minor injuries on the person's body ~~of a person, that are~~ identified around the same time or over a period of several weeks, but have no clear, known explanation; and

(B) when evaluated for whether an injury is suspicious, the determination is made from ~~the an independent, skeptical reviewer's point of view of an independent, skeptical reviewer,~~ with an injury being deemed suspicious when there is no credible explanation for it that is consistent with the injury not being the result of maltreatment. ■ 43 15

"Unexplained injury" means an injury ~~for which there is~~ that has no known credible origin or cause, even when a possible explanation for the injury may be offered.

"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"Vulnerable adult" means an individual who is an incapacitated person or who because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity, or other disability, is substantially impaired in the ability to:

(A) provide adequately for the care or custody of himself or herself;

(B) manage his or her property and financial affairs effectively;

(C) meet essential requirements for mental or physical health or safety; or

(D) protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

"Vulnerable adult caretaker" or "VAC" means a person responsible for the a vulnerable adult's health, safety, or welfare, of a A vulnerable adult including includes:

(A) Hisson class members;

(B) Greer residents; and

(C) vulnerable adults receiving services from a community services provider, community services worker, Medicaid personal care services provider, or Medicaid personal care assistant per 56 O.S. § 1025.1.

"Ward" means a person over whom a guardianship has been given by the court.

INSTRUCTIONS TO STAFF 340:2-3-2

Revised 9-15-17

1. (a) Prior to substantiating abuse regarding a child, the Office of Client Advocacy (OCA) investigator considers the:

(1) impact on the child related to the child's age, physical condition, and vulnerability to the abuse;

(2) person responsible for the child of interest (PRFCI's) pattern of abusive behavior; and

(3) duration of the abuse.

(b) Prior to substantiating abuse regarding a child, not otherwise defined in the definitions of this Section under harm or threatened harm, physical abuse, mental injury/emotional abuse, sexual abuse, sexual exploitation, or failure to protect, the factors in (1) and (2) are present.

(1) Any action by a PRFCI that results in death, physical or emotional harm, sexual abuse, or exploitation.

(2) The child is harmed or threatened with substantial harm as the result of the PRFCI's behavior.

2. "Accident" means an event that could not be anticipated or prevented through the exercise of reasonable care.

3. "Physical injury" means temporary or permanent damage or impairment to the child's body by the PRFCI.

4. "Physical abuse" regarding children, means an injury resulting from punching, beating, kicking, biting, burning, or otherwise harming a child. Even when the injury is not an accident, the PRFCI may not have intended to hurt the child.

(A) The injury may result from:

(i) extreme physical punishment inappropriate to the child's age or condition;

(ii) a single episode or repeated episodes that range in severity from significant bruising to death; or

(iii) any action that involves hitting with a closed fist, kicking, inflicting burns, shaking, or throwing the child, even when no injury is sustained, but the action places the child at risk of grave physical danger.

(B) A minor injury on a child older than 10 years of age is not considered physical abuse unless the actions that caused the injury placed the child in grave physical danger. Minor injury means belt marks, slap marks, or

bruises on the child's buttocks, legs, shoulders, or arms that are not extensive, deep, or are located on multiple sites as a result of discipline to a child 10 years of age and older and are located on the legs, shoulders, arms, or buttocks. Minor injury examples may include, but are not limited to:

- (i) fingertip bruising to the child's arm; and
- (ii) belt marks, slap marks, or bruises on the child's buttocks or legs that are not extensive, deep, or are located on multiple sites.

(C) Prior to substantiating physical abuse, the OCA investigator:

- (i) determines if the child sustained a physical injury;
- (ii) assesses the severity of the injury;
- (iii) obtains the explanation given by the PRFCI and child for the injury; and
- (iv) determines the PRFCI's intent when physically disciplining the child.

(D) In general, to substantiate physical abuse the factors in (i) and (ii) are present.

- (i) The child sustains a physical injury inflicted by the PRFCI resulting in temporary or permanent damage to the child's body from extreme physical punishment, punching, beating, kicking, biting, burning, or otherwise harming the child.

- (ii) The injury is inflicted non-accidentally by the PRFCI.

(E) When the PRFCI does not admit inflicting the injury to the child, one or more pieces of evidence in (i) through (iii) is present.

- (i) In the OCA investigator's professional judgment, the injury is clearly consistent with abuse based on credible evidence gathered regarding the cause of the injury.

- (ii) It is the opinion of a licensed health care professional that the injury is consistent with abuse.

- (iii) A witness statement corroborates the child's statement.

(F) Physical abuse may be substantiated without the presence of an injury when the PRFCI admits to an action that in the OCA investigator's professional judgment, based on professional training or on collaborating witness statements, constitutes the potential for substantial injury to the child, such as the child is:

- (i) customarily hit in the face or head or receives extreme physical punishment inconsistent with the explanation; or

- (ii) very young and frail and the alleged abuse described is inappropriate for the child's age or development.

5. Mental injury/emotional abuse is determined with reference to the following definitions and guidelines:

(A) "mental injury/emotional abuse" means an injury to the child's intellectual or psychological capacity:

- (i) as evidenced by observable and substantial impairment in the child's ability to function within the child's normal range of performance and

- behavior with regard to the child's culture; and
- (ii) resulting from a pattern of cruel and unconscionable acts upon the child, statements made or permitted to be made to the child, or within the child's environment, by the PRFCI.
- (B) To substantiate mental injury, one or more of the factors in (i) through (iii) is present.
- (i) The PRFCI demonstrates a pattern of emotionally abusive or neglectful behavior causing the child extreme unpleasant mental reactions, such as fright, horror, grief, shame, or humiliation.
 - (ii) A professional judgment indicating the PRFCI's behavior causes observable and substantial impairment of the child's intellectual or emotional functioning.
 - (iii) There is cumulative documentation of the child's impairment and the PRFCI's behaviors, such as:
 - (I) statements by the child and at least one competent witness;
 - (II) the PRFCI's description of a typical family interaction;
 - (III) the PRFCI's description of an attitude toward the child;
 - (IV) collaborative evidence provided by collateral sources familiar with the family; or
 - (V) the OCA investigator's observation and assessment of the child's behavior and demeanor.
- (C) Mental injury examples include, but are not limited to:
- (i) acts or repeated statements directed at the child that degrade or belittle the child;
 - (ii) exposure to repeated violent or intimidating acts or statements that may or may not be directed at the child, but have a harmful effect on the child;
 - (iii) ignoring or being psychologically unavailable to the child, ranging from a lack of sustained attention to a barrier of silence;
 - (iv) the PRFCI:
 - (I) showing little or no attachment to the child and failing to provide minimum levels of nurturing; or
 - (II) regularly ignoring, rejecting, or cursing the child when the child requires assistance from the PRFCI;
 - (III) confusing the child's gender identity by forcing the child to dress in clothing inappropriate for the gender of the child in order to shame the child;
 - (IV) exposing the child to maladaptive and harmful influences by engaging in serious criminal activity with the full awareness of the child, or by allowing or encouraging the child to engage in illegal acts, which may be considered mental injury/emotional abuse depending upon the child's age and maturity level; or
 - (V) consistently refusing to permit any professional to assess the child's serious emotional or behavioral problems, which may also be

considered medical neglect.

6. **To substantiate "caretaker misconduct," the act or omission by the PRFC:**
 - (a) violates a statute; regulation; written rule, policy, procedure, or directive; or accepted professional standards and practices;**
 - (b) is not found to be abuse or neglect; and**
 - (c) results in, or creates the risk of harm to, a child or a vulnerable adult residing at Greer.**
7. **(a) To substantiate "threat of harm," the factors in (1) or (2) are present.**
 - (1) The PRFCI either intended to act, acted, omitted to act, or knew about conditions that placed the child in imminent or impending danger and exhibited no protective capacities.**
 - (2) The intentions, actions, omissions, or conditions could have resulted in physical injury, sexual abuse, or neglect.**

(b) Examples of threat of harm may include, but are not limited to, the PRFCI:

 - (1) knowingly leaving a child in a potentially dangerous situation or with inappropriate caretakers;**
 - (2) driving while under the influence of drugs or alcohol with the child in the car; or**
 - (3) having the child in the PRFCI's direct care while under the influence of illegal drugs, prescription drugs, or alcohol that impairs his or her ability to care for the child.**
- 7.8. **Heinous and shocking finding of abuse. When OKDHS makes a recommendation for a finding of shocking and heinous abuse to a PRFC:**
 - (1) the OCA investigator notifies the Programs Administrator for Investigations upon the closure of an investigation with a finding of heinous and shocking abuse;**
 - (2) the Programs Administrator or designee places the case on the next scheduled Program Review Committee Docket. The Program Review Committee conducts a program review to determine if the finding is correct per policy;**
 - (3) the Programs Administrator adds the PRFC's name with a finding of heinous and shocking abuse to a centralized location; and**
 - (4) the Programs Administrator or designee is then responsible for providing the PRFC's name to Child Care Services within one-business day of the program review's completion.**
9. **Failure to protect and other neglect regarding a child not otherwise defined.**
 - (1) "Failure to protect" regarding the child, means the PRFCI had knowledge or could have predicted the child would be:**
 - (A) in imminent danger or in a high risk situation; or**
 - (B) with a person who has a history of abusive, neglectful, or violent behavior; and**
 - (C) failed to show regard for the child's need for safety.**
 - (2) In order to substantiate failure to protect regarding a child, the OCA investigator considers:**

- (A) the PRFCI's knowledge of a potential safety threat to the child;
 - (B) the PRFCI's overall attitude regarding the child's need for safety; and
 - (C) if a reasonable adult could have predicted harm to the child in the situation. A reasonable person acts sensibly without serious delay and takes proper, but not excessive precautions.
- (3) To substantiate failure to protect regarding a child, either or both of the factors in (A) and (B) of this paragraph are present.
 - (A) The PRFCI had knowledge or could have predicted the child would be:
 - (i) in an unsafe situation; or
 - (ii) with an individual who had a history of abusive, neglectful, or violent behavior.
 - (B) The PRFCI failed to show attention, care, or consideration for the child's need for safety.
- (4) When someone other than the PRFCI is the perpetrator of the abuse or neglect to the child and:
 - (A) the PRFCI has protected the child and will continue to protect the child, a finding of Ruled Out is made; or
 - (B) it appears the abuse or neglect was attributable to the PRFCI's willful failure to protect the child, a finding of substantiated failure to protect is appropriate.
- (5) Examples of failure to protect may include, but are not limited to:
 - (A) leaving a child in the care of an inappropriate caretaker or a caretaker with whom the PRFCI does not have a long-standing relationship;
 - (B) allowing a child to be left with caretakers who previously harmed a child and the PRFCI had knowledge of the previous abuse;
 - (C) remaining in an environment where a child is being abused and/or neglected by another caretaker; or
 - (D) permitting abuse and/or neglect to occur at the hands of another PRFCI or caretaker.
- (6) For all other forms of neglect not otherwise defined under harm or threatened harm, failure to protect, medical neglect, or lack of supervision prior to substantiating neglect, the OCA investigator considers the:
 - (A) impact on the child related to the child's age, physical condition, and vulnerability to the conditions;
 - (B) PRFCI's pattern of neglectful behavior;
 - (C) duration of the neglect; and
 - (D) resources available to the PRFCI to assist the PRFCI to increase protective capacities.
- (7) To substantiate neglect, the factors in (A) and (B) of this paragraph are present.
 - (A) The PRFCI does not provide basic food, clothing, shelter,

supervision, or essential medical, dental, or behavioral health care necessary for the child's health or safety, due to the PRFCI's behaviors or refusal to use available resources.

(B) The child is harmed or threatened with substantial harm as the result of the PRFCI's behaviors.

(8) Examples of neglect may include, but are not limited to:

(A) dangerously inadequate supervision;

(B) extremely hazardous living conditions;

(C) malnutrition;

(D) failure to obtain or provide critically essential medical, dental, or behavioral health care;

(E) mental injury;

(F) seriously inadequate physical care;

(G) exposure to sexual acts or age-inappropriate material;

(H) failure to protect;

(I) use of a restraint by the PRFCI under circumstances the PRFCI knew or should have known:

(i) was not an authorized use of physical force;

(ii) the type of restraint used is not an approved method;

(iii) the physical surroundings where the restraint was executed would result in a risk of serious injury; or

(iv) the amount of force used was excessive;

(J) abandonment; or

(K) threat of harm.

§ 10. "Medical neglect" means withholding medical treatment or prescription medication of any type that may result in significant harm to the child, when the:

(1) medical treatment is, in the opinion of a licensed health care professional required to safeguard the child from serious medical risk;

(2) child's medical condition is an emergency or a life-threatening condition, constituting such a serious risk to the child's health, safety, or welfare that a reasonable person would procure medical attention immediately and the PRFCI does not do so;

(3) withholding or refusal to administer or supply prescribed medications results in the child needing emergency medical services; or results in the child suffering for a period of time that would have been prevented with proper administration of prescribed medications;

(4) needed medical treatment is withheld from an infant born alive at any stage of fetal development; or is withheld from an infant born with disabilities, when the infant's life-threatening condition will most likely improve or be corrected with medical treatment per Oklahoma Administrative Code (OAC) 340:75-3-430;

(5) To substantiate medical neglect, consultation with licensed health care professionals occurs and either factors (A) and (B) are present or factor (C)

of this paragraph is present.

(A) The child does not receive medical, dental, or behavioral health care for a documented serious health problem that when untreated, may place the child in imminent or impending jeopardy of limitation, incapacitation, or death.

(B) The PRFCI demonstrates a consistent refusal to obtain and follow through with specified medical care, including the supply and administration of prescribed medications.

(C) The child's health was significantly endangered by the PRFCI's failure to obtain medical treatment or supply and administer prescribed medications for the child.

(6) Examples of medical neglect include, but are not limited to, the PRFCI:

(A) not seeking medical attention for a child with an injury, especially to the face, head, neck, stomach, ears, or genitals;

(B) not administering prescribed medications, resulting in the child needing emergency medical care or prolonging suffering;

(C) not seeking medical care when the child is ill for a prolonged period of time; or

(D) consistently not following recommendations made by the child's licensed health care professional regarding treatment and/or care.

9 11. "Lack of supervision" regarding a child is determined using the following guidelines:

(1) Prior to substantiating lack of supervision, the OCA investigator considers the:

(A) child's competence;

(B) environment where the child is left unsupervised;

(C) duration and frequency when the child is left without supervision;

(D) child's accessibility to a capable adult;

(E) PRFCI's expectations of the child while child is alone;

(F) resources available to the PRFCI to improve the supervision plan; and

(G) PRFCI's ability to make safety-related decisions regarding the child.

(2) To substantiate lack of supervision the factors in (A) and (B) of this paragraph are present.

(A) The child is placed in situations beyond the child's developmental ability to manage without competent supervision, guidance, or protection.

(B) The circumstances of the supervision plan are such that a reasonable person would be expected to foresee that the child is placed in danger of physical harm, sexual abuse, or sexual exploitation.

(3) Examples of lack of supervision may include, but are not limited to:

(A) leaving a young child alone without appropriate supervision or access to an appropriate caretaker;

(B) leaving a young child without appropriate supervision in a

potentially dangerous or hazardous environment;

(C) not providing appropriate supervision to young, disabled, or vulnerable children around roadways, bodies of water, or inside vehicles;

(D) allowing young or vulnerable children to freely play at a park, playground, school, and the like without an appropriate caretaker present to supervise; or

(E) leaving a child with physical, intellectual, or emotional disabilities without appropriate access to a capable adult or responsible caretaker to tend to his or her needs.

40 **12.** Neglect of a vulnerable adult may include neglect of a client's financial interests due to a breach of a fiduciary relationship.

44 **13.** Neglect regarding a vulnerable adult may result from lack of supervision appropriate under the circumstances and failure to report client maltreatment per OAC 340:2-3-33.

42 **14.** Sexual abuse includes any sexual activity, including sexual propositioning between the PRFCI and the child or any acts committed or permitted by the PRFCI including rape, sodomy, incest, and lewd or indecent acts or proposals. Sexual abuse and sexual exploitation of a child seldom result in physical evidence and often a child victim, due to the seriously troubling emotional aspects of sexual abuse, does not provide consistent reliable information. The absence of substantiation does not mean that sexual abuse or sexual exploitation did not occur. It means the information obtained during the investigation is not sufficient to substantiate the allegation.

(1) Prior to substantiating sexual abuse or sexual exploitation, the OCA investigator considers:

(A) the statements and behaviors of the child, which are usually the primary sources of documentation of sexual abuse;

(B) the child's ability to describe or demonstrate the specific sexual acts that must be present and supported by the child's description as to the context of the sexual abuse, to substantiate sexual abuse or sexual exploitation based solely on the child's statement and behavior; and

(C) when witnesses in the sexual abuse investigation provide information that supports the child's statement and behavior, the information may be used to support substantiation of sexual abuse.

(2) The aspects explored regarding the child's statement and behavior are listed in (A) through (C).

(A) The child's ability to describe verbally or behaviorally, the:

(i) sexual behavior by exhibiting sexual knowledge beyond what is expected for the child's developmental stage;

(ii) description of the sexual behavior from a child's viewpoint; and

(iii) explicit accounts of sex acts.

(B) A child may be able to provide three or more details about the context of the victimization, such as:

- (i) where it happened;**
- (ii) when it happened;**
- (iii) what the perpetrator said to obtain the child's involvement;**
- (iv) where other individuals were;**
- (v) what the victim was wearing;**
- (vi) what the perpetrator was wearing;**
- (vii) what pieces of the child's clothing were removed;**
- (viii) what pieces of the perpetrator's clothing were removed;**
- (ix) the child's emotional state during the abuse, such as scared, feeling bad, or confused;**
- (x) if the perpetrator said anything about the child or perpetrator telling, or not telling;**
- (xi) if the child told anyone; and**
- (xii) the reactions of the persons the child told.**

(C) The child's statement and behavior is explored regarding the child's affect or emotional reaction when recounting sexual abuse. Common emotional reactions to disclosure include:

- (i) reluctance to disclose;**
- (ii) embarrassment;**
- (iii) anger;**
- (iv) anxiety;**
- (v) disgust;**
- (vi) sexual arousal; or**
- (vii) fear.**

(3) Medical evidence of sexual abuse is seldom found in sexual abuse or sexual exploitation cases. The probability of medical findings is greater with younger children, in acute abuse, and the availability of a skilled, licensed health care professional. Most medical evidence is described as consistent with or suggestive of sexual abuse rather than conclusive.

(4) Complete confession by the perpetrator during the investigation rarely occurs. The perpetrator may:

- (A) admit to some, but not all sexual abuse described by the child victim. Typically, the admission is to lesser acts; or**
- (B) indirectly admit to the sexual abuse without directly stating he or she sexually abused the child. For example, the perpetrator says the child is not lying, but the perpetrator does not admit his or her guilt.**

(5) To substantiate sexual abuse, one or more of the factors in (A) through (C) of this paragraph are present:

- (A) the child's statement and behavior including the ability to describe or demonstrate specific sexual acts and the ability to describe the context of the sexual abuse;**
- (B) medical evidence; or**
- (C) confession of the perpetrator, whether a:
 - (i) complete confession;****

- (ii) partial confession; or
- (iii) indirect admission.

(6) A specific perpetrator does not need to be identified to substantiate sexual abuse or sexual exploitation.

(7) A child's recantation of a previous account of sexual abuse or sexual exploitation is not uncommon and does not automatically indicate the previous findings were inaccurate.

(8) Sexual behaviors that may be cause for concern include, but are not limited to:

- (A) extreme preoccupation with masturbation;
- (B) sexual interaction with peers that is not within normal developmental limits;
- (C) sexual aggression toward younger or more naive children;
- (D) sexual accosting of older children or adults;
- (E) seductive behavior in younger children; and
- (F) demonstration of sexual behavior, knowledge, or statements about sexual activity that indicates the child may have been exposed to adult sexuality or actual sexual molestation. Sexual knowledge beyond what would be expected for a child's normal developmental stage may signal possible sexual abuse, repeated exposure to adult sexuality, exposure to sexually explicit materials, or pornography.

13 15. When making the suspicious injury assessment, consideration is given to the credibility of the source of information as well as the information provided. "He fell in the shower" may be an excuse for abuse. "She tripped on her shoe laces" may be an excuse for lack of supervision. When determining if an injury is suspicious, a licensed health care professional's assessment that an injury is not suspicious is only one factor considered and is not conclusive.

PART 3. INVESTIGATIONS

340:2-3-39. Program Review process for substantiated child abuse or neglect findings of child abuse or neglect in Office of Client Advocacy investigations

Issued 9-15-14 Revised 11-1-21

(a) **Purpose.** ~~The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (DHS) to provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process~~ The Office of Client Advocacy (OCA) program review process serves the following purposes:

- (1) ~~provides individuals with a substantiated finding of child abuse or neglect an opportunity for due process per the 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, Oklahoma Human Services (OKDHS) is required to provide persons who disagree with a substantiated finding of child abuse or neglect with a procedure for appealing and~~

responding to appeals of those findings;

(2) serves as a quality assurance mechanism to assess findings compliance with Office of Client Advocacy (OCA) standards, per Oklahoma Administrative Code (OAC) 340:2-3-36; and ~~■~~ 1

~~(3) provides substantiated findings review by a team of reviewers as designated by the advocate general~~ a procedure for notice and an opportunity for review to an individual and, if the individual is an employee of a facility licensed, certified, operated, or contracted by or with the Office of Juvenile Affairs (OJA), to the facility prior to recording an individual in the Restricted Registry, per Section 405.3 of Title 10 of the Oklahoma Statutes (10 O.S. § 405.3).

(b) **Eligibility criteria.** An individual may request consideration through the program review process when:

(1) the person is a person responsible for the child of interest (PRFCI), per OAC 340:2-3-2 in an investigation involving abuse or neglect allegations; and

(2) the investigation results in a substantiated finding regarding the PRFCI; and

(3) there is no other court action or court order in regard to the alleged child abuse or neglect including pending or completed:

(A) protective order hearings;

(B) civil actions for monetary compensation; or

(C) criminal court proceedings.

(c) **Procedures for the program review process.** The procedures for the program review process are outlined in (1) through (4) of this subsection.

(1) **Notification to PRFCI.** Upon ~~substantiation of~~ substantiating abuse, neglect, or both, the OCA social services inspector notifies the PRFCI of the finding by mailing Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, Request for Program Review, provided the criteria in OAC 340:2-3-39 is met. Forms 04KI077E and 04KI079E are:

(A) mailed by certified mail and regular mail within 10-calendar days of abuse or neglect ~~substantiation of abuse or neglect~~; and

(B) mailed to the PRFCI's last known address.

(i) Form 04KI077E informs the PRFCI of:

(I) any substantiated child abuse or neglect finding in the investigation;

(II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and

(III) demographic information.

(ii) Form 04KI079E specifies:

(I) the PRFCI may request a program review by mailing a request to the OCA Program Review Committee within ~~45-calendar days from the date mailed or~~ 15-calendar days from the date of signature postmark on the ~~green card of the certified mailing envelope~~ containing Form 04KI079E; Request for Program Review; and

(II) the PRFCI has the right to provide additional information through written statements that must be submitted at the same time the request for program review is made;

(III) failure to submit the program review request within 15-calendar days

from the postmark on the envelope containing Form 04KI079E results in the finding becoming final, and also specifies that the PRFCI waives any right to refute this finding in the future, unless good cause is established; and ■ 4 2

(IV) that verification of legal representation must be established when the PRFCI requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney. ■ 3

(2) ~~Conditions of good~~ **Good cause conditions.** A PRFCI is granted a review despite failure to make a timely response, provided good cause is established, including, but not limited to, severe illness or other disabling condition.

~~(3) Response to program review request from PRFCI.~~ When the PRFCI requests a review within the required time, the Program Review Committee chairperson responds to the PRFCI through written notice within 10 calendar days following receipt of the PRFCI's request for review. The Program Review Committee notifies the PRFCI:

~~(A) of the right to provide additional information through written statements that must be submitted within 30 calendar days from the postmark on the envelope containing the notification that the appeal was accepted for review;~~

~~(B) that failure to submit additional information within 30 calendar days results in a waiver of this right, unless good cause is established per OAC 340:3-2-39(c)(2); and~~

~~(C) that verification of legal representation must be established when the PRFCI requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.~~ ■-2

~~(4) Review Procedure.~~ Within 120 ~~calendar~~ 60-calendar days following acceptance of the PRFCI's timely request for a review request acceptance, or a late review request for a review when good cause was established per OAC 340:2-3-39, the OCA Program Review Committee determines whether the substantiated abuse or neglect finding of ~~abuse or neglect~~ meets substantiation protocol per OAC 340:2-3-2. No individual with direct decision making authority regarding a case being reviewed ~~will be~~ is authorized to vote to ensure that there is no conflict of interest.

~~(A) The decision to uphold, modify, or reverse the original abuse or neglect finding of abuse or neglect is determined by reviewing:~~

~~(i) Form 04KI003E, Report to District Attorney, including attachments, and relevant OCA information including OCA history, child welfare history, and referrals; and~~

~~(ii) all written documents submitted by the PRFCI to the OCA Program Review Committee.~~

~~(B) When the Program Review Committee determines the finding failed to meet the substantiation criteria for substantiation,~~ per OAC 340:2-3-36, the committee:

~~(i) determines whether the preliminary decision was based upon lack of credible evidence to support the allegations of child abuse, neglect, or both;~~
or

(ii) determines whether the preliminary decision is based upon a the OCA social service inspector's lack of documentation by the OCA social service inspector; and

(I) ~~When~~ when a lack of documentation exists, the Program Review Committee sends notification to the programs administrator, programs manager and OCA social services inspector that information is missing and requests the information be added to the report or scanned into the KIDS file cabinet On Base;

(II) ~~After~~ after the Program Review Committee's notification ~~by the Program Review Committee,~~ the programs manager reopens and reassigns the investigation;

(III) ~~The~~ the assigned OCA social services inspector adds the additional information to the report within 15-calendar days of the reassignment and sends notification to the Program Review Committee upon completion;

and

(IV) ~~The~~ the Program Review Committee reconsiders the ~~PRFCI appeal review request~~ with the additional information and modifies or upholds the finding as appropriate; and

(iii) modifies the finding, when appropriate, in KIDS.

(I) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the Program Review Committee's chairperson ~~of the Program Review Committee~~ ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added along with the substantiated finding; and

(II) Forms 04KI077E, ~~Notification Concerning Finding(s) of Child Abuse/Neglect,~~ and 04KI-079E, ~~Request for Program Review,~~ are mailed ~~to the PRFCI~~ with the corrected allegations and findings.

(C) ~~The~~ Within 60-calendar days following the acceptance of the review request, the Program Review Committee, provides written notification of the final determination of the finding ~~within 120-calendar days following acceptance of the appellant's request for a review~~ to the:

(i) appellant;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

(vi) district attorney's office in the county where the finding originated;

(vii) Specialized Placement and Partnership Unit, when applicable;

(viii) Child Care Services (CCS), when applicable;

~~(iv)~~(ix) Office of Juvenile Affairs (OJA), when applicable; and

(x) facility administrator. ■ 3 4 & 4 5

(4) Notification of Child Care Services (CCS) of a PRFC's substantiated finding of heinous and shocking abuse.

(A) OCA is responsible for notifying CCS upon completion of a program review when a finding of heinous and shocking abuse is substantiated.

(B) CCS notifies a child care facility owner or operator and the child care resource and referral organization in writing immediately or not later than one-business day after a finding of heinous and shocking abuse is substantiated on a PRFC by DHS, per 10 O.S. § 406.

(d) Procedures for the OJA facility program review. The procedures for the facility program review process are outlined in (1) and (2) of this subsection.

(1) Notification to facility. Within 10-calendar days of a facility employee's substantiation of abuse, neglect, or both, the facility is notified of the finding. The notification informs the facility:

(A) of the substantiated finding;

(B) of the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party;

(C) of the demographic information;

(D) that a program review may be requested by notifying the OCA Program Review Committee within 15-calendar days of the date the facility was notified of the substantiated findings;

(E) that additional information for consideration by the OCA Program Review Committee may be provided with the request for a program review; and

(F) that failure to request a program review in a timely manner may result in the finding becoming final and waives any right for the facility to request consideration of the finding in the future.

(2) Review procedure. The review procedures for a request for program review by an OJA facility follow the procedures found in (c)(4) of this Section.

INSTRUCTIONS TO STAFF 340:2-3-39

Issued 9-15-14 Revised 9-15-21

1. Procedures for the quality assurance program review process. As part of the quality assurance procedures of the Office of Client Advocacy, the program review process is provided to facilities, not otherwise described in 10 O.S. § 405.3 and (a)(3) of this Section, that employ individuals with a substantiated finding of abuse and neglect and who are subject to recording on the Restricted Registry. The notification and program review procedures for facilities described in this ITS are found at (d) of this Section.

2. Notification of program review determination to person responsible for the child of interest (PRFCI).

(1) When to send notification of program review determination to PRFCI. The Office of Client Advocacy (OCA) programs manager assures Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, Request for Program Review, are sent to each PRFCI identified during the investigation, within 10-calendar days after the OCA programs manager approves an investigation with a investigation's substantiated finding is approved by the OCA programs manager.

(2) How to send notification of program review determination to the PRFCI. KIDS generates Forms 04KI077E and 04KI079E. The PRFCI address of the

PRFCI populates to Form 04KI077E and the Form is designed to display the PRFCI's address in a window envelope. Forms 04KI077E and 04KI079E are mailed to the PRFCI.

~~23.~~ **Notification Program review notification to OCA staff of ~~program review.~~** When the Program Review Committee accepts a ~~PRFCI review~~ request for review, an acceptance notification ~~of the acceptance~~ is provided to the previously assigned OCA social service inspector, programs manager, programs administrator, and advocate general, ~~who.~~ These individuals are advised of the need to ensure all necessary documentation has been entered into KIDS referral and investigation screens and that other supporting documentation is stored in the KIDS file cabinet.

~~34.~~ **Final determination regarding investigation finding.**

(1) The Program Review Committee chairperson notifies the appellant, advocate general, programs administrator, programs manager, ~~and~~ OCA social service inspector, the district attorney's office, and appropriate programs staff, such as Child Care Services, Office of Juvenile Affairs (OJA), and the Specialized Placement and Partnership Unit (SPPU) of the final determination regarding whether the substantiated finding is upheld or reversed.

(2) The OCA social service inspector prints the final determination email, files the email in the OCA case record and, when applicable, in the resource record, and scans the email and stores it in the referral file cabinet.

~~45.~~ **Program Review Committee composition.** The Program Review Committee is comprised of:

(1) the programs manager for the OCA Grievance Division who serves as the Appeals Committee chairperson;

(2) a programs manager or designee for the OCA Advocacy Division;

(3) the CPS Child Protection Services Program Unit programs manager or designee;

(4) the programs administrator for the OCA Investigative Division:

(A) is considered a guide to the process; and

(B) does not vote on cases;

(5) an external stakeholder as designated on a rotating basis to be chosen from the following entities:

(A) a programs manager or designee from the ~~Specialized Placement and Partnership Unit (SPPU)~~;

(B) a programs manager or designee from Child Care Services Licensing; and

(C) the advocate general for the ~~Office of Juvenile Affairs~~ OJA or designee.