

COMMENT DUE DATE: February 3, 2023

Date: January 3, 2023

Dawn Leemon, Office of Client Advocacy

405-760-8560

Holli Kyker, Programs Administrator

405-982-2217

Brandi Smith, Policy Specialist

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 3. Office of Client Advocacy

Part 1. Administration

340:2-3-12 [REVOKED]

Part 3. Investigations

340:2-3-36.1 [AMENDED]

340:2-3-39.1 [AMENDED]

(WF 23-2C)

SUMMARY:

The proposed amendments to Chapter 2, Subchapter 3 revoke outdated sections and amend existing rules: (1) to ensure rules conform to state and federal statutes and regulations and (2) to ensure that rules conform to current best practices.

Permanent rulemaking approval is requested

LEGAL AUTHORITY:

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



Rule Impact Statement

To: Programs Administrator
Legal Services – Policy

From: John Dewey, Advocate General

Date: June 2, 2022

Re: **CHAPTER 2. ADMINISTRATIVE COMPONENTS**
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-12 [REVOKED]
Part 3. Investigations
340:2-3-36.1 [AMENDED]
340:2-3-39.1 [AMENDED]
(WF 23-2C)

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The proposed amendments to Chapter 2, Subchapter 3 revoke outdated sections and amend existing rules: (1) to ensure rules conform to state and federal statutes and regulations and (2) to ensure that rules conform to current best practices.

Strategic Plan Impact.

The proposed amendment ensures Office of Client Advocacy (OCA) rules are compliant with Developmental Disabilities Services rules and current best practices that pertain to vulnerable adult safety.

Substantive changes.

Subchapter 3. Office of Client Advocacy

Part 1. Administration

Oklahoma Administrative Code (OAC) 340:2-3-12 is revoked.

OAC 340:2-3-36.1 is amended to: (1) add language related to the provision of contact information to OCA by accused vulnerable adult caretakers (VAC); (2) to

move language related to the notices provided to an accused VAC; and (3) to update terminology and correct grammar.

OAC 340:2-3-39.1 is amended: (1) to add language related to methods of contact with and service of process on accused VAC and (2) to update terminology and correct grammar.

Reasons.

The proposed amendments to OCA rules revoke outdated rules and update the rules to incorporate requirements per Section 10-103 of Title 43A of the Oklahoma Statutes (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 or current best practices.

Repercussions.

If the proposed amendments to OCA rules are not implemented, OCA rules will not conform to statutes or current best practices.

Legal authority.

Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 43A § O.S. 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 being served by OKDHS. 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 being served by OKDHS.
- 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 vulnerable adult maltreatment. There are no 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 by ensuring that investigations fully conform with statutes and current best practices.
- 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 Community Service 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 June 2, 2022 modified December 15, 2022

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees [REVOKED]

Revoked 9-15-23

~~**(a) Application.** This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) per OAC 342:2-3-32 through 340:2-3-37 that an OKDHS employee engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when~~

~~(1) OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) per OAC 340:2-3-62(b) expired without OCA receipt of a timely request; or~~

~~(2) a timely request for GARC review was received and processed to conclusion per OAC 240:2-3-62.~~

~~**(b) Supplemental investigations.**~~

~~(1) Upon receipt of an OCA investigation report, when the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA conduct a supplemental investigation.~~

~~(A) A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and sets out the specific information needed.~~

~~(B) No more than one such request may be made in an individual case.~~

~~(C) OCA conducts a prompt supplemental investigation, commencing the investigation within 30 calendar days and completing the investigation within 60 calendar days of receipt of a request for a supplemental investigation, unless these time periods are extended for good cause as determined by the advocate general or the OKDHS Director.~~

~~(2) Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee may request the case be submitted to GARC per OAC 340:2-3-62.~~

~~**(c) Disciplinary guidelines regarding OKDHS employees.** These guidelines are used by state office administrators and their designees to determine appropriate OKDHS personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.~~

~~**(1) Abuse, sexual abuse, or neglect.**~~

~~(A) **First offense.** The first offense may result in discharge, demotion, suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.~~

~~(B) **Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.~~

~~**(2) Caretaker misconduct resulting in physical injury or mental anguish to a vulnerable adult.**~~

~~(A) **First offense.** The first offense may result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.~~

~~(B) **Second offense.** The second offense may result in discharge, demotion, or suspension without pay.~~

~~(3) **Caretaker misconduct not resulting in physical injury or mental anguish to vulnerable adult.**~~

~~(A) **First offense.** The first offense may result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.~~

~~(B) **Second offense.** The second offense may result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.~~

~~(4) **Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.~~

PART. 3 INVESTIGATIONS

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

Revised 9-15-23

(a) **Initiation of OCA investigation initiation.** 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).

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

(2) 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.

(3) 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.

(4) 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)(1) the OCA investigator's name and phone number;~~

~~(B)(2) the investigative process described in this Section;~~

~~(C)(3) the employee's rights and responsibilities relating to the investigation described in ~~(j)(h)~~ 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)(4) the allegation made against the VAC without divulging the reporting party's identity or the substance of the evidence; and~~

~~(5) obtains the signature of the CSW on the forms listed in (3) of this subsection and provides a copy to the OCA investigator.~~

~~(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) VAC address and email. During the investigative process the accused VAC provides OCA with a current mailing address and email address, if applicable.

(1) It is the responsibility of the accused VAC to promptly notify OCA of any changes in mailing address or email address.

(2) OKDHS sends all subsequent communications concerning the investigation and administrative actions to the last known mailing address or email address as applicable, as provided by the accused VAC.

(3) OKDHS may serve notice of investigative findings as provided in this Section and administrative actions per Oklahoma Administrative Code (OAC) 340:2-3-39.1 to the last known mailing address or email address as applicable as provided by the accused VAC.

(4) Failure to notify OCA of any changes in mailing address or email address may result in placement of the accused VAC in the Community Services Worker Registry.

(j) 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.

(k) 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.

(l) 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

~~(h)~~(m) **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)~~(n) **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. At the time of the interview of the accused VAC, if the OCA investigator determines that a signed Form 15IV004E, Address Information Notice, has not previously been provided to OCA, the investigator obtains it from the accused VAC. If the interview is being conducted in a manner other than in-person, the investigator reads Form 15IV004E to the accused VAC and: ■ 8 & 9

(1) obtains verbal acknowledgement of understanding from the accused VAC;

(2) records the information on Form 15IV004E as provided by the accused VAC; and

(3) obtains consent to sign Form 15IV004E on behalf of the accused VAC.

~~(n)~~(o) **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. ■ 40 9

~~(o)~~(p) **"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)~~(q) **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.

~~(q)~~(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.

~~(r)~~(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. ■ 45 14

~~(s)~~(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; ■ 44 10
- (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; ■ 13
- (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. ■ 42 11

~~(t)~~(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.

~~(u)~~(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.

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

- (1) After the OCA investigation is complete a findings letter is ~~mailed~~ provided 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~~ provided 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.

~~(w)~~ **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

~~(x)~~ **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.

(y) 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. ■ 46 15

(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.

(z) **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. ■ 47 16

(aa) **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. 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:

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

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

(3) 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.

(bb) **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.

(cc) **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. ■ 48 17

INSTRUCTIONS TO STAFF 340:2-3-36.1

Revised 9-15-23

- 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.

(10) If the investigator completes Form 15IV004E, Address Information Notice, the investigator obtains the information from the accused VAC and fills out the form exactly as provided. The investigator then signs Form 15IV004E indicating on the form that it was completed verbally, and indicating the date. The investigator sends a completed copy of Form 15IV004E to the accused VAC.

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.

340:2-3-39.1. Reconsideration process for substantiated findings of vulnerable adult maltreatment in Office of Client Advocacy (OCA) investigations and Community Services Worker Registry (CSWR) procedures

Revised 9-15-23

(a) Notice of Reconsideration process for substantiated findings of vulnerable adult maltreatment by vulnerable adult caretakers (VAC) not eligible for CSWR placement.

- (1) The OCA administrative programs officer (APO) or designee sends the VAC a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of approval of a substantiated investigation finding by the OCA programs manager or supervisor.
- (2) The notification of findings informs the VAC of:
 - (A) any substantiated vulnerable adult abuse or neglect findings in the investigation;
 - (B) the abuse or neglect referral, allegations, and findings dates;
 - (C) demographic information; and
 - (D) instructions regarding the request for reconsideration, specifying that:
 - (i) the VAC may request reconsideration by mailing a request to the OCA Reconsideration Committee within 20-calendar days of the mailing date of the notification of findings was sent;

(ii) the VAC has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the notification of findings.

(iii) ~~that if a~~ the VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and

(iv) failure to submit a request for reconsideration within 20-days of the ~~mailing date of the Notification of Findings~~ notification of findings was sent may result in the finding becoming final. In this case, the VAC may only contest the finding upon a showing of good cause.

(3) The notification of findings does not include the reporting party's identity.

(b) Review procedure for substantiated findings of vulnerable adult maltreatment by VAC not eligible for CSWR placement.

(1) When the VAC requests reconsideration, within 45-calendar days of accepting the request, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a preponderance of the evidence and meets the relevant definition, per Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103).

(2) If the VAC does not request reconsideration, within 45-calendar days of the ~~mailing date of the Notification of Findings~~ notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested:

(A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

(i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, Adult Protective Services (APS) history, criminal history, and referral history; and

(ii) any written documents submitted by the VAC;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves; ■ 1

(C) the OCA Reconsideration Committee emails the APO its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision, the APO or designee provides notification to the:

(i) ~~appellant~~ VAC;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

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

(vii) Developmental Disabilities Services (DDS), when applicable;

(viii) Aging Services (AS), when applicable;

- (ix) facility administrator; and
- (x) guardian for the vulnerable adult, when applicable.

(c) Notice of reconsideration process for substantiated findings of vulnerable adult maltreatment by community services worker (CSW)s eligible for CSWR placement.

(1) The OCA APO or designee sends the CSW a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of a substantiated investigation finding approval by the OCA programs manager or supervisor.

(2) The CSW may be added to the CSWR when Oklahoma Human Services (OKDHS) sent proper notice:

- ~~(A) to his or her last known address, and the notice was returned as unclaimed or undeliverable by certified mail, return receipt requested, and regular mail;~~
- (A) to his or her last known address, and the notice was returned as unclaimed or undeliverable by certified mail, return receipt requested, and regular mail;
- (B) to his or her email as provided to OKDHS; or
- (C) as provided in (l) of this Section.

~~(3) The notice is sent by certified mail, return receipt requested.~~

~~(4) The notice informs the CSW of:~~

- (A) the dates of the abuse or neglect referral, allegation, and finding; and
- (B) instructions regarding the request for reconsideration, specifying that:
 - (i) he or she may request reconsideration of the investigative findings by submitting a detailed written statement with the request within 20-calendar days of the mailing date of the notice;
 - (ii) he or she has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the findings letter;
 - (iii) that when a VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and
 - (iv) absent good cause shown, failure by the CSW to submit a request for reconsideration within 20-calendar days of the mailing date of the notice:
 - (I) may result in the finding becoming final;
 - (II) waives the right to further administrative or judicial review; and
 - (III) authorizes entry of his or her name in the CSWR and disclosure, per Oklahoma Administrative Code (OAC) 340:100-3-39, to any person requesting such information.

~~(5)~~(4) The notice does not contain the reporting party's identity.

(d) Review procedure for substantiated findings of vulnerable adult maltreatment by CSWs eligible for CSWR placement.

(1) If the CSW requests reconsideration, within 20-calendar days of the mailing date of the notification of findings of vulnerable adult abuse/neglect and request for reconsideration was sent, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. §10-103.

(2) If the CSW does not request reconsideration, within 20-calendar days of the mailing date of the notice notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a

preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested:

(A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

(i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, APS history, criminal history, and referral history; and

(ii) any written documents submitted by the CSW;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves; ■ 1

(C) the OCA Reconsideration Committee informs the APO by email of its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision the APO or designee provides email notification to the:

(i) ~~appellant~~ CSW;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

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

(vii) DDS, when applicable;

(viii) child care services (CCS), when applicable;

(ix) AS, when applicable;

(x) facility administrator; and

(xi) guardian for the vulnerable adult, when applicable.

(e) Upheld substantiated findings for CSWs eligible for CSWR placement.

(1) When the OCA Reconsideration Committee makes a determination to uphold a substantiated finding of maltreatment of a vulnerable adult by a CSW eligible for CSWR placement, the OCA Reconsideration Committee immediately conducts a CSWR review to determine potential registry placement based on criteria in (A) and (B) of this paragraph. Whether the CSW's wrongful conduct:

(A) results in, or creates a substantial risk of serious physical or emotional injury to a service recipient; or

(B) was the result of intentional, willful, or reckless disregard for the service recipient's health or safety.

(2) When the OCA Reconsideration Committee upholds a substantiated finding under a preponderance of the evidence standard, but the CSW's conduct does not meet the criteria required for potential registry placement, the committee chair notifies the APO.

(3) The APO or designee provides written notification of the reconsideration determination within 15-calendar days of the decision. This time period runs concurrent with the 15-calendar day deadline for sending notice of the reconsideration results. The notice is provided to the:

(A) ~~appellant~~ CSW;

(B) advocate general;

- (C) programs administrator;
- (D) programs manager;
- (E) OCA social services inspector;
- (F) district attorney's office in the county where the finding originated;
- (G) DDS, when applicable;
- (H) CCS, when applicable;
- (I) AS, when applicable;
- (J) facility administrator; and
- (K) guardian for the vulnerable adult, if applicable.

(4) When the registry review affirms or modifies the findings and determines the CSW warrants potential placement on the CSWR, the OCA APO notifies OKDHS Legal Services (LS).

(5) OKDHS LS has prosecutorial discretion and determines whether to pursue CSWR placement.

(A) When OKDHS LS decides not to pursue CSWR placement, LS staff sends a Determination Letter to the CSW, copied to the OCA APO, and OCA takes no further action.

(B) When OKDHS LS staff decides to pursue CSWR placement, LS staff notifies the OCA APO or designee. The APO then notifies the CSW ~~in writing by regular and certified mail, with return receipt requested, advising the CSW, as provided in (c)(2) of this Section~~ that:

(i) if the CSW is aggrieved by the decision, an administrative hearing may be requested in writing via mail sent to OKDHS within 20-calendar days of the ~~mailing date of the reconsideration decision~~ was sent; and

(ii) absent a finding of good cause by an administrative law judge (ALJ), the failure to timely request a hearing:

(I) results in the reconsideration decision becoming final;

(II) waives any right to an administrative hearing or judicial review; and

(III) authorizes entry of the CSW's name in the CSWR, and disclosure to any person requesting the information per this subsection.

(g) **Hearing Notice.** When the CSW submits a timely written request for hearing, or upon the ALJ finding of good cause for a request that was not timely, OKDHS LS sends a hearing notice ~~by certified mail, return receipt requested, postage prepaid~~ as provided in (c)(2) of this Section within 10-business days of receipt of the request. The hearing notice is dated and states:

(1) the administrative law judge's (ALJ) name;

(2) the hearing date and time;

(3) the street and city address and room number where the hearing is scheduled;

(4) that his or her failure to attend the hearing, absent a finding of good cause by an ALJ:

(A) waives any right to either an administrative hearing or judicial review; and

(B) authorizes entry of his or her name in the CSWR, and disclosure to any person requesting the information, per OAC 340:100-3-39;

(5) the CSW may be represented by an attorney;

(6) requests by the CSW or his or her attorney for witnesses or records, relevant to the proceeding must be directed to OKDHS LS staff, who forward requests to the relevant persons, OKDHS programs, and provider, per OAC 340:100-3-39; and
(7) a final proposed list of evidence, witnesses, and summary of anticipated testimony must be submitted to the administrative law judge designated on the notice of hearing at least 10-calendar days prior to the hearing.

(h) Hearing.

(1) The hearing is:

- (A) held no earlier than 15-calendar days and no later than 90-calendar days after the date the request for hearing was received by OKDHS. Upon request by the CSW or OKDHS, and for good cause shown, a hearing may be held more than 90-calendar days after the date the request for hearing was received by OKDHS, when approved by the ALJ;
- (B) closed and all information presented therein is confidential; and
- (C) audio recorded.

(2) The CSW or his or her attorney is allowed to cross-examine witnesses called by the OKDHS attorney, who is allowed to cross-examine any witnesses called by the CSW or his or her attorney.

(3) The ALJ has final decision on the specific persons allowed to testify, the scope of direct testimony and cross-examination, and admissibility of exhibits, except all OKDHS and provider records pertaining to a finding of confirmed maltreatment are admissible.

(4) The formal rules of evidence and procedure under Oklahoma law are not controlling, the burden of persuasion and initially coming forward with evidence is on OKDHS through its attorney, and the standard of proof is clear and convincing evidence.

(i) Hearing decision. A written decision by the ALJ:

(1) is issued placing the CSW on the CSWR when the ALJ finds by clear and convincing evidence that maltreatment occurred. Despite a finding by the ALJ that maltreatment occurred, the CSW is not added to the CSWR when the ALJ makes a finding that the act or omission that is the basis for the confirmed finding either:

- (A) did not result in, or create a substantial risk of, serious physical or emotional injury to a vulnerable adult; or
- (B) was not the result of intentional, willful, or reckless disregard for the service recipient's health or safety;

(2) is issued denying placement of the CSW on the CSWR if the ALJ finds that there is not clear and convincing evidence that maltreatment occurred;

(3) contains findings of fact and conclusions of law;

(4) contains appeal rights, the action required to appeal, and the time within which such actions must be taken;

(5) is issued within 30-calendar days of the hearing; and

(6) is ~~mailed~~ sent to the CSW by certified mail, return receipt requested or email as applicable no later than the third business day following the date the decision is signed by the ALJ.

(j) Appeal rights. A CSW aggrieved by a decision of the ALJ may seek judicial review of the decision. A judicial review, based solely on the administrative record, may be

initiated by filing a petition in the Oklahoma district court with jurisdiction within 30-calendar days from the date the decision is signed by the administrative law judge, per 56 O.S. § 1025.3 and 75 O.S. § 318. A copy of the petition and summons filed in district court must be served on OKDHS LS.

(k) **Request for CSWR removal.** A registrant may request removal after 60 months from the date of placement on the CSWR. A request for removal from the CSWR is forwarded to the OCA Reconsideration Committee. The OCA Reconsideration Committee makes a determination within 30-calendar days of receipt of the CSW's request.

(1) Criteria considered for removal includes, but are not limited to:

(A) the individual's age at the time of the offense(s);

(B) the number and types of maltreatment incidents for which the individual has findings made against them;

(C) the circumstances surrounding the maltreatment incident demonstrating willful intent;

(D) the likelihood the individual will maltreat again;

(E) other documentation submitted indicating the vulnerable adult's health, safety, and well-being are, or are not endangered;

(F) a current criminal background review, conducted within 30-calendar days of the date of the removal request;

(G) work and training histories, since registration;

(H) a personal statement of rehabilitative efforts; and

(I) the length of time on the CSWR.

(2) A decision to remove a registrant from the CSWR is based on an OCA Reconsideration Committee majority decision. ■ 2

(3) OCA Reconsideration Committee staff notifies the registrant of the OCA Reconsideration Committee decision.

(l) **Service.** If Form 15IV004E, Address Information Notice, is not obtained during the investigative process found in OAC 340:2-3-36.1. OKDHS may obtain service on a CSW by any means authorized by the Rules for the District Courts of Oklahoma as found in Title 12 of the Oklahoma Statutes (12 O.S. § Rule 1, et. seq.).

INSTRUCTIONS TO STAFF 340:2-3-39.1

Revised 9-15-23

1. The Office of Client Advocacy (OCA) Reconsideration Committee is comprised of:

(1) the grievance program supervisor or designee;

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

(3) a programs manager or designee from Developmental Disability Services; and

(4) a programs manager or designee from Adult Protective Services.

2. When the Reconsideration Committee decision is to remove the registrant, OCA Reconsideration Committee staff notifies Oklahoma Human Services to update the Community Services Worker Registry database within five-business days.