

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Office of Adult Abuse Prevention
and Investigation

411

Agency and Division		Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	500 Summer Street NE, E-10 Salem, OR 97301-1074	(503) 945-6398
Rules Coordinator	Address	Telephone

RULE CAPTION

Adult Protective Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

October 15, 2014	2:30 pm	Human Services Building 500 Summer Street NE, ROOM 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

411-020-0000; 411-020-0002; 411-020-0010; 411-020-0015; 411-020-0020; 411-020-0025; 411-020-0030; 411-020-0040; 411-020-0060; 411-020-0080; 411-020-0085; 411-020-0090; 411-020-0100; 411-020-0110; 411-020-0120; 411-020-0123; 411-020-0130

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Other Auth.: H.B. 4151 (2014), H.B. 2205 (2013)

Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, & 443.767

RULE SUMMARY

The Department of Human Services (Department) is proposing to amend the rules for Adult Protective Services in OAR chapter 411, division 020 to:

- Amend the definitions of “neglect,” “sexual abuse” and add the definition for “basic care” to implement HB4151. These definitions will be applied in investigations of alleged abuse to older adults and persons with physical disabilities in the community as well as licensed care facilities. Other definitions had minor wording, grammar, and formatting adjustments. A few new definitions were added to reflect terminology changes within the Department.
- Add to the list of mandatory abuse reporters because it was expanded by legislation in 2013 to add attorneys, dentists, optometrists, chiropractors and members of the legislative assembly. In addition, the rules now state that certain attorney communications are protected as confidential.
- Amend the triage times for Adult Protective Services (APS) to commence an investigation of alleged abuse to be the same for all licensed care facility types.
- Clarify that reported victims, reported perpetrators, and key witnesses shall be interviewed in person with certain exceptions.
- Add the time frame to complete community abuse investigations as well as what information can be shared about the conclusion.
- Make minor wording, formatting, punctuation and grammar adjustments to the rules.

The Agency requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

October 21, 2014 at 5 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signed Marie G. Cervantes, Director, Adult Abuse Prevention & Investigations

Signature

9/5/2014

Date

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Office of Adult Abuse Prevention
and Investigation

411

Agency and Division

Administrative Rules Chapter Number

Adult Protective Services

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR 411-020-0000; 411-020-0002; 411-020-0010; 411-020-0015; 411-020-0020; 411-020-0025; 411-020-0030; 411-020-0040; 411-020-0060; 411-020-0080; 411-020-0085; 411-020-0090; 411-020-0100; 411-020-0110; 411-020-0120; 411-020-0123; and 411-020-0130 relating to Adult Protective Services.

Statutory Authority: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Other Authority: H.B. 4151 (2014), H.B. 2205 (2013)

Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, & 443.767

Need for the Rule(s):

The Department needs to amend the rules in OAR 411-020 to reflect changes made by legislation. The proposed rules do this by:

- Amending definitions for “neglect,” “sexual abuse” and adding a definition for “basic care” to implement HB4151. These definitions will be applied in investigations of alleged abuse to older adults and persons with physical disabilities in the community as well as licensed care facilities. Some new definitions were added or amended to reflect terminology changes within the Department. Other definitions were amended to make minor wording, grammar, and formatting adjustments.
- Amending the rules on mandatory reporters to incorporate additional mandatory reporters added by legislation in 2013. The list was amended to add attorneys, dentists, optometrists, chiropractors and members of the legislative assembly. In addition to the mandatory reporter changes, certain attorney communications are protected as confidential and this is now stated in the rules.
- Amending the triage times for APS to commence an investigation of alleged abuse are being amended so they are the same for all licensed care facility types.

- Amending the rules on interviewing reported victims, reported perpetrators, and key witnesses and clarifying these rules to say these individuals shall be interviewed in person with certain exceptions.
- Adding the time frames to complete community abuse investigations to the rule, along with adding what information can be shared about the conclusion.
- Making and addressing minor wording, formatting, punctuation, and grammar issues in the rules.

Documents Relied Upon, and where they are available:

HB 4151 (2014) and H.B. 2205 (2013) available from DHS Hearings and Rules Unit, 500 Summer Street NE E48, Salem, Oregon 97301

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR chapter 411, division 020 will have the following fiscal and economic impact:

State Agencies: The Department estimates there will be no fiscal or economic impact on State Agencies.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on Units of Local Government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are currently approximately 1,800 Adult Foster Homes in Oregon. Of these, approximately all of them may be considered a small business as defined by ORS 183.310.

Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed changes will not impact reporting, recordkeeping, or administrative activities as described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed changes impact will not impact equipment, supplies, labor or increased administration costs as described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from Area Agencies on Aging, Aging and People with Disabilities, AARP, Background Check Unit, consumers, Oregon Health Care Association, Home Care Commission, Leading Age Oregon, Governor's Commission on Senior Services, the Office of Licensing and Regulatory Oversight, Community Based Care provider, Long Term Care Ombudsman, Adult Foster Home providers, Aging and People with Disabilities (APD).

Signed Marie G. Cervantes, Director, Adult Abuse Prevention & Investigations

9/5/2014

Signature

Date

**DEPARTMENT OF HUMAN SERVICES
ADULT ABUSE PREVENTION AND INVESTIGATIONS
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 20**

ADULT PROTECTIVE SERVICES -- GENERAL

411-020-0000 Purpose and Scope of Program

(1) RESPONSIBILITY. The Department of Human Services (Department), ~~Seniors and People with Disabilities Division~~ Ageing and People with Disabilities program area (~~Division~~APD) has the responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within ~~the Division~~APD's jurisdiction to investigate.

(2) INTENT. The intent of the APS Program is to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm and neglect.

(3) SCOPE OF SERVICES. The scope of services includes:

- (a) Receiving reports of abuse, neglect, or self-neglect;
- (b) Providing and documenting risk assessment of reported victims;
- (c) Conducting and documenting investigations of reported wrongdoing; and
- (d) Providing appropriate resources for victim safety.

(4) AVAILABILITY. Adult protective services are available from the ~~Division~~ Department to any adult resident of a ~~Department~~-licensed care facility, to nursing facility residents regardless of age, and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) INTERVENTION MODEL.

(a) As a human services agency, the ~~Division~~ Department embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in adult protective services is the obligation to balance the duty to protect older adults and adults with physical disabilities with the duty to protect their rights to self-determination.

(b) The ~~Division~~ Department relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with abuse and neglect, and encourages active participation and sharing of appropriate information by APS staff on multidisciplinary teams.

(c) The ~~Division~~ Department supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, & 443.767

411-020-0002 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 020:

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes, but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) NEGLECT. Neglect including:

(A) ~~Active or passive f~~Failure to provide the basic care, Supervision, or services necessary to maintain the ~~physical~~ health and safety emotional well-being of an adult:

(i) Failure may be active or passive.

(ii) Failure that creating es a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

(iii) The expectation for care, ~~supervision, or services~~ may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to, where an individual has a fiduciary responsibility to assure the continuation of necessary care or services.

~~(B) Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.~~

~~(BC)~~ An adult who in good faith is voluntarily under treatment solely by spiritual means ~~through prayer~~ in accordance with the tenets and practices of a recognized church or religious denomination ~~by a duly accredited practitioner~~ shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes, but is not limited to, the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes, but is not limited to, anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult ~~would~~ reasonably believes that the threat conveyed ~~would~~ maybe carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe, threatening, pervasive or inappropriate exposure of an adult to sexually explicit material or language; Sexual harassment or sexual exploitation of an adult or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Sexual exploitation of an adult; Any sexual contact between an employee or volunteer of a facility or caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility; Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility ~~can~~ evaluates the behavior and develops care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area ~~would~~ poses a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment ~~prior to implementing~~before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated ~~prior to~~before the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an older adult, an individual with a physical disability who is 18 years of age or older, or is a resident of a Department licensed nursing facility, residential care facility, assisted living facility, or adult foster home.

(3) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(4) "APD" means "Aging and People with Disabilities".

(~~53~~) "APS" means adult protective services as described in these rules.

(~~64~~) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(~~75~~) "Area Agency on Aging (AAA)" means the Department designated agency ~~designated by the Department~~charged with the responsibility to provide a comprehensive and coordinated system of service to ~~older adults or adults with disabilities~~individuals in a designated planning and service area.

(86) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(9) "Basic Care" means care essential to maintain the health and safety needs of an adult, but is not limited to, assistance with medication administration, medical needs, nutrition and supervision for safety as well as activities of daily living including assistance with bathing, dressing, hygiene, eating, mobility and toileting.

(107) "Community-Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(118) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(912) "Conservatorship" means ~~that~~ a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(13) "Consumer" means the person applying for or eligible for Medicaid home or community-based services.

(140) "Department" means the Department of Human Services (DHS). ~~The term "Department is synonymous with "Division (SPD)".~~

(154) "Evidence" ~~for the purpose of these rules,~~ means material gathered, examined, or produced during ~~the course of~~ an adult protective services investigation. Evidence includes, but is not limited to, witness statements, documentation, photographs, and relevant physical evidence.

| (162) "Financial Institution" has the meaning given that term in ORS 192.583.

| (173) "Financial Records" has the meaning given that term in ORS 192.583.

| (184) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

| (195) "Health Care Provider" has the meaning given that term in ORS 192.556.

| (2046) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

| (217) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

| (4822) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options, and communicate that choice.

| (4923) "Law Enforcement Agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;
- (d) Any district attorney; or
- (e) The Oregon Department of Justice.

(240) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(254) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(262) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and, ~~while acting in an official capacity,~~ comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the ~~individual, while acting in an official capacity, comes~~ individual comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, psychiatrist, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home ~~health agency~~ health service;

(C) Employee of the Department of Human Services, ~~county health department, community mental health program,~~

community developmental disabilities program, or Area Agency on Aging or a nursing facility, or an individual who contracts to provide services to a nursing facility;

(D) Employee of the Oregon Health Authority, county health department, or community mental health program;

(E) Employee of a nursing facility or an individual who contracts to provide services to a nursing facility;

(FD) Peace officer;

(GE) Member of the Clergy;

(HF) Licensed Regulated clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(IG) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(JH) Senior center employee;

(KI) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(LK) Firefighter or emergency medical services provider;

(L) Emergency Medical Technician;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee; and

(O) Attorney;

(P) Dentist;

(Q) Optometrist;

(R) Member of the Legislative Assembly, and

(OS) For nursing facilities ~~iesy abuse~~, all of the above, plus legal counsel, guardian, or family member of the resident.

(273) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(284) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(295) "Older Adult" ~~for the purpose of these rules,~~ means any individual 65 years of age or older.

(3026) "Physical Disability" ~~for the purpose of these rules,~~ means any physical condition or cognitive condition such as brain injury ~~and or~~ dementia that significantly interferes with an adult's ability to protect ~~his or her self~~ themselves from harm or neglect. (See OAR 411-020-0015, Eligibility)

(3127) "Protected Health Information" has the meaning given that term in ORS 192.556.

(2832) "Relevant" means tending to prove or disprove the allegation at hand.

(2933) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(340) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(354) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system, and other relevant factors are also evaluated to determine their impact on the individual's ability to become or remain safe.

(36) "Risk of Serious Harm" means that without intervention, the individual is likely to incur substantial injury or loss.

(372) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(383) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

~~(34) "Serious Risk of Harm" means that without intervention the individual is likely to incur substantial injury or loss.~~

(395) "Services" as used in the definition of abuse includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, housekeeping, and transportation as well as assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(3640) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(4137) "These Rules" mean the rules in OAR chapter 411, division 020.

(3842) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(439) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

| (440) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0010 Authority and Responsibility

| The [Division-Department](#) is granted statutory authority and responsibility to protect older adults and adults with physical disabilities from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

| (a) ORS 410.020 authorizes the [Division-Department](#) to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) These rules detail the steps in the adult protective services process.

(2) ADULT FOSTER HOMES.

| (a) ORS 443.767 requires [the Division the Department](#) to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that [could-may](#) result in injury, abuse, or neglect of

a resident and ~~could~~ may place the resident's health or safety in imminent danger.

(b) OAR 411-050-~~0455~~ 0665 details the steps for filing, investigating, and documenting complaints in Adult Foster Homes.

(3) RESIDENTIAL CARE ~~OR~~ AND ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the ~~Division~~ Department access to a facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and 443.991(2) and the rules in OAR chapter 411, division 054.

(b) OAR 411-054-0105 details methods for conducting inspections and investigations in residential care and assisted living facilities.

(4) NURSING FACILITIES.

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650 to 441.695 addresses the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating, and documenting investigations in nursing facilities and the corrective action procedure for substantiated complaints.

(5) ROOM AND BOARD FACILITIES.

(a) ORS 443.500 allows the ~~Division~~ Department access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances, and regulations. If the ~~Division~~ Department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, ~~the~~ the Department may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in room and board facilities.

(6) ELDER ABUSE.

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) These rules detail the procedures for reporting, investigating, and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0015 Eligibility Criteria

(1) Adult protective services as described in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older;

(b) Adults aged 18 and older who have a physical disability as defined in these rules; and

(c) Anyone living in a [nursing-licensed care](#) facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to individuals who are [entitled-enrolled in or previously determined eligible to-for](#) services from [the-Division the Department](#) under ORS 430.735 to 430.765 and OAR 407-045-0250 to 407-045-0360 [are should be](#)-referred for [investigation by the community mental health or screening to the county](#) developmental disabilities program, [or the Office of Investigations and Training. Reported abuse to individuals receiving services from the Oregon Health Authority under ORS 430.735 to 430.765 and OAR 943-045-0250 to 943-045-0360 are referred for screening to the community mental health program.](#)

(3) Eligibility for adult protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0020 Reporting of Abuse and Neglect

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to ~~a Division~~ the Department, ~~designated~~ local office, or a local law enforcement agency. A psychiatrist ~~or~~ psychologist, attorney, or member of the clergy does not have to report privileged information covered under ORS 40.225 to 40.295. An attorney is not required to make a report of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

(2) Reporting of instances involving abuse or neglect of older adults and adults with physical disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the individual reporting the suspected abuse shall be confidential and may be disclosed only with the consent of that individual, by judicial process (including administrative hearing), or as required to perform the investigation by the ~~Division~~ Department or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.055 – 124.075, 124.090, 410.070, 411.116, 441.635 – 441.655, 441.671 – 441.675, & 443.765

411-020-0025 Multidisciplinary Team (MDT)

(1) The local ~~Division or AAA~~ office must participate in their county MDT to coordinate and collaborate on allegations of abuse and self-neglect of older adults and adults with physical disabilities. Adult protective services, when provided by the local office in conjunction with their participation on their county MDT, shall be provided as described in OAR 411-020-0040.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except by law, authorization by the adult, or by court order.

(3) The local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and [also](#) the number of APS cases referred to law enforcement in the county.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & section 8, chapter 837,
Oregon Laws 2009

411-020-0030 Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential, except for disclosure of the conclusion under OAR 411-020-0100(6), and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (5) of this rule.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. [On-For](#) these types of complaints, information regarding the identity of the complainant, the reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) The Department shall make the protective services report and underlying investigatory materials available to the protection and advocacy

system designated by ORS 192.517 when the reported victim is an individual with a disability or mental illness as identified by ORS 192.517.

(5) Where the Department deems it ~~is~~ appropriate, for the purpose of furthering a protective service, ~~or~~ when it is necessary to prevent or treat abuse, or when deemed to be in the best interest of a reported victim, the names of the reported victim, witnesses (other than the complainant except as expressly permitted below), any investigative report, and any records compiled during ~~the course of~~ an investigation, may be made available to:

(a) Any law enforcement agency, to which the name of the complainant may also be made available;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) A public agency that licenses or certifies an individual that has abused or is alleged to have abused an older adult;

(d) The Long Term Care Ombudsman;

(e) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including, but not limited to, the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the [U.S. Postal Inspection Service Federal Offices of Inspector General](#);

(f) An MDT as described in OAR 411-020-0025;

(g) A court, pursuant to court order, to which the name of the complainant may also be made available as required by the court order; or

(h) An administrative law judge in an administrative proceeding when necessary to provide protective services, investigate, prevent, or treat abuse of an older adult or when in the best interest of an older adult.

(6) Recipients of information disclosed under section (4) of this rule must maintain the confidentiality of the information as required by Oregon statute unless superseded by other state or federal law.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769, & 2012 Or. Laws Chapter 70

411-020-0040 Services Provided

(1) Local ~~Division designated~~ offices must follow procedural guidelines consistent with ~~Division Department~~ policies guiding APS response activities. Although the role of APS is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, and licensing agencies are desirable.

(2) ~~The Division~~ The Department shall establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations must be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116

411-020-0060 Screening

(1) All calls or contacts involving the possibility of abuse or neglect must be directed to APS screening.

(2) Screening is the skilled interviewing process used to gather and assess information in order to determine eligibility for adult protective services. This activity includes a determination of whether the complaint meets the definition of abuse as contained in administrative rules.

(3) If the complaint meets the definition of abuse, screening activities may include, but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint; or

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition of abuse but requires intervention, response shall include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition of abuse or require intervention, but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(6) If the complaint involves a [client-consumer](#) who is currently receiving case management or eligibility services, the worker assigned to the [consumer-client](#) must be notified. If the complaint involves a commercial adult foster home, the local licenser must be notified.

(7) Each local office must develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier must be assigned and shared with the complainant at the time of screening so that the complainant may re-contact the office and determine the disposition of the report.

(8) Each local office must establish an after hours reporting system.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0080 Triage

(1) Triage is the APS process of determining the nature and severity of risk to individuals and the immediacy of response required.

(2) ~~The Division~~ The local office shall provide for a prompt and timely initial response to all APS referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by ~~the Division~~ the Department are as follows:

(a) COMMUNITY CASES (Non-facility, elder abuse, and APS).

(A) IMMEDIATELY: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The individual is in the process of being harmed due to criminal activity, medical emergency, fire, ~~etc.~~, or is a clear and present danger to self or others;

(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT: Initiate investigation within two hours when the reported victim is identified as being in imminent danger;

(C) BY THE END OF THE NEXT ~~DIVISION~~-WORKING DAY: Initiate investigation by the end of the next working day when the individual is identified as being in a hazardous situation that is one that ~~could~~ may lead to increased harm or risk; or

(D) WITHIN FIVE ~~DIVISION~~-WORKING DAYS: When screening determines ~~that~~ the situation is problematic, one that is chronic or ongoing, or is a general complaint that an immediate response is unlikely to change the reported victim's

risk level, an investigation ~~should~~must be initiated within five working days.

(b) ASSISTED LIVING, RESIDENTIAL CARE, ADULT FOSTER HOME AND NURSING FACILITY CASES.

~~(A) NURSING FACILITY CASES.~~

~~(A) (i) WITHIN TWO HOURS:~~

~~(i) If the resident's health or safety is in imminent danger; or~~

~~(ii) The resident has recently died, been hospitalized, or been treated in an emergency department as a result of suspected abuse or neglect.~~

~~(B) PRIOR TO BEFORE THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.~~

~~(B) ADULT FOSTER HOMES.~~

~~(i) WITHIN TWO HOURS:~~

~~(I) If the complaint alleges the resident has been injured, abused, or neglected and that any resident's health or safety is in imminent danger; or~~

~~(II) That the resident has died or been hospitalized due to abuse or neglect.~~

~~(iii) BY THE END OF THE NEXT DIVISION WORKING DAY: If circumstances exist that may result in injury, abuse, or neglect.~~

~~(C) ASSISTED LIVING FACILITY, RESIDENTIAL CARE FACILITY, ROOM AND BOARD FACILITY.~~

~~(i) IMMEDIATELY: If circumstances exist that may result in injury, abuse, or neglect and may place the resident's health or safety in imminent danger; or~~

~~(ii) BY THE END OF THE NEXT WORKING DAY: In all other cases.~~

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, & 443.767

411-020-0085 Law Enforcement Notification

(1) The Department or local office shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) ~~There is R~~reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable;

(d) Forensic photographic or other evidence is needed; or

(e) ~~As-Those~~ required under OAR 411-020-0123 or 411-020-0126.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Department finds ~~that~~ there is reasonable cause to believe a crime has been committed.

(3) When the local ~~Department or AAA~~ office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement

agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, & 443.767

411-020-0090 Assessment

(1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information, and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.

(2) Assessment in APS cases shall be conducted in person with the reported victim, usually in the reported victim's home or the facility where the reported victim lives.

(3) The assessment may include:

(a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, and domestic violence providers, etc. and other relevant others individuals, in keeping with Department confidentiality guidelines.

(b) The use of accepted screening tools as well as the worker's professional judgment to determine the reported victim's safety and functional abilities.

(4) If there is evidence ~~that~~ the reported victim's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results shall be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.

(5) Upon completion of the initial APS assessment, the complaint shall be continued for investigation where there is a reported perpetrator, or shall proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim shall be offered resource information, and the case shall be documented and closed.

(6) Results of the APS assessment of the reported victim's cognitive and functional abilities shall be recorded in the ~~relevant portions of the Client Assessment and Planning System or other~~ Department-approved system. A summary of the relevant portions shall be included in the APS report.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0100 Community Investigation, Documentation, and Notification

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation shall be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional, and complete.

(4) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct unannounced interviews with the parties described in section (a) above to gather all relevant available evidence. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;

(c) The reported victim and reported perpetrator must be interviewed in person unless a deviation under OAR 411-020-0040(3) is required for the safety of any party to the investigation, an in-person interview is unable to be obtained, or at the request of law enforcement. Whenever reasonable, key witnesses shall be interviewed in person.

(ed) Obtain and review any available and relevant documentary or physical evidence;

(de) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(ef) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(fg) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(gh) Conclude whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determine that the evidence is inconclusive.

(5) The local office must document and close the investigation on or before 120 days from receipt of the initial complaint unless delayed by a concurrent criminal investigation. in a timely manner and in a standard report format consistent with Division policy. A reasonable delay may be permitted in the event of a concurrent criminal investigation.

(a) Documentation of community assessments and investigations must include, but is not ~~necessarily be~~ limited to:

(A) A description of documents and records reviewed; A summary of the findings;

(B) Identification and summary of witness statements obtained; Conclusions;

(C) A summary of the findings; Any plans of action that are recommended or taken.

(D) Conclusions; and

(E) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Dates and Location of the complaint; Characteristics of the reported victim;

(B) Date investigation commenced and by whom; Relationship of the reported victim to the complainant, witnesses, and reported perpetrator;

(C) Characteristics of the reported victim including identified language, race and ethnicity; Type of reported mistreatment or abuse;

(D) Relationship of the reported victim to the complainant, witnesses, and reported perpetrator; Conclusion; and

(E) Type of reported mistreatment or abuse; Outcome.

(F) Conclusion; and

(G) Outcome.

(c) Reports must be written and closed on a Department-approved system; (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that:

(a) There was an allegation of abuse or self-neglect and type of abuse or self-neglect being investigated;

(b) -aAppropriate action is being taken;

(c) , and that nNo abuse was found (unsubstantiated);

(d), ~~A~~abuse was found (substantiated); or

(e), ~~or~~ The investigation was 'inconclusive'.

(7) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 – 441.650, 441.660, 443.500, & 443.767

411-020-0110 ~~Community~~ Intervention

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed the victim at risk.

(2) Intervention may include, but is not ~~necessarily~~ limited to:

(a) Arranging for emergency services such as law enforcement and, emergency medical care, ~~etc.~~ as needed;

(b) Providing education and counseling to the individual at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical, and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed; or

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis

response. Longer term intervention may be made available through APS risk management or through non-APS case management.

(4) An individual who can make an informed choice may refuse assistance or intervention. In this case, the worker ~~shall must~~ provide the individual with appropriate resource information and a way to re-contact APS ~~if should~~ aif a threat of harm recurs or reaches a level unacceptable to the individual.

(5) If the individual at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention, if available must include medical assessment to determine whether capacity may be improved or restored.

(6) If the individual at risk is unable to consent to assessment or treatment, consideration must be given to involuntary intervention, including as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases, the intervention initiated must be:

(a) be The least restrictive available;;

(b) must respectful of the values of the individual at risk;; and

(c) must be Sought only when it has been determined that there is no surrogate decision maker in place, or that such individual is not acting responsibly in that role.

(7) If the individual lacks appropriate information, the worker must provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the individual, and balanced, in order to support the individual's right to make an informed choice.

(8) When the assessment or investigation is complete, the case shall be either:

(a) Documented and referred to APS risk management for further monitoring and intervention if the situation meets the criteria in OAR 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The individual at risk, having the ability to do so, decides not to have further adult protective services.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767

411-020-0120 Facility Investigation, Documentation, and Notification

(1) Investigations shall be objective, professional, and complete.

(2) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct interviews with the parties described in section (a) above to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;

(c) Obtain and review any available and relevant documentary or physical evidence;

(d) Create additional investigatory aids, such as maps or drawings, that may aid in proving or disproving the allegation;

(e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(g) Conclude whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was

substantiated or unsubstantiated, or determine that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the ~~Division's Central~~ Office of Licensing and Regulatory Oversight.

(3) In conducting facility abuse investigations, the ~~Division~~ Department protocols governing activities of investigations further include:

(a) Notifying the ~~Division's~~ Department's Nursing Facility Survey Unit (NFSU) ~~Client Care Monitoring Unit (CCMU)~~ if:

(A) A situation exists in a nursing facility that meets criteria for ~~CCMU~~ NFSU to complete the investigation. Where ~~CCMU~~ NFSU shall conduct the investigation, the local office must provide coordination to assure victim safety; or

(B) A situation exists in a residential care facility or an assisted living facility that may cause ~~CCMU~~ NFSU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant, ~~or~~ a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying individuals or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility; and

(d) Arranging for immediate protection. The worker must direct the provider to correct any substantiated problem immediately.

(4) The local office must submit ~~detailed~~ completed investigation reports written on the ~~Division's~~ Department's Facility Report Writing System to the Office of Licensing ~~and Quality of Care in Central Office~~ and Regulatory Oversight. ~~The local office must refer these reports to the appropriate office~~ within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility. A reasonable delay may be permitted in the event of a concurrent criminal investigation.

(a) Facility investigations must be written at the local office on the ~~Division's~~ Department's Facility Report Writing System.

Documentation of facility investigations for each allegation must include ~~for each allegation~~:

- (A) A statement of the allegation;
- (B) A Ssummary of witness statements;
- (C) Investigator observations, including documentary review;
- (D) Findings of fact; and
- (E) A Cconclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office must retain hard copies of facility investigation reports for a period of 10 years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules or and policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Division- Department may collect standardized statewide data on all types of adult protective services including, but not limited to, information on the number of cases, types of incidents, individual characteristics, and outcomes.

(8) The Department or the a law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116,
441.645 – 441.650, 441.660, 443.500, & 443.767

411-020-0123 Accessing Protected Health Information, including Records

Protected health information from a health care provider may be obtained in the course of an APS investigation either from a mandatory reporter performing that reporter's duties required by Oregon statute or as follows:

(1) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider may disclose, in accordance with 45 CFR 164.512(j), protected health information to APS to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes ~~that~~ the disclosure is necessary to prevent or lessen the threat. APS may request protected health information in the course of a self-neglect assessment or abuse investigation under this provision to prevent or lessen a serious and imminent threat.

(2) COMMUNITY ABUSE INVESTIGATION. In the course of an APS investigation into abuse in a community-based setting where the process under section (1) does not apply or is declined by the health care provider:

(a) CONSENT BY REPORTED VICTIM. APS may obtain a reported victim's protected health information for an APS investigation with that reported victim's consent.

(b) DECLINED CONSENT. If a reported victim ~~is able to~~can make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the reported victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) REPORTED VICTIM INCAPABLE OF CONSENT. If a reported victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the reported victim's protected health information, and the reported victim does not have a fiduciary or legal representative that ~~can~~consents to APS accessing the reported victim's protected health information, or when the

fiduciary or legal representative is a reported perpetrator and refuses to consent to APS accessing the reported victim's protected health information, then the following procedure must be followed in order for APS to obtain the protected health information:

(A) APS must request that the appropriate law enforcement agency submit a written request to the health care provider to allow the law enforcement agency to inspect and copy, or otherwise obtain, the protected health information.

(B) APS shall inform the law enforcement agency that the written request must state that an investigation into abuse is being conducted under ORS 124.070 (elder abuse) or ORS 441.650 (nursing facility resident abuse).

(3) HEALTH CARE PROVIDER NOTICE. In investigations where APS is seeking disclosure of protected health information by a health care provider under sections (1) or (2) of this rule, APS shall inform the health care provider, either directly or through the law enforcement agency requesting the information, that the health care provider is required, in accordance with 45 CFR 164.512(c)(2), to promptly inform the individual to whom the protected health information pertains that information has been or shall be disclosed, unless:

(a) The health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm; or

(b) The health care provider ~~would be~~ is planning to inform a personal representative of the individual and the health care provider reasonably believes ~~that~~ the personal representative is responsible for the abuse, neglect, or other injury, and ~~that~~ informing such person ~~would not be~~ is not in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(4) LICENSED CARE FACILITY INVESTIGATIONS. In the course of an APS investigation into abuse in a licensed care facility:

(a) **OBTAINING RESIDENT RECORDS MAINTAINED BY A LICENSED CARE FACILITY.** Licensed care facilities must provide APS access to all resident and facility records, including protected health information, maintained by the facility as required by their respective Oregon Administrative Rules.

(b) **DISCLOSURE BY HEALTH CARE PROVIDER.** A health care provider, such as a hospital, a medical office, or a provider other than a licensed care facility, may disclose, in accordance with 45 CFR 164.512(d), a reported victim's protected health information to APS as a health oversight agency for purposes of oversight of that facility, including oversight through investigation of complaints of abuse of residents in such facility. APS shall inform the health care provider of its authority as a health oversight agency and that such disclosures are permitted in accordance with 45 CFR 164.512(d).

(c) **HEALTH CARE PROVIDER REFUSAL TO DISCLOSE.** If a health care provider refuses to disclose protected health information to APS as a health oversight agency, APS may follow the procedure set forth in section (2)(c) of this rule if the reported victim is an older adult.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 Or. Laws Chapter 70

411-020-0130 APS Risk Management

(1) APS risk management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial self-neglect assessment or abuse investigation ~~phase~~ has been completed.

(2) Referral to APS risk management is appropriate when:

(a) Assessment indicates that the reported victim continues to be vulnerable and at ~~serious~~-risk of serious harm;

(b) Continued reassessment and intervention may reduce the risk of harm; and

(c) There is no other source of case management available to the reported victim.

(3) APS risk management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the reported victim;

(b) Regular active contact with the reported victim to reassess the risk of harm and the effectiveness of interventions; and

(c) Documentation of assessments and interventions.

(4) APS risk management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by [a](#) supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070, 411.116, & 443.767