

**COMMENT DUE DATE: February 3, 2023**

**Date: January 3, 2023**

**Tammy Hall, Child Support Services**

**Holli Kyker, Programs Administrator**

**Brandi Smith, Policy Specialist**

**405-522-0022**

**405-982-2217**

**405-693-6542**

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:**

Subchapter 28. Office of Administrative Hearings: Child Support

340:2-28-4.2 [AMENDED]

**(Reference WF 23-2D)**

**SUMMARY:**

The proposed amendments to Chapter 25 Subchapters 1 and 5 amend the rules to: (1) implement rule changes recommended during the annual Child Support Services (CSS) policy review process; (2) implement Governor mandated rule reduction measures; (3) amend legal authorities as necessary; and (4) make non-substantive changes to improve rule clarity.

**Permanent rulemaking approval is requested**

**LEGAL AUTHORITY:**

Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B); 42 U.S.C. § 1396k; Chapter 7, Subchapter IV, Part D; 50A U.S.C. §§ 501 through 596;

45 C.F.R. §§ 300 through 399; 45 C.F.R. § 303.11;

Director of Human Services, 56 O.S. § 162; 3A O.S. § 724.1; 10 O.S. §§ 80, 83, 90.5, 7700-101 through 7800; 12 O.S. §§ 1170, 1171.2 through 1171.4, 2004, and 2005.2; 21 O.S. §§ 566, 566.1, 567, and 852; 36 O.S. § 6058A; 43 O.S. §§ 109.2 through 110, 112, 112A, 112.1A, 114 through 120, 135 through 139.1, 140, 410 through 413, 601-100 through 601-903; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24; 63 O.S. §§ 1-311, 1-311.2, 1-311.3, and 1-321; 68 O.S. § 205.2; and 70 O.S. §§ 3970.1 through 3970.12.

Executive Order 13563: Improving Regulation and Regulatory Review.



### Rule Impact Statement

**To:** Programs Administrator  
Office of Intergovernmental Relations and Policy

**From:** Renee Banks, Director  
Child Support Services

**Date:** June 1st, 2022

**Re: CHAPTER 25. CHILD SUPPORT SERVICES**  
Subchapter 1. Scope and Applicability  
340:25-1-1 [AMENDED]  
340:25-1-1.1 [AMENDED]  
340:25-1-1.2 [AMENDED]  
340:25-1-2 [REVOKED]  
Subchapter 5. Operational Policies  
Part 7. The Case Record – Computer File Records and Case Folders  
340:25-5-55 [AMENDED]  
Part 9. Disclosure of Information  
340:25-5-66 [REVOKED]  
340:25-5-67 [AMENDED]  
340:25-5-68 [REVOKED]  
Part 13. Retention and Destruction of Records  
340:25-5-95 [REVOKED]  
Part 15. Case Initiation, Case Management, and Case Closure  
340:25-5-114 [AMENDED]  
340:25-5-118 [REVOKED]  
340:25-5-123 [AMENDED]  
340:25-5-124.3 [AMENDED]  
Part 20. Medical Support  
340:25-5-169 [AMENDED]  
340:25-5-170 [REVOKED]  
Part 21. Establishment  
340:25-5-178 [AMENDED]  
340:25-5-190 [AMENDED]  
Part 23. Enforcement

340:25-5-200 [AMENDED]  
340:25-5-200.2 [REVOKED]  
340:25-5-200.3 [REVOKED]  
Part 27. State Tax Refund Offset Program  
340:25-5-244 [AMENDED]  
Part 31. Consumer Reporting Agencies – Credit Bureaus  
340:25-5-265 [AMENDED]  
340:25-5-265.1 [REVOKED]  
Part 37. Recovery  
340:25-5-305 [AMENDED]  
340:25-5-328 [REVOKED]  
340:25-5-336 [REVOKED]  
Part 38. Title IV-D and Non-Title IV-D Central Case Registry Information  
340:25-5-338 [REVOKED]  
340:25-5-339 [AMENDED]  
340:25-5-340 [AMENDED]  
340:25-5-340.1 [REVOKED]  
**(Reference WF 23-25)**

**Contact:** Tammy Hall, Programs Manager, 405-522-0022

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

**Purpose:**

The proposed amendments to Chapter 25 Subchapters 1 and 5 amend the rules to: (1) implement rule changes recommended during the annual Child Support Services (CSS) policy review process; (2) implement Governor mandated rule reduction measures; (3) amend legal authorities as necessary; and (4) make non-substantive changes to improve rule clarity.

**Strategic Plan Impact.**

The proposed amendments support Oklahoma Human Services (OKDHS) goals of helping Oklahomans lead safer, healthier, more independent and productive lives; keeping our workforce informed, supported, and engaged; meeting the needs of vulnerable Oklahomans; and cultivating a culture of continuous improvement. The proposed amendments support the CSS strategic plan by providing customers access to tools and resources to achieve and maintain healthy families, prioritizing CSS ability to provide core services to customers, and clarifying how CSS provides services to customers.

**Substantive changes.**

**Subchapter 1. Scope and Applicability**

Oklahoma Administrative Code (OAC) 340:25-1-1 is amended to provide the legal authorities that govern the Oklahoma child support program.

OAC 340:25-1-1.1 is amended to add duty stations in the definition of district office.

OAC 340:25-1-1.2 is amended to add that CSS provides paternity establishment only services when the alleged father is deceased.

OAC 340:25-1-2 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

#### Subchapter 5. Operational Policies

##### Part 7. The Case Record – Computer File Records and Case Folders

OAC 340:25-5-55 is amended to add required record disposal authority from revoked OAC 340:25-5-95.

##### Part 9. Disclosure of Information

OAC 340:25-5-66 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

OAC 340:25-5-67 is amended to: (1) relocate relevant legal authorities; and (2) add process required when case information is requested from revoked OAC 340:25-5-66 and 340:25-5-68.

OAC 340:25-5-68 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

##### Part 13. Retention and Destruction of Records

OAC 340:25-5-95 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

##### Part 15. Case Initiation, Case Management, and Case Closure

OAC 340:25-5-114 is amended to: (1) update tagline to merge two noncooperation polices into one; (2) add federal authority Section 303.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.11); and (3) add penalty for non-public assistance non-cooperation.

OAC 340:25-5-118 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

OAC 340:25-5-123 is amended to comply with change to 45 C.F.R. § 303.11 that updates closure criteria by adding allowable closure when the child support payor receives Supplemental Security Income and Social Security Disability or Social Security Retirement.

OAC 340:25-5-124.3 is amended to: (1) streamline the process for transferring and working a child support case when the family is involved in a juvenile deprived court case; and (2) add the process when a requested deferral per Section 1-4-702 of Title 10 A of the Oklahoma Statutes (10A O.S. § 1-4-702) is approved.

##### Part 20. Medical Support

OAC 340:25-5-169 is amended to include existing language on medical enforcement only cases from revoked OAC 340:25-5-170.

OAC 340:25-5-170 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

##### Part 21. Establishment

OAC 340:25-5-178 is amended to remove non-substantive duplicated language cleanup.

OAC 340:25-5-190 is amended to clarify process when serving documents by email.

##### Part 23. Enforcement

OAC 340:25-5-200 is amended to include enforcement of spousal support legal authority from revoked OAC 340:25-5-200.2.

OAC 340:25-5-200.2 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

OAC 340:25-5-200.3 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

Part 27. State Tax Refund Offset Program

OAC 340:25-5-244 is amended to: (1) clarify a state tax offset is for past due child support and overpayment recovery when notice is sent to the affected taxpayer; and (2) add non-substantive cleanup.

Part 31. Consumer Reporting Agencies – Credit Bureaus

OAC 340:25-5-265 is amended to add: (1) CSS authority to access credit bureau information from revoked OAC 340:25-5-265.1; and (2) non substantive clean-up.

OAC 340:25-5-265.1 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

Part 37. Recovery

OAC 340:25-5-305 is amended to add: (1) language from revoked OAC 340:25-5-328 that CSS may collect an overpayment from another state or agency of this state without notice; and (2) language from revoked OAC 340:25-5-336 that outlines status and closure of inactive overpayment recovery cases.

OAC 340:25-5-328 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

OAC 340:25-5-336 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

Part 38. Title IV-D and Non-Title IV-D Central Case Registry Information

OAC 340:25-5-338 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

OAC 340:25-5-339 is amended to: (1) clarify the state Central Case Registry as defined in 43 O.S. §§ 112A, 120, and 413, includes both IV-D and non IV-D cases; and (2) add non substantive clean up.

OAC 340:25-5-340 is amended to add: (1) process for disclosure of an address of record from revoked OAC 340:25-5-340.1; and (2) non substantive clean up.

OAC 340:25-5-340.1 is revoked per Executive Order 13563: Improving Regulation and Regulatory Review.

### **Reasons.**

Chapter 25, Subchapter 1: The proposed amendments provide greater clarity in definitions and CSS services.

Chapter 25, Subchapter 5: The proposed amendments: (1) amend rules to provide improved customer service; (2) come into compliance with Executive Order 13563: Improving regulation and regulatory review; (3) provide additional clarification regarding CSS processes to the public; (4) provide additional guidance regarding internal CSS business processes to staff; and (5) clarify language and legal citations.

### **Repercussions.**

Chapter 25, Subchapter 1: The proposed amendments provide greater clarity in definitions and CSS services.

Chapter 25, Subchapter 5: The proposed amendments are designed to contribute to the health, safety, and wellbeing of children entitled to support and to promote healthy families by: (1) increasing program efficiency; (2) improving customer service; and (3) providing clear and accurate guidance to staff to ensure consistency in rule application. Failure to do so could lose or suspend Title IV-D federal funding.

**Legal authority.**

Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B); 42 U.S.C. § 1396k; Chapter 7, Subchapter IV, Part D; 50A U.S.C. §§ 501 through 596; 45 C.F.R. §§ 300 through 399; 45 C.F.R. § 303.11;

Director of Human Services, 56 O.S. § 162; 3A O.S. § 724.1; 10 O.S. §§ 80, 83, 90.5, 7700-101 through 7800; 12 O.S. §§ 1170, 1171.2 through 1171.4, 2004, and 2005.2; 21 O.S. §§ 566, 566.1, 567, and 852; 36 O.S. § 6058A; 43 O.S. §§ 109.2 through 110, 112, 112A, 112.1A, 114 through 120, 135 through 139.1, 140, 410 through 413, 601-100 through 601-903; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24; 63 O.S. §§ 1-311, 1-311.2, 1-311.3, and 1-321; 68 O.S. § 205.2; and 70 O.S. §§ 3970.1 through 3970.12.

Executive Order 13563: Improving Regulation and Regulatory Review.

**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 children entitled to support, noncustodial parents (NCP) who owe child support, custodial parents (CP) who are owed child support, CSS staff, CP private attorneys, and courts. Most affected classes of persons will bear no costs associated with implementation of the amendments.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit are children, NCPs, CPs, CSS staff, employers, courts, and taxpayers. The classes of persons who will benefit are NCPs who have been incarcerated for over 180-calendar days. CPs and children will directly benefit through increasing compliance rates of previously incarcerated NCPs by enforcing orders based on actual income.
- 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:** The proposed amendments facilitate efficient use of program funds and

reduce expenditures by eliminating non-essential services. There are no fee changes with these rule changes.

- 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 probable cost to OKDHS includes the cost of printing and distributing the rules and training materials estimated to be under \$100 and is within the current budget and requires no additional funding. These amendments do not increase any agency's duties or need for additional full-time employees.
- 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 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:** The proposed amendments are intended to minimize compliance costs and intrusive regulations while fully complying with state and federal mandates. There are no less costly or intrusive methods to achieve full 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:** The proposed amendments are intended to comply with state and federal child support mandates, increase program effectiveness, protect CSS ability to deliver services, and improve services delivered to families, thereby contributing to the health, safety, and wellbeing of children entitled to support.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared ; June 1, 2022; modified December 15, 2022

## SUBCHAPTER 1. ADULT PROTECTIVE SERVICES REPORTS

### **340:5-1-1. Adult Protective Services (APS) authority, core principles, and mission**

Revised ~~9-15-219-15-23~~

(a) APS was created to meet the requirements of the Protective Services for Vulnerable Adults Act, per Sections 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(b) APS assists vulnerable adults who are unable to meet their own needs, or who are reported to be suffering from physical or verbal abuse, neglect, self-neglect, personal degradation, or exploitation.

(c) The vulnerable adult is the APS client. APS respects the client's right to self-determination and approaches service planning and intervention with sensitivity to the client's perception of his or her situation and needs. An objective assessment of the circumstances and need for involvement is made. ■ 2

(d) APS intervention and service planning are client-centered. The vulnerable adult alleged to need protective services, is an Oklahoma Human Services (OKDHS) client. While outcomes desired by the reporter, family members, or other caretakers are considered, APS intervention and service planning are client-centered. ■ 1 & 4

(e) The APS specialist maintains professional objectivity when providing for or arranging services for vulnerable adults, whether services are paid for by the client or from private or public funds.

(f) Protective service plans are developed with the knowledge and approval of the client, when possible. When involuntary services are necessary to protect the life or estate of a client, guardianship is pursued with careful consideration of the effect on the client's psychological and emotional needs. Service planning focuses on services that meet the vulnerable adult's needs in the least intrusive and least restrictive manner possible. ■ 3

(g) APS program goals are, to:

- (1) reestablish and maintain a stable level of functioning approaching the client's maximum potential;
- (2) reestablish and maintain the client's family and community relationships;
- (3) assist the client to remain in the community as long as possible;
- (4) ensure that the client who lacks capacity to consent, receives involuntary court-ordered services; and
- (5) assist the client in obtaining appropriate institutional care, when less restrictive services are not available.

(h) APS is responsible for program planning, staff training, technical assistance, quality assurance, and policy development. APS district directors assist in this process by providing local support for APS staff. ■ 5

### **INSTRUCTIONS TO STAFF 340:5-1-1**

Revised ~~9-15-219-15-23~~

- 1. Adult Protective Services (APS) staff recognizes the complexity of family relationships, and approaches family caretaker issues with sensitivity and compassion.**
- 2. When the APS specialist determines that the client recognizes and understands the consequences of his or her choices, the client's decision is respected even when an allegation of maltreatment is substantiated.**



3. The APS specialist must consider if available resources offer a positive alternative to the current situation from the client's perspective, unless the situation is an emergency, and the client lacks decision-making capacity.
4. (a) When the APS specialist has questions concerning policy issues, he or she consults with the primary APS specialist IV or designee for resolution. When the primary APS specialist IV or designee is unavailable to answer the questions, staff may consult the primary APS specialist III, APS specialist IV in another unit, or the APS district director. All difficult issues are staffed with the APS district director. APS State Office staff addresses questions concerning policy, procedures, and protocols when the primary APS specialist III, APS specialist IV or designee, and the APS district director are unavailable. In all cases the APS Community Living, Aging, & Protective Services (CAP) director serves as the final authority for interpreting APS policy.
  - (b) APS district directors are responsible for all personnel issues.
  - (c) ~~Questions APS staff, or the APS district director refer questions~~ regarding legal issues ~~are referred to the Oklahoma Human Services (OKDHS) Legal Services (LS) by APS staff, or the APS district director.~~ In emergencies involving temporary guardianships the APS specialist IV or designee refers the APS specialist directly to LS or the office of the district attorney in the county of jurisdiction.
  - (d) When an APS specialist is subpoenaed to testify in court regarding an APS case, receives an order to release information, or receives an order to testify at a deposition, the APS specialist, following consultation with the APS specialist IV or designee:
    - (1) notifies APS State Office;
    - (2) contacts LS to review what information may be divulged. The APS specialist includes the APS specialist IV and district director on correspondence with LS;
    - (3) emails a copy of the subpoena or order to LS before other contact is made;
    - (4) documents contact with LS and receipt of the subpoena or court order in the APS Computer System; and
    - (5) scans a copy of the subpoena or court order into the case record in the APS Computer System Files Section.
5. An APS specialist may appear in court without a subpoena, and with approval of the APS specialist IV or designee, to support a client's family member or other interested person, to obtain a Title 30 guardianship, or to assist a client in filing a protective order.

### **340:5-1-6. Definitions**

Revised ~~9-15-24~~9-15-23

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

**"Abandonment"** means the withdrawal of support or the act of deserting a vulnerable adult by a caretaker or other person responsible for the vulnerable adult's care.

**"Abuse"** means causing or permitting the:

(A) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, mental anguish, personal degradation; or  
(B) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

**"Activities of daily living (ADLs)"** means basic self-care activities such as toileting, transferring, feeding, bathing, and dressing.

**"Adult"** means a person 18 years of age and older.

**"Alleged victim"** means a vulnerable adult who is suspected of being a victim of maltreatment or in need of services that are necessary to aid the individual to meet essential requirements for mental or physical health and safety.

**"APS"** means Adult Protective Services.

**"APS specialist"** means an Oklahoma Human Services (OKDHS) worker who successfully completed the Adult Protective Services (APS) New Worker Academy or is working under the oversight of an experienced APS specialist.

**"APS specialist III"** means the lead APS specialist who coaches and may be designated to act for the APS specialist IV.

**"APS specialist IV"** means OKDHS staff assigned or designated to act in an APS supervisory capacity.

**"Caretaker"** means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.

**"Client"** means a vulnerable adult in need of services.

**"Conclusion"** means a brief summary of the case including presenting issue, risk, need, and resolution that is completed in cases of self-neglect for which investigatory findings are not required to be sent to the district attorney. The conclusion is specific enough to distinguish the case, but does not reiterate the case record.

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

**"Evidence"** means all documentation, photographs, interviews, observations, objects, and other information collected, observed, or otherwise obtained during the course of an investigation.

**"Executive function"** means the brain's ability to absorb information, interpret this information, and make decisions based upon this information.

**"Exploitation"** means unjust or improper use of the person or resources of a vulnerable adult for the profit or advantage of another person through undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

**"Financial neglect"** 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.

**"Finding"** means substantiation, unsubstantiation, or an inconclusive finding of an allegation following an investigation of abuse, neglect, or exploitation that is sent to local district attorney for a decision whether to prosecute.

**"Guardian"** means one of the types of guardianship specified in the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

(A) **General guardian.** A general guardian is a person appointed by the court to serve as the guardian of an incapacitated person to ensure that the essential requirements for the health and safety of the person are met, to manage the estate of the person, or both.

(B) **Limited guardian.** A limited guardian is a person appointed by the court to serve as the guardian of a partially incapacitated person and is authorized by the court to exercise only certain powers of a guardian over the person, or estate or financial resources of the person, or both.

(C) **Special guardian.** A special guardian is a person appointed by the court to exercise certain specified powers to alleviate a situation in which there is a threat of serious impairment to the health or safety of an incapacitated or partially incapacitated person, or a situation in which the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken.

**"Incapacitated adult"** means a vulnerable adult whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage his or her financial resources or to meet essential requirements for the person's mental or physical health or safety without assistance.

**"Inconclusive"** means there is insufficient information to either support or not support the allegation of maltreatment, but there is a reason to suspect maltreatment.

**"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 person.

**"Information and Referral (I & R)"** means a referral that is referred to an appropriate responder because it does not contain an alleged vulnerable adult and at least one allegation of maltreatment, or a more appropriate responder is better suited to meet the client's needs and provide services.

**"Instrumental activities of daily living (IADLs)"** means abilities necessary for an adult to function independently in the community, such as preparing meals, using the phone, driving or arranging for transportation, shopping, and handling finances.

**"Investigation"** means a prompt and thorough fact-finding to determine if a vulnerable adult is the victim of maltreatment.

**"Mandatory reporter"** means any person who has reasonable cause to believe someone is suffering from abuse, neglect, or exploitation.

**"Maltreatment"** means abuse, neglect, self-neglect, financial exploitation, sexual exploitation, financial neglect, abandonment, or verbal abuse, or personal degradation.

**"Near death"** means the vulnerable adult is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

**"Neglect"** means:

- (A) failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;
- (B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or
- (C) negligent acts or omissions that result in harm or unreasonable risk of harm to a vulnerable adult, or lack of supervision by a caretaker providing direct services.

**"Next of kin"** means the closest living relative by blood or marriage and includes any relative active in care or service planning.

**"Personal degradation"** means 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, the taking, transmission, or display of an electronic image of a vulnerable adult:

- (A) for the purpose of reporting vulnerable adult abuse to law enforcement, ~~Oklahoma Human Services~~ OKDHS, or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules;
- (B) for the purpose of treatment or diagnosis; or
- (C) as part of an ongoing investigation.

**"Power of attorney"** means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The affidavit may be durable. When it is durable, the power of attorney becomes effective when the principal loses decision making abilities as defined by the document and instructions of the principal. The power is revoked upon:

- (A) written revocation of the principal;
- (B) incapacity of the principal unless it is a durable power of attorney;
- (C) death of the principal;
- (D) a termination date if specified in the document;
- (E) order of the court; or
- (F) the appointment of a guardian, in most cases.

**"Referral"** means any allegation of maltreatment received by APS.

**"Report"** means a referral that is assigned for investigation.

**"Response type"** means the assignment of an APS referral for investigation, service case, or information and referral.

**"Self-neglect"** means neglect brought about by a vulnerable adult's own actions or inactions that causes the vulnerable adult 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.

**"Service Case"** means a referral is assigned for prompt and thorough determination of risk, needs, a capacity decision, and service planning.

**"Services that are necessary to aid an individual to meet essential requirements for mental or physical health and safety"** means services that include, but are not limited to, the:

- (A) identification of adults in need of protective services;
- (B) provision of medical care for physical or mental health needs; or
- (C) provision of assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical maltreatment, guardianship referral, outreach, and transportation necessary to secure any of such needs. This excludes taking the adult into physical custody without the adult's consent except through proper procedures for the provision of involuntary services.

**"Sexual abuse"** means:

- (A) 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 with any other object by a caretaker or other person providing services to the vulnerable adult;
- (B) 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
- (C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

**"Sexual exploitation"** means and includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by Oklahoma law.

**"Substantiated"** means the greater weight of the evidence collected during an APS investigation determines that maltreatment occurred and the alleged victim meets the definition of a vulnerable adult.

**"Temporary guardian"** means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the court. A temporary guardian serves in that capacity only until the guardianship is dismissed by the appointing court.

**"Undue influence"** means the substitution of one person's will for the true desires of another.

**"Unsubstantiated"** means evidence found during an APS investigation was insufficient to show that more likely than not maltreatment occurred.

**"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 adult who, because of physical or mental disability or other impairment, may be subject to maltreatment and is substantially impaired in his or her ability to independently:

- (A) provide adequately for his or her own care or custody;
- (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 maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS referral is received and the APS specialist's assessment of that condition is made during service planning or investigation.

## **INSTRUCTIONS TO STAFF 340:5-1-6**

**Revised 9-15-219-15-23**

### **1. Reports of alleged abuse, neglect, or exploitation of a vulnerable adult require a prompt and thorough investigation.**

**(1) Screen Out: The Review, Evaluate, and Decide (RED) Unit specialist or designee determines no additional action is needed from Adult Protective Services (APS). For example, the vulnerable adult is deceased and there are no allegations that maltreatment contributed to the death or the vulnerable adult's name is unknown, there is no address, finding directions which include a pinpoint location, or phone number and the reporter cannot be contacted for additional information.**

**(2) Information and Referral: The RED Unit specialist or designee determines the alleged victim is not a vulnerable adult, or the vulnerable adult's risks can be addressed through Information and Referral (I & R) to a more appropriate responder. For example, when the vulnerable adult's primary vulnerability is mental illness or substance use or abuse dependency, the Red Unit specialist or designee must determine if other issues exist within APS jurisdiction. When no other issues exist, the case is assigned as an I & R and the Red Unit specialist or designee directs the vulnerable adult or reporter to the nearest Oklahoma Department of Mental Health and Substance Abuse Services contract facility for outpatient service.**

**(3) Service Case: When the RED Unit specialist or designee determines from the intake information that the alleged victim is a vulnerable adult and the only allegation is self-neglect, the referral is assigned as a Service Case for prompt and thorough determination of risk, needs, a capacity decision, and service planning. Document the capacity decision in Service Plan Monitoring Notes. When it is determined that temporary guardianship is needed, the Service Case ~~will be~~ is elevated to an Investigation.**

**(4) Investigation: The RED Unit specialist or designee determines the allegation of abuse, neglect, or exploitation of a vulnerable adult requires a prompt and thorough assessment, investigation, and service planning.**

**(5) Guardianship: If it is determined that temporary guardianship is needed, the investigation ~~will be~~ is elevated to guardianship.**

## **SUBCHAPTER 3. MALTREATMENT ALLEGATIONS**

### **340:5-3-5. Concurrent jurisdiction with other entities**

Revised ~~9-15-219-15-23~~

Some referrals that are appropriate for Adult Protective Services (APS) intervention must also be sent to other entities.

- (1) **Concurrent jurisdiction with Oklahoma State Department of Health (OSDH).**
  - (A) Referrals alleging maltreatment of vulnerable adults are accepted and screened by APS and sent to OSDH, Protective Health Services, ~~Medical Facilities Service~~ Long-Term Care Complaints, for residents of:
    - (i) residential care facilities;
    - (ii) assisted living facilities;
    - (iii) adult day care facilities; and
    - (iv) nursing facilities when the referral is self-neglect or maltreatment by a person not employed by the facility. ■ 1
  - (B) The APS specialist sends a copy of the final investigative report to OSDH. ~~Upon completion of~~ When an investigation involving an administrator named as the alleged perpetrator is completed and, when findings are substantiated, the APS specialist IV or designee notifies the Oklahoma State Board of Examiners for Long-Term Care Administrators.
- (2) **Concurrent jurisdiction with law enforcement.** Referrals alleging illegal activity or situations determined too dangerous for an APS response are referred to law enforcement. ■ 2
- (3) **Joint response by APS and law enforcement.** Law enforcement assistance is requested for home visits when warranted by safety protocol.
- (4) **Referrals involving substance use or abuse and persons with mental illness.** Oklahoma law gives the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) primary responsibility for persons with mental illness and substance use or abuse dependency. ODMHSAS treats persons with mental illness on a voluntary basis. Community mental health centers administered by, or under contract to, ODMHSAS provide recommended aftercare services to patients who are discharged from state mental hospitals and who voluntarily request and accept mental health services. ■ 3
  - (A) The APS specialist may assist law enforcement, when requested, by facilitating or completing a third party affidavit.
  - (B) When the vulnerable adult's primary problem is determined to be mental illness or substance use or abuse dependency, the Abuse and Neglect Hotline specialist must determine if other issues exist within APS jurisdiction. When no other issues exist, the case is assigned as Information and Referral. The Review, Evaluate, and Decide (RED) Unit specialist or designee directs the vulnerable adult or reporter to the nearest ODMHSAS contract facility for outpatient service.
  - (C) When other issues of alleged abuse, neglect, or exploitation exist, the case is assigned in the usual way.
  - (D) The APS specialist IV or designee contacts law enforcement to secure emergency detention when the person is a danger to self or others.

### **INSTRUCTIONS TO STAFF 340:5-3-5**

Revised ~~9-15-219-15-23~~

1. (a) When a referral is received alleging that a resident of a residential care or assisted living facility, licensed or unlicensed, is suffering maltreatment or that a resident of a nursing facility is suffering maltreatment from anyone not on the facility's staff or from self-neglect, the Abuse and Neglect Hotline specialist enters all pertinent information in the Adult Protective Services (APS) Computer System Intake Section and submits the referral for assignment. The Review, Evaluate, and Decide RED Unit specialist or designee also emails a summary of the referral to Oklahoma State Department of Health (OSDH), Protective Health Services ~~Medical Facilities Service~~ Long-Term Care Complaints at [LTCComplaints@health.ok.gov](mailto:LTCComplaints@health.ok.gov). The phone number is 405-271-6868, toll-free 1 800-747-8419; fax 405-271-4172; toll-free fax 1-866-239-7553.  
 (b) In addition to the referral, the APS specialist IV or designee sends the final investigative findings in summary form to OSDH, Protective Health Services ~~Medical Facilities Service~~ Long-Term Care Complaints.
2. When referrals contain allegations of illegal drug manufacture or sale, dangerous animals, guns, or other situations that present a potentially serious danger to an APS specialist, the APS specialist notifies law enforcement and follows safety protocol.
3. Refer to safety protocol.
4. In order to appropriately utilize use available services for the vulnerable adult, APS specialists have working knowledge of:
  - (1) current state mental health laws;
  - (2) local law enforcement policies regarding voluntary and involuntary treatment for persons with mental illnesses and persons using or abusing substances;
  - (3) mental health professionals; and
  - (4) available community resources.

## **SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REPORTS**

### **340:5-5-5. Documentation of Adult Protective Services (APS) cases**

Revised 9-17-189-15-23

The APS specialist documents the report or referral, interviews, record reviews, other evidence, and investigation findings, or conclusions in the APS case. ■ 1

(1) ~~Upon completion of the~~ When an investigation is completed, the vulnerable adult's identified caretaker, legal guardian, and next of kin receive a letter from the Oklahoma Department of Human Services, per Section 10-105.1(C)(6) of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105.1(C)(6)).

(2) When the vulnerable adult has a court-appointed guardian, the APS specialist files a notice of the findings in the guardianship case and sends a copy of the findings to the court of jurisdiction, per 43A O.S. § 10-105.1(C)(6).

## **SUBCHAPTER 7. LONG-TERM CARE INVESTIGATIONS**

### **340:5-7-1. Referrals submitted to Long-Term Care Investigations**

Revised 9-15-219-15-23



(a) Screening protocols, per Oklahoma Administrative Code 340:5-3-5, are followed for referrals submitted to Long-Term Care Investigations. ■ 1

(b) The Abuse and Neglect Hotline specialist is responsible for screening referrals. Referrals are accepted for investigation, screened out when Adult Protective Services (APS) criteria is not met, or are referred to another entity. The Review, Evaluate, and Decide (RED) Unit specialist or designee determines which Long-Term Care social service inspector is assigned the referral. ■ 2

(c) All APS rules apply to Long-Term Care Investigations, except those noted in this Subchapter.

## **INSTRUCTIONS TO STAFF 340:5-7-1**

**Revised ~~9-15-21~~ 9-15-23**

1. When abuse, neglect, or exploitation is alleged, the Hotline specialist enters the referral into the Adult Protective Services (APS) Computer System. The Review, Evaluate, and Decide (RED) Unit specialist or designee screens and assigns all Long-Term Care Investigation referrals.

2. (a) When the incident did not happen in a nursing facility, ~~Intermediate Care Facility/Individuals~~ an intermediate care facility for individuals with Intellectual Disabilities intellectual disabilities (ICF/IID), or Oklahoma Veterans Nursing facility, the referral is reassigned to Community APS for screening.

(b) When the incident happened in a nursing facility, ICF/IID, or Oklahoma Veterans Nursing facility, but the alleged perpetrator (AP) is not an employee of the facility, the referral is reassigned to Community APS for screening.

(1) A facility employee is defined as anyone who is being paid or is under contract by the facility; ~~or any person~~, volunteering to do work in that facility; ~~or any person~~ hired by the family and allowed to work in the facility. This includes, but is not limited to:

(A) home health workers;

(B) physical therapy workers;

(C) hospice employees;

(D) physicians;

(E) physician assistants;

(F) private sitters;

(G) agency workers;

(H) volunteers; or

(I) any other person the facility knowingly allowed to work with facility residents.

(2) When the AP is also a facility resident, the AP is entered as an alleged victim (AV) on the APS referral. "Unknown staff" for the facility is entered as an AP with allegations of caretaker neglect, and the referral is assigned to Long-Term Care Investigations. The social service inspector (SSI) ~~will update~~ updates the AP's information when the name of the AP is identified.

(c) The RED Unit specialist or designee reviews the referral to determine if the facility is responsible for the maltreatment, by action or inaction.

- (1) When the facility was not responsible and facility intervention was appropriate, the referral is screened as Information and Referral and further action is not required.
- (2) When the facility's actions or inactions facilitated or caused resident-to-resident abuse, but the facility took appropriate action, the referral is screened as an Information and Referral. If the facility did not take appropriate action or there have been multiple incidents at the facility, the referral is assigned to a Long-Term Care Investigator for investigation.
- (A) If the facility participated by encouraging the maltreatment in any fashion, the staff member, who was responsible, is assigned as the AP.
- (B) If the facility or staff member knew or should have known the client was abusive but did not intervene, the case is assigned as neglect against the staff member or members, who should have intervened to prevent abuse.
- (d) All complaints are entered into the APS Computer System by client name or other identifying information.
- (1) Relevant closed cases are reviewed.
- (A) When there is just one past intake, screen as a new case.
- (B) When there are multiple past intakes concerning the same victim, consider, whether:
- (i) the allegations are the same or are similar; and
- (ii) staff intervened appropriately.
- (C) Screen as new case when staff did not intervene to protect clients. Past failure to protect should be considered and weighed in assignment decision.
- (2) When an open case already exists:
- (A) a Long Term Care referral is received, and there is an open Community APS referral, the RED Unit specialist or designee notifies the APS specialist;
- (B) if the open case is assigned to Long-Term Care Investigations and a duplicate complaint is received, follow Merge Protocol; or
- (C) if the open case is assigned to Long-Term Care Investigations and the allegations or AP are not the same, screen as a new case.
- (e) Cases are determined to be Long-Term Care Investigation cases when there:
- (1) is no maltreatment, but there are violations of nursing home rules and regulations or when a referral is received alleging that some aspect of patient care in a nursing facility is bad but no specific patient is named or the allegations do not constitute abuse, neglect, sexual or financial exploitation, verbal abuse, an area of concern regarding general poor patient care or poor environmental conditions, it is not assigned for investigation. This includes complaints, such as the facility is understaffed, linens are dirty, patients are not properly fed or groomed, or air-conditioning or heating is inadequate; the referral is screened as an Information and Referral and a referral is sent to the Oklahoma Department of Health (OSDH). No APS takes no further action is taken by Adult Protective Services.

(2) are violations of residents rights, which might include verbal abuse; the referral is screened as an Information and Referral and a referral is sent to the Oklahoma State Ombudsman office; ~~or~~

(3) are obvious criminal charges; the RED Unit specialist or designee screens the referral following the steps above. The program manager or designee may send a referral to the Office of the Attorney General, Medicaid Fraud. The Chief Investigator is contacted by phone at 405-521-4274 or email before the referral is sent. When calling, ask for nursing home abuse, Medicaid fraud intake, or the Chief Investigator by name. Not all referrals are investigated; or

(4) are allegations against hospitals, dialysis centers, or other medical facilities; the RED Unit specialist or designee screens the referral as an Information and Referral and a referral is sent to ~~Oklahoma State Department of Health (OSDH)~~, Protective Health Services Medical Facilities Service. The phone number is 405-271-6868, toll-free 1 800-747-8419; fax 405-271-4172; toll-free fax 1-866-239-7553, and email at [LTCComplaints@health.ok.gov](mailto:LTCComplaints@health.ok.gov) [medicalfacilities@health.ok.gov](mailto:medicalfacilities@health.ok.gov).

(f) When the resident is deceased and the death is suspected to be related to abuse or neglect, the intake is referred to OSDH or the Oklahoma Attorney General Medicaid Fraud. The RED Unit specialist or designee may assign the intake for investigation when there is a compelling reason, such as there are specific allegations of abuse, neglect, or exploitation that may have contributed to the death of the resident. The RED Unit specialist may staff with the program manager or designee.

(g) Non-urgent cases are assigned to Long-Term Care Investigations ~~social service inspector (SSI)~~.

(h) When urgent cases are assigned for investigation, the RED Unit specialist or designee emails the ~~program~~ programs manager and the SSI.