

COMMENT DUE DATE: January 15, 2024

Date: December 15, 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:

Chapter 5. Adult Protective Services

Subchapter 3. Maltreatment Allegations

340:5-3-5 [AMENDED]

340:5-3-6 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Reports

340:5-5-6 [AMENDED]

Subchapter 7. Long-Term Care Investigations

340:5-7-1 [AMENDED]

(Reference WF 24-5)

SUMMARY:

The proposed amendments to Chapter 5, Subchapter 3, amend the rules to clarify language regarding the current practices and responsibilities of the Review, Evaluate, and Decide (RED) Unit and Abuse and Neglect Hotline (Hotline) specialists.

The proposed amendments to Chapter 5, Subchapter 5 correct a reference to policy.

The proposed amendments to Chapter 5, Subchapter 7 amend the rules to clarify language regarding the RED Unit.

Permanent rulemaking approval is requested.

LEGAL AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).



OKLAHOMA DEPARTMENT OF HUMAN
SERVICES



Rule Impact Statement

To: Programs administrator
Legal Services - Policy

From: Jeromy Buchanan, CAP Director

Date: June 28, 2023

Re: Chapter 5. Adult Protective Services
Subchapter 3. Maltreatment Allegations
340:5-3-5 [AMENDED]
340:5-3-5 ITS 5 [NEW]
340:5-3-6 [AMENDED]
Subchapter 5. Investigation of Adult Protective Services Reports
340:5-5-6 [AMENDED]
Subchapter 7. Long-Term Care Investigations
340:5-7-1 [AMENDED]
(Reference WF 24-5)

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 3, amend the rules to clarify language regarding the current practices and responsibilities of the Review, Evaluate, and Decide (RED) Unit and Abuse and Neglect Hotline (Hotline) specialists.

The proposed amendments to Chapter 5, Subchapter 5 correct a reference to policy.

The proposed amendments to Chapter 5, Subchapter 7 amend the rules to clarify language regarding the RED Unit.

Strategic Plan Impact.

The proposed amendments achieve Oklahoma Human Services (OKDHS) goals by aligning policy with practice and improving services that are offered to vulnerable adults who may be experiencing mental health challenges.

Substantive changes.

Subchapter 3. Maltreatment Allegations

Oklahoma Administrative Code (OAC) 340:5-3-5 4 clarifies the responsibilities of the RED Unit specialists.

OAC 340:5-3-5 adds instructions to call 988 when needed.

OAC 340:5-3-6 clarifies the responsibilities of Hotline and RED Unit specialists.

Subchapter 5. Investigation of Adult Protective Services Reports

OAC 340:5-5-6 is amended to correct the reference to another section of policy.

Subchapter 7. Long-Term Care Investigations

OAC 340:5-7-1 is amended to clarify the unit who is responsible for screening referrals.

Reasons.

The proposed amendments to clarify the responsibilities of the RED Unit specialists and Hotline specialists delineate who is responsible for screening Adult Protective Services (APS) referrals.

The purpose for the proposed amendments to add instructions to call 988 and give guidance on action to be taken when a vulnerable adult appears to be at risk of suicide is to improve service delivery to vulnerable adults.

Correcting the reference to policy will ensure appropriate action is taken.

Repercussions.

If proposed revisions are not made, APS policy would not be consistent with APS practice. Vulnerable adults who may benefit from appropriate referrals for mental health services would not receive the services they need.

Legal authority.

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (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:** Chapter 5 Subchapters 3, 5, and 7: The classes of persons most likely to be affected by the proposed amendments are APS staff and vulnerable adults. 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 and vulnerable adults.
- 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 or benefit to OKDHS.
- 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:** The proposed amendments outline appropriate action to be taken by APS specialists when a vulnerable adult appears to be at risk of suicide. Effective response to vulnerable adults expressing or demonstrating suicidal ideation could decrease their risk for suicide.
- 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 June 28, 2023.

SUBCHAPTER 3. MALTREATMENT ALLEGATIONS

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

Revised ~~9-15-24~~ 9-14-24

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, 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 the facility does not employ.

(B) The APS specialist sends a copy of the final investigative report to OSDH. Upon completion of an investigation involving an administrator named as the alleged perpetrator 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.

(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.

(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~~ Review, Evaluate, and Decide (RED) Unit specialist or designee ~~must determine~~ determines 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~~ 988 for services.

(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 or 988 to secure emergency detention when the person is a danger to self or others.

INSTRUCTIONS TO STAFF 340:5-3-5

Revised ~~9-15-22~~ 9-14-23

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 at LTComplaints@health.ok.gov medicalfacilities@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.
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 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.
5. When the vulnerable adult appears to be at risk of suicide, the vulnerable adult needs to be assessed by a mental health professional. The APS specialist phones 911 or 988 and requests the vulnerable adult be assessed for voluntary admission or an Emergency Detention to a mental health facility for mental health treatment. The APS specialist arranges for someone to stay with the vulnerable adult until assistance arrives, if possible.

340:5-3-6. Screening and assigning referrals

Revised ~~9-15-24~~ 9-14-24

(a) **Time frame for screening Adult Protective Services (APS) referrals.** The Review, Evaluate, and Decide (RED) Unit specialists or designees are responsible for screening new referrals on the APS Computer System on a regular basis throughout the day to identify emergency situations and to ensure assignment to the correct county office. Emergencies are reported to 911.

(b) **Responsibility for screening and assigning referrals.** Abuse and Neglect Hotline (Hotline) specialists determine if an urgent response is indicated. The RED Unit specialists or designees are responsible for screening:

(1) screen referrals and assigning to facilitate the timely initiation of the investigation, per Oklahoma Administrative Code (OAC) 340:5-5-2;

(2) assign the response type. The Hotline specialist determines if an urgent response is indicated. Hotline specialists and RED Unit specialists or designees complete screening to facilitate the timely initiation of the investigation, per Oklahoma Administrative Code (OAC) 340:5-5-2. The RED Unit specialist or designee determines; and

(3) determine which APS specialist is assigned the referral. ■ 1

(c) **Referrals involving domestic violence.** When referrals allege maltreatment of a vulnerable adult by a spouse, other family, or household member, domestic violence resources ~~must be~~ are considered in service planning. ■ 2

(d) **Referrals involving Oklahoma Human Services (OKDHS) employees or their families.** Specific procedures are followed when a referral of maltreatment is received that involves OKDHS employees. ■ 5

(e) **Service case assignments.** Service case assignments allow staff to determine the need for services and offer or create a service plan to assist clients. Service case conclusions are written in a manner that documents and supports stability of the service plan, with or without follow-up, before case closure. ■ 4

(f) **Referrals involving Soonercare (Medicaid) paid caregiver.** Referrals involving paid, unlicensed caregivers, whose services are funded through Soonercare (Medicaid), are sent to Office of Client Advocacy (OCA). These workers are subject to the Community Services Worker Registry guidelines. The programs in (A) through (G) of this subsection contract with agencies ~~utilizing~~ using workers who are in this category: ~~The programs contracting with agencies who utilize workers in this category are:~~

(A) ADvantage Waiver Services, including Consumer Directed Personal Assistance Services and Supports (CD-Pass);₂

(B) State Plan Personal Care Program;₂

(C) Developmental Disability Services;₂

(D) Adult Day Services;₂

(E) Program of All-inclusive Care for the Elderly (PACE);₂

(F) Living Choice;₂ and₂

(G) Medical Fragile (Med Frag). ■ 5

INSTRUCTIONS TO STAFF 340:5-3-6

Revised ~~9-23-22~~ 9-14-23

1. (a) **The Abuse and Neglect Hotline (Hotline) specialist and Review, Evaluate, and Decide (RED) Unit specialist or designee follows (1) through (7) of this Instruction as referral screening criteria.**

(1) **Is the alleged victim (AV) of maltreatment reported to be a vulnerable adult?**

(2) **Does the situation described fall into one of the categories of abandonment, abuse, financial neglect, neglect, self-neglect, financial or**

other exploitation, sexual abuse, sexual exploitation, verbal abuse, or personal degradation?

(3) Does the setting where the maltreatment is alleged to have occurred fall into the jurisdiction of the Community Adult Protective Services (APS) program?

(4) Does the situation, as reported, appear to require emergency intervention through 911?

(5) The RED Unit specialist or designee refers to Merge Protocol when considering referrals for merge.

(6) The Hotline specialist determines if the situation presents an immediate threat to the APS specialist or vulnerable adult. When a potential threat exists, the APS specialist IV, designee, or APS specialist calls 911. APS specialists are not first responders and do not place themselves into dangerous situations. When an APS specialist receives additional information from emergency personnel or discovers situations requiring emergency personnel at the initial home visit, the APS specialist staffs the situation with the APS Specialist IV or designee.

(7) When another entity is determined to be a more appropriate responder, such as Animal Control, Code Enforcement, the Oklahoma Department of Mental Health and Substance Abuse Services, or the Oklahoma Department of Public Safety, the ~~Hotline specialist~~ RED Unit specialist or designee screens the referral as an Information and Referral (I & R). ~~The RED Unit specialist or designee~~ and refers the reporter to other entities that may provide assistance. The RED Unit specialist or designee documents the contact in the APS Computer System.

(b) When there is insufficient information in the referral to immediately determine that the AV meets the definition of a vulnerable adult, the ~~Hotline specialist~~ RED Unit specialist or designee attempts to determine vulnerability.

(1) Information on the Oklahoma Human Services (OKDHS) computer system may be viewed and the RED Unit specialist or designee may contact the reporter for additional information to assist in this determination. RED Unit specialists or designees are familiar with the definition of vulnerable adult. A medically-diagnosed disability is not required to consider an adult vulnerable.

(2) Inability to determine vulnerability is not grounds for I & R assignment.

(c) The ~~Hotline specialist~~ RED Unit specialist or designee considers the definitions of maltreatment.

(1) Reports of maltreatment assigned as an Investigation include abuse, caretaker neglect, exploitation including non-caretaker "scams" when Medicaid is involved, sexual abuse, verbal abuse by a paid caregiver, personal degradation, and abandonment.

(2) When self-neglect is alleged, the case is assigned as a Service Case for prompt and thorough determination of risk and needs, a capacity decision, and service planning.

(3) When the allegation does not fit one of the definitions of maltreatment, the referral is assigned as an ~~Information and Referral (I & R)~~. The Hotline

specialist RED Unit specialist or designee documents in the Notes Section why the referral was assigned as an I & R. ~~The RED Unit specialist or designee~~ and contacts the reporter, when known, to discuss other alternatives for risk reduction.

(d) When a referral contains allegations of serious problems that could result in death or serious physical harm to the AV, 911 is called. APS follow-up may be required at the discretion of the APS specialist IV or designee.

(e) When the setting is not within APS jurisdiction, per Oklahoma Administrative Code 340:5-3-4, the RED Unit specialist or designee advises the reporter, when known, of the name of the entity to which APS forwards the referral.

2. (a) APS specialists have a working knowledge of the provisions of the Protection from Domestic Abuse Act, Sections 60 through 60.18 of Title 22 of the Oklahoma Statutes (22 O.S. §§ 60 - 60.18), the Domestic Abuse Reporting Act, 22 O.S. §§ 40.5 through 40.7, and 74 O.S. § 150.12.B.

(b) When a referral is received about an individual who does not meet the APS definition of vulnerable adult, the RED Unit specialist or designee refers the reporter to the local court clerk or other appropriate service provider for assistance in obtaining legal advice, legal action, or services.

3. (a) Additional screening criteria apply upon receipt of a referral involving OKDHS employees or their family members to determine if the potential for conflict of interest exists with the AV or alleged perpetrator (AP). It is never appropriate for anyone to discuss the referral with the involved employee outside of the investigative process. Notifying an employee of a pending investigation is a violation of the confidentiality provisions of 43A O.S. § 10-110. In addition to the basic screening criteria, the RED Unit specialist or designee determines:

(1) the AV's relationship to the OKDHS employee;

(2) if the employee is the AP; and

(3) the extent of any involvement between the employee and any APS specialists including the APS specialist IV or designee.

(b) After thoroughly analyzing the additional screening criteria the RED Unit specialist or designee and the APS district director or designee determine if the potential for conflict of interest or the appearance thereof may exist if the referral is assigned for investigation to local staff.

(1) The potential for conflict of interest may be determined to exist, when through acquaintance with the employee, the APS specialist, APS specialist IV, or designee could be accused of favoring or benefiting the employee in any way through the investigation.

(2) In some cases in which the employee is a family member but not an AP or actively involved in the care of the AV, there may be no question of conflict of interest and the referral may be assigned for investigation without being transferred.

(c) When the potential for conflict of interest exists, the APS district director or designee coordinates assignment of the referral to a different APS specialist IV group. When an out-of-district assignment of the referral is necessary, the APS district director or designee and Community Living, Aging, & Protective

Services (CAP) director coordinate the action with the other involved APS district director or designee. The CAP director may be consulted at any time in determining the appropriate assignment of a referral involving an OKDHS employee.

(1) Out-of-group assignment is appropriate when the local employee who is involved in the referral is not well known to other APS staff in the district.

(2) Out-of-district assignment is appropriate when the local employee involved in the referral is well known over a large portion of the district and APS staff in the district could not investigate without the potential appearance of conflict of interest.

(d) When the allegation involves possible violations of the employee's professional position, the referral is sent to the OKDHS Office of Inspector General (OIG) on Form 19MP001E, Referral Form. When accepted by OIG, local staff cooperates as requested. When OIG declines, the APS district director or designee follows the procedure for assigning a complaint involving an employee.

(e) The APS specialist IV or designee immediately notifies the APS district director or designee of substantiated allegations when an employee is named as AP, and of any training issues that are identified as a result of the findings.

(f) The APS district director or designee ensures confidential storage of records in a secure digital environment, which is ~~maintained by~~ a contracted entity maintains.

(1) Paper case records on APS investigations involving OKDHS employees are securely destroyed.

(2) To restrict access, during the screening process the APS specialist IV or designee codes electronic case records for confidentiality in the APS Computer System.

4. Information Management System/Medicaid Management Information System (IMS/MMIS) assists APS ~~workers~~ specialists in determining if a client is receiving a Medicaid Program. Members often have multiple IMS case numbers; therefore, it is important to utilize use the current active IMS number.

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REPORTS

340:5-5-6. Provision of protective services to vulnerable adults

Revised 9-15-24 9-14-24

(a) **Voluntary protective services.** Voluntary services are arranged when a vulnerable adult consents to provision of services, requests services, and is willing to allow the Adult Protective Services (APS) specialist to provide or arrange for services, per Section 10-106 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-106).

(1) ~~Payment for voluntary protective services.~~ Payment for voluntary protective services. The cost of providing voluntary protective services is borne by the vulnerable adult when the APS specialist determines the person is financially able to make payment or by any private or public programs for which the vulnerable adult is eligible.

(2) When a caretaker controls the person's funds and refuses to pay for necessary services, caretaker interference may be construed and is addressed in (c) of this subsection. ■ 4 5 An allegation of financial neglect may be considered, along with asset management remedies available through temporary guardianship, or an Order to Enjoin Caretaker.

(3) When voluntary services are required to meet an urgent need and no other payment source is available, the APS specialist follows procedures in ~~(e)~~ (b) of this subsection. In cases where the services do not meet an urgent need, the APS specialist arranges for voluntary services, that:

(A) can be provided free of charge;

(B) the vulnerable adult is able to, and agrees to pay for; or

(C) can be paid for by a public or private assistance program.

(b) **Payment for emergency protective services.** Oklahoma Human Services (OKDHS) maintains a limited APS Emergency Fund that may be accessed only when specific criteria are met. This fund is used as a short-term measure for crisis situations until other arrangements are made. ■ 2

(c) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services, but the caretaker refuses to allow the provision of services, OKDHS may petition the court for an injunction prohibiting caretaker interference with the provision of protective services. ■ 3 5

(d) **Refusal to consent to protective services.** When a vulnerable adult does not consent to the provision of needed services or withdraws consent after it is given, the APS specialist documents the vulnerable adult's refusal in the service plan and on Adult Protective Services Report of Investigation. Service Case refusals are documented in the service plan and case conclusion. Services are terminated unless OKDHS determines the vulnerable adult lacks capacity to consent. In that case, the APS specialist considers action, per Oklahoma Administrative Code ~~(OAC)~~ 340:5-1-4.

(e) **Religious beliefs.** A vulnerable adult has the right to depend on spiritual means for healing through prayer, within the practices of a recognized religious method in accordance with the tenets and practices of said place of worship ~~as mandated by~~ per 43A O.S. § 10-103(B). ■ 7

(f) **Involuntary protective services.** Involuntary protective services are authorized, per 43A O.S. § 10-107. When a vulnerable adult is suffering from abuse, neglect, or exploitation that presents a substantial risk of death or immediate and serious physical harm to self; or significant and unexplained depletion of the adult's estate, but lacks the capacity to consent to receive protective services and consent cannot be obtained from anyone acting as caretaker, the services may be ordered by the court on an involuntary basis. ■ 8

(1) **Authority.** Per 43A O.S. § 10-107(B)(1), the court authorizes provision of specific services the court finds least restrictive of rights and liberty while consistent with the welfare and safety of the vulnerable adult.

(2) **Payment for involuntary services.** Vulnerable adults are expected to pay for services. Payment for involuntary protective services is made from the vulnerable adult's funds upon court order. ■ 6

(g) **Responsibilities for out-of-home placements.** When the service plan recommends out-of-home placement for safety, health, and care needs, the APS

specialist discusses the plan with the vulnerable adult. The vulnerable adult is provided with all of the information necessary to make an informed decision. This may include visits to a variety of placement options ~~arranged or facilitated by the APS specialist~~ arranges or maintains. The vulnerable adult's family, when appropriate and approved by the vulnerable adult, is included in planning. The vulnerable adult or his or her family is provided with all of the information available to the APS specialist regarding the quality of care provided by the identified and selected placement. ■ ~~9~~

(h) **Continuation of involuntary services.** Continuation of services is authorized, per 43A O.S. § 10-108(L). The APS specialist ~~is responsible for obtaining~~ obtains the required information and ~~submitting~~ submits it to the court of jurisdiction. When the alleged victim's mental state is in question, the APS specialist may request that the court order a psychological or psychiatric evaluation. ■ ~~43~~ 17

(i) **APS specialist responsibilities as temporary guardian of the person, estate, or person and estate.** The APS specialist, as temporary guardian, ~~is responsible for ensuring~~ ensures to the extent possible, protection of the vulnerable adult's residence, resources, and belongings.

(j) **Additional APS specialist responsibilities as temporary guardian of the estate.** The APS specialist, as temporary guardian of the estate:

- (1) opens a guardianship account in a local financial institution and regularly collects and deposits monies due to the vulnerable adult;
- (2) freezes existing accounts as necessary; and
- (3) works with the court, the vulnerable adult's attorney, the district attorney (DA), and OKDHS Legal Services to obtain a professional accountant to manage the estate.

(k) **Additional APS specialist responsibilities as temporary guardian of the person.** In cases where temporary guardianship of the person is granted to OKDHS, the APS specialist arranges or facilitates the protective services ordered by the court. This may include, but is not limited to:

- (1) placement in a medical facility for treatment of health related problems;
- (2) placement in a safe and anonymous location;
- (3) placement in a facility for short- or long-term care needs. Long-term care facilities include:
 - (A) residential care facilities;
 - (B) group homes;
 - (C) nursing homes;
 - (D) intermediate care facilities for persons with intellectual disabilities;
 - (E) assisted living centers;
 - (F) skilled nursing facilities; or
 - (G) other types of facilities licensed to provide 24-hour care or services for vulnerable adults; ■ ~~48~~ 13
- (4) making application or completing reviews for federal or state programs on behalf of the vulnerable adult for which he or she is or may be eligible to receive; or ■ ~~49~~ 24
- (5) making arrangements for facilities to be paid from the vulnerable adult's funds or resources.

(l) **Dismissal of court orders for involuntary services.** When services are in place and the vulnerable adult is stable, or guardianship is no longer necessary to ensure the safety of the vulnerable adult, APS prepares and submits a motion to dismiss to OKDHS Legal Services or the local district attorney according to county practice. ■ ~~22~~ 27

INSTRUCTIONS TO STAFF 340:5-5-6

Revised ~~9-23-22~~ 9-14-23

1. **The Adult Protective Services (APS) specialist assists a vulnerable adult in making application for public or private assistance programs, when needed, by:**
 - (1) completing application forms; and
 - (2) gathering documentation necessary to determine eligibility.
2. (a) **When the APS specialist determines the vulnerable adult needs emergency services and no payment source is available, the need for emergency funds is documented in the APS Computer System Service Plan. Emergency funds may be requested in a Service Case. Authorization to utilize use the APS Emergency Fund is approved, when the:**
 - (1) vulnerable adult has an open referral and an emergency exists, per Oklahoma Administrative Code (OAC) 340:5-1-6;
 - (2) APS specialist has verified the vulnerable adult does not have funds to pay for the services and his or her family members or local or district resources are unwilling or unable to assist;
 - (3) vulnerable adult and APS specialist have explored and applied for all federal and state programs for which the vulnerable adult may be eligible;
 - (4) Service Plan Section is completed on the APS Computer System describing how the emergency fund expenditures reduce risk, address needs, and prevent the need for future Emergency Fund expenditures; and
 - (5) APS specialist IV's or designee's and APS district director's or designee's designee's reviews of the circumstances and approvals are documented in the APS Computer System Notes Section.
- (b) **APS cases in which an Emergency Fund request is made, remain open until the APS specialist is notified of all pending claim payments.**
- (c) **Forms 10AD012E, Claim Form, and ~~IRS Form W-9, Request for Taxpayer Identification Number and Certification~~ (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) Oklahoma Office of Management & Enterprise System Services Vendor/Payee Form (<https://oklahoma.gov/omes/services/purchasing/supplier-portal.html>), are completed as needed for each vendor and the originals are sent to Aging Services (AS) State Office finance staff by emailing ASD.Purchasing@okdhs.org within 10-business days of the approved request.**
- (d) **When requests are made for APS Emergency Funds, the APS district director or designee:**
 - (1) approves or denies the request(s);
 - (2) documents the approval or denial in the APS Computer System Notes Section; and
 - (3) notifies AS State Office finance staff by emailing ASD.Purchasing@okdhs.org no later than the following business day when emergency funds have been approved.

(e) AS State Office finance staff processes all claims upon receipt.

(f) AS State Office staff documents claims tracking and notifies the APS district director or designee, APS specialist IV or designee, and requesting specialist when claims are paid. The APS specialist documents the payment in Service Plan Monitoring Notes.

3. **Court-related services.** All petitions or motions filed with the court regarding a vulnerable adult require the signature of the district attorney (DA), assistant district attorney (ADA), or an Oklahoma Human Services (OKDHS) Legal Services attorney.
4. The date, time, and circumstances of the vulnerable adult's consent are documented in the APS Computer System Capacity to Consent Section of the Risk, Needs, and Capacity Assessment.
5. (a) **Petitioning the court - order enjoining caretaker.** When the vulnerable adult's caretaker refuses to allow the provision of protective services to which the vulnerable adult has consented or otherwise interferes in the provision of services, OKDHS may petition the court for an Order to Enjoin Caretaker.
(b) The APS specialist, explains to the caretaker, the legal responsibility of OKDHS to arrange the needed services and authority to obtain an injunction, when necessary. Family members and other interested parties may be involved in the attempt to persuade the caretaker to allow provision of services. When attempts were made to persuade the caretaker to allow the needed services to be provided, and the caretaker still refuses to allow service provision, OKDHS may petition the court for an injunction to prohibit the caretaker from interfering with the provision of protective services. The petition alleges specific facts sufficient to show the:
 - (1) vulnerable adult is in need of protective services;
 - (2) vulnerable adult consents to receive the needed services; and
 - (3) caretaker refuses to allow the provision of such services.
(c) The APS specialist documents the date, time, and circumstances under which consent was obtained from the vulnerable adult, as well as the circumstances surrounding the caretaker's refusal to allow service provision.
(d) When the court finds the vulnerable adult is in need of and consents to protective services and the caretaker refuses to allow provision of services, the court may enter an order enjoining the caretaker from interfering with provision of services.
(e) When a caretaker continues to refuse to allow provision of protective services after the court issues an injunction, OKDHS requests assistance from law enforcement officials to implement the court order.
6. **Payment for involuntary services.** Vulnerable adults are expected to pay for services. Payment for involuntary protective services is made from the vulnerable adult's funds upon court order. When payment is required for involuntary services, procedures in (2) of this subsection Instruction to Staff (ITS) are followed, when:
 - (1) funds are not available from the vulnerable adult's assets; and
 - (2) a private or public payment source is not available.

7. Nothing is construed to interfere with a vulnerable adult's right to practice his or her religion through reliance on prayer alone for healing when this choice:
 - (1) was expressed, verbally or in writing by the vulnerable adult, who retained capacity at the time of the decision;
 - (2) was previously set forth in a living will, health care proxy, or other advance directive document validly executed and applied under state law; or
 - (3) may be clearly determined a part of the vulnerable adult's life history.
8. (a) Petitioning the court - Emergency Order for involuntary protective services. OKDHS may petition the court for an order to provide emergency protective services. The petition is made in the county of the vulnerable adult's residence or in a county where the vulnerable adult is located.
 - (b) The APS specialist ~~must have~~ has a face-to-face interview with the vulnerable adult within 24 hours prior to the filing of a petition for involuntary services.
 - (c) The petition ~~must be~~ is approved and signed by the DA, ADA, or OKDHS Legal Services and ~~must include~~ includes the:
 - (1) name, age, and address of the vulnerable adult determined in need of services;
 - (2) nature of the abuse, neglect, or exploitation;
 - (3) specific services needed; and
 - (4) information relating to the vulnerable adult's capacity to consent to services and OKDHS attempts to obtain consent.
 - (d) When a petition for involuntary services for a vulnerable adult is filed in the county of residence or the county where the vulnerable adult is located, the county of residence is the lead county and remains primarily responsible for the case including case record documentation and coordination of service planning. When two or more counties are involved with a vulnerable adult receiving involuntary services, close communication and coordination are required to ensure the vulnerable adult's needs are met.
 - (e) When a vulnerable adult's residence changes to the county where services are provided, the case is transferred to the new county of residence. When the former county of residence has an active court case on the vulnerable adult, the county of court jurisdiction may, upon request, transfer the case to the county of residence. When continued court action is needed, it is initiated in the county where the open case is on file.
 - (f) When the court issues an Emergency Order to provide protective services, the order includes the appointment of a temporary guardian for the vulnerable adult in need of services. The temporary guardian may be OKDHS or an interested person. The Emergency Order gives the temporary guardian authority only to consent to the specified protective services on behalf of the vulnerable adult.
 - (g) The vulnerable adult, temporary guardian, or any other interested person may at any time petition the court to have the Emergency Order set aside or modified.

9. The services to be provided must be specifically listed in the court order, including the names of any facilities or agencies that will be service providers for the vulnerable adult.
10. Do not resuscitate (DNR). Per Section 10-108(A) of Title 43A of Oklahoma Statute, (43A O.S. § 10-108(A)), only the court may make decisions regarding the granting or denying of consent for a DNR order, the withdrawal of hydration or nutrition, or other life-sustaining treatment.
11. Guardianship notification. When APS seeks guardianship, the court sets a date to hear the case. The hearing is scheduled within five-calendar days, excluding weekends and holidays per 43A O.S. §10-108(C)(2), of the date the judge signs the notice of proposed protective services. The vulnerable adult ~~must receive~~ receives notice 48 hours in advance of the hearing, unless notice is waived. Notice may be waived by the court in emergency cases, per ~~(2)~~(1) of this ~~Instruction to Staff (ITS)~~.
 - (1) When petitioning the court for an order for emergency protective services, OKDHS may file a motion to waive notice when there is a risk that immediate and reasonably foreseeable death or serious physical harm to the person will result from a delay, per 43A O.S. § 10-108(D). In response, the court, may enter a 72-hour verbal order if not during regular court hours or issue a limited order during regular hours and order written notice be served on the vulnerable adult and attorney, when known, of a hearing to be held within that 72-hour period.
 - (2) A court order is issued showing OKDHS petitioned the court for an order to provide protective services, and gives the date, time, and place of the hearing. The order specifies who serves the notice to the vulnerable adult. The APS specialist serves notice on the person who is the subject of the petition unless the situation is potentially dangerous. When there is the possibility of danger to the APS specialist, the APS specialist requests assistance from a law enforcement officer. When the client retained or was appointed an attorney, notice is also served on the attorney. The APS specialist IV or designee is consulted to ensure all necessary family members are identified for service of court documents. When the APS specialist is uncertain if circumstances warrant a waiver of notice, the APS specialist staffs the situation with the APS specialist IV or designee or APS district director or designee before presenting the petition and evidence to the court for a decision.
 - (3) If the hearing is declined, the court may either terminate the emergency temporary guardianship or enter a temporary 30-calendar day order to provide involuntary protective services.
12. (a) Responsibilities for out-of-home placements. As a result of a substantiated investigation, the APS specialist develops a service plan to address the identified needs and safety issues. Refer to OAC 340:5-5-3, ITS # 5 and # 6 for additional information.
 - (b) All out-of-home placements including any change of placement of vulnerable adults under APS guardianship, are reported to and subject to, approval of the court. Only protective services necessary to remove the conditions

immediately threatening the life and well-being of the vulnerable adult are ordered.

(1) Protective services authorized by court order may include a change of residence only when the court gives specific approval for such action and names the facility in its order.

(2) Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other facilities that provide services appropriate for the vulnerable adult's age and condition.

(3) Emergency placement is not made or construed as an alternative to emergency detention and protective custody, per 43A O.S. §§ 5-206, et seq. or made or construed as an alternative to involuntary commitment, per 43A O.S. §§ 5-410, et seq., when the person otherwise meets the criteria for involuntary commitment.

(4) Services provided to vulnerable adults are provided in a setting that is segregated from residents of a facility who are determined to be a danger to others. The APS specialist confirms with the facility administrator or Director of Nursing, prior to placement that the vulnerable adult will be segregated from any residents who are determined to be a danger to others.

13. (a) Information on current quality issues of specific nursing facilities is obtained from a variety of sources to determine the appropriateness of a facility for a vulnerable adult receiving APS services. The local APS specialist and APS specialist IV or designee determine placements with approval from an APS district director or program field representative. When a facility has any Oklahoma State Department of Health (OSDH) deficiencies at or above the actual harm level or has more than three substantiated Long-Term Care Investigations (LTCI) reports in the past year, the Community Living, Aging, & Protective Services director or designee approves the placement ~~must be approved by the CAP director or designee.~~

(b) These include, but are not limited to, reviewing OSDH survey reports at <http://www.ok.gov/health/>, contacting the district program field representative for information regarding substantiated allegations against long-term care facilities, and obtaining information available from the Long-Term Care Ombudsman at the local Area Agency on Aging office. Facilities are placed on a list ~~maintained by APS~~ maintains, when they:

(1) have suspended or revoked licenses;

(2) were decertified for SoonerCare (Medicaid) within the past year; or

(3) have a current restriction on new admissions imposed by OSDH.

(c) Without thorough documentation of other placements attempted and the reason those would not work, vulnerable adults are not placed in those facilities. Preferences expressed and decisions made by vulnerable adults receiving APS services and guardians, caretakers, or next of kin are thoroughly documented in case records.

14. Restricted or supervised visitation. Restricted or supervised visitation with the vulnerable adult requires a court order, per 43A O.S. § 10-111. A restricted or supervised visitation order is requested, when:

(1) it is consistent with the vulnerable adult's welfare and safety; or

- (2) the OKDHS investigation determined that maltreatment occurred and the vulnerable adult needs protection.
15. Time limits for providing involuntary emergency protective services. Protective services under an emergency court order, other than a 72-hour order, may be provided for 30-calendar days. When the APS specialist determines protective services are required past this 30-calendar day period, a motion is filed for continuation of involuntary protective services, per (h) of this Section.
16. (a) When the vulnerable adult continues to require protective services beyond the original 30-calendar day order, OKDHS immediately files a motion for the court to order one or both:
- (1) an appointment of a guardian; or
 - (2) placement of the vulnerable adult in a nursing home, personal medical institution, home placement, or other appropriate facility.
- (b) Before the court enters a 180-calendar day order for continued protective services, the court directs that an evaluation of the vulnerable adult is conducted and submitted to the court within 30-calendar days at a review hearing. The evaluation includes, at least:
- (1) the address where the vulnerable adult resides and the names of any persons or agencies presently providing care, treatment, or services;
 - (2) a summary of the professional treatment and services provided for the vulnerable adult by OKDHS or other agencies, when any, in connection with the problem creating the need for protective services; and
 - (3) a medical, psychological or psychiatric, and social evaluation and review including recommendations for or against maintenance of partial legal rights and recommendations for placement consistent with the least restrictive environment required.
- (c) The original order continues in effect until the evaluation is submitted and a hearing is held on the motion.
- (d) Notice of the hearing is served.
- (e) When an investigation indicates the vulnerable adult is likely to need assistance with his or her affairs for an extended period of time, consideration is given to identifying a relative, friend, or other person interested in the vulnerable adult's well-being to serve as permanent guardian. Any person interested in the welfare of a vulnerable adult believed incapacitated or partially incapacitated, may file a guardianship petition with the court. Procedures for filing the petition are found in the Oklahoma Guardianship and Conservatorship Act, 30 O.S. § 3-101. Interested persons are referred to the office of the district court for further information and assistance.
17. When it appears the vulnerable adult may have regained capacity to consent to services, OKDHS Legal Services, the DA or ADA, or other attorney may make a motion to the court requesting an order for a psychological or psychiatric evaluation to determine the vulnerable adult's mental state.
18. Continuation of services for an additional period. After the hearing, when the vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed 180-calendar days,

per 43A O.S. § 10-108. After 180-calendar days, when the vulnerable adult is still found in need of protective services, the court may renew the order every 180-calendar days as needed.

19. Sale of real property. In the event that temporary guardianship extends for more than one year, or the vulnerable adult owns real property that must be sold in order to qualify for SoonerCare (Medicaid), OKDHS may, as temporary guardian, sell the vulnerable adult's real property per provisions of the Oklahoma Guardianship and Conservatorship Act, 30 O.S. § 3-101, and as OKDHS Legal Services directs. The fact that the vulnerable adult is in jeopardy for receipt of SoonerCare (Medicaid) if the property is not sold is stated in the court order directing the sale of the real property.
20. Sale of personal property. The court may issue an order authorizing OKDHS to sell the vulnerable adult's personal property when additional resources are required to pay for his or her necessary care. Personal property may consist of vehicles, furniture, televisions, or other household goods the vulnerable adult is not expected to need for the duration of the court order.
21. The APS specialist as temporary guardian ~~is responsible for ensuring~~ ensures to the extent possible, protection of the vulnerable adult's residence, resources, and belongings. This includes:
 - (1) securing the residence, checking and gathering the mail, and feeding or arranging for care for the vulnerable adult's domestic animals or livestock;
 - (2) inventorying and photographing the vulnerable adult's home and personal property within two weeks of the initial court order. The inventory ~~can~~ may be completed by photo or written documentation at the discretion of the APS specialist IV or designee.
 - (A) For enhanced accountability, a minimum of two people must be present during the inventory, one of whom is a law enforcement representative or non-OKDHS employee.
 - (B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory or photographic record, noting the date and their professional affiliation.
 - (C) ~~Exceptions~~ The APS district director or designee approves exceptions to the inventory process ~~must be approved by the APS district director or designee~~ and documented documents them in the APS Computer System Notes Section; and
 - (3) establishing an account at a local financial institution and depositing any cash and uncashed checks; the:
 - (A) The account ~~must be~~ is established using the name of the APS specialist and one other OKDHS employee, preferably the APS specialist IV or designee; and
 - (B) The APS specialist documents account information in the APS Computer System Estate Management Section. The APS specialist scans copies of the check registry and other pertinent documentation in the APS Computer System. Financial institutions that require Social Security numbers are given the OKDHS federal employee identification (~~FEI~~) number 73-6017987. In no instance does the APS specialist provide his

- or her personal Social Security number for a vulnerable adult's financial account; and
- (4) securing other valuables located during the inventory. The APS specialist:
- (A) arranges to have the locks changed or padlocks the residence to secure it from intrusion, when necessary; and
 - (B) advises all parties that no one is allowed to enter the residence unless accompanied by an OKDHS representative while the temporary guardianship is in effect.
22. The APS specialist, as temporary guardian of the estate may:
- (1) transfer existing accounts to the long-term care facility to facilitate payment;
 - (2) submit an accounting to the court as ordered by the court, no less than annually; and
 - (3) have responsibility, absent the availability of professional financial management, for regular financial activities as dictated by the vulnerable adult's circumstances that include, but are not limited to, the timely:
 - (A) payment and documentation of the vulnerable adult's expenses and other bills as they occur. Cash transactions are strongly discouraged and the use of automatic bank drafts by vendors is preferred. The APS specialist ~~must reconcile~~ reconciles monthly bank statements and ~~document~~ documents all cash transactions with receipts that are scanned into the APS Computer System. A third party must witness all cash transactions;
 - (B) deposit of funds received;
 - (C) redirection of incoming funds to the new account; and
 - (D) protection of existing accounts.
23. Involvement of the vulnerable adult and his or her family is desirable in all cases to the extent they are able to be safely involved.
- (1) Any time an out-of-home placement is considered, the APS specialist assesses the:
 - (A) vulnerable adult's preferences and wants and needs;
 - (B) family's preferences and wants and needs;
 - (C) vulnerable adult's medical condition and needs, and the physician's recommendation;
 - (D) vulnerable adult's situation or unique circumstances in order to provide an appropriate and safe level of care;
 - (E) availability of facilities to meet the vulnerable adult's needs;
 - (F) facility's willingness to accept the vulnerable adult; and
 - (G) payment arrangements, availability, and affordability.
 - (2) The APS specialist documents these assessment criteria in the case record and makes them available at the request of the court in the form of a written report.
- 24.(a) Applying for or maintaining benefits and services for the vulnerable adult includes:
- (1) monitoring the receipt of benefits;

- (2) acquiring and assisting the vulnerable adult to obtain documents to determine benefit eligibility; and
 - (3) documenting in the APS Computer System Guardianship Section:
 - (A) the case number(s) for benefits the vulnerable adult is applying for or receiving;
 - (B) how to contact the person at each agency who ~~is responsible for certifying~~ certifies or ~~reviewing~~ reviews the vulnerable adult's eligibility for each benefit or service; and
 - (C) when reviews are due for the benefits or services the vulnerable adult is receiving.
 - (b) When the guardianship expires or is dismissed, arrangements must be in place and documented in the APS Computer System Service Plan Section for the vulnerable adult's ongoing maintenance of benefits.
 - (c) When a vulnerable adult possessing a Medicaid Income Pension Trust (MIPT) dies, the APS specialist immediately notifies the vulnerable adult's eligibility worker. The eligibility worker notifies staff in the Adult and Family Services ~~(AFS)~~ Health & Medical Services Section and requests termination of the MIPT, per OAC 317:35-41.6(6)(B)(xi).
25. When an emergency situation requires immediate placement, the APS specialist places the vulnerable adult in a licensed facility that, to the best of the APS specialist's knowledge, provides the required services needed to alleviate the current emergency situation. Reasons for this choice are documented in the case record and provided to the court at the 72-hour hearing. Refer to OAC 340:5-5-6(l)(2) for emergency out-of-home placement into a nursing facility.
26. To enforce a court order for involuntary protective services, 43A O.S. § 10-108 provides that the court may also order:
- (1) forcible entry of the vulnerable adult's premises;
 - (2) transportation by law enforcement of the vulnerable adult to another location. Refer to OAC 340:5-5-6(b) for transportation expense payments; or
 - (3) the eviction of a person from any property the vulnerable adult owns, leases, or rents and restriction of that person from further access to any of the vulnerable adult's property.
27. (a) When the vulnerable adult is subject to a court order for involuntary services and OKDHS serves in the role of temporary guardian, the APS specialist ~~is responsible for responding~~ responds to a court's request to dismiss the guardianship by preparing and submitting the motion to dismiss to OKDHS Legal Services or the local DA according to county practice.
- (b) Prior to filing a request to dismiss a court order for temporary guardianship, the APS specialist:
- (1) consults with the APS Specialist IV or designee to determine if dismissal is warranted;
 - (2) discusses and staffs the pleadings with the OKDHS attorney in the matter as to form; and
 - (3) prepares a Financial Accounting if OKDHS held guardianship of the estate, or person and estate.

(c) After receiving APS specialist IV or designee and OKDHS attorney approval, the APS specialist files the petition and financial accounting with the court clerk and obtains a dismissal order from the court.

(d) After obtaining the dismissal order, the APS specialist:

- (1) scans the petition and the order into the APS Computer System;
- (2) updates the APS Computer System Service Plan Items Section;
- (3) closes involuntary services; and
- (4) updates service plan monitoring notes with the dismissal date and action by the court.

SUBCHAPTER 7. LONG-TERM CARE INVESTIGATIONS

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

Revised ~~9-15-21~~ 9-14-24

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

(b) The ~~Abuse and Neglect Hotline~~ specialist is responsible for screening Review, Evaluate, and Decide (RED) Unit specialist or designee screens 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~~ LTCI, except those noted in this Subchapter.