

COMMENT DUE DATE: February 3, 2023

Date: January 3, 2023

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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 1. Adult Protective Services Reports

340:5-1-1 [AMENDED]

340:5-1-6 [AMENDED]

Subchapter 3. Maltreatment Allegations

340:5-3-5 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Reports

340:5-5-5 [AMENDED]

Subchapter 7. Long-Term Care Investigations

340:5-7-1 [AMENDED]

(Reference WF 23-5)

SUMMARY:

The proposed amendments to Chapter 5, Subchapter 1: (1) update language to include "personal degradation"; and (2) to incorporate "personal degradation" into the definition of "maltreatment."

The proposed amendments to Chapter 5, Subchapter 3: (1) update notification procedures for Oklahoma State Department of Health to reflect the correct division to forward referrals; and (2) to include acronym for the Review, Evaluate, and Decide Unit.

The proposed amendment to Chapter 5, Subchapter 5 updates language to reflect current practice.

The proposed amendment to Chapter 5, Subchapter 7 includes acronym for the Review, Evaluate, and Decide Unit.

Permanent rulemaking approval is requested

LEGAL AUTHORITY:

Director of Human Services; 56 O.S. § 162.



Rule Impact Statement

To: Programs administrator
Legal Services

From: Jeromy Buchanan, CAP Director

Date: May 31, 2022

Re: CHAPTER 5. ADULT PROTECTIVE SERVICES
Subchapter 1. Adult Protective Services Reports
340:5-1-1 [AMENDED]
340:5-1-6 [AMENDED]
Subchapter 3. Maltreatment Allegations
340:5-3-5 [AMENDED]
Subchapter 5. Investigation of Adult Protective Services Reports
340:5-5-5 [AMENDED]
Subchapter 7. Long-Term Care Investigations
340:5-7-1 [AMENDED]
(Reference WF 23-5)

Contact: Cathy Wood, Programs Supervisor, 580-421-5807

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

Purpose.

The proposed amendments to Chapter 5, Subchapter 1: (1) update language to include "personal degradation"; and (2) to incorporate "personal degradation" into the definition of "maltreatment."

The proposed amendments to Chapter 5, Subchapter 3: (1) update notification procedures for Oklahoma State Department of Health to reflect the correct division to forward referrals; and (2) to include acronym for the Review, Evaluate, and Decide Unit.

The proposed amendment to Chapter 5, Subchapter 5 updates language to reflect current practice.

The proposed amendment to Chapter 5, Subchapter 7 includes acronym for the Review, Evaluate, and Decide Unit.

Strategic Plan Impact.

The proposed amendment to Chapter 5 Subchapter 1 achieves Oklahoma Human Services (OKDHS) goals by ensuring Adult Protective Services (APS) policy reflects Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103), Protective Services for the Elderly and for Incapacitated Adults Act.

The proposed amendments to Chapter 5 Subchapter 3 achieve OKDHS goals by ensuring APS policy accurately identifies the correct division at the Oklahoma State Department of Health (OSDH) to notify regarding APS referrals that meet the requirements for notification.

The proposed amendments to Chapter 5 Subchapter 5 achieve OKDHS goals by ensuring policy APS policy accurately identifies the correct division of OSDH to notify regarding APS referrals that meet the requirements for notification.

The proposed amendment to Chapter 5 Subchapter 7 achieves OKDHS goals by ensuring consistency throughout policy.

Substantive changes.

Subchapter 1. Adult Protective Services (APS) authority, core principles, and mission

Oklahoma Administrative Code (OAC) 340:5-1-1 is amended to add "personal degradation."

OAC 340:5-1-6 is amended to incorporate "personal degradation" into the definition of "maltreatment."

Subchapter 3. Maltreatment Allegations

OAC 340:5-3-5 is amended to update notification procedures for OSDH to reflect the correct division to forward referrals.

OAC 340:5-3-5 includes the acronym for the Review, Evaluate, and Decide Unit.

Subchapter 5. Investigation of Adult Protective Services Reports.

OAC 340:5-5-5 is amended to update language to reflect current APS practice.

Subchapter 7. Long-Term Care Investigations

OAC 340:5-7-1 is amended to include acronym for the Review, Evaluate, and Decide Unit.

Reasons.

Chapter 5 Subchapter 1: The proposed amendment adds "personal degradation" to be consistent with types of maltreatment defined in 43A O.S. § 10-103, Protective Services for the Elderly and for Incapacitated Adults Act.

Chapter 5 Subchapter 3: The proposed amendments reflect the correct division at OSDH to forward referrals to when required and includes the acronym for the Review, Evaluate, and Decide Unit to be consistent with other policy subchapters.

Chapter 5 Subchapter 5: The proposed amendment includes language for documentation of reports and referrals to reflect current APS practice.

Chapter 5 Subchapter 7: The proposed amendment includes the acronym for the Review, Evaluate, and Decide Unit to be consistent with other policy subchapters.

Repercussions.

If proposed revisions are not made, APS policy would not be consistent with 43A O.S. § 10-103, Protective Services for the Elderly and for Incapacitated Adults Act. Referrals would be forwarded to the incorrect division at the OSDH.

Legal authority.

Director of Human Services; 56 O.S. § 162.

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 APS staff, vulnerable adults, and OSDH staff. The affected classes bear no costs associated with the implementation of the rules.

C. A description of the classes of persons who will benefit from the proposed rule:

The classes of persons who will benefit are APS staff, vulnerable adults, and OSDH staff.

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 do not have an economic impact on the affected entities.

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: There is no anticipated cost and the proposed amendments will result in enhanced delivery of services to positively impact APS staff, OSDH staff, and vulnerable adults.

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 impact on any political subdivisions or require their cooperation in implementing or enforcing the rule.

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: The proposed amendments do not

have an adverse economic effect on small businesses 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 not any less costly, nonregulatory, or less intrusive methods identified for achieving the purposed of the proposed rules.
- 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 amendments clarifies personal degradation as a type of maltreatment that is investigated by APS. Including personal degradation as a type of maltreatment may contribute to more effective response to vulnerable adults and decrease their risk.
- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** If the proposed amendments are not implemented, processes may not be followed as intended, unintentionally placing vulnerable adults at risk of continued maltreatment.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared May 31, 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. 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 ~~9-17-18~~9-15-23

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 ~~9-15-21~~9-15-23

(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 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.