

COMMENT DUE DATE: February 17, 2022

Date: January 18, 2022

Dawn Leemon, Foster Care Ombudsman 405-760-8560
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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 **PERMANENT**.

SUBJECT:

CHAPTER 2. ADMINISTRATIVE COMPONENTS

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-2 [AMENDED]

Part 3. Investigations

340:2-3-36 [AMENDED]

340:2-3-36.1 [NEW]

340:2-3-39 [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-61 [AMENDED]

340:2-3-62 [REVOKED]

(Reference WFs 22-2B and 21-06)

SUMMARY:

The proposed amendments to Chapter 2, Subchapter 3 create new rules to separate investigative procedures for vulnerable adults from investigative procedures for child abuse or neglect.

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) bring rules into conformity with recently passed statutes; (2) bring rules into conformity with federal regulation; (3) harmonize Office of Client Advocacy (OCA) rules with other Oklahoma Human Services (OKDHS) program's rules; (4) and to clarify and simplify existing rules.

PERMANENT APPROVAL: Permanent rulemaking is requested.

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

**Oklahoma Human Services
Rule Impact Statement**

To: Programs Administrator
Legal Services – Policy

From: John Dewey, Advocate General

Date: December 15, 2021

Re: **CHAPTER 2. ADMINISTRATIVE COMPONENTS**
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-2 [AMENDED]
Part 3. Investigations
340:2-3-36 [AMENDED]
340:2-3-36.1 [NEW]
340:2-3-39 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-61 [AMENDED]
340:2-3-62 [REVOKED]
(Reference WF 22-2B)

Contact: Dawn Leemon (405) 760-8560

A. Brief description of the purpose of the proposed rule:

Purpose.

The proposed amendments to Chapter 2, Subchapter 3 create new rules to separate investigative procedures for vulnerable adults from investigative procedures for child abuse or neglect.

The proposed amendments to Chapter 2, Subchapter 3 amend existing rules to: (1) bring rules into conformity with recently passed statutes; (2) bring rules into conformity with federal regulation; (3) harmonize Office of Client Advocacy (OCA) rules with other Oklahoma Human Services (OKDHS) program's rules; (4) and to clarify and simplify existing rules.

Strategic Plan Impact.

The proposed amendment ensures OCA rules are compliant with the Pinnacle Plan, Child Welfare Services (CWS), and Developmental Disabilities Services (DDS) rules that pertain to child or vulnerable adult safety.

Substantive changes.

Subchapter 3. Office of Client Advocacy
Part 1. Administration

Oklahoma Administrative Code (OAC) 340:2-3-2 is amended to: (1) add definitions created by recent legislation; (2) amend definitions to bring them into conformity with current statutes; (3) amend definitions to bring them into conformity with related definitions in other OKDHS program's rules; and (4) remove unnecessary definitions.

Part 3. Investigations

OAC 340:2-3-36 is amended to: (1) update terminology to reflect current usage; and (2) to remove language related to vulnerable adult maltreatment investigations.

OAC 340:2-3-36.1 is created to separate rules related to vulnerable adult maltreatment investigations from child abuse and neglect investigations.

OAC 340:2-3-39 is amended to bring it into conformity with current statutes by providing a program review process for individuals subject the Restricted Registry who are being investigated by OCA for child abuse or neglect..

Part 7. Grievance and Abuse Review Committee

OAC 340:2-3-61 is amended to remove language relating to child abuse and neglect investigation reviews.

OAC 340:2-3-62 is revoked as it is no longer relevant.

Reasons.

The proposed amendments to the OCA rules update the sections to incorporate new legislative requirements: 10 O.S. § 405.3; 43A O.S. § 10-103; 56 O.S. § 1025.1. If the proposed amendments are not implemented, OCA rules do not conform with statutes.

Repercussions.

If the proposed amendments to OCA rules are not implemented, OCA policy does not conform to statutes.

Legal authority.

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

Permanent approval. Permanent rulemaking approval is requested.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons most likely to be affected by the proposed amendments are vulnerable adults and children being served by CWS. There is no cost associated with implementing these rules.

- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit by the proposed amendments are vulnerable adults and children being served by CWS.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There are no fee changes associated with these proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** The amendments impact OCA investigations regarding abuse or neglect of vulnerable adults and children being served by CWS. There are not costs to OKDHS or to other agencies in implementing or enforcing the proposed rule. The probable cost to OKDHS of printing and distributing the rules is estimated to be less than \$100.
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendments do not have an economic impact on any political subdivision, nor will the cooperation of any political subdivisions be required in implementation or enforcement of the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There are not anticipated adverse effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are neither less costly, nor non-regulatory methods, nor less intrusive methods to achieve compliance.
- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** Implementation of the proposed OCA rules will have a positive impact regarding safety of vulnerable adults and children being served by CWS by ensuring policy conforms with statutes and federal regulations.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** Failure to implement the proposed rules would create non-conformity between statutes and OKDHS rules. This would have a detrimental impact on public safety.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** July 9, 2021; modified December 15, 2021.

**Oklahoma Human Services
Rule Impact Statement**

To: Programs Administrator
Legal Services – Policy

From: John Dewey, Advocate General

Date: December 15, 2021

Re: **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)

Contact: Dawn Leemon (405) 760-8560

A. Brief description of the purpose of the proposed rule:

Purpose.

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.

Strategic Plan Impact.

The proposed amendment ensures Office of Client Advocacy (OCA) rules are compliant with the Pinnacle Plan, Child Welfare Services (CWS) and Developmental Disabilities Services (DDS) rules that pertain to child or vulnerable-adult safety.

Substantive changes.

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.

Reasons.

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.

Repercussions.

If the proposed amendments to OCA rules are not implemented, OCA rules will not conform to statutes.

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.

Permanent rulemaking approval is requested.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons most likely to be affected by the proposed amendments are vulnerable adults and children being served by CWS and DDS. There is no cost associated with implementation of these rules.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit by the proposed amendments are vulnerable adults and children being served by CWS and DDS.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There are no fee changes associated with these proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** The rules impact OCA investigations into child and vulnerable-adult maltreatment. There are not costs to OKDHS or to any other agency in implementing or enforcing the proposed rule. The probable cost to OKDHS of printing and distributing the rules is estimated to be less than \$100.
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendments to the OCA rules do not have an economic impact on any political subdivision, nor will the cooperation of any political subdivisions be required in implementation or enforcement of the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There are no anticipated adverse

effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are neither less costly, nor non-regulatory methods, nor less intrusive methods to achieve compliance.

- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** Implementation of the proposed OCA rules will have a positive impact regarding safety for vulnerable adults and children by ensuring that investigations fully conform with Statutes.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** Failure to implement the proposed rule would prevent OCA from conforming with state statutes related to the Restricted Registry and the Community Services Worker Registry. This would have a detrimental impact on public safety.

- K. The date the rule impact statement was prepared and, if modified, the date modified:** prepared July 9, 2021; modified December 15, 2021.

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

Revised 9-15-17 9-15-22

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

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

~~(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:~~

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

~~(i)(i) pose a risk of inflicting harm to himself or herself or others; or~~

~~(i)(ii) be in the process of leaving a facility without authorization; and~~

~~(i)(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 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 PRFC with regard to a child residing outside of his or her home, other than a child in foster care, means 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 Individuals with Intellectual Disabilities" or "ICF/ID" also known as a or "specialized facility for the intellectually disabled individuals with intellectual disabilities," 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 individuals with intellectual disabilities 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; ■ 8 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 & 11 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" or "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~~ 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~~ 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 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 ■
12 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) Hissom 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 ~~9-15-179-15-22~~

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.

8 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

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340:2-3-36. Office of Client Advocacy (OCA) investigation procedures for cases involving child victims

Revised 9-17-18 9-15-22

(a) Initiation of OCA investigation initiation.

~~(1) Per Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma Department of Human Services (DHS) (OKDHS) OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines, per 10A O.S. § 1-2-105 and Oklahoma Administrative Code (OAC) 340:75-3-130. ■ 1 & 2~~

~~(2) DHS OCA within its investigative scope and authority, per 43A O.S. § 10-105, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult with intellectual disabilities who is a recipient of home and community based waiver services.~~

~~(A) An OCA investigator initiates an investigation by making face-to-face contact with the vulnerable adult, who is the alleged victim.~~

~~(B) The OCA investigator initiates the investigation, as soon as possible, but within five calendar days, and not to exceed 120 hours from the time of the receipt of the referral.~~

~~(C) In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation, as soon as possible, but not to exceed 24 hours from the date of case assignment.~~

~~(D) During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect or is in need of involuntary protective services or court intervention, the OCA investigator promptly makes a referral to Adult Protective Services (APS) and coordinates with APS to ensure the safety of the vulnerable adult, per 43A O.S. § 10-106.~~

~~(b) **Joint investigations with law enforcement are conducted during children and vulnerable adult investigations when possible.**~~ In accordance with 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

~~(1) whenever feasible for investigations involving cases of child sexual abuse, sexual exploitation, physical abuse, and neglect cases;~~

~~(2) to enhance the investigative process and maximize services provided to affected children and families; and~~

~~(3) to consult with other MDT team members, as appropriate. ■ 3~~

~~(c) **Notice of investigation Investigation notice and written description of investigation process provided to person responsible for the child of interest (PRFCI) alleged perpetrator.**~~ At Per 10A O.S. § 1-2-106, at initial contact with a PRFCI an alleged perpetrator who is the subject of an investigation, DHS OCA advises the PRFCI alleged perpetrator of the specific complaint or allegation made against him or her, per 10A O.S. § 1-2-106. If OCA is unable to locate the alleged perpetrator, as soon as possible after initiating the investigation, OCA provides him or her a brief and easily understood written description of the investigation process, per 10A O.S. § 1-2-106.

~~(d) **Written description of the investigation process provided to PRFCI.**~~ When DHS is unable to locate the PRFCI who is the subject of an investigation, DHS as soon as possible after initiating the investigation of the person, provides the person a brief and easily understood written description of the investigation process that includes information, per 10A O.S. § 1-2-106.

~~(e) **Reportable incident regarding vulnerable adult reported by DHS to law enforcement.**~~ The DHS investigation of a vulnerable adult includes notification of the allegation to the local law enforcement agency, per 43A O.S. § 10-105(B)(1).

~~(f) **Notice of investigation provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**~~

~~(1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, DHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, whether or not the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.~~

~~(2) When the vulnerable adult retains capacity to consent to voluntary services and does not want a caretaker or next of kin to receive notification of the investigation, DHS abides by the vulnerable adult's wishes.~~

~~(g) **Facility or provider administrator responsibility to arrange document production, visits, and interviews.**~~ The applicable facility or provider agency

administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator or the administrator's designee who employed the ~~accused PRFCI or VAC~~ alleged perpetrator at the time of the alleged incident informs the employee of:

(A) the OCA investigator's name and phone number;

(B) the investigative process described in this Section;

(C) ~~except as stated in (2) of this subsection,~~ the employee's rights and responsibilities relating to the investigation described in (I) of this Section, except as stated in (2) of this subsection using Form 15IV005E, Rights and Responsibilities of Accused Caretakers; Form 15IV006E, Investigations of Foster Parent Retaliation Complaints — Rights and Responsibilities of Accused DHS Employees; Form 15IV004E, Investigations of Client Maltreatment — Rights and Responsibilities of Accused DHS Employees; Alleged Perpetrators, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice, a copy of which is provided to the OCA investigator ~~except as stated in (2) of this subsection;~~ and

(D) the allegation made against the ~~PRFCI or VAC~~ alleged perpetrator without divulging the reporting party's identity of the reporting party or the substance of the evidence.

(2) When the ~~PRFCI or VAC~~ alleged perpetrator is subject to the Community Services Worker (CSW) Registry ~~maintained by DHS Legal Services,~~ the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in OAC ~~340:100-3-39~~ 340:2-3-39.1.

(A) The facility or provider administrator or the administrator's designee promptly completes Form ~~06PE059E~~ 15IV005E, ~~Rights and Responsibilities of Community Services Worker in an Investigation of Maltreatment~~ and Form 15IV004E per OAC ~~340:100-3-39(e)(2)(C)~~.

(B) The facility or provider administrator or the administrator's designee mails Form ~~06PE059E~~ 15IV005E and Form 15IV004E to the worker when it is not possible to hand-deliver it to the worker who is no longer employed by the provider.

~~(h)~~(e) **OCA access to victims, employees, clients, facilities, files, and other records.**

(1) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a the facility's or provider's client of the facility or provider.

(2) During an OCA investigation, ~~DHS~~ OKDHS, Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center, providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(3) Denial of access may be grounds for a contract termination between ~~DHS~~ OKDHS and the contractor or for other courses of action.

~~(i) **Court order allowing entry to premises, access to and exam of the child, and access to child's medical, psychological, or psychiatric records.** Per 10A O.S. § 1-2-105: ■-4~~

- ~~(1) the investigation may include a medical, psychological, or psychiatric examination of any child in the home or in an out-of-home placement. When admission to the home, school, or any place where the child may be located cannot be obtained, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the PRFCI or the person in charge of any place where the child may be located, to allow entrance for the interview, examination, and investigation;~~
- ~~(2) when the PRFCI does not consent to the DHS requested medical, psychological, or psychiatric examination of the child, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the examination to be made at the times and places designated by the court; and~~
- ~~(3) the investigation may include an inquiry into the possibility the child has a history of mental illness. When the PRFCI does not allow DHS access to requested behavioral health records or treatment plans that may be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, allows DHS by order, access to the records pursuant to terms and conditions prescribed by the court.~~

~~(j) **Court order allowing entry to premises, private access to the vulnerable adult, or records and documentation.** ■-5~~

- ~~(1) Per 43A O.S. § 10-105, the DHS investigation includes:
 - ~~(A) a visit to the home or other place of residence of the person who is the subject of the report;~~
 - ~~(B) a private interview with the person who is the subject of the report; and~~
 - ~~(C) consultation with persons who have knowledge of the circumstances.~~~~
- ~~(2) When in the course of an investigation, DHS is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult, DHS may petition the court for an order allowing entry to the premises or private access to the vulnerable adult, per 43A O.S. § 10-105.~~
- ~~(3) The court makes a finding of probable cause of the vulnerability of the adult before issuing the order.~~
- ~~(4) When documentation, or access to records, or other information relating to the alleged vulnerable person is denied, DHS may petition the court for an order allowing entry or access. The petition states the name and address of the person who is the subject of the report and alleges specific facts sufficient to show the circumstances of the person are in need of investigation.~~
- ~~(5) When it is necessary to forcibly enter the premises, DHS enters, accompanied by a peace officer, per 43A O.S. § 10-105.~~

~~(k)(f) **Discrimination, retaliation, or interference in an OCA investigation prohibited and subject to criminal penalties.**~~

- ~~(1) An employer, supervisor, or administrator, or governing body or entity must not interfere, with the any employee's or other person's reporting obligations or in any manner discriminate, or retaliate against a person who in good faith provides~~

~~information or testifies reports suspected child abuse or neglect or provides testimony in any proceeding involving child abuse or neglect, per 10A O.S. § 1-2-101(B)(4).~~

(2) 21 O.S. § 455 states it is a felony to:

(A) ~~willfully prevent or attempt to prevent, threaten, cause, or procure physical harm through force or fear; any person who makes an abuse or neglect report, pursuant to 10A O.S. § 1-2-101 from giving testimony or producing any record document or other object; or~~

- ~~(i) with intent to prevent a witness from testifying or to alter his or her testimony;~~
- ~~(ii) from providing any record, document, or object in any proceeding; or~~
- ~~(iii) from making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult; or~~

(B) ~~harass, or cause a witness to be harassed because of: threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.~~

- ~~(i) testimony given by that person in any proceeding; or~~
- ~~(ii) making a report of child abuse or neglect or a report of abuse, neglect, or exploitation to a vulnerable adult.~~

(3) ~~A DHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:~~

- ~~(A) intimidating, harassing, or threatening a party to the investigation;~~
- ~~(B) retaliation against an employee for reporting an allegation; or~~
- ~~(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.~~

(4) ~~43A O.S. § 10-104(K) states an employer will not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on an employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. §§ 10-101 et seq.~~

~~(f)(g) **Rights and responsibilities of accused PRFCI or VAC.** The alleged perpetrator's rights and responsibilities of the accused PRFCI or VAC during an OCA investigation are outlined in this subsection, ~~except when the accused is a GSW, whose rights and responsibilities are found at OAC 340:100-3-39.~~~~

(1) **Rights.** During the investigation process, an ~~accused PRFCI or VAC~~ alleged perpetrator has the right to:

- (A) be advised by OCA of the nature of each allegation made against him or her;
- (B) be advised by OCA of the investigative process involving ~~caretaker maltreatment~~;
- (C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;
- (D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a PRFCI's or VAC's his or her rights and responsibilities in OCA investigations, including the right to seek counsel;

- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- ~~(H) be notified in writing by his or her employer of the outcome of the investigation when the investigation involves a VAC; and~~
- ~~(I) be notified in writing by OCA of the outcome of the investigation when the investigation involves a PRFCI.~~

(2) **Responsibilities.** During the investigative process, the ~~accused PRFCI or VAC~~ alleged perpetrator has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation, upon request;
- (B) be available for interviews and accommodate the OCA investigator with scheduling interviews;
- (C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (D) provide pertinent information and respond fully and truthfully to questions.

~~(m)~~(h) **Educational employees.** This subsection applies to an educational employee of a school district providing contract educational services on site at a facility per OAC 340:2-3-2, who is either a witness or the ~~accused PRFCI or VAC~~ alleged perpetrator in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

~~(2) The school principal is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The facility administrator where the alleged incident took place is responsible for client protection.~~

~~(3) OCA investigates educational employees who meet the definition of a caretaker, per OAC 340:2-3-2.~~

~~(n)~~(i) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an ~~accused PRFCI or VAC~~ alleged perpetrator in an OCA investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes of notification and coordination of and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

~~(e)~~(j) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

- (1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;
- (2) medical records;
- (3) photographs ~~and/or~~ or video; ~~and~~
- (4) facility or provider logs; and
- (5) activity and tracking documents. ■ 40 8

~~(p)~~(k) **Investigative interviews.** When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person, other than the OCA investigator and the person interviewed, is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the person interviewed ~~attends~~ may attend an interview only as a silent observer with the advocate general's or the advocate general's designee's prior permission ~~of the advocate general or the advocate general's designee.~~ ■ 40 9 & 44 10

~~(q)~~(l) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, ~~and~~ persons ~~who allegedly were~~ directly or indirectly involved in the allegation, persons with relevant knowledge ~~of relevant information~~, and each ~~caretaker accused of the maltreatment~~ alleged perpetrator. ■ 40 9 & 44 10

~~(r)~~ **Conducting the investigation.** ~~OCA investigators conduct investigations in a professional manner.~~

~~(s)~~(m) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, ~~recording by the person interviewed or anyone in attendance is not permitted to record.~~ Recordings of interviews Interview recordings remain with the OCA investigative file. ~~OCA files and recordings are not public documents.~~ ■ 42 11

~~(t)~~(n) **"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.~~ ■ 6 4 through 9 7

~~(u)~~(o) ~~Presentation of the allegation~~ **Allegation presentation for witnesses later identified as alleged perpetrators.** During an investigation, when a witness is identified as a ~~potential accused caretaker~~ alleged perpetrator, the OCA investigator interviews the witness again to inform the witness that he or she is a ~~potential accused caretaker~~ alleged perpetrator. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator ~~or provider agency~~ of the new allegation and of the potential, additional ~~accused caretaker(s)~~ alleged perpetrators. ~~The OCA investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.~~

~~(v)~~(p) **Opportunity for accused caretakers alleged perpetrators to respond.** Following the alleged perpetrator's initial interview ~~of the accused caretaker~~ alleged perpetrator, if the OCA investigator obtains information the ~~accused caretaker~~ alleged perpetrator did not have an opportunity to respond to, the OCA investigator conducts

another interview with the ~~caretaker~~ alleged perpetrator. The OCA investigator advises the ~~accused caretaker~~ alleged perpetrator of the substance of the new information and provides an opportunity to present a response.

~~(w)(g)~~ **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews the a person who is deaf or hard of hearing or with limited English proficiency, the ~~facility or provider agency that employed the person at the time of the alleged incident~~ OCA provides oral or sign language interpreter services by an independent and qualified interpreter, ~~at no cost to OCA~~. Interpreter services for DHS OKDHS employees and clients are provided per OAC 340:1-11-10.

~~(x)(r)~~ **Scheduling interviews.** To schedule an interview with an ~~accused caretaker~~ alleged perpetrator, the OCA investigator phones, emails, or mails the facility or provider agency administrator, ~~the provider agency administrator~~, or the administrator's designee that employs the ~~caretaker~~ alleged perpetrator. After two documented attempts to schedule an interview, the OCA investigator ~~in writing~~, contacts the facility or provider agency administrator, ~~provider agency administrator~~, or the administrator's designee in writing advising the administrator of his or her responsibility to compel the employee to participate. The OCA investigator notifies Developmental Disabilities Services (DDS) Quality Assurance (~~QA~~) or Child Welfare Services Specialized Placements and Partnerships Unit (~~SPPU~~) staff to ensure compliance with contract provisions. If unsuccessful, the OCA investigator sends a letter by mail to the ~~caretaker's~~ alleged perpetrator's last known address notifying the ~~caretaker~~ alleged perpetrator of the investigation, offering an opportunity to be interviewed, and setting a date and time for a response. The letter informs the ~~caretaker~~ alleged perpetrator of the consequence of failing to participate. The OCA investigative report is completed without the ~~caretaker's~~ alleged perpetrator's statement, and a finding is made based on the available information. For other persons needing to be interviewed, the OCA investigator follows the same protocol for an ~~accused caretaker~~ alleged perpetrator, but the letter only requests his or her participation in an interview. ■ 42 10

~~(y)(s)~~ **Areas(s) of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs ~~the facility or provider agency administrator or the administrator's designee~~ him or her of AOCs. Upon ~~completion of the investigation~~ investigation's completion, all identified AOCs are provided in writing to the facility or agency provider administrator. ■ 20 18

~~(z)(t)~~ **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation(s) investigated, including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number; ■ 14
- (2) a statement of any physical injuries the alleged victims sustained ~~by the alleged victim(s)~~;
- (3) information regarding involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;

- (5) the applicable definition(s) of caretaker misconduct or the maltreatment type of ~~maltreatment~~ at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s), per ~~(aa) and (cc)~~ (x) of this Section;
- (7) a list of the involved parties, titles and roles in the matter, if they were interviewed and, when interviewed, ~~were~~ whether the interviews face-to-face or by phone;
- (8) the name, address, and phone numbers of any interpreter employed during the investigation;
- (9) an explanation of the basis for the finding(s);
- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- ~~(11) AOCs relating to the referral identified during the investigation regarding facility, provider, or DHS practices or procedures that have implications for the safety, health, or welfare of clients but do not rise to the level of abuse or neglect;~~
- ~~(12) a list of relevant documents and records reviewed during the investigation;~~
- ~~(13)(12) a list of attachments to the report provided upon request; and~~
- ~~(14)(13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.~~

~~(aa)(u)~~ **OCA findings and completion time requirements regarding investigations involving a child in DHS custody.** Per 10A O.S. § 1-9-112.1, the OCA investigation of a child abuse or neglect report of ~~abuse or neglect of a child in DHS custody~~ results in a written report, with findings, within 30-calendar days from the referral date of the referral stating one of the findings in (1) through (3) of this subsection. ■ 15 13

~~(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody and based upon credible evidence, that child abuse or neglect occurred.~~

~~(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred.~~

~~(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child in DHS custody, that no child abuse or neglect occurred.~~

~~(bb) OCA findings and completion time requirements regarding investigations involving a child not in DHS custody.~~ OCA investigations involving a child not in DHS custody results in a written report within 30-calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

~~(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody and based upon credible evidence, that child abuse or neglect occurred.~~

~~(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred.~~

~~(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in DHS custody, that no child abuse or neglect occurred.~~

~~(cc) OCA findings regarding investigations involving a vulnerable adult.~~ The OCA investigation of a report of abuse or neglect of a vulnerable adult results in a written

response within 45 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

(1) **"Substantiated"** means the preponderance of the available evidence establishes the alleged maltreatment occurred.

(2) **"Unsubstantiated"** means the preponderance of the available evidence indicates the alleged maltreatment did not occur.

(3) **"Ruled Out"** means no evidence was discovered that indicated the alleged maltreatment occurred;

(dd) **Identification of the responsible VAC.** Regarding investigations involving a vulnerable adult, when the evidence gathered during the investigation is sufficient to substantiate maltreatment of a vulnerable adult but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The administration may be named as responsible VAC when the policies, procedures, or practices adopted by the administration of a facility or provider are the primary factor resulting in the maltreatment of individual clients.

(ee) **Notice of findings of abuse, neglect, sexual abuse, financial exploitation, or financial neglect to a vulnerable adult.**

(1) After completion of the OCA investigation, a findings letter is mailed to the:

(A) alleged VAC;

(B) legal guardian and next of kin; and

(C) facility administrator.

(2) When a facility administrator is named as an accused VAC, a findings letter is mailed to the facility's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.

(ff)(v) **Notice of child abuse or neglect findings of child abuse or neglect to a child.**

(1) After completion of completing the OCA investigation, a findings letter is mailed sent to the:

(A) alleged PRFCI perpetrator; and

(B) facility or provider administrator.

(2) When a facility or provider administrator is named as an accused PRFCI alleged perpetrator, a findings letter is mailed to the facility's or provider's chair of the board of directors or governing entity, or to the director of the state agency operating the facility, as applicable.

(3) The OCA investigator verbally provides the findings to the child victim's parents or legal guardian.

(gg)(w) **Appeal process for substantiated child abuse or neglect findings of child abuse or neglect.** The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires that DHS OKDHS provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect with a procedure for appealing and responding to appeals of those findings, per OAC 340:2-3-39. ■ 17

(hh) **Appeal process for substantiated findings of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse.** The appeal process is provided for VACs who disagree with a substantiated finding of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse, per OAC 100-3-39. ■

~~(ii)(x)~~ **OCA investigation report submitted to Child Welfare Services (CWS).** Per 10A O.S. § 1-9-112.1, in addition to the requirements of 10A O.S. § 1-9-112, the OCA abuse or neglect investigation report concerning a report of abuse or neglect of the child in DHS OKDHS custody is submitted to the CWS director or the director's designee within 30-calendar days from the referral date.

~~(jj)~~ **Dissemination of OCA investigative reports involving VACs not subject to the CSW Registry.**

~~(1) Except as provided in (aa) of this Section and consistent with 43A O.S. § 10-110B, a summary of the final OCA investigation report involving a vulnerable adult client is sent to the administrator of an affected facility or provider agency. The summary is provided within five business days of closure of the investigation. The administrator is responsible for notifying the client of any OCA finding. OCA is also responsible for notifying the accused caretaker and the legal guardian or next of kin of a vulnerable adult of the OCA finding.~~

~~(2) When the referral alleges abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy of the report is sent to the applicable district attorney.~~

~~(3) A copy of the report is also sent to the DHS State Office administrator, ODRS director, or ODMHSAS director, as applicable.~~

~~(4) When a facility or provider administrator is named as an accused VAC in the allegation, OCA forwards the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.~~

~~(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation involves a day treatment program.~~

~~(6) The administrator provides the accused DHS employee who is a VAC, a letter summarizing the allegation and states the OCA finding.~~

~~(7) When client maltreatment by a licensed nurse is substantiated, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.~~

~~(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide (CNA).~~

~~(9) When maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.~~

~~(10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.~~

~~(kk)~~ **Dissemination of OCA investigative reports involving PRFCIs not subject to the Restricted Registry.**

~~(1) A copy of the investigation report is sent to the:~~

~~(A) district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E);~~

~~(B) appropriate DHS State Office administrator, OJA executive director, or the J.D. McCarty Center director, as applicable; and~~

~~(C) Oklahoma State Board of Nursing, when client maltreatment by a licensed nurse is substantiated.~~

~~(2) Form 04KI019E, Notification Concerning Findings of Child Abuse/Neglect, is sent to the DHS-operated facility administrator and applicable DHS director or the director's designee. When an accused PRFCI is a DHS employee who does not work at a DHS-operated facility, the applicable DHS director or the director's designee is responsible for providing the employee with a letter summarizing the allegation and stating the OCA finding.~~

~~(3) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.~~

~~(H)(y)~~ **Dissemination of investigation reports involving Hissom class members (HCM)s and VACs persons subject to the Community Services Worker (CSW) Registry.**

~~(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry, per OAC 340:100-3-39 and 317:35-15 340:2-3-29.~~

~~■ 18 16~~

~~(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104(I).~~

~~(3) OCA sends a an investigation summary of the investigation to the designated leadership within the facility or provider administrator within five OKDHS-business ~~DHS-business~~ days of closure of the investigation closing. Nothing in this subsection ~~will be~~ is construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.~~

~~(4) The investigation report is sent to the DDS director or designee, the Aging Services director or designee, or the Oklahoma Health Care Authority (OHCA) director or designee, as applicable.~~

~~(5) OCA notifies the accused caretaker and legal guardian or next of kin of a vulnerable adult of the investigation finding. When the vulnerable adult is a HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding. ■ 21~~

~~(6) When an investigation involves a vulnerable adult with a guardian, a copy of the completed investigation report must be filed with the court to which the guardian is accountable, per 43A O.S. § 10-105 (D).~~

~~(mm)(z)~~ **Dissemination of reports involving PRFCIs alleged perpetrators subject to the Restricted Registry, Joshua's List.**

~~(1) All OCA investigations involving a substantiated abuse or neglect finding against a PRFCI an alleged perpetrator when the abuse or neglect occurred to a child while the child is in the care of a child care program facility licensed, certified, operated, or contracted with OKDHS or OJA are processed for the Restricted Registry, per OAC 340:110-1-10.1; and OCA submits a copy of the report to the Office of Background Investigations.~~

~~(2) A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment abuse or neglect occurred, per 10A O.S. § 1-2-105(E).~~

~~(3) In addition to (aa) of this Section, when When the victim is a child receiving DDS services, OCA sends a copy of the report to the DDS director or the director's designee.~~

~~(nn)(aa)~~ **Confidentiality of OCA investigative reports confidentiality.**

(1) Persons receiving copies of OCA investigative reports regarding a child are bound by the confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

(2) Persons receiving copies of OCA investigative reports regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(A) Per 43A O.S. § 10-110(A) of the Protective Services for Vulnerable Adults Act, all reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult are confidential and can be disclosed only pursuant to rules promulgated by DHS, by court order, or as otherwise provided in the "Public Disclosure" provisions, per 43A O.S. § 10-110.1 when a VAC is charged with committing a crime that resulted in the death or near death of the vulnerable adult.

(B) All reports, records, and working papers may be disclosed without a court order, upon showing of proper credentials and pursuant to their lawful duties, per 43A O.S. § 10-110(B), to:

(i) any district attorney and their staff upon presentation of proper credentials in the course of their official duties, per 43A O.S. § 10-110 or in the prosecution of crimes against a vulnerable adult;

(ii) the attorney representing a vulnerable adult in a proceeding per the Protective Services for Vulnerable Adults Act;

(iii) employees of a law enforcement agency of this or another state;

(iv) employees of adult protective services agencies of this or another state;

(v) a licensed health care professional, who upon examination or treatment of a vulnerable adult suspects, the vulnerable adult was abused or neglected or any health care or mental health professional involved in the evaluation or treatment of the vulnerable adult;

(vi) a caretaker, legal guardian, custodian, or other family members of the vulnerable adult; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;

(vii) any public or private agency or person authorized by DHS to supervise or provide other services to a vulnerable adult who is the subject of a report or record of abuse or neglect; provided, DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure; and

(viii) any person or agency for research purposes, when the conditions in (I) and (II) are met the person or agency conducting:

(I) such research is employed by, or is under contract with the State of Oklahoma and is authorized by DHS to conduct such research; and

(II) the research ensures all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; and that all identifying information is redacted from documents used in the research when the research is completed.

(C) A summary disclosed, per 43A O.S. § 10-110(B) excludes:

(i) Social Security numbers and financial account numbers of the:

(I) alleged victim;

(II) alleged VAC;

- ~~(III) DHS caseworker;~~
- ~~(IV) vulnerable adults identified in the investigation; and~~
- ~~(V) any other person identified in the record; and~~
- ~~(ii) all identifying information including, but not limited to, names, addresses, and phone numbers of the person(s) who reported the abuse, neglect, or exploitation, and all such identifying information of any other vulnerable adults in the home or facility.~~

~~(D) The OCA investigation report may be provided in lieu of a separately created summary and the identifying information found in this subsection is redacted.~~

~~(E) All investigative records received by DHS and created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.~~

~~(F) Persons seeking redacted identifying information listed in (2)(C) of this subsection contained in the OCA investigative report, in any summary, or other information contained in any other reports, records, or working papers used or developed in the investigation must obtain a court order authorizing release of such information.~~

~~(i) All reports, records, working papers, and all information contained therein remain confidential after the DHS release; and~~

~~(ii) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose. ■~~

~~22~~

~~(oo) **Substantiated findings involving Greer.** The OCA investigation report findings involving client maltreatment at a DHS-operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review, per OAC 340:2-3-62(b) expired and a review was not requested, or the review was timely requested and concluded.~~

~~(1) When Child Welfare Services (CWS) or DDS staff receives a copy of a final OCA investigative report or notice that a review, per OAC 340:2-3-62 is concluded, within 30 calendar days, the applicable director notifies the advocate general in writing of:~~

~~(A) the personnel action taken or to be taken with regard to each accused PRFCI or VAC named in the report;~~

~~(B) the corrective action taken or to be taken regarding AOCs noted in the report; and~~

~~(C) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations for client maltreatment by the worker and, when so, the basis for each such finding, and the personnel action taken in response.~~

~~(2) When a personnel action is or will be taken, the applicable director notifies the DHS Human Resource Management director. When the final OCA finding does not substantiate maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused PRFCI or VAC.~~

~~(3) OCA reports information regarding substantiated findings to the DHS Director.~~

~~(pp) **Findings involving a HCM.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed an accused VAC named in an OCA investigation report. Within 60 calendar days of receipt of a final OCA~~

investigation report, the ~~DDS director or the director's designee~~ notifies the advocate general in writing:

- ~~(1) when personnel action was or will be taken with regard to each accused VAC named in the report; and~~
- ~~(2) of corrective action taken or to be taken regarding AOC noted in the report.~~

INSTRUCTIONS TO STAFF 340:2-3-36

Revised ~~9-17-18~~ 9-15-22

- 1. ~~Initiation of~~ Office of Client Advocacy (OCA) investigation initiation.** In an investigation involving a child an OCA investigator initiates an investigation by making face-to-face contact with the child, within a time frame ~~determined by the Oklahoma Department of Human Services (DHS)(OKDHS)~~ Abuse and Neglect Hotline (Hotline) determines. The timeframe may be extended when extenuating circumstances exist as ~~determined by the OCA investigator's supervisor~~ determines.
- 2. ~~Notification to~~ Notifying and ~~interview of~~ interviewing the child's custodian.** The child's custodian is notified of the alleged abuse or neglect incident. The notification and subsequent ~~custodian~~ interview is documented as a collateral interview in the OKDHS Child Abuse and Neglect Information System (KIDS) investigation screens.
 - (1) When the child is in ~~DHS~~ OKDHS custody, the primary Child Welfare Services (CWS) child welfare (CW) specialist is notified. When a child in ~~DHS~~ OKDHS emergency or temporary custody is injured or removed from the placement due to abuse or neglect, the CW specialist assigned to the case contacts the child's ~~parent~~ parents.**
 - (A)** Notification occurs as soon as possible after the child's condition is determined through direct or indirect means.
 - (B)** When it is not possible to contact the child's family immediately, attempts to contact are resumed the next business day.
 - (2) When the child was placed by the parent, the custodial parent is notified.**
 - (A)** When the alleged child victim is in parental custody, his or her parent is contacted and interviewed first, by phone or in person. Interviews with alleged child victims are conducted only after obtaining the parent's permission, unless contact with the child is necessary to ensure the health, safety, and welfare of the child or other children in the facility, and other efforts to contact the parent ~~were~~ are unsuccessful.
 - (B)** Parent interviews are recorded.
 - (C)** When ~~inadvertent contact with~~ the OCA investigator inadvertently contacts an alleged child victim or child witness ~~is made by the OCA investigator~~ at the facility or shelter, attempts to contact the child's parent are initiated the same day and continue until contact is made or reasonable efforts have been exhausted.
 - (3) When a an investigation referral is accepted ~~for investigation~~ and the child is in tribal custody, OCA notifies the tribal worker. When the tribal worker cannot be identified, the ~~DHS tribal liaison~~ OKDHS tribal region coordinator for the child's identified tribe is notified.**

3. When alleged criminal activity is reported to OCA Intake and law enforcement is notified, this information is noted on Form 15GN001E, Office of Client Advocacy - Intake Referral.
4. ~~Court order allowing OCA access to child victim, records, or other documentation. When the OCA investigator is denied access to the place where the child is located, access to records or treatment plans, or other documentation relevant to the alleged abuse or neglect of a child, the OCA investigator contacts the district attorney. The district attorney may make application to the district court for an order allowing access.~~
5. ~~Court order allowing OCA access to premises, private access to the vulnerable adult, records, and documentation. When the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, DHS Adult Protective Services (APS) is contacted for assistance in petitioning the court for an order allowing access.~~
6. An A safety assessment regarding safety is done in each case and is documented on Form 15IV013E, Plan for Immediate Safety. When the OCA investigator determines a Plan for Immediate Safety (PFIS) is necessary to ensure safety, the OCA investigator contacts the administrator on duty (AOD) to complete the PFIS and works with the facility to ensure the safety threat is reduced. When an agreement cannot be reached to ensure safety; the OCA investigator ~~must contact~~ contacts the supervisor, program manager, or program administrator. The program manager or program administrator ensures CWS Specialized Placement and Partnership Unit (SPPU) program staff ~~and/or~~, Developmental Disability Services (DDS) Quality Assurance staff, or both are notified of the safety concerns and of the inability to reach a mutually acceptable resolution. The PFIS ~~must be~~ is completed, signed, and made part of the file. All PFIS sections ~~must be~~ are completed, and include:
 - (1) the alleged victim's name and date of birth;
 - (2) ~~the a~~ a summary of allegations, and safety concerns;
 - (3) the injury, when observed;
 - (4) photographic evidence ~~taken by the facility or OCA~~ takes, documented with the date and time taken;
 - (5) medical treatment, when any occurs;
 - (6) if the ~~Person Responsible for the Child of Interest (PRFCI) or vulnerable adult caretaker (VAC)~~ alleged perpetrator was removed;
 - (7) if the alleged victim was observed ~~and/or~~, interviewed, or both;
 - (8) if law enforcement was notified;
 - (9) the required actions necessary to protect the child ~~or vulnerable adult~~ in relation to current safety concerns are documented, when safety concerns exist. When there are no safety concerns and immediate protective measures are not necessary Form 15IV013E is documented with an explanation of such determination;
 - (10) specifics as to who has the responsibility for implementing each plan component;
 - (11) how the plan is monitored, by whom, and how often;
 - (12) the OCA investigator's signature and date; and

- (13) the AOD's signature and date.
75. A copy of the PFIS is left with the facility. When a PFIS is unnecessary, the reasons are documented. If, after a PFIS is completed, factors arise that warrant additional safety measures, a new PFIS is established.
86. When the PFIS is in regard to a child, within 24 hours of the creation of or changes to the PFIS, OCA staff notifies the SPPU facility liaison by email, fax, or phone that a PFIS was established or updated and uploads the established/updated PFIS into the KIDS file cabinet.
97. When the PFIS is in regard to a ~~vulnerable adult~~ child receiving DDS services, within one-business day of the creation of or changes to the PFIS, OCA notifies the DDS case manager and OCA advocate, when applicable, by phone, email, or fax that a PFIS was established and emails or faxes a copy of the PFIS to the DDS case manager and OCA advocate, when applicable. ~~OCA staff uploads the established/updated PFIS into the OCA CCM system documents section within one DHS business day.~~
108. Documentary Evidence evidence.
- (1) History search.
 - (A) When there is CW, APS, or OCA history involving adults or children listed in the pending abuse or neglect report ~~of abuse or neglect~~, the history is reviewed prior to initiating the investigation unless:
 - (i) an urgent response is required and there is no time to review prior to initiation; or
 - (ii) it is outside office hours and not possible to access the paper file or KIDS. In these instances, the history is reviewed as soon as possible.
 - (B) Background information includes if the child or adult involved in the abuse or neglect allegations ~~of abuse or neglect~~ are:
 - (i) known to ~~DHS~~ OKDHS and Child Protective Services (CPS);
 - (ii) currently receiving ~~DHS~~ OKDHS or CWS services;
 - (iii) known to another state's CPS; or
 - (iv) known to law enforcement due to reports of domestic violence, substance abuse, or sexual abuse.
 - (2) Additional The OCA investigator reviews and considers additional ~~documentary evidence is reviewed and considered by the OCA investigator to include including:~~
 - (A) written interview and observation records ~~of interviews and observations;~~
 - (B) psychological evidence;
 - (C) law enforcement reports;
 - (D) medical examiner's autopsy report ~~of autopsy;~~
 - (E) public information from sources, such as the Oklahoma State Courts Network (OSCN), the Oklahoma District Court Records (ODCR), and the offender lookup for the Oklahoma Department of Corrections;
 - (F) admission documentation or documents pertaining to a child's admission to a facility;

- (G) child's treatment plan ~~or vulnerable adult's individual plan (IP)~~, to include therapeutic goals;
- (H) history and a physical for the child ~~or vulnerable adult~~, when warranted;
- (I) placement worksheets for ~~DHS~~ OKDHS custody children; and
- (J) placement provider information reports for ~~DHS~~ OKDHS custody children.

(3) Photographs and videos. The OCA investigator:

- (A) obtains a copy of each photograph or video ~~pertinent~~ relevant to an investigation or makes an immediate request to the administrator for time-sensitive material;
- (B) clearly labels the date, time, and by whom the photographs or video were taken; and
- (C) secures the photographs or video in a separate envelope or folder labeled with the investigative case number, ~~name(s) of victim(s)~~ victim names, and other pertinent information.
 - (i) The photographs or videos are attached to the written investigative report and the photographic evidence is referenced in the investigative report.
 - (ii) When photographs necessary to document injuries or conditions that resulted or may result in an injury or serious harm to the person, were not taken by the time the OCA investigator initiates the investigation, the OCA investigator takes photographs.

(4) Facility or provider logs, activity, and tracking documents. The OCA investigator reviews existing ~~DHS~~ OKDHS records pertaining to the facility to obtain background information.

- (A) The OCA investigator or the OCA programs manager (PM) contacts the current Child Care Services specialist, CWS SPPU facility liaison, or ~~Oklahoma Office of Juvenile Affairs (OJA)~~ licensing specialist assigned to the facility or shelter to confer, regarding about the most appropriate way to conduct the investigation.
- (B) Additional information obtained includes ongoing or recent non-compliance areas ~~of non-compliance~~, Corrective Action Plans, or Facility Action Steps, as well as the most recent Continuous Quality Improvement report regarding the facility.

449. Investigative interviews.

- (1) ~~Face-to-face contact is made with the vulnerable adult alleged victim regardless of his or her perceived ability to participate in an interview. The OCA investigator documents efforts to assess the ability of a vulnerable adult victim to communicate and participate in an interview. In making that determination, the OCA investigator reviews psychological evaluations, the individual's plan of care, the individual's protective intervention plan, and behavioral plan. The OCA investigator documents discussions or interviews with collateral witnesses, such as the assigned OCA advocate, guardian, or DDS case manager for the vulnerable adult. When the vulnerable adult has~~

~~an OCA advocate, the OCA advocate must be interviewed as part of the investigation. When possible, the OCA advocate participates in the interview of the vulnerable adult to assist the OCA investigator to effectively communicate with the alleged victim.~~

~~(2) Interviews. Interviews are conducted face-to-face. When a special circumstance exists that prevents a face-to-face interview, an OCA investigator obtains prior approval from the OCA investigator's supervisor to conduct a phone or virtual interview. When permission to conduct a phone or virtual interview is granted, the ~~phone~~ interview is recorded and conducted in a manner to verify the interviewee's identity of the person interviewed. Absent special circumstances, the OCA investigator interviews each alleged victim, accused PRFCI, VAG alleged perpetrator, and eyewitness witness is interviewed by the OCA investigator in person. Examples of special circumstances are:~~

~~(A) the interviewee moved to another state;~~

~~(B) the interviewee moved to a location other than where the majority of the witnesses are located, necessitating additional travel expense and time for a single interview;~~

~~(C) the interviewee refuses to be interviewed other than by phone and a good faith effort was made to overcome resistance;~~

~~(D) the interviewee is a collateral witness not anticipated to possess information regarding a material issue in the case when no credibility issues are anticipated. For example a DDS case manager was interviewed to obtain routine information from the client's file; or~~

~~(E) when the advocate general determines there is an OCA investigator shortage as ~~determined by the advocate general;~~~~

~~(F) when the advocate general or OKDHS leadership determines public health circumstances necessitate the use of phone or virtual interviews.~~

~~(3)(2) Request for another OCA investigator to assist the assigned OCA investigator with interview. The OCA investigator assigned to the case conducts each interview needed to complete the investigation.~~

~~(A) An OCA investigator may request supervisory approval for another OCA investigator to conduct an interview when the interviewee lives over 100 miles from the assigned OCA investigator's duty station.~~

~~(B) When the interviewee is an alleged victim, an accused PRFC or VAG alleged perpetrator, or an eyewitness to the events, the OCA investigator exhausts reasonable efforts ~~for the assigned OCA investigator to conduct the interview are exhausted~~ before approval for another OCA investigator is granted.~~

~~(C) When approval is granted for another OCA investigator, the assigned OCA investigator provides the assisting OCA investigator with all relevant information to conduct an effective interview and listens to the interview recording.~~

~~(4)(3) Injuries. When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents the apparent injury and obtains pertinent medical documentation, including photographic evidence.~~

When the nature and circumstances of the ~~child or vulnerable adult's~~ child's injury ~~create~~ creates a concern for the child's ~~or vulnerable adult's~~ continuing safety, the OCA investigator promptly informs the persons with authority to resolve the matter, who are listed in (A) ~~—(C)~~ and (B) of this paragraph.

~~(A) When a Hissom class member (HCM) or client who is receiving DDS services has an injury that creates a safety concern, the OCA investigator contacts the DDS case manager or staff or the OCA advocate or staff, and remains on the scene.~~

~~(B) In other cases, the~~ The OCA investigator contacts the OCA programs administrator for investigations or an OCA supervisor for guidance.

~~(C)~~(B) Law enforcement is contacted when warranted if it is believed that a crime has been committed.

~~(5)~~(4) Emergency situations. During an investigation when the OCA investigator becomes aware of facts creating a concern for the continuing safety of the alleged victim, the OCA investigator takes appropriate action warranted by the situation.

~~(A) When a HCM or DDS client is involved, the OCA investigator contacts the DDS case manager or staff or the OCA advocate or staff as warranted.~~

~~(B)~~ The OCA investigator remains on the scene as needed to ensure the client's protection and safety.

~~(C)~~(B) In other cases, the OCA investigator contacts the OCA investigations programs administrator or an OCA supervisor for guidance.

~~(D)~~(C) The OCA investigator contacts law enforcement, when warranted.

~~(E) The OCA investigator contacts APS when protective or involuntary services and/or court intervention appears warranted.~~

4210. Interview protocols.

(1) Attorney requests to be present during an OCA interview. A person interviewed by OCA interviews may arrange for an attorney to be on-call in the attorney's office during the interview allowing the person to call the attorney during the interview for legal advice. The attorney representing the interviewee may be granted permission to be present when the attorney agrees to the conditions in (A) through ~~(H)~~(I) of this paragraph.

(A) The interview is conducted in a ~~DHS~~ an OKDHS building or in a neutral location selected by the OCA investigator selects and is not conducted in the attorney's office.

(B) The attorney and the interviewee understand the attorney does not say anything during the interview other than to request a break to consult privately with the interviewee or as otherwise provided in these Instructions to Staff.

(C) The attorney does not make an opening statement or closing argument, ask questions, or make any suggestions, directly or indirectly, about how the interviewee answers a question other than to advise him or her to decline to answer the question based on the Fifth Amendment or a recognized privilege.

- (D) The attorney does not audio or video record the interview ~~by audio or video~~ and may not obtain a copy of the OCA investigator's recording ~~made by the OCA investigator~~ except per Oklahoma laws relating to OCA investigation record confidentiality.
- (E) The attorney acknowledges on the record at the beginning of the interview that anything said during the interview is protected by federal and state confidentiality law ~~relating to confidentiality~~, and that he or she will not violate the confidentiality of communications during the interview.
- (F) The attorney is not provided discovery in connection with the interview and is not supplied with information, such as documents and reports relating to the case.
- (G) The request to have an attorney present does not delay the interview absent good cause. Interviews take place within seven-to-ten business days after the OCA investigator contacts the interviewee to schedule the interview. The attorney accommodates the OCA investigator's schedule.
- (H) At any time during the interview, the interviewee or the attorney may ask to be excused to consult privately.
- (I) The OCA investigator may terminate the interview if the attorney or witness fails to abide by the conditions outlined herein.
- (2) When possible, all other witnesses are interviewed prior to interviewing the ~~accused PRFCI or VAC~~ alleged perpetrator.
- (3) ~~When the allegation regards a child, initial~~ Initial contact is made with the facility or provider agency administrator to obtain preliminary information, arrange document production, and interviews; ~~and~~ Initial contact does not constitute his or her formal interview. The initial contact is documented as an interview in the KIDS system, in addition to the subsequent formal interview. Interview protocol order is:
- (A) the alleged child victim;
 - (B) the other child or adult who witnessed the incident or has information related to the incident to include the reporting party;
 - (C) the alleged perpetrator;
 - (D) the facility or provider agency administrator;
 - (E) the child's custodian, ~~DHS~~ OKDHS CWS specialist, or person who placed the child in the facility;
 - (F) the facility contract liaison; and
 - (G) custodians of other children identified, who are interviewed as collaterals.
- (4) Modifying investigation protocol related to children. Investigation protocol is followed unless good cause exists for modification.
- (A) ~~Modifications are approved by the~~ The OCA PM or supervisor approves modifications and they may include:
- (i) altering the required order ~~in which~~ interviews are conducted in when:
 - (l) emergency conditions exist that require immediate action to protect the child(ren). Protocol is reinstated after the child is safe;

- (II) additional information is necessary to identify alleged victims or PRFCIs alleged perpetrators;
- (III) the emotional atmosphere is volatile, for example, people are emotionally immobilized or violent; or
- (IV) key persons are not available; or
- (ii) omitting required interviews with individuals other than the child victim or alleged perpetrator when:
 - (I) all allegations are obviously and unquestionably false;
 - (II) it is determined the report was made in bad faith; or
 - (III) the report was a result of an absolute misperception of the child's condition or circumstances; and
 - (IV) no information collected from the child victim and alleged perpetrator indicate a possible safety threat; or
- (iii) substituting required face-to-face interviews with a phone or virtual interview when the interviewee's circumstance or location makes him or her otherwise unavailable for a face-to-face interview.
- (B) A modification and the reason for the modification to the investigation protocol is documented in Summary/Recommendation Section of Form 04KI003E, Report to DA district attorney. PM or supervisor approval of the modification is documented in the contacts section of the investigation in KIDS.
- (C) Modification requests not listed require consultation with and approval from the OCA Investigative Unit programs administrator.
- ~~(5) When the allegation regards a vulnerable adult, initial contact is made with the provider agency administrator and interview protocol order is:~~
 - ~~(A) the alleged victim;~~
 - ~~(B) the OCA advocate, when assigned;~~
 - ~~(C) other individual(s) who witnessed the incident or have information related to the incident, including the reporting party;~~
 - ~~(D) the provider agency administrator;~~
 - ~~(E) the DDS case manager;~~
 - ~~(F) the guardian; and~~
 - ~~(G) the alleged perpetrator.~~
- ~~(6) When an OCA advocate is assigned to a vulnerable adult, communication with the OCA advocate takes place prior to the interview with the vulnerable adult, when possible. The purpose is to determine current circumstances, communicative abilities, and any concerns the team has regarding the vulnerable adult's care.~~
- (7) The OCA investigator informs interviewees about the investigative process.
- ~~(8)~~(6) Providing an allegation notice of allegation to the PRFCI, VAC alleged perpetrator, legal guardian, or next of kin.
 - (A) The OCA investigator verbally informs each accused ~~PRFCI or VAC~~ alleged perpetrator of the substance of the allegation(s).
 - (B) The OCA investigator discloses only the nature of information learned during the investigation.

(C) The reporter's identity of the reporter is never disclosed during the investigation.

(D) During an investigation, when a witness subsequently is identified as a potential ~~accused PRFCI or VAC~~ alleged perpetrator, the OCA investigator interviews the witness again to inform the witness that he or she is a potential ~~accused PRFCI or VAC~~ alleged perpetrator.

(E) The witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.

(F) The OCA investigator informs the facility or provider administrator of the new allegation and, of the new potential ~~accused PRFCI or VAC~~ alleged perpetrator.

~~(9)~~(7) Opportunity for ~~accused PRFCI or VAC~~ an alleged perpetrator to respond. During the interview with an ~~accused PRFCI or VAC~~ alleged perpetrator, the OCA investigator provides the ~~PRFCI or VAC~~ alleged perpetrator an opportunity to respond to the allegation(s) and to supplement information previously provided in written statements. Following the alleged perpetrator's initial interview ~~of the accused PRFCI or VAC~~, when the OCA investigator obtains information that the ~~accused PRFCI or VAC~~ alleged perpetrator did not have an opportunity to respond, the OCA investigator conducts another interview with the ~~PRFCI or VAC~~ alleged perpetrator. The OCA investigator advises the ~~accused PRFCI or VAC~~ alleged perpetrator of the substance of the new information and provides an opportunity to present a response.

~~(10)~~(8) Scheduling OCA investigation interviews.

(A) The OCA investigator phones, emails, or mails the facility or provider administrator or the administrator's designee that employs the ~~PRFCI or VAC~~ alleged perpetrator, to schedule an interview with the ~~accused PRFCI or VAC~~ alleged perpetrator.

(B) After two documented, unsuccessful attempts to schedule an interview, the OCA investigator contacts the facility or provider administrator to require the administrator to compel the employee to participate.

(C) When a facility or provider administrator denies access to employees, clients, facilities, locations, files, or records of any nature pertaining to the investigation, OCA notifies ~~DHS~~ OKDHS DDS Quality Assurance, CWS SPPU, CCS, OJA staff, or the appropriate contracting or licensing entity to report the refusal to cooperate.

(i) When unsuccessful, the OCA investigator mails a letter to the ~~PRFCI's or VAC's~~ alleged perpetrator's last known address notifying the ~~PRFCI or VAC~~ alleged perpetrator of the investigation, offers an opportunity for an interview, and sets a date and time for a response.

(ii) The letter informs the ~~PRFCI or VAC~~ alleged perpetrator the consequence of failure to participate is that the OCA investigative report is completed without his or her statement and a finding is made based on available information.

(D) When other interviews are needed, the OCA investigator follows the same process to set an interview as is followed to interview an accused PRFCI or VAC alleged perpetrator, except the letter only requests the person's participation in an interview.

~~(41)~~(9) Failure to appear for scheduled interviews. When a person fails to appear for a scheduled interview without good cause, as ~~determined by the advocate~~ general determines, the OCA investigator completes the investigative report without interviewing the person. The investigative report includes an explanation of why the interview was not conducted, including documented efforts to interview the person.

~~(42)~~(10) Documenting the child-related investigation in KIDS. The DHS OKDHS Child Abuse and Neglect Information System (KIDS), is a permanent, computerized record-keeping system ~~maintained by CWS~~ maintains, per 10A O.S. § 1-2-108 that requires the maintenance of all reports of child abuse, sexual abuse, and neglect made, per provisions of the Oklahoma Children's Code. The OCA investigator documents in KIDS:

(A) each attempted contact with the alleged child victim or other family member;

(B) a contact titled, Face-to-Face NA Child Death, when the alleged child victim is deceased; and

(C) each completed contact in the appropriate KIDS screen.

~~43~~11. Audio recording the interview. During each interview and while recording, the OCA investigator explains to the interviewee ~~while recording that the interview~~ he or she is being recorded. OCA ~~Investigators~~ investigators include in the written report the time, date, and location of each interview conducted ~~in the written report~~. ~~In the written investigative report, the investigation clearly~~ and identifies any persons other than the OCA investigator and the interviewee, who are present in the interview and explains their purpose for attending.

~~44~~12. Corrected or expanded allegations. When the original allegation was factually inaccurate with regard to date, time, place, or individual identity, the written investigative report includes the allegation as corrected or expanded as a result of the investigation.

~~45~~13. ~~Review of OCA investigative reports~~ review. The OCA supervisor monitors timely completion of each OCA investigation report and regularly discusses with the OCA investigator referrals assigned to him or her pending over 30-calendar days. The OCA investigator submits the written report to the OCA supervisor for review. The OCA supervisor reviews the investigative report for completeness, accuracy, ~~appropriate~~ appropriateness of the analysis, proper inclusion of areas of concern (AOC), timeliness, and acceptable presentation.

~~46~~14. When the OCA investigator ~~confirms~~ substantiates an alleged perpetrator's abuse or neglect by an accused PRFCI, ~~knows the PRFCI~~ alleged perpetrator is not within OCA's purview to investigate, and ~~that the~~ circumstances give cause to believe a the alleged perpetrator's child of the PRFCI may be the an abuse or neglect victim of ~~abuse or neglect by the PRFCI~~, the OCA investigator makes a CWS referral, per 10A O.S. § 1-2-101.

~~1715. Appeal process for substantiated child abuse or neglect findings of child abuse and neglect. Upon receipt of the findings letter from OCA, the PRFCI alleged perpetrator may request a reconsideration committee review of the finding by Reconsideration Committee. The reconsideration committee consists of personnel not involved in any other stage of the investigation.~~

~~1816. Appeal process for substantiated findings of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse. Upon receipt of the findings letter from OCA, the VAC may request a review of the finding by Reconsideration Committee personnel not involved in any other stage of the investigation. After completion of an investigation involving a confirmed finding of abuse, neglect, or exploitation of a vulnerable adult by a community services worker (CSW), an OCA administrative programs officer sends completed Form 04KI003E, to DHS Legal Services (LS). DHS LS makes a decision to pursue CSW Registry placement. When DHS LS makes a decision not to pursue CSW registry placement, LS sends a Determination Letter to the CSW and one to the OCA administrative programs officer. When CSW Registry placement is not pursued, OCA takes no further action regarding the reconsideration process. When DHS LS makes a decision to pursue CSW Registry placement, LS sends an email to an OCA administrative programs officer to proceed with the CSW Registry process. The OCA administrative programs officer sends the CSW a letter regarding a summary and results of the investigation within three business days. The CSW is notified in the letter of the intent to place his or her name on the CSW Registry and the right to request reconsideration. The letter advises the CSW that the request for reconsideration and written objection must be postmarked within 10 calendar days of receipt of the notice. The CSW is advised that failure to request reconsideration absent good cause renders the finding final and the right to further administrative or judicial review is waived, which authorizes placement of the CSW's name on the CSW Registry. The letter is sent by regular and certified mail with return receipt requested to the CSW. When a CSW requests reconsideration, the OCA administrative programs officer notifies the program review unit of the request for reconsideration. Reconsiderations are reviewed by a committee of the following persons: a PM or the PM's designee from APS, a PM or the PM's designee from DDS, a PM from the OCA advocacy program, and the OCA programs field representative of intake, grievance, and program review. The administrative programs officer emails Form 04KI003E, accompanying documentation, and the CSW's written objection to the committee members, who review the information and, render a decision based on individual votes. Reconsideration Committee members vote to affirm the investigation, modify the investigation, reverse the investigation, or remand the investigation for further investigation. The committee, within five business days of receipt, issues a decision. When there is voting tie, the OCA PM for intake, grievance, and program review votes to break the tie. The OCA program review unit monitors the reconsideration process and collects committee members' votes regarding requested reconsiderations. The program review unit forwards results to the OCA administrative programs officer. The~~

~~administrative programs officer notifies the community service worker in writing of the final decision of the Reconsiderations Committee and advises him or her of his or her right to an administrative hearing. The letter is sent to the CSW by regular and certified mail with return receipt requested. Reconsideration process for substantiated findings of child abuse and neglect for an accused caretaker who is also a Community Services Worker. Upon receipt of the findings letter from OCA, an alleged perpetrator who is a CSW may request a review of the finding by Reconsideration Committee personnel pursuant to the process set forth in OAC 340:2-3-29.1.~~

~~1917. Final investigative finding.~~

~~(1) An OCA investigative finding in a case not involving a CSW or Medicaid personal care assistant (MPCA) is final upon Grievance and Abuse Review Committee (GARC) and DHS Director review, per Oklahoma Administrative Code (OAC) 340:2-3-62; or when a timely request for GARC review was not received when the report does not contain a substantiated finding. In cases with a substantiated finding, the report is final when the review process is complete, per 340:2-3-39.~~

~~(2) In cases involving a CSW or MPCA, the finding is final when the investigation report does not contain a confirmed substantiated finding. In cases involving a CSW or MPCA and a confirmed substantiated finding, the OCA finding is final upon completion of when the review process is complete, per OAC ~~340:100-3-39~~ 340:2-3-39.1.~~

~~2018. AOC notification. During the investigation the assigned OCA investigator phones or emails the applicable facility or provider administrator or the administrator's designee and informs the facility or provider administrator or the administrator's designee him or her of any identified AOCs. Upon completion of When the investigation is complete, all identified AOCs are provided in written documentation to the facility or agency. Within five DHS-business OKDHS-business days of the completion of an investigation involving a child, OCA staff emails or faxes the AOC notification to CWS SPPU program staff.~~

~~21. Notification of legal guardian and next of kin. Upon completion of an investigation an OCA PM sends a letter to the vulnerable adult's guardian and next of kin, when known, explaining that:~~

~~(1) DHS found insufficient evidence of abuse, neglect, financial exploitation, financial neglect, or verbal abuse; or~~

~~(2) there appears to be probable cause to suspect the existence of abuse, neglect, financial exploitation, financial neglect, or verbal abuse; and~~

~~(3) DHS concerns regarding the vulnerable adult.~~

~~2219. Storage OCA investigative records storage and retention of OCA investigative records. OCA maintains the original report, supporting documents, and applicable recordings per the DHS OKDHS records management and disposition schedule. Access to investigative files and records is limited to OCA employees on a need-to-know basis. Requests by DHS OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general.~~

340:2-3-36.1. Office of Client Advocacy (OCA) investigation procedures for cases involving vulnerable adults

Issued 9-15-22

(a) Initiation of OCA investigation initiation

(1) Oklahoma Human Services (OKDHS) OCA within its investigative scope and authority, per Section 10-105 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105), conducts a prompt and thorough investigation upon receiving a report of maltreatment of a vulnerable adult who is a recipient of home and community based waiver services, State Plan Personal Care (SPPC) services, living choice waiver services, medically fragile waiver services, or a Hissom Class Member, or a resident of the Robert M. Greer Center (Greer).

(A) An OCA investigator initiates an investigation when they make face-to-face contact with the vulnerable adult, who is the alleged victim.

(B) The OCA investigator initiates the investigation as soon as possible within five-calendar days, not to exceed 120 hours from the time of the referral receipt.

(C) In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation as soon as possible, but not to exceed 24 hours from the date of case assignment.

(D) During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect or needs involuntary protective services or court intervention, the OCA investigator promptly makes a referral to the Adult Protective Services (APS) and coordinates with APS to ensure the vulnerable adult's safety, per 43A O.S. § 10-106.

(b) Joint investigations with law enforcement. Investigations regarding vulnerable adults are conducted jointly with law enforcement when possible.

(c) Reportable incident regarding vulnerable adults. The OKDHS vulnerable adult investigations include allegation notification to the local law enforcement agency, per 43A O.S. § 10-105. ■ 1

(d) Investigation notice provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.

(1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, OKDHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, regardless of whether the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.

(2) When the vulnerable adult retains the capacity to consent to voluntary services and does not want a caretaker or next of kin to receive an investigation notification, OKDHS abides by the vulnerable adult's wishes.

(e) Facility or provider administrator responsibility to arrange document production, visits, and interviews. The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator or the administrator's designee who employed the accused VAC at the time of the alleged incident informs the employee of:

(A) the OCA investigator's name and phone number;

- (B) the investigative process described in this Section;
- (C) the employee's rights and responsibilities relating to the investigation described in (j) of this Section, using Form 15IV005E, Rights and Responsibilities of Accused Caretakers, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice, a copy of which is provided to the OCA investigator; and
- (D) the allegation made against the VAC without divulging the reporting party's identity or the substance of the evidence.

(2) When the VAC is subject to the Community Services Worker (CSW) Registry maintained by OKDHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in Oklahoma Administrative Code (OAC 340:2-3-29.1).

(A) The facility or provider administrator or the administrator's designee promptly completes Form 15IV005E and Form 15IV004E, per 340:100-3-30.

(B) The facility or provider administrator obtains the CSW's signature of the CSW and gives a copy to the OCA investigator.

(f) OCA access to victims, employees, clients, facilities, files, and other records.

(1) Per 43A O.S. § 10-105, the OKDHS investigation includes:

(A) a visit to the home or other place of residence of the person who is the subject of the report;

(B) a private interview with the person who is the subject of the report; and

(C) consultation with persons who have knowledge of the circumstances.

(2) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.

(3) During an OCA investigation, OKDHS, Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (OMDHSAS), providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(4) Denying access may be grounds for a contract termination between OKDHS and the contractor. ■ 2

(g) Discrimination, retaliation, or interference in an OCA investigation prohibited.

(1) 21 O.S. § 455 states it is a felony to:

(A) willfully prevent or attempt to prevent any person who make an abuse or neglect report, pursuant to 43A O.S. § 10-104 from giving testimony or producing any record document or other object; or

(B) threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.

(2) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denying access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104 states no employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 et seq.

(h) **Rights and responsibilities of accused VAC.** The rights and responsibilities of the accused VAC during an OCA investigation are outlined in this subsection.

(1) **Rights.** During the investigation process, an accused VAC has the right to:

(A) be advised of the nature of each allegation made against him or her;

(B) be advised by OCA of the investigative process involving caretaker maltreatment.

(C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;

(D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the reporting party's identity;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a his or her rights and responsibilities in OCA investigations, including the right to seek counsel;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the investigation's outcome when the investigation involves a VAC.

(2) **Responsibilities.** During the investigative process, the accused VAC has the responsibility to:

(A) prepare written statements and reports relevant to the investigation, upon request;

(B) be available for interviews and accommodate the OCA investigator with scheduling interviews;

(C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions.

(i) **Educational employees.** This subsection applies to an educational employee who is either a witness or the accused VAC in an OCA investigation.

(1) The facility or provider agency administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) OCA investigates educational employees who meet the caretaker definition, per this subsection.

(j) **Contractor's employees.** This subsection applies to an employee of a provider or facility contractor when the employee is an accused VAC in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative review, advising the employee of his or

her rights and responsibilities related to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(k) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

(1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(2) medical records;

(3) photographs, videos, or both;

(4) facility or provider logs;

(5) activity and tracking documents;

(6) the vulnerable adult's Individual Plan (IP); and

(7) all relevant Developmental Disability Services (DDS) documents and forms. ■ 6

(l) **Investigative interviews.** When there is an alleged injury, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the OCA investigator and the person interviewed is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the interviewee attends an interview only as a silent observer with the advocate general's or the advocate general's designee's prior permission. ■ 7

(m) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who are allegedly directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each accused VAC. ■ 8 & 9

(n) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, the interviewee and anyone in attendance is not permitted to record the interview. Interview recordings remain with the OCA investigative file. ■ 10

(o) **"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 vulnerable adult. ■ 3 & 5

(p) **Allegation presentation for witnesses later identified as accused VACs.** During an investigation, when a witness is identified as a potential accused VAC, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused VAC. At the time, the witness is informed of the substance of the evidence and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator of the new allegation and of the potential additional accused VAC. The OCA investigator advises the accused VAC of the substance of the new information and provides an opportunity to present a response.

(r) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews a person who is deaf or hard of hearing or who has limited English proficiency, OCA provides interpreter services by an independent

and qualified interpreter. Interpreter services for OKDHS employees and clients are provided, per OAC 340:1-11-10.

(s) **Areas of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs him or her of AOCs. When the investigation is completed, all identified AOCs are provided in writing to the facility or agency provider administrator. ■ 15

(t) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

(1) the referral allegation investigated, including date, time, and location of the alleged incident, the date the allegation was reported to OCA, and the assigned OCA case number; ■ 11

(2) a statement of any physical injuries the alleged victim sustained;

(3) information regarding involved law enforcement entities;

(4) a recommendation for the district attorney to consider further investigation;

(5) the applicable definition of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the findings, per (x) of this Section;

(7) a list of the involved parties, titles, and roles in the matter, if they were interviewed and, when they were interviewed, whether the interviews were face-to-face by phone, or virtual;

(8) the name, address, and phone numbers of any interpreter employed during the investigation;

(9) an explanation of the basis for the findings;

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) a list of relevant documents and records reviewed during the investigation;

(12) a list of attachments to the report provided upon request; and

(13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section. ■ 12

(u) **OCA investigation findings regarding a vulnerable adult.** The OCA investigation of a report of vulnerable adult maltreatment of a vulnerable adult results in a written report with findings, within 60-calendar days from the referral date.

(v) **Identification of the responsible VAC.** When the evidence gathered during the investigation is sufficient to substantiate vulnerable adult maltreatment but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The facility or provider administration may be named as responsible VAC when the policies, procedures, or practices the administration adopted are the primary factor resulting in individual client maltreatment of individual clients.

(w) **Notice of maltreatment findings to a vulnerable adult.**

(1) After the OCA investigation is complete a findings letter is mailed to the:

(A) accused VAC;

(B) legal guardian and next of kin; and

(C) facility or provider administrator.

(2) When a facility or provider administrator is named as an accused VAC, a findings letter is mailed to the facility's or provider's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.

(x) Appeal process for substantiated maltreatment findings. The appeal process is provided for accused VACs who disagree with a substantiated maltreatment finding, per OAC 340:2-3-39.1. ■ 12 & 13

(y) Dissemination of OCA investigation reports involving VACs not subject to the CSW Registry.

(1) Except as provided in (4) of this subsection and consistent with 43A O.S. § 10-110, a summary of the final OCA investigation report involving a vulnerable adult is sent to the administrator of an affected facility or provider agency. The summary is provided within five-business days of the investigation's closure. The administrator is responsible for notifying the accused VAC and the vulnerable adult's legal guardian or next of kin of the OCA finding.

(2) When the referral alleges maltreatment, a copy of the report is sent to the applicable district attorney.

(3) A copy of the report is also sent to the DDS State Office administrator, ODRS director, or ODMHSAS director, as applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, the OCA forwards a summary of the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation involves a day treatment program.

(6) When the accused VAC is an OKDHS employee, the relevant state office administrator provides the accused VAC with a letter summarizing the allegation and stating the OCA finding.

(7) When there is a substantiated finding of client maltreatment by a licensed nurse, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation. This includes but is not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide.

(9) When there is substantiated maltreatment by a guardian, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

(z) Dissemination of investigation reports involving Hissom Class Members (HCMs) and VACs subject to the CSW Registry.

(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry, per OAC 340:2-3-29.1. ■ 13 & 14

(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104.

(3) OCA sends an investigation summary to the facility or provider administrator within five-business days of the investigation's closure. Nothing in this subsection will be construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.

(4) The investigation report is sent to the DDS director or designee, the Community Living, Aging, and Protective Services director or designee, or the Oklahoma Health Care Authority director or designee, as applicable.

(5) OCA notifies the vulnerable adult's accused caretaker and legal guardian or next of kin of the investigation finding. When the vulnerable adult is an HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding. ■ 16

(6) When an investigation involves a vulnerable adult with a legal guardian, a copy of the completed investigation report must be filed with the court the guardian is accountable to, per 43A O.S. § 10-105.

(aa) Confidentiality of OCA investigative reports. Persons receiving copies of OCA investigative reports or summaries regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(1) All investigative records OKDHS receives that are created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(2) Person seeking redacted identifying information, per 43A O.S. § 10-110, contained in the OCA investigative report, in any summary or other information contained in any other reports, records, or working papers used or developed in the investigation, must obtain a court order authorizing the information's release of such information.

(A) All reports, records, working papers, and all information contained therein remain confidential after the OKDHS release; and

(B) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose. ■ 17

(bb) Substantiated findings involving Greer. OCA investigation report findings involving vulnerable adult maltreatment at Greer are considered final when the report does not contain a substantiated finding. In cases with a substantiated finding, the report is final upon completion of the review process, per 340:2-3-39.

(1) When DDS staff receives a copy of a final OCA investigative report or notice that a review, per OAC 340:2-3-39.1, is concluded, within 30-calendar days, the applicable director notifies the advocate general in writing of:

(A) the personnel action taken or to be taken with regard to each accused VAC name in the report;

(B) the corrective action taken or to be taken regarding AOCs notice in the report; and

(C) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations of the worker's maltreatment of a vulnerable adult. If such confirmations exist, the basis for each such finding, and the personnel action taken in response.

(cc) Findings involving an HCM. This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused VAC

named in an OCA investigation report. The DDS director or the director's designee notifies the advocate general in writing:

(1) when personnel action was or will be taken with regard to each accused VAC named in the report; and

(2) of corrective action taken or to be taken regarding AOCs noted in the report.

(dd) **Ten-day staffing.** Ten days after the investigation is initiated, the provider has the right to request an investigative status update. The provider makes the request to the the assigned OCA Investigator's programs manager or programs supervisor. The ten-day staffing includes the provider administrator, the programs manager or programs supervisor and the OCA investigator. OCA provides an update as to the progress and there is an information exchange between the provider and OCA to identify any ongoing safety issue to barriers to concluding the investigation. ■ 18

INSTRUCTIONS TO STAFF 340:2-3-36.1

Issued 9-15-22

- 1. When alleged criminal activity is reported to the Office of Client Advocacy (OCA) Intake and law enforcement is notified, this information is noted on Form 15GN001E, Office of Client Advocacy – Intake Referral.**
- 2. Court order allowing OCA access to premises, private access to the vulnerable adult, records, and documentation. When the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services (APS) is contacted for assistance in petitioning the court for an order allowing access.**
- 3. An assessment regarding safety is done in each case and is documented on Form 15IV013, Plan for Immediate Safety. When the OCA investigator determines a plan for immediate safety (PFIS) is necessary, the OCA investigator contacts the administrator on duty (AOD) to complete the PFIS and works with the facility to ensure the safety threat is reduced. When an agreement cannot be reached to ensure safety, the OCA investigator contacts the supervisor, program manager, or program administrator. The program manager or program administrator ensures Developmental Disability Services (DDS) quality assurance (QA) staff are notified of the safety concerns and of the inability to reach a mutually acceptable resolution. The PFIS is completed, signed, and made part of the file. All PFIS sections are completed and include:**
 - (1) the alleged victim's name and date of birth;**
 - (2) the summary of allegations and safety concerns;**
 - (3) when one is observed, the injury;**
 - (4) the photographic evidence the facility or OCA takes, documented with the date and time taken;**
 - (5) medical treatment, when any occurs;**
 - (6) if the vulnerable adult caretaker (VAC) was removed;**
 - (7) if the alleged victim was observed or interviewed;**
 - (8) if law enforcement was notified;**
 - (9) when safety concerns exist, the required actions necessary to protect the vulnerable adult in relation to current safety concerns are documented;**

- (10) specifics as to who has the responsibility for implementing who implements each plan component;
 - (11) how the plan is monitored, by whom, and how often;
 - (12) the OCA investigator's signature and date; and
 - (13) the AOD's signature and date.
4. A copy of the PFIS is left with the provider. When a PFIS is unnecessary, the reasons are documented. If, after a PFIS is completed, factors arise that warrant additional safety measures, a new PFIS is established.
5. Within one-business day of the creation of or changes to the PFIS, OCA notifies the DDS case manager and OCA advocate, when applicable, by phone, email, or fax that a PFIS was established. OCA also emails or faxes a copy of the PFIS to the DDS case manager and OCA advocate, when applicable. OCA staff uploads the established updated PFIS into the OCA client contact manager (CCM) system documents section within one-business day.
6. Documentary evidence.
- (1) History search.
 - (A) When APS or OCA history involving adults exists, this information is documented in the investigation. The history is reviewed prior to initiating the investigation unless:
 - (i) an urgent response is required and no time is available to review prior to initiation; or
 - (ii) it is outside office hours and it is not possible to access the paper file or OKDHS databases. In these instances, the history is reviewed as soon as possible.
 - (B) Background information includes if the adult involved in the abuse or neglect allegations is:
 - (i) known to OKDHS;
 - (ii) currently receiving OKDHS services; or
 - (iii) known to law enforcement due to reports of domestic violence, substance abuse, or sexual abuse.
 - (2) The OCA investigator reviews and considers additional documentary evidence to include:
 - (A) written records of interviews and observations;
 - (B) psychological evidence;
 - (C) law enforcement reports;
 - (D) medical examiner's report of autopsy;
 - (E) public information from sources, such as the Oklahoma State Courts Network, the Oklahoma District Court Records, and the offender look-up for the Oklahoma Department of Corrections;
 - (F) admission documentation or documents pertaining to a vulnerable adult's admission to a facility;
 - (G) a vulnerable adult's individual plan and protective intervention plan (PIP), if applicable;
 - (H) the vulnerable adult's history and a physical, when warranted.
 - (3) Photographs and videos. The OCA investigator:

(A) obtains a copy of each photograph or video pertinent to an investigation or makes an immediate request to the administrator for time-sensitive material;

(B) clearly labels the date, time, and by whom the photographs or video were taken; and

(C) secures the photographs or video in a separate envelope or folder labeled with the investigative case number, victim name, and other pertinent information.

(i) The photographs or videos are attached to the written investigative report and the photographic evidence is referenced in the investigative report.

(ii) When photographs necessary to document any injuries or to document conditions that resulted in or may result in an injury or serious harm to the person, were not taken by the time the OCA investigator initiates the investigation, the OCA investigator takes the photographs.

(4) Facility or provider logs, activity, and tracking documents. The OCA investigator reviews existing OKDHS records pertaining to the provider or facility to obtain background information.

7. Investigative interview.

(1) Initial matters. Face-to-face contact is made with the alleged vulnerable adult victim regardless of his or her perceived ability to participate in an interview. The OCA investigator documents efforts to assess the vulnerable adult victim's ability to communicate and participate in an interview. In making that determination, the OCA investigator reviews the vulnerable adult victim's psychological evaluations, care plan, PIP, and behavioral plan. The OCA investigator documents discussions or interviews with collateral witnesses, such as the vulnerable adult's OCA advocate, guardian, or DDS case manager. When the vulnerable adult has an OCA advocate, the OCA advocate must be interviewed as part of the investigation. When possible, the OCA advocate participates in the vulnerable adult's interview to assist the OCA investigator to effectively communicate.

(2) Interviews. Interviews are conducted face-to-face. When a special circumstance exists that prevents a face-to-face interview, an OCA investigator obtains prior approval from his or her supervisor to conduct a phone or virtual interview. When permission to conduct a phone or virtual interview is granted, the interview is recorded and conducted in a manner to verify the interviewee's identity. Absent special circumstances, the OCA investigator interviews each alleged victim, accused VAC, and eyewitness in person. Examples of special circumstances are:

(A) the interviewee moved to another state;

(B) the interviewee moved to a location other than where the majority of the witnesses are located, necessitating additional travel expense and time for a single interview;

(C) the interviewee refuses to be interviewed other than by phone or virtually and a good faith effort was made to overcome resistance;

- (D) the interviewee is a collateral witness not anticipated to possess information regarding a material issue in the case when no credibility issues are anticipated. For example, a DDS case manager was interviewed to obtain routine information from the client's file;
- (E) when there is an OCA investigator shortage as determined by the advocate general; or
- (F) public health circumstances necessitate the use of phone or virtual interviews as determined by the Advocate General or OKDHS leadership.
- (3) Request for another OCA investigator to assist the assigned OCA investigator with interview. The OCA investigator assigned to the case conducts each interview needed to complete the investigation.
- (A) An OCA investigator may request supervisory approval for another OCA investigator to conduct an interview when the interviewee lives over 100 miles from the assigned OCA investigator's duty station.
- (B) When the interviewee is an alleged victim, an accused VAC, or an eyewitness to the events, reasonable efforts for the assigned OCA investigator to conduct the interview are exhausted before approval for another OCA investigator is granted.
- (C) When approval is granted for another OCA investigator, the assigned OCA investigator provides the assisting OCA investigator with all relevant information to conduct an effective interview and listens to the interview recording.
- (4) Injuries. When an injury is alleged, the OCA investigator or other appropriate person observes, notes, and documents the apparent injury and obtains pertinent medical documentation, including photographic evidence. When the nature and circumstances of the vulnerable adult's injury create a concern for the vulnerable adult's continuing safety, the OCA investigator promptly informs the persons with authority to resolve the matter, who are listed in (A) through (C) of this paragraph.
- (A) When a Hissom Class Member (HCM) or client who is receiving DDS services has had an injury that creates a safety concern, the OCA investigator contacts the DDS case manager or staff, or the OCA advocate or staff, and remains on the scene.
- (B) In other cases, the OCA investigator contacts that OCA programs administrator for investigations or an OCA supervisor for guidance.
- (C) Law enforcement is contacted when warranted.
- (5) Emergency situations. During an investigation, when the OCA investigator becomes aware of facts creating a concern for the alleged victim's continuing safety, the OCA investigator takes appropriate action as the situation warrants.
- (A) When an HCM or DDS client is involved, the OCA investigator contacts the DDS case manager or staff or the OCA advocate or staff as warranted.
- (B) The OCA investigator remains on the scene as needed to ensure the client's protection and safety.
- (C) In other cases, the OCA investigator contacts the OCA investigations programs administrator or an OCA supervisor for guidance.

(D) The OCA investigator contacts law enforcement, when warranted.

(E) The OCA investigator contacts APS when protective or involuntary services or court intervention appears warranted.

8. Interview protocols.

(1) Attorney requests to be present during an OCA interview. A person interviewed by OCA may arrange for an attorney to be on-call in the attorney's office during the interview allowing the person to call the attorney during the interview for legal advice. The attorney representing the interviewee may be granted permission to be present when the attorney agrees to the conditions in (A) through (H) of this paragraph. The interview is terminated if these conditions are not followed.

(A) The interview is conducted in an OKDHS building or in a neutral location the OCA investigator selects and is not conducted in the attorney's office.

(B) The attorney and the interviewee understand the attorney does not say anything during the interview other than to request a break to consult privately with the interviewee or as otherwise provided by Instructions to Staff #8 of this section.

(C) The attorney does not make an opening statement or closing argument, ask questions, or make any suggestions, directly or indirectly, about how the interviewee answers questions other than to advise him or her to decline to answer the question based on the Fifth Amendment or a recognized privilege.

(D) The attorney does not audio or video record the interview and may not obtain a copy of the OCA investigator's recording investigator except per Oklahoma laws relating to OCA investigation record confidentiality.

(E) The attorney acknowledges on the record at the beginning of the interview that anything said during the interview is protected by federal and state confidentiality laws and that he or she will not violate the confidentiality of communications during the interview.

(F) The attorney is not provided discovery in connection with the interview and is not supplied with information, such as documents and reports relating to the case.

(G) The request to have an attorney present does not delay the interview absent good cause. Interviews take place within seven to ten business days after the OCA investigator contacts the interviewee to schedule the interview. The attorney accommodates the OCA investigator's schedule.

(H) At any time during the interview, the interviewee or the attorney may ask to be excused to consult privately.

(2) When possible, all other witnesses are interviewed prior to interviewing the accused VAC.

(3) Initial contact is made with the provider agency administrator and interview protocol order is the:

(A) alleged victim;

(B) OCA advocate, when assigned;

- (C) other individuals who witnessed the incident or have information related to the incident, including the reporting party;
 - (D) provider agency administrator;
 - (E) DDS case manager;
 - (F) guardian; and
 - (G) alleged perpetrator.
- (4) When an OCA advocate is assigned to a vulnerable adult, communication with the OCA advocate takes place prior to the interview with the vulnerable adult, when possible. The purpose is to determine current circumstances, communicative abilities, and any concerns regarding the vulnerable adult's care.
- (5) The OCA investigator informs interviewees about the investigative process.
- (6) Providing notice of allegation to the VAC, legal guardian, or next of kin.
- (A) The OCA investigator verbally informs each accused VAC of the substance of the allegations.
 - (B) The OCA investigator discloses only the nature of information learned during the investigation.
 - (C) The reporting party's identity is never disclosed during the investigation.
 - (D) During an investigation, when a witness is identified as a potential accused VAC, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused VAC.
 - (E) The witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.
 - (F) The OCA investigator informs the facility or provider administrator of the new allegation and, of the new potential accused VAC.
- (7) Opportunity for accused VAC to respond. During the interview with an accused VAC, the OCA investigator provides the VAC an opportunity to respond to the allegations and to supplement information previously provided in written statements. Following the initial interview of the accused VAC, when the OCA investigator obtains information that the accused VAC did not have opportunity to respond, the OCA investigator conducts another interview with the VAC. The OCA investigator advises the accused VAC of the substance of the new information and provides an opportunity to present a response.
- (8) Scheduling OCA investigation interviews.
- (A) The OCA investigator phones, emails, or mails the provider administrator or the administrator's designee that employs the VAC, to schedule an interview with the accused VAC.
 - (B) After two documented, unsuccessful attempts to schedule an interview, the OCA investigator contacts the facility or provider administrator to require the administrator to compel the employee to participate.

(C) When a facility or provider administrator denies access to employees, clients, facilities, locations, files, or records of any nature pertaining to the investigation, OCA notifies OKDHS DDS QA or the appropriate contracting or licensing entity to report the refusal to cooperate.

(i) When unsuccessful, the OCA investigator mails a letter to the VAC's last known address notifying to notify the VAC of the investigation, offers an opportunity for an interview, and sets a date and time for a response.

(ii) The letter informs the VAC the consequence of failure to participate is that the OCA investigative report is completed without his or her statement and a finding is made based on available information.

(D) When other interviews are needed, the OCA investigator follows the same process to set an interview as is followed to interview an accused VAC, except the letter only requests the person's participation in an interview.

(9) Failure to appear for scheduled interviews. When a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the OCA investigator completes the investigative report without interviewing the person. The investigative report includes an explanation of why the interview was not conducted, including documented efforts to interview the person.

9. Audio recording the interview. During each interview, the OCA investigator explains to the interviewee while recording that the interview is being recorded. OCA investigators include the time, date, and location of each interview conducted in the written report. In the written investigative report, the investigation clearly identifies any persons other than the OCA investigator and the interviewee, who are present in the interview and explains their purpose for attending.

10. Corrected or expanded allegations. When the original allegation is factually inaccurate with regard to date, time, place, or individual identity, the written investigative report includes the allegation as corrected or expanded as a result of the investigation.

11. Review of the OCA investigative reports. The OCA supervisor monitors timely completion of each OCA investigation report and regularly discusses with the OCA investigator referrals assigned to him or her pending over 30-calendar days. The OCA investigator submits the written report to the OCA supervisor for review. The OCA supervisor reviews the investigative report for completeness, accuracy, appropriateness of the analysis, proper inclusion of areas of concern (AOC), timeliness, and acceptable presentation.

12. Appeal process for substantiated findings of vulnerable adult abuse, neglect, financial exploitation, financial neglect, or verbal abuse is found at OAC 340:2-3-39.1.

13. Final investigative finding. An OCA investigative finding is final when the report does not contain a substantiated finding, or in cases of a substantiated finding, the report is final when the reconsideration process, per OAC 340:2-3-29, is completed.

14.AOC notification. During the investigation, the assigned OCA investigator phones or emails the applicable facility or provider administrator or the administrator's designee of any identified AOCs. When the investigation is completed, all identified AOCs are provided in written documentation to the facility or provider agency.

15. Legal guardian and next of kin notification. When an investigation is completed, an OCA PM sends a letter to the vulnerable adult's guardian and next of kin, when known, explaining that:

(1) OKDHS found insufficient evidence of abuse, neglect, financial exploitation, financial neglect, or verbal abuse; or

(2) OKDHS found probable cause to suspect the existence of abuse, neglect, financial exploitation, financial neglect, or verbal abuse; and

(3) OKDHS concerns regarding the vulnerable adult.

16.OCA investigative records storage and retention. OCA maintains the original report, supporting documents, and applicable recordings per the OKDHS records management and disposition schedule. Access to investigative files and records is limited to OCA employees on a need-to-know basis. OKDHS employees' requests for access or copies of OCA investigative reports are made to the advocate general.

17.When OCA intake staff sends a disposition notice to the provider to indicate an investigation has been assigned, the disposition notice includes notification of the provider's right to request a status update ten calendar days after the investigation is initiated. The provider makes the request to the OCA investigator's program manager or program supervisor. The program manager or program supervisor will document the ten-day staffing as a contact in CCM.

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 9-15-22

(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~~ an alleged perpetrator in an investigation involving abuse or neglect allegations; and

(2) the investigation results in a substantiated finding regarding the ~~PRFCI~~ alleged perpetrator; 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 alleged perpetrator program review process.** The procedures for the alleged perpetrator program review process are outlined in (1) through (4) of this subsection.

(1) **Notification to ~~PRFCI~~ alleged perpetrator.** Upon ~~substantiation of~~ substantiating abuse, neglect, or both, the OCA social services inspector notifies the ~~PRFCI~~ alleged perpetrator 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:

■ 2

(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~~ alleged perpetrator's last known address.

(i) Form 04KI077E informs the ~~PRFCI~~ alleged perpetrator 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~~ alleged perpetrator may request a program review by mailing a request to the ~~OCA Program Review Committee~~ 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 alleged perpetrator 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~~ alleged

perpetrator 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 alleged perpetrator 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 ~~an alleged perpetrator~~ 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: ■-3

~~(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~~ program review committee determines whether the substantiated child 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. ■ 4 & 5

(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~~ 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~~ on a lack of credible evidence to support the child abuse or neglect allegations of ~~child abuse, neglect, or both;~~ or

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

(I) ~~When~~ when a lack of documentation exists, the ~~Program Review Committee~~ program review committee sends notification to the programs administrator, programs manager and OCA social services inspector that information is missing ~~and~~. The program review committee 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 is received,~~ 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~~ program review committee upon completion; ~~and~~

(IV) ~~The~~ the ~~Program Review Committee~~ 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,~~ Form 04KI079E 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~~ alleged perpetrator;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector; ■ 5

(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;

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

(x) facility or agency provider administrator. ■ 3 & 4

(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 ensures Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, Request for Program Review, are sent to each PRFCI alleged perpetrator identified during the investigation, within 10-calendar days after the OCA investigator's programs manager approves an investigation with a 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 alleged perpetrator's**~~

address of the PRFCI populates to Form 04KI077E and is designed to display the PRFCI's alleged perpetrator'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 program review committee accepts a PRFCI review request for review, 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, and the Specialized Placement and Partnership Unit 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. In the event the regularly appointed, voting members of the committee yield an equal number of votes for and against the substantiated finding, the Program Review Committee Chairperson casts the deciding vote.~~
- ~~45. Program Review Committee review committee composition. The Program Review Committee program review committee is comprised of:~~
- ~~(1) the programs manager a designee for the OCA Grievance Division who serves as the Appeals Committee program review 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 or designee for the OCA Investigative Division who:~~
- ~~(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 or designee.~~
- ~~(6) a programs manager or designee from Child Care Services; and~~
- ~~(7) the advocate general for the Office of Juvenile Affairs or designee.~~

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-61. Grievance and Abuse Review Committee (GARC)

Revised ~~9-15-14~~ 9-15-22

- (a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section 1-9-112 of Title 10A of the Oklahoma Statutes (O.S. 10A § 1-9-112).
- (b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this Part unless the context clearly states otherwise.
- (c) **Purpose.** This Section establishes an administrative review committee to review:
- (1) ~~findings regarding allegations of abuse, neglect, verbal abuse, and exploitation investigated by the Office of Client Advocacy (OCA) per OAC 340:2-3-32 through 340:2-3-37;~~
 - (2) ~~findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to O.S. 10A § 1-9-117 and investigated by OCA per OAC 340:2-3-38;~~
 - (3) unresolved contested grievances of Oklahoma Department of Human Services (DHS) (OKDHS) clients listed in OAC 340:2-3-45(a)(2) and processed per OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;
 - (4)(2) unresolved grievances of foster parents filed per O.S. 10A § 1-9-120 and processed per OAC 340:2-3-50; and
 - (5)(3) an issue affecting the care and treatment of:
 - (A) ~~a client in a DHS operated facility; or~~
 - (B) a minor in DHS OKDHS custody placed in a private or public facility, ~~a public facility not operated by DHS OKDHS, or in a foster home.~~
- (d) **GARC composition.**
- (1) GARC is composed of at least three voting members ~~appointed by the DHS OKDHS Director~~ appoints. The DHS OKDHS Director designates one member to serve as chair and appoints substitute members as needed.
 - (2) The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.
- (e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. ~~At least three business days before a meeting, the advocate general provides each GARC member with materials relevant to matters to be considered at the meeting.~~ GARC members review the agenda material prior to the GARC meeting.
- (f) **GARC meetings.**
- (1) The advocate general or designee coordinates GARC meetings. This includes:
 - (A) arranging the dates for GARC meetings;
 - (B) establishing the agenda for GARC meetings;
 - (C) eight-calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the GARC meeting date of the GARC meeting;
 - (D) transmitting agenda material to GARC members three-business days prior to a meeting;
 - (E) recording the GARC findings and recommendations;
 - (F) preparing GARC reports in consultation with GARC members;

- (G) granting time extensions ~~of time~~ for good cause shown; and
- (H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the meeting's purposes ~~of the meeting~~.

(3) At the GARC meeting's conclusion ~~of the GARC meeting~~, the matter is taken under advisement and the GARC chair informs interested parties of the results ~~by means of GARC's~~ in a written report.

340:2-3-62. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports [REVOKED]

Revised 9-15-14

~~(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, or exploitation, with the exception of cases involving a community services worker processed per Oklahoma Administrative Code (OAC) 340:100-3-39.~~

~~(b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis of the review and the reasons review is requested. Supporting documentation for the request for review is included with the request.~~

~~(1) With regard to investigations involving a facility under contract or license with the Office of Juvenile Affairs OJA, with the exception of OJA-operated secure facilities, a request for GARC review may be made by the OJA advocate general or the executive director.~~

~~(2) With regard to investigations involving DHS-operated facilities, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the DHS Director. When a request is made by a facility administrator, he or she sends a copy to the request to the applicable state office administrator.~~

~~(3) With regard to investigations involving facilities that contract with DHS, a request for GARC review may be made by the applicable state office administrator, or the DHS Director.~~

~~(4) With regard to investigations involving a Hissom class member that result in a not substantiated finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services (DDS) director or designee.~~

~~(5) With regard to investigations involving a facility operated by the Oklahoma Department of Rehabilitation Services (ODRS), a request for GARC review may be made by the ODRS director.~~

~~(6) With regard to all other investigations conducted per OAC 340:2-3-32, including investigations involving a DHS employee not working at a DHS-operated facility, a request is made by the applicable state office administrator or the DHS Director.~~

~~(7) The advocate general also can request GARC review.~~

~~(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.~~

~~(1) GARC does not consider prior unsubstantiated allegations.~~

~~(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and heir designees may attend the GARC meeting. The OCA investigator involved in a case being review, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the GARC chair.~~

~~(3) When an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.~~

~~(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general or a state office administrator.~~

~~(d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.~~

~~(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.~~

~~(2) GARC's recommendation as to any action needed to protect the victim and other clients~~

~~(3) Any areas of concern identified during GARC's review of the case regarding facility or DHS practices or procedures.~~

~~(e) **DHS Director's review.** The advocate general submits to the DHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.~~

~~(1) Within 15 business days of receipt of the GARC report, the DHS Director decides whether to:~~

~~(A) adopt GARC's findings;~~

~~(B) adopt GARC's findings with modifications;~~

~~(C) return the matter to GARC for further consideration; or~~

~~(D) reverse GARC's finding.~~

~~(2) When the DHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.~~

~~(3) OCA notifies in writing all interested parties of the result of the DHS Director's review.~~

~~(f) **Routing the results of the DHS Director's review.**~~

~~(1) In cases involving DHS operated facilities, the advocate general sends a copy of the GARC report and the results of the DHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two business days of receipt of the DHS Director's decision, the administrator informs each accused employee of the result of the DHS Director's review.~~

~~(2) In cases involving private or non DHS operated public facilities, the advocate general sends a copy of the GARC report, and the results of the DHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation,~~

~~the GARC report and results of the DHS Director's review are sent to the chair of the facility's board of directors.~~

~~(g) **Response to results of the DHS Director's review.** After a receipt of the results of the DHS Director's review of an OCA investigation involving a DHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action per OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the DHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.~~