

**COMMENT DUE DATE: February 16, 2021**

**Date: January 15, 2021**

**Miranda Kieffer, APS** 405-209-7054  
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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 amendment is **permanent**.

**SUBJECT: CHAPTER 5. ADULT PROTECTIVE SERVICES**

Subchapter 1. Adult Protective Services  
340:5-1-1 [AMENDED]  
340:5-1-4 through 340:5-1-6 [AMENDED]  
340:5-1-8 [AMENDED]  
Subchapter 3. Maltreatment Allegations  
340:5-3-1 through 340:5-3-2 [AMENDED]  
340:5-3-4 through 340:5-3-6 [AMENDED]  
Subchapter 5. Investigation of Adult Protective Services Reports  
340:5-5-2 through 340:5-5-4 [AMENDED]  
340:5-5-6 through 340:5-5-8 [AMENDED]  
Subchapter 7. ~~Long-term~~ Long-Term Care Investigations  
340:5-7-1 [AMENDED]  
340:5-7-3 [REVOKED]  
340:5-7-5 [AMENDED]  
340:5-7-7 [REVOKED]  
**(WF 21-5)**

**SUMMARY:**

The proposed amendments to Chapter 5, Subchapter 1, Sections 1, 4, 5, 6, and 8 include minor language updates such as removing outdated text; and 340:5-1-6 incorporates new and updated definitions.

The proposed amendments to Chapter 5, Subchapter 3, Sections 1, 2, 4, 5, and 6 include minor language changes including removing outdated text and processes.

The proposed amendments to Chapter 5, Subchapter 5, Sections 2, 3, 4, 6, 7, and 8 include minor language cleanup including removing outdated and redundant text, reorganizing text for clarity, and removing text better suited as Instructions to Staff (ITS).

The proposed amendments to Chapter 5, Subchapter 7, Sections 1, 3, 5, and 7 include minor language changes and adding “inconclusive” as an indicator in 340:5-7-5. A duplicative section, 340:5-7-3, regarding complaints is moved to the complaints Section in Subchapter 1. Outdated Section 340:5-7-7 is revoked as reporting is sufficient now within a common system.

**PERMANENT APPROVAL:** Permanent rulemaking is requested.

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

## Rule Impact Statement

**To:** Programs Administrator  
Legal Services - Policy

**From:** Jeromy Buchanan, Director  
OKDHS Aging Services

**Date:** December 18, 2020

**Re: CHAPTER 5. ADULT PROTECTIVE SERVICES**  
Subchapter 1. Adult Protective Services  
340:5-1-1 [AMENDED]  
340:5-1-4 through 340:5-1-6 [AMENDED]  
340:5-1-8 [AMENDED]  
Subchapter 3. Maltreatment Allegations  
340:5-3-1 through 340:5-3-2 [AMENDED]  
340:5-3-4 through 340:5-3-6 [AMENDED]  
Subchapter 5. Investigation of Adult Protective Services Reports  
340:5-5-2 through 340:5-5-4 [AMENDED]  
340:5-5-6 through 340:5-5-8 [AMENDED]  
Subchapter 7. ~~Long-term~~ Long-Term Care Investigations  
340:5-7-1 [AMENDED]  
340:5-7-3 [REVOKED]  
340:5-7-5 [AMENDED]  
340:5-7-7 [REVOKED]  
**(WF 21-5)**

**Contact:** Miranda Kieffer 405-209-7054

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

#### **Purpose.**

The proposed amendments to Chapter 5, Subchapter 1, Sections 1, 4, 5, 6, and 8 include minor language updates such as removing outdated text; and 340:5-1-6 incorporates new and updated definitions.

The proposed amendments to Chapter 5, Subchapter 3, Sections 1, 2, 4, 5, and 6 include minor language changes including removing outdated text and processes.

The proposed amendments to Chapter 5, Subchapter 5, Sections 2, 3, 4, 6, 7, and 8 include minor language cleanup including removing outdated and redundant text, reorganizing text for clarity, and removing text better suited as Instructions to Staff (ITS).

The proposed amendments to Chapter 5, Subchapter 7, Sections 1, 3, 5, and 7 include minor language changes and adding “inconclusive” as an indicator in 340:5-7-5. A duplicative section, 340:5-7-3, regarding complaints is moved to the complaints Section in Subchapter 1. Outdated Section 340:5-7-7 is revoked as reporting is sufficient now within a common system.

### **Strategic Plan Impact.**

The proposed amendments to Chapter 5 cleanup language to clarify and reflect updated processes.

### **Substantive changes.**

Most revisions in Chapter 5 clarify and cleanup language and update to reflect current processes. Substantive changes include revoking 340:5-7-3 and 340:5-7-7 to remove redundancy and outdated processes respectively. Some language was also identified as more appropriate to address in ITS.

#### **Subchapter 1. Adult Protective Services**

Oklahoma Administrative Code (OAC) 340:5-1-1 is amended to: (1) update language; and (2) remove outdated referral process.

OAC 340:5-1-4 is amended to: (1) update language; and (2) clarify residential re-entry procedure.

OAC 340:5-1-5 is amended to update and add clarifying language.

OAC 340:5-1-6 is amended to: (1) update language; and (2) add definitions for "inconclusive," "personal degradation," and "response type" and incorporate these where applicable.

OAC 340:5-1-8 is amended to: (1) update language; and (2) update for process clarifications including appropriate titles, inclusion of Long-Term Care complaints to eliminate a redundant section, and exclusion of confidential information in responses.

#### **Subchapter 3. Adult Protective Services**

OAC 340:5-3-1 is amended to: (1) update language; and (2) update the submission of referrals for screening process.

OAC 340:5-3-2 is amended to: (1) update language; and (2) rename the section to further clarify that the hotline is for adults as well as children.

OAC 340:5-3-4 is amended to move jurisdiction of community service providers to Office of Client Advocacy and for clarification when Oklahoma Department of Mental Health and Substance Abuse Services has jurisdiction.

OAC 340:5-3-5 is amended to: (1) update outdated language; (2) clarify jurisdictional language; (3) add adult day facilities under Oklahoma State Department of Health and updates report and notification procedures; and (4) reflect current processes.

OAC 340:5-3-6 is amended to: (1) update language; (2) update procedures and language surrounding screening and assignment; and (3) include Office of Client Advocacy for referrals involving Medicaid paid caregivers.

#### **Subchapter 5. Investigation of Adult Protective Services Reports**

OAC 340:5-5-2 is amended to: (1) update language; and (2) remove discretionary language more appropriate as Instructions to Staff (ITS).

OAC 340:5-5-3 is amended to: (1) update language; and (2) remove language belonging in ITS.

OAC 340:5-5-4 is amended to: (1) update language; and (2) remove special considerations addressed in ITS.

OAC 340:5-5-6 is amended to: (1) update language; (2) remove text belonging in ITS; and (3) restructure text for clarity.

OAC 340:5-5-7 is amended to: (1) update language; (2) add termination for refusal of services; and (3) reflect change in citation.

OAC 340:5-5-8 is amended to: (1) update language; and (2) remove the word "paper" to include electronic records.

Subchapter 7. ~~Long-term~~ Long-Term Care Investigations

OAC 340:5-7-1 is amended to: (1) update language; and (2) reflect updated referral process and assignment.

OAC 340:5-7-3 is revoked as it is repetitive to and incorporated in OAC 340:5-1-8.

OAC 340:5-7-5 is amended to: (1) update language; and (2) add the finding of inconclusive.

OAC 340:5-7-7 is revoke because it is no longer applicable to forward reports as they are accessible in a shared system.

**Reasons.**

Language clarifying and reflective of current processes in Chapter 5 is important to ensure availability of appropriate information.

**Repercussions.**

If the amendments to Chapter 5 are not accepted, the Chapter will reflect outdated processes and redundancy creating confusion around Adult Protective Services.

**Legal authority.**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes.

**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 affected by the proposed amendments includes individuals receiving adult protective services from OKDHS and partners.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons affected by the proposed amendments are individuals receiving adult protective services from OKDHS and partners.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There is no anticipated economic impact of the proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in**

**such revenues if it can be projected by the Agency:** 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 does not have an impact on any political subdivisions or require their cooperation in enforcing the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** The proposed amendments do not have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are no less costly, non-regulatory, or less intrusive methods for achieving the purpose of the proposed amendments. The proposed amendments do not increase compliance costs.
- 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 do not have an effect on public health, safety, or environment.
- 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, there will be no detrimental effect on public health, safety and environment; however, the amendment provides clarity and accuracy.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared on July 21, 2020; modified December 18, 2020.

## CHAPTER 5. ADULT PROTECTIVE SERVICES

### Subchapter 1. Adult Protective Services Reports

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

Revised ~~9-17-18~~ 9-15-21

(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, 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 ~~Department of Human Services (DHS)~~ (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) APS supervisors or designees review referrals to determine the appropriate level response.~~

~~(g)~~ 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

~~(h)~~(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.

~~(i)~~(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**

~~Issued 9-17-18~~ Revised 9-15-21

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 director serves as the final authority for interpreting APS policy.  
 (b) APS district directors are responsible for all personnel issues.  
 (c) Questions regarding legal issues are referred to the Oklahoma Department of Human Services (DHS 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) ~~faxes or scans and~~ 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 Notes Section; and
  - (5) scans a copy of the subpoena or court order into the case record in the APS Computer System Documents 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.

**340:5-1-4. Adult Protective Services (APS) ethical considerations**

Revised 9-17-189-15-21

- (a) Ethical principles guide all client-related contact. ■ 2



(1) The APS specialist must obtain prior approval from the district director, program field representative, APS Specialist specialist IV, or designee to:

(A) handle the vulnerable adult's personal resources, such as bank accounts, cash, checks, notes, mortgages, trusts, deeds, sales contracts, stocks, bonds, certificates, or any other liquid assets;

(B) obtain or initiate repairs, personal services, and other necessary actions to provide health care, food, or shelter for a vulnerable adult. Verbal approval is authorized in emergency situations where immediate action is required to protect the vulnerable adult from imminent harm or significant loss of property. The APS specialist must document all plans and the approval in the case record as soon as possible; and

(C) re-enter a client's residence that was secured, and may only enter when ~~another specialist is present or with~~ another person from outside of the Oklahoma Department of Human Services (DHS), such as law enforcement, ~~or a nurse aide~~ is present. When a third party is unable to accompany APS staff, the district director may approve entry when another specialist is present.

(2) The APS specialist must not:

(A) solicit, charge, request, or accept a fee, gift, reward, or payment of any kind from individuals or staff for services rendered as a volunteer, intern, or employee;

(B) use contact with the vulnerable adult or any member of the vulnerable adult's support system for personal gain or personal relationships;

(C) after termination of any assignment, make personal contact with a former client or any member of the client's support system or use former contact with a client for personal gain;

(D) buy items from a vulnerable adult;

(E) engage in any employment or business interest that would constitute a conflict of interest or impair the APS specialist's ability to carry out duties in an impartial manner;

(F) give diagnostic medical or legal opinions;

(G) refer the vulnerable adult to just one physician, attorney, counselor, or other professional for services; ■ 1

(H) have sexual contact with vulnerable adults, his or her relatives, next of kin, or support system members; and

(I) make after hours home visits unless specifically approved by the APS specialist IV or designee; and

(J) ~~re-enter a secured residence without another specialist present or another person from outside of DHS, such as law enforcement or a nurse aide.~~

**(b) Response to aggression in the field.** If at any time, the APS specialist feels unsafe in the field or in a home, he or she has the authority to stop an interview and leave. The APS specialist contacts the APS specialist IV or designee immediately when the vulnerable adult or the APS specialist leaves the home or is threatened or injured in the course of the investigation.

**INSTRUCTIONS TO STAFF 340:5-1-4**  
**Revised 9-17-18 9/15/21**

1. When only one referral for professional services is made, the reason, and Adult Protective Services (APS) district director approval must be documented, in the APS Computer System Notes Section.
2. APS specialists III and IV must successfully complete the APS Specialist III and IV Academy to be able to provide adequate supervisory support for an APS specialist.

### **340:5-1-5. Confidentiality**

Revised 9-17-189-15-21

- (a) All records related to Adult Protective Services (APS) cases are confidential, per Sections 10-110 and 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. §§ 10-110 and 10-110.1), and may be disclosed only by court order except under the circumstances described in (b) through (h) of this Section. Representatives of the general public, news media, or agencies not meeting one of the exceptions in (c) of this Section who request details on a specific case are referred to APS Oklahoma Department of Human Services (~~DHS~~) (OKDHS) State Office staff or to the ~~DHS~~ OKDHS Office of Communications for a detailed explanation of ~~DHS~~ OKDHS confidentiality rules. ■ 1
- (b) When making contacts as part of the investigation or service planning process, the APS specialist may disclose information necessary to ensure that the vulnerable adult is protected and the vulnerable adult's needs are met.
- (c) Certain persons acting in an official capacity with regard to the vulnerable adult may review or receive information from the entire case record, including the:
- (1) a district attorney or district attorney staff;
  - (2) ~~the~~ attorney representing the person who is the subject of an involuntary services action;
  - (3) ~~the~~ attorney representing the vulnerable adult, who is not the subject of involuntary services;
  - (4) ~~the~~ staff from:
    - (A) an Oklahoma law enforcement agency;
    - (B) a law enforcement agency of another state;
    - (C) a state Medical Examiner's Office;
    - (D) a law enforcement agency of a federally recognized tribe in Oklahoma; or
    - (E) a federal law enforcement agency;
  - (5) staff of another state's APS program;
  - (6) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult; and
  - (7) ~~DHS~~ OKDHS staff who use the information to provide services to the client. ■ 2
- (d) Any agency or person authorized by ~~DHS~~ OKDHS to provide services to a vulnerable adult may receive a summary of information necessary to secure or provide appropriate care for the vulnerable adult.
- (e) The vulnerable adult's caretaker, legal guardian, and next of kin may receive summaries of information from an APS case record. ■ 3
- (f) Some information from APS records may be released to employees or contractors of the State for research purposes, upon application to and approval by the ~~DHS~~ OKDHS Institutional Research Board. While ~~DHS~~ OKDHS offices may release statistical

information, no specific case information is released for research purposes unless approval is received from APS State Office.

(g) ~~Per 43A O.S. § 10-110.1, when~~ When the person responsible for the care of a vulnerable adult has been charged by information or was indicted with committing a crime resulting in the death or near death of a vulnerable adult, there is a presumption that it is in the best interest of the public to disclose relevant information, per 43A O.S. § 10-110.1.

■ 4

(h) When federal law specifically prohibits the disclosure of any of the information required by this subsection, that information is excluded from the disclosed information. ■ 5

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

**Revised ~~9-17-18~~ 9-15-21**

1. To maintain the highest degree of confidentiality, Adult Protective Services (APS) records are kept ~~in a secured area at local and State Office levels.~~
2. ~~Oklahoma Department of Human Services staff granted access to APS records include, Adult and Family Services, Child Welfare Services, Developmental Disabilities Services, Office of Inspector General, Office of Client Advocacy, Aging Services, and others who request records to evaluate eligibility or complete an investigation.~~ Oklahoma Human Services staff who request records to evaluate eligibility, complete an investigation, or assist with placement approval are granted access to APS records.
3. Pre-formatted letters available in the APS Computer System may be downloaded and used as the case summary.
4. (a) When an APS specialist has a case in which a person responsible for the care of a vulnerable adult is charged with committing a crime resulting in the death or near-death of a vulnerable adult, the APS specialist immediately notifies ~~APS State Office~~ his or her supervisor. The supervisor notifies the district director and APS State Office.  
(b) The APS State Office and Legal Services determine the information for release.
5. Example: disclosing medical information prohibited by the Health Insurance Portability and Accountability Act (HIPPA) of 1996 as it relates to the human immunodeficiency virus (HIV) that causes acquired immunodeficiency syndrome (AIDS). The court must order the release of such information.

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

**Revised ~~9-17-18~~ 9-15-21**

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, ~~or~~ 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 or 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 ~~Department of~~ Human Services (~~DHS~~) (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 ~~DHS~~ 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, ~~or 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 ~~has been~~ is referred to an appropriate responder ~~screened by the APS specialist IV and 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 telephone ~~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.

**"Level"** ~~means the assignment of an APS referral for investigation, service planning, information and referral, and/or involuntary services.~~

**"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.

**"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, 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. ~~If~~ When it is durable, the power of attorney ~~has been filed at the county court house and~~ 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.

**"Ruled-out"** ~~means no credible evidence was found to support an allegation of maltreatment.~~

**"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 which 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**

~~Issued 9-17-18~~ Revised 9-15-21

1. Reports of alleged abuse, neglect, or exploitation of a vulnerable adult require a prompt and thorough investigation. ~~Allegations of self-neglect require prompt determination of risks and needs and thorough service planning.~~
  - (1) Screen Out: The Hotline specialist determines no additional action is needed from Adult Protective Services (APS). For example, the vulnerable adult is deceased or there is no address or finding directions.
  - (2) Level 1 Information and Referral: The supervisor or designee Hotline specialist determines the alleged victim is not a vulnerable adult, or the vulnerable adult's risks can be addressed through information Information and/or and Referral (I & R) referral to a more appropriate responder. For example, when the vulnerable adult's primary vulnerability is mental illness or substance use or abuse dependency, the APS specialist IV 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 APS specialist IV 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.
  - (2)(3) Level 2 Service Case: The supervisor or designee is unable to determine When the Hotline specialist determines from the intake information if that the alleged victim is a vulnerable adult or if and the allegation(s) rises to the level of maltreatment. A referral for only allegation is self-neglect, the referral is assigned Level 2 as a Service Case for prompt and thorough determination of risk, and needs, a capacity decision, and service planning. When history or facts indicate, a Level 3 or Level 4 assignment may be made it is determined that temporary guardianship is needed, the Service Case will be elevated to an Investigation.
  - (3)(4) Level 3 Investigation: The supervisor or designee Hotline specialist determines the allegation of abuse, neglect, or exploitation of a vulnerable



adult requires a prompt and thorough assessments, investigation, and service planning.

~~(4)~~**(5) Level 4 Guardianship: If it is determined that temporary guardianship is needed, the investigation will be elevated to guardianship. The supervisor or designee determines the allegation of abuse, neglect, or exploitation of a vulnerable adult requires a prompt and thorough assessment, investigation, and extensive service planning to include temporary guardianship.**

### **340:5-1-8. Complaints and concerns regarding Adult Protective Services (APS) ~~completed service planning and~~ or Long-Term Care investigations**

Revised ~~9-17-189-15-21~~

Complaints regarding the provision of services or an investigation may be submitted to the Oklahoma Department of Human Services ~~DHS~~ OKDHS by phone, email, or in written form. Complaints regarding:

- (1) APS policy and procedure are referred to the district director, or program supervisor, who performs a case review. The district director, or program supervisor, sends a written response to the complainant within 45-calendar days, stating the review's general findings. Confidential information is not included in the report. If the complainant is not satisfied with the findings, the complainant may within 30-calendar days of the date of the letter, submit a written appeal to the APS State Office, at PO Box 25352, Oklahoma City, Oklahoma 73125. A committee composed of ~~DHS~~ OKDHS staff reviews the appeal and sends the complainant the decision within 30-calendar days; ■ 1
- (2) alleged misconduct by an APS specialist, or social service inspector is referred to the APS specialist IV supervisor or designee in the specialist's chain of command; ■ 2
- (3) alleged misconduct by an APS specialist IV is referred to the appropriate district director for action; and ■ 2
- (4) involuntary services are brought before the district court that granted the temporary guardianship at issue. ■ 3

### **INSTRUCTIONS TO STAFF 340:5-1-8**

Revised ~~9-17-189-15-21~~

1. (a) **No confidential information is included in the district director's or program supervisor's written response. A copy of the response is retained by Adult Protective Services (APS) State Office.**  
(b) **The APS director or designee and two senior Oklahoma Department of Human Services (~~DHS~~)(OKDHS) staff members from outside of APS review the appeal. Upon reaching a decision, the APS director or designee prepares a response letter. After review and signature by the APS director, the response letter is sent to the complainant.**  
(c) **Facility review requests about a specific Long-Term Care Investigations social services inspector.**  
**(1) When the Long-Term Care Investigations program manager receives a complaint, he or she:**

- (A) reads the complaint and all supporting documentation and compares it to the documentation in the case file;
- (B) forwards the complaint to the social service inspector for review and comment or for answers to the program manager's questions;
- (C) determines the accuracy of the social service inspector's decision after a thorough analysis of the case and complaint;
- (D) makes a decision and drafts a letter to the complainant;
- (E) gives the complaint, letter, social service inspector's comments, and file to the (APS) director for review and approval;
- (F) signs the letter without documentation, and mails it to the complainant; and
- (G) files all documents, the complainant's letter, the social service inspector's comments, and the response letter in the original case.
- (2) If a new investigation is initiated as a result of the complaint, it is given a new intake and number, and is initiated as a new case.
- (d) Complaints about Long-Term Care Investigations staff members received by Community APS specialists.
- (1) Complaints are reduced to writing.
- (2) The reporter may be contacted for clarification.
- (3) When the Community APS specialist is satisfied that the problem may be a Long-Term Care Investigations staff complaint, he or she immediately forwards the complaint to his or her supervisor.
- (4) The supervisor immediately sends the complaint to the Long-Term Care Investigations program manager.
- (5) Under no circumstance is a Long-Term Care Investigations staff complaint entered in the APS Computer System without the APS director's instruction to do so.
- (6) The program manager informs the APS director that a complaint was received and the nature of the complaint.
- (7) Investigation of concerns may include talking to the reporter, Long-Term Care Investigations social service inspector, or other persons when they have related information and are identified by the reporter.
- (8) All relevant documentation is reviewed.
- (9) Any other steps requested by the APS Director or Human Resource Management (HRM).
- (10) All findings are reduced to writing and given to the APS director for review.
- (11) The program manager and APS director meet to make a joint-decision about the finding and resolutions.
- (12) The program manager drafts a response letter that is mailed to the reporter after the APS director reviews and approves the letter.
- (13) A verbal and possibly written response to the complaint is provided to the Long-Term Care Investigations staff.
- (14) When disciplinary action is required the staff is informed according to OKDHS HRM policy.

2. (a) When a civil rights allegation is received, the APS district director offers to help the complainant complete Form 14CR001E, Discrimination Complaint – Client or Vendor. Completed Form 14CR001E is sent to the Office for Civil Rights at the address on the form for appropriate action.  
 (b) The APS specialist IV or designee assigned to the county where the alleged victim resides is responsible for addressing the complaint of possible inappropriate conduct by an APS specialist.  
 (c) The APS district director reviews all complaints of possible inappropriate conduct by APS staff.
3. DHS OKDHS Legal Services may be consulted when complaints are received.

### Subchapter 3. Maltreatment Allegations

#### **340:5-3-1. Receiving maltreatment allegations**

Revised 9-17-189-15-21

(a) **Mandatory reporters.** Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation is mandated by law, per Section 10-104(A) of Title 43A of Oklahoma Statutes (43A O.S. § 10-104(A)), to notify the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) or law enforcement.

(1) State law provides that any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation is, upon conviction, guilty of a misdemeanor.

(2) Any person who willfully or recklessly makes a false report or a report without a reasonable basis is liable in a civil suit for any actual damages suffered by any person named in the report and any punitive damages set by the court or jury.

(3) Any person exercising good faith and due care in making a report of alleged abuse, neglect, or exploitation has immunity from any civil or criminal liability that might otherwise be incurred.

(4) Every person in Oklahoma is a mandatory reporter and select groups who routinely have contact with vulnerable adults are specifically named in ~~(43A O.S. § 10-104(A))~~, including:

- (A) social workers;
- (B) physicians;
- (C) emergency response vehicle operators;
- (D) mental health professionals;
- (E) law enforcement;
- (F) domestic violence programs staff;
- (G) long-term care facility personnel, including staff of:
  - (i) nursing facilities;
  - (ii) intermediate care facilities for persons with intellectual disabilities;
  - (iii) assisted living facilities;
  - (iv) residential care facilities; and
  - (v) Oklahoma veterans' centers;
- (H) persons entering into transactions with a caretaker or other person who assumed the role of financial management for a vulnerable adult;
- (I) staff of:
  - (i) residential care facilities;

- (ii) group homes; and
  - (iii) employment settings for individuals with developmental disabilities;
  - (J) job coaches;
  - (K) community service workers;
  - (L) personal care assistants;
  - (M) other medical professionals; and
  - (N) municipal employees.
- (b) **Referral content.** A referral of alleged abuse, neglect, or exploitation of a vulnerable adult includes: ■ 1
- (1) the vulnerable adult's name, address, or location;
  - (2) the caretaker's name or address, when any; and
  - (3) a description of the vulnerable adult's situation.
- (c) **Obtaining the reporter's name.** The reporter's name, phone number, or address is not required, however such information is always helpful. ■ 2
- (d) **Submission of referrals for screening.** ~~Oklahoma Department of Human Services (DHS)~~ OKDHS staff immediately submits all referrals for screening.
- ~~(1) APS Abuse and Neglect Hotline staff enters the referral into the Adult Protective Services (APS) Computer System Intake Section.~~ ■ 3
  - ~~(2) DHS county office staff sends the reporter's name and contact information to the APS Hotline email in the county where the alleged vulnerable adult is located; or may send referrals to APSPublic@okdhs.org. County directors are responsible for ensuring compliance.~~ ■ 4

## **INSTRUCTIONS TO STAFF 340:5-3-1**

**Revised ~~9-17-189-15-21~~**

- 1. Additional information that is useful in fact finding at all levels is noted in the Adult Protective Services (APS) Computer System Intake Section.**
- 2. (a) The person accepting the referral explains to the reporter that:**
  - (1) Oklahoma Department of Human Services (DHS) (OKDHS) may need to contact the reporter for additional information and stresses the importance of the reporter's testimony when legal intervention is necessary;**
  - (2) the reporter's name is not revealed by APS;**
  - (3) DHS APS records are confidential but may be disclosed upon order of the court; and**
  - (4) per Section 10-104 of Title 43A of the Oklahoma Statutes, an employer may not retaliate against an employee for making an APS referral.**

**(b) If the reporter continues to decline to provide his or her name and contact information, the referral is accepted and given to an APS specialist IV or designee for screening screened.**
- 3. When the person who takes the original referral submits it to the incorrect county, the APS specialist IV or designee is responsible for reassigning the referral to the correct county within 24 hours. When there is a delay in the referral's submission to the appropriate county, the APS specialist IV or designee in the appropriate county advises the APS district director of the delay.**
- ~~4. When DHS county office staff receives referrals, staff sends the reporter's name and contact information to the APS Hotline in the county where the alleged~~**

~~vulnerable adult is located or may send referrals to APSPublic@okdhs.org. When an emergency response is required staff calls 911 immediately.~~

### **340:5-3-2. Child Abuse and Neglect Hotline (Hotline)**

Revised ~~9-17-189-15-21~~

The Oklahoma Department of Human Services maintains a statewide, toll-free Hotline to report abuse, neglect, or exploitation of children and adults. The Hotline, 1-800-522-3511, operates 24 hours a day, seven days a week, 365 days a year, and is staffed by personnel who are trained in Adult Protective Services procedures. ■ 1

### **INSTRUCTIONS TO STAFF 340:5-3-2**

Revised ~~9-17-189-15-21~~

1. (a) Hotline reporting. The Child Abuse and Neglect Hotline (Hotline) 1-800-522-3511 staff accepts all information and records it in the Adult Protective Services (APS) Computer System Intake Section including the name of the reporter, when possible. Anonymous calls are handled in the same manner as those made by a person who identifies himself or herself.
- (b) All calls, including calls from law enforcement, are considered referrals and are entered into the APS Computer System Intake Section by Hotline staff.
- (c) Hotline staff directs reporters to 911 for emergency situations requiring immediate medical attention or law enforcement intervention.
- (d) Urgent referral guidelines. A referral meets urgent guidelines, when: the alleged victim (AV) is in imminent danger of serious physical harm, sexual abuse, death, or substantial loss of finances or resources. For example, sexual abuse occurred within the last 72 hours; the AV needs total care and is left without a caregiver; the AV is punished or confined, such as locked in a closet or tied to a bed; or serious financial or resource loss would interfere with life-sustaining care or services.
  - ~~(1) abuse is occurring at the time of the referral;~~
  - ~~(2) an emergency situation requiring immediate medical attention or death;~~
  - ~~(3) the alleged victim (AV) threatens suicide;~~
  - ~~(4) the AV is threatened with homicide;~~
  - ~~(5) there is reason to believe the AV or alleged perpetrator (AP) is exhibiting psychotic or bizarre behavior that places the AV or AP in immediate danger;~~
  - ~~(6) the AP currently has access to the AV in any situation of sexual or physical abuse or the AP has threatened such abuse;~~
  - ~~(7) sexual abuse occurred within the last 72 hours;~~
  - ~~(8) the caregiver refers himself or herself for fear he or she may harm the AV;~~
  - ~~(9) there is reason to believe the AP may flee the investigation and move the AV to an unknown location;~~
  - ~~(10) the AV needs total care and is left without a caregiver. Examples include: the caregiver is hospitalized, deceased, or abandoned the AV;~~
  - ~~(11) the AV lacks basic physical necessities severe enough to result in freezing, serious heat stress, or starvation;~~

~~(12) the AV is without essentials for activities of daily living or critically needed supervision and the AV's impaired judgment or physical condition places him or her in immediate danger;~~

~~(13) there are visible injuries, bruising to vital areas, or other possible life-threatening conditions;~~

~~(14) there is sudden deterioration in the AV's condition, and he or she may be in imminent danger;~~

~~(15) there is an environmental hazard or condition that places the AV in immediate danger;~~

~~(16) the AV is punished or confined, such as locked in a closet or tied to a bed;~~  
~~or~~

~~(17) there are any other factors, such as repeated incidents or reports that are believed to indicate imminent danger.~~

(e) Referral procedures. Hotline and APS staff follow procedures in (1) through ~~(6)~~(5).

(1) When Hotline staff receives an emergency report, Hotline staff:

(A) asks the reporter if 911 was called. When emergency services were not called and immediate help is needed, Hotline staff tells the reporter to immediately call 911; and

(B) refers to the latest contact list provided by the APS State Office and immediately ~~phones~~ calls the appropriate APS specialist IV or designee. Hotline staff tells the APS specialist IV or designee that the reporter called, or was told to call 911. Hotline staff:

(i) calls the APS specialist IV first unless contact list indicates otherwise;

(ii) always leaves a voice-mail voicemail message when the person does not immediately answer the call; and

(iii) allows time for the person to call back before calling the next person on the contact list.

(2) Hotline staff receiving APS calls after hours always calls the APS specialist IV or designee when:

(A) the allegations meet urgent guidelines in (d) of this Instruction;

(B) the situation does not fall within the urgent guidelines, but information given by the reporter indicates an immediate, urgent response may be necessary; or

(C) Hotline staff is unable to decide if the situation falls within the urgent guidelines.

~~(3) Hotline staff screen prints the summary page of the referral and emails it to the appropriate county Hotline address, such as \*OKLA(C).APS.HOTLINE or \*BRYAN.APS.Hotline.~~

(4) Hotline staff electronically submits the referral through the APS Computer System to the Oklahoma Department of Human Services (DHS) (OKDHS) office for the county where the AV resides. When waiting on additional information from the reporter, Hotline staff submits the referral prior to the end of his or her shift. When additional information is received after the referral was submitted, Hotline staff emails the information to the appropriate county Hotline address, such as \*OKLA(C).APS.HOTLINE or \*BRYAN.APS.Hotline.

~~(5)~~**(4)** When Hotline staff reports to the incorrect DHS OKDHS county office, the receiving APS specialist notifies the appropriate APS staff and transfers the referral to the appropriate DHS OKDHS county office through the APS Computer System.

~~(6)~~ Hotline staff emails any supporting documentation or law enforcement reports to the appropriate county Hotline address, such as ~~\*OKLA(C).APS.HOTLINE~~ or ~~\*BRYAN.APS.Hotline~~.

~~(7)~~ When a referral names a Medicaid personal care assistant as an AP, the referral is sent to APS for assignment.

~~(8)~~**(5)** Hotline staff notifies investigative Investigative bodies other than local APS are notified as indicated in (A) through (G), when:

(A) the AV is a resident of the Robert M. Greer Center or is known to be a Hissom or Balance Class member, Hotline staff sends the report to the Office of Client Advocacy (OCA) at 405-522-2720 or faxes it to 405-522-2680;

(B) the report alleges the alleged perpetrator (AP) is a community services provider employee or a community services worker, or a paid Medicaid personal care assistant, per Section 1025.1 of Title 56 of the Oklahoma Statutes, Hotline staff notifies APS screens the referral as an Information and Referral. The APS specialist IV or designee sends the referral to Office of Client Advocacy (OCA);

(C) the AV is a resident of a licensed nursing facility and the alleged perpetrator AP is a facility employee, Hotline staff notifies APS, Long-Term Care Investigations (LTCI) at 405-521-3440 screens the referral as an Investigation and sends it to APS, Long-Term Care Investigations (LTCI);

(D) Hotline staff determines the AV is deceased, staff refers the caller to the local district attorney's or the medical examiner's office;

(E) the AV is presently incarcerated in a city, county, state, or federal jail or prison or is a resident of a state or federal hospital, Hotline staff screens the referral as an Information and Referral and. The APS specialist IV or designee refers the caller to the internal advocates for the agency that regulates the facility. ~~When the caller is resistant to being referred elsewhere, the report is accepted and forwarded to APS;~~

(F) ~~When~~ the report alleges AV maltreatment by medical hospital, rehabilitation facility, or private psychiatric hospital staff, while the AV is receiving services, Hotline staff screens the referral as an Information and Referral (I & R). The APS specialist IV or designee refers the caller to the Oklahoma State Department of Health, Protective Health Services, Medical Facilities Service at 405-271-6576; or

(G) When the report alleges AV maltreatment by public or private community mental health agency staff, Hotline staff screens the referral as an I & R. The APS specialist IV or designee refers the caller to the Oklahoma Department of Mental Health and Substance Abuse Services Inspector General at 405-248-9037 or to the toll-free, number at 1-866-699-6605.

**340:5-3-4. Referrals under the jurisdiction of entities other than Adult Protective Services (APS)**

Revised ~~9-17-189-15-21~~

Some referrals of alleged maltreatment of vulnerable adults are not investigated by APS staff.

(1) **Robert M. Greer Center (Greer) resident or former Hissom Memorial Center resident referrals.** When the alleged victim is a current Greer resident, or a former Hissom Memorial Center resident, who suffered maltreatment by a facility employee or by a current caretaker, the referral is sent to Office of Client Advocacy (OCA). ■ 1

(2) **Reports of maltreatment by persons providing services to alleged victims receiving services from a community services worker, community services provider, SoonerCare (Medicaid) personal care services provider, or Medicaid personal care assistant (MPCA).** When the alleged victim receives services from a community services worker, community services provider, SoonerCare (Medicaid) personal care services provider, or MPCA, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes, the referral is ~~handled by APS~~ sent to Office of Client Advocacy (OCA). ■ 2

(3) **Alleged maltreatment in hospital settings.** APS staff refers allegations of maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals, by facility staff to the Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service. ■ 3

(4) **Alleged maltreatment by Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) staff and contracted providers.** APS staff refers allegations of maltreatment of vulnerable adults by public or private community mental health agency staff to the ODMHSAS Advocacy Division. Certain residential care facilities may also be under the jurisdiction of ODMHSAS and receiving a stipend. ■ 4

(5) **Alleged maltreatment of residents by nursing facility staff.** APS staff refers allegations of maltreatment of nursing facility residents by facility staff to APS Long-Term Care Investigations and to OSDH, Protective Health Services, Medical Facilities Service. ■ 5

(6) **Alleged maltreatment of incarcerated individuals in federal or state custody.** APS staff refers allegations of maltreatment of incarcerated individuals by federal or state public hospitals, jails, prisons, or similar facilities staff to the facility's regulatory department for investigation and to the local district attorney.

(7) **Alleged maltreatment of individuals who are deceased at the time of referral.** Maltreatment allegations of persons who are deceased are not accepted by APS. Reporters are referred to the state Office of the Medical Examiner, law enforcement, or when the death occurred in a nursing facility, to the Office of the Attorney General, Medicaid Fraud Control Unit. ■ 6

(8) **Alleged impaired driving.** Reporters with concerns about impaired driving are referred to the Oklahoma Department of Public Safety. APS does not investigate impaired driving, but may address related issues.

**INSTRUCTIONS TO STAFF 340:5-3-4**

Revised ~~9-17-189-15-21~~



1. When the ~~Adult Protective Services (APS) specialist~~ Abuse and Neglect Hotline (Hotline) receives a referral regarding residents of the Robert M. Greer Center Greer or a former resident of Hissom Memorial Center, the ~~APS Hotline specialist~~ enters all pertinent information in the APS Computer System Intake Section and immediately sends the referral to the Office of Client Advocacy (OCA) by fax 405-522-2680 or email at \*oca.intake@OKDHS.org.
2. When the alleged victim (AV) receives services from a community services worker, community services provider, SoonerCare (Medicaid) personal care services provider, or Medicaid personal care assistant, the ~~APS Hotline specialist~~ enters the referral in the APS Computer System Intake Section ~~for screening and APS response and screens the referral as an Information and Referral.~~ The APS specialist IV or designee sends the referral to OCA.
3. The APS specialist IV or designee calls the Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service at 405-271-6576 to report maltreatment of vulnerable adults in hospital settings. The APS specialist IV or designee documents in the APS Computer System Notes Section that the referral was made to OSDH.
4. The APS specialist IV or designee calls the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) Advocacy Division at 405-248-9037 or toll-free, 1-866-699-6605 to report alleged maltreatment of the vulnerable adult by facility staff operated by or contracted with ODMHSAS. The APS specialist IV or designee documents the referral was made to ODMHSAS in the APS Computer System Notes Section.
5. When Adult and Family Services county staff receives an allegation of maltreatment of a nursing facility resident, staff ~~sends the reporter's name and contact information to the Long Term Care Investigations (LTCI) Unit. The LTCI phone number is 405-521-3440 and fax number is 405-522-3463~~ enters the referral into the online reporting portal at OKHotline.org or transfers the call to the Abuse and Neglect Hotline.
6. When the APS specialist conducted a face-to-face interview with the AV and the AV dies during the investigation, the APS specialist continues with the elements of the investigation to complete it.

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

Revised 9-17-189-15-21

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

(1) ~~Referrals sent to~~ 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:

- (A)(1) residential care facilities;
- (B)(2) assisted living facilities; and
- (3) adult day care facilities; and

~~(C)~~(4) 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 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) ~~Referrals sent to~~ **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 ~~the mentally ill persons with mental illness~~ and substance use or abuse dependency. ODMHSAS treats ~~mentally ill 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 ~~providing behavioral assessments necessary to obtain involuntary mental health treatment, such as facilitating or completing a third party affidavits affidavit.~~

(B) When the vulnerable adult's primary problem is determined to be mental illness or substance use or abuse dependency, the APS specialist IV or designee Abuse and Neglect Hotline specialist must determine if other issues exist within APS jurisdiction. When no other issues exist, the case is assigned as ~~Level 1 and Information and Referral~~. The APS supervisor or designee directs the vulnerable adult or reporter to the nearest ODMHSAS contract facility for outpatient service. ~~When the intake process did not allow for the services to be referred, the intake is screened and assigned by the APS Specialist IV or designee as a possible Level 2 when contact can be made with the reporter, client, or other collateral or client by phone or when a face-to-face visit with the client is required.~~

(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 9-17-189-15-21**

1. (a) ~~When a referral is received in an Oklahoma Department of Human Services (DHS) county office 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 person accepting the referral~~ 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. ~~In addition, the person accepting the referral~~ The APS specialist IV or designee also ~~phones calls, emails, or faxes~~ a summary of the referral to Oklahoma State Department of Health (OSDH), Protective Health Services Medical Facilities Service. The phone number is 405-271-6868, toll-free 1 800-747-8419; fax 405-271-4172; toll-free fax 1-866-239-7553, and email at [LTCComplaints@health.ok.gov](mailto:LTCComplaints@health.ok.gov).

(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.**

34. In order to appropriately utilize 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.

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

Revised 9-17-189-15-21

(a) **Time frame for screening Adult Protective Services (APS) referrals.** APS specialist IVs 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.** ~~APS specialist IVs or designees~~ Abuse and Neglect Hotline (Hotline) specialists are responsible for screening referrals and assigning them a ~~Level~~ the response type. ~~The APS specialist IV or designee~~ Hotline specialist determines if an ~~emergency~~ urgent response is indicated, ~~if the referral is employee related, and which APS specialist is assigned the referral.~~ APS specialist IVs or designees Hotline specialists complete screening to facilitate the timely initiation of the investigation, per Oklahoma Administrative Code (OAC) 340:5-5-2. The APS specialist IV or designee determines 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 considered in service planning. ■ 2

(d) **Referrals involving Oklahoma Department of Human Services (DHS) (OKDHS) employees or their families.** Specific procedures are followed when a referral of maltreatment is received that involves DHS OKDHS employees. ■ 3

(e) **Level Two Service case assignments.** ~~Level Two~~ Service case assignments allow staff to determine the need for services and offer ~~and/or~~ or create a service plan to assist

clients. Formal assessments are not part of the Level Two Service Case process. When the specialist determines formal assessments may be necessary, the case is staffed with the supervisor or designee and assigned as an investigation at either Level Three or Level Four. When the specialist identifies new allegations he or she immediately notifies the supervisor or designee for assignment at either Level Three or Level Four as an investigation. Level Two case 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) **Quick Look for Possible Paid Caregiver Referrals involving Soonercare (Medicaid) paid caregiver.** Referrals to APS often involve involving paid, unlicensed caregivers, whose services are funded through Medicaid Soonercare (Medicaid), are sent to Office of Client Advocacy (OCA). These workers are subject to the Community Services Worker Registry guidelines. The following programs in (A) through (G) contract with agencies utilizing workers who are in this category: The following programs contract contracting with agencies utilizing who utilize workers are in this category are:

- (A) Advantage ADvantage Waiver Services, including Consumer Directed Personal Assistance Services and Supports (CD-Pass);
- (B) State Plan Personal Care Program;
- (C) Developmental Disability Services;
- (D) Adult Day Services;
- (E) Program of All-inclusive Care for the Elderly (PACE);
- (F) Living Choice; and
- (G) Medical Fragile (Med Frag). ■ 5

## **INSTRUCTIONS TO STAFF 340:5-3-6**

**Revised 9-17-189-15-21**

1. (a) **The Abuse and Neglect Hotline (Hotline specialist and Adult Protective Services (APS) specialist IV or designee follows (1) through (6) (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, ~~or~~ verbal abuse, or personal degradation?

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

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

**(5) The APS specialist IV or designee refers to Merge Protocol when considering referrals for merge.**

**(5)(6) The APS specialist IV or designee 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 phones 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.

~~(6)~~(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 screens the referral as an Information and Referral. The APS specialist IV or designee refers the reporter to other entities that may provide assistance. The APS specialist IV or designee documents the contact as ~~Level 4~~ in the APS Computer System Notes Section.

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

(1) Information on the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) computer system may be viewed and the APS specialist IV or designee may contact the reporter for additional information to assist in this determination. APS specialist IVs or designees must be 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 ~~Level 4~~ Information and Referral assignment.

(c) The APS Hotline specialist IV or designee considers the definitions of maltreatment.

(1) Reports of maltreatment ~~requiring investigation~~ are assigned as ~~Level 3 or Level 4~~ an Investigation. This includes include abuse, caretaker neglect, exploitation including non-caretaker "scams" when Medicaid is involved, sexual abuse, verbal abuse by a paid caregiver, personal degradation, ~~or~~ and abandonment.

(2) Reports of verbal abuse, caretaker abuse, caretaker neglect, exploitation, or abandonment by an ~~Advantage Waiver or Personal Care Provider~~ are assigned as ~~Level 3 or Level 4~~.

(3) When self-neglect is alleged, the case is assigned as ~~Level 2~~ a Service Case for prompt and thorough determination of risk and needs, a capacity decision, and service planning; however, when history or facts indicate, an allegation of self-neglect may be assigned as ~~Level 3 or Level 4~~.

~~(4)~~(3) When the allegation does not fit one of the definitions of maltreatment, the referral is assigned as ~~Level 4~~ an Information and Referral (I & R). The APS Hotline specialist IV or designee documents in the Notes Section why the referral was assigned as ~~Level 4~~, an I & R. The APS specialist IV or designee and contacts the reporter, when known, is contacted 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 (OAC) 340:5-3-4, the APS specialist IV or designee advises the reporter, when known, of the name of the entity to which APS ~~will forward~~ 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.

~~(1)(b)~~ When a referral is received about an individual who does not meet the APS definition of vulnerable adult, the APS specialist IV 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.

~~(2) When the referral includes an allegation of abuse or neglect of a person younger than 18 years of age the APS specialist immediately makes a referral to Child Welfare Services.~~

3. (a) Additional screening criteria apply upon receipt of a referral involving DHS 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 APS specialist IV or designee determines:

(1) the AV's relationship to the DHS 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 APS specialist IV or designee and the district director 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 coordinates assignment of the referral to a different APS specialist IV group. When an out-of-district assignment of the referral is necessary, the district director and division director coordinate the action with the other involved district director or designee. The APS director may be consulted at any time in determining the appropriate assignment of a referral involving a DHS 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 DHS 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 district director of substantiated allegations when an employee is named as perpetrator, and of any training issues that are identified as a result of the findings.
  - (g)(f) The district director ensures confidential storage of paper records in a county office secure digital environment, which is maintained by a contracted entity.
    - (1) Paper case records on APS investigations involving DHS OKDHS employees are scanned to the "W" drive and securely destroyed.
    - (2) Electronic case records are appropriately coded for confidentiality by the APS specialist IV or designee during the screening process in the APS Computer System to restrict access.
4. IMS/MMIS assists APS workers in determining if a client is receiving a Medicaid Program. Members often have multiple IMS case numbers; therefore, it is important that you to utilize the current active IMS number.

## Subchapter 5. Investigation of Adult Protective Services Reports

### 340:5-5-2. Initiating investigations

Revised 9-17-189-15-21

An Adult Protective Services (APS) specialist initiates an investigation by a visit to the vulnerable adult who is the alleged victim (AV) at the adult's location or residence. ■ 1

#### (1) Time frame for initiating investigations.

(A) The APS specialist initiates the maltreatment investigation as soon as possible within five-business days, not to exceed 120 hours from the time the APS received the report, excluding weekends and official state holidays. ~~An APS specialist IV or designee may determine that a more prompt initiation is required.~~ ■ 2

(B) In an urgent situation, when prompt action may be required, the APS specialist initiates the investigation within 24 hours of receipt ~~or sooner at the discretion of the APS specialist IV or designee.~~ ■ 3

(2) **Denial of access to the AV.** When the APS specialist is denied entry into the AV's residence or is denied a private interview with the AV, the Oklahoma Department of Human Services petitions the court for an order allowing entry or access. ■ 4

### INSTRUCTIONS TO STAFF 340:5-5-2

Revised ~~9-17-189-15-21~~

1. (a) ~~The Oklahoma Department of Human Services (DHS)~~ (OKDHS) Adult Protective Services (APS) specialist IV or designee discusses any safety issues identified during screening with the APS specialist prior to the initial visit. The APS specialist and the APS specialist IV or designee:
  - (1) ~~staffs~~ staff the report and case record to determine risk factors; and
  - (2) determine if the home visit can be made safely, and what precautions are taken. When necessary, the APS specialist follows:
    - (A) hazard protocol using program resources;
    - (B) warning protocol, including law enforcement; or
    - (C) stop-authority protocol and refers the situation to law enforcement, when the specialist cannot enter the home after first considering (A) and (B).
- (b) After safety concerns are addressed, the APS specialist plans the home visit and:
  - (1) provides documentation of planned field contact to the APS specialist IV or designee. When there are major changes in the schedule the APS specialist informs the APS specialist IV or designee of the changes; and
  - (2) notifies the APS specialist IV or designee when the APS specialist leaves and returns. When the APS specialist plans to go home after the last field visit, he or she notifies the APS specialist IV or designee after the last visit is finished even if it is an ~~afterhours~~ after hours visit.
- (c) APS specialists keep personal protective equipment (PPE) for use when making home visits.
  - (1) Program-issued PPE consists of:
    - (A) a respiratory mask;
    - (B) ~~a lab coat;~~
    - (C) surgical gloves;
    - (D)~~(C)~~ boots and boot covers;
    - (E)~~(D)~~ shoe covers;
    - (F)~~(E)~~ a head cover;
    - (G) ~~vehicle seat covers;~~
    - (H)~~(F)~~ disinfectant; and
    - (I)~~(G)~~ disposal bags that may also be used as vehicle seat covers.
  - (2) The APS specialist also carries:
    - (A) ~~a DHS-issued~~ an OKDHS-issued cell phone;
    - (B) one change of clothing; and
    - (C) clean towels for self-decontamination.
- (d) When preparing to park and leave the vehicle, the APS specialist:
  - (A) programs the phone so that a 911 call can be made;
  - (B) parks in an open area and near a light source that offers the safest walking route to the home;
  - (C) locates the alleged victim's (AV) building, when possible before exiting the car when the AV's residence is in an apartment complex;
  - (D) parks on the street rather than in a driveway and in the direction in which the APS specialist plans to leave; and



- (E) takes only the items necessary to complete the home visit. Purses or wallets and personal items are concealed when left in the locked car.
- (e) When approaching the residence, the APS specialist:
  - (A) looks and listens for signs of someone in the residence and assesses if there is any indication of danger involving the occupants;
  - (B) is aware of any smells associated with substance use or abuse;
  - (C) observes the outside of the residence, the surrounding homes, and any animals or suspicious vehicles; and
  - (D) if newly discovered risk factors indicate warning protocol, the specialist leaves and staffs with the APS specialist IV or designee.
- (f) In order to make a safe entrance into the residence, the APS specialist:
  - (A) goes only to the door that is in plain sight of the street and stands to the side of the door when knocking;
  - (B) as the door is opened, looks quickly inside to determine if there are any safety threats;
  - (C) does not enter the home when an unseen person calls for the APS specialist to come in; and
  - (D) quickly evaluates the AV's attitude and demeanor to determine if there are warning signs of aggression, violence, substance use, or suspicious behavior.
- (g) When the specialist is accompanied by law enforcement on a home visit, he or she remains outside of the residence until law enforcement determines it is safe to enter.
- (h) When the APS specialist is denied entry into the home, he or she does not attempt to aggressively persuade the AV to allow access to the home. When denied, the APS specialist leaves the residence and consults with an APS specialist IV.
- (i) When in the AV's residence, the APS specialist is particularly aware of any signs of risk to safety. The APS specialist once inside the AV's residence:
  - (A) stays near an exit and remains alert and observant;
  - (B) pays attention to any unusual sights or odors, particularly those associated with the manufacture or use of drugs;
  - (C) remains aware of the possibility of any other persons in the residence and inquires about anyone that may appear to be in another room; and
  - (D) leaves immediately if there is risk to safety.
- (j) When leaving the AV's residence, the APS specialist remains alert to safety risks by:
  - (A) observing any activity or persons near the residence or in the neighborhood;
  - (B) having the car keys in hand when walking to the car; and
  - (C) not lingering to make phone calls or notes and leaves the neighborhood immediately.
- (k) When an APS specialist has an ongoing APS case where there were or are new allegations of methamphetamine use or manufacture, the same precautions are taken as in an the initial visit.

- (l) **APS specialist IVs and designees stay informed about the most current indicators of methamphetamine production and provide the information to staff. Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBNDCC) information flyers are kept in supply in DHS OKDHS county offices.**
- (1) **Outbuildings, hotel and motel rooms, apartments, storage sheds, garages, and vacant buildings are all common places where methamphetamine is produced. Some of the indicators of methamphetamine use and production identified by OBNDCC are:**
- (A) **a strong odor of urine or unusual chemicals, such as ether, ammonia, or acetone;**
  - (B) **little or no traffic around the home during the day but significant activity during very late hours;**
  - (C) **extra efforts made to cover windows or to reinforce doors;**
  - (D) **trash not put out for collection;**
  - (E) **a significant accumulation of items, such as cooking dishes, coffee filters, or bottles that do not appear to be for regular household use;**
  - (F) **the presence of unusual quantities of chemicals; and**
  - (G) **vehicles loaded with laboratory materials or chemicals.**
- (2) **The APS specialist, in initiating an investigation alleging use or production of methamphetamine:**
- (A) **requests law enforcement to accompany him or her;**
  - (B) **remains in the car until law enforcement determines the residence is safe to enter; and**
  - (C) **does not enter the residence under any circumstances when there is evidence of a methamphetamine laboratory.**
- (3) **When evidence of a methamphetamine laboratory either outside or inside the residence is encountered, the APS specialist:**
- (A) **does not enter any residence where there is any evidence of methamphetamine laboratory materials or chemicals on the property;**
  - (B) **discreetly, but immediately leaves the residence when he or she unknowingly enters a home in which there is evidence of a methamphetamine laboratory, and drives to a safe location to contact law enforcement; and**
  - (C) **follows self-decontamination procedures, per (b)(2) of this Instruction.**
- (4) **When there is any exposure to a methamphetamine laboratory, self-decontamination procedures are followed. The APS specialist:**
- (A) **covers car seats and floorboards with plastic covering and wipes his or her hands with disinfectant wipes before touching the steering wheel**
  - (B) **goes to a safe location to change clothes and place the dirty clothes in a disposal bag. All exposed skin surfaces are cleaned with disinfectant wipes; and**
  - (C) **washes any items carried into the home with soap and water.**

- (m) The APS specialist coordinates with law enforcement to ensure the safety of any vulnerable adult who was likely exposed to a methamphetamine laboratory.
    - (1) Transportation for the vulnerable adult is arranged by the APS specialist in cooperation and coordination with law enforcement.
    - (2) The vulnerable adult is taken immediately for a medical examination.
  - (n) When the vulnerable adult is in the hospital or other temporary residence at the time of the referral, the initial visit is made to that location. A visit to the vulnerable adult's residence may be made at the discretion of the APS specialist IV or designee.
  - (o) The initial home visit is not preceded by a phone call or appointment and is made unannounced.
  - (p) When the AV cannot be located, the APS specialist documents efforts to locate the AV in the APS Computer System ~~Interview Section~~ by checking the "Initial Visit Interview" on the APS Computer System, ~~marking the "attempted face-to-face" on the drop down box,~~ and documenting the specifics in the Interview Section.
  - (q) When the AV cannot be located, the APS specialist IV or designee, at his or her discretion may direct one or two more attempts to locate.
2. An APS specialist IV or designee may determine that a more prompt initiation is required. When the APS specialist does not receive the referral timely, the APS specialist is responsible for making the face-to-face visit or phone initiation as soon as possible and documents the reason for delay in the APS Computer System Notes Section.
  3. An urgent situation is determined by the APS Hotline specialist ~~IV or designee~~ at the time of screening and immediately communicated to the assigned APS specialist on-call person. An APS specialist IV or designee may determine that a more prompt initiation is required. When an investigation is not initiated timely, the reasons are documented in the APS Computer System Notes Section.
  4. (a) When the APS specialist is denied access to the AV, the APS specialist notifies the AV or the AV's caretaker that an investigation must be completed. When the AV or the caretaker continues to deny access to the AV, the APS specialist, in consultation with the APS specialist IV or designee documents the situation in the Notes Section and makes a decision to:
    - (1) contact law enforcement to assist in gaining access to the AV;
    - (2) contact other persons who may be able to assist in gaining access to the AV; or
    - (3) petition the court for an entry order.
  - (b) To petition the court for an entry order, the APS specialist contacts the local district attorney or DHS OKDHS Legal Services for assistance.
    - (1) When the court grants the entry order, the APS specialist notifies law enforcement to enforce the entry order. Law enforcement is responsible for gaining access to the AV. The APS specialist requests law enforcement remain with him or her for the duration of the interview and home assessment.

- (2) When the court denies the entry order, the APS specialist consults with the APS specialist IV or designee to develop a plan to complete the investigation, when possible. The APS specialist IV or designee may consult with the district program field representative and district director or State Office staff as needed.
- (c) The APS specialist documents all activities in the APS Computer System Interview Section and scans copies of any court orders in the W-drive APS Computer System.

### 340:5-5-3. Elements of an investigation

Revised ~~9-17-18~~ 9-15-21

(a) Although the investigation process may vary depending on the initial allegations and other factors, all Adult Protective Services (APS) investigations include paragraphs (1) through (10) of this subsection.

(1) **Law enforcement notification.** Law enforcement is notified of all APS investigations. ■ 1

(2) **Efforts to locate and notify others.** APS specialists must make every reasonable effort to locate and notify the alleged victim's (AV) caretaker, guardian, and next of kin. ■ 2

(3) **Visits and interviews with the vulnerable adult.** Per Section 10-105(C)(1)(a) of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105(C)(1)(a)), each APS investigation includes at least one visit and private interview with the vulnerable adult and may include as many visits as are necessary to reach a conclusion and determine what, if any, protective services are needed. ■ 3

(4) **Consultation with others.** The APS specialist interviews other people who have, or can reasonably be expected to have, pertinent knowledge about the AV's circumstances during the investigation, including any alleged perpetrator (AP) of maltreatment. ■ 4

~~(A) Consultation includes medical, psychiatric, or other evaluations, as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services.~~

~~(B) The AV's permission is not required for these contacts.~~

(5) **Photographs.** The APS specialist may take photographs or video recordings to document injuries to the vulnerable adult or conditions in the adult's residential environment that resulted in, or may result in, an injury or serious harm.

(6) **Other relevant data.** The APS specialist collects data relevant to the situation being investigated including records to arrive at a finding. When the APS specialist is denied access to pertinent records, documentation, or other information relevant to the investigation, the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) may petition the court for an order allowing access.

(7) **Determining decision-making capacity.** ~~DHS~~ OKDHS is mandated by 43A O.S. § 10-106(C) to determine a vulnerable adult's risk and needs and the vulnerable adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity capabilities in personal, medical, and financial management.

~~(A) Information is obtained from medical or psychiatric sources, when available, to assist in the determination. In making the determination, the APS specialist assesses and considers:~~

- ~~(i) the vulnerable adult's short and long term memory;~~
- ~~(ii) the vulnerable adult's executive functioning by his or her ability to plan and execute a plan;~~
- ~~(iii) the vulnerable adult's ability to recognize risk factors;~~
- ~~(iv) the vulnerable adult's or caretaker's denial of problems;~~
- ~~(v) the vulnerable adult's executive functioning by his or her ability to understand and follow directions; and~~
- ~~(vi) indicators of:~~
  - ~~(I) affective disorders, such as depression or bipolar disorder;~~
  - ~~(II) substance use or abuse;~~
  - ~~(III) dementia;~~
  - ~~(IV) delirium;~~
  - ~~(V) psychosis;~~
  - ~~(VI) traumatic brain injury;~~
  - ~~(VII) uncharacteristic, socially inappropriate behaviors;~~
  - ~~(VIII) impaired decision-making; and~~
  - ~~(IX) other factors.~~

~~(B) The APS specialist's assessment of a vulnerable adult's mental capacity to consent to protective services takes into account the vulnerable adult's awareness of the:~~

- ~~(i) limitations and deficiencies in the physical environment;~~
- ~~(ii) vulnerable adult's own physical or mental limitations;~~
- ~~(iii) resources available to assist in meeting the vulnerable adult's needs; and~~
- ~~(iv) consequences to the vulnerable adult if nothing is done to improve the situation.~~

~~(C) When a vulnerable adult is deficient in all or most of the areas in (B) of this paragraph, he or she may lack the capacity to consent to protective services and it may be appropriate to petition the district court for an order authorizing the provision of needed services.~~

~~(D) When a vulnerable adult expresses awareness of all four areas in (B), it is likely that the present circumstances are the vulnerable adult's choice, though in some cases a vulnerable adult might express awareness in these areas and still lack the capacity to consent to provision of services.~~

~~(E)(B) When a vulnerable adult appears unaware of the consequences of the present situation lacks capacity and an imminent risk to health or estate exists, legal intervention is may be appropriate.~~

**(8) Evaluation to determine the need for protective services.** The evaluation consists of the APS specialist's analysis and consultation with the APS specialist IV<sub>1</sub> or designee<sub>2</sub> of all evidence gathered during the initial phases of the investigation. The evaluation includes consideration of whether the:

(A) ~~the~~ vulnerable adult needs protective services. When so, the need for protective services is documented to include the least restrictive services to meet the person's needs;

(B) services that are identified as needed are available through ~~DHS~~ OKDHS or in the community, and the sources and manner in which they can be provided. Options are explored with the vulnerable adult;

(C) ~~the~~ vulnerable adult is capable and willing to obtain services for himself or herself;

(D) ~~the~~ vulnerable adult can pay for needed services or is eligible for public assistance programs;

(E) a caretaker or guardian is willing to provide or agree to the provision of needed services; ■ 10 through 12 and

(F) ~~the~~ vulnerable adult wants the services. ■ 5

(9) **Completion of investigative report.** From the date an APS referral is received, the APS specialist completes the investigative report within 60-calendar days. ~~The APS specialist IV or designee may extend the time frame for completion of an investigation for an additional 30-calendar day period when it is in the vulnerable adult's best interest to do so.~~ ■ 6 To complete the investigation, the APS specialist:

(A) completes necessary interviews and assessments including identification of any immediate service needs;

(B) completes all final documentation;

(C) submits a report to the local district attorney;

(D) submits a report to the court of jurisdiction, when the alleged victim is currently under guardianship or conservatorship; and

(E) makes a determination of substantiated, ~~or unsubstantiated,~~ or inconclusive based on the definitions of terms in Oklahoma Administrative Code (OAC) 340:5-1-6. ■ 76

(10) **Findings.** The APS specialist, in conjunction with the APS specialist IV or designee, makes a final determination of the investigative process on each allegation contained in the APS report. Each allegation is determined to be substantiated, unsubstantiated, or ~~ruled out~~ inconclusive and the investigation is documented, per OAC 340:5-5-5. ~~The APS specialist IV or designee notifies the appropriate district director immediately of substantiated referrals in which a DHS employee is named as the alleged perpetrator.~~

(11) **Follow-up.** The APS specialist, in consultation with the APS specialist IV or designee, ~~is responsible for determining what follow-up is~~ determines needed follow-up in each case.

(A) On cases not requiring court-ordered involuntary services, follow-up needs are determined on a case-by-case basis. ■ 87

(B) For reports that result in a vulnerable adult receiving involuntary services, ~~DHS is responsible for ensuring~~ OKDHS ensures basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the vulnerable adult's changing needs. ~~At least one follow-up visit is made within a month, regardless of whether DHS continues to hold temporary guardianship ensuring that every guardianship has at least one follow-up. A follow-up is completed within two weeks of any hearing unless the vulnerable adult was personally served or seen by APS. A follow up is completed within two~~

weeks of placement in a nursing home. Follow ups are required monthly thereafter for the duration of placement. ■ 98

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

**Revised ~~9-17-189-15-21~~**

- 1. Each Adult Protective Services (APS) specialist IV or designee is responsible for determining, in conjunction with each APS district director and local law enforcement agencies, the method to notify law enforcement agencies of APS investigations within their jurisdictions.**
- 2. (a) To accomplish this mandate, existing Oklahoma Department of Human Services (~~DHS~~) (OKDHS) records are reviewed by the APS specialist. The reporter, when known, other professionals involved with the vulnerable adult, and involved friends, neighbors, or service providers may provide information to identify the vulnerable adult's caretaker, guardian, and next of kin. For purposes of this requirement:
  - (1) "caretaker" is the vulnerable adult's primary caretaker;**
  - (2) "guardian" is a guardian, limited guardian, or conservator appointed per Title 30 of the Oklahoma Statutes. Persons holding power of attorney or similar surrogate decision-making documents are not guardians; and**
  - (3) "next of kin" is the closest living relative by blood or marriage and includes any relative active in care or service planning.****
- (b) When the vulnerable adult retains the capacity to consent to voluntary services, and does not want a caretaker or next of kin to receive notification of the investigation, ~~DHS~~ OKDHS abides by the vulnerable adult's decision.**
- (c) When the caretaker, guardian, and next of kin are identified, a copy of ~~DHS~~ OKDHS Publication No. 15-13 "Frequently Asked Questions Adult Protective Services," is provided to each of them and to the vulnerable adult.**
- 3. (a) Visits with the vulnerable adult may include as many visits as are necessary to reach a conclusion and determine if the adult meets the definition of a vulnerable adult and what, if any, protective services are needed.**
  - (b) When the adult is determined to not be a vulnerable adult, the Investigation or service case is concluded. The APS specialist refers the adult to more appropriate services. When the APS specialist and the APS specialist IV or designee determine that the alleged victim (AV) is not a vulnerable adult, the APS specialist documents the findings as unsubstantiated.**
  - (c) All contacts are documented in the APS Computer System Interview Section.**
  - (d) When there are two or more counties involved, refer to Oklahoma Administrative Code (OAC) 340:5-5-4(b).**
  - (e) When the APS specialist is unable to locate the alleged victim (AV) for the initial interview, per OAC 340:5-5-2, the APS specialist staffs with the APS specialist IV or designee to determine if another attempt to locate must be made.**
    - (1) When, at the first attempt, the AV does not answer the door, the APS specialist follows the protocol in (A) through (D) of this paragraph prior to leaving the residence.**
      - (A) The APS specialist attempts to contact the AV by phone.**

(B) When no one answers the phone, the APS specialist ~~phones~~ calls the reporter to verify correct information.

(C) When the reporter does not have additional information regarding the AV's whereabouts, the APS specialist contacts collaterals, such as neighbors, doctors, and family to attempt to locate the AV.

(D) When the first attempt to locate the AV is unsuccessful, the APS specialist leaves a business card and ~~DHS OKDHS~~ Publication No. 99-07 17-33, "~~APS Questions and Answers Door Hanger.~~"

(2) When the first attempt was unsuccessful, the APS specialist makes a second attempt to contact the AV within five-business days at a different time of the day, when directed to do so by the APS specialist IV or designee. ~~When the AV does not answer the door~~ contact is unsuccessful, the APS specialist follows the protocol in (A) through (E) ~~of this paragraph.~~

(A) The APS specialist mails a contact letter on ~~DHS OKDHS~~ letterhead to the last known address requesting the AV contact the APS specialist within seven-calendar days.

(B) When the letter is returned undeliverable or there is no response within seven-calendar days, the APS specialist staffs the report with the APS specialist IV or designee regarding further options and documents in the APS Computer System Notes Section, what further action is planned.

(C) When the APS specialist and the APS specialist IV or designee decide that all reasonable efforts to locate the AV were made, the APS specialist documents the referral as unsubstantiated based on "unable to locate."

(D) When the reporter is from a law enforcement agency and the APS specialist is unable to locate the AV, the APS specialist notifies the reporter.

(E) When the reporter is from another state or entity and the APS specialist is unable to locate the AV, the APS specialist notifies the other state or entity and local law enforcement.

4. Interviews with collateral contacts are extremely important in helping the APS specialist determine the AV's current circumstances, expressed wants and needs, habitual practices, and recent changes. Consultation includes medical, psychiatric, or other evaluations, as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services. The APS specialist documents all interviews with collaterals, alleged perpetrators (AP), family members, next of kin, caretakers, legal guardians, or service providers in the APS Computer System Interview Section.

(1) The AV's caretaker, guardian, next of kin, and the reporter are considered collateral contacts when they are identified.

(2) Any collateral contacts the APS specialist is unsure about are staffed with the APS specialist IV or designee before the APS specialist interviews the collateral contacts.

(3) The AP is interviewed in all reports in which an AP is identified.



(4) The APS specialist coordinates with appropriate law enforcement officials regarding interviewing APs, who are or may be the subject of a criminal investigation.

(5) An investigation is considered complete when a finding is reached, Form 08AP002E, Adult Protective Services Report of Investigation, is submitted to the district attorney (DA), and the computer documentation of the finding is done. A Level 2 Service Case assignment is complete when the case conclusion is submitted and approved by the APS Specialist IV or designee.

(6) At any time when it appears that criminal wrongdoing may have occurred, the APS specialist discusses the case with the APS specialist IV or designee, law enforcement, the DA, or all three parties before interviewing the AP.

(7) The APS specialist documents all collateral contact attempts ~~and contacts~~ in the APS Computer System Interview Section.

5. (a) Information is obtained from medical or psychiatric sources, when available, to assist in the capacity determination. In making the determination, the APS specialist assesses and considers the vulnerable adult's:

(1) short - and long-term memory;

(2) executive functioning by his or her ability to plan and execute a plan;

(3) ability to recognize risk factors;

(4) or caretaker's denial of problems;

(5) executive functioning by his or her ability to understand and follow directions; and

(6) indicators of:

(A) affective disorders, such as depression or bipolar disorder;

(B) substance use or abuse;

(C) dementia;

(D) delirium;

(E) psychosis;

(F) traumatic brain injury;

(G) uncharacteristic, socially-inappropriate behaviors;

(H) impaired decision-making; and

(I) other factors.

(b) When a vulnerable adult is deficient in all or most of the areas described, he or she may lack the capacity to consent to protective services, and it may be appropriate to petition the district court for an order authorizing the provision of needed services.

(c) When a vulnerable adult expresses awareness of all four areas described in (i) through (iv) of OAC 340:5-5-3(a)(7)(A), it is likely that the present circumstances are the vulnerable adult's choice, though in some cases a vulnerable adult might express awareness in these areas and still lack the capacity to consent to provision of services.

6. APS specialists in each county office develop a coordinated working relationship with the local Oklahoma State Department of Health, mental health facilities, DA's office, law enforcement agencies, and other public or private staff that may be ~~helpful in facilitating~~ help facilitate the investigation process or ~~providing~~ provide needed services to vulnerable adults.

**67. (a)** It may be in the vulnerable adult's best interest to delay finalizing the report in order to allow the APS specialist more time to visit with the vulnerable adult to establish rapport before the vulnerable adult makes a decision about accepting available services.

~~(b) When the APS specialist IV or designee or district director or designee grants an extension, the completion of the referral is not considered delinquent for management reports.~~

~~(c) The APS specialist IV or designee may extend the time frame for completion of the investigation for a specified time not to exceed an additional 30-calendar days when it is in the vulnerable adult's best interest. When the APS specialist IV or designee approves the extension request, he or she documents the approval and the reasons why the 30-calendar day extension was granted in the APS Computer System Notes Section.~~

~~(d) The district director must decide whether to approve the second extension request when the investigation cannot be completed within the additional 30-calendar day time frame and documents the decision in the APS Computer System Notes Section, based on:~~

~~(1) the total number of referrals received during the previous 60-calendar day period;~~

~~(2) the staff available to conduct investigations and assessments;~~

~~(3) excessive workloads, such as, but not limited to:~~

~~(A) an APS specialist IV vacancy of more than one month;~~

~~(B) an APS specialist vacancy in a one-worker county office;~~

~~(C) an APS specialist vacancy of more than two months in any county office;~~

~~(D) an increase in temporary guardianships that require intensive and immediate attention;~~

~~(E) an increase in complicated and complex investigations;~~

~~(F) any special duty investigations requiring staff to work in other locations; or~~

~~(G) any combination of (A) through (F); and~~

~~(4) any additional circumstances that led to the difficulty in meeting policy requirements and time frames.~~

~~(e) The APS district director must decide whether to approve the third, and any subsequent extension requests, when the investigation cannot be completed within the third or subsequent 30-calendar day time frame. The district director makes the decision and documents his or her decision based on information provided by the APS specialist IV or designee in the APS Computer System Extension Section.~~

**78. (a)** Steps in (1) through ~~(5)~~**(6)** determine if a report is substantiated, or unsubstantiated, or inconclusive and to develop an individualized service plan for the vulnerable adult.

(1) The APS specialist reviews all evidence gathered during the investigation including all collateral contacts made and all records reviewed, to assess their usefulness in making a finding on the referral.

(2) When more than half of the evidence indicates maltreatment is likely to have occurred and the AV is a vulnerable adult, a finding of substantiated is entered in the APS Computer System Findings Allegations Section.

(3) When less than half of the evidence indicates maltreatment is likely to have occurred and the AV is a vulnerable adult, a finding of unsubstantiated is entered in the APS Computer System Findings Allegations Section.

(4) When there is insufficient information to either support or not support the allegation of maltreatment but there is a reason to suspect maltreatment, a finding of Inconclusive is entered in the APS Computer System Allegations Section.

~~(4)~~(5) Although professional judgment plays a large part in the investigative process, it has no part in the case finding. A very strong feeling that maltreatment occurred, when not supported by sufficient evidence, must result in a finding of unsubstantiated or inconclusive.

~~(5) When no credible evidence indicates maltreatment occurred, a finding of ruled-out is entered in the APS Computer System Findings Section.~~

(6) A service plan is developed with the vulnerable adult and involved family and caretakers in all cases where service needs are indicated.

(b) The district director is responsible for monitoring completion of APS investigations within 60-calendar days and regularly discussing reports with investigations pending over 90-calendar days with the APS specialist IV or designee.

(c) Service provision and follow-up activities often extend beyond 60-calendar days based on the individual vulnerable adult's needs and service plan. These ongoing activities are not considered in determining if the investigation was timely, as long as a substantiation decision was reached and Form 08AP002E was submitted to the DA's office within 10-calendar days of completing the investigation.

**89.** The APS specialist documents follow-up activities in the APS Computer System when entering the date and time of the contact and information about the visit in the Service Plan Monitoring Notes Section.

(1) When the APS specialist IV or designee and APS specialist determine follow-up is not necessary, the decision and the reasons for it are documented in the APS Computer System Service Plan Monitoring Notes Section.

(2) When the APS specialist IV or designee and APS specialist determine follow-up is necessary, the APS specialist documents why follow-up is necessary and the plan for completing follow-up in the APS Computer System Service Plan Monitoring Notes Section.

(3) The APS specialist may complete a follow-up contact by phone rather than face-to-face with someone other than the vulnerable adult or the AP after receiving APS specialist IV or designee approval. The APS specialist documents in the APS Computer System Service Plan Monitoring Notes Section:

(A) the means of contact;

(B) why the contact was made by phone rather than face-to-face; and

(C) what information was obtained.

**910. At least one follow-up visit is made within a month, regardless of whether OKDHS continues to hold temporary guardianship. A follow-up is completed within two weeks of any hearing unless the vulnerable adult was personally served or seen by APS. A follow-up is completed within two weeks of placement in a nursing home and required monthly thereafter for the duration of placement.** For guardianship follow-ups, the APS specialist documents follow-up activities in the APS Computer System by completing a Monthly Guardianship Assessment ~~in the Guardianship Tab~~, entering the date and time of the contact and information about the visit.

(1) The APS specialist may complete a follow-up contact by phone rather than a face-to-face with someone other than the vulnerable adult or the AP after receiving APS specialist IV or designee approval. The APS specialist IV or designee must also document this approval. The APS specialist documents in the APS Computer System Service Plan Monitoring Notes Section:

(A) the means of contact;

(B) why the contact was made by phone rather than face-to-face; and

(C) what information was obtained.

(2) When a guardianship is dismissed by the district court, the APS specialist submits the case for internal review and closure.

**1011. The assigned APS specialist IV or designee enters case notes regarding any closure decision and ~~the APS specialist IV's or designee's~~ his or her review of all supporting documents; reconciliation of bank accounts; staffing of any ongoing or outstanding issues, such as pending Medicaid; review of the monthly guardianship assessment; ~~if the APS specialist IV or designee wants~~ decision to assign further follow up tasks; and if they need to be face-to-face based on review and staffing. The APS specialist IV or designee may assign a face-to-face follow-up at any time a dismissal is considered.**

(1) When ~~DHS~~ OKDHS continues to hold guardianship after 30-calendar days, follow-up contact ~~to~~ with the vulnerable adult is required at least once each month. A face-to-face visit is required within two weeks of any hearing unless the vulnerable adult is personally served or was already seen by APS within the two week timeframe. This requirement continues for the duration of the temporary guardianship.

(A) When the vulnerable adult's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.

(B) Follow-up contact may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the vulnerable adult's situation.

(C) In medical facilities, such as geriatric psychiatric units or a medical hospital ~~for care~~, the worker follows-up with the vulnerable adult's assigned social worker or the individual assigned at the APS specialist IV's or designee's discretion.

**(D) In group homes, residential care facilities, and assisted living centers through involuntary services, the face-to-face follow-up is completed each month until the first 180-Day Order is obtained. After the 180-day order is obtained, monthly follow-up is required, and the APS specialist IV or designee has the discretion to determine if the follow-up must be face-to-face. However, a monthly follow-up must be documented and may include an interview with the vulnerable adult, staff, and any family or collateral involved. Supporting documentation must be obtained, scanned into the "W" Drive APS Computer System, and listed in the Documents Files Section. The APS specialist may contact other professionals not associated with the facility who provide treatment or services to the vulnerable adult for follow-up information every month, or more often as indicated.**

**(E) In any type of nursing home, the APS specialist visits the vulnerable adult, at least once within two weeks of initial placement to check for changes in the vulnerable adult's condition, such as injuries, signs of over-medication, and cognitive state. This follow-up includes; admit to the facility, inventory, resident trust fund, payment considerations, adjustments by the vulnerable adult to the facility, incidents, pharmacy or medical issues, visitation issues, how to contact the APS specialist, back-up specialist, and APS specialist IV or designee and intentional relationship building with staff. All computer-related tasks must be completed. The face-to-face follow-up is completed each month until the first 180-Day Order is obtained. Face-to-face monthly visits are at the discretion of the APS specialist IV or designee after the initial 180-Day Order. However, a monthly follow-up must be documented. Supporting documentation must be obtained, scanned into the "W" Drive APS Computer System, and listed in the Documents Files Section. The APS specialist discusses concerns with the nursing home administrator or director of nursing, and the APS specialist IV or designee. After the first month, the APS specialist completes a follow-up with the vulnerable adult at least once every month, reviews the nursing home charts and incident reports, and discusses care needs with the staff and vulnerable adult's family, if available. This follow-up may be completed by phone with APS specialist IV or designee approval.**

**(F) The APS specialist makes frequent contact with vulnerable adults remaining at home, or at a relative's home, caretaker or any non-facility placement in temporary guardianship at a minimum of every month to ensure the established service plan meets the vulnerable adult's safety and needs. The APS specialist:**

- (i) makes modifications, as needed, to the service plan as-well-as and provision of services by providers;**
- (ii) evaluates the quality of care and the method of contact on a case-by-case basis depending on the individual needs of the specific vulnerable adult including a face-to-face visit every month; and**

(iii) ensures all computer-related tasks ~~must be~~ are completed. A monthly follow-up must be documented and includes an interview with the vulnerable adult, family, and any other collateral involved. Supporting documentation is obtained when available, scanned in to the ~~"W" Drive~~ APS Computer System, and listed in the ~~Documents~~ Files Section.

(I) The APS specialist may determine, as a result of follow-up contacts, that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the vulnerable adult, a request by the family, or the facility's request to relocate the vulnerable adult.

(II) Placement alternatives are determined in accordance with this Section and approved by the APS specialist IV or designee, the district director, or district program field representative.

(III) The court-appointed attorney for the vulnerable adult and the family are notified of the problems and the alternatives that were developed.

(IV) The APS specialist submits a written report of the change of placement to the court, with a copy of the motion to the vulnerable adult's family and attorney of record.

(G) The follow-up on estate only guardianships does not require a mandatory face-to-face visit, and may be completed by phone with APS Specialist IV or designee approval. The follow-up is assigned at the APS specialist IV's or designee's discretion, but must be completed monthly and documented in the Service Plan Monitoring Notes or Monthly Guardianship Assessment. Supporting documentation is scanned into the ~~W Drive~~ APS Computer System and listed in the ~~Documents~~ Files Section. Case notes must reflect the APS specialist IV's or designee's review of all supporting documents, reconciliation of bank accounts, staffing of any ongoing or outstanding issues, such as pending Medicaid, review of the Monthly Guardianship Assessment, and a decision if the APS specialist IV or designee wants to assign an immediate face-to-face visit based on review and staffing and how the follow-up is to be conducted and when for future months.

(i) In the event the vulnerable adult is placed in a facility out-of-county, the APS specialist IV or designee immediately contacts the APS specialist IV or designee in the county of placement to notify the receiving county of the placement and that follow-up activities ~~per this paragraph must be~~ proved must be completed by the receiving county.

(ii) The APS specialist in the county where the vulnerable adult is residing is the specialist designated to provide follow-up services for temporary guardianship cases.

(2) Medicaid follow-ups must be assigned by the APS specialist IV or designee, when:

(A) there is a new application for Long-Term Care (LTC) benefits, either nursing home or ADvantage Waiver services, and whether or not the application was made by APS;

(B) there is a recent closure or denial of LTC benefits; or

(C) a review for LTC benefits is due within the month.

(3) The Medicaid process must be monitored monthly until a satisfactory decision to certify or deny has been documented in the APS Computer System Service Plan Monitoring Notes. Medicaid follow-ups must continue on dismissed guardianship cases until the issue is resolved.

(4) A Medicaid follow-up may consist of: checking IMS, FACS, and/or or workflow or contact with the client, AFS, or other collaterals. The APS specialist documents all Medicaid follow up activities in the APS Computer System Service Plan Items. The APS specialist documents in the Service Plan Monitoring Notes:

(A) the means of contact;

(B) what information was obtained; and

(C) what remains unresolved.

**12. The APS specialist IV or designee notifies the appropriate district director immediately of substantiated referrals in which an OKDHS employee is named as the alleged perpetrator.**

**4413.** The assigned APS specialist and APS specialist IV or designee enters notes in Service Plan Monitoring Notes regarding any decision to change placement location, the APS specialist IV's or designee's review of all supporting documents, and a decision if the APS specialist IV or designee wants to assign further follow-up tasks.

**4214.** In the event the vulnerable adult is placed in a facility out-of-county, the APS specialist in the placement county is added to the APS Computer System as a back-up worker by the APS specialist IV or designee and documents all contacts, Monthly Guardianship Assessments, supporting documents, and Service Plan Monitoring Notes on the APS Computer System as soon as the contacts are made. All actions are discussed with the APS specialist in the county of jurisdiction and documented in the APS Computer System Notes Section.

(1) The resident county APS specialist or APS specialist in the county of court jurisdiction are responsible for all issues that require written consent, other problems or concerns, and acts in coordination for reporting to the court as required by the court order.

(2) The APS specialists and specialist IVs or designees from both counties discuss and determine the best course of action for temporary guardianship continuations.

(A) The decision takes into account the vulnerable adult's specific situation, the family and their desires, the availability of the courts in the two counties, and the advice of the vulnerable adult's court-appointed attorney, and the attorney(s) representing ~~DHS~~ OKDHS in the matter.

**(B) The district director, district program field representative, State Office, and DHS OKDHS Legal Services attorneys are consulted for assistance in determining the best course of action.**

**340:5-5-4. Special referral considerations**

Revised 9-17-189-15-21

**(a) Referrals regarding Indian tribal members.**

(1) When a Memorandum of Understanding (MOU) exists between the State of Oklahoma and a sovereign Indian Nation the procedures outlined in the MOU are followed.

(2) When an MOU does not exist prior to entry on tribal land, the Indian Nation or United States Marshall Service is notified of the Adult Protective Services (APS) referral and APS procedures are followed in collaboration with the Indian Nation whenever possible. ■ 1

**(b) Referrals involving two or more counties.** When a referral involves two or more counties, such as when the alleged victim (AV) lives in one county and the alleged perpetrator (AP) lives in another county or when the AV moves, temporarily or permanently to another county before the investigation is completed, APS staff from both county offices are involved in the investigation. ■ 2

**(c) Referrals involving Soonercare (Medicaid) fraud.** When an APS investigation indicates fraud by a provider receiving Medicaid funds, APS staff immediately notifies the Office of the Oklahoma Attorney General Medicaid Fraud Control Unit (MFCU). APS cooperates with any MFCU investigation. When MFCU declines to investigate, APS staff completes the investigation and sends a summary report to MFCU.

**(d) Referrals involving provider agencies.** Providers subject to APS investigations include, but are not limited to, home health providers, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These investigations include all elements of an APS investigation. ■ 3 with special emphasis on:

~~(A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;~~

~~(B) obtaining copies of applicable charts and records;~~

~~(C) reviewing medication lists and schedules;~~

~~(D) taking photographs;~~

~~(E) examining habilitation or other care plans;~~

~~(F) examining financial records and other money management documentation;~~

~~(G) reviewing time schedules and time sheets; and~~

~~(H) requesting any other information needed to complete the investigation.~~

~~(2) When assistance is needed to assess medical issues, Oklahoma Department of Human Services (DHS) long term care nurse involvement may be requested. ■ 3~~

~~(3) Any corrective action plan on the part of the provider agency becomes a part of the APS case record. When the provider agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's (DA) office of the failure to cooperate.~~



(e) **Referrals involving other licensed or certified persons.** APS staff sends findings to any state agency with concurrent jurisdiction over persons or issues identified in the investigation including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and other appropriate state licensure or certification boards, agencies, or registries. ■ 4

(f) **Referrals alleging exploitation.** When referrals involve large amounts of funds, resources, or the need to access complex records regarding financial transactions, the APS specialist is authorized to request assistance from the ~~DHS~~ OKDHS Office of Inspector General (OIG). ■ 5 When OIG declines to investigate, the APS specialist completes the investigation. ■ 6 ~~Protective services that may be provided in cases of exploitation include:~~

- ~~(1) changing the representative payee; ■ 6~~
- ~~(2) freezing all of the vulnerable adult's assets;~~
- ~~(3) petitioning the court for an order allowing access to records;~~
- ~~(4) redirecting or stopping the flow of the vulnerable adult's assets into the AP's account(s); and~~
- ~~(5) stopping perpetrator access to the AV's account(s).~~

(g) **Persons referred to DHS OKDHS by the courts.** Courts are not authorized to remand criminal defendants to DHS OKDHS based on a finding of lack of competency to stand trial. Courts are authorized to refer the alleged incompetent defendant to DHS OKDHS for consideration of voluntary assistance or conditionally release the incompetent defendant, per Section 1175.6 of Title 22 of the Oklahoma Statutes. In order to qualify for such disposition, the court must make findings described in subsection (1) or (2) of this subsection.

(1) Referral for voluntary services or conditional release occurs when the court finds the person is incompetent for reasons other than the AV is a person requiring treatment, per 43A O.S., and is found not to be dangerous.

(2) When a court, the ~~DA~~ district attorney, or the attorney for a criminal defendant notifies the APS specialist that a referral for voluntary DHS OKDHS services or conditional release ~~has been~~ is made, the APS specialist obtains a copy of the order from the person making the referral. When, after evaluation, it appears to the APS specialist that the AV may also ~~be developmentally disabled~~ have a developmental disability, the APS specialist immediately contacts the Developmental Disabilities Services (DDS) Area Intake office and requests their involvement in the process of determining, in consultation with DHS OKDHS Legal Services if voluntary services are available and adequate, or whether to propose a plan of services for conditional release. This is a joint effort between the APS specialist and the DDS case manager.

■ 7

(h) **AV receiving services from DDS.** When an AV is receiving, or may be eligible for, services from DDS, the APS specialist contacts the appropriate DDS Area Intake office to coordinate activities to enhance the AV's safety. ■ 8

~~(i) **Referrals involving residents of residential care facilities, assisted living facilities, and adult day care facilities.** The APS specialist sends a copy of the final investigative report to OSDH. Upon completion of an investigation involving an administrator named as the AP and when findings are substantiated, the APS specialist~~

~~IV or designee notifies the Oklahoma State Board of Examiners for Long-Term Care Administrators. ■ 9~~

## **INSTRUCTIONS TO STAFF 340:5-5-4**

**Revised ~~9-17-189-15-21~~**

1. (a) When possible tribal membership is indicated, the Adult Protective Services (APS) specialist consults with the APS specialist IV or designee to determine if a Memorandum of Understanding (MOU) exists. When an a MOU is in effect, the procedures outlined in the MOU are followed.  
(b) APS staff is encouraged to establish and continue working relationships with tribal social services to provide services for Native American clients. Tribal notification of all referrals and investigations is considered best practice and the tribe or United States Marshall Services is notified when possible prior to entry on tribal land; however, a referral or investigation may proceed prior to tribal notice, when tribal notice is impossible.  
(c) APS staff may contact the United States Marshal Marshall for assistance on restricted land, as appropriate.  
(d) Information from an APS investigation may be shared with the Bureau of Indian Affairs (BIA) and tribal governments.
2. (a) APS staff in the county of residence of the alleged victim (AV) has primary responsibility for the investigation. APS specialists in other involved counties cooperate fully and as quickly as possible to obtain information for the investigation. All requested information is forwarded to the county office in the AV's county of residence for case completion. This includes, but is not limited to, interviews with collateral contacts, such as family members, alleged perpetrators (AP), or other persons determined to have knowledge pertinent to the investigation and conducting property searches, obtaining bank records, or other material pertinent to the investigation.
  - (1) Staff in the county office of the county of the AV's residence may request APS staff in the county where the AP lives to conduct the interview with the AP. All efforts to involve the AP with APS staff in the county of residence are exhausted before this option is exercised. The same APS specialist interviews the AV and the AP if possible.
  - (2) When the back-up APS specialist interviews the AP, the back-up APS specialist documents the interview in the APS Computer System Interview Section within five-business days.  
(b) When the AV is temporarily housed in another county, the APS specialist IV or designee in the resident county where the AV normally resides may request that the back-up specialist in the temporary county:
  - (1) completes and documents the initial face-to-face interview as soon as possible;
  - (2) completes and documents the Risk, Needs, and Capacity Assessment; and
  - (3) contacts and documents any collaterals.  
(c) Staff in the resident county is responsible for completing the investigation and takes into consideration the input from the temporary county's APS

specialist. The time frame for initiating the investigation remains the same per Oklahoma Administrative Code (OAC) 340:5-5-2.

- (d) When it is determined that the AV relocated to another county prior to the conclusion of the investigation, the referral may be transferred to the new county. The APS specialist IV or designee of the initial county contacts the APS specialist IV or designee of the receiving county as soon as this determination is known in order to timely complete the investigation.
  - (e) When problems with coordination occur between APS staff in different county offices or there are delays in documenting information, county APS staff contacts the APS district director for resolution.
3. (a) These investigations include all elements of an APS investigation with special emphasis on:
- (1) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;
  - (2) obtaining copies of applicable charts and records;
  - (3) reviewing medication lists and schedules;
  - (4) taking photographs;
  - (5) examining habilitation or other care plans;
  - (6) examining financial records and other money management documentation;
  - (7) reviewing time schedules and time sheets; and
  - (8) requesting any other information needed to complete the investigation.
- (b) When assistance is needed to assess medical issues, Oklahoma Human Services (OKDHS) long-term care nurse involvement may be requested.
- (c) Any corrective action plan on the part of the provider agency becomes a part of the APS case record. When the provider agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's office of the failure to cooperate.
- (a)(d) The APS specialist may request the involvement of an Oklahoma Department of Human Services (DHS) (OKDHS) long-term care (LTC) nurse in investigations involving agency providers or when a nursing assessment is needed. The nurse's role is to:
- (1) act as a resource in the interpretation of physical observations made by the APS specialist;
  - (2) accompany the APS specialist to visit the vulnerable adult when approved by the area nurse;
  - (3) assist the APS specialist in determining a course of action on the vulnerable adult's behalf; and
  - (4) assist in the follow-up of the vulnerable adult in the home, as appropriate.
- (b)(e) In order to involve the DHS OKDHS LTC nurse in an APS investigation, the APS specialist must determine that the need exists for an in-home medical assessment. This conclusion may be reached after discussion with the APS specialist IV or designee, and the DHS OKDHS LTC nurse, or both.
- (1) When the DHS OKDHS LTC nurse is not available, the specialist may call the area nurse.

- (2) When a nurse cannot be reached or is geographically unavailable for prompt response, the APS specialist determines if other nursing resources are available, such as the Developmental Disabilities Services (DDS) nurse or the local Oklahoma State Department of Health (OSDH) nurse.
- (3) When the situation demands immediate attention and a nursing resource is unavailable, the APS specialist initiates the home visit immediately.
- (e)(f) When assistance from the DHS OKDHS LTC nurse is appropriate either at the initial home visit or at follow-up visits, the APS specialist accompanies the nurse to visit the vulnerable adult.
- (1) When the DHS OKDHS LTC nurse accompanies the APS specialist on the initial home visit, the specialist and DHS OKDHS LTC nurse assess the need for further action.
- (2) After a visit to the vulnerable adult, the DHS OKDHS nurse completes all items on Form 08AP003E, Adult Protective Services Nursing Assessment, and submits the original to the APS specialist for scanning and inclusion in the the APS Computer System.
4. (a) Contact information for OSDH includes:
- (1) mailing address, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73111;
- (2) phone number, 405-271-6868; toll-free phone number, 1-800-747-8419; fax number, 405-271-2206; and toll-free fax, 1-866-239-7553; or
- (3) email at, LTCComplaints@health.state.ok.gov.
- (b) Contact information for the Oklahoma State Board of Nursing includes, the:
- (1) mailing address, 2915 N. Classen Blvd., Suite 524, Oklahoma City, Oklahoma 73106; and
- (2) phone number, 405-962-1800.
5. The APS specialist makes the referral to the DHS OKDHS Office of Inspector General (OIG) on Form 19MP001E, Referral Form, and emails the referral to OIGFraud2@okdhs.org.
6. ~~A vulnerable adult's benefits may be suspended pending appointment of a payee or a change of payee.~~ Protective services that may be provided in cases of exploitation include:
- (a) suspending a vulnerable adult's benefits pending appointment of a payee or a change of payee;
- (b) changing the representative payee;
- (c) freezing all of the vulnerable adult's assets;
- (d) petitioning the court for an order allowing access to records;
- (e) redirecting or stopping the flow of the vulnerable adult's assets into the AP's account(s); and
- (f) stopping perpetrator access to the AV's account(s).
7. When an AV is named a defendant in a criminal case and is referred to DHS OKDHS for services, the assigned APS specialist makes periodic reports to the court regarding the status, activities, and well-being of the AV, per Section 1175.6b of Title 22 of the Oklahoma Statutes. Periodic reports are made annually or more often when court ordered.
- (1) Assigned county staff in the vulnerable adult's county of residence maintain any existing original paper case records. The APS specialist enters

**new reports referrals in the APS Computer System Intake Section with references to existing paper files cases, if any.**

**(2) When the county of the vulnerable adult's residence is different from the county of court jurisdiction, an APS specialist in the county of residence is assigned as back-up for the purpose of a face-to-face visit with the vulnerable adult, documenting the contact, and preparing reports as needed. ~~The reports are maintained in the specified "W" drive and may be printed as needed by the APS specialist.~~**

**(3) When in the APS specialist's or the DDS case manager's professional judgment, the AV appears to have achieved competency to stand trial, the APS specialist reports this in writing to the court. The court then sets another hearing for the purpose of determining competency.**

**8. (a) APS staff provides information to DDS staff to assist in evaluation of a vulnerable adult known or suspected to have a developmental disability. The case manager for a vulnerable adult receiving DDS services facilitates and cooperates with the APS investigation by providing requested information and accompanying the APS specialist on home visits when needed.**

**(1) When APS staff is assisted by DDS staff on a case, a copy of Form 08AP002E is routed to the appropriate DDS case manager upon completion of the investigation.**

**(2) An example of APS and DDS staff coordinating activities is when the AV has developmental disabilities and is facing criminal charges, or may be the victim of a crime, and a prompt social service response is needed.**

**(b) When a vulnerable adult receiving APS services appears to have developmental disabilities, but does not receive DDS services, DDS Intake staff or other appropriate staff may accompany the APS specialist, when necessary, on home visits and assist in making application for DDS services. When DDS staff assists APS staff on a case, APS staff routes a copy of Form 08AP002E to the appropriate DDS case manager upon completion of the investigation.**

**(c) When the APS specialist suspects the AV has developmental disabilities, the APS specialist checks IMS to determine if the vulnerable adult receives DDS Waiver services or is on the waiting list. To make a referral for DDS Waiver services or DDS state-funded services, the APS specialist contacts the appropriate DDS Area Intake office.**

**(1) DDS has three Area Intake offices:**

**(A) Area I includes Oklahoma City and Enid and the toll-free phone number is 1-800-522-1064;**

**(B) Area II includes Tulsa and the toll-free phone number is 1-800-522-1075; and**

**(C) Area III includes Pauls Valley and the toll-free phone number is 1-800-522-1086.**

**(2) The APS specialist describes the situation and gives details to the DDS intake worker regarding the person who may be in need of DDS services. Details include the AV's:**

**(A) name;**

**(B) Social Security number;**

- (C) date of birth;
  - (D) address;
  - (E) phone number;
  - (F) diagnosis;
  - (G) medical information;
  - (H) responsible party's or legal guardian's name; and
  - (I) other pertinent information.
- (3) The DDS intake worker explains to the APS specialist what DDS services are available, if any, and how to access services and/or make application for services.
- (d) When, after consultation with DDS staff, it appears the AV may be eligible for DDS Waiver services but is not receiving them, the APS specialist informs the AV and/or the AV's responsible party or legal guardian that the AV may be eligible for DDS Waiver services. The APS specialist advises how to apply for services and offers to assist in completing and signing the DDS Waiver application and obtaining all required documents, such as physical and psychological reports.
- (1) When the family does not want or need the APS specialist's help in applying for DDS Waiver services, the APS specialist provides the family with the appropriate DDS Area Intake number so they can apply. In this case the APS specialist informs local DDS staff that the family was referred to the DDS Area Intake office and may need services. When there is no family, responsible party, or legal guardian, or these persons are the alleged perpetrators, the APS specialist may assist the DDS intake worker with the application.
  - (2) DDS maintains a waiting list of clients when resources are unavailable for persons to be added to services funded through the Home and Community-Based Services (HCBS) Waiver. The HCBS Waiver request list is maintained in chronological order based on the date of receipt of a written request for services. For emergency situations exceptions to the chronological order may be made per OAC 317:40-1-1(f).
- (e) The APS specialist routes a copy of Form 08AP002E to DDS Quality Assurance upon completion of the APS investigation involving vulnerable adults receiving DDS services.
- (f) When a complaint alleges abuse, neglect, or exploitation of a person with developmental disabilities by a ~~DHS~~ an OKDHS employee, refer to OAC 340:5-3-6(c).
- (g) When, in the course of an investigation, the APS specialist discovers the vulnerable adult is a Hissom class or Balance class member, or the AP is a Medicaid provider, the APS specialist immediately routes the report to the Office of Client Advocacy (~~OCA~~) for investigation.
9. (a) The APS specialist faxes, emails, or mails final investigative findings in summary form to OSDH. Refer to Instruction # 4 for OSDH contact information.
- (b) To notify the Oklahoma State Board of Examiners for Long-Term Care Administrators (OSBELTCA), the APS specialist:

- (1) downloads a pre-formatted letter from the APS Computer System Documents Section;
- (2) obtains a notarized signature from the APS specialist IV or designee; and
- (3) sends the letter to OSBELTCA, 2401 N.W. 23rd Street, Suite 2H, Oklahoma City, Oklahoma 73107.

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

Revised 9-17-18

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

(1) Upon completion of the investigation, 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).

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

Revised ~~9-17-18~~ **9-15-21**

1. (a) **Documentation required to complete an investigation. The Adult Protective Services (APS) specialist documents investigations within 60-calendar days after the receipt of referral in the county office. The APS specialist files downloads APS Report of Investigation in the "W" drive APS Computer System and routes copies to the local district attorney's office.**

(b) **The APS Report of Investigation is a summary of the investigation and is not used as a tool to complete the investigation. The full case documentation on the APS Computer System provides a detailed chronological account of the entire investigation process including:**

- (1) **specific circumstances of the report;**
- (2) **the date and time of the home visit;**
- (3) **the persons present during the home visit;**
- (4) **the condition of the vulnerable adult and the vulnerable adult's environment;**
- (5) **the information from collateral contacts, including dates and times;**
- (6) **the APS specialist's evaluation of the vulnerable adult's capacity to consent to services;**
- (7) **the assessment of risk;**
- (8) **the APS specialist's determination of the report as substantiated, or unsubstantiated, or inconclusive;**
- (9) **the results of follow-up visits including dates and times;**
- (10) **the assessment of the vulnerable adult's needs;**
- (11) **the proposed service plan for substantiated investigations;**
- (12) **the circumstances of the vulnerable adult's acceptance or refusal of services offered;**
- (13) **the information concerning the actual delivery of services; and**

(14) detailed descriptions of all legal actions and follow-up activities for the vulnerable adult receiving involuntary services.

(c) The APS specialist must document each new APS referral in the APS Computer System Intake Section. When there is no existing APS case number for the vulnerable adult, a new case is opened. For all APS referrals the APS specialist enters the relevant information including receipt of referral, substantiated, unsubstantiated, or ~~ruled-out~~ inconclusive case findings, case conclusion when ~~Level 2~~ a Service Case, and services actually provided, including legal actions initiated into the APS Computer System.

(d) APS cases require documentation of a review by an APS specialist IV or designee or staffing in the APS Computer System Notes Section at:

- (1) intake;
- (2) risk, needs, and capacity assessment;
- (3) the determination of findings or conclusion;
- (4) legal action determinations;
- (5) service planning;
- (6) ~~extension requests~~;
- ~~(7)~~ follow-up; and
- ~~(7)~~(8) case closure.

(e) At the conclusion of the investigation, the APS specialist routes the APS Report of Investigation to the local district attorney. Findings of self-neglect are not forwarded to the office of the district attorney unless similar findings were reported within six (6) months prior. A summarized report is sent to any appropriate licensing agency. In substantiated investigations, the APS specialist works closely with the provider to develop a plan that addresses substantiated elements of the investigation.

(f) The APS specialist submits a summary of the investigation omitting the reporter's identity to the Nurse Aide Registry at the Oklahoma State Department of Health for all substantiated referrals against certified nurse aides. For substantiated referrals against licensed nurses, information is submitted to the Oklahoma State Board of Nursing at 405-962-1800 or faxed to 405-962-1821.

(g) The APS specialist sends a summary notification of findings to the caretaker, legal guardian, and next of kin. The summary notification includes:

- (1) whether ~~the Oklahoma Department of Human Services (DHS)~~ (OKDHS) determined the findings to be substantiated, unsubstantiated, or ~~ruled-out~~ inconclusive; and
- (2) a summary of ~~DHS~~ OKDHS recommendations concerning the vulnerable adult.

~~(h) When an allegation of maltreatment by a paid Medicaid personal care assistant, community services provider employee, or community services worker is substantiated, the APS specialist IV or designee notifies State Office staff to initiate the Community Services Worker Registry process.~~

2. Documentation required to conclude a ~~Level 2 referral~~ Service Case.

- (1) From the date an APS referral is received, the APS specialist completes the documentation for Service Case referrals within 60-calendar days.



- ~~(1)~~**(2)** The APS specialist IV or designee reviews tasks, task completion, service plan, and case summary conclusion for completion and accuracy.
- ~~(2)~~**(3)** Conclusions are not required to be sent to the district attorney.

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

Revised 9-17-189-15-21

(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).

~~(b)~~**(1) Payment for voluntary or involuntary protective services.** The cost of providing voluntary or involuntary 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 ~~(3)~~ **(c)** of this subsection. ■ 1 An allegation of financial neglect may be considered, along with asset management remedies available through temporary guardianship, or an Order to Enjoin Caretaker. Refer to ~~(d)~~ of this Section.

~~(1)~~ **Payment for voluntary services.**

~~(3)~~ When voluntary services are required to meet an urgent need and no other payment source is available, the APS specialist follows procedures in ~~(3)~~ **(c)** 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.

~~(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. When payment is required for involuntary services, procedures in ~~(3)~~ of this subsection are followed, when:

- ~~(A) funds are not available from the vulnerable adult's assets; and~~
- ~~(B) a private or public payment source is not available.~~

~~(3)~~**(b) Payment for emergency protective services.** The Oklahoma Department of Human Services ~~(DHS)~~ **(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)~~ **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 a DHS Legal Services attorney.

~~(d)~~ **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services, but the caretaker refuses to allow the provision of services, DHS **OKDHS** may petition the court for an injunction prohibiting the caretaker from interfering interference with the provision of protective services per subsection ~~(e)~~. ■ 3

~~(e)~~ **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, DHS may petition the court for an Order to Enjoin Caretaker. ■ 4~~

~~(f)(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 Form ~~08AP002E~~, Adult Protective Services Report of Investigation. ~~Level 2 Service Case~~ refusals are documented in the service plan and case conclusion. Services are terminated unless ~~DHS 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.

~~(g)(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 43A O.S. § 10-103(B).  
■ 54

~~(h)(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.

~~(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.

~~(i) Petitioning the court – Emergency Order for involuntary protective services.~~ DHS 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. ■ 6

~~(1) 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 DHS or an interested person. The order gives the temporary guardian authority only to consent to the specified protective services on behalf of the vulnerable adult. ■ 7~~

~~(2) 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.~~

~~(j) Do not resuscitate (DNR).~~ Per 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.

~~(k) Guardianship notification.~~ When APS seeks guardianship, the court sets a date to hear the case. The hearing is scheduled within five calendar days of the date the judge signs the notice of proposed protective services. The vulnerable adult must receive notice 48 hours in advance of the hearing, unless notice is waived. Notice may be waived by the court in emergency cases, per (2) of this subsection.

~~(1) A court order is issued showing DHS petitioned the court for an order to provide protective services, and giving the date, time, and place of the hearing. The order specifies who serves the notice to the vulnerable adult. ■-8~~

~~(2) When petitioning the court for an order for emergency protective services, DHS 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. ■-9~~

~~(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.~~

~~(h)(g) **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. ■-10~~

~~(1) 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.~~

~~(A) 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.~~

~~(B) 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.~~

~~(C) 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.~~

~~(D) 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.~~

~~■-11~~

~~(2) 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. 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.~~

~~(3) 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. Placements are determined by the local APS specialist and APS specialist IV or designee, with approval from the any 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 placement must be approved by the APS director or designee. ■ 12

~~(m) **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 DHS investigation determined that maltreatment occurred and the vulnerable adult needs protection.~~

~~(n) **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 petition is filed for continuation of involuntary protective services, per (o) of this Section.~~

~~(o)(h) **Continuation of involuntary services.** Continuation of services is authorized, per 43A O.S. § 10-108(L).~~

~~(1) When the vulnerable adult continues to require protective services beyond the original 30-calendar day order, DHS immediately files a motion for the court to order:~~

~~(A) an appointment of a guardian; and/or~~

~~(B) placement of the vulnerable adult in a nursing home, personal medical institution, home placement, or other appropriate facility.~~

~~(i) 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.~~

~~(ii) Services are provided to a vulnerable adult in a setting that is segregated from residents of a facility who are determined to be a danger to others. ■ 14~~

~~(2) 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:~~

~~(A) the address where the vulnerable adult resides and the names of any persons or agencies presently providing care, treatment, or services;~~

~~(B) a summary of the professional treatment and services provided for the vulnerable adult by DHS or other agency, when any, in connection with the problem creating the need for protective services; and~~

~~(C) 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.~~

~~(3) The original order continues in effect until the evaluation is submitted and a hearing is held on the motion.~~

~~(4) Notice of the hearing is served per (k) of this Section.~~

~~(5) The APS specialist is responsible for obtaining the required information and submitting it to the court of jurisdiction.~~

~~(6) 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.~~

~~(7) When the alleged victim's mental state is in question, the APS specialist may request that the court order a psychological or psychiatric evaluation. ■ 13~~

~~(p) **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.~~

~~(q) **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), DHS 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 directed by DHS Legal Services. 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.~~

~~(r) **Sale of personal property.** The court may issue an order authorizing DHS to sell the vulnerable adult's personal property when additional resources are required to pay for his or her necessary care. ■ 14~~

~~(s)(i) **APS specialist responsibilities as temporary guardian of the person, or estate, or person and estate.** The APS specialist, as temporary guardian, is responsible for ensuring 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.~~

~~(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-DHS employee. ■ 15~~

~~(B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the photographic record noting the date and their professional affiliation;~~

~~(3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and ■ 16~~

~~(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 a DHS representative while the temporary guardianship is in effect.~~

~~(t)~~**(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) ~~transfers existing accounts to the long-term care facility to facilitate payment;~~
- (4) ~~submits an accounting to the court as ordered by the court, no less than annually;~~
- (5) works with the court, the vulnerable adult's attorney, the DA, and DHS OKDHS Legal Services to obtain a professional accountant to manage the estate; and
- (6) ~~absent the availability of professional financial management, is responsible 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; ■ 17~~
  - (B) ~~deposit of funds received;~~
  - (C) ~~redirection of incoming funds to the new account; and~~
  - (D) ~~protection of existing accounts.~~

~~(u)~~**(k) Additional APS specialist responsibilities – involuntary protective services as temporary guardian of the person.**

In cases where temporary guardianship of the person was is granted to DHS OKDHS, the APS specialist arranges or facilitates the protective services ordered by the court. This may include, but is not limited to:

- (1) ~~hiring in-home caregivers to provide in-home care and protection for the vulnerable adult;~~
- (2) placement in a medical facility for treatment of health related problems;
- (3)(2) placement in a safe and anonymous location;
- (4)(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 ~~and/or~~ or services for vulnerable adults; ■ 18
- (5)(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 ■ 19
- (6)(5) making arrangements for facilities to be paid from the vulnerable adult's funds or resources.

~~(v) APS specialist responsibilities – emergency out-of-home placement – ex-parte hearing.~~ 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. ■ 20

~~(w) **Enforcement of court orders for involuntary services.** 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; or~~
- ~~■-21~~
- ~~(3) the eviction of a person from any property owned, leased, or rented by the vulnerable adult and restriction of that person from further access to any of the vulnerable adult's property.~~

~~(x)(l) **Dismissal of court orders for involuntary services.** When the vulnerable adult is subject to a court order for involuntary services and DHS serves in the role of temporary guardian, the APS specialist is responsible for responding to a court's request to dismiss the guardianship by preparing a motion to dismiss and submitting the motion to DHS Legal Services or the local district attorney according to county practice. 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. ■~~

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

**Revised ~~9-17-18~~ 9-15-21**

**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, ~~an APS Emergency Request is completed and submitted in the APS Computer System Emergency Fund Section~~ the need for emergency funds is documented in the APS Computer System Service Plan. Emergency funds may be requested in a ~~Level 2 case~~ Service Case. Authorization to utilize 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;**
- (5) ~~APS Computer System Emergency Fund Section is completed and submitted;~~ and**
- (6) APS specialist IV's or designee's and APS district director'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 23C0135E, Vendor Information, are completed as needed for each vendor and the originals are sent to APS State Office within 10-business days of the approved request.

(d) When requests are made in the ~~APS Computer System Emergency Fund Section~~ for APS Emergency Funds, APS State Office staff:

(1) approves or denies the request(s);

(2) documents the approval or denial in the ~~APS Computer System Emergency Fund Section~~ Notes Section;

(3) processes all claims upon receipt;

(4) documents claims tracking; and

(5) notifies the requesting specialist when claims were are paid in the ~~APS Computer System Emergency Fund Section~~. For a Level 2 case document in ~~Service Plan Monitoring Notes~~. 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.

34. 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.

45. 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.

(a) The APS specialist, explains to the caretaker, the legal responsibility of the ~~Oklahoma Department of Human Services (DHS)~~ 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, ~~DHS~~ 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.

(b) 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.

(c) 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.



(d) When a caretaker continues to refuse to allow provision of protective services after an injunction is issued by the court, DHS 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 (6) of this subsection 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.**

**57. 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, orally 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.**

**68. 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.**

**(a) The APS specialist must have a face-to-face interview with the vulnerable adult within 24 hours prior to the filing of a petition for involuntary services.**

**(b) The petition must be approved and signed by the district attorney, assistant district attorney, or DHS OKDHS Legal Services and must include 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 DHS OKDHS attempts to obtain consent.**

**(c) 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.**

**(d) If 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.**

**(e) 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.

(f) 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.

79. 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.

811. 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 notice 48 hours in advance of the hearing, unless notice is waived. Notice may be waived by the court in emergency cases, per (2) of this subsection.

(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.

9. 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 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.

10. ~~Refer to OAC 340:5-5-3, Instructions to Staff # 5 and # 6 for additional information.~~

~~11. The APS specialist confirms with the facility administrator prior to placement, that the vulnerable adult will be segregated from any residents who are determined to be a danger to others.~~

12. 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, Instructions to Staff # 5 and # 6 for additional information.

(a) 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. 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. Placements are determined by the local APS specialist and APS specialist IV or designee, 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 placement must be approved by the APS director or designee.

(a) These include, but are not limited to, reviewing Oklahoma State Department of Health (OSDH) survey reports at <http://www.ok.gov/health/>, Long-Term Care Investigations (LTCI) records through AFS ApplicationXtender Web Access, and 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, 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.

(b) 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.

1317. When it appears the vulnerable adult may have regained capacity to consent to services, DHS OKDHS Legal Services, the district attorney DA, 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 directed by OKDHS Legal Services. 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.

1420. 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.

1421. The APS specialist as temporary guardian is responsible for ensuring 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. The inventory can 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 to the inventory process must be approved by the APS district director and documented in the APS Computer System Notes Section.

(3) establishing an account at a local financial institution and depositing any cash and uncashed checks;

16. (A) The account must be established using the name of the APS specialist and one other OKDHS employee, preferably the APS specialist IV or his or her designee.

(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 ~~case file on the "W" drive~~ APS Computer System. Financial institutions that require Social Security numbers are given the ~~DHS~~ 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.

4722. 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;

(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 monthly bank statements and document all cash transactions with receipts that are scanned into the "W" drive APS Computer System. All cash transactions must be witnessed by a third party;

(B) deposit of funds received;

(C) redirection of incoming funds to the new account; and

(D) protection of existing accounts.

4823. 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, 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.
- 1924.** (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;
  - (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 or reviewing 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).
- 2025.** 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.
- 2126.** 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 owned, leased, or rented by the vulnerable adult and restriction of that person from further access to any of the vulnerable adult's property.
- 2227.** 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 to a court's request to dismiss the guardianship by

**preparing and submitting the motion to dismiss to OKDHS Legal Services or the local district attorney according to county practice.**

(a) 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 ~~DHS~~ OKDHS attorney in the matter as to form; and
- (3) prepares a Financial Accounting if ~~DHS~~ OKDHS held guardianship of the estate, or person and estate.

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

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

- (1) scans the petition and the order into the "W" drive 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.

**340:5-5-7. Termination of adult protective services**

Revised ~~9-17-18~~ 9-15-21

Adult protective services are terminated when the situation that prompted the referral is remedied, ~~and the vulnerable adult's circumstances are stable, and/or~~ or the vulnerable adult refuses to accept services. Cases for vulnerable adults for whom the Oklahoma Department of Human Services has a current guardianship or remand are terminated only when the court order dismissing the temporary guardianship ~~has been~~ is filed. These cases remain active and follow-up activities are documented as required by Oklahoma Administrative Code ~~340:5-5-3(10)~~ 340:5-5-3(11), as long as the court order is in effect.

■ 1

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

Revised 9-17-18

1. When preventive or supportive intervention services continue to be necessary, they are documented in the Adult Protective Services (APS)-Computer System Service Plan Section. If another referral is received and assigned for the individual, a new case is initiated and documented in the APS Computer System.

**340:5-5-8. Case destruction**

Revised ~~9-17-18~~ 9-15-21

(a) The destruction of Adult Protective Services paper files is done, per the Oklahoma Department of Human Services Consolidated Records Disposition Schedule. ■ 1

(b) Records of investigations conducted, per The Protective Services for Vulnerable Adults Act, Section 10-110 of Title 43A of the Oklahoma Statutes, are not expunged except by court order. ■ 2



## **INSTRUCTIONS TO STAFF 340:5-5-8**

**Revised 9-17-189-15-21**

1. Access the Records Management website for the Consolidated Records Disposition Schedule for Adult Protective Services (APS) records.
2. (a) When the Oklahoma Department of Human Services (DHS) (OKDHS) is or was appointed as the vulnerable adult's temporary guardian, any petition or motion requesting that investigative records be expunged is filed under the same case number.  
(b) When a copy of a petition or motion to expunge records, a copy of a notice of hearing on such a petition or motion, or a copy of a court order is received pertaining to or directing that records be expunged, the APS specialist immediately contacts DHS OKDHS Legal Services (LS). LS staff decides what records to expunge, which includes, but is not limited to, written records.
  - (1) LS may request the case or copies of the case. The APS specialist is responsible for getting the information to LS within five-business days.
  - (2) LS notifies APS State Office staff of the action taken.

### **Subchapter 7. ~~Long-term~~ Long-Term Care Investigations**

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

**Revised 9-17-189-15-21**

- (a) Screening protocols, per Oklahoma Administrative Code 340:5-3-5, are followed for referrals submitted to Long-Term Care Investigations. ■ 1
- (b) ~~The Adult Protective Services (APS) programs manager or designee~~ Abuse and Neglect Hotline specialist is responsible for screening referrals. Referrals are accepted for investigation, screened out when APS criteria is not met, or are referred to another entity. The Adult Protective Services (APS) Long-Term Care Investigations programs manager 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~~ Long-Term Care Investigations, except those noted in this Subchapter.

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

**Issued 9-17-18 Revised 9-15-21**

1. ~~The Long-Term Care Investigations program manager or designee~~ screen Abuse and Neglect Hotline specialist screens all allegations. When abuse, neglect, or exploitation is alleged the referral is sent to intake and is entered into the Adult Protective Services (APS) Computer System. The program manager or designee screens all Long-Term Care Investigation referrals a second time to determine the disposition.
2. (a) Maltreatment allegation referrals received by ~~Adult Protective Services (APS)~~ Long-Term Care Investigations are screened by the ~~program manager or designee~~ Hotline specialist.

- (1) When the APS program manager or designee determines that abuse, neglect, or exploitation occurred, the referral is entered into the APS Computer System.
- (2) All referrals in the Long-Term Care Investigation section are read and evaluated by the program manager or designee.
- (b) When the incident did not happen in a nursing facility, Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID), or Oklahoma Veterans Nursing facility, the referral is transferred to Community APS for disposition.
- (c) 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 transferred to Community APS for disposition.
- (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; any person hired by the family and allowed to work in the facility. This includes, but is not limited to, home health workers, physical therapy workers, hospice employees, physicians, physician assistants, private sitters, agency workers, volunteers, or 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) in APS intake. The intake is assigned to Long-Term Care Investigations.
- (d) The program manager or designee reviews the intake 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 intake is screened as ~~information~~ Information and ~~referral~~ Referral and further action is not required.
- (2) When court intervention is needed to resolve the issue or assist the resident, the ~~intake/completed~~ intake or completed case is forwarded to Community APS for review.
- (3) When the facility's actions or inactions facilitated or caused resident-to-resident abuse, a case is opened and assigned to an 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.
- (e) 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 ~~but import the client on the AV screening page.~~
- (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 cases case already exists:
  - (A) if the case is assigned to Community APS, contact the assigned APS specialist before proceeding;
  - (B) if the open case is assigned to Long-Term Care Investigations and a duplicate complaint is received, a copy of the new intake is sent to the Long-Term Care Investigations Social Service investigator (SSI) Inspector, and the cases are merged; or
  - (C) if the open case is assigned to Long-Term Care Investigations and the complaint is the not the same, screen as a new case.
- (f) ~~When cases~~ 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; a referral is sent to the Oklahoma Department of Health (OSDH).
  - (2) are violations of residents rights, which might include verbal abuse; a referral is sent to the Oklahoma State Ombudsman office; or
  - (3) are obvious criminal charges; a referral may be sent 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 ~~phoning~~ calling, ask for nursing home abuse, Medicaid fraud intake, or the Chief Investigator by name. Not all referrals are investigated.
- (g) When the resident is deceased, the intake may be referred to OSDH or the Oklahoma Attorney General Medicaid Fraud. The program manager may assign the intake when there is a compelling reason. The program manager may staff with the SSI and the APS division director.
- (h) Non-emergency cases are assigned to Long-Term Care Investigations SSI Social Service Inspector.
- (i) When emergency cases are assigned for investigation, the program manager ~~phones~~ calls or emails the SSI to staff the high-priority case and set a response time.

**340:5-7-3. Complaints concerning Long-Term Care investigators [REVOKED]**

~~Revised 9-17-18~~

~~Complaints regarding Long-Term Care investigators are submitted by phone, email, or in writing to an Adult Protective Services programs manager. A confidential, written response stating review findings is provided to the complainant within 45-calendar days. Confidential information is not included in the report. ■ 1 & 2~~

**INSTRUCTIONS TO STAFF 340:5-7-3 [REVOKED]**

~~Issued 9-17-18~~

~~1. Facility review requests about a specific Long-Term Care Investigations Social Services Investigator (SSI).~~

- ~~(1) When the Long-Term Care Investigations program manager receives a complaint, he or she:~~

- ~~(A) reads the complaint and all supporting documentation and compares it to the documentation in the case file;~~
  - ~~(B) forwards the complaint to SSI for review and comment or for answers to the program manager's questions;~~
  - ~~(C) determines the accuracy of the SSI's decision after a thorough analysis of the case and complaint;~~
  - ~~(D) makes a decision and drafts a letter to the complainant;~~
  - ~~(E) gives the complaint, letter, SSI comments, and file to the Adult Protective Services (APS) director for review and approval;~~
  - ~~(F) signs the letter without documentation, and mails it to the complainant; and~~
  - ~~(G) files all documents, the complainant's letter, SSI's comments, and the response letter in the original case.~~
- ~~(2) If a new investigation is initiated as a result of the complaint it is given a new intake and number and initiated as a new case.~~
- ~~2. Complaints about Long-Term Care Investigation staff members received by Community APS specialists.~~
- ~~(1) Complaints are reduced to writing.~~
  - ~~(2) The reporter may be contacted for clarification.~~
  - ~~(3) When the Community APS specialist is satisfied that the problem may be a Long-Term Care Investigation staff complaint, he or she immediately forwards the complaint to his or her supervisor.~~
  - ~~(4) The supervisor immediately sends the complaint to the Long-Term Care Investigation program manager.~~
  - ~~(5) Under no circumstance is a Long-Term Care Investigation staff complaint entered in the Adult Protective Services (APS) Computer System without the APS director's instruction to do so.~~
  - ~~(6) The program manager informs the APS director that a complaint was received and the nature of the complaint.~~
  - ~~(7) Investigation of concerns may include talking to the reporter, Long-Term Care Investigation SSI or other persons when they have related information and are identified by the reporter.~~
  - ~~(8) All relevant documentation is reviewed.~~
  - ~~(9) Any other steps requested by the APS Director or Human Resources Management (HRM).~~
  - ~~(10) All findings are reduced to writing and given to the APS director for review.~~
  - ~~(11) The program manager and APS director meet to make a joint decision about the finding and resolutions.~~
  - ~~(12) The program manager drafts a response letter that is mailed to the reporter after the APS director reviews and approves the letter.~~
  - ~~(13) A verbal and possibly written response to the complaint is provided to the Long-Term Care Investigation staff.~~
  - ~~(14) When disciplinary action is required the staff is informed according to Oklahoma Department of Human Services HRM policy.~~

**340:5-7-5. Initiating ~~long-term care investigations~~ Long-Term Care Investigations**  
Revised 9-17-189-15-21

A ~~long-term care investigation~~ Long Term Care Investigation is initiated by visiting the vulnerable adult in the nursing facility. ■ 1

(1) ~~Long-term care investigation~~ Long-Term Care Investigation timeframes. Maltreatment reports are initiated within 20-business days or sooner when circumstances indicate immediate action is needed.

(2) ~~Long-term care~~ Long-Term Care investigative report completion.

(A) The long-term care investigator determines within 60-business days of the receipt of the report, if the evidence indicates the report is substantiated, or unsubstantiated, or inconclusive, per Oklahoma Administrative Code (OAC) 340:5-1-6. The program manager may extend the case closure date when necessary.

(B) The findings are sent to state entities with concurrent jurisdiction over the persons or issues identified in the investigation, such as the Oklahoma State Department of Health, local district attorney, Long-Term Care Ombudsman in Aging Services, and appropriate state licensure or certification boards, agencies, or registries. The special considerations in OAC 340:5-5-4(d), and (e), ~~and (i)~~ apply to ~~long-term care investigations~~ Long-Term Care Investigations.

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

Revised 9-17-189-15-21

1. (a) 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, ~~but it~~ 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. Long-Term Care Investigations secures all pertinent information and ~~phones~~ calls, faxes, or emails the information to the Oklahoma State Department of Health (OSDH), Protective Health Services. No further action is taken by the Oklahoma Department of Human Services (~~DHS~~) (OKDHS).

(b) All information pertaining to a long-term care investigation is maintained by Long-Term Care Investigations. The county office does not maintain case records on these referrals.

(c) When the investigation is completed, a summary of the final ~~DHS~~ OKDHS investigative report is faxed, emailed, or mailed by the office completing the investigation to the appropriate state agency or entity with jurisdiction over the person or issues identified in the investigation, such as OSDH, Protective Health Services 1000 N.E. 10 St., Oklahoma City, Oklahoma 73104; fax 405-271-2206, ~~emailed to email~~ LTCComplaints@health.state.ok.us, or toll-free fax number 1-866-239-7553; the local assistant district attorney; or the ~~DHS~~ OKDHS Long-Term Care Ombudsman Aging Services, 405-521-6734 or fax 405-522-6739. The findings are mailed to the alleged victim's family.

**340:5-7-6. Long-Term Care Investigation elements ITS Only**

Revised 9-17-18

A Long-Term Care Investigation includes the elements set forth in Oklahoma Administrative Code 340:5-5-3 (1) through (6) and (9) through (10). ■ 1 through 5

## **INSTRUCTIONS TO STAFF 340:5-7-6**

**Issued ~~9-17-18~~ Revised 9-15-21**

1. The pre-investigation case review includes reading the case, making notes, reviewing any supporting documentation, contacting the reporter or other collateral to clarify information, and planning and scheduling the trip. Equipment, such as a camera, tape recorder, pens, pencils, and paper are checked and organized.

2. The investigation includes:

(1) **Unannounced facility visit.** ~~The investigator~~ **social service inspector (SSI)** makes an unannounced, onsite visit to the facility. Facility visits are always unannounced. No calls are made to the facility and no one, including the caller, is told of the date and time of the visit.

~~(a)~~**(A)** **Entrance interview.** Upon entering the facility, the ~~investigator~~ **SSI** finds the administrator or staff in charge and introduces himself or herself and states the purpose for the visit. The ~~investigator~~ **SSI** requests to see client and the client's records. The ~~investigator~~ **SSI** establishes a work area at the facility.

~~(b)~~**(B)** **Client interview.** The ~~investigator~~ **SSI** introduces himself or herself and states the purpose for visit. ~~The investigator~~ **He or she** ensures that staff and family leave the room, conducts the interview, and determines client capacity.

~~(c)~~**(C)** **Facility records review.** The ~~investigator~~ **SSI** reviews the resident's chart and all related records, such as bathing sheets, food intake records, weight charts, incident reports, and trust accounts. ~~The investigator~~ **He or she** requests copies of pertinent records. The ~~investigator~~ **SSI** with facility administrative staff reviews any problems with records, such as shorthand, difficult to read writing, missing records ~~and/or~~ **or** documentation, and waits for the records to be found.

~~(d)~~**(D)** **Exit interview.**

~~(1)~~**(i)** The ~~investigator~~ **SSI** tells facility administrative staff the current status of the complaint. ~~The investigator~~ **He or she** asks if staff has questions. The ~~investigator~~ **SSI** may discuss problems identified during investigation, such as records, nursing, or failure to report. ~~The investigator~~ **He or she** informs facility staff of the procedure for completion of case and that they will receive a letter that includes the final disposition, whether substantiated, or unsubstantiated, or inconclusive, other problems, and if other state agencies will be contacted.

~~(2)~~**(ii)** The ~~investigator~~ **SSI** does not make a substantiation decision at this time or discuss the findings with facility administration. ~~The investigator~~ **He or she** may educate administrative staff on issues identified during investigation. The ~~investigator~~ **SSI** may request a

plan of correction from administrative staff at this time, and offer in-service education for staff.

(2) Collateral interviews. Collateral interviews may be formal or informal and may occur at any time during the investigation. Collateral interviews include taking written statements. The investigator SSI may provide information on laws or professional standards to assist staff in future work. Collateral interviews include an interview of the alleged perpetrator. Collateral interviews may include family members, other residents, nursing facility staff, physicians, other agency staff, law enforcement, and others.

(3) Photographs. Photographs including those taken of client's body, furniture, room and any other relevant facility feature, such as laundry carts or the kitchen may be taken at any time during the visit.

(4) Offsite work.

(A) Off-site record review. An in depth study of client records may be conducted off-site. The investigator SSI requests any missing documentation. ~~The investigator~~ He or she may go to other facilities, such as hospitals, social service agencies, or law enforcement to obtain records. The investigator SSI makes notes of pertinent documentation and collates records. ~~The investigator~~ He or she reviews applicable federal and state laws and regulation and professional practice guidelines.

(B) Off-site interviews. The investigator SSI completes any collateral interviews. These are often done on the phone but the investigator SSI may travel to meet collaterals for an in-person interview. ~~The investigator~~ He or she may request written statements and may consult with other agencies ~~and/or~~ and law enforcement.

(5) Writing the report. The investigator SSI organizes all of information developed during the investigation into a readable narrative within the program guidelines.

(6) Writing letters. Letters required after each investigation include letters to the next of kin and the facility administrator. Some cases may require letters to agencies, such as the Oklahoma Department of Human Services (~~DHS~~) (OKDHS), Oklahoma Health Department, Ombudsman, Attorney General, Veterans Administration, or the Oklahoma Health Care Authority; boards, such as the Board of Nursing, Board of Examiners for Nursing Home Administrators, or Board of Medical Licensure; law enforcement; district attorneys; and others. Sample letters are provided to ~~investigators on the "W" drive~~ SSIs.

3. Review case with the program manager. At any time during the investigation but usually when the investigation is complete the investigator SSI and program manager discuss:

(A) case issues;

(B) any problems encountered during the investigation;

(C) expected or unexpected delays in completion; and

(D) the substantiation decision.

4. Legal work. The investigator SSI may be required to testify in depositions, agency or board proceedings, or in court. ~~The investigator~~ He or she may consult with DHS OKDHS Legal Services attorneys as necessary.
5. Facility staff education. The investigator SSI may educate staff on maltreatment and related issues, such as reporting maltreatment ~~under~~ per Title 43A of the Oklahoma Statutes, to correct deficient work practice found during investigations and to prevent future occurrences of abuse. This is normally done one-on-one with staff. When the program manager approves, the investigator SSI may do a facility educational in-service. The investigator SSI does not agree to ~~conducting~~ conduct an in-service training without consulting the program manager.

~~340:5-7-7. Information available to Oklahoma Department of Human Services (DHS) offices [REVOKED]~~

~~Revised 9-17-18~~

~~Long Term Care Investigations staff provides investigative findings to Community Adult Protective Services staff as needed to assist in locating appropriate placements for vulnerable adults. ■-1~~

~~INSTRUCTIONS TO STAFF 340:5-7-7 [REVOKED]~~

~~Revised 9-17-18~~

1. ~~Long Term Care Investigations staff responds to inquiries as soon as possible, not to exceed three business days.~~